

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 18 October 2006

The Council met at Eleven o'clock

MEMBERS PRESENT:

THE PRESIDENT

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

THE HONOURABLE JAMES TIEN PEI-CHUN, G.B.S., J.P.

THE HONOURABLE ALBERT HO CHUN-YAN

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

THE HONOURABLE LEE CHEUK-YAN

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

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

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

THE HONOURABLE MARGARET NG

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

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHAN YUEN-HAN, J.P.

THE HONOURABLE BERNARD CHAN, G.B.S., J.P.

THE HONOURABLE CHAN KAM-LAM, S.B.S., J.P.

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

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE SIN CHUNG-KAI, J.P.

DR THE HONOURABLE PHILIP WONG YU-HONG, G.B.S.

THE HONOURABLE WONG YUNG-KAN, J.P.

THE HONOURABLE JASPER TSANG YOK-SING, G.B.S., J.P.

THE HONOURABLE HOWARD YOUNG, S.B.S., J.P.

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE LAU CHIN-SHEK, J.P.

THE HONOURABLE LAU KONG-WAH, J.P.

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

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

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

THE HONOURABLE CHOY SO-YUK, J.P.

THE HONOURABLE ANDREW CHENG KAR-FOO

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

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

THE HONOURABLE LI FUNG-YING, B.B.S., J.P.

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

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE FREDERICK FUNG KIN-KEE, S.B.S., J.P.

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

THE HONOURABLE VINCENT FANG KANG, J.P.

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

THE HONOURABLE LI KWOK-YING, M.H., J.P.

DR THE HONOURABLE JOSEPH LEE KOK-LONG, J.P.

THE HONOURABLE DANIEL LAM WAI-KEUNG, S.B.S., J.P.

THE HONOURABLE JEFFREY LAM KIN-FUNG, S.B.S., J.P.

THE HONOURABLE MA LIK, G.B.S., J.P.

THE HONOURABLE ANDREW LEUNG KWAN-YUEN, S.B.S., J.P.

THE HONOURABLE ALAN LEONG KAH-KIT, S.C.

THE HONOURABLE LEUNG KWOK-HUNG

DR THE HONOURABLE KWOK KA-KI

DR THE HONOURABLE FERNANDO CHEUNG CHIU-HUNG

THE HONOURABLE CHEUNG HOK-MING, S.B.S., J.P.

THE HONOURABLE WONG TING-KWONG, B.B.S.

THE HONOURABLE RONNY TONG KA-WAH, S.C.

THE HONOURABLE CHIM PUI-CHUNG

THE HONOURABLE PATRICK LAU SAU-SHING, S.B.S., J.P.

THE HONOURABLE ALBERT JINGHAN CHENG

THE HONOURABLE KWONG CHI-KIN

THE HONOURABLE TAM HEUNG-MAN

MEMBERS ABSENT:

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

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

PUBLIC OFFICERS ATTENDING:

THE HONOURABLE RAFAEL HUI SI-YAN, G.B.S., J.P.
THE CHIEF SECRETARY FOR ADMINISTRATION

THE HONOURABLE STEPHEN IP SHU-KWAN, G.B.S., J.P.
SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR

DR THE HONOURABLE SARAH LIAO SAU-TUNG, J.P.
SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

THE HONOURABLE FREDERICK MA SI-HANG, J.P.
SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY

DR THE HONOURABLE YORK CHOW YAT-NGOK, S.B.S., J.P.
SECRETARY FOR HEALTH, WELFARE AND FOOD

THE HONOURABLE DENISE YUE CHUNG-YEE, G.B.S., J.P.
SECRETARY FOR THE CIVIL SERVICE

CLERKS IN ATTENDANCE:

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

MS PAULINE NG MAN-WAH, ASSISTANT SECRETARY GENERAL

MRS VIVIAN KAM NG LAI-MAN, ASSISTANT SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY
GENERAL

TABLING OF PAPERS

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

Subsidiary Legislation/Instruments	<i>L.N. No.</i>
Electoral Procedure (Chief Executive Election) (Amendment) Regulation 2006	209/2006
Employees Retraining Ordinance (Amendment of Schedule 2) (No. 2) Notice 2006	210/2006
Chief Executive Election (Election Petition) (Amendment) Rules 2006	211/2006

Other Papers

- No. 3 — Report by the Trustee of the Customs and Excise Service Children's Education Trust Fund for the year ending 31 March 2006, together with the Director of Audit's Report and the Audited Statement of Accounts
- No. 4 — Annual Report 2005-06 of the Protection of Wages on Insolvency Fund Board
- No. 5 — Environment and Conservation Fund Trustee Report 2005-2006
- No. 6 — Report of changes to the approved Estimates of Expenditure approved during the first quarter of 2006-07 (Public Finance Ordinance : Section 8)
- No. 7 — The Land Registry Trading Fund Hong Kong Annual Report 2005/06
- No. 8 — Traffic Accident Victims Assistance Fund Annual Report for the year from 1 April 2005 to 31 March 2006

- No. 9 — Electrical and Mechanical Services Trading Fund
Annual Report 2005/2006
- No. 10 — Companies Registry Trading Fund
Annual Report for the period from 1 April 2005 to
31 March 2006
- No. 11 — Urban Renewal Authority
Annual Report 2005-2006
- No. 12 — Hong Kong Deposit Protection Board
Annual Report 2005-2006
- No. 13 — Construction Workers Registration Authority
Annual Report 2005/06
- No. 14 — The Government Minute in response to the Report No. 46
of the Public Accounts Committee dated July 2006

Report of the Bills Committee on Smoking (Public Health) (Amendment)
Bill 2005

ADDRESSES

PRESIDENT (in Cantonese): Address. The Chief Secretary for Administration will address the Council on "the Government Minute in response to Report No. 46 of the Public Accounts Committee dated July 2006".

The Government Minute in response to the Report No. 46 of the Public Accounts Committee dated July 2006

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Madam President, laid on the table today is the Government Minute responding to Report No. 46 of the Public Accounts Committee (PAC).

The PAC Report No. 46 covers four chapters in the Audit Report No. 46, including two on Radio Television Hong Kong (RTHK) on which the PAC has

conducted hearings. When presenting the PAC Report No. 46 on 12 July this year, the Chairman of the PAC set out in detail the comments of the PAC on RTHK's various irregularities identified in the audit. The Administration is grateful for the time and effort that the PAC has devoted to this report. Today, I would like to highlight the measures that have been or are being taken to improve RTHK's financial control and governance. The measures that the Government has taken or is taking on the conclusions and recommendations contained in the PAC Report are set out in the Minute in detail.

RTHK pledges to provide high quality public broadcasting services to the community, and at the same time exercises prudence in the use of public funds. The Director of Broadcasting, together with his management team, is committed to implementing the recommendations made by the PAC and Audit Commission, to complying with government rules and regulations, and to enhancing financial control and governance in RTHK.

RTHK has formulated an action plan to address all recommendations of the PAC and Director of Audit. New guidelines and reminders are being issued to ensure that staff are aware of all the specific requirements in the various areas of concern. RTHK is working with relevant bureaux and departments to explore the possibility of providing for flexibility in its guidelines and internal regulations, where appropriate, to suit its operational requirements.

The strengthened Systems Review Unit, headed by a Chief Treasury Accountant seconded to RTHK, has been closely monitoring and reviewing the effectiveness of internal control measures. The Unit is advising and assisting the management team in putting in place proper checks and balances to ensure accountable, effective and efficient management of public resources.

RTHK will compile annual plans to enhance resource management. Under the Framework Agreement signed between the Secretary for Commerce, Industry and Technology and the Director of Broadcasting, the Secretary for Commerce, Industry and Technology will provide policy guidance to the Director of Broadcasting in defining programmes of activities, reviewing their objectives, setting performance targets, and so on. The Commerce, Industry and Technology Bureau will, therefore, follow up the Audit Commission's observations and recommendations, and ensure that it plays an active part in providing policy guidance to RTHK to help it formulate annual plans, and monitor regularly implementation of the plans against targets set.

Since 2000, the PAC, the Administration and the Director of Audit have agreed amongst themselves a set of arrangements to prevent leakage of audit investigations before tabling. I would like to reiterate the Administration's commitment to these agreed arrangements to facilitate the smooth operations of the PAC. We have reminded Directors of Bureaux and Controlling Officers that they should not speak on or confirm the audit investigations before the tabling of the Director of Audit's report. They should also refrain from initiating publicity to counter the audit findings before public hearings. The Administration would actively co-operate with the PAC and provide support to its work.

Finally, I wish to echo the PAC Chairman's remarks that the PAC plays an important role in ensuring value for money in the delivery of public services. The Administration looks forward to receiving its constructive comments and wise counsel. As always, we shall respond positively and promptly. Thank you, Madam President.

PRESIDENT (in Cantonese): Dr Philip WONG, are you seeking elucidation?

DR PHILIP WONG (in Cantonese): I have to make a clarification. President, I have to thank the Chief Secretary for Administration for his response. I would like to ask about the last line of the fourth paragraph made by the Chief Secretary for Administration, namely, "providing for flexibility in its guidelines and internal regulations". What does he mean by flexibility? Will he clarify further?

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Certainly, Madam President, it concerns the specific operation of the departments concerned, and I do not wish to go into the details in my response here. But insofar as the principle is concerned, in the many reviews conducted in the past of the various problems relating to the utilization of resources by RTHK, the department and the staff pointed out that the work of RTHK, being a media group, could not be handled in the same way as that of other departments such as government supplies because they sometimes have to deal with sudden incidents, and consideration has to be given to the flexibility required by the media. For this reason, the Government all along considers that in principle, RTHK should be given flexibility when necessary, so that it can operate flexibly without

compromising the principles of proper resource management and compliance with general management rules and regulations, thereby striking the right balance. The department and the Bureau are now looking into how much room can be and should be provided in this connection. Thank you, Madam President.

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. First question.

Policy on Procurement of Drugs by Public Hospitals

1. **MISS CHAN YUEN-HAN** (in Cantonese): *President, regarding the policy on the procurement of drugs by public hospitals, will the Government inform this Council whether it knows:*

- (a) *the number of pharmaceutical companies which supply drugs to public hospitals at present, and the respective proportions of the drugs supplied by various pharmaceutical companies;*
- (b) *the mechanism and criteria adopted by the Hospital Authority (HA) for procuring drugs which have the same efficacy but are manufactured by different pharmaceutical companies; and*
- (c) *if any review mechanism is in place to monitor the mechanism for procuring drugs by public hospitals; if so, of the details; if not, how the HA monitors and prevents incidents involving acceptance of advantages?*

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

- (a) Currently there are more than 200 pharmaceutical companies supplying some 3 000 drug items to the HA. In 2005-2006, drugs supplied by 50 of the pharmaceutical companies accounted for 85% of the HA's total drug expenditure. The share by these companies

individually ranged between 9.25% and 0.20%. Some pharmaceutical companies have accounted for a larger share of the HA's expenditure on drugs mainly due to the fact that they have successfully developed innovative drugs that merited patent protection. Since other pharmaceutical companies cannot manufacture these drugs within the period of protection, prices for patented drugs are normally higher.

Pharmaceutical companies have to invest significant amounts of resources in the development of new drugs. If not for the protection of patents, they may not be able to recover their costs. Therefore, it is common around the world that pharmaceutical companies would charge higher prices for patented drugs, and it is not something that we can avoid.

- (b) Generally speaking, for high value procurement of commonly used drugs in large quantities, the HA would make use of single tenders for patented drugs and open tenders for non-patented drugs. The HA would normally sign a supply contract with the successful bidders for a term of 12 or 24 months.

As the major provider of public health care services in Hong Kong, the HA has always respected intellectual property rights. In the procurement of patented drugs, the HA will carefully verify relevant patents to ensure that sufficient justification exists for the use of single tenders. In respect of drugs for which patent protection has already expired, the HA will switch to the use of open tenders for their procurement, so as to allow other manufacturers to compete for the supply contracts. This is to ensure the opening up of the market in a timely manner and lower the cost of medical services.

For the evaluation of drugs manufactured by different pharmaceutical companies, the Department of Health (DH) and the HA have a common drug procurement policy to ensure that the quality and standards of drugs used in the public health care sector of Hong Kong will not be adversely affected by the introduction of generic alternatives. The evaluation of drugs is the responsibility of the Drug Selection Committee, which comprises representatives from both the HA and the DH, university professors, and clinical

experts and pharmacists from the private sector. The Committee will follow the aforementioned drug procurement policy in the evaluation and selection of drugs manufactured by different pharmaceutical companies through a tendering process.

- (c) Not only is the drug procurement mechanism a matter subject to the scrutiny of the HA's Internal Audit Department, the Independent Commission Against Corruption (ICAC) also conducts assignment studies from time to time to prevent incidents involving acceptance of advantages from happening.

MISS CHAN YUEN-HAN (in Cantonese): *President, in his reply to part (b) of my question, the Secretary mentioned that out of respect for intellectual property rights, single tenders would be used in the procurement of drugs.*

Just as the term implies, the single tender approach is adopted for the sake of showing respect to certain kinds of innovative drugs, but this has given rise to a number of loopholes. Does the Government depend solely on the ICAC to monitor whether other actions have been taken behind the scene under the single tender approach or does it have other mechanism in place? How can the Government ensure that the single tender concerned is really a fair deal? When I say fair, I refer to a fair price. Since only one tender is involved, how can the Government monitor that a fair and reasonable price is offered and that there will not be any clandestine acceptance of advantages?

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, when a new drug is launched on the market and certain medical practitioners or supervisors intends to procure that drug, they have to go through some specific procedures. A drug therapeutic committee has been set up in each hospital. The committee will first consider the efficacy of the drug concerned and decide whether it is worth procuring according to its level of efficacy. The decision is made not by individual medical practitioners, but jointly by the various experts, medical practitioners and pharmacists on the committee. After a decision is made by a certain hospital, it has to be submitted to other committees in the top echelon of the HA. There are four committees in the top echelon of the HA, one of which is an advisory committee on drugs which is responsible for considering new drugs introduced to Hong Kong. If a

majority of hospitals apply for the use of a certain drug, the committee will then examine whether the drug in question is worth procuring. But this is a matter of a different level.

Moreover, a committee on drug evaluation responsible for assessing the safe application of new drugs is also in place. But, generally speaking, not all medical practitioners can prescribe new drugs, only experts on the treatment of certain diseases are authorized to prescribe new drugs, and some policies must be laid down on this. Finally, before putting out a tender, the committee has to ensure that the price quoted for Hong Kong is comparable to that offered in places overseas. Though the single tender approach is used in the tendering exercise, a tender board will be set up to monitor the situation and no individual can deal direct with the pharmaceutical company on his or her own. We have thus provided the means for internal audit at every level.

MISS TAM HEUNG-MAN (in Cantonese): *May I ask whether the HA will conduct regular assessments on the products and quality of services of drug suppliers and decide whether the suppliers should be replaced? If yes, what is the frequency of such assessments and the criteria for replacing suppliers?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, in general, as far as patented drugs are concerned, once a drug is found to be ineffective — not effective to patients in Hong Kong — we can stop procuring that drug, and this kind of drug is not supplied by another agent. However, for drugs which patent protection has already expired, open tenders will generally be used. Drugs procured through open tenders are in general effective and rarely found ineffective. However, sometimes, certain medical practitioners, in continual prescription of a certain drug, may find patients unable to adapt to the size of the drug and may thus make some suggestions to the committee assessing the usage of drugs. In the next tendering exercise, the committee may perhaps decide not to use that drug and replace it with other drugs.

If we wish to replace an agent, we must have good justifications, for we cannot make any replacement arbitrarily. Their main concern is the efficacy of the drugs, which we call "bio-equivalence", that is, whether the drugs will have

the same effect on the human body upon entry to the patient's body. Certainly, if their efficacy is the same, prices will be a factor for consideration.

PRESIDENT (in Cantonese): Miss TAM Heung-man, has your supplementary question not been answered?

MISS TAM HEUNG-MAN (in Cantonese): *Yes, President. I have to thank the Secretary for stating the criteria in detail. But I also asked about the frequency of assessments earlier. How often would assessments be carried out?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, as far as I know, the several committees under the HA hold meetings once every three months. Certainly, in case of unexpected incidents, they will meet more frequently.

MR JAMES TO (in Cantonese): *President, I in fact like to follow up part (c) of the question on the acceptance of advantages. Many reports pointed out that a number of medical practitioners of public hospitals and even some senior medical practitioners had been invited by a lot of pharmaceutical companies to attend overseas visits, conferences, gatherings, and so on. Though the Secretary said that the Drug Selection Committee had been established, pharmaceutical companies may still invite all members on the Committee. Even if members can only join the Committee on recommendation, pharmaceutical companies may still invite all persons who are connected with the adoption of drug. In view of this, what mechanism has been put in place to maintain transparency in this respect? What are the steps involved? Will the Secretary please enlighten us?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, first of all, I would like to tell Members that these committees comprise many different representatives and individuals. I do not think it is easy to invite all of them to a meal together. Of course, when pharmaceutical companies have to promote or sell a new drug, they must introduce the drug to medical practitioners. At present, all staff members of the HA, including

medical practitioners, are bound by some guidelines on conduct which have set out the treat they can accept, such as hospitality receptions provided by pharmaceutical companies. Views of the ICAC on these guidelines have been sought. For instance, staff may only accept invitation to a meal but cannot accept any other gifts, and the cost of meal per head is capped. Restrictions of this kind have been laid down. In this respect, the HA has already imposed stringent regulation in the past few years.

With regard to the provision of subsidies to medical practitioners for attending overseas conferences mentioned by the Member earlier, this situation did occur a decade or two ago, but now, pharmaceutical companies cannot give direct subsidy to any specific medical practitioner for attending those conferences. These companies can only offer the money to a specific society and let the society concerned to select a representative to attend the meeting. In this connection, both the HA and the societies concerned have to follow their respective codes of practice in making the decision.

MS AUDREY EU (in Cantonese): *President, in part (a) of the main reply, it is mentioned that some 3 000 drug items are involved. May I ask the Secretary whether he will, for the sake of enhancing transparency, consider publicizing all the drugs procured by the HA on the Internet irrespective of the pharmaceutical companies from which and the prices at which the drugs are procured, so that the public may check the information on the Internet? Moreover, as the prices of drugs in the market may fluctuate or become cheaper sometimes, will the Secretary let us get such information from the Internet regularly, for the HA may get cheaper drugs because of the movement in the market?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I will reflect this point to the HA for internal consideration. In general, drugs procured by the HA are offered at a lower price in comparison with that of private hospitals or private practitioners because of the bulk volume procured by the HA. Certainly, the suggestion involves a commercial consideration. Are the pharmaceutical companies concerned willing to disclose the prices? However, if the drugs are included in the HA Drug Formulary, the HA does publish the relevant information, stating the drugs procured by the HA and the locations of pharmaceutical companies supplying the drugs. This information is accessible to the public.

MS AUDREY EU (in Cantonese): *President, my supplementary question asked whether such information could be made available on the Internet. The Secretary said that such information is accessible, but does he mean that we can check this out on the Internet? The Secretary seems to mean that the names of drugs and pharmaceutical companies could be found, but my question is whether such information can be found on the Internet. Of course, another part of my supplementary question is about prices, and the Secretary said that this needed to be considered.*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I have to clarify whether such information, particularly the HA Drug Formulary, has already been uploaded onto the Internet. I do not have such information at hand now. (Appendix I)

MR LI KWOK-YING (in Cantonese): *President, in part (b) of the main reply, the Secretary mentioned that the drug procurement policy adopted aimed to ensure the quality and standards of drugs used in the public health care sector of Hong Kong. I believe quality and standards should include the efficacy of drugs and individuals' reaction to the drugs. However, though the Drug Selection Committee does comprise representatives from various trades and industries, it lacks representatives of users, that is, representatives of patients groups. May I ask the Secretary why the Drug Selection Committee does not include users of drugs, that is, representatives of patients groups? Will these representatives be included in the Committee in future?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, since the Drug Selection Committee is purely a professional committee which has to consider a lot of scientific verifications or evidence, so, generally speaking, I believe a layman can hardly understand those issues. The main objective of the Committee is to ensure that drugs procured are suitable for our patients and supported scientific evidence. In respect of the patients' reactions to drugs and the relationship between medical practitioners and patients, we have other advisory mechanisms that allow patients to reflect the efficacy of medical treatment to medical practitioners. I thus consider it not necessary to put lay members on the Committee.

DR FERNANDO CHEUNG (in Cantonese): *President, in the reply to Mr LI Kwok-ying's supplementary question, the Secretary said that the Drug Selection Committee dealt with highly professional issues which average patients might not necessarily understand. As far as I understand it, a decade ago, that is, 1996, the drug administration of the Federal Government in the United States invited representatives of patients to render assistance in the certification of some new drugs and apparatuses. The concept is in fact very clear. More often than not, patients do become experts, and they can give new perspectives for consideration by experts who will make the so-called professional judgement. Since we notice that other countries have also adopted this practice, I thus hope that the Secretary will reconsider this suggestion seriously. This is not purely a technical issue, for when a certain type of drug or apparatus is to be introduced, a host of factors, particularly the well-being of patients, have to be considered.*

PRESIDENT (in Cantonese): Do you mean to ask the Secretary whether he will consider this?

DR FERNANDO CHEUNG (in Cantonese): *Yes, will the Secretary consider this?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, at present, members of the HA Board already include representatives of patients. Certainly, regarding the need to include representatives of patients in every framework or committee, we have to consider the effectiveness of such practice carefully.

However, I agree that as far as new technologies or new drugs are concerned, the most important consideration is the interest of patient. That is to say, we have to consider ways to enable patients to benefit, the well-being of patients and the efficacy of the drugs. I believe the professionals now involved will make the decision based on the same principle instead of other motives.

PRESIDENT (in Cantonese): We have spent more than 17 minutes on this question. Last supplementary question.

MR LAU KONG-WAH (in Cantonese): *I would also like to follow up part (c) of the main reply, in which the Secretary said that the ICAC would conduct assignment studies from time to time. May I ask whether the assignment studies are conducted in response to cases involving irregularities, or are these regular random checks precautionary in nature? If these are regular checks, how often are they conducted? Are they effective?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, most of the audit work is conducted by the internal audit department of the HA. However, sometimes, as the need arises or in response to public request in particular, the HA does regularly invite the ICAC to conduct inspections, such as checking its internal guidelines and internal procedures to see whether they are in line with corruption prevention practices. According to my records, an inspection was conducted by the ICAC in 1998 and another one was conducted in 2002. Those inspections were regular inspections, not conducted in respect of any particular case.

PRESIDENT (in Cantonese): Second question.

Auction of Personalized Vehicle Registration Marks

2. **MR JEFFREY LAM** (in Cantonese): *Madam President, it was reported that when the first batch of personalized vehicle registration marks (PVRMs) was auctioned in mid-September, a vehicle registration mark dealer spent a million dollars to acquire more than 20 PVRMs and offered them for public sale on the Internet. In this connection, will the Government inform this Council:*

- (a) *given that some of the PVRMs in the first batch are abbreviations of listed companies or international brand names, but they have been acquired in the auction not by the companies or holders of the brand names concerned, whether the authorities have received any enquiries or complaints on such acquisitions from the companies concerned or other international companies that the right of their intellectual property or trade marks have been infringed; if they have, of the follow-up actions to be taken by the authorities;*

- (b) *whether any assessment has been made to determine if auctions of PVRMs would be monopolized by vehicle registration mark dealers, resulting in "price-boosting"; and*
- (c) *whether it has reviewed the auction of the first batch of PVRMs to see if there is room for improvement; if it has, of the outcome?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, in response to Mr LAM's question:

- (a) In drafting the legislation on PVRMs, the Government has carefully considered the legal issues relating to intellectual property rights and has consulted the Intellectual Property Department and the Department of Justice. Legal advice is that since PVRMs do not include symbols, no question of copyright should arise. There is generally no copyright in single words and short phrases. As regards trademark, since trademark infringement is the unauthorized use of a trademark in the course of trade or business in relation to goods and services, and PVRMs are not used as trademarks for goods and services, legal advice is that the use of a PVRM is unlikely to constitute an infringement of a trademark.

Besides, each PVRM holder will receive a Certificate of Allocation of Personalized Registration Mark. The notes for PVRM holders printed on the back of the Certificate remind them of their responsibility for ensuring that the use of PVRMs will not infringe any legal requirements or legal rights, in particular intellectual property rights. The same notes are also found in the Guidance Notes — Auction of Personalized Vehicle Registration Marks, which are distributed to people attending such auctions.

Some of the PVRM combinations put up for auction are identical to company names or brand names. The Government has received submissions from some of the companies concerned expressing reservations about or raising objections to the use of such combinations for PVRMs. As I have explained earlier, our legal advice is that the use of a PVRM is unlikely to constitute an infringement of a trademark or copyright. As such, there is no

ground for us to reject these PVRM applications. We have written to the companies concerned to explain the matter.

- (b) Proposed PVRMs are offered for sale by auction by the Transport Department under Regulation 12I of the Road Traffic (Registration and Licensing of Vehicles) Regulations. Auctioning PVRMs based on the principle of the items going to the highest bids is consistent with the existing practice of auctioning ordinary and special vehicle registration marks. Any interested persons can bid for their preferred PVRMs in an open and fair auction.
- (c) The first auction of PVRMs was conducted smoothly with a total of 210 PVRMs put up for sale. The total revenue exceeded \$11 million. The Government is satisfied with the smooth completion of the first auction. The second auction will be conducted in the same way as the first one.

The Government has undertaken to review the operation of the PVRM Scheme one year after its implementation. The review report will be submitted to the Legislative Council in the first quarter of 2008.

MR JEFFREY LAM (in Cantonese): *Madam President, the Secretary mentioned in part (a) of the main reply that he had received submissions from some companies expressing reservations about or raising objections to PVRMs. In fact, I have also received submissions from some international companies expressing views in this regard. I notice that the Transport Department (TD) announced today that the second auction of PVRMs will be conducted next week, among which are abbreviations of some international brand names, for instance, HSBC, Sony and Ferrari. May I ask the Secretary how many complaints he has received so far and which companies have lodged these complaints? Will he recall the PVRMs relating to such complaints?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, as at yesterday, the TD has received a total of

five submissions raising objections, and we have written to the companies concerned to explain the matter. I am sorry. We are not in a position to disclose the names of these companies as we have not obtained their consent. However, just as Mr LAM said, the names of these companies have already been disclosed in today's press reports, and some of them may probably submit to the Government their views on the matter. But as I said in the main reply, legal advice is that there is no infringement of trademark, so the PVRMs will remain unchanged in the auction.

MR HOWARD YOUNG (in Cantonese): *President, the Secretary just said that he considered the first auction smoothly conducted both in terms of procedures and other responses, which generated \$11 million of revenue. However, I can remember that the target set at that time seemed to be \$70 million. May the Secretary explain whether the above auction has met the target in terms of the revenue generated, apart from its procedures and responses?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, answering Mr YOUNG's supplementary question, actually, this is the first auction and we have planned to process a maximum of 3 000 applications a year. In other words, further auctions will gradually be conducted. Revenue generated from the first auction amounted to \$11 million. As to how many more auctions will be conducted, of course, there are no final decisions yet. However, as mentioned in the submissions provided to the Legislative Council, the revenue to be generated was estimated at about \$70 million. It is rather difficult to say at the moment whether the target can be achieved. But since \$11 million of revenue was already generated from the first auction and 210 PVRMs were successfully sold, the result was indeed rather satisfactory. In other words, the auctioning of PVRMs will continue.

MR DANIEL LAM (in Cantonese): *President, my supplementary question has some similarities with that raised by Mr Howard YOUNG, but I will make some slight changes. The Secretary mentioned in his reply that, while the first auction of PVRMs had generated \$11 million of revenue, the target was actually*

\$70 million. Will the Secretary inform this Council what is the time limit for achieving this target?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, just as I said in my reply, further auctions will gradually be conducted. I am not saying that the target of \$70 million can definitely be achieved, but in view of the fact that 210 PVRMs were sold and \$11 million of revenue generated from the first auction alone, the result appears to be satisfactory. We hope that we can keep it on in the future. As far as the first batch is concerned, perhaps I can provide some data to give Members a better understanding of the public acceptability of PVRMs. While the limit of the first batch of applications was 1 000 PVRMs, 1 580 applications were actually received, which means that a lot of people wanted to apply for PVRMs. After examination, we considered 828 of them compliant with the requirements while others involved PVRMs that have yet to be put up for auction. Just as Mr LAM said right now, the second auction will be conducted on 28 October when 200-odd PVRMs will again be put up for auction.

MRS SELINA CHOW (in Cantonese): *President, in considering the PVRM Scheme, we have certainly discussed its implication on the traditional lucky vehicle registration marks (VRMs). I wish to ask the Secretary: While the revenue generated from auctioning PVRMs was only \$11 million, the revenue generated from the sale of traditional lucky VRMs has also reduced. So, what does the Secretary think about this? Will the revenue generated from the continuous auction of these two kinds of VRMs reduce? If so, what remedial actions should be taken?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, frankly speaking, it is rather difficult to predict a reduction in revenue because it depends to a large extent on the attractiveness of the traditional VRMs being put up for auction. We have looked into the issue, and yet we find it quite difficult to tell its implication on the traditional VRMs at this stage. The study must go on for some time. Certainly, with the auctioning of PVRMs, it is likely that some people will choose their PVRMs and traditional VRMs will therefore be less appealing to them. However, just as I said earlier, it is too early to draw a conclusion now. When the bill was

discussed in the Legislative Council, the point of concern to some Members was that revenue from the auction of traditional VRMs would be paid into the Lotteries Fund. I can tell Members that, during the period from 2006 to 2007, the Lotteries Fund has an opening balance of over \$4,700 million, which, in other words, is still sufficient. This is only supplementary information provided for Members' reference.

DR PHILIP WONG (in Cantonese): *President, may I ask the Secretary under what circumstances the assigned PVRMs can be transferred? The reason why I raised this supplementary question is some people may acquire those more popular VRMs for sale to people with the same interest in them at high prices. Does this situation warrant special consideration by the authorities in respect of operation?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, thanks to Dr WONG for raising this question. In fact, the PVRMs will be sold together with the vehicles concerned. Just as Dr WONG has said, we know that some people will acquire PVRMs for trading purposes. In this connection, perhaps Members will be interested to know that, according to our information, 210 PVRMs were assigned to 159 buyers in the first auction, among whom 143 buyers (that is the majority of them) have only acquired one for their own use and it accounts for 68% of the PVRMs sold on that day. Sixteen buyers had acquired more than one PVRM which together made up the remaining 67 PVRMs, accounting for 32%. It seems that Mr LAM mentioned earlier that — he is well versed in this subject — one buyer had acquired 22 PVRMs and I believe they will be used for trading purposes. However, just as I said earlier, these PVRMs must be transferred together with vehicles.

MR JAMES TIEN (in Cantonese): *President, the Secretary pointed out in part (c) of the main reply that \$11 million of revenue has been generated from the auction. Since the Government had once stated that the revenue would be used for poverty alleviation initiatives, may I ask the Government when the \$11 million revenue obtained will be used for poverty alleviation initiatives?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, we stated that \$60 million would be earmarked for poverty alleviation initiatives when the PVRMs Scheme was proposed to the Legislative Council, it is therefore expected that at least \$60 million will be used for such purpose each year. Even if the auction proceeds fall short of \$60 million, the amount of provision in this respect will not be reduced. I think the supplementary question raised by Mr TIEN right now is probably based on the concern about whether the provision will be made once available. Is this what he meant? As regards the timing, I also have to find out when the provision will be made. Nevertheless, we can assure Members that \$60 million will definitely be set aside for poverty alleviation initiatives. (Appendix II)

MR SIN CHUNG-KAI (in Cantonese): *President, a couple of large corporations told me that they would bring the case of infringement of trademark to Court. The supplementary question I am going to raise is: Since the Government's arguments were made on the basis that there is no infringement of trademark, what contingency plan can be introduced in case there is actually infringement of trademark or copyright?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, a number of submissions have been received to date. And just as I said in my reply to Mr LAM's question, there were correspondences raising objections and expressing other views, but so far no prosecution cases have been received. Just as I said earlier, in-depth studies on the matter have been carried out during the course, and we believe differences in legal viewpoints can be resolved in Court.

MR SIN CHUNG-KAI (in Cantonese): *President, the Secretary has not answered the question. My supplementary question is indeed very simple. Does the Government have any contingency plan if it loses the case?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, as this is a hypothetical question, I am not going to answer it.

PRESIDENT (in Cantonese): We have spent more than 16 minutes on this question. Last supplementary question now.

MR LAU KONG-WAH (in Cantonese): *President, I am also very much concerned about the usage of the revenue, that is, for poverty alleviation initiatives. It appears that the Secretary is going to put the revenue into a big reservoir. So, how can we ascertain that the revenue will actually be used for that purpose? Furthermore, what is the time limit for using the \$60 million if it can actually be used?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, Mr LAU's question is about poverty alleviation, and it seems to have deviated from the subject of VRMs of the main question. I will invite the Financial Secretary, Chairman of the Commission on Poverty, to give Mr LAU a reply in writing. (Appendix III)

PRESIDENT (in Cantonese): Third question.

Transfer of Contract Staff to Permanent Establishment

3. **MR LEUNG YIU-CHUNG** (in Cantonese): *President, it is learnt the Hospital Authority (HA) has launched a scheme in recent months which allows full-time contract staff who have worked for the HA for six years or more to apply for transfer to the permanent establishment. However, temporary staff are excluded from the scheme, and the years of service during which contract staff are employed on temporary appointment terms are also not counted. On the other hand, the Civil Service Bureau is reviewing with various government departments the situation of non-civil service contract (NCSC) staff. In this connection, will the Government inform this Council whether:*

- (a) *it will introduce similar transfer schemes to allow NCSC staff with certain years of service to apply for transfer to the permanent establishment, so as to give them job security and to rectify the problem of "different pay for the same work"; if so, of the details; if not, the reasons for that; and*

- (b) *it will advise statutory bodies to treat contract staff and temporary staff equally in the implementation of transfer schemes of any kind, so as to avoid unfairness and divisions; if not, the reasons for that?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): President, the Non-Civil Service Contract Staff Scheme (NCSC Scheme), introduced in 1999, provides Heads of Bureaux, Departments and Offices (HoDs) with a flexible means to employ staff on fixed term contracts outside the civil service establishment to meet service needs which are time-limited or short-term or subject to market fluctuations, or which require staff on a part-time basis, or where the mode of delivery of the service is under review or likely to be changed through, for example, contracting out.

The staff employed under the NCSC Scheme are not civil servants. As such their terms of appointment and conditions of service are different from those of civil servants. The entry requirements may also be different. HoDs are required to adhere to the guiding principles and arrangements laid down by the Civil Service Bureau for the employment of NCSC staff.

We undertook at the meeting of the Legislative Council Panel on Public Service in March this year to conduct a special review of the NCSC staff situation on a department-by-department basis to better understand individual departments' manpower situation. We have indicated that where it is established that civil servants instead of NCSC staff should be employed to meet specific service needs, we would devise appropriate measures with the concerned bureaux and departments while keeping the size of the overall civil service establishment under control. We aim to complete the review around the end of this year and report the outcome to the Panel.

Against the above background, my reply to part (a) of the main question is that we will not introduce any scheme that allows NCSC staff with certain years of service in the Government to apply for transfer to become civil servants. But we welcome their applying for civil service posts through our long-established, open, fair and competitive recruitment process, under which qualified candidates are selected on the basis of merits. Therefore, without prejudice to the outcome of the review mentioned earlier on the NCSC staff situation, if there is a long-term need for certain NCSC positions and we decide to replace these positions by civil service posts, we would conduct open recruitment to fill these

posts. Serving NCSC staff interested in these civil service openings would be welcomed to take part in the open recruitment process.

In accordance with our established appointment procedures and arrangements, newly appointed civil servants to a specific rank have to go through the required probation period laid down for that rank. If a candidate selected for appointment to a civil service rank has previously served in the recruiting department as a NCSC staff and undertaken duties similar or comparable to those of the civil service rank concerned, the appointment authority may reduce up to half the required probation period for the new appointee. Newly appointed civil servants to a specific rank receive pay at the starting salary point laid down for that rank. Where the appointment authority is faced with serious recruitment difficulties or where the experience of a new recruit, irrespective of whether or not he is a former NCSC staff, is considered particularly valuable for meeting operational needs, the appointment authority may grant incremental credits.

On part (b) of the main question, statutory bodies operate in accordance with the powers conferred on them by the respective ordinances. For those statutory bodies employing their own staff, the terms of employment are decided by the governing boards of these bodies. It would not be appropriate for us to direct them on how they should treat their contract staff and temporary staff.

MR LEUNG YIU-CHUNG (in Cantonese): *President, some posts are actually quite short-term in nature, and of course, we accept that they are temporary posts. However, certain posts are filled by appointees on temporary contract terms as long as five to six years, or even longer. It is therefore rather difficult to agree that these posts are temporary.*

However, President, under this approach, workers are often made to face certain phenomena of, first, having unstable jobs where contracts have to be renewed time and again; and second, their remuneration and benefits falling far short of those of long-term contract staff, thus causing dissatisfaction among them for suspicions that the Government actually wants to exploit them by means of contracts or temporary contracts. In the fourth paragraph of the main reply, the Secretary advises that a review will be conducted, and subject to the long-term need of the nature of the jobs concerned, it will be followed by an open recruitment to fill the posts, when necessary. As such, I wish to ask the

Secretary this question. If a post which has been occupied for many years but is still regarded as temporary, then it reflects that there is a need for this post. If, in the end, it is confirmed that there is a justified need to fill the post, first, will you dismiss the incumbent and conduct an open recruitment? If so, is it fair to the dismissed staff? If they are not dismissed, then how will they be treated? Is it fair to them if the posts in question cannot be converted into permanent posts? Can the Secretary explain what will be done to these posts?

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): President, as stated in the main reply, the employment of NCSC staff by government departments is currently allowed in certain situations, and Mr LEUNG has only mentioned one of them, that is, for short-term needs. There are, however, other cases, say, time-limited posts. Some of them may span several years. Let me cite an example. The Buildings Department has recruited some NCSC staff for clearing backlog cases in unauthorized building works, which will probably take several years to complete.

The guidelines issued for various departments on the employment of NCSC staff also include a requirement on HoDs to determine the duration of employment in the light of their actual operational needs, which specifies that the duration should not exceed three years. Furthermore, unless there are specific operational needs, government departments are not encouraged to employ NCSC staff on very short-term contracts by all means, say, for three months or six months.

As pointed out in the main reply, the main objective of employing NCSC staff is to provide HoDs with a more flexible means of manpower deployment. NCSC staff and civil servants are two distinct types of government employees. As such, differences in the terms and conditions of service offered by the Government to NCSC staff and those to civil servants should not constitute any problem of exploitation.

The remuneration of NCSC staff and the entire NCSC Scheme are significantly different from those of civil servants. The remuneration offered to NCSC staff is an all-inclusive pay package, and unlike civil servants, they do not have annual increments. And yet, HoDs will review on a regular basis, in the light of market situation, the need for adjusting the remuneration of NCSC staff.

In other words, two distinctive mechanisms have been adopted and they are not comparable to each other.

Earlier, Mr LEUNG asked what will happen on completion of those time-limited jobs. Of course, the NCSC concerned will not be renewed. Furthermore, after the ongoing review is completed by the end of this year, we will discuss with the departments concerned on the appropriate actions to be taken. If one of the initiatives is the transfer of some NCSC posts to civil service positions, the former will then be deleted once suitable candidates have been identified to fill the civil service positions through open recruitment. However, just as I said in the main reply, I wish to take this opportunity to emphasize again that NCSC staff are welcomed and encouraged to apply for civil service positions through our open recruitment process, and join us through our open and fair selection process. We consider this the fairest approach as it also enables the Government to appoint the most suitable persons into the Civil Service and fill the relevant civil service positions.

MR LEUNG YIU-CHUNG (in Cantonese): *President, the Secretary has not answered my question. I asked whether or not she would dismiss the serving temporary staff if the review result suggests that permanent establishment is justified. It is because the serving staff must be dismissed before recruitments can be conducted. Will the Secretary dismiss the staff concerned? The Secretary has not answered this part of the supplementary question. Furthermore, I asked her just now whether the fact that the staff concerned are not dismissed demonstrates the need to retain the posts in question. And, is it fair to this group of staff since the Secretary has refused to transfer the posts to the permanent establishment?*

PRESIDENT (in Cantonese): Secretary, I think you have to explain more clearly.

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): President, let me repeat once again. Once we have decided to replace some non-civil service posts by increasing civil service positions, we will undergo an open and fair recruitment process whereby any person, including serving NCSC staff, is welcomed to take part in this open and fair selection process.

Serving NCSC staff who are appointed as civil servants through the selection process will certainly not be required to leave the Civil Service as they are now government employees. However, their employment status will definitely change from NCSC staff to civil servants. Contracts of serving NCSC staff who fail to be appointed to civil service positions after going through our open and fair recruitment process will then be terminated upon expiry.

MR WONG KWOK-HING (in Cantonese): *President, I wish to raise a supplementary question in the light of the Secretary's main reply, which stated that applications by temporary staff of the HA for transfer to the permanent establishment were rejected, and that the years of service during which they were employed on contract terms are not counted even if their applications are approved. Under this circumstance, can the Government be more apathetic in handling the case, notwithstanding what the Secretary has stated in the last sentence of his main reply, namely "It would not be appropriate for us to direct them on how they should treat their contract staff and temporary staff"? In fact, Mr LEUNG Yiu-chung has proposed in his main question that the Government should make suggestions to, rather than directions, the statutory bodies. As such, may I ask the Secretary to answer this supplementary question via the President: Can the Government be more apathetic in making a suggestion to help the temporary staff or contract staff to apply for conversion into permanent staff with a view to demonstrating a government that promotes care, justice and family harmony, instead of a cold and uncaring one?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): *President, I thank Mr WONG for this supplementary question.*

Being the Government, it is most imperative for us to act in accordance with the law. The Hospital Authority Ordinance clearly provides that the HA Board is responsible for the employment terms and conditions of all HA staff. In this connection, I think the question raised by Mr WONG earlier on involves two aspects, one of them is certainly HA employees and the other is its Board and management. And, what Mr WONG just wished to come true can be, I believe, relayed to the HA through the Bureau Director concerned.

Actually, being an institution having such a large number of employees, I believe the HA also appreciates the importance of a harmonious relationship

between management and staff. I also believe more balanced decisions will be made by the HA by taking into account various considerations. Very often, in making a decision, considerations have to be given to different aspects, therefore the final decision will rest with the HA having regard to all aspects.

PRESIDENT (in Cantonese): We have spent more than 17 minutes on this question. Last supplementary question.

DR KWOK KA-KI (in Cantonese): *President, I do appreciate the reply given by the Secretary right now, but I can hardly agree with it entirely. It is because after discussing with some medical officers of the Department of Health (DH) who are employed on contract terms, I noticed that, just as you said, the DH has really planned to convert certain posts into civil service positions, but with the express statement that only medical practitioners who have received specialist training will be appointed.*

Most of the medical officers who work with the DH are deprived of opportunities to receive training. So, according to what you said, they are also deprived of opportunities to serve as permanent staff ultimately despite their years of service in the Government. This is not simply a problem of "different pay for the same work", and worse still, this group of neglected NCSC medical officers has become rather inferior when it comes to the formal recruitment of civil servants. I consider this system most unfair and I hope that the Secretary will seriously review the situation. How are you going to deal with the medical officers who have contributed so much to the DH and the patients but have failed to be appointed as civil servants on a fair basis in the end? How are you going to explain this to them?

PRESIDENT (in Cantonese): Dr KWOK Ka-ki, you have only expressed your own wish and viewpoints, but have not raised your supplementary question.

DR KWOK KA-KI (in Cantonese): *Sorry, President.*

President, my supplementary question is: How is she going to explain this to that group of staff?

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): President, when a department takes on NCSC staff, it will explain clearly to the new appointees the duration of their employment and job duties. Very often, we can note from the appointment of NCSC staff that the entry requirements of certain NCSC posts are indeed different from those of civil service positions. This is precisely one of the reasons explaining why serving NCSC staff are disallowed from being converted to civil servants automatically, without going through an open and fair selection process, even when there is a need to conduct recruitment to fill the civil service positions. It is because the entry requirements concerned are actually different in some cases. This is the first point.

The second point is, being the Government, we, must act in a fair manner. There may be people in the labour market who are currently not working as NCSC staff for the Government, but interested in joining the Civil Service. Therefore, we think that it is necessary to act in a fair manner and to select the suitable candidates for the relevant civil service posts through an open and fair selection process. However, we must also take into account the case when NCSC staff are being appointed as civil servants — just as I mentioned in the main reply — whereby the recruiting department may consider shortening their probation period as they have previously served as NCSC staff. Also, if the recruiting department really meets recruitment difficulties, it may even consider allowing the new appointees to be paid at any salary point laid down for that rank, instead of the entry point, provided that they possess the relevant experience.

We are of the view that this approach not only complies with the principle of openness and fairness, it also provides relatively fair treatment to people in the labour market who are interested in joining the Civil Service, and at the same time, takes into account the previous working experience of those serving NCSC staff if applicable.

DR KWOK KA-KI (in Cantonese): *Firstly, the Secretary has not answered my supplementary question; secondly, I wish to make a clarification. I think the Secretary may not be aware that the DH's medical officers are deprived of the opportunities of becoming civil servants as they do not have any training, or even opportunities of training. As such, how can they become civil servants? This is basically a major issue.....*

PRESIDENT (in Cantonese): Dr KWOK Ka-ki, in fact, all you have to do is to say that the Secretary has not answered the part of your supplementary question concerning the situation of the DH.

Secretary, do you wish to reply in writing or give an oral reply now?

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): President, perhaps I will give an oral reply.

The training that a medical officer could get is determined mainly by the officer himself. For instance, are suitable candidates with the relevant training available in the market in case an open recruitment is conducted? If so, does it mean that it is right for us to recruit people to fill the civil service position in question with this recruitment requirement? It is because not only the Government will provide in-house training.

PRESIDENT (in Cantonese): Fourth question.

Taxi Fare Bargaining

4. **MS MARGARET NG** (in Cantonese): *President, the Secretary for the Environment, Transport and Works said openly on 3 June 2003 that fare bargaining between taxi drivers and passengers might not necessarily constitute a breach of the law, and that while the bargaining of taxi fare by passengers was allowed, taxi drivers were prohibited from soliciting business by offering fare discounts, as this might lead to traffic chaos. I have received complaints that fare bargaining has since become a very common phenomenon. Some taxi drivers, commonly known as members of the "taxi discount gangs", would hint their willingness to offer fare concessions by distributing name cards or through taxi radio stations. An increasing number of taxi drivers, succumbing to competition pressure, have joined their ranks, and more and more passengers bargain with the taxi drivers on boarding the taxis, rendering the taximeters almost useless. Moreover, taxi drivers of the "discount gangs" will issue to passengers, upon request, receipts showing a fare higher than the actual fare for claiming reimbursement of taxi fares from organizations employing them. Such acts might constitute aiding the passengers concerned in defrauding. In this*

connection, will the Government inform this Council of the measures, including investigation, prosecution or legislative amendments, taken or to be taken to put an end to such a state of affairs?

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): First of all, I would like to point out that the Government has made it very clear that no taxi driver shall in any manner, including offering fare discounts or concessions, attract passengers in order to induce them to make use of his vehicle. Soliciting is an offence under the law and offenders on conviction are liable to a maximum penalty of a fine of \$10,000 and six-month imprisonment.

In the same vein, we have spelled out to the public that taxi passengers are obliged by law to pay the legal fares recorded on the taximeters. In other words, any passenger who refuses to pay the fares as recorded commits an offence. Whatever excuse should not be used as a reason for breaking the law. Offenders are liable to a maximum penalty of a fine of \$3,000 and six-month imprisonment.

Enforcement action has been actively taken to curb taxi soliciting activities. A total of 93 persons were prosecuted by the police for taxi soliciting between October 2005 and September 2006. Seventy-five of them were convicted and fined between \$340 and \$4,000, while the remaining cases are being processed. The police will continue to take enforcement actions against these illegal activities and welcome the trade and the public to report suspected cases.

In addition, to enhance the deterrent effect, the Transport Department (TD) publishes regularly the relevant enforcement figures through the *Quarterly Newsletter on Taxi* to keep the trade informed of the Government's latest operations against taxi soliciting activities.

The TD has also stepped up publicity on fare bargaining to remind taxi passengers of their responsibility to pay the legal fares recorded on the taximeters. Publicity comes in the form of promotional stickers displayed inside taxi compartments, distribution of leaflets, and posters put up at various districts and major taxi stands. The TD will continue their promotional efforts and is planning further promotional activities.

In response to the suggestion from some members of the urban taxi trade that the Government should amend the law to require taxi drivers to charge the exact fare recorded on the taximeters, the TD has recently sent out questionnaires to the urban taxi trade for consulting their views. The Government needs to handle this issue carefully. It is because all along there have been divergent views within the taxi trade on whether the law should be amended. The trade also wants to ascertain whether there is any consensus among their members on this issue before exploring this further. We have carried out similar study before but no majority support for legislative amendment to prohibit passengers from fare bargaining could be secured.

On the other hand, Regulation 37 of the Road Traffic (Public Service Vehicles) Regulations provides that no taxi driver shall refuse to issue a fare receipt on passenger's demand. The receipt must be printed by the receipt printing device installed in the respective taxi, showing information of the trip concerned, including the distance travelled, the duration of the hiring and the total amount of fares. Where the receipt printing device installed is not in proper working order, the driver can issue a receipt in manuscript in a format prescribed by law in lieu of a printed one. Taxi passengers are obliged by law to pay the legal fares recorded on the taximeters. If the fare a passenger pays is lower than the legal amount but he claims for reimbursement by producing a receipt showing the original fare, he may have committed criminal offences such as fraud.

MS MARGARET NG (in Cantonese): *President, I thank the Secretary for clarifying that taxi passengers must pay the fare recorded on the taximeters. In the last paragraph of the main reply, the Secretary stated that if the fare a passenger pays is lower than the legal amount recorded on the taximeters, he may have committed criminal offences such as fraud. May I ask her how enforcement actions will be taken? First of all, of course, there must first be a breach of the law before an enforcement action can be taken, but what should be done about the passenger taking the initiative to bargain the fare instead of the taxi driver inducing the passenger to do so? Moreover, she also pointed out that taxi passengers are obliged by law to pay the legal fares recorded on the taximeters. President, I have also read the law, which only stipulates that taxi drivers shall not charge a fare exceeding the appropriate rates prescribed in Schedule 5. In other words, taxi drivers are prohibited from charging a fare higher than the amount recorded on the taximeters, but they are not prohibited*

from bargaining or charging a fare lower than the amount recorded on the taximeters. As such, how could we prove that there is a breach of the law? In effect, how will the Government gather evidence to enforce the law? If the law is not enforceable, it will become nothing but empty talk.

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Cantonese): It is certainly stipulated in the provisions that taxi drivers shall not charge a fare exceeding the amount recorded on the taximeters; while Regulation 48 is about passengers, which spells out that no passenger shall dishonestly endeavour to avoid payment of a legal fare lawfully due from him and the legal fare is the amount recorded on the taximeter. I am referring to the passengers' responsibilities. If we want to prosecute passengers for fare bargaining, taxi drivers will have to report such cases in the first place so that we can be aware of them. In the past 12 months, that is, from October 2005 to September 2006, four passengers in total were prosecuted by the police for refusing to pay the legal taxi fares. All four of them were convicted and fined \$500 to \$1,200. Hence, passengers who refuse to pay taxi fares can be prosecuted under the law.

MS MARGARET NG (in Cantonese): *Will the Secretary please briefly provide the information of these four cases to see whether they dovetail with the situation of taxi passengers bargaining the fare, or they were simply cases of taxi passengers refusing to pay the fare?*

PRESIDENT (in Cantonese): This is not part of your supplementary question just now, but I believe the Secretary has heard what you said and she will decide what to do.

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): I will go back and consult our DoJ (Department of Justice).

PRESIDENT (in Cantonese): There are altogether 12 Members waiting for their turns to put supplementary questions. I hope Members who have the opportunity to put questions can be as concise as possible.

MR ANDREW CHENG (in Cantonese): *The Secretary mentioned in her reply just now that only those passengers who dishonestly avoid payment of taxi fares may breach the law, but the point is that it is hard to expect taxi drivers of the "discount gangs" to take the initiative to report such cases, because both sides are happy — the passengers can pay a lower fare, while the taxi drivers can maintain their business and make money. Thus, does the Secretary agree that there is a major grey area in the present law? Should the Secretary expeditiously give some thought to making it clear in the law that, in order to curb the "taxi discount gangs", neither taxi drivers nor passengers can bargain the taxi fares, and that they must charge or pay the taxi fares recorded on the taximeters, and then adopt the measure of fare concessions, which is currently being discussed within the taxi trade, as the overall solution to the existing problem of "taxi discount gangs"?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): I have, in fact, already pointed out in the main reply that enforcement actions against illegal means of soliciting passengers are ongoing. For some time in the past, the police have adopted many different measures, such as undercover operations, to crack down on those taxi radio systems and also taxi drivers who have breached the law. Moreover, the TD has all along been discussing with the taxi trade the solution to the problem of fare bargaining by passengers. I believe Members may well know that this issue has become a great concern in the past few years ever since the business started to turn for the worse. In the relevant panel meetings, some members of the trade put forth a legislative proposal. However, as the taxi trade involves different parties, including taxi owners, drivers who rent taxis and drivers cum owners, and they each have varying interests and thus different considerations as to whether they will support amending the law to prohibit passengers from fare bargaining and requiring drivers to charge the fares as recorded on the taximeters. This is a very sensitive issue and the taxi trade hopes that a consensus can be reached within the trade before proceeding to the next stage of work.

In 2005, we conducted a questionnaire survey, but failed to secure a majority support from the interviewees on to the issue of legislative amendment — for instance, as I have said just now, on the two issues of prohibiting passengers from fare bargaining and requiring drivers to charge the fares as recorded on the taximeters. I believe Members may well recall that in response

to the market demand, we raised the issue of taxi fare, that is, just as Mr CHENG has requested just now, that the taxi trade should be consulted again on the possibility of a fare concession. We have sent out questionnaires to gauge the views of the trade which, in turn, has put forth two proposals, and we are now in the process of consultation.

Members may well remember the controversy over fare concession back in 2002, in which actually over 90% of the members present at the trade's meeting supported a fare concession. However, due to strong opposition from various quarters, the proposal ultimately did not come through. We do not wish the matter to unfold into something like that so as not to affect the operation of the community. We, thus, will handle such matters through consultation on different occasions and in panel meetings so as to strive to reach a consensus within the trade and then decide what to do next.

MS EMILY LAU (in Cantonese): *President, I have also received many complaints about the "taxi discount gangs". I heard the Secretary say that a consensus should be reached in handling many matters, but the public feels that some matters are now challenging the entire system of Hong Kong. Despite some systems are in place, they are almost useless. I thus hope that the Secretary will come back to the relevant panels of the Legislative Council and reach a consensus there and then proceed to work.*

The Secretary mentioned in the penultimate paragraph of the main reply — which is not written by her but she has repeated it again just now — the failure to secure a majority support. What support should it be? It is the support for requiring taxi drivers to charge the fare recorded on the taximeters. If support could not be secured on this point, then, what are the taximeters for? Are the taxi drivers that formidable? What could be done then? Not to mention if we want to introduce fare concessions or other things. What is in the mind of the taxi trade? I know that the taxi trade is one of the knotty problems to the Government, but if something has to be done and it has secured the support of the Legislative Council, I will pledge my support to the Secretary because the public is suffering and there are public outcries saying that the present state of affairs is most unfair.

PRESIDENT (in Cantonese): Miss Emily LAU, I am not very clear about what your supplementary question is.

MS EMILY LAU (in Cantonese): *In view of the failure to secure the majority support of the taxi trade on charging the fare recorded on the taximeters, I am asking her what it is all about. This is something we all regard as correct, but the Secretary said that it could not be implemented because the trade did not support it. Not to mention if we want to have a fare concession or an amendment to other legislation.....*

PRESIDENT (in Cantonese): That will do. As long as you have stated your supplementary question, that will be enough.

MS EMILY LAU (in Cantonese): *That is, there is no need to charge the fare recorded on the taximeters now?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): We fully understand that there are divergent views within the trade on the issue of requiring taxi drivers to charge the exact fare as recorded on the taximeters, because they think that there should be some flexibility with the taxi fare. For example, a taxi driver may have chosen a wrong route and thus he is willing to charge \$2 less in fare as an apology for taking a detour. Such situations do exist. Yet, we have explained to them that these are exceptional cases, which are nothing like an across-the-board fare concession that the "taxi discount gangs" are offering now. We agree that there are indeed problems with the taxi market, and we are thus tackling the problems through various means. Regarding this questionnaire survey, we hold that it is not merely on the law because the problem is also closely related to the taxi fare issue. In other words, we currently have some fare concession proposals to address the imbalanced market. This also needs to be carried out before the operation of the market can be rationalized.

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

MS MIRIAM LAU (in Cantonese): *I am worried that the Secretary has mixed up the issue of charging the fare recorded on the taximeters with that of fare*

concessions. In the penultimate paragraph of the main reply, the Secretary mentioned that some members of the urban taxi trade suggested that the Government should amend the law to require taxi drivers to charge the exact fare recorded on the taximeters and the TD has recently sent out questionnaires to the urban taxi trade to consult their views. However, as far as I know it, that consultation is not on whether fare should be charged as recorded on the taximeters. According to the questionnaire in my hand now, that consultation is on whether they support a fare concession by choosing one out of four proposals. It is not related at all to the issue of whether the trade should charge the exact fare recorded on the taximeters. If the Secretary agrees with me and thinks that the information I have is correct, will she appropriately amend the penultimate paragraph of her main reply?

Moreover, will the Secretary truly conduct a consultation on the views of the taxi trade in relation to charging the fare recorded on the taximeters? As far as I know it, the views of the taxi trade on this issue are not as divergent as the Secretary has said. Of course, the situation of drivers taking the wrong route, which the Secretary has cited, does happen, and it is true that there are divergent views over the issue of fare concessions, but the two issues should not be mixed up. Will the Secretary formally conduct a consultation on the views of the trade in relation to charging the fare recorded on the taximeters?

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Cantonese): First of all, I wish to make a clarification on this questionnaire survey. I have this questionnaire with me now, which is an opinion survey on the taxi trade. The first part of it puts forth four proposals on fare concession, while the fifth part is on other views, that is, the proposal of making the act of not charging the fare according to the legal amount recorded on the taximeters an offence. Taxi drivers can express their views through this consultation. This item is included in the questionnaire though it is not a major part of it. This is our second time conducting this survey. We conducted a formal one in April 2005, in which we focused on consulting their views on prohibiting passengers from fare bargaining through legislation and on prohibiting taxi drivers from charging a fare lower than the amount recorded on the taximeters. The result showed less than half of the interviewees supported the legislative proposal. We thus need to continue exploring the issue with them so as to find out the format which can secure the majority support.

PRESIDENT (in Cantonese): Fifth question.

Ngong Ping 360 Cable Car System

5. **MR LAU KONG-WAH** (in Cantonese): *President, regarding the Ngong Ping 360 cable car system, which was commissioned last month, will the Government inform this Council:*

- (a) *of the number of incidents in which cable car service was suspended due to system failures or weather conditions since the commissioning of the system, and the details of each incident;*
- (b) *whether it has looked into the reasons for the frequent failures of the cable car system within a short period from commissioning; and*
- (c) *whether the operator of the cable car system has immediately reported to the relevant authorities on each of the system failures, and whether the existing notification mechanism requires a public announcement to be made immediately in the event of any accident or system failure?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): President,

- (a) Since the commissioning of Ngong Ping cable car system on 18 September this year (up to 16 October), the operator Skyrail-ITM (Hong Kong) Limited (Skyrail) has suspended the cable car services three times due to weather conditions and four times due to system and mechanical failure. Details are as follows:
 - (i) on 23, 24 and 30 September, the cable car services were suspended due to strong winds, with a period of suspension ranging from 15 minutes to 39 minutes, to ensure passengers' safety and comfort;
 - (ii) on 30 September, the cable car service was suspended for 38 minutes due to technical problems associated with the adjustor

device in adjusting the spacing between cabins in Tung Chung Skyrail Terminal. On 8 October, the cable car stopped for 33 minutes, triggered by a signal from the safety system. On 15 October, the commencement of the cable car service was delayed for 59 minutes in the morning because Skyrail took time to adjust the spacing between cabins. On the same day from 6.05 pm to 7 pm, the cable car service was also intermittently stopped because of the signal from the safety system. Under the Aerial Ropeways (Safety) Ordinance, Skyrail has to submit a report to the Electrical and Mechanical Services Department (EMSD) on any failure of the cable car system. Skyrail has already submitted reports on the incidents on 30 September, 8 October and 15 October to the EMSD.

- (b) The 30 September incident was attributable to technical problems associated with the adjustor device in adjusting the spacing between cabins. Skyrail fine-tuned its staff's code of practice immediately after the incident.

As indicated in Skyrail's report, the incident on 8 October was triggered by a signal from the safety system to suspend operation. In accordance with the safety measures, the cable car system should not resume service until it had been inspected by operational staff to make sure everything was in order. On the day, Skyrail, following the code of practice, immediately deployed its staff to check the related equipment at various terminals and aerial towers to ensure that the cable car system was safe before it resumed operation. After investigation, the EMSD believed the safety system was over sensitive and had therefore requested the Mass Transit Railway Corporation Limited (MTRCL) and Skyrail to make improvements.

Turning to the delay in cable car service on 15 October, the cause of the incident was the over close spacing between cabins as a result of the maintenance carried out on the night of 14 October. To ensure safety, Skyrail had to adjust the spacing between cabins on 15 October morning before activating the system and therefore boarding was delayed. As regards the intermittent stoppages that afternoon, they were triggered by the technical problems with the

sensors at Lei Nak Shan Angle Station. Skyrail immediately deployed its staff to the Angle Station to make emergency repairs.

