

# OFFICIAL RECORD OF PROCEEDINGS

Thursday, 19 October 2006

The Council continued to meet at  
half-past Two o'clock

## MEMBERS PRESENT:

THE PRESIDENT

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

THE HONOURABLE 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 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.

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

**PUBLIC OFFICERS ATTENDING:**

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

THE HONOURABLE HENRY TANG YING-YEN, G.B.S., J.P.  
THE FINANCIAL SECRETARY

THE HONOURABLE WONG YAN-LUNG, S.C., J.P.  
THE SECRETARY FOR JUSTICE

THE HONOURABLE MICHAEL SUEN MING-YEUNG, G.B.S., J.P.  
SECRETARY FOR HOUSING, PLANNING AND LANDS

PROF THE HONOURABLE ARTHUR LI KWOK-CHEUNG, G.B.S., J.P.  
SECRETARY FOR EDUCATION AND MANPOWER

THE HONOURABLE JOSEPH WONG WING-PING, G.B.S., J.P.  
SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY

DR THE HONOURABLE PATRICK HO CHI-PING, J.P.  
SECRETARY FOR HOME AFFAIRS

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

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

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

MRS VIVIAN KAM NG LAI-MAN, ASSISTANT SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY  
GENERAL

**BILLS****Committee Stage**

**CHAIRMAN** (in Cantonese): We now continue to examine the Smoking (Public Health) (Amendment) Bill 2005.

**CLERK** (in Cantonese): Clause 2.

**MR ANDREW CHENG** (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 clauses 17A, 17B and 17C together with clauses 2 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): Mr Andrew CHENG, you have my consent.

**MR ANDREW CHENG** (in Cantonese): President, I move that Rule 58(5) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider new clauses 17A, 17B and 17C together with clauses 2 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 clauses 17A, 17B and 17C together with clauses 2 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 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 motion passed.

Council went into Committee.

### Committee Stage

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

**CLERK** (in Cantonese): New clause 17A Prohibition on selling tobacco products, etc. to persons in school uniform

New clause 17B Display of sign when offering tobacco products for sale, etc.

New clause 17C Offences under Part IVA.

**CHAIRMAN** (in Cantonese): Mr Andrew CHENG has given notice to move the addition of new clauses 17A, 17B and 17C and his amendments to clauses 2 and 36 in relation to prohibition on selling tobacco products, etc. to persons in school uniform. The Secretary for Health, Welfare and Food and Mr Tommy CHEUNG have also separately given notice to move their respective amendments to clause 2.

**CHAIRMAN** (in Cantonese): Committee will now proceed to a joint debate. I will first call upon Mr Andrew CHENG to move the Second Reading of new clauses 17A, 17B and 17C.

**MR ANDREW CHENG** (in Cantonese): Madam Chairman, I move the Second Reading of new clauses 17A, 17B and 17C.

Madam Chairman, the purpose of clause 17A is to prohibit any persons from selling tobacco products to persons in school uniform; clause 17B stipulates that persons selling tobacco products shall place a sign to indicate that no tobacco products should be sold to any persons in school uniform; clause 36(g) sets out the sample of signs to be displayed indicating the prohibition on selling tobacco products; clause 17C is the defence provision in which the party charged of selling tobacco products to young persons in school uniform may rely on the defence if he can prove that he believed on reasonable grounds that such a person was not in school uniform. Clause 2 stipulates the effective date, which shall fall on 1 January 2007, when this legislation starts to become effective.

Madam Chairman, I have proposed this amendment with the purpose of reducing the chances for youngsters to procure tobacco products, protecting them and preventing them from forming the habit of smoking. According to the World Health Organization (WHO), among the smokers, over half of them started smoking since their adolescent period. The situation in Hong Kong is similar. The findings of a survey conducted by the Census and Statistics Department reveal that among smokers in Hong Kong, most of them became addicted to smoking during their adolescent period. 60.7% of them formed the habit of smoking every week before the age of 20. Once become addictive smokers, the youngsters will keep on smoking for 15 to 20 years. Therefore, if we want to reduce the harms caused by smoking, the most important work is to prevent youngsters from smoking. This has become the global consensus and it is also the most significant point of the tobacco-control policy of the Government.

With regard to the measures targeting at youngsters buying tobacco products, in the Smoking (Public Health) Ordinance, only section 15A prohibits the selling of cigarettes to persons under the age of 18. Once convicted, a person will face a penalty at level 4, that is, he may be liable to a maximum fine of \$25,000. According to information provided by the Department of Health,

between January last year and July this year, the Department received a total of 47 complaints in connection with the selling of tobacco products to persons under the age of 18. However, there were only nine cases of successful prosecution and conviction.

However, in an undercover survey conducted by the Committee on Youth Smoking Prevention between July and August this year, it was discovered that cases of selling tobacco products illegally to young people under the age of 18 were very prevalent. This organization co-ordinated a group of youngsters aged from 13 to 17 to attempt buying cigarettes from 1 249 retail stores. As a result, it was discovered that 81.1% of such shops had sold cigarettes illegally to them, and nearly 80% of the shop assistants had sold cigarettes to them without even asking about their age. The worst cases were in the news-stands — 90% of them would sell cigarettes to the youngsters. Apart from ineffective law enforcement by the Government, the inadequacies in the Ordinance also have a part to play in contributing to the emergence of the above situations. Very often, retailers would sell cigarettes to youngsters on the grounds that they do not have the authority to check their identity cards and that the youngsters have the mature looks which make them appear to be over the age of 18.

Since most youngsters are still pursuing education in schools, it would be more convenient to implement the provision by using school uniform as the basis for determining their identities. Therefore, I have proposed the amendment to prohibit the selling of tobacco products to students in school uniform.

The Health, Welfare and Food Bureau says that school uniforms include sports wears and blazers with school badges, and so on. So it would not be easy to define school uniforms, nor would it be easy for hawkers and vendors to recognize school uniforms within a short period of time. As such, it opposes my amendment. In the meantime, the Bureau is of the opinion that underage persons already include persons in school uniform, saying that the existing regulatory control is already adequate.

Madam Chairman, I think the Bureau's viewpoint does not hold water. First, not all the persons in school uniform are underage persons. So the fact that a shop selling cigarettes to persons in school uniform may not necessarily constitute adequate evidence for taking prosecution action against the offence of selling tobacco products to underage persons. So, having specific provisions on the prohibition on selling cigarettes to persons in school uniform will make the Ordinance more explicit.

With regard to the Bureau's allegation that it is not an easy task to determine whether a certain kind of clothing is school uniform, I believe under many circumstances, it is easier to determine whether a youngster is in school uniform than to determine whether he is aged under 18. Furthermore, we have already incorporated a defence provision. If the school uniform involved is really difficult to determine as such, then the person-in-charge of the shop does not have to bear any legal responsibility.

While the Bureau says that it is not easy to give a definition to school uniforms, Madam Chairman, in fact, regulation 22C of the Places of Amusement Regulation (Cap. 132, subsidiary legislation BA) has already carried provisions prohibiting persons in school uniform from entering any billiard establishments, and persons in school uniform are also prohibited from entering the off-course betting branches of the Hong Kong Jockey Club. The effectiveness of such measures has already been proven.

I hope Members can, realizing the significance of preventing youngsters from being exposed to tobacco products, preventing youngsters from forming the habit of smoking, as well as the concern of parents and people from all walks of life in society, support my amendment. The Democratic Party has conducted a voice telephone survey on this amendment, and the findings show that 79.4% of the respondents indicated support of it. And the Committee on Youth Smoking Prevention conducted a questionnaire survey in 2004 on enacting laws to prohibit the selling of cigarettes to persons in school uniform and won the support of 157 District Council members, 310 secondary and primary schools, 10 parents' organizations as well as 29 Honourable colleagues in the Legislative Council. And these 29 Honourable colleagues include many Members from the commercial and industrial sectors, the Liberal Party or other independent Members.

Yesterday, Mr James TIEN said that he had also signed the charter. Although he is not in the Chamber now, I still could not help making a short response. Since we have already signed the charter for supporting the prohibition on selling cigarettes to persons in school uniform in the past, and I think one would not have signed it casually, so everyone would have some expectations. It is natural that these organizations would have some expectations when the Legislative Council comes to this critical moment, that we would make use of the law as the basis, in black and white as the law in future, to prohibit the selling of cigarettes to persons in school uniform. As such, I hope

Mr TIEN and other colleagues from the Liberal Party can think more clearly about this issue. They say that it is difficult to grasp the definition of school uniform. With regard to the definition of school uniform, I have already cited some evidence and there is such basis in the existing laws of Hong Kong for our reference.

Some may say that after certain persons have entered a billiard establishment or video games centre, the persons-in-charge of the centres may be able to find out that they are actually in school uniform, and then they may demand their departure. However, if the situation is shifted to selling cigarettes, they would become worried. All such a person has to do is just to put down \$20 to \$30 to buy a packet of cigarettes, and then he will leave the shop or stall immediately. How does the cigarette vendor find out whether he is in school uniform? Let us take the clothing Mr LEE Cheuk-yan is wearing today as an example. It looks quite similar to a school uniform. If something like this really happens, as the responsible person on the spot, I do not know whether he is in school uniform, then all I have to do is to invoke the existing provision in the amendment, that is, if the accused can prove that at the time when he was alleged to have committed the offence, he believed on reasonable grounds that such a person was not in school uniform. The reasonable grounds of course may include the fact that Mr LEE Cheuk-yan's hair has become mostly grey, and no matter which way you look at him, he is definitely over 18. Even if he is really in school uniform, it is simply because he likes to wear his school uniform. Everyone may have some unique preferences. Even some elderly people may like to put on school uniforms. This could be put forward as a reasonable excuse. There is no problem about it.

However, if you do not support the provision of prohibiting the selling of cigarettes to persons in school uniform because it would be difficult to prove whether that person was in school uniform, or because you are afraid that the news-stand vendors or the persons-in-charge of retail shops may be involved in unnecessary legal trouble and be prosecuted, I think you do not have to worry. It is because under the existing legislation, persons-in-charge of billiard establishments or video games centres could have used the same reasons to challenge the Legislative Council why it should enact such a piece of legislation at that time.

I know most of the Honourable colleagues from the Liberal Party have signed the charter. Some of the DAB colleagues such as Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr WONG Yung-kan,

Mr CHEUNG Hok-ming and Mr MA Lik have also signed the charter on the prohibition on selling cigarettes to persons in school uniform. I wish to tell these Honourable colleagues, they put their signatures on the charter the other day and today is the moment of truth. Yesterday, Mr James TIEN said that when he signed the charter, he thought that only secondary and primary school students would wear school uniforms. He said he did not know that even older people — he did mention people in their thirties or forties or fifties — might wear school uniforms. I feel that this excuse is hardly convincing to anyone, right?

Regarding the definition of school uniform, even if an university student is in school uniform — I know some university students would wear black suits or suits in some other colours, if he is really in school uniform, as long as the Ordinance has stipulated it, he must comply with it. This is similar to what happens when someone enters a billiard establishment or a video games centre, if he is in school uniform — sorry, we shall have to ask him to take off the school uniform. The spirit of the Ordinance is to convey a message, that is, persons in school uniform are not allowed to enter any billiard establishments or video games centres.

Society has the responsibility to protect persons in school uniform and promote good behaviour. Therefore, the spirit of this Ordinance is, if you are in school uniform, please do not buy cigarettes. It is because if you wear a school uniform and buy cigarettes, it would lead others to think that students can buy cigarettes easily and they have the habit of smoking. Therefore, if the legislation is passed, in future, even if Mr LEE Cheuk-yan proceeds to buy cigarettes in a school uniform, I hope such persons in school uniform can still be prohibited from buying cigarettes. If you want to buy cigarettes, please take off your school uniform. This is the underlying spirit of this legislation.

Some colleagues say that there are great difficulties in law enforcement. If so, why did they not tell the organizations at the time of signing the charter, "It is very difficult to enforce it, so I cannot sign it." I do not know whether the remaining 20 to 30 Honourable colleagues had not signed it because they had asked the question. They decided not to sign it because they realized that there were enforcement difficulties. However, at least, I hope I can convince those colleagues who had signed the charter. The two words "enforcement difficulty" have always been used as the argument or the excuse for not enacting certain legislation. There are over 1 000 ordinances in Hong Kong, and many of them really pose enforcement difficulties. Then why should we still enact them?

The examples I have frequently cited are the traffic regulations. There are provisions on how pedestrians should cross the roads. If we have to enforce the law, we may have to deploy a policeman at each junction with traffic lights to see whether there are persons crossing the road when the red traffic signal is on. In fact, it is very difficult to enforce this regulation. But why do we still have to enact this regulation and the rules? It is meant to tell the people that crossing the roads in this manner is very dangerous; that it is put down in black and white is intended for compliance by everyone. If someone is really caught for having jumped the red traffic signal, he will be penalized.

Similarly, I hope this amendment can tell persons in school uniform, students in school uniform and young people in school uniform: You should not smoke cigarettes and you should not be able to buy cigarettes. This is spelt out in written form in order to convey an explicit message, that is, students should not smoke cigarettes, that retail shops and news-stand vendors should not sell cigarettes to these persons. However, the problem that exists in this society is that it is difficult to enforce the law and there is no way for them to check the identity cards of customers, so these persons can buy cigarettes easily. We can see that many newspapers have featured photographs of students in school uniform buying and smoking cigarettes. Do we want to see our next generation growing up in such a manner? According to a survey and study conducted by the WHO, when young people start smoking when they are 12 or 13 years old, they will become the major burden of our future medical expenditure after smoking for 15 to 20 years. Madam Chairman, this major burden will inevitably bring about very heavy medical expenses for society in future.

Today, in the Legislative Council, regarding this amendment, I really implore Members to think twice about it. I would also like to have a good discussion with Members here. If they think there might be difficulty in defining school uniform, and there might be enforcement difficulty, and such will impose undue legal responsibility on retailers who might have to come under very heavy pressure, I hope my amendment can allay all such worries, thus bringing about a healthy and anti-smoking culture for the younger generation.

Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That new clauses 17A, 17B and 17C moved by Mr Andrew CHENG be read the Second time.

**CHAIRMAN** (in Cantonese): I now call upon Mr Tommy CHEUNG and the Secretary for Health, Welfare and Food to speak on Mr Andrew CHENG's relevant amendments as well as their own amendments, but they may not move their amendments unless Mr Andrew CHENG's motion is negated.

**MR TOMMY CHEUNG** (in Cantonese): Madam Chairman, I mentioned yesterday that the Bills Committee had set a target, which was to complete the scrutiny in the previous legislative year and resume the Second Reading debate and Third Reading of the Bill and have it passed in July. However, as the scrutiny was not yet finished a month ago, the Bills Committee thus decided to defer the relevant legislative process and did not resume the Second Reading debate and Third Reading until today. I hold that such an arrangement will deprive the catering and karaoke industries, which have been immensely affected by the Ordinance, as well as many other business operators and practitioners of sufficient time to make preparations.

As a matter of fact, according to the latest proposals of the Bill, the catering and karaoke industries shall have to implement a total smoking ban on 1 January 2007. If the Bill is passed in July as originally planned, in order to dovetail with its date of commencement, the industries concerned shall have almost half a year to understand the Ordinance and to make compliance arrangements. However, the Bill resumed its Second and Third Readings only today, leaving the industries concerned only 60 to 70 working days to make preparations. This will undoubtedly bring difficulties to the employees and employers of the industries concerned.

After the Blue Bill was gazetted, the original proposal of the Government was to set the date of commencement at 90 days after gazettal. At that time, the industries unanimously held that in order to cope with the legislation, the 90-day adjustment period was simply too short and there was not enough time for the industries to understand the Ordinance, carry out staff training and make other necessary arrangements. They thus strongly urged the authorities to provide a longer adjustment period and I, on behalf of the industries, put forward the request. At the end of last year, I discussed the matter with the Secretary and reflected to him the views of the industries and proposed extending the adjustment period by at least half a year so as to facilitate the industries. At that time, both the Secretary and I anticipated that the Bill would be passed in July. By setting the date of commencement on 1 January 2007, we would, on the one

hand, be able to respond to the request of the industries for extending the adjustment period by at least half a year, while on the other, we could provide a specific date for the industries. Moreover, I had separately accompanied the Secretary and some members of the Bills Committee to site visit premises of different trades, so as to gain a better understanding on their modes of operation, the actual conditions of these premises, the aspirations and characteristics of the clientele, and so on. Subsequently, after consideration, the Secretary agreed and accepted my proposal, and extended the adjustment period which would be implemented in two major industries. The catering and karaoke industries will have about six months after the passage of the legislation to adjust to the changes, while trades such as bars and nightclubs the major patrons of which are smokers will have a three-year adjustment period. I thank the Secretary for accepting my view at that time. The only time he came to the Legislative Council for a meeting with us was to discuss the issue concerning the commencement date of 1 January 2007. The time he came to discuss the date of commencement was January early this year. The Secretary has in fact given the industries a whole year to adjust to the changes. I am grateful to the Secretary for his accommodation in this respect.

However, the scrutiny has remained at a tug-of-war state with a lot of unclear provisions requiring study, making it impossible to resume the Second Reading debate in the previous legislative year until today. Now that the Government has given a reasonable expectation to the industries by extending the adjustment period from 90 days as originally proposed to that of 90 days to three years, I hold that it should be fair to the industries and correspondingly defer the date of commencement of the Ordinance to at least the original proposal of about 90 days as set out in the Blue Bill.

In fact, I have also mentioned here examples of countries which have deferred the date of commencement of their anti-smoking legislation after enactment. We have respectively visited three countries, two of them being Norway and Ireland. I do not remember clearly whether Norway had the date of commencement set on 1 January 2005, but the date was ultimately deferred to 1 June. In other words, the date of commencement was deferred after enactment. The date of commencement in the case of Ireland was also deferred from that year, that is, from 1 January to 21 March 2005. Therefore, we can see from situations abroad that even if the law has been passed and the date of commencement decided, its implementation can still be deferred.

I thus hope that if I can propose an amendment later on, all I am requesting is an adjustment period of 90 days be given to the industries. I have received recently many views from the industries saying that as it has been some time since the issue of smoking was last deliberated, many of them are not sure whether the legislation would go ahead. If it would, in what way would it be implemented? I simply did not know how to explain to them clearly. Therefore, if there is a chance for me to propose the amendment later, I urge Members to support it.

Madam Chairman, I also wish to talk about the issue of school uniform. I am not sure how many of you realize that the clothes that I am wearing is a school uniform? I think Mr Ronny TONG definitely knows it. I have asked Dr Philip WONG just now, but he did not know it despite his son has studied in this school the uniform of which is exactly what I am wearing now. Of course, many of you may wonder: Do I often wear a school uniform? I wear a school uniform from time to time because the alumni of my Alma Mater will hold its 40th anniversary student gathering on 28 October, at which time we will be wearing our school uniforms.

Mr Andrew CHENG said just now that no matter the buyer is Mr Tommy CHEUNG (that is, me) or Mr LEE Cheuk-yan, if he is wearing his school uniform, he should take it off before buying cigarettes. This is not what I wish to say. What I wish to say is Mr Andrew CHENG's amendment. He frequently mentioned, when moving his amendment to clause 17C, reasonable excuse and reasonable defence. In fact, Members may not understand it and I dare not say that I know a lot, but I have come across many restaurant owners who would suffer weeks of poor appetite and sleepless nights because they have to face charges laid against them by their employees at the Labour Tribunal. It is a most painful process. Thus, if the Tobacco Control Office issued a summons to vendors ordering them to answer charges laid against them — although Tommy CHEUNG's hair is mottled, I can take off my clothes on hot summer days, and the clothes that I am wearing happens to be our school uniform which includes a white shirt, a school tie and a pair of grey slacks — they could well use this as a reasonable defence. Of course, members of the Democratic Party need not worry about giving a reasonable defence because many of them are solicitors or counsels; the future leader of the Party can be their solicitor, or even his predecessor can be their counsel. They can plea the case in whatever way they wish and they will be able to come up with a reason. However, it will be difficult for the vendors to appoint a solicitor or counsel to defend the case for them.

Therefore, Madam Chairman, coming back to the issue of school uniform, I sincerely wish to say that I respect Mr Andrew CHENG in moving this amendment. All of us sitting here, whether or not we have signed that charter — I believe I am the one who has not signed the charter because Mr Andrew CHENG did not mention my name and did not say that I had signed the charter, I believe Members of this Council, including colleagues from the Liberal Party, will absolutely not wish to see anyone selling cigarettes to people who, regardless of their wearing school uniforms or not, are under 18. While we hold that such acts should be duly punished, we do not think we should encourage young people buying cigarettes or acquiring the habit of smoking.

Under such a circumstance, I would really like to say that not supporting Mr Andrew CHENG's amendment does not mean that I agree with young people buying cigarettes or smoking. We absolutely do not encourage this. Especially considering that we have children ourselves — although they have well passed their adolescence and are adults now, I could well put myself in their shoes because I fully understand the process of parents teaching their children. It is our choice if we choose to smoke, but we, at any rate, do not want children to smoke, and we will also teach them not to do so. However, I have all along felt that we should not catch vendors, who have sold cigarettes to people wearing school uniforms, by way of legislation. As there is already legislation in place with stipulation on the punishment for selling cigarettes to underage people, the Government should not trouble the vendors again to require any reasonable defence. To me, this is especially true for employees of the newspaper stalls. They are but the employees only, how could they know that Tommy CHEUNG, who was dressed like this and to whom they have sold a packet of cigarettes, was wearing a school uniform? Yes, they could defend by saying that they did not know, especially in a place like Central, how could they know? In Mong Kok, it may be possible to see someone wearing a school uniform like mine, as there may be a thousand or even 2 000 children in school uniform going here and there, so they could tell right away that they were wearing school uniform. Madam Chairman, I do not know whether Mr Ronny TONG realized that this is a school uniform as he had looked at me for several times. If he has seen his son off to school, he will know that this school uniform of mine is exactly the same as his son's.

Therefore, regarding this entire amendment, I can only say sorry to Mr Andrew CHENG. I respect his proposal, but I cannot accept it. Although the vendors can make a reasonable defence, this is unfair to them. Madam Chairman, I so submit.

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam Chairman, clause 2 is the commencement clause. After discussions with the Bills Committee, I propose that the commencement dates of several provisions be amended. The provisions that I propose to come into operation on 1 January 2007 are set out in subsections (2)(a) to (h), which include designated new no smoking areas in the revised Schedule 2, the repeal of the manager's responsibility to display no-smoking signs, the further restriction on tobacco advertisements and sales of tobacco products, the display of designated health warnings on tobacco price boards, and the deferment of the smoking ban in six categories of listed premises and the requirements for prescribed signs to be displayed.

According to subclause (3) of clause 2 of the Government's amendment, the exemption presently applicable to retail outlets employing two employees or less to display tobacco advertisements will be revoked on 1 November 2007 and the same exemption for licensed hawker stalls will be revoked on 1 November 2009.

If the Bill is passed, the remaining provisions such as the appointment of inspectors will come into effect on the date of gazettal of the Ordinance.

I hope Members will support the Government's amendment.

Now I would like to respond to the amendments of Mr Andrew CHENG and Mr Tommy CHEUNG on the behalf of the Government. Regarding Mr Andrew CHENG's amendment which seeks to prohibit the sale of tobacco products to people in school uniforms, the Administration agrees that tobacco products should not be sold to young people. Under the existing legislation, sales of tobacco products are explicitly prohibited to people under 18 years old. Generally speaking, the definition of people under 18 years old has widely covered secondary school and primary school students and the law does not prohibit the vendors from requesting proof of identity from the person concerned. This is a relatively convenient and objective way of getting evidence.

I hope Members will understand that the sale and purchase of tobacco products takes just a matter of seconds. In such a short span of time, it will be very difficult for the vendors, in particular those who are aged, to tell whether the buyers are wearing school uniforms. Furthermore, under the present circumstances, it is very difficult to define school uniforms. Can a pair of simple grey slacks with a blazer be regarded as a uniform? Some school

uniforms only bear a school badge. Besides, can sport wear be regarded as uniforms? Should clothing for extracurricular activities such as brass bands or boy scouts be regarded as uniforms? Regarding all these examples, if such a requirement is introduced to the legislation, it will increase the pressure on the retail vendors who will be at a loss as to what to do, not to mention the difficulty in law enforcement.

Some members mentioned a similar statutory requirement for billiard establishments which prohibits people wearing school uniforms from entering. I would like to point out that the two requirements are entirely different as far as the objective environment is concerned. People in school uniforms will stay longer in billiard establishments and the venue manager can have sufficient time to ascertain their identity.

I would like to reiterate that there are sufficient provisions in the existing legislation to prohibit the sale of tobacco products to young people and the penalties carry sufficient deterrent effect. I urge Members not to introduce any provision that may increase the pressure on the hawkers and oppose Mr Andrew CHENG's amendment.

Besides, Mr Tommy CHEUNG requests that the Amendment Ordinance shall come into effect 90 days after gazettal instead of 1 January 2007. Suppose the Bill is passed and gazetted on 27 October, the effective date as proposed by Mr CHEUNG will be 25 January 2007.

We do not agree to such a change mainly because of two reasons. Firstly, 1 January 2007 and 1 July 2009 are the important dates for two different stages proposed to the Bills Committee early this year and widely reported by the media. All sectors in society and the industries have been psychologically prepared. Secondly, many people in society have indicated their expectation that there should not be any delay in the implementation of the smoking ban. So we consider that the implementation of the smoking ban in indoor and outdoor public places on 1 January 2007 can meet the expectation of most people.

Once again, I urge Members to support the Government's amendment. Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): Members may now debate new clauses 17A, 17B and 17C, the original clauses 2 and 36 as well as the amendments thereto jointly.

**MR VINCENT FANG** (in Cantonese): Madam Chairman, with regard to Mr Andrew CHENG's new proposed clause 17, which adds the stipulation of "prohibition on selling tobacco products, etc. to persons in school uniform" and related provisions, I oppose them.

The existing section 15A (1) of the Smoking (Public Health) Ordinance has already stipulated that "No person shall sell any cigarette, cigarette tobacco, cigar or pipe tobacco to any person under the age of 18 years.". I think this provision is sufficient. In addition, the Bill under discussion also prohibits the launching of any promotion for tobacco products. Therefore, I think this new proposal is unnecessary.

Secondly, this new proposal requires that it should be explicitly stipulated in law that no tobacco products should be sold to persons in school uniforms and offenders would be subject to punishment at level 5. It has in effect transferred the responsibility of law enforcement and educating students to retailers. And the retailers, in particular, the news-stand vendors, have already borne a "very heavy burden" in deciding how to enforce the law of not selling cigarettes to persons under the age of 18 years.

I know some anti-smoking organizations have recently been sending underage volunteers to undertake some "test purchase" against retail shops. As indicated by the findings, it was found that over 80% of the shops had still sold cigarettes to these persons. These organizations approached me and persuaded me to support Mr Andrew CHENG's amendment.

My stance of not supporting the addition of the new proposed clause does not mean that I do not support the work of discouraging smoking among young people. As a matter of fact, I hope these organizations can do more in this regard, so as to steer young people away from smoking. I simply do not agree to such "test purchases" since this is tantamount to passing the significant responsibility of discouraging smoking among young people onto the retailers.

The work of discouraging young people from smoking should start with education and care, so as to make young people realize the harms caused by smoking, thus deterring them from using smoking as a means of dispelling boredom or showing that they are mature enough. We must not start the work with the retailers — using heavy penalties to deter retailers from selling

cigarettes to people suspected to be underage persons. This is just like putting the cart before the horse, and it is entirely irresponsible. Guess whether these young people can get the cigarettes elsewhere if they cannot buy them from open and legal retail shops or news-stands? We all know the answer must be in the affirmative. They might even buy illicit cigarettes because they are cheaper and no one would question whether they have reached the age of 18.

Secondly, nowadays, many school uniforms look like casual wear. If the provisions of prohibiting the sale of cigarettes to persons in school uniforms were added to the Ordinance, how can those retail shops or news-stands with only one or two workers operate? Or will the sale of cigarettes to persons aged above 18 but who are in school uniforms constitute an offence in law?

Madam Chairman, today, many anti-smoking organizations are listening to this debate in the public gallery. I would like to sincerely tell them that all Legislative Council Members are very supportive of the work of discouraging smoking among young people. However, we should proceed with the work from the fundamentals, that is, strengthening the educational initiatives targeting at the young people. Instead of trapping the retail shops or news-stands by undertaking "test purchases", we had better help the Customs and Excise Department in cracking down on the peddling of illicit cigarettes by conducting "undercover operations". I also hope that the Government can keep on injecting more resources into assisting these organizations in the promotion of anti-smoking campaigns, so as to substantially reduce the number of young smokers.

I so submit. Thank you, Madam Chairman.

**DR KWOK KA-KI** (in Cantonese): Madam Chairman, I speak in support of the amendments moved by Mr Andrew CHENG.

In fact, it is very clear that, just as Mr CHENG said earlier, firstly, provisions prohibiting people in school uniforms from entering billiard establishments and off-course betting branches are already in force, and since the implementation of such provisions in the relevant places has not encountered any difficulties according to past experiences, I cannot see why there exists another set of new standard which now renders the provisions not feasible.

Secondly, in the anti-smoking battle, we indeed know very clearly that the promotion of tobacco by traders is mainly targeted at youngsters. Yesterday, I received a book sent to me by the American Cancer Society, which highlights the latest genome map of smoking. The cover of the genome map is a picture of two youngsters smoking in school uniforms, whereas the content of the book clearly illustrates that our greatest challenge in the future is the promotion of tobacco traders being targeted at youngsters. A government survey shows that, in 1982, 41.7% of the smokers were under the age of 20, and it rose to 61.5% in 2003. There is a recent move by the District Court of the United States against tobacco traders to prohibit the use of misleading brand names which contain such wordings as "mild" and "light". The Court also advised that it has been the major task of the United States Government to deter young smokers for years, and I believe the Government and the Secretary should know this very well.

Furthermore, let us look at enforcement. Earlier on, many Honourable colleagues, like Mr Vincent FANG, mentioned the major difficulties that would be encountered by cigarette vendors. We do understand their difficulties, but I believe all citizens, including the cigarette vendors, are obliged to abide the law and uphold the spirit of Hong Kong's rule of law. We do not wish to place all the responsibilities solely on the shoulders of cigarette vendors. We may ask the vendors whether they find it more difficult to examine the customers' identity cards, or to distinguish if the customers are wearing school uniforms. If I am a cigarette vendor, I will simply refuse to sell to those who come to buy cigarettes in school uniforms because I have reasons to believe that they are students. I need not even bother to ask for their identity cards for examination as sometimes this may give rise to arguments. Anyone who is wearing a school uniform clearly demonstrates that he is a student, and it is also highly probable that he is a youngster under the age of 21. This is, in fact, a provision to help the cigarette vendors, the Government and society at large to address the problem of youth smokers.

We have repeatedly claimed the need to ban smoking, and repeatedly agreed that it is not our wish to see the number of smokers increasing. However, we all know that what we are doing and discussing right now is not what we profess it to be. It is not surprising that we fail to live up to our words, but I will be rather upset if the Government also says one thing and mean another. It is because if the provision can be successfully enforced in other places — I do not see the Hong Kong Jockey Club encounter any enforcement difficulties, nor do I see such enforcement units as the police or staff of billiard

establishments find it difficult to distinguish people in school uniforms. Of course, there are always extreme cases. For example, there are clothes which look very much like school uniforms. What Mr CHEUNG is wearing looks like a school uniform, and what I am wearing also looks like a school uniform as it bears much resemblance to the uniform of a particular school. While a strip suit is used by a particular United Kingdom school as school uniform, I have also seen students of some United Kingdom boarding schools in tuxedos. So, perhaps there should be a provision prohibiting the sale of cigarettes to people wearing black swallowtails in the future. And yet, we all have common sense and should be able to tell the difference. Will an elderly person with streaks of white hair, like Mr CHEUNG, be mistaken as a young man when he buys cigarettes? This is impossible. Therefore, we think that it is actually an excuse to say that the legislation cannot be enforced.

Some people from the trade find it unreasonable to penalize them. Actually, we do not mind vendors selling cigarettes to the appropriate persons, that is, those who are over 21 not being students. I think this is what the vendors should do to make a profit. Let us look at the survey conducted by an organization using "test purchases". It shows that 81.1% of the cigarette outlets, news-stands and small vendors in particular, failed to enforce the law, which is indeed a real cause for concern. We may say that the youngsters can turn to the illicit cigarettes if the sale of cigarettes to them is prohibited, or even ask someone who appears to have reached the age of 21 to buy them the cigarettes. However, it should be noted that, very often, the kids — I mean those teenagers — merely smoke for fun. They will probably not plan to find someone to buy cigarettes for them as we think. Perhaps they merely want to try if they can succeed in buying cigarettes after school, just for fun. They may then pull a puff if they succeed in doing so, and even continue to smoke once they found that the small vendor downstairs or certain convenient stores are willing to sell cigarettes to them. Therefore, it is indeed a very important step to prevent the smoking habit from spreading among the youngsters by discouraging them from smoking at that stage, and making them aware of the prohibition of sale of cigarettes to people wearing school uniforms.

The scene as described in the book is what I have personally witnessed in some school areas, where the students bought, lighted and smoked cigarettes recklessly. I was deeply saddened by this scene, and all adults will certainly be deeply saddened by it, too. We should ask ourselves: Why should we give up when the amendments can actually pinpoint young smokers without much

difficulty? A lot of work has already been done. Yesterday, during the debate, we mentioned that the implementation of anti-smoking initiatives required a lot of efforts, for instance, much have to be done in the designation of smoking areas in parks, transport interchanges and beaches. However, we do have a very clear objective. First of all, we want to get rid of the second-hand smoke, and more importantly, we do not want to see the youngsters attempt to smoke or pick up the habit of smoking. But I am sure this will become a major trend as the percentage has already gone up to 61%. According to overseas experience, I believe we do not have to wait too long before it rises to 80%. In other words, over 80% of the youngsters made their first attempt to smoke under the age of 20 and continue to smoke thereafter. If there are no clear and effective ways to curb smoking, we are, in fact, "offering the lamb (that is, the youngsters) to the tiger (which is definitely the tobacco traders)".

In respect of enforcement, I believe the Secretary might have encountered many difficulties and I understand that there will be financial problems as well. As we can see, the amount of funding of the Tobacco Control Office was only \$1.7 million last year, while that of the Hong Kong Council on Smoking and Health was \$1.1 million, which add up to a total of less than \$3 million only. This is, however, all we have for fighting against the onslaught of publicity by tobacco traders, which costs billions of dollars and is launched in various forms including hard sell and soft sell. What can we do then?

Actually, those "test purchases" should not have been staged by an anti-smoking organization, and there may also be public controversy that, in so doing, the volunteers would be exposed to smoke. Yet, I am not going to discuss the matter as this kind of work should have been done by the Government. Enforcement work which aims to prevent the sale of cigarettes to youngsters aged under 21 should have been placed under government supervision. However, the Government failed to do so and was slack in supervision. It is now time to amend the relevant legislation with a view to improving the situation, and yet, it has failed to do so either. Being responsible adults, we are knowledgeable enough to tell the hazards of smoking, so it does not make sense if we choose not to introduce adequate legislation and take steps to help curb activities that induce the youngsters to smoke. I understand and foresee that the amendments moved by Mr Andrew CHENG will probably be negated by a majority vote in the voting to follow, which, I believe, is most saddening and disappointing to us. Yet, I find it more disappointing to see the Government let slip of this opportunity and refuse to take this important step toward discouraging young people from smoking.

Furthermore, I would like to respond to Mr Tommy CHEUNG's amendments, which proposed a delay of the effective date by 90 days. I find this unnecessary for two reasons. As we all know, the Secretary had solemnly declared, during the only Bills Committee meeting which he had ever attended, that the effective date would be 1 January 2007 regardless of the extent of the discussion and when the discussion ends. This we all know. Earlier on, we learnt that the catering industry considered it too late for the legislation to come into operation on 1 January 2007, and pilot programme had therefore been implemented on its own initiatives. Food premises and bars, which joined the programme on a voluntary basis, have either imposed the smoking ban on a trial basis or launched promotion to announce in advance that they are designated no-smoking restaurants and food premises, so that their customers may well be aware of the imminent enforcement of the anti-smoking legislation. Since society at large, including the industries concerned, is well aware of the need for its introduction and there is no reason for any delay, I cannot see any reason for delaying the effective date of the Bill.

I so submit. Thank you, Madam Chairman.

**MS MARGARET NG** (in Cantonese): Chairman, since I have not participated in the deliberation of this Bill, so I do not wish to discuss the issue from a policy perspective. However, as Mr Tommy CHEUNG's speech has touched upon some fundamentals of the legislative process and law enforcement, I would like to speak to clarify the issues involved.

Mr Tommy CHEUNG opposes Mr Andrew CHENG's proposal because first of all, there are many different styles of school uniforms, some of which are very similar to ordinary clothing. Therefore, it would be impossible to say for sure what other people are wearing are school uniforms or not. Secondly, among the diversified school uniforms, no one can tell how many kinds of school uniforms there are. Therefore, basing on such a reason, he thinks school uniforms cannot be used as the yardstick. However, he also thinks that even the provision of "a reasonable excuse" is unacceptable because no one knows definitely if a certain kind of clothing is a school uniform. I think if there can be a reasonable excuse, the fact that no one knows definitely a certain kind of clothing is a school uniform can be considered a reasonable excuse. However, Mr Tommy CHEUNG says that the provision allowing the use of "reasonable excuse" is not acceptable because it does not serve any practical purpose. He

said there are many lawyers in the Democratic Party — I do not know how many cigarette vendors there are in the Democratic Party — since there are many lawyers in the Democratic Party, once someone in the Party is arrested, they can always put forward some reasonable excuses. But the ordinary hawkers do not have the support of lawyers, especially those elderly hawkers, so they could not possibly put up any defence for themselves.

Chairman, in our laws, reasonable excuses are provided in respect of many offences. If Mr Tommy CHEUNG's logic is adopted, we can never have that kind of laws. In future, whenever the Government puts forward any Bills, if there are some provisions on reasonable excuses, we can then tell the Government that such provisions must be withdrawn because the provisions allowing the use of "reasonable excuse" is not acceptable. However, in fact, is this the case? It is absolutely not the case. First, the Democratic Party is not the only organization where we can find lawyers. Lawyers can also be found in the Courts. In Courts, we can find the name plaques of duty lawyers. This is a long-standing practice. For such cases, they will definitely be heard in the Magistracies. The services of duty lawyers are readily available there. The lawyers will definitely offer assistance to you for free. If you are really poor — but in fact, you do not have to be very poor. Basically, the duty lawyers will not .....

**CHAIRMAN** (in Cantonese): Mr CHEUNG, do you have a point of order?

**MR TOMMY CHEUNG** (in Cantonese): Chairman, it is a point of order. I find that Ms Margaret NG has misinterpreted my earlier speech.

**CHAIRMAN** (in Cantonese): Mr Tommy CHEUNG, you cannot do this. If you raise a point of order, you can only rise to ask Ms Margaret NG to clarify her remark or comment made just now. But if you think that a certain Member has misinterpreted your speech, and you wish to make a clarification, then you will have to wait until he or she has finished delivering his or her speech before you can request elucidation. I shall give you the opportunity to do so later on.

**MR TOMMY CHEUNG** (in Cantonese): Fine.

**CHAIRMAN** (in Cantonese): Ms Margaret NG, please continue.

**MS MARGARET NG** (in Cantonese): Thank you, Chairman. Therefore, Chairman, if the provision on "reasonable excuse" is in place..... If the defendant needs the assistance of a lawyer, according to our legal system, he would be permitted to seek the assistance from a lawyer, and such assistance would be provided to him in a rather active manner. In other words, even if the person involved does not take the initiative to look for a lawyer, he will still be provided with such legal services.

Chairman, I would like to highlight one point in particular. Although I often hold different viewpoints from those of the Department of Justice, and I often feel that there are inadequacies in the prosecution policy or in the enforcement of the same, I have great confidence in one aspect, that is, if the prosecution knows that there are some reasonable excuses, they would not initiate any prosecution. This is because if the defendant mentions this point..... I have deliberately refrained from turning around to Mr Tommy CHEUNG. If that school uniform is seen by anyone, or even seen by the officers arresting him, and that they all think that it is reasonable to make a mistake about it, then is our prosecution system so nasty to such an extent as pressing charges without considering all those factors involved? I do not believe this will ever happen. However, Chairman, in the worst case that the authorities do press the charges, then the defendant will still be provided with reasonable legal assistance.

Chairman, I also wish to point out that, with regard to Mr Tommy CHEUNG's allegation that the Democratic Party's opposition was attributable to the fact that there are lawyers in that Party, I really find it seriously flawed. I say so because such an allegation would virtually imply that they have selfish motives. They put forward the provision because it would not affect them. The underlying implication is that: If it causes problems to you, and you cannot defend yourselves, then you would not propose it. I hope we would not have such a mentality because we are in a legislature, and our mission should be to strive for the best interest of the ordinary public. Regarding amendments put forward by Members, we must examine them to see whether they are reasonable; whether they are compatible with the policies and whether they are in the best interests of Hong Kong.

Chairman, finally, I wish to discuss the definition of school uniforms as mentioned by the Secretary. Many Honourable colleagues have said that many venues such as billiard establishments, and so on, have to observe the definition of school uniform, and that the Government has never encountered any difficulties in this regard. Surprisingly, the Secretary said that the case was different because people would hang around the billiard establishments for a longer time, whereas the act of buying cigarettes would only take a few seconds. Of course, if the cigarette vendors adopt a couldn't-care-less attitude and sell cigarettes to whoever comes to them, then of course it is a matter of several seconds. However, after he has learned that there is such a law, and he has the responsibility of ascertaining whether the customer is in a school uniform, of course he would look at that person more carefully before selling cigarettes to him. Why do we need to have such legislation in place? In fact, the Government had put forward many similar pieces of legislation in the past. The purpose of such legislation is to make the vendors and those responsible for discharging such duties to take a second look. This is the reason for it. Why can those people hang around the billiard establishments for a longer time? It is because you find that there is no problem with these persons, or you let them in without realizing any problem in the first place. In fact, the problems in both situations are the same. Therefore, Chairman, I think regardless whether Members support Mr Andrew CHENG's amendment today for reasons attributable to policy considerations, other factors or out of the need to balance the interests of certain parties, this is another issue. But when these theories touch upon the fundamentals of the laws or judicial fairness, then I consider it essential to make the clarification. Thank you.

**CHAIRMAN** (in Cantonese): Mr Tommy CHEUNG, do you wish to clarify the part of your speech that has been misinterpreted?

**MR TOMMY CHEUNG** (in Cantonese): Chairman, I would like to reiterate that I do not wish to speak at great length. Of course, I know apart from the Democratic Party, the Civic Party is another organization with lots of its members being lawyers. In fact, I was just citing an example. It is all too simple for an ordinary person to put forward a reasonable excuse. But regarding the hawkers, when they are prosecuted through the issuance of a penalty ticket by the Tobacco Control Office, they may say that they really do not know that someone buying cigarettes from them are in school uniforms; or that they are too old and do not know why they are prosecuted.

With regard to this reasonable excuse, I think we may choose not to include it in the legislation. We say that there was some distortion, as someone thought we held the view that a certain political party is moving the amendment for their private reasons. But actually what I had said was just citing an example, that is, some people would find it easier to put forward a reasonable excuse. I believe that if I am required to attend a hearing in Court to present my reasonable excuse, as long as I can spare the time for it, probably I may not necessarily require the assistance of a lawyer. However, insofar as the hawkers are concerned, this is very difficult. This was the main point I had wanted to highlight.

I think that after the enactment of this Amendment Bill, it will be most unfair to these hawkers selling cigarettes, in spite of the reasonable excuse they may invoke in their defence. Please do not misinterpret my viewpoint or quote me out of context to make others feel that I am lashing out at the Democratic Party or the Civic Party because they have many barristers or legal advisers among their members, and that they are moving such an amendment out of selfish motives. I absolutely do not mean that, Chairman.

**MR JAMES TO** (in Cantonese): Chairman, I speak with the purpose very much similar to that of Ms Margaret NG, that is, I intend to speak mainly on law enforcement.

The so-called "undercover operations", or the test purchases or the prohibition of sale of some items to certain persons are commonplace in our laws. Members may imagine the case in greater detail: For example, generally speaking, a pharmacy that has engaged the services of a pharmacist must be a larger operation than a small cigarette stall operated by an old vendor at the roadside (of course, you may argue that this may not be necessarily true). However, when legislators consider whether this legislation can be enforced, they should take this into consideration. Therefore, I would like to share my own viewpoint with the Government and Honourable colleagues. In fact, I can tell you, if you have ever come into contact with such old cigarette vendors, you will find that their experience in life, their ability in observing people and their experience and insight in daily life are, frankly speaking, by no means inferior to those of a salesperson of a pharmacy or a billiard establishment attendant. Honestly, they would have an eye for detail. If you tell these old vendors that

recently some non-government organizations have conducted some "test purchases", they could easily mention many such examples, and some of which could be some very extreme cases. Some of such customers had very young looks, and were clearly in school uniforms — the evidence was very visible even from a distance. But these vendors still sold cigarettes to them.

Therefore, in such situations, no one had deliberately disguised themselves in any tricky manner — I do not know whether there were adults who put on school uniforms for the purpose of attending some nostalgic parties, even though they were already in their fifties, sixties, seventies or even eighties — but in such cases, such people who performed the tests on cigarette vendors had not dressed in such special outfits. In fact, even at a glance, one could tell easily that such people who came to buy the cigarettes were small kids. But the vendors still chose to sell cigarettes to them, and even on multiple occasions. These were not very extreme cases. Frankly speaking, if you ask me when the Government enforces the laws, whether our officers from the Department of Health have ever taken any actions such as conducting some test purchases to buy cough medicines, I would readily agree with what Honourable colleagues have said earlier, that the Government has not conducted any "test purchases", that is, it has not done anything to uncover the problems. Instead, it just let others do it. In my opinion, this is tantamount to a dereliction of duty.

The Action Committee Against Narcotics has repeatedly mentioned in many reports that smoking is in fact the start of taking drugs. This has happened in many cases among the young people. Therefore, the first thing you must refrain from doing is smoking. With regard to those soft drugs and narcotics such as cough medicines, test purchases have been conducted on all of them. But the Department of Health seldom conducts such operations on buying cigarettes. Since the non-government organizations have completed such a good report and exposed so many extreme cases, in fact, our government officers should really learn from such examples.

Mr Vincent FANG said that we should not place all the anti-smoking responsibility on retail vendors. I find such an argument weird and ridiculous. Our legislation does put part of the responsibility..... Of course, the responsibility was not placed only on the shoulder of retail vendors, but part of the responsibility has really been placed on the first-line people, that is, those who sell cigarettes to them. Of course, other issues such as education are

important. Internalization is of course important, and the changes in the values are also important. However, we have really placed some of the responsibility on the retail vendors.

This is just like many different situations in our life. For example, in the course of enforcing many different laws, we are required to distinguish whether certain persons are underage. During the past few years, when we go online, we have to distinguish persons appearing in website photographs to determine whether such photographs should be categorized as adult pornography or child pornography. It is stipulated in law that any such photographs involving persons below the age of 16 are illegal. A casual glance may not enable one to determine the age of a certain person. Probably some people may look more mature than their actual age. But the question is, every one of us has the responsibility and this offence may lead to an imprisonment of over 10 years. For photographs that pop up when we go online, you have the responsibility to determine the age of the persons who appear in them. Why? Because we think that child pornographic objects have become a very serious problem, and it is necessary for the whole world to take some actions together. Therefore, when someone surfing on the Internet suddenly finds a link appear all of a sudden, then he has to determine whether he should download it to his own computer; otherwise, he may face the penalty of imprisonment for over 10 years. It is even more difficult for us to determine the age of people under such circumstances.

However, the point is, this is just part of the responsibility. Since the original responsibility involves the prohibition of sale of cigarettes to young people, we have to determine the age of the people, so shall we do it by checking the identity cards or by distinguishing whether those people are in school uniforms? I agree with Dr KWOK Ka-ki in his point that it is far easier to determine by distinguishing whether the person in question is in school uniform. If you say some doubts have emerged, then this is the key to enforcement. However, please bear in mind, as far as I can see, when the Department of Health conduct other test purchases, including the one on cough medicines, they would do it in an explicit manner, instead of doing it in a "grey-area" fashion or conducting the test operations by sending some adults disguising as young people or sending some mature-looking young people to do it. They have adopted absolutely none of such tricks. It is because if any such cases are heard in the Court, such acts alone would be harshly reprimanded by the Judges. If such a

case is brought to the Court, together with the efforts required in the actual enforcement, reporting of such cases and checking of evidence, and so on, I believe it would be very difficult for the authorities to make use of implicit evidence in a haphazard manner.

I agree with what Ms Margaret NG has said because there are duty lawyers in Magistracies. When a duty lawyer glances through the case, the vendor may tell him, "Someone walked up to me, and I did not know what he wanted to do." This was exactly what had happened. The sale process was basically very short and very unclear. Ambiguity does exist in such cases. If the authorities insist on taking prosecution actions, they could end up even having to pay the costs. Nothing can be done about it at all. In past litigation cases, the Department of Health had absolutely not played any tricks at all in test purchases of cough medicines, and no "grey area" was involved. Therefore, if someone makes use of this to justify their allegation, it simply does not hold water. Besides, if someone really attempts to trap the vendors by making use of the "grey areas", each and every Member in this Council would not let the Government get away with it easily.

On this issue, we already know the situations of ordinary hawkers and vendors. But the question is: If this issue is really important and the law has already passed part of the responsibility onto the general public, I would feel that such a responsibility is really unshirkable. I have difficulty in believing that anyone who has previously been involved in carrying out such operations, such as those officers from the Department of Health, and so on, would find it so difficult to tell the age of the persons concerned. If some difficulties do exist in telling the ages of persons, then should we find a more reliable prosecution policy? All you have to do is to voice this opinion, then the entire society will accept it, and we can see the so-called rationality of law enforcement.

I feel that if the Government wishes to oppose this amendment with this reason, and since you have said this explicitly, how you can justify yourselves in future in case the situation has worsened and if you want to introduce a change? By then, what will you do if you want to enact a law for the purpose? Will you say once again that today I would like to refute what I said yesterday? In fact, you have many colleagues engaged in enforcement who can share their experience with you. Therefore, I feel very angry and heartrending about the Government's opposition to this amendment.

**MR RONNY TONG** (in Cantonese): Chairman, like Ms Margaret NG, I have also not participated in the deliberations of the Bills Committee. However, same as Ms Margaret NG, as a lawyer, very often, in the face of issues involving injustice, I would come forth to speak up.

Mr Tommy CHEUNG is not in the Chamber now. Earlier on, he kept asking me, "Ronny TONG, can you recognize my school uniform?" I said, "Sorry, I really cannot recognize it." I could not tell which school he was referring to. I was educated in Queen's College. I take pride in my school. The school uniform of Queen's College bears a school badge on it. Many people know this, so must the Secretary. So even if a student does not put on the blazer, his shirt still bears a school badge with two bold letters "QC" on it. Therefore, even if Mr Tommy CHEUNG is right — he is entering the Chamber now — even if he is really in his school uniform when he proceeds to buy a packet of cigarettes and others really refuses to sell him one, I still consider the cigarette vendor concerned has acted correctly. Why? It is because he would be tarnishing the reputation of his school if he proceeds to buy cigarettes in his school uniform. This point is very important. You cannot say that this is unimportant. I think he is not a smoker, so he was just using this to illustrate his point, and I am also using this to illustrate mine.

Therefore, I think a cigarette vendor has acted correctly in refusing to sell cigarettes to a man of the age of Mr Tommy CHEUNG who is in a school uniform. And he deserves our support. Many Honourable colleagues said earlier that the Legislative Council would have difficulties because it requires police officers to conduct checks from time to time or even some "test purchases" have to be conducted. But can this the reason for us not to enact laws on this? I do not think so. Of course, we must consider whether there are enforcement difficulties, but this is not the only factor of consideration, nor is it a decisive factor because I absolutely believe that Hong Kong is a place where the rule of law prevails. After a law has been enacted, the implication is that Hong Kong people will have the law to comply with. When they see that a law has come into existence, they will naturally comply with it. Some friends of mine from the Mainland often tell me, "Hong Kong people are weird. They will stop the car in front of a red traffic light even at three o'clock in the night. Why?" (*Laughter*) They also said, "We will not brake to a stop before a red traffic light even at three o'clock in the daytime." (*Laughter*) Why do we stop our vehicles in front of a red traffic light even at three o'clock in the night? This is something we can take pride in. This is also the point that makes me

feel that we should not expect everyone in Hong Kong would violate the legislation when we enact a certain law; that they would await the arrest after violating the law, and if they are not, then they can consider themselves lucky; otherwise, they will just consider themselves unlucky. This should not be the mindset of us, legislators. Therefore, is this a decisive factor of consideration? I absolutely do not think so.

Besides, the basic reason for enacting laws is to protect the core values of Hong Kong. We will not just consider the issue from the perspective of the hawkers. I believe even Hong Kong's hawkers would not think in this way. They would not think that such legislation should not be enacted, so as to save them the tough task of enforcing it. If they think that this is one of the core values of Hong Kong, then they would comply with the laws. What actually are the core values we have been mentioning? In fact, the Hong Kong culture is also very important. Please imagine: In a cosmopolitan tourist city like Hong Kong, how badly we would fare if overseas tourists see that our streets are full of young people smoking in school uniforms while swaying their bodies by the side of some lamp-posts? What kinds of impact will it have on Hong Kong culture as well as the reputation of the schools concerned? I think we should also take this aspect into consideration.

Besides, at present we do not lack legislation banning underage persons from buying cigarettes. We do have such a law. The Government says, since we already have such a law, then it would not be necessary to enact this law. I think such a viewpoint is incorrect. In fact, I think the two pieces of legislation are complementary. It is because with a person in school uniform, we can tell instantly that, even without checking his identifications, he should not be buying cigarettes just from his outward appearance. Therefore, in enacting this law, we are not trying to set up a legal trap to arrest more people who are originally outside the long arm of the law. Instead, we are doing it in the hope of assisting the enforcement of the existing law, so that everyone can have the law to comply with.

Therefore, I very much support Mr Andrew CHENG's amendment. I think it deserves my support. However, Mr Andrew CHENG, we have a most interesting Council here. Many Members or even the officials come to this Council to proclaim their support for a certain cause because such a cause is correct. But, please do not enact any law for it. It is correct to have the minimum wage, but please do not enact any law for it. It is correct to have fair

competition, but please do not enact any law for it. It is incorrect for persons in school uniforms to smoke a cigarette, but please do not enact any law for it. They would always be able to find a reason for not enacting laws. Sometimes I find it strange — Mr Andrew CHENG, have you ever thought about this: What are we supposed to do sitting here? Everyone agrees that this cause is correct, but please do not enact any law for it. Then why should we still be sitting here? Are we not wasting.....Sorry, (*laughter*) I should ask the Chairman: What on earth are you supposed to do sitting here? (*Laughter*) Why should we act as Members? If it is not necessary for us to enact any laws on all kinds of issues, then all of us can pack our bags and go home.

Chairman, as I have said just now, I know very little about the deliberations on the smoking Bill. But I do have a very strong conviction, that is, Hong Kong people should not smoke, be they adults or children. We should promote a no-smoking culture. I absolutely believe that this is beneficial to Hong Kong as a whole. I hope the Government can reconsider this, and I also hope that Members supporting the Government can also lend their support to Mr Andrew CHENG's amendment.

**DR YEUNG SUM** (in Cantonese): Madam Chairman, Mr Ronny TONG asked the Chairman what purposes she served sitting there. I think you do carry very great significance, and at the same time, what you are doing carries value relevant to both our time and history. Our Honourable Chairman, your presence in this Chamber is to uphold the dignity of the Legislative Council. The burden of safeguarding the system is on your shoulder. However, being Members of this Council, our bodies and souls should be integrated, instead of being detached from each other.

Since Mr Martin LEE had to rush to the Court, so he entrusted me with this task, "Sum, I now pass to you some information I have received from others. I cannot possibly make it this time. So you had better deliver it for me." I am glad to because we must give our full support to Mr Andrew CHENG not because he is a member of the Democratic Party, but the amendment proposed by him is really very important.

Here, I would like to share with you a very interesting survey which was conducted in 2004. An independent research company surprisingly conducted a survey for a very large and internationally-renowned tobacco company. I do

not want to divulge the name of this research company. With regard to that very large and internationally-renowned tobacco company, forgive me, I also do not wish to disclose its identity as I do not want to be accused of disclosing its information. In addition, that company has not authorized me to use such information, so I do not want to disclose its name.

The survey was conducted in December 2004. Guess what it was all about? It was surprisingly entitled as "Report on Mystery Shopping Study" in English, and it was intended for finding out the success rate of young people in buying cigarettes. Honourable colleagues, is this not interesting? That company had identified 1 300 young people. As you all know, it is against the law for young people under the age of 18 to buy cigarettes. Had it conducted the survey, people would ask whether young people under 18 had been hired to perform the sampling acts. In that case, will the tobacco company or the survey company be accused of encouraging people to break the law? Therefore, some people over 18 were identified, but they must look as if they were under 18. There are so many technical points they have to attend to in conducting surveys. They had identified and chosen a group of people. Then some research leaders would bring these people to some off-course betting branches of the Hong Kong Jockey Club. These selected people had to go into these betting branches, and they must be stopped and checked by the security guards there for their identity cards. So it means that these people would make others feel that they were very young at a glance. This in fact was designed to highlight that these people did possess a young look, and they should give people the impression that they were under 18. But in fact, they were over 18 because they did not wish to make these people break the law.

That company had successfully identified this group of people. They had entered the betting branches several times, and been asked to produce their identity cards for checking. It did happen, and these people were selected as the final candidates. In other words, they possess an immature look. Since they possess a young look, then it can be established that, in terms of both technicality and experiment, these people were in fact over 18, but they gave people the impression that they were younger than that age.

Madam Chairman, 1 300 people went, in different time slots, to some famous shops in Hong Kong, including some shops which all of us are familiar with, in which shopping is easy or which had been run for a long time or you can find one or two such shops anywhere in Hong Kong. Madam Chairman, among

these 1 300 people, guess how many of them could successfully buy the cigarettes? There were surprisingly as many as 1 297. Only three persons failed.

Madam Chairman, regarding the causes for such a phenomenon, we find that most shop assistants absolutely do not care about this. This is where the problem lies. Secretary, please listen to this: What you are going to say will have a most significant impact on the Hong Kong community. I know you must find this most troublesome. The business sector is strongly against this; and the tobacco traders are also against this. However, according to this survey, no one is observing the existing law on this, and it is particularly difficult to enforce it, or basically it is never enforced.

The Secretary often tells us that people under 18 are already protected by the law, and they are absolutely not allowed to buy cigarettes; Mr Andrew CHENG is really troublesome — as a Cantonese saying goes, "After allowing him to get in bed, he will demand for sharing your blanket." Not even so, Mr CHENG seems to be asking for many more blankets. Do you not find him too troublesome? I wonder if he would be suffocated eventually — but we find that he does have some wisdom. He realizes the existence of certain inadequacies in the law. That explains why he proposed this amendment out of a good intention. I hope the Secretary would not find him too troublesome. If he does come across this survey .....I can show this survey to the Secretary. I do not wish to divulge its identity simply because I have not obtained its consent. But as a Member of the Legislative Council, I think I should do this. We can see that it was commissioned by a very famous tobacco company. Then I would like to ask: Why should the tobacco company place such a heavy emphasis on the young people? What kind of impact the young people would have on them?

Madam Chairman, we often mention a recent court ruling in the United States. You may all recall it, right? It is exactly for this reason that the Government had withdrawn its originally proposed "grandfathering" arrangement upon the enactment of the amendment with regard to misleading descriptors. It was because after the release of this ruling, the Government also attached great significance to it, and that explained why the Government had cancelled its original "grandfathering" arrangement. The litigations in this court ruling had actually been going on for six years, but the ruling was made just recently. I have a summary of this judgement which was handed down on 17 August 2006 by Judge Gladys KESSLER. There is such a paragraph in

Judge KESSLER's ruling — Madam Chairman, I think Hong Kong people should read this because there is a paragraph in the ruling that mentions "youth marketing".

It so happened that she intended to highlight in her ruling that, tobacco companies, each and every one of them, had been encouraging smoking among young people in a most systematic and calculated manner. Why should she say that? That was where the most interesting part of the ruling lies. I look at the whole incident from a marketing perspective. Although we often take part in electioneering activities, we may still learn a lot from this incident. Actually this incident is very significant. What she meant was — I had better quote the original wordings — "Defendants have similarly known that an overwhelming majority of regular smokers began smoking before age 18 and remained loyal to their initial brand choice of cigarettes.". It means that the young people find smoking very stylistic, very cool, charismatic, full of rebelliousness and the spirit of anti-establishment. In short, it makes them look very charismatic, right? It makes them stand out. It happens to our amazement that they will loyally stick to a certain brand of cigarettes which they chose before the age of 18, that their loyalty will sustain and they will just keep on smoking the same brand.

Therefore, we find that, instead of speaking for the interests of the old vendors selling cigarettes at news-stands, some of the colleagues are actually speaking for the interests of the entire groups of corporations. That explains why they do not wish to see Mr Andrew CHENG's amendment passed, and that explains why they say that the existing laws have already included that — it is too much for them to pull a blanket from others and pull it over themselves after getting into the bed of other people.

However, Madam Chairman, this survey can basically demonstrate how seriously inadequate the existing laws are. Honestly, this is just some common knowledge even a layman can tell, is it not? However, this survey was conducted by a large company, an independent company, in such an intricately designed approach which does not violate the law on the one hand, and also engage the service of some young-looking persons on the other. Whenever these people entered the betting branches, they would be asked to produce their identity cards for checking. But when they went to buy cigarettes, only three out of the 1 300 persons failed. The main reason was: The shop assistants absolutely did not care about how old they were.

So, what purpose do school uniforms serve? They will serve very useful purposes. I support Mr Andrew CHENG. School uniforms would definitely facilitate easy identification. The outward appearance will make identification easier, right? It would make it easier to make a differentiation. In the meantime, Mr Andrew CHENG still has another reason, that is, people would not be subject to unfair accusation because all is fine if you have a reasonable excuse. Therefore, he has even considered this point, right? So, he has the aspiration to do this and he also has the wisdom. His wisdom is evident in the protection offered in order to ensure that people would not be unfairly incriminated and that such people can put forward a reasonable excuse in defence.

After listening to so many arguments, and I have also spent such a long time explaining this point to you, Honourable colleagues, if you have been listening to my speech here or outside this Chamber, please come in and cast your votes later on in support of Mr Andrew CHENG; otherwise, you will have to assume responsibility for society because you know so well that there are inadequacies in the existing laws, yet you still choose not to see and not to hear this fact. You absolutely do not care about the young people, and you absolutely do not care about the fact that the young people are being poisoned by the advertisements and even a certain trend in society. That would be the only reason for you to support the Government and oppose Mr Andrew CHENG's amendment. Thank you, Madam Chairman.

**MS AUDREY EU** (in Cantonese): Chairman, I speak in support of Mr Andrew CHENG's amendment. I would also like to tell the Government and, in particular, Secretary Dr York CHOW, that I feel extremely miserable, and I also despise the Government for adopting such an attitude and such a stance towards the amendment.

Chairman, all along, I have respected Secretary Dr York CHOW very much. However, I really do not understand both speeches delivered by him today and yesterday, particularly in his capacity as the Secretary for Health, Welfare and Food, bearing in mind the fact that he is a medical doctor himself. Yesterday, he said that we had to set up smoking rooms and that the Government would spend two years studying the issue. When the experts have already told him that the smoking room approach does not work and at a time when the Government frequently says that it is under very tight financial constraints and

resources have to be utilized most prudently, he surprisingly said that the Government would spend two years on conducting studies on smoking rooms.

Today, he debated with us on whether cigarettes should be sold to persons in school uniforms. Frankly speaking, I really do not understand the stance adopted by the Secretary. Just now, I listened very attentively to the Secretary's speech. He said that the existing laws had already stipulated that cigarettes could not be sold to persons under the age of 18 and that adequate deterrent effect is already in place. He asked us why we still wished to cause extra trouble to cigarettes vendors. Chairman, I had nearly wanted to stand up to ask the Secretary whether his speech was written by the Liberal Party. I understand that the Liberal Party had been affected by factors related to the sectors it represents — it consists of the retail and catering sectors — that explains why they have adopted an opposing stance, saying that we should not bring so much extra trouble to their voters.

However, Chairman, the Secretary has the responsibility of upholding the interests of the public. We are not saying that we should place all the responsibility on the shoulders of cigarette vendors. Of course, I agree that if we want to deter young people from smoking, we have to carry out many other matching initiatives, and of course education is also very important. However, at this final critical stage, when we are discussing whether we should sell cigarettes to persons in school uniforms or under the age of 18, I do not understand why the Secretary can tell us that the existing legislation already has sufficient deterrent effect.

Chairman, I believe the Secretary has been listening to our speeches while sitting in this Chamber. So he must have listened to the survey cited by Mr Andrew CHENG just now, and also it was not the first time that it was cited. In the past, it had already been mentioned on certain occasions of the Legislative Council that this law was so ineffective to the extent that as if it is non-existent. In fact, with regard to the survey cited by Dr YEUNG Sum in his speech, it demonstrates that the vendors actually do not take the law of not selling cigarettes to persons under 18 seriously. The Government has never taken any law-enforcement actions in relation to that provision, so the legislation does not have any deterrent effect at all. When the Secretary delivers his speech in this Chamber today, why does he still tell us that this piece of legislation carries adequate deterrent effect, and that Members should not pass the provision that prohibits the sale of cigarettes to persons in school uniforms? He says this would only bring extra trouble to vendors. That explains why I said that the

speech seemed to be one delivered by a certain sector, and it was an act unbecoming of the Secretary for Health, Welfare and Food.

Chairman, apart from being a Member of the Legislative Council, I am also the mother of my children. I cannot understand it. I have racked my brain but still I cannot understand why the Government cannot accept this amendment which prohibits the sale of cigarettes to persons in school uniforms. Is it because today Mr Tommy CHEUNG has put on a genuine school uniform or some clothing that looks like a school uniform, so we should not pass this provision? Sometimes, we may have some misunderstanding or we may make mistakes in this regard, but I think we would not think that the laws of Hong Kong are so bad, or Hong Kong's legal system and Hong Kong's Department of Justice are so stupid, would we? If a vendor has sold cigarettes to Mr Tommy CHEUNG who is in an old school uniform, are we going to arrest this vendor and take prosecution action against him? Is this example consummate proof that we should not pass this legislation, particularly we have already had the law prohibiting persons in school uniforms from entering billiard establishments and placing bets on horse races?

A society should have certain standards and levels. I do not understand why the standards and levels of our society today have degraded to the extent that we still have to debate in this Chamber whether we should sell cigarettes to persons in school uniforms. In his speech delivered yesterday, the Secretary said that sometimes certain adults might attend evening schools, and they might have to wear school uniforms; as such, we should not enact such a piece of legislation. Should we adopt such an attitude in making laws today? I find this attitude totally unreasonable.

I do not hope that this Legislative Council will find it so difficult to discuss such a solemn issue, that is, whether cigarettes should be sold to persons in school uniforms. I do not know why the level of this society has degraded to such a state. Today, I really hope that Honourable colleagues can reflect on the issue, and I particularly hope that the Secretary can reflect on the issue as well. If this Legislative Council cannot pass this amendment to say that this society does not accept the sale of cigarettes to persons in school uniforms, I shall have to express my deepest regret particularly when an exemption provision has already been added to it: That the Government would not prosecute the vendors if they have a reasonable excuse. If, with the addition of such a provision, it still cannot be passed, I shall find the situation completely ridiculous. Thank you, Chairman.

**MR LEUNG YIU-CHUNG** (in Cantonese): Chairman, earlier on, several colleagues have explained the issue from a legal perspective. Therefore, in presenting my opinions on the provision that prohibits the sale of cigarettes to persons in school uniforms, I shall speak mainly from the practical and realistic perspectives.

First of all, Chairman, earlier on, several Honourable colleagues cited the "undercover operations" conducted by some organizations to observe how some news-stand vendors, supermarkets and convenience stores sold cigarettes to persons under 18. Chairman, I would like to make a declaration. I am a member of one of such organizations. The organization I am affiliated to conducted two such undercover investigations in 2005 and 2006 respectively in order to examine which organizations would sell cigarettes to persons under 18. With regard to another organization, the Committee on Youth Smoking Prevention, it has also conducted such a survey this year, and the findings of the two surveys are surprisingly similar.

The situation of this year is slightly better than that of last year. Last year, 95% of the organizations sold cigarettes to persons under the age of 18. That explains why Dr YEUNG Sum said earlier that nearly 100% of shops had done that. However, the situation this year is slightly better. It is 75%, it does show some improvement. Why would there be the improvement? It was because after we had released the findings last year, many hawkers and vendors also became aware of the message. Besides, we have also held several seminars afterwards, thus making them realize the existence of this ordinance. Therefore, they have to comply with what is stipulated in law in dealing with certain issues. For this reason, the situation has shown some improvement.

However, the problem is, 75% of the organizations still sell cigarettes to persons under the age of 18. This problem still persists. Why? In fact, I think it is attributable to several major factors. We have asked them why they sell cigarettes to persons under the age of 18. The first and foremost reason is that, this legislation uses age as the main criterion, and the age yardstick is under the age of 18. In fact, nowadays, it is really by no means an easy task to judge the age of a person by just looking at his face. This is really very difficult. Someone may appear to be over 18, but in fact he is not. Or someone looks younger than 18 years old, but again he is not. Of course, it is useless to judge the age of someone just by looking at his outward appearance. It would be ideal if concrete evidence can be produced to prove his real age.

However, it is most unfortunate that the greatest defect of this ordinance lies in the fact that the vendors selling cigarettes are not authorized to check the identity cards of his customers. In other words, the cigarette vendors do not even possess the authority to ask persons intending to buy cigarettes to produce their identity cards for ascertaining their age before selling cigarettes to them. It is because the cigarette customers may produce their identity cards if they like to; and they may decline the request if they do not like it. Such situations constitute the core of the problem, and this is the greatest failure of this legislation.

In fact, many hawkers and organizations have kept asking us whether we could request the Government to grant them the authority to do that. We had held numerous meetings with officers of the Department of Health to ask them to explore some ways of doing that, so as to help such persons, so that they can possess the authority to require cigarette customers to produce their identity cards for inspection. However, officers of the Department of Health told us that there was no way they could do it. It cannot be done due to the privacy legislation and many other problems. If the vendors have doubts about the age of cigarette customers, they may choose not to sell cigarettes to them. Even if they have sold the cigarettes to them, they may still use this as defence to relieve themselves of the liability involved. In other words, as long as a vendor has doubts and he has asked about the age of the person involved, then he can use this reason as defence in Court if he is prosecuted, thus relieving himself of the legal responsibility.

However, the problem is, many vendors and hawkers have told us that the problem has become very serious and they are facing very severe intimidation. As I said yesterday, when the hawkers and vendors on the streets have to decide whether they should sell cigarettes to these persons, they face great intimidation such as harassment and even vandalism. Yesterday, I also said that such cases had happened. Some hawkers and vendors told me that they had been splashed with water, and the whole news-stands had been vandalized and damaged, and so on. Chairman, what should they do? If they choose not to sell cigarettes to such persons, the above nasty scenes will take place. But if they choose to sell cigarettes to them, they will be breaking the law. Therefore, they are trapped in a dilemma.

Of course, regarding the provision on school uniforms under discussion today, it may be similar to the other provision insofar as the phenomenon is

concerned. But it is after all a supplement to the provision on the prohibition of sale of cigarettes to persons under the age of 18. At least, it is easier to determine the age of a person by looking at his school uniform instead of his outward appearance. As long as a vendor can see that someone is in school uniform, he can decline selling cigarettes to him just on the ground that he is in school uniform. This would make the task easier. It is better than asking a customer to produce his identity card, but he declines to do so. Instead, he insists that he is aged over 18. Should that happen, can you suggest what he should do? This would be much more difficult. Therefore, I agree that a provision on school uniforms should be added to the Bill. This must after all serve some good purpose. However, will it really bring about very good results? Not necessarily so, but it must be better than the existing legislation. Therefore, I support the amendment proposing to prohibit the sale of cigarettes to persons in school uniforms, and I also support such a practice.

Chairman, the Secretary said that the existing legislation already carries adequate deterrent effect, thus making it unnecessary to introduce new regulation on school uniforms. But does it really have deterrent effect? Chairman, I would like to tell you some figures. From 2001 to 2006, there were only 55 cases of successful prosecution against the sale of cigarettes to persons under 18. And among these 55 cases, 23 of them took place between January and June in 2006, that is, during the six months that have just passed, there were altogether 23 cases. On the contrary, there were only 32 cases of successful prosecution during the past five years, that is, only about five cases in a year on average. I do not know whether it is because the legislation is so effective that no one dares to sell cigarettes to underage persons anymore, thus resulting in such a low figure; or it was because many problems exist in the legislation, thus rendering it not enforceable and that explains why the figure was so low.

Chairman, why did I say that this legislation is not enforceable? It is because there is a very difficult requirement in the Ordinance, that is, the authorities will only deploy officers to investigate the situation after someone has filed a report on it, and only under such circumstances will the officers go and see whether an incident has really taken place before any prosecution actions will be taken. So when another customer sees that a certain stall or shop has sold cigarettes to persons under 18, he may then make a telephone call to lodge a complaint. After the authorities have deployed its officers to the scene and if the person buying the cigarettes still has not left the stall, then the officers can

take prosecution actions against him. Chairman, is this really very difficult for the authorities to take prosecution actions?

Secondly, if such actions do not rely upon the filing of complaints, then the authorities must deploy officers to patrol and check the stalls and shops before such illegal acts can be detected. But how many officers do we have? If I can recall the figure correctly, the Tobacco Control Office has an establishment of 20-odd officers. How can they do so much work? Even if the establishment is increased by 60 officers in the future, still how can it cope with the volume of work involved? Yesterday, both Mr Andrew CHENG and Ms Emily LAU listed a large number of organizations this group of officers will have to take care of. Chairman, in future if they have to be responsible for enforcing this legislation, how can they cope with this as well? Therefore, this legislation prohibiting the sale of cigarettes to persons under the age of 18 is really useless and futile. However, if school uniforms can be used as the means of recognition, then it will be much more direct and explicit for vendors and organizations to decline selling cigarettes to underage persons on the ground that they are in school uniforms. It will be much more convenient and effective.

Chairman, this legislation must be passed; otherwise, the hawkers and vendors will be caught in a predicament: If they decline selling cigarettes to underage persons, they are afraid that they might be harassed; and if they sell cigarettes to such persons, they will violate the law. How can this predicament be solved? The problem has existed for a long time. In the meantime, the non-government organizations keep exposing such problems. So, the pressure faced by the hawkers and vendors is escalating. Since we keep exposing the problem, the government departments concerned will take some actions to conduct some random checks. So they are scared and do not know what they should do. I think this will put extra pressure on the hawkers and vendors. It is unfair and unreasonable. Therefore, in connection with this point, I hope Honourable colleagues can support the passage of this legislation.

Meanwhile, Chairman, after this legislation has been passed, we do not just hope that enforcement actions can be taken, but we also hope that it would make it easier for us to launch more promotion and education initiatives. It is because when a piece of legislation has spelt out so clearly to us that any persons in school uniforms cannot buy cigarettes, coupled with our publicity work, it will make it easier for everyone to accept this, and the work can be done more easily.

In the past, we had also launched publicity on prohibiting the sale of cigarettes or tobacco to persons under the age of 18. But many people find it difficult to tell whether someone buying cigarettes is aged 18 or above. In fact, Chairman, I do not know what is on your mind, but which one will you find it easier to determine: Is someone aged 18 or is he in a school uniform? Generally speaking, even if some difficulty is involved, there is no reason for one to say that it is more difficult to determine whether a person is in a school uniform than to determine whether he is aged 18, is there not?

Chairman, during the past two years when I conducted the so-called random undercover checks, I would ask my friends to go to some Jockey Club off-course betting branches to see if they could place some bets there because the Jockey Club has stipulated that people under the age of 18 cannot vote .....oh, it should be "cannot gamble", instead of "cannot vote". So when all these so-called undercover agents arrived at the betting branches, they were all denied admission to such branches. Why? It is because they are very strict, and they have adopted a rather tight security measure, and they have no fear that they might be harassed or become the target of vandalism or damage. So they can confirm clearly the age of the persons involved and will not violate the law. However, with regard to the hawkers and vendors, even if they have suspicions, they dare not ask any questions. Instead, they would just sell the cigarettes to these persons as if nothing unusual has happened. Earlier on, Dr YEUNG Sum said that many hawkers and vendors had not even looked at the customers when they sold them cigarettes. Of course, such situations did occur. But as a matter of fact, when we conducted the operation, — we had someone using a video-camera to record the scene clandestinely, so as to see how the process was like (clandestine recording is not permitted, right?) — we could see that some of them hesitated, but they dared not ask questions because they were scared that something might happen as a result, and they were also very timid. Therefore, I think if we enact this provision, so as to enable them to have a clear basis for determining the age of the customers, it will actually reduce their pressure in making a living. I think this is both valuable and meaningful.

With regard to the practice of exposing this type of situations by the non-government organizations, I believe we would keep on doing it. We hope that improvement can be made to this type of situations continuously, thus making the younger generation not to take up smoking. In fact, I really agree with what Dr KWOK Ka-ki said. We have read a great deal of information

which reveals that many adult smokers started smoking when they were very young, and after growing up, they keep on smoking. On the other hand, there are substantially fewer people picking up smoking halfway. Therefore, if we can deter the young people from smoking from an early stage, we can actually reduce the chances of these people taking up smoking after they have grown up.

I hope this legislation can play a complementary role after enactment: First, it can supplement the inadequacies of the existing laws; secondly, it would also make it easier for us to launch education and publicity initiatives, thereby making the people (who buy cigarettes or otherwise) realize the existence of this legislation, and it would make our work easier. On the other hand, the young people will not be able to buy cigarettes so easily. These are what I intended to say here.

In the meantime, Chairman, I also hope that the authorities can really step up their efforts in monitoring the situations of cigarette vendors. It is because very often, some neighbourhood stores near the schools would open the packing of a packet of cigarettes and sell the cigarettes one at a time to students. Such situations have become rather serious now. I hope the authorities can pay attention to this problem and take actions to stop it.

Chairman, I so submit.

**MR ALBERT CHAN** (in Cantonese): Chairman, with regard to Mr Andrew CHENG's amendment, I have also discovered some extreme difficulties after pondering over it for a long time. Regarding the traps in this provision, I have said time and again that I am determined to oppose it and I am duty-bound to do so. But on the other hand, I will give my full support to some other provisions.

Regarding this problem, I think the greatest difficulty is how the legislation can be implemented by the vendors and the general public without stepping on the landmines, or committing an offence. Besides, if we take a look at cigarette retail outlets, we will see that many of them are chain shops, such as Circle-K and 7-Eleven, which mainly employ part-time staff at an hourly rate of \$20 or less. These staff may inadvertently breach the regulation and break the law. Is it appropriate to require an employee earning an hourly rate of \$20 to bear such a great legal risk? Of course, regarding the principle, several

anti-smoking Members have spoken on the amendments and the problem of regulation. From their speeches, we can see that their rationale, logic and ideal are all correct, one hundred percent correct. If we live in or hope to live in a brave new world in which there is no pollution, no irregularity or criminal offence, and all people are law-abiding, it is really an ideal.

However, through my contact with the vendors and the ordinary public, I can see that they have a lot of worries. Recently we can see that the number of traffic accidents caused by bus has been on the rise. Very often, it is because the bus drivers have to live in panic. A single complaint from the public will cost them the hard-work bonus and one traffic accident will cost them their jobs. Now more and more people are living under pressure, resulting in more calamities and tragedies. This in turn has jeopardized other people's safety.

In fact, there are 3 000-odd newspaper retailers in Hong Kong. Chairman, I have to declare that I am the adviser of the Coalition of Hong Kong Newspaper and Magazine Merchants and helping them to deal with a legal problem that they have never thought of. They are being sued by a publisher. A dozen of newspaper retailers are being sued by a publisher who has formally taken the case to Court on the ground that they are selling infringing copies of books. The retailers are just book vendors. Books are dispatched to them by the wholesalers every day for sale. These books may consist of thousands of different kinds of newspapers and magazines. Suddenly, they received a court summons charging them of selling infringing copies. The retailers actually cannot tell which are infringing copies. But from the legal point of view, they have to give defence themselves. An ignorant person will be scared to death on receiving such a summons. Under certain circumstances, they will rather pay compensation in order to close the case when they are further pursued by the representative of the law firm. Some of them have paid \$3,000 to \$5,000 or even more than \$10,000 for no reason. Regarding whether the law firms have lined their pockets from this, I do not know. I just want to tell Members that the general public and these newspaper retailers — some Members said that they are allowed to defend themselves in law — they can defend themselves by claiming that they do not know that the books are illegal or infringing copies, but basically they do not know how to differentiate which books are infringing copies. They really do not know. However, they have to face such a legal risk. Now about a dozen of newspaper retailers are facing such litigation. As a result, they have lost appetite for food, worried in doing business and panic-stricken. This is exactly the difficulty faced by the general public.

Some Members may say, "You have made your own bed and you must lie on it." In order to protect our younger generation from the hazards of smoking, cigarette vendors should bear the legal risk even though they just earn a few dollars out of a pack of cigarettes. The logic behind the proverb that "You have made your own bed and you must lie on it" is correct, isn't it? A bus driver will lose his hard-work bonus if he is complained and be dismissed if he has committed an offence. One should be laid off because of committing mistakes. However, the problem is that if these 3 000-odd newspaper retailers face prosecution just because of selling cigarettes to a young person in a school uniform, I have much reservations about the propriety of such a penalty. You may say that we are all equal before the law. Some newspaper retailers are illiterate. I can tell Members that some newspaper retailers are even illiterate. But, no way, they have to face it.

So, having considered Mr Andrew CHENG's proposal, I, in principle, find it hard to oppose it, but I cannot support the amendment in view of the reality and the cases that I have encountered. I very much hope that the Government can enhance the publicity on this. The best way is to educate the young people not to buy cigarettes or even to ban the sale of cigarettes completely by designating cigarettes as narcotics. That will be the end of the problem.

Now the problem is that some lawful act — of course, it is now stipulated that cigarettes are prohibited from being sold to young people — although some act is legal, it faces numerous hurdles and some people will commit a criminal offence by merely selling cigarettes to young people unawares. In that case, I think it is an overkill. Of course, I absolutely understand that Mr Andrew CHENG, Dr KWOK Ka-ki or even friends in the Civic Party will disagree with what I say. But I can tell Members that concerning the legal problem, or the proverb that everybody is equal before the law, the case is different here. I would like to tell those senior counsels, this is not true. Under the law, some are more equal than others. The rich and those who can afford the legal costs are the more equal. For the general public, they cannot sleep and lose their life savings when caught in a lawsuit and finally may lose in the litigation completely. I can tell Members that I have met many such people. But the rich will stand firm. Should the Government dare sue them, they will engage in a lawsuit with the former without any fear because they can afford to hire legal representation. However, it will be different for the general public when they face a trivial legal matter. As I just said, thousands of newspaper retailers, because of the charge against some of their members for selling infringing

copies, are panic-stricken. I only hope that they can be given an opportunity so that they can be free from panic. It will be a great blessing to them if they are allowed to lead a more comfortable life.

Thank you, Chairman.

**MS MARGARET NG** (in Cantonese): Chairman, just now, Mr Tommy CHEUNG said that there were many barristers in the Civic Party. In fact, I think in this Council, the Civic Party is not the only party that has such a feature. In my opinion, as we have enacted so many ordinances, many Members should also know the basic principles to be considered when enacting legislation. Perhaps we as lawyers have more knowledge of the laws, so, if we have observed something and found that we can do something to help this Council and answer queries, we are duty-bound to elaborate it.

Chairman, just now Mr Tommy CHEUNG said that it would be a very easy task for a lawyer to give a reasonable defence, but it would not be so for the ordinary people. Chairman, actually our principle of enacting legislation is that we will never criminalize any act so easily. This is no easy task. When criminal liability is imposed on some act, we will always consider the necessity in a careful manner. We will only approve the official Bill when it is considered necessary to enact such legislation. So, regarding this smoking ban legislation, we do not have any doubt because it is very important to the health of the community as a whole, in particular, the health of the young people. So, because of such consideration, we say that criminal liability should be introduced in order to deter vendors from selling cigarettes to people in school uniforms.

So, this is the starting point, and that is, the consideration of whether it is necessary for the protection of public interests. If it is necessary, we then ask what difficulty will exist for enacting such legislation. This is exactly what Mr Albert CHAN just said. Sometimes difficulties do exist and thus a proportionate and reasonable defence should be introduced. This is not a new thing, Chairman. In fact, regarding this aspect, the responsibility of the general public and the responsibility of certain people must be differentiated. Are there a certain group of people who will easily break the law even though they have full knowledge of it? If so, further consideration is needed. However, we only target at the cigarette vendors. They are in a similar position of liquor vendors who are subject to certain restriction when selling liquor, and that is,

they cannot sell it to people under 18 years old. What should they do? If they are running such a business, they should be aware of such a condition. So, as the gatekeeper, they should pay attention to such matters of significance. If you are working as a shopkeeper in these shops, regardless of your hourly rate, you will never say that because you have a wage hike — for instance, if Mr Albert CHAN has succeeded in striving for legislation on minimum wage — no one will say that his legal responsibility has become more onerous just because he earns more. Such a situation will not exist. In a nutshell, anyone in the trade should know such a restriction before taking up the job.

Another point I would like to clarify is why we also blame the Government for the ambiguity of some definitions in law which has resulted in people being caught inadvertently. This is because the provisions are unclear, leading to difficulty in compliance. Under such circumstances, it is unacceptable no matter whether there is a reasonable defence or not. But now we are going to lay down a provision which prohibits the sale of cigarettes to people in school uniforms and there is no ambiguity at all. Of course, if you say that it is difficult to tell whether someone is wearing a school uniform and sometimes it is really difficult to do so, a reasonable defence is therefore provided.

I also agree with Mr Albert CHAN, that the general public may not be well versed in knowledge of laws and thus it is necessary to ensure that compliance is easy. This is also our principle. If compliance is difficult and the responsibility is put on the shoulder of these people, it will be most unreasonable. However, under such circumstances, is it really very difficult to make the distinction. Or if you refuse to sell cigarettes to a person wearing a school uniform, will he beat you up or do anything else? On the contrary, we have to consider how to help those who are obliged to comply with the law. For instance, we should explain to them that they should tell cigarette buyers who are wearing school uniforms that this is illegal and prohibited. Just now Mr LEUNG Yiu-chung queried whether it is problematic if it is stipulated that a liquor or cigarette vendor cannot sell such products to people under 18 years old but is not empowered to inspect their identify cards. In fact, this is not a problem, Chairman, because you do not have the responsibility to sell anything to anyone. When you think that a person is under 18 years old but he insists that he is 18, you may tell him, "I cannot sell it to you unless you can prove that you are over 18." If he is willing to produce his identity card, you may sell cigarettes to him. If he is unwilling to do so, you may say, "If I sell it to you, I will suffer a great loss because I will be criminally liable." I think this will be

very fair. We should understand what difficulty the public will encounter in compliance with the law and work out some solutions to help them. But we should not say that legislation should not be enacted just because of the difficulty in compliance. In that case, such undesirable behaviour will continue.

Chairman, if this is used as the basis for legislation, it will turn out that our social interests cannot be protected by way of legislation. Thank you, Chairman.

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

**MR LEE CHEUK-YAN** (in Cantonese): Chairman, we have almost discussed for two hours on whether cigarettes should be sold to people in school uniforms. But I wonder what the Secretary has heard. I really do not understand why we have spent two days discussing just one thing: We hope to provide a healthy environment to our community and our younger generation, and on the issue of anti-smoking, we have reached a consensus that we oppose smoking among young people and hope that the community can attain the goal. However, when our discussion has reached the present stage, why does the Secretary seem to back-pedal? Since the Secretary has submitted the Bill to the Legislative Council, why can he not follow good advice readily and take public opinion on board so that the problem of smoking among young people can be really mitigated? The Secretary must also admit that if Mr Andrew CHENG's amendment is passed, the number of young smokers can be reduced. Why? Because we have already obtained a lot of evidence on this. The Secretary's proposal that cigarettes should not be sold to people under 18 years old is infeasible because the vendors will keep selling cigarettes to them and the young people will keep smoking. But if cigarettes cannot be sold to people in school uniforms, I think we can at least achieve one thing, and that is, the young people's chances of buying cigarettes can be reduced. And this is more effective than the Secretary's proposal.

Many colleagues just now mentioned the difficulty faced by news-stand vendors. But I think it will be easier for them to comply with the law after the amendment is passed. It is because regarding people under 18 years old, the newspaper hawkers find it hard to distinguish them and are unwilling to check their customers' identity cards. Ms Margaret NG said that the hawkers can

refuse to sell cigarettes to them. But sometimes, they just do not want to quarrel with people. But it will be much easier to tell whether a person is wearing a school uniform. In other words, if it is stipulated that cigarettes cannot be sold to people in school uniforms, the hawkers will find it easier to comply. So, I can hardly understand why the Secretary should oppose this amendment. In fact, the Secretary was unable to advance any further arguments at the end and eventually said that the age of customers in billiard establishments can be identified because of the longer business hours there. But I believe it is not too difficult to take a look at someone to see if he is wearing a school uniform. It will not take too much time to observe a person and decide whether he is wearing a school uniform. The only explanation is that the Secretary wishes to protect those who have a weakness for school uniforms so that they can buy cigarettes. In other words, there are some middle-aged people who are fond of wearing school uniforms. The Secretary is reluctant to see that they cannot buy cigarettes and would like to protect them. But is it necessary for the Secretary to oppose this amendment deliberately just for the sake of those who have such a habit? I do not think so. Now our most important objective is to dissuade young people from smoking. To keep them healthy is most important. I do not think the Secretary would like to protect those who have a habit of wearing school uniforms.

Now the DAB has only Mr WONG Ting-kwong in attendance. In fact, the DAB has promised the anti-smoking committee that it will support the notion of not selling cigarettes to people in school uniforms. But I do not hear them say one word in this debate today. Of course, one may say that they spoke yesterday and I am not asking for their response now — the Chairman has glanced at me wondering if I am urging her to invite them to speak. I think no one here would like to do so. We just hope that the debate can come to a close as soon as possible. However, I think they should explain why they always make promises but flinch at the critical moment. This is the constant problem of the royalists which is most incomprehensible. When their promise can be trusted by the people? This is our constant doubt which has once again been substantiated today. Why are they unable to honour their previous promise? Why are their words and deeds at complete variance? Thank you Chairman.

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

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): If not, Mr Tommy CHEUNG, do you wish to speak again?

**MR TOMMY CHEUNG** (in Cantonese): No, it is not necessary.

**CHAIRMAN** (in Cantonese): Secretary for Health, Welfare and Food, do you wish to speak again?

(The Secretary for Health, Welfare and Food shook his head to indicate that he did not wish to speak again)

**CHAIRMAN** (in Cantonese): Mr Andrew CHENG is not in the Chamber.....

(Mr Andrew CHENG entered the Chamber in a hurry)

**CHAIRMAN** (in Cantonese): He has entered the Chamber. Mr Andrew CHENG, do you wish to speak again?

**MR ANDREW CHENG** (in Cantonese): Sorry, I was just talking with the legal adviser on the technicalities of this Bill out there. Sorry, Madam Chairman.

Madam Chairman, just now colleagues spoke on the issue one after another and I would like to add some more points. Colleagues who oppose me have given me a very strong message, and that is, we should not put too much responsibility on the news-stand hawkers and shop managers. I would like to stress that, Madam Chairman, regarding this Bill, in the past two days or 150 hours' debate, I have seldom mentioned this point. But I would like to put it on record. There is one major difference between the Government's Bill and that of other countries which have imposed anti-smoking regulation and a total smoking ban — I would like to explain this to the Secretary who should also know this. In other countries, such as Ireland and Norway, the relevant legislation stipulates that premises managers have legal responsibility. If a person smokes in a no smoking area and the premises manager does not ask him to leave, the manager will also be prosecuted in accordance with the legislation of many regions. But there is no such provision in our Bill.

This point has deviated from our current discussion. I mentioned it because there is a functional constituency in our Hong Kong Legislative Council. If this functional constituency opposes it, the Bill cannot be passed for everybody will think that the premises managers are already in a plight because their business is poor, apart from the requirement to enforce the indoor smoking ban. Furthermore, their business volume has plummeted and they have to be responsible. When we discussed the use of reasonable force, they also queried what reasonable force should be used to enforce the law on behalf of the Government. I would like to put it on record and hope that the Secretary will review the effectiveness of the legislation and whether the people are really self-disciplined in future. According to other countries' experience, their nationals are very self-disciplined. If a customer smokes, the manager of a bar or restaurant will ask him to leave. This is very natural because the manager himself will also be held responsible. If the customer refuses to leave, the manager will call for the law-enforcement officers. Madam Chairman, I am worried about Hong Kong in future because if anyone smokes in a bar, no one will complain and the manager will say that the customer is his boss and his patron, so he will never ask him stop smoking because he is not responsible. To a certain extent, the manager can advise the customer not to smoke, but if it does not work, he is not responsible even if someone or a law-enforcement officer has seen it. So, the spirit of the Bill is very lenient towards the premises managers in Hong Kong.

Regarding this aspect, just now some colleagues, in particular colleagues from the legal profession, have pointed it out very clearly and I would not repeat anymore. Regarding any legislation, those on the frontline, meaning the news-stand hawkers, should help us to uphold our core values and the spirit of our laws, rather than complaining that we have increased their pressure and should not enact the legislation because this is to their disadvantage.