The design, construction, operation and maintenance of Ngong Ping cable car system are under the supervision of the EMSD in compliance with the Aerial Ropeways (Safety) Ordinance. The EMSD has been closely monitoring the operation and maintenance of the cable car system before and after its commissioning. The EMSD considers that both the design and construction of the cable car system meet the safety requirements.

- (c) Skyrail has put in place a notification mechanism whereby the departments concerned will be informed in the light of different situations. For instance, any failure in the cable car system with passengers on board has to be reported immediately to the EMSD; any requirement for special traffic arrangements arising from an incident has to be reported to the Transport Department (TD). If an incident will give rise to other problems, Skyrail may need to report to the Hong Kong Police Force and the Fire Services Department depending on the nature of the problems.

For each suspension of the cable car service, the MTRCL and Skyrail have undertaken to inform the public through placards, notices and announcements in the MTR stations on the Tung Chung Line and the Tung Chung and Ngong Ping Skyrail Terminals. Skyrail has also promised to deploy its staff to explain the situation to visitors on site and notify the tour groups that have made advance bookings to ensure that the affected visitors will be aware of the situation on the spot as soon as possible.

The recent incidents on suspension of service reflect that there is still room for Skyrail to improve its notification mechanism. We have already asked the MTRCL and Skyrail to enhance transparency in their operation and improve the notification mechanism to minimize inconvenience to visitors.

MR LAU KONG-WAH (in Cantonese): *President, according to the Secretary's reply, it is obvious that delays in cable car service are getting longer and the impact is becoming more serious.*

It is reported that in a recent incident, the Secretary was also at the scene. He might have heard the announcement, but many people knew nothing about the incident, and that is why we are gravely concerned about the announcement mechanism. In the last part of the Secretary's main reply in which he mentioned how the MTRCL would make announcements to the public, he only stated that announcement would be made in the stations and that tour groups would be notified, but he made no mention of the dissemination of information to the public via the media.

However, President, I have found a statement issued by the Managing Director of Ngong Ping 360 on 9 June which stated therein that timely information would be announced by the media where necessary. So, why this point was omitted by the Secretary? Why has the Managing Director not acted in accordance with the statement and promise he made at that time? When passengers had been kept waiting for an hour, should it not be regarded as a "necessary" situation? Does the Government not have the responsibility to work out a formal public announcement mechanism with them?

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): I have to thank Mr LAU for his question. I think both Mr LAU and I are very concerned about the situation, and that is why I have also pointed out in my main reply that we considered there was still room for improvement.

Let me explain it in greater detail. I have also been to Ngong Ping and I have experienced the situation personally. I think all visitors taking the cable car do understand that there may be occasional suspension of service during operation. But what is most important is that passengers will know at the first instance what has happened in the case of suspension and how long the service will be suspended, for this will let passengers have options where they may perhaps choose to take the bus. In this connection, the media may play a positive role in notifying passengers as soon as possible. We have reflected our concern in this respect to the companies concerned and the MTRCL, and they do attach great importance to this concern of the public.

As far as I understand it, if cable car service is expected to be suspended for half an hour, I think not only visitors waiting on site should be immediately informed, the media should also be notified. We have already reflected this point to them. We understand that they do value the opinions of the public and

have been discussing the case recently. According to my understanding, they will soon issue a notice, announcing the notification mechanism for notifying the media and other parties concerned. We should be able to know that soon.

PRESIDENT (in Cantonese): There are altogether nine Members waiting to ask supplementary questions, so will Members be as concise as possible when they put their questions.

MISS CHOY SO-YUK (in Cantonese): *President, we can see from the Secretary's reply that cable car service was suspended seven times within 28 days. Actually, cable car is not unique; it is a mode of transport found all around the world. But in Hong Kong, service suspension occurs once every four days. I, as a citizen of Hong Kong, really feel ashamed of this.*

May I ask the Secretary whether he has assessed how the image of Hong Kong has been affected by such incidents in the eyes of visitors? Moreover, according to the Secretary's reply, there seems to be no specific approach or solution addressing the problem, and the best they can do is ensuring that visitors will be informed so they will not take the cable car. However, does the Government have any practicable proposal to improve the situation where cable car service was suspended seven times within 28 days?

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): I have to thank Miss CHOY for her question.

First, if cable car service is suspended due to weather conditions or strong winds — though the Observatory is also under my purview, I have no control over the speed of wind — it is a situation where no one can predict. Nonetheless, if the suspension is considered necessary on safety grounds, the service should be suspended.

Actually, I have had a number of discussions with the Chairman of Skyrail regarding the suspension of service. He told me that in other places like Sydney, Australia, and so on, the duration of service suspension exceeded 10% of its operation time in last month. We, of course, do not like to see this happen in Hong Kong. As I mentioned earlier, in addition to weather conditions,

system failure and mechanical breakdowns were also causes of service suspension. Should these situations not be prevented by all means? In fact, the Director of Electrical and Mechanical Services does deploy his staff to the site every day. He told me recently that the availability rate of the cable car has reached 98% on average. We will have a better picture of the case by referring to this comparison.

However, this is after all a new system. Since we still consider the system a new one, we have constantly reminded the Director to keep an eye on its operation. Members should have noticed that upon the occurrence of the incidents in question, the Director has immediately informed its staff of the areas where improvement should be made and certain measures have already been implemented. As for the details, such as the type of sockets to be used, the signs available and the setting up of insulation facilities in the stations, these issues are so technical that I can hardly explain to Members here. However, if Members are interested in learning more about them, the Director will be more than willing to explain them to Members.

The most important point I would like to explain is that colleagues from the EMSD are deployed there every day. They are required to explain to the Director the repair procedures involved, the timing of repairs, and so on. They will also conduct quarterly inspections on all systems and experts will be invited to Hong Kong to inspect the entire system on a yearly basis. Members may be aware that many procedures have been put in place to monitor the operation of the entire system and we will certainly continue to monitor the situation.

MR CHEUNG HOK-MING (in Cantonese): *The Secretary mentioned in the main reply certain contingency measures to be taken in case of failure of Ngong Ping 360 cable car system. He also made particular mention of the notification system which included the notification of the TD where traffic arrangements became necessary. With regard to the seven incidents in the past, both the public and visitors are deeply dissatisfied.*

May I ask the Secretary, among the seven incidents occurred in past, how many of them had given rise to traffic problems which required notification of the TD? What measures did the TD and the transport operators concerned take at the time to alleviate the problem? Does the Government consider those

improvement measures satisfactory? Is there any room for improvement that will help them do better?

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): As far as I understand it, special arrangement does not necessarily be made for every delay. Certainly, I know that vehicles were once despatched to Ngong Ping to take visitors to the ground level. Madam President, I do not have the particular figures at hand, but I can give a reply to Mr CHEUNG in writing. (Appendix IV)

DR RAYMOND HO (in Cantonese): *On and off, we have heard of the many incidents related to Ngong Ping 360 cable car. In fact, from our point of view, the incidents reported only involve some simple technical problems, such as the spacing between cabins, suspension triggered by a signal from the safety system, and so on. The Secretary also said that he had once been affected by such incidents.*

Many cities around the world also use this system. The MTRCL has a good track record. However, it is learnt that the company employed by it this time is not quite experienced, with only 10 years' experience. Will the Secretary tell me if failures continue to occur or the situation deteriorates despite the tremendous efforts made by the EMSD, will the Government, being the largest shareholder of the MTRCL, consider terminating the contract with Skyrail?

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): I think Dr HO certainly knows the system better than I do, for he is an engineer.

As I have pointed out earlier, the EMSD is responsible for monitoring the system, and it is perfectly right. Dr HO is right in saying that the system is operated by the MTRCL and Skyrail, a company selected by the MTRCL, which certainly have the responsibility to ensure the smooth operation and safety of the system. I have also stated earlier that according to the relevant safety ordinance, they have to do many things, such as conducting daily inspection, carrying out repairs procedures, making quarterly arrangements, performing annual independent inspections on the system, and so on.

As at today, the cable car has operated exactly for a month. I believe Members are concerned about the situation. However, as I have pointed out earlier, cable car systems in other places are also suspended due to weather conditions and other reasons. Given the 98% availability rate at present, I think the situation is not on the poor side.

Certainly, we do hope that Skyrail can perform better, and I do not wish to see the frequent occurrence of these failures. Therefore, what I can say is that the EMSD has closely monitored the situation and we have also paid attention to this, hoping the new system will be improved constantly in the next few months. Of course, if it is not the case, and if the situation, just as Dr HO said, deteriorates as the number of failures increase, we will pay more attention to it and consider what decision should be made by then.

MR CHAN KAM-LAM (in Cantonese): *Perhaps because we people of Hong Kong pin high hopes on Ngong Ping 360, just as we do in the case of Disneyland, that when problems occur to the cable car, we put heavy blame on it. Had the Secretary not been affected by the cable car failure this time, Skyrail would not have promised to notify visitors immediately in case of failure. Obviously, it is somehow related to its management culture. I hope the Bureau or the Government will require companies providing infrastructure to enhance their performance in this respect.*

I would like to ask the Secretary about part (b) of the main reply. It is stated inter alia that the delay in cable car service on 15 October was caused by the narrow spacing between cabins as a result of the maintenance carried out on the night of 14 October, and thus adjustment had to be made in the morning of 15 October. May I ask whether the EMSD has followed up the incident to gain a better understanding? When we repair the brake pads of a bus, we have to remove the tyres, but we will put the tyres back afterwards instead of waiting until the next morning when the bus captain comes to collect the bus. Therefore, may I ask whether there is any problem with the repairs procedure as a whole, and whether their daily operation procedures are subject to the supervision of the Government?

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): I have to thank Mr CHAN for his question. I think he has an eye for details.

Certainly, whenever an incident occurs, Skyrail has to submit a report. The incident occurred on 15 October, today is 18 October, I believe — have we received the report? We have just received it. The company has to submit a report to the Director who, I believe, after studying the report in detail, will address the issue with the company concerned. However, you are right, as the repair was completed on the night of 14 October, it would certainly be most desirable that the problem was discovered right after the repair. However, since the problem of narrow spacing between cabins was discovered only the next morning, rectification could only be made on that morning and thus resulted in the delay. Certainly, just as you have said, it is preferable that the procedure can discover the problem on that night so that rectification could be made, and the delay on the next morning could thus be avoided.

Mr CHAN also mentioned earlier that whether the incident should be attributed to management problems and other problems. In this connection, as I have said earlier, we have already reflected our concerns to the MTRCL and Skyrail, and they have submitted a report on this issue to the Director who will follow up the matter.

PRESIDENT (in Cantonese): We have spent more than 19 minutes on this question. Last supplementary question.

MR LEE WING-TAT (in Cantonese): *President, according to the Secretary, the company concerned seems to find the problem hard to handle. However, as far as I understand it, the demand of the public is very basic, for they are not asking Skyrail to provide them with Chinese barbecue buns and English tea when the cable car is out of service. Their demand is simple, which only involves common sense management. They only demand that: in case of a failure, they should be notified as soon as possible; in case of a failure, the TD should be notified; in case of a failure, the media should be notified; in case of a failure, the regulator should be notified.*

The Secretary may feel he has been wronged, for in respect of transport authorities, the Kowloon-Canton Railway Corporation and the MTRCL have already adopted this system, which is in no way complicated. I do not understand why it takes the management a month to learn this so-called common

sense system, for it is something that even those who have never received management training would have known.

May I ask the Secretary whether he has required the company concerned to fully comply with this so-called common sense management system which an average man knows, that is, to notify the media, the transport organizations, the TD and other departments in case of failure? Have they promised to do so? Moreover, should you not ask them why this common sense management system was not adopted in the first place?

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Thank you, Mr LEE.

First of all, I would like to point out that we do not regard the cable car system as a public transport system; otherwise, I will not be the one answering questions here. The most important point is that they do have a notification system in place, but I believe all of us do not find it satisfactory. Why? For under that system, the media will only be informed if the delay lasted for an hour. As I have said earlier, to date, the cable car has operated for nearly a month, and various situations indicate that the time concerned should be shortened and the notification should be expedited. I am not referring to the notification of visitors on site. For visitors on site, they certainly should be notified immediately in case of any failure. We are talking about the notification of media. Should the time concerned be shortened, say to 30 minutes, as I suggested earlier? Members should bear in mind that the cable car is after all not a public transport system, but a tourist attraction. And I have repeatedly stated that visitors do wish to know about the situation as soon as possible.

Therefore, like Mr LEE or the public, I do have grave concern about this issue. Just as I said in my earlier reply to Mr LAU Kong-wah, I have reflected these situations to the organizations concerned. I think the time should not be set at one hour, once it is projected that the delay may last for 30 minutes, the media should be notified immediately. Of course, visitors waiting on site should also be informed immediately, for there is no reason to keep them waiting.

I also have to point out that the organizations concerned do understand and attach great importance to the concern of the public and will address the issue. I believe an announcement on this will be made in a couple of days.

PRESIDENT (in Cantonese): Last oral question.

Mental Health Policy

6. **DR KWOK KA-KI** (in Cantonese): *Some medical practitioners have relayed to me that the Government has not conducted any comprehensive review on its mental health policy for many years, the resources for psychiatric services in public hospitals are insufficient, services for ex-mental patients are inadequate, and training courses for family doctors on treatment of mental illnesses are not enough. In this connection, will the Government inform this Council:*

- (a) *whether it has conducted any review on its mental health policy; if it has, of the time and results of such review; and whether it has any plan for a comprehensive review of such policy in the future; if it has, of the specific timetable;*
- (b) *of the following in the past three years: the ratio of psychiatric beds and health care personnel to patients in public hospitals; the respective funding for various services relating to mental health policy, including medical services, community-based rehabilitation services and the provision of training on mental illnesses to family doctors in the community; and*
- (c) *of the specific plan on and the resources to be committed to improving the above services which are related to mental health policy and promoting mental health for the whole community?*

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

- (a) The Government is committed to promoting mental health. We have implemented a series of initiatives in this regard, starting from preventive measures like public education to promote the importance of mental health and ways of early identification and intervention, to providing avenues for seeking help and appropriate support, counselling and medical services. In parallel, we are also

providing a series of rehabilitation services for ex-mentally ill persons, to facilitate their reintegration into the community by helping them re-acquire living skills, communication skills and work ability. In response to changes in the environment and social needs, we keep our policies and initiatives under review to ensure that while we can promptly respond to the needs of society, we are also adhering to the principle of sustainability. In the middle of this year, the Health, Welfare and Food Bureau has set up a working group on mental health services, which commenced in August this year a review of the current mental health services with a view to mapping the development of future services. I chair the working group myself, and its members include professionals of psychiatric and rehabilitation services and academia.

- (b) As for the treatment of mental illness, the international trend is shifting the focus from in-patient care to community and day services. In the light of this trend, the Hospital Authority (HA) has been reviewing its in-patient psychiatric services continually over the past few years. They have also stepped up efforts in developing more comprehensive community treatment methods through their community psychiatric service, community psychiatric nursing service and psycho-geriatric service, to progressively allow more suitable psychiatric patients to receive treatment in the community, thereby enhance their prospect of reintegration into the community after recovery. Efforts have been made in recent years to achieve a more even distribution of psychiatric beds amongst hospital clusters, so as to reduce the need for cross districts admittance. Moreover, the HA has implemented a number of programmes over the past few years, which include the Early Assessment Service for Young People with Psychosis ("EASY") Programme to identify young patients suffering from psychotic problems for early treatment; the Extended-care Patients Intensive Treatment, Early Diversion and Rehabilitation Stepping-stone (EXITERS) Project to facilitate the reintegration of patients receiving extended care into the community; and the wider use of new psychiatric drugs. At the same time, the provision of community residential facilities (for example, half-way houses and long-stay care homes) allows some psychiatric patients who no longer require in-patient care to make an early return to the

community. The above measures have made it possible for the HA to reduce the number of psychiatric beds in public hospitals, releasing valuable resources for the treatment and care of more patients.

The ratios of psychiatric health care personnel and psychiatric beds to the number of in-patients for the past three years are set out in the table below (excuse me for not reading them out):

	2003-2004	2004-2005	2005-2006
Number of psychiatrists	254	258	258
Number of psychiatric nurses	1 930	1 910	1 944
Number of psychiatric beds	4 730	4 716	4 666
Utilization rate of psychiatric beds	78%	79%	77%
Number of psychiatric in-patients	10 800	11 900	12 200
Ratio of psychiatrists to beds	1 : 18.6	1 : 18.36	1 : 18.1
Ratio of psychiatric nurses to beds	1 : 2.45	1 : 2.47	1 : 2.44
Ratio of psychiatrists to in-patients	1 : 42.5	1 : 46.1	1 : 47.3
Ratio of psychiatric nurses to in-patients	1 : 5.6	1 : 6.2	1 : 6.3

The resources allocated to services related to mental health in the past three years amounted to \$3.25 billion in 2003-2004, \$3.18 billion in 2004-2005 and \$3.13 billion in 2005-2006 respectively. A breakdown of these figures by medical services and community-based rehabilitation services is provided in the table below:

<i>Services Areas</i>	<i>2003-2004 (\$Billion)</i>	<i>2004-2005 (\$Billion)</i>	<i>2005-2006 (\$Billion)</i>
Medical services	2.64	2.59	2.53
Community-based rehabilitation services	0.61	0.59	0.6
Total	3.25	3.18	3.13

- (c) Regarding future mental health services, apart from continued promotion of public education, as pointed out by the Chief Executive in his policy address last week, the key to more effective

handling of complicated social issues, including mental health problems, is to build up a family-focused support network, and to reinforce harmonious and loving family relationships. In this regard, we are all set to implement a new community psychiatric health outreach service. Through home visits and organizing promotional activities in the community, this service seeks to identify early persons with psychological problems, and to enable them to receive appropriate counselling and services to avoid exacerbation of their problems. Through community support networks, it will also seek to help them rebuild positive values and reinforce harmonious family relationships.

On concrete plan and resource allocation for the future, we will carefully consider the recommendations made by the recently established working group on mental health services following its review of current services and detailed deliberation. We will consult relevant parties, including the Legislative Council, at the appropriate juncture.

In parallel, I would also like to take the opportunity to point out that the promotion of mental health really depends on the participation of all sectors, and the mutual support among members of the community and families. Therefore, apart from injecting finance resources, we will also actively mobilize social resources to enhance the support for, and to strengthen families, to foster a sense of responsibility in each family member, to nurture care and love, and to develop a relationship of mutual support. This will both enhance our community's understanding and concern about mental health, in order to prevent and handle psychological problems at an early stage, and promote early integration of ex-mentally ill persons into the community.

Thank you, Madam President.

DR KWOK KA-KI (in Cantonese): *President, I naturally welcome the establishment of such a working group by the Secretary. However, for reasons unknown, the working group has been keeping such a very low profile that even I*

myself, a former Chairman of the Panel on Health Services, have been unaware of its existence. Maybe, the Secretary would like to tell us in writing later on the details of the working group's membership and work arrangements.

My question is about a fact known to all Members — psychiatric services are different from other health care services, in the sense that they often involve the handling of the underprivileged in society. Many in society are of course very much concerned about these people and as mentioned by the Secretary just now, the support of various social sectors is required. But the availability of resources and funding are also very important. As shown clearly by the document supplied by the Secretary, the provision of psychiatric services actually saw a decrease rather than an increase in 2003 to 2005. At the same time, we have also noticed many incidents related to psychiatric beds, such as the excessive demand for beds in Kowloon Hospital. May I ask the Secretary, first, whether he can provide a timeframe and, second, how he is going to provide resource support? I have asked this question because in the absence of resource support, no matter how many patients are identified in the community, the shortage of medical practitioners, hospital beds and rehabilitation services will still render it impossible to solve the problem. Can the Secretary explain clearly how society's demand for psychiatric services can be met in terms of estimated resource investment?

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese):
Madam President, first, I wish to point out that the HA's expenditure on psychiatric services in the past three years has not taken account of the pay cuts for psychiatrists, psychiatric nurses and psychiatric health care personnel in line with those for civil servants. Members therefore do not see any big changes in the ratios of psychiatric nurses and psychiatrists. Members should instead realize that since we started to provide psychiatric beds in various other district hospitals rather than just providing them in Castle Peak Hospital and Kwai Chung Hospital, we have been able to utilize such beds more effectively. However, we still have some more room at present. Members can see that in most cases, our bed occupancy rate is lower than 80%. This means that hospital beds do not pose any great problem. At present, many psychiatrists arrange the hospitalization of their psychiatric patients not so much because these patients have nowhere to live in but rather because there is a need for in-patient treatment. And, after recovery, these patients are discharged to their respective

communities, homes or half-way houses as soon as possible. Such a change has led to a gradual transformation of our service delivery mode. Psychiatric treatment 20 to 30 years ago was hospital-based, but a community-based approach has gradually emerged.

As for how much resources are required in the future, this is precisely the question that our working group must examine closely. This is a rather complex issue, not least because on the one hand, we need to take care of the current in-patients of psychiatric hospitals, and on the other, we also hope that in the future, the treatment of psychiatric patients will not require their repeated hospitalization and continued presence in hospitals. Such parallel development will inevitably require time for planning. I shall brief Members on the progress in due course.

DR KWOK KA-KI (in Cantonese): *The Secretary has not answered my supplementary question. I have actually made it very clear that I want to know whether there is any timeframe. Can the Secretary tell us clearly the time this task is expected to complete?*

SECRETARY FOR HEALTH WELFARE AND FOOD (in Cantonese): Madam President, this is also a mammoth task which cannot be completed very easily. At an appropriate time after the launching of the task, I shall give Members a more detailed schedule of work.

DR FERNANDO CHEUNG (in Cantonese): *The Secretary's main reply seems to imply that there is no problem with both manpower and resources now. But many ex-psychiatric patients have approached me, complaining that their hospitalization experience was altogether unpleasant. The conditions in Kwai Chung Hospital are especially appalling. There are hygiene problems, and not only this, in-patients are frequently put into straitjackets, prescribed tranquilizers and given injections. They may even be locked up in rooms. One of the main problems is the lack of any triage in the admission process. Some patients suffering from acute depression, for example, need not be given such severe and defensive treatment. If there is any triage, there will be a more comfortable environment for patients. But we simply find their feeling altogether shocking. They are extremely resistant to hospitalization, but they must be hospitalized*

because they want to be cured. May I ask the Secretary whether he will consider the possibility of introducing triage in the admission process, so as to create an environment where different types of psychiatric patients can receive more reasonable treatment?

SECRETARY FOR HEALTH WELFARE AND FOOD (in Cantonese): Madam President, as far as I know, there are many different types of mental diseases which all vary in the degree of severity. Besides, there are also acute and chronic psychiatric patients. For these reasons, I think it is best for us to leave professionals to determine how patients should be treated and handled. At present, their decisions are more or less based on triage principles. Acute and dangerous patients, or even patients with suicidal or violent tendency, are often given immediate treatment. As for the Honourable Member's proposal on treating different types of psychiatric patients differently, I must point out that in some cases, certain forms of treatment just have to be administered for the protection of patients. I therefore think that we have already attained a high level of achievement, whether in terms of resource investment or service quality. For this reason, whenever any patient expresses dissatisfaction, we must find out the reasons, because it is normally not very common to see a high satisfaction rate among psychiatric patients. All of these patients do not want to be hospitalized, and all of them have other problems. We must therefore find out whether the dissatisfaction is caused by their personal feelings or by a true shortfall in standard on our part. Over the past few years, there have been great increases in resource investment, in-patient accommodation and the variety of drugs available. Over the past few years, we have increased the amount spent on introducing new drugs by some \$40 million, with the result that most schizoids, that is some 15 000 patients, can now be prescribed new drugs. Three years ago, we could prescribe new drugs to 4 000 to 5 000 patients only. It can thus be seen that we have raised our service standards in many different areas.

DR FERNANDO CHEUNG (in Cantonese): *President, my question is about the fact that there is no triage for acute wards and closed wards. Acute patients who need to be hospitalized and those who must be assigned to closed wards must be accommodated together. This gives rise to the unpleasant experience of some patients. Can there be triage for patients, so that they can be assigned to different types of wards?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, as far as I know, existing psychiatric wards are quite big in size, so it is physically impossible for us to assign patients to small wards for the time being. However, even now, there are already separate psychiatric wards for different types of patients depending on the severity of their conditions, their degrees of dependency and whether they may pose any dangers to others or cause any harm to themselves. Therefore, there are already some sorts of decisions.

MR LI KWOK-YING (in Cantonese): *I was glad to hear the Secretary say at the beginning of his main reply that the Government is committed to promoting mental health, and that appropriate support, counselling and medical services have been provided all along. But I wish to point out that according to the findings of a social survey, 80% of the medical practitioners engaged in primary health care are hold that since it takes more time to treat psychiatric patients, the treatment of mental diseases will incur losses rather than enabling them to make any profits. But medical practitioners working in public hospitals, on the other hand, have very limited time. As mentioned in the Secretary's main reply, and as Members can notice, the resources concerned have been decreasing over the past three years. May I ask the Secretary how he can ensure that psychiatric patients can always receive adequate medical support at the community level? Besides, it is mentioned in part (c) of the main reply that the provision of mental health services is closely connected with complicated family problems. Complicated family problems, of course, cannot be solved by solely relying on the HA. The Social Welfare Department and other relevant departments may have to be involved as well. May I ask the Secretary whether he will establish a permanent mechanism whereby all the departments concerned can jointly handle such cases and provide appropriate support to the promotion of mental health?*

PRESIDENT (in Cantonese): Mr LI Kwok-ying, there are two points in your supplementary question. Which one do you want the Secretary to answer first?

MR LI KWOK-YING (in Cantonese): *The first one.*

PRESIDENT (in Cantonese): The first part? Secretary, your reply please.

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

I am sorry. I can remember Mr LI's second question only. *(Laughter)*

PRESIDENT (in Cantonese): You may reply to any one of them. Even if you choose to offer a combined reply to both, I will have no objection.

MR LI KWOK-YING (in Cantonese): *President, I can repeat the first point in my supplementary question.*

PRESIDENT (in Cantonese): Secretary, do you want Mr LI to do so?

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Yes. Madam President, can he repeat the first point in his supplementary question?

PRESIDENT (in Cantonese): Yes.

MR LI KWOK-YING (in Cantonese): *Yes. The first point is about the Secretary's claim that psychiatric patients are provided with adequate and appropriate support. But as indicated by a survey, 80% of the community doctors hold that since it takes more time to treat psychiatric patients, the treatment of mental diseases will incur losses rather than enabling them to make any profits. But medical practitioners working in public hospitals, on the other hand, have very limited time and are unable to do the job well. It is also mentioned in the Secretary's main reply that the resources for treating psychiatric patients have been decreasing over the past three years. Given the resource reduction year after year and the necessity of providing adequate treatment to psychiatric patients, may I ask the Secretary how the Government can ensure sufficient support?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I am sorry that the point eluded me momentarily just now.

First, I do not think that there has been any actual reduction of resources. As I have mentioned, the apparent reduction of resources does not imply any reduction of manpower. The level of manpower has remained the same throughout. Only that salaries have been cut. And, we have at the same time increased the variety of drugs. But the most important thing is that we are still of the view that family doctors or primary health care services are very useful to the treatment of mental diseases. That is why I do not think that it was quite so appropriate of Mr LI to comment that doctors found the treatment of psychiatric patients loss-incurring rather than profit-making. The reason is that many medical practitioners will have the well-being of their patients in mind when deciding whether to provide any treatment. They do not give so much consideration to profits. Naturally, if their patients require frequent advice and counselling, they will have to spend more time. If a good relationship can be established between the patient and the doctor, the former will stand a greater chance of early recovery. Therefore, in this connection, we will step up the training for doctors as much as possible, so as to enable them to handle psychiatric patients in the community. I think this will be our future direction.

PRESIDENT (in Cantonese): We have spent more than 19 minutes on this question. Last supplementary question.

MS AUDREY EU (in Cantonese): *President, the statistics provided by the Secretary do not mention the ratio of psychiatrists to psychiatric patients. I have read a press report published in October this year in which it was mentioned that the number of psychiatric patients seeking treatment at public hospitals had actually exceeded 600 000. If there are 258 psychiatrists, each psychiatrist will have to handle some 2 300 patients. According to this press report, the longest waiting time for patients may be three years. May I therefore ask the Secretary whether there is currently enough manpower to cope? Particularly in a place like Hong Kong where working hours are long and pressure heavy, patients should receive treatment as early as possible. But the current waiting time is so long. Is that because there is not enough manpower?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, for the number of psychiatrists, we may compare the statistics in the table I have provided with the figures for the past five years. In 2000-2001, the number of psychiatrists in all the public hospitals of Hong Kong was 212. This year, there are 258 psychiatrists, meaning that there has been an increase of some 30 psychiatrists. As for psychiatric nurses, the number was 1 797 in 2000-2001, but it has since increased to 1 944. All this can show a continuous increase in manpower.

MS AUDREY EU (in Cantonese): *I am sorry to say that the Secretary has failed completely to answer my supplementary question. My question is not about the increase in manpower. Rather, it is about the current manpower ratio. There are 258 psychiatrists, but according to the press report, the number of psychiatric patients seeking treatment has reached some 600 000 this year. This means that on average, each psychiatrist has to handle 2 000 or so patients. And, the longest waiting time is three years. My question for the Secretary is: Given the mental pressure faced by Hong Kong people nowadays and also their demand for treatment, can the current ratio be considered adequate? Diseases should be treated as early as possible. Is the waiting time of three years much too long?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, currently, the ratio of psychiatrists to patients, that is, the ratio of psychiatrists to out-patients, is 1:504. There has already been some improvement. We of course also think that this ratio is a bit high from any perspectives. It will of course be much better if there can be more psychiatrists to spend more time on psychiatric patients. But all must depend, first, on whether so many psychiatrists can become available. Second, we also need to ask ourselves how many more psychiatrists must be trained up before it can be called adequate. Currently, nearly all medical graduates in Hong Kong every year can secure employment. It is doubtful whether we can have so many psychiatrists. I do also think that if we can gradually increase the resources required, we will be able to offer better help to patients. But I must at the same time emphasize that we should not rely solely on psychiatrists to provide care for patients. It is also necessary for psychiatric nurses and other rehabilitation professionals to provide support. In this regard, there have been continued increases in the resources for the HA, the Social Welfare Department and the social welfare sector.

WRITTEN ANSWERS TO QUESTIONS**Curbing Use of "Bald" Tyres**

7. **MISS CHOY SO-YUK** (in Chinese): *President, it is reported that some motor trading companies lend new tyres to container truck owners for the latter to replace the old tyres of their trucks with the new ones, but the "bald tyres" will subsequently be put back and used again after the trucks have passed the annual inspection by the Transport Department. In this connection, will the Government inform this Council:*

- (a) *of the progress of the investigation into the above situation and whether any person has been prosecuted;*
- (b) *of the number of car accidents involving the use of "bald tyres" in each of the last three years; among them, the number of cases in which container trucks were involved and casualties were caused;*
- (c) *of the number of prosecutions against the use of "bald tyres" in each of the last three years; among them, the number of cases in which container trucks were involved and the penalty usually imposed; and*
- (d) *in order to curb the use of "bald tyres", whether it will consider reviewing the existing legislation to impose heavier penalty with a view to enhancing the deterrent effect; if it will, of the details; if not, the reasons for that?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Chinese): *President, upon receiving reports that some motor trading companies lend new tyres to container truck owners for vehicle annual examinations, the police have launched investigation. The investigation is still underway and no prosecution has so far been instituted.*

In 2003, 2004 and 2005, there were 182, 113 and 110 traffic accidents with casualties that involved vehicles with substandard tyres (including "bald tyres") respectively. Among them, five, four and five cases involved container trucks. We do not have the breakdown of traffic accidents involving vehicles fitted with "bald tyres".

Regarding prosecutions, the police instituted 141, 175 and 201 prosecutions against vehicles fitted with "bald tyres" in 2003, 2004 and 2005 respectively. We do not have the breakdown of prosecution figures against container trucks.

According to the existing legislation, any person who uses, causes or permits others to use any vehicle fitted with substandard tyres on roads is liable to a fine of \$10,000 and six months' imprisonment on conviction. Depending on the circumstances of the cases, the police may also charge the persons concerned with other offences, such as careless driving.

The police will step up enforcement against the use of substandard tyres. We will also strengthen publicity and education to remind vehicle owners the importance of vehicle maintenance. In addition, we will continue to monitor closely the relevant accidents and prosecution statistics, and will review the relevant legislation if necessary.

Corporal Punishment

8. **DR FERNANDO CHEUNG:** *President, it was reported that a mother was arrested for suspected child abuse after hitting her seven-year-old son's hand, causing him to run away from home. According to a study conducted by the University of Hong Kong on child abuse in 2005, about 44% of the parent respondents admitted having ever administered corporal punishment to and used physical violence on their children. In this connection, will the Government inform this Council whether parents administering corporal punishment to their children contravene any laws of Hong Kong; if so, of the legislation contravened?*

SECRETARY FOR HEALTH, WELFARE AND FOOD: President, there is no prescribed provision under the existing law which prohibits corporal punishment inflicted by parents on their children. However, it does not mean that parents can use violence against their children. Pursuant to section 27(1) of the Offences Against the Persons Ordinance (the Ordinance) (Cap. 212), it is unlawful for a person aged over 16, including a parent, who has the custody, charge or care of a child or young person under the age of 16, to wilfully assault or ill-treat the child or young person, or cause such child or young person to be

assaulted, ill-treated in a manner likely to cause such child or young person unnecessary suffering or injury to his health. If convicted, the person shall be liable to a maximum penalty of 10 years' imprisonment. The person may also be convicted of assault occasioning actual bodily harm or common assault respectively under sections 39 and 40 of the Ordinance, and subject as such to a maximum penalty of one to three years' imprisonment.

Chief Executive Giving Directions to Statutory Bodies

9, **MS EMILY LAU** (in Chinese): *President, regarding the Chief Executive giving directions to statutory bodies in accordance with legislation, will the executive authorities inform this Council:*

- (a) *of the ordinances which empower the Chief Executive to give directions to statutory bodies; and*
- (b) *whether they will review if it is an outdated practice to stipulate in legislation that the Chief Executive may give directions to statutory bodies, and whether such a practice will undermine the independence of statutory bodies; if they will conduct a review, of the details; if not, the reasons for that?*

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

- (a) A list of the ordinances which contain empowering provisions for the Chief Executive to give directions to statutory bodies is at Annex.
- (b) The power of the Chief Executive to give directions to the statutory bodies in question has been vested in the Chief Executive by law, as part of the statutory scheme under which those bodies were established. In every case, the Legislative Council had in the legislative process agreed that it was appropriate, and in the public interest, for the Chief Executive to be vested with the power to give directions. The power cannot be said to undermine the degree of independence of the statutory bodies concerned, which is enshrined

in the relevant ordinances. There is also no question of the Chief Executive's directions working to undermine the independence of these statutory bodies. In practice, the power would not be, and has not been, exercised lightly. The Chief Executive would only exercise the power where there is a clearly justified need and when he is satisfied that it is in public interest to do so. The Administration therefore does not see the need to review the provisions.

Annex

List of Ordinances which empower the Chief Executive
to give directions to statutory bodies

Consumer Council Ordinance (Cap. 216)
District Council Ordinance (Cap. 547)
Employees Retraining Ordinance (Cap. 423)
Employees' Compensation Insurance Levies Ordinance (Cap. 411)
Estate Agents Ordinance (Cap. 511)
Financial Reporting Council Ordinance (Cap. 588)
Hong Kong Arts Development Council Ordinance (Cap. 472)
Hong Kong Council for Academic Accreditation Ordinance (Cap. 1150)
Hong Kong Council on Smoking and Health Ordinance (Cap. 389)
Hong Kong Examinations and Assessment Authority Ordinance (Cap. 261)
Hong Kong Export Credit Insurance Corporation Ordinance (Cap. 1115)
Hong Kong Science and Technology Parks Corporation Ordinance (Cap. 565)
Hospital Authority Ordinance (Cap. 113)
Housing Ordinance (Cap. 283)
Long-term Prison Sentences Review Ordinance (Cap. 524)
Mandatory Provident Fund Schemes Ordinance (Cap. 485)
Occupational Safety and Health Council Ordinance (Cap. 398)
Ocean Park Corporation Ordinance (Cap. 388)
Personal Data (Privacy) Ordinance (Cap. 486)
Post-Release Supervision of Prisoners Ordinance (Cap. 475)
Securities and Futures Ordinance (Cap. 571)
Surviving Spouses' and Children's Pensions Ordinance (Cap. 79)
Urban Renewal Authority Ordinance (Cap. 563)

Registration System for Health Care Professionals

10. **DR JOSEPH LEE** (in Chinese): *President, will the Government inform this Council:*

- (a) *of the types of health care professionals who are currently not subject to statutory registration but are allowed to provide health care services to the public, and the respective numbers of such professionals who are employed in the public sector (including all government departments and the Hospital Authority (HA)) or private sector, or are engaged in private practice;*
- (b) *why those professionals are allowed to provide services without going through statutory registration, and how the Government regulates such professionals to ensure their service quality;*
- (c) *whether it has discussed with the relevant professions the issue of statutory registration; if it has, of the professions involved, the number, and details and outcome of the discussions; if not, the reasons for that; and*
- (d) *whether it has considered establishing a statutory registration system or following the practice of foreign countries and setting up a health professional council to regulate the abovementioned professions and handle registration matters; if it has, of the details; if not, the reasons for that?*

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

- (a) At present, there are 12 types of health care professionals that are required to complete statutory registration before they are allowed to practise in Hong Kong. These professions are medical practitioners, dentists, Chinese medicine practitioners, midwives, nurses, pharmacists, medical laboratory technologists, occupational therapists, optometrists, radiographers, physiotherapists and chiropractors.

The composition of the health services functional constituency of the Legislative Council also includes 15 health care professions which are not subject to statutory registration. They are audiologists, audiology technicians, chiropodists/podiatrists, clinical psychologists, dental surgery assistants, dental technicians/technologists, dental therapists, dietitians, dispensers, educational psychologists, mould laboratory technicians, orthoptists, prosthetists/orthotists, scientific officers (medical) and speech therapists. The numbers of practitioners from these professions employed in the public sector are as follows:

	<i>Numbers of practitioners employed in the public sector¹</i>
Audiologists	23
Audiology Technicians	9
Chiropodists/Podiatrists	19
Clinical Psychologists	180
Dental Surgery Assistants	372
Dental Technicians/Technologists	82
Dental Therapists	273
Dietitians	93
Dispensers	926
Educational Psychologists	28
Mould Laboratory Technicians	27
Orthoptists	16
Prosthetists/Orthotists	94
Scientific Officers (Medical)	95
Speech Therapists	69

The estimated numbers of practitioners from these professions employed in the private sector or engaged in private practice are as follows²:

¹ These numbers refer to the total number of practitioners from the 15 health care professions employed in major government departments, HA and Prince Philip Dental Hospital as at October 2006.

² The estimated numbers are obtained from the Health Manpower Survey conducted in 2000. The Department of Health (DH) conducted a similar survey in 2005 and the data collected are being processed.

	<i>Numbers of practitioners employed in the private sector/engaged in private practice</i>
Audiologists	6
Audiology Technicians	4
Chiropodists/Podiatrists	1
Clinical Psychologists	23
Dental Surgery Assistants	778
Dental Technicians/Technologists	274
Dental Therapists	0
Dietitians	20
Dispensers	Not Applicable ³
Educational Psychologists	6
Mould Laboratory Technicians	1
Orthoptists	1
Prosthetists/Orthotists	7
Scientific Officers (Medical)	0
Speech Therapists	30

- (b) In assessing whether registration system for a health care profession should be introduced, the Administration will take into account the possible hazards caused to the public in case of any misconduct or substandard service by practitioners of that profession. Higher priority will be accorded to health care professions with a larger proportion of practitioners working mainly in the private sector and having more frequent contact with patients.

Save for dental surgery assistants and dental technicians, the majority of practitioners of the above health care professions not subject to statutory registration work in the public sector where various forms of institutional control over their work are already in place. This in turn provides for certain assurance of the standard of their practice. As for dental technicians, their work does not

³ "Dispenser" is a civil service grade under the DH and HA. In general there is no distinct profession titled as "dispenser" in the private sector.

involve any direct interface with patients, while the work of dental surgery assistants is under the close personal supervision of dentists. Besides, we note that many of the abovementioned professions have already developed society-based registration.

- (c) In the past two years, the Health, Welfare and Food Bureau held three meetings with professional bodies of psychologists, prosthetics/orthotists and dietitians to listen to their views on regulation of their professions. The Bureau encourages these professions to further develop their society-based registration systems so as to provide useful information to consumers in choosing appropriate services.
- (d) Different countries and health care systems adopt different modes and scopes in regulating their health care professions based on their actual needs. In assessing the need to introduce statutory regulation for health care professions, we should also have regard to the pros and cons of a statutory registration system on top of the considerations stated in (b) above. With a view to striking a balance, we encourage these health care professions to keep up their efforts in developing a society-based registration, and we will continue to listen to the views of various professions and sectors.

Speed Limit for Two Sections of South Lantau Road

11. **MR ALBERT CHAN** (in Chinese): *President, the vehicular speed limit for two sections of South Lantau Road near Shui Hau Village and Ma Po Ping Road was prescribed at 30 km an hour in August 1984. However, members of the public have recently told me that no speed limit sign has ever been erected at the road sections concerned. In this connection, will the Government inform this Council:*

- (a) *of the reasons for not erecting speed limit signs at the above road sections;*
- (b) *whether the speed limit for the above road sections has been changed since 1984; if so, when and why; and*

- (c) *of the procedure and basis for the authorities to determine or change the speed limit for the above road sections?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Chinese): President, the speed limit for the two sections of South Lantau Road near Shui Hau Village and Ma Po Ping Road is 50 km per hour and speed limit signs have been erected at appropriate locations by the Transport Department (TD).

In setting the speed limit for the relevant road sections, the TD took into consideration a number of factors, including the environment of the road sections, traffic conditions, sight distance, views of road users, and so on. The TD also consulted the Traffic and Transport Committee of the then Islands District Board, and secured the Committee's support.

The TD will continue to review the speed limits of roads regularly.

Pilot Scheme on Power Saving

12. **DR RAYMOND HO** (in Chinese): *President, it has been reported that the Highways Department (HyD) launched a pilot scheme on power saving early this year whereby the brightness of about 3 000 street lights along three road sections is reduced by 10% to 25% at night. In this connection, will the Government inform this Council:*

- (a) *how the rate of traffic accidents of the relevant road sections before the pilot scheme was launched compares to the rate thereafter;*
- (b) *if the rate of traffic accidents of the relevant road sections has risen, whether the authorities will immediately terminate the pilot scheme to safeguard the safety of the public; and*
- (c) *as the pilot scheme only targets roads of the L3 illumination level, whether the authorities plan to extend the pilot scheme to cover roads of other illumination levels; if so, of the roads (road sections) involved?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Chinese): President, the HyD launched the Central Dimming System Scheme as one of the energy saving pilot schemes between December 2005 and May 2006. The Electronic Ballasts for Dimming Scheme, the other energy saving pilot scheme, commenced in January 2006.

For the purpose of road light design, the HyD generally divides lighting into four classes (L1, L2, L3 and L4) according to road planning classifications. L1 is for expressways, L2 for trunk roads, L3 for district distributors and L4 for local streets. Most of the 3 100 or so road lights involved in the two energy saving pilot schemes belong to the L3 class.

To implement the pilot schemes, the HyD selected about 1 600 road lights along 101 road sections in Kowloon and New Territories East under the Central Dimming System Scheme. About 1 500 road lights along 14 road sections on Lantau Island and New Territories West were selected for the Electronic Ballasts for Dimming Scheme.

For both pilot schemes, road light luminance was lowered by 10% from switch-on time to midnight, by 25% from midnight to 5 am, and by 10% from 5 am to switch-off time.

The reply to Dr Raymond HO's question is as follows:

- (a) According to the information provided by the Transport Department (TD), during the implementation of the two pilot schemes, only 20 out of the 115 concerned road sections saw a rise in the number of accidents at nighttime compared to the figures for the same period in the previous year. The number of accidents for the remaining road sections either remained unchanged or actually decreased.
- (b) To understand how road users adjusted and reacted to the pilot schemes, the HyD conducted on-site surveys during the implementation of the pilot schemes to collect their views. The findings reveal that the two pilot schemes did not have any significant impact on road users.

There are many causes for traffic accidents. So far, there is no evidence indicating that the traffic accidents at the road sections

under the pilot schemes are related to the level of luminance. In fact, even for those sections where the number of accidents has increased, the level of luminance meets the design standards.

The HyD will continue to liaise closely with the police and the TD. Improvement measures will be taken immediately should there be any sign of luminance problem at individual sections.

- (c) Most of the road sections under the two pilot schemes belong to the L3 class, with a few L2 and L4 sections. The HyD will continue to monitor the number of accidents of the concerned sections and conduct other analyses before deciding on the way forward for the pilot schemes (including whether to extend the schemes to road sections of other luminance classes), so as to achieve satisfactory energy saving level without creating any impact on road users.

Drug Abuse

13. **MR BERNARD CHAN** (in Chinese): *President, it was reported that in late July this year, a 13-year-old girl was suspected to have died in the street due to abuse of psychotropic substances. In this connection, will the Government inform this Council:*

- (a) *of the number of young people aged 18 or below (in age groups of two years each) who were reported to engage in drug abuse over the past three years, and the change as expressed in percentage each year;*
- (b) *of the respective numbers of people in the three age groups, namely, those below 16, between 18 and 20, and 21 or above, who engaged in cross-boundary drug abuse over the past three years, and the change as expressed in percentage; and*
- (c) *whether it will allocate additional resources for stepping up the prevention of drug abuse and encouraging drug abusers to receive drug treatment and related services?*

SECRETARY FOR SECURITY (in Chinese): President,

- (a) According to the Government's "Central Registry of Drug Abuse"⁽¹⁾ the number of reported drug abusers aged 18 or below, and the year-on-year rate of change over the past three years are as follows:

	2003	2004		2005	
	No.	No.	Year-on-year change (%)	No.	Year-on-year change (%)
Aged 10 or below	-	-	-	-	-
11 to 12	*	*	-	*	-
13 to 14	142	138	-2.8	134	-2.9
15 to 16	576	511	-11.3	623	+21.9
17 to 18	754	783	+3.8	820	+4.7
Average age of reported drug abusers aged 18 or below	16.4	16.5		16.4	

(1) The "Central Registry of Drug Abuse" collects and compiles statistical information regarding drug abuse. Drug abusers' information is submitted by a network of reporting agencies voluntarily. The reporting network is extensive, covering law enforcement agencies, treatment and rehabilitation organizations, welfare agencies, tertiary institutions, hospitals and clinics.

* Less than six persons

- (b) The "Central Registry of Drug Abuse" was redeveloped in 2005 to include a number of new data requirements, including the locality of taking drugs by the abusers. Starting from May 2005, some reporting agencies have started to provide such data (for example, Hong Kong or the Mainland) to the Registry. An increasing number of agencies are now submitting the new data. The trend cannot be established at this stage yet from the data available.

Separately, a Survey of Drug Use among Students was conducted in 2004. It was estimated that among the approximately 500 000 students in local secondary schools, international schools and Hong Kong Institute of Vocational Education, the proportion of those who

usually used drugs in private premises or entertainment venues in the Mainland is as follows:

Proportion of secondary level students who usually used drugs in the Mainland, 2004⁽²⁾

	<i>Lifetime heroin users⁽³⁾</i>	<i>Lifetime psychotropic substance users⁽³⁾</i>
Private premises in the Mainland	0.02%	0.03%
Entertainment venues in the Mainland	0.04%	0.16%

(2) In the survey, students were allowed to choose only the most usual place where they took drugs.

(3) Lifetime users refer to persons who had ever abused the drugs concerned once or more in their lifetime, regardless of whether they were still abusing drugs at the time of survey enumeration. Some students might use both heroin and psychotropic substances.

- (c) The Administration has all along adopted a multi-pronged approach to beat drugs. In the light of the drug abuse trends and situation, we formulate appropriate strategies and join forces with the relevant government departments and non-governmental organizations (NGOs) to combat drug abuse and trafficking.

To tackle the drug abuse problem among young people, we will strengthen preventive education and early intervention so as to enable youngsters to have an understanding of the harmful effects of drug abuse at an early age and to build up a positive and healthy lifestyle. We will also provide them with timely services and assistance when necessary.

On preventive education, we will produce a new set of Television Announcements in the Public Interest to educate the public on the harmful effects of the specific drugs which are commonly abused by young people.

Parents play a very important part in the life and development of their children. They could also play an important role in preventing drug abuse by their children. Starting from this year,

we have stepped up preventive education activities for parents. We have organized seminars for parents to improve their skills in communicating with their children, enhancing their knowledge of drugs as well as heightening their awareness of signs of drug abuse. To reach a wide audience of parents, the Administration is also liaising with radio stations on the production of a special radio programme to disseminate anti-drug messages.

The Administration has all along attached great importance to school-based anti-drug education. The Narcotics Division has, since September this year, extended anti-drug education talks to students at Primary Four level and above from the previous Primary Five and above to educate students on the scourge of drugs at an earlier age.

The Education and Manpower Bureau also launched in July 2006 a new website namely "Leading a Healthy Lifestyle", which provides useful information on drug abuse prevention that teachers may download as education resources.

On treatment and rehabilitation, a working group has been set up under the Sub-Committee on Treatment and Rehabilitation of the Action Committee Against Narcotics to study the possibility of strengthening co-operation between private medical practitioners and social workers. The aim is to widen the network for early intervention so that abusers may be given proper treatment or referred to counselling or other services at an early stage.

Early intervention is also the strategy adopted by the Social Welfare Department (SWD) for various services targeting the youth, including those Integrated Children and Youth Services Centres providing overnight outreaching service, for which the SWD has allocated additional provision to enhance their services since August 2005. As regards the five Counselling Centres for Psychotropic Substance Abusers, we are actively considering enhancing support in terms of manpower and outreaching services.

To address the problem of cross-boundary drug abuse, we have launched the "Sponsorship Scheme on Anti-Cross-boundary Drug Abuse Projects" which provides funding to non-profit-making organizations to hold anti-drug educational and publicity activities.

To help steer high-risk youths away from drugs, the Beat Drugs Fund will continue to provide funding support to organizations to hold various kinds of anti-drug activities including preventive education.

The Administration has spared no efforts in combating the drug problem. Extra resources are being allocated to areas of need. To effectively tackle the problem of drug abuse among the youth, the concerted efforts of the Government, families, schools, the mass media and NGOs are imperative in order to achieve the desired results. We will continue to explore new horizons in our fight against drug abuse. We will collaborate and develop a strategic partnership with all sectors of the community in this battle.

Traffic Directing by Building Attendants and Security Personnel

14. **MR ALBERT CHENG** (in Chinese): *President, I notice that building attendants and security personnel of many hotels, commercial buildings, luxury properties and private carparks in Hong Kong are required to undertake the duty of controlling vehicular traffic to and from the premises. They often have to stop pedestrians and even vehicles on driveways so as to make way for vehicles entering or leaving such premises. In this connection, will the Government inform this Council:*

- (a) *whether, according to the laws of Hong Kong, building attendants and security personnel have the authority to direct traffic and stop pedestrians and vehicles on driveways; if not, whether the police have looked at the above situation and taken actions accordingly; and*
- (b) *whether it has studied if such attendants and personnel are injured while directing traffic, they will not be covered by employees' compensation insurance on the ground that such a duty falls outside the scope of responsibilities of building attendants and security personnel; if it has, of the study results?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS
(in Chinese): President, currently, the law has not empowered attendants or

security guards of private properties to direct traffic. According to the Summary Offences Ordinance, any person causing obstruction to traffic without lawful excuse is liable to prosecution. Police officers on patrol do observe these attendants or security guards discharge their duties in maintaining security and order. Generally speaking, they do not cause any traffic problems. However, if traffic obstruction does occur, the police will take appropriate actions, including giving advice, issuing warning or instituting prosecution against the attendants or security guards concerned. The police have instructed front-line police officers on patrol to pay more attention to such situations.

According to the Employees' Compensation Ordinance, if personal injury or death by accident arising out of and in the course of the employment is caused to an employee, his employer shall be liable to pay compensation in accordance with the Ordinance. Notwithstanding that the employee is at the time when the accident happens acting in contravention of any statutory or other regulation applicable to his employment, if such act is done by the employee for the purposes of and in connection with his employer's trade or business, the employee is entitled to compensation. The Ordinance also requires employers to take out insurance policies to cover their liabilities both under the Ordinance and at common law for injuries at work in respect of all their employees. When an employer who has been insured becomes liable to pay any sum of compensation under the Ordinance or damages in respect of a work injury to his employee, such sum shall become due and payable by the insurer, notwithstanding anything to the contrary in the policy of insurance. Therefore, when personal injury by accident arising out of and in the course of the employment is caused to an employee, the employee can claim compensation from his employer and the insurer concerned.

Women Health Services

15. **MISS TAM HEUNG-MAN** (in Chinese): *President, I have recently conducted a survey, the result of which revealed that nearly 40% of the women did not take regular gynaecological check-up. Moreover, according to the information from the Department of Health (DH), at present, only three Women Health Centres (WHCs) and 10 Maternal and Child Health Centres (MCHCs) provide health services for women, with some 20 000 women enrolled in such services each year. In this connection, will the Government inform this Council whether it will consider:*

- (a) *stepping up publicity to encourage more women to enrol in the health services provided by the DH; if it will, of the details of the specific publicity programme;*
- (b) *increasing the number of centres that provide women health services so that women in various districts can obtain such services in their neighbourhood; and*
- (c) *providing subsidies to all women in Hong Kong for them to seek health services in private medical institutions or take annual gynaecological check-up; if it will, when the policy study concerned will commence; if not, the reasons for that?*

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

- (a) At present, the DH publicizes the details of its Woman Health Service through various channels, such as the DH Homepage (<www.dh.gov.hk>), the Family Health Service Homepage (<www.fhs.gov.hk>) and the Central Health Education Unit Hotline (Telephone No.: 2833 0111). Information leaflets are also distributed in MCHCs and other organizations such as the Integrated Family Service Centres. The DH will closely monitor the utilization of such services and review the publicity strategies and means as appropriate.
- (b) Woman Health Service is provided by the DH for women aged 64 or below in its three WHCs and 10 MCHCs located across the territory. The utilization of the Service now provided by these Centres has not yet reached full capacity. Moreover, the DH is not the sole provider of woman health services. Other organizations in the community, such as the Family Planning Association of Hong Kong, the Tung Wah Group of Hospitals, and the Hong Kong Federation of Trade Unions, among others, also make available an array of health programmes for women. Hence, the DH has no plan at this stage to increase the number of such centres for Woman Health Service.

- (c) Members of the public should take responsibility for their own health, adopt a healthy lifestyle and take it upon themselves to undergo preventive check-ups, such as physical examination. We encourage the public to use the preventive check-up services currently offered by many family doctors at reasonable prices. Our limited resources should be utilized in the most appropriate manner and allocated to those genuinely in need. Hence, at this stage, the DH does not intend to provide women health services or regular body check-ups for women directly or by provision of a subsidy.

In fact, for effective disease prevention, we should understand their causes and early symptoms as well as the risk factors, maintain a healthy lifestyle and consult doctors once possible symptoms emerge. It is more important for the Administration to direct its efforts to disease prevention and health promotion through public education rather than the provision of physical check-up services. Therefore the DH will continue to update the information on the prevention of women-related illnesses and on health promotion, and raise women's awareness of the common diseases and the preventive measures through various means, such as leaflets, compact discs, webpages, or health talks for women held in collaboration with community organizations. The DH will keep up its ongoing efforts to assess the health care needs of women in Hong Kong, and review the mode of service provision and the contents of health education, while collaborating with relevant organizations to promote women's health.

Review on Responsibilities of Various Policy Bureaux

16. **MR FREDERICK FUNG** (in Chinese): *President, regarding the authorities' review on the responsibilities of various Policy Bureaux, will the Government inform this Council:*

- (a) *whether it has conducted a review on the distribution of work among various bureaux; if so, of the reasons and the methodology adopted for conducting the review as well as its preliminary results; whether*

it will hold public consultation and has drawn up an implementation timetable; if no review has been conducted, the reasons for that;

- (b) whether it will consider designating one single Policy Bureau to be responsible for co-ordinating and handling all labour matters (including employment assistance, unemployment assistance, protection of labour rights, upgrading of skills, and so on), so as to better co-ordinate the relevant work and to achieve more effective allocation and utilization of resources;*
- (c) whether it has assessed if the arrangement whereby the Environment, Transport and Works Bureau (the Bureau) is concurrently responsible for environmental protection, transport and public works has resulted in the Bureau playing a confusing role due to the lack of focus and contradicting policy objectives; if there is such a situation, whether it will consider setting up an environmental protection bureau with dedicated responsibility for the environmental protection work for which the Bureau is now responsible, so that the Government can take forward environmental protection work in a more focused and independent manner; and*
- (d) given that cultural affairs concern the sustainable development of a society and affect the life and quality of people and even the development of its economy, whether it will consider setting up a cultural affairs bureau to be responsible for all the Government's efforts on the cultural front, and allowing the involvement of personnel from that bureau in the formulation of policies by other Policy Bureaux, so that cultural concerns can be reflected in government policies?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Chinese): President, prior to delivery of the 2006-2007 policy address, the Chief Executive held consultation sessions with Legislative Council Members, political parties and political groups, as well as representatives of different sectors of the community to listen to their views and expectations on the policy address. During the process, some participants put forth views about the reshuffling of responsibilities among the 11 existing Policy Bureaux of the Government

Secretariat; these views cover policy areas relating to health and welfare, environment and transport, energy and culture, and so on.

The Administration has put the suggestions received on record. If the third term Chief Executive takes the view that it is necessary to consider reshuffling the responsibilities among the existing bureaux, the suggestions received earlier will be referred to.

Interim Report of Committee on Teachers' Work

17. **MR CHEUNG MAN-KWONG** (in Chinese): *President, the Committee on Teachers' Work (the Committee), set up in January this year by the Administration to review the current work situation of teachers, submitted an interim report to the Secretary for Education and Manpower in August. As the authorities have not published the report, the public cannot have a detailed understanding of the sources of pressure on teachers as identified therein, nor can they comment on or analyse the research methodology adopted by and conclusions of the report. In this connection, will the Government inform this Council:*

- (a) *of the contents of the report, including the research methodology adopted, subjects interviewed, bases of its arguments and the preliminary conclusions;*
- (b) *given that the relevant expenses of the Committee were paid out of public funds, of the authorities' justifications for not publishing the report; and*
- (c) *whether the authorities will require that reports submitted by public-funded committees be published; if they will, of the details; if not, the reasons for that?*

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

- (a) The Committee was set up at the beginning of this year to review the work situation of local teachers from an objective perspective. It

will also make recommendations to the Education and Manpower Bureau on measures that will help alleviate teachers' workload.

The Committee's interim report of August 2006 set out information and observations on the job nature, workload and pressure of teachers. It was prepared on the basis of a comprehensive literature review, in addition to survey studies and interviews involving thousands of stakeholders in the school sector, as well as school visits.

The Committee has made some useful observations, for instance, that it is the nature and not the quantity of work that matters most to teachers, and that the total working hours of a teacher in Hong Kong is comparable to those of other professions in Hong Kong. The Committee has also identified strategies which schools and teachers have used to relieve pressure.

The Committee is now consolidating its findings and will put forth recommendations towards the end of the year.

- (b) Further deliberations and studies are still needed for the Committee to develop its interim report into a final one. To avoid exerting influences on the Committee, the interim report will not be published.
- (c) It is for individual bureaux or departments responsible for the studies to decide whether a study report should be made public. In making the decision, they will take into account factors such as the purpose and nature of the study, and the sensitivity of the data or information collected.

Mosquito Surveillance

18. **MR JAMES TO** (in Chinese): *President, regarding the placement of ovitraps for mosquito surveillance, will the Government inform this Council:*

- (a) *in view of the Government's remarks that ovitraps should be placed at locations with heavy pedestrian flow, whether the authorities have*

reviewed if the ovitraps in Kowloon City are placed at locations which meet this criterion, and if the relevant ovitrap indices can fully reflect the situation of mosquito problem in that district;

- (b) how the Government ensures that the ovitrap indices can reflect the mosquito problem in all districts of Hong Kong;*
- (c) whether the Government will consider moving the ovitraps which have consistently recorded low level of readings to new locations for optimum use of resources; if it will, when the measure will be implemented; if not, the reasons for that;*
- (d) whether the Government will review the locations of ovitraps more frequently, which are currently reviewed once a year;*
- (e) whether the Government will inject additional resources so that ovitraps may be placed at more locations in order to extend the coverage of mosquito surveillance; and*
- (f) in view of the dual roles of Food and Environmental Hygiene Department (FEHD) in monitoring mosquito problem and carrying out anti-mosquito work, which may give rise to conflict of interests, whether the Government has considered assigning the relevant duties to different government departments?*

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

(a) and (b)

In selecting locations for placing ovitraps, the FEHD makes reference to the recommendations of the World Health Organization (WHO) for dengue vector surveillance. As such, ovitraps are mainly set up in areas and hospitals where local dengue fever cases were reported, as well as densely populated housing estates, schools, and so on. The ovitraps in Kowloon City are placed in accordance with this principle.

To ensure that the ovitrap indices can reflect the monitoring work of the dengue fever situation in all districts of Hong Kong, the FEHD will, apart from strengthening its management, continue to draw reference from the recommendations of the WHO in adopting a scientific approach for the placement of ovitraps and handling of data collected. On the other hand, in monitoring and assessing the extent of mosquito problem, the Administration will also take into consideration the ovitrap indices as well as a basket of factors, namely, information obtained from the WHO and health authorities of neighbouring areas, the number of imported and local cases of mosquito-borne diseases, reports and number of mosquito complaints received and feedback from District Councils and local personalities. All the information is useful to the Administration for making an overall assessment of the prevalence of mosquitoes in Hong Kong.

(c) and (d)

The locations of ovitraps are fixed throughout the calendar year to enable the FEHD to make meaningful comparison and monitor monthly trends. These locations are reviewed annually, taking into consideration past experience, new development (including the levels of ovitrap indices recorded) and emerging public health needs. The department considers the existing annual review to be appropriate, and there is no plan to move ovitraps to other locations when the index recorded is below a certain level.

(e) The FEHD regularly reviews and improves the surveillance programme. The frequency of survey was increased from once every three months to once a month in 2003, and the number of localities under surveillance also increased from 34 to 38. In 2004, the surveillance programme was further extended to cover 30 port areas in the territory. Currently, about 2 000 ovitraps are placed by the FEHD in the 38 localities covering all the district board areas, to reflect the prevalence of dengue fever vector at both district and territorial levels. While the current surveillance programme has achieved its objectives, we will conduct annual review and adjust the scope of surveillance to respond to actual needs.

- (f) District staff of the FEHD are responsible for mosquito preventive and control operation, whereas the Pest Control Advisory Section (PCAS) of the FEHD provides professional advice and technical support on pest control matters for the FEHD's district operational staff as well as for other government departments. The PCAS also monitors territory-wide dengue vector through the ovitrap surveillance programme. Since anti-mosquito operations and monitoring work are carried out by two different and independent units, there is no question of overlapping roles. The Government has no plan to assign the relevant duties to different government departments.

Curbing Transmission of Human Immunodeficiency Virus

19. **MR ANDREW CHENG** (in Chinese): *President, statistics from the Department of Health (DH) indicate that there has been a rise in the number of cases of infection of human immunodeficiency virus (HIV) in the Men-having-Sex-with-Men (MSM) community. In this connection, will the Government inform this Council:*

- (a) *of the measures taken by the authorities to curb such a trend, and whether they will step up the publicity work among the MSM community on preventing HIV infection;*
- (b) *of the measures to curb the transmission of HIV in the communities practising unprotected sex and to prevent the development of any new infected communities; and*
- (c) *how the authorities monitor and review the effectiveness of the above efforts?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Chinese): President, all along, the Administration endeavours to raise public awareness of AIDS and safe sex through its education and publicity programmes. We also strengthen our AIDS prevention efforts among high-risk communities and AIDS patients through the provision of HIV tests and counselling services. As a

result, the overall HIV prevalence in Hong Kong has been kept at a low level (at below 0.1% as at March 2006). That said, we cannot afford to be complacent.

The Administration is concerned with the recent increase in HIV infections among MSM in Hong Kong, as evidenced from the reported cases, seroprevalence surveys and investigation of HIV cluster, and has embarked on corresponding preventive measures to deal with the situation. The DH launched a major publicity and education campaign among the MSM community in mid-2006 to raise the relevant community's awareness of AIDS and the importance of safe sex as well as to promote condom use.

We understand that enhancing the involvement of the relevant community is an important part of our HIV prevention strategy. In this connection, the Red Ribbon Centre of the DH is now stepping up its efforts to promote greater involvement of the MSM community in HIV prevention, establish a partnership with them, build capacity and provide technical support. In addition, the AIDS Trust Fund will also consider providing appropriate funds to encourage community-based HIV prevention programmes by the non-governmental organizations for the MSM community.

AIDS prevention is not the sole responsibility of the Administration. Individuals must also do their part by taking appropriate precautionary measures to protect themselves and avoid infecting others. The Administration is aware of the behaviour of the relevant high-risk communities and will accordingly take intervention actions, mount publicity campaigns on AIDS prevention and promote safe sex.

The DH will strive to enhance the HIV surveillance system in Hong Kong in order to facilitate early detection of any new cluster of HIV cases, planning of interventions and evaluation of the response. The DH will also continue to monitor HIV prevalence, and collect data and information for analysis and assessment of the effectiveness of the above measures, so as to develop an appropriate strategy and ensure optimal use of resources.

Promoting Fair Competition Among Content Providers

20. **MR SIN CHUNG-KAI** (in Chinese): *President, the industry has relayed to me that non-affiliated content providers in the market suffer from*

discrimination by certain mobile network operators (MNOs), including access speed and price discrimination, whereas affiliated content providers are given favourable treatment. In this regard, will the Government inform this Council:

- (a) of the total number of complaints received since 2004 which are related to the above situation and the number of cases being handled;*
- (b) of the procedures for handling such complaints and the average time required to conclude a complaint case;*
- (c) whether it has ever reviewed the existing regulatory mechanism to assess if the mechanism is effective in enhancing the compliance of MNOs' commercial acts with the "Open Network Access" (ONA) requirement in respect of content providers, that is, "the traffic of non-affiliated content or service providers (CSPs) of a certain class or type will be treated on a non-discriminatory basis compared with CSPs of the same class or type affiliated with the MNO"; if it has, of the outcome; if not, the reasons for that; and*
- (d) whether it will consider enhancing the existing regulatory mechanism or implementing other measures, such as requiring MNOs to publish regularly their network access levels, so as to promote fair competition among content providers; if it will, of the relevant details?*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Chinese): President, currently, there is ONA requirement in the third generation (3G) mobile services licences, whereby the licensees are required to open 30% of the network capacity for Mobile Virtual Network Operators and non-affiliated CSPs and to provide access up to this threshold on a non-discriminatory basis. The Telecommunications Authority (TA) may determine the tariffs for the services, which include the relevant terms and conditions for the provision of the services, if the tariffs offered by a 3G licensee to a CSP are unfair, anti-competitive or discriminatory. There is a similar licensing requirement under the recently renewed second generation (2G) licences. It will be effective after the end of the sixth year of the renewal of the licence.

- (a) The Office of Telecommunications Authority (OFTA) has not received any complaint since 2004 from non-affiliated CSPs concerning discriminatory treatment of MNOs.
- (b) As the OFTA has never dealt with complaint concerning discriminatory treatment of the MNOs, there is no information on the average time of handling such complaint.

If a complaint is received, the OFTA will follow the ordinary procedures for competition complaints to conduct a preliminary investigation to establish whether or not there is *prima facie* evidence to indicate that the case merits full investigation. The OFTA aims to complete the preliminary investigation within four weeks from its initiation. If the OFTA is satisfied that the case merits full investigation, its performance pledge is to complete 80% of full investigations on complaints against operators relating to competition provisions of the Telecommunications Ordinance within four months after preliminary investigation.

- (c) The TA has not commissioned any review on ONA requirement because the TA considers that competition in the market is working well. The current regulatory regime has already provided an effective mechanism for the TA to intervene when necessary, with a view to ensuring that MNOs will treat non-affiliated CSPs on a non-discriminatory basis. So far, the TA has not received any request for him to make a determination of the tariff offered to CSP under the 3G licensing condition, or any complaint from CSP against discriminatory treatment of the 3G or 2G MNOs. CSPs are able to reach agreements with MNOs through commercial negotiation in a competitive environment. Therefore, the TA does not consider that there is any need to review the current regulatory mechanism.
- (d) Since the TA considers that competition in the market is currently working well, reinforcing the existing regulatory mechanism is not considered necessary at this juncture. The TA will continue to monitor the market development and review from time to time the need to introduce additional regulatory measures to ensure fair competition in the market.

BILLS**Second Reading of Bills****Resumption of Second Reading Debate on Bills**

PRESIDENT (in Cantonese): Bill. We now resume the Second Reading debate on the Smoking (Public Health) (Amendment) Bill 2005.

SMOKING (PUBLIC HEALTH) (AMENDMENT) BILL 2005**Resumption of debate on Second Reading which was moved on 11 May 2005**

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

MR ANDREW CHENG (in Cantonese): Madam President, first of all, I would like to know whether there is no time limit for my speech on this report? Even if there are changes in the speaking time, the 15 minutes will not be a reason to.....Is it that I will have 15 minutes for my own speech?

PRESIDENT (in Cantonese): The time to be taken for your speech made in a personal capacity will be counted separately.

MR ANDREW CHENG (in Cantonese): Madam President, first of all, in my capacity as the Chairman of the Bills Committee on Smoking (Public Health) (Amendment) Bill 2005 (the Bills Committee), I am very glad to report on the deliberations of the Bills Committee. The debate of the Bills Committee had indeed spanned 150 hours, and as the Secretary said on a previous occasion, the discussion conducted outside this Council had not even been factored in. The debate has continued both inside and outside this Council and today, we hope to enable the public to understand as soon as possible that the major objective of the Bills Committee in scrutinizing the Smoking (Public Health) (Amendment) Bill 2005 (the Bill) is to expand the scope of no smoking areas.

The Bill, if enacted, will impose a comprehensive ban on smoking in indoor workplaces and public places, including indoor areas of restaurants and karaoke establishments, with effect from 1 January 2007. Moreover, the outdoor areas of some public places, including escalators, the Hong Kong Wetland Park, stadia and swimming pools, and public pleasure grounds and beaches within the meaning of the Public Health and Municipal Service Ordinance will also be designated as no smoking areas with effect from 1 January 2007.

Clause 20 of the Bill amends Schedule 2 by adding a number of new places as designated no smoking areas, such as schools and indoor areas of public premises, restaurant premises, bars, karaoke establishments, mahjong tin-kau premises, commercial bathhouses and hospitals.

Since the introduction of the Bill, the restaurant and entertainment industries have expressed concerns about the impact of the Bill on their business. They made representations to the Bills Committee and the Administration about the special characteristics of their trades, and the potential economic impact of the Bill, as well as their worries that the smoking ban would affect customer patronage and result in revenue and job losses.

Taking into account the unique mode of operation of mahjong parlours, commercial bathhouses, massage parlours, mahjong clubs and nightclubs, the Administration accepted that certain industries might need more flexible arrangements to help them adapt to the regulatory changes, modify their mode of operation, as well as to facilitate their smoker-customers to gradually adapt to the legislative requirements. The Administration, therefore, proposed that the implementation date of the smoking ban for mahjong parlours, commercial bathhouses, massage parlours, mahjong clubs and nightclubs, and bars open to people aged 18 and above only, can be deferred to 1 July 2009, in order to allow a longer adaptation period for such establishments.

The transitional provisions in respect of the qualified establishments mentioned above are set out in Part 2 of a new Schedule 6 to the Ordinance. The new Schedule sets out the definitions of the six categories of qualified establishments, entry restrictions, requirements for prescribed signs to be displayed, procedures for inclusion in the list of qualified establishments and removal of an establishment from the list, as well as the appeal mechanism and other relevant matters. The Administration has taken into account the views

expressed by members during discussions on the proposed new Schedule and incorporated most of their suggestions into the final version.

While some members welcomed the Administration's proposal to provide a longer adaptation period for the six categories of qualified establishments, other members considered that the Administration should not have made the concession, and they had only accepted the proposed arrangement in order not to hold up the passage of the Bill today, so that a comprehensive ban on smoking can be expeditiously implemented in workplaces and other restaurant premises with effect from 1 January 2007.

In respect of educational institutions, the existing legislation provides that the management authority of a school, university or tertiary institution may designate the educational premises or any part thereof as no smoking area. The Administration proposed imposing a smoking ban on both the indoor and outdoor areas of all child care centres, kindergartens, primary and secondary schools, and on the indoor premises of all universities and post-secondary institutions.

Members considered it more logical to impose a total smoking ban in a consistent manner in all educational institutions. Following consultation with the educational establishments concerned, the Administration agreed to extend the smoking ban to cover both the indoor and outdoor areas of their campuses, except for employees' quarters (other than communal quarters) which will be exempted from the smoking ban. In other words, all the areas of educational institutions, whether indoor or outdoor, will be included as no smoking areas.

Madam President, having consulted the Hospital Authority and the Hong Kong Private Hospitals Association, the Administration accepted members' proposal to expand the smoking ban to both the indoor and outdoor areas of all hospitals.

Madam President, next, I will talk about the amendments relating to public pleasure grounds. In June 2006, the Administration accepted my proposal of designating any public pleasure grounds within the meaning of the Public Health and Municipal Service Ordinance (Cap. 132) as a no smoking area under Schedule 2. Most members expressed support for the proposed amendment.

Later, in September 2006, the Administration reported to the Bills Committee that it had received different views on this proposed amendment. In

order to balance the varying needs of users, the Administration proposed that "smoking areas" be designated in public pleasure grounds by the Leisure and Cultural Services Department (LCSD) under the Public Health and Municipal Services Ordinance. The Director of Leisure and Cultural Services will consult the relevant District Councils (DCs) in the process of designation.

Some members voiced strong objection to the Government's proposal. Members also expressed concern that different criteria might be adopted by the DCs in designating "smoking areas", resulting in varying practices in the districts. Members requested the Administration to provide detailed criteria for designating the proposed smoking areas.

The Administration added that in large parks, such as the Victoria Park and Kowloon Park, the Administration would propose to designate not more than 1% of the total area as smoking area. In the Victoria Park, for instance, 1% of the 17 hectares is a relatively large area. The locations of the smoking areas will be far away from any children area, areas with dynamic sport elements, and so on. In designating these smoking areas, the Government will determine the number and locations of these areas on a case-by-case basis. The actual designation will be made after consultation with the DCs.

Members considered that the information provided by the Administration failed to address their concerns about the lack of clarity of the criteria to be used in designating smoking areas. The Bills Committee decided that I shall move an amendment on its behalf to disallow the designation of smoking areas in these public pleasure grounds. In other words, there will be a complete ban on smoking in any public pleasure ground, park, and so on, as defined in the existing legislation. The Bills Committee considered that anti-smoking measures should be resolute and the anti-smoking message should be unequivocal. Public parks are recreational venues for public leisure. Elderly people practising Tai Chi and children playing hopscotch in parks should not be exposed to second-hand smoke.

(THE PRESIDENT'S DEPUTY, MS MIRIAM LAU, took the Chair)

Deputy President, next, I will talk about the ban on smoking at transport interchanges. In respect of transport interchanges, the Administration agreed to

propose an amendment to the effect that the Director of Health, may by notice published in the Gazette, designate as a no smoking area the whole or a part of the following places: First, any area that consists of the termini of two or more modes of public transport and is used for effecting and facilitating interchange between them; or any bus terminus of more than one specified route as defined in section 2 of the Public Services Ordinance (Cap. 230). Deputy President, given the large number of transport interchanges involved and the need to consider the boundary of the no smoking area at each of these interchanges, the Administration proposed that implementation of the proposal will be deferred until it has completed work on setting up a Fixed Penalty System for smoking offence in 12 to 15 months' time following the enactment of this Amendment Bill. Priority will be given to covered interchanges. In other words, when a Fixed Penalty System is put in place in future, the Government will clearly draw the boundary lines of bus termini and transport interchanges and designate both transport interchanges and bus termini as no smoking areas.

Deputy President, next, I will talk about tobacco advertisements. In respect of display of tobacco advertisement, under section 12 of the Ordinance, the display of tobacco advertisements is prohibited except at licensed hawker stalls and retail outlets employing not more than two employees. The Administration proposed revoking the exemption currently applicable to licensed hawker stalls and retail outlets with two employees or less. The Administration originally proposed an adaptation period of one year for these hawkers and retail outlets. In order to provide greater relief to licensed newspaper stall hawkers, the Administration proposed to extend the adaptation period from the proposed one year to three years and to fix 1 November 2009 as the effective date for revoking this exemption. Besides, the exemption presently applicable to retail outlets employing less than two employees (including newspaper shops) will be revoked as proposed in the Bill, which means that this exemption will be revoked with effect from 1 November 2007.

Deputy President, I will now turn to the use of misleading descriptors. The use of misleading descriptors was the most controversial item discussed in the Bills Committee. I must make it clear here to the whole Council that this was also a major reason why the Second Reading debate on the Bill could not be resumed on 12 July. It was because we had to wait for the Government's reply on this issue for the entire summer, and the Bills Committee must also re-examine whether some misleading descriptors are inducing our young people and the smokers into thinking that certain products do not have too many adverse

consequences on them. In the following paragraphs, I will talk on some of the more complicated issues in this respect and the results of our discussion. Before I do so, I certainly understand that the Government had, in fact, accepted most of our proposals at the last meeting, and the Bills Committee also agreed with the final decision of the Government. That is why we decided to defer it for two months. This will not affect the scheduled implementation on 1 January next year and helps put the Government back onto the right track insofar as "misleading descriptors" are concerned.

Deputy President, section 10(3) of the Ordinance prohibits the sale of cigarettes which have on their packet or their retail container a brand name which includes words implying that the cigarettes have a low tar yield, such as "light" and "mild", unless the cigarettes have a tar yield of 9 mg or less. Clause 11 of the Bill amends section 10(3) to expand the prohibition, so that it covers sale of cigarettes which have on their packet or retail container the words "醇", "焦油含量低", "light", "mild", "milds" or "low tar", or other words which imply or suggest that the cigarettes are less harmful than others, regardless of the tar yield of the cigarettes.

In May 2005, a tobacco company made a submission to the Bills Committee that the proposed amendment to section 10(3) would amount to a prohibition of their trade mark and thus, would be a "*de facto*" deprivation of their property under Article 105 of the Basic Law, and would fail the "fair and balance test".

After consulting the Department of Justice and the Intellectual Property Department, the Administration informed the Bills Committee in January 2006 that in view of the complexity of the legal issues involved and the risk that litigation might follow if clause 11 was passed in the present form, the Administration proposed to amend the clause to the effect that the prohibition would not prevent the use of trade mark containing any such misleading words on the packet or retail container if the following two conditions are met:

- (1) the trade mark has, as of the day on which the Amendment Ordinance is enacted, been registered with the Trade Mark Registry under the Trade Marks Ordinance (Cap. 559); or, if the trade mark has not been registered under the Trade Marks Ordinance, its owner is able to prove that the mark is used in Hong Kong in relation to the

retail sale of cigarettes on the day immediately before the enactment of the Amendment Ordinance; and

- (2) the packet or retail container bears a notation in the prescribed form and manner.

The purpose of the notation is to bring to the smoker's attention that the use of misleading words does not in any way indicate that the cigarettes contained therein are less harmful than others.

Deputy President, some members expressed strong objection to the proposed amendment which they considered would set a very bad example for the Mainland and other countries in the region. They were also concerned about the implications of the proposed amendment, in particular whether it was in compliance with the Framework Convention on Tobacco Control of the World Health Organization. Even those members supportive of the proposed amendment considered that the cut-off date for the "grandfathering" arrangements should be the date of gazettal of the Bill instead of the date of the enactment of the Amendment Ordinance.

Members expressed serious doubts that the amendment proposed in clause 11 would constitute deprivation of property. The Administration's response was that although clause 11 of the Bill taken on its own does not necessarily constitute "*de facto*" deprivation of property without compensation within the meaning of Article 105 of the Basic Law, there is a serious risk that the cumulative effect of clause 11 and other provisions of the Bill and the existing law as contained in the Ordinance (particularly those relating to tobacco advertisements) amounts to such a deprivation as far as registered trade marks incorporating the words mentioned in clause 11 are concerned. This proposition applies to a certain extent also to trade marks duly registered after the gazettal of the Bill and before its enactment and commencement.

On 22 June 2006, when the Administration provided the Bills Committee with the first draft of its proposed amendments to clause 11, some members expressed strong dissatisfaction with the "grandfathering" arrangements and requested the Administration to consider other alternatives. Deputy President, let me stress that the first draft of the amendments was submitted on 12 June 2006 and so, only very little time was left before 12 July, the day for which the Second Reading debate was scheduled to resume. Coupled with strong

dissatisfaction expressed by some members, we, therefore, continued our discussion at the meetings. For example, as Article 11 1(a) of the Framework Convention on Tobacco Control does not require specific words to be stipulated in domestic legislation giving effect to the Article, some members, therefore, suggested that instead of adopting the "grandfathering-cum-notation" approach, a general ban on the use of misleading words on tobacco packaging without an absolute ban on the specific words should be considered.

As members supported the imposition of a general ban and were prepared to accept the financial implications of taking litigation on a case by case basis, the Administration ultimately agreed at the last few meetings to withdraw its previous proposal of adopting an absolute ban on specific words. Under the new proposed amendment to clause 11, a general ban will be imposed on the use of misleading descriptors. This is how we had, during the entire summer, made the Government ultimately withdraw the "grandfathering" approach. It was because we considered that it might be rather misleading, and the Government has taken on board our view.

Deputy President, next, I will talk about the display of signs at places where smoking is prohibited. Clause 6 of the Bill amends section 5 of the Ordinance, which provides that the manager shall place and maintain in a prominent position in each no smoking area or public transport carrier a sufficient number of signs in English and Chinese to indicate that smoking is prohibited and such signs shall be of the prescribed description and maintained by the manager in legible condition and good order.

Some members expressed concern that managers may find it difficult to determine what positions are regarded as "prominent" in the smoking area, and how many signs are considered "sufficient" in each and every case. Members also noted that given the different layouts and configurations of commercial complexes, office buildings, hotels, restaurants, and so on, it would be difficult for managers to know if they have complied fully with the requirements of displaying "no smoking" signs.

Having considered the views of members and the trades, the Administration proposed that the statutory requirement of the display of signs under section 5 of the Ordinance and section 2 of the Smoking (Public Health) (Notices) Order, which also provides for the prescribed signs to be displayed,

should be repealed. The sanction against managers under section 7(3) will also be repealed accordingly.

Some members supported the Administration's proposal. Other members voiced grave reservations about it. They were concerned that some managers may choose not to display any sign at all as there is no requirement or sanction as a result of the repeal of the two sections in question. They held that the two sections should be retained, but the wording can be improved to enhance clarity, and that the enforcement authority can exercise flexibility in enforcing the provision.

As the majority view of the Bills Committee was that the requirement for managers to display the "no smoking" sign should be retained, I have proposed an amendment on behalf of the Bills Committee to replace section 5 with a simpler and clearer provision.

The Bills Committee also proposed that the requirement for specified form of "no smoking" signs under paragraph 2 of the Smoking (Public Health) (Notices) Order be repealed to allow managers flexibility in the design of such signs.

The amendments proposed by the Bills Committee also include repealing clause 8 which proposes the addition of a provision to exempt government officers from legal liability. In other words, the Government should have the same liability as that of other private institutions as provided for in law, rather than being exempted from criminal liability. Deputy President, I will explain the arguments of the Bills Committee in more detail at the Committee stage later.

Deputy President, next, I will turn to the proposal of putting in place a Fixed Penalty System for smoking offences. In view of the anticipated substantial increase in statutory no smoking areas after the enactment of the Bill, members requested the Administration to introduce a Fixed Penalty System for persons found smoking in a statutory no smoking area. Members shared the view that a Fixed Penalty System is worth considering because the process is effective and efficient, as clearly shown in the case of littering offences. It sends a clear message to the public and obviates the need to go through the judicial process which is time consuming and costly for minor offences of this nature.

The Administration proposed to fix the penalty level at \$1,500 for a smoking offence, on a par with the offence for littering, both of which have an impact on public health. All operational officers of the Department of Health holding the post of Tobacco Control Inspectors and police officers of the Hong Kong Police Force will be appointed under the law to issue fixed penalty notice. The Administration may review at a later stage whether it is necessary to involve other departments in the enforcement taking into account the community's overall compliance with the smoking ban after the enactment of the Bill. The Administration also undertook to table to the Legislative Council legislation containing the relevant provisions on fixed penalty as soon as possible. The Government said initially that it might take 12 to 18 months. The Bills Committee hopes that the Government can expedite the process, rather than putting it off to 12 or 18 months later, since the Government already has gained enormous experience in handling littering offences punishable by fixed penalties.

Finally, Deputy President, let me draw a brief conclusion here. The Administration has made some undertakings at the request of the Bills Committee, and I hope that the Secretary will state in his speech later that he will follow up these undertakings:

First, as I said earlier, to introduce a Fixed Penalty System for smoking offence as soon as possible after the enactment of the Bill;

Second, to implement the proposal of designating transport interchanges as no smoking areas as soon as practicable and provide in the speech an outline of its plan and timetable for implementation;

Third, to conduct studies exploring into the expansion of the smoking ban to cover country parks, theme parks and queues (it is because very often, as also discussed in the Bills Committee, we can see queues of people in outdoor areas, such as at bus stops, or people queuing up at cinemas — perhaps this is the queuing culture of Hong Kong) or queuing areas where people queue up for consultation chips at out-patient clinics, as well as the need to start the next phase of its legislative exercise on tobacco control;

Fourth, to examine the viability of prohibiting the use of tobacco brand name and logo on non-tobacco products; and

Fifth, to review the provision of smoking rooms in the Hong Kong International Airport in line with international developments in this regard.

Deputy President, this is all I have to say on the work and report of the Bills Committee in my capacity as the Chairman of the Bills Committee. Now, on behalf of the Democratic Party, I wish to express some of our views on the amendments to the Bill and explain the amendments proposed by us.

Deputy President, the Ordinance was last amended in 1997 and since then, there have been calls from the public for enhanced efforts on tobacco control, and there are often complaints from members of the public that they are forced to inhale second-hand smoke at public places such as bistro cafes, restaurants, and so on. Over the past few years, the Democratic Party has kept on urging the authorities to introduce an Amendment Ordinance as soon as possible. In 2001, the Democratic Party even drafted a Member's Bill with the objective of imposing a smoking ban on all indoor workplaces, food establishments, and indoor areas that are open to the public. But as Members all know, after 1997, it has been basically impossible for any private bill to be introduced to the Legislative Council.

Deputy President, after many years of efforts — of course, I must praise our Secretary too, for this Smoking (Public Health) Ordinance indeed requires determination and commitment on the part of the Secretary, as this Ordinance was immediately tabled to the Legislative Council after Secretary Dr YEOH Eng-kiong had stepped down. Although we did not see eye to eye on many issues in the course of discussion, and although the Secretary was not present even once during all the 150 hours of discussion, for he was not required to attend meetings of the Bills Committee, I believe the Secretary was also aware of the many proposals made by us. At first, we made many proposals on a smoking ban in indoor areas and then, we gradually put forward more and more proposals to ban smoking in outdoor areas, and these proposals were all accepted by the Secretary. But the only exception is the ban on smoking in parks which I will explain later on, as the Government seemed to be "taking three steps forward and then two steps backward". The designation of smoking areas in parks indeed gave us the feeling that what the Government had done was inconceivable and that it had been knocked into a loss.

Deputy President, as the Bill is tabled to the Legislative Council today, I would like to take this opportunity to point out that after extensive public

consultation by the Administration, we think that the Government has accepted and is aware of the public's response to passive smoking. We welcome the Government's readiness to accept advice, but with regard to the arrangements for parks, I hope the Secretary can understand that I had proposed many amendments on behalf of the Democratic Party at the time, including those relating to bus termini, transport interchanges, parks, beaches, swimming pools, escalators, and so on, and we hoped that the Government could incorporate them all into its amendments to the Bill. The Government had accepted them all and therefore, we were glad to let the Secretary propose these amendments because amendments proposed by the Government will certainly be endorsed. Deputy President, this is the result of separate voting implemented after 1997. This may be a misfortune, and this may be a state of helplessness. But no matter by whom these amendments are proposed, as long as they can be helpful to the public and to public hygiene, we do not mind that they are proposed by the Government.

However, the Government told us only at the last two meetings that after discussion with the DCs, especially Chairmen of the DCs, it was of the view that it seemed to be a bit inhuman not to allow the elderly to smoke in parks. We felt most sorry at hearing that. Although the most important objective of the Secretary, the Bills Committee or the Bureau in introducing this Bill is to prescribe the scope of no smoking areas, there is still an underlying function and that is, it is hoped that smokers will find it more and more inconvenient when they wish to smoke, and that they will eventually succeed in quitting smoking and be motivated to quit smoking. With a comprehensive smoking ban in parks, when the elderly wish to smoke in pleasure grounds, they will find that they are not allowed to smoke there and so, they will have to go out and they may even give up smoking. This will help them rid themselves of the addiction to smoking. But unfortunately, I have heard the Secretary say time and again on public occasions that if the elderly are asked to smoke at the entrances of parks, it would cause inconvenience to them and obstruction on pavements. I think the Secretary's explanation is bizarre. Mr Tommy CHEUNG may use the same reason later to question the imposition of a smoking ban on restaurants and bars. While some people may say that these are indoor areas and so, smokers should not be smoking there, they would also point out that as smokers are forced to smoke outside the bars, food establishments, restaurants and bistro cafes, how could passers-by walking on the pavement get through these smokers? So, I hope that the Secretary will not cite this as the reason anymore, as this should not be a reason at all, because the pavement is so wide, and there must be

somewhere for smokers to smoke, rather than allowing them to smoke in a place where they should not smoke. We stress in particular that parks are a venue of recreational facilities for the physical well-being of the public and so, there should not be the least puff of second-hand smoke, and elderly people, children and non-smokers should not be exposed to second-hand smoke at these places. I hope the Secretary will clearly explain this later. I hope that he will no longer use this as a reason.

If the amendments to be proposed by the Secretary later are endorsed, which means that the Secretary would let the DCs decide on the locations of smoking areas inside parks, then I think it would be even more worrying. I am a member of the Tai Po DC. Firstly, the Chairman of the Tai Po DC has not consulted me on this matter. Nor has this been discussed in the DC. I do not understand why the Secretary would change so quickly in his position on this issue. Moreover, the 18 districts may adopt different criteria. How could the LCSD take enforcement actions in future? If the Tai Po, Sha Tin and Yau Tsim Mong DCs, and the Eastern and Wai Chai DCs on Hong Kong Island have different views, enforcement would be in great confusion. Then, the Government also said that it would be unnecessary to display the "no smoking" sign in parks, and this may cause disputes between smokers and non-smokers. How can there be harmony in society? It will even intensify the disputes, because they hold a different view about where smoking is allowed and where it is not. Given that parks often cover a large area, those people engaging in disputes might have left when the LCSD officers arrived.

So, I think the Government should give us a clear explanation and act decisively by imposing a complete ban on smoking in such recreational facilities as parks, public pleasure grounds and beaches, with a view to pre-empting difficulties in enforcement and excessive disputes among the public and between smokers and non-smokers.

Next, I would like to turn to the display of "no smoking" sign which I mentioned earlier. In fact, Deputy President, the "no smoking" sign is a very simple sign. People will not smoke when they see the "no smoking" sign. In the past, when there was not a comprehensive smoking ban, the Government had maintained these signs as a reminder to the public. Now that a total smoking ban is imposed and there are more no smoking areas and the Government nevertheless considers these signs unnecessary on the ground that smoking is banned in many places. But let us not forget that indoor restaurants and bistro

cafes are patronized by many mainland visitors under the Individual Visit Scheme. We can often hear news about visitors and locals coming to blows over smoking. Why? It is because they would argue whether smoking is allowed at a place. In future, with the "no-smoking" sign, we can call for enforcement officers, and this will reduce conflicts. I maintain that this legislative provision is necessary. When a total smoking ban is implemented, especially in parks and at bus termini, there will indeed be long queues of people. I understand that the Government, as it has said, will certainly put up these signs, and that it will put up these signs by administrative means to tell people that smoking is not allowed in a particular place. This will be done by way of an administrative order. Such being the case, why does the Government not comply with and put into effect a rule which already exists? The entire Bills Committee and us in the Democratic Party feel that the Government should have this duty, because under the previous law, if there are complaints about government premises not putting up these signs or not putting up sufficient signs, the Government would be exempted from any criminal liability. But we do not see any reason for the Government to enjoy this exemption. The Bills Committee considered it necessary to include this provision in the Bill, for the Government should be given the same punishment as that for ordinary citizens if they commit the same offence. Now, it is obvious that the Government does not have to shoulder any responsibility for taking away the "no smoking" signs. So, we hope that this provision can be included in the law and the Government should similarly face the criminal liability. Only in this way can it be considered fair, and only in this way can it be considered as promoting an anti-smoking culture.

Deputy President, next, I will briefly explain what we in the Democratic Party think about some of the amendments proposed by other Members. With regard to Mr Tommy CHEUNG's amendments, I think Members will understand that we consider most of them unacceptable, except for the part relating to a person's residence, as Mr Tommy CHEUNG has proposed an amendment to extend the smoking ban to cover private premises used for the purpose of conducting private tutorials. We agree with this. But I wish to tell Mr Tommy CHEUNG that both his amendments and mine may not be moved in this Council. I think I have to use the remaining few minutes to explain how we are going to vote later.

Although we do not accept the Government's proposal to designate smoking areas in parks, we are afraid that if we oppose it, and since the Liberal

Party has openly opposed a complete smoking ban in parks — if we oppose it, then, my amendment will be put to the vote. Insofar as my amendment is concerned, separate voting will be conducted, and once separate voting is conducted, although we would vote for the amendment, it would still be negated if the Liberal Party opposed it, and in that case, we would go back to the Blue Bill in which there is no reference to "parks" because this amendment was first proposed by me, and it was subsequently agreed that the amendment be proposed by the Government. So, in order to prevent both amendments from being negated, although I still hope that a comprehensive smoking ban can be implemented in parks, and if this became impossible, we could only support the designation of smoking areas proposed by the Government. But as it is the rule that the Government's amendment, not my amendment, will be put to the vote first, there is no alternative and we must make sure that we would not come to a state where both the amendments are negated. Therefore, the Secretary needs not feel surprised if he finds that we support him later in the vote. In fact, I certainly do not support him, not in my spirit and not in my soul. It is only because of this fallacious separate voting system that we cannot but support him. This is so complicated, Deputy President. But there is no option, so I must explain this, or else colleagues may not understand why I have said so much now and yet, I support the Government at the vote.

Deputy President, Mr Martin LEE will later speak on behalf of the Democratic Party on the issue of trade mark and misleading elements. Among us, Mr Martin LEE is the one who considers these issues most contentious and most unsatisfactory. I think it is better for his views to be explained by himself rather than by me. He will speak on these issues on behalf of the Democratic Party later.

In respect of the Ocean Park, we support the amendment proposed by Dr KWOK Ka-ki. The reasons are simple. Although the Ocean Park has kept writing to us that smoking areas are already designated in the Park, as I said when I expressed our views earlier on, the Ocean Park is a venue of recreational facilities, especially as visitors have to queue up for many facilities in the Ocean Park. As you, Deputy President, may know, if there are more mainland visitors in the queues, there will be more smokers among them, and this may result in other visitors in the Ocean Park being subject to second-hand smoke when they are waiting in line. This is unhealthy. So, we will support the amendment proposed by Dr KWOK Ka-ki.

As for the other amendments proposed by Mr Albert CHAN and Mr Tommy CHEUNG about the provision of smoking rooms, we cannot accept them.

Deputy President, please give me a second, as I would like to make sure that I have not left out anything. In addition, I also have to say a few words on behalf of the Democratic Party on the prohibition of sale of cigarette to persons in school uniform. I almost forgot this point. I hope that the Secretary will not oppose this on the ground that enforcement would be difficult. Some colleagues also questioned whether enforcement difficulties are a good reason for not effecting this prohibition. I would like to draw colleagues' attention to the fact that more and more young people in school uniform can buy cigarettes now. For the sake of our next generation, I hope that Members will think twice, and in my amendment, the definition of "school uniform" is the same as that of "school uniform" applied on video game centres. It also provides a reasonable defence for cigarette vendors, which would prevent them from being prosecuted as a result of their being unable to see whether the buyer is in school uniform. As long as they could put up a reasonable defence, such as the buyer had put on a jacket covering his school uniform, which could be used as a defence, they would be exempted from criminal liability. Moreover, this can clearly put across a message to students that they must not smoke and that they must not buy cigarettes in food establishments or from news-stands.

Deputy President, I so submit.

DR YEUNG SUM (in Cantonese): Deputy President, I am very pleased that the Bill on prohibiting smoking can be tabled before the Legislative Council for debate today. We have had to spend comparatively more time on this task in recent years, but we still find it worth the while to do so. On this occasion today, I must commend the Government. We suggested many amendments in the process. At the very beginning, the Bill dealt only with smoking indoors, but we in the Democratic Party put forward many amendments on prohibiting smoking in outdoor places. The Government has heeded our good advice, so I wish to put down on record our commendation of the Government. I believe the Bill will erect a milestone in Hong Kong's participation in the international tobacco control campaign. If we pass the Bill today, it will become a watershed of our tobacco control efforts.

Deputy President, this milestone is most significant. On this occasion, I must express my gratitude to the many medical professionals, both in Hong Kong and elsewhere. After many years of hard work, they have finally succeeded in providing scientific evidence to prove the health hazards of passive smoking. At the same time, they have time and again warned that passive smoking may even cause greater harm than active smoking. People may not be aware that at the workplace, or at birthday celebrations, they may easily inhale second-hand smoke. Those who do not smoke often think that passive smoking will not cause too much harm. But in the end, as the effects accumulate, they may sustain even greater harm. I think the evidence is extremely important. Tobacco companies can no longer turn a blind eye to everything, nor can they deny the scientific evidence.

Passive smoking causes far-reaching adverse consequences. And, there is enormous medical evidence to prove that passive smoking can lead to inflammation of the ear, lung cancer, infant asthma, respiratory problems and a myriad of other diseases. It has also been pointed out that the prevention of passive smoking will be immensely beneficial to our health care expenditure, public health and even Hong Kong's tourism industry. For all these reasons, I must thank medical professionals, both in Hong Kong and elsewhere, for their hard work, and I think they all deserve credit.

Hong Kong is a free market and even the Government permits the sale of cigarettes, so some Legislative Council Members simply wonder why we democrats, who attach so much importance to personal freedom, should insist on the prohibition of smoking in so many places. If people themselves do not fear lung cancer, then why not just let the disease kill them? Why should we be concerned at all? What has the whole thing got to do with us anyway? To them I would say that second-hand smoke will affect not only the health of smokers but also that of those around them. I personally take personal freedom seriously. However, Deputy President, I suppose Members will generally agree that freedom is relative. It is very difficult for us to enjoy absolute freedom. Members can easily imagine what society will become if all of us pursue absolute freedom. A fundamental concept is that the pursuit of one's freedom must not lead to any infringement upon others' freedom. People may well smoke and puff away as much as they like, but they must remember that it is immoral of them to puff out smoke that affects the people around them. Consequently, although I attach great importance to the concept of freedom, I

must nonetheless make it very clear that one's pursuit of freedom must not infringe upon the freedom of others. In response to all the criticisms that we in the democratic camp or the Democratic Party have sought to infringe upon others' freedom with all our support for the cause of tobacco control, I do want to add a footnote here.

The whole process of scrutiny has spanned a very long time, starting from prohibiting smoking indoors and ending up in also banning smoking in certain outdoor places. I believe that when Mr Tommy CHEUNG speaks later on at this meeting, he will certainly argue that the original legislative intent is not the prohibition of smoking outdoors, but that the scope has somehow turned out to be much larger at the end. However, I am of the view that such a change is both justified and healthy. The change is warranted, whether in short-term interests or long-term benefits. However, I also felt dissatisfied with several aspects, and the Government was able to stop before it was too late. I am referring to some misleading descriptors. Actually, some misleading descriptors such as "light" and "mild" were already specified in the ordinance, but if a company had registered such in their trade marks before the law was passed and became effective, the "grandfathering" provision would apply. We were extremely angry at learning of this provision. We held that the use of such descriptors was clearly prohibited because the law did not permit the use of them. But it was argued that if a company had registered them before the ordinance became effective, to forbid it to use such descriptors would constitute an infringement of its intellectual property right. It was further argued that since the Basic Law does not permit the deprivation of people's property right, it would be advisable to insert the "grandfathering" provision. I had argued over this for a long time with the Government and even advised it to seek written explanation from the World Health Organization on whether the "grandfathering" arrangement would affect the tobacco control campaign. But I have not yet received any explanation. It does not matter anymore, however, because the Government has withdrawn the proposal. I believe the Government itself also finds its argument a bit unreasonable. At that time, the Government feared that it might be sued. The Government said that since tobacco companies possessed huge financial strength and were backed up by whole teams of professionals, it would be plunged into an abyss of endless compensation if it lost in such lawsuits. It therefore claimed that it had better play safe and adopt the "grandfathering" arrangement. It further explained that since this approach had been adopted in Taiwan, Hong Kong might as well try it. But I think that

although such an approach is adopted in Taiwan, Hong Kong does not necessarily have to follow suit. And, it must also be noted that there are not sufficient justifications anyway. What then explained the Government's subsequent volte-face? The reason is the recent ruling made by a Court in the United States. The lawsuit concerned had actually continued for many years, and at the end of it, the Court ruled that the display of the descriptors concerned on cigarette packets and in tobacco advertisements must be prohibited. The Government's decision to stop before it is too late is indeed a wise one after all.

But another decision of the Government still makes me and Mr Andrew CHENG most discontented. This decision concerns smoking in parks. Around June and July, the Government still agreed that smoking in parks must be totally prohibited. But then, after the summer holidays, it said that it was sympathetic to the situation of the elderly and would allow them to smoke in some tiny corners of parks. The Government maintained that it was a form of care for them, so it suddenly proposed to designate no smoking areas in parks. I have learnt from the press today that the Government may consider the possibility of permitting the setting up of smoking rooms in food establishments. I do not know whether this is true. If it is, the Secretary must offer an explanation and the Democratic Party will definitely fight against the Government to its very last.

Throughout the whole process, we have actually been advocating a balanced approach. We understand that the immediately implementation of a total ban on smoking in some places will affect business turnover. For this reason, we have been advocating a balanced approach. We understand that it will be difficult to implement a total ban on smoking in mahjong parlours and nightclubs on a date to be specified after the ordinance has come into effect, so we agree to deferring the total smoking ban for such venues to 2009. We think that we have already made many efforts, but those engaged in such businesses may still think that we have not done enough. I must make it a point to say that we have indeed considered their situation and business environment. But if the public are exposed to second-hand smoke in public places or indoor premises, there will be negative impacts on morality, social well-being and political and economic interests. This explains why we have made such a decision.

I still wish to raise two more points. First, I hope that if this Bill is passed, the Secretary can do a better job in enforcement. I think the whole

cause must be supported by manpower resources, education and even various departments. And, I also hope to see serious enforcement. If an existing law is not adhered to or enforced, there will be very great problems. Therefore, we are only making a start today. I believe that in order to achieve complete success in tobacco control, the Secretary must make more efforts in respect of education and community education.

Second, regarding the display of no-smoking signs, I also have strong dissatisfaction. At the very beginning, the Government also agreed to the display of such signs. However, after Members' discussions on the sizes, positioning and colours of these signs, the Government said in the end that it was best not to display any — it remarked that in view of the many arguments among Members, it was best not to display any signs. It even argued that the passage of the legislation would serve as a warning to people and the display of signs was therefore not required. It was also remarked — not by the Government but by restaurant operators — that the display of too many signs in a beautifully decorated restaurant will be unsightly. But I still maintain that the legislation should require the display of signs. The Government said that with the implementation of the legislation, people will need time to adapt to the change. And, frankly speaking, the legislation has all along been very controversial. While some support it, others do not. In order to avoid enforcement problems in future, the legislation should really require the display of signs in the places concerned. But the Government has removed the clauses on this. As for the designation of smoking areas in parks, the Government similarly missed the chance in the end. This is most regrettable. The soccer game has been wonderful throughout, but the Government missed the chance for no good reasons in the end. These are my two points of dissatisfaction.

The last point I wish to make is that, as remarked by Mr Andrew CHENG just now, in regard to most of the amendments proposed by the Government during the process of scrutiny, we could accept some of them but we also found some others unacceptable. For instance, we of course accept the proposal of banning smoking on beaches. However, we cannot accept the designation of smoking areas in parks. The problem is that we must first vote on the Government's amendments before Mr Andrew CHENG can move his amendments for the Democratic Party. If we vote against the Government's amendments (Some of these amendments, such as the designation of no smoking areas in parks, are unacceptable to us), if there are any problems and the

Government's amendments cannot be passed, then even Mr Andrew CHENG's amendments will not be passed. It is because some Members simply do not support the Government's proposals this time around. In that case, we will end up achieving nothing, thus wasting our many years of efforts — I mean, not only our efforts but also the joint efforts of many in society. I must reiterate that we find some of the Government's amendments acceptable but cannot accept some others. However, all these amendments were bundled up in the scrutiny process. We have enquired with the Legislative Council Secretariat whether it is possible to single out some of these amendments and vote on them individually. The answer we received was negative, because this is not in accordance with proper procedures. Consequently, we must accept the reality. However, for the record, I still hope the Secretary will realize that while we support him in some cases, we do not accept his proposals in other cases. We urge the Government to examine whether reviews should be conducted following the implementation of the legislation. If the Government finds that it is not feasible to designate no smoking areas in parks, it should put forward amendments as early as possible. I still cherish some hope and do not think that the situation is entirely hopeless. I hope the Secretary can hear our words today. We have reached this conclusion after considering the views of the industries and the Government with good sense and justifications. But if there are any inadequacies in enforcement, the Government should put forward legislative amendments to make up for the inadequacies of the legislation.

Deputy President, generally speaking, the various sectors have made many efforts this time around and the industries concerned have also taken part enthusiastically. I do not buy many of the views advanced by Mr Tommy CHEUNG. But I do understand that as the representative of the industries concerned, he has no choices. Likewise, Deputy President, you must also speak as much as possible on transport matters as the representative of the industries concerned. Such is the role of Members. Anyway, the relevant industries, the Government and the medical sector have all made many efforts. I therefore think that this legislation carries the involvement of all of us. I hope that Hong Kong can set a good example of tobacco control in the international community. We notice that our move this time around is indeed very progressive.

I so submit.

MR TOMMY CHEUNG (in Cantonese): Deputy President, first of all, I believe Members all know that I am very concerned about this Bill. The two Honourable colleagues who have just spoken have mentioned my name repeatedly mainly because the greatest challenge faced by the catering sector I represent right now is this piece of legislation that imposes a comprehensive smoking ban. The Bills Committee was established last June, and I joined it immediately. Since its establishment, the Bills Committee has held 57 meetings with the Administration for a total of 148 hours.

Ever since the introduction of the Bill, I have been constantly misunderstood and smeared, and I have been accused of opposing the Government's legislative initiatives for a smoking ban in indoor workplaces as well as delaying the relevant legislative process of implementing the smoking ban. I would like to clarify these two points first. I must point out clearly that I support the policy of moving towards a smoke-free Hong Kong, and I also support the Government's initiatives in implementing a comprehensive smoking ban in indoor workplaces. I have always advocated that the Government should implement a policy of banning smoking in a gradual and orderly manner. Therefore, two years ago when Honourable colleagues of this Council moved a motion on speeding up the process of implementing a comprehensive smoking ban in workplaces, I supported the progressive approach of introducing the legislation to implement a smoking ban.

Besides, unlike the smearing attempts that accuse me of trying to delay the legislation on a smoking ban, I have on the contrary offered my full co-operation in working closely with the Government and the Bills Committee, having prudently examined each and every one of the provisions, and consulted and listened extensively to the views of different sectors of society. As such, I have attended each and every meeting of the Bills Committee. I participated in all the discussions on every single topic, so as to avoid wasting time on discussing topics or asking questions that might have been covered during my absence. As I remember it, the Bills Committee had set a goal in the early stage for reaching a consensus on the resumption of Second Reading debate in the last Legislative Session. At that time, I stated clearly on different occasions in the meetings that I fully supported this goal, and if necessary, we could work days and nights and could even hold additional meetings on Sundays in order to attain the goal. Unfortunately, we were unable to attain the goal eventually, and the Second Reading of the Bill had not resumed until today.

One of the most significant factors was the fact that the word "indoor", which is the legislative intent, was unfortunately omitted in the Blue Bill prepared by the Government from the long title of the Bill — did Dr YEUNG Sum send someone to hack into my speaking note? He seemed to have known what I was about to say. As a result, when the Bill was published, there were incessant calls for expanding the scope of the no smoking areas, starting from the original indoor food establishments, workplaces and entertainment establishments, and substantially expanded to cover outdoor areas such as parks, beaches, stadiums, playgrounds, campuses, hospitals, traffic interchanges all over the territory, to even public facilities such as escalators. There were areas in this "sweeping" legislative approach that I did not fully agree with, particularly with a law as controversial as the one implementing a smoking ban. It would affect a great number of people and a wide spectrum of society, with many associated problems as far as law enforcement is concerned. We must conduct an extensive consultation to gauge the views of different parties, and we must not legislate in a hasty manner. It was precisely due to the fact that a sweeping approach was adopted, which greatly expanded the scope of no smoking areas, that we were left with no choice but to extend the time needed for the examination of the Bill in order to discuss all the amendments to be proposed by the Government and Members at the Committee stage. Had the Government's omission of the word "indoor" not occurred in the first place, I believe, the Bill would have been passed in the previous Legislative Session.

Furthermore, the Bills Committee had spent a fairly lengthy time on discussing certain topics. A good example is the discussion on clause 11 of the Bill, which deals with the prohibition of displaying misleading words on the package of tobacco products. A rough estimate reveals that we have spent almost 20 hours on discussing this topic. As a matter of fact, the Government is mainly to blame for the delay of the Bill. The position of the Government was not firm enough, and in many instances it appeared that the Government had adopted double standards. Let us take the proposal for prohibiting the display of misleading words on the package of tobacco products as an example. The original intention of the Government was a comprehensive ban; then the Government said there would be a grandfathering and notation arrangement. Finally the Government changed its stance again, so that the use of misleading words is prohibited, but the exact wordings were not specified. Similar incidents of such wavering positions occurred quite frequently.

Besides, during my involvement in the examination of the Bill in the Bills Committee, I identified some logical flaws in the government proposals in designating smoking areas and areas where exemption would be given. The proposals were not thoroughly considered, and grey areas emerged. First, I would like to point out that the original intention of the Government was to implement a comprehensive smoking ban on all indoor food establishments with the aim of protecting not only the non-smoking customers, but also the working staff from second-hand smoke. On the other hand, exemption would be given to areas within domestic premises; as such, the Government had not considered regulating private kitchens located in domestic premises. I considered that illogical, and it was not in line with the policy intent. There are working staff and customers in private kitchens too, so why are they not regulated? If the Government argues that it was because private kitchens were located in domestic premises, does it mean that food establishments would be given exemption if they ran the operation on the model of a private kitchen and conduct their business in domestic premises?

Later on, upon further consideration, private kitchens were also listed as no smoking areas. However, exemption would be given to private tuitions conducted as a commercial operation, which again appeared to me to be problematic in terms of logic. Why could a commercial activity run in the form of a one-to-one private tuition be regarded by the Government as being conducted in a domestic setting, hence should not be subject to regulation? I believe Members will all agree that when exemption is given to private tuitions, when private tutors and other people can smoke in premises where private tuitions are given, many students will certainly be affected. But the Government said in response that, unlike private tuitions, more people were involved in private kitchens located in domestic premises and therefore a smoking ban was necessary. I would like to remind Members that the smoking ban in premises where private kitchens operate is not only effective during the business hours of the private kitchens. Even during the non-business hours of the private kitchens, that is, when the premises once again become a domestic dwelling, the smoking ban is still effective in the entire premises. I merely demanded that a smoking ban should be in force when a private tuition took place in a room, but still the Government would not accept it. In my opinion, the Government should not base its logic on the number of people involved. Instead, two principles should be considered: first, it is a commercial activity, which inevitably involves customers; and second, the customers in this case are students who are either children or young people. According to the principles

of the Government, these people have to be given greater protection than other general citizens.

In my opinion, when the Government enacts legislation, it should seek to apply consistency in terms of established principles. It will create some illogical phenomena. Let us take the case of banning smoking in private tutorial schools as an example. The Government stresses that there are enforcement difficulties. But may I ask the Government one question: Since smoking is banned in private communal quarters in spite of the enforcement difficulty involved, why, with the same enforcement difficulty, smoking is not banned in private tutorial schools? I am not encouraging the Government to intrude into the private residences of people on the pretext of taking enforcement actions against illegal smoking, nor do I advocate the conferment of such a power. I just wish to point out that the Government does have a problem with its logic in policy formulation.

Another example is the original proposal of introducing a smoking ban in both indoor and outdoor areas of secondary and primary schools, whereas only the indoor areas of universities and hospitals are subject to such a smoking ban. How can such logic be convincing? The authorities exempt the universities from a complete smoking ban on the ground that university students are adults. I was the first one to point out that this was most illogical and would give the public an impression that the legislation promotes smoking among university students. Besides, apart from university students, youngsters and secondary students will also visit university campuses. Therefore, I think university campuses should also be subject to regulation by the legislation banning smoking. So I strongly requested the Government to make legislative amendments to ban smoking in all the schools — smoking should be banned in all the schools, be they secondary schools, primary schools or other educational institutions or even hospitals. My suggestion was supported by the Bills Committee and eventually accepted by the Government after consideration and consultation. Eventually, it is stipulated that smoking is also banned in the outdoor areas of all the educational institutions and hospitals.

With regard to the catering industry, members of the industry do not blindly oppose the policy of imposing a smoking ban. The industry thinks that Hong Kong should strive to implement a policy with the ultimate objective of making Hong Kong a smoke-free city, so as to improve public health. However, the industry holds divergent views on the pace of introducing the

smoking ban. Some are of the opinion that the smoking ban should be implemented progressively. Such a smoking ban should be implemented with reference to the special characteristics of the different premises in deciding the scope of regulation, and that the smoking ban should be implemented in phases. So the smoking ban should never be implemented with a sweeping approach in the hope of achieving the target overnight. As I have stressed repeatedly, the industry agrees that long-term smoking is hazardous to health, and members of the industry are prepared to act in accordance with the Government's anti-smoking policy. However, in recent years, the industry has been under the pressure of escalating rents and rising operating costs. The operators are having a tough time in facing these challenges, so they can hardly accept any greater blows. For this reason, the industry has been trying to lobby the Government against implementing the anti-smoking policy with an instant and full-scale approach. Instead, the policy should be implemented step by step, so that waivers may be granted to certain restaurants and entertainment establishments with their customers mainly being smokers. Or alternatively, smoking rooms could be set up in such premises to take care of the smoker customers, so that the operators may have the chance to survive or to identify some room, however tiny, of survival. Regarding the concept of a smoking room, it is also one of the main points in my proposals presented to the Government. Deputy President, I shall speak in greater details on the smoking room later on when I move my amendment.

Regarding the existing legislation empowering management staff and personnel of no smoking areas to demand smoking customers who have violated the law to provide their names, addresses and the production of their identity cards, or to use suitable or reasonable force to expel smoking customers out of the smoke-free areas, or even detain them, I think such practices will only intensify the conflicts between them and the public. If force is employed in order to enforce the smoking ban, such a power will become excessive. In addition, to those staff members, they were not required to perform such duties when they were employed. This legislation introduced by the Government has imposed onerous pressure on them. Therefore, I shall move an amendment and hope that Honourable colleagues can support it. In fact, when our employees go to work, they should only do restaurant-related duties, instead of performing law-enforcement duties for the Government.

With regard to the part of the Bill governing the display of tobacco advertisements, the original clauses prohibit newspaper stall hawkers from

displaying such advertisements in their stalls. A newspaper stall hawker has complained to me, saying that there are about 2 000 newspaper stalls in Hong Kong, and income generated from tobaccos and their advertisements accounts for about 30% of the income of such hawkers. The advertising fees may range from about \$500 to several thousand dollars; and tobacco traders would provide newspaper racks and light boxes to them for free, and such racks and light boxes could cost \$40,000-odd to over \$100,000. They worry that, once the Ordinance is enacted, the income of the newspaper stalls would be affected, and such hawkers might be forced to apply for Comprehensive Social Security Assistance. I am very concerned that the livelihood of such hawkers might be severely affected by such measures. I have told the Government not to adopt a sweeping approach to prohibit newspaper stalls from displaying advertisements as it will deprive such hawkers of the means to maintain self-reliance, and the authorities should even provide the hawkers with compensation. Therefore, after prohibiting newspaper stall hawkers from displaying tobacco advertisements, the Government has, as a compensatory measure, undertaken to assist them in identifying opportunities for displaying advertisements for other products; and the Government has also proposed to extend the original adaptation period from one year to three years to facilitate the hawkers in looking for alternative source of income. The industry accepts such an arrangement, and I would like to take this opportunity to thank the authorities for heeding our opinions.

Finally, it is about the issue of displaying the no-smoking signs. I have stated repeatedly that there is no need to do this and that it will only add to the burden of the catering industry. I have expressed this viewpoint to the Government which has accepted it and subsequently it has proposed an amendment to remove the provision from this Bill which requires the managers of such establishments to display in prominent positions a sufficient number of standard signs announcing the prohibition of smoking. This would give the industry some flexibility. I would also like to say this: Why did we spend such a long time discussing these issues? In the past, only restaurants with a seating capacity of 200 were required to comply with a smoking ban. Of course, in such a tiny place, there are only about 800 such restaurants in Hong Kong requiring the display of such signs. However, nowadays, by the time this legislation is enacted, smoking will be prohibited in all the indoor premises, so why should each room be required to display a sufficient number of such signs in prominent positions? This will definitely affect the business operation of our industry. Not only costs are involved, but it will ruin the exquisite décor. In

this Chamber, if we have to display a sufficient number of signs in prominent positions, will this make the place good-looking? Do we have such a need? Of course, I support the continued use of such signs.

The Democratic Party has earlier on expressed disagreement with my views, but I have already explained why the industry has such requests.

Deputy President, I so submit.

MR LI KWOK-YING (in Cantonese): Deputy President, nowadays, regulations on tobacco control are being implemented at various different levels in many countries all over the world. Even in France, a place which has always emphasized the pursuit of pleasure, a country with a profound culinary culture and respect for personal rights and freedom, a comprehensive smoking ban will be implemented at all public places of the country early next year. Evidently, the hazards of smoking second-hand smoke have been recognized all over the world. The Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) welcomes the designation of indoor workplaces and public places as statutory no smoking areas. This enables Hong Kong to catch up with the global trend of attaching great significance to public health.

As a matter of fact, the designation of no smoking areas is a tough legislative endeavour, and it is not as simple as just prohibiting smokers from smoking at certain places. Apart from affecting the daily life of smokers in some measure, the legislation banning smoking carries many implications on the interests of different industries, and it also brings about repercussions in different labour markets. Therefore, during the course of scrutinizing the Bill, Members had divergent views on many different issues. Nevertheless, Members shared a consensus, that we recognize the importance of protecting public health, which is the thrust of this legislation. Having said that, while a culture for a comprehensive smoking ban has yet to become prevalent in society, the authorities must strike a balance between protecting public health, which is regarded as most significant, and taking care of the personal rights and needs of smokers when they proceed to regulate smoking.

According to the original Blue Bill submitted by the Government, the legislation for implementing the smoking ban only targeted at indoor public places, whereas the issue of banning smoking in outdoor areas was beyond the scope of consideration. However, the Administration expanded the scope of no

smoking areas from indoor to outdoor in response to the demands of some members. From the perspective of public health, this move can further reduce the threat of second-hand smoke for non-smokers.

As I mentioned just now, the legislation for implementing the smoking ban has far-reaching implications on different sectors of society. If the smoking ban is to be successfully implemented, a certain degree of consensus has to be forged among members and the public. In order to collect the views of the public, the Administration conducted an extensive consultation in 2001 on a number of proposals put forward in the Blue Bill.

As regards the new proposal for designating outdoor public places as no smoking areas, since extensive consultation has not been conducted, I agree to the Government making flexible arrangements in designating outdoor no smoking areas.

Take Central District as an example. The huge volume of traffic, coupled with the high population density there, leads to a persistently high air pollution index. Every day, Central is always packed with people during lunchtime. Every now and then we can see smokers passing by, as well as non-smokers who dislike the smell of the smoke trying to dodge the smoke. In fact, it is by no means easy to disperse second-hand smoke on busy streets, and it is hard to avoid it either. Fortunately, there are still places like the Chater Garden within the "concrete jungle", where smokers can "sit back and relax". While smokers are enjoying themselves, they could also avoid causing a nuisance to non-smokers. Now, if a comprehensive smoking ban was imposed on all these places, given that smoking will be prohibited in indoor workplaces, smokers will be forced to smoke on the streets. By then, the roadside air pollution index will certainly be breaking new records.

Furthermore, I would like to talk about the situation in the electoral constituency. The electoral constituency to which I belong is an old area. Many senior citizens like to spend their time in the gardens, usually small gardens, where they will smoke a cigarette or two and play a game of chess. While smoking is hazardous to health, I certainly would like these elderly persons to promptly quit smoking, but it would be hard for them to just go through old turkey on a smoking habit formed over several decades. It would only be reasonable that we should allow these senior citizens to smoke in some quiet gardens where they will not affect other people, would it not?

Furthermore, these elderly persons are not fond of loitering around or unwilling to go home, but they usually live in tiny partitioned rooms with very limited space and poor ventilation. Some of these rooms do not even have a window, and if they smoke in their room, they might affect other residents and result in rows and confrontations. Therefore, they are forced to look for space on the streets where they could enjoy a moment of their time. This is just a humble pursuit of pleasure. Are we sure we are cruel enough to deprive them of such a humble pursuit?

As regards domestic premises, the Administration has redefined the meaning of "domestic premises" to mean premises used as a private dwelling. As such, the common areas of the premises including corridors and lobbies will become statutory no smoking areas too. At present, many residents who do not want to go out to the streets would like to smoke at these places, so that both the smoker and the non-smoker members of the family can each enjoy their way of life without affecting others. If the managers have not posted clear signs at these places and the residents have not familiarized themselves with the new legislation, then the residents would be susceptible to breaking the law inadvertently. In this regard, the Administration should encourage the managers to place signs at public areas on the one hand, and help the residents to familiarize themselves with the legislation through public education on the other.