With our discussion having come to this level today, Mr Ronny TONG queried what Members were doing here. Frankly, I really feel saddened about it because we ourselves or even the outsiders will query why such a question should be debated. It should be implemented instead of being debated. Some kaifong even asked, "Has it not been stipulated in the law that cigarettes are not to be sold to students in school uniforms? Why should it be argued? Would anyone really object it?" Indeed, it is really being objected and the reason for objection sometimes makes us feel saddened because our target is to protect our next generation. Will our next generation grow in a healthy way? Do we

think that they will constitute exorbitant medical expenses to society? Do our core values proactively promote a culture of health? I hope colleagues can rethink these three points because we will cast our votes in a division later. So I have to pinpoint my arguments. I dare not say whether the amendment can be passed in the geographical constituencies, in particular after hearing Mr Albert CHAN's speech. However, if we can convince some Members in the functional constituencies, this is the last chance for our amendment to be passed.

The Secretary will not speak again because the voting will proceed after I have spoken and he will not speak again. So, even though this amendment cannot be passed, I still hope that the Secretary, after hearing our speeches today, will conduct a review in a serious manner. The findings read out by Dr YEUNG Sum just now are worth reconsideration by the Government. In fact, the current legislation exists in name only. I hope the industry will not insist that this will increase their pressure at work.

Madam Chairman, when I spoke for the first time, I did not express my views on Mr Tommy CHEUNG's amendment. So I would like to add some points here. In fact, we have debated for more than two hours and we are still revolving around Mr Tommy CHEUNG's proposal that the legislation shall come into effect 90 days later. We do not agree to it. We support the Government's clear indication that the law will come into effect on 1 January 2007 so that a smoking ban will be implemented in all eating establishments, indoor workplaces and all no smoking areas we discussed yesterday. Do not talk about the 90 days anymore. We have to emphasize that although the debate on this Bill could not be resumed on 12 July, if this Bill can be read the Third time and passed on 18 and 19 October, it will not affect a totally new ordinance coming into operation on 1 January 2007 in our society. Although the amendment concerning people wearing school uniforms may not be passed, I still hope that the Secretary can reconsider this question and the Government will change its mind in future.

Thank You, Madam Chairman.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That new clauses 17A, 17B and 17C moved by Mr Andrew CHENG be read the Second time. 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 one minute.

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

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

Functional Constituencies:

Dr Raymond HO, Ms Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr Joseph LEE, Dr Fernando CHEUNG, Mr KWONG Chi-kin and Miss TAM Heung-man voted for the motion.

Dr David LI, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr Tommy CHEUNG, Mr Vincent FANG, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG and Mr WONG Ting-kwong voted against the motion.

Mr WONG Kwok-hing abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr LAU Chin-shek, Ms Emily LAU, Mr Andrew CHENG, Mr

Frederick FUNG, Ms Audrey EU, Mr Alan LEONG and Mr Ronny TONG voted for the motion.

Mrs Selina CHOW, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk and Mr LI Kwok-ying voted against the motion.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 24 were present, eight were in favour of the motion, 15 against it and one abstained; while among the Members returned by geographical constituencies through direct elections, 19 were present, 12 were in favour of the motion and six against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

**CHAIRMAN** (in Cantonese): As Mr Andrew CHENG's motion has been negatived, he may not move his amendments to clauses 2 and 36.

**CLERK** (in Cantonese): Clause 36 as amended.

**CHAIRMAN** (in Cantonese): As the Committee has earlier on passed the Secretary for Health, Welfare and Food's amendments to clause 36, I now put the question to you and that is: That clause 36 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, I move that clause 2 be amended.

*Proposed amendment*

**Clause 2 (see Annex I)**

**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 raised your 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 Tommy CHEUNG may not move his amendment to clause 2, which is inconsistent with the decision already taken.

**CLERK** (in Cantonese): Clause 2 as amended.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That clause 2 as amended stand part of the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): New Clause 16A      Offences under Part IV.

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam Chairman, I move that new clause 16A be read the Second time as set out in the paper circularized to Members.

The new clause 16 seeks to increase the level of fines for offences under Part IV of the Ordinance from level 4 to level 5.

In our opinion, breaches of offences relating to tobacco advertisements under Part IV are not out of inadvertence or negligence of an individual. At present, the maximum penalty for the offences is a fine at level 4. After a review of the maximum penalty, we consider that the current level of penalty is too low and therefore propose to increase the fine to level 5.

The amendment is supported by the Bills Committee. I urge Members to support and pass this amendment. Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That new clause 16A 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 16A.

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam Chairman, I move that new clause 16A be added to the Bill.

*Proposed addition*

**New clause 16A (see Annex I)**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That new clause 16A be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

**CHAIRMAN** (in Cantonese): Council now resumes.

Council then resumed.

### **Third Reading of Bills**

**PRESIDENT** (in Cantonese): Bill: Third Reading.

### **SMOKING (PUBLIC HEALTH) (AMENDMENT) BILL 2005**

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

Smoking (Public Health) (Amendment) Bill 2005

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

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Smoking (Public Health) (Amendment) Bill 2005 be read the Third time and do pass.

**MR ANDREW CHENG** (in Cantonese): Madam President, before we proceed to the voting on the Third Reading of the Bill finally, I would like to, on behalf of the Bills Committee — I perhaps cannot represent all members of the Bills Committee, for different opinions were expressed during the discussion on the smoking room issue yesterday. However, I will still speak in my capacity as Chairman of the Bills Committee and hope that the Secretary will respond to the views expressed by the Bureau on the setting up of smoking rooms at three of the

meetings in the past. Before the Third Reading of the Bill, I hope the Secretary, before this solemn and just Legislative Council, would give an honest and convincing response.

Madam President, why did I say so? Members know that this time, we, on the whole, have no doubt about the determination of the Government from the beginning to the end. In the entire process, in respect of the setting up of smoking rooms in restaurants and entertainment establishments, during the nearly 150 hours of debate in the past, we fully agreed with the position held by the Government previously. Why? Madam President, please allow me to quote the records of the three meetings held on 20 January, 10 February and 16 May 2006 respectively. Our colleagues have listened to the content of the meeting to reproduce these verbatim records as evidence of proof. I sincerely and earnestly hope that the Secretary will respond instead of just saying he has nothing to add when the President asks if the Secretary wishes to reply. In the latter case, I will be really disappointed.

Madam President, first, I would like to mention the meeting on 20 January 2006. At that time, Mrs YEUNG, Deputy Permanent Secretary for Health, Welfare and Food, the representative of the Health, Welfare and Food Bureau, was the major public officer taking charge of the scrutiny of this Bill on behalf of the Bureau. According to the verbatim record, her response to Mr Tommy CHEUNG's proposal on the establishment of smoking rooms is as follows (to this effect): "In respect of smoking rooms, we have had a lot of discussion. Apart from the smoking rooms at the airport which exemption has been granted subject to compliance of a number of restrictions, we have a concern over the establishment of smoking rooms in other establishments. For so far, neither the international community nor the World Health Organization (WHO) has found any ventilation standard acceptable in effectively removing harmful substances. Therefore, if we are to draw up a standard, how effective will it be? How good will it be? For people affected by second-hand smoke, will it be the best approach? We have great doubts about it. Therefore, during the introduction and amendment of the legislation, we do not recommend the establishment of smoking rooms, nor the drawing up of a ventilation standard.". This is the record of the meeting on 20 January this year. I have to reiterate clearly that the Bureau considered at the time that owing to the lack of a standard in the removal of harmful substances, the establishment of smoking rooms and the drawing up of a ventilation standard were not recommended — such a standard will not be drawn up.

Then, at the meeting on 10 February, the Deputy Permanent Secretary, Mrs YEUNG, gave the following remarks as recorded in verbatim, to this effect, "I will first respond to Mr Tommy CHEUNG's question. It is proposed that under the legislation, smoking will be banned in indoor workplaces and indoor food establishments. I understand that the idea of Mr Tommy CHEUNG does not mean the delineation of a smoking area, say the designation of a smoking area within a restaurant, where a ventilation system is installed to allow people to smoke and eat there. He means the setting up of a room for people to only smoke inside. However, we can see that if this room is established within a food establishment, it becomes or basically forms part of a food establishment or a workplace. Then, first, we will see smokers going in and out of the room where second-hand smoke may escape from the room. Second, since this room forms part of the entire workplace, in the absence of an effective or internationally recognized ventilation system at present and an applicable effective standard on this, if it is to be established as part of a workplace or a food establishment, or as part of a place where smoking is prohibited, it will be inevitable that second-hand smoke in this room will affect other persons present in the remaining part of the establishment. Therefore, at present, when an international standard or an internationally recognized ventilation system or other technology related to the isolation of second-hand smoke is not yet available, we will not recommend this approach." Madam President, this is the record of the meeting on 10 February at which the Bureau reiterated this point. In the last couple of months, many colleagues said that they could not take part in the meetings for a number of questions were argued over and over again. This is one of the issues argued at the early stage — whether smoking rooms should be established.

After stating its stance in January, the Bureau repeated it in February, stating on both occasions that owing to the lack of an internationally recognized standard, the Bureau did not recommend this approach, nor had it said "we may study it". Alright, if the Secretary says that it is their position in January and February, that is, the early stage, the issue was again discussed at the meeting on 16 May, only two months before the Secretary prepared to resume the Second Reading of the Bill. At that meeting, another person, Dr LAI Kit-lim, Assistant Director of Health, who is now in the Chamber, was also present. The verbatim record of that meeting is as follows (to this effect): "As far as I understand it, so far, the WHO and certain authoritative medical organizations or public health organizations of the international community have not been able to

develop a standard on ventilation systems, defining how harmful substances of second-hand smoke present in the air can be removed. Since such a standard is lacking, there is no standard for maintenance and assessment of effectiveness of the system. Nor is there any standard that requires the installation of double doors or barriers to prevent the escape of air from the room. Therefore, it is questionable whether Hong Kong is capable to draw up such a standard or intends to verify that such a standard can protect the public." "Both the WHO and medical organizations of the international community do not have a safety standard on ventilation systems of the so-called smoking rooms, and the only advice given is to prohibit smoking. We see that owing to the lack of a safety benchmark and a safety standard, and the serious consequences that second-hand smoke can cause, as everyone knows it can cause lung cancers and heart diseases, the use of some costly designs and systems may not necessarily achieve a standard considered relatively safe" — Madam President, the word "relatively" was said in English at the meeting and it is also recorded in English in the verbatim record — "which may in fact create a lopsided playing field in the trade. Our stance is that the establishment of smoking rooms is unacceptable." Madam President, this is the record of the meeting on 16 May. These two remarks are evident that all along, despite hours of discussion, the Government still considered the establishment of smoking rooms impossible to accept.

More so, I have to put forth two points here. First, the only advice given is to prohibit smoking. At that time, we admired at heart the persistence displayed by the Department of Health and the Bureau in upholding their stance. I believe doctors in this Chamber should also hold this view in their hearts of hearts, and I believe you all think the same way. But, for reasons unknown, it comes out the opposite.

Second, the Bureau has made it crystal clear that some costly designs have to be used — those designs are costly possibly because such a system can only achieve the purpose by generating tornado-style airflow, which is really difficult, and probably only some wealthy members of the trade or consortia can do so — the Bureau stated that this would result in unfair competition. They therefore took the position that: smoking room was unacceptable. Madam President, the word "unacceptable" was clearly stated at the meeting on 16 May. Why on 18 October, only after four months, would the Secretary make a 180-degree U-turn and a volte-face blatantly at the resumption of the Second Reading of the Bill?

As the Chairman of the Bills Committee, I will say that it really breaks my heart, or as Dr KWOK Ka-ki said — he used a classic Chinese expression with four characters to describe it yesterday but I cannot think of it now, he said ..... I forget that but I will recall it later — in a word, I am dismayed. Frankly speaking, the chortles we give are filled with tears, and I really do not want to talk about it anymore. For I hope in the remaining time, I can persuade the Secretary to rise and tell us about this. I suddenly think of one point, that is, the reason he can accept or encourage us to accept the deferral of the total ban on smoking in entertainment establishments to 1 July 2009 is that this can buy him two or three years' time to discuss the establishment of smoking rooms with the trade.

Madam President, in respect of this issue, I implore the Secretary to speak again to respond to the three verbatim records quoted by me. Those records display the true motives given by his subordinates on behalf of the Bureau and the Department of Health in the past, stating that the establishment of smoking room was absolutely unacceptable.

Thank you, Madam President.

**DR YEUNG SUM** (in Cantonese): Madam President, in the meeting yesterday, when we talked about the establishment of smoking rooms, I did say that the way in which the Secretary handled the issue was really not honourable. I made that remark not without a reason. I have been following the Bill quite closely. Basically, I had read all the study reports before I came to the meeting. All along, never did I ever get the impression from the Government that it would consider or even spend money to examine the establishment of smoking rooms.

Therefore, when the Secretary gave his reply yesterday, I wondered whether this particular part was added to his speech at the last moment. I found it most strange. Though I am acquainted with the Secretary, I cannot help but tell him this. I flatter myself for honouring the spirit of sportsmanship. We do fight for a lot of things, such as democracy, and though we have not yet succeeded, we will continue to fight for it. If the Secretary did say from the very beginning that there was room for the Government to consider this approach, and he brings up the proposal again now, I basically cannot take issue with that, for it would have been the impression the Secretary has given us all along. However, the impression we get from the Secretary, which is

reasonable, is that this option is not available — sorry, the Secretary has already thrown this option out of the window. Today, Mr Andrew CHENG has quoted the remarks given by his colleague, Mrs YEUNG. In the deliberations on the Bill, Mrs YEUNG has been very devoted and responsible, she did try to listen to as many opinions as possible and her remarks should have reflected the views of her department.

If the Secretary is willing to give a response, I would like to raise several simple questions. I do not want to drag on for too long. First, will the Secretary give a brief response stating the new justifications that make the Bureau consider it necessary to spend money on the study and even draw up a timetable? For many issues, even for universal suffrage, we do not have a timetable, am I right? However, all of a sudden, a timetable is drawn up for this study. What new justifications does the Secretary have? Second, before the resumption of the Second Reading of the Bill, did any members from the trade lobby him? Third, before the resumption of the Second Reading of the Bill, did anyone indicate to him that it might be related to the Election Committee for the election of the Chief Executive? Thank you, Madam President.

**DR KWOK KA-KI** (in Cantonese): President, yesterday, we did ask the Secretary in this Chamber what had made him change his stance. The issue had been discussed by the Bills Committee for 57 times and over a hundred hours. All of us knew the scientific evidence clearly. The decision made at the time was that smoking rooms should not be allowed.

Mr Andrew CHENG has quoted some of the remarks given by the Bureau in May, which are very accurate. I have found the remarks made by the Secretary on 24 January 2006, one of the sentence states clearly that: the ultimate purpose of not compromising was to ban passive smoking. The Secretary gave this comment when we were discussing whether the establishment of smoking rooms was necessary or should be considered.

I would like to quote a paragraph from the paper issued to us by the Secretary in January 2006, ".....there were also proposals urging the Government to allow indoor establishments to set up 'smoking rooms' to segregate smoking and non-smoking customers, or to allow customers to smoke during certain periods of time (mainly night time) and forbid smoking during other periods.....In this regard" — please listen — "as international

organizations (including the World Health Organization) have not been able to develop a so-called 'safety standard' for air quality in indoor smoking locations, Hong Kong is not in a position to arbitrarily draw up 'healthy' or 'safe' air quality standards for 'smoking rooms' and 'non-smoking rooms' with scientific basis and which is acceptable to the medical sector and the international community. Moreover, medical evidence has proved that toxic substance in cigarettes would remain in the rooms for a prolonged period of time. Thus, the above proposal will not protect customers from the impact of passive smoking. In fact, to date, there is no internationally approved ventilation system able to completely extract the residual second-hand smoke from the rooms. You may wish to take reference from the documents published by some international organizations in this respect at Annex.....". In January, the paper issued by the Secretary or the Government stated clearly that scientific evidence had indicated that the establishment of smoking rooms needed not be further considered.

Yesterday, we did ask repeatedly what difficulties or reasons had obligated the Government take a swift U-turn — I do not know how to express it in Chinese, that is, a 180-degree change in attitude — at this final stage just before the Third Reading of the Bill, but the Secretary did not give any response. This is most disappointing. I wonder if the Secretary is under great pressure which has not been addressed, and has thus resorted to making a declaration to curry favour with certain people, stating that something may still be offered, and thus Members should not worry but endorse the Bill first. If that is the case, the issue needs not be discussed anymore and we need not cite on figures and principles in our discussion. All these will be deemed unnecessary, for the Government will eventually make such an unexpected change of heart.

Secretary, you owe us an explanation which I think is important. Today, all media will pay attention to the remarks made by Secretary from now on, and I believe he will become a footnote in history. Why should the Secretary or the Government make such a dramatic change in this incident? The change does not tally with the decision made earlier, nor is it consistent with the standard of the WHO or the international community.

I so submit. Thank you, Madam President.

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): Secretary, do you wish to speak again?

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, I thank Members for their views on the smoking room case. I do not have any doubts about the scientific evidence. At the present stage, there is no internationally recognized standard or practice which is regarded as safe.

As we are all aware, during the deliberations on the Bill, we have designated a lot more no smoking areas. We can also see that Hong Kong is small and densely populated with a lot of high rises. I can also see that many smokers will go to the streets to smoke after the implementation of the indoor smoking ban in so many places on 1 January. As we all know, many smokers will stand at many passages, particularly the streets, to smoke. Such a phenomenon may become more prevalent next year.

Of course, as we are responsible for public health, we certainly hope that all people are healthy and smokers will gradually reduce smoking and even kick the habit. But there is a process for that. In any society, it will go through a process. We cannot eliminate at one go all smoking areas where smokers are allowed to do something they deem necessary, that is smoking. But we are not encouraging them to smoke or giving them ample room to do so. We just consider how to let them smoke in a safe environment where no one will be affected by second-hand smoke.

As Dr KWOK Ka-ki has just said, I will not make compromise on second-hand smoke. So, in my opinion, smoking rooms are a possibility but technically not viable at present. How should we proceed? A study is necessary but I am not in favour of spending too much time on it. Instead, a specific timetable is preferred and, based on this, we will decide how to implement the option if found feasible. But we have to give it up once it is proved the contrary. The whole process will certainly be open and transparent. If we need to bring the option back to the Legislative Council, I believe it will be submitted to the Health Services Panel, and then a legislative amendment will be submitted to the Legislative Council.

So, regarding the implementation of this option in Hong Kong, we, as a responsible government, must deal with the problems faced by smokers. We are not encouraging them to smoke or continue to smoke. But there must be a process and time must be allowed for them to quit smoking. As we all know, it

is not easy to quit smoking. Many people have failed despite numerous attempts. But we have to give them some room which will become incrementally limited. This is also the Government's position. Now, at the first stage which is also the most important, we have to reduce or eliminate second-hand smoke exposure.

Regarding the conspiracy theory of the Democratic Party which claims that I have made a political compromise, I would like to make a clarification. Concerning this Bill, I know the issue better than Mr TSANG, the Chief Executive, and will not be influenced by anybody. This is my own decision and there is no question of affinity difference between me and any political parties. We all work for the good of Hong Kong people.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you as stated.....

**MR ANDREW CHENG** (in Cantonese): President, can I speak again?

**PRESIDENT** (in Cantonese): No, you cannot. The debate has come to a close.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Smoking (Public Health) (Amendment) Bill 2005.

**MOTIONS**

**PRESIDENT** (in Cantonese): Motion. Proposed resolution under the Pharmacy and Poisons Ordinance to approve the Pharmacy and Poisons (Amendment) (No. 4) Regulation 2006 and the Poisons List (Amendment) (No. 4) Regulation 2006.

**PROPOSED RESOLUTION UNDER THE PHARMACY AND POISONS ORDINANCE**

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, I move that the Pharmacy and Poisons (Amendment) (No. 4) Regulation 2006 and the Poisons List (Amendment) (No. 4) Regulation 2006 as set out under my name in the paper circularized to Members be approved.

Currently, we regulate the sale and supply of pharmaceutical products through a registration and inspection system set up under the Pharmacy and Poisons Ordinance. The Ordinance maintains a Poisons List under the Poisons List Regulations and several Schedules under the Pharmacy and Poisons Regulations. Pharmaceutical products listed in different parts of the Poisons List and different Schedules are subject to different levels of control in regard to the conditions of sale and keeping of records.

To safeguard public health, some pharmaceutical products can only be sold in pharmacies under the supervision of registered pharmacists and in their presence. For certain pharmaceutical products, proper records of the particulars of the sale must be kept, including the date of sale, the name and address of the purchaser, the name and quantity of the medicine and the purpose for which it is required. For some other pharmaceutical products, the sale must be authorized by prescription from a registered medical practitioner, a registered dentist or a registered veterinary surgeon.

The Amendment Regulations now tabled before Members seek to amend the Poisons List in the Poisons List Regulations and the Schedules to the Pharmacy and Poisons Regulations for the purpose of imposing control on seven new medicines.

In view of the seven applications for registration pharmaceutical products received, the Pharmacy and Poisons Board proposes to add seven substances to Part I of the Poisons List and the First and Third Schedules to the Pharmacy and

Poisons Regulations, providing that pharmaceutical products containing any of these substances must be sold in pharmacies under the supervision of registered pharmacists and in their presence, with the support of prescriptions.

We propose that these Amendment Regulations take immediate effect upon gazettal on 20 October 2006 to allow for early control and sale of the relevant medicines.

The two Amendment Regulations are made by the Pharmacy and Poisons Board, which is a statutory authority established under section 3 of the Ordinance to regulate the registration and control of pharmaceutical products. The Board comprises members engaged in the pharmacy, medical and academic professions. The Board considers the proposed amendments necessary in view of the potency, toxicity and potential side effects of the medicines concerned.

With these remarks, Madam President, I move the said motion.

**The Secretary for Health, Welfare and Food moved the following motion:**

"RESOLVED that the following Regulations, made by the Pharmacy and Poisons Board on 25 September 2006, be approved —

- (a) the Pharmacy and Poisons (Amendment) (No. 4) Regulation 2006; and
- (b) the Poisons List (Amendment) (No. 4) Regulation 2006."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Health, Welfare and Food be passed.

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): I now put the question to you 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.

## **MEMBERS' BILLS**

### **First Reading of Members' Bills**

**PRESIDENT** (in Cantonese): Members' Bill: First Reading.

## **CITY UNIVERSITY OF HONG KONG (AMENDMENT) BILL 2006**

**CLERK** (in Cantonese): City University of Hong Kong (Amendment) Bill 2006.

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

### **Second Reading of Members' Bills**

**PRESIDENT** (in Cantonese): As the City University of Hong Kong (Amendment) Bill 2006 presented by Dr Raymond HO relates to government policies, in accordance with Rule 54(1) of the Rules of Procedure, the signification by a designated public officer of the written consent of the Chief Executive shall be called for before the Council enters upon consideration of the Second Reading of the Bill.

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I confirm that the Chief Executive has given his written consent for the City University of Hong Kong (Amendment) Bill 2006 to be introduced into the Legislative Council.

**PRESIDENT** (in Cantonese): Members' Bill: Second Reading. Dr Raymond HO, you may now move the Second Reading of your Bill.

**CITY UNIVERSITY OF HONG KONG (AMENDMENT) BILL 2006**

**DR RAYMOND HO:** Madam President, I move that the City University of Hong Kong (Amendment) Bill 2006 (the Bill) be read the Second time.

In 2003, the City University of Hong Kong (the University) undertook a review of its governance in response to the recommendations in the University Grants Committee Higher Education Review Report (the Report), referred to as the Sutherland Report, published in March 2002. The Report recommended: "That the governing body of each university carries out a review of the fitness for purpose of its governance and management structures. Such an exercise will necessarily include a review of the relevant Ordinances and, where appropriate, proposals for legislative changes should be made."

The Report also commented on a number of features of the governing bodies in Hong Kong, one of which was size. The Report stated: "The governing bodies of the universities generally have a membership with numbers which contrast starkly with the small size of decision-making bodies in most private business."

The University established a Review Committee on University Governance and Management (the Committee) in 2003 under the Chairmanship of the Honourable Mr Justice Patrick CHAN with membership drawn from the University Council and independent external advisors. The Committee was charged with the task of reviewing the University's governance structure and to recommend changes where appropriate for the University Council to consider. One of the main recommendations of the Committee was that the size of the University Council be reduced and its composition changed to reflect the changing environment within which the University is now operating.

The Committee's arguments for the proposed changes were as follows:

1. As the supreme governing body, the ultimate responsibility for the Institution rests with the University Council including fiduciary responsibility for the academic integrity and financial health of the University. For practical reasons, the University Council has the power to delegate but is ultimately responsible for the proper functioning of the University. The University Council should be responsible for setting the mission and strategic direction of the University and negotiating the role of the University with the Government. It should also monitor the operation of the

University to ensure that the programme of activities is consistent with its agreed mission.

2. The Committee investigated the, then, current work of the University Council and concluded that it was too heavily involved in operational matters of the University and there should be greater in-depth debate on major strategic issues.
3. If the University Council was to become more proactive and involved in setting the role, mission and strategic directions of the University, the Committee viewed that this could not be done effectively with a body of over 30 members. The Committee was also concerned that the composition with respect to the balance of internal and lay members was not appropriate.
4. The Committee consulted a large number of stakeholders and the majority of the feedback suggested that the current University Council was rather large and that the representation of internal members could be reduced. The Committee believed that, given a greater involvement of the University Council in planning the future direction of the University, its size should be reduced. The views from management could be represented effectively by the President and one or two members of the senior management team. Hence, a shift in the balance of membership towards lay members was recommended.
5. The recommendations on the change to the composition of the University Council were approved by the University Council at its 30th meeting held on 24 November 2003.

Let me brief Members on the contents of the Bill.

The changes proposed in the Bill simply relate to the membership of the University Council. The proposed changes will reduce the number of members from the current maximum of 37 to 20. The existing ordinance specifies the membership as follows:

- President
- Deputy President
- not more than four Vice-Presidents

- not more than five Deans
- not more than three Public Officers
- 18 lay members
- three members of staff
- Chairman of Convocation
- President of the Students' Union

In line with the recommendations of the Committee, the proposed Bill would reduce the size to a total of not more than 20 with a new constitution as follows:

- President
- Deputy President
- one staff elected from the Senate
- one staff elected by all staff
- one student elected by the students
- 15 lay members

Of the 15 lay members seven would be appointed directly by the Chief Executive and eight would be appointed by the Chief Executive on the recommendation of the University Council.

This is the essence of the proposals in the Bill. It is proposed that the amendments to the current ordinance should be introduced on 1 January 2007. This coincides with the expiry of the terms of office of the majority of the current members and will minimize the need for any transitional arrangements arising from the reduction in the size of the University Council.

For Members' information, the majority of the eight University Grants Committee-funded universities in Hong Kong have taken, or are undertaking, a review of their governance as recommended in the Report. Both the University

of Hong Kong and The Chinese University of Hong Kong have completed their reviews and both are reducing the size of their Councils to improve the effectiveness of their governance. The University of Hong Kong has reduced the size of its Council to a maximum of 24 members compared to their previous size of 54. It is understood that The Chinese University of Hong Kong is considering a similar reduction from the existing membership of 57.

I believe the proposals put forward in the Bill will improve the effectiveness of the University Council and enable it to better perform its primary role of setting the mission and strategic direction of the University. The proposals will also improve the governance structure of the University by ensuring that the balance between the lay members and internal members is more appropriate.

For all the reasons mentioned above, I hope Members will support the Bill. Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the City University of Hong Kong (Amendment) Bill 2006 be read the Second time.

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

### **Resumption of Second Reading Debate on Members' Bills**

**PRESIDENT** (in Cantonese): We now resume the Second Reading debate on the Hong Kong Society for the Protection of Children Incorporation (Amendment) Bill 2006.

### **HONG KONG SOCIETY FOR THE PROTECTION OF CHILDREN INCORPORATION (AMENDMENT) BILL 2006**

#### **Resumption of debate on Second Reading which was moved on 21 June 2006**

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Hong Kong Society for the Protection of Children Incorporation (Amendment) Bill 2006 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority 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 motion passed.

**CLERK** (in Cantonese): Hong Kong Society for the Protection of Children Incorporation (Amendment) Bill 2006.

Council went into Committee.

### **Committee Stage**

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

### **HONG KONG SOCIETY FOR THE PROTECTION OF CHILDREN INCORPORATION (AMENDMENT) BILL 2006**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of Hong Kong Society for the Protection of Children Incorporation (Amendment) Bill 2006.

**CLERK** (in Cantonese): Clauses 1 to 6.

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

(Members raised their hands)

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

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority 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 motion passed.

**CHAIRMAN** (in Cantonese): Council now resumes.

Council then resumed.

### **Third Reading of Members' Bills**

**PRESIDENT** (in Cantonese): Members' Bill: Third Reading.

### **HONG KONG SOCIETY FOR THE PROTECTION OF CHILDREN INCORPORATION (AMENDMENT) BILL 2006**

**MR BERNARD CHAN**: Madam President, the

Hong Kong Society for the Protection of Children Incorporation (Amendment) Bill 2006

has passed through Committee without amendment. I move that this Bill be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Hong Kong Society for the Protection of Children Incorporation (Amendment) Bill 2006 be read the Third time and do pass.

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

(Members raise their hands)

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

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion passed.

**CLERK** (in Cantonese): Hong Kong Society for the Protection of Children Incorporation (Amendment) Bill 2006.

## **MEMBERS' MOTIONS**

**PRESIDENT** (in Cantonese): Members' motions. Two proposed resolutions under the Interpretation and General Clauses Ordinance in relation to the extension of the period for amending subsidiary legislation.

First motion: Extension of the period for amending the Public Health (Animals and Birds) (Exhibitions) (Amendment) Regulation 2006.

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

**MR TOMMY CHEUNG** (in Cantonese): Madam President, on behalf of the Subcommittee on Public Health (Animals and Birds) (Exhibitions) (Amendment) Regulation 2006 I move that the motion, proposed under my name and printed on the Agenda, be passed.

In order to allow the Subcommittee to continue its deliberations and submit its report to the House Committee, the Subcommittee agreed that I shall move a motion that the scrutiny period of this Regulation be extended to 8 November 2006.

I so submit. I hope that Members will support this motion.

**Mr Tommy CHEUNG moved the following motion:**

"RESOLVED that in relation to the Public Health (Animals and Birds) (Exhibitions) (Amendment) Regulation 2006, published in the Gazette as Legal Notice No. 167 of 2006 and laid on the table of the Legislative Council on 10 July 2006, the period for amending subsidiary legislation referred to in section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) and deemed to be extended under section 34(3) of that Ordinance, be extended under section 34(4) of that Ordinance to the meeting of 8 November 2006."

**PRESIDENT** (in Cantonese): I now propose the question to you and this is: That the motion moved by Mr Tommy CHEUNG be passed.

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Mr Tommy CHEUNG be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion passed.

**PRESIDENT** (in Cantonese): Second motion: Extension of the period for amending the Food Business (Amendment) Regulation 2006.

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

**MR TOMMY CHEUNG** (in Cantonese): Madam President, I move that the motion proposed under my name be passed, contents of which are printed on the Agenda. During the House Committee meeting of 21 July 2006, Members formed a subcommittee to study the Food Business (Amendment) Regulation 2006, laid on the table of the Legislative Council on 10 July 2006.

To give the Subcommittee sufficient time for deliberations and reporting to the House Committee the results of deliberation, I, in my capacity as the Chairman of the Subcommittee, move that the scrutiny period of the Regulation be extended to 8 November 2006.

Madam President, I sincerely ask Members for their support of the motion.

**Mr Tommy CHEUNG moved the following motion:**

"RESOLVED that in relation to the Food Business (Amendment) Regulation 2006, published in the Gazette as Legal Notice No. 169 of 2006 and laid on the table of the Legislative Council on 10 July 2006, the period for amending subsidiary legislation referred to in section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) and deemed to be extended under section 34(3) of that Ordinance, be extended under section 34(4) of that Ordinance to the meeting of 8 November 2006."

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

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): I now put the question to you 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 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 motion passed.

**PRESIDENT** (in Cantonese): Proposed resolution under the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China.

**PROPOSED RESOLUTION UNDER THE BASIC LAW OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA**

**MR JASPER TSANG** (in Cantonese): President, I move that the motion proposed by myself with regard to amending the Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region be passed.

The Committee on Rules of Procedure has considered whether a procedure should be set up so as to avoid the failure to summon an urgent meeting of a Committee of the Council for the purpose of discussing important issues when need arises, as a result of the Chairman not being available for contact. The Committee on Rules of Procedure proposed that, in case that a certain

Committee member requests for a meeting to discuss an issue of urgent importance, the Secretary of the Committee should be allowed 48 hours to contact the Chairman. If ultimately no contact can be made, the Deputy Chairman should determine whether or not the meeting should be summoned. Should the meeting be summoned, the date, time and venue of the meeting will also be determined. This arrangement should also apply to the Subcommittees under the different Committees of the Council.

The amendments to the Rules of Procedure as recommended by the Committee have been included in the resolution. The House Committee has also accepted the relevant amendments as proposed. I urge that Members give their support to this resolution.

**Mr Jasper TSANG moved the following motion:**

"RESOLVED that the Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region be amended —

- (a) in Rule 79(2), in the English text, by adding "and the place" after "at the time";
- (b) in Rule 79A(4), by repealing "a joint subcommittee appointed under Rule 77(9A) (Panels) and";
- (c) by adding —

**"79B. Determining the Time and the Place of a Meeting of a Committee by the Deputy Chairman of the Committee**

Where a Rule of this Part provides that a committee shall meet at the time and the place determined by the chairman of the committee, if a member of the committee makes a request for a meeting to discuss a specific issue of urgent importance for consideration by the chairman and within 48 hours of the request being made, the chairman cannot be contacted for making any such determination, the determination may be made by the deputy chairman (if any), who may also direct that a shorter notice of the meeting be given as provided in that Rule."

- (d) in Rule 93(e), by adding ", including a joint subcommittee appointed under Rule 77(9A) (Panels)" after "such committees".

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

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): I now put the question to you 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 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 motion passed.

**PRESIDENT** (in Cantonese): Two motions with no legislative effect.

First motion: Opposing the introduction of a Goods and Services Tax.

## **OPPOSING THE INTRODUCTION OF A GOODS AND SERVICES TAX**

**DR YEUNG SUM** (in Cantonese): Madam President, I move that the motion as printed on the Agenda be passed.

Madam President, last week, the Chief Executive remarked in the Legislative Council that the decision to introduce a Goods and Services Tax (GST) or not rested with the Members. I hope that Members can exercise their votes today to reflect the opposition of more than 70% of the public to a GST and to express to the Government the strong opposition that the public cherish against this type of tax.

The Government argues that the tax base in Hong Kong is narrow, but the Democratic Party is not quite agreeable to this. Later on at this meeting, Mr SIN Chung-kai will offer an explanation in this respect on behalf of the Democratic Party. However, it is an iron-clad fact that the Government has been using this as an excuse to draw grass-roots people into the tax net, thus aggravating their livelihood burden. I hope that government officials can refrain from diverting public attention by talking about offering allowances for or waiving water charges and rates. The reason is that I estimate that the burden of grass-roots people, especially those in the middle and lower strata, will certainly increase after the introduction of a GST.

The Government's proposal will definitely aggravate the polarities in wealth in Hong Kong. We know that the consultant commissioned by the Government will certainly assert that a GST will not widen the wealth gap, or indicate that the Government will provide various subsidies. Let me express my point by using a concrete example. The Government proposes to grant a GST allowance of \$2,000 a year to a family earning \$11,000 or less a month. But such an amount is simply unable to off-set the GST expenditure incurred by such a family. It will have to put side a portion of its already meagre income to meet the tax expenditure, so its financial burden will certainly become heavier. As for families earning incomes between \$11,000 and \$20,000, they will be most severely hit by a GST, because there will be no allowance for them and they will not benefit from any tax reduction. But they will have to pay tax for the majority of their expenditure items. Although the Government announced on Monday that it might consider the possibility of exempting transportation, education and medical expenditure from the ambit of a GST, there will still be no relief for grass-roots people from the impacts of the tax. The reason is that according to the 2004-05 Household Expenditure Survey, for the first household-income quartile, the expenditure share on food was 34%. This also explains why the expenditure on food is exempted when GST is introduced in foreign countries as a means to make this tax less regressive. It can thus be seen that the new arrangement recently announced by the Government will not be able to alleviate the Democratic Party's worries in this respect.

The Government's publicity is also marked by obscurity. Madam President, what is most infuriating about the entire consultation is that while the whole proposal is clearly meant for introducing a new tax to increase government revenue, the Government has still repeatedly emphasized that a GST to be introduced will be "revenue neutral" in its first five years of implementation, meaning that the proposal is not meant to increase government revenue, but just to widen the tax base for Hong Kong's long-term development.

If the purpose of introducing a new tax is to cope with social changes, the Government should discuss with the public honestly, as in the case of health care financing and retirement protection. If the policy must really be adjusted to cope with social changes, and if the Government would discuss the issue with the public, I believe it is not a certainty that the public will raise objections. Unfortunately, the Government has chosen a somewhat unsatisfactory approach. The Government tells the public that the introduction of a GST is not intended to increase government revenue. But it failed to make itself convincing. When the public questioned the arrangements relating to the whole proposal and asked for supporting statistics, the Government was simply short of justifications and even accused the public of being irrational. However, the Government has failed to answer one fundamental question throughout: If the purpose is not to increase revenue, why does it still want to introduce a GST, particularly when the state of public finances in Hong Kong has gradually turned stable? The Financial Secretary may have to discuss with us on how taxes are to be reduced a little later.

The Financial Secretary, Mr Henry TANG has, on the one hand, criticized GST opponents of being irrational, but has misled the public on the other. Actually, the Government should tell the public honestly and clearly that the purpose of introducing a GST is to increase revenue — not simply revenue, but a kind of stable revenue. The Government should also answer all the questions asked by the public, telling them, for example, how the huge fiscal reserves will actually be used, so that they can assess the impacts of this tax on them. The Government should not withhold the relevant information and then just tell the public vaguely that the proposal is "revenue neutral" and simply intended to widen the tax base. The Government has adopted a very bad marketing strategy to sell a very bad product this time around. When the public feel that the Government's words are unreasonable and illogical, they will not render their support. This is due to the failure of the Government to do its job well, so please do not shift the blame onto the public.

The poor marketing strategy aside, the Government's proposal is itself totally unacceptable. For example, there will be no exemption for expenditure on food. The Financial Secretary now suggests exempting education and health care expenses, but such an exemption was only put forward as late as this Monday. However, in the absence of any figures and statistics, how can we discuss with the public rationally? The Financial Secretary has even gone so far as to say that if a GST cannot be introduced, it will not be possible to implement small-class teaching and other measures. This is tantamount to blackmailing the public and Members into supporting a GST, and this way of acting is regrettable.

However, the Democratic Party wishes to remind the Government that the proposal we advocate is intended to work within the room made available by the population decline. We will be able to phase in small-class teaching district by district simply by utilizing the existing resources for education. Consequently, the proposal on small-class teaching hitherto advocated by the Democratic Party will not lead to any huge increases in government expenditure. Frankly speaking, the authorities will not implement the idea of small-class teaching that we are still discussing until five years later. When the time comes, the birth rate will have declined further. Therefore, the Government must stop using the lack of money as an excuse for refusing to implement small-class teaching.

During his election campaign, Chief Executive Donald TSANG once remarked that if the economy improved, it would be possible to consider tax reductions. The Financial Secretary's New Year wish, "May Everybody's Wish Come True", has not materialized, and basically, the Government now faces a "financial flood". However, with a fiscal reserve of \$300 billion under his management, the Financial Secretary has still queried us "where does the money come". And, he also bundles up the introduction of a GST, small-class teaching and health care expenditure. This is simply a combination of sticks and carrots. The main purpose is to collect a stable revenue of \$30 billion from the public. Madam President, it was said that tax should be increased when economic conditions were poor, but when the economy is in good shape now, there is still the intention to increase taxes. I cannot but sigh, remarking that the life of Hong Kong people is indeed rather difficult.

In the following part of my speech, I wish to say a few words on the very nature of a GST. Madam President, for a GST, all people, rich and poor alike, will have to pay at the same rate. The rate currently proposed by the Government is 5%. From the perspective of tax to income ratio, a GST is in fact a regressive tax of type, because grass-roots people must spend a larger

portion of their incomes on paying a GST. In other developed countries, most daily necessities are exempt from GST payment, and this can help reduce the regressive nature of the tax. Therefore, if the Government can follow suit, the effects of the regressive nature of the tax can be offset, as in the case of other welfare societies. Since families earning higher incomes have spare money to invest in real estate properties and financial products, they may be exempted. But in the case of grass-roots people, since they spend most of their incomes on consumption and do not have any spare money for savings, their actual tax rate payable will be higher than that applicable to the upper and middle classes. I am referring to the ratio, not the actual amount. From this, we can observe that the Government's current proposal is in fact rather regressive. I have always upheld the principle that taxes should be progressive in nature. Those earning higher incomes should pay more in tax, and those earning lower incomes should pay less or even no tax at all. This is the only way to achieve social equity, and it is only in this way that the Government can have resources to develop various types of services. However, with the introduction of a GST, low-income earners will have to earn more tax in the relative sense. And, the effects of the Government's proposed exemption will also be limited. The Democratic Party cannot accept this in principle.

Finally, Madam President, I wish to talk about the situation upon implementation of a GST in other countries. According to the Government, this type of tax is found in many other countries. But I must point out that though this type of tax may be known by various names in different countries, the tax rate has in fact been rising constantly in most cases — I emphasize that the tax rate has been rising constantly in most cases, and in some Scandinavian countries, the rate may be as high as 25% now. In the United Kingdom, for example, the rate at the time of introduction was only 8%, but it has since increased to 17.6%. In the case of Singapore, the tax rate has risen by 60% from 3% in 1994 to the present 5%. Besides, of the 29 member states of the Economic Co-operation Organization mentioned by the Government, 19 have seen increases in the tax rate — there have been increases in the tax rate in 19 countries. And, only four of the member states get a tax rate lower than that at the time of introduction. The universal experience is that unless the tax is not introduced, otherwise the tax rate will definitely, or in most cases, increase over time.

Madam President, not only are the tax rates in these countries higher than those in Hong Kong, but their tax regimes are also far more complicated than ours. In contrast, tax rate in Hong Kong is lower and our tax regime simpler. This explains precisely why Hong Kong has come to be known as a "Shoppers'

Paradise". If we forcibly introduce a GST, the advantages and characteristics of Hong Kong's tax regime will be compromised, in which case the status of Hong Kong as a "Shoppers' Paradise" will certainly sustain heavy impacts. It has been three months since the Government published the consultation document and the Government has been making many public relation efforts to sell this type of tax. However, the findings of many surveys all indicate that up to this week or last week, almost 80% of the public were still opposing the introduction of a GST. The public obviously find this new tax type extremely unacceptable.

I hope that the Secretary can hear the outcry of our widespread opposition and refrain from forcibly introducing a GST. I so submit. Thank you, Madam President.

**Dr YEUNG Sum moved the following motion: (Translation)**

"That this Council opposes the introduction of a Goods and Services Tax."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by Dr YEUNG Sum be passed.

**PRESIDENT** (in Cantonese): Dr David LI will move an amendment to this motion. The motion and the amendment will now be debated together in a joint debate.

I now call upon Dr David LI to speak and move his amendment.

**DR DAVID LI:** Madam President, I move that Dr YEUNG Sum's motion be amended.

It is three months to the day that the Administration embarked on a nine-month consultation exercise on the need to broaden the tax base, and on the suitability of introducing a Goods and Services Tax (commonly known as "GST") in order to achieve that aim.

The Financial Secretary explained at the time that an unusually long consultation period was necessary in order to allow the community to study the issue of broadening the tax base carefully, rationally and in depth.

The consultation document sets out the Administration's position on the need to broaden our tax base by means of a GST. It also seeks feedback from the community on whether it shares such views and, if not, what options we may explore.

It asks, for example, whether we agree that a GST is an appropriate means to broaden Hong Kong's narrow tax base; what our views are on the proposed GST framework, and on the proposed compensation measures.

In this past week, it was revealed that over 1 300 responses have been received to date. This very powerfully demonstrates the community's interest in participating in the consultation exercise. I have no doubt that many organizations wish to use the remaining period to collect the views of their members before making submissions.

The motion now before us would have the Administration rule out a GST as a means to broaden the tax base. The motion does not ask that the consultation exercise should end. However, it asks us to prejudge a very complex and very important issue.

I submit that it would be irresponsible in the extreme for this Council to support the original motion, unless Members are also willing to put on the record their considered views on the need to broaden the tax base. The International Monetary Fund (IMF) has for many years spoken of the danger of our narrow tax base. What arguments do Members have to refute the IMF?

Some Members may support broadening the tax base, yet oppose a GST. What other measures can we introduce, in line with the principle of maintaining a low and simple tax regime?

With our rapidly-ageing population, the narrowness of our existing tax base is a problem that will only get worse over time. Increasing demands will be placed on Government services such as health care and social welfare. Yet the proportion of the population subject to tax will shrink, unless we make preparations to broaden the tax base.

Some argue that there is no need to act, as the problems are not urgent. Today, our economy is thriving and our revenue sources are strong. However, there is no better time than now to lay a strong foundation for our future.

In addition, broadening our tax base will enhance Hong Kong's international competitiveness. It will enable us to keep in step with the global trend of reducing direct taxation.

Some may feel that international competitiveness is not of interest to them. This, to borrow a phrase from the Secretary for Financial Services and the Treasury, the Honourable Frederick MA, would be short-sighted.

A competitive economy attracts more economic activity. Companies are able to offer more and better jobs for our workforce. We will all benefit.

In preparing its 2002 report, the Advisory Committee on Broadening the Tax Base (the Committee) identified eight widely-accepted principles under which a good tax system should operate: economic neutrality; fairness; effectiveness; efficiency; certainty and simplicity; flexibility; international competitiveness; and finally, revenue yield.

The Committee then considered a number of taxes against these yardsticks, and conducted a public consultation. The options considered included: increasing salaries and profits tax rates; increasing stamp duty on property; reducing salaries tax allowances; increasing rates on property, and introducing taxes on capital gains, interest or dividends.

At the end of that process, the Committee concluded "that a GST is the only new tax with the long capability to broaden the tax base that is not incompatible with Hong Kong's international competitiveness".

Members may believe that the options considered were not very imaginative. Let us then hear other options during the debate today, and through the remaining six months of the consultation.

Recent opinion polls show a large majority in Hong Kong is against a GST. A number of questions have been raised, and deserve a response from the Administration. For example:

- How will the Administration use GST revenue over the long term? Does it intend to increase entitlement programmes in future, or simply maintain existing standards?
- Will rising health service costs be funded through a GST or through other means?