Another point worth mentioning is the repeal of the statutory requirement for the display of the "No Smoking" sign. Given that the Bill carries an underlying message that smoking is a bad behaviour, smoking should be prohibited in just any place. Therefore, notionally, all places should fall within the category of a no smoking area, whereas the number of smoking areas should keep decreasing. So if all no smoking areas have to display a "No Smoking" sign, then it would become a scenario described by Mr Tommy CHEUNG just now, that these "No Smoking" signs could be seen everywhere. Meanwhile, I am afraid this would convey a wrong message, that if no such sign is present, smoking would be allowed. The message that smoking is a bad habit will be quickly forgotten, and this is not the original intention of educating the smokers. However, repealing the requirement for the display of the "No Smoking" signs does not mean that the display of such signs is prohibited. The DAB believes that the Government should formulate guidelines to advise the managers on possible areas of dispute and proper display of the "No Smoking" signs.

As the number of no smoking area increases, law enforcement by the Tobacco Control Office (TCO) staffed by several dozens of officers under the assistance of the Police Force will prove to be a difficult task. It is understood that the authorities intend to implement a fixed penalty system after the legislation has been implemented for a certain period of time to make it easier to prosecute law-breaking smokers. We believe the authorities could consider delegating the power to other government departments for the purposes of law enforcement, such as the Food and Environmental Hygiene Department, the Leisure and Cultural Services Department and the Housing Department, and so on, so that relevant officers could prosecute law breakers in areas under their management. This can mitigate the pressure of the TCO in law enforcement and give them more time to engage in educational initiatives on the one hand, and it could also enhance the efficiency of law enforcement with the help of other government departments on the other.

Lastly, I would like to express my views on the proposal to prohibit the sale of tobacco products to persons in school uniform. The DAB opposes the sale of tobacco products to students below 18 years old, be they in school uniform or otherwise. Since the amendments do not define the term "school uniform", that may result in certain difficulties in law enforcement. I believe we are all aware that school uniforms these days tend to model after fashion, whereas fashion tends to model after school uniforms, thus making it difficult to distinguish between trendy clothing and school uniforms. Since the existing law has clearly stipulated that sale of cigarettes to persons aged 18 or below is prohibited, I believe the existing legislation is sufficient. If we introduce a provision that prohibits the sale of cigarettes to persons in school uniform, it would have the effect of prohibiting the sale of cigarettes to persons in school uniform-looking clothing, even if the person in question is over 18 years old. Under the circumstances, if an adult wearing a T shirt with a school logo wants to buy cigarettes from a tobacco vendor, what should the vendor do? Even if the vendor is reasonably satisfied that the clothing of the buyer is not a school uniform, but should the vendor bear the risk of being prosecuted due to the ambiguities of the provision? I think this is most unreasonable. From the perspective of the legislation, prohibiting the sale of cigarettes to persons aged 18 or below has offered the best protection to youngsters. Furthermore, a number of studies have pointed out that the peer factor is the major cause of young smokers, because students can have easy access to cigarettes from their peers. Therefore, prohibiting the sale of cigarettes to persons in uniform alone fails to address the root of the problem. Not only is it unable to reduce the number of

young smokers, it will also create many problems in law enforcement by increasing the odds of confrontation between tobacco vendors and law-enforcement officers.

(THE PRESIDENT resumed the Chair)

Lastly, I would like to reiterate that the DAB supports regulating smoking. But we opine that all efforts should start with the basics, that is, more emphasis should be given to education and publicity on the hazards of smoking, in a bid to containing the number of smokers from increasing, and we should respect personal rights and needs too. The Government should step up its efforts in promoting the campaigns of quitting smoking and helping those in need. Madam President, the success of tobacco control depends on education, instead of penalty.

Madam President, I so submit.

MR VINCENT FANG (in Cantonese): Madam President, the Secretary for Health, Welfare and Food said on 11 May last year when he moved the Second Reading of the Smoking (Public Health) (Amendment) Bill 2005, (quote): "the principle aims of the Bill are to protect the public against secondhand smoking in indoor workplaces and public places and to tighten control over the advertisement and promotion of tobacco products." (End of quote).

Being a non-smoker myself, I certainly hate the smell of cigarette smoke, and I agree that smoking is hazardous to health. Therefore, I absolutely agree that second-hand smoke is not simply a nuisance to non-smokers; it is actually a health hazard to them. So, I support the implementation of a comprehensive ban on smoking in all indoor workplaces and food establishments frequently patronized by people of all ages, such as restaurants and fast-food shops, and so on, so as to protect the health of non-smokers. If this is the objective of the Bill, I will absolutely give it my support.

However, the entire Blue Bill of the Government has been drafted in such a way as if selling cigarettes is permitted in Hong Kong, but smoking is prohibited. Although many countries and cities around the world have imposed

a comprehensive ban on smoking, the bans implemented are neither sweeping, nor are they implemented in as thorough a manner as it is in Hong Kong. Even the survey on a comprehensive ban on smoking at select locations conducted by the Bills Committee has indicated that the measures originally proposed for implementing the smoking ban in Hong Kong are "more stringent than those in force in the United States and Europe". Even in Ireland, where the most comprehensive smoking ban is in force, exemption has been given to premises where non-enclosed area accounts for 50% of the total area. In Italy, indoor smoking rooms equipped with independent ventilation system are permitted. In New York, exemption has been given to tobacco shops with sale of tobacco products accounting for 50% of their business turnovers.

However, the proposed smoking ban in Hong Kong is definitely unprecedented. No exemption whatsoever has been provided in the original proposals, and not a single option has been given to those whose livelihood is dependent on the tobacco business. Of course, major tobacco companies do not figure in the consideration of the Government. Yet, once the Bill is enacted and becomes effective, even the limited advertising space of newspaper stall vendors has to be abolished. Newspaper stall vendors will no longer be allowed to display the products, so all of a sudden, they will be deprived of the advertising fees from the sponsoring advertisers, as well as the storage boxes provided by these advertisers.

As for tobacco manufacturers, tobacco tasting will be prohibited, and cigar smoking will be prohibited in cigar shops. This is no different from asking them to relocate their factories to the Mainland, or even to simply wind up their business.

Furthermore, even entertainment establishments that are open only to those aged 18 and above cannot enjoy any exemption. I was truly surprised by the crest-fallen remark made before this Council by veteran members of the trade and business owners who have been making a living in this business, when they said: "We appreciate that the Government is concerned about us and about the hazards caused by second-hand smoke. Yet we would rather be allowed to inhale second-hand smoke, because while second-hand smoke will only kill us slowly, a comprehensive smoking ban would cost us our jobs right away and kill us instantly."

After having consulted the views of members of the trade for more than a year, the Health, Welfare and Food Bureau was willing to respond to public opinions at last, by introducing some minor amendments to the original legislation. Newspaper stall vendors will be given an extra grace period of two and a half years, so that they could look for new advertising clients. I would like to remind the Secretary that the Bureau has undertaken to assist the vendors in looking for new advertising clients. I hope the Government can honour its pledge.

Other mitigating measures include the permission for providing tasting rooms by tobacco manufactures not engaged in the retail of tobacco products, exemption to shops specialized exclusively in the sale of cigars, and the extension of the transitional period to two and a half years for clubs, mahjong parlours and nightclubs, and so on, which are open to those aged 18 and above only. Honestly, the grace period of two and a half years for the smoking ban can merely prolong the last breath of members of the trade and facilitate their hunts for other jobs. However, it is unable to remove the uncertainties that plague the prospects of the industry.

While these measures cannot address the root of the problem, I would like to express my gratitude to the Government for its willingness to adopt some mitigation measures in the face of the overwhelming support for a sweeping comprehensive smoking ban. However, I wonder if the Government had got carried away by these words of gratitude, as it, in the final phase of the discussion, extended the scope of the smoking ban to include beaches and even beach rafts, where the air quality and air circulation is definitely better than that in Central and Causeway Bay.

The spirit of the Framework Convention on Tobacco Control (FCTC) of the World Health Organization is to reduce the number of smokers by controlling the promotion of tobacco products. However, when even the most open places like beaches and pebble beaches, where air circulation is at its best, have to be turned into no smoking areas, the current practice of the Government is going overboard. I would be interested to know if Hong Kong has done something unprecedented in the world.

I have stressed repeatedly in this Council that the law only governs those who observe the law. If one was to find a loophole in the law, there are always many ways of doing it. But this particular piece of legislation is really very

stringent. I once suggested in the Bills Committee that we could simply list all tobacco products as narcotics and ban their import and consumption. That would be an even more thorough approach, wouldn't it?

After the enactment of the legislation, law enforcement will be the most important aspect. In my opinion, many no smoking areas as designated by the law are totally unnecessary, and it will be very difficult to take law-enforcement actions in such cases. I have always stressed that the key to instilling the proper concepts into the people is education, not threatening penalty. Madam President, although this piece of legislation has the support of this Council and it will be passed today, I still hope that the Government can focus on the principle of "people first" in its subsequent legislative initiatives, balance the interests of different sectors of society, and offer patient guidance to the public by means of education.

I so submit. Thank you, Madam President.

MR WONG TING-KWONG (in Cantonese): Madam President, Dayu succeeded in taming the rivers because instead of using the method of blocking the channels, he adopted the method of diversion. Since the public consensus is that smoking should be regulated instead of prohibited, legislation on regulating smoking must not only protect public health, but also divert smokers to smoke at designated areas. If the legislation on regulating smoking is too stringent, or if the implementation of the legislation is ambiguous, it will only lead to unnecessary conflicts.

During the Bills Committee stage of the Smoking (Public Health) (Amendment) Bill 2005 which aroused much public concern, 57 meetings were held between the Bills Committee and the Government. Since the Bill covers an extensive scope affecting not only the business environment but also the living habits of the general public, the discussions very often attracted great public concern. In the course of deliberating on the Bill, the Bills Committee has met with members of the industry, representatives from different deputations and interested parties. While examining the clauses of the Bill, members of the Bills Committee and the Government devoted a great deal of time and efforts to such areas as the scope of the smoking ban, the details of law enforcement and administrative arrangements, and so on. Many amendments were proposed by

both the authorities and members, and the deliberation finally completed and the Second Reading debate of the Bill is resumed today.

According to the Bill, the scope of no smoking areas will be further expanded to include both indoor and outdoor places in addition to the existing restrictions on the sale and promotion of tobacco products. If all the parks are designated as no smoking areas, the public will certainly have a healthier environment and be able to enjoy more fresh air. However, we believe that in making laws with far-reaching effects, the Government must endeavour to balance the needs of different parties.

Doubtless the parks are the lungs of the city. They are also places where the general public can engage in leisurely and recreational activities. There may be a scenario like this: You are jogging along the tracks of a park and enjoying the warmth of the sunlight. The sounds of birds and the scents of flowers are pleasing and enjoyable. Suddenly a smoker comes into your view, and smoke is exhaled towards you, forcing you to inhale the second-hand smoke. Nothing could be more unpalatable.

However, Hong Kong is an international metropolis. Large numbers of visitors are coming to Hong Kong every day, and many of them are bound to be smokers. Besides, we cannot force the smokers among the local people to stay home smoking all the time. Many senior citizens who are smokers use these facilities to enjoy a moment of their time, meeting and chatting with friends, watching birds and playing chess, and so on. These are their recreational activities. Some of them may have been smoking for many years, and it would be hard for them to change their habit all of a sudden. We should be pragmatic. An adequate number of smoking areas should be reserved for these smokers, on the premise that children and public health will not be adversely affected. However, these smoking areas must be acceptable to the public and they should carry clear signs. Otherwise, it may result in unnecessary disputes, and the good intentions of the Government may end up doing a disservice.

Therefore, the DAB hereby demands the Administration, that before the Director of Leisure and Cultural Services exercises his discretion to designate smoking areas in parks, he must first conduct adequate consultations with the District Councils and local residents, so as to gain a thorough understanding of the situation of the relevant districts.

Furthermore, the spirit of enacting legislation is to avoid by all means causing disturbances to the public and that it has to be practicable. If the legislation is unclear, it will result in law-enforcement difficulties, and innocent citizens will be caught by the law inadvertently. We do not wish to see that happen. If the regulations are ambiguous, some weird phenomena might happen: For example, a person sitting and smoking on a bench in a park breaks the law, but another person who is standing and smoking by a bench does not. That would be the most absurd thing in the world, wouldn't it?

Therefore, the DAB demands that the Administration should put clear signs at appropriate places, such as on the map shown at the entrance of a park. Notices should be displayed and the locations of the smoking areas marked at appropriate places in the park, and within the smoking areas, facilities should be painted in a specific colour or special floor tiles should be laid for easy identification by the public. Most important of all, the Administration should listen to the opinions of the District Councils and the people, so as to bring about the greatest possible benefits by pooling ideas together.

Another issue I would like to discuss is, in order to cope with the specific requirements of art performances, the authorities should enact Schedule V, so as to grant exemption to scenes involving the acts of smoking in live performances, movie or television productions. When this issue was discussed in the Bills Committee, I suggested that the exemption should also cover the final rehearsal of live performances. The Authorities accepted my suggestion, and I am satisfied with it.

However, we are also concerned that some young people might imitate the act of smoking after watching these performances. Therefore, the DAB suggests that a set of guidelines should be formulated and adequate measures carried out by the production agencies to remind viewers that the performance involves acts of smoking. Measures to be considered include the printing of a warning note like "The programme involves acts of smoking. Parental guidance is recommended." on the programme booklets or on the promotion posters, or making a relevant broadcast before the performance commences. As regards television programmes, reference can be drawn from the current practice, under which warnings are frequently broadcast or shown on the screen at the beginning and during the broadcast of a programme.

The DAB hopes that through our joint efforts we can balance and accommodate the interests of different parties while protecting the citizens from second-hand smoke. In this way, the public will be able to enjoy a healthier living environment with fresher air. The DAB supports the Bill as well as the amendments proposed by the Administration.

Madam President, I so submit.

MR LEE CHEUK-YAN (in Cantonese): President, today I would like to congratulate the Government for the passage of the Bill submitted to this Council. Despite the late submission of the Bill, it is still commendable because the Government is at least willing to submit it. I have been quite worried because the SAR Government always says that a consensus is necessary whenever we want to fight for the passage of certain legislation. If we have to wait for a consensus for this Bill, I think we will never see such a day. Frankly speaking, the smoking ban is not welcome by places of entertainment and bars. This Bill is luckier than that concerning minimum wage because consensus is needed for minimum wage, but it is not necessary to reach a consensus before this Bill can be passed. So, this shows that the Government's governance has improved and I welcome this.

However, for the Hong Kong Confederation of Trade Unions, the Bill is a difficult one. Why? Because it affects the employees' "rice bowls". How should a balance be struck? Regarding this Bill, I may not necessarily share the views of Mr Martin LEE and Mr Andrew CHENG whom I can describe as anti-smoking fundamentalists. Their views are correct and anti-smoking is in fact right. I also support anti-smoking, but to a lesser extent because we should consider one point. To pay attention to public health is absolutely correct and I agree to it. But should personal choice and personal right be totally deprived of? I do not think people should be deprived of their personal choice. President, as you know, I agree that the scale of the smoking ban should be expanded. But I do not agree that the Government should infringe upon a person's right to choose. In this whole issue, where is my point of balance? It lies in where personal choice is not infringed and the public are entirely protected from second-hand smoke.

Let me cite an example. If I find that someone likes to smoke on a beach raft, I would not bother about it because if he is able to swim to the beach raft

with a cigarette in his hand, he would at most affect people around him. But I do not think that he can swim to the beach raft with a cigarette in his hand. In some places where the public can avoid second-hand smoke, I think the smokers should be given the personal right to choose. In some open space, for instance, I think they should be allowed to have a choice. However, at bus stops, for example, the public cannot avoid second-hand smoke because they are waiting for the bus and cannot walk away. For these places, I think smoking should be totally banned. However, in places where people can move around freely such as in a park, I wonder if smoking should be banned to such an extent. I can simply walk away when I see people at a distance smoking. Or a smoking area can be designated for the smokers who can continue to smoke without affecting the non-smokers. They can be segregated under such an arrangement.

As far as policy is concerned, my stance is to adopt a segregation policy, rather than an anti-smoking policy. In a nutshell, they should be segregated. I think they can do whatever they like because smoking is not totally banned now. If we have reached a stage where smoking is totally banned because smoking is considered to be extremely hazardous to health, then we should ban smoking entirely without any regard to personal rights. If it is proved that cigarette is as harmful to health as opium, it should be totally banned. As long as smoking is not totally banned, we should adopt a segregation policy.

So, regarding the employees, I have reiterated in the Bills Committee that smoking rooms can be considered. But such should not be set up in food establishments because of the large number of patrons whose ages range widely. So, smoking rooms should not be set up in restaurants.

Although a segregation policy can be adopted in bars, the employees should also be segregated, not just the public. Some employees may say, as Mr Vincent FANG has also pointed out, that they will die sooner or later and it is better to die slowly than to die immediately. But I think it is a lamentable statement. If they say it is better to die slowly, I think it is not right. I do not want the employees to die slowly, or immediately. I would not say I hope they would die slowly rather than immediately. We in the trade union will not hope that the employees will die slowly or immediately. How can we say such things?

Besides, regarding the smoking ban, I believe it may lead to transformation. Perhaps not only the smokers play mahjong or drink. I think there is a lot of room for our imagination to yield solutions.

Finally, I would like to talk about the idea of smoking room. If a segregation policy is really adopted, I think we should improve the ventilation facilities and the employees should not be required to go in and clean up the place. In other words, it is a self-service room where the smokers go in to smoke with their beer. Other people who go in should know that they will be exposed to second-hand smoke and this is their choice and their problem. The employees have no choice. So if the employees are segregated with clear instructions that they are not required to go into the room or provide service and such an arrangement is feasible, then I think the smoking room arrangement is acceptable. However, it is necessary to prove that this is feasible. In other words, ventilation systems should be improved and the employees are not required to go into the room to provide service. On such a premise, I think the idea of smoking room is acceptable.

President, in a nutshell, where is the point of balance? I think it is the segregation policy. If the public can be protected from second-hand smoke and the smokers choose to harm their own health by smoking, we should let them decide on their own when we have yet to impose a total ban on smoking now.

Just now, I heard the issue of school uniform. If a person aged below 18 is not allowed to smoke, there will be adverse impact if cigarettes are sold to youngsters in uniform. When people see that students in uniform and under 18 are buying cigarettes, they will not feel good. In terms of concept, youngsters under 18 years old being able to buy cigarettes is unacceptable to me. Nor do I believe that school uniforms have become fashionable or *vice versa*. Although my clothes today look like a school uniform, people should know that they are not because there is no school badge. A school uniform should bear a badge. So, it is not that difficult to differentiate whether it is a school uniform or not. No one wants the youngsters to smoke. In this respect, apart from publicity and education, I think to ban the sale cigarettes to people in school uniforms is a very clear message. I support this idea.

President, I will vote according to my segregation policy. Thank you, President.

DR KWOK KA-KI (in Cantonese): President, today, there is a great likelihood that the Smoking (Public Health) (Amendment) Bill 2005 will be passed. This

can be described as one of the landmarks of the anti-smoking campaign in Hong Kong but this is by no means the end.

In fact, in the '70s, the scourge of smoking began to be felt at various places in the world, including Hong Kong. According to the latest study conducted by the University of Hong Kong (HKU) — the study was also discussed in the Bills Committee, that is, the Bills Committee on Smoking (Public Health) (Amendment) Bill 2005 — President, the figures provided by the HKU to us at that time were: As of last year, the losses incurred as a result of tobacco products included overall economic loss amounting to \$5.3 billion, medical expenses amounting to \$2.6 billion and long-term health care expenses amounting to \$900 million. It was also estimated that each year, 4 000 people died prematurely before the age of 75, mainly as a result of smoking and passive smoking.

Therefore, all that we are doing today is not to restrict anybody's personal freedom, nor are we discussing matters at a theoretical or philosophical level. In fact, in Hong Kong and throughout the world, a great many people have paid a heavy price for smoking in terms of their health, their lives and even the health and lives of their family members, and even the national economies as a whole are affected.

In Hong Kong, the Smoking (Public Health) Bill was initially enacted in July 1982 and restrictions were imposed on the use, sale and promotion of tobacco products. In fact, since then, the ongoing discussions and amendments have all revolved round two major issues, that is, tobacco companies and their supporters, and even people receiving benefits from tobacco companies have kept citing reasons such as personal freedom and the adverse effects on the economic vitality of certain trades in opposing the imposition of any restriction on smoking, claiming that smoking is a personal right and a freedom and equality that smokers are entitled to. Furthermore, a lot of trades would be affected, they say President, we are already used to hearing such comments.

What we are discussing now is not the restriction of anyone's right or the restriction of anyone's freedom. What we have to discuss is, firstly, we have to protect all Hong Kong people from the suffering of passive smoking and secondly, President, I wonder if Members know that although we are discussing a smoking ban all along, in fact, more and more people, in particular, young people, are being lured into smoking. In 1982, the number of people who

began smoking at 20 years of age accounted for 41.7% of all smokers. President, as of 2003, the proportion has reached 61.5%. In fact, tobacco companies have been very successful. They have adopted various means. The Government has all along been implementing anti-smoking measures, saying that it wants to protect the health of the public, however, tobacco companies have also resorted to other means and metamorphosed. Tobacco companies even dip into their own pockets to support some anti-smoking groups by funding them direct, so as to project a positive public image.

We are now involved in a difficult war. Tobacco companies have taken on various guises and roles, using various excuses to hinder anti-smoking efforts and what is more, various reasons to make tobacco products appealing to young people. In fact, teenagers are not fully aware of the effects of smoking on health, however, they are lured into smoking as a result of social influences and various marketing tactics. If we really love them, and in order to protect the right of these minors not to be lured into smoking, we should adopt a more resolute attitude in our anti-smoking efforts.

Since the amendment to the principal Ordinance in 1997, we are aware that there are a lot of calls as well as views in society calling for the control of passive smoking. In fact, as many Honourable colleagues have pointed out, initially, this piece of legislation only targeted indoor smoking. However, no matter what, I appreciate the attitude taken by the Secretary towards this matter and the Secretary probably thinks the same. He said that this would be the first thing he had to do after he had assumed his office, that is, such a piece of legislation had to be implemented. Secondly, he also considers it is necessary for society as a whole to address this issue. As a result, this legislation has evolved from having to do purely with the control or ban of smoking indoors to being in a better position to put the Framework Convention on Tobacco Control (FCTC) into practice.

Why did I mention the FCTC? I wish to point out that not all the things we are doing now are done purely out of good intentions. In fact, Hong Kong signed the FCTC on 11 October 2005 on account of the People's Republic of China. The negotiations on the FCTC began in 1996 and continued until May 2003, when it was passed in the 56th World Health Assembly in Geneva. It is fortunate that to date, 168 countries worldwide have signed the FCTC. There are several requirements in the FCTC that we must fulfil: first, to increase the duty on tobacco; second, to ban tobacco advertising; third, to ban and restrict tobacco traders' sponsorship offers for activities; fourth, to combat the

smuggling of tobacco; fifth, to prohibit the sale of cigarettes to minors; sixth, to display health warnings on cigarette package stating that "smoking is hazardous to health" and seven, to take measures to reduce the exposure to passive smoking in public places.

In view of this, I wish to set the record straight. When the Government initially drew up this piece of legislation, actually, the scope should not be limited to smoking at indoor places. In fact, smoking indoors is just one aspect of passive smoking. To ban smoking in venues where a lot of people can be found or where a lot of non-smokers will be affected after the discussion on this occasion can in fact honour some FCTC obligations incumbent on us. I wish to reiterate that these matters have to be addressed after signing the FCTC and we cannot do any less. We must not think that what we are doing now amounts to anything extraordinary, since we all know that Hong Kong as well as the Central Government have signed these international treaties and even though we agree very much with doing so, we must also implement it concretely before it can be said that we have fulfilled our responsibilities.

In 2001, after the Panel on Health Services of the Legislative Council had carried out a consultation on this document, it seemed that this Bill had been aborted and there was no more momentum. It was not until last year that to our delight, this piece of legislation was eventually revived for deliberation. Although in this process, the Government and Members held divergent views, in any event, I myself hope very much that this piece of legislation as a whole or the primary legislation can eventually be passed by the Legislative Council. The passage of this Bill does not mean that the entire piece of legislation is flawless, quite the contrary, this Bill also contains a lot of amendments that we believe should not have been made, including allowing the implementation of this Bill in certain trades such as karaoke establishments and bars only several years later. I personally believe that this should not have been done.

Secondly, what we cannot settle definitely with the Government even now is the designation of no smoking areas in parks. The differences between us on this point are in fact quite great. As Members all know, we have no intention of rooting out smoking altogether, since in the final analysis, we have a lot of sympathy for people who have been lured by unscrupulous tobacco traders through various means into becoming smokers. In fact, they are the victims,

nevertheless, we still do not want them to affect other people in any way. However, more importantly, we really do not want the next generation to be lured into smoking. Members can just imagine: In a park where birds twitter and the fragrances of plants waft in the air, when families are engaged in some recreational activities, a smoking area is located next to them and all the people in it are all holding cigarettes, smoking in the setting of a park. I do not know how parents will say in reply to their children's questions concerning this sight. Perhaps, if I take my son to a park and he asks me about this, I will tell my son to ask the Secretary for it is him who said that smoking areas should be designated in parks and that smokers should smoke in them.

In fact, we know how the situation in those places is like. We do not wish to give people, be it young people or children, the impression that we have to put up with other people smoking, that we have rationalized this conduct, that at a place where they play, a place for recreational activities belonging otherwise to them, they have to continue to put up with smoking. I believe that in Hong Kong, there are many places where smokers can smoke with no difficulty. At many places, including streets and places not designated by the Leisure and Cultural Services Department (LCSD) or the Government as pleasure grounds in accordance with the laws, smoking is allowed. For the same reason, I believe I also have to propose an amendment in this regard to ban smoking in the Ocean Park and theme parks.

We consider that firstly, all such theme parks are in fact places that families or many children will visit; secondly, no matter for Hong Kong itself or as a part of China, we really hope that the spirit of the FCTC, or shall we say, the spirit that the FCTC inspired in us, can be fulfilled; thirdly, as a developed tourist destination, Hong Kong in fact has the mission to tell tourists, including those from the Mainland, that we attach great importance to anti-smoking efforts and that degree of importance is so great that we hope they will not propagate their act or behaviour of smoking in tourist facilities. Often, some people will cite sectoral interests as the reason for not implementing anti-smoking measures. I do not know which measure they will implement. Recently, I have learned that some package tour operators do not charge those who join any fees. It appears that it serves the interests of some trades, however, ultimately, Hong Kong as a whole will suffer. I hope that this trend will not guide us in what we do in future, including our anti-smoking efforts.

Concerning the ban on smoking, including the discussion on how a ban on smoking indoors will affect the relevant trades, it is in fact very interesting. President, such discussions actually began a decade and even two decades ago, and also in many places in the world. However, it is noteworthy that in many places in the world, tobacco control has not affected the trades concerned. Let me give an example. At that time, we said that prohibiting tobacco traders from placing advertisements might reduce the revenues of television stations by \$100 million. President, if we look at the revenue from advertisements earned by television stations between 1990 and 1996, we would find that it has increased by 80%. Therefore, some matters are actually not that credible and I call on Members not to think that there will really be an impact after hearing about such things.

I was pleased to learn two days ago that the catering industry had made some positive responses and it would even launch its own pilot scheme by giving advance notice of the implementation of the anti-smoking legislation in a number of catering establishments and by practising trial runs to educate their customers. In fact, why would they want to do this? I believe that firstly, the trade is very responsible; and secondly, they also know that basically, this matter will not affect their business or turnover. Therefore, even though I can see that the representative of the sector has voiced his opposition vehemently, I wonder if he is being unnecessarily mean?

In addition, I wish to say one more thing, that is, we should know that despite the implementation of this anti-smoking legislation, it is obvious that we have only taken a small step, not a major step. Our opponents, that is, the tobacco traders, will still infiltrate every corner through various channels and by various means, including making donations and that includes political contributions. Therefore, what we have to do and what I hope the Government will do is to allocate adequate resources to government departments and anti-smoking groups, including the Tobacco Control Office and Hong Kong Council on Smoking and Health after this legislation has come into effect. If fact, if we review this area, it will not be difficult to see that both the services provided by the Hospital Authority, the Department of Health, the Tobacco Control Office or the Hong Kong Council on Smoking and Health and the funding provided to them are all sorely inadequate.

Earlier on, we also proposed to the Financial Secretary that a levy should be imposed on smoking or the sale of cigarettes and the proceeds from this levy

can be directly allocated to several areas, including tobacco control and anti-smoking campaigns, education and research. However, unfortunately, the Government apparently has not acted on these requests. I wish to remind the Government again that to make the public smoke less through pricing, including the levy of duties, is in fact one of the requirements of the FCTC. I hope the Secretary will give a positive response to this later on.

President, as I have said, it is likely that this Bill will be passed, however, I wish to point out here that Members must not think that after this Bill has come into effect, Hong Kong will become a smoke-free city, as we will still encounter various difficulties, including those in law enforcement and education. We still have to make a great deal of efforts to continue to obtain adequate resources to counter tobacco traders and assist members of the public in quitting smoking. Here, I wish to point out to those people who have made contribution to tobacco control together with Members that they must continue with their endeavours.

I support this motion. Thank you, President.

MS EMILY LAU (in Cantonese): President, I speak in support of the Smoking (Public Health) (Amendment) Bill 2005.

President, although the Bill has come late, I am still very pleased. Originally, I hoped that the Second Reading of this Bill could resume before the summer recess. Just now, Honourable colleagues have explained the reasons for the delay. The legislation will come into effect early next year and I trust there will not be any further delay. I agree very much with this arrangement and I give it my full support. This may be the most important task in the Secretary's tenure and hopefully, it can be dealt with satisfactorily today. However, another very important or even more important issue, that is, health care financing, is nowhere to be seen. I wonder if the Secretary can only deal with one thing at a time. At present, we are talking about such things as families, and he has written some articles — I just do not know how to put it. However, another issue of the utmost concern to us is health care financing and I hope the Secretary can deal with this issue as soon as possible.

President, I am not a member of the Panel on Health Services, but the reason for my joining the Bills Committee to scrutinize this Bill is of course, on

the one hand, I am all for banning smoking — several years ago, other Honourable colleagues and I did our utmost to bring about a ban on smoking in the Legislative Council Building — on the other hand, I am also aware that this Bill is highly controversial. I believe that as Members of the Legislative Council, we should not follow the example of the Chief Executive and we have to listen to the views of members of the public, particularly when one finds that one is disposed towards supporting one side but the people on the other side also hold very strong views. This is not imposing our views on others. But we must spare the greatest amount of time possible to listening to opinions. In the end, we may not necessarily win the support of other people, however, they will still think that we have been quite fair and are prepared to give them audience, instead of brushing them aside from day one.

Therefore, even though I am not a member of this Bills Committee, I still aired my views and although my attendance rate is not 100%, I still tried my best to make it to the meetings, and I even went to various local communities to meet various groups. Today, the representatives of many of these groups are present and I must commend them. No matter if they support the Bill or oppose it, they have always been present, in particular, those opposed to the Bill are even more hard-working than we are, President, and they would all arrive even before the start of the meeting at 8.30. President, they have devoted a lot of time. Why? Is it because Hong Kong people have nothing better to do after their stomachs are full? In fact, they are very worried about their livelihood.

We are talking about the employees in such trades as bars, mahjong parlours and nightclubs. I have also examined ways of helping them. On 1 January next year, the legislation will come into full effect in restaurants, bars open to the public and billiard establishments. However, the effective date of this legislation for some venues in the entertainment industry will be deferred until 1 July 2009. Is this arrangement really helpful to the operators? I have also discussed this matter with the Secretary. The Secretary is now also present in the Chamber. Actually, what other considerations are involved? Even if they want to wind up their businesses, since they have entered into tenancy agreements in respect of the premises concerned, they have to be given time so that if they can wind up their businesses if they really cannot continue with the operation. This is indeed lamentable.

Although the unemployment rate is on the decrease, many members of the public — over 1 million members of the public are still finding themselves in

deep water. The Secretary only has to take a look at the Commission on Poverty to see how difficult things in this area are. When we went to places such as bars and karaoke establishments, we would come into contact with employees who said that they had been educated only up to Secondary Three. They had worked hard for many years and now, they were earning a wage of over \$10,000 or more monthly and they already considered that to be quite good. They asked me, "Members, can you imagine what we can do for a living if we lose our jobs one day?" President, I was lost for an answer. Should we follow the example of the Secretary, who suggested to chicken slaughterers that they change their occupations and become baby-sitters? How can they change their occupations? We have to consider some factors, however, the best course of action is, hopefully, the Secretary trying his best to persuade members of the public to continue to patronize those places because in fact, the great majority of them do not smoke. President, the present state of affairs gives one the impression that the majority of the people patronizing those places are smokers and if they are not allowed to smoke, they will no longer patronize those places.

Just now, reference has been made to overseas experience. I have recently also visited New York several times but I did not go to any bar. I only went to places like restaurants and found that the situation was quite good. However, it has been said that the situations in some other countries are not too good, so even overseas experience is not that clear-cut. Therefore, since the Secretary has such a lot of resources at his disposal, I really hope that he can make more educational efforts to, on the one hand, educate the public not to smoke, and on the other, encourage the public to continue to patronize those venues by all means. If a lot of such venues really close down in the future, I really do not know how we can explain to these members of the public. On the one hand, it is of course important to care about the health of the public, however, an Honourable colleague also pointed out just now that we also had to care about the health of the economy. Even if these unemployed people can apply for CSSA, is this what they want? Therefore, I hope the Secretary can exert his best, that is, to support the ban on smoking on the one hand, and on the other, he should tell members of the public as far as he can that they should get used to enjoying themselves in those venues in a smoke-free setting and see if it is possible to assist these trades in making their businesses really appealing, so that they can become even more attractive and people will think that even though smoking is not allowed in those venues, they will still visit them. This is what I hope the Secretary can accomplish.

Just now, Mr LEE Cheuk-yan mentioned something about segregation and I have asked him if he has modelled it on South Africa. In fact, I think segregation can be considered if it is really possible. I am not trying to persecute those people and I do not mean to let people smoke to their death, as Mr Albert CHAN said. In fact, we do not want to let them smoke to their death, however, if they really want to smoke and the authorities do not consider those things to be narcotics, then we should just let them smoke, however, when they smoke, they should not force others to inhale second-hand smoke. Therefore, I actively support the Secretary in carrying out studies on smoking rooms to see if those people can be segregated. However, President, I do not know how long the tenure of the Secretary will be and whether he will still be in office on 1 July next year, still, I hope that the authorities will undertake this task.

In addition, just like a lot of Honourable colleagues, I have to commend the Secretary for expanding the scope of the ban, which was originally only limited to indoor places, to many other places. In fact, some of these expansions have not gone through public consultation. Since the ban will be extended to so many places, we have suggested that the universities be consulted. As far as I know, it seems the universities have not declared their stances, that is, they are neither for nor against it. In fact, everyone is afraid of getting committed. President, what does this mean? It means that a lot of people are in fact very jittery. In the future, should anything happen and it is necessary to enforce the law, or if some people want to make a scene, there is no knowing how such matters will be dealt with then.

Concerning hospitals, I have also noticed that of course, all hospitals under the Hospital Authority have agreed to this measure, whereas two private hospitals have expressed support but two others have disagreed with it. What is the reason for their disagreement? They said that they do not know what should be done and what liability they may have to bear. The Secretary will tell them not to worry and he will appease them after the passage of the legislation and advise them on what to do. Of course, I hope that the authorities will do so quickly. I wonder if the authorities can advise them on what to do because hospitals are extensive in area, so how should the law be enforced? If they do not comply, who will be prosecuted? Or what else will be done? I hope the Secretary can expedite his work and that no problem will arise in this regard.

In addition, not many Honourable colleagues have talked about how indoor and outdoor places are defined. This is because there is a formula involving the rate of 50% and I hope it is a scientific one. In sum, we hope that there will be less and less disputes in future, otherwise, something well-intentioned will become undesirable. If some people query why they are not allowed to smoke at certain places, thinking that they should be allowed to but the authorities think otherwise, on what criteria should this matter be decided? What yardstick should be applied when making measurements — is it 50%, 43% or 62%? I hope the Secretary can assist people in various sectors such as restaurant operators as well as society understand the situation because the more the disputes, the more the confidence of the public will be eroded. Therefore, we support this and if the Secretary needs the support of the Legislative Council, I hope he can come back and discuss with the panels of the Legislative Council, but there may be some problems with regard to the measures.

When it comes to the measures, of course, we have to talk about the Tobacco Control Office (TCO) because once the Bill is passed, the manpower of the TCO will be increased by more than 30 persons. Of course, it is said that police officers and other people will also help, however, President, how many venues are there? There are 10 000 restaurants, catering establishments, bars, karaoke establishments and billiard establishments — the number is as many as 10 000, furthermore, there are 2 100 educational institutions and 500 000 workplaces, so how can the law be enforced? Therefore, we very much hope that the authorities will provide a hotline which will respond actively the phone calls from members of the public. However, the authorities have told us that we should not think someone would come immediately after a phone call is made. If no one comes, what does that mean? Therefore, we should let those organizations and the public know what they can do, otherwise, if people make phone calls but they are not heeded, over time, the legislation will fall into disuse and no one will respect it, nor will anyone comply with it. This is the last thing we wish to see. Therefore, we hope that the Secretary can think more about this.

Another area in which law enforcement will be difficult is the pleasure grounds. On the one hand, I agree with the comments of Honourable colleagues, that if people go to pleasure grounds for relaxation, they certainly

must not be exposed to second-hand smoke. However, I also understand that the homes of many members of the public are very small, particularly with regard to some districts and housing estates. President, surely you must have seen them. If a family lives in a unit and someone in it smokes, of course, the other members do not want to inhale second-hand smoke at home all the time, so they will go downstairs to some park for a stroll or to play. However, some parks are in fact very small and smoking is not allowed. The trouble is, some people also want to go to the park to take a break and a puff — in fact, many members of the public work very hard for 10-odd hours every day and they do not have any entertainment. Since they spend quite a lot of money on transportation, they do not have much money for eating out, so what gives them some comfort is pulling a cigarette. In these circumstances, do we want to make it very difficult for them to smoke? Do we want them to go to the roadside and keep inhaling the fumes from vehicles while smoking? Do we want to go that far?

Therefore, I support the designation of smoking areas, however, we have also heard some District Councils say that when reporters and District Council members go to the central park in Sha Tin, which is now called the Sha Tin Park and which is very large, to look for such an area, they could not locate the smoking area. I do not know how the Leisure and Cultural Services Department (LCSD) will handle this matter in the future because they do not know how to choose such areas and do not know what places are suitable for smoking. There are many problems here. I hope that the arena of these disputes will not move to the District Councils in the future, otherwise, we only have the authorities to thank.

President, finally, one point that I wish to make and have related to the Secretary is that later on, there will be a lot of amendments and those proposed by the Secretary will be passed. However, the great majority of these amendments was originally proposed by Members and accepted by the authorities and various political parties and groupings, then it was agreed that the Secretary would propose the amendments. The amendments proposed by Members will not be passed. This is the problem that the Legislative Council has been facing for many years and also the reason for our negative image. President, you are also aware that Article 74 of the Basic Law deals with legislation and Members are not allowed to propose certain types of Bills.

However, now the authorities do not even let Members propose amendments, yet we still have to co-operate with the authorities. Even those amendments proposed by us and supported by all Members have to be surrendered to the Secretary for him to propose them. Therefore, the outcome is that the Secretary appears to be the most terrific guy and every amendment proposed by him will always emerge victorious and be passed, whereas Members are very incompetent and what they propose will always be defeated.

I wish to tell the Secretary and the authorities that if this practice continues, if the Legislative Council continues to be trodden like this, this will not be favourable to the relationship between the executive authorities and the legislature. If the Legislative Council finds itself in such a difficult situation, I do not think the authorities will fare any better either. Therefore, the Secretary should understand that in fact, a lot of things are not proposed by him, rather, he has been made to do so. However, he has taken them here to propose them, to secure the support of Members and have them passed but actually, they should be proposed by us Members. Therefore, I call on Honourable colleagues to consider the future practice for Bills Committees — some Honourable colleagues may say, "It does not matter, just let the Secretary propose them because in this way, they can be passed more easily." In fact, if something has been agreed upon by Members, even if something were to involve a division of 10 groups, it would still be passed. I do not understand why we have to surrender an item which has obviously won the support of all political parties and groupings to him to propose it.

Some Honourable colleagues may think that we should not challenge the Secretary, or else we would be accused of challenging Article 74. I am not challenging anything, I am just upholding the dignity of the Legislative Council. Since all these amendments were proposed by us, why can we not move them, even though we are Members? Each time, the headlines in the reports of the mass media would say that the proposals put forward by the Secretary were the best and were all passed but those moved by Members were all decimated. I can by no means approve of such a practice. As matters stand, everyone thinks that there is no problem with this, still, I want to raise this because most of the amendments today were actually proposed by Members but for no apparent reason, they were handed to the Secretary for him to move them. Then, some reports will appear tomorrow saying that the Secretary is terrific as all the

amendments moved by him were passed but Members were really good for nothing as all the amendments moved by them were negated. I think this is most unfair and it is time the authorities reflected on this sort of behaviour. I think this is being too hegemonist and will not win the hearts of the public.

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

MS AUDREY EU (in Cantonese): President, I am very pleased that the Smoking (Public Health) (Amendment) Bill 2005 (the Bill) can resume Second Reading today. To those people who support or oppose this Bill, I wish to thank all of them here. As Ms Emily LAU said, these people have attended the meetings very actively, either to observe the meetings or make representations to us. Today, many of them are sitting up there to witness the passage of this Bill.

President, apart from thanking a number of Honourable colleagues and the Secretary here, I think our Legal Adviser also deserves special mention. In fact, apart from having done a lot for this Bill, he is also sitting here today to see how this Bill is being dealt with.

President, one point about this Bill raised by a lot of people is why the progress had been so slow. After holding so many meetings, why was the voting, which was originally set down for the last Legislative Session, deferred to this? When speaking just now, Mr Tommy CHEUNG also specifically clarified that this had nothing to do with him, that even though there were a lot of opposing voices in his sector, he had not caused any delay.

President, I wish to explain here that there are mainly two reasons for the long time taken by this Bill. Of course, one of them is that this Bill is highly controversial and there were quite a lot of opposing voices. The other reason is that originally, the scope of this Bill was only confined to indoor places but it was subsequently expanded to include a lot of outdoor places.

However, President, I also agree very much with the comments made by Mr Tommy CHEUNG in his speech that often, people opposed to the Bill did not

want to cause any delay but that they were really the people who would be particularly affected. Very often, as the saying goes, "No one but the wearer knows better where the shoe pinches.". Since the Bill will impact on them personally or on their trade in particular, they kept coming to the Legislative Council to carry out lobbying or make representations. As Members of the Legislative Council, in fact, we respect these voices and think that we have a duty to listen to them.

However, today, I heard Mr Tommy CHEUNG ask in his speech why we wanted to catch up with and even overtake western countries. Why was it necessary to adopt a sweeping approach? He said that we should in fact make orderly and gradual progress towards the goal of a total ban on smoking. On hearing his comments, I could not help but immediately think of Articles 45 and 68 of the Basic Law, which also mention making orderly and gradual progress towards universal suffrage. President, if universal suffrage could be approved here today just like this ban on smoking, I would take great consolation in it. I wonder if the attitude of the Liberal Party towards "orderly and gradual progress to universal suffrage" will be as positive as towards this piece of anti-smoking legislation.

President, I have said that the second reason for the long delay is that the scope was expanded. Initially, when the Government tabled the Bill, only indoor places were covered. If this were a Bill with a political tint, I believe that when defining the scope of the Bill, the long title would have been spelt out at great length or would take up a whole page, just as in the case of the draft legislation on the Chief Executive election, so that Members could not attach anything to it. However, since this Bill has to do with a smoking ban, the wording is relatively loose and it was possible for many Members to propose a number of amendments or amendment proposals, which the Government eventually accepted.

President, in fact, originally, it would not have been necessary to take such a long time, however, initially, the Secretary (or perhaps the Government) was unwilling to listen to many of the views put forward by Members, so a tug-of-war went on for a long time; the ball was passed back and forth many times and the discussion in each meeting was repetitive. Outside of the meetings, I know that a lot of Members also met with and lobbied the Secretary,

so eventually — if you want to praise the Secretary for being amenable to advice, I also wish to add that had he accepted Members' views earlier, this Bill would not have dragged on for such a long time.

Even Mr Tommy CHEUNG also pointed out in his speech that the position and rationale of the Government in regard to this Bill is very problematic. On the one hand, it says it wants to control tobacco, and on the other, it could not adhere to and see its position through due to the voices of opposition. It was precisely due to these reasons that the Bill was delayed for such a long time.

However, I believe this Bill is a prime example showing that if an issue does not involve political orientations or positions, in fact, it is entirely possible for people on both sides to come to a compromise and eventually, we will get results. If Members leaf through this Bill, they can see the results of the compromises and endeavours made by both sides in many ways. For example, on the effective date, initially, the Blue Bill adopted a broad-brush approach and laid down the requirement that a smoking ban had to be imposed in all places of entertainment at the same time. However, since there were a lot of voices and since livelihood issues and other factors were involved, in the end, the Bill will be implemented in two stages, that is, on 1 January next year and 1 July 2009. Different venues will be dealt with in different ways and this is also the final compromise made by both sides after extended discussions, mutual lobbying and mutual accommodation.

Moreover, the same applies to the scope of the smoking ban. All of us can see that initially, it was only confined to indoor places but subsequently, it was gradually expanded to include various other places such as universities, swimming pools, bus stops, pleasure grounds and beaches. These places were added gradually and are the outcome of the compromises made and the lobbying carried out by both sides. Even on the provision concerning the use of misleading descriptors on tobacco packaging, there was also a lot of bargaining, countless meetings were held on the issues in this area, countless documents were looked up, a number of overseas examples and judgements were cited and detailed advice was provided by the Legal Adviser before we eventually obtained the results.

However, President, although I am very pleased that this Bill will be passed today, I think that there is still a loose end that must be highlighted. I think that one of the issues that have not been solved satisfactorily is the one

relating to pleasure grounds, which many Honourable colleagues have mentioned. In fact, had we not left the discussion of this issue to the final stage, I believe it would have been possible to solve this problem. However, since we wanted to make it to the Second Reading today, failing which the legislation cannot come into effect on 1 January next year, so during the discussion on the issues relating to pleasure grounds, even though we went over the issues repeatedly, we could not find any comparatively satisfactory solution. Although the Government subsequently accepted Members' proposal and is willing to impose a smoking ban in pleasure grounds, it still hopes to designate an area therein as a smoking area.

President, I also wish to state the position of the Civic Party here. In fact, if it is specified clearly in the guidelines which part in these pleasure grounds (including waterfront promenades) is involved, we will not voice any opposition. If the Government can clearly delineate or specify in the guidelines which part is the smoking area, we will find this acceptable because we understand that some people do not want to smoke at home and want to do so in some open public area, instead of having to smoke in the streets or at the roadside.

However, we held many meetings and Mrs YEUNG also told us that this could be done easily, that the LCSD knew how to designate them and it would also discuss with the District Councils. But the trouble is, when we requested her to submit a paper, she failed to write one no matter how. She had claimed that it was easy but she failed to produce any. Just now, Ms Emily LAU has already pointed out in her speech that when she went to the Sha Tin Park, she was at a loss, that is, what yardstick can be adopted to decide at what location and in how large an area should smoking be allowed? In fact, this will lead to a great deal of controversy in the future. Therefore, if the Civic Party is asked to choose, in these circumstances, we prefer the lesser evil and it is preferable to ban smoking completely, instead of leaving a loose end that will lead to a lot of disputes in the future.

However, since the voting arrangement of the Legislative Council is most weird, that is, no separate voting is required for the amendments proposed by the Secretary and they can be passed more easily. Furthermore, since voting must be carried out on the Secretary's amendments first and Members are worried that if they do not support the not-so-desirable proposals put forward by the

Secretary, all amendments will end up being negated. Therefore, even though Members of the Civic Party do not find the present approach adopted by the Secretary at all desirable, it was eventually compelled to accept this solution adopted by the Government, thus resulting in a loose end that will give rise to controversies in future.

President, another point that I wish to raise is that tobacco products should not be sold to people wearing school uniforms. The Secretary's reply says that he neither accepts the proposals nor the amendments in this regard, the reason being that there will be a lot of difficulties in law enforcement. Just now, Mr LI Kwok-ying also said in his speech that uncertainties could arise easily because nowadays, school uniforms look very fashionable and fashionable clothes also look like school uniforms. However, President, in our existing legislation, such as in the Places of Amusement Regulation (Cap 132BA) concerning billiard establishments, it is already specified that no person in school uniform may enter a billiard establishment and a notice must be displayed at the entrance of such premises to this effect and this requirement is different from the one providing that no person under the age of 16 years may enter a billiard establishment. In other words, existing regulation already regulates people wearing school uniforms, therefore, there should not be any difficulty in law enforcement. I also agree with Mr LEE Cheuk-yan, who said that if the legislation does not prohibit the sale of tobacco products to people wearing school uniforms, this will send a very bad message.

In fact, often, problems will occur in law enforcement. Even in the existing Tobacco Control Office, as Ms Emily LAU said, there was a shortage of manpower. Besides, issues such as what actually can be considered indoor places and how large the enclosed area should be, or whether 50% of a place has to be enclosed before a place can be considered an indoor place, can often pose problems for law enforcement. The point is, when enacting legislation, it is of course improbable to encounter no difficulty, however, it is necessary to show a resolve and the position of the Government and society as a whole. Therefore, Members can just imagine what a shame it is for the Government to oppose an amendment made by Members to prohibit the sale of tobacco products to people wearing school uniforms. This is an extremely bad message and I have already told this to the Secretary but he still refuses to listen to the views in this regard, so I find this most regrettable. If the Legislative Council does not pass the amendment proposed by Mr Andrew CHENG, which prohibits the sale of

tobacco products to people wearing school uniforms, if this sort of thing is not banned, I find it extremely regrettable and I think the Legislative Council will send a very bad message to society.

In addition, one more point that I wish to raise here in particular has to do with no-smoking signs. President, in fact, the existing legislation already requires that for no smoking areas, such signs should be displayed to inform the public where a no smoking area is located. However, the Government now proposes that these no-smoking signs be cancelled. In fact, the present amendment proposed by the Member concerned only requires that clear no-smoking signs must be displayed and they do not have to be displayed prominently, as made out by Mr Tommy CHEUNG, who also said that if these signs were displayed everywhere in the Legislative Council, it would be most unsightly and affect the decorations in places like restaurants. In fact, I hope Mr Tommy CHEUNG can take a look at the present proposal put forward by the Bills Committee. In nowhere therein can the word "prominent" be found, nor is there any requirement to display the signs everywhere. It only requires in clear and simple terms that the location of a no smoking area be indicated. In particular, after the scope of no smoking areas is expanded under the present Bill, it is really necessary to inform the public. As Ms Emily LAU said just now, sometimes, it is not clear what places are considered indoor places or outdoor places. In these circumstances, no-smoking signs are necessary. In the open spaces at such places as universities, what actually are the limits of the no smoking area? It is necessary to inform people of this. Therefore, I hope Honourable colleagues can support the relevant amendment.

President, finally, I wish to talk about an issue which no Member has raised, that is, the issue raised in paragraph 117 of the report of the Bills Committee. It is said *inter alia* that some Members have expressed concern about the tobacco industry making use of non-tobacco products to display the name and/or logo of a tobacco product. President, the "some Members" mentioned therein includes me because I am very concerned about the measures on tobacco advertisements specified by the Bill. It only prohibits advertisements of tobacco products, however, the display of the logos of a tobacco product on non-tobacco products is not prohibited and this is not considered tobacco advertisement. This is an obvious loophole. I hope very much that when the Secretary speaks later, he will say that he will continue to follow up this issue.

President, the last thing I wish to say is that the air quality in Hong Kong is very poor, so I hope a ban on smoking can help improve the air quality in Hong Kong. Thank you, President.

MR LEUNG YIU-CHUNG (in Cantonese): President, originally, I was also a Member of the Bills Committee, however, in February this year, I withdrew from the Bills Committee. The main reason is not that I took issue with anything in the Bill, only that the schedule of the meetings clashed with that of my teaching duties during the daytime and since I could not manage, I withdrew from the Bills Committee.

In fact, President, I am also very much opposed to smoking. Actually, I have said in the legislature before that both my parents died of pulmonary failure and bronchial problems that resulted from smoking. Therefore, I take this opportunity to urge all smokers that they really should not smoke, and more so for the younger generation, since doing so will really affect one's health.

Therefore, I am very concerned about the problem of smoking and also hope that this Bill can be passed. However, before this Bill is passed, I have a lot of views that I wish to take this opportunity to express to the Secretary. Just now, many Honourable colleagues said they hope very much that this society will become a smoke-free city. President, in fact, I think this is just a fantasy. Why do I say so? Not to mention the fact that the sale of cigarettes is not illegal, when even narcotics, which are illegal, are still available and if we do not treat cigarettes as narcotics, the possibility of this city becoming smoke-free is extremely remote.

Precisely for this reason, the efforts that we are now making are only trivial. Just as Mr Andrew CHENG said, the work that can be done now is only intended to make things inconvenient for some smokers, in the hope that they would cease to smoke. However, this is just a hope. Will we succeed in reality? Of course, there will be some measure of achievement, otherwise, this approach would not be adopted in so many countries and regions. However, will this actually be highly successful? President, no, it definitely will not be. Because we can see that a lot of people will leave their offices and go to alleys or other places to smoke. No matter how difficult it is, they will still smoke, therefore, the effectiveness is questionable, only that doing something now is

always better than doing nothing at all. This being so, I think that when doing the work, it is necessary to see how it is done.

In fact, in 1999, the Government embarked on this task by establishing smoking and no smoking areas in restaurants. That was done with a view to responding somewhat to the demands in society. If nothing was done by the Government, how could it counter the smoking trend? If it relied merely on some simple publicity campaign, it certainly would not yield any result. Therefore, at that time, the Government allowed smoking in a particular area in restaurants. However, President, this is precisely the worst possible approach. Since the mentality of the Government then was just to make a response and get a job done and there was no clear and long-term strategy for doing the work, therefore, operators of restaurants thought that if smoking was to be banned partially, then so be it and they would just comply with the Government's wish. It never occurred to them that one day, a total ban like the present one would be imposed. This is where they have difficulty adjusting to. Now that smoking is to be completely banned all of a sudden, how can they adapt? Here lies the greatest problem.

Just now, Ms Emily LAU said that even if other people's views were different, one had to give audience to other people, therefore, it was necessary to go and take a look, listen, meet with deputations, and so on. In fact, I have also contacted my friends who operate restaurants and karaoke establishments and they fully agree that they should follow the Government's measures as far as possible. However, the problem is whether the Government has given them the time and room to do so. This is because the legislation provides clearly that it will come into effect on 1 January 2007. However, if we pass the Bill today, there is only a short period of two to three months before 1 January. So President, how is one supposed to adapt?

At the time when the motion was being discussed, Members attending the meetings, as well as the colleagues from government departments, all said that the period was not short at all. According to them, since the discussions were already underway, these people should begin to do something. How could they wait until the legislation had been passed before they took action? President, I find such remarks most objectionable. If they are made by Honourable colleagues, I find them all the more objectionable. Why? This is because doing so is to degrade the Legislative Council. In what way is it degraded? Will the Bill definitely be passed? According to the rules, it is necessary to put

it to the vote before it can be passed, so before the Bill goes through this procedure, how can one say that that since the Bill is being discussed, you can just make changes accordingly? What should people do if it is not passed?

The second thing is that if it is the Government that makes such comments, of course, I will also be resentful. Why? What do you think the legislature is? A rubber-stamp? Do you think something can be passed as long as you want to? In fact, President, you will perhaps agree that we have rules. Without rules, this cannot be considered a legislature. What has yet to be passed cannot be regarded as legislation. This being so, is it not necessary to respect the legislature and consider a legislation to have been passed only after the legislature has passed it? Now, there is only a short adaptation period of two to three months for people to make adjustments and it is even said that if one does not like it, one can just fold one's business. Even if one wants to wind up his business, as Ms Emily LAU said just now, there will be difficulties involving the tenancy agreement. If one does not want to continue with the operation and wants to wind up a business, what should he do? There is no transitional period or adjustment period whatsoever and I really feel very unhappy and displeased about this.

Furthermore, winding up a business will affect not just employers but also employees. Ms Emily LAU's remarks just now amount only to wishful thinking. She said that hopefully, after the Bill was passed, business would still be good. If it is good, of course, there will be no problem and employees and employers will both be happy. However, President, in the event that business is not good and a business has to be wound up, what is one supposed to do? This is the greatest problem. However, the Government simply does not care about such matters and merely says that people should take care of such things themselves. I think this is being very irresponsible. Therefore, I am very dissatisfied with the Government's handling of this issue. Actually, at that time, friends in the catering trade also expressed a lot of views to the Government and to Members, however, they have not been reflected in the Bill. I find this most regrettable.

Concerning restaurants, I think that in line with the principle cited by me, it is necessary to respect others and provide a transitional period, rather than giving people the impression that this is an approach of "might is right" and that since one has the power, one has the say. This is the most draconian way, halting and banning things as one pleases. I really think that this is not a

desirable approach and direction for handling social and public issues. In fact, as I have said, many colleagues and friends operating restaurants are really prepared to co-operate, but they have to be given a way out, a direction and a period of time to see how they can adapt. This is what merits the greatest attention.

President, another issue concerning this Bill that many Honourable colleagues have raised has to do with school uniforms. I agree with the requirements concerning school uniforms, that is, no cigarette should be sold to people in school uniforms. Why do I agree with this? In fact, the existing legislation provides that people under 18 years of age are not allowed to buy tobacco products, or shops cannot sell tobacco products to people under 18 years of age. However, ever since the implementation of this legislation, if I remember it correctly, the number of prosecutions is no more than 10 — I do not know if my memory serves me correctly — the number of cases is no more than 10. In fact, President, what is the reason for this? It turns out that vendors do not have the power to request people buying tobacco products to produce their identity documents to prove that they are over 18 years of age.

When shop-keepers doubt if someone has reached the age of 18 and request him to show his identity card, he can retort by asking what power they have to request that he show his identity card. The shop-keepers can say nothing in reply and they can choose to either sell or not to sell. Often, this arrangement gives rise to a lot of disputes. Some newspaper vendors told me that if they refused to sell tobacco products to these people, problems would arise. If they refuse to sell, thus foregoing the opportunity of doing business and earning money, it seems that this is a very right thing to do, but President, the consequences will be dire. What are the consequences? They include water being splashed on their stalls, their stalls being subjected to vandalism and they were even assaulted. The main problem is that they do not have any power, so what can they do when someone causes trouble? In fact, I have had many meetings with the Government to ask them what can be done, however, they did not answer or provide any solution.

Of course, if school uniforms are used as the identification clue, will the situation be any better? It will be better because if one sees someone wearing a school uniform, there is no need to request him to show his identity card at all. On seeing that someone is wearing a school uniform, one can refuse to do

business with him, so this will be somewhat better. However, one problem will still exist anyway, that is, if one does not have any power, there will still be a lot of trouble and one will still be subjected to havoc. Therefore, I hope that the Government can do more in this regard by examining how shops that refuse to sell cigarettes can be given greater protection, so that they will not be subjected to so much havoc and threats. In the past, many vendors and shops have also put forward a lot of proposals to the Government and I am not going to talk about them in detail here. However, I hope the Government can listen to their views and see how they can be protected, so that the legislation can be enforced.

Another issue is the designation of smoking areas in pleasure grounds. I think that Members must really think seriously about this issue. A lot of middle-aged or elderly people have been smoking for many years and smoking is the only pastime for them. However, if we do not provide any space to them, we are really depriving them of the freedom and right to enjoy their only pastime. I believe that pleasure grounds are different from other places in that if you see someone smoking in a park and dislike it, you can go away, so this is really different from an enclosed space. If even doing so is forbidden, I think that society has not taken these people into consideration. I understand and I have also said that smoking is really hazardous to health, however, since they have been in this habit for such a long time, how can they change? I hope Members can show some tolerance for them. We are not requesting that smoking should be allowed at all places in a pleasure ground, only that a location be provided for them to smoke.

As regards the problem of designating smoking areas, of course, the solution is not easy and I do not wish to leave this baggage to the District Councils and make them shoulder it. However, the point is that if the Government makes this proposal, it should shoulder the consequences on its own and designate these areas by itself, instead of saddling this problem on the District Councils. Under the present arrangement, the Government can shift the blame when there is opposition, saying that it has nothing to do with the Government and that the District Councils have given their approval, thus deflecting the criticisms to other parties. Since it has put forward such a proposal today, I hope it can carry this matter through and assume the responsibility all by itself from the beginning to the end. It is of course fine to carry out consultation, however, it must not pass the buck to other people, saying

that it has nothing to do with it and that the decisions are made by another party. I hope the Government can put this principle into practice more often.

President, I so submit.

MR HOWARD YOUNG (in Cantonese): Madam President, the Legislative Council established a bills committee to scrutinize the Smoking (Public Health) (Amendment) Bill 2005 (the Bills Committee) in the year 2004-2005. After the Bills Committee has held more than 50 meetings with the Administration and after Members have made site visits to the affected businesses, this Bill straddling three legislative years can finally resume Second Reading in the Legislative Council today. Since the new legislation will have profound effects, the amendments are complicated and numerous and their scope is extensive, and since the Bills Committee has examined each amendment very carefully, so the scrutiny of the Bill has taken a long time. Everyone will understand this.

In fact, all Members in the Bills Committee share the goal of expanding the scope of the smoking ban since they all understand that both smoking and passive smoking have adverse effects on our health, therefore, the Bills Committee even wanted to impose a total ban on smoking as soon as possible. Members had a consensus on the aim of amending the legislation, namely, to protect the public from the effects of passive smoking in indoor workplaces and public places, and the focus of contention was the scope of application of the Bill, the timetable and the law-enforcement arrangements after the Bill has come into effect. These issues were often discussed by Members again and again and the Government was also requested to make clarifications a number of times. Members do not wish to see this new legislation end up as something that does not serve its purpose, thus wasting manpower and resources, as well as the time and effort expended by Members in the past.

In order to allow sufficient time for various trades to make preparations for the new legislation, the Government has provided a grace period. However, initially, people may not fully understand the actual arrangements and there are also some ambiguities with regard to the details, as a result, the trades that may be affected are not sure of what they should do. To take the hospitality industry in the tourism industry as an example, the Government plans to give qualified establishments holding valid liquor licences, but not those whose

emphasis is on catering, a grace period lasting until July 2009 and those granted the grace period include nightclubs and bars. However, the liquor licences of hotels are rather special. Although there are a number of restaurants in a hotel, it may only be necessary to apply for one liquor licence because such a licence is issued after considering the conditions of a hotel as a whole. If the restaurants in a hotel are contracted out to other operators, naturally, each will have its own liquor licence and this is quite clear. Since some hotels have only one liquor licence and since there are other catering establishments providing catering services, such as cafés, grill rooms or Chinese restaurants in these hotels, therefore, even though a bar in a hotel does not mainly provide catering service, the hotel is actually not entitled to the grace period granted by the Government.

Two years can be considered neither long nor short, however, since the tourism industry now mainly caters to tourists from the Mainland and a lot of them are smokers, if all restaurants and entertainment venues are turned into no smoking areas, I am afraid this will be inconvenient to some of the visitors. The Government proposes to grant a grace period to bars and lounges holding valid liquor licences if they do not provide catering services. To the hospitality industry, a grace period is desirable and this is anyway better than a sweeping approach as the smoking ban can be implemented gradually and in an orderly manner, so that visitors can get used to it gradually and the effects on visitors can be minimized. However, the hospitality industry still has some misgivings about the implementation of the ban. For example, the industry believes that the *modus operandi* of some hotels has been overlooked, as the bars in some hotels focus on providing executive buffets targeting non-smokers at noon but operate as bars without catering service at night. Therefore, the hospitality industry still thinks that there are some problems in this regard.

The hospitality industry has all along been grateful to the Government for the understanding it has shown to the concerns of the trade, as well as to Mrs YEUNG of the Health, Welfare and Food Bureau for explaining patiently to the industry the contents of the amendment legislation. It also understands the Government's position. Consequently, the hospitality industry eventually agreed that bars in hotels will apply for separate liquor licences. However, I wish to point out that according to past experience, it took at least several months to apply for a liquor licence and sometimes, the wait could be as long as a year and a half. Although the present measures are accepted by everyone, I still hope that the authorities can streamline the procedure for examining liquor

licence applications and shorten the approval time. Otherwise, the grace period will probably have ended by the time a liquor licence is obtained and this will only create problems for the hospitality industry.

In order to protect the health of the public, the Liberal Party and the tourism industry both believe that greater restrictions should be imposed on tobacco advertisements and the scope of the smoking ban should be expanded. In the long term, the Liberal Party, which cares for the health of the public and is concerned about air pollution, believes that ultimately, a total ban on smoking should be implemented and its position has always been consistent.

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

MR ALAN LEONG (in Cantonese): Madam President, after the Framework Convention on Tobacco Control (FCTC) came into effect, stepping up tobacco control has become a worldwide trend. Be it from the angle of international responsibility or that of protecting public health and public interest, it is incumbent on the SAR Government to put the FCTC into effect by way of legislation and reduce the harm of passive smoking on members of the public by means of policies.

The most controversial part of the Smoking (Public Health) (Amendment) Bill 2005 (the Bill) is the designation of restaurants, bars and other hospitality establishments as no smoking areas. This has aroused strong dissatisfaction in the catering and entertainment industries, as they are concerned that this will make a lot of smokers stop their patronage and even the very survival of these industries will be affected. They have proposed measures such as "smoking licences" and "smoking rooms", in the hope of retaining some scope for smoker customers, whereas the Government has proposed the provision of two grace periods, so that various types of catering and entertainment venues can adjust to the new legislation.

Madam President, as I have said, the discussion on this legislative exercise must have the implementation of the FCTC as its principal objective. Article 8 of the FCTC requires all countries to take effective measures to provide "for protection from exposure to tobacco smoke in indoor workplaces, public transport, indoor public places and, as appropriate, other public places.". The

FCTC stipulates that governments must prevent members of the public from having any chance of coming into contact with tobacco smoke, not just prevent those who are unwilling to inhale second-hand smoke from coming into contact with tobacco smoke.

Article 8 of the FCTC sets out and explains in clear terms the reason behind this principle, "scientific evidence has unequivocally established that exposure to tobacco smoke causes death, disease and disability.". Even if smokers separate themselves from other social groups, the ills created by their smoking habit will eventually still be borne by their family members and even society.

Be it the measure of "smoking licence" or "smoking room", it is obvious that they do not comply with the stipulations of the FCTC in this regard.

From this perspective, not only do we support the Government in stepping up tobacco control, we also hope very much that the Government will display consistency in its tobacco-control policy and it must not be inconsistent in the rigour of its measures in various areas, such that conflicting signals are sent to various sectors in society. From this angle, I really doubt why it is necessary to make further concessions on the adjustment period for catering and entertainment venues. Does that mean that there is still some other scientific study that can refute the findings on the harms of tobacco? Does that mean we should not have enhanced the protection of people's health even earlier?

In order to facilitate the implementation of other tobacco control measures as early as possible, we can only make it clear that the series of provisions concerning the grace periods proposed by the Government has already exceeded our tolerance level and we cannot possibly make further concessions on the dates or the scope for smoking in catering and entertainment venues.

Madam President, apart from the issue of the smoking ban in catering and entertainment establishments, I am also very much concerned about the requirements in another area of the Bill, namely, those concerning misleading descriptors on tobacco products in clause 11 of the Bill. Article 11 1(a) of the FCTC stipulates that tobacco product packaging and labelling should not "directly or indirectly create the false impression that a particular tobacco product is less harmful than other tobacco products", whereas the original clause

11 proposes banning the use of Chinese and English descriptors such as "mild" and "low tar" on the packaging of tobacco products.

Tobacco traders pointed out that clause 11 of the Bill would amount to a prohibition of their trade marks and thus, would be a *de facto* deprivation of their property under Article 105 of the Basic Law and fail the "fair and balance test". At one point, as the Government considered that since the original clause 11 may give rise to a lot of litigations, it proposed that clause 11 be amended by adding a grandfathering provision stipulating that if a trade mark has been registered or in use before the gazettal of the legislation and the packet bears a notation in the prescribed form and manner, even though a trade mark contains the aforesaid descriptors, no criminal prosecution would be brought.

Madam President, if the Government really adopts the new clause 11 due to its fear of litigation, this will surely make the tobacco control efforts in Hong Kong lag behind the global trend. The international community has been straining to find a strategy to root out the use of such descriptors as "extra mild" or "low tar" that mislead and harm consumers, however, in this Asia world city called Hong Kong, tobacco traders would be able to continue to evade the law by registering their trade marks before the deadline. Meanwhile, the European Union and such countries as Australia and Canada have already enacted legislation to completely ban the use of misleading words, yet no tobacco trader has managed to win any legal action. Quite the contrary, two months ago, a Federal Judge in Washington in the United States, Gladys KESSLER, issued an order to explicitly ban the use of misleading descriptors by tobacco companies. I really dare not imagine the international condemnation that Hong Kong may draw should it leave a crack open for tobacco companies.

However, fortunately, the provisions relating to trade marks and the grandfathering approach in clause 11 were in the end deleted, instead, an overall ban on the use of misleading words was adopted. The Government believes that this move will be adequate in eliminating any concern about the violation of trade marks. In the course of dealing with clause 11, I could see that the Administration discussed and co-operated fully with Members of the Bills Committee and a proposal to implement the FCTC was eventually worked out. For this reason, I wish to express my appreciation of the efforts made by the authorities.

Madam President, on the whole, quite a number of provisions in the entire Bill have aroused considerable controversies in society. This is probably due to the fact that all along, various sectors in society have not held any in-depth and rational discussion on the issue of tobacco control, as a result, the interests of a number of social groups are deeply rooted in the prevalence of tobacco and any measure to step up tobacco control will inevitably disturb their interest. To be fair, their concerns are by no means unreasonable. Had the Government made the resolve earlier and not wavered on the issue of tobacco control, so that the tobacco industry and tobacco products could be prevented from becoming all-pervasive in the lives of various social strata, perhaps the reactions from these interest groups would not have been so strong. However, since the Government has started late in its efforts on tobacco control, it is all the more necessary for us to make good use of the time to do what should have been done as quickly as possible.

The discontent of the catering, entertainment and retail sectors reminds me of a film I have watched recently, "An Inconvenient Truth", which has drawn widespread attention. In the film, the former Vice-President of the United States, Al GORE, talked about his family. His father made a living out of growing tobacco and as a result, his sister was hooked to smoking at a young age and in the end, she died of lung cancer. Al GORE's entire family could not get over his sister's death and his father also felt very guilty. In the end, his father gave up his business of growing tobacco.

Here, I am not criticizing members of the industry. In fact, a number of industries will suffer blows due to the increased intensity in tobacco control and we cannot possibly avoid such a situation. When the Government bans smoking, it should find ways as quickly as possible to help various industries tide over the difficult times and adopt a more practical and effective strategy to encourage people to quit smoking. Members of these industries should also reflect on the fact that the results of tobacco control will ultimately benefit them and even their family members.

Madam President, if we can make steady progress in promoting public health, the number of people patronizing restaurants, looking for entertainment and buying newspapers and magazines will only increase other than decrease. Parents working hard to make a living also need not worry about their children degenerating into smokers. Moreover, there will also be a greater number of

healthy members of the public taking part in economic development and in improving people's lot, and this will translate into greater productivity, more jobs and continued growth in the wealth of society.

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

MR JAMES TIEN (in Cantonese): President, I have never smoked, be it when I was young or as a grown-up, and in my family, my wife does not smoke, nor does my son or daughter, and I am also pleased to know that my son-in-law and daughter-in-law do not smoke either. Of course, it is hardly necessary to mention my grandson, who is just one year old.

Is smoking really hazardous to health and is passive smoking equally hazardous to health? Since I do not smoke, I can only listen to the expert opinions of my friends, particularly those who are doctors. I think society has been concerned about the issue of passive smoking for a long time. I fully support the tabling of this Bill by the Government. Through taking part in the work relating to this Bill, I wanted to ensure that the position of the Liberal Party was given full recognition. It was also due to the fact that our two Honourable colleagues representing functional constituencies had to represent their industries and hence, the message they convey may not be very clear, that I took part in the scrutiny. Therefore, we fully support the enactment of this legislation by the Government and the imposition of a total ban on smoking in places frequented by members of the public, including offices, restaurants, karaoke establishments, billiard establishments, and so on, from 1 January 2007 onwards. This is an appropriate course of action. In fact, the majority of "wage earners" in Hong Kong work in offices and our 10 Members also support banning smoking in offices.

One major reason that the Liberal Party supports this Bill is that the Government will impose the mandatory ban on bars, mahjong parlours, bathhouses, message parlours and nightclubs patronized by people over 18 years of age only in another phase in July 2009, so these venues patronized by a greater number of smokers and tourists can adjust to the arrangements of the smoking ban gradually.

In addition, we also support the Government's amendment to delete the requirement that the managers of no smoking areas must display a sufficient number of no-smoking signs. The reason is very simple. Since these areas have been designated as no smoking areas by law, we think that to further require the mandatory display of so many no-smoking signs will affect the appearance of a place. For example, a smoking ban is already in effect in the Legislative Council Building, so just imagine: since smoking is already prohibited in the Legislative Council Building, if a heap of no smoking signs are posted on both sides of where you are seated, President, is this really necessary? I believe that it is unnecessary to do so.

President, after almost two years of debate on the Bill, the scope of the smoking ban has been expanded significantly. Apart from our initial idea or understanding that the Government proposed to ban smoking completely in indoor places, the outdoor places covered by Schedule 2 have also increased significantly and they include hospitals, the outdoor areas of educational institutions, escalators, public pleasure grounds, beaches, public swimming pools, stadia and the so-called communal quarters.

Of course, enlarging the scope of the smoking ban is definitely desirable to non-smoker members of the public like me, since their health can be even better protected and the situation of puffs of second-hand smoke wafting over, making one feel uncomfortable, can be pre-empted. Therefore, the Liberal Party supports extending the no smoking area to most of the places listed in Schedule 2, in particular, to hospitals and schools frequented by elderly persons and young people.

President, I wish to talk about the issue of school uniform raised by Mr Andrew CHENG here. In December 2004, a group called Committee on Youth Smoking Prevention (Hong Kong) organized a signature campaign. At that time, I also signed in support and called on Mr Howard YOUNG and Mrs Sophie LEUNG to sign as well, since the campaign called for the prohibition of the sale of tobacco products to people wearing school uniforms. Perhaps due to the fact that I do not smoke, I did not have a deep understanding of this issue. On hearing about people wearing school uniforms, the first thing that came to my mind was students in their teens in primary and secondary schools. It did not occur to me that even people in their twenties can also wear school uniforms and even people in their forties and fifties attending extramural programmes can also wear school uniforms. If the sale of tobacco products to anyone wearing a

school uniform is prohibited, will that be feasible? Of course, some vendors selling cigarettes said that if these people put raincoats over their school uniforms to cover them, it would be difficult to tell if they are students. Therefore, on this issue, I believe the most important thing is that this concept of school uniforms is in fact the concept of young people, that is, the concept of people being under 18 years of age. At present, since the law already prohibits the sale of tobacco products to young people under 18 years of age, I believe this is actually a fair approach in dealing with this matter. Conversely, if it is stipulated that young people over 18 years of age wearing school uniforms cannot buy cigarettes, it is not even necessary for them to go home to get changed at all. They only have to turn round, take off their ties and jackets and buy some cigarettes. They can then simply put their ties on again and that is it. In these circumstances, is it possible to implement the measure prohibiting the sale of cigarettes to them?

President, we also have some other views concerning Schedule 2. We understand that at present, tobacco products are not classified as contrabands in Hong Kong, that is, they are not treated as illicit drugs. I believe we should leave a little room for smokers, who are the minority, while catering to the health of the public and the rights of a small number of smokers. I do not use words such as "striking a balance" because the two sides cannot be balanced and it can even be said that the balance is tilted entirely in favour of one side, so all we hope is that a little room can be given back to smokers.

Therefore, the Liberal Party welcomes the government proposal to designate a small area in pleasure grounds such as parks. Of course, the Government's claim is that it is easier to designate 1% of the area in larger parks but it is very difficult to do so in smaller ones, however, we think that the Government should let the departments concerned designate this so-called "small area", which should be as small but also as practicable as possible. This will give the minority smokers and elderly people who often relax in parks and who are addicted to smoking some places to smoke. I think this is a reasonable and sensible approach. In this connection, we in the Liberal Party were not quite sure what should be done either, so we conducted a public opinion survey on whether a small area should be designated as a smoking area in parks. The results show that opinions are equally divided, with 48% of the people surveyed supporting the idea and 43% opposed to it. In fact, public opinion on this issue is equally divided.

Another issue that the Liberal Party opposes is the Government's claim that it is also necessary to ban smoking on beaches. We think that beaches are open areas and even if some individuals smoke, I believe the impact will not be great. We have also looked into the situation in overseas countries. According to the information provided by the Government, at present, all over the world, smoking is prohibited only on several beaches in Queensland and in Sydney, Australia. We have also looked at the other side of the coin. For example, I often go cruising in France and at such places as Saint Tropez, Nice and Cannes in southern France, Malaga in Spain and Sardinia in Italy, smoking is not prohibited on beaches. Take the Waikiki Beach in Hawaii and the beaches in California as other examples, smoking is not prohibited in those places either. Therefore, I believe that if throughout the world, only a few examples of banning smoking on beaches can be found in Australia, and if we in Hong Kong want to follow these examples by banning smoking on beaches, is it really necessary? What will be the actual effects? A puff of smoke will be blown away by wind in a wink.

President, another point on which we and representatives of the business sector and employers have some views is the ban on smoking in communal quarters. The present Bill proposed by the Government provides that smoking be banned in the communal quarters provided by employers to employees. That is to say, if I, as an employer, provides two identical units to employees as quarters, if one of them is taken up by a family of four consisting of a couple and their two children, even if the quarters are provided by an employer, it is not necessary to ban smoking there. If another unit is provided to two or three male or female employees living together, then it is necessary to ban smoking. As another example, if several of my employees rent a unit to live together, smoking does not have to be banned there and it only has to be banned in the quarters provided by employers. Is this really logical?

Another situation where enforcement I believe will also be difficult is the ban on smoking on escalators such as the escalators in Central. In theory, everything sounds fine. It has a cover but its sides are open, moreover, there are stairs on one side. People who use the stairs can smoke but they cannot do so on the escalators. However, in the spaces between escalators — let me see how I should put it — on the landing platforms, that is, on those small pieces of level ground, smoking is allowed. Who will actually be responsible for law enforcement? How much manpower must the Government recruit in order to achieve its goal? President, the Liberal Party concludes that we very much

support a piece of anti-smoking legislation that is reasonable and enforceable. However, we are gravely concerned that although a piece of legislation is passed, it will be difficult to enforce. I am not saying that a law is not enforced but that if it is not possible to enforce it, gradually it will not have much effect.

Finally, the Liberal Party eagerly hopes that the number of smokers in Hong Kong will decrease after the passage of the Bill. I think that apart from enacting legislation, one thing that the Government has promised to do and which we also support as an ongoing effort is education and publicity. In particular, we would learn from the television and newspapers occasionally that the problem of smoking among a lot of young people, in particular, among young women, is deteriorating, so can it be solved merely by enacting legislation? I believe not, so I hope the Government can continue to do something in other areas.

As regards the voting that will take place later, the Liberal Party thinks that some provisions are not reasonable and we have always opposed them. However, the provision on banning smoking on beaches, in communal quarters and on escalators are set down in Schedule 2 among a group of more than 20 items and together with places where we believe smoking should be banned, such as public swimming pools, wetland parks and stadia, therefore, it is not possible to vote on them separately. In view of this, when voting on the entire Bill, the Liberal Party has no choice but to accept reluctantly and — the Government will be happy to hear this — vote in support of the Government on everything.

Thank you, President.

MR LEUNG KWOK-HUNG (in Cantonese): President, I am a smoker. Many of my friends are smokers too. In fact, in last year's debate, I already made my position clear, that I support the concept of "smoke-free workplace". It is because I am a Marxist and I have long been fighting for the rights of workers. So, I cannot possibly accept a situation where workers would have no choice and be forced to be exposed to the adverse consequences of second-hand smoke or cigarette stains in order to land a job. That is why I had abstained in the vote back then. Today, I will also cast an abstention vote. But I wish to say a few words about my views on the development of the anti-smoking campaign over the years.

Many colleagues, such as Mr Martin LEE and Mr Andrew CHENG, are persons whom I very much respect. But I think they seem to have confused the Government's role in making legislation or the purpose of legislation. I think legislation should not perform the role of moral education. To put it in another way, legislation should not serve to prohibit some people from doing something on the ground that it will not do them any good or there will be moral problems. It should not serve such a purpose. Most importantly, legislation should provide protection to people who are entitled to protection in law.

For example, if some people are forced to inhale second-hand smoke, it is necessary to enact legislation to protect them. It is just this simple. But if it is said that legislation is enacted for the protection of smokers too, a very dangerous tendency would arise, because this is tantamount to saying that we must enact legislation to reduce smokers' consumption of cigarettes or to the effect that smokers cannot see any cigarette advertisement. In fact, this is not in the least convincing. If this logic applies, other problems may arise.

For instance, with regard to some controversial obscene literature, such as *Jin Ping Mei* (金瓶梅), some people said that it is not good to the mind and so, let us ban it. Certainly, some other people said after reading it that *Jin Ping Mei* is, in fact, very good, or in book reviews, *Jin Ping Mei* is described as a really good book. This begs the question: What purpose should legislation serve? Is it to prohibit some people from doing something that does not do them any good? Is that so? Or is it to prohibit those people from doing what they like even though their so doing does not cause any nuisance to other people?

So, at a later stage, I felt that the prohibition had been extending farther and farther. It is certainly justifiable to ban smoking in an enclosed workplace or a place that workers must go for their work, because workers' rights should be protected. It is reasonable to ban smoking in an enclosed area because the smoke cannot be dispersed, or in some very crowded places where non-smokers are forced to inhale second-hand smoke. Legislation should be enacted to protect the safety and health of those people who will possibly be exposed to second-hand smoke. But when it comes to beaches, if smoking is banned even on beaches, it would strike me as very, very weird, unless we assume that beaches are as crowded as canned sardines, and that beach goers will line up orderly once they arrive at the beach and the beach will be jam-packed with people and so, when somebody smokes, the people around will definitely be subject to the adverse consequences of second-hand smoke. Otherwise, I do not

see why it is still necessary to take actions against smokers in the open areas. This, I cannot agree.

In fact, the case of parks is the same. Parks are a place for public leisure or for people to do whatever they like. Different parks have different facilities. But why are smokers not allowed to smoke when they are inside the parks? They are not allowed to do so even though other people are not affected. This also does not stand to reason. In enacting legislation, do we intend to make smokers feel that they should be punished because it is morally or politically incorrect to smoke and so, they cannot do it in public places, or do we wish to make smokers understand that they cannot smoke out of sheer selfishness and thus affect non-smokers or smokers (even for smokers, inhaling second-hand smoke is not good to them)? I think there can be no answer if we think with this kind of logic.

For instance, there is plenty of open space in universities. I visited the University of Hong Kong the other day, and as I was holding a cigarette, someone said to me, "I am sorry, Mr LEUNG. But you have to smoke over there please." That is a very small place in the open area. In fact, as many colleagues said — I have doubts about it too — this involves political correctness or moral correctness, but should regulation be imposed by way of legislation? I have grave doubts about it.

Right. Many people asked me why I supported a minimum wage. It is because workers earning wages at the lowest end are indeed in abject poverty, and it is impossible not to provide protection to them. That is why we have advocated the setting of a minimum wage. We will not make legislation and specify in it how much wages workers should be paid in order to be considered enough for them to make ends meet. So, in respect of the smoking ban, this principle should also apply in the making of legislation. This is also why I cannot agree with that logic.

What is more dangerous is that, as I said in this Chamber before, alcoholism will adversely affect other people too. Of course, there is no "second-hand alcohol", but it would do permanent damage to the family tree of a family. It is medically proven that one member in the next three generations of an alcoholic will be prone to alcoholism. Are we going to impose a ban on alcohol? Let me tell Members that there are precedents and such a ban has been tried out before elsewhere. In Russia, Finland and the United States, they had

tried to ban alcohol before, and I mean a complete ban on alcohol. But did it work? If we adopt the same criteria and if we really wish to resolve the problem in a scientific or reasonable manner, why is it that we do not ban alcohol?

We all know that the use of aerosols is detrimental to the ozone layer. Are we going to ban their use too? Air conditioners do not only lead to pollution on streets. It also causes a disease if the indoor air conditioning ducts are not cleansed for a long time; I do not remember the name of the disease and perhaps Secretary Dr York CHOW can throw light on this later on. If we use this logic to deal with problems, there will be too many things to be banned in this world. Can we possibly ban all of them?

It is known that the hamburgers of the McDonald's are not good to health and they will do us no good if we eat too many of them. But will Hong Kong people be prohibited from consuming hamburgers? Drinking too much Coca Cola will lead to addiction, and it will cause obesity and even diabetes. Will it be banned too? If the purpose of legislation is not only to prevent people from being adversely affected by those people indulging in certain habits that can lead to addiction for personal pleasure, but also for another reason and that is, to stop them from doing things that are politically or morally incorrect, that would be most dangerous, and it would certainly develop to a state where all the other things would eventually be banned.

Therefore, I hope that colleagues can think about this. Are smokers sinners, criminals, or ill? Let me tell Members that I am ill. I may be considered a criminal, because when we legislate to the effect that a person, after doing something, will commit a crime in this world, this "crime" is purely invented by us. But I think when we talk about the framework on tobacco control today, we smokers are already not criminals. If I am asked not to smoke, I will stop smoking; if I am not allowed to smoke in the Legislative Council, I will not smoke, and so, I do not commit a crime. But it seems that we have a sin, which suggests that what I have done is a bad thing, that is, I know very well that it does not do any good to myself and it does not do any good to others, but I still keep on doing it. This is what makes it dangerous.

During the entire process for effecting the smoking ban, we had actually been discussing a view and that is, why do we not sacrifice the interest of those people, so as to make things better for other people? Only when work is carried

out on this principle and from the angle of political correctness and moral judgement that smoke-free workplace or indoor smoking ban is eventually extended to cover outdoor areas, to beaches, to parks, and to places where it is impossible for smokers to subject other people to second-hand smoke.

Let me cite another example. If I smoke in a park — in fact, this has already happened as I have smoked there — people passing by would stare at me fiercely and say, "See this 'Long Hair'. Why does he, being a Member of the Legislative Council, smoke in public places?" They will give me a murderous stare and question why I smoke there, as they think that what I do is immoral. If I smoke in the park outside (smoking will be prohibited there in future) and walk up to these people, and if, for instance, I see Mrs FAN when I smoke and if I walk up to her, that is certainly immoral. But if Mrs FAN comes to me instead and say, "'Long Hair', why do you smoke?", it does not constitute immorality on my part. That said, she can still ask me to stop smoking for a while. So, in citing this example, I actually wish to say that it is necessary to give some room to smokers. They should be given some room as long as they do not affect the health of other people, rather than being criticized from a moral perspective. They should not be questioned as to why they would do something that does not do any good to themselves, to other people, to their family and to their loved ones. Even if smokers choose to do it, they are still prohibited from doing so in public places because if he is allowed to smoke in public places, we will be accused of encouraging smoking. But this is wrong. Why? It is because the next step would be to require movies to remove all smoking scenes; on television, there will not be plots that have to do with smoking by all means, and the act of smoking will not appear in drama series, and so on.

However, do Members not consider this ridiculous? We are most strongly against war. But in our movies there are numerous scenes of war; some encouraged war for nationalism; some encouraged holy war for religion; and in some cases, war is waged to epitomize heroism. So, on this issue, nothing can influence me on how I am going to vote. I have listened for a long time, and many people asked me, "'Long Hair', on the question of smoking, why are you a coward, not daring to say anything?" I think I am the minority, and under a democratic system, it is inevitable that the rights of the minority are given unfair treatment. Only through a slow learning process will the community accumulate the experience of respecting the minority. In a religious context, there is heresy, and being a heretic kills, and this is all "witch hunting". We smokers are like witches; everybody is hunting us down everywhere and

once they find us, we will be considered as committing a crime. This is unnecessary.

So, insofar as this issue is concerned, I know that the Government will win a complete victory in the vote today because basically, what the Government has done is not wrong. There is nothing I can do. But why do I speak? As there is no so-called "sunset clause" in this case, I hope Members can take this into consideration in the future. Let me cite a true case as an example. I am not speaking for any bar or tobacco company — everyone knows that I am not on speaking terms with any of these people and I absolutely will not do anything for them. I have been to a place like a disco in Central, and an experiment was conducted on us there. That is, a sample of air was taken 48 times in a minute in a smoking room for tests to be conducted. According to the results of the tests (provided that the results were not cooked up), the quality of the air samples taken there did not contain smoke and it was even found to be better than the air quality in the Legislative Council now. I really wish to ask Members: Given the test results, why are those people not allowed to smoke while they are drinking coffee and listening to music? We must reason this out sensibly. If a smoking room can be maintained in such a state, and when not even the employees will be affected, why are they not allowed to do so? So, I think what it is being done now has become unreasonable. That things have developed to such an unreasonable state is the result of smokers not exercising the slightest self-discipline on themselves — I am one of them. The tobacco companies were too heartless and too despicable by excessively advertising the merits of smoking. That is why things have been going too far, making us criminals and witches. This is, in fact, so unnecessary. I also hope that everyone, including children, will not listen to what those people said. Smokers do not have a sin. They are not criminals, just that they are ill. Thank you.

MR BERNARD CHAN: Madam President, it was two years ago when I introduced a motion into this Council calling on the Government to ban smoking in the workplace. It got far more support than I expected. I was very grateful to all my colleagues here who joined me then in asking the Government for action. I am very pleased to see this Bill now being debated. This Bill will benefit nearly everyone in the community.

According to a study made in 2001, it will save the lives of an estimated 150 catering workers a year in Hong Kong. Second-hand smoke is believed to

cause lung cancer deaths in non-smoking adults, and it endangers the health of people with heart disease, bronchitis and pneumonia. It is also a threat to children with such conditions as asthma, and it can affect the health of unborn children.

On the other side, there are some people in the catering and entertainment sectors who believe this Bill will lose them business. Even if that is true, it will be a small price to pay from the point of view of the community as a whole. There are times when there are conflicting interests, and consensus is not possible. When it is a health issue, the Government and this Council must be decisive.

Ideally, there would be no exemptions to this anti-smoking legislation. However, I think the exemptions that are allowed — in prisons, cigar salons and airport smoking areas — are basically sensible. And I believe it makes good sense to let the District Councils decide on the smoking areas in parks in their own neighbourhoods.

My only worry is that exemptions might turn into loopholes. In particular, we must make sure that the exemption for enclosed ventilated areas in cigar salons and airports does not spread elsewhere. It might be unfair if some establishments could install such facilities and others could not. And more to the point, it would be the thin end of the wedge — we would probably start to see employees being exposed to smoke in the workplace again.

In all other respects, however, Madam President, I strongly support this Bill. Now we have debated for almost four hours, I know the overwhelming majority of the community look forward to seeing it passed. And perhaps, if my remaining colleagues can keep their speech short, the whole of Hong Kong may be able to see this wonderful news in our evening newscast. Thank you.

DR JOSEPH LEE (in Cantonese): Madam President, just now, Mr Bernard CHAN said that we had debated for almost four hours on this Bill. I, as a member of the Bills Committee, believe that many colleagues have discussed the details of the Bill, the merits and the demerits, and what should be implemented and what should not. Wearing several hats, I am a nurse, a worker in the health care sector and a member of the Anti-smoking Campaign. I certainly support the smoking ban and anti-smoking measures.

However, colleagues' arguments seem to be reasonable. I would like to talk about my views about smoking in the past year. I think the legislative intent is to protect public health and protect people from second-hand smoke, in particular, to protect some employees from the harm so that society will become healthier. Of course, through legislation, I would also like to educate the public about the adverse impact of smoking so that those who have not started to smoke know that they should not smoke and the smokers will give up smoking. Finally, we also hope that through legislation, we can change people's behaviour. According to my understanding, this is the legislative intent.

However, I would like to mention one thing. When details of the anti-smoking legislation were discussed and disputes aroused concerning the expansion of no smoking areas from the original proposals of indoor and enclosed places to open space such as beaches, parks, staircases and places ventilated on three sides, I was quite disappointed at the wavering position of the Government during the whole deliberation process of the Bill. As an anti-smoking person, I applaud the Government's initial clear indication that these places would be no smoking areas as the purpose is exactly the legislative intent I just said. However, during the discussion process, the Government sometimes said that smoking might be allowed in some places but disallowed in others. This made me at a loss as to what to do and wonder where I should stand. Should some places be designated as no smoking areas? I felt confused. Moreover, as the Government's proposals are bundled up, I have to support the Government first in the voting later on. Otherwise, it is impossible for us to discuss the amendments. In my opinion, the occurrence of such a situation and the adoption of such an approach by the Government is ridiculous and lamentable! What should I do?

I think the Government can make some changes in some areas. For instance, Mr Andrew CHENG's amendments are quite reasonable. If I support Mr CHENG's amendments while trying to support the Government, Mr Andrew CHENG's amendments may not be passed. I find such a rule of the game really baffling. Of course, this does not mean that I will change my anti-smoking position or my support for the smoking ban. But I would like to say that this is really frustrating. We feel that as the Bill has been discussed for so long, the law should be enacted as soon as possible. Of course, many colleagues also query whether this is possible. Let us wait and see. As I just said, and Mr LEUNG Kwok-hung has also pointed out a very good phenomenon and that is, the arguments concerning the Bill are not only related to the details. Rather, on

the premise of health, the focus is on whether what we said are morally correct or politically correct.

My personal opinion is that the discussion is not really about whether smoking on the sand or rocks of a beach is allowed, or as some colleagues said, whether smoking is allowed on downward escalators but prohibited on covered escalators. Mr LI Kwok-ying also said it seemed that smoking while sitting on a bench is not allowed but it is allowed while standing next to it. We are not discussing such confusing problems. On the contrary, I think under the current situation, colleagues may face a question as to whether it is morally correct and whether it is correct on the major issue of health. As Mr Tommy CHEUNG said, he in fact supports the Bill, but it is difficult to say so because the industry requests his support and he has to reflect their views. In the interest of health, the smoking ban is indisputable.

However, is it politically correct? If a Member has taken the wrong side and there are so many amendments waiting for his votes, once he has cast a wrong vote, how can he defend himself if he is condemned by journalists holding microphones outside the Chamber? I think it is very difficult to strike a balance when participating in this game. As Mr LEE Cheuk-yan said, the safest way is the implementation of a segregation policy because nothing needs to be considered except segregating those who are exposed to second-hand smoke from the smokers. And this is relatively safe and feasible. Having heard so many proposals, I share Mr LEUNG Kwok-hung's view that undeniably we need to pass the law today in order to protect the health of Hong Kong people. But this does not mean that after passing the law, we have to judge the smokers who are innocent and smoking is their choice. However, the Government is absolutely obliged to protect people from second-hand smoke, no matter they are the employees or pedestrians. We must handle the issue with care instead of acting at the dictates of our personal preference.

Mr LEUNG Kwok-hung has just cited a very good example. When I am smoking and the President is walking towards me — She chose to do so — she should not ask me to put out my cigarette. This example tells us that we should not get into a dead end, trying to judge people by the law, which is unfair. I hope that after the passage of the Bill, we can adhere to this principle. Of course, I support the Bill but I hope that after the Bill is passed, the Government will really enforce the details discussed by us. However, can enforcement be really possible on beaches or in parks?

Besides, after the law has come into effect, to what extent will Hong Kong people's health be improved? How many people will not be exposed to second-hand smoke or get rid of smoking for good so that the resource demand for health care service in Hong Kong can be reduced? Can the Government provide data on a regular basis, say three or five years, so that the public can know that this is feasible? In fact, I originally had nothing to say if not because of the persistent arguments on some technical issues, personal preference or judgements over the past year. Of course, these arguments will have a positive effect on smoking or the anti-smoking cause. But my personal feeling is that I have been criticized as one of the members who seldom attended meetings of the Bills Committee. One of the reasons is that the discussions of the Bills Committee have focused on dealing with emotions rather than specific problems. I hope through this debate and passage of the Bill into law, Hong Kong people will know that smoking is really bad. Nevertheless, they can choose between smoking and not to smoke. I only hope that when people exercise the choice, they will also respect the others and will not expose the others to second-hand smoke. Thank you, Madam President.

MR FREDERICK FUNG (in Cantonese): President, it is a global trend to impose tobacco control. As the World Health Organization (WHO) has passed the Framework Convention on Tobacco Control (FCTC), China which is a signatory state put it into effect in January this year. Hong Kong is thus obliged to fulfil the requirements laid down in the Convention. A Bills Committee was formed in May last year and it has held 57 meetings ever since. Though this piece of law is highly controversial, I am very grateful to members of the Bills Committee who have been working diligently in the past year or so in scrutinizing the Bill. The Hong Kong Association for Democracy and People's Livelihood (ADPL) and I support this Bill, for it enables Hong Kong to comply with the requirements laid down in the FCTC. It is also hoped that this will help speed up the tobacco control work of our neighbouring districts, so that we can work together for a healthier and fresher region.

In a report released by the Census and Statistic Department (C&SD) in August this year, it is pointed out that at present, nearly 30% of the wage earners working indoor are forced to inhale second-hand smoke with a 3 m radius. Actually, the hazards of second-hand smoke are numerous. A research report issued by the Faculty of Medicine of the University of Hong Kong confirms for the first time that second-hand smoke will increase the risk of dying from stroke

by 50%, and that over 1 000 persons die from heart diseases, circulatory diseases, pulmonary diseases and cancers every year as a result of exposure to second-hand smoke at home or in the workplace. Therefore, persons suffering from prolonged exposure to second-hand smoke bear a higher risk of developing smoking-related diseases than even smokers.

To reduce the hazards of passive smoking and to meet the international standard, the ADPL considers that the Government must prohibit smoking in the workplace as soon as possible to protect the health of wage earners. However, I have met with representatives from the entertainment industry and fully appreciate the problems and hardships faced by them at present. Owing to the special mode of operation of certain entertainment establishments, the trade is worried that the business may be affected by the smoking ban. Therefore, the ADPL also agrees with the Government's proposal that a total ban on smoking in entertainment establishments which only admit persons aged 18 or above be deferred to July 2009. We think that this arrangement may on the one hand foster a public recognition of smoking ban in the workplace first, and on the other provide a longer adjustment period for the entertainment industry so that its employers and customers may gradually get used to the smoke-free environment. In this way, disputes may be avoided, which will be beneficial to all parties. The ADPL does not agree with the amendment proposed by a certain Member which suggests setting up smoking rooms in these establishments as exempt areas.

Moreover, Article 13 of the FCTC stipulates that governments are obliged to ban all tobacco advertising. However, tobacco advertising is a source of income of licensed hawkers. To alleviate the impact of this policy change on the grassroots, licensed hawkers in particular, we agree with the Government's present proposal of extending the adjustment period from one year to three years to ensure sufficient time is provided for licensed hawkers to find alternative source of income.

In the 181st paragraph of the Bills Committee's report, the Government proposed to repeal the requirement on the display of no-smoking signs. The ADPL considers that the repeal will give rise to unnecessary disputes. We also think that the Government has to do a good job of implementing measures to complement the smoking ban, and step up its effort in publicity and education, particularly in explaining the smoking ban to visitors. We thus support the amendment proposed by the Chairman of the Bills Committee, which requires

managers of venues and public transport carriers to display no-smoking signs in English and Chinese.

According to a report released by the C&SD in August, over 60% of the smokers formed the habit of smoking before the age of 20. Many smokers started smoking out of curiosity at an early age and became addicted to it, but they failed to quit smoking when they grew up. Therefore, to minimize the hazards of smoking, attention must be focused on prevention, preventing teenagers from attempting to take the first puff out of curiosity at early age. If we can do a good job on this front, where no one wants to become a smoker, we can prevent smokers from passing the habit to the next generation. We think that schools should be the starting point, for every child now enjoy nine-year free education and do their studying at schools. If we can establish a smoke-free campus, the chances of teenagers being exposed to tobacco products will be reduced. The ADPL also supports Mr Andrew CHENG's amendment which proposes to legislate on prohibiting the sale of tobacco products to persons in school uniform. As the existing legislation related to places of entertainment also carries similar provisions on betting branches and amusement centres, we think this amendment should be practicable.

The ADPL also considers that the Government should adopt a proactive approach to addressing the problem of smokers, which includes identifying ways to help smokers to quit smoking and prevent non-smokers from attempting to smoke. Actually, the Government needs to strengthen its smoking cessation service, so that a smoke-free community can really be established in the long run. However, in this course, the Government must allow some room and buffer for trades affected and elderly smokers, for only this can avoid conflicts in society.

President, there is a point that I consider strange. The ultimate aim of the Government in proposing this Amendment Bill on tobacco control is to discourage people from smoking, for smoking will affect our health, and the ultimate aim of discouraging people from smoking is that no one will buy cigarettes anymore. In that case, why does the Government not simply set the smoking ban as its ultimate aim? On the one hand, it allows people to buy cigarettes, but on the other it urges people not to smoke. It is the Government which allows people to buy cigarettes, but it is also the Government which urges people not to smoke. Under this circumstance, the relevant ordinance is contradictory to the reality. I am really puzzled by this.

Finally, I would like to quote a line from a young woman, Montagut CHUEN, who was taken ill with stage III nasopharyngeal cancer at the age of 22, and I quote: "I only want them to understand that I am not depriving their freedom to smoke and is not discriminating against them, I just hope that I can have the freedom to breathe fresh air." Ah CHUEN is now 24 and she has been smoking for seven years. After suffering from this serious illness, she now focuses her effort on book writing, designing anti-smoking bookmarks and printing T-shirts to discourage people from smoking. I believe what Ah CHUEN is now doing makes us aware of the harms of smoking. I think we as Members have the obligation to work together to promote the anti-smoking cause.

Madam President, I so submit.

MR MARTIN LEE (in Cantonese): Madam President, today I am limping but it has nothing to do with smoking or Mr Albert HO's case. (*Laughter*)

Madam President, we are now waging a world war, which has in fact lasted for many years. We are waging a battle against the tobacco companies, not only in Hong Kong but also in the whole world. That is why the WHO has formulated the Framework Convention on Tobacco Control. Since our country is its Member State, Hong Kong is also a member. We are now waging this war which has come to a very critical juncture. Many Southeast Asian countries, as well as our country, are now watching how the Bill under scrutiny will fare. We have almost taken an erroneous step, leading us to the edge of a precipice. Fortunately, we have made a timely turn which I will explain later.

"Long Hair" seems to feel himself a sinner. In fact, he is certainly not. He is a victim instead. I am sure when he took the first puff, he did not know that smoking is addictive. I believe that when he took the first puff, he was a teenager, not knowing that nicotine would play a funny trick on him to make him become a heavy smoker. He is a victim but when he smokes in front of non-smokers, he causes harms to them. I have said in this Council that when you smoke in front of people, you are harming yourself when you inhale the smoke and you are causing harms to the others when you exhale it. It is as simple as that.

Mr Frederick FUNG just mentioned one thing. I remember when I was a member of the Basic Law Drafting Committee in around 1986, there were four members in a subgroup on the relations between the Central Government and the Special Administration Region (SAR). They were smoking all the time. We put them at one side and sat as far as possible from them. One day when we were having tea, I suggested that residents of Hong Kong SAR should not smoke. In response, they said, "Martin LEE, how come you say you support human rights and freedom? How can this be written into the law? This is a kind of freedom." I agreed and then suggested that residents of the Hong Kong SAR have the freedom to inhale smoke but not the freedom to exhale it. Everybody knows that I had proposed a lot of good ideas which were, however, not included in the Basic Law.

Regarding this building, I have made a lot of efforts to turn it into a smoke-free haven. Before I became a Member of the former Legislative Council, I already found that there were too many smokers. I had lobbied for 12 years and eventually room 217 on the third floor was designated as a smoking room and smoking was banned in all the other rooms. At that time, some colleagues asked whether the air conditioning could be improved. I disagreed because without air conditioning, they would smell the smoke of other people and in addition to their own smoke, they would stop smoking. This would be the best idea.

Why did I say all this? In fact, many years ago when I was studying in the University of Hong Kong, I did try smoking. One day when I was playing a card game with six people in a tiny room, they all smoked except me. I asked them if they could take turns to smoke? They refused, saying they had the freedom to smoke. What should I do? I went out to buy a pack of cigarettes and lit 10 cigarettes in one go. I then inhaled and exhaled the smoke. Eventually they all agreed not to smoke.

Madam President, there is already a consensus in the medical sector that second-hand smoke is hazardous to health. Recently, the Surgeon General in the United States published a report in June this year entitled "The Health Consequences of Involuntary Exposure to Tobacco Smoke". Here I have an Executive Summary which was also published in the *Washington Post*. I would like to read out a few lines: "The scientific evidence is now indisputable: Secondhand smoke is not a mere annoyance. It is a serious health hazard that can lead to disease and premature death in children and nonsmoking adults". It

went on to say: ".....exposure to smoke at home or work increases the nonsmokers' risk of developing heart disease by 25 to 30 percent and lung cancer by 20 to 30 percent. It is especially dangerous for children living with smokers.....", and "The report.....leads to one inescapable conclusion: Only comprehensive smoke-free workplace laws can protect all workers and the public from the serious, proven health risks of secondhand smoke.....Public-health advocates will use this report in every state and every city and every workplace, restaurant and meeting place that doesn't already have a comprehensive smoke-free law". Mr Ron DAVIS, President-elect of the American Medical Association said, "this report should be a wake-up call for lawmakers to enact comprehensive clean indoor air laws that prohibit smoking in all indoor public places and workplaces." In the report, there is a very important line: "The industry (referring to the tobacco industry) has funded or carried out research that has been judged to be biased, supported scientists to generate letters to editors that criticized research publications, attempted to undermine the findings of key studies, assisted in establishing a scientific society with a journal, and attempted to sustain controversy even as the scientific community reached consensus".

In fact, Gladys KESSLER, a Colombian District Court Judge, whom was just mentioned by Mr Alan LEONG, published a very long judgement on 17 August this year. I would like to read out some of the paragraphs because it is really enlightening. She said, "As awareness in concern about the adverse health risks associated with smoking began to grow in the early 1950s, defendants began developing cigarettes they internally referred to as health reassurance brands in an effort to keep smokers in the market. For several decades, defendants have marketed and promoted a so-called low tar or low nicotine cigarette using brand descriptors like light, ultra light, mild and medium, and claims of low tar and nicotine to suggest to consumers that these products are safer than regular, higher tar cigarettes". But she went on to say: "It was not until 2001 that the public health and scientific communities generally recognized what the defendants have long known internally: there is no meaningful reduction in disease risk in smoking low tar cigarettes, as opposed to smoking regular cigarettes." It is because they will inhale the smoke deeper and stronger.

Madam President, at the start of scrutinizing the Bill, I made one point clear. I said after decades of efforts by the medical sector and awakening of many people in society, many smokers now know that smoking is hazardous to

health. Meanwhile, many youngsters refuse to take the first puff. What did the tobacco companies do? They have joined forces to cook a plot in order to deceive people into believing that it is less harmful to smoke the so-called mild and light cigarettes. In that case, what they have to do is to switch to other brands of cigarettes and need not quit smoking. At the same time, the youngsters may think that it is no good to smoke regular cigarettes, but it is less harmful to smoke the light ones. So they will try. However, once they have tried it, they will become addicted to it and cannot quit because the tobacco companies have added nicotine in the cigarettes. I believe "Long Hair" has also tried to quit smoking but it is very hard because of the nicotine deliberately added by the tobacco companies. The smokers will thus become addicted to it and cannot kick the habit. So, we should not let these tobacco companies continue to mislead and deceive the people into believing that it is not necessary to quit smoking if they switch to the so-called light cigarettes. We can restrict the continuous growth of their market only by doing so.

Madam President, before I delivered my speech, I had talked to many medical practitioners. But in her judgement, the Judge said, "Defendants' campaign of deception has impacted Americans' decisions to smoke. As a result of defendants' conduct, health-concern smokers have switched from regular cigarettes to those with low reported tar yield rather than quitting smoking altogether. Smokers of light and ultra light cigarettes are less likely to quit smoking than are smokers of regular cigarettes. In short, defendants' concerned campaign of deception regarding low-tar cigarettes has been a calculated and extremely successful scheme to increase their profits at the expense of the health of the American public."

How should the battle be fought? We should unite together and we will win the battle not only with the efforts of a country or a region but with the efforts of the whole world. It does not matter whether you follow me or I follow you. What is the problem of following the others? Is smoking only banned on the beaches in Australia? What is the problem of following the others? If we go down the path of health faster, the death toll will be smaller. What is the problem? That is the direction.

Madam President, last summer I was extremely shocked because I could not believe that the Government could be influenced by the tobacco companies in Hong Kong. The Government was so afraid when they mentioned the possibility of suing it that a grandfathering provision, meaning no retrospective

effect, was added to the Bill. Why did I mention the English term? Because it is not grandfathering. The Government not only said that Mild Seven could continue to use the brand name after 20 years' business, it also said that it was not too late for the brand name to register. In a nutshell, registration is possible as long as the legislation has not yet come into effect. This should be called grandbabying. I really do not know Hong Kong's tobacco companies are so influential on the Government. Fortunately, the Government has made a timely turn. In fact, the Government should not be worried because, according to a newspaper report, Philip Morris said that they also agreed to such an arrangement. Even the Japan Tobacco Inc. also said that they were just seeking legal advice rather than resorting to litigation.

So, I hope the Government will enforce the law after enacting it. If they still use such words as their brand names, they should be prosecuted. In all such lawsuits in the world, the tobacco companies have always been the losers. We in Hong Kong should not be afraid of losing the case because we will certainly win. Besides, members of public should note such lawsuits.

Thank you, Madam President.

MR KWONG CHI-KIN (in Cantonese): President, there is an advantage in speaking after Mr Martin LEE because I only have to say that I agree with what he said and need not add anything. Clearly this is a trick used by the legal profession, just like the situation where three Judges sitting in the Court of Appeal when the first one has delivered a detailed judgement, the other two need not say anything other than "I concur".

Everybody knows that my political position is a bit different from Mr Martin LEE's. But his anti-smoking position is highly respected by the community organizations. He is a veteran in the anti-smoking sector. I hope he would not mind my saying so because he is really my senior.

However, after hearing the speech of Mr LEUNG Kwok-hung, who has just returned to the Chamber, I have some mixed feelings. Mr LEUNG Kwok-hung said that the majority seemed to be oppressing the minority and the smoking minority were being deprived of their human rights. I will generally listen to Mr LEUNG Kwok-hung's speeches very carefully although our political convictions are different because his speeches are usually very logical and very

interesting. But this time I beg to differ from what he said in his speech. However, he has also admitted that the smokers and the tobacco companies were too hegemonist in the past. I hope he will not think that the legislation is a means employed by the majority to oppress the minority. I do not think the Government will do so. Colleagues who support the anti-smoking campaign will not oppress the minority. Neither will Mr Martin LEE infringe upon the human rights of the smoking minority.

However, should the rights of smokers be unrestricted? I hope the smoker colleagues in this Council should at least reconsider this point. The smokers' right is not unrestricted. Mr LEUNG Kwok-hung, unless you do not consult the doctor or go to the public hospital, otherwise, we are actually subsidizing your medical bill. You are not deprived of the right to smoke. We are not saying that smoking is totally banned. We only restrict people to smoke in public areas and indoor public places so that the non-smokers can have the right to fresh air.

Before becoming a Legislative Council Member, I once heard a speech by Mr Martin LEE which I thought was very enlightening. He said, "We are not opposing you to inhale the fume of smoke, we oppose you to exhale it." One day when I delivered a speech in a secondary school, I borrowed this famous line of his — Mr Martin LEE, I had pointed out that it was borrowed from you — I do not oppose you to inhale the fume of smoke, I oppose you to exhale it because your smoke affects other people. I hope Mr LEUNG will be reasonable and refrain from saying that the majority are oppressing the minority.

Since the harms of smoking are well-known, it is the global trend to make it more and more inconvenient to smoke in public places. But this trend will help the smokers quit smoking easier and they should bear the inconvenience. Mr LEUNG Kwok-hung, this in fact helps you kick the habit. It is indeed less convenient to smoke in public places, but this helps you quit smoking and your health will improve and save our medical expenses. I hope you will appreciate our good intention. This is for your own good, instead of oppressing you.

Dr Joseph LEE criticized the Government for its vague position and policy. Here I have a piece of newspaper cutting from *Ming Pao* today with the headlines: "The smoking ban legislation may pass today and the Government considers setting up smoking rooms in restaurants." On seeing this, I was

extremely shocked because the catering industry has given a lot of support to the Government. Even though the law has not come into effect, it has launched a campaign in advance so that the patrons can adjust to the regulation early and smoke-free restaurants can be promoted. The Government should not back-pedal because the way forward is to promote a smoke-free public place. But on the other hand, the Government said that it would consider the setting up of smoking rooms. Even the industry thinks that this may not be effective. I think the Government should not conceive such an idea which may send a very confusing message to the public and the industry who may wonder whether the Government really aspires to promoting smoke-free restaurants or intends to back-pedal in the middle of the course. As we have been promoting a smoking ban and a smoke-free environment, we are a bit disappointed at the Government.

Having said that, today is a great day for those community organizations which promote the anti-smoking and smoke-free campaign. In fact, friends of mine do not know what the centre of contention is in the Legislative Council and why the controversies have lasted for so long and wonder whether this will hinder the passage of the legislation. If our examination of the Bill can be completed and the Bill passed today, this would be a day for celebrations. However, I hope the Government, after the passage of the Bill, will seriously allocate more resources, particularly for promoting anti-smoking education and publicity among young people and students. Now some community organizations which claim to be promoting the anti-smoking message to youngsters are actually receiving donations by tobacco companies. I am really reluctant to criticize them, and I believe these organizations are sincere. But why should community organizations accept sponsorships by tobacco companies in order to meet their recurrent expenses? According to my understanding, these activities have penetrated into many schools, such as lion dance groups, which are also subsidized by tobacco companies. I do not want to criticize these friends. But the Government, as the policy drafter, should find this problematic. Is it because the Government has not provided sufficient resources to these organizations that, as a result, they have to receive donations from tobacco companies? In the international community, this is a great ridicule of the anti-smoking campaign in Hong Kong. Morally it is also problematic for anti-smoking organizations to receive sponsorships from tobacco companies. The Government is duty-bound in this regard. After the passage of the Bill, I hope the Government will allocate sufficient resources to these community organizations in order to enable them to tie in with its effort in

promoting a smoke-free environment and instil the awareness of no-smoking into the people, particularly the young students.

Thank you, President.

MR ALBERT CHAN (in Cantonese): President, first of all I have to declare that I do not smoke, I do not like people smoke and I hate the smell of smoke — "Long Hair", you need not leave immediately. I fully support the spirit of the Bill because a smoking ban is a good measure to the general public as well as the smokers.

Regarding the harms of second-hand smoke and the hazards of smoking to health, the medical sector has conducted many studies and conclusions have been drawn which I fully recognize. Despite all these principle, concept and ideal, I think the most important responsibility of the Legislative Council is to study the clauses of the Bill. We have to examine the contents of the provisions.

When the smoking ban legislation was first drafted, it was only concerned about imposing a smoking ban in indoor places. But later, in response to Members' request, the areas subject to a smoking ban have been expanded to such an unlimited extent that even beaches, parks, and so on, are all included as no smoking areas. I think Secretary Dr York CHOW should give up the post of Secretary for Health, Welfare and Food. Rather, he should assume the post of Secretary for Constitutional Affairs. In that case, he would be warmly welcomed and supported by Members of the democratic camp because if functional constituency elections are changed to full direct elections, it will be a most benevolent policy. The Secretary has made a lot of changes, and of course, many discussions and consultations concerning the Bill have also been conducted. An initial quantity change has become a quality change. The implications of the whole Bill may not have been foreseen by the Government at the initial drafting stage, and many more problems have been included in the study. Of course, many Members, in particular those who oppose smoking on moral high ground, soon got the Government's consent before extensive and numerous amendments were introduced to the Bill.

I remember that when we examined the Bill on legislation on Article 23 of the Basic Law, many Members of the Democratic Party emphasized time and

again that we must look into the details of the law. "Devil is in the details" has become a pet phrase. If we look at this Bill from such a perspective, the angel-like Bill has become devil-like because the major problem is that the general public and smokers may inadvertently commit an offence and be prosecuted. And ignorance of the law is no defence. Eventually, they would be convicted and penalized.

I think we must ensure that any legislation is clear, and its enforcement impartial, fair and open. Many Members mentioned that no-smoking signs should be posted everywhere to remind people of the smoking ban. I would like to clearly tell Members in the Chamber that even members of the Bills Committee are aware that it is absolutely impossible to let people clearly know smoking is prohibited in all no smoking areas. Such a defect will surely lead to hundreds or even thousands of people being prosecuted due to having inadvertently committed an offence. In Tin Shui Wai and Tung Chung, I have often received people's complaints that they have been prosecuted for cycling on forbidden tracks because there are many gaps along the cycling track, where cycling is prohibited at a 10-m-odd-long section. Without any signage, people only realize that cycling is not allowed on that section after being prosecuted. The traps set by the Bill will be more numerous than that of the cycling track by thousands, tens thousand or even million times. If Members, with full knowledge of this situation, insist on passing the Bill, I think that they would have failed their duties. Of course, Members who are standing on moral high ground may think that in order to protect the welfare and health of the 7 million people and the health of our next generation, there is nothing we can do even though innocent smokers are prosecuted because their sacrifice is for a political cause. They had better refrain from smoking at any place.

Regarding the harms of smoking, Mr Martin LEE has just mentioned them all. I would like to call Mr Martin LEE the "Uncle of Democracy". In my opinion, he can assume the role of an anti-smoking pioneer, or even the role of LIN Zexu by burning all cigarettes and banning the sale of cigarettes in the whole territory. A comprehensive ban of cigarettes might be a better measure. If he wants to wage a war against the tobacco companies, please declare a full-scale war by formally stipulating that cigarettes are equivalent to narcotics and smoking and sale of cigarettes are both prohibited. The situation now is very ridiculous. Now the Government has imposed a high duty rate on cigarettes. The American Revolution was also triggered by taxation because "no taxation without representation". Paying a high duty, the smokers are also

subject to stringent regulation. Of course, smoking is their own choice. But the major problem is that if cigarettes are considered to be equivalent to narcotics, causing similar harms to the people, they should be put in the same category as marijuana, illicit drugs and poisons subject to a total ban in order to pre-empt so many traps in the legislation.

The scope of the Bill is very wide, ranging from indoor to outdoor places as I just said. But now, as we can see, there are many contradictions in the logic of regulation. For instance, why is a smoking room set up in the airport when smoking is not allowed in all indoor places? Why can the Ocean Park designate a smoking area? We can see from many provisions that when the Government takes into account of some special circumstances and the need of some unique social groups, it will not mention the hazards of smoking to health and the serious problem of smoking to the people anymore. Why is smoking not totally banned in the airport? Because of the tourists. Why is there a special arrangement in the Ocean Park? Because of the tourists. Why is smoking not banned in hotels? Also because of the tourists. Is the health of the tourists the least important factor to be considered? We have attracted tourists to Hong Kong to spend money. If they die of smoking, does it have nothing to do with us? So, if we take a look at the provisions — "Tai Pan" keeps nodding — we can see that the logic and rationale do not hold water.

Just now, Mr KWONG Chi-kin mentioned that smoking is a personal choice, but health problems will lead to pressure on our medical system. I wonder if drinking of wine is not harmful to people's health. In fact, alcoholism is equally detrimental to health. Earlier on, a member of the public died of excessive drinking because alcohol is also harmful to the liver. On a more far-fetched note, drunk driving will also lead to accidents. For instance, a traffic accident caused by a bus yesterday led to one death and 12 injuries. Traffic accidents will also pose tremendous pressure on our medical system. Some simple acts of people such as sex will lead to heavy pressure on our medical system if they are not cautious enough. The Government cannot selectively prohibit certain acts simply because they will cause adverse impact. Can it just ignore the others? What is the logic of the legislation.

Regarding this Bill, I absolutely think that only a small number of inconsiderate smokers will exhale smoke without regard to other people. When I see people smoking in front of me, I have to make a zigzag detour in order to

avoid the second-hand smoke. This is the inconsiderate behaviour of a small number of people. But the present problem is that the majority are unhappy with the inconsiderate behaviour of the minority, as a result, it turns out to be the despotic rule of the majority. I hope Members will understand that when smoking is banned in a whole building, in the parks, restaurants, karaoke establishments and mahjong parlours, the only option for the smokers is to smoke at home or kick the habit. I congratulate WONG Yuk-man on having quitted smoking. He began to quit smoking not because of this smoking ban legislation but because he has become a Christian. If government control is so strict, the smokers will be forced to smoke at home. If smoking is prohibited in mahjong parlours, the smokers will not go to mahjong parlours. They will play mahjong and smoke at home instead. What will happen to the children at home then? If friends of mine who oppose smoking emphasize so enormously the harms of smoking, the law should stipulate that no smoking is allowed in front of children or inhaling of smoke is allowed but not exhaling of smoke. Smoking should also be banned when a Filipino maid is around because the Government intends to protect their health. The Government's stringent tobacco control in public places will most likely force the smokers to smoke at home. When the law has come into effect, the children will suffer because their fathers used to smoke only one or two cigarettes at home after coming back from mahjong parlours or karaoke establishments. But now they will smoke all the time at home.

I have also received complaints from members of the public about them being affected by the second-hand smoke from residents at lower floors of their homes. Such cases are real. I told them that this was not regulated by law because the smokers were smoking at home and the fume of smoke came in through the window. Even when the new legislation has been passed, it is impossible to regulate this. Have Members considered and examined whether, after the passage of the law and imposition of numerous controls, there will be other sequelae or side-effects? I am very worried. If Members stand on the moral high ground and uphold idealism without dealing with the practical problems, this will lead to a chain effect and the sequelae will be more serious. Now as parents are not allowed to smoke at places other than their home, they will smoke in front of their children. In that case, who should be responsible for the children? I hope the Government should further amend the legislation in order to ban smoking in places where children are within 20 m of the smokers. I think only such logic is correct. However, the Bill is not drafted in such a way — "Tai Pan" keeps nodding — but the Bill is not drafted in such a way.

There are many contradictions and absurdities. How can the Government protect members of the public?

So, this battle — Martin said earlier that this is a battle against the tobacco companies. I would like to join him in the war, but I know that the innocent may also suffer. He wants to be a hero, or the general in charge of the war. That is fine. But the war will lead to a lot of casualties and many innocent people will be targeted and prosecuted. If the Government wants to wage the war, it should target it against the tobacco companies by imposing a complete tobacco ban. I think such an approach will be more reasonable and appropriate as far as all parties are concerned.