- What is the full administrative cost of implementing a GST, including both public and private costs, and the cost of all relief measures?
- Would a GST deal a blow to our reputation as a shopper's paradise, even with a suitable tourist refund scheme?
- How much will GST affect the poor, given the proposed relief measures?
- Will GST be a burden to business, particularly small and medium enterprises, and if so, should any relief be provided?
- Will GST indeed be a more stable source of revenue?
- Are other measures suggested to date, such as an electricity tax, a viable alternative to a GST?

I am certain that Honourable Members have many more questions to ask. The Administration should take these questions very seriously. Taxation is a compact between all members of society. Hong Kong has thrived on a low and simple tax regime. The Administration must do a better job in explaining why it proposes to introduce new taxes.

I think that this would be a more productive exercise than seeking to stifle debate on the important topic of broadening our tax base.

For that is what this Council will do, if it passes the very negative motion proposed by my good friend, Dr YEUNG Sum.

This Council must not simply reject the consultation, and leave crucial questions unanswered. We cannot let the Administration off so easily.

I very much hope that Members will support my amendment, to encourage the whole community to continue to contribute their valuable ideas to the present consultation exercise.

Madam President, I so submit.

**Dr David LI moved the following amendment: (Translation)**

"To add "urges the Government to continue the public consultation on the introduction of a Goods and Services Tax as a means to broaden the tax base, and if there are other feasible options that are accepted by the majority of the public, this Council" after "That this Council"."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Dr David LI to Dr YEUNG Sum's motion, be passed.

**MR LAU CHIN-SHEK** (in Cantonese): President, on the topic of a sales tax, one can say that those Members and organizations concerned about the livelihood of the lower strata of society are caught in a dilemma. On the one hand, we know very well that a sales tax is regressive in nature and will deal the heaviest blow to grass-roots people and the sandwich classes. On the other hand, we also know that all the policies on improving the livelihood of grass-roots people will require funding. In all our discussions on a sales tax, the challenge we have to face should be how we can avoid, at the same time, adding fuel to the argument that all taxes are evil. The emergence of a social climate against all taxes will of no help in promoting our policy advocacy. Grass-roots organizations and the Government should not be opposed to each other on this issue.

President, the original motion today consists of a mere nine words, but the issues we have to discuss cannot possibly be sorted out in any debate lasting a span of just a few hours. Whatever the voting outcome today may be, the Government, this legislature and even the common masses all cannot dodge the following two fundamental questions. Firstly, to what extent should the Government bear the responsibility of social services and investments? To begin with, to what extent should the Government bear the responsibility of social services and investments? Furthermore, how much are the public prepared to pay in order to provide the Government with enough resources for discharging this duty? That is, secondly, how much are the public prepared to pay in order to provide the Government with enough resources for discharging this duty?

President, some are of the view that globalization enables the Government to diminish the role it plays. But what we observe is that in reality, the case is just the opposite. As also pointed out by the Secretary in his commentary that appeared in major local newspapers yesterday, as competitions intensify, it has become necessary for the Government to invest a great deal of resources in education and technological research. In one feature article of the *Economist* weekly last month, it was pointed out that one of the greatest challenges currently faced by the global economy is how best to ensure a fairer distribution of the fruits of economic growth. It was said that it is especially important to bring concrete improvement to the livelihood of the grassroots and the sandwich classes through welfare provision and taxation policies, or else the progress of globalization will only have to lag behind.

President, there is no such thing as free lunch in the world. Whether the Government's role is to build up a civilized society or a harmonious society, money is invariably a must. From whom should the Government collect taxes? And, how much should it tax? These are the questions that every one of us must answer. I have always maintained that we should all be committed to achieving the common goals of society, and that those who have the means should contribute more, so as to help all those less fortunate in society. A sales tax is undoubtedly a form of common commitment, but the effective tax rate for grass-roots people and the sandwich classes is much higher than that for high-income earners. This runs counter to the principle of "those who have the means pay more", so I have reservations about this type of tax.

President, one third of the nine-month consultation period has already passed. I think the Government must do two things in the coming six months. First, it should step back a bit. The term "sales tax" is much too sensitive. Besides, when sales tax is made the sole focus of discussion, people will fail to see the wood for the trees. If the Government can make a sales tax only one of the options to be discussed and lay the emphasis of consultation on such fundamental issues as the Government's role and the principles of taxation, I believe the discussions will be much more meaningful.

If the Government wants society to discuss Hong Kong's tax regime in a rational manner, the second thing that government officials concerned must do is — setting a good example. The consultation work must not be handled with too much strategem. In the past three months, the public often received many contradictory messages. For example, when the Government marketed a sales

tax among the middle classes, it explained that the tax was not intended to increase government revenue. But when it tried to ward off opposition, it indicated that when the next recession came, the fiscal deficit might easily exceed \$190 billion, so a sales tax must be introduced to increase revenue. Which of these claims is correct anyway? Is the tax "revenue neutral"? Or, is it intended to increase revenue? Maybe, the Government is just too eager to win in the debate, but in so doing, it has achieved the opposite result. I believe that discussions in society will be much more rational if the Government can act sincerely and disclose more statistics to enable the public to judge for themselves the shape of Hong Kong's public finances.

Thank you, President.

**MR RONNY TONG** (in Cantonese): President, the consultation document on introducing a sales tax is entitled "Broadening the Tax Base and Ensuring Our Future Prosperity". But honestly speaking, when I look at this booklet, I find it a bit difficult to understand how broadening the tax base can ever ensure our future prosperity.

Actually, there may not necessarily be any direct relationship between tax revenue and the promotion of prosperity. Two weeks ago, Ms Margaret NG gave me a book entitled *Making Globalization Work*. The author of this book is Joseph STIGLITZ, a renowned economist and Nobel Laureate. As pointed out in this book, the economic theory that a booming economy will necessarily benefit all walks of life has already lost all its credibility. It is a great pity that the SAR Government still seems to believe in this theory.

We should ask everybody, "What is the purpose of taxation?" I totally disagree that taxation should be intended to promote prosperity, because if the latter will end up widening the wealth gap, we should not render out support. Hong Kong is a fine example. I personally think that the main objective of altering the tax base should be the improvement of people's livelihood and our social environment. This should be our real objective. It must never involve the aspect of promotion of prosperity.

In order to improve our tax regime, there are in fact two major fundamental principles which we must not ignore. First, tax revenue must be utilized properly. Second, those who have the means should pay more.

By proper utilization, it means that taxes should not be collected simply for the sake of obtaining revenue. Tax revenue should instead be used to bring about social improvement. We may make reference to countries where a GST is in place, and note the percentage share of public expenditure in their Gross National Product: it is 29% in the United States, 39% in the United Kingdom, 37% in Canada, 38% in Japan, 40% in New Zealand, 39% in Norway and 53% in Sweden, but in Hong Kong, it is just about 21%.

Although the percentage share in Hong Kong is comparatively low, we must not forget that we do not have to incur on expenditure such as national defence and diplomacy — national defence will incur very huge sums — nor are our welfare and health care policies anything to be proud of either. That means that we must ask, "Is our existing tax revenue already sufficient? If not, have we been utilizing our tax revenue properly at all?" I think if the Government wants to introduce taxation increase or improve the tax regime, it must first convince Hong Kong people that it has been making use of its tax revenue properly. If the Government cannot do so, it will be very difficult for us to persuade the masses in Hong Kong to accept any reform of the tax regime.

Another most fundamental principle is that those who have the means should pay more. Actually, as the Financial Secretary Mr TANG should remember, since the very days when we were still the Article 45 Concern Group, the Civic Party has been asserting at every meeting with him that it upholds this fundamental principle. The Government agrees to this principle. As far as my understanding goes, the Government has always claimed that it agrees to this principle. But its deeds are not quite in accordance with the very principle it endorses. Members will all agree that sales tax itself is not a tax that can make those who have the means pay more. A sales tax is a regressive tax, which implies that the tax rate for poor people will be proportionately higher. Owing to this factor, when such a tax is proposed, should the financial implications to be brought about the regressive nature of this tax be first addressed?

It is a pity that in the consultation document, I cannot see the mentioning of any adequate protection measures which can ensure that the financial losses of low-income families, or families in the lower-middle income group, will not incur a consequent increase. The following example can illustrate my point. In the case of a so-called middle-income family mentioned in the Government's consultation document, it will have to incur an additional expenditure of \$6,000 a year if the tax rate is 5%. However, whatever computations one may make,

one fails to see how the subsidies proposed by the Government can add up to \$6,000. Amongst families in the lower-middle income group, many do not actually have the chance to pay any rates. For this reason, the amount of \$3,000 should not be counted at all. If this problem cannot be tackled right from the onset, or if the principle of making those who have the means pay more cannot be met, then we are bound to conclude that the whole thing will be built on very delicate ground. Therefore, it is small wonder there is such huge reverberations in society.

Do we have any other remedies? I believe so. We can actually tackle the issue of widening the tax base by introducing integrated reforms to the overall tax regime. We have actually mentioned this before, and I hope that others will not think that I am trying to raise an old issue again. It was actually wrong to abolish estate duty because this was the only tax type that could make those having the means pay more. Have Members ever come across any case in which a person earning just \$4,000 a month was required to pay estate duty? But then, we abolished this type of tax. Can this type of tax widen the tax base? The answer is certainly yes, because even if one does not have to pay any salaries tax or profits tax, one must still pay estate duty. But we nevertheless abolished it.

Regarding the widening of the tax base, there are actually many other possibilities for us to consider. The Civic Party once proposed to introduce an energy tax, that is, an electricity tariff. But I wish to clarify here that our intention is not to turn an energy tax into the effect of a sales tax, because if we introduce an energy tax, business operators will have to pay more in electricity tariffs and they will shift the additional costs to Hong Kong people. This will in effect turn out to be something like a sales tax. Therefore, I must clarify that this is not the intent for the Civic Party's proposal. We only wish to implement the principle of making those who have the means pay more. As for other types of tax revenue, we may consider the introduction of a capital gains tax or even an export tax.

However, I think that if we recognize the two fundamental principles mentioned just now, we must get back into the right track in our discussions. What actually is the purpose of altering the tax regime? Our purpose should not be the promotion of prosperity. Rather, the aim should be to accord fair and just treatment to people's livelihood. If this can be achieved, the door of discussions will always be open.

**MR JAMES TIEN** (in Cantonese): Madam President, the world image of Hong Kong is well borne out by ratings of international rating organizations as the freest economy in the whole world, hitherto noted for its simple and low tax regime. And, our profits tax is not progressive in nature, and there are no such taxes as dividends tax and capital gains tax. How can all this be possible in Hong Kong? I think the reasons are that the Hong Kong Government has been upholding the policy of "small government, big market", that we do not have to incur any expenditure on national defence and diplomacy, and that there is no need for us to hand over any of our revenue to the Central Authorities. Therefore, when reviewing our tax regime, we are not bound to adopt policies practised in other countries. We should not follow what Dr David LI advocates in his amendment — he has now left his seat thinking that it is just because something is advocated by foreign experts, then we must follow suit.

On the introduction of a sales tax, the Government has repeatedly asked us, "If a sales tax is not imposed, where can we get the money?" Actually, the introduction of a sales tax mainly involves two issues. The first one is the Government's claim that our tax base is narrow. The second is the ageing of our population. However, I think the most important issue does not lie here. Whether or not the tax base is really narrow, we can always hold further discussions to find out the answer. As for the ageing of our population, there is still time for us to sort things out. Therefore, the most important thing for us to consider now is whether there is enough money to cope with our expenditure. If the Government really cannot make ends meet now, then as responsible political parties or Legislative Council Members, we must of course help the Government solve the problem. But if the Government already has enough money, why should we still have to give consideration today?

Madam President, let me refer to the table listing the sources of government revenue to find out whether or not the Government has enough money. In 2005-2006, the sources of government revenue were \$70 billion from profits tax, some \$40 billion from salaries tax, \$2.9 billion from land premiums, some \$14 billion from rates, \$17.9 billion from stamp duties and \$11.9 billion from betting duty. We can see that all these sources of tax revenue are very stable, except that we have not seen the return rate of the Exchange Fund. In 1997, our Exchange Fund stood at \$650 billion only. But it has increased to \$1,100 billion by now. The average return rate up to this moment is 6.6%, meaning an amount close to \$70 billion. We are of the view that if the Government can allocate this entire sum of \$70 billion for use, rather than just allocating an average of roughly 30% of it as before, there will be an

extra \$40 billion at our disposal. On the basis of all these figures, I can say that the Government does not have to worry about where to get the money for meeting its annual expenditure.

The Government frequently says that we must save and prepare for rainy days, and that political parties must not behave like ostriches, so a sales tax must be introduced. However, although Hong Kong is just a place with a population of 7 million, the Government already possesses \$1,100 billion of reserves and also the Exchange Fund. Our ranking is just next to Singapore, which has a population smaller than ours. I think there is no need for the Government to worry about any lack of money. If the Government still says so despite this \$1,100 billion, I believe many people will feel that our Government is simply a miser who is so obese that it cannot even pull on a sock. People will probably think that after fondling with the money in its left pocket, it would still say often that since the money does not belong to its right pocket, it is still short of money. The Government frequently claims that the Exchange Fund should be used for defending the Hong Kong Dollar. But even the Government itself has admitted that some \$200 billion will be enough for the purpose. And, we in the Liberal Party is not asking the Government to spend all the \$1,100 billion either. We are simply saying that it should be enough to allocate all the investment return of \$70 billion for use. And, there is no need for any continuous expansion of the \$1,100 billion anyway. We will then spend about \$200 billion a year, and the \$1,100 billion will be enough for Hong Kong to last the rainy days.

What is more, since the reunification nine years ago, there has been a discrepancy between the closing balance and the revised estimate every year, ranging from \$1.3 billion in 1998-1999 to \$11.6 billion in 1999-2000. And, the discrepancy has invariably been due to the Government's underestimation of the closing balance rather than the revised estimate. While I think it is of course important for the Government to be prudent, but should it be prudent to the extent of intimating us, making people think that it is crying "wolf" all the time?

Madam President, I also want to discuss the issue of our narrow tax base. The Government claims that since there are 7 million people in Hong Kong and only 1.2 million people out of the 3.4 million working population have to pay salaries tax, the tax base is narrow. There is no doubt that these 1.2 million taxpayers pay as much as \$37.5 billion in salaries tax. But the rest of the common masses also pay other taxes, as much as \$14 billion in rates, \$29.8 billion in stamp duties and betting duty, \$14.5 billion in 3 000 government fees

and charges and some \$10 billion in various duties levied on commodities such as tobacco, alcoholic beverages and vehicles. And, coupled with the \$70 billion mentioned just now, I therefore believe that although some people do not have to pay any salaries tax, they must still pay other forms of taxation. Therefore, on the issue of whether our tax base is really narrow, we can still discuss further.

I also wish to say a few words in response on the topic of ageing population. According to the Government, the number of people aged 65 or above was 84 000 in 2005. By 2033, that is, 27 years from now, the number of people in this age group will be 2.24 million. Therefore, something must be done. The Liberal Party agrees entirely. However, we are of the view that the main problem faced by senior citizens is related to health care. In that case, can we actually try to tackle their health care problem by means of health care financing or other arrangements? If yes, then we will be able to solve the main problem faced by senior citizens. The small number of remaining problems which are brought about by increases in the elderly population, and which the Government must solve, are simply welfare issues. I observe that at present, only about 200 000 out of the 1.1 million elderly people are in receipt of Comprehensive Social Security Assistance (CSSA). This means that not every senior citizen is in receipt of CSSA. What is more, there is still 27 years to go before 2033 and it will take only two or three years to implement a sales tax. Therefore, we can actually discuss the introduction of such a tax at a later time.

Lastly, Madam President, the Liberal Party wishes to point out that we would support Dr YEUNG Sum's original motion because public opinions are clearly against the introduction of a sales tax. Dr YEUNG Sum's original motion, however, does not ask for the cessation of consultation. I have stated clearly at the very beginning that in view of the clear opinions of the public, the Government should really stop the consultation exercise lest it should become the target of criticisms. However, the Government has turned down my well-intentioned advice. This is fine with me. Just let it continue to be the target of criticisms. It may as well continue with the consultation exercise until March next year. Therefore, we will support Dr YEUNG Sum's original motion.

Finally, Secretary Frederick MA said we were aiming for votes, but I think we are just standing up for our constituents in the various industries. If the Secretary fails even to understand this point, he may really be a bit naïve. Thank you, Madam President.

**MR WONG KWOK-HING** (in Cantonese): On the introduction of a sales tax, the Hong Kong Federation of Trade Unions (FTU) has remained opposed to it for a decade or so. Miss CHAN Yuen-han, who is sitting next to me, is the Director of the Social Policies Committee under the FTU and I am its Vice-Director. Every year when we discuss the Budget for the past 10 more years, we would advocate the principle of vertical fairness. This means that those who earn more and those with the means should pay a bit more. Then the Government, making use of its taxation revenue, should seek to redistribute wealth, so as to assist the lower strata who can only earn very little income due to their low abilities.

However, a sales tax is a regressive tax rather than a progressive one, and even people with very little income will fall into the tax net. If the Financial Secretary succeeds in introducing a sales tax, all the several million people in Hong Kong will become taxpayers, regardless of wealth, sex, age and whether they are under any employment. It is not true to say that people do not want to pay tax. They simply do not have the means. It is all the question of financial ability. We therefore maintain that regressive taxes such as a sales tax should not be introduced.

We instead hope that the Government can consider the matter from another perspective. Should those who have the means, the high-income strata and enterprises be required to pay a bit more? If the Government really wants to introduce more tax types and prevent the tax base from becoming too narrow, then, logically, it should not have abolished estate duty last year. After narrowing the tax base, the authorities now want to consult the public on the introduction of a sales tax. There is really a problem in logic here. What is more, instead of offering other options, the Government has only proposed one tax type for the purpose. Why do the authorities not provide the public with a greater number of options? In this connection, we have actually been proposing year after year that consideration should be given to levying more tax on luxury goods. Should we, for example, also consider the introduction of progressive tax bands and a capital gains tax? We may also give thoughts to a dividends tax and profits tax. We have made many proposals, but the Government has not been listening to us at all. Therefore, it is not true to say that we have not put forward any advice on introducing new tax types and broadening the tax base. We have offered lots of views already, the only problem is that the Financial Secretary has never listened to us. This is very much regrettable.

What is more, although the economy of Hong Kong has started to recover, the broad masses of employees and grass-roots people have still failed to share the fruit of economic recovery. Although the problems of wage freeze and wage reduction have seen slight alleviation, many people are still unable to make ends meet. Some 300 000 people are still earning less than \$5,000 a month, which is below the CSSA level. That being the case, if the Government refrains from finding means to tackle the disparity in wealth, allowing the wealth gap to widen and the Gini Coefficient to increase, while still intending to levy taxes on the broad masses of low-income earners, how can it ever gain support from the people?

We in the labour sector have been strongly urging the Government to enact legislation on a minimum wage level. But it has sought to defer all discussions until two years later. The Government has disappointed the people in this regard, but at the same time it wants to introduce a sales tax. In that case, how can it gain the people's support? How can it prevent the decline of its popularity? We therefore maintain that the Government must be people-based in its governance. Actually, the Government should enact legislation on a minimum wage level as soon as possible rather than trying to introduce a sales tax. It is only in this way that it can gain support from its people.

Meanwhile, we observe that the imposition of a sales tax in other countries is invariably accompanied by a whole set of supporting measures, for the levying of a sales tax simply does not stand alone. I have recently visited the United Kingdom and France. The rates of the sales tax in these two countries are both very high — 17.5% in the United Kingdom and 19.6% in France. But there is very little public discontent in both cases. Why? The reason is that their social security and welfare systems are very sound. There are unemployment relief and a minimum wage level. Their social welfare systems can offer comprehensive protection, so the levying of a sales tax is not so much a problem. However, such supporting measures are absent in Hong Kong. The Government's introduction of a sales tax will certainly lead to strong grievances and public outcries. Another point is that sales tax is not imposed in our neighbouring places. If we introduce a sales tax, will people be encouraged to spend money in Shenzhen and Macao? What are we going to do when this really happens? What will become of the retail industry in Hong Kong? This will become a very great problem.

We have recently convened many residents' meetings in various districts on this proposal of the Financial Secretary. Wherever we go, we will hear residents' strong opposition. Residents all asked us to advise the Financial Secretary that he should be content with being the "King of Fortune" instead of trying to become the "King of Ten Thousand Taxes", for if the Financial Secretary succeeds in imposing a sales tax, people will have to pay "ten thousand taxes". When there are "ten thousand taxes", the Financial Secretary will become the "King of Ten Thousand Taxes". In that case, he will be "condemned for ten thousand years". Therefore, I for one do not want him to become the "King of Ten Thousand Taxes". I hope that he can just continue to be the "King of Fortune". Maybe, he could move one rung up the ladder of the officialdom in the future, this we cannot tell, but he must not introduce a sales tax because this will not gain him support from the people. I hope that the "King of Fortune" can heed our well-intentioned advice. Thank you, President.

**MR VINCENT FANG** (in Cantonese): Madam President, first of all, I wish to declare that I am the Chairman of the Coalition Against Sales Tax (the Coalition). This organization was formed long before I was returned to the Legislative Council by the wholesale and retail functional sector. In other words, I was already the Chairman of the Coalition even before the Government launched the consultation exercise on the introduction of a sales tax. My position on this topic is therefore very sharp and clear.

All members of the Coalition, including me, are opposed to the introduction of a sales tax, because from the experience of the 130 or so countries where a sales tax is imposed, we can observe that the introduction of a sales tax will lead to immediate economic decline, despite the fact that unlike Hong Kong, their economies do not depend solely on the services industries and some of them are even financially stronger than Hong Kong. Some of these countries have still failed to recover after a very long time and there have been no marked improvements to government finances.

The tax regimes of these countries are rather complex in most cases, and their overall tax rates are high. They all hope that the introduction of a sales tax can simplify their tax regimes, lower their overall tax rates and in turn upgrade their competitive edge. Hong Kong's simple tax regime and low tax rate have always been other countries' target of emulation. I really cannot see why we

should seek to ruin our own competitive edge by following the examples of other countries.

Since the launching of consultation on 18 July, the Liberal Party, the Coalition and I myself have all been rendering our support for the consultation, and we have even assisted in collecting opinions for submission to the Government before the end of the consultation period.

We hope that the Government can adopt an open attitude and conduct a comprehensive, objective and sincere consultation exercise. We further hope that it can decide on the introduction of a sales tax or otherwise only after listening to the views of all sectors, instead of constantly putting forward piecemeal amendments to its proposal and making offer for various minor benefits after hearing the voices of opposition. I hope that if the consultation findings indicate that the majority of Hong Kong people are against the introduction of a sales tax, this Government, which takes "governance for the people" as its guiding principle, can really respect the opinion of the public.

During this period, the Coalition, various political parties, organizations, chambers of commerce, companies and individuals have all along been offering many different kinds of advice on ensuring the stability of government revenue. But the Government has listened selectively to its apologists only, dismissing all opponents as being irrational and unable to offer any constructive advice. For this reason, therefore, in the few minutes left, I wish to repeat several viewpoints, just to discharge my duty as a Legislative Council Member, industry representative, businessman and Hong Kong resident.

The main reason underlying the Government's proposal on introducing a sales tax is that the tax base in Hong Kong is too narrow. However, I am of the view that Hong Kong's tax base is, as already pointed out by Mr James TIEN just now, not at all narrow. The numbers of companies and individuals paying direct taxes do seem to suggest a very tax base. But Members must not ignore the fact that a good part of the Government's revenue actually comes from indirect taxes. In 2005, for example, more than 66% of our government revenue was from indirect taxes.

The Government argues that it is necessary to make savings to counteract impacts similar to the Asian financial turmoil, as well as the effect of the huge health care expenditure necessitated by population ageing and our rising

education expenditure. However, economists do not think that any similar financial turmoil is likely to occur, not to mention the fact that while Hong Kong possesses more than a thousand billion of fiscal reserves and has an annual surplus of several dozen billion dollars, it is a city not having to incur any national defence expenditure.

Population ageing is a fact. But while the Government explains that the purpose of introducing a sales tax is to care for the elderly, it at the same time requires retirees to share the burden of a sales tax. All this is simply contradictory.

In order to cope with the huge health care expenditure, the Legislative Council and society at large have already come to a consensus on making use of health care financing and public-private partnership as a means of reducing the Government's health care expenditure and resolving this problem.

We also propose that the Government amend its population policy, so that talents with stronger financial ability can be introduced to fill up the unused portion of the daily 150-One Way Permit quota intended for mainland people seeking family reunion in Hong Kong.

The business sector also point out that if the Government is really worried about the instability of direct taxes, we do not mind even if the Government may introduce progressive taxes. The reason is that only a vibrant economy capable of sustainable development can bring about social stability and a satisfactory business environment. Government revenue will then become stable and increase continuously.

Although Legislative Council motions do not carry any legislative effect, I still hope that the Government can listen carefully to our views. With these remarks, I support Dr YEUNG Sum's original motion on opposing the introduction of a Goods and Services Tax. Thank you, Madam President.

**MISS TAM HEUNG-MAN** (in Cantonese): Madam President, first of all, I wish to thank Dr YEUNG Sum for moving this motion on opposing the introduction of a sales tax. In my speech today, I shall focus on the views of the accounting sector about a sales tax and also my opinions on whether the consultation exercise relating to this tax should continue.

The public generally think that the accounting sector will be the greatest beneficiary of a sales tax. They all suppose that the accounting sector will support the Government's proposal without any reservation whatsoever. However, the world is always full of surprises. Not all accountants are in favour of such a tax, and there are many who in fact oppose to the proposal.

In mid-August, I conducted a questionnaire survey on the accounting sector to gauge my fellow accountants' views about the introduction of a sales tax. According to the interim findings, more than 60% of the respondents were against the Government's proposal. In the case of both practising Certified Public Accountants and non-practising Certified Public Accountants, the rate of opposition is both higher than 60%.

The survey also reveals that most respondents were of the view that public finances in Hong Kong were marked by structural problems. While they did not think that the problems could be solved solely by broadening the tax base, they maintained that public expenditure must be controlled at the same time, so as to enhance the efficacy of public spending. The Financial Secretary and the Secretary for Financial Services and the Treasury must really make more efforts in this respect.

Many accountants agree with the Government that it is necessary to broaden Hong Kong's tax base. However, they do not think that the introduction of a sales tax should be the only means. According to the surveys I have conducted, accountants think that a capital gains tax and a property gains tax should be given priority consideration as means of broadening the tax base. The accounting sector also proposes to introduce a progressive profits tax for the purpose of increasing government revenue.

Like the common masses, the accounting sector is also worried that once a sales tax is introduced, Hong Kong as a Shoppers' Paradise may lose its luster and this may cast negative impacts on the economy. The administrative costs associated with the introduction of a sales tax will exert immense pressure on business operators.

On the other hand, some accountants told me privately that the extra business brought by a sales tax to the accounting profession may not be as profitable as it looks. The reason is that the sales tax accounting of an enterprise will involve extremely onerous procedures, requiring lots of manpower and time. The accounting sector is currently facing an acute

manpower shortage and competition is very keen. It may not be possible to shift all the additional costs to clients, so in the end, this may affect profits.

Madam President, I notice that many political parties have been advising the Government to abort the consultation exercise. As a taxation professional, I do not think that the consultation exercise should have to be ended immediately. In this regard, I share the same opinion with Secretary Frederick MA. The reason is that the tax regime of Hong Kong is not satisfactory enough and the tax base is indeed very narrow. That is why it is worthwhile to hold discussions on broadening the tax base. It will be a great pity if the consultation exercise were aborted all of a sudden.

That said, we should, instead of adopting the past approach of focusing only on a sales tax as well as various tax relief and reduction measures, examine a much more profound issue, that is, the question of whether or not Hong Kong needs to broaden its tax base and if yes, what options of tax types are there.

During a radio interview this Sunday, Secretary Frederick MA remarked that it would be irresponsible to stop the consultation on a sales tax now. I agree with him because it is our duty to ensure the soundness of Hong Kong's public finances. And, I also agree that the consultation on broadening our tax base should continue.

My advice is that the Government should put forward a greater number of options on broadening the tax base for public consideration. I frankly cannot understand why the Government should focus only a sales tax instead of also considering other options such as a capital gains tax, a property gains tax and even a green tax. Even if the Government thinks that all these taxes are not sufficient to broaden the tax base, it should still offer an explanation to the public. How can the Government refuse to seriously consider the views of society, especially the opinions of the accounting sector, which possesses more professional expertise in taxation than others?

A couple of days ago, I learnt from the mass media that the Financial Secretary intended to put forward other proposed measures on broadening the tax base for discussions by society at large. It will be very good news if he is really going to do so. This can at least show that the Government has heeded the opinions of the public. I hope that when giving his reply later on, the Financial Secretary can explain to us his views on this.

Madam President, the consultation period will end in March next year. There is still five months to go from now, so the Government should make more proactive efforts to promote discussions. There is still plenty of time to further market the introduction of a sales tax.

Madam President, I so submit. Thank you, Madam President.

**MS LI FUNG-YING** (in Cantonese): President, the Financial Secretary's consultation document on introducing a Goods and Services Tax (GST) has aroused very strong opposition both inside and outside this legislature. The spates of opposition emerging in society have led the Financial Secretary and the Chief Executive to make public comments one after another, emphasizing that the Government is obliged to prepare for rainy days by broadening the tax base, so as to meet the challenges brought about by our ageing population. They have also remarked that if society thinks that a GST is not viable, it should put forward alternative proposals.

I am greatly puzzled by all these remarks because they are vastly different from what I understand to be the Government's position on the introduction of a GST. Following the Government's publication of the consultation document in July this year, the Financial Secretary held a number of meetings with Legislative Council Members to gauge their views. The Financial Secretary made it very clear at that time that he would only listen to views about the specific proposal on introducing a GST, and that no other issues would be considered. Therefore, as far as my understanding goes, the position of the Government is that society can only choose between supporting or opposing the introduction of a GST and recommend improvements based on the Government's original proposal. In other words, any other consideration would be non-existent.

The attitude posed by the Financial Secretary when consulting Members was that discussions would be confined to the technical feasibility of introducing a GST. This is not desirable at all. Before discussing the introduction of a GST, I reckon that we must first sort out a number of fundamental problems.

The first one is the Government's principle in handling its fiscal surpluses. According to the consultation document, the introduction of a GST is mainly intended to broaden the tax base and ensure the stability of government revenue, so as to prevent any huge fluctuations on government revenue in the wake of

cyclical economic changes. At present, the Government seeks to protect itself against any decline in revenue or other possible impacts mainly by savings, amassing surpluses and building up huge fiscal reserves. If a GST can really serve as a stable source of government revenue, the amounts of savings the Government must hoard up could certainly be reduced. A GST will affect the Government's fundamental policy of handling its fiscal surpluses and reserves, I believe that the Government cannot evade this fundamental issue, and it should explain to the public its principle of using surpluses and reserves after the introduction of a GST.

In the consultation document, the Government mentions the other objective of introducing a GST — to cope with the challenges brought about by the ageing population. Ironically, however, nowhere in the entire consultation document can we find any visions and directions relating to how the Government is going to deal with the ageing population. The only thing that is found is that everyone will get involved after the introduction of a GST, with the tax net being extended to elderly people. If the general inclusion of elderly people in the tax net is considered a means of meeting the challenges brought about the ageing population, then I must say that the Government is not following the direction it should follow.

When trying to adjust the tax regime, the Government has one fundamental question to answer. Will the adjustment widen the wealth gap in Hong Kong, or will it alleviate the disparity in wealth? In the consultation document, the Financial Secretary indeed proposes to offer cash subsidies to low-income families. But even with such subsidies, it will remain a fact that the tax will affect grass-roots people far more than it affects the upper and middle classes. If the Government wants to introduce a GST, it must explain why the tax will not lead to the worsening of the already further aggravated and even alarming disparity in wealth.

Yesterday, I read a newspaper article on the introduction of a GST, published under the name of the Financial Secretary. In this article, the issue of education is dragged in. It is pointed out that only 18% of Hong Kong students can now enter university, and that without stable revenue, it will be difficult for the Government to increase its commitment to education provision on the long term. The implication is that it will not be possible to raise the university admission rate unless this new tax is introduced. I hope that when giving his reply later on, the Financial Secretary can explain the relevant government policy. Why must we first introduce the new tax before we can increase the

university admission rate of local students? Why does it seem affordable currently in using public money to boost the admission of non-local students to universities in Hong Kong?

Madam President, I do not agree with the Government that opponents of a GST must put forward proposals on dealing with our narrow tax base and ageing population. Any responsible government should not treat dissenting views in such a manner, because the fundamental duty of a government is to put forward sound policies for governance. No government should simply give up and lay the blame on others once its policies come under any criticisms. Also, I do not agree to the proposal in the amendment either, because no alternative proposals are set out in the consultation document to enable the public to compare the pros and cons and make their choices.

Madam President, I so submit.

**DR LUI MING-WAH** (in Cantonese): On 18 July, Financial Secretary Henry TANG formally announced a scheme on introducing a sales tax, proposing to levy tax comprehensively on transaction segments relating to production, wholesale, retail and services delivery. The consultation document has since been met with the fierce and unanimous opposition of various social sectors. No matter what, the important thing is that the introduction of a sales tax will alter the long-standing taxation principle and tradition in Hong Kong and produce far-reaching consequences on its economic development and people's livelihood. The introduction of this tax must be seriously considered.

The Government's rationale is that the tax base of Hong Kong is narrow and this will pose risks to government finances in the long run. The introduction of a sales tax will help stabilize government revenue and reduce the pressure of cutting public expenditure at times of economic downturn in the future. Furthermore, the impacts on the Government's long-term planning and the quality of social services will also lessened. The Government has repeatedly emphasized that the introduction of a sales tax is a tax reform and the ultimate purpose is to lighten the impacts of economic fluctuations on government revenue rather than increasing the revenue of the Government.

The Government's active attempts to stabilize revenue in the hope of mitigating the inherent problems faced by our public finances are indeed a

reflection of its sense of responsibility. However, the Government seems to have overlooked the fact that while salaries tax, profits tax and land proceeds are admittedly sources of revenue highly susceptible to the impacts of cyclical economic fluctuations, consumer spending and the production and services of enterprises will similarly shrink at times of economic sluggishness, thereby directly affecting government revenue. The intention of the Government to protect its revenue against the impacts of cyclical economic fluctuations by introducing a sales tax casts doubt on whether its plan will ever work at all. Secondly, the Government claims that the introduction of a sales tax will not bring any sizeable revenue to the Treasury and achieve the effect of drastically increasing taxation revenue. If this is true, what is the point in taking so much trouble to reform the tax regime? If the introduction of a sales tax is not meant to increase Treasury revenue, can the Government guarantee that it will plough all the sales tax proceeds every year back into social investments without increasing the tax rate? Otherwise, what it proposes to offer in the first five years after the introduction of a sales tax will just be baits to induce people to accept this new tax.

Obviously, public opinions are completely different from the Government's viewpoints. Society generally thinks that a sales tax is a regressive tax, meaning that the actual tax rate will drop as income increases. As a result, the actual tax burden of poor people will be heavier than that of the rich. This runs counter to the principle of "making those who have the means pay more" and not only this, the uneven distribution of wealth will also be intensified, thus further widening the wealth gap and resulting in social conflicts. What is more, a sales tax will also lead to rising prices of goods, adding to the pressure of inflation and the burden on people's livelihood. Rising goods prices will in turn reduce consumption desire and demand, causing business turnovers of the consumption industries to drop as a consequence, thus dealing a severe blow to retail industries in Hong Kong.

The Government regards a sales tax as an effective drug with a bitter taste, but the public view the tax as a dreaded beast. These two viewpoints are completely at odds with each other. Discussions on the introduction of a sales tax have dragged on for two decades, but every time, little result came of it amidst arguments and controversies. The reason is that the introduction of a new tax at times of recession will add to people's already heavy burden, so dissensions in society are bound to be very strong and fierce. But if the introduction of a sales tax is proposed at times of economic boom and when the Government records fiscal surpluses, people will likewise query, "Since there is

now so much revenue for the Government, why does it still want to introduce a new tax to fleece the people of their flesh and blood for its own well-being?" It is thus evident that it is quite difficult to look for a suitable opportunity for introducing a new tax. And, the resultant political effects must not be underestimated.

A sales tax is admittedly found in many economically advanced countries in the world, but the economies of these countries are highly developed and structurally sound, with very limited room for annual economic growth while increase in taxation will not meet expenditure. Consequently, the governments of these countries are forced to introduce new taxes, such as a sales tax, in order to cope with their colossal public expenditure which is ever-increasing. But the case of Hong Kong is entirely different. Since the 1980s, there has been a huge outflow of manufacturing industries, and our economy has come to be excessively reliant on services industries. For this reason, our economy is susceptible to the effects of external factors, and has thus directly affected the Government's tax revenue. In order to enable government revenue to be more stable, Hong Kong must be provided with extensive room for development. One of the measures which is most acceptable to the public is for the Government to assist the development of new industries through a process of economic restructuring. The export of goods and services can then be relied upon to create social wealth and employment opportunities. That way, the economic fluctuations resulting from the structural defects of our economy can be reduced. This is the only way for maintaining the stability of public finances. And, only such a policy can be described as a proper economic policy. If we seek to stabilize revenue by reforming the tax regime, we will just be playing a game of figures, the trick of which is moving money from one pocket to another. There will be no consequent increase in social wealth and resources. In the end, only the Government will benefit and all people are bound to suffer. Grievances will emerge as a result, adversely affecting social stability and economic development. The negative impacts must not be underestimated. The Government should ponder over it.

President, I so submit. Thank you.

**DR KWOK KA-KI** (in Cantonese): Madam President, since the start of this debate, that is, since Dr YEUNG Sum first spoke on this debate motion, I have not heard any word of support from any Member for the Goods and Services Tax (GST) brought up by the Financial Secretary. I do not know whether or not this

explains why we cannot even see him in the Chamber now. In any case, this does not matter, some of his colleagues are still listening to us.

IF we look at the consultation document published by the Government on 17 July, two questions are raised therein for us to consider. The first one is whether Hong Kong must reform its tax regime. The second one is whether it is necessary to introduce a GST. Such are the questions raised, but the Government actually has something else in mind. Hong Kong must reform its tax regime, but this does not necessarily mean the introduction of a GST. However, the Government has already made the choice for us. Every time when the Financial Secretary, Secretary Frederick MA or any other government officials speak publicly, they will invariably remark: first, one will be myopic if one does not agree to the need for reforming Hong Kong's tax regime or admit that our tax base is too narrow; and, second, one will simply be lagging behind the times and outdated if one does not recognize a GST as the one and only option.

I agree to the first analysis. The tax base of Hong Kong is indeed too narrow and must be reformed. But I do not buy the "natural" and unilateral conclusion drawn by the Government, that is, I do not agree that Hong Kong must introduce a GST. Originally, so-called professionals like us are basically the Government's lobbying targets, because it has already made it clear that the bulk of taxes are now paid by the middle classes and large business corporations, and that in order to relieve the pressure on the middle classes, it has come up with the idea of introducing a GST. That way, it says, the middle classes can pay less tax.

But for reasons unknown, the public do not quite find its argument acceptable. Many representatives of the middle classes share a view, that of opposition to the introduction of a GST. There are two reasons. First, they cannot see how a GST can assist Hong Kong in its long-term development. Second, they perhaps also think that this type of tax is regressive in nature, marked by great unfairness. These two reasons taken together have caused the general public and even the middle classes to find the introduction of a GST unacceptable.

The Government also has certain viewpoints. Actually, the consultation document seems to suggest that there are no taxes whatsoever on goods and services in Hong Kong. But if we read page 6 of the consultation document, where Hong Kong is compared with members of the Economic Co-operation

Organization, it can be observed that there is actually a certain type of taxes, called consumption tax, in the tax regime of Hong Kong. The rate of such a tax can be as high as 17.8%. When we fix consumption tax, many taxes relating to goods and services are included in it. For example, there are betting duty, hotel accommodation tax, air passenger departure tax, vehicle sales tax and so on. Why do I have to bring up this point? The reason is that the Government is not correct in claiming that there are no taxes on goods and services in Hong Kong. Quite the contrary, such taxes have always been levied on many goods. Some examples are the First Registration Tax for vehicles, tobacco duty, alcohol duty and other duties on high-end cosmetics. Many such taxes existed for long. What is being proposed is just to broaden this tax base, the tax base of goods and services, extending its focus from high-end or financially capable people to the common masses. This is a fundamental change.

We appreciate that there is a need for Hong Kong to maintain a low tax rate and its competitiveness. Nowadays, we in Hong Kong are proud of having a flexible and free market. It is not at all easy to maintain all this. Every time when we refer to our competitiveness and high degree of market freedom, they have actually found their basis on the direct and simple tax regime we have been upholding. Will all this still be the situation in Hong Kong after the introduction of a GST? I doubt it. I do not belong to the business sector, but I agree with those Members from this sector that Hong Kong must face up to one very big challenge now, involving that we must find out how we can sustain our tourism industries and services industries. And, in order to sustain these industries, we must do one thing — to see whether or not our goods and market can continue to attract others to come.

I have recently heard a story. Some Members and I once went to Singapore, mainly for a fact-finding mission on health care financing. When we talked with some Singaporean government officials, we learnt of something very interesting — they would come to Hong Kong every year for shopping. I asked them why. They replied that first, they liked Hong Kong as a place for sightseeing; and, second, there was no GST in Hong Kong. A certain Singaporean government official even voted with his feet. He would not do any shopping in Singapore and whenever he saw anything nice, he would put it down on to a list and do the shopping in Hong Kong later.

Secretary, do you understand what I am saying? What we are being asked to do now will definitely affect Hong Kong's long-term development as the freest economy and the most attractive centre of investments and consumption for tourists or other people.

As for the narrow tax base, many Members have put forward their views just now. There are in fact many options, such as the introduction of progressive profits tax, capital gains tax and so on. I believe the Government should have realized it and many Members have expressed estate duty should not have been abolished. But the Government has already done so. I do not think that we can accept anything that amounts to robbing the poor to aid the rich.

The Financial Secretary and other government officials have even resorted to persuasion and lies. In brief, they want to get things done by hook or by crook. I do not think that this will do any good to health care services. We have conducted a survey and according to the findings, more than half of the people stated that if a GST was really introduced, they would have to depend more heavily on public-sector health care services instead of choosing private-sector health care services. About 70% of the patients interviewed also expressed their firm opposition to a GST. Although they are talking about tax relief for health care services, I still believe that in order to resolve the problems with health care services, we must rely on health care financing in the long run rather than turning to a GST. A GST may be a chronic poison or a sugar-coated poison. Once it is introduced, we can never get rid of it. It will be very difficult for us to go back and return to the era of no GST. Therefore, I advise the Government to think twice before trying to forcibly introduce the tax.

With these remarks, I support Dr YEUNG Sum's motion. Thank you, Madam President.

**DR FERNANDO CHEUNG** (in Cantonese): President, the Government's proposal of introducing a sales tax is very perplexing.

Politically, we have an upcoming Chief Executive Election. The putting forward of such a controversial issue at this very time is therefore very peculiar. Our Chief Executive has just pointed out in his policy address that he will only be able to concentrate on policies for the remaining eight months of his term of office. This explains why he cannot look farther ahead. He is unable to, and he will not, mention any blueprint for our economic and social development in the future.

However, our Financial Secretary has portrayed before us a very long-term vision, an economic vision for Hong Kong that will at least go beyond the next five years. In line with this vision, we are to introduce a sales tax.

Why do I say that the vision will go beyond the next five years? The reason is that according to the Budget announced by our Financial Secretary this year, we will continue to have surpluses in the coming five years. Even according to our conservative estimation, our surpluses in the coming five years will still amount to some \$90 billion. Our records show that differences in estimation were common in the past, and such differences were mostly related to the underestimation of surpluses. This means that the surpluses casually exceed beyond \$90 billion.

It is obvious that there will be money left in the next five years. In that case, why should we still have to introduce a new tax? In fact, it is hardly justified. On the one hand, we talk about "big market, small government". We will not drastically increase our public expenditure; not only this, but the share of our public expenditure in the Gross Domestic Product (GDP) actually will also decline continuously from the present 18% — 18% is itself a very low percentage. In the case of the European Union and other advanced countries, the rates are often over 30%, 40% and even 50%. The rate of 18% in our case is already lower than the so-called alert level of 20% set down by the then Financial Secretary Antony LEUNG several years ago. We have already achieved the target. If the target is to bring down our public expenditure to lower than 20%, I can say that we have already achieved the target. But this is not yet considered enough. In the next few years, reduction will continue, and as estimated by the Financial Secretary, our public expenditure will drop to 16.1% of our overall public expenditure in 2010-2011. If this figure does not turn out to be an underestimation in the end, we will really be able to see "big market, small government" in operation by that time.

Since such a strategy is adopted, since it is not necessary to further increase expenditure and since we have fiscal surpluses, what is the point of introducing a sales tax? So, when the Government tells us that the purpose is not to meet increasing expenditure, we are looking at what may happen beyond the coming five years, and this is in the very long run indeed. And, what actually is the purpose? The purpose is to take precaution against big incidents similar to those which have happened only once or twice so far, such as the financial turmoil.

But we must then ask ourselves, "If there is really a financial turmoil, if there are some 'predators' who may really stir up a financial turmoil, do we have sufficient fiscal reserves to cope with?" If we browse the website of the Hong Kong Monetary Authority, we will find that our reserves have already exceeded

\$1,000 billion. Even our fiscal reserves alone have already exceeded \$800 billion. That being the case, our ranking in the world is actually very high, may be the seventh. With the status of being just a city yet ranking so high, we can in fact call ourselves the richest city in the whole world. I am totally confused as to why a new tax must still be introduced under the current financial conditions, not least because the proposal has been put forward in such an environment and under such social climate.

Alright, you said the intention is to broaden the tax base, this is a good thing. Everyone in society has become a contributor by paying tax. This is a very good idea. But then, all must still depend on whether people really have the means. Please look at the wealth gap and the problem of poverty in Hong Kong. The Financial Secretary himself is the Chairman of the Commission on Poverty. I suppose he himself should consider, whenever he wants to introduce a new policy, whether it will widen the wealth gap. In case the answer is "yes", is there a need for him to review whether it is feasible to introduce it like that?

Regarding the regressive nature of a sales tax, you assure us that things will be alright because although having dragged everyone into the tax net, you will give some rebate and offer some allowances to people. But is this a very inefficient and cumbersome arrangement? If yes, why should such a tax still be chosen? At a time when the whole world is saying that this type of tax will widen the wealth gap, why should we still choose to introduce it at this time?

But then, two years ago, we have even abolished estate duty. And, what have the Government done when the economy was in very poor shape? It simply kept on cutting public expenditure, and reducing welfare benefits and Comprehensive Social Security Assistance (CSSA). All these happened when this current Legislative Council was returned. I can remember very clearly that the cut was made in 2003-2004. Be it CSSA rates for senior citizens or for people with disabilities, all were cut with no exception. Such has been the public policy. Now that we say the economy has improved a little bit, but grass-roots people are simply unable to share the fruit of economic success. And, the Government still wants to implement what to me is a draconian policy.