President, I have proposed several amendments, one of which is to request for an exemption for mahjong parlours in the whole territory because there are only 40-odd licensed mahjong parlours. A total smoking ban will lead to the unemployment of workers in these establishments. Unlike Los Angeles or other cities, Hong Kong's unique feature is that its proximity to Shenzhen, so people can cross the boundary in 30 minutes. The entertainment business in Hong Kong has been declining. In the past, night life in Hong Kong once flourished. But as people go northward for development or other activities, the entertainment business in Hong Kong has been in the doldrums. If the Government steps up the anti-smoking measures, it will deal a fatal blow to the entertainment business. Smoking is hazardous to health, but people's livelihood will also be seriously affected if a smoking ban brings these businesses into demise. I have dealt with a lot of family problems caused by unemployment or joblessness in Tin Shui Wai and Tung Chung. I personally came into contact with a middle-aged man who was in his fifties. I would not call him uncle. This middle-aged man eventually committed suicide because he could not find a job. So, the Government said that smoking is hazardous to health, but financial difficulties will make people feel desperate and hopeless, and such impact is equally fatal.

My amendment seeks to set up a smoking room on entertainment premises. Regarding the outdoor places, if the Ocean Park is allowed to designate a smoking area, there is no reason to prohibit other places from doing so. Besides, as regards some large-scale school sponsoring bodies, such as St Stephen's College, I do agree to imposing a smoking ban in the school campus. But the area of some school campuses is very large and the staff, after finishing

kitchen or cleansing work, may want to smoke, but they would have nowhere to do so if a total smoking ban is implemented. Thus their daily life will be greatly affected. We should pay attention to this point. So, in my amendment I propose to designate a smoking area in certain places.

Thank you, President.

MR ALBERT CHENG (in Cantonese): President, regarding Mr Albert CHAN's speech, there are many points that I agree. Basically, we should implement a total smoking ban.

The legislation is fraught with deficiencies. After the Bill has been deliberated for 57 times, Mr Andrew CHENG, as Chairman of the Bills Committee, has made a lot of efforts. Why is the law not perfect? Because we have Members like Mr Albert CHAN, "Long Hair" and Mr Tommy CHEUNG. President, this is a kind of compromise without which we cannot make one step forward today. Secretary Dr York CHOW, I can tell you, I am not satisfied with the legislation. But after having discussed it for a decade, we have to pass it at any rate.

I would like to remind Members that on 20 October 2004 of this term of the Legislation Council, when I was a newly elected Member, Mr Bernard CHAN moved a motion. The wordings of the motion are: "That this Council urges the new Secretary for Health, Welfare and Food to actively expedite the implementation of a total smoking ban in workplaces so as to safeguard public interests and protect the public from the health hazards of passive smoking, and to step up anti-smoking efforts to combat the problem of young smokers." At that time, as a newly-elected Member, I proposed an amendment to his motion, urging the new Secretary for Health, Welfare and Food to actively expedite the implementation of a total smoking ban in workplaces and at the same time, take proactive action to expedite the implementation of a total smoking ban in restaurants and air-conditioned indoor public areas. This is my first amendment and the only amendment which was passed without controversy during this term. I was very happy about that. Today, two years later, I see that the Secretary has eventually introduced the legislation. Here I would like to thank him and applaud his effort although I am not quite satisfied with this legislation.

Why is it impossible to perfect the legislation? Why are there so many loopholes? Just as I said, it is because our views are so different. Some Members support the Bill because of workers' welfare but many others have to express different views for the sectors they represent. Mr Albert CHAN, we are not standing on moral high ground. Rather, it is a matter of life and death. Smoking is not a moral issue, it is a matter of life and death.

Before I attended the Council meeting today, I applied to the President for consent to bring some props into the Chamber but was rejected. I respect the President because I am not "Long Hair". Otherwise, I will take a video recorder with me and replay the API broadcast daily on the television by the Anti-smoking Committee. The API, which has struck root in the minds of people, can be heard when driving and seen on television at home. In the film, a child was holding the hand of a policeman to ask for help. I would like Mr Albert CHAN to play that role. If I were working in the Tobacco Control Office, I would request to have Mr Albert CHAN and "Long Hair" to play the lead role. Instead of fetching the police, the little child could come to us and said, "Members, my dad is dying! Why are we still exposed to second-hand smoke? Please pass the law expeditiously." Today, there is an opportunity for us to pass the legislation. Unfortunately, the President did not allow me to play the API and I am not eloquent enough. In fact, I have made a version in which the child is holding the hands of "Long Hair" and Albert CHAN. I would like to pose the film on YouTube and may do so tomorrow.

In fact, I would like to mention one point. Smoking is not as simple as that. Take junk food as an example. It is hazardous to health. But can it be prohibited? Can we prohibit drinking of wine? But smoking is different. Even though I do not smoke, I will be suffocated to death by second-hand smoke. It is really fatal, no kidding. It is really fatal. We have to protect the employees' interest. Honestly, they just work for their employers and should not risk their lives. A precedent has already been established in the United States, according to which, the flight attendants of an airline had won the case against their employer on the ground that they suffered from cancer due to second-hand smoke. It is indisputable and further disputes on this are just a waste of time.

Now, under the final compromise, we hope the Bill can be passed today and the smoking ban can come into effect on 1 January. Of course, I am not satisfied with the Bill. I am not satisfied with the exemption for bars and

mahjong parlours. I am extremely unhappy about this. Nevertheless, we have taken one step forward. After that, we have to wait until 2009 and can do nothing even though the death toll may rise by thousands of lives. Our purpose is to protect the workers' welfare. However, you people, as members of the League, calling yourself the earliest socialists, oppose the Bill even though you see that the employees are being exploited by the employers and risking their lives under the exposure to second-hand smoke. I really do not understand. As your supporter, next time I may take back the flowers from you (*laughter*) because I always send you roses.

This is a matter concerning the workers' welfare and whether they have jobs. It may sound offensive if I say that this is connived by society. We should work out a solution to this. Just now a Member said that there were only 40-odd mahjong parlours. Assuming there are 30 employees in each parlour, the total is just a few hundreds. Why should they risk their lives? Further, they do not understand what a mahjong parlour is. But I know because some friends of mine are operating such establishments. The patrons will not go to a mahjong parlour if they can play mahjong at home. No one will go to mahjong parlour if they can play the game at home. President, those who patronize mahjong parlours are another kind of people. They go to the mahjong parlours for another purpose. So the argument is groundless.

At the end of the day, however, I have to say that this is a kind of compromise. On behalf of the smokers, some of you have succeeded in getting an imperfect law while we, on behalf of the non-smokers, are fighting for a comprehensive smoking ban with compromise. Regarding some amendments, I have to express my views too. Concerning school uniforms, for example, I have argued with the Secretary. Now, people under the age of 18 are not allowed to smoke. But some amendments seek to ban selling cigarettes to people in school uniform. In lobbying me, an official said, "'Tai Pan', some middle-aged people also wear school uniforms." But in fact, there is none. Having said that, I have to mention one thing. Unlike our Mr Alan LEONG, the Chief Executive candidate, who studied in Queen's College and wore suit and tie, I studied in a technical college and wore a blue overall. If I went to buy cigarettes, the vendor might not know that I was wearing a school uniform, and just thought that I was a young garage worker. Should he be arrested? So, we have to consider the definition of school uniform, which in my opinion, is not worth arguing.

I am also disgusted with the proposal of allowing smoking in the parks which should not be a place for people to smoke. But we have taken into account the fact that the living environment in Hong Kong is different from those in America or other regions where people can go out to their own garden to smoke when they cannot do so at home. But in Hong Kong, some elderly people have to smoke in the parks. So we think there should be some places for them to smoke. Without other alternative, I reluctantly support this.

There is another point we also oppose. I know that some Members in the democratic camp, or the so-called anti-smoking radicals, who are the "Uncle" or "Younger Uncle" — I am the "Younger Uncle" and he is the "Uncle" — I am more radical than the "Uncle". President, I had been kidding in the Bills Committee that smokers who patronized hospitals under the Hospital Authority should pay the regular medical fees without subsidy. But other members thought that I was just kidding and did not let me propose an amendment on this. I am a very radical anti-smoking lobbyist.

Now some people request that notices be put up in all no smoking areas. I strongly object to this. I think this is a question about logic. If no-smoking signs should be posted, should notices prohibiting many other prohibited acts such as pissing, littering, making of noises and fighting be posted on the wall of a building? This is not logical. If thousands of signs on all sorts of prohibitions have to be posted on the wall of the building where I am living, I think this is illogical. So, I support the Government's amendment.

Most importantly, today we have to pass the Bill which must come into effect on 1 January. We cannot wait any longer. Every day a person dies of smoking. No one will die of eating barbecue buns, but passive smoking kills. So, despite all these controversies, I believe Members have conscience — not ethics but conscience — will pass this Bill which is unsatisfactory in my eyes, and in those anti-smoking bodies or individuals. Having said that, I will give this Bill 80 marks, which is not high but better than nil. To save one life is better than to lose one more life.

I am grateful to the Government which finally has the courage and demonstrated its strong governance for the welfare of people to introduce the Bill so that we can pass it and impose a smoking ban as soon as possible.

I so submit. Thank you, President.

PRESIDENT (in Cantonese): Does any.....

(Mr LEUNG Kwok-hung stood up)

MR LEUNG KWOK-HUNG (in Cantonese): President, I would like to elucidate one point because when talking about the League of Social Democrats, it is very simple.....

PRESIDENT (in Cantonese): Please wait, you can only elucidate the contents of your speech just now. But in your speech just now, I did not hear you mention the League of Social Democrats.....

MR LEUNG KWOK-HUNG (in Cantonese): No, because when I spoke.....

PRESIDENT (in Cantonese): If you want to make an elucidation in respect of the content of his speech, you have to make such a request when he is speaking, otherwise you cannot do so.

MR LEUNG KWOK-HUNG (in Cantonese): I understand. Then I do not make an elucidation.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If not, I now call upon the Secretary for Health, Welfare and Food to reply. This debate will come to a close after the Secretary for Health, Welfare and Food has replied.

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, first of all, I must express my heartfelt thanks to Mr Andrew CHENG, Chairman of the Bills Committee on Smoking (Public Health) (Amendment) Bill 2005 (the Bills Committee), and also other members of the Bills Committee for the time and efforts they have spent on the Smoking (Public Health) (Amendment) Bill 2005 (the Bill).

The Bill was tabled before the Legislative Council for Second Reading in May 2005. The scrutiny of the Bill has spanned more than a year. Totally 56 meetings lasting for more than 140 hours were held. I must clarify that I have attended one of these meetings and it was quite an important one. At this meeting, I informed Members of my intention to implement the Bill on 1 January 2007, adding that notwithstanding all the discussions and delay that might arise in the process, I considered it very important to implement the Bill on this very date. I am very grateful that my decision at that time was supported by members of the Bills Committee. As Members can observe, there are vastly divergent views on tobacco control in both the Legislative Council and the wider community. If I do not designate a timeframe, it will be impossible to formulate a roadmap. But this of course does not mean that we can always do the same in the case of other legislation. *(Laughter)*

The Administration has submitted nearly 100 documents to provide the necessary background information, policy elaboration and responses to the questions raised by Bills Committee members. I know that members of the Bills Committee even went to Ireland, Norway and Thailand for on-site inspections. I have provided all these figures and information just to show that the Bills Committee has conducted an extremely serious, thorough and in-depth scrutiny of the Bill.

I am very grateful to the hundred or so deputations, professional sectors, industry representatives and district personalities who attended the public hearings held by the Bills Committee during the scrutiny process. My thanks are also due to all those who sent us emails or written submissions on the Bill. I must finally thank the Chairmen and Vice-Chairmen of District Councils and individual District Councils for expressing their views on the Bill to us.

Most of the amendments I am going to move later on at the Committee stage have already incorporated the proposals made by the Bills Committee, its

individual members and the industries concerned. The rest are technical in nature.

Just now, when Bills Committee Chairman, Mr Andrew CHENG, presented the Bills Committee's report and when other Members spoke, they offered plenty of advice and background information relating to the proposals contained in the Bill. We understand that they support some of the Government's amendments but do not support the rest.

I am going to reply generally to the major points and questions of principle raised by Members who spoke just now. As for the contents of individual amendments, I shall explain them one by one later on at the Committee stage.

To begin with, I wish to clarify our tobacco control policy. Since the 1980s, we have been adopting an incremental approach. Drawing lessons from international developments and having regard to the actual situation in Hong Kong, we have put in place various tobacco control measures complementary to one another, including public health education and publicity, strict control of tobacco product advertisement and tobacco duty increases.

The results of our tobacco control efforts over the past 20 years or so are evident to all. The smoking rate in Hong Kong dropped from 23% in the 1980s to 14% last year. This rate is lower than those in the West or our neighbouring places, showing precisely the overall effectiveness of our tobacco control efforts.

We have put forward the Bill with four major objectives: first, the expansion of the smoking ban, with the special purpose of protecting the public against second-hand smoke in indoor workplaces and public places; second, further restrictions on the advertisement and promotion of tobacco products; third, increasing the controls on the packaging and labelling of tobacco products; and, fourth, stepping up enforcement by conferring enforcement powers on inspectors of Tobacco Control Office (TCO), including the powers of entering premises for the collection of evidence.

Besides, the Bill also provides for special and transitional arrangements, setting out the places not covered by the smoking ban and the implementation dates of individual provisions. Focusing on these five major areas, I shall give a report on the outcomes of the Administration's discussions with the Bills

Committee and explain the rationale and considerations underlying the amendments proposed by the Government.

As I mentioned just now, the first objective is the expansion of the smoking ban. It is our long-standing policy to adopt an "incremental" approach. The Amendment Bill introduced this time around signifies a great step forward for our tobacco control efforts. But it was precisely due to the question of "pace" that the Administration and the Bills Committee had to expend huge amounts of time on discussing the scope of the smoking ban during the scrutiny process. In the end, both sides managed to reach an agreement, and Mr Andrew CHENG has already briefed Members on this.

Regarding public transport interchanges, we have also accepted the Bills Committee's recommendation on designating them as statutory no smoking areas. However, in view of the varying designs of public transport interchanges, we have reached a consensus with the Bills Committee, whereby a provision is to be incorporated into the Bill, empowering the Director of Health to designate notice in the Gazette the entirety or part of a public transport interchange (including a bus terminus) as a no smoking area. I wish to explain here that the designation of a no smoking area in every public transport interchange will require the support of additional resources and manpower. In accordance with the priorities of resource utilization, we will first introduce a fixed penalty system for the offence of smoking before designating no smoking areas in public transport interchanges.

At the very late stage of scrutiny, the Bills Committee expressed disagreement to a proposal of the Administration. The Government proposed that while implementing a total smoking ban in public pleasure grounds, it would, depending on the circumstances in individual venues and without affecting children and other park users by all means, consider the possibility of designating small areas in parks, where smokers, particularly senior citizens who liked to spend time in parks, could smoke. Some members of the Bills Committee maintained that smoking should be totally banned in public pleasure grounds such as parks. At the Committee stage later on, I shall explain the Government's position and views.

I wish to point out — I also hope Members can understand — that the legislative amendments this time around are meant to reduce the health hazards caused by passive smoking. And, this is also the international trend.

However, we must adopt an incremental approach, so that smokers can be given time to kick the habit. Even under the Framework Convention on Tobacco Control of the World Health Organization, there is no provision on banning the act of smoking totally, nor is there any proposal on making it totally impossible for people to smoke.

Some Bills Committee members asked for the banning of smoking at places where queues of people were formed, including roadside bus stops. The scope covered by this proposal is much too extensive and in real-life environments, such as bus stops and places where people queue up for fast-food and drinks, those in the queue are often intermingled with pedestrians at the roadside. It will thus be very difficult to designate smoking areas and no smoking areas on the very narrow pavements in Hong Kong. And, in many cases, the various circumstances at the scene where crowds are found will make it very difficult to ascertain clearly whether a queue has been formed. This will easily give rise to disputes in the course of enforcement. Some members also proposed to ban smoking in all country parks. Country parks account for roughly 40% of Hong Kong's total land area. We do have some reservations about whether we should proceed so very quickly in tobacco control. On the other hand, some other members were of the view that we should only take one step at a time rather than extending the smoking ban to too many outdoor venues all at the same time. They thought that society as a whole and members of the public should be allowed time for gradual adjustment. After balancing all considerations, we do not propose to designate queuing places and all country parks as no smoking areas.

The protection of public health is admittedly our responsibility, but while implementing the new policy, we should also consider its acceptance in society. The Government hopes to strike a balance among all the divergent views. We think it will be safer and society will be able to make adjustment more easily if we can pass this Bill on expanding the smoking ban now and then let the new legislation operate in society for some time first. We will conduct public education and publicity in the meantime. At a later stage, when a new culture of prohibiting smoking is instilled among the public, we will study whether there is any need for further expanding the smoking ban. If necessary, we will conduct public consultation once again.

Second, in the course of the Bills Committee's deliberations, Ms Audrey EU requested the Government to prohibit the use of tobacco brand names and

logos on non-tobacco products. Since Ms Audrey EU's proposal will lead to far-reaching implications, especially since there is a very wide range of non-tobacco products, the issues involved will not be limited to public health but will even produce impacts on the trade and economy of Hong Kong. The problem is indeed a highly complex one. We must therefore study the proposal very carefully in conjunction with the Policy Bureaux and departments concerned. And, we will report our research findings to the Panel on Health Services at a later time.

Third, I wish to talk about the packaging and labelling of tobacco products. Clause 11 of the original Bill proposes to prohibit the display on any cigarette packets or retail containers of "醇", "焦油含量低", "light", "mild", "low tar" or other words which imply or suggest that the cigarettes are less harmful than others.

Since the gazettal of the Bill, there have been new developments both locally and internationally. Locally, the verdict made by the Court of First Instance of the High Court in April 2005 in relation to a certain case can provide us with very useful reference in the application of Article 105 of the Basic Law (on the protection of private property). Internationally, although different places handle descriptors on retail tobacco products in different ways, their approaches can still provide us with very meaningful reference. Since quite a number of Members already talked about this in the deliberation process, I am not going to make any repetition.

Following discussions in the Bills Committee, we now agree that it is a feasible approach to impose a general ban on deceptive or misleading descriptors without specifying any prohibited descriptors in the legislation. According to the legal advice we have sought, this approach is in accordance with the Article 105 of the Basic Law and Hong Kong's obligations under the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

I would like to take this opportunity to thank the Bills Committee members and political parties concerned for supporting the Government's amendments. With their support, we managed to resolve this matter after thorough and in-depth discussions.

I am glad to inform Members that some tobacco companies have indicated publicly that the packaging of their tobacco products in future will no longer

carry any misleading descriptors. I believe that the Bill will continue to yield such effect after its passage.

The fourth issue is enforcement and penalties. In regard to enforcement, the Bill proposes to empower the inspectors appointed by the Secretary for Health, Welfare and Food to enforce the relevant provisions. Subject to the passage of the Bill, I shall appoint the Tobacco Control Officers under the Department of Health as inspectors responsible for enforcing the provisions of the ordinance. Since the smoking ban will be expanded with effect from 1 January 2007, the demand for enforcement personnel will increase correspondingly. The TCO under the Department of Health will recruit more inspectors to cope with enforcement, publicity and education.

Many Bills Committee members were concerned as to how the TCO could enforce the legislation effectively with its limited manpower. I must first emphasize that the Government should not be relied upon as the sole force of tobacco control. Members may recall that when we amended the Smoking (Public Health) Ordinance, society also queried whether we could effectively ban smoking in cinemas and on public transport carriers. The facts have however proven that with the implementation of new laws and the emergence of a new social order and culture, smokers will automatically refrain from smoking in no smoking areas.

We also hope that the relevant legislative amendments can lead to gradual changes in social concepts and behaviour, changes that will induce smokers to exercise self-discipline and refrain from affecting others by smoking in public places. We believe that with sufficient support measures in terms of publicity and education, most smokers will not break the law and will consider the well-being of others.

Of course, we will not underestimate the difficulties in enforcing the new rules. In the course of implementing the new legislation, we will at the same time increase the statutory powers of the TCO and expand its functions and establishment, so as to ensure the effective enforcement of the new legislation. I hope that after the implementation of the new legislation, members of the public can report to us over the phone in case they come across any smoking offences. Although we may not be quick enough to arrive at the scenes for immediate enforcement actions, we can still record the names of the black spots, so that raids can be conducted later on. On the basis of complaints and reports,

inspectors of the TCO will target on the black spots strategically and step up inspections and enforcement. The legislation also empowers managers of statutory no smoking areas to take immediate actions once they notice or are informed that someone is smoking. They are empowered to ask smokers to extinguish their lighted cigarettes, so as to remove the nuisance caused by second-hand smoke to the people around. This is the most effective measure. The Department of Health will also organize workshops to teach proprietors of restaurants how to deal with such cases.

We of course think that in the long run, fixed penalties are a more effective solution. But there must be adequate preparations before the arrangements concerned can be put in place, and this may take two to three years more. Foreign experience shows that public education, publicity and public pressure can all make smokers stop smoking. In conclusion, the successful enforcement of the legislation must depend on the joint efforts of all in society.

In regard to fixed penalties, we noticed from the discussions on enforcement that the Bills Committee was especially concerned about enforcement problems in future. For this reason, we are now stepping up the preparations required, and the Department of Health will also set up a computer system to support the fixed penalty system. This will take roughly 18 months.

Fifth, I wish to talk about special arrangements and transitional provisions. In regard to special arrangements, the smoking ban proposed in the original Bill does not cover domestic premises and employees' quarters in general. This is mainly based on human rights, privacy and enforcement considerations. However, during the scrutiny of the Bill, members of the Bills Committee unanimously agreed that the smoking ban should also be extended to communal quarters provided by an employer to two or more employees. The Bills Committee advised the Administration to move an amendment for the purpose of extending the smoking ban to communal quarters. We do agree to this proposal. However, we must make it very clear that for privacy reasons, we will not empower inspectors to enter any communal quarters. If any employees are willing to report cases of smoking offences in communal quarters to enforcement agencies, they may assist in investigations and give evidence in the prosecution process. As far as I know, the Bills Committee also agreed that a proper balance should be struck between effective enforcement and privacy rights. Members of the Bills Committee also understood that it would be more

difficult to enforce the smoking ban in communal quarters than in other public places.

Besides, the amendment of the Administration also provides that communal quarters shall not mean the accommodation shared by an employer and his employees, so as to avoid the misunderstanding that the smoking ban is also applicable to the accommodation provided by an employer at his home to his employees.

Some Members requested me to say a few words on the arrangement for the international airport. There are currently 12 smoking rooms in the Hong Kong International Airport, seven of which are located at the Departure Hall. The remaining five are found at the level of the Arrival Hall, with three of them located at transit lounges. The Airport Authority has informed us that with effect from 1 January 2007, the two smoking rooms at the Arrival Hall will be closed. As far as we know, smoking rooms for transit passengers are provided in all major international airports in our neighbourhood. The main reason is that air passengers, especially long-haul and transit passengers, cannot go outdoors for smoking at any time they like. We will closely follow the international practices in this regard.

The original Bill proposes that the Amendment Ordinance shall come into operation in all new no smoking areas on the ninetieth day after the day on which it is published in the Gazette.

Subsequently, we received submissions from mainly the entertainment and hospitality industries which expressed the worry that since most of their customers and employers are smokers, their business may be adversely affected. Therefore, like other people in society, the employees and customers in the premises concerned should, in principle, be protected against the hazards of second-hand smoke by all means. However, the arrangements they proposed, such as permanent exemption, are incompatible with our public health policy. We appreciate that these industries may need more time for adjustment or making changes. In order to strike a proper balance, we propose to phase in the smoking ban.

Our amendment proposes that the smoking ban shall come into effect on 1 January 2007 in the great majority of indoor workplaces and public places, such as the indoor areas of all restaurants, offices, markets, karaoke

establishments and bars open to all age groups. As for the six categories of "qualified establishments", namely, nightclubs, commercial bathhouses, massage parlours, mahjong-tin kau premises, designated mahjong rooms in a qualified club and certain bars, the effective date of the smoking ban may be 1 July 2009 at the latest, but one of the conditions is that they must be open to those aged 18 and above only. Such establishments must comply with other requirements and notify the Director of Health in advance for inclusion in the List of Qualified Establishments.

To ensure that members of the public and the industries concerned can have a deeper understanding of the new legislation and make good preparations for its implementation, the TCO will organize a series of publicity and public education activities after the enactment of the Amendment Ordinance to inform the public of the new legislative requirements. Government publicity footages and soundtracks will be broadcast. Workshops will be organized for managers, and pamphlets and other public education materials will be distributed to the public. The TCO will also promote its smoking cessation services and continue to work with the Smoke-free Restaurants Working Group, so as to publicize the latest legislative requirements in the catering sector. The Hong Kong Council on Smoking and Health, a statutory body funded by the Government, will continue to organize various publicity activities on the harmful consequences of smoking and passive smoking.

Madam President, I have given a rough account of the amendments to the original Bill proposed by the Administration and the Bills Committee.

In the following part of my speech, I wish to explain a new amendment proposed by the Government, one which was not mentioned before.

The Government proposes to delete the statutory requirement that managers of no smoking premises must display notices. This amendment is based on the consideration that following the passage of the Bill, smoking will be prohibited in practically all indoor public places and workplaces as well as many outdoor venues. Since the scope of the smoking ban is so extensive, and in view of the vastly different layouts and designs of various indoor and outdoor venues, we think that the retention of the mandatory legislative requirement on displaying no-smoking signs will lead to inflexibility and add to the difficulties faced by the industries. I must emphasize that this amendment proposed by the

Government is intended to give managers greater flexibility and leeway in determining how no-smoking signs should be displayed. For instance, in restaurants, managers may choose to place a small "no-smoking" sign on each table. And, in cinemas and theatres, managers may choose to broadcast the no-smoking message to the audience.

In case no prohibition sign is displayed in a room, will anyone wrongly think that smoking is permitted in the room? When I was moving around in the Legislative Council Building just now, I observed that "No Smoking" signs were displayed above the urinals of the male toilets only. If other buildings follow suit, some visitors may think that while smoking is prohibited in the toilets of the Legislative Council Building, people may still smoke in other places of the building. I think that such a requirement may lead to misunderstanding and is certainly outdated.

We are also of the view that following the expansion of the smoking ban, this requirement will impose an unreasonably heavy responsibility on managers of premises. If a manager fails to discharge this statutory obligation, even if there is just a slight omission or failure on his part, he will be held criminally responsible. Therefore, members of the Bills Committee were very concerned about this, and they were especially concerned about the situation in such communal parts as corridors in old residential buildings, that is, tenement blocks. There may not be any designated managers in these buildings, and it is also difficult to tell who the managers are. It will thus be difficult to enforce the requirement concerned.

In response to the concern expressed by the Bills Committee, we have proposed an amendment, whereby the statutory requirement on the display of "no-smoking" signs by managers is to be waived. In other words, section 5 is to be deleted. Following the waiving of this statutory requirement, managers of no smoking areas can flexibly decide where to display "no-smoking" signs in the light of their actual situations. Or, they can even choose to notify venue users of the smoking ban in other appropriate ways.

Although the Government proposes to waive this statutory requirement, the TCO under the Department of Health will continue to provide "no-smoking" signs and logos free of charge, so as to assist venue managers. More importantly, we will conduct extensive publicity and education activities, with a view to publicizing the smoking ban and building up a new social culture. In

public pleasure grounds such as public beaches, the Leisure and Cultural Services Department will post or put up appropriate notices to remind users of the smoking ban.

Finally, I wish to say a few words on smoking rooms, an idea discussed a number of times in the Bills Committee.

In this connection, Mr Tommy CHEUNG and I once visited a smoking room designed by the industry and a small-scale test was carried out on the spot. But the findings could not establish the feasibility of the technology concerned.

Actually, there are not yet any internationally recognized ventilation standards that can effectively prevent the second-hand smoke in a smoking room from invading the neighbouring environments. However, we still think that in the long run, it will be worthwhile to spend resources and time on exploring the technical feasibility of this idea.

Roads in Hong Kong are narrow and crowded with pedestrians. In the case of some hospitality and entertainment industries, the ratios of smoker customers are rather high. If all these smokers cluster outside such establishments, the smoke they exhale will affect and cause inconvenience to other customers and passers-by. If we can develop an effective ventilation system, and if we can forbid all activities and services other than smoking in smoking rooms, fewer people will smoke in the streets. And, this is also in line with the major principle of segregating smokers and non-smokers.

However, before we can formulate any ventilation standards for smoking rooms, we must first collect sufficient scientific information and conduct adequate tests, so as to prove their feasibility. Therefore, we intend to enlist the support of engineering professionals and launch studies on smoking rooms immediately. I hope that the studies can be completed within a year or two. The aim is to determine the feasibility of smoking rooms while implementing the fixed penalty system. If the idea is proved technically feasible, we will decide on the types of establishments for implementation according to the views of the industries and the actual situation.

At the Committee stage later on, several Members will move amendments to different clauses of the Bill. The Government is opposed to these amendments because most of the proposals acceptable to us and the public are

already included in the Government's amendments. Later on, I shall explain the Government's views on these amendments and the reasons for our opposition.

Madam President, many people have been waiting for the early passage of the Bill since its gazettal. Once again, I must extend my heartfelt gratitude to the various political parties in the Bills Committee and to Members for supporting the resumption of Second Reading of the Bill. I hope that Members can vote for the Bill and the Committee stage amendments to be moved by the Government.

Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Smoking (Public Health) (Amendment) Bill 2005 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)

Ms Emily LAU rose to claim a division.

PRESIDENT (in Cantonese): Ms Emily LAU has claimed a division. The division bell will ring for three minutes.

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

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

Mr James TIEN, Mr Albert HO, Dr Raymond HO, Mr LEE Cheuk-yan, Mr Martin LEE, Dr David LI, Dr LUI Ming-wah, Mrs Selina CHOW, Mr James TO, Mr CHEUNG Man-kwong, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Dr YEUNG Sum, Mr LAU Chin-shek, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Ms Emily LAU, Miss CHOY So-yuk, Mr Andrew CHENG, Mr Timothy FOK, Mr TAM Yiu-chung, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Frederick FUNG, Ms Audrey EU, Mr Vincent FANG, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr LI Kwok-ying, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr MA Lik, Mr Andrew LEUNG, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr Ronny TONG, Mr Patrick LAU, Mr Albert CHENG, Mr KWONG Chi-kin and Miss TAM Heung-man voted for the motion.

Mr Albert CHAN and Mr LEUNG Kwok-hung abstained.

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

THE PRESIDENT announced that there were 55 Members present, 52 were in favour of the motion and two abstained. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CLERK (in Cantonese): Smoking (Public Health) (Amendment) Bill 2005.

Council went into Committee.

Committee Stage

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

SMOKING (PUBLIC HEALTH) (AMENDMENT) BILL 2005

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Smoking (Public Health) (Amendment) Bill 2005.

CLERK (in Cantonese): Clauses 1, 3, 7, 9, 10, 12, 14, 16, 17, 21 to 29, 31, 34 and 35.

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 clauses stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 4, 5 and 20.

CHAIRMAN (in Cantonese): The Secretary for Health, Welfare and Food has given notice to move amendments to clauses 4, 5(a) and (c) as well as 20. These amendments relate to designating no smoking areas and exempt areas. In this regard, Mr Andrew CHENG and Dr KWOK Ka-ki have separately given notice to move amendments to clause 20. Mr Tommy CHEUNG and Mr Albert

CHAN have also separately given notice to move amendments to clauses 4 and 20.

CHAIRMAN (in Cantonese): Committee now proceeds to a joint debate. In accordance with the Rules of Procedure, I will first call upon the Secretary for Health, Welfare and Food to move his amendments.

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam Chairman, I move the amendments to clauses 4, 5(a) and (c) and 20, as set out in the paper circularized to Members. I would like to briefly explain the major amendments.

Clause 4 is the interpretation clause. I move that some definitions in clause 4 of the Bill be amended to tally with the interpretation of relevant provisions in the Bill and the amendments. Having considered the views of the Bills Committee, we have amended the definition of "manager" to stipulate that the owner of the premises will be defined as the manager in the case where there is no manager or no person holding an appointment analogous to that of a manager. The definition of "public transport carriers" is also amended so that the smoking ban regulation is also applicable to public transport carriers when they are not carrying passengers.

Clause 4 has also stipulated the definition of "indoor" in the Bill which includes a ceiling or roof and an area which is "completely or substantially enclosed". When the Bill was under scrutiny, the Bills Committee considered the term "substantially enclosed" rather abstract and may give rise to different interpretations or understandings. Some members thus requested that a more specific definition of "indoor" be drawn. After discussions with the Bills Committee, we have accepted the members' general consensus and proposed to change the description of "substantially enclosed" to "enclosed at least up to 50% of the total area on all sides".

Besides, in the light of the classification of "designated no smoking areas" set out in Schedule 2, we have accepted most of the Bills Committee's proposals to amend Schedule 2 to include some proposed amendments and some new definitions of no smoking areas. These include technical amendments to the definition of restaurant premises, commercial bathhouses, domestic premises,

workplaces and schools. The definitions of public swimming pools, public pleasure grounds, outdoor escalators, beaches, massage parlours and stadia are also added.

Clause 5(a) of the Bill provides that the areas under Part 1 of Schedule 2 are "designated no smoking areas" and that under Part 2 are "exempt areas".

We have accepted the Bills Committee's views by adding a new provision in the amendment to clause 5 stipulating that the Director of Health, may by notice published in the Gazette, designate as a no smoking area the whole or a part of any area that consists of the termini of two or more modes of public transport or any bus terminus of more than one specified route.

Provisions are also added to the amendment stipulating that under Schedule 5 any person who does a smoking act during live performance or recording for film or television programme is exempted from the no smoking regulation.

Consequential amendments are made to clause 5(c) to improve the writing of the provisions setting out the no smoking areas and exempted premises.

These amendments are supported by the Bills Committee.

Clause 20 of the Bill proposes to amend Schedule 2. Regarding Part 1, Schedule 2 is provided for in accordance with section 3(1) in the proposed amendment and new subsection (1AA). Schedule 2 in the amendment consists of three parts. In response to the discussion of the Bills Committee, Part 1 is amended so that the designated no smoking areas in the original Bill are extended from mainly indoor places to cover some outdoor places. In the proposed amendment, 20 classes of such areas are listed.

Regarding Part 2, proposed Part 2 of Schedule 2 sets out the exempted areas, in which 10 classes of exempt areas are listed, including general domestic premises and Type 1 and Type 2 private quarters not shared by employees. The proposed exempt areas reflect our policy intent since the formulation of the original Bill that in principle, we do not recommend the application of a smoking ban in private dwelling places on the grounds of human rights, privacy and law enforcement.

After discussions with the Bills Committee, we propose that the exempt areas should at the same time include the cigar-tasting rooms in cigar shops and the room designated for tobacco tasting carried out for the purpose of conducting research and development or quality control of tobacco products in the manufacturing or non-retail business premises of a tobacco company provided specified requirements are met. In response to the need of the industry, these two types of exemption are very restrictive and the stringent conditions stipulated in the ordinance should be met before the exemption applies.

Part 3 relates to staff quarters. We have adopted the Bills Committee's proposals to include communal quarters provided by an employer to two or more employees in the statutory definition of "no smoking areas". To avoid any doubt, the interpretation provisions of Part 3 are added to Schedule 2 in order to clearly define the communal quarters as no smoking areas.

I hope Members will support the passage of the amendments. Thank you, Madam Chairman.

Proposed amendments

Clause 4 (see Annex I)

Clause 5 (see Annex I)

Clause 20 (see Annex I)

CHAIRMAN (in Cantonese): I now call upon Mr Andrew CHENG, Mr Tommy CHEUNG, Dr KWOK Ka-ki and Mr Albert CHAN to speak on the amendments moved by the Secretary for Health, Welfare and Food as well as their own amendments respectively. However, they may not move their respective amendments at this stage.

MR ANDREW CHENG (in Cantonese): Madam Chairman, I believe this amendment and the amendments proposed by other Bills Committee members and me the more important amendments to the Bill under discussion today. However, as I remarked when speaking for the first time during the resumption of Second Reading debate, this amendment is very important, but the most

miserable thing is that even after all our discussions, there will still be many problems, and this is particularly the case with designating smoking areas in parks. Even though we have put forward an amendment on behalf of the Bills Committee, we must nonetheless support the Government at the voting eventually.

When some Members spoke just now, I could observe that they were most emotive, one example being Ms Emily LAU. They argued that in the case of those amendments which were raised in the Bills Committee, and which stood a good chance of passage, the Government should not be usurped them as its own amendments. But Emily should not be so agitated because all of us know that this is in fact the harsh political reality. If the Government thinks that there is a chance of passage, and if it also thinks that the public actually wants it to do the job, it will just take over. When the Government takes over, the ruling coalition will render its support. If the Government does not take over, if we individual Members put forward any amendments, then, very unfortunately One example is the amendment I am going to move for the Democratic Party on prohibiting the sale of cigarettes to students. I have heard many reasons, but they all sadden me a great deal because as reasons for opposing my amendment, they are mere sophistry. Yes, they do not relate to the present amendment, so I will dwell on them later. I hope Members can realize that throughout the entire deliberation process of the Bills Committee, we have co-operated fully with the Government, and rightly so because public interest is involved. However, I hope the Government can also realize that many of the no smoking places or areas set out in the Schedule were in fact proposed by members of the Bills Committee.

Anyway, I wish to raise one special point regarding the speech delivered by the Secretary during the resumption of Second Reading debate just now. This is about smoking rooms. In this regard, the Secretary spent some time talking about things we have never heard in the Bills Committee. But I must first make an apology here. The Secretary did attend one of the meetings of the Bills Committee and took part in discussions. However, I have really forgotten all about this because there were more than a hundred hours of discussions. Many thanks to the Secretary for reminding me. I can remember that the meeting was a very important one because in the course of it, the deadline was decided.

In regard to smoking rooms, many experts gave us their advice during the scrutiny process. Mr Tommy CHEUNG, a number of Bills Committee members and I also visited some smoking rooms designed by the industry and mentioned by the Secretary just now. Some medical doctors and experts subsequently told us that they did not know whether it was possible for the design of these smoking rooms to attain the satisfactory standards that can prevent tobacco smoke from escaping into air ducts, filling other rooms with cigarette smell and affecting their air quality. Some even maintained that it would be necessary to install equipment with air pressures and vectors similar to those of tornadoes. We were greatly surprised and wondered whether we would really have to install such equipment. But can our existing technologies cope? We simply cannot accept the idea at the present stage.

I appreciate that the Secretary must adopt an open attitude and listen to all views. But as far as this issue is concerned, I hope that apart from listening to the views of the industry, he can also make special efforts to study the experience of other countries. From some press reports we have recently read, we know that since the prohibition of smoking, the business of bars and restaurants in the United Kingdom has increased rather than declined. Actually, I believe that we in Hong Kong can be equally optimistic. I hope that the Secretary can follow this direction instead of expending too much resources on studying smoking rooms for the industry. Very often, I will explain to the industry, hoping that it can understand one point. The total smoking ban in restaurants will not affect their business enormously. The smoking ban may even do good to their business. Therefore, while the Secretary talks about continuing with the studies, I hope that he will not Naturally, the Government must utilize resources, but I hope that resources can be expended on expediting the drafting of a Bill on introducing fixed penalties and on expanding the Tobacco Control Office. This will be better.

Madam Chairman, although we have already talked about parks, I must still respond to some Members' remarks just now in order to show our persistence. It is obvious that the Government is determined to set up smoking areas. But we must still put our views on record today, in the hope that in case there is any need for amending or reviewing the legislation several years later, the points discussed today can provide some useful reference.

I wish to talk about a point raised by many people: Homes in Hong Kong are very small but there are many senior citizens, so if elderly people are not

permitted to smoke in sitting-out areas of parks, their life will be very miserable. At hearing this argument, I cannot help wondering whether they have put the cart before the horse. The Chief Executive has mentioned his intention of establishing a family commission, and the Secretary has also been talking a lot about this. As its name suggests, a family commission should be responsible for formulating policies on the family. If homes are too small and the relationship among the members of a family is poor, we should administer the right remedy. The underlying purpose of the Bill is that people can be given more opportunities to quit smoking, or that policies can be formulated to enable people to quit smoking. It must not be made to serve the opposite purpose of enabling people to continue smoking in places when others may be affected by second-hand smoke.

I am even more unhappy about the explanation offered by the Government in some documents. We raised the problem at the meeting in September. As mentioned by some Members just now, some Bills Committee members were not entirely against the designation of smoking areas. But we all queried the Government on the criteria to be adopted. In response, the Government provided us with a paper consisting of roughly five paragraphs. As I mentioned when speaking for the first time just now, it was explained that smokers should not be forced to smoke in the streets because as more people do so, air quality would deteriorate, thus inflicting further harm on street hawkers and pedestrians. I do not want to make any repetition here. This argument cannot hold because there is a similar problem at the entrances of restaurants and bars.

The next question we asked was about the delineation of smoking areas. Questioned by us over and over again, the Government added one more paragraph to the paper several days later. As I mentioned a moment ago, the Government claimed that it would designate less than 1% of the total area of large parks as smoking areas. The Government only said that we did not need to worry about anything because there would be no difficulty in delineating smoking zones. But whenever we asked it to explain the criteria, it invariably failed to tell us any. Then, the issue was put to the District Councils (DCs) for handling. As I mentioned when speaking for the first time, how can DCs handle an issue like this? There are many political parties and groupings in DCs, and they all hold different views. And, different districts and DCs will employ different practices. In that case, the Government is bound to waste its own time, right? I am holding the list of public pleasure grounds contained in Schedule 4 to the Public Health and Municipal Services Ordinance. There are

more than a thousand parks and sitting-out areas. Frankly speaking, if administrative directives are to be issued, or if the Leisure and Cultural Services Department is to delineate a smoking area in every park, I simply do not know how much resources the Government will have to expend. It is better to expend the resources on employing more enforcement staff for the Tobacco Control Office. If they do not do so, if they are to go from park to park — from Blake Gardens, to Kau U Fong Children's Playground, to Siu Sai Wan Promenade, and so on — they will have to go to 1 000 to 2 000 parks. How can they manage? As for signage, the Government says that it is not necessary to enact any legislation on the erection of signs in parks to designate smoking and no smoking areas. However, the Government says that administrative measures will be implemented. I shall discuss this in detail again with the Government at a later time.

Are there any clear-cut criteria for prohibiting smoking in parks? When interviewed on the radio, some smokers also remarked that they did not want the Government to designate a particular smoking area for them, adding that they did not know what the Government took them for. They said that since they were enjoying themselves in a park, they would like to walk around with their lighted cigarettes. They questioned why they must stay in a designated area for smoking while non-smokers could move freely around. This will lead to many conflicts. If smokers move around with their lighted cigarettes, people practising Tai Chi will be forced to inhale second-smoke when they walk near them. When smokers walk near children who are swinging, the latter will also be forced to inhale second-hand smoke. There will be health impacts. For this reason, we hope the Government will understand that our amendment is premised really on the effects of second-hand smoke. To allow smoking in parks will also result in the problem of passive smoking, and even though the smoke may have dispersed a bit, the problem will still see little amelioration.

"Long Hair" commented that we should not stand on moral high ground for political reasons when tackling this issue. Many Members have sought to refute his remark. I hope that this can really be handled as a public health issue rather than a problem of political ethics. Mr Albert CHAN is in the Chamber now. I share similar views with him on many issues, but when it comes to this one, I really cannot buy his opinions. I do not agree with him that we are trying to drive smokers into desperation.

As for prohibiting smoking on beaches, Mr James TIEN remarked that while beaches were found in many places, smoking on beaches was prohibited in

Australia and the United States only. He questioned why we must be so progressive. After hearing his remark, I cannot help wondering why no comparison is made with Australia and the United States when we talk about universal suffrage and the democratization of our constitutional system. They are so progressive, but why are we so slow? What is so bad with being progressive? We must say that our intention of moving this amendment today is just to do our job and set a good example by taking a step forward in prohibiting smoking and reducing the effects of passive smoking. Members cannot vote on my amendment. Emily was not present when I told Members just now that they could not vote on my amendment. But I ask her not be so upset because this is the harsh reality. After all, we cannot possibly stop the Government from putting forward amendments. However, I hope that what I speak of now will not be proved correct when the Government conducts a review in the future. The reason is that I also want the Government to succeed. I also hope that if they really consider the establishment of smoking rooms This idea suddenly comes to my mind I hope that rather than considering the establishment of smoking rooms in indoor places and restaurants, they can set up such rooms in parks. Since smoking areas will be designated, I think it is better for the Government to consider the possibility of setting up smoking rooms in parks, where people can smoke when they want to. I really mean what I say because the effects of second-hand smoke will not be removed entirely even though the smoke may have dispersed a bit. If they want to consider the establishment of smoking rooms, they should look at the possibility of setting up such rooms outdoors. Our only concern is that passers-by must not be affected. This idea is definitely worth consideration.

Besides, honestly speaking, since the indoor ventilation systems in Hong Kong are all central systems, how can it be possible to set up smoking rooms? They are even talking about the installation of equipment with air pressures and vectors similar to those of tornadoes. How can that be possible at all? However, if a smoking room is built outdoors, it may not be necessary to install such equipment to disperse the smoke. That way, the problem can be solved. Therefore, although Members cannot vote on our amendment, I still hope that if the Government conducts a review in the future, or if what I say now is proved to be correct, a total smoking ban can be implemented in parks. Thank you, Madam Chairman.

MR TOMMY CHEUNG (in Cantonese): Chairman, I also hope that Emily will not be so upset. Many Members thought that I should be very upset today, but

they now find that I am quite calm. Therefore, I too do not want to be at loggerheads with Members. But I must still refer to Mr Andrew CHENG's point that the business of bars in the United Kingdom has turned very good since the implementation of a smoking ban in the country. It is very difficult for me to "see" the bull from afar, not to speak of "buying" or "shooting" it. We are just trying to "look at" the bull from afar. He has been talking a great deal about the things that other countries have done. Last year, Mr Andrew CHENG cited Norway and Ireland as examples — I do not know why he has left the Chamber instead of staying on to listen to my remarks. Since he chose Norway and Ireland as examples, we went to these countries, and also Thailand, for inspection visits.

In Norway, we noticed a most laughable situation. All the local government officials who guided our visits said that business was very good. They told us that the Norwegian Government had even spent as much as US\$500,000 on assessing the business situation since the imposition of the smoking ban. But despite all they said, the only information they could give us was that there had been no decrease in the sales volume of beer (They did not talk about any increase but just told us that there had been no decrease). But then, I asked, "Was there any price cut for beer?" They asked me in return, "How do you know?" Actually, seeing that the sale of beer had dropped, they cut the prices. As a result, the sale of beer remained very good, and this was used to deceive others that business has been good since the implementation of the smoking ban.

None of the restaurants and bars we visited told us that business was good. When asked whether their business was good, proprietors of ground floor restaurants replied that there was no problem. We asked them why this had been the case, and whether the smoking ban had produced any effects on them. One of them replied, "There are 200 seats indoors, but the Government allows me to operate 400 seats outdoors. People can smoke out there, so there is no problem." But according to press reports, the business turnovers of those bars located in basements, on upper floors or inside shopping centres dropped by 50%. The business of ground floor bars in Norway was slightly better. There was a drop of 20% in some cases and a decline of 50% in others. The number of bartenders employed by many bars dropped from three to two, and then from two to one only. If Members really want to find out the situations in other countries, they must look at all these figures. There is something more ridiculous. In Norway, when we met with the industry, we asked, "Has your business been affected?" They answered in the negative, "Even California of

the United States says that there is no adverse impact. How can there be any effects on us?"

We subsequently went to Ireland. Some government officials there claimed that business had not been affected, but no one from the bar industry was willing to meet with us. Mr Howard YOUNG later learnt that an Irish MP had visited Hong Kong, so he asked the MP how the business of bars was going in his country. He replied that it had gone down a great deal. Why? When lady customers of bars want to have a puff outside, he said, someone will walk up to them and ask, "How much?" In other words, women are taken for prostitutes — Chairman, I see that you are frowning. Women find this a great insult, so more and more of them now choose to buy beer from supermarkets and drink it at home. If Members look at the sale of beer in Ireland, they will certainly see no drop. This means that women in Ireland still drink beer. They still drink beer, but they no longer do so in the bars. Proprietors of bars and their employees have thus suffered immensely. Why have I referred to this example? The main reason is that although I very much respect the position of those people championing the cause of anti-smoking, I must nonetheless say that they have adopted the wrong strategy over the past few years. They repeatedly tell restaurant proprietors that they are a bit unwise, and that business will even be better after the prohibition of smoking. They question why restaurant proprietors should still support something so unhealthy. In other words, they think that restaurant proprietors are unscrupulous, to the extent of hindering the cause of anti-smoking despite the prospects of booming business. They even assert that restaurants should continue to prohibit smoking.

I think these people must be vindicated. Many Members have explained that they understand the situation, and even Mr Andrew CHENG has admitted that business may not necessarily increase after a total smoking ban is imposed, and he is no longer so certain about this. He says that business may increase, but he also thinks that it may also drop. Actually, many in the industry are extremely worried, and many employees are also worried about losing their jobs. This explains why they have adopted such a position. Members must never think that they have made very huge profits but still want to oppose the Bill.

Chairman, let me return to my amendment. It actually consists of two main parts. One is about private tuition. I wish to clarify that I do not oppose the Government's proposed provision on communal quarters. The only thing is that even when the Government first proposed to include communal quarters, it

already knew that no enforcement could be possible, and it also pointed out that no inspection would be carried out. It made it clear that prosecutions would be staged only upon receipt of complaints and when there were witnesses. The legislation actually carries two main parts. Chairman, as you are aware, one part is about prohibiting smoking in restaurants, and the other part is about education. Therefore, smoking is to be prohibited both indoors and outdoors, whether one is talking about universities or kindergartens. This is a very big move. But two things are left untouched. One of them concerns private kitchens, and since I have already discussed it, I shall make no repetition here. Fortunately, the Government has accepted my views, or to give the matter its fair deal, it has no alternative but to accept my views. Let us therefore dismiss this as an oversight. At the very beginning, there were once some arguments concerning private residential premises. But when a person is performing a commercial act, whether he is giving private tuition to your daughter or my son, how can he be permitted to smoke? Or, what is the logic of allowing a person to smoke in the living room while you are giving private tuition there?

The Government keeps claiming that no enforcement can be possible in such cases. I have explained that there will be no problem. If a tutor keeps puffing away when teaching his student geometry and arithmetic or when teaching his student how to play the piano, making the student cough or suffer from an allergic nose, the student will certainly tell his mother back home. There will then be a complaint, in which case enforcement will be possible. Why are they so reluctant? I cannot see any logic in this.

It is most unfortunate that both Mr Andrew CHENG and I have to face the same miserable situation — no one will vote for my amendment. Although his intention is good, I will not have any chance of moving my amendment. But I still think that there is no logic in the Government's reasoning. I have wasted a lot of time on this. Some Members may think that I should not have wasted so much time on requesting the Government to include all these proposals in the ordinance.

Besides, Chairman, I also wish to say a few words on smoking rooms. I have heard how the Secretary and Mr Andrew CHENG talk about smoking rooms. Actually, we have found some experts People have been talking about smoking rooms, about how we can freshen the air inside a room where there are always people smoking. Some Members have questioned whether a

ventilation speed of 48 times a minute can freshen the air, can make the air fresher than the air in this room, where no one ever smokes.

We may as well put aside the studies on this for the time being. But I can say that the ventilation system of the smoking rooms I have been proposing to the Secretary is even better than that of the airport. For one thing, there must be a separate ventilation and fresh air system, such that the air in such a room will never find its way back to the master fresh air system. For another, such a smoking room is open to smokers only for the purpose smoking. No one will dine in it, and no employee will be affected. Most importantly, the tobacco smoke exhaled will be pumped away and will not leak to other workplaces. We may thus say that the only people affected will be the smokers, and no other people will be exposed to any second-hand smoke. In hospitals, for example, there are numerous invisible and odourless germs, but even so, it is still possible to prevent germs from spreading from one ward to another. Therefore, I fail to understand why it is impossible to stop the spreading of tobacco smoke, which is visible and not odourless. I fail completely to understand why it should be impossible.

Chairman, I heard the Secretary say that studies would be conducted. I therefore hope that the studies can be completed within one to two years or even a shorter period of time. I am convinced that the studies will prove the technical feasibility of the smoking rooms advocated by the industry. I wish to thank the Secretary for his undertaking, and I also welcome his move to launch the studies on behalf of the industry. Actually, it is best for the Government to engage our involvement in the studies, so that we can offer advice on their conduct.

The idea of smoking rooms is the focus of my proposal to the Government. At a time when the whole anti-smoking legislation was about to come into operation, the bar industry constructed two smoking rooms in Central and Causeway Bay during the scrutiny period. Ms Emily LAU mentioned them just now. Mr Andrew CHENG also inspected them, and so did other Members. Actually, when it comes to the overall test findings, although the Secretary commented that he could not be certain about anything (because one of the indexes suddenly soared when large quantities of smoke were emitted), I just do not think that there was any leakage of smoke which could be detected by people and which caused any great discomfort.

What are the mechanics of the smoking room in Central? It operates on negative pressure, which prevents second-hand smoke from escaping from the smoking room. Cool fresh air is pumped continuously into the independent smoking room through the vents, and fresh air is sucked into the room from outside the bar. At the same time, the six air outlets in the room will continuously pump air out of the room. All this, together with an air-purifier, will keep the air inside the room fresh even when people are smoking.

A self-service smoking room is meant for smoking only. No food and other services will be provided. The industry has also made it clear that whenever anyone is smoking in a smoking room, all staff will wait until he has left before entering the room to work. This arrangement is intended to address the authorities' worry that employees' health may be affected by second-hand smoke. The smoking room in Causeway is different from the one in Central because people can sit there and eat. But its ventilation equipment has been replaced by a more powerful system. I think the results are also quite good. But people who do not smoke, such as Mr Martin LEE, will of course feel uncomfortable there. I can appreciate that.

Discussions on bars remind me of Tang Lung Street. When I was working on the Liquor Licensing Board, there was a 22-storeyed building in this street. Each floor measured some 3 000 to 4 000 sq ft. As many as 21 liquor licences were issued to the bars in this building. Members must realize that there were two lifts in this building. If all people must go downstairs for smoking Members should know how Tang Lung Street is. It is just half the width of this road and traffic is one-way. Therefore, why do we not consider this idea? At least, no staff will be affected. People will just go into a room for smoking, and the smoke exhaled will be treated very properly.

Mr Andrew CHENG mentioned the United Kingdom just now. I also wish to talk about a foreign country, France. The French Government has announced that with effect from 1 February next year, a total smoking ban will be implemented. For restaurants, bars and other night-time entertainment establishments, exemption will be granted until 1 January 2008. There is also a requirement on the construction of smoking rooms. Restaurants, bars and night-time entertainment establishments such as discos, where smoking is common, must construct smoking rooms with independent ventilation. And, no staff should be forced to enter any smoking rooms to serve customers. The authorities will promulgate a law next month to implement the measure that

exemption will only be granted to public places equipped with restricted-entry smoking rooms. Even staff members on duty are forbidden to enter such smoking rooms. What France is doing is similar to my proposal in many ways. But I started to advocate the idea a very long time ago and the law in France is just a very recent thing. Therefore, when Members say that such and such are found only in Hong Kong but not in other countries Actually, Chairman, I think the scrutiny of the Bill has been a very painful process Actually, speaking of beaches Well, I am not going to mention other countries. Smoking is prohibited on the beaches in two Australian States only. Actually, we are not very progressive. In Japan, smoking is prohibited in streets. Why do we not follow their practice of banning smoking in streets? The reason is that in Japan, smoking is prohibited in streets only. There is no prohibition in other places. The point is that we often tend to look at something out of context and argue over it endlessly. Why does Japan still prohibit smoking in streets even though so many cigarettes are sold there? Why do we not follow their practice of banning smoking streets. As for why only two Australian beaches and cities prohibit smoking, I really do not know. Chairman, I only hope that Members can give the catering and bar industries some room for survival, so that they can carry on their business. I hope that their employees can still work and live happily without being affected by any second-hand smoke.

Chairman, since the Secretary discussed smoking rooms with such sincerity just now, I shall withdraw my eighth amendment on smoking rooms. Thank you, Chairman.

DR KWOK KA-KI (in Cantonese): Madam Chairman, I had wished to speak on a complete smoking ban in the Ocean Park originally. But I was a bit shocked as I listened to the Secretary and Mr Tommy CHEUNG who had been echoing each other's views in their speeches, because the Secretary mentioned smoking rooms — I am sorry; first of all, the Secretary had attended only one of our meetings, and he had not attended any of our other meetings. In fact, the other representatives had not mentioned this at all. In the course of scrutiny by the Bills Committee, various experts did give their views on the viability of smoking rooms. This was also discussed very clearly in the Bills Committee. However, with present-day technology, a smoking room still cannot provide the people inside with the same environment as that outside in smoke-free places. That is why I find it very strange. Has there been a new breakthrough in technology or in the relevant arrangements recently which supersedes the

conclusions made on an issue that we have basically discussed? I find it strange that this issue would be brought up all of a sudden. Why?

In fact, in the entire Bill, one of the most important issues is why, insofar as the indoor smoking ban is concerned, it is necessary to put down in such express terms the restriction that no smoking room can be provided. The reason is that according to the deliberations of the Bills Committee and expert opinions, it is clearly stated that judging from the present-day standard, the provision of smoking rooms is not viable. So, as the Secretary had suddenly brought up this issue again, it explains why we would hear Mr CHEUNG say that he would withdraw all his amendments. Indeed, he could really withdraw them. First, we know that basically, there will not be further discussions; and second, if the Secretary said that he would look into the provision of smoking rooms, it seems that he has taken on board the view of a particular side. But this, I cannot agree, because if this is allowed to happen, we would not have to examine the Bill at all. Madam Chairman, we held more than 50 meetings and spent over 100 hours discussing this issue. Now, the Secretary suddenly suggested in his speech to again discuss an issue that had already been discussed before, as if this issue has never been discussed by us at all.

I think this has nothing to do with whether or not we should take on board the view of a particular trade or the view of some people. This is entirely open to discussion. From the tabling of the Bill to the Bills Committee to this day in the Legislative Council, the discussion has all along been open and above board. Everyone can put forward different views according to what they have in mind. But in the end, Madam Chairman, when we have made our points and stated our views, the Government suddenly put forward some new views and opinions. I think it is most unfair to our scrutiny of the Bill, is it not? It has never occurred to me that this can happen. In fact, I thought that this would not be discussed anymore. Today, I read from the newspaper that the Government had suddenly brought up the issue of smoking rooms again. I had never thought that the report could be so true. But to people who have been persistently striving for a complete ban on smoking in indoor areas, this is indeed a bolt from the blue.

Mr CHEUNG mentioned earlier the different practices adopted in many places elsewhere. I do not think that I can list all the places one by one. But Madam Chairman, I am sure that smoking rooms are not provided in many places where smoking is banned. I believe the reason is that they have fully considered and discussed the viability of the ventilation system and whether the

health of the employees and other people in the premises will be protected. Firstly, many premises, bars or places are basically very small, and in such a small area, I do not know how an even smaller smoking room will be provided there. Secondly, is it viable in terms of the arrangement for ventilation equipment? Where will the smoke go? Thirdly, will the employees be protected in the way as easily as it is said now by just telling the employees not to go into the smoking room? Is it just this easy? It is because, in reality, Madam Chairman, how can segregation be effected? Will the guests there not order dishes, food and drinks too, and will the employees not be required to take food into the smoking room?

(THE CHAIRMAN'S DEPUTY, MS MIRIAM LAU, took the Chair)

During our discussions on the Bill, we already drew a very clear conclusion from our discussions that apart from providing protection to the general public, it is also necessary to take into consideration the hazards of inhaling second-hand smoke by employees working in the premises concerned, especially the occupational safety of employees in such workplaces as bars, saunas and karaoke establishments, and this is a very important factor. Why has this consideration disappeared into obscurity all of a sudden? On this point, the Government does owe us a clear explanation.

I would also like to briefly explain why I proposed to implement a total smoking ban in the Ocean Park. In fact, in the stage of discussions, we discussed not only the Ocean Park. Firstly, we discussed some amendments in the process, and the Government accepted some of them. According to our discussion at that time, we proposed to include all public swimming pools and public beaches as no smoking areas. Some of the amendments were proposed by Mr Andrew CHENG and some by me. With regard to the discussion on the inclusion of public swimming pools and public pleasure grounds as no smoking areas, we entirely agreed with the original view of the Government, that a total smoking ban should be imposed before the introduction of new amendments.

I do not wish to repeat the views that I mentioned during the Second Reading of the Bill. In fact, we all know that parks, beaches or theme parks are recreational facilities frequented by families and by many children and young

people, and we know only too well that smoking should not be allowed in these places. Even if the sale of cigarette is to be banned in Hong Kong, as suggested by some people, I personally do not mind seeing this happen. But this is certainly not a viable option in the short run. Time is what we need, and it would be most successful if no one would smoke and the public would no longer be deceived by tobacco companies. But before we can achieve this, we still do not wish to see anyone being subject to the adverse impact of first-hand smoke or second-hand smoke anymore, or to give the younger generation a wrong impression that there is a place where smoking is condoned. It is indeed unjustifiable to allow them to smoke in parks or theme parks.

Many people are of the view that this is all for our tourism. At present, the largest source of tourists may be visitors from the Mainland. Here, let me reiterate that even the Mainland has signed the Framework Convention on Tobacco Control (FCTC), and to give effect to the FCTC, the Mainland may have carried out work even more thoroughly than we have, just that we may not know about it. But clearly enough, what we are doing now is precisely to make people return onto the right track. We do not wish to see that non-smokers are attracted or misled to take up smoking, and we also encourage smokers to quit smoking, because the habit of smoking is, in fact, hazardous to their health. The right and wrong are clear enough. Not allowing them to smoke in parks does not mean not allowing them to smoke. There are still plenty of places outside the parks where they are allowed to smoke, and it is not a problem to smoke there.

Under our original proposal, we considered that no express stipulation should be made on the provision of smoking areas in large parks, including the Kowloon Park and the Victoria Park. So, it is under the same principle that I proposed a total smoking ban in the Ocean Park. As we said before, smoking should also be banned in two other theme parks, namely the Hong Kong Wetland Park and the Disneyland. With regard to the Hong Kong Wetland Park, the Government has accepted the proposal of Mr Fred LI and made provisions to clearly include it in the scope of the total smoking ban. As for the Disneyland, it is not within the scope of our discussion in the course of the scrutiny, for it has its own governing ordinance, but it does not mean that we would give up pursuing for a total smoking ban in the Disneyland. In fact, Deputy Chairman, earlier on, even I myself had discussed this with the management of the Disneyland and expressed the wish for a total smoking ban to be implemented there. It is because of the constraints on the scope of this Bill under discussion

now that we are unable to make clear provisions in respect of the Disneyland. But clearly enough, this amendment can cover the Ocean Park and so, we cannot give up this principle.

Deputy Chairman, I think we must distinguish between right and wrong. If we give up this principle, then, it would become always difficult to conduct discussions on the issue of a smoking ban. It is because when actual benefits are involved, we would have to go back to issues already discussed before. When we say that cigarette advertisements should be banned, the advertising companies would say that they would be affected; when we discuss a total smoking ban in catering establishments, the restaurants would say that they would be affected; when we discuss a smoking ban in bars, the bars would say that they would be affected. But has anyone thought about the public? Has anyone thought about the next generation? It is because bar operators, karaoke establishment operators or operators in various other trades and industries all have their own representative or spokesman in this Chamber. But does the young generation have any spokesman here? Does anyone care about those people who are attracted to smoke generation after generation? We pay \$5.3 billion yearly for first-hand smoke and second-hand smoke. The money spent is not in the least worthwhile. Worse still, money aside, 4 000 lives are claimed every year. Has anyone ever thought about the cost in terms of human lives and economic benefits? Why would we suddenly think that a total smoking ban is not viable, saying that this could have certain impact on a particular industry or the tourism industry?

Speaking of its impact on tourism, I think it is far smaller than that of those scandals, such as the "zero tour fee" incidents, which are a disgrace to us. Some people said that a smoking ban will deter tourists from coming to Hong Kong, and that they will be deterred from visiting the Ocean Park. I absolutely do not believe it. In fact, our anti-smoking efforts can give Hong Kong an opportunity to develop into an advanced city of tourism. I think other cities in the Mainland may agree with this; so will other places in Asia. When we visit other places, where smoking is not banned and many people smoke, we may have the feeling that we do not wish to go there anymore, because that is a very uncivilized place. So, these are precisely the changes that we wish to make, and it is precisely our wish to develop Hong Kong into a healthy and quality city of tourism, which is important. To develop our theme parks into quality tourist spots will only further improve Hong Kong's reputation in tourism development in the international community. Visitors travelling to Hong Kong with their

family will feel even more at ease visiting Hong Kong or the theme park and the Ocean Park. If we are so short-sighted as to set eyes only on the possible impact in the short term, thinking that it might reduce the number of in-bound mainland visitors, this view is, in fact, far from convincing.

I am very disappointed. As many colleagues have said, we certainly do not have the chance to put our amendments to a vote because in fact, we are enduring humiliation for an important cause. If we do not endorse the Government's amendments to this Bill, we are worried that the Bill basically cannot come into effect in January 2007. In this connection, what we (including myself) are doing here is like "slapping ourselves across the face". On the one hand, we ask for changes to the original amendments of the Government, including implementing a total smoking ban in the Ocean Park, but when we vote, we may have no choice but to accept the political reality and endorse the Bill because if we vote against it, people who do not wish to see a total smoking ban might feel very happy and so, I do not wish to do so.

In any case, I am very disappointed because firstly, no vote can be taken on our amendments; and secondly, I think the remarks made by the Secretary earlier about smoking rooms seem to be a retrogression. It is not my wish to see what we have achieved now to eventually go back to square one, and then everything that we have done would be thrown into the rubbish bin. If so, smoking would continue to be allowed in many indoor places as a result of the provision of one smoking room after another.

I so submit. Thank you, Deputy Chairman.

MR ALBERT CHAN (in Cantonese): Deputy Chairman, I plan to propose a number of amendments, but I think I do not have the chance to move them formally. As for the Government's amendments, I think they will eventually be endorsed by a majority vote in this Chamber.

During the Second Reading debate earlier, many Members, including many of those supportive of the extension of the anti-smoking legislation to outdoor areas, said in their speeches repeatedly that this Bill leaves much to be desired and that there are many problems with it. It is precisely because this Bill is full of traps and encompasses many contradictions in logic that Mr LEUNG Kwok-hung and I abstained in the vote on the Second Reading of the

Bill. I abstained not because we do not support a smoking ban. I am fully supportive of it, especially a total smoking ban in indoor places, including restaurants and workplaces. But as I said in the Second Reading debate, we must ensure fairness and impartiality in the enforcement of the ordinance and also compliance with the ordinance by an informed public. The Legislative Council and the Government must not set traps for the innocent public to fall into. As I have already explained this point, I will not repeat it here.

I only wish to further elaborate a number of points. Firstly, I wish to clarify a point made by "Tai Pan" in his speech earlier. He said that I was arguing on behalf of smokers. In fact, despite my abstention in the vote and the many criticisms that I have made, I absolutely do not speak for smokers, because I am against smoking. I made many comments because I have seen defects in the clauses and many problems in logic. My observations are on the technicalities of the clauses and the potential problems in actual enforcement. I put forward many views and made many comments in the Bills Committee, but I did not see Members supportive of this Bill or Members supportive of a total smoking ban overturn my conclusions and comments on the technical aspects of the Bill, especially those in relation to the traps arising from the Bill.

For instance, I have particularly criticized the part of the Bill which imposes a smoking ban on beaches. I have pointed out time and again that a very ridiculous thing about it is that while a smoking ban is certainly acceptable on beaches and the waters, smoking is allowed in shops on beaches but it is banned in the barbeque area beside a beach. These ambiguities will certainly cause confusion among the public when they go to beaches, as they do not know where smoking is banned and where it is not. This will certainly cause traps to arise, and this again brings us back to the problem of traps.

Earlier on, Dr KWOK Ka-ki expressed shock at the Government's proposal of providing smoking rooms. In fact, what should be a shock to the whole of Hong Kong is that the Bill has turned an indoor smoking ban into an indoor plus outdoor smoking ban. This should be an "earthquake", not just a "shock". Sometimes, Members are very selective, as they tend to indefinitely extend things that they like. They are very happy in doing so; they have no other feeling, and they just feel happy themselves. But for things that they do not like, even though it is just a minor amendment or even a proposal to conduct

studies or to take something into consideration, they would make severe criticisms.

In the course of deliberations by the Bills Committee, I had very deep feelings. Perhaps this is because I have more contact with the grassroots. Certainly, many Members in this Chamber also have contact with many grassroots. But every week, I see the plights and tragic sufferings of the people in their living due to the economic downturn and unemployment. The cases received by me under the "meet the public" scheme involve divorce, bankruptcy, unemployment, suicide, missing persons, and so on. I handle many of these cases every week. The monthly caseload in all these categories adds up to dozens, if not above a hundred. So, when Members consider a social policy or a piece of legislation, especially when it involves the economy and employment, we cannot make assumptions.

Mr Andrew CHENG said that these amendments seeking to impose a smoking ban would affect neither the economy nor business. This is his observation and analysis. But what if they are really affected? Will Mr CHENG take care of the whole family of those people affected? Will they take care of them for their whole lifetime? Certainly, Dr KWOK Ka-ki may ask whether I will take care of those people suffering from lung cancer caused by smoking for the rest of their lives. But this issue has lingered on for many years. As many Members said during the Second Reading debate, if cigarettes are really taken as an equivalent of narcotics, then the sale of cigarettes should be banned completely, and this would earn more respect from me. Given strong medical evidence, the smoking of marijuana is banned, and according to many medical studies, cigarettes can cause more serious impacts than that of marijuana and since marijuana is banned, why is cigarette not banned? If a ban on smoking is proven on medical grounds and if there are strong medical arguments supporting a total smoking ban, enforcement problems would be out of question. It is because to many smokers, including the ordinary citizens with whom I have contact, the five minutes taken to smoke a cigarette in a park may be the most relaxing and enjoyable moment of the day. He may live in a very small "cubical" in a district and so, he does not smoke there, and he does not have the means to go elsewhere for his enjoyment. He may go to the small park near his dwelling and take a cigarette there quietly in the corner all by himself. This may be the most enjoyable moment to him. But now, we even have to take away this moment from him. Dr KWOK Ka-ki said that there are many other places where he can smoke, but in fact, there are not. The only option for him to smoke is to crouch at the curbside, because smoking is not allowed in many

indoor places. Nor can he smoke inside buildings, restaurants, and so on. The only choice for him is the roadside. He may have to crouch at the curbside in order to take a cigarette, but the vehicular exhaust that he will be inhaling may be more harmful than a cigarette. Speaking of the air, sometimes I think this is most ironic. While we are doing everything we can to alleviate the impact of smoking on us, our blue sky is already gone, and we just do not know if the damages caused by industrial pollution will be 10 times greater than those by smoking. Nor do we know how the circulation of air will be regulated in the future, in order not to render the public affected.

With regard to the impact of the smoking ban, I know that some time ago, a company, or a karaoke establishment which is quite large in scale in Hong Kong tried to start ahead of others in providing smoke-free karaoke service. After trying it out for some time, it was reported that their business had dropped 40%, according to what they said. So, if Members consider that a smoking ban will not have any impact on business and if, after implementing this ordinance, the business of the relevant trades is severely affected and the employees cannot make their ends meet, I hope that Members can give them a reasonable answer and explanation.

Certainly, I absolutely agree that protection should be given to employees. That is why I fully support almost all the clauses providing protection to employees. Please do not have the misconception that I am speaking for tobacco companies and especially smokers in making so many criticisms. But as a responsible parliamentary assembly and a responsible Member, we cannot just sit idly by when seeing traps in the clauses.

Speaking of the impact of cigarettes, psychotropic drugs or alcohol, in fact, we may as well turn all Hong Kong people into puritans who do not smoke or drink alcohol. They may even refuse to receive blood transfusion; and they refuse formal education, which means that they will educate their children by themselves. This is how people may make their own choice according to their creed. But when statutory provisions are involved, we really cannot ignore the need to estimate and study the impact of the ordinance on the economy and the community. This, we absolutely cannot just look on with indifference.

Deputy Chairman, another point that I wish to make is that some other clauses in the Bill will put certain pressure on many employees, especially those concerning a total smoking ban by educational institutions. Certainly, I agree that smoking should be completely banned in conventional primary and

secondary schools, even in Year 2000 design schools, and especially in kindergartens. But some primary and secondary school premises are very large, such as Diocesan, La Salle, and St Stephen's. Under the Bill, smoking will be completely banned in these school premises. I would like to cite an example. If an employee is a cleaner or a kitchen worker in a school and wishes to smoke a cigarette during his rest time, but if there is not one single place where he is allowed to smoke in the whole school, he may have to walk for some 10 to 20 minutes in order to smoke a cigarette outside the school premises. Is it too much of a restriction? That is why in my amendment, I wish to make some changes, but I know that I do not have a chance to do so. Schools should designate some places where people seldom pass by or places in the remote parts of the school premises as smoking areas, so that employees (including teachers) who wish to smoke within the school premises can have a choice. Otherwise, some employees who have been a smoker for 20 or 30 years may breach the regulation for taking a cigarette secretly and may hence be dismissed. The impact may be insignificant, but we cannot neglect how the employees will be affected. Let us look at the question at issue: The school covers such a large area and yet, there is completely nowhere that smoking is allowed; smoking is not allowed in workplaces; it is not allowed in quarters; and it is not allowed even in the open area, and I stress, open area. Like the example of St Stephen's primary and secondary school that I have just cited, the school premises is enormous in size, but if an employee working in one of the quarters wishes to take a cigarette, he really must go out of the school premises before he can do so. This is absolutely impossible, and will create a major impact on his living.

Finally, Deputy Chairman, I wish to add that apart from removing beaches from the scope of the smoking ban and the provision of smoking areas in schools as I mentioned earlier, part of my amendment also proposes to grant exemption to mahjong tin-kau premises, because I think imposing a smoking ban on these premises will expedite the extinction of these entertainment establishments. Mahjong parlours will become extinct even if smoking rooms are provided. I do not know whether this industry will have any chance of being declared as a cultural heritage, for they cannot be found elsewhere. The Hong Kong Government seems to have made an application for "pineapple bun" and "milk tea" to be declared as cultural heritage, but another cultural heritage of ours, namely, the mahjong parlours, will be destroyed by this Bill, and this, I believe, is not the original intent of Members. But I think it will happen and these parlours will disappear in Hong Kong.

Deputy Chairman, another amendment proposed by me concerns the provision of smoking rooms in entertainment establishments which do not include catering establishments. The main reason is that I think the provision of smoking rooms in entertainment establishments will prevent the entertainment industry from being wiped out by this Bill. The Secretary also mentioned the provision of smoking rooms. As the Secretary also made a proposal on smoking rooms, I will, if I have the chance to move my amendment, withdraw the part of my amendment concerning smoking rooms. But if I have the chance to move my amendment, I will maintain the parts on exempting mahjong parlours and beaches from the total smoking ban and providing outdoor smoking areas by educational institutions. I hope that I will have the chance of doing so. If not, I hope that when the Government introduces amendments to the ordinance in future, it can reduce the disastrous effects caused by the ordinance to a minimum, so that those people who know that they will not live long because they may die of lung cancer from long years of smoking will have the chance of having a bit of joy in the rest of their lives, rather than being subject to greater plights both in their living and in spirit because Members consider smoking unacceptable. Thank you, Deputy Chairman.

DEPUTY CHAIRMAN (in Cantonese): Members may now debate the original clauses and the amendments jointly.

DR YEUNG SUM (in Cantonese): Deputy Chairman, Mr Albert CHENG said in his speech earlier that people opposing smoking like us are fundamentalists. Some colleagues criticized that in opposing smoking, we are standing on moral high ground to the neglect of the human rights and difficulties of smokers.

However, Deputy Chairman, you held the Chair when I spoke earlier, and one of the points that I made was about my views on freedom. I remember that I said that freedom was not absolute. If, in a society, everybody insists on his own freedom to the neglect of the freedom of other people, there will be no social order in this society. So, even in the International Covenant on Human Rights, or the international covenant relating to political, cultural and economic rights, or the Declaration of Human Rights, and from the '40s to the present, freedom is always relative. In other words, you have your freedom, but if your

freedom infringes upon other people's freedom, this should not be encouraged or accepted for the overall interest of the Government.

In this connection, do we people who oppose smoking steadfastly disallow other people to smoke? No. You may continue to smoke, and it is up to you to decide whether or not to quit smoking. This is a question of moral choice and living habit. But if you will affect other people when you smoke, I think it should not be encouraged morally speaking or from the perspective of civic responsibility, and this should not be considered as deprivation of his human rights. He has the freedom and the human right to smoke, but to people inhaling the second-hand smoke, where are their human rights and freedom? When we are concerned about the smokers, saying that they are old and poor, what about those people around them, including their children, their wives, relatives and neighbours? For people who are affected by their smoking in the park, who will speak for them? In fact, we are faced with so many myths and in the end, freedom will always come up, but is freedom absolute or relative? When we have thought about this question clearly, please do not say that I am a moralist standing on moral high ground, or that we are fundamentalists. I think it is not very difficult to solve this myth. You just have to think about it more carefully and think about the International Covenant on Human Rights and even the International Covenant on Civil and Political Rights and you will understand this point.

Deputy Chairman, I would like to put on record and state explicitly to the Secretary my strong protest to what he had said at the end of his speech. When I first read the relevant reports in newspapers, I thought that it was just rumour. It had never occurred to me that when the Secretary concluded his speech, or in the last part of his speech, he would stress again that the Government would consider ploughing in resources for studies to be conducted over a period of one year or two on the provision of smoking rooms. I think this "volte-face" approach of the Secretary is, firstly, dishonest, and secondly, an outcome of political negotiation. So, after the Secretary had finished his speech, I heard Mr Tommy CHEUNG say that he would withdraw his relevant amendments. Obviously, the Government had talked with them about this and a deal had been made. This may serve to quiet down opposition in the relevant trades, as they will think that as long as they can have one or two years' time and if its feasibility is established by the Government's studies, it is basically possible to revert to past practices.

Frankly speaking, if the catering establishments can successfully persuade the Government — I do not know what standards are adopted in the scientific research, by whom these researches are conducted and what samples are taken, and these are the very basic questions in the conduct of studies. If you said that smoking rooms can be provided in a particular industry, smoking rooms will then proliferate, prompting every trade and industry to ask for smoking rooms similarly. In that case, you will be taking the entire anti-smoking campaign backward, and this is a retrogression.

Deputy Chairman, I clearly remember that the Bills Committee scrutinizing the Bill has had discussions on smoking rooms. I also remember clearly that some professionals, including representatives from the Faculty of Medicine of the University of Hong Kong, spent plenty of time explaining to us that it would be very difficult to provide smoking rooms that are 100% safe or very safe. The catering industry, for which Mr Tommy CHEUNG is the representative, always says that as long as a good ventilation system is put in place, or if the employees are segregated from these rooms, as Mr LEE Cheuk-yan has said, it would not affect other people. The employees would not even have to go into these rooms; customers would take care of themselves, and they could bring their alcohol and food to these rooms. I remember clearly — Deputy Chairman, you can check the records of meetings — that few Members have expressed support for this idea.

Basically, there was not a mainstream view which supported the Government to do so at that time. But now, the Government has not only made this proposal, but also said that resources will be committed to conducting studies. This can, indeed, pacify certain sectors. I believe in the vote to be taken later on, perhaps nobody will vote against the Government and its proposal will be unanimously endorsed amidst applause. But regrettably, the Government's proposal carries a defect. Some of the issues were discussed by us; some people who attended the meetings had explained the results of many studies from their expert angle to prove that it is not feasible; and the committee did not think that the Government would revisit this proposal again. When the discussions were over and everyone had expressed their views, no conclusion was drawn; the Government was not encouraged to do so, and the Government did not say that it would do so either. But when the Secretary rose to speak earlier, I listened to him very attentively. When he had finished, I wrote a note to Mr Andrew CHENG. I said that this was not the attitude of the Government when we were scrutinizing the Bill. Basically, after we had listened to the

views from all sides, apart from the industry insisting on this proposal, the Government did not insist on doing it. Apart from the industry, other colleagues did not indicate strong support for it. But now, the Government has outrageously put forward such a proposal. From this we can see that it is indeed very difficult for the Government to practise "strong governance".

Under the system formulated by the Government, the Chief Executive is not returned by universal suffrage and therefore does not have the people's mandate. The Legislative Council is not entirely returned by universal suffrage and there is no room for multi-party politics. Whenever the Government wishes to secure approval for something, it has to give way to certain people, "arm-wrestle" with certain people, or make deals with other people. In order to make everyone happy, it must make concessions to all sides. So, while this did not have much support in the stage of scrutiny by this Council, the Government put forward this proposal and Mr Tommy CHEUNG then said that he would withdraw all the relevant amendments, giving the catering sector the feeling that there seems to be a little bit of hope. This is fine, if its safety is scientifically proven. But please bear in mind that once you permit an industry to do so, other industries would be asking for the same one after another. But is it really 100% safe? What scientific standards are adopted? Who will be responsible for conducting the studies? What will be the samples? I consider this dishonest approach most unsatisfactory. In the course of the scrutiny, there was every reason for us to debate this, and after the debate was over, basically, the committee might have formed a mainstream view. The Administration should have insisted that studies be conducted and after listening to all the opinions, the Secretary could proceed to put this on record in his speech. We would accept this, because you are the person who rules. But if, in the course of the scrutiny, the Government's attitude was unclear, and when experts had expressed their views, when all the supporting and opposing views had been stated, and when the committee did not ask the Government to do it and the Government did not say that it would do this either, the Government is nevertheless telling us that it would do this now. We are in the stage of formal examination, and every speech made by the Government will be put on record and it represents an undertaking. Now, the industry will hope that after a year or two, this measure will be widely adopted when it is scientifically proven to be safe. In fact, has the Government considered the propriety of such a practice or approach? What would be the consequences? I am greatly disappointed with this, and I must strongly protest against it.

In respect of parks, I do not wish to repeat my views here, and Mr Andrew CHENG has also stated our position earlier on. Although we oppose the provision of smoking areas in parks, since the Government's amendment will be put to the vote first according to the voting procedures and if we vote against the Government's amendments, there will not be enough votes for Mr Andrew CHENG's amendments to be endorsed and if that happens, it means that we will achieve nothing at all. For this reason, even though I oppose the designation of smoking areas in parks, I will still vote in support of the Government. Let me reiterate that if problems are found after smoking areas have been provided in parks for some time, I hope that the Government will introduce an amendment bill for our further scrutiny.

Thank you, Deputy Chairman.

MR VINCENT FANG (in Cantonese): Deputy Chairman, in the course of the deliberation of the Bills Committee, the issue that has generated the most lengthy discussion concerns with Schedule 2 in clause 20, which deals with designated no smoking areas and exempt areas.

Just as I said right at the beginning, I am all in favour of imposing a smoking ban on indoor workplaces, in particular schools, hospitals, child care centres and locations with heavier pedestrian flows. Because it is the only way through which we can achieve the target of protecting the public from the harm of second-hand smoke.

Earlier, some Honourable colleagues said that they were dissatisfied with the scope of the smoking ban as proposed by the Government in the amendments, for example, they opposed the designation of smoking areas in parks. However, I think that some proposals are totally unreasonable, while some are excessively stringent.

Firstly, the original proposals of the Government's Blue Bill were so restrictive that such adult entertainment establishments as mahjong parlours, nightclubs and clubs, and so on, had been included into the scope of the smoking ban. It is known to all that the business of these establishments is inseparable from tobacco and alcohol. When we stand on moral high ground in the Legislative Council, claiming that the smoking ban is in the interest of protecting the health of the people visiting and working in these establishments, have we

ever thought about them from the perspectives of actual business operation and their means of living?

I think exemption should be granted, in particular, to mahjong parlours, as new mahjong licences will not be issued according to the existing Gambling Ordinance. The existing 40-odd mahjong parlours, which are gradually disappearing, have actually become the so-called "sunset industry". However, people who play mahjong or work in these parlours are basically smokers, so why did the Government not exercise its discretion in this case?

I have stressed time and again in this Council that, while our business environment has become less favourable, government departments have very often merely considered their own portfolios when drafting laws, but neglecting all other aspects. Like this anti-smoking law, the Health, Welfare and Food Bureau has placed public health above all else, to the neglect of the business environment. Yet, I am very glad to hear from the Secretary's reply that the possibility of setting up smoking rooms installed with separate ventilation and filtering systems in, say, bars, will be examined and a review of the feasibility of such smoking rooms will be conducted within two years, that is, before the expiry of the transitional period. I appreciate the sincerity of the Secretary, but I do hope that the Government will look at it from an objective and practical perspective, and establish a reasonable ventilation standard. People who engage in the operation of clubs and nightclubs told me that they had started to seek business opportunities in the north and Macao because, on the one hand, the economy and entertainment business of these places have become increasingly prosperous, and, on the other, their anti-smoking laws are not so stringent. Provided that there is room for development in Hong Kong, they still wish to continue development here and will be most willing to inject capital for the setting up of smoking rooms.

I oppose the amendment proposed by the Government to designate all bathing beaches and swimming pools as no smoking areas. Just as I said earlier, bathing beaches are, in fact, open areas with good ventilation. So, if a smoking ban is not imposed on pedestrians in the urban area, I really do not see why it should be imposed in bathing beaches.

As far as public swimming pools are concerned, I understand that swimmers are currently not allowed to bring anything other than swimming gear into the pool area, whereas Item 16 of Part 1 under Schedule 2 in clause 20

highlights "(a) any swimming pool; (b) any sidewalk immediately adjacent to the swimming pool; and (c) any diving board or other apparatus or facility adjoining the swimming pool". Are these three provisions not redundant?

Although the Government's final decision to designate certain smoking areas in parks has been criticized by some Honourable colleagues as a retrogressive step, I personally think that it is the Government's bid to remedy things. It is because many elderly people actually play chess, chat around and read newspaper in the parks near their homes every day, so if a smoking ban is also imposed in these public places, the Secretary might have to inject more resources to provide counselling to these people.

As we all know, many adults will avoid smoking at home for the well-being of their kids. But if smoking is prohibited even in places with good ventilation, then where do we want to drive these smokers to? Have we ever considered their human rights and freedom? The spirit of legislation is to provide for the scope of statutory regulation, and yet, should the law concerned not be at least reasonable and enforceable? Many Honourable colleagues want to turn Hong Kong into an international anti-smoking high ground in one-go, but may I ask the Government: Have you considered the actual situation of Hong Kong and the enforceability of the law concerned when you decided to incorporate Members' views into it?

The Department of Health advised that nearly a hundred tobacco control inspectors will be recruited to carry out enforcement duties. However, compared to the scope of the smoking ban, it is downright impossible to achieve effective enforcement. Earlier, the Secretary also said that the success of the smoking ban lies in the self-discipline of the smokers themselves, whereas law enforcement only plays a complementary role. Since it is the smokers' self-discipline that counts in the end, then why do we not give them more room? With regard to the finalized scope of the smoking ban, I support it albeit reluctantly because I only support the exempted areas listed in the latter part of the amendments. I so submit. Thank you, Deputy Chairman.

MR MARTIN LEE (in Cantonese): Deputy Chairman, I express my strong dissatisfaction that the issue of the proposed setting up of smoking rooms has been, without any prior notice, brought up again by the Secretary all of a sudden today, when some media were notified while Members of this Council were left

in the dark. In fact, a conclusion has already been drawn. I clearly remember that the issue was actually wrapped up in the course of deliberations of the Bills Committee, and it was confirmed that there would not be any smoking rooms. So, there should be no cause for concern. What is the point of revisiting the issue all of a sudden? Now, I have begun to get a clue as to why the Government was so smart to pull back from the brink and returned to the right track on the Mild Seven issue. It is because the Government has, in fact, made a deal with the tobacco companies.

(THE CHAIRMAN resumed the Chair)

Madam Chairman, I remember that not long ago, an experienced journalist called to my home one night and said, "Martin, everything has been settled and the Government has now made a volte-face. General wordings will be used by Mild Seven while leading expressions are not allowed to be printed on the packets." I asked if it was true. He said everything had been settled and discussions would be held with the tobacco companies on the following day. Of course, I did not believe in what he said at that time. Are you crazy? Is the Government really going to discuss with the tobacco companies about the drafting of law? Today, I can no longer refuse to believe. If our senior government officials had not compromised with the major tobacco companies, why would the Secretary make such a move today at the eleventh hour?

Madam Chairman, is this not collusion between the Government and business, and between government officials and the tobacco companies? What is the position of the health of our people? What is the priority accorded to it? If this is a football match, Madam Chairman, you should give the Secretary a "red-card" warning because he had triped up the attacker of the opposing team when the latter attempted a shot. It was actually a ploy used at the very last moment. Furthermore, he knows very clearly that he is the person-in-charge as all the amendments to the Bill are initiated by him. In case his amendments are voted down, no other amendments can be proposed. We are compelled to support his amendments, no matter we like it or not. This is downright a plot.

I also wish to ask whether or not the Legislative Council Building is also required to set up a smoking room as the relevant proposal has again been put

forward now. If it is considered logical to set up these rooms, then why do we not have one? Perhaps a smoking room should also be provided in the official residence of the Chief Executive, so that when his friends who engage in the tobacco business visit him to discuss about his bid for a second term, there will be a smoking room for them. Another question is: What will happen in case of a breakdown of the ventilation systems of smoking rooms after they are allowed to be set up in food premises and bars? If I am a smoker, I patronize a certain food premise simply because it has a smoking room. But what if its ventilation system breaks down? I am sorry, I will have to smoke outside, or else I will choose not to patronize it. What can be done then? How can the Government exercise control in this case? When there is a breakdown of the ventilation system, though not a complete but partial breakdown, what will happen? Will the food premise concerned be allowed to continue business and let the customers smoke inside? Mr Tommy CHEUNG said that the Government should help the food premises and bars to survive — He is not. He actually wants those non-smokers to extinct.

Madam Chairman, I would like to talk about the Ocean Park and parks. If smoking areas are designated in the Ocean Park and parks, can you imagine what will happen to the kids? Madam Chairman, a large number of kids are indeed coming from the Mainland, who visit the Ocean Park with their parents. But if their fathers are smokers and have to stay in the smoking area, what will happen to the kids? They will have to wait for their fathers somewhere not too far away. Then, are kids visiting the Hong Kong Special Administrative Region again exposed to second-hand smoke? The case of parks is the same.

Why do Members supporting the Government always think of the smokers, instead of the non-smokers? Mr Vincent FANG is still talking about human rights and freedom. He was not present when I gave my speech earlier, neither is he present when I speak again now. As I said before, people inhaling smoke will only do harm to themselves, but their exhaling of smoke will do harm to others. Which part of the world will admit that their citizens have the right to harm other people? Mr Vincent FANG said that some of his friends will go north, so just let them go. Relevant legislation will also be enacted in the Mainland very soon. Collusion between the Government and business may probably not exist because now I know that the mainland leaders, HU and WEN, hated collusion between the Government and business very much. I believe the powerful tobacco companies in Hong Kong will be less influential in the

Mainland, and by then, those who have gone north may have to return to Hong Kong.

Mr Albert CHAN mentioned the elderly people, and they are often mentioned because they deserve our sympathy. Many smokers actually started smoking at their teenage years and maintain the habit until old age. How lucky they are to survive up till now. Many of them died and failed to live until such old age. Mr Albert CHAN said that the most enjoyable moment for the elderly people is when they have a puff of cigarette, just like an old cigarette advertisement — where a man sits on a horseback under the blue sky, enjoying every puff of his cigarette. Is it really that enjoyable? For those non-smokers in his surrounding, it is indeed a painful moment, painful like being persecuted. It is as simple as this.

I hope that the Secretary will make a clarification on this as I can speak several times at the Committee stage. Will the Secretary tell us why he said, at this very last moment, that the proposal regarding the setting up of smoking rooms would be reconsidered? Furthermore, does it relate to the Mild Seven case? Had there been an agreement package before the proposal was tabled before the Legislative Council? I think the Secretary is obliged to clarify this. Thank you, Madam Chairman.

MR KWONG CHI-KIN (in Cantonese): Madam Chairman, regarding the legislation we have to pass today, I think people consider a total smoking ban in restaurants and eating establishments the most important part of the legislation. In particular, after the SARS epidemic, everyone has attached greater importance to health and respect to others' right to health which is the right of not to be exposed to second-hand smoke.

I believe smoking in the office will be regarded as a barbarian act and few people will commit it. However, in restaurants and eating establishments, our law has still lagged behind the trend. In 1997, amendments were made to the Ordinance. To date, the number of the so-called non-smoking areas is very few and practically ineffective in practice. So, many people, especially the non-smokers, hope that the legislation can be passed at the earliest opportunity so that restaurants and eating establishments can become an entirely smoke-free environment.

But unfortunately, the Secretary indicated that after the passage of the Bill, he would consider the setting up of smoking rooms in eating establishments. Both Dr YEUNG Sum and Mr Martin LEE have pointed out where the problem lies and I am not going to repeat their arguments. I have participated in the smoke-free environment campaign and exerted a lot of efforts in the community over the past decade. I think the Government's approach is extremely retrogressive. Having made so much effort in proposing the Bill which can be passed today, the Government said that it would consider the setting up of smoking rooms in eating establishments on the eve of passing the Bill. In fact, through the efforts of the Department of Health, the catering industry has given up its confrontational attitude. I believe as a result of the Government's painstaking efforts, many restaurants and eating establishments have taken the lead in launching "smoke-free" drives during certain business hours. According to my understanding, some large-scale catering groups — they are Chinese restaurants, not fast-food shops — have imposed a total smoking ban in their premises. In August this year, some restaurants imposed a total smoking ban in order to usher in a smoke-free environment in advance. Under such circumstances, why does the Secretary back-pedal? His move has disappointed those who have promoted smoke-free environment and confused the industry.

Earlier I read out a report from today's *Ming Pao*, saying that the Government would consider the setting up of smoking rooms in restaurants. In the same report, some friends in the catering industry said that if the Government, while promoting smoke-free restaurants, considered the setting up of smoking rooms, it would take at least two years to accomplish it and queried why the Government had to back-pedal. Madam President, let me read out another report from today's *Ming Pao*: "Mr Simon WONG, Chairman of the Hong Kong Federation of Restaurants & Related Trade expressed that the trade had psychologically prepared for the total smoking ban and the public should be accustomed to 'smoke-free eateries' in these two years, it was basically unnecessary to attract patrons by setting up smoking rooms. He considered this measure proposed by the Government would not be effective." These are the words spoken by a Mr WONG in the trade, not us, the anti-smoking lobbyists.

As the industry also finds such measure superfluous, why did the Secretary send out such a confusing message before the law is passed? I hope the Secretary will reconsider it and never take this step because after the passage of the Bill, people still expect to have a smoke-free environment in restaurants and

eating establishments in future. The industry is fully prepared for the Government's measure. There is no need for the Government to back-pedal. Once the Government has set the precedent of the smoking room, the largest lobby of a restaurant will become the smoking room and people will be unable to fulfil their expectation of dining in smoke-free restaurants and eateries. I very much hope that the Government will never take this step or back-pedal. As the Government has decided to follow this path after so many controversies and the industry is psychologically prepared, it should continue to promote the no-smoking campaign because according to my understanding, the people put the eateries' environment in the first place.

Thank you, Madam Chairman.

MS EMILY LAU (in Cantonese): Chairman, I think if the Secretary really wants to explore the possibility of setting up smoking rooms, he should raise the issue with members of the Bills Committee. The issue was once discussed, but since even the Secretary himself did not accept the idea, nothing on it is mentioned in the Bill. I think if the Secretary really wants to do something about this, he should raise the issue with Members on a suitable occasion, so as to seek their clear opinions — either for or against. He must not raise it so very suddenly because this will make many Members, especially those who do not favour the idea, think that there is some kind of regression.

I think it is even more inadvisable to set up smoking rooms in restaurants. The reason is that everybody is now concerned about what will happen to the entertainment industry in several years after the implementation of the smoking ban. But Mr KWONG Chi-kin is also right in asking whether they are confused. Should do they get all things prepared for the operation of smoke-free business? Or, is there any possibility of a turning back in the future? I think the Secretary should give a clear explanation. If he really wants to do this, really wants the entertainment industry to think that two or three years later, it will have to close down all business, he should make sure that all safety standards can be met after the installation of smoking rooms. The reason is that as far as I can remember, the authorities never mentioned any such standards in the course of our discussions.

Some experts who came here to offer their advice even talked about something like tornado pressure. Members all thought that this was impossible.

Such was the situation at that time. Since it was considered impossible, no further consideration was given to it. It is of course very nice if there are really some technologies that can ensure safety. But are there any such technologies? No such technologies were mentioned in the course of all the discussions. How can it be possible to create a tornado in a room? How can people eat in such a room? What is the new information they now have? What has happened? Why do they not allow the Bills Committee to know the information? I believe that Mr Andrew CHENG will be most delighted to convene another Bills Committee meeting to discuss all these new developments. The Secretary must explain whether there is any new information that can support the technical feasibility of the idea. Besides, Chairman, even if actions are to be taken, the legislation must first be amended. They must not take actions once they feel like it. If the legislation is to be amended, the Legislative Council will have a chance of scrutiny. I believe that the Secretary must talk about all these matters.

However, the Secretary has been listening for the whole afternoon. The main argument is no longer about restaurants. Members all agree to go ahead in restaurants. Their only worry is that there may be problems with other entertainment establishments. But some Members think that there will be no problems anyway. If the Secretary now says that even restaurants must be included, he will be stirring up trouble because this is something already accepted by people. As an English idiom goes, he will be opening a can of worms. If discussions go on in this way, the debate will not come to an end tomorrow, or even the day after tomorrow. I only wish the Secretary could explain what he wants to do. Members no longer have any argument concerning restaurants. Even Mr Tommy CHEUNG has expressed his acceptance. Members only want to discuss the entertainment industry and find out why the situation has developed to this state.

I hope that the Secretary can: 1. tell us clearly what he is doing; 2. clarify whether there are any new technologies; 3. state whether he agrees that there should still be clear protection for people outside in case he wants to go ahead; 4. explain whether it is necessary to enact any legislation. I think all this requires clarification. If there is no clarification, there will be endless debates, though I consider such debates necessary. I do not agree to endless debates. But if new things are mentioned all of a sudden, I think the Secretary must offer an explanation. Thank you, Chairman.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Mr Andrew CHENG, do you wish to speak again?

MR ANDREW CHENG (in Cantonese): Madam Chairman, in fact, on this point raised by the Secretary earlier on, although we had already heard of it from the media in the last couple of days, I was actually waiting to see if the Secretary would really raise it. After he had finished his speech, I was waiting to see how colleagues would respond. As Ms Emily LAU said earlier, a never-ending debate is actually not good to our health.

However, I think the worst part of it is this: We had had 150 hours of discussion, and insofar as this issue is concerned, I thought it had been settled in the stage of the experts and the industries making their representations, and I thought that we would no longer be entangled in the question of smoking rooms. But unfortunately, today, as things now stand, it is inevitable that colleagues will have a very strong feeling about whether the Government — I do not know if this is the intention of the Secretary, and I do not know whether the higher echelon above the Secretary, be it the Secretaries of Department or the Chief Executive, has exerted pressure on the Secretary insofar as this issue is concerned, or whether this is basically a general strategy of the Government.

Madam Chairman, I must reiterate here that in my first speech made on behalf of the Bills Committee, I mentioned a process. As Members may recall, I said that it was only in June that the Government submitted to the Bills Committee the final amendments relating to misleading descriptors. At that time, the Government hoped that the Second Reading debate could resume on 12 July, which means that we were required to deal with this issue of great importance in a month or so. Our feeling was that the Government might be thinking that while the smoking ban was originally proposed to cover indoor places only, and as many of your colleagues had proposed to cover outdoor places, such as beaches, bus stops, escalators, schools, hospitals, and so on, the Government had already done a lot and so, this issue might as well be dealt with altogether. But we did not agree.

As the Secretary has always said, on the question of an indoor or outdoor ban, we already had many debates both inside and outside this Chamber. I remember that I once had a heated debate with the Secretary in the room, and I must mention it here. The Secretary seemed to be very worried about not being able to resume the Second Reading debate on 12 July, in which case it would have to be deferred to October. The reason why they did not wish to defer it to October was that the Government knew that we would exert enormous pressure on the Government during the summer. Here, I hope the Secretary will understand that even a deferral will not affect the effective date for law enforcement and implementation, that is, 1 January 2007. Looking back, I wonder why the Government was so worried at the time. Now, it seems impossible for the Government not to withdraw the proposed "grandfathering" arrangement and insidiously, it raised this issue on this occasion today when the Second Reading had resumed and during our examination of the Bill. Obviously, its purpose is to ensure that what we can do at most is to put this down in the records of meeting today, so as to preclude our repeated discussions on this issue. I would like to say this to the Secretary: Please show us the scientific evidence to prove the feasibility of smoking rooms. As I said earlier, with regard to the "tornado-like" air pressure, can you do it? If you can, show me. Given that many overseas experts have stated that it is impossible, why did the Government nevertheless propose at this point in time to spend two years discussing and studying it? Why should we spend the money and resources?

Earlier on, Mr KWONG Chi-kin expressed his view very clearly. He read out to us many views of the industry. Many of those in the industry have already accepted the reality, and some even think that after looking at the experience in many other overseas countries, they may be gradually convinced that a smoking ban in restaurants and bars may not affect their business too much and may even be helpful. Yet, you are still proposing to spend time on this. Are you telling us that it is difficult for you to persuade.....particularly as some Members, such as Mr Martin LEE, have spoken in agitation, questioning whether the high echelons of the Government have colluded with tobacco companies, and we even have the feeling that this may have something to do with the Chief Executive election. The Government said now that some studies would be conducted and then — frankly speaking, I hope the tobacco companies can hear this — Two years later, the Chief Executive may have been re-elected and by then, I do not know if the Government will really honour this pledge.

But the question is that, insofar as this step taken by the Government is concerned, my feeling is that as they did not propose it in the Bills Committee but put it forward here, proposing such a significant and yet retrogressive process, this, I think, is really bizarre. I am the Chairman of the Bills Committee and we have spent so much time. While we have been praising the Secretary for his determination and breadth of mind, as he introduced the Bill right after he had taken over, I hope the Government will be totally committed and truly making an effort to accomplish its anti-smoking tasks bravely without the least reservation, rather than, as I have always said, moving three steps forward and then two steps backward, which is what I thought at first but now, it transpires that it may be just marking time and remaining stagnant. If, in future, we would revert to a state where smoking rooms may be provided in restaurants, this, I think, would be a misfortune.

Madam Chairman, I would like to further respond to Mr Albert CHAN. I actually do not wish to debate this issue with him, but I must respond to him in relation to his remarks about traps, earthquake, and so on. I always hope that while we may not see eye to eye with each other, we should try our best to consider purely from — as this Bill concerns public health, we should, therefore, consider from the health and hygiene perspective. My comments in relation to the financial aspect were not made just casually, because from my observations and from the many overseas reports that we in the Bills Committee have studied, we did learn that a complete smoking ban had brought many long-term and positive financial benefits to restaurants and bars.

However, even if there may really be negative impact — Madam Chairman, let me make a bold assumption. If many people would consequently become unemployed and receive Comprehensive Social Security Assistance (CSSA), or as Mr Albert CHAN said, they would go bankrupt or jump from a height and would be under great pressure — But think about this: Even though he has to receive CSSA and survive on it, is it not better than having a job but having to work laboriously without the protection of a minimum wage and maximum working hours, as mentioned by Mr Albert CHAN, and having to work day and night and then inhale second-hand smoke and suffer from lung cancer and die — a fate of losing even his life in the end? Moreover, the treatment of lung cancer will require enormous resources in the public health care sector.

As we have discussed before, and as shown in many studies conducted by universities, the annual medical expenditure incurred in this regard is some \$2 billion to \$3 billion or even more. Think about this: Compared with the huge medical expenditure, drawing CSSA and saving the lives of the people.....Madam Chairman, is it not that where there is life, there is hope? If you always say that this would cause many people to become jobless and might subsequently drive them to CSSA, I will reason this out with you on this ground, that is, no compromise should be made insofar as human lives are concerned. So, I hope that Mr Albert CHAN.....I know I may not be able to convince him but of course, he can speak again and I can further express my views. But on this issue, although we cannot support each other, but from the angle of mutual respect, I think this debate is still worthwhile, because in the next two or three years, we can see whether this measure has any negative impact on the medical expenditure and on the business and livelihood of these people. We will know about this then.

I do not wish that our discussion would involve puritans or whatever, because we are really not addressing this issue from a religious and moral viewpoint. I do not understand why the Liberal Party, Mr Albert CHAN, Mr LEUNG Kwok-hung, and so on, always say that we are taking the moral high ground. We are not taking the moral high ground. With regard to our discussion are discussing today, and even on the question of providing smoking areas in parks and smoking rooms in restaurants under discussion now, we have used scientific evidence to explore these issues, in order to see how we can do the best.

But today, Madam Chairman, after the Secretary's speech, I think another round of debate will be inevitable. So, I hope that the Secretary — although I do not see his eyes, as they are blocked by the files and so, I cannot see his eyes when I speak, but I can see that he is listening with a glow of seriousness in his eyes to colleagues' response on the issue of smoking rooms. Nevertheless, I believe that with political wisdom as high as yours, when you made those remarks, you have no reason not having anticipated the response of Members.

So, I hope and I subjectively wish that when you made those remarks earlier about conducting studies or injecting resources into studies on smoking rooms, you had thought twice, and I hope that the conclusions that you explained to us earlier had not been made out of those inferences made by us just now. If

that is really the case, I would be thoroughly disappointed with the Government in its sincerity in combating second-hand smoke.

Madam Chairman, I hope that the Secretary can further give us a detailed explanation on the issue of parks and the issue of smoking rooms and then, we will respond as and when necessary. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Dr KWOK Ka-ki, do you wish to speak again?

(Dr KWOK Ka-ki shook his head to indicate that he did not wish to speak again)

MR ALBERT CHAN (in Cantonese): Chairman, originally, I do not intend to talk about the same things again, however, since Mr Andrew CHENG has referred to me a number of times and since I consider that in quoting my arguments and my analysis of the views on this Bill, he has distorted them seriously, so it is necessary for me to make clarifications and set the record straight.

Chairman, when criticizing the provisions, I made it clear right from the beginning that I fully support a total ban on smoking after taking into account the working environment of employees. I fully support doing so. I have pointed out the traps a number of times and up to now, even when Mr Andrew CHENG was criticizing me, he did not say that the traps pointed out by me did not exist. He did not say so.

I have pointed out a number of times that there are a lot of contradictions in this Bill. Why is smoking allowed in some places but not in others? If smoking affects the public seriously, why do we tolerate parents who puff away in front of their children at home? Why is smoking allowed in hotels? Concerning these problems, using actual examples, I have pointed out in clear terms that there are a lot of contradictions and absurdities in this Bill. If the ban on smoking is founded on medical grounds, such as on the problems of smoking pointed out by Dr KWOK Ka-ki on basis of medical evidence, if the reasons for banning smoking is based on medical grounds or theories, then this sort of behaviour should be regulated by way of legislation, and the act of puffing out smoke, which affects other people, should be completely banned in view of the effects of smoke puffed out. This should be the spirit and principle of the law,

the legislation. When drafting legislation, it is necessary to regulate the behaviour of smokers by way of legislation in view of the problems in this regard.

However, this is not the situation now. The present situation is that there are contradictions in many areas. Meanwhile, in many of the so-called prescribed no smoking areas, as in the example of beaches which I have cited many times, often, it is not possible to actually enforce the legislation, is it? For one thing, there is a shortage of manpower in the Tobacco Control Office, and for another, even if the Tobacco Control Office has enough manpower, many members of the public will not be aware that some areas have been designated as no smoking areas, as a result, they will be prosecuted innocently.

If the Legislative Council is aware of the existence of such traps — and I stress there are many — but does not address and rectify them by means of the provisions, as I have already pointed out, I consider this to be an irresponsible attitude. If any mechanism that can prevent employees from being affected by smoking or second-hand smoke in their workplaces is prescribed by the provisions, I am all for it.

Therefore, in dealing with this issue, a lot of my comments on this Bill relate to the technical problems in the provisions of this Bill — just as a lot of Members said, that the devil is in the details when scrutinizing the legislation on Article 23 of the Basic Law — the flaws of this legislation lie in its details. I have already said that even if this Bill were an angel, due to the problems in the details, many traps have been created and will lead to the prosecution of innocent members of the public. If Mr Andrew CHENG tells me that there are no traps in this Bill and no members of the public who lack a good understanding of this matter will be prosecuted innocently, then I will withdraw my criticisms.

However, having discussed for the whole evening, that is, from one o'clock in the afternoon up to now and although the discussion has gone on for seven hours, so far, no Member can refute my conclusion, that is, the ambiguities in the provisions or in the design will result in the prosecution of innocent members of the public. If any Member wants to tussle with me on this issue, he is welcome to point out whether my criticisms are totally unfounded and whether they are totally wrong.

Moreover, on economic issues, if it is possible for our legislation to be designed in such a way that on the one hand, it can protect the health of employees, and on the other, the relevant trades will not be subjected to over-regulation or unreasonable regulation under this piece of legislation, then we should identify more mechanisms so that these trades will not be hurt by this new piece of legislation or by a lack of careful consideration. This is our responsibility.

The most desirable legislation is one that can achieve a ban on smoking as well as realizing the relevant principles and spirit. The medical grounds cited by Dr KWOK Ka-ki have my total support and so do a lot of principles and concepts put forward by Mr Martin LEE, however, is it absolutely necessary to take such steps as those specified in the present Bill to bring about a ban on smoking? Is it necessary to take an intolerant approach?

If it is possible to implement the anti-smoking arrangements and at the same time, some sort of system, such as smoking rooms, can be put in place under the Bill, so that the relevant trades will not be seriously affected, we should try our best to find ways to do so, should we not? I am not an expert. Now some reports say that this is feasible while others say otherwise. My simple deduction is that, if the isolation ward in Princess Margaret Hospital can be so designed that all viruses can be isolated, why is it not possible to design smoking rooms in such a way that they will reach the same standards, so that they are capable of isolating all the smoke and substances such as nicotine? In theory and logic, this is feasible. Why do we rule out the proposal of smoking rooms categorically before conducting any study and coming to a conclusion?

These issues have been discussed in the Bills Committee over and over again. I only hope that a win-win solution can be found, instead of one in which Members opposed to smoking or Members supporting the anti-smoking legislation will score a complete victory, whereas other people will be completely routed, so much so that they will probably go broke, commit suicide or lose their jobs, am I right? Surely Members do not wish to see this happen, do they?

The ideal arrangement is a win-win proposal. Chairman, I hope that a win-win proposal can be found, that is, on the one hand, a smoking ban can be implemented — I have said time and again that I do not like people smoke and I

totally subscribe to the conclusion that smoking has an effect on health care — on the other hand, if the relevant trades can be spared the disastrous consequences, then the proposal will be a win-win one.

Chairman, I hope that this will serve to clarify my arguments, so that my comments will not be distorted all the time.

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam Chairman, first of all, I would like to respond to the remarks made by Mr Martin LEE and several Members from the Democratic Party who found some issues unsatisfactory. I think their arguments are totally unfounded. First of all, the Bill is not only the responsibility of the Health, Welfare and Food Bureau but also my responsibility. No one can affect the way in which I handle this Bill. Secondly, although we have discussed the issue of smoking rooms, there is no so-called world standard. This is the first point. So we think some studies are necessary if we are to take this forward. Just now some Members put words in my mouth that such an arrangement would become widespread. I have never said that. I just said that we have to conduct some studies and will decide what to do when it is proved to be feasible. As to the way forward, we will bring the issue to this Council for discussion and amendments will be made to the Ordinance if necessary. The whole procedure will be transparent and open. So, the problems alleged by Members do not exist.

Secondly, the issue has nothing to do with the wording mentioned by Mr Martin LEE. I have explained to Mr Martin LEE and the Democratic Party that the legislation is entirely decided on legal basis rather than any political consideration or deal. The purpose of our tobacco control legislation is mainly for the health of all Hong Kong people, not for any particular industry. But we should bear in mind that there is a smoking minority in Hong Kong and we all know that it is not so easy to kick the habit. On the premise of not affecting the others, they should be enabled to continue to exercise their freedom of smoking. And we have to consider how to ensure a more stable and harmonious society in Hong Kong.

Recently I visited New Zealand which has already imposed a smoking ban. Outside a hotel in Wellington, a city with a population of just 300 000, a crowd of people are smoking because smoking is not allowed in the hotel and anyone who go in and out have to pass through this group of smokers. Will the same

situation happen in Hong Kong? We cannot turn a blind eye to it. We all hope that the law can be passed at the earliest opportunity. But after the passage of the law, we have to deal with whatever situations that may arise. So, we must take this into consideration. But now I really do not have any finalized proposal which is known to be feasible or not. But we will do our best because no such standard has been set in the world. However, even if we know it is feasible, we will not adopt it extensively. Rather, we will make the decision according to people's reaction after the legislation has been accepted by society. By then, I believe all Legislative Council Members can participate in the discussion and decide the way forward.

Regarding the total smoking ban in public places, I believe many people have explained the situation to me. I would like to emphasize that our proposal that the decision be made by Director of Leisure and Cultural Services according to the views of the District Councils may not be unable to make the total smoking ban proposed in Mr Andrew CHENG's amendment feasible. But we have to take account of the fact that there are 1 400-odd public pleasure grounds which are open to the public. If a total smoking ban is implemented immediately, we have to follow certain procedures so that small smoking areas can be arranged for those smokers who cannot kick the habit without affecting the others. After some period of time, the District Councils can also suggest to the Director of Leisure and Cultural Services that a total smoking ban be implemented in certain places because no one goes there to smoke anymore. We do have such flexibility. By doing so, we can help many districts solve their problems.

I do not quite understand why the Democratic Party which attaches so much importance to the work at the grass-roots level and District Councils will oppose such a responsible and well-conceived proposal. I have also agreed that after the law has been implemented for some time, we can conduct a review. But I do not mean that Mr Andrew CHENG's objective cannot be achieved.

On the other hand, regarding Mr Tommy CHEUNG's amendment which proposes the designation of domestic premises while being used for private teaching activities as a no smoking area, we consider it very difficult to enforce. First of all, nowadays the definition of teaching is so wide that it may cover the learning of children, as well as cookery, floral arrangement and dancing classes of adults. Under such circumstances, if someone smokes, who should

prosecute and who should be prosecuted? Besides, how can the law be enforced? It is very difficult. So we will not support this amendment.

Regarding Dr KWOK Ka-ki's amendment concerning the Ocean Park, we know that the Ocean Park has a respective governing ordinance and basically it was declared in July this year a no smoking area except four designated smoking areas. These four designated smoking areas are set up at places of low pedestrian flow or at corners. According to information provided by the Park, such an arrangement has been operating smoothly and we also hope that they will continue to make further efforts.

Regarding Mr Albert CHAN's amendment, we think we cannot support it. I hope Members will support the Government's amendments. Thank you, Madam Chairman.

MR MARTIN LEE (in Cantonese): Madam Chairman, I am grateful to the Secretary for clarifying several issues. However, I have jotted it down clearly that concerning smoking rooms, the Secretary said that there was no standard on the provision of fresh air in the world. If there is no such standard in the world, in view of this, are the authorities taking the trades on a wild-goose chase? Have they been given something to hope for? How can this proposal be put into practice? If it is necessary to have air ventilation with the force of a tornado, the Secretary had better say that if air ventilation that forceful was developed in the future, it would be practically unnecessary to impose a smoking ban in the catering industry at all. This is because once smoke is exhaled, it will be extracted immediately, so all will be fine. Why did the Secretary say that there is no standard on this in the world just when the job is almost done? Just now, a Member said that the catering industry was prepared for the implementation of the smoking ban and that the industry was ready to proceed. This matter has been settled, however, all of a sudden, the authorities have again given it a false hope. Why does he take them on a wild-goose chase at this stage? Moreover, it turns out that in this chase, one is allowed to puff away.

MR KWONG CHI-KIN (in Cantonese): Madam Chairman, I also wish to talk about the issue of smoking rooms. It is a pity that the Government transfers its Administrative Officers every two to three years, so I am not really well

acquainted with the Administrative Officers who provide support to the Secretary, even though I have worked for a smoke-free environment for almost a decade.

Coming back to the issue of smoking rooms, with the rapid advances in technology nowadays, it may technically be possible to put in place smoking rooms so that other people will not be affected, however, this direction should not be explored as a matter of government policy. Why? Madam Chairman, the Administrative Officers of the past several tenures have exchanged views with the anti-smoking lobby on this issue, the discussion in society at that time had not yet become so heated and a total ban on smoking in restaurants had not been proposed. In 1997, we in the anti-smoking lobby and Dr LEONG Che-hung only requested that a ban be introduced gradually and that an area comprising one third of the seats be designated as a no smoking area in restaurants with more than 200 seats. We only hoped to proceed gradually. Later on, the Government told us in clear terms that its policy was to introduce a total ban on smoking. Of course, we welcome this government policy, however, we also wanted to understand the rationale behind it. The Government said that only a total ban would be fair to all restaurants, otherwise, should the discussion focus on the establishment of smoking rooms, as is the case now, Madam Chairman, a great deal of problems would arise. Rich and powerful corporations can do it even if the ventilation has to be tornado-like, so they can provide smoking rooms, but what about small and medium enterprises and bistro cafes? This will arouse concern in the industry that such a measure will lead to unfair competition. As far as I understand it, the catering industry in fact does not hold any particular views but of course, some people in it may be worried about the impact on their businesses. However, as long as they are treated equitably and a level playing field is provided to all, everyone will find some room for survival.

I once again urge the Secretary to go back and consider what the Government wants to achieve at the policy level. Since the Government wants to promote a smoke-free environment and restaurants are ready to co-operate, why should the authorities backtrack? The Government is engendering fear in the industry. Small enterprises are very concerned about losing out to large consortia because the latter have the capability to provide smoking rooms but small enterprises do not. In that case, should small enterprises fold? I believe this is not the Secretary's intention, however, I find it regrettable that the

Government's policy lacks consistency. After two manpower reshuffles, it has even lost sight of its original intention.

Madam Chairman, I hope the Secretary will give up the idea of exploring the idea of smoking rooms and stop sowing confusion in the industry. Since the industry is prepared to co-operate, he should state in clear terms that he will make all restaurants smoke-free instead of backtracking, so that a clear message can be sent to the public.

Thank you, Madam Chairman.

DR YEUNG SUM (in Cantonese): Chairman, just now the Secretary has tried his very best to clarify his own points. But I still find myself not completely satisfied on certain issues.

First, I still think that this is after all a matter related to procedure. In terms of procedure, we had discussed this issue, and people from different walks of life, including members of the trade and the experts, had also participated in the discussions. I am very glad to hear the Secretary say that so far such a level has not been attained by anyone in the world. He has obviously paid attention to what was discussed at that meeting or the evidence presented by the participants at the meeting. At that time, all the professionals who attended the meeting said that basically there was no smoking room that is very safe. If so, the Government's remark of spending one to two years on studying the issue will only give some false hope to the trade. If it is not feasible, please do not make any promise casually.

If the information obtained by the Secretary shows that even advanced countries do not have that kind of technology, how can Hong Kong do it? Does it mean that we have grasped some latest inventions even ahead of all the other countries? I do not know that our technological capability has suddenly risen to the highest level in the world. The authorities frequently say that our high technology is lagging behind the advanced countries, and that our people are only good at imitation. But all of a sudden, the Secretary has become very confident, and says that we shall be able to jump to a forefront position of the world — so that suddenly we can reach a level even beyond the reach of the advanced countries. What kind of marketing tactics is this?

I think the Secretary should point out pragmatically that at present no technology can do it, insofar as the latest evidence is concerned. However, tomorrow's newspapers will definitely report the speech delivered by the Secretary today in bold print. This will basically lead everyone to think that some slight changes are still possible, and that a new situation may emerge in future. Regarding such an approach and procedure, I remain very doubtful.

Earlier on, the Secretary said he did not quite understand this: Since the Democratic Party is so concerned about the district work at the grass-roots level, why does it oppose allowing the people to smoke in the parks, especially they are just allowed to smoke in only some designated areas; otherwise, these people will have to smoke on the streets. The Secretary said that in New Zealand, he had seen people smoking on the streets. I am very puzzled that the Government has frequently said that it is not good for the people to smoke on the streets. Does the Government wish to convey the message to us that the smoking ban has to be extended to cover the streets as well?

The Democratic Party does not wish to make this suggestion. We do not wish to drive the smokers to a dead alley. Other people accuse us of adopting a sweeping approach, but actually we are not. Smoking on the streets should be permitted because less people will be affected. The Secretary says that if smokers are allowed to smoke on the streets, then some people walking past them on their way to the parks may still be affected. Then, does the Secretary intend to extend the smoking ban to cover even the streets? However, he does not mean that. The Secretary has not said that cigarette is a kind of narcotics, and the people are allowed to smoke it, and this has answered the questions raised by other Members.

If on-street smoking is prohibited, restaurant operators would ask why their customers are required to go out to the streets to smoke, and nightclub operators would ask why their customers have to go out to the streets to smoke. If the Secretary does not want the people to smoke on the streets, then he actually does not have to introduce the smoking ban. The Secretary may either let them smoke wherever they like, or simply ban it altogether. But both alternatives are extreme measures. We do not fancy extreme approaches. Instead, we like pragmatic measures. Therefore, why was it mentioned that it was bad for the people to smoke on the streets?

If the people are allowed to smoke, but they are not allowed to smoke indoors, then it is natural for them to go out to the streets to smoke. When I was in Europe, I could see many local people smoking very casually on the streets. This is because the authorities absolutely do not like the idea of driving all smokers to a dead alley; instead, they let the smokers enjoy the freedom of smoking. I agree to this point.

If the Secretary thinks that it is a bad idea to let them smoke on the streets, so he is suggesting that certain areas in the parks should be designated for smoking, then all the restaurants and entertaining businesses would also suggest designating certain areas in their premises as smoking areas. The present situation is like refusing a wolf to enter the house from the front gate, but actually a tiger is allowed into the house through the back door. What actually does the Government wish to have: a wolf or a tiger? Thank you, Chairman.

DR KWOK KA-KI (in Cantonese): Madam Chairman, the Secretary really has not answered our question and let us know the reasons. During the past year, the Bills Committee had discussed many different methods in great detail, including the smoking room option. Even some experts had been invited to give their comments. Just now I asked the Secretary to clarify whether he had some new evidence or new methods to enable us to conduct some studies anew. It was because, regarding this approach, that is, for a new viewpoint to be presented in such a late stage when the Bill is about to pass — during the Second and Third Readings — it is not at all fair indeed. Of course, the Secretary may attribute this to some political deals, some political compromises or perhaps due to some discussions in private. I dare not say this. But if the Secretary does confirm the existence of such situations, I shall be even more disappointed.

However, having discussed the issue for such a long time — we have held altogether 57 meetings and spent over 100 hours on it — if the Secretary has some new viewpoints regarding smoking rooms, why did he not present them earlier? Why must he present them as late as now? It is because obviously, with regard to smoking rooms, I wonder if it is specially tailor-made to serve the interests of the several industries — those industries which will not be subject to the Bill until July 2009. The Secretary has just mentioned that some studies would be conducted on whether smoking rooms should be established. With regard to the indoor smoking ban, if the scope of application of the smoking

room should be extended to cover not only bars and entertainment establishments, but also places like the eating establishments, then this is even more unacceptable. It is because it seems that, after taking one step forwards, we are moving one step backwards.