I reckon that the Financial Secretary must be very prudent because all forms of taxes will inevitably produce direct impacts on people's livelihood, and on grass-roots people. A bad policy may easily plunge people into severe livelihood difficulties or even indirectly affect their family life and personal development. If everything is so casually conducted, with neither statistics nor

thoughts, and then haphazardly, they are talking about increasing the number of university places and implementing small-class teaching, I think this indicates a total disregard of the principle of "people-based" governance. I therefore rise to speak in support of Dr YEUNG Sum's original motion. Thank you, President.

**MR SIN CHUNG-KAI** (in Cantonese): Madam President, first of all, I wish to answer the Financial Secretary's question of "where the money is supposed to come from". This simple question exposes the lie in the Government's claim that the purpose is not to increase government revenue. If a sales tax is really "revenue neutral", the Financial Secretary should not have asked the question about "where the money is supposed to come from", because "revenue neutral" means no increase in government revenue, and even if a sales tax is not introduced, there will be no reduction of government revenue anyway.

One phrase after another, the Financial Secretary keeps talking about "revenue neutral" and "where the money is supposed to come from". If such words have not exposed the "fox tail" of the Government's sales tax proposal, they have proven that its reasoning is self-contradictory. A fox tail stands for cunningness and dishonesty. And, when its intention is crooked, its reasoning self-contradictory, how can it be rational?

The Government repeatedly stressed that owing to its worries about fiscal deficits, the ageing population and welfare expenditure, it has to introduce a sales tax. The Democratic Party is sceptical of the Government's justifications.

To begin with, the Financial Secretary has remarked that there are not too multiples of \$190 billion in the fiscal reserve. But he seems to have forgotten how conservative his Budget is. In the recently announced Budget, it is estimated that the Government will have a surplus of almost \$100 billion in the coming five years. This means that the Government's \$300 billion reserves will still increase in the time to come. Another thing is that the Government has never told us what use it will make from the cumulative surpluses of the \$440 billion Exchange Fund.

Second, population ageing. According to the Government, by 2033, our ageing population will lead to increasing expenditure on health care and social services. But the point is that by 2033, many senior citizens aged 65 will have contributed to their Mandatory Provident Fund schemes for 32 years. The

percentage of senior citizens having to live on CSSA hence should see some decrease by that time. The Democratic Party has been urging the Government to resolve one issue. There is one issue on which we have urged the Government to settle, that is, we agree that a health care financing scheme must be formulated.

Third, the Democratic Party has reservations about the claim that our tax base is too narrow.

The tax base referred to by the Government is restricted to direct taxes, that is, mainly salaries tax and profits tax. The Government frequently argues that only one third of the working population has to pay salaries tax. But in Hong Kong, there are many indirect taxes, and the tax base of such taxes is very broad. Rates are one example. Even tenants of public rental housing have also to pay rates. There are also stamp duties, which are levied on all stocks and property transactions. But the Government has never mentioned all these taxes. As for betting duty, the taxpayers are even grass-roots people in most cases.

In 2005-2006, the Government derived 6.7% of its revenue from stamp duties, 5.7% from rates, 4.9% from betting duty and 2.7% from the duties on various goods. All these, together with hotel accommodation tax, air passenger departure tax, motor vehicle first registration tax, royalties and concessions, accounted for 22.6% of the total government revenue. The total sum of all these indirect taxes amounted to \$54.9 billion, which is far bigger than the \$38.9 billion of salaries tax. And, most of these indirect taxes were paid by the common masses. How can the Government argue out of context that the bulk of taxes are paid by a minority of people? I must therefore ask the Financial Secretary, "How narrow can you say the tax base is?"

And, who actually pay all the land premiums? Financial Secretary Mr TANG, I hope you are an honest person. I hope instead of giving the answer as property developers, you will admit that land premiums are actually paid by the many property buyers.

Property prices in Hong Kong are extremely high. Even though Hong Kong may not rank first in the whole world in terms of rent levels, it must still be among the top three. All Hong Kong people in a way contribute to the land premiums received by the Government, this apart from giving enormous profits to property developers, also make payment to the taxes involved, thus enabling

the Government to receive more revenue. Land premiums are similar to a sales tax in nature, there is only a difference in names. When the Government claims that the tax base is narrow and that only a handful of Hong Kong people are required to pay taxes, it is not being fair to the rest of the general public.

Meanwhile, government revenue is now very stable and our reserves are as much as \$300 billion. The Democratic Party maintains that it is not necessary to introduce a sales tax at this stage.

Madam President, the Government has called upon the public and Members to conduct "rational discussions". I am definitely more than happy to conduct rational discussions with the Government. But I hope that it can take the lead and refrain from casually accusing people of being myopic or criticizing Members for being keen only about votes. On the contrary, I actually wish to advise the Government that those who oppose the introduction of a sales tax are in fact very far-sighted. For example, they can visualize that such a tax will significantly affect inward investment and foreign visitors' desire to do shopping in Hong Kong. Many of our grass-roots people are engaged in base-level jobs, so the tourism industry does play a very important role in tackling the unemployment problem. Any blows cast on Hong Kong's reputation as a Shoppers' Paradise will certainly impair its long-term interests. That is not myopic at all.

In regard to Dr David LI's amendment, first, the Democratic Party must clarify that it does not agree that the tax base of Hong Kong is narrow, and second, the Democratic Party has already recommended a number of solutions. We have repeatedly expressed the hope that the Government can improve the apportioning of the investment returns of the Exchange Fund. This is also the consensus of the Legislative Council and discussions have already been held.

The Democratic Party also proposed that the Government should introduce a green tax, to be taxable on goods, but it will only be imposed selectively on products that cause environmental damage. The Financial Secretary has remarked that anti-pollution efforts will also require financial commitment on the part of the Government. I wish to advise the Financial Secretary that this may not necessarily be the case. I hope that he can study the Democratic Party's research report on the introduction of a green tax. I hope the Government and Secretary Dr Sarah LIAO can seriously explore when Hong Kong can introduce a green tax.

The Democratic Party reckons that it has already responded to the conditions mentioned by Dr David LI, the only thing is that the Government has been turning a deaf ear. Dr David LI has put forward his first ever amendment, proliferated with pro-government accent. Please therefore excuse the Democratic Party for not being able to render its support.

Madam President, I hope the Government can rationally handle all the discussions on the introduction of a sales tax and take heed of the voices of opposition coming from 70% of Hong Kong people. I must emphasize that opposition to a sales tax is not necessarily about the cessation of consultation. As a matter of fact, in as early as August, I have already urged the Government to abort the consultation exercise and I was actually the first one to ask of that. My advice was well-intentioned, because the longer the consultation exercise drags on, the greater will be the impacts on the Government's popularity rating. But since the Government favours such impacts and wants to continue with the consultation exercise, I will not try to stop it. But I must still advise that the sooner abortion of the consultation exercise will be beneficial to the Government's popularity rating. I so submit.

**MS MIRIAM LAU** (in Cantonese): Madam President, the publication of the Government's consultation document on the introduction of a Goods and Services Tax (GST) in July this year was immediately met with strong opposition from society. Government officials have been working very hard these days, doing everything possible to sell the tax. On the one hand, they have adopted a very high profile and criticized Members opposing a GST for being myopic and thinking only about votes. And, they have also said that the public are concerned only about their personal interests. On the other hand, they have even gone so far as to lure the public with some "incentives", in the hope of reversing the situation. However, I believe that things will not work out the way the Government designs. The public is still adamantly opposed to the introduction of a sales tax.

The Liberal Party has just launched a new opinion survey on Monday, that is, the very day when the Government announced the possibility of upcoming "benefits". It lasted for three days in a row. The findings as at yesterday show that the public had not shown any u-turn due to any enticement. Those against the introduction of a sales tax still accounted for 70% of the respondents. The rate of support was just 14%. These findings are roughly the same as those we got around the end of September.

Public opposition is based not only on the additional burden brought about by a GST but also on the fear that the introduction of such a tax may produce severe negative impacts on the Hong Kong economy. Therefore, the public should not be criticized for being concerned about their personal interests only. They will also consider the macro economic environment of Hong Kong.

Madam President, Hong Kong has always upheld a simple and low tax regime and this has been the cornerstone of our success so far. Once a sales tax is introduced, Hong Kong will at once see the disappearance of its most competitive business advantage. This is tantamount to disarming ourselves.

Since the collection of sales tax will involve very complex procedures, compliance costs will definitely be very high. But on the other hand, the introduction of sales tax will surely reduce consumption desire and the number of visitors. Business turnovers will certainly decline. From the experience of other countries, we can observe that all these will surely happen. Small and medium enterprises (SMEs) — 98% of the business organizations in Hong Kong are SMEs — will be dealt a heavy double blow. This is the greatest worry of SMEs.

Besides the principal economic mainstay, all other economic pillars of Hong Kong, such as the tourism, logistics, catering, wholesale and retail industries, may easily turn completely stagnant and lose all their vitality due to the introduction of a GST. By then, we will realize that this so-called "effective medicine with a bitter taste" may well kill us all instead of curing any diseases.

The re-export as well as the transportation and logistics industries are a good example. The Government maintains that since it has proposed to defer tax payment and provide bonded warehouses, the export and re-export industries have nothing to worry about. However, those familiar with the logistics industry all know that the logistics industry in Hong Kong is facing many big challenges. There is now a continuous and massive drain of cargoes to mainland ports. And, the future situation may even be grimmer.

If the logistics industry is burdened with additional service costs or complex formalities, many more consignors will simply abandon Hong Kong and go direct to mainland ports for the consignment or export of cargoes and raw materials. Some logistics service providers have also made it very clear that if a sales tax is introduced, they will relocate their bases of operation to Macao where no sales tax is levied. There is something Members should remember

and know, something that many people have told us — that cargoes once drained away are never to return. If this really happens, it will be difficult for the transportation and logistics industries in Hong Kong to survive. Will this run counter to the Mainland's 11th Five-Year Plan, which requires us to enhance our competitiveness? I think the answer is "yes".

As for Hong Kong's renowned images as a Shoppers' Paradise and Duty-free Capital that are so enticing to tourists, they will all be smashed as a result of the introduction of a sales tax.

Actually, even the Government has admitted that the introduction of a sales tax will lead to inflation and depress consumption desire. But the Government argues that the pain will be short-lived. It will hurt only for a little while. But will the pain really be so short-lived? We may as well take a look. Japan started to levy a sales tax in 1989, and its economy suffered for more than a decade afterwards. In Singapore, a sales tax was introduced in 1994. In the 10 years that followed, tourist spending kept declining, and retail businesses were even plunged into a recession lasting five whole years. Are we supposed to bear the same risks? Can our economy withstand a recession lasting five to 10 years?

The effects of a sales tax on people's livelihood must not be overlooked either. Although the Financial Secretary announced on Monday that the Government might consider the exemption of transport fares, school fees and medical expenses, I think to the lower-middle classes, the pressure will still be very heavy. As for the middle classes, who have hitherto always paid the most taxes, they will remain the greatest loser after the introduction of a sales tax.

The Government's latest offer is that besides a maximum rates allowance of \$3,000 and an allowance of \$500 for water and sewage charges, there is a chance for the salaries tax level to be lowered to that before 2002-2003.

Since middle-class people belong to the high-consumption bracket, can any slight reduction of salaries tax offset the burden imposed by the introduction of this new tax? Will the Government honour its promise of tax reduction? Even if the promise is honoured, how long will it last? Will there be any increase in the new tax? In regard to all these questions, the middle classes are not entirely without doubts and worries.

Foreign experience shows that the introduction of a sales tax will send us onto a river of no return. In most cases, there will only be increases instead of

reductions. There may well be some slight reduction of salaries tax or other taxes at the very beginning, but there is no guarantee that these taxes will not be adjusted upward later on. And, the reduction will not be able to offset the additional expenditure anyway. I must take this opportunity to settle old scores with the Government. Several years ago, when the Government was faced with huge fiscal deficits, the middle classes had put up with two increases in salaries tax. Although the Government has now eradicated the fiscal deficits ahead of schedule, it is nonetheless unwilling to reduce the tax. Now, tax reduction is even bundled with the introduction of a sales tax — so the Secretary is also smiling at this. Is this fair to the middle classes?

Madam President, I so submit.

**MS EMILY LAU** (in Cantonese): President, I speak in support of Dr YEUNG Sum's motion. Although this is Dr David LI's debut amendment (*laughter*), and he is a good friend of mine, I still find it impossible to support him. I told him a while ago that I certainly would listen attentively to his speech. But after listening to his speech, I still cannot possibly give him my support.

President, much has been said by colleagues; it is meaningless for me to repeat. However, firstly I heard the utterance of "strong governance" in connection with the developments of the matter. If the purpose of raising the proposal is to achieve strong governance, people will get the impression that there will be extensive support from this Council (not to mention support from the public). President, although we have been termed the opposition stream, it is not the case that we oppose everything. Despite our "verbal attack" on the Secretary for quite a while, we indicated earlier our support for anti-smoking. Contrary to the expectation that the push for the levy of a GST will gain support from the informal ruling coalition, they have turned up in a queue to raise objection one after another. I really have no idea what the Chief Executive, the Secretaries of Departments and the Directors of Bureaux have been doing.

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

We know that the Secretary did not discuss with the ruling coalition (including the President) before raising the proposal. The result would not have turned out to be so miserable today had discussion been held and support gained

from them. Now that even the Financial Secretary has left, instead of staying in the Chamber to listen. Is it outrageous that not a single Member had voiced support even though the Secretary had been sitting here listening for such a long while? How can strong governance be achieved? If steady support cannot be secured in this Council simply because of reluctance to discuss with the ruling coalition, I really have no idea how the situation can be solved. If this is really the case, things will really become "hard to fix" should the Chief Executive stay in office for a few more years.

I strongly agree with the remark made by colleagues earlier that many people do not support the proposal. It is unnecessary for me to elaborate further as the public has clearly stated their reasons. Nevertheless, I would like to say a few words about the wealth gap. When referring to the International Monetary Fund, Dr David LI pointed out that Hong Kong's tax base is too narrow. Deputy President, our tax base is narrow because of the small number of taxpayers, particularly the payers of salaries tax and profits tax. The Secretary will definitely remind us of the number of salaries taxpayers in Hong Kong. We all agree that the working population in Hong Kong exceeds 3 million, or actually reaches 3.4 million. However, only 1.2 million people are taxpayers, of which 100 000 people account for 60% of the total tax payment. Deputy President, can you guess how much those 100 000 people earn? A colleague already mentioned earlier that the salaries tax payable is around \$40 billion.

As for profits tax, there are 750 000 registered businesses in Hong Kong. However, only 800 of these businesses pay the \$70 billion profits tax collected. Under such circumstances, the tax base is of course narrow. As pointed out by a colleague earlier, there is a threshold for tax payment. Although some people still feel that the threshold should be adjusted, it is generally agreed that the threshold is fair, only that some people have not reached the salaries tax and profits tax thresholds. Attaining the threshold is a goal for all people. Who would not like to be a taxpayer? Only those who can make money are required to pay tax. What can be done, given that wealth is concentrated in just a small fraction of the people in Hong Kong? The authorities have proposed to widen the tax base. I have to tell my old friend, Dr David LI, that this would mean requiring the genuinely poor people to pay tax as well. This is why I cannot support Dr LI after listening to his amendment.

The case is, Deputy President, with reference to the report presented by Advisory Committee on New Broad-based Taxes to the Financial Secretary in

2002, the Advisory Committee has examined 15 tax items. In paragraph 41 of page 25 of the report, members considers that, after examining all the tax items, a GST is the only new tax which can widen the tax base without damaging Hong Kong's external financial capacity. From a certain perspective, I agree that our economic competitiveness will not be undermined by the new tax. However, the report has not mentioned a word about how to care for the people who become increasingly impoverished — this is a wealth gap issue.

Looking back at the figures provided by the Census and Statistics Department, the number of households with a monthly income of less than \$4,000 has risen from some 80 000 in 1996 to 200 000 at present. Deputy President, the authorities have admitted that more than 1 million people are living in poverty. Now the authorities claim that they are going to enhance Hong Kong's competitive edge. It would be a good thing if people can benefit from the fruits of economic growth. Otherwise, "people-based governance" will not be achieved. Deputy President, the present proposal is therefore wrong.

It has also been mentioned by a colleague earlier that the Exchange Fund has now reached \$1,100 billion, although it cannot be exhaustively spent. How much can be spent? As I quoted from the statistics by end of July, government revenue has exceeded \$780 billion, with \$312.1 billion in fiscal reserves and \$468.1 billion in accumulated surplus. With such an abundant wealth, colleagues have put forward a number of initiatives, including ways to put aside some money for the public on an annual or monthly basis. However, the authorities have never agreed to do so. Joseph YAM once asked, "Would \$700 billion be too little?" Certainly, the more money the better, otherwise, how can the Hong Kong dollar be defended? How can those people earn millions of dollars? But who would care for the people in Hong Kong?

Let us refer to the report — the report we have at hand. Deputy President, I note that the profits tax rates levied in some places, such as Hungary, Lithuania, Ireland and Macao, are lower than ours. However, are these places our rivals? Our rivals are organized groups and European Union countries, such as South Korea, Singapore, Austria, and so on. Their profits tax rates are much higher than ours. So, is there scope for our profits tax rates to be raised? Even Mr Vincent FANG has agreed that progressive profits tax and capital gains tax be levied. There are indeed many ways to make "those who have the means pay more", instead of making the poor pay tax.

I so submit.

**MR CHAN KAM-LAM** (in Cantonese): Deputy President, the SAR Government has repeatedly emphasized that the purpose of introducing a GST is to maintain a stable revenue for tackling such issues as ageing population, competitiveness problems resulting from globalization, and so on, in future. At the same time, the Government has also made it clear that the existing narrow tax base must be widened. The purpose of introducing a GST is not to boost government revenue. All additional revenue will be returned to the people in the form of relief measures.

In a newspaper article published yesterday, the Financial Secretary reiterated the urgency of the introduction of a GST and appealed to the people to be vigilant at times of peace and prepare for danger and support the GST by looking further afield from a higher point. Days ago, the Financial Secretary has raised another proposal on introducing exemptions in a bid to make the public at large to accept the introduction of a GST.

Nevertheless, the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) has to point out that the introduction of a GST is not the only solution in solving the problems experienced by Hong Kong with its rapidly ageing population and maintaining its competitive edge. Neither is the levy a panacea for these issues. Right, Hong Kong's present birth rate of just above 0.9% is extremely low. With the elderly population expecting to expand substantially in three decades, the younger generation will have to bear a heavy social burden. However, can the ageing population problem be resolved merely by a GST? Certainly not. A population problem has to be resolved by the introduction of policies and initiatives. For instance, should the Government formulate policies to encourage the elderly to enjoy the quality and inexpensive elderly services provided in our neighbouring regions so that the elderly can obtain better options and care?

As for Hong Kong's long-term development, the DAB is of the view that the upgrading of competitive edge hinges mainly on the maintenance of a convenient, conducive and liberal operating environment and reasonably low operating and production costs. The governance philosophy of "big market, small government" all along emphasized by the Government is about paying attention to the direction of economic development, coupled with the provision of appropriate and relevant complementary measures and guidance in terms of policy when required. Our simple but low tax system is precisely the tax system envied by other countries in the international community. It is also an

element contributing to the unique competitiveness of Hong Kong. It is not to be replaced by a GST.

We do not deny the fact that our tax base is narrow. Our tax revenue at present is indeed more reliant on the two direct taxes, namely profits tax and salaries tax, and land proceeds. However, it has been proved that the problem experienced by Hong Kong over the years with recurrent expenditure exceeding recurrent revenue is not a structural fiscal problem. It is rather attributable to the imbalance in fiscal revenue and expenditure resulting from the cyclical economic development. The anticipated surplus of \$32.6 billion in the Government's budgetary forecast for the coming five years has aptly reflected that the Government's fiscal deficit will disappear when the economy enters a cycle of normal growth, and the deficit will then be turned into a surplus immediately.

The DAB therefore holds that as long as public expenditure is in keeping with Gross Domestic Product, the tax base in Hong Kong, albeit narrow, is sound. It is unnecessary for the tax base to be widened. What is more, it is unnecessary for a GST to be introduced.

Regarding whether a GST is a stable source of revenue, we may look back at 1997 when Hong Kong economy was at its peak with total spending exceeding \$830 billion. During the outbreak of SARS in 2003, however, total spending dropped by 14% to below \$720 billion. The reduction is evidently greater than the combined 9.5% reduction in GDP in those two years. We therefore hold that the habits and modes of public spending will change when there is a change in economic conditions. For instance, the public might instead turn to less expensive regions for spending, thus resulting in unstable public revenue.

Our tax system, under which salaries tax and commodity taxes, such as property tax and motor vehicle first registration tax, are levied, has all along fully embodied the principle of "those who have the means pay more". At the same time, personal allowances for individuals, couples and families are considered part of the basic initiatives for social support by the SAR Government.

Hong Kong society has evidently been striving to achieve its objective of redistributing wealth through its tax system so that the disadvantaged groups are accorded basic care. Should a sales tax be levied in Hong Kong resulting in all members of the public, regardless of their income levels, being driven into the

tax net, the basic spirit of "those who have the means pay more", that is, vertical fairness and wealth redistribution, will be violated.

At present, there are still 400 000 households in Hong Kong with a monthly income of below \$5,000, and they are considered as the most needy. The Government must therefore look squarely at the fact that the levy of a GST will increase the tax burden of the people, particularly the poor and retirees, thus making the poor increasingly poor. The Financial Secretary has repeatedly indicated that subsidy will be offered to the lower strata to make up for their additional tax burdens. However, if the tax base is widened without more tax payment, where will the stable revenue of the sales tax come from? Where will the money required to meet the expenditure incurred as a result of the ageing population and expenses on medical care and social welfare come from? To bring out the truth, the answer must be: from the "sandwich" class, or the middle class.

It is more worrying that once a GST is introduced, the Government will be caused to rely overly on revenue from sales tax, and cease to study the problem of broadening sources of income and reducing expenditure. Furthermore, it will abandon its principle of fiscal prudence and easily turn to sales tax by raising its tax rates, thereby aggravating the financial burdens of the public.

Deputy President, given its assumption that this Council will oppose the introduction of a GST only if there are other better options to solve the narrow tax base problem, Dr David LI's amendment is not as clear as the original motion in terms of its opposition stand. Hence, we cannot support the amendment. Deputy President, I so submit.

**DR JOSEPH LEE** (in Cantonese): Deputy President, it has been nearly three months since the Government's publication of the document to consult the public on the introduction of a GST. During the period, many voices of opposition to the introduction of the levy were heard from the majority of the public, groups and political parties. At the same time, questionnaire surveys on the introduction of a GST were conducted in different ways by various organizations and agencies. The results thus obtained revealed that the majority of the people were against the proposal. Public opinion apparently was lopsidedly against the introduction of a GST.

The levying of a GST is actually a way to impose tax on spending by the public. This approach undoubtedly represents a "user pays" principle, the achievement of which could be a fair means whereby everyone has to pay and

fulfil their civic responsibility. But what is meant by "fair"? A GST is essentially a regressive levy. In other words, people with the lower the income will have to bear a heavier burden. For the socially disadvantaged groups, such as the grassroots and the elderly, is it fair to aggravate their burden?

The consultation document, although given the title of "A Broader-based Tax System for Hong Kong?", is not focused on presentation of different reformed tax regimes for public discussion. Instead, it merely points out that the introduction of a GST seems to be the only solution to the problems confronting the Government in the areas of medicine, social welfare expenditure, and so on, as a result of the ageing population, and the preparation of Hong Kong for the next financial turmoil — should there be one. I certainly hope not.

As regards whether a GST should be introduced in Hong Kong, my office issued a questionnaire to the health services constituency in August, by email and fax, to solicit its view on the introduction of a GST. The results of the surveys reveal that, about 70% of the respondents opposed the introduction of a GST, with more than two thirds of the opponents holding the view that the introduction of the levy would aggravate the burden of the socially disadvantaged groups and the grassroots. At the same time, they considered that the introduction of a GST would aggravate the burden of retirees and worsen the poverty problem resulting from the ageing population. Other reasons cited include tarnishing Hong Kong's reputation as a shoppers' paradise, dealing a blow to the spending desire of the public, and damaging the simple tax regime of the territory. It was also revealed from the survey that nearly 90% of the respondents supported the lowering of salaries tax and profits tax should a GST be levied. The respondents also indicated that their mode of spending would be changed should a GST be really introduced. While half of them expected to cut down on spending, some of them would even spend more on the Mainland or overseas to avoid a GST. 20% of the respondents even indicated that they would do their shopping through overseas websites to avoid the payment of a GST. The above findings clearly reflect that the majority of the practitioners of the constituency are inclined not to support the Government's introduction of a GST.

Deputy President, it is generally believed that the introduction of a GST will only aggravate poverty and add to the burden of the socially disadvantaged groups and the grassroots. I believe the middle class will have to pay most taxes if an exemption mechanism is provided for the grassroots. Without an exemption mechanism, however, the grassroots will have to bear a heavy burden. Can the Government maintain stable revenue through this cycle of increase and reduction?

Furthermore, apart from offering subsidy to prevent the livelihood of the grassroots from being affected, how can the interests of the middle class be balanced to avoid aggravating their burden as a result of the introduction of a new tax? Are cash allowance, water and sewerage deductions, and rates deductions just trivial benefits to the middle class? Is the assistance offered adequate?

As regards exempted tax items, should daily necessities and medicine be exempted? If too many commodities were being exempted, it will cause the tax system to become meaningless, and administrative charges will be raised as well. How can the Government strike a balance? I think that all these should be considered by the Government when a GST is introduced.

In brief, the simple tax system hitherto practised in Hong Kong will be changed with the introduction of a GST, for everyone will have to pay tax. A GST will bring inflation, this the Government has also acknowledged. As Hong Kong economy has just recovered, I believe the people might not be able to bear the impact, and to a certain extent, a GST will also undermine the desire of spending and Hong Kong's competitiveness.

Certainly, the narrowness of Hong Kong's tax base cannot be neglected. The profound impact of tax reform will actually produce long-term impact on Hong Kong society as a whole. Given that Hong Kong economy has gradually turned for the better with the unemployment rate beginning to fall, we should take this timely opportunity to enable the Government to present to the public its view on ways to widen the tax base and to lead the relevant discussion. However, the consultation document on a GST, apparently failing to give us an account of Hong Kong's tax system, has merely described a GST as the only solution to our tax base problem. We therefore propose that the Government should now take the lead in conducting proper discussions on feasible ways to vigorously reform Hong Kong's tax system or conduct comprehensive review, and provide the public with more information pertaining to the background for introduction of new tax types and relating to other trades and industries to enable the discussion as a whole to be conducted in a clearer and more rational manner.

For these reasons, therefore, Deputy President, we should not confine ourselves to keep promoting a GST to the public. With these remarks, I support Dr YEUNG Sum's original motion.

**MR TOMMY CHEUNG** (in Cantonese): Deputy President, the Government proposed to introduce a GST to widen the tax base, this to me is understandable.

Though the introduction of the levy might facilitate the Government's administration, the economic development of society as a whole will be hit endlessly. In particular, the catering industry, principally small and medium enterprises, is simply incapable of withstanding the impact produced as a result of the introduction of a GST.

The reason is very simple. If a 5% GST is levied by the authorities, the industry can only have two options: either bearing the tax itself, or increase charges, passing the additional cost on to consumers.

Over the past couple of years, however, most of the restaurant owners have not dared to charge more. Despite the double-digit growth in the prices of such basic food commodities as flour, salt, sugar and oil, coupled with increases in wages and soaring shop rentals, restaurant owners still dare not charge more merely because they do not want to lose their customers.

As the spending power of the people have yet to recover fully, restaurants still dare not adjust their menu prices back to the 1997 level. It can be anticipated that, even if a 5% GST is introduced, restaurants will still dare not pass the additional cost on to their customers. But is this within their capacity to bear?

Over the past decade, the operating environment of the catering industry has continued to worsen. For instance, in 1995, the Government passed the trade effluent surcharge (TES) on to the industry by virtue of the "user pays" principle. With the introduction of the Mandatory Provident Fund System in 2000, the industry was made to pay 5% more for wages. Furthermore, the financial turmoil in 1997, the invasion of the avian flu, and the outbreak of SARS have long put the catering industry in dire straits.

In the years to come, it can be anticipated that the catering industry will continue to be impacted. The latest is the recently passed legislation that will bring a total smoking ban into effect on 1 January 2007. The turnover of restaurants is expected to be hit because of the reduction in customers. It is also estimated that the TES will be increased three times with the imminent implementation of phase two of the strategic sewerage programme. I am convinced that the catering industry will be dealt a fatal blow should a GST be imposed.

It is even more worrying that most of the 200 000 employees of the catering industry are middle-aged people, women, and people with low

educational attainments and low skill. They will be the ones to be directly hit by the introduction of a GST.

The proposed implementation of relief measures by the authorities, namely lowering salaries tax or profits tax, will not render much assistance to my constituency because many restaurants simply cannot make money and do not need to pay profits tax. Moreover, many employees of the catering industry are not highly paid, so the salaries tax paid by them is not substantial.

The Government has often argued that the impact of a GST on the economy is only short-lived, but from the experience gained from SARS, we know that the catering industry can hardly withstand an impact even as short as only a month.

Although the authorities have assumed with great confidence that a 5% GST will bring in an income of \$30 billion, I believe the figure is overestimated because GST is an extremely complicated regime. In Singapore, for instance, the local private sector has a relatively sophisticated internal audit system, and the administrative fees for handling GST should be relatively low. However, in the first three years when its GST was levied at 3%, the Singaporean Government got almost no revenue after deducting its extremely high expenditure on administrative fees and relief measures. In the end, it was forced to raise the GST rate to 5%.

The Hong Kong Government will inevitably follow in the footsteps of Singapore. As with other countries in which a GST is levied, it is very likely for Hong Kong to have its GST gradually raised from 5% in order to make up for exorbitant administrative fees.

A number of overseas studies have even indicated that the administrative fees incurred by the business sector as a result of the levy of a GST will be three times as high as those incurred by the Government. In other words, for every dollar spent by the Government out of its \$500 million administrative fees, the business sector will have to spend \$3. Therefore, according to the Government's conservative estimate of \$500 million, the business sector will have to spend \$1.5 billion.

For small and medium enterprises (SMEs), administrative fees have even risen by leaps and bounds. In a study entitled "Compliance costs of value-added tax in Sweden", conducted by Skatteverket in Sweden recently, it is revealed that the amount of administrative fees incurred by a four-person

company is 35 times as high as those incurred by a company with approximately 500 employees. In other words, paying three times as high as those of the Government, as just mentioned, is insignificant for big companies, but for small companies, however, the increase might be more than 30 times. Therefore, the catering industry, dominated by SMEs, will definitely be the first to bear the brunt of such a sharp rise in operating costs.

The levying of a GST will bring an enormous impact to both the employers and employees of the catering industry. How then can I, as their representative, give my support?

The authorities should think twice about this. The withdrawal of a large sum of capital from society as a result of the levy of a GST is bound to deal blows on investment. Public spending, and even spending by mainland visitors to Hong Kong, will also greatly shrink as a result of a rise in prices in Hong Kong. Related sectors such as retailing, tourism, catering, and so on, will definitely suffer severe damage. At the same time, places near Shenzhen, such as North District, Yuen Long, Tin Shui Wai, Tuen Mun and Tai Po will be the hardest-hit areas. The recovering economy is bound to collapse as a result of the chained effects produced by the levy of a GST.

Actually, the Hong Kong Government is not heavily indebted. On the contrary, it has an abundant surplus with its financial conditions continuing to improve as well. It is simply unnecessary for a GST to be introduced. The Government might as well put in more vigorous efforts to boost its economy to make a larger "cake" to resolve the problem caused by its narrow tax base. It is not worthwhile for the Government to damage its simple and low tax regime that has contributed to Hong Kong's long-running success while jeopardizing the territory's status as a shopping and gourmet paradise.

With these remarks, Deputy President, I support Dr YEUNG Sum's motion.

**MISS CHAN YUEN-HAN** (in Cantonese): As pointed out by Mr WONG Kwok-hing earlier, we oppose the introduction of a GST — it was formerly known as sales tax, not the term as presently used.

We have already expressed disapproval when the levy was proposed by the Financial Secretary, Sir Piers JACOBS (if I remember correctly), in the late '80s. I was then chairman of a labour union of the retail sector, and we

presented our arguments to illustrate the enormous impact of the levy on the entire sector. As stated by Mr Vincent FANG today, he has also come forward to say no to the Government because the retail sector believed the impact would be enormous. Furthermore, Hong Kong as a shoppers' paradise would be affected. I disagree with the Financial Secretary's earlier remark. Hence, if the matter is to be implemented, we will, on the contrary, suffer great losses.

Proposal of a sales tax would occasionally be raised by the Financial Secretaries in the past decades, and all along we have been opposing it on behalf of the grassroots. Besides mentioning the opposition by the retail sector, we have still retained hope for the tax system. The Financial Secretary is not present here in the Chamber at the moment. He has said at least twice that tax as a tool should seek to resolve wealth disparity in society. I was very happy on hearing his idealistic remark because, if properly handled, tax as a tool can practically help narrow the wealth gap in society. However, should we fail to capitalize on tax as a tool and instead, people earning little and people earning a lot are to pay tax at the same rate, the tax will, from my point of view (that is, from a conceptual angle), become regressive. Obviously, if the tax system is to play its role in narrowing the wealth gap, people making a lot must pay more, while those earning little should pay less. However, under the present proposal — whether the levy is called a sales tax or a GST — the same tax rate applies to people with an income and those with no income alike, as well as high income-earners and low income-earners. We therefore say that the tax, considered by us regressive conceptually, is against a very important principle of the tax system.

Many a times when we held discussions with the Financial Secretary on this issue, he would ask several of us to keep a more open attitude towards the issue. We have attempted to do so. The first question we would have is: Is Hong Kong's tax base narrow? Are there any other alternatives for Hong Kong? Mr WONG Kwok-hing has been opposing the abolition of estate duty all along, suggesting that other alternatives can be considered. Even if we consider profits tax, one of the existing taxes, it is different with the allowances under salaries tax, for more salaries tax will have to be paid with high salaries. A standard rate is, however, applicable to profits tax. Can we make any alterations to this tax? We have kept putting forth proposals for more than a decade. For instance, our proposals included: should a higher tax rate be applied to an annual net profit of more than \$5 million? Or, can an even higher tax rate be applied to an annual net profit of more than \$10 million? These were our proposals to the Government.

As for the introduction of other taxes, we must first review whether our tax base is narrow or wide. We are willing to discuss this. However, the Government should not, like what it is doing at present, first request us to discuss with a more open attitude but then immediately propose a sales tax, or a GST as in the present case. I feel that it is not a discussion this way. The present situation is similar to the minimum wage discussions in which the business sector was reluctant to participate.

Deputy President, there are 350 000 people who earn less than \$5,000 a month in Hong Kong. Struggling for survival, they work very hard to make ends meet. Kwun Tong, as part of my constituency, is one of the five poorest districts in the territory. I have been told by a number of Kwun Tong residents that they usually go to their workplaces on foot, or go by bus for a distance and then on foot. Very often, they will look for the cheapest meals when they go out to work. This explains why meals costing \$10 each are still available in some canteens. These canteens are practically serving this group of grass-roots people. Some of the poorer ones patronizing cooked food stalls for food may pay less still. Furthermore, we can also see from news reports that some poor people live on scavenging, collecting cartoon boxes, following or watching out for refuse collection vehicles, or collecting vegetable scraps in the market. The situation is just like back in the '60s when I was small. I grew up eating leftover collected from the market. However, my mother would cook the leftover with some other things like tomatoes, and so on.

However, even up till this day, which is well beyond 2000, such people still exist, yet the Government has still refused to admit that there is absolute poverty in our community. I very much wish to say that such situations can be found among the grass-roots people whom I am familiar with. Furthermore, the number of these people is substantial, especially in some poverty-stricken districts. In the light of the present poverty situation as a whole, even local residents who enjoy better living conditions, for they earn higher income and their living conditions are not too bad, would still live very frugally. For instance, some people will cut coupons (some newspapers will publish the coupons issued by certain supermarkets) from newspapers when reductions are offered by supermarkets. The coupons will then be collected for redemption of instant noodles and other inexpensive items. Cutting coupons has very often become a fashionable trend in grass-roots families. However, they will certainly know to calculate. They will not purchase the more expensive newspaper just for the sake of cutting the coupons.

During a consultation on a sales tax in Tseung Kwan O earlier, I was rebuked by the workers off the stage before I finished talking to them. I was treated by them as a government official because I went there in the company of the Secretary. The group of people was more than 100 at that time, and the incident took place not long ago. Though I have merely uttered a few words, they have immediately rebuked me as if I were an official. I can see that the residents in the estate are not very poor, and yet they already have a lot of grievances. Very often, they will do everything just to save a few cents. Frankly speaking, even though they earn more than \$5,000, their livelihood is still not far better off.

I have also known some middle-class people whose family income may reach \$30,000 to \$40,000 a month. However, they asked me if I knew how much they had to pay and how much they could spend at their disposal each month. Now that the Government is saying that some benefits will be given to the public after everyone is caught in one net, how come there is still opposition from so many people?

We do not look for votes to act. I hope the Government can keep its cool in considering our present situation and truly understand the grassroots. I am extremely worried that when a GST is launched, there will be a gap between the Government's underlying notion and the public, including the grass-roots and the middle class. I think it is worthwhile for the Government to reflect on this. The Government should not act like the Financial Secretary, who criticized us recently. Criticism is no big deal. We criticize the Government too. However, we must consider one question: why have we come to such a state? Let us try to consider the matter from the angle of the public. I cited grass-roots poverty, marginal poverty and the middle class earlier to illustrate my point in the hope that the Government can think twice about the matter. If the Secretary is listening so attentively and is interested, I could hold a general meeting for the residents with him, could that be so? Let us go and listen. Thank you.....*(the buzzer sounded)*

**DEPUTY PRESIDENT** (in Cantonese): Your speaking time is up.

**MR CHIM PUI-CHUNG** (in Cantonese): Deputy President, our debate today is consultative by nature. However, the Government should understand better that this consultation is even more representative. The people closed to the

Financial Services and the Treasury Bureau once called me and asked me to listen to the Government's view on a sales tax. This is absolutely unacceptable to me personally because I treat it just as another version of the West Kowloon development plan. There will be no way out in the end.

Therefore, conceptually, I have rejected an overt collaboration with the Government, for Members of this Council are duty-bound to oversee the overall operation of the Government: to support what is right and oppose what is wrong. It simply is not reasonable for the Government to lobby Members to listen to its meetings on everything, including the policy address, the Budget, and so on. Some Members are willing to attend its meeting and express their views. However, since they have their views expressed, the Government would ask them afterwards what was there for them to raise opposition still given that they have already been presented their views. This is basically inconsistent with the concept of "one country, two systems" and the separation of powers in Hong Kong. I hope Members can keep themselves clear-headed and calm.

Deputy President, we understand that as a result of an overall transformation of the society, Hong Kong has now become dominated by the services and marketing industries. By 2008, 20 or so hotels will be completed in Macao, and some 200 international brand-name companies will be set up in Macao as well. At the same time, 200 or so globally renowned restaurants will start their operation in Macao, world-class performing venues will be found in every corner of the enclave, and three to five top international convention centres will be opened in Macao. According to the newspaper report today, however, all these pose no threat to Hong Kong.

Faced with such threats at its doorstep, the SAR Government has failed to come up with counter-measures. What is more, it is still examining its most powerful strengths — services and sales — by considering the feasibility of tax increases. I really cannot understand the concepts, logic and theories of the Government. Like the present political situation in Hong Kong — the Government cannot distinguish between friends and foes. Is it looking for construction or destruction? While we have to rely on the Central Government to conduct formal studies, Members of this Council ought to express our opinions.

Hence, secondly, Deputy President, as mentioned by a colleague earlier, we bear no responsibility in national defence. We understand that Singapore's budget for this year is around HK\$145.4 billion, with 33% therein to be spent on

national defence. In other words, \$40 billion to \$50 billion of its budget is to be set aside for national defence. It is not necessary for Hong Kong to pay for national defence, so why say that we are worried of inadequate funds? Just now I did not hear a lot of colleagues thinking genuinely on behalf of the Government as to how the tax base can be widened. What I said might have probably offended some people. However, if every Member is expected to know how to resolve the problem, why are they paid only \$50,000 or so a month? On the contrary, anyone taking up public office is paid more than \$2 million a year. Even if the Secretary does not view his remuneration seriously, the difference between the two is, after all, very great. There is no reason for us to think on behalf of the Government.

However, I would like to offer the Secretary some advice. Should the Government's budget revenue become inadequate one day, I personally propose that a 5% import tax be levied. Members should be able to understand that the levying of a sales tax involves a lot of expenses and administrative charges, and yet the Government will not benefit a lot from it. However, the Government will reap a good harvest should a 5% tax be imposed on imported goods. Of course, all commodities relating to people's livelihood, especially non-staple food from the Mainland, should be exempted from the levy to prevent affecting the spending and expenses of the poverty-stricken grass-roots people.

What is wrong with levying a 5% import tax by the Government on goods from other regions in Europe and Western countries? For instance, our mainland compatriots will also purchase such goods as watches and other commodities of valuable brands. Even if a 5% tax is imposed, the price of the goods might not necessarily be raised accordingly. It is not surprising at all for wholesale underwriters to raise prices for just one or two percentage points, or not to raise prices even, because they prefer "small profit but better sale" or they have other policy considerations. In this respect, the Government will not be required to pay enormous expenses. Some people, however, will say that the image of Hong Kong as a duty-free centre will be damaged. It must not be forgotten that not everything is duty-free in Hong Kong. Alcoholic drinks, cigarettes, petrol, and so on, are taxable in the territory. I am convinced that when there are huge deficits in the Government's budget such that even the Basic Law would have been contravened, and it is decided that an import tax be levied, the public will not have strong views.

Lastly, Deputy President, what I want to say is that, this document is fundamentally consultative, but on what grounds can the Government, particularly Secretary Frederick MA, promote the levy? Is he going to sacrifice

his political future? This is very interesting, for he will not do so unless the pressure behind him is enormous. If projection is made on the basis of political theories, the Secretary of Department and the Director of Bureau will have become crippled if they try to tackle the matter and then fail. So, who is forcing them to become crippled from behind their back? Although the Chief Executive personally promoted the levy recently, it must be borne in mind that he was merely taking the first step.

(THE PRESIDENT resumed the Chair)

I am fully convinced that the Secretary of Department is listening to our speeches inside the room. It is just that he feels embarrassed for being at odds with us. Be he the Secretary of Department or the Director of Bureau, I hope he would firmly believe that this booklet is only used for consultation, not for promotion. I also hope they can keep calm and listen to what the public has to say. Thank you.

**DR RAYMOND HO** (in Cantonese): Madam President, the levy of a tax is, more often than not, hard to be applauded by members of the community, particularly taxpayers who will be directly affected. Given the nature of a GST, its impact will reach even people from all walks of life. The tremendous reverberation produced as a result of the consideration by the SAR Government for introducing a GST is therefore to be expected. However, a GST is nothing new. It is already levied in a number of countries for quite some time. A VAT, similar to the GST proposed in Hong Kong, was introduced in Britain while I was in the country in the early '60s. Initially levied at 5%, it was later raised to 17.5%. In determining whether a GST should be imposed, the SAR Government should therefore take the experience of other countries as important reference.

Immediately after the launching of a public consultation by the Government on the proposed reform on widening Hong Kong's tax base in July this year, I emailed to thousands of engineers a questionnaire on the levying of a GST in the hope of soliciting the views of the engineering constituency on the introduction of a GST. The questionnaire merely contains two simple questions. One of the questions raised is "Do you approve of the SAR Government's proposal of introducing a GST?". Of the questionnaires received

up to the deadline, 57% expressed disapproval of the introduction of a GST, while 43% indicated approval. I believe this ratio is better than those of other constituencies. I can see that the Secretary is smiling. Ultimately, however, voices of opposition still form the majority.

In addition to the questionnaire mentioned above, I have also arranged, with the support of the Hong Kong Institution of Engineers and the engineering profession, a forum on Hong Kong's tax system reform this evening. One of the key speakers is Mr Frederick MA, Secretary for Financial Services and the Treasury, who is now sitting right opposite to me. However, he is unable to leave the Chamber as the meeting is still in progress. I am also supposed to speak in the forum, but I cannot leave the Chamber at present either.

However, Secretary Frederick MA has appointed Mr Alan LAI, Permanent Secretary, to attend and speak in the forum. Other speakers include a veteran accountant, Mr Paul CHAN, President of the Hong Kong Institute of Certified Public Accountants, and a renowned scholar, Prof Y C CHAN. I hope the profession can gain a better understanding of the tax system through the questions raised and speeches delivered by these heavy-weight guests before making a final decision. If required, I will still consult the profession further.

Madam President, I would like to take this opportunity to appeal to the SAR Government to maintain an open attitude towards the widening of Hong Kong's tax base, including the introduction of a GST, continue to extensively consult the public, extend the consultation period, and encourage members of the community to actively participate in the discussion before making a final decision.

I so submit. Thank you.

**MR LEUNG KWOK-HUNG** (in Cantonese): President, our venerable Secretary TANG.....oh, Secretary TANG is not here. In fact, I want to present an item to him but he is not here now. Actually, I want to present a pair of spectacles to him because, just like Regina IP who said that we have to take a long view, it is necessary for him to look at the Goods and Services Tax (GST) with far-sightedness.

Generally speaking, there is nothing wrong in doing so because a person must have vision in life, however, the problem is that the levy of GST is being

opposed right from the start and if he wears this pair of spectacles, as what I am doing now, Secretary MA, please take a look at this pair of spectacles. Looking through to take a long view will immediately cause one's eyes to become pupil-less because his eyeballs will also pop out. Members, the GST is just like this pair of spectacles, on which you can see the eyeballs but without the pupils because Hong Kong people have been completely misled.

What is this issue of GST about? It is possibly an economic issue but in fact, it is a political issue. On this point, the Government's remarks have by no means been wrong. The Government can also see that the GST is being opposed by virtually all people, therefore, it has tasked Secretary MA with flying into a temper here because usually, Secretary MA is always grinning, however, he has flown into a temper all of a sudden, lashing out that we are doing such things for the sake of votes. When he made this remark, he is indeed aware that all voters are in fact opposed to the GST. Hey, man, since you know full well that this is so, you should not have lashed out at us, who became Members of the Legislative Council through elections, but should have lambasted the voters and asked them why they voted for such people. Do you know that in lambasting us that we are after the votes, you are actually lambasting the voters? You ought to apologize to the Hong Kong public and not to us because you are insulting a group of Members returned by the small-circle election put in place by you people. In lambasting us like this, it means that you think the people who elected us are as blind as a bat. It does not matter if you lashed at me but why did you also lash at other people?

On this issue, I have prepared a couplet for you.....

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, you have to address the President.

**MR LEUNG KWOK-HUNG** (in Cantonese): President, I will also show you the couplet. This is my creation:

"Frederick might have stumbled but Fortune smiles at him  
Quitting business for politics makes him a dignitary but a real mean guy  
MA had a smooth going in the officialdom  
Yet he who hard sells a harsh tax and chides the populace is nothing but a  
hideous monster".