Madam Chairman, this is not the only time the Bills Committee has held discussions on similar issues. In the beginning, we agreed to the view taken by the Government in the Blue Bill, that all the misleading descriptors should be banned. There is no problem with that. However, in the middle of the process, there is some regression, saying that there would be the so-called "grandfathering" practice. And the second time took place when..... we had been fighting for a very long time to ban smoking in sports facilities and sitting-out areas, and the ban was said to be a comprehensive one in the beginning. But eventually, the regression took place to allow the establishment of smoking areas in such places. This is already the third time. However, there is even one major difference, that is, the change took place much later than before, that it was not proposed until the Bill came to the stage of the Second Reading. However, I cannot hear any new evidence in the Secretary's speech delivered just now or any evidence that is convincing, that can prove that the proposed approach is feasible technology-wise or by way of ventilation. I think the Secretary has not explained his case very clearly. Besides, although it would not cause any obstruction to this voting, this has set a bad precedent for our discussions as well as debates in the Legislative Council. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Mr Andrew CHENG, speaking for the third time.

MR ANDREW CHENG (in Cantonese): Madam Chairman, looking back at the time when discussions were held on the expansion of the scope of the statutory no smoking areas, after the Government had examined the Blue Bill with us, it submitted to us a large number of amendments, and explained the difference in respect of the adjustment periods.

As I mentioned just now, when the Government proposed to extend the adjustment periods for bars, mahjong parlours and commercial bathhouses to 1 July 2009, some Members were already less than happy. They did not

understand why the Government had extended the adjustment periods. With the benefit of hindsight, I guess I can put things into perspective now.

Why is it necessary to extend the adjustment period to 1 July 2009? Is the extension meant to enable the Government to conduct that so-called study in these two to three years?

Madam Chairman, we all know that every time when the Government says it is necessary to conduct some studies, there are always certain "presumptions". Any studies with regard to public policies, even if they are merely studies in the form of a report, must not proceed without a predetermined direction. As we have always said, when it comes to public policies, if there is something that the Government is not willing to do, they would simply adopt a "couldn't-care-less" attitude, and no studies whatsoever will be conducted. For things that carry prospects of getting done, the Government will initiate everything with studies, and will let it be known that a study is being undertaken. This being the case, the way we see it, the word "studies" itself implies a position already. Since the Government has taken a position on the issue, the current state of affairs is entirely inconceivable. Among other things, the Government always complains of insufficient funding. In particular, the health care financing scheme is not introduced yet, and the health care and medical charges are always increasing at the expense of the grass-roots people. The Government is running short of funding, and the medical system headed by the Secretary is running short of funding, yet some public funding have to be spent on studies which are contradictory to the basic principles of the Government's smoking or anti-smoking policy. In this regard, how could the Legislative Council be expected to give its approval to the Government for spending money recklessly?

I believe the underlying principle of the Government is to encourage more people to lead a healthier lifestyle and encourage them to quit smoking. I would rather see the Government spend the money on setting up a "Smoking Cessation Fund". Hong Kong does not compare to other countries and advanced societies when it comes to efforts of encouraging people to quit smoking. This being the case, the Government should use the money to set up a "Smoking Cessation Fund", encourage smokers not to smoke in parks and gardens, and encourage them to receive counselling for smoking cessation. If smokers should feel the urge for a smoke when they are in an eating establishment, they should receive

counselling for quitting smoking. This is the proper way of addressing the issue, but the Government is not doing this. On the contrary, the Government believes that something should be done for the eating establishments, such as providing a smoking room so that smokers can smoke in the room, just because eating establishments are always packed with people. These efforts run completely contrary to the principles.

Madam Chairman, therefore, if the Secretary makes a speech again, I hope that, having listened to our views, he will understand that there is no chance that he will have the approval of the Committee, whether in terms of actual formalities, or in terms of the principles of the policy. However, the remarks of the Secretary are tantamount to acts of "foul play". Therefore, we could only keep saying no to the air and keep saying no to him. I have no idea if he gets the message or not.

The Secretary criticized the Democratic Party by saying that if we were so concerned about the grassroots, then why we did not accept the proposal of designating a small smoking area for the senior citizens and the grassroots once the total smoking ban in parks and gardens was in force. Then he said that a gradual and orderly approach would be necessary, because a total smoking ban could not be enforced in all 1 400-odd parks and gardens in one go. Madam Chairman, once again this is about funding. Let me do a rough calculation for the Secretary. Let us take the Sha Tin Park, which Ms Emily LAU mentioned earlier, as an example. Given the efficiency of the Government, let us work out the amount of manpower, time, money and resources that would be required for designating smoking areas and no smoking areas in each of these thousand-odd parks and gardens, as well as the cost and administrative resources for law-enforcement actions. Why is it not possible to implement the smoking ban in over 1 000 parks and gardens all in one go? The Government has the conviction, and the legislation is already in place too. It is most explicit that the time for enforcing the law has come, but then the Government says we have to wait until we have checked out the situations in the beaches and the parks and gardens. Only when the officers of the Leisure and Cultural Services Department are satisfied that the number of smokers in those areas are small can a total smoking ban be enforced. Honestly, as long as smoking areas are provided, smokers will always smoke in those areas, so how can we attain our goal by this gradual and orderly approach?

Therefore, my view is that we may just as well spell things out clearly. Madam Chairman, I do not wish to repeat the points anymore, as many amendments will still be moved later on. I hope the Government would not conduct studies anymore, and instead the money should be spent on setting up a "Smoking Cessation Fund". I think the Secretary would like to have his name and contribution remembered in future generations. He had once been so resolute in introducing this Bill. But today, his proposals have left us disappointed and caused us to make serious accusations against him. Insofar as he is concerned, this has left a blemish on him. I hope the Secretary can come to his senses in time.

Thank you, Madam Chairman.

MR LI KWOK-YING (in Cantonese): Up till now, after we have discussed this Bill for such a long time, many Honourable colleagues have spoken on these amendments again and again, and they have also spoken on the issue of smoking rooms. In fact, we had already spent a long time on discussing the issue of smoking rooms when the Bill was being deliberated. Regarding the establishment of smoking rooms, I can recall that when I joined Mr Andrew CHENG and Mr Tommy CHEUNG on a fact-finding tour to Europe, we had visited such rooms there. In Ireland, there are the so-called "bingo rooms", and the principle of the smoking rooms is adopted throughout the country. Only customers have access to the smoking rooms, and staff members are not allowed to enter such rooms. It is because the smoking rooms are established for the purpose of preventing smokers from affecting non-smokers or non-smoker staff members. Therefore, no staff members will enter any bingo halls in Ireland. Customers have to walk out of the room to purchase food on their own. In this way, staff members will be spared the inhaling of second-hand smoke.

This time, the Bureau has put forward the suggestion related to smoking rooms. I find it weird that the Bureau has suddenly brought up the subject of conducting studies on smoking rooms. It is because a smoking room actually offers protection to both sides — as I have said in the beginning, it offers protection to both non-smokers and staff members. Besides, of course the Bureau has also mentioned that the negative pressure system in a smoking room

requires strong air ventilation before it can fully serve its purpose. In addition, the installation costs are rather expensive. So in terms of cost-effectiveness, an ordinary eating establishment actually cannot afford the provision of a well-equipped smoking room to segregate the second-hand smoke and prevent it from leaking. Therefore, if the Government intends to enact legislation to enable smoke-free eating establishments, then I think even the concept of smoking rooms should not be allowed to exist. If a smoking room is not equipped with a good ventilation system, then it seems that we are going back to the days when eating establishments were separated into smoking areas and no smoking areas. As Mr Andrew CHENG has said, what the Government is doing now is like after having moved three steps forward, it just moves three steps backward. It makes the people feel that the Government does have some reservations about this. Therefore, regarding the concept of smoking rooms, I hope the Government can really conduct some detailed studies on the issue. Eating establishments should be smoke-free. I would support such an approach only if good systems can be provided. Thank you, Chairman.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary, do you need to speak again?

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): No.

CHAIRMAN (in Cantonese): If no Member wishes to speak, before I put to you the question on the Secretary for Health, Welfare and Food's amendment to clause 20, I wish to remind Members that if that amendment is agreed, Mr Andrew CHENG and Dr KWOK Ka-ki may not move their respective amendments to clause 20, while Mr Tommy CHEUNG and Mr Albert CHAN may not move their respective amendments to clauses 4 and 20.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment to clause 20 moved by the Secretary for Health, Welfare and Food 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 amendment passed.

CHAIRMAN (in Cantonese): As the amendment moved by the Secretary for Health, Welfare and Food has been passed, Mr Andrew CHENG, Mr Tommy CHEUNG, Dr KWOK Ka-ki and Mr Albert CHAN may not move their respective relevant amendments, which are inconsistent with the decision already taken.

CLERK (in Cantonese): Clause 20 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 20 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(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): I now put the question to you and that is: That the amendments to clauses 4 and 5(a) and (c) moved by the Secretary for Health, Welfare and Food 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 amendments passed.

CLERK (in Cantonese): Clause 18.

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam Chairman, I move the amendments to clause 18 to amend the proposed sections 15E and 15G and add the proposed section 15GA as set out in the paper circularized to Members. I would like to briefly explain the major amendments.

Clause 18 of the Bill proposes to add Part IVB in order to empower the Secretary for Health, Welfare and Food to appoint any public officer to be an inspector to enforce the relevant provisions of this Ordinance. The Bill proposes that the inspector be empowered to enter any place in which the inspector reasonably suspects that a relevant offence "has been, is being or is likely to be committed". We have accepted the Bills Committee's proposal to delete the reference to "is likely to be committed". Besides, we have also amended other provisions in the clause in order to further clarify the inspector's general powers and duties. The new section 15GA provides for the handling procedures of seizure of properties by the inspector under this Ordinance.

The above amendments are supported by the Bills Committee. I hope Members will support them. Thank you, Madam Chairman.

Proposed amendment

Clause 18 (see Annex I)

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 Health, Welfare and Food 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 amendment passed.

CLERK (in Cantonese): Clauses 4 and 18 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the clauses as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Chairman, may I seek your consent to move under Rule 91 of the Rules of Procedure that Rule 58(5) of the Rules of Procedure be suspended in order that this Committee may consider new clause 22A together with clause 5.

CHAIRMAN (in Cantonese): As only the President may give consent for a motion to be moved to suspend the Rules of Procedure, I order that Council do now resume.

Council then resumed.

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

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I move that Rule 58(5) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider new clause 22A together with clause 5.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Rule 58(5) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider new clause 22A together with clause 5.

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

(Members raised their hands)

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

(No hands raised)

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

Council went into Committee.

Committee Stage

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

CLERK (in Cantonese): New clause 22A Schedule 5 added.

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam Chairman, I move that new clause 22A be read the Second time to add Schedule 5 to the amendment as set out in the paper circularized to Members. I would like to briefly explain the major amendment.

Schedule 5 is made in accordance with the amendment which proposes that new subsection (2A) be added to section 3. The Schedule seeks to provide exemption to a person who does a smoking act in a live performance or recording for film or television programme in a no smoking area. In accordance with the views of the Bills Committee, we have added provisions to Schedule 5 so that the exemption is not applicable to live performance in any nursery, kindergarten or primary school. Prior permission in writing has to be obtained from the manager of the venue if the live performance is to take place in a secondary school. Under Schedule 5, if a film or television programme containing a smoking act is recorded in nursery, kindergarten, primary school or secondary school, prior approval in writing must be obtained from the manager of the venue. To prevent abuse of this exemption, section 4 of the proposed

Schedule 5 provides that the smoking act does not expressly or impliedly induce or encourage any person to purchase or smoke any tobacco product.

The amendment is supported by the Bills Committee. I hope Members will support it. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 22A be read the Second time.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clause 22A.

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam Chairman, I move that new clause 22A be added to the Bill.

Proposed addition

New clause 22A (see Annex I)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 22A 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.

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam Chairman, I move the amendment to add paragraph (ba) to clause 5 in order to provide for the exemption in Schedule 5. Thank you, Madam Chairman.

Proposed amendment

Clause 5 (see Annex I)

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 Health, Welfare and Food 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 amendment passed.

MR TOMMY CHEUNG (in Cantonese): Chairman, I move the amendment to add paragraph (bb) to clause 5.

Chairman, the amendment seeks mainly to explain that the Bill, when enacted in the early '90s, empowered the managers the use of appropriate force. I have proposed the amendment in the hope that colleagues will support the proposal of stripping the managers of the following powers, particularly the power of using appropriate force — that is, requiring offenders to furnish their names, addresses and proof of identity, and using reasonable force to evict an offender when necessary.

Chairman, I would like to stop here. I have explained repeatedly that it is unreasonable to require an employee to do so, for he is not required by his employer in the employment agreement that he is to enforce law for the Hong Kong SAR Government, and even still less to use appropriate force. Neither do I wish to see the public place hope on any employees (particularly the employees of restaurants), thinking that they will be given the power accordingly by law or even expecting them to exercise such power and use appropriate force when they see a smoker.

Chairman, I beg to move.

Proposed amendment

Clause 5 (see Annex I)

CHAIRMAN (in Cantonese): Members may now debate the original clause and the amendment jointly.

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

(No Member indicated a wish to speak)

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam Chairman, Mr Tommy CHEUNG's amendment proposes to delete the managers' powers to request the person concerned to give his name, address and to produce proof of identity and to expel the person concerned from the no smoking area and detain him with reasonable force when necessary.

In our opinion, the main purpose of the existing provision is to provide an additional power to the managers of no smoking areas in order to facilitate management of the venue. It also enables the managers to identify the offender when necessary before assistance can be provided to the law-enforcement officers in enforcing the law on arrival at the scene.

I would like to emphasize that the provision is to provide an additional management tool to the managers. The law does not require the managers to exercise the powers. If the managers consider it unnecessary or inappropriate to exercise such power, they need not do so. Nor do they have any statutory obligation to take action.

Mr CHEUNG's amendment will delete or reduce the statutory powers conferred on the managers. If the amendment is passed, even though the managers may wish to exercise such powers in future, there is no legal basis for them to do so. So we oppose Mr CHEUNG's amendment and urge Members to oppose it.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Mr Tommy CHEUNG, do you wish to speak again?

(Mr Tommy CHEUNG shook his head to indicate that he did not wish to speak again)

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

(Members raised their hands)

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

(Members raised their hands)

CHAIRMAN (in Cantonese): I think the question is not agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the amendment negatived.

CLERK (in Cantonese): Clause 5 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 5 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 6, 8 and 19.

CHAIRMAN (in Cantonese): The Secretary for Health, Welfare and Food and Mr Andrew CHENG have separately given notice to move amendments to clauses 6, 8 and 19 and the addition of new clause 31A to the Bill.

CHAIRMAN (in Cantonese): Committee will now proceed to a joint debate. I will first call upon the Secretary for Health, Welfare and Food to move his amendments to clauses 6, 8 and 19.

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam Chairman, I move the amendments to clauses 6, 8 and 19 of the Bill as printed on the paper circularized to Members.

Clause 6 of the amendments proposes repealing section 5 of the existing Ordinance.

This provision was introduced in 1982 when the statutory no smoking areas only covered public lifts, part of the seating accommodation of cinemas, theatres or concert halls, and public transport carriers. Amendments were made to the Ordinance in 1992 and 1997, after which the applicability of section 5 has been extended to include the addition of no smoking areas in amusement game centres, supermarkets, banks, department stores, shopping malls, and in part of the area of restaurants, educational institutions and the airport. This provision might be necessary at that time, but we are of the view that it will become obsolete with the expansion of the scope of no smoking areas when the new Ordinance comes into effect.

We propose to repeal section 5 of the Ordinance regarding the statutory requirement for the relevant managers to display "No Smoking" signs, and the major considerations have been mentioned just now. After the passage of the Bill, smoking will be extensively prohibited in almost all indoor public places and workplaces, as well as in many outdoor places. It will lack flexibility if the mandatory requirement of placing no-smoking signs is retained. With the removal of the relevant statutory duty, managers of no smoking areas shall, in the light of the actual situation and environment, deal with this matter flexibly.

Section 7(3) of the Ordinance provides that any manager who fails to place the sign in accordance with section 5 or maintain the sign in the manner required by that section commits an offence and is liable on summary conviction to a fine at level 4.

The offence under section 7(3) is prescribed consequential to the requirement imposed on managers under section 5. If the requirement under section 5 is deleted, the criminal provision of section 7(3) shall no longer be applicable. We thus propose amending clause 8 of the Bill to delete section 7(3) of the Ordinance, together with clause 8(c) of the Bill as clause 8(c) shall no longer be necessary.

I propose a consequential amendment to clause 19 of the Bill to the effect that the authority of the relevant Secretary to prescribe through subsidiary legislation the form of no smoking notices and their manner in which they are displayed shall be repealed.

I urge Members to support these amendments. Thank you, Madam Chairman.

Proposed amendments

Clause 6 (see Annex I)

Clause 8 (see Annex I)

Clause 19 (see Annex I)

CHAIRMAN (in Cantonese): I will now call upon Mr Andrew CHENG to speak on the Secretary for Health, Welfare and Food's relevant amendments as well as his own amendments, but will Mr CHENG please not move his amendment for the time being because, if the Secretary for Health, Welfare and Food's amendments are negated, Mr CHENG may move his amendment; but if the Secretary for Health, Welfare and Food's amendments are agreed, Mr Andrew CHENG may not move his amendment.

MR ANDREW CHENG (in Cantonese): Madam Chairman, I move the amendment on behalf of the Bills Committee. We have actually made a lot of

comments on this point in the debate. I only wish to spend some time responding to the remark made by the Secretary for he referred to history in his speech to explain the need at that time because smoking was not banned in all places. It is now hoped that the public can gain a better understanding through clear definitions.

Madam Chairman, the designation of some no smoking areas was passed earlier. According to the Secretary's notion, and provided that there has been no change in the government policy, directions or signs were required back then because the smoking ban was not imposed in all places. A total smoking ban is actually not in place at present too. I would like to ask the Secretary to refer to the exempted places. In particular, as frequently pointed out by us, smoking areas will be set up in 1 000 or so parks in future. This means that some areas in the parks will be exempted from the smoking ban. This is equally applicable to many bus interchanges. These transport interchanges will be delineated to give the waiting passengers a clear idea of the locations of bus terminals or transport interchanges, where smoking is prohibited.

According to the Government's explanation, some signs must be erected. According to the same explanation, the Government should have been able to resort to administrative measures without the need to enacting legislation. So why are these signs still retained despite the enactment of the law down so many years? It is because these signs do serve a certain purpose. They serve to tell the public — Madam Chairman, I am not referring merely to Hong Kong people — and mainland and foreign tourists where smoking is allowed or prohibited throughout the territory.

I hope colleagues can understand that the amendment is proposed by me on behalf of the Bills Committee. During the discussions of the Bills Committee, we were told by the Department of Health that this piece of legislation had never been enforced, and there had never been a case in which a manager was prosecuted for posting the signs improperly, posting insufficient signs, or unsatisfactory performance. Some people will question the worthiness of the legislation for it has been put aside. We think otherwise because of the concern in our minds. I remember a colleague asked when this issue was raised whether managers of establishments would easily be prosecuted because of the deficiency of the legislation.

I have to refer to some of the wordings of previous legislation — I can find it very quickly for, Madam Chairman, I can browse it while delivering my

speech — the relevant wordings are: The manager shall place in each no smoking area or public transport carrier a sign in English and Chinese to indicate clearly that smoking is prohibited in the no smoking area or the public transport carrier. Basically, the wordings are extremely clear and should not give rise to enormous conflicts for the managers. I hope colleagues can understand that legislation is already in place. If it is considered that traps will be created for the managers — Mr Albert CHAN has often insisted that there are traps — but these traps have never exerted any pressure on the managers. We just hope to have clear guidelines and directions to avoid different interpretations by different people, thereby leading to conflicts and disputes, or even fighting incidents, as I mentioned earlier in my speech.

I hope the Secretary can understand that our request for the posting of signs is no different from the posting of signs by the Government back in those years for the purpose of distinguishing between smoking areas and no smoking areas. The signs posted by the Government are still there. Furthermore, this provision was kept even though a total smoking ban was not imposed at that time. Now that the smoking ban is being pushed further and further and members of the public are still adjusting to it, the signs will suddenly be gone. The Government will definitely say that a lot of efforts will be made in public education to make the public know that smoking is prohibited in indoor places. However, I am talking about the banning of smoking in both indoor and outdoor places.

The Government has merely indicated that the approach of administrative instructions will be adopted. As such, what are the problems with the retention of this piece of legislation? As the department has indicated previously that there are no problems and no manager has been wrongly charged because of these traps, there is nothing bad about it, given that the relevant ordinance is already in place. The Government should actually be pleased to accept Members' request for the enactment of legislation by the bureau to confer the authority on the department. The Government might probably not see such a need and does not want to cause disturbance to the public. Neither does it wish to exert pressure on the managers of the department. However, I can see no pressure at all.

I am looking at this matter merely from the angle of a third party or a member of the public. If smoking is still allowed in certain places after the full implementation of the smoking ban subsequent to the amendment of legislation, I

hope members of the public can understand clearly that the display of more no-smoking signs like these is intended mainly to act as a warning in the hope that smokers will quit smoking more quickly. The signs can also serve this hidden function. I therefore hope that the Bill can be enforced in this direction. On behalf of the Bills Committee, I propose the amendment. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Members may now debate the original clauses 6, 8 and 19, the amendments thereto as well as new clause 31A jointly.

DR YEUNG SUM (in Cantonese): Madam Chairman, I only wish to raise two points briefly.

First, despite our proposal on extending the total ban on smoking from indoor to outdoor places, Members should be aware that we support the Government's amendments earlier because we are left with no alternatives. It is feared that, should the Government's amendments fail to be passed without our support, Mr Andrew CHENG's amendment will not be passed too, and a lot of efforts will thus be wasted. Given the passage of the Government's amendments, some places are thus exempted. In other words, smoking is prohibited in some places, while some others are exempted. When the legislation comes into force initially, many people may not know clearly what places are exempted or not. The same applies to tourists coming to Hong Kong too. As a result, a lot of misunderstanding and disputes will arise, thus making it difficult for the Tobacco Control Office staff to handle.

Second, I wish to remind colleagues that the amendment is proposed by Mr Andrew CHENG on behalf of the Bills Committee. A Bills Committee usually comprises Members from different political parties and groupings. With the consent of all members or the majority of the members of a Bills Committee, the Chairman will propose an amendment on behalf of the Bills Committee. Therefore, Mr CHENG is actually representing the Bills Committee, not the Democratic Party. I hope colleagues can support the amendment proposed by the Chairman of the Bills Committee. Thank you, Madam Chairman.

MS AUDREY EU (in Cantonese): Chairman, I rise to speak in support of the amendment proposed by Mr Andrew CHENG on behalf of the Bills Committee.

Chairman, I deeply regret that the Government cannot accept the Bills Committee's proposal. As stated by the Secretary, there is a requirement of placing no-smoking signs in the existing provision. The fact that the requirement was stipulated in 1982 obviously shows that the requirement is warranted. As pointed out by Mr Andrew CHENG just now, no smoking areas are expanded under the existing Ordinance. Even the term "indoor areas" alone can be disputable, as the word "indoor" can be defined in many ways. In short, a place with a roof and four walls constitutes an indoor area. However, one can drill a hole on a wall. A hole can also appear on two out of four walls, or three out of six walls. Can these places be called indoor? There has been a long argument among us on this. Furthermore, some walls can be opened or lifted. Can they be called walls too? In some cases, we really do not know for certain whether a place is considered an indoor place. The presence of a sign can definitely help reduce disputes among members of the public.

The same applies to outdoor places too. Mr Andrew CHENG earlier mentioned a number of examples, such as escalators, bus interchanges, or certain university departments. Even Mr James TIEN stated in his speech earlier that while smoking was prohibited on escalators, he did not know if smoking was prohibited on the landings. Many places were still very unclear to him. Such being the case, a sign should be put in place to specify where smoking is allowed or disallowed.

Furthermore, Chairman, we cannot simply say that Hong Kong people should be aware of the enacted legislation, because Hong Kong is a favourite place for overseas tourists. The presence of clear signs can help people abide by the law.

We certainly understand that, after the passage of this law, some people may still not be aware of the details of the legislation and thus violate the law. Such being the case, clear no-smoking signs are even more essential.

A number of colleagues pointed out in their speeches earlier that the posting of no-smoking signs everywhere would be unsightly. I remember Mr James TIEN once asked the Chairman to imagine how awful it would be should no-smoking signs be posted everywhere in the Chamber. I hope Mr TIEN can

take a look at the proposed amendment. It merely requires the manager to make it clear in the no smoking area that smoking is prohibited there. If smoking is allowed in an entire building, it is already sufficient to put up a clear sign outside the entrance, unlike the display of the signs in the male toilets as mentioned by Secretary Dr York CHOW earlier. Our proposal is actually very simple; it merely requires that a sign be displayed to clearly indicate the boundary of a no smoking area.

Some colleagues stated in their speeches that inflexibility would thus be resulted. This is actually not the case. Regardless of the size of a smoking area, it will be extremely clear provided that a smoking sign is displayed, with the boundary of the smoking area clearly stated on the board on the lower side or clearly delineated on a small map. As such, there is no requirement as to what approaches are disallowed, though a certain format should be adopted. It is already stated in law that the no-smoking sign is represented by a circle with a slanted line to specify the location of a no smoking area. There are many ways to indicate below the sign the size of a no smoking area.

Chairman, it is also said that the requirement of posting the signs everywhere is inflexible or rigid. I wish to point out that the requirement of the existing legislation is even more complicated. Under the existing legislation, managers are required to provide in no smoking areas, including the prominent positions of public transport carriers, a sufficient number of signs in English and Chinese to indicate no smoking areas. Therefore, there are two additional requirements under the existing legislation: first, a prominent position; and second, a sufficient number. The amendment proposed by the Bills Committee now is even more lenient and flexible, as it merely requires the provision of a sign in English and Chinese to clearly indicate the no smoking area. I therefore deeply regret that the Government cannot accept such a reasonable proposal.

Chairman, as the amendment is proposed by the Bills Committee, I hope colleagues can render their support. Thank you, Chairman.

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

MR JAMES TIEN (in Cantonese): Chairman, I have indicated in my speech earlier that even if indoor smoking is prohibited by law, which means that

smoking is prohibited inside the Legislative Council Building, I still do not consider it necessary to put one, two, three or even four more no-smoking signs here in the Chamber. I know Members will understand.

Chairman, I wish to reiterate that, although the proposal was raised by the Chairman of the Bills Committee on behalf of the Bills Committee, the Liberal Party opposed the proposal when it was debated in the Bills Committee. Thank you, Chairman.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Mr Andrew CHENG, do you wish to speak again?

MR ANDREW CHENG (in Cantonese): Chairman, Mr James TIEN questioned earlier whether no-smoking signs would be posted everywhere and mentioned the objection raised by the Liberal Party. Today, I hope to advance some arguments, particularly some historical reasons mentioned by the Secretary earlier in the debate, to facilitate Members' exchange of ideas. As far as I can remember, this issue was not discussed too many times in the Bills Committee, though it was constantly pointed out that the existing legislation was full of ambiguous wordings, like the examples read out by Ms Audrey EU earlier. Then, there were discussions on how to define "prominent" or "sufficient". At one stage, the Government apparently hinted that amendments would be made provided that the wordings were properly conceived. Consequently, some wordings have been proposed to replace "prominent" or "sufficient", for the two terms might give rise to frequent disputes. It has thus been proposed that the signs, written clearly in English and Chinese, shall be maintained "in good condition". Unfortunately, I do not know why the Government has acted in this manner — I wonder if it is because, should the amendment be passed, the Government will then be held criminally liable like other operators. The Bills Committee considered this unreasonable too. My amendment is actually like a series of amendments — not only should the signs be posted, they have to be maintained by the Government in good condition, for it should be held criminally liable should it fail to do so.

Anyhow, I wonder why the Secretary mentioned the signs in the male toilets earlier — I did not notice the signs when I entered the toilets. Even if there is one, people might probably not notice it, not to mention that there is none. The Secretary was referring to the male toilets; I wonder if there are such signs in the female toilets. Female Members may perhaps say a few words. Anyhow, according to the Secretary, such signs can be found only in the male toilets in the entire Legislative Council Building. Why? I suddenly recall that Mr Andrew WONG was a former Member of this Council, and he often smoked in the toilets. This explains the existence of the signs — the Chairman is nodding too. I wonder if that was the reason; I was not a participant of the relevant discussion. It proves that the signs are necessary should that be the case. Some people may smoke in certain places when they are out of the sight of others. A warning might prevent them from challenging the law by violating the rules. Therefore, a sign is always better than no sign at all. Furthermore, there is nothing new about this existing practice. Given the existence of the signs even before the full implementation of a total smoking ban, I hope that we can do better and retain the signs, for this is where the spirit lies.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Secretary for Health, Welfare and Food.....

(Ms Audrey EU raised her hand to indicate her wish)

CHAIRMAN (in Cantonese): Secretary, please hold on. Do you wish to listen to Ms Audrey EU's speech first?

MS AUDREY EU (in Cantonese): Chairman, I wish to respond to Mr James TIEN's speech because of his objection to the proposed amendment in his earlier speech on the ground that it is suffice for the Legislative Council to display just one no-smoking sign, and there is no need to display four or five such signs inside the Chamber.

Chairman, I hope Mr James TIEN can take a look at the script because the proposed amendment is written in the simplest manner in the script. Chairman, Mr Andrew CHENG has written the amendment to clause 6 in a very clear

manner in page 29. He has merely required "the manager to place and keep in place in each no smoking area or public transport carrier (as the case may be), a sign in English and Chinese — Chairman, I am referring to just one sign — to indicate clearly that smoking is prohibited in the no smoking area or public transport carrier, and such sign shall be maintained by the manager in good condition". Chairman, I have no idea why the provision inside the brackets of the script is written in Chinese only.

As such, Chairman, I wish to read out the English version of the provision to Mr James TIEN. The provision is indeed rendered in English very clearly: "The manager shall place and keep in place in each no smoking area or public transport carrier, as the case may be, a sign in English and Chinese to indicate clearly that smoking is prohibited in the no-smoking area or public transport carrier, and such sign shall be maintained by the manager in good condition".

The requirement is therefore very simple. It is even simpler than the one in the existing legislation, which was already in place in 1982. Under the existing legislation, a sufficient number of signs must be provided in prominent position. Mr TIEN might be referring to the existing legislation, but we are discussing the present proposal. The present proposal merely requires that a sign be displayed to clearly indicate a no smoking area. I hope the Liberal Party can reconsider this issue and support the Bills Committee's amendment eventually.

Furthermore, Chairman, I wish to add that I forgot to mention the amendment to clause 8 in my speech earlier. The amendment seeks to repeal the requirement of exempting the Government from criminal liability under clause 8(c). In other words, the Government is not criminally liable even if it fails to provide no-smoking signs in no smoking areas. During the discussions in the Bills Committee, we disapproved of this approach because, after the passage of the Bill, many government buildings will become no smoking areas. I feel that the Government is absolutely duty-bound to tell the public clearly which government buildings or vehicles are no smoking areas. Therefore, the Government should be legally liable. For this reason, we object to the repeal of the relevant provision.

The issue of whether the Government should, unlike the public in general, be exempted from liability has been frequently discussed in this Council. In this connection, this Council has always insisted that the Government, like ordinary

people, should be legally liable. This explains why I wish to mention clause 8 in particular. Thank you, Chairman.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): If no other Member wishes to speak for the time being, I now call upon the Secretary for Health, Welfare and Food to speak.

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Chairman, we do not support this amendment moved by Mr CHENG because the requirement of the clause concerned is ambiguous, to such effect that the manager will find it even more difficult to meet the requirement and disputes will easily arise during law-enforcement actions. For example, a sign in good order is placed in an inconspicuous corner of the premises by the manager where few people will notice it. Despite it "clearly setting out" that smoking is prohibited in the no smoking area, I hold that such a practice is not in line with the requirement of the law. Although the amendment seeks to retain the statutory duty of the manager, it has deleted the specific requirement regarding the manner in which the signs are displayed, leaving law-enforcement officers who have to discharge their duty know not what course to take, because they are denied a law-enforcement standard. This loophole will render a mandatory requirement which carries criminal liability useless. This is just like Mr Andrew CHENG, who has been using the toilet of the Legislative Council for years, is not aware that there is this sign in the toilet, proving that this sign does not need to be there. *(Laughter)* I hold that the amendment proposed by the Government is more valid.

Moreover, the amendment moved by Mr Andrew CHENG seeks to retain the criminal liability of section 7(3) so as to impose such liability on the Government and public officers. It has been the legal policy of the Government that the Government and public officers should not be subjected to criminal liability of offences of a regulatory nature. In order to dovetail with this legal

policy, we cannot support the amendments, regarding clause 8 of the Bill, moved by Mr Andrew CHENG.

Thank you, Chairman.

MR MARTIN LEE (in Cantonese): Madam Chairman, I would normally not take notice of the existence of no-smoking signs when I entered a male toilet. However, when I detected the smell of a cigarette, I would look for the sign immediately. If I saw the sign and someone was smoking — very often it could hardly be detected for the smoker might be sitting on the side — I would splash water on him.

MR ANDREW CHENG (in Cantonese): Chairman, I wish to speak again. The purpose of my speech is not to refute if I have seen any no-smoking signs inside the toilets. Nevertheless, I hope the Secretary can understand that I have not noticed the sign because I am not a smoker. Neither does it matter to me. However, as stated by Mr Martin LEE, if I really smell someone smoke inside the toilet of this Council, I might respond in this way — to check if smoking is prohibited inside the toilet. In all fairness, such notices were posted in the past probably because the President or the Legislative Council Commission considered it necessary to do so, or someone had really smoked inside the toilet.

Actually, I speak again not because I wish to respond to this point. I am deeply grieved by the speech delivered by the Secretary earlier in the meeting. I would like his assistant to check clearly what he said in his speech just now. Our present amendment seeks to delete such wordings as "prominent" and "sufficient" and replace them with the provision the Secretary is going to oppose today. Let me read it out. Chairman, I would like to invite the Secretary to respond again. Being a responsible Secretary, he must do so because he requested Members to oppose my amendment.

However, my amendment does not contain any wordings of the existing legislation. The paragraphs of provisions read out by the Secretary earlier were sought to respond to the problems that may possibly be encountered by managers at present, because no one know what "prominent" and "sufficient" mean. However, he was responding to the inadequacy of the existing legislation! If he would like members to oppose me, he should identify the problem of the

amendment proposed by me on behalf of the Bills Committee in relation to the display of signs in no smoking areas.

My amendment reads: "The manager shall place and keep in place in each no smoking area or public transport carrier, as the case may be, a sign in English and Chinese (that is the most crucial) to indicate clearly that smoking is prohibited in the no smoking area or the public transport carrier and such signs shall be maintained by the manager in good condition". I wish to point out that only one sign is required, for some colleagues have no idea how many signs are required.

I would like to invite the Secretary to, instead of making the remark earlier, respond to my amendment and explain why it is not worthwhile for Members to support the amendment. This is because he was only responding to the provision considered unsatisfactory by the Bills Committee, which has subsequently proposed the amendment. Right, Members did not find the provision satisfactory. Such a remark should indeed be made by me, rather than the Secretary. I would like the Secretary to respond again to why he still thinks that managers will find the amendment proposed by the Bills Committee stressful and unclear, and why the amendment is unclear. Thank you, Chairman.

MRS SELINA CHOW (in Cantonese): Chairman, the Liberal Party opposes the amendment, that is, Mr Andrew CHENG's amendment, for just one very simple reason, that the amendment is problematic in logic.

Under the legislation already passed, no place is called a no smoking area. How many no smoking areas are there inside the Legislative Council Building? Is there only one no smoking area in the entire Building, or is every room inside the Building a no smoking area? Let me cite a public transport carrier as an example. Are the upper and lower decks of a bus considered two no smoking areas or just one?

If a room is used as a unit of calculation, should the relevant sign be displayed in every room? If the entire Legislative Council Building is seen as a single no smoking area on the ground that all indoor places are now no smoking areas, should one sign or notice or 10 be posted? There should be more than 10

rooms inside this Building. Chairman, the remark made by Mr James TIEN earlier is absolutely not exaggerated, depending on how it is interpreted.

I really want to ask Mr Andrew CHENG. In short, how many such notices should be posted in every bus? Should one such notice be posted in each train compartment or the entire train, or are there other methods of demarcation? As far as I understand the entire logic at present, it is simply unnecessary for the Government to display such a sign because a total ban on smoking is now imposed. The sudden proposal of setting up no smoking areas is like a new invention. The posting of signs was warranted in the past because a total ban on smoking was not imposed in the community, only that certain indoor places were designated as no smoking areas. It was therefore necessary to make it clear. Now that a total ban on no smoking is imposed, how can certain places inside the same building be demarcated as no smoking areas?

I believe the proposal is seriously problematic in logic. Chairman, if the proposal is problematic in logic, it will be problematic to act according to it. Law enforcement will be problematic too. Therefore, we cannot support Mr CHENG's amendment.

DR YEUNG SUM (in Cantonese): Chairman, although a number of Members advocate a total smoking ban, some places are exempted according to the Government's amendment passed earlier. These are the latest developments. The situation probably changed 10 minutes or so ago. Therefore, there is something more than a total smoking ban. After this law has come into effect, smoking will still be allowed in certain places. How can the places be distinguished? We were talking about the parks, not the Legislative Council Building. I wonder if Members noticed what was said. They are different. Smoking is not banned in all places. It is not even totally banned in all places at bus stops. So, does it mean that a great number of signs in various languages will be required? The expression "indicate clearly" does not specify the size and prominence of the sign. However, it is already impossible to achieve the purpose of "indicating clearly". The Secretary is actually like "trimming the toes to fit the shoes" in saying that great difficulty will be encountered. Given the difficulty, the Secretary might as well not making any requirement.

Some colleagues might not follow closely each and every provision. According to the provision passed earlier, smoking is indeed not banned in all

places, as some places are exempted. Such being the case, it is perfectly reasonable for signs to be provided to indicate clearly where smoking is allowed or prohibited. We still have a great number of tourists visiting Hong Kong for spending. They must be told where smoking is allowed or prohibited to avoid tarnishing Hong Kong's image. Now that it is said that not even a sign is allowed. Who will bear the responsibility in the event of misunderstanding?

Thank you, Chairman.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Health, Welfare and Food, you may speak now.

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): I do not need to speak again.

CHAIRMAN (in Cantonese): You do not need to speak again?

MR ANDREW CHENG (in Cantonese): Chairman, I wonder why the Secretary did not speak in response to my request. However, I would like to speak in response to Mrs CHOW's remark.

In brief, it is probably because Mrs CHOW is not a member of the Bills Committee. During the initial discussions of the Bills Committee, the most crucial point relating to "indoor" was discussed at length, as the Bill is about "indoor". The Bills Committee has spent quite some time, at least 20 hours, discussing the definition of "indoor". I remember quite a number of members raised questions. This is particularly so for Mr Tommy CHEUNG, whose constituents have raised the following questions: Which indoor restaurants will be affected? How should "indoor" be defined? Some restaurants might have

walls on the sides but without a ceiling; some might have a ceiling but the walls on three sides are open. Will these restaurants be regarded as indoor?

Let me read out the definition of "indoor". "Indoor" is defined in the law — excuse me, I have turned one more page. Chairman, the definition of "indoor" is I am using the marked up copy, sorry. The definition of "indoor" carries two requirements: First, having a ceiling or roof, or a cover that functions (whether temporarily or permanently) as a ceiling or roof; and second, enclosed (whether temporarily or permanently) at least up to 50% of the total area on all sides, except for any window or door, or any closeable opening that functions as a window or door. Honourable colleagues, having listened to the passage I have read, will you still worry that you cannot tell whether a certain place you will visit is defined as an "indoor" place, whether smoking is allowed therein, and whether the place is a smoking or no smoking area?

Chairman, how can we tell by simply looking at the definition? I recall that during a Bills Committee meeting, the officers from the relevant department illustrated with the aid of a dozen photographs taken at the sites of various environments to demonstrate what were regarded as "indoor" places where smoking would be allowed or disallowed. Hence, members can tell the difference. Without such efforts, members will not be able to make the distinction. And yet the authorities believe the public will still understand even without no-smoking signs being displayed in no smoking areas. I originally had no wish to lose my temper. I would have cast my vote if not for the Secretary's earlier response.

I originally had no wish either to cite the definition of "indoor" in response to Mrs CHOW, but I hope she can respond to it. This is probably relevant to her constituents or Mr Tommy CHEUNG's constituents. The existence of signs might do their constituents even better because of enhanced clarity. May I ask if you understand what "indoor" means, after listening to the definition of "indoor" read out by me earlier? You might probably say you understand that an "indoor" place refers to one having a ceiling and enclosed at least up to 50% of the total area on all sides. What happens when an "indoor" place is open? What are those places which can sometimes be open or closed? Making rules is therefore the best solution. Now that legislation is already in place, signs should be provided by responsible persons or operators. And a clear understanding can be obtained by enquiring with the Tobacco Control Office. So, what else can be disputed?

I do not entirely understand why Members have the feeling that we seek to procrastinate the matter and make an unnecessary move. We are not making an unnecessary move. This is already provided in the existing legislation. Furthermore, smoking and no smoking areas are still retained in many places, whereas "indoor" is defined in such a vague manner — I dare not say vague, it should be complicated instead. Given its great complexity and, in some cases, confusion caused to the outsiders, the third party or members of the public, the matter should be sorted out.

Chairman, the Secretary should really respond to my comments and, in his jargons, request Members not to support the amendment proposed by me on behalf of the Bills Committee and considered by me more progressive and clearer than the existing legislation.

Thank you, Chairman.

MRS SELINA CHOW (in Cantonese): Chairman, despite Mr Andrew CHENG's lengthy speech, I have only heard him explain to us what "indoor" means. Yet he has failed to answer my question directly.

My question is very simple and specific. How many no smoking areas are there inside the Legislative Council Building? How many no smoking areas are there in a public transport carrier? How many signs have to be displayed should his amendment be carried?

MR ANDREW CHENG (in Cantonese): Madam Chairman, this issue has been discussed in the Bills Committee. According to my personal view, the entire Legislative Council Building is, by virtue of our proposed amendment, a building. Its manager — probably the President in the capacity of the Chairman of the Legislative Council Commission — is merely required to maintain a no-smoking sign in English and Chinese to indicate clearly that smoking is prohibited in the Legislative Council Building.

Where should the sign be placed? Still inside the male toilet? The sign does not necessarily have to be placed in the male toilet. This is because our discussion is about the requirement of indicating to the public clearly all the no

smoking areas. According to the discussions conducted by the Bills Committee, the best location must be the main entrance or exit, where a no-smoking sign in bold characters can be placed, and the problem will be solved. I hope this can answer the question raised by Mrs Selina CHOW. According to our amendment, the problem can already be solved if the sign is placed in the main passage of a bus, a 12-compartment train, or whatever.

Like Mr Martin LEE, some managers might dislike other people smoking and probably put up the signs everywhere. However, I see no particular problem even if they do so as the places belong to them. They can put up the signs as if they are wallpaper. I therefore do not find this problematic.

I hope Members can understand that we merely seek to improve the existing legislation to avoid confusion. I also hope Mrs CHOW can understand that I was trying to convince Members by explaining the definition of "indoor". Actually, the business sector, as one of the functional constituencies, will definitely find it problematic after hearing the definition of "indoor", for people of the sector will realize that they do not know where smoking is allowed and they have no idea either as to how to complement the enforcement efforts of the law-enforcement agencies. Is it not entirely satisfactory? I hope to, through my speech, implore the Secretary to respond — I see that he has put a file on the desk. I really look forward to his response to explain clearly how he will deal with the problem in relation to our amendment.

Thank you, Madam Chairman.

MR HOWARD YOUNG (in Cantonese): Chairman, Mr Andrew CHENG indicated a while ago that he had no idea where the sign should be put. However, insofar as this Council is concerned, there are at least four major corridors. Unless the sign is displayed where the regional emblem is situated, no other places are more prominent.

As pointed out by Mr CHENG earlier, some smoking areas will still be exempted after the passage of the Bill. However, I believe Hong Kong people will accept that, unless there are exceptional cases, all indoor places are basically no smoking areas. This will become a new standard for all. On the contrary, I remember that some places are exempted at the moment. When I took part in

the scrutiny of the Bill, there was a proposal that a sign should be displayed in exempted places to indicate that the places are exempted. In other words, smoking is simply prohibited in places where there are no exemption signs. I therefore consider it unnecessary for additional signs, provided for under the existing system, to be posted everywhere.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary, do you wish to speak again?

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): No.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments to clauses 6, 8 and 19 moved by the Secretary for Health, Welfare and Food be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr Andrew CHENG rose to claim a division.

CHAIRMAN (in Cantonese): Mr Andrew CHENG has claimed a division. The division bell will ring for three minutes, after which the division will begin.

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

CHAIRMAN (in Cantonese): Dr Fernando CHEUNG, do you intend not to vote?

(Dr Fernando CHEUNG pressed the button to vote)

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

Mr James TIEN, Dr Raymond HO, Mr LEE Cheuk-yan, Dr David LI, Dr LUI Ming-wah, Mrs Selina CHOW, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr LEUNG Yiu-chung, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr LAU Chin-shek, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Miss CHOY So-yuk, Mr Timothy FOK, Mr TAM Yiu-chung, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Mr LI Kwok-ying, Mr Jeffrey LAM, Mr MA Lik, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong and Mr KWONG Chi-kin voted for the amendments.

Mr Albert HO, Mr Martin LEE, Mr James TO, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Dr Joseph LEE, Mr Alan LEONG, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr Ronny TONG and Miss TAM Heung-man voted against the amendments.

Mr Albert CHAN and Mr LEUNG kwok-hung abstained.

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

THE CHAIRMAN announced that there were 53 Members present, 33 were in favour of the amendments, 17 against them and two abstained. Since the question was agreed by a majority of the Members present, she therefore declared that the amendments were carried.

MS MIRIAM LAU (in Cantonese): Chairman, I move that in the event of further divisions being claimed in respect of the provisions of the Smoking (Public Health) (Amendment) Bill 2005 or any amendments thereto, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the motion moved by Ms Miriam LAU be passed.

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 respectively of each of the two groups of Members who are present. I declare the motion passed.

I order that in the event of further divisions being claimed in respect of the provisions of the Smoking (Public Health) (Amendment) Bill 2005 or any amendments thereto, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

CHAIRMAN (in Cantonese): As the amendments moved by the Secretary for Health, Welfare and Food have been passed, Mr Andrew CHENG may not move

his amendments to clauses 6, 8 and 19 and the addition of his new clause 31A, which are inconsistent with the decision already made by the Committee just now.

CLERK (in Cantonese): Clauses 6, 8 and 19 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the clauses as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam Chairman, may I seek your consent to move under Rule 91 of the Rules of Procedure that Rule 58(5) of the Rules of Procedure be suspended in order that this Committee may consider new clause 31A ahead of other clauses.

CHAIRMAN (in Cantonese): As only the President may give consent for a motion to be moved to suspend the Rules of Procedure, I order that Council do now resume.

Council then resumed.

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

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I move that Rule 58(5) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider new clause 31A ahead of other clauses.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Rule 58(5) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider new clause 31A ahead of other clauses.

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

(Members raised their hands)

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

(No hands raised)

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

Council went into Committee.

Committee Stage

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

CLERK (in Cantonese): New clause 31A No smoking signs.

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam Chairman, I move that new clause 31A be read the Second time.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 31A moved by the Secretary for Health, Welfare and Food be read the Second time.

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.

(Members raised their hands)

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

CLERK (in Cantonese): New clause 31A.

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Chairman, I move that new clause 31A be added to the Bill.

Proposed addition

New clause 31A (see Annex I)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 31A moved by the Secretary for Health, Welfare and Food 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.

(Members raised their hands)

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 11, 13, 30 and 32.

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam Chairman, I move the clauses read out just now be amended as set out in the paper circularized to Members.

The amendments to subsections (a) and (b) of clause 11 propose amending the penalties of the offences under Part III from the original fine at level 4 (that is, \$25,000) to level 5 (that is \$5,000). We have responded to the views of the Bills Committee and agreed that the penalties need to be stepped up as these offences are premeditated rather than innocent oversight or omission, so as to achieve the deferent effect.

The amendment to subsection (c) of clause 11 proposes amending section 10(3) of the Ordinance, to prohibit tobacco products to bear on its packaging any term, descriptor, trademark, figurative or any other sign that is likely to create an erroneous impression that the product is less harmful to health than other tobacco products the packaging of which does not bear such descriptor or sign, or to prohibit promoting the product by any means on the packaging that is false, misleading or deceptive.

The above amendments were made after discussions with the Bills Committee and have obtained the majority support of its members.

The amendment to clause 13 proposes further amending section 11 of the Ordinance to provide for the requirement of prohibiting the printing, publishing or causing to publish a tobacco advertisement; while the proposed amendments to clauses 30 and 32 of the Bill are technical and textual amendments.

These amendments are supported by the Bills Committee and I urge Members to support the passage of these amendments. Thank you, Madam Chairman.

Proposed amendments

Clause 11 (see Annex I)

Clause 13 (see Annex I)

Clause 30 (see Annex I)

Clause 32 (see Annex I)

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

MR VINCENT FANG (in Cantonese): Madam Chairman, there has been criticism by some colleagues that the Secretary's proposal to consider setting up smoking rooms is a quid pro quo with tobacco traders for a re-tightening of clause 11(c) of the Smoking (Public Health) (Amendment) Bill 2005 (the Bill) in relation to the prohibition of use of misleading descriptors on cigarette packs. I have therefore, with great reluctance, accepted the last amendment. I would like to take this opportunity to respond that the tobacco brands targeted by colleagues do not benefit the most from any relaxation in the market. What I have been campaigning for is that Hong Kong, as an international commercial city, should safeguard the trademarks and brands which have existed for a long time in the market and are protected by law.

Although I will still support the Government's last amendment to clause 11, I am greatly dissatisfied with the Government's indecisive position towards this provision. It also demonstrated that the Bureau would change its decision due to pressure.

According to the initial proposal in the Blue Bill, regardless of the actual purpose of the wordings, it was unlawful for such wordings as "lights", "mild" to appear on cigarette packs. Subsequent to the objection raised by the trade, the Government found that the use of these wordings was related to the tar and

nicotine yields of cigarettes and, furthermore, the proposal was very likely to affect some cigarette brands and contravene the Basic Law. Subsequently, the Government proposed to add a "grandfathering" provision to the proposed provision (with notation included on cigarette packs) to prevent some brands, such as Mild Seven, from becoming illicit commodities.

Nevertheless, due to the Government's failure to set a deadline for the "grandfathering" provision to, for instance, require that only trademarks registered before the tabling of the Bill to this Council for First Reading are governed by the "grandfathering" provision, some tobacco traders have continued to apply to the Intellectual Property Department for registration of trademarks with these wordings. In addition, dozens of brands are allowed to enjoy the treatment given by the "grandfathering" provision, even though these brands have ceased to offer products on the market. This has attracted vigorous objection from some Members fighting for a total smoking ban.

After months of discussion, the Government could not withstand the pressure and, all of a sudden, announced the abolition of the "grandfathering" provision overnight. Instead, it has merely prohibited the use of misleading wordings without specifying which wordings will be prohibited.

During the debates over the past months, some colleagues delivered some misleading comments by criticizing, for instance, the tobacco trade of deliberately using such wordings as "lights" or "mild" to mislead the public by impressing them that these cigarettes are less harmful. Actually, they do not entirely understand the background of the issue.

Actually, both the Hong Kong Government and overseas experts stated very clearly years ago that tar and nicotine contained in cigarettes are harmful to the body. This explains why, during the past two decades, many countries have been tightening legislation to require tobacco manufacturers to gradually reduce the amount of nicotine yields of cigarettes. In Hong Kong, for instance, cigarettes sold in Hong Kong had a maximum tar yield of 17 mg before 1997. Subsequent to legislative amendment, the yield was lowered to 15 mg, and further tightened by the Europe Union to 10 mg recently. This reflects that the public misunderstanding that cigarettes with lower tar yields are less harmful is partly attributable to the Government's policy.

The use by tobacco companies of such wordings as "lights" or "mild" is intended to distinguish the levels of tar and nicotine yields. Under Hong Kong laws, the tar yield of products with these marks must not exceed 9 mg. It is evident that tobacco companies, governed by the Government, cannot resort to indiscriminate or abusive use of such wordings as "lights" or "mild".

Adopting the view that cigarettes with high or low tar yields are equally harmful to smokers, the Government has now changed its position overnight. Not only are such wordings as "lights" or "mild" prohibited from appearing on cigarettes packs, even trademarks are not spared. The brand, Mild Seven, targeted by colleagues was already available on the market more than two decades ago when the Framework Convention on Tobacco Control was established. Furthermore, Mild Seven is a commodity trademark. Similar trademarks have all along been subject to the Trademarks Ordinance in Hong Kong. I am therefore extremely dissatisfied with the inconsistent decision made by the Health, Welfare and Food Bureau.

Although it is not explicitly stipulated in the latest amendment by the Health, Welfare and Food Bureau which specific words will be banned, disputes will definitely arise because a certain cigarette brand will be involved in litigation if its wordings are considered by any member of the public to be misleading.

I therefore hope that the Government can, upon the passage of the Bill, expeditiously hold meetings to communicate with the trade in relation to the specific method and criteria of enforcement of clause 11. Otherwise, the trade will be at a loss as to what to do. I so submit. Thank you, Madam Chairman.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Health, Welfare and Food, do you wish to speak again?

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam Chairman, as many Members have already spoken on this topic, I have nothing more to add.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Health, Welfare and Food 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 amendments passed.

CLERK (in Cantonese): Clauses 11, 13, 30 and 32 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the clauses as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(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 15, 33 and 36.

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam Chairman, may I seek your consent to move under Rule 91 of the Rules of Procedure that Rule 58(5) of the Rules of Procedure be suspended in order that this Committee may consider new clause 35A together with clauses 15, 33 and 36.

CHAIRMAN (in Cantonese): As only the President may give consent for a motion to be moved to suspend the Rules of Procedure, I order that Council do now resume.

Council then resumed.

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

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I move that Rule 58(5) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider new clause 35A together with clauses 15, 33 and 36.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Rule 58(5) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider new clause 35A together with clauses 15, 33 and 36.

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

(Members raised their hands)

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

(No hands raised)

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

Council went into Committee.

Committee Stage

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

CLERK (in Cantonese): New clause 35A Paragraph added.

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam Chairman, I move that new clause 35A be added to the Bill.

New clause 35A of the Bill proposes adding a new paragraph 5A in the Smoking (Public Health) (Notices) Order (sub. leg. B) to provide that the price board of tobacco products shall bear a health warning in the form set out in the Schedule, and the warning shall be of a size that covers at least 20% of the area of the price board.

This amendment has incorporated the views of the Bills Committee and I implore Members to support it.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 35A be read the Second time.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clause 35A.

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam Chairman, I move that new clause 35A be added to the Bill.

Proposed addition

New clause 35A (see Annex I)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 35A moved by the Secretary for Health, Welfare and Food 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.

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam Chairman, I move the amendments to clauses 15, 33 and 36 of the Bill as set out in the paper circularized to Members. I now briefly explain the major amendments.

Having incorporated the views of the Bills Committee, the amendments to clause 15(a) and (b) provide that any brand name or company name of a tobacco product that appears in an advertisement for a non-tobacco product or job recruitment shall not form a "prominent" part of the advertisement, instead of the "most prominent" part as prescribed under the original Bill.

In response to the views of the Bills Committee, we have added in clause 15(c) a provision to restrict the area of each type of tobacco product containing its name and price on a price board, and the price board shall bear a health warning in the prescribed form and manner.

The amendment proposes at the same time allowing cigar shops to have inside the shop three sets of catalogues containing the names and prices of cigar products on sale in the shop.

The amendment to clause 33 proposes deleting certain specifications of the health warning displayed on the retail container of cigar and other tobacco products as prescribed under the original Bill.

The amendment to clause 36 is a consequential amendment made in response to changes made to clauses 33, 35 and new clause 35A of the Bill. In addition, it also proposes adding Part IIIA in the Schedule of its subsidiary legislation to set out the form of the health warning displayed on the price board of tobacco products.

The above amendments are supported by the Bills Committee and I implore Members to support them. Thank you, Madam Chairman.

Proposed amendments

Clause 15 (see Annex I)

Clause 33 (see Annex I)

Clause 36 (see Annex I)

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Health, Welfare and Food 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 amendments passed.

CLERK (in Cantonese): Clauses 15 and 33 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the clauses as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(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): Part 4.

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam Chairman, I move the amendment to Part 4 which includes clauses 37 and 38 as set out in the paper circularized to Members. I wish to briefly explain the major amendments.

The proposed revised Part 4 sets out the transitional provisions of the Bill. I propose adding Schedule 6 to renumber the transitional provisions under clause 38 of the original Bill as Part 1 of Schedule 6. The policy intention reflected by the relevant provisions remains the same, which is to provide a transitional period of 12 months for the tobacco industry to bear, in accordance with the new requirement, on the packaging of tobacco products the new graphic health warnings and the indication of the tar and nicotine yields; and to comply with the amended section 10(3) of the Ordinance regarding the restriction of prohibiting the use of misleading words and descriptors on the packaging of tobacco products.

After discussions with the Bills Committee, we proposed adding Part 2 of Schedule 6 to set out six types of establishments which can defer the application of the smoking ban to 1 July 2009, provided that these establishments meet the relevant requirements prescribed under that Part.

Section 3 of Part 2 under Schedule 6 sets out the entry restrictions the six qualified establishments have to comply with.

Sections 4, 5 and 6 separately set out other requirements these establishments shall comply with. Under section 7, the Director of Health shall maintain a list containing the names and addresses of the qualified establishments. Section 8 provides that these establishments shall display the prescribed signs. Section 9 confers power on the Director of Health to remove, under the situations prescribed in the Ordinance, the name and address of a certain establishment from the list of qualified establishments. We have also set out in detail, in accordance with the views of the Bills Committee, in sections 11 to 15 the appeal mechanism set up specifically for decisions made by the Director of Health of removing the name and address of an establishment from the list of qualified establishments. Section 16 provides that the provision pertinent to the part on qualified establishments shall expire on 1 July 2009.

This amendment is supported by the Bills Committee and I implore Members to support this amendment.

Proposed amendment

Part 4 (see Annex I)

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 Health, Welfare and Food 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 amendment passed.

CLERK (in Cantonese): Part 4 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That Part 4 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

SUSPENSION OF MEETING

CHAIRMAN (in Cantonese): It is now 10.03 pm. I do not think we can finish the Agenda today before 12 midnight, I thus now suspend the Council until 2.30 pm tomorrow.

Suspended accordingly at five minutes past Ten o'clock.

Appendices II and III**WRITTEN ANSWER****Written answer by the Secretary for Financial Services and the Treasury to Mr James TIEN and Mr LAU Kong-wah's supplementary questions to Question 2**

As regards how the Government would ensure that proceeds from the sale of Personalized Vehicle Registration Marks (PVRMs) could be used for poverty alleviation work and how the funding would be used, the proceeds will be paid into the general revenue. The Government has undertaken to set aside \$60 million each year in the five financial years starting from 2006-2007, that is, \$300 million in total, to fund poverty alleviation work. The amount is equivalent to the estimated net proceeds from the sale of PVRMs after deducting the administrative cost. Even if the annual net proceeds of the Personalized Vehicle Registration Marks Scheme are less than \$60 million, the Government will not reduce the funding. If the annual net proceeds exceed \$60 million, the Government will review the funding in three years.

The above funding will entirely be used for supporting poverty alleviation work at both the central and district levels. Out of this funding, \$150 million has been earmarked over the next five years to strengthen district-based poverty alleviation work, including support for social enterprises, with a view to helping the disadvantaged to achieve self-reliance. In response to this, the "Enhancing Self-Reliance Through District Partnership Programme" has been established under the Home Affairs Department and is now open to applications.

The relevant bureaux and departments will continue to discuss how effective allocation of the above funding would be best achieved, taking into consideration the suggestions of the Commission on Poverty and the concerned parties, including:

- to strengthen employment assistance/provide incentive (for example, the trial placement scheme and travel support pilot scheme);
- to strengthen the support to children and youth;

WRITTEN ANSWER — *Continued*

- to promote and development of social enterprises; and
- to strengthen the assistance to other disadvantaged groups.

In preparing the estimates of government expenditure each year, the Government will set out the funding for poverty alleviation work for examination by the Legislative Council.

If Members have any enquiries, please contact Mr Steve TSE at 2810 2400.

Appendix IV

WRITTEN ANSWER**Written answer by the Secretary for Economic Development and Labour to Mr CHEUNG Hok-ming's supplementary question to Question 5**

Regarding contingency transport arrangements for Ngong Ping 360 for the seven incidents of cable car service suspension between 18 September and 16 October 2006, the Transport Department (TD) has been working closely with the relevant government departments and organizations to monitor the traffic and transport arrangements, with a view to meeting the visitors' demand for the cable car service since its opening on 18 September 2006.

Of the seven cases that had caused disruption to the cable car service, the TD was notified of six, except the one occurred on 15 October 2006 evening on signal failure resulting in intermittent stoppages of cable car service, with intermissions each of less than 15 minutes. On the six reported cases, the TD had followed up with Skyrail, and assessed and monitored passenger demand for public transport services at Tung Chung and Ngong Ping during the service disruption periods. The TD also alerted New Lantao Bus Company Limited to get prepared for meeting the bus services demand at Ngong Ping and Tung Chung. According to the TD's observation, none of the reported cases had caused significant traffic and transport problem, and the current traffic arrangement for handling incidents involving cable car service disruption works satisfactorily.

(Updated information:

For the four cases of service disruption that happened after 16 October 2006 (up to 8 January 2007), none of them had caused significant traffic and transport problem. The TD will continue to review the arrangement with Skyrail and other concerned parties as and when necessary.)