Everyone should be able to read this for himself. There is a screen here.

Members, I know that Secretary MA is not this sort of people because I have had certain close encounters with him. That Secretary MA has to do such a thing, however, is the Government's making. This is because this Government is stubborn and self-willed, so it wants its subordinate to do this sort of thing. What sort of Government is this? Is it a triad society that dispatches its lackeys for the battle when it cannot do a job properly?

In fact, I have yet another couplet. In order to be fairer to Secretary MA — in fact, he is not the mastermind of this crime. I have brought along another one.....President, I am addressing you. This one reads:

"Donald Tsang is despicable for failing to enact legislation on minimum wage  
And may Henry Tang die young for levying the GST and his absurd administration".

If the two lines are shortened, they become:

"Donald Tsang is despicable  
And may Henry Tang die young".

Members, we can see how a rotten Government has made people who work for it to fall into disorientation. How rotten is this Government? At first, it said it was not going to take care of the lower class. All right, next, even Mr TUNG had the intelligence to say that small and medium enterprises (SMEs) could not be left to perish and if they did, it would be "a big deal". The Liberal Party often says that over 90% of the businesses are SMEs. Have the policy addresses ever mentioned SMEs? Of course, they would not, man. This is because the GST will cause the destruction of SMEs, leaving those in other regions to be benefit. Being such a government, it still has the guts to ask other people what good ideas they have. Now, I would want to ask this Government what good ideas it has to prevent SMEs on the verge of their demise from dying?

I will reply to this question of yours only if you can give me a reply. Let me tell you, it is not that I am lost for want of an answer, but that due to the present small-circle election, I cannot have any dialogue with you. I do have some ideas, but do you have the courage to open up the elections? You will

only have to give me five minutes and I could tell you all the tricks immediately. Since we do not have open elections now and you are occupying the platform and looking down from the top, this is just like "a Han man who has learned the language of a nomad tribe going up to the top of the fort to rail at his clansmen". What sort of people is this group of yours, yapping here but why are you making no sounds now? Man, you have already occupied the platform, so how can you still ask people to teach you how to govern?

Henry TANG has been talking. Hey, how much does he earn as salary? He should have the responsibility to tell all of us that after making calculations, he thinks there is no alternative and there is still a shortfall of trillions of dollars, so it is necessary to levy the GST. He has failed to give an explanation, so how can he ask others in retort? I have told him a lot time ago — I have already told him in our first meeting that he can levy a capital gains tax or a luxury goods tax and all of them are progressive in nature. Moreover, there is also the option of progressive profits tax and all these can make those Hong Kong people who have earned a lot pay more as they earn more.

Members, ordinary members of the public like us are paying hidden taxes. The revenue that the Government receives from the sale of land by jacking up land prices is paid by us to property developers when we pay for our clothes, food, accommodation and transportation. The Commissioner for Inland Revenue in Hong Kong is Mr LI Ka-shing and the Inland Revenue Department in Hong Kong is the Cheung Kong (Holdings) Limited. Every one of us has to pay high prices for our clothes, food, accommodation and transportation because they have pushed up the land prices. When we pay the mortgages on our flats, have we not paid the hidden tax? Every one of us has to do so and we have to even when patronizing food shops, so are you saying that this is not tax? Do you know anything about political economy? All these are hidden taxes and the price to be paid for seeking higher rent yield. I am putting this question to you and you have to answer this question — do you have any way to remove this shackle of hidden taxes on us?

**MR LEUNG YIU-CHUNG** (in Cantonese): President, since the Government published this consultation document on the Goods and Services Tax (GST) in July, public opinions have been strongly critical of and opposed to it all the time. I have been listening very carefully to the opposition voiced by Honourable colleagues just now and found that actually, the views within and outside the legislature are in fact consistent.

Basically, the reasons that Members consider the GST not worthy of support are that it will widen the disparity of wealth, that it failed to address the financial pressure borne by the middle and lower classes and our economy, including small and medium enterprises, the tourism industry and the retail industry, will be dealt a blow. One can say that these arguments are consistent with those voiced by people in society at large. Basically, as matters now stand, the voices of opposition are emerging from all quarters. Having seen this strong torrent of opposition, the Government is now hastily seeking counter-measures to turn things around. A few days ago, the Government brought forward a new proposal to provide relief for school fees, transportation fees and medical fees, furthermore, it even said that it would be possible to implement small-class teaching, in the hope that we will give our support.

However, President, I wish to ask the Government, what is the meaning of bringing forward this new proposal at this stage. A lot of people in the press said such a tactic was designed to please, to scare and to entice. Yet, I think this is more than to please, to scare and to entice. In fact, when the Government initially considered the GST, is it that it did not do so thoroughly? If it did, why did it not tell us right from the beginning that exemptions would be granted to school fees, transportation fares and medical fees? Why did the Government not say so right from the start? What does it only say so now? If the Government only says so now, if the Government has not given this matter thorough and careful consideration, then what the mass media said should be correct, that is, this move is intended to entice and please people, in the hope that we will accept such a measure from the Government. President, should this really be the case, it would be all the more alarming. Why?

Now that the Government finds the situation not in its favour, it wants to make a last-ditch attempt, so it thinks that it will try to please us for the time being, in the hope that we will accept such a measure proposed by the Government. All right, if we really accept it and approved the GST, how will the situation be like in future? The rate will initially be set at 5%, then it will be adjusted upwards and increased gradually, as in the case of the United Kingdom described by Dr Raymond HO, from 5% to 10%, then to 15% and to 17.5% as at present. What does this tantamount to? This is tantamount to a pit, a pitfall, President, and this is what is so alarming about it. So this measure is the product of "strong governance" and one has the impression that each move the Government takes under its policy objectives is making our hearts jump. Why? For nowadays, a lot of things that appear to be sugar-coated is however really poisonous in the core.

Therefore, I think that if the Government believes that the GST is a solution that can solve social problems effectively, why does it not float it as part of a packaged offer? Why are some moves taken all of a sudden only until now? If the situation then is still not very ideal and the Government wants to turn the situation round, I do not know whether more proposals will be put forward towards the end of the consultation period in March next year, in the hope that we will be compliant and accept the GST. Will things turn out this way? If so, I would ask the Government to tell everyone about them right now, so that it will not be necessary to do such a lot of things.

President, I am very worried and wonder why the Government has cherished such a way of thinking. I have asked a lot of people what actually is the aim of the Government. The GST has been floated for a stretch of time by now, however, public opinion has nosedived, telling us that no one supports it — only a tiny minority supports it but the overwhelming majority do not — why does the Government still want to force through to promote it regardless? This is really perplexing.

If it is said that the Government is not really doing this for the future of Hong Kong, it would be very difficult for us to say it is not, however, if it is said that this move is taken for the sake of our future, it would also be very difficult for us to agree. As many Members and society at large have actually remarked, all of us know that the GST cannot solve the existing problems facing Hong Kong. In fact, a number of Honourable colleagues and even society at large have brought forward a lot of reform proposals to solve the existing problem of what is called a narrow tax base, including proposals to increase the salaries tax and progressive profits tax, to levy capital gains tax, dividend tax, environmental tax and energy tax and so on, so it cannot be said that there are no proposals. Different political parties, Members and people from various backgrounds have all brought forward many proposals, however, the Government has all along simply maintained the question of where will the money come from. The Government is, as the Chief Executive said when he was the Financial Secretary, like a Greek goddess who poured wax into her own ear, thus shutting out every sound. In fact, we did tell the Government about them but it has refused to listen, so this is what I am most worried about.

President, another thing that I am even more worried about is whether, as I raised just now, has the Government considered this matter thoroughly and studied the GST in a thoroughgoing way? After the proposal of the GST was floated, the Government has been repeatedly criticized by the mass media. Among them, the *Hong Kong Economic Journal* said that since the information

was outdated, the GST should be studied further. It pointed out that in fact, when the Government proposed the implementation of the GST in 2002, the estimates at that time were adopted as the basis. How were the estimates at that time? The Government estimated that in 2006-2007, the fiscal deficit of Hong Kong would stand at \$58 billion, while only \$104 billion would remain in the fiscal reserve. However, what is the situation like now? In 2005-2006, our surplus stood at \$14 billion and the fiscal reserve stood at \$310 billion. President, the Government's estimates have completely departed from these figures. In view of this, if we propose this tax system on the basis of outdated information, saying that the tax base in Hong Kong is too narrow, is this proposal well-founded? Has the Government in fact not sorted out its financial situation seriously, and is it that implementing such a taxation system is all that it wants to do? This is what we are concerned about.....*(the buzzer sounded)*

Therefore, as seen from various aspects, I cannot make out why the Government has to introduce the GST. President, we are against it.

**MR LEE WING-TAT** (in Cantonese): President, Secretary Frederick MA is very devoted and has been sitting here listening to Members' speeches the whole evening.

At this stage of the debate, I think Members have already expressed a lot of views and actually, I do not have a lot of new ideas to offer either. Concerning this issue, as I see it, the grounds cited repeatedly by the Financial Secretary and the Secretary in the discussions over the past few months have been refuted by a number of Honourable colleagues one by one.

Firstly, I remember that several years ago, at the time of the SARS outbreak and economic recession, for a short period of time, we were really worried because the reserve had dropped by more than \$100 billion within three years. I believe Secretary MA has also raised this point. This arguably is a situation that has seldom occurred in the past two decades. Of course, Secretary MA or the Financial Secretary may remark that in say, five years or 10 years later, this may happen again, so how should this be tackled? I think we can discuss this with cool heads, however, whether it is necessary to address this issue by way of levying the GST is another matter.

Secondly, Secretary MA and the Financial Secretary also said in the past that Hong Kong had structural deficits, however, it seems that these several

words are no longer used, that is, there is no longer any — I do not know if there is still any. If there is, perhaps they can talk about it in their reply. In the past one or two years, it seems the Government no longer used these several words, and only saying that our tax base is narrow rather than there are structural deficits. By structural deficits, it means that when there is an economic downturn, there will be a deficit and when there is an economic boom, there will still be a deficit. Only in this manner can a deficit be described as structural, however, it is unlikely we will experience it this year or the next. In the absence of any structural deficit, I hope the Government will tell us if there is really such a great need to levy that tax?

Thirdly, I wish to praise the Government because in the past few years, it has adopted the approach of keeping a tight rein on its finance. Compared with many other countries, the Hong Kong Government has done a fairly good job. Although some Honourable colleagues may criticize the Government for being too strict in spending on certain areas — and I also want to criticize it in this regard — speaking from the viewpoint of management, the Hong Kong Government has been doing something in respect of its establishment or its expenditure in these few years, such that its expenditure as a percentage of the GDP has decreased from some 22% or 23% to 17% or 18%. I want to commend the Financial Secretary and the Secretary for doing quite a good job.

Of course, how should we spend the money so that education, welfare and health care services will be adequate in serving the public? I agree with expenditure in this direction, however, we must bear in mind that financial management of a set of accounts is a very difficult task. However, I also think that if the finance is well managed, to put it in a vulgar way, what does the Government want so much money for? I am not saying that money is not important; everyone wants money. If I spend \$20,000 per month, of course, I would want to have \$50,000 in my pocket. The Government spends \$200 billion each year, so it wants to have \$300 billion in its pocket and this is only normal. However, I believe this is not adequate in explaining to us why, given that it is doing a good job in controlling its expenditure, why it still needs so much money — even with regard to health care financing, which will be discussed in half a year or a year's time, I am sure the Government will definitely levy new taxes or fees and charges instead of relying on existing expenditure. In other words, generally speaking, the Government is doing quite a good job in controlling existing revenues and services (this is the second time I praise the Government), so what does it want so much money for? Thus, once again, I do not quite understand why.

All right, if the Government says that problems such as an ageing population and those relating to health care financing will occur in future, I think they have to be dealt with as another major issue. In fact, the Democratic Party has all along urged the Government to speed up the discussion. For example, the consultation on health care financing originally scheduled for early 2005 has by now been delayed for a year and a half. Members all know that the consultation will now be conducted only after the election. Our Government is really clever and the consultation on all controversial issue has to be deferred. Another example is that last Friday, I found that the bills that we have to deal with this year stands only at eight. In fact, we should get a salary cut because we do not have a lot of work to do. We Members of the Legislative Council have to handle bills, however, there are only eight bills for 16 slots. I have been a Member of the Legislative Council for 10-odd years — I was not a Member for four years within this period — and it seems such a situation has never occurred before, that is, the Government does not give us any work to do. Why? This is because controversial issues have to be dealt with afterwards.

If one asks where the money will come from, firstly, I think it is necessary to use money appropriately; secondly, the Democratic Party has always taken the view that the existing practices with regard to the Exchange Fund are extremely unreasonable. Of course, we know that the Exchange Fund is an important component in stabilizing the value of the Hong Kong dollar, however, I think I do not have to coach Mr MA on this. The long-term return rate for the exchange fund in Singapore is something like 8% or 9%, however, it is only 4% to 5% for us. We have no reason to believe that the Chief Executive of the Hong Kong Monetary Authority, Joseph YAM, is no match for others, do we? Do Members know how much money does 3% represent? For one year, a difference of 3% has already amounted to \$30 billion.

I know that Korea is now learning from Singapore, hoping that it can also establish a similar exchange fund to make investments and obtain a return rate that is more or less the same. If there is a surplus in our coffers, should we levy such a..... I do not understand why the Government is so lenient with the Chief Executive of the Hong Kong Monetary Authority, Joseph YAM. I do not mind very much that he gets an annual salary of \$8 million; what matters most is that he must be capable and if he uses \$1 trillion to make investments, he does not have to obtain too high a rate of return — just 6% or 7% will do, as long as the level of return will not always be lower than that for bonds in the United States, as is the case now. In the present state of affairs, it is really not worth it to pay him an annual salary of \$7 million or \$8 million. I think, therefore, the

Government is always very kind to senior officials, its colleagues or former colleagues, but it is comparatively mean to members of the public.

In fact, I think the Secretary and the Financial Secretary have to consider one question and that is, after today, what are you two going to do? Of course, you would say that the consultation will continue, however, I am not sure if the Legislative Council will be interested in continuing the discussion on this issue with you. However, of course, we cannot interfere with how the Government goes about its business. From a certain perspective, I think Dr YEUNG Sum of the Democratic Party has given you a hand because if the debate goes on for another half year, the authority of the Government will be on a steady decline. I think be it the Secretary or the Financial Secretary, one issue that has to be considered now is how to tidy up the mess.

I remember that a year ago, several political parties, including Mr James TIEN of the Liberal Party, had a discussion on the canopy for the West Kowloon Cultural District Development. Although the Legislative Council had passed a motion, the Government still maintained that it would proceed. However, in less than three or four months afterwards, the Government changed its position again but I do not know why. I think that sometimes, it is desirable if the Government could comply with the Legislative Council, which represents public opinion. To argue and clash with the Legislative Council repeatedly does not mean that the authority of the Government can be preserved.

Thank you, President.

**MR LEE CHEUK-YAN** (in Cantonese): President, I hope that in floating the GST, the Government can see a stark political reality, that is, universal suffrage is absent in Hong Kong. Recently, when the Secretary was putting up a last-ditch struggle, he inveighed practically every political party, saying that we were all working after the votes in everything we did. When we discuss the voucher system, Secretary Prof LI also inveighed against us, saying that this group of ours is also going after the votes in opposing the Government.

I think the Government is now finding itself in a deplorable situation and I hope it can get over its inferiority complex. It has an inferiority complex because it is not elected, so for its inferiority complex, it especially likes to trample on those political parties that have the backing of voters. Even Members returned by functional constituencies have the backing of voters, the

difference only lies in the numbers of voters. Since the Government is plagued by inferiority complex, therefore, throughout the process of lobbying, whenever it could not accomplish something, it would use this tactic of tarnishing other people, saying that they were going after the votes. I hope the Government will ultimately do some self-examination and will not say all the time that political parties are often going after the votes, because after all, this is normal. The votes represent public opinion and if we hope that the Government will govern according to public opinion, is there any problem with this? What is wrong with this? Therefore, I think it is the Government that should pause to ponder. If it really wants to implement certain ideas, it should first introduce universal suffrage so that it can obtain public mandate. Only in this way is it qualified to implement the controversial GST. I hope that the Government can first of all learn a lesson from this aspect.

Secondly, (the Financial Secretary, Henry TANG, has come back and that is good) I think that throughout its process of marketing the proposal, the Government is an awkward salesperson whose remarks are completely contradictory, nor are they based on good grounds. The official concerned even left while we were having a debate, and still bade us farewell, appearing to be very lightsome. (*Laughter*) However, should the Government behave in such a way? It should listen to Members debating because the more debating, the more will the truth be uncovered. Why did I say that throughout this process, the Government is an awkward salesperson and its remarks are completely contradictory? Let me give several examples so that the Government can really reflect on its acts.

First, the Government has put itself in a fix right from the beginning. It said from the very beginning that the entire proposal is "revenue neutral". All right, if it is really revenue neutral, then there will be raw deals on a lot of things. In what way are they raw deals? Since we hope that problems relating to education, welfare and medical services for the elderly can be resolved properly, the Government therefore alleged that the expenditure could be increased after the levy of the GST. However, since it stated that this measure is "revenue neutral", then it will not be possible to increase the expenditure. How will the expenditure be increased? The Government has never explained this. Next, Henry TANG said that what comes from the public would be spent on the public, saying that he was far-sighted and hoped that education can be improved, or it would not be possible to meet the challenges of globalization. He also said that he wanted to upgrade the quality of our society and solve the problems relating to the elderly. He cited a lot of things, however, President,

in the end, things would hit a snag as a result of being "revenue neutral". First, where will the money for doing all these things come from? Second, the Government is self-contradicting. It talks about "big market, small government" all the time and that the scale of the Government can only account for less than 20% of the GDP and the proportion is now 17%. If the Government really have to meet all such expenses and really wants to invest in education, health care and welfare for the elderly, then it will not be possible for the scale of the Government to account for less than 20% of the GDP. If it is not possible for the proportion to remain at less than 20%, then another established principle hitherto adopted by the Government will be violated. However, the Government has never come out to say, nor has it ever explained that after the introduction of the GST, should revenue increase substantially in the future, it will change the scale of the Government to one that accounts for more than 20% of the GDP. The Government has never said so. If it has never said so, what is the point in levying so much money? President, the Government has never given an explanation on this.

Furthermore, I think the most undesirable thing of all is that one does not know what the whole consultation is driving at. According to the Government, what can be done after it gets the \$30 billion? The answer is that the profits tax can be reduced by 5% and the salaries tax can also be reduced by 5%. Will it be the profits tax, or the salaries tax, that the Government will reduce? The Government was silent on this. I do not know what the Government is intending for. The worst thing of all is that, if things are really "revenue neutral" and the money received is used to offer a reduction in profits tax and salaries tax, another major problem will arise. President, obviously, all Hong Kong people have to pay the tax, no matter what their income level is, and this will also be the case for the poorest people, so the Government will become "the lord of taxes". Since the Government will reduce the profits tax, that means the large syndicates in the business sector will in turn be subsidized. As regards the reduction in salaries tax, what sort of people is the bulk of income tax payers made up of? They are high-income people like Secretary MA, so does that not amount to using tens of billions of dollars to subsidize these people, so that they can pay \$20 billion less? Is this reasonable? Action like this will only serve to widen the disparity of wealth.

President, another point on which Henry TANG has got it all wrong is his stated intention to solve the problem of an ageing population. True enough, I think he will be able to solve the problem of an ageing population because people will have to pay the tax even at their old age. In this way, the problem of an

ageing population will be solved, but there is yet a solution for the welfare problem that will accompany an ageing population. If the GST is levied, people will be made to pay tax at their old age when they are receiving "fruit grant" (old age allowance), after having worked and having been taxed throughout their whole lives. It is in this way that the problem of an ageing population will be solved.

Finally, President, I want to raise one more point. The Government says that it wants to broaden the tax base, however, we must not forget that the Government has narrowed the tax base last year by abolishing the estate duty. Obviously, the Government is letting dead people off but not the living. In future, when we have all become old folks, it would really be better if we die the sooner the better, for otherwise we will have to pay tax until the day we lie in the coffin. Therefore, President, a lot of options are available if the aim is to broaden the tax base. If the Government actually wants a discussion on broadening the tax base to be held, it should not talk about the GST but should prepare a consultation document on broadening the tax base instead. Thank you, President.

**MR JEFFREY LAM** (in Cantonese): Madam President, the Government has been consulting the public on broadening the tax base for more than three months. The Hong Kong General Chamber of Commerce (HKGCC) is of the opinion that the tax base in Hong Kong is narrow and in times of economic recession, public revenue from tax will decrease, thus affecting the ability of the Government to provide public services. Hence, the Government should carefully work out a tax system that can provide stable income for Hong Kong.

In discussing a tax system for Hong Kong, it is necessary to give this matter an all-round consideration. At present, the revenue of the Hong Kong SAR Government mainly comes from land sales, salaries tax and profits tax, so how can it be ensured that its revenue will not decrease substantially as a result of the economic cycle? There are many areas that require further study. In levying the GST, does it mean that the public will not spend less in times of economic recession, thus leading to a decrease in revenue? It is necessary for Hong Kong to cope with the onerous expenses incurred by an ageing population, however, will it do to just focus on levying more tax? In recent years, we have been actively exploring the use of tax incentives to achieve some economic and social policy objectives, for example, the levy of a plastic bag duty to reduce the use of plastic bags. Can taxes of this sort help relieve some burdens of government expenditure?

In fact, we can see that various types of GST are being implemented in a number of countries. Some of them have the serious consequence of posing an obstacle to the economy but others have provided stable income. Overseas experience can be used as reference but should not be followed wholesale. This is because Hong Kong has its unique conditions. It is a small place with a large population, an abundance of shops and an intense consumption pattern. Furthermore, a simple tax system has always been an edge that gives Hong Kong its high degree of competitiveness. If any change is to be made to this state of affairs, careful study is necessary to avoid creating any uncertainty that will hinder investment and growth.

For the Government to achieve fiscal balance, apart from reviewing the tax revenue and levying new taxes, the HKGCC reckons that the Government should also review its expenditure at the same time. The HKGCC has also pointed out a number of times that the civil service establishment is too bloated, so the Government should strive to streamline it, so as to reduce expenditure. Take Singapore as an example, the number of its civil servants is calculated on a pro rata basis and has only two thirds of the number in Hong Kong, however, its foreign affairs network and the coverage of its overseas offices are more extensive than those of Hong Kong.

The members of the HKGCC hail from various sectors and strata. It is now consulting its members and collecting their views, as well as processing their views and carrying out in-depth analysis on them, with a view to offering advice on how the Government can continue to have sustained and increasing sources of revenue and maintain existing public services, so as to tie in with the long-term development and needs of Hong Kong.

I so submit, Madam President.

**MR BERNARD CHAN:** Madam President, the Government often says it wants to forge a consensus in the community. And it has succeeded. Just about everyone in Hong Kong agrees that they do not like the proposal for a Goods and Services Tax (GST).

In some ways, this is not surprising. No one likes having to pay tax, and the whole point of a GST is that everyone pays it. So obviously, there is no way a GST is going to be popular.

This public consultation exercise is not just an attempt to measure public opinion. It is aimed at encouraging public debate. It is also a sincere and serious attempt to stimulate new ideas and suggestions.

There are many arguments against a GST, and it is easy to come up with them. But it is much harder to come up with convincing reasons why we do not need such a tax, or what alternatives we could use.

The central reason for a GST is to broaden the tax base.

Most people accept that our current tax base is too narrow. We saw the impact during the recession a few years ago. Revenues fell sharply and the Government ended up with a serious deficit. It had no way to tell how long it would take to get its books in order again.

However, there is also an argument that our narrow tax base reflects our uneven distribution of incomes. If there is some truth to it, does it mean the current narrow tax base is acceptable? Or fair? Or sustainable? Is it healthier for the Government to rely on so few people and companies for such a large share of the revenue?

If we accept a need to broaden the tax base, what are the alternatives to a GST?

Would it be possible to broaden the existing salaries and profits tax net? That would mean taxing more workers and more small companies. What about the idea of a tax on all electricity and gas bills? It would be simple to collect and would encourage energy conservation, but it would be painful for certain heavy users of energy. Are either of those ideas actually better than a GST?

Of course, another alternative is to draw down the reserves when we hit the hard times. This is fine so long as we have a surplus during good times. But can we guarantee that? There is an argument that our reserves are too high. But even if that is true, it still does not offer us a sustainable and dependable, long-term source of revenue.

And then we have the ultimate alternative. And that is, quite simply, to cut the Government's spending. And that leads us to another question — which areas would you want to cut first?

Cutting expenditure is a viable alternative. If we do face a long-term problem of matching revenues with spending, and if the community strongly resists new forms of tax, it will be our only option. Thank you.

**MR ANDREW LEUNG** (in Cantonese): Madam President, on behalf of the Federation of Hong Kong Industries (FHKI), I speak on the motion "Opposing the introduction of a Goods and Services Tax" being discussed today.

The SAR Government published the consultation document containing its proposal to levy the Goods and Services Tax (GST) in July this year, in the hope of solving the issue of narrow tax base in Hong Kong and ensuring that government revenue could remain stable even at times of economic recession, so as to meet the needs in public expenditure.

In fact, the business sector is also very concerned about the issue of a narrow tax base in Hong Kong and agrees that it is necessary to face it squarely. In October 2001, the FHKI responded to the consultation paper published by the Advisory Committee on New Broad-based Taxes (the Advisory Committee) established at that time. In the relevant representation, we pointed out that the levy of a new tax in the form of a consumer tax was not suitable for Hong Kong. At that time, the FHKI also proposed other options that could be considered to the Advisory Committee, such as a land departure tax and reducing the tax allowance.

The FHKI is of the view that a simple tax system is an established advantage that Hong Kong hitherto possesses and is very important for Hong Kong to maintain its status as an international trade centre. However, the levy of a GST will run counter to a simple tax system and make the tax collection system extremely complicated. Not only will the simplicity of the system being compromised, a lot of government and non-government operations will increase in complexity as a result. Administrative costs will go up, users will also experience a great deal of hassle while the image and reputation of Hong Kong will be adversely affected.

In order to implement the GST, naturally, the Government has to put in place a set of complementary facilities to tie in with the levying of the tax, for example, the Customs and Excise Department and the Inland Revenue Department will have to recruit more manpower and procure new computer hardwares and softwares, whereas other departments will also have to be

responsible for implementing relief measures. An academic has pointed out that in fact, society has to pay a high opportunity cost in order to levy the GST but it can be said that there is hardly any economic benefit therein. On the contrary, if the Government diverts the resources, time and energy expended on such a large administrative machine for other purposes, for example, to attract overseas companies to establish their headquarters in Hong Kong, to promote tourism, to allocate resources to improve education, health care or to develop commerce and industry and even sports and arts development, not only can the economy grow in a healthy way, the goal of maintaining a state of surpluses and financial stability can also be achieved.

At the same time, the business sector and all members of the Hong Kong public have to shoulder the opportunity costs that the tax involves. Companies have to be responsible for collecting the tax, which has to be surrendered to the Government afterwards. This process will give rise to considerable administrative work for companies and increase the costs of running businesses. According to a report of the Australian Broadcasting Corporation, after implementation of the GST in Australia, each small company hiring less than 20 employees has to pay AUD\$3,300 out of its own pocket, that is, about \$18,000, as compliance cost after deducting the subsidy provided by the Government. If companies can use these resources to develop their businesses, promote their products or to make other investments, I believe this will benefit both the companies and the entire Hong Kong economy even more.

Companies are also very concerned that the increase in costs will deal a blow to the consumer market because apart from the additional 5% in GST, a lot of companies will transfer the administrative and accounting costs on to consumers as far as they possibly can. However, with the keen competition in the market nowadays, except some leading companies with an exceptional competitive edge, other small and medium companies will find it difficult to transfer such costs to consumers successfully. As a result, they can only swallow such expenses and their profit margin will be further eroded.

In addition, since for a long time, Hong Kong has made itself a name as a free port, and except for tobacco products, alcohol, vehicles and fuel, the import and export of goods are duty-free, so the inspection of the luggage of visitors entering and leaving the territory is quite a simple and easy affair. Once the GST proposed by the Government is implemented, a tax will then be levied when Hong Kong people travelling overseas return to Hong Kong carrying any item valued over \$3,000, and this impose a heavy mental burden on the public.

The consultation conducted by the Government on this occasion seeks to change the situation of a narrow tax base in Hong Kong. The FHKI also agrees that there is a need to broaden the tax base in order to fortify our ability to cope with adversities and to recover in times of economic downturn. However, a consumer tax must not be introduced indiscriminately just for the sake of keeping up with the joneses. The Hong Kong economy is very unique in the international arena. The advantages that we possess are often not found in other economies, for example, just the absence of a consumer tax allows us to forge ahead of other competitors.

As I have said, there is the need to broaden the tax base, however, as regard how we should go about it, in order to allow sustained development for society and steady growth for the economy, it will be necessary for us to put our heads together, propose new options to enable everyone to have in-depth discussions. The business sector in Hong Kong will be happy to continue to offer its ideas and strategies to the SAR Government and the FHKI will also study this subject, in the hope of bringing forward effective and constructive proposals.

Madam President, on behalf of the FHKI, I support this motion and oppose the levy of the GST. I so submit.

**MR FREDERICK FUNG** (in Cantonese): Madam President, the government proposal to levy the Goods and Services Tax (GST) has triggered heated debate in society and from the beginning of the consultation to the present, the voices of opposition have been sounded incessantly in the community and opposition groups have been formed one after another. From the grass-roots, the middle class to the business sector, the stance of opposition is the same. Be it the political parties on the left, right or at the centre, there is no any need to say whatever their stance is. The stance of opposition taken by the entire society is in fact quite consistent. This is in stark contrast to the pattern of wrangling over matters of ideology in the past, for example, over the pace of political development or the bi-polar tussle over the welfare for the grass-roots and the interests of the business sector.

In fact, has the Government ever reflected on why the GST is faring like this? Why has it not led to the social phenomenon of bi-polar tussles, as is the case in the past? In fact, the Government did give us an answer. As the

Government indicated, it was only natural to oppose the GST because no one was willing to pay tax, still less a new tax. However, as a responsible Government, it had to consider the long-term interests of society and it could not shy away from the discussion on the GST just to win some transient applause. On the face of it, this smacks of the magnanimity of going where the angels fear to tread, however, in essence, this is a manifestation of the influence that the present SAR Government is exerting, that is, it is self-righteous in whatever it does and everything has to follow the will of the Chief Executive. It looks as though only the Government knew what is the most desirable and most favourable for Hong Kong, and that apart from the Government, only sectoral interests abounds in society and people are working for their own interests. They are both short-sighted and partial, whereas political parties are only going after the votes.

Madam President, in fact, in this consultation exercise on the GST, the Hong Kong Association for Democracy and People's Livelihood has launched an all-out campaign to express our stance of strong opposition. The grounds for our stance have been clearly set out and they are both rational and reasonable. However, the treatment we received was no different from other opposition groups. It goes without saying that the Government has turned a deaf ear to all opposing views, moreover, it even portrayed all opponents as "irrational" right from the beginning. All the dissent voiced by the general public, no matter whether the arguments are sound or not, has been branded as irrational, having no regard for the long-term development of Hong Kong, an opportunistic attempt to win votes, and so on.

The Government frequently emphasizes that one has to discuss the issue of the GST rationally, however, the subtext is that society is asked first of all to agree with the premises spelled out by the authorities, including an overly narrow tax base, the importance of stability in government finance, an ageing population and the long-term competitiveness of Hong Kong and so on. If the discussion on the GST is not based on such premises, then it is not considered to be a tad rational and objective. If we look at the entire consultation document, the effect it strives to achieve is that nothing else other than the GST will do. The premises, tone and even conclusions in this consultation exercise have all been predetermined, so how can it be rational? How can there be any discussion? In fact, do Members find the foregoing premises laid down by the Government reasonable? Do the officials here find this reasonable? There is in fact no opportunity for society to have extensive discussion, still less any room for us to examine them closely.

Based on these premises, the Government delves into the details of implementing the GST and the general public is led into hollow discussions on matters such as whether the so-called exemptions or relief measures are adequate, how the interests of various strata can be calculated, and so on. The other day, Financial Secretary Henry TANG even intimated that more exemptions could be given. It seems that such a tactic has been adopted by the Government time and again.

Madam President, I may as well first discuss here whether the premise of a "narrow tax base" is sound. The so-called "narrow tax base" described by the Government means that apart from the rather simple types of taxes, there is an excessive reliance on the salaries tax paid by a small proportion of members of the public and the profits tax paid by companies for the tax revenue. In fact, does a "narrow tax base" essentially mean that there is a problem? This in itself is already highly questionable and calls for detailed discussion by society. What we should look at is whether in saying that the tax base is too narrow, it is the Government that has actually reversed the cause-and-effect relationship. The polarization of the rich and the poor in Hong Kong society is the result of the lopsided policies and economic structure implemented by the Government, so wealth and salaries have become highly concentrated on a small group of people whereas the majority of the public can only earn a meagre income. Not to mention shouldering the tax burden, they cannot earn the minimum wage even after working 10 hours or support themselves or their family, so how possibly can they pay any tax? If the households in Hong Kong are divided into 10 tiers, the incomes of the two tiers of households with the highest income account for as much as 57% of the total income of all households in Hong Kong. These figures indicate that the incomes are highly concentrated on a small group of people. In this way, naturally, a small number of people will have to pay more tax. Is this a problem attributable to the tax base or to the disparity of wealth in Hong Kong society instead?

In fact, the single key to tackle the problem of a narrow tax base is not to find ways to broaden the tax base but to look at how improvements could be made to problems relating to the economic structure, economic policies and employment in Hong Kong, as I have earlier pointed out, so that more people on low income can earn more money through working. In this way, more people will pay tax. If the authorities refrain from addressing the disparity of wealth but instead talk at length about how to broaden the tax base, is this not reversing the cause-and-effect relationship? Are they not trying to achieve something by fishy means? In order to levy the GST, they have converted the entire tax

system into the rules of the game and compelled all people to fall into the tax net. Such is the aim of broadening the tax base.

Madam President, other premises such as financial stability, an ageing population and how to enhance Hong Kong's long-term competitiveness are in fact all very significant topics *per se* and each of them can be dealt with in myriad ways. Have the authorities ever given audience to our views on how to deal with the problem of an ageing population? We have an approach involving contributions from three parties, which is designed to raise new tax revenue, but has the Financial Secretary ever given us audience? Why has this proposal been found not feasible? The Hong Kong Council of Social Service once proposed a very detailed plan and an actuary have also worked out a whole set of figures. All these problems cannot be solved immediately by the mere levy of the GST. Even if you say so, I will not believe it. In fact, I bet even you yourself do not believe so.

Madam President, I agree that it is necessary to have "rational discussion", however, it must be founded on a very sound basis and not on some predetermined premises or ambiguous arguments, saying that "in the next economic winter, the fiscal deficit will perhaps exceed \$190 billion" to scare people but without the justifications to support such a claim. On making estimates, I too can make an estimate. I estimate that it will not just be \$190 billion but may well be \$1.9 trillion. Next, the authorities will use as examples the sun rising from the east and the story of an ant preparing for the winter. Will the authorities please provide some figures, proofs and facts as the evidence instead of merely telling stories?

If we really want the public, the academic circle and Members to have objective and rational discussions in detail focussing on the premises and problems spelled out by the Government, then the fallacious approach of presuming that the mandative levy of the GST is required even before carrying out consultation should not be adopted. Thank you, Madam President.

**MR ALBERT CHENG** (in Cantonese): President, today, many Members have spoken and the majority of them are opposed to the GST. My position is very clear. I have always opposed the GST. Back in those years, when Mr Moses CHENG Mo-chi and Mr Eric LI Ka-cheung released their report, I said publicly that LI Ka-cheung was not "cheung"(auspicious) and CHENG Mo-chi was not "chi"(wise). President, my position remains unchanged.

Dr David LI has moved an amendment on today's motion. His amendment is very simple and it in fact consists of only one line. Dr David LI seldom proposes any motion or amendment and even this amendment proposed by him is very simple, and it says, "That this Council urges the Government to continue the public consultation on the introduction of a Goods and Services Tax as a means to broaden the tax base, and if there are other feasible options that are accepted by the majority of the public, this Council opposes the introduction of a Goods and Services Tax." It is all very clear, President. However, I do not know why, I heard a lot of Members spoke — Dr David LI has very good interpersonal relationships — but nobody has voiced any opposition to Dr David LI's amendment. They merely said that they support Dr YEUNG Sum's motion, in other words, it goes without saying that the majority of Members are opposed to Dr David LI's amendment.

I wish to talk about this issue from the viewpoint of principle. President, I, as a Member who supports democracy and seeks to advance democracy, maintain the principle that we will always ask the Government to carry out consultations and the longer the period, the better. If Members' memory still serves them well, did you remember what we advocated in respect of the legislation on Article 23 of the Basic Law? It was nothing other than a White Bill, that is, that was a fight for a period of consultation. The more often the Government conducts consultation, the better, and we cannot possibly oppose this. How can we possibly oppose this? We say that we support democracy and want the Government to respect public opinion. Now that Dr David LI proposes that consultation should be carried out and if it is found on consultation that the public does not find the GST acceptable and there is no other option, then we may as well oppose the GST. This is very simple. Therefore, I do not understand why Dr David LI's amendment should be opposed. I want to make my position very clear. Under this principle, I personally oppose the GST but I support Dr David LI's amendment.

On the GST, the Government's grounds are very flimsy. Why are they flimsy? The Government says that the tax base is narrow, so a lot of Members debated with the Government on the basis of a narrow tax base, however, they have all fallen into the trap. The tax base in Hong Kong is not narrow and there is no need to elaborate on this further. What should the Government say instead? If we face the reality, the fact is that the base of direct taxes is narrow because only a small number of people are paying taxes, however, the tax base is by no means narrow because indirect taxes account for 60% of government revenue. Where do these indirect taxes come from? Firstly, as I often say, President, the greatest source of revenue is derived from the policy of high land

prices, including the revenue from land sales, rates and stamp duty. Apart from this, there is the revenue from football and horse-racing bettings. The Financial Secretary is a former voting member of the Hong Kong Jockey Club (HKJC) and also a horse owner, so he should be fully aware that the HKJC will pay the Government \$8 billion each year as guaranteed betting duty, moreover, the Government also receives revenue from football betting. Moreover, with a daily turnover of \$40 billion in the stock market, it receives substantial stamp duty in this regard. The tax base for indirect taxes is very broad, so we should not be envious of poor people who do not have to pay any tax. When we buy a buttered bun, drink a cup of tea with milk or have a bowl of wonton noodle outside, we all pay indirect taxes because as a result of the policy of high land prices, shops have to pay high rents and this is as simple as that. We are paying indirect taxes in everything that we do. Therefore, if we want to introduce the GST to broaden the tax base because the direct tax base is narrow, we will have to face the reality by changing our so-called simple tax system and deciding if we still want to adhere to the policy of high land prices.

In addition, after becoming a Member of the Legislative Council, I found that there is one type of even more exorbitant indirect tax and it is transportation fares. This type of charges is even more exorbitant. Let me tell you, the policy of high land prices has resulted from the stamp duty and rates levied by the Government and the revenue from land sales, however, this Government does not invest in mass transportation systems and roads but allow franchised companies operating the cross-harbour tunnels, Route 3, buses, the mass transit railway, the Kowloon-Canton railway, and so on, to charge very high fares and tolls. As we all know, if a person with little means living in Tuen Mun works in Central, he has to spend \$40 a day, equivalent to \$1,200 in a month on transport fares, so this is even higher than salaries tax because he does not have to pay \$1,200 in tax for his wage. In other words, there are indirect taxes in Hong Kong and our tax base is very broad, not in the least bit narrow. To say that the GST has to be levied because the tax base is narrow does not hold water at all.

However, from another perspective, I very much "admire" — I do not know how to translate this — I neither look up to them nor appreciate what they did, but very much admire them for their courage to do such a stupid thing and I admire the Financial Secretary, Henry TANG, in particular. He knows only too well that anyone will oppose this proposal. When we say that any government — do not talk about Singapore, just now, I heard someone talk about Singapore and I was not very pleased to hear that. He said that the return for the exchange fund of Singapore is very high, however, the exchange fund of

Singapore is controlled by the LEE family while Singaporeans do not know what they have invested it on. Do we want to be like this? Please do not talk about Singapore any more. President, the point is, apart from such totalitarian regimes as Singapore — in any other country seeking to introduce the GST, if it is passed by the parliament with consequent enactment of legislation, then the political party concerned will have to step down from office.

Again, about the GST, according to the Canadian experience, the administrative cost incurred by the Government is 1.5%. This 1.5% is just the administrative cost but has not factored in the administrative costs likewise incurred by small and medium enterprises or large corporations in collecting the GST for the Government. Hence, there is more to lose than to be gained, moreover, the simple tax system in Hong Kong will be affected, so I am resolutely against it.

However, one can see that Henry TANG has done a lot of work of late, for example, providing subsidies to poor people. I have one suggestion. If the GST is spent on health care financing or on providing universal health care insurance, then I am willing to consider it. However, if we do not change the simple tax system in Hong Kong, which includes indirect taxes and the policy of high land prices, I will be resolutely against the GST. Thank you, President.

**MR ALAN LEONG** (in Cantonese): Madam President, since the Financial Secretary proposed the levy of the Goods and Services Tax (GST) three months ago, in general, the public have sneered at the proposal, and political parties representing different strata of society have taken to the streets to express their discontent one after another. The Government also admits that the great majority of public opinions are opposed to the introduction of the GST, however, it has added a "proviso" at the same time, saying that the public do not oppose continual discussion on it. The amendment moved by Dr David LI has in fact toed the official line, that is, it wants the discussion to continue until other feasible options acceptable to the public are identified before the GST should vanish.

Madam President, however, people in various strata of society have gone through the whole document long ago and have done so thoroughly, so much so that it is already worn out and they have expressed everything that they wanted to express. Is there any government viewpoint or justification that we have all along overlooked or even disregarded? Is there any? If not, and if the Government wants the public to go deeper in their discussion, should it not carry

out a self-examination and examine in which area is the information provided insufficient and then supplement it accordingly?

The reasoning in the consultation document is very simple: that the tax base in Hong Kong is narrow and the number of taxpayers is small, however, the challenges posed by an ageing population are imminent but introducing any change to the direct taxes or the property tax will affect our competitiveness, whereas other types of new taxes will lead to an increase in the operating costs of businesses. Moreover, it is not possible to increase the salaries tax significantly, therefore, the only remaining option is to levy the GST. Assuming that the rate of the GST is 5%, the new tax will bring \$28 billion in revenue and after deducting \$7 billion for providing relief to families and \$300 million for providing relief to companies or organizations, there will still be a gain of \$20 billion in revenue, which can be used either to offer a reduction in salaries tax and profits tax or to increase public expenditure. Such is the simple argument in the consultation document.

Behind such linear thinking, there are a large amount of unexplained facts and figures. There is only the mention of a narrow tax base but silence on the disparity of wealth that has reached the Gini Coefficient of 0.525 and the fact that a large number of people in the working population will be pushed into the tax net; just like any change to other types of taxes, the GST will have an effect on the operating costs of businesses and their competitiveness, however, the Government did not provide a detailed comparison of the impacts of various types of taxes on economic performance; the basis on which the tax rate of 5% is derived is not fully accounted for, so even the \$20 billion in revenue is only an attractive yet questionable figure.

Madam President, with this consultation document characterized by such hallow and narrow thinking and purporting to broaden the tax base, the discussion of the public were restricted to the confines of either supporting or opposing the GST and it is practically impossible to think more broadly out of the box. If an ageing population will give rise to pressure on health care and welfare, why do we not administer the right cure to the problems by addressing them through reforms on health care financing and establishing a system of retirement protection? Can progressive profits tax and a tax on luxury goods be introduced, so that the tax base can be broadened with a more equitable tax system? Apart from increasing revenue, does the Government has any strategy to cut expenditure, for example, by reforming the financial management of statutory bodies and even to find ways to encourage companies and individuals to

increase their donations to welfare or educational institutions, so as to reduce the latter's reliance on public funds?

The most paradoxically thing about this consultation document is that, whereas the Government admits in paragraph 7 that "Our major sources of revenue..... all suffer from considerable volatility related to economic conditions", it proposes to introduce a type of tax which is just as closely linked to consumption and investment, and which also cannot be insulated from the economic conditions. Originally, such a statement will lead people into thinking that the Government will make a different kind of proposal to raise revenue and compile a comparison on how various proposals can serve to ensure steady revenue in the cyclical fluctuations of the economy, unfortunately, the Government did not do so in its consultation document.

Madam President, is it the case that apart from this government proposal, there is no one who is looking for a way out for the public finance in an externally-oriented economy? This is by no means the case. I remember that in June last year, in a motion debate on putting the fiscal reserve to good use, a Member proposed a very conservative and sound investment strategy that makes use of the fiscal reserve standing at close to \$1 trillion to obtain an annual income of \$50 billion or \$60 billion in fixed interest. Did the Government ever listen to such proposals? Furthermore, responses such as reforming the health care and welfare systems, making good use of a progressive tax system and striving to cut expenditure are all rational options. The only question is whether the Government is receptive.

Madam President, so long as the Government listens attentively and studies closely, it will not be difficult to see that there are plenty of responses given by various sectors in society to the Government's proposal. Quite a number of such responses are both feasible and supported by the public. Those people who have given the responses certainly hope that the Government will continue to discuss with society, however, the approach adopted in the discussion should not be just to recap the arguments in the consultation document, rather, detailed figures and analysis on the effects of various proposals on consumption and investment should be provided. If the Government has no sincerity in amending and supplementing the existing consultation document, it would be tantamount to refusing to bring discussion with the public any further.

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

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

**MR ALBERT HO** (in Cantonese): Madam President, today, this Chamber has really turned into a hot kitchen with a very high temperature, so the Financial Secretary has been forced to go out for a breather. As for Secretary MA, I am sorry, the Financial Secretary may have greater freedom, whereas the Secretary has to listen to more of our speeches. It is a must to listen to public opinions because the Government is people-oriented, so even though it finds them very hard to stomach or does not want to listen to them, it still has to listen to them and we also have the duty to reflect them.

Madam President, in fact, the Goods and Services Tax (GST) is neither a devil nor an angel by nature. No, it depends on what circumstances it appears in. In some places, there is no problem in implementing the GST since the whole society accepts it, it is part of the tax system and everyone thinks that the Government has the authority to levy such a tax. However, unfortunately, introducing the GST in the present-day circumstances in Hong Kong, at such a time and under present social conditions, will create a devil and Honourable colleagues have already given many reasons. Why do they feel so strongly about it? It is not my intention to repeat anything here, however, I also wish to delve further into this matter and say that in fact, the levy of any tax does not merely reflect the economic policy of the Government but goes further to manifest the beliefs of the Government in governance and the value judgements of society. In fact, if we are concerned about the entire society, the first question we will naturally ask is, in implementing the GST here and now, who will be subjected to the greatest impact? Anyone who has studied this type of tax will say that this is a kind of regressive tax and poor people will be dealt the heaviest blow because more weight will be added to their already onerous burden, inequality in society will be aggravated and the disparity in wealth or income will get even worse.

Therefore, if our Government has been keeping close tabs on the pulse of society, cares more about the poorer families these days and fully understands the impact and effects of this tax on society, then no matter from what perspective — be it a long-term or short-term one — definitely it should not propose the tax at such a time, unless the social conditions have changed. Therefore, in proposing it now, the Government makes people wonder if it is biased and has its own preferences, having regard only to economic prosperity but not to the lives of people behind this façade of economic prosperity,

including the poor and whether they can live and work happily. In particular, the strongest reaction that a lot of people have after reading this consultation document is that a lot of exemptions are favourable to wealthy people, for example, those given to financial services, however, no exemptions are given to rents, electricity bills, school fees, medical fees, and so on. Why is the situation so lopsided?

Therefore, this makes us wonder if we have the confidence that the Government collecting so much tax will spend the money on society in a reasonable way, so that the lives of numerous poor people and people living in poor conditions will see an improvement. No one will have the confidence. Therefore, since the Government mentioned the term "revenue neutral" today, the first question it will elicit from other people is that if it is revenue neutral, what do we levy the GST for? If there is no need to collect such a tax, then the tax should not be collected. It maintains that it wants to solve this problem with a long-term solution, however, it does not tell us what long-term plan there is or how the newly collected tax will be used in a reasonable way, so that the problems facing our society can be solved. In particular, the Chief Executive mentioned building a harmonious society in his policy address and what is this so-called third challenge about? It is about the impoverishment of low-income people and stalling social mobility, as well as the widening wealth gap. All these matters are really disappointing.

When it comes to vision, many Honourable colleagues have already mentioned the impact and effects on the tourism industry, although I do not know about them. If we look further into the administrative aspect, as far as the entire administrative structure is concerned, it has already been pointed out that the administrative costs are high and it is possible that one third of the \$30 billion or \$40 billion in tax revenue received at a rate of 1.5% may have to be spent on administrative costs, moreover, some of the money will have to be spent on relief measures. The relief measures will also pose a major problem because the approach to be adopted in screening people will also become an issue. Frankly speaking, on transportation subsidies alone, so far, no proposal has been able to be worked out, and coupled with the effects of social stigmatization, everyone will wonder if this proposal is feasible and worthy of support.

Just now, I have talked about administrative costs and Members must not forget that all the calculations are based on the rate of 1.5%, which is the Government's administrative cost, but what about the administrative cost borne by the public? Can the Government prevent tax evasion effectively? We find

all these matters questionable. However, in conclusion, we are not calling on the Government to halt the consultation today. Today, within this period of consultation, many Honourable colleagues have voiced their strong opposition and if the Government wants to continue with the consultation, then it's up to its choice to do so.

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): If no other Member wishes to speak, Dr YEUNG Sum, you may now speak on Dr David LI's amendment. You have up to five minutes to speak.

**DR YEUNG SUM** (in Cantonese): Madam President, just now Mr Albert CHENG asked why Members from the democratic camp opposed Dr David LI's amendment which just proposed a consultation. He added that the democratic camp always mentioned openness and public participation and wondered why a consultation was not acceptable.

**MR ALBERT CHENG** (in Cantonese): I have not mentioned the democratic camp.

**PRESIDENT** (in Cantonese): Please sit down.

**DR YEUNG SUM** (in Cantonese): Perhaps I have taken the remark personally.

If the remark were taken personally by the democratic camp, Mr CHENG's argument will be more convincing because the democratic camp supports public consultation and openness of the Government. Does the democratic camp oppose Dr David LI's proposal of consulting the public? Yes, we in the Democratic Party do oppose it. As many colleagues have said, they basically oppose it because some implications are found hidden in Dr David LI's amendment if the wordings are to be looked at more carefully.

The first point — that is also disagreed by Mr Albert CHENG — he said that the tax base should be broadened. But with what means can the tax base be broadened? It is by means of introducing a Goods and Services Tax (GST). He further added that GST was the only means to broaden the tax base. But many colleagues, in their speeches, disagree that our tax base is narrow. Even Mr Albert CHENG and Mr James TIEN also think that the narrow tax base mainly refers to those who pay direct tax. If indirect tax is included, about 60% of the government revenue is generated from indirect tax. I have listened very carefully to colleagues' speeches and jotted down the main points. Just now 29 Members have spoken, most of them disagree that the tax base in Hong Kong is narrow because they think that the tax base should include both direct and indirect taxes and the Government only refers to direct tax. So, the Government's statement is superficial.

We disagree that the tax base is narrow. Nor do we agree that it is necessary to broaden the tax base, because the Government has an abundance of revenue. Apart from the \$300 billion of surplus, it has \$1,100 billion in foreign reserves. In the Budget to be submitted to this Council later on, the Financial Secretary may need to find out a proper way to refund the tax revenue to the public because of the enormous surplus. In other words, even though the tax base should be broadened, we disagree that GST is the only means to do so. So, we should not ask why a consultation should be conducted. Rather, the consultation is subject to some premises: first, we should support the broadening of the tax base; secondly, the only way to broaden the tax base is GST.

This is not the only implication hidden in the amendment. Another hidden implication is the attitude he showed towards GST. He said that this Council will oppose GST if we, including all Members here, can find out other feasible options which are accepted by the majority of the public. On the contrary, we consider GST not feasible and, secondly, GST will not be accepted by the general public. GST itself does not meet these criteria. But he did not say so. He said that GST had been proposed for our discussion and consideration. But we could oppose it only when we had found out other feasible options that were accepted by the general public.

So, Mr Albert CHENG, the point is he did not talk about consultation or say whether or not the democratic principle has been matched. The point is that there is a hidden implication. If we cannot even accept the premise, why should we support him? Returning to the issue, my motion is not concerned about consultation at all. The Government is the ruling body and we highly respect

the constitutional framework even though in our opinion, it is returned by a "small circle" election and the Legislative Council as a whole cannot effectively monitor it. As we cannot effectively monitor the Government, the Government will not be accountable to us in an effective way.

So, my motion is basically not concerned about whether a consultation should be conducted. Let us take a look at my wordings which are very simple: "That this Council opposes the introduction of a Goods and Services Tax". So, if we think that the consultation is still going on, why should we make our attitude known? Actually we have always declared our position. Have we not considered the issue thoroughly even though three months have passed for this nine-month consultation? So, the Secretary should not comment that Members are not prudent enough because three months have already passed. According to our timetable, three months are a very long period of time. You can take a look at the time we spent on deliberation of motions and approval of funds. So, I will be very surprised if Members still have not determined their position after a three-month consultation and on hearing the voices of objection of 70% of the people. Actually I just provide a platform for Members to reveal their attitude. However, among the 29 Members who have spoken on this motion, all except one or two are basically against the GST.

I so submit.

**FINANCIAL SECRETARY** (in Cantonese): Madam President, concerning the consultation document on tax reform, the focus of discussion has all along been on whether the Goods and Services Tax (GST), which can also simply be called a value-added tax (VAT), should be introduced, however, there has been little in-depth discussion in society on the underlying principles of the tax reform. The aim of the SAR Government in proposing the tax reform is to establish a fair tax system to ensure the stability of tax revenue. Only in this way can favourable conditions be created to enable the Government to handle a number of long-term problems and provide greater support to people in need in society, thus creating an equitable and harmonious society.

Last Monday, I met more than 20 friends from organizations in the mass media. A reporter among them asked me why, since the motion debates in the Legislative Council were not binding on the executive, I should care about the motion that opposes the GST, which was moved in the Legislative Council

today. My reply was that I was concerned about this motion not just because it was intent on opposing this policy proposal that was the subject of heated debates in society, more importantly, I was concerned about whether Dr YEUNG Sum, Members who support this motion and their political parties or groupings have misunderstood the fundamental demands of the public on the issue of the tax base, so much so that we will miss the opportunity to have a discussion on the long-term solution for the problems relating to the tax base, or even pose an obstacle to doing so.

Just now, Dr YEUNG Sum said that his motion was simple but resolute. In a motion of merely 12 words, he voices opposition to the GST utterly with no compromise. From a political viewpoint, if various political parties simply determine that the nature of the VAT is a new tax that will increase the burden borne by members of the public and it has to be opposed before they can have the peace of mind, I have little difficulty in understanding this mentality. However, as a responsible Government, we cannot do everything out of political considerations, and having regard to the long-term interests of the general public, the Government has to make efforts by taking the challenges head on. What the Government asks for is just the opportunity to rationally discuss with the public whether the VAT is a good solution in solving the problem of a narrow tax base, the opportunity to explain further the principles underlying the VAT, the details of implementation and its effectiveness, as well as the opportunity to identify a proposal that is the most acceptable to the public, so as to ensure that what comes from the public will be used on them. This is precisely the reason that we published a consultation document consisting of 84 pages and set a consultation period lasting nine months, that is, to enable the Government, the public and the legislature to put their heads together and reach a consensus.

However, if the motion moved by Dr YEUNG Sum is passed without amendment, it will inevitably give people the impression that one is blind to the problem that is facing us and that we have shunned it without discussing it.

I am grateful to Dr David LI for moving an amendment to encourage the public to continue to discuss ways to broaden the tax base, as well as giving society the opportunity to identify a proposal that the majority of the public will find acceptable on reforming the tax system. More importantly, the amendment encourages the public to continue the dialogue and discussion with the Government, express their opinions and seek a consensus, so that the true spirit of political discussion can be manifested.

Since the Government began its public consultation on the VAT, in the first three months of this period, it has received over 1 300 representations, organized 26 forums at various points of time, held 50 forums of various descriptions at the community level in various districts and made reference to some opinion surveys. We have come up with the following preliminary views:

Firstly, the majority of the public agree that the tax base in Hong Kong is too narrow, that is, a small number of people have to shoulder most of the tax burden and this is a fact beyond dispute. Moreover, most people also believe that this problem has to be solved. However, the public has neither had any in-depth discussion nor reached any consensus on how to solve the problem of a narrow tax base.

Secondly, although the public cannot accept the GST for the time being, they do not oppose continuing the discussion on the problem of a narrow tax base, neither do they agree that the consultation has to be shelved as a result.

Thirdly, the reservation that the public have on the VAT is attributable to the lack of understanding on it, for example, they are concerned that the simple tax system will be compromised, the administrative cost will be too high or the GST will increase the burden borne by the public, and some people are even concerned that the GST will widen the wealth gap. Some people hold the view that expenses on some basic daily necessities should be exempted from the GST, so as to reduce the burden borne by grass-roots members of the public.

The foregoing views point very clearly and definitely to the fact that although the public have quite a lot of doubts and reservations on the GST, it does not mean that they want to terminate the discussion on a narrow tax base and the VAT right now. This is in stark contrast with the aim and consequence of Dr YEUNG Sum's motion. As far as I know, after this motion had been proposed, a number of chambers of commerce and professional bodies have written to the President of the Legislative Council to indicate their agreement that the present tax base is narrow and that the study and discussion on the effective ways to broaden the tax base should continue.

Therefore, we believe that in the consultation period that remains, it is necessary to further explain to the public the problems caused by a narrow tax base and discuss with the public various solutions and whether the VAT is the best strategy in solving this problem.

Just now, when Members spoke, they also raised some queries concerning the VAT and the narrow tax base, so I wish to make some clarifications here to make the discussion today clearer.

The problem with the tax base in Hong Kong is that, to put it simply, a small number of people, particularly people in the middle class, have to shoulder the bulk of the tax burden, whereas the Government is excessively reliant on several sources of revenue that rise and fall easily and significantly with economic fluctuations. Some people are of the view that since economic development could be sustained in the past several decades under a simple but narrow tax base, therefore, there is no need to change the tax base or the tax system. However, I trust Members all understand that nowadays, our tax revenue can no longer rely unduly on land premium. Our society has experienced blows from the financial turmoil in 1998, the September 11 incident and the SARS outbreak in 2003. I believe the economic difficulties and hardships we experienced, brought about by these crises, are still fresh in our memory. I believe it is necessary for us to have stable revenue in order to sustain development in society and meet the demands to improve the public's livelihood. Broadening the tax base is a reasonable and feasible approach.

In addition, some people pointed out that under the existing system, when members of the public rent a flat or buy a property, they have already paid a lot of money and in the past, the Government had received large sums of land-related revenue, therefore, in this sense, the existing tax base is in fact already quite broad. I must point out that land-related public revenue has in fact fluctuated greatly. In the past eight years, the lowest annual revenue was \$5.4 billion and the highest was \$34.8 billion. Furthermore, I am convinced that in Hong Kong, which is a fairly mature economy, the demands of the public in respect of their living environment and the density of their living environment will increase all the time. Coupled with the fact that land is a very limited resource, I believe the revenue peak resulting from land sales seen in 1997-1998 will not recur easily. I believe that in future, the proportion of revenue from land premiums in the total revenue will decrease. To ensure the stability and soundness of public finance and achieve a balance between Operating Account and Consolidated Account, we must have a broad-based and stable operating revenue to pay for the expenditure of the Government and provide services closely related to the public.

Some Members are of the view that in proposing the levy of the VAT, the Government is levying taxes for sake of doing so. In this connection, I will try

to spell out some of the demands calling on the Government to reduce direct taxes and introduce measures designed to improve people's livelihood made by political parties and groups in recent years and set out the public expenditure required, as well as the resources committed by the Government to various policy areas to meet future challenges, so that everyone can have a better idea and the discussion can become more focused:

- some people have proposed a slogan which everyone has heard many times and which is by now familiar to everyone: "Reducing salaries tax rates to the level in the year 2002-2003". If the salaries tax is to be reduced to the level in 2002-2003, the Government will receive \$5.2 billion less in tax revenue each year.
- some people consider that the Government should commit more resources to education and I have already heard this demand many times. In the policy address delivered by the Chief Executive last week, it is proposed that \$2 billion be allocated as the subsidy for early childhood education. This is the decision he made after consulting the public. Furthermore, a lot of people have proposed small-class teaching and if this proposal is to be implemented, on the basis of reducing the number of students in each class to 25, the additional expenditure required will be about \$2.4 billion each year.
- the paces of reform and opening up on the Mainland are very fast and its modernization drive is also fairly successful. If Hong Kong wants to meet the challenges of a knowledge-based economy and economic restructuring and raise the proportion of university places for people in the age bracket concerned from 18% to 35%, the additional expenditure required will be about \$8 billion each year.
- as the population increases and ages and the demand for medical services increase, the preliminary estimate is that the expenditure on health care will increase by \$50 billion to over \$80 billion by 2023. The health care financing systems in various places of the world are either funded by tax revenue, or supported by universal insurance systems, private insurance or selective insurance, with the addition of a safety net. It will be necessary for the public to discuss the extent of resources the Government should commit to the future health care financing system.

Having looked at the "wishing list" proposed by various political parties and Members each year while I was drafting my Budget, I can say that not only are the foregoing demands very familiar to us, they are in fact just a tip of the iceberg and the list is in fact very long. If we cannot broaden our tax base and stabilize our revenue while the Government is asked to meet the foregoing diverse demands, this is tantamount to milking the bull and it will be difficult to get any result.

Some Members consider that the impacts of a narrow tax base will not be seen today but tomorrow, or in the future, therefore, they suggest that we "do not worry about tomorrow, for tomorrow will worry about itself". Even if the tax base has to be broadened, we can leave it to the next generation, in any event, if the VAT has to be implemented, this task can be accomplished in several years' time. However, we have had discussions on the problem of a narrow tax base for many years. If we shelve a feasible proposal that can solve the problem today, but the population of Hong Kong continues to age and the dependency ratio becomes greater and greater, the problems spawned by a narrow tax base will not simply go away but will only become more and more pressing. If we do as what is suggested just now and "do not worry about tomorrow, for tomorrow will worry about itself", and try to find solutions only when our savings are being used until they reach a dangerous level, can such an attitude be considered responsible?

Another Member believes that the fiscal reserve of Hong Kong is quite substantial and one should not be unduly concerned. One only has to pin one's hope on the fiscal reserve and the trillions of dollars of the reserve in the Exchange Fund and make aggressive investments, expecting that such high-risk moves will yield high returns. I cannot subscribe to this suggestion. Although the Hong Kong Monetary Authority and I do review the investment portfolio for our reserves from time to time, I believe members of the public will also agree that when making investments with the reserves, a balance should be struck between risks and return and we should not be too keen on getting instant results. I notice that recently, an academic in the financial discipline pointed out that it was a fantasy to pin one's hope of providing a stable source of revenue to the Government on a change on the share of investment return from the Exchange Fund. I fully agree with such a view. Ideal theorizing is not the same as actual practice.

If we look at Hong Kong's position on the international arena, we cannot disregard the trend of lowering direct taxes as seen in other economies either.

This trend will exert some pressure on our competitiveness. Between 2000 and 2005, various countries in the European Union lowered the profits tax rate for companies by 10 percentage points, whereas Hong Kong ran counter to the global trend by raising the profits tax rate 1.5 percentage points in the same period. On salaries tax, the standard rate was also adjusted upwards by a total of 1 percentage point in the years 2003-2004 and 2004-2005. Sometime ago, Members had an animated debate on whether the future economic development of the SAR would be marginalized. However, why is it that when it comes to examining specific solutions for the problems, Members are unwilling to discuss any further and would rather close the discussion as soon as possible?

In fact, now that the economy is booming, inflation is relatively mild and the unemployment rate has reached a five-year low, it is now the ideal time for all of us to have an in-depth discussion on problems relating to the public finance of the SAR and embark on a quest for a stable and sound system of public finance. Conversely, if we wait until a time of economic gloom, high unemployment rate or high inflation rate, it would not be appropriate to have any discussion at such a time, still less introduce the VAT.

Just now, I marked out some public concerns about the VAT and I wish to make certain responses here. Since the beginning of public consultation, the reservation of the public on the VAT is partly attributable to the fact that the VAT will be levied on nearly all commodities, services and daily expenses such as bus fares and medical fees. Other people consider that when implementing the VAT, exemptions should be given to some basic necessities and services, while progressively higher tax rates be adopted for luxury items. These views can be discussed and studied if the Government decides to introduce the VAT.

As I have said just now, the Government drew up this proposal on tax reform and the VAT based on the principles of fairness and the "capacity to pay". Therefore, we propose that as few exemptions as possible should be given and the method of cash subsidies should be adopted instead to maintain the purchasing power of the low-income stratum. This approach can help preserve the simplicity of the system and reduce administrative costs, more importantly, it can be ensured that those with the capacity will pay more and the limited sources of society can be concentrated on helping low-income families, which are the most in need. However, if the general view in society is that the acceptability or otherwise of the GST depends on whether basic consumer goods and services are exempted appropriately, I believe this is within the scope of matters that can be

further examined and discussed. For example, if items such as public transportation, public health care and school fees of government and subsidized primary and secondary schools are exempted from paying GST, it is estimated that the annual revenue will be reduced by about \$1.4 billion. Whether exemptions should be given and how they should be given without eroding the tax base and effectiveness of the GST all fall within the scope of matters that can be discussed and studied in this consultation exercise. Therefore, I do not agree with the criticism that this proposal should either be accepted in its entirety or else rejected outright.

When embarking on the consultation and when drawing initial conclusions recently, we said that we hope members of the public would discuss three issues that are linked to one another: first, whether the existing tax base is too narrow; second, if the tax base is narrow, how should it be resolved and whether the VAT is the best solution, and third, if members of the public are willing to consider the VAT, how should it be implemented, and if they do not find it acceptable, what other good solutions are available.

I believe it is imperative that members of the public discuss the foregoing three issues and I also hope that society as a whole can do so rationally. Just as I said earlier, from the launch of the consultation up to now, members of the public generally understand and accept that a narrow tax base is a problem that has to be examined and solved. As regards the other relevant issues, it is in fact only natural that there are debates and different views on them among the general public, however, we should not paint the GST as a monster, and consequently stand still without making progress, shutting our eyes and closing our ears.

Therefore, the Government is open-minded on whether the public agrees that the GST is the best solution for the problem relating to the tax base and it will be happy to discuss other feasible proposals at the same time. In fact, the Task Force headed by Mr Moses CHENG has considered quite a number of options for broadening the tax base. Even as we discuss or oppose the GST, I hope the Legislative Council will not grudge the room for having discussions on other proposals with the public, so as to put the spirit of open and objective political discussion into practice.

In the consultation period, quite a number of political parties have been brandishing the banner of putting in place a fair and equitable tax system wherein "the capable pays more" as they oppose the GST, coupling with the hope that the

desirable outcome of wealth redistribution can be achieved. They hope that through the tax system, underprivileged groups in society can get a bigger share of social resources and the wealth gap can be narrowed. Members and various groups would rather increase the rates of the profits tax and salaries tax and they have proposed the introduction of progressive profits tax and the levy of new taxes such as capital gains tax, dividend tax, electricity tax and green tax in the place of the GST.

Since the foregoing proposals have been made in society, the Government will continue to discuss these various proposals in the consultation period. It is not necessary for these proposals and the GST to be mutually exclusive. Furthermore, if these options are compared with and studied together with the GST, so that a wide spectrum of views can be solicited, this will be conducive to building a consensus and improving long-term public finance.

A narrow tax base is not an adversity that we have conjured up. For many years, a number of international organizations, such as the International Monetary Fund and international credit rating agencies, have concurred in pointing out that the tax base in Hong Kong is too narrow and this problem must be addressed squarely. We cannot ignore these professional analyses, nor have I heard any sound argument pointing out why such analyses should be taken as incorrect.

Meanwhile, an ageing population will be one of the most severe challenges facing Hong Kong in the coming two decades and the resultant expenditures on public health care and welfare will grow exponentially. An ageing population will also lead to a host of economic and social problems and of course, we cannot rely merely on the tax reform to solve the problems. It is essential that we have a package of policies and measures to tie in and cope with them, such as a policy on population and the promotion of further integration of the SAR with the Mainland. However, the increase in expenditure as a result of an ageing population and the further erosion of the tax base are issues that any members of the public concerned with the long-term interests of Hong Kong cannot shy away from or avoid discussing. In addition, in the face of global competition, it is necessary for Hong Kong to move towards a knowledge-based economy and the Government has to make sustained and increasing investments in education and training. In future, not only does Hong Kong have to maintain its prosperity, it also has to enhance its competitiveness and raise the quality of its population and

quality of life. Only in this way can we avoid being marginalized. We have to begin making preparations right from today.

Madam President, today, several political parties and groupings have formed an alliance to compel the Government to abandon the consultation on the GST. If this motion is passed, it seems that individual political parties and Members have scored a victory, however, Members must ponder deeply on whether this motion will deprive the public of the opportunity to discuss issues relating to the tax base, which are closely related to them, and whether the long-term interests of the public at large will stand to lose. Members, not only do the public expect you to reflect their views, they also hope that you will help them gain a deeper understanding of the issues and analyse them. The motion moved by Dr YEUNG Sum obviously runs counter to this. I hope after thorough consideration, Members will support Dr David LI's amendment, so that the Legislative Council can meet the challenges head on without fear of difficulties, by continuing to solicit a wide spectrum of views, holding rational discussions on issues relating to the tax base, the long-term development of Hong Kong and our long-term interests, and making political contributions, so as to fulfil the responsibility which the public have so invested in Members.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That Dr David LI's amendment to Dr YEUNG Sum's motion be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Dr YEUNG Sum rose to claim a division.

**PRESIDENT** (in Cantonese): Dr YEUNG Sum has claimed a division. The division bell will ring for three minutes, after which the division will begin.

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

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

Functional Constituencies:

Dr Raymond HO, Dr David LI, Dr LUI Ming-wah, Mr Bernard CHAN and Mr Timothy FOK voted for the amendment.

Ms Margaret NG, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Mr SIN Chung-kai, Mr Howard YOUNG, Ms Miriam LAU, Ms LI Fung-ying, Mr Vincent FANG, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr WONG Ting-kwong and Mr KWONG Chi-kin voted against the amendment.

Mr WONG Yung-kan and Mr CHIM Pui-chung abstained.

Geographical Constituencies:

Mrs Selina CHOW, Mr Jasper TSANG and Mr Albert CHENG voted for the amendment.

Mr James TIEN, Mr Albert HO, Mr James TO, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr LAU Kong-wah, Ms Emily LAU, Miss CHOY So-yuk, Mr Andrew CHENG, Mr TAM Yiu-chung, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr LI Kwok-ying, Mr Alan LEONG, Mr CHEUNG Hok-ming and Mr Ronny TONG voted against the amendment.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 23 were present, five were in favour of the amendment, 16

against it and two abstained; while among the Members returned by geographical constituencies through direct elections, 23 were present, three were in favour of the amendment and 19 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

**PRESIDENT** (in Cantonese): Dr YEUNG Sum, you may now reply and you still have three minutes.

**DR YEUNG SUM** (in Cantonese): Madam President, Members, I am very grateful to you for your full support to this motion. But we are not trying to gather strength to stop the Government's consultation. I hope the Secretary can listen to this carefully, for a communication problem still seems to exist between us and the Government. The Government, as the ruling body, can continue to consult the public if it likes. But we are opposed to the new tax both in principle and technical aspect.

In fact, the Financial Secretary has wasted a lot of time in discussing whether the tax base is narrow or broad. We had better change to another angle to look at the issue. The Government in fact wishes to have a stable source of revenue. An unstable economy due to globalization, ageing population and demand for social services are the three factors that have urged the Chief Executive to introduce GST in order to ensure a stable revenue. We fully understand the challenge and the need. However, I just hope that the Financial Secretary can consider whether the social price to pay will be too high even though we can have a stable source of revenue. Will the price to pay be too high?

Fortunately, all colleagues have an understanding in our people and felt our people's pulse. Professional bodies many not quite understand the public sentiment. If GST is really so attractive, there will not be opposition from more than 70% of the people coming from all walks of life. Even though we have received the submissions from several chambers of commerce, there are more than 70% of the people who are clearly and generally against the new tax. So, professional bodies from outside really do not understand Hong Kong people's sentiment.

If GST is introduced regardless of people's objection, Madam President, I think the price we will have to pay must indeed be very high. To put it simply,

three phenomena can be observed. First, the disparity between the rich and the poor will become more serious. As I have just said, according to the World Bank's report, Hong Kong ranks the fifth in terms of disparity between the rich and the poor, which is even higher than that of some of the third world countries.

Second, it will damage our simple tax system. We all know it too well that Hong Kong has become a shoppers' paradise not relying solely on its beautiful scenery but because of our simple tax system and low tax rates. Once GST is introduced regardless of people's objection, our competitive advantages, meaning low tax rates and simple tax system, will be gone forever. I reckon such a price is unaffordable by anyone.

Third, it is related to our tourism industry, Hong Kong's reputation as shoppers' paradise and social stability which is my prime concern. If the disparity between the rich and the poor keeps on the decline, our reputation as shopper's paradise may be tarnished and I believe the internal conflicts among all strata in our society will be aggravated. This will go against the Chief Executive's intention of building a harmonious society in Hong Kong and the state leaders' wish of leading China towards the direction of building a harmonious society as a whole.

So, the opposition we raise this time to the introduction of GST is to honestly reflect public opinion and to come with a judgement according to our conscience. Here I would like to thank all colleagues again. Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Dr YEUNG Sum be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr SIN Chung-kai rose to claim a division.

**PRESIDENT** (in Cantonese): Mr SIN Chung-kai has claimed a division. The division bell will ring for three minutes, after which the division will begin.

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

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

Functional Constituencies:

Ms Margaret NG, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Mr SIN Chung-kai, Mr Howard YOUNG, Ms Miriam LAU, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Andrew LEUNG, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr WONG Ting-kwong, Mr CHIM Pui-chung and Mr KWONG Chi-kin voted for the motion.

Dr David LI and Mr Bernard CHAN voted against the motion.

Dr Raymond HO, Dr LUI Ming-wah, Dr Philip WONG, Mr Timothy FOK and Mr Jeffrey LAM abstained.

Geographical Constituencies:

Mr James TIEN, Mr Albert HO, Mr LEE Cheuk-yan, Mr James TO, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr LAU Kong-wah, Ms Emily LAU, Miss CHOY So-yuk, Mr Andrew CHENG, Mr TAM Yiu-chung, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr LI Kwok-ying, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr CHEUNG Hok-ming, Mr Ronny TONG and Mr Albert CHENG voted for the motion.

Mrs Selina CHOW and Mr Jasper TSANG voted against the motion.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 24 were present, 17 were in favour of the motion, two against it and five abstained; while among the Members returned by geographical constituencies through direct elections, 26 were present, 23 were in favour of the motion and two against it. Since the question was agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was carried.

**PRESIDENT** (in Cantonese): It is now 9.37 pm. I think we can finish all the items on the Agenda before midnight today. (*Laughter*) I am very confident that we can do so. So, the meeting shall continue.

**PRESIDENT** (in Cantonese): Second motion: Introducing legislation to regulate clandestine photo-taking.

### **INTRODUCING LEGISLATION TO REGULATE CLANDESTINE PHOTO-TAKING**

**MR ANDREW LEUNG** (in Cantonese): Madam President, in August this year, a magazine published the photos of a female artiste changing her clothes. This act has seriously invaded the privacy of the artiste and trampled on women's dignity, causing a great social outcry and strong discontent among the public. As at mid-September, the Television and Entertainment Licensing Authority (TELA) received a new record high of over 2 800 complaints. Members of the performing arts sector went to the Government Headquarter and chanted that tolerance and indulgence would breed evils, while expressing great resentment at the same time. The community called on the person-in-charge of the magazine to come forth to give an explanation, offer a public apology and undertake not to do it again in future. However, nobody got this wish. On the contrary, the magazine immediately proceeded to print 15 000 more copies of that issue, and the Chief Editor of the magazine made only one remark: "We are sorry that we have no comment to make for the time being". I wonder if this is the strategy of the other party to buy time, so that time would get everything diluted, leaving the matter to be settled unnoticed.

Nobody would have thought that while this incident had yet to be resolved, another incident occurred. Early this month when a famous artiste was hospitalized for medical treatment, someone sneaked into the Intensive Care Unit

where she stayed in an attempt to take photographs of her. This has again aroused concern in the community at large. The suspect alleged to have taken the clandestine photos was caught in the hospital. The police could lay a charge against the person under the Hospital Authority Bylaws, and this case was heard at the Eastern Magistracy last Friday. Insofar as this incident is concerned, the magazine concerned reacted quite promptly and positively by issuing a statement on the very same day when the incident occurred to accuse the impropriety of such act and suspending the editor involved in the incident from his duties temporarily pending results of investigation, while reaffirming their firm stand of forbidding the use of unlawful means in covering news.

Clandestine photo-taking is nothing new. Victims include not only members of the performing arts sector. Some colleagues in this Chamber have also been become targets of clandestine photo-taking by the media before. However, these two incidents have again aroused concern in the community that more cases of clandestine photo-taking will follow and worse still, they may become more and more rampant. We cannot refrain from asking: Is there a need for Hong Kong to enact a piece of legislation to specifically target against clandestine photo-taking? I propose this motion today on behalf of the Liberal Party in the hope that discussion can be stimulated in the Chamber and in the community, so that the Government can listen to more opinions.

Madam President, my motion today consists of three parts: The first part calls for a review of the imposition of sentence under the existing Control of Obscene and Indecent Articles Ordinance, hoping that penalty with deterrent effect can be imposed on the offenders. The second part urges the Government to explore the criminalization of the invasion on privacy as per the basis of the recommendations made by the Law Reform Commission (LRC) on the protection of personal privacy in March this year, and the third part urges the media to exercise greater self-discipline.

At present, all newspapers and magazines are subject to the regulation of the Control of Obscene and Indecent Articles Ordinance. Publication of a newspaper or magazine classified as a Class II indecent article by the Obscene Articles Tribunal is forbidden to persons below the age of 18 and the copies must be sealed in wrappers with printed warning. An article classified as a Class III obscene article is even prohibited from publication. The maximum penalty for a first offence is a fine of \$400,000 and imprisonment of one year, while the maximum penalty for a subsequent offence is a fine of \$800,000 and imprisonment of one year. But how does the Court quote this Ordinance to

mete out sentences? Take for example the media organization which owns this magazine with photos of a female artiste changing her clothes. As at 19 September this year when the Court made the judgement, publications under this media organization have a record of offence conviction under the Control of Obscene and Indecent Articles Ordinance for 103 times, but it was fined only \$2,000 to \$40,000 on each conviction. If we further look at the information of the TELA for the period between January and July this year, the fine imposed by Court involving entertainment magazines was \$3,000 to \$5,000, which is far less than the maximum fine of \$400,000. As for the maximum term of imprisonment is one year, offenders were sentenced to six days to six months only this year. This has revealed a reality and that is, the issue is not of leniency in the penalty, but leniency in sentencing.

Hong Kong is a society where the rule of law prevails. We very much respect and cherish the judicial independence in Hong Kong. Therefore, we respect judgements made by the Court. But even in the face of continuous publication of indecent photos in newspapers and magazines, the Court only meted out a fine of a few thousand dollars. To a magazine which is sold at only \$10 to \$20 per copy, as long as the photos can stimulate the public's desire to buy a copy of the magazine, they may increase the sales figure by hundreds and even up to 1 000 or this may attract more advertisements, in which case they could have broken even successfully. The fine, therefore, becomes part of their "operating cost", and the deterrent effect is obviously lacking. In this connection, therefore, it is imperative for us to review the imposition of sentence under the existing Control of Obscene and Indecent Articles Ordinance, in order to look into how a substantive deterrent effect can be created. With regard to publications and media organizations which have repeatedly breached the Ordinance, studies should be conducted to examine the need to impose a heavier penalty, so that the starting point of sentence to be meted out by the Court can be raised to an appropriate level. As for publications with contents repeatedly classified as indecent or even obscene, can we require them to be sealed in wrappers for a period of three months to six months when they are sold? Or can we make reference to the practice adopted in New Zealand by ordering the suspension of those publications which have repeatedly breached the law within one year?

A key point of my motion is to study the introduction of legislation to regulate clandestine photo-taking. Two months ago the Chief Executive responded in a high profile that the Government would start looking into the recommendation made by the LRC in March this year on criminalizing

clandestine photo-taking, thereby enhancing the protection of privacy. There are great outcries in the community calling for the enactment of legislation to completely prohibit clandestine photo-taking. A platform for the protection of privacy has actually been provided in the Basic Law. Articles 29 and 30 provide for the protection of personal privacy against arbitrary or unlawful infringement except for the purpose of public security or of investigation into criminal offence. What we have been lacking is precisely a piece of legislation which specifically prohibits clandestine photo-taking. To tackle clandestine photo-taking, the police, in order to institute prosecution, can only resort to the offences of "loitering" and "disorder in public place" which have an extremely extensive scope of application. But in view of the fact that more and more people are involved in peeping taking photos with the use of mobile phones and mini video recorders, the penalty of these two offences is too lenient with limited deterrent effect and so, results achieved have been very limited.

In this connection, two years ago the Department of Justice issued a guideline to the police, allowing the police to prosecute repeat offenders of taking under skirt photos on the offence of breaching public decency, so that they are liable to a maximum penalty of seven-year imprisonment. But the scope of application to the three offences as mentioned above has its restriction, for they can only deal with clandestine photo-taking in public places where the suspect involved in such photo-taking is arrested red-handed.

In March this year, the LRC proposed the enactment of two new offences. One proposes to make it an offence for a person who enters or remains on private premises as a trespasser with intent to observe, overhear or obtain personal information, thus making trespassing a criminal offence. The second offence proposed is that it should be prescribed as an offence to place a technological device (whether inside or outside private premises) with the intention of obtaining personal information relating to individuals inside the private premises in circumstances in which those individuals would be considered to have a reasonable expectation of privacy.

However, insofar as this incident involving the clandestine photos of a female artiste is concerned, even if the photos were taken in Hong Kong, the police still cannot lay the above charges against the person who took the photos because the place where the incident took place is not a public place and nobody was arrested then and there. As a result, the authorities can only ask the Obscene Articles Tribunal to assess whether or not the publication of the photos by the magazine has been in breach of the Control of Obscene and Indecent Articles Ordinance.

Let us also look at the penalty meted out for clandestine photo-taking in other countries. In Canada, the penalty for clandestine photo-taking is the heaviest as the offender is liable to a maximum imprisonment of five years. The term of imprisonment in Britain is two years, whereas that in the United States and France is both one year. But there is one common point in the legislative provisions of these countries and that is, clandestine photo-taking is targeted against, and is also considered a sexual offence, the prosecution, in order to impose criminal liability on the accused, must prove the following: First, the photos were taken secretly; second, the act did not obtain consent from the persons who appear in the photos or the photos were taken not with the knowledge of such persons; third, the persons who appear in the photos have "reasonable expectation of privacy" under circumstances such as in the washroom or when changing clothes, or where females do not expect to have photos taken under their skirts in public places, or the clandestine photos involve sexual intercourse, and so on. Therefore, these provisions do not prohibit clandestine photo-taking across the board, and the prosecution cannot make a general allegation that the person taking the photos has intruded into another person's privacy. In Canada, the accused can even use "public good" as a defence. So, we must be cautious when exploring the room for and the form of legislation.

As to whether there is a need to introduce legislation, earlier on, the Hong Kong Journalists Association and the Hong Kong News Executive Association expressed concern that hasty enactment of legislation would impose restrictions on freedom of the press, affect the public's right to know and undermine the monitoring role of the media, while they stressed the need to strike a balance between respect for privacy and press freedom in reviewing the introduction of legislation in this respect.

If the Government is determined to introduce legislation against clandestine photo-taking, legislation must be focused and target-specific. It must effectively target those acts with ill intent and which will even outrage public decency and corrupt public morals, while ensuring that the legislation will not "victimize the innocent" by reasonably safeguarding sensible and reasonable news coverage by the media.

Finally, with regard to the ethics and professional conduct of the media, I hope that the media will exercise greater self-discipline. As pointed out by many news groups and organizations of front-line reporters, some of the practices adopted by the media in conducting news coverage are unethical and this has time and again drawn criticisms from various sectors of the community.

The media should not just sit passively to await its doom, pending government action to impose legislative control on it. Rather, it should seize every opportunity to conduct discussion within the trade on how self-discipline and compliance can be enhanced by the media.

Madam President, I propose this motion today not only to protect the politicians, the celebrities and members of the performing arts sector from having their private life intruded, but more importantly, also to protect all Hong Kong people from invasion of their personal privacy. To strike a proper balance between protection of privacy and protection of freedom of the press, I reckon it is necessary to enact legislation on privacy, in order to have a piece of dedicated legislation to protect all the 7 million Hong Kong people from unnecessary disturbances in their private life. I hope that colleagues in the Legislative Council will all share my view and vote in support of the motion.

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

**Mr Andrew LEUNG moved the following motion: (Translation)**

"That, as there are from time to time complaints about serious invasion of personal privacy by some media organizations and earlier on, peep photos of a female artiste changing her clothes had been taken and published by a magazine which seriously invaded the privacy of the artiste and trampled on women's dignity, thereby causing a great public outcry; this Council urges the Government to expeditiously take measures, including:

- (a) reviewing the imposition of sentence under the existing Control of Obscene and Indecent Articles Ordinance so that penalty with deterrent effect is imposed on the offenders;
- (b) criminalizing the invasion of privacy on the basis of the recommendations made by the Law Reform Commission on the protection of personal privacy in March this year, and encouraging in-depth discussion among the media, the performing arts sector and the general public about the contents of the bill concerned; and
- (c) urging the media to exercise more self-discipline,

so as to strike a proper balance between protection of personal privacy and freedom of the press."

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

**PRESIDENT** (in Cantonese): Mr Albert HO will move an amendment to this motion. Mr Jeffrey LAM and Mr Albert CHAN will respectively move an amendment to Mr Albert HO's amendment. The motion and the amendments will now be debated together in a joint debate.

I will first call upon Mr Albert HO to speak and move his amendment to the motion. Then, I will call upon Mr Jeffrey LAM and Mr Albert CHAN to speak, but no amendments are to be moved at this stage.

I now call upon Mr Albert HO to speak and move his amendment.

**MR ALBERT HO** (in Cantonese): Madam President, my amendment to Mr Andrew LEUNG's motion mainly consists of two points: One is the review of the Control of Obscene and Indecent Articles Ordinance, and the other is in what manner should legislation be made to target the issue of "privacy".

On the first point of the original motion, that is, "reviewing the imposition of sentence under the existing Control of Obscene and Indecent Articles Ordinance, so that penalty with deterrent effect is imposed on the offenders", the Democratic Party supports it in principle. The Democratic Party met with the Commissioner for Television and Entertainment Licensing in September, in order to understand the imposition of sentence for breach of provisions on the publication of indecent articles in the Ordinance. From the information and statistics that we have obtained, it is true that the sentence currently meted out by the Court cannot create an effective deterrent effect. Thus, we support in principle that a review be conducted on the penalty as prescribed in the Ordinance.

Moreover, after our meeting with the Commissioner, we found that a review is also warranted on other enforcement problems relating to publication of indecent articles by the media under the Ordinance. For this reason, we support a comprehensive review of the Ordinance. For instance, if we take a closer look at the decisions made by the Obscene Articles Tribunal with reference to the definition of "indecent", we will see that it is often difficult to classify clandestine photos taken by the media as "indecent" articles, for the

definition is unclear. Simply enough, photos purely showing the act of kissing may not be classified as "indecent". Then, what is considered "indecent"? Very often, it is really difficult to set a clear and objective standard. So, it is indeed doubtful as to whether a stronger deterrent effect can be created purely by imposing heavier penalty. We can consider firstly, including in the guidelines to Judges for classifying indecent articles the factor of "whether the article is described or depicted in a way generally unacceptable to reasonable members of the community", thereby widening the definition of "indecent". But I still have doubts about whether it can be defined even more clearly, and this will require more extensive discussion. Besides, we also propose that consideration be given to including "public interest" in the Ordinance as a factor for consideration, in order to ensure that while these so-called indecent articles are regulated, we can also have regard to the need for publication in consideration of the public under certain circumstances.

Apart from the definition of "indecent", we also propose to include provisions to allow the prosecution to provide the Tribunal with information that is normally not provided to the Court, including information about the special benefits that such acts may possibly bring to the accused, the prevalence of the offence being prosecuted in society, the damage done on the people affected, the effects on the social climate, and so on, for consideration of the Judge in meting out sentence. I think we can consider these proposals in depth in the review of the overall implementation of the Ordinance.

The second point of my amendment is in what manner should legislation be made to target invasion of the right to "privacy". In this regard, the Law Reform Commission (LRC) has put forward three ways: First, imposition of criminal liability; second, imposition of civil liability; third, setting up a self-regulating commission. I have a little reservation about the proposal in the original motion of urging the Government to expeditiously criminalize the invasion of privacy. It is very dangerous to suggest regulation of the acts of the media by way of criminalization. Having said that, however, we can still consider it seriously, and we may not have to completely rule out this option. It can still be accepted so long as there is a clear and narrow definition. As we all know, freedom of the press is a core value of Hong Kong and we must bear this in mind when conducting the review.

Moreover, while members of the public support government regulation of clandestine photo-taking by the media at this stage, no consensus has been reached in the community as to how legislation can be made as well as the pros

and cons of various proposals. At the present stage, what we should do is to encourage more extensive discussion. Criminalization is one of the options, but it must be handled with a cautious attitude.

Although the right to privacy is not a new idea, it is never easy to regulate clandestine photo-taking by way of criminalization. Certainly, while the proposed criminalization may have a fairly narrow interpretation, we can see that in practice, there may be difficulties in its application because of its narrow coverage. For this reason, we consider the imposition of civil liability a more effective option. Certainly, its advantage is that it has a wider coverage, and reasonable remedies can be made in various ways to the victims or the persons whose privacy is invaded.

Another option is setting up a self-regulating commission. I remember that this proposal was put forward by the LRC as early as in 1999. At that time, many colleagues, including myself, were opposed to it, for we were concerned that as the commission would be a government body and particularly, with members to be appointed by the Chief Executive, it would very easily lead to government intervention in the operation of the media, hence government intervention in freedom of the press. In 2004, I think it is because the LRC had taken on board various opinions that it put forward some new proposals, including setting up self-regulating commissions which are completely free from participation by the Government. I think we should not rule out in our studies and discussion the proposal of allowing the sector to take self-regulating measures and establish on its own a body to set professional standards for self-regulating purposes. That is why I propose the establishment of a self-regulating commission in my amendment, hoping that Members would give it their consideration.

I am certainly aware that some colleagues have misgivings about this self-regulating commission. I also understand that they are well-intentioned, for we all attach importance to freedom of the press. But we think that more comprehensive discussion could by all means be conducted at this stage, and it is not necessary to narrow down the scope of discussion to civil liability.

To sum up, I do not wish to draw a conclusion in this debate today on which option is, in my view or that of the Democratic Party, most effective or most suitable for tackling the problem of the invasion of privacy. I do not believe that the enactment of a piece of legislation in a "broad-brush" manner to criminalize such acts can be a solution to these problems. I hope that our

discussion today can trigger more feedback from various sectors of the community and that when the chance comes by in future, this Council can formulate the systems and measures which we all consider to be suitable and effective for protecting our basic freedom of the press and freedom of speech. Thank you, Madam President.

**Mr Albert HO moved the following amendment: (Translation)**

"To add "and its overall implementation" after "Control of Obscene and Indecent Articles Ordinance"; to add "studying the proposals on" before "criminalizing the invasion of privacy" and to add ", establishing a self-regulating commission and enacting additional civil tort law on privacy" thereafter; and to add "and December 2004" after "in March this year"."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr Albert HO to Mr Andrew LEUNG's motion, be passed.

**MR JEFFREY LAM** (in Cantonese): Madam President, before I actually explain the reason why I propose an amendment to amendment today, I would like to comment a little on what I think about this motion in general. In common law there is this old legal saying: Every man's house is his castle. Every move that we make now in the Legislative Council is broadcast live, but when we go back home, we hope to enjoy tranquility in our private life. We do not expect ourselves to become the leading actor or actress in "Truman Show", with each and every move of us being brought before the eyes of other people.

The Hong Kong Bill of Rights Ordinance has incorporated the relevant provisions of the International Covenant on Civil and Political Rights (ICCPR) applicable to Hong Kong and hence become laws in Hong Kong. These provisions include Article 17 of the ICCPR, which provides that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence.

But in reality, each and every move of many public figures in society (including some Members of the Legislative Council) and even ordinary citizens at home may be photographed or filmed secretly. Worse still, they may even be

photographed or video-taped secretly in places where they should enjoy privacy, such as the washroom and changing room, thereby completely depriving them of their privacy.

As Mr Andrew LEUNG pointed out in the example that he had just cited, the methods used by the media for clandestine photo-taking and filming in recent years have been coming up with innovative ideas one after another. I understand that it is inevitable for entertainment magazines and periodicals to consist of elements of "nosiness", but if even the process of an artiste changing her clothes was video-taped and published in newspapers or magazines, such acts must indeed be severely condemned.

Short films taken in a clandestine manner are not only published in magazines and periodicals, but also uploaded by members of the public to the Internet for general access. All these have resulted in stronger and stronger calls in the community for the regulation of clandestine photo-taking or filming by way of legislation. However, I wish to emphasize that the making of legislation to regulate clandestine photo-taking or filming does not specifically target the media. At present, when instituting prosecution against persons taking clandestine photos, the police can only charge them with the offence of "loitering" or "disorder in public place", making prosecution indirect and difficult, consequently with limited deterrent effect. Therefore, in the absence of the regulation of law, the situation now is like allowing semi-indulgence to clandestine photo-taking or filming, and this may cause the situation to worsen.

Certainly, imposing regulation on clandestine photo-taking and filming by way of criminalization is but one option. We also agree that people who are victimized by clandestine photo-taking should be able to seek civil remedies. A two-pronged approach can be adopted to provide greater protection to the public.

The Law Reform Commission (LRC) has published a number of reports on invasion of privacy before. For example, the Consultation Paper on Privacy: Regulating Surveillance and the Interception of Communications in 1996, Consultation Papers on Regulation of Media Intrusion and Civil Liability for Invasion of Privacy in 2004, and the report on Privacy: The Regulation of Covert Surveillance released in March this year. In other words, the authorities have already conducted studies of the invasion of privacy, including clandestine photo-taking and filming, as early as a decade ago. But after much delay and filibustering, no legislation has been enacted so far to regulate clandestine photo-taking and filming in society. I think a review is indeed warranted. On

the one hand, we agree that studies can be conducted on the details of the proposal but more importantly, we must provide a direction and that is, to have the proposal implemented. We must not continue to drag our feet for another decade. This is the reason why I propose an amendment to amendment.

Legislation aside, I also support the view that the media should exercise more self-discipline and that a more effective self-regulating mechanism be put in place, because effective self-regulation of conduct by the media can certainly prevent litigation in Court, and such a mechanism can also provide greater convenience.

To ensure the acceptability of the self-regulating mechanism, the Liberal Party basically agrees to the recommendations made by the LRC in 2004 relating to the establishment of a self-regulating commission. That is, the commission shall comprise representatives from the media and the public. This can balance the views from all sides and enhance impartiality whether in the formulation of codes of practice or in handling complaints.

The Liberal Party considers that representatives from the sector should be the representatives of newspapers, magazines, reporters and academics in journalism, while representatives from the public can come from non-governmental organizations or other professional bodies. A self-regulating mechanism with participation from the sector and the public can reduce the influence from the Government or other third parties to the minimal while such a mechanism can be more authoritative.

Madam President, I wish to point out that there are still a lot of uncertainties as to what extent the self-regulating commission can create a deterrent effect. Adding to this is that self-regulation by the sector is, after all, confined to the sector only. If the person taking the clandestine photos does not work in a media organization or he is not a member of the media, it is still difficult for the victim to be protected. In this connection, as I repeatedly stressed today, introducing legislation to impose regulation remains an important direction.

Madam President, I so submit.

**MR ALBERT CHAN** (in Cantonese): President, my amendment to Mr Albert HO's amendment is actually very simple. My amendment seeks to delete the

phrase "criminalizing the invasion of privacy" originally proposed by Mr Albert HO. The logic and reasons are simple, because there are many grey areas in the scope and issues involved in criminalizing invasion of privacy. If what is involved are some obvious and very serious acts of invasion which are harmful to individuals and not in line with public interest, then criminalization of such acts can be further discussed. But when it comes to news coverage on individual persons by the media, whether they be public figures or members of the public, more often than not and in most cases, these acts would allegedly be invasion of privacy. To put it simply, the "Bus Uncle" incident some time ago which made "You have pressure, I have pressure" a popular saying may pose as an example. Is it a breach of privacy to film a person secretly in a certain place without the permission of that person? On this point, insofar as law is concerned, the answer to this question may be "Yes" in the future.

Given the ambiguities and magnitude of the scope involved, we therefore consider that criminalization of such acts must be handled with great care. When I read the newspaper in the last couple of days, I saw on a newspaper a picture of a man holding a boy who was urinating into a litter bin in a MTR station. This may be considered invasion of privacy too. But these photos actually involve some degree of public interest, for they can fully reflect the problem that no public toilet is provided in MTR stations. We in the Legislative Council have been taking the MTR to task for many years. In Taiwan, toilets are provided in all underground stations, but there is none in MTR stations in Hong Kong. So, this may involve a balance between invasion of privacy and public interest, and this is actually extremely important.

Some Members argued that there is no reason for the media to be allowed to cover a person's acts at home. But I wish to make one point. In many cases of corruption and bribery, many dealings are conducted at home. Certainly, this has to do with another crime. But if the media can obtain some reliable news which the ICAC does not know and hence making it impossible for the ICAC to conduct investigation, and if the media claimed to have some reliable news about some people having dealings or political trade off at home, such as Secretary Dr Patrick HO dining out with friends for several hours, and his whereabouts had remained a puzzle for some time even during the dinner, as in the case involving the Equal Opportunities Commission — Very often, these dining occasions can be private affairs, but they may also involve public interest. How should a line be drawn? Sometimes, it is indeed very difficult to do so.

Certainly, if we are talking about cases similar to the two cases that occurred one after another recently with extensive coverage by the media — one,

photos were taken of an artiste changing her clothes, and in the other case, somebody had sneaked into a hospital to take clandestine photos of another artiste during the latter's hospitalization — I think these acts must be condemned. But if criminal prosecution will be instituted at every stroke, I think it would give rise to extremely serious problems. Please look back on some well-known cases in the world, such as the Watergate incident. In the United States, there is a different circumstance, for the Constitution of the United States protects freedom of speech, freedom of news coverage and freedom of the press. But if news coverage would be prohibited on anything which involves privacy, or if some members of the media are deterred by their possible criminal liability and hence refrain from covering news, many important coverage or stories involving public interest might have been buried.

Therefore, I think the Government, in striking a balance among all sides, must be very careful in handling these issues. An example is the recent incident of CHEN Shui-bian in Taiwan. His family is involved in many problems. In fact, insofar as the many acts of his family are concerned, some are dealings between core members of his family and influential figures or friends, but these acts had ultimately become the key points leading to criminal investigation, arousing concern among the public and prompting nearly one million people to take to the street. This is an example of how these cases may be of public concern.

Therefore, when the law involves the relationship between privacy and criminal liability, or between the types of privacy and criminal liability, I think it is necessary to have regard to a great deal of public interest. At the present stage, we cannot hastily criminalize invasion of privacy and so I propose in my amendment to delete this point.

Moreover, President, another point that I wish to make is that the recent spate of incidents has aroused much concern about privacy in this Council and among the public. This is a healthy sign. Yet, I think it is rather regrettable that in the wake of this spate of incidents, the concern among the public, including the concern in this Chamber, is apparently the result of invasion of the privacy of an artiste. The Law Reform Commission (LRC) has published a report in as early as December 2004 and made many major recommendations in it at the time. I feel regrettable because such an important report did not arouse as much public feedback or response as that by the photos of an artiste. Certainly, this is also because the media has made loud noises and made up many sensational stories, which have won the sympathy of many people on the artiste

concerned. While the reports of the LRC have not been able to arouse extensive discussion over the years, a story can, however, stimulate discussion so extensively. In this connection, the Government may have to conduct a review, and when publishing reports in future, it should consider telling some sensational stories to boost publicity. These reports may be helpful to the Government in promoting the enactment of legislation in this respect. The Government may also provide information to the media for it to put together some sensational stories to arouse reverberation from the public. I believe the consultants of the Government may really have to consider this seriously in the future, or they can consult "Tai Pan", so as to conjure up more controversial stories. This may be more helpful to the Government.

Besides, President, I would like to speak briefly on the self-regulating commission. I am very worried that it may become a politics controlling tool. In this aspect, the Government must deal with it very carefully. I will move my amendment later. Thank you, President.

**MISS CHOY SO-YUK** (in Cantonese): President, in 2003, the Next Media reported a case of paedophile crime involving a tutor of a private tutorial school, supplemented by series of pictures depicting the process of how the children victims were abused. In 2004, a magazine of this media group carried a detailed report on the process of brutal killing of animals, using objectionable words and offensive expressions of brutality and violence. In 2005, the magazine again published articles full of obscene and indecent expressions on the pretext of covering stories about transsexuals. In 2006, a magazine of the same media group has even been alleged to be selling child pornography openly by publishing photos of a 14-year-old girl in soaked clothes. Two months later, the magazine still went further as a reporter had sneaked into the changing room at a performing venue in Malaysia and taken clandestine photos of a female artiste changing her clothes. It is unbelievable that this media group which has over and over again committed such acts of disgrace and breached the professional conduct is not a small, negligible tabloid, but one with a large readership, and it has not only continuously dealt blows to the rule of law under the disguise of press freedom, but also challenged the moral standards in society.

Seeing newspaper and magazines under the Next Media carry reports and pictures one after another which harm the youngsters, insult women and trample on our civilized society, any Hong Kong people with a conscience would feel indignant; I, being a female Member of this Council, feel even greater heartsore

by these acts of the media which have brazenly infringed on the dignity of women.

As the saying goes, "If the upper beam is not straight, the lower ones will go aslant". It is most shameful that the senior management of the group only cares about reaping profits heedless of the rage of society and unscrupulously decided to reprint for sale even more copies of the issue carrying photos of the female artiste changing clothes which had caused an uproar in public opinion forums. What is more, the Chairman of the group, apparently intending to challenge the morality baseline of society, did not offer the slightest bit of apology for those acts of his magazine which have corrupted public morals, and even visited the office of the magazine in person to show support to his staff. This is very much like giving a boost to the staff morale and encouraging his group to work along the line of obscenity and indecency, taking a nonchalant attitude as if saying you can do nothing about me.

We must ask: Why is society unable to do anything about him? Why can they be so haughty and arrogant? Apart from the reason that they have a large team of legal consultants who can help the group to take advantage of the loopholes in law to protect their private gains, it is also because the penalty set out in law against such unscrupulous media organization is too lenient indeed, and the sentence meted out by the Court is even more lenient. This is a fatal cause of the problem. A fine of a few thousand dollars or ten thousand dollars is less than a drop in the ocean to a media consortium which is worth billions of dollars in the market. No wonder they can pay no heed to the contempt of the community, condemnation from organizations and complaints from the people.

President, if the penalty set out in law is not heavy enough, the Legislative Council can pressurize the Government to introduce legislative amendments, in order to increase the penalty. If the sentence imposed by the Court on law-breaching media groups is too lenient, the community can, through public opinion forums, call on the Court of Appeal to issue sentencing guidelines. But if the law-enforcement agency adopts different assessment standards for different media organizations in enforcing the law, how should the Legislative Council and the community press for changes in the law? How can the law-enforcement agency be called on to enforce the law in a fair and just manner?

It is most heartaching to see that the Television and Entertainment Licensing Authority (TELA), which is the government department responsible for monitoring and prosecuting law-breaching media groups, has either connived

at individual media groups by not pressing charges against them or adopted different assessment standards for different media groups. President, these allegations are not unfounded. I have, from time to time, received from the public complaints about publication of problem pictures and reports by individual media organizations and yet, we have not seen prosecution actions taken by the TELA, or, when two different newspapers published a similar series of indecent photos, the TELA would impose heavy penalty only on one of the newspapers, while the other newspaper was only punished nominally. Members of the public cannot refrain from asking: What legal basis does the TELA take in adopting completely different standards for different media groups? I hope that the Secretary for Commerce, Industry and Technology can give an answer to the public later on.

President, it is more worrying that the TELA is not the only department alleged to be selective in instituting prosecution against media organizations. The Department of Health (DH) has always been criticized for using the Undesirable Medical Advertisements Ordinance to attack people who hold views dissident from it. While the same advertisement is published in different newspapers, the treatment given to the newspapers is completely different. Some newspapers have time and again been issued with warnings from the DH for offending the law and denounced publicly for carrying the advertisement, while some others can remain untouched and spared from punishment. No wonder the public have doubted that this double standard approach adopted by the TELA and the DH is actually the chief accomplice driving certain media groups to challenge social morals over and over again.

The professionalism and dedication of the local news media has all along been a pride to Hong Kong people. But "a big tree is likely to have some withered branches", and these "withered branches" are not only stout, but also have in command massive resources and a considerable pool of readers. They have even kept on eroding the trunk of the tree, as their wretched thinking, vulgar taste and depraved editorial style have been exerting influence on other members of the media and society.

President, I support the original motion and the amendments which urge the Government to review the existing legislation, so that penalty with deterrent effect is imposed on the offenders, and to study the series of recommendations on legislating for the protection of personal privacy made by the Law Reform Commission, and also call on the media to exercise more self-discipline, in order to make concerted effort to combat the evil influences brought about by unscrupulous media groups.

**MR RONNY TONG** (in Cantonese): President, it is not the first time that local publications in Hong Kong put in print information which constitutes tort and pictures or words not in line with the moral standards in Hong Kong. In this *Easy Finder* incident, what is most heartaching and infuriating is that public anger could not compel the magazine to offer an apology to the community or to repent and rectify its mistake in a responsible manner, but worse still, it even took the opportunity to reprint additional copies in order to reap profit. This is absolutely a breach of natural justice. When something like this happens in our society, can the Government just sit by with folded arms and turn a blind eye to it? At present, it is most regrettable that, as many colleagues have said, we do not have legislation to protect our basic human rights in this regard. Mr Jeffrey LAM said very clearly earlier on that under Article 17 of an international covenant on human rights, it is expressly provided that no person shall be subject to invasion of privacy, and every government has the duty to enact laws for the protection of personal right to privacy. International covenants on human rights also provide explicitly through Article 39 of the Basic Law that the SAR Government, as also affirmed by us, is indeed duty-bound to enact laws for the protection of this right.

However, under which category of tort is clandestine photo-taking related to? Recently, through the Obscene Articles Tribunal, the SAR Government instituted prosecution against *Easy Finder* under the relevant legislation on obscenity. But frankly speaking, although I have not seen the cover page of that issue of the magazine, according to my friends and my wife, it is, after all, a bit far-fetched to describe the picture as obscene, because many people think that the clothes on the artiste when she sings on the stage may be less than what she was wearing in the picture and so, it is absolutely inappropriate to handle this from the angle of obscenity. In fact, under some other circumstances, this may still constitute a serious tortious act even if obscenity is not involved. An example is somebody sneaking into a hospital to steal the medical report of a certain person. This is not a case that has never happened before. This has happened before in Hong Kong. So, we must address these acts squarely with a positive attitude. Since this is a tortious act, we should then handle it as infringement on human rights. If the act involved is an infringement on human rights, under what circumstances will such an act be intolerable to society? We had a marathon debate in the Legislative Council some time ago discussing legislation on tapping or bugging. If on the premise of prevention of serious crimes we should make allowances for tortious acts, what about civil cases that do not involve serious crime? How should they be handled? What warrants our particular attention is that if we enact laws in this respect, would it give the local media the feeling

that their freedom of the press or freedom of speech is restricted? This, I think, must be handled very carefully.

I think one very basic principle is that if the media will disclose information that may involve tort on a very strong ground of public interest, I think it is worthwhile for society to discuss and even accept such disclosure. But other than the involvement with public interest, if it is considered civil tort and if it is defined as tort, what will be the consequences? I think it is very difficult for the victim to prove how much loss he had sustained. For example, if clandestine photos were taken when he was changing his clothes or bathing, what is the amount involved? I think it is very difficult to resolve this point in civil litigation, and if the victim is required to initiate the civil proceedings, that would appear to be even more excessive. He may think that his rights were already violated but he still has to brave the ordeal once again in Court. How could he find this acceptable?

For all these reasons set above, I think it is, in fact, necessary to put in place an independent institution. There are, in fact, many merits for putting in place an independent institution: First, this will, at least, make the media of Hong Kong feel that they are not subject to the control of the Government. So, consideration can be given to building up a more equitable and neutral image in this respect, in order to address this issue; second, we can consider giving this institution some investigation powers and even empowering it to order immediate retrieval of publications which invaded privacy. I think this remedy is desirable, because when it was found out that the privacy of this female artiste was invaded, many Members and even I myself had reminded her through the media that she could make immediate application for an injunction order. However, she might have reacted a bit too late and so, when she actually applied to the Court for an injunction order, *Easy Finder* had already twice reprinted more copies of that issue for sale. Therefore, the order was not in the least helpful in terms of deterrent effect or reducing the extent of damage. If an independent body with statutory powers is in place, it can immediately issue an order to take back the publications, and this, I think, is useful in addressing these tortious acts positively.

Finally, I wish to say here that if legislation will be enacted in this regard, we absolutely cannot neglect the fact that legislating against such tortious act would cast an impact on freedom of the press. On the question of criminalization proposed by some colleagues, I have great reservations about it, because criminalization is a heavy penalty and may have a significant deterrent effect on some journalists and media workers, which may in turn affect the press

freedom that Hong Kong has taken pride in. I, therefore, do not support the proposal of criminalization for the time being. Thank you, President.

**MR WONG TING-KWONG** (in Cantonese): Madam President, Hong Kong is a free society in which the people enjoy a high degree of freedom in their living. For instance, no magazine or periodical is required to be submitted for inspection before publication. However, some market-oriented leisure and entertainment magazines like to report stories in a manner of revealing secrets, in order to attract reader patronage. Given increasingly fierce competition in the market, they have gradually been going to the extreme by publishing on their covers indecent photos taken by them secretly. What warrants concern is that such clandestine photo-taking has become increasingly popular and rampant. It is indeed necessary to take actions against these acts of serious infringement of privacy.

The targets of clandestine photo-taking are usually celebrities, including members of the performing arts sector, those from the commercial sector or political circle. Extremist methods are used to take clandestine photos, and they will exhaust all possibilities, such as pretending to be the staff to sneak into the backstage, buying off the staff, and even trespassing into restricted areas to take clandestine photos, just like detective movie plots. The photos or films taken involve nude pictures of female artistes changing their clothes, and hospitalization of political figures or artistes or their families, and even courtship among artistes. When they obtained these pictures, they would publish them on the front page of the magazine, thinking that it would be best for the pictures to become topics for gossiping to a complete neglect of the damage done on the victims who appear in the clandestine photos.

I think the problem of clandestine photo-taking or filming involving nudity of women is particularly serious. As pointed out in the motion, this will seriously invade the privacy of the victims and trample on the dignity of women. This will also have an adverse impact on the readers and are harmful to the physical and psychological health of youngsters. I asked an oral question on the control of indecent publications in the Legislative Council early this year. The Secretary for Commerce, Industry and Technology said at the time that the present maximum penalties for breach of the Control of Obscene and Indecent Articles Ordinance are by no means light. A person who is convicted is liable to a maximum fine of \$400,000 and to imprisonment for 12 months on his first conviction, and the maximum penalties on a second or subsequent conviction will double. However, this sword, sharp as it is, (the heavy penalty) has never ever

been unsheathed, as the Court generally imposes a fine of a few thousand or tens of thousand dollars only. The fine is only deemed as part of the cost of the magazine and does not have any deterrent effect at all.

Meanwhile, clandestine photo-taking, which is a serious infringement of personal privacy, is not governed by the laws of Hong Kong. The accused is normally charged for other offences, including such comparatively minor offences as misconduct in the course of discharging public duties, outraging public decency, loitering and disorderly conduct in public place, or the accused may even be prosecuted for a civil wrong. Even though the accused was convicted ultimately in some cases, the law still cannot fully protect the right of female victims to seek redress.

The authorities should be alert that following technological development, coupled with the influence exerted by media coverage, the criminal conduct of clandestine photo-taking may become more and more serious. In fact, apart from entertainment magazines, clandestine photo-taking takes place almost everyday in society. For instance, earlier on, a policeman stationed in Court was alleged to have used his mobile telephone to take under-skirt photos of a woman while assisting her to apply for the refund of bail money; in November last year, a former Senior School Development Officer took under-skirt photos of female students. Even in the University of Hong Kong, an academic institution of higher learning, clandestine photos were taken of female students changing their clothes in their rooms, and such photos were even uploaded onto the Internet; in The Chinese University of Hong Kong, a female student became victim of clandestine video filming while undressing in the female quarter.

The Law Reform Commission published a report in March this year, recommending the creation of criminal offences to criminalize acts such as trespassing into private premises in an attempt to obtain information on personal privacy and using equipment to monitor persons inside the premise. The Home Affairs Bureau said that the Legislative Council Panel on Home Affairs would be consulted again on these specific proposals and that the Government did not have a pre-determined position. As this issue involves the many interests of various parties, the Democratic Alliance for the Betterment and Progress of Hong Kong considers that the first and foremost task is to encourage extensive discussion in the community, and among the media and all relevant parties concerned.

Moreover, we admit that the penalties currently imposed by the Control of Obscene and Indecent Articles Ordinance are by no means light, only that the

Court has not meted out punishment which can create a deterrent effect. For this reason, we support a review of the Ordinance, so that sentencing guidelines can be provided, and we also urge the Department of Justice to lodge appeal on cases in which a light sentence is imposed, with a view to increasing the fine and raising the starting point for sentencing in accordance with the law. We believe this should be able to create a deterrent effect.

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

**MR TIMOTHY FOK** (in Cantonese): Madam President, in recent years, under the catalysts of "nosiness" and "paparazzing", the personal privacy and dignity of celebrities, such as artistes, have unfortunately been degenerated into a tool in the hands of individual media groups to attract readership and boost the sale of their publications. Around-the-clock shadowing, peeping, clandestine filming, clandestine photo-taking, seeking entry to premises under impersonation, making up stories, and conjuring computer-processed photographs are among the extremist methods used to serve the purpose. Behaviour as such have not only deviated from the roles expected of the media in upholding social justice and fulfilling their social responsibility, but also posed serious threats to and even infringed on the personal safety and privacy rights of the public, which are detrimental to the order of social life and that of social management.

Although the "Ah Kiu" incident, the "Fei Fei" incident and the incident involving the outraging publication of nude pictures of an artiste allegedly taken when she was kidnapped and assaulted a few years ago are all individual incidents and they were immediately condemned by public opinions, they clearly show the saddening reality that the moral standards of the media, the principle of being a social instrument to serve public good, and self-discipline and self-restraint in the media have all seemed to be increasingly weakened under the heavy pressure of the market.

In fact, to reveal social vices and uphold social justice, reporters would collect evidence by unconventional means, in order to bring to light the dark side of society. Not only should such means be beyond rebuke, but they should be given due recognition instead. The disclosure of the secretive monetary incident over the transfer of players in the English Premier League was precisely attributed to the effort made by the media. I must point out that it is the basic obligation of a modern, civilized society to defend freedom of the press, but once freedom of the press is manipulated or has deviated to such a state as to go

against public interest, how should this be handled? How can the personal privacy and dignity of the victims be safeguarded?

Madam President, the rumoured lovers of artistes, photos of artistes changing clothes or accidentally exposing parts of their body, photos showing their faces when they are ill or before make-up cannot be said to have anything to do with public interest. These have grabbed the news headlines only to whet the appetite for peeping or prying of some people. Public figures are no prey of the public. They should not and there is no reason for them to be hunted arbitrarily by cameras hidden in different corners. Now, even those areas of absolute privacy, such as the changing room and hospital beds, have been invaded with ill intent. So, let us not find excuses any more. We must expressly point out that such consumptive clandestine photo-taking is basically a crime which tramples on press freedom and tarnishes human nature.

In fact, in the wake of rapid development of communication, video recording and digital technologies, it is already impossible to effectively prevent peeping, clandestine photo-taking and filming with the use of modernized electronic equipment, such as pinhole camera, transparent digital camera, mobile telephones with camera function, and so on. The victims are no longer confined to public figures. Even an ordinary member of the public who has no news value at all will become the leading actor in short films anytime without knowing it just because his looks or acts are said to be detestable or adorable and hence be made a target of accusation and mockery.

The Law Reform Commission (LRC) has already started a comprehensive review of legislation involving privacy as early as in 1989 and published the Consultation Paper on Regulation of Media Intrusion in 1999. A report on the Consultation Paper was published later in 2004. In the interim, the performing arts sector had expressed strong discontent and the Government also made some undertakings. Regrettably, everything has remained in the stage of consultation and studies. Infuriating infringements of privacy have continued to exist and become more and more rampant. I think the Government must do something if it wishes to achieve strong governance and put into practice the principle of "people-oriented", rather than condoning peeping and clandestine photo-taking and filming and allowing these acts to continue amidst the din of criticisms.

Madam President, whether or not the photos involve nudity, persons taking these photos should all be punished. They must bear the cost for taking this risk. We cannot sacrifice the whole pot of porridge just to protect a tiny

rodent dropping. Neither can we allow freedom of the press to become a cloth to cover up shame for these tortious acts.

With these remarks, I support the motion.

**MR CHAN KAM-LAM** (in Cantonese): Madam President, the publication of clandestine photos of a female artiste in the changing room on the front page of *Easy Finder* has aroused public rage all over the territory and widespread condemnation. But regrettably, the media organization concerned has not only turned a blind eye to the reaction of the public, but also turned a deaf ear to it. Faced with overwhelming criticisms and denunciation, this media group, which claims that it fully respects public opinions, nevertheless acted against public wish and adopted a policy of three "Nos" — No apology, No self reflection, and No sense of shame. This is totally different from its past posture of always defending vehemently its actions and being keen on taking up the moral high ground.

But from this incident we can see clearly the true face of this media organization. No matter how pleasing to the ear they have sounded when talking about democracy, freedom and justice, hidden behind is its true face of putting profit before everything else, trampling on human rights, betraying its conscience and neglecting morals and justice. Zhuang Zi said, "If we make for them (men) benevolence and righteousness to make their doings correct, even by means of benevolence and righteousness shall we be teaching them to steal."<sup>Note</sup> This is precisely a description of they speaking lofty, fine-sounding words but doing all kinds of evil, and firmly upholding justice in all righteousness on the surface but deceitfully committing acts of stealing underneath. In their mind, all slogans of democracy, freedom and justice are merely tricks to deceive the readers and the public in a bid to boost sales. All is but a "gimmick".

Public opinion in the community cannot be clearer: The people are determined not to further condone these shameless members of the media. Indeed, the track records of these unscrupulous magazines have long been abominable. They had broken into and searched the hotel room where artistes were staying or played up paedophile pornography. Now, it has gone even further by taking clandestine photos of an artiste undressing. Behaviour as such is not only defiance to the professional conduct of the media. This is downright

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<sup>Note</sup> The Writings of Chuang Tzu, James Legge, Oxford University Press, 1891

immoral. We cannot help but ask: What value is there to carry such a report? It is not news, and it serves only to whet the appetite of voyeurism and yet, such a report was put on the front cover to play to the gallery. What word other than shameless can be used to describe such an act? It is this media group which started such malpractices. But regrettably, what it has done is not unprecedented; nor is this going to be the end, as this will become even more rampant. While we sigh at such malpractices in the media, we must not forget who had actually started this trend in Hong Kong.

Today, we are debating a motion urging for the introduction of legislation to regulate clandestine photo-taking. Why is it necessary to legislate? It is because the existing legislation cannot create a deterrent effect on unscrupulous media organizations. We understand that a person convicted of an offence under the existing Control of Obscene and Indecent Articles Ordinance is liable to a maximum fine of \$1 million and imprisonment for three years. The penalty is by no means light. However, this media organization has breached the Ordinance for more than a hundred times, and in many cases, it was only fined tens of thousand dollars. To this well-financed, arrogant media organization, a fine at this amount basically has no deterrent effect on it and so, it would soon revert to the old practices. For this reason, the Government should increase the penalty, so as to impose heavy punishment on unscrupulous media organizations, and it is all the more necessary to introduce legislation against clandestine photo-taking, adopting a two-pronged approach to tackle the problem. Relying solely on the self-discipline of the media has proven to be a case of "fishing from a tree".

Some members of the media are concerned that legislation against clandestine photo-taking may be detrimental to press freedom. They are worried that this would be "throwing the baby out together with the bathwater". Their concern is understandable. But I wish to reiterate that if we do not throw away the filthy bathwater, the baby being immersed in the filthy water day and night would die sooner or later. But it would only be a naive, muddle-headed babysitter who dares not throw away the filthy water fearing that the baby would be thrown out with the bathwater. When considering legislation, we must clearly lay down in detail the parameters of legislation and provide for defence clauses, in order to allay the concern of the media. The filthy water discharged by this media organization has contaminated us for years. If we do not think of ways to throw it away now, the situation would aggravate to a state beyond control at the end of the day. Tolerating and indulging evil would eventually make it too late for us to regret.

In end of August when I attended an activity organized by the entertaining industry to denounce the Next Media, I heard the voices of many friends in the entertainment industry expressing that they felt extremely distressed and dissatisfied at persistent brazen media intrusions into the private daily life of artistes on the pretext of press freedom. They considered that these brazen intrusions into their private life have already come to a state intolerable to them and that these acts have gone far beyond the bounds of press freedom. Furthermore, clandestine photo-taking by unlawful means in the media is even more infuriating. The Government's attitude in handling unscrupulous media groups often gives us an impression of much cry but little wool, with many measures being shelved in the end. I think as members of the public are outraged and dissatisfied at these acts, the Government should seize the opportunity to take prompt actions, in order to combat these shameless acts of the media. This is what a responsible government should do, and we think that consideration can be given to the proposals made by the Legislative Council a year ago.

Madam President, I so submit.

**MR HOWARD YOUNG** (in Cantonese): Madam President, speaking of clandestine photo-taking, I think we all understand that this is an invasion of privacy which is very immoral and despicable. As the right to privacy is a very important basic personal right, I remember that about two months ago when examining the Interception of Communications and Surveillance Bill in this Chamber, we were also gravely concerned about privacy. For instance, some colleagues considered that the person on private premises naturally should have "reasonable expectation of privacy", and if an enforcement agency considers covert surveillance necessary on this person, it is required to apply for judicial authorization or executive authorization for such surveillance under the law, and there are many hurdles in the process.

We had a heated debate even on the question of whether we will need to pull the drapes down on private premises in order to be entitled to privacy. Finally, we agreed that if the person has drawn the curtains at home and if an outsider used a device to take clandestine photos of him, such act obviously constitutes invasion of privacy. Even an enforcement agency is required to go through stringent application procedures before surveillance operations can be carried out.

Since we have adopted such stringent principles to protect personal privacy when imposing regulation on the enforcement agencies, we should similarly adopt stringent standards to require private organizations or individuals to take actions for the protection of personal privacy, and in our view, the media should be no exception.

As regards various activities in the community which infringe on privacy, including bugging, clandestine photo-taking, and so on, they are not within the scope of regulation under the law that I mentioned earlier, and this is a very big loophole that needs to be plugged. For this reason, I support the motion proposed by Mr Andrew LEUNG today, urging the Government to introduce legislation to regulate clandestine photo-taking for the protection of privacy.

As many colleagues said earlier, activities inside private premises or undressing at the backstage or even clandestine photos taken at hospital in no way concern public interest, but as the people involved are artistes or celebrities, the media, in order to boost sales, will sacrifice principles for profit, using all possible methods to take clandestine photos in order to capture each and every move of these people, and just as if a magnifying glass is put in front of the eyes of the public, these people completely deprived of their privacy only to have the nosy mentality of the readers satisfied.

I must emphasize that the Liberal Party absolutely supports the protection of press freedom and we will do our utmost to defend it. However, what we are stressing is the need to enhance protection for personal privacy by imposing regulation on clandestine photo-taking which invades privacy, and this has nothing to do with the public's right to know or freedom of the press. Mr Albert CHAN mentioned earlier that some people may commit crimes at home, and this seems to have become an excuse for arbitrary photo-taking and filming by the media. However, I wish to point out that the prevention of corruption is the duty of the enforcement agency, not the responsibility of the media.

In fact, in this incident of clandestine photo-taking which has aroused widespread public rage, although the Television and Entertainment Licensing Authority has received a record-high number of complaints and many non-government organizations have held various activities, such as calling on the public not to buy the magazine, processions, and so on, the reality before us is that the magazine has completely ignored all the protests or dissatisfaction in the community. It had even gone as far as to reprint more copies of the issue to reap more profit and yet, the public can do nothing about it because our mechanism for the protection of the right to privacy is inadequate.

Although in theory, the unscrupulous publications can be prosecuted under the Control of Obscene and Indecent Articles Ordinance, the penalty meted out even in cases of successful prosecution was generally disproportionately light and so, no deterrent effect could be created. Besides, some Members mentioned that it is questionable as to whether the clandestine photos taken are considered obscene. We basically look at this as an invasion of privacy; it has nothing to do with press freedom, and it is not a question of obscenity or indecency. Since we cannot regulate such acts under the law, and given that *Easy Finder* is appealing on the ground that no indecency is involved in the incident, I consider it necessary to draw up a specific legislation to impose regulation on clandestine photo-taking which will invade privacy, with a view to protecting the privacy of the public.

I so submit.

**MS MARGARET NG** (in Cantonese): President, personal privacy must be protected, because insofar as privacy is concerned, it is not as simple as a person trying to keep something secret from other people. Rather, it will have a direct bearing on personal freedom and dignity.

However, the media is absolutely not the only source of invasion of privacy. Intrusion of privacy by the Government is, in fact, even more horrifying. President, during our deliberation of the bill on covert surveillance before the summer recess, I proposed some amendments on behalf of the Civic Party, with a view to including some criminal offences in the bill. That is to say, when an enforcement agency of the Government conducts covert surveillance without official authorization, that would amount to unlawful covert surveillance with the intention of stealing or obtaining private information or having such information audio-recorded, video-recorded or retained. Act as such should be prescribed criminal offences. Then, if they do it knowing that it is an offence, it should be a criminal offence. In the meantime, I also proposed another amendment to make it a criminal offence if they disclose the information unlawfully even if such information was obtained by lawful means. At that time, the Administration strongly opposed it. A total of 32 Members, including Members of the Liberal Party, opposed my amendment of one accord and it was subsequently negated.

Today, it strikes me as very strange, for why are such actions taken by the Government not be criminalized, whereas media intrusion of privacy should nevertheless be criminalized.

President, in point (b) of this original motion proposed by Mr Andrew LEUNG today, it is suggested that invasion of privacy should be criminalized on the basis of the recommendations made by the Law Reform Commission (LRC) in March this year. The LRC actually proposed four offences, one of which is criminalization of disclosure without proper authorization, or unlawful authorization of information obtained by covert means, that is, information obtained by clandestine photo-taking or bugging, and this, we support. I had then proposed an amendment precisely to target such act by government enforcement agencies, but the amendment met opposition from Members and the Government. As the target that we are talking about today is the media, they nevertheless do not oppose it and instead, they even support it.

In fact, the LRC also proposed other offences to which we do not agree. One of these offences, which does not involve covert operations, is entry without authority to premises to take photos. The LRC considers that this should also be a criminal offence, but we disagree because this has nothing to do with covert act or operation. As for another offence — actually the second and third offences can be jointly discussed — that is, obtaining private information by bugging or with devices that can be used to take clandestine photos from a long distance and when the persons inside the premises have reasonable expectation of privacy, the LRC considered that such act should also be made a criminal offence. We do not entirely agree with it, because it involves the meaning of reasonable expectation, and Mr Howard YOUNG also mentioned this point earlier. But I wish to remind Mr Howard YOUNG that when we put forward the proposal of criminalization, he was among those who opposed it.

So, President, with regard to point (b) of Mr Andrew LEUNG's original motion, which suggests criminalizing invasion of privacy on the basis of the recommendations made by the LRC, I think I should explain clearly what we agree and what we disagree.

However, the biggest problem actually lies not in how amendment can be made to the details of the statutory provisions, because the motion we proposed today concerns only the principle of a major policy direction. When we actually come to the legislating process, we certainly have to deal with it more carefully. However, the biggest problem is why, despite the fact that protection of privacy is involved in both cases, the Government had resolutely opposed the protection of the people's privacy from intrusion by government officials and even the sponsor of this motion today had also resolutely opposed it, but when it comes to incidents of clandestine photo-taking by the media, we saw Chief Executive Donald TSANG responding in a high profile that they would study the

LRC's recommendation in March this year of criminalizing clandestine photo-taking in order to enhance protection of privacy? Why was he so discriminatory in handling the two cases? Under such circumstances, no wonder the media is worried that the Government has an axe to grind.

President, I think this is actually a very simple matter. If legislation should be introduced to criminalize clandestine photo-taking and invasion of privacy, we should treat all cases equal and in a non-discriminatory manner. If Mr Andrew LEUNG agrees that we should go back to the legislation on covert surveillance and criminalize such acts as unlawful disclosure or unauthorized or deliberate invasion of privacy, we can then start discussion in this direction. In fact, if a discriminatory approach is inevitable, then the media must be treated "more favourably" while the Government must be subject to more stringent requirements. Why? It is because under a Government with strong powers, if we do not have a free and independent media to reveal the dark side of society, it would be impossible for us to know what the Government has done and infringed on the rights of the people.

On the other hand, if the Government could under very secretive circumstances, pry into the privacy of the people with all its resources and manpower and make use of the information to attack people whom it dislikes, it would be impossible for members of the public to protect themselves.

So, President, we are not opposing Mr Andrew LEUNG's proposal of criminalization today. All that we are asking for is an equal and non-discriminatory approach. Once government intrusion of privacy is criminalized, we can then start looking into how invasion of privacy by the media or by other people can be criminalized.

Thank you, President.

**MS EMILY LAU** (in Cantonese): President, with regard to this motion today, Mr Andrew LEUNG has made it clear that in putting forward his proposals, he hoped to strike a proper balance between protection of personal privacy and freedom of the press, adding that he appreciated the need to protect the freedom of sensible and reasonable news coverage by the media. This is a very important point. But earlier on, Ms Margaret NG revisited something that took place a few months ago which had aroused great controversies at the time. I believe the Liberal Party will recall that the Secretary for Security said at the time — it is because Mr LEUNG mentioned Articles 29 and 30 of the Basic Law

earlier. (In fact, Secretary Ambrose LEE had also said this in private and openly) — that the legislation enacted a few months ago serves to impose control only on law enforcement agencies. But some people pointed out that Articles 29 and 30 also protect people's freedom of communication, and so on. He said, however, that if other quarters of society or sectors other than the Government were involved, it would be necessary to conduct consultation, but as no consultation had been conducted so far, there would bound to be extensive discussion, for he knew that this issue would generate considerable debate. It is still unknown as to what the final decision is. The discussion has not even started and the Liberal Party is already suggesting the introduction of legislation to criminalize invasion of privacy. Is the pace a bit too fast? Today, Secretary Ambrose LEE is not in the Chamber, but Secretary Joseph WONG and Secretary Dr Patrick HO are present. As they are also members of the executive authorities, I hope they will point out where the problems lie.

Mr Andrew LEUNG mentioned earlier that the Hong Kong Journalists Association and Hong Kong News Executive Association had expressed concern. He said that he was aware of their concern and that their concern should be addressed. So, the problem is that if the media has expressed concern, and as we have not yet started debate on this very complicated and controversial issue which, I think, will arouse no less controversy than that in the case of sales tax, and if we have not even started discussion, how could we take it forward hastily?

I very much agree with what Mr Albert CHAN said earlier. Some people said that some dealings may be conducted on private premises and some of the dealings may be illegal or involve corruption. Mr Howard YOUNG also said that matters pertaining to corruption are the job of the Independent Commission Against Corruption. Does it mean that reporters are forbidden from reporting incidents of corruption even if they are aware of such incidents? The problem is: If they can really obtain information about involvement of public figures in corruption or bribery, that would certainly be breaking news to be posted on the front page but they would be stepping out of line if they do such an act. The question is whether we should make arrangements in this respect, so that under no circumstance can they step out of line and under no circumstance can they report such news, or rather we should do something to protect the freedoms of the media. I think this is very important. For matters that are truly personal, I certainly do not agree that the media should report on them, but I think insofar as public figures are concerned, they actually do not have much privacy to speak of. Frankly speaking, President, as you may know, I have undergone similar incidents before, and I may have put up with them more than anyone sitting in this Chamber. But I will not come forth and yell in anguish to reprove those

people for doing this to me and then call for the making of legislation to impose regulation on them. It is just not the right way, is it?

I believe what we would like to see is that freedom of speech and freedom of expression are provided with adequate protection. In some cases, we can ask for opinions to be expressed. But on the establishment of a self-regulating commission, which has lingered on and remained unresolved for many years, I cannot agree to it. That is why I support Mr Albert CHAN in deleting Albert HO's proposal, and Mr HO also expressed his support for it. It is because on the question of setting up a self-regulating commission, the media has actually been very restrained, and they have already exercised a lot of self-censorship. President, as you may know, there are certain issues that the media tends to avoid, especially political issues or issues not in the favour of the Central Authorities. It is not even considered as news when Falun Gong could mobilize thousands of people to take to the street. What kind of press freedom is this? What kind of freedom of speech is this? I think this is downright terrible. When such outrageous practices already exist in the media, we are still suggesting that more restrictions should be imposed. We must really think about this more thoroughly. When the two Bureau Directors speak later, they will certainly say that they would provide great protection and pay close attention to freedom of speech. But there is no point in making empty talk, and it is necessary to really translate words into actions.

Therefore, I think we must have everybody together to discuss this. As the Secretary of Department and the Bureau Director said earlier on, why do we not hold discussion? Discussion will do no harm. But when it comes to issues which we consider very sensitive and which should be handled with caution — that is, when the red lights keep flashing and flashing — we must exercise great care. It is because if there is no democracy in Hong Kong, freedoms will be invaded, and I do not wish to see that after something is done, they would turn out to be infringement on the freedoms of the media in the name of protection of privacy. It is because legislation is an enormous and clumsily heavy knife, and I think this knife should not be taken out lightly, even though time and again there is no reason for the media to be forgiven and they should not be forgiven.

So, President, I call on colleagues to consider this carefully. If Members think it necessary to legislate on Articles 29 and 30 of the Basic Law, we can start discussing and debating this as a first step. I hope that Members can allow sufficient room and time for this issue to be explored. As Ms NG has said, even government intrusion is not considered a problem, and the powers of the Government are much greater than those of the media. Since the enactment of that piece of legislation, many people, including many in this Chamber, have felt

that they have become subjects of surveillance. Many people feel outraged and helpless. So, let us start by imposing restrictions on the Government first. As for the media, I hope they will attach importance to self-respect.

**MR LEUNG KWOK-HUNG** (in Cantonese): President, in fact, I am a victim of the paparazzi in the media, for they will cook up a scandal for me once in a while, and I expect them to strike again around the next election. Recently, I find that many people have shot pictures of me. I do not know when another fictitious scandal will emerge. But I still cannot agree to the proposals made by our colleague, Mr Andrew LEUNG.

In fact, when debating the legislation on tapping, although I did not have much involvement in the discussion of this bill, I still pointed out that when we formulate a piece of legislation to regulate the Government, it would at the same time create a shackle that can be used to impose restrictions on the private sector in the future. I did make this point clear. If we would leave no stone unturned to grant the Government many unnecessary powers that can be abused, I really wish to ask Members: How can you convince Hong Kong people that these powers cannot likewise be given to the media?

Many people said that what the media is doing can be taken over by the Government, because there is the Independent Commission Against Corruption. Man, take CHEN Shui-bian as an example. If investigation was conducted solely by their Government, nothing could have been dug up. The collapse of the entire CHEN Shui-bian empire is the result of disclosure by the media. Is it not? The lessons of history are close at hand. The Watergate incident was revealed by whom? Was it the CIA or FBI which initiated investigation into NIXON? Certainly not. We all have watched this movie starring Robert REDFORD, right? Do we not give high praises to it, saying that the two young men were just brilliant, and the *Washington Post* has since become famous.

A great many facts have proven that it is difficult for the Government to investigate itself; this is the case even for a democratic government. The media is the fourth power in a modern society. If the Government enjoys more powers than the media, it would mean that the first power is more superior than the fourth power. This might still be barely acceptable if it is an elected government. Otherwise, it would mean that the second power, the third power and the fourth power would all be hard hit, right? The reason is that it is not returned by election.

In fact, in Hong Kong today, even the Government itself admits that they are not returned by Hong Kong people. But they said that it would be necessary and that there should be a gradual and orderly progress over a long period of time before achieving it. Such being the case, I really do not understand why we do not enhance the second power, the third power and the fourth power. Our powers here are very limited, whereas the media has comparatively more powers. Of course, I understand that in modern society, the media is controlled by consortiums, and like the Government, it may easily abuse its powers.

However, if an autocratic government is to monitor a corrupt media, how could that be possible? I think it is like inbreeding. That is to say, if we empower the Government to control the media, it would make use of this power to conduct inbreeding or crossbreeding, and would become unchecked in whatever it does. They would say that they have evidence to prove your guilt, man; they would tell you that if you do this, they would take actions. It transpires that the two powers would become unrestrained, and according to the words of many of you here, the case is one of unrestrained. In that case, the two powers would very likely join force to target actions at ordinary citizens like me, right? So, insofar as this issue is concerned, by whom the powers of the media should be monitored? To a very large extent, it should be subject to monitoring by customers. If the Government really has this breadth of mind, it should open up the news media as far as possible to allow for competition within the sector. Am I right? Competition is the solution. However, what happened to a humble citizen like me is really distressing. I was arrested yesterday because I was only trying to fight for the very, very, very humble right to operate a community radio station, and I was arrested just for that, man. If such a nasty approach is adopted — I was using a means to monitor the media, if I can operate a community radio station and when they try to cause troubles to me, I would certainly criticize them; if they cause troubles to Secretary "HO Wing-ping", spreading rumours about he having an extramarital affair, I would immediately say that this is not true and would immediately invite "HO Wing-ping" to clarify on the air that there is no such case, man.

The suggestions that you have made are so weird that they are beyond imagination. You are suggesting that some autocratic powers and powers that will be or may be abused or things involving extremely big powers should be divided into tiers, with the Government being more superior than the media. The Government can threaten the media, but it would be impossible for the media, which represents us, to do so, because it would be afraid of the Government. How could this be allowed? Added to this is that a community-based media is not permitted. So, this is really insane.

In fact, many people said that I do not argue reasonably. But after I finished, I wonder if there is anyone who can refute this point made by me. So, on this issue, when we are debating so hard that we have bleeding gums in our mouth — On that day, I was talking about the "sunset clause" and everyone in the Chamber had laughed their heads off; man, all the troubles would have been solved had there been the "sunset clause". If you can tell me right away today, "'Long Hair', do not worry, for there is the 'sunset clause'", which means that amendments can be made if things go wrong — There might be a "sunset clause" when imposing regulation on the media in the future. Why? It is because the media is less pliable, and this measure might be compelled to be taken. So, the more the truth is debated, the clearer it becomes; just as one will discharge black excrement after taking pig's blood. We were right in proposing the "sunset clause" on that day, because today, colleagues in support of the Government have proven that there is something wrong with them. How wonderful it would be only if there would be a "sunset clause".

So, the entire discussion today is about the Government wishing to exterminate a tyranny by taking advantage of public sentiments towards the high-handed practices of the media, thereby imposing tyranny on the media and making it impossible for it to represent us and subsequently imposing tyranny on us. Thank you, President.

**DR KWOK KA-KI** (in Cantonese): The reason for Mr Andrew LEUNG to propose the motion today is perfectly understandable. In the meantime, I have to make it clear that we can absolutely not accept or silently tolerate the incident, in which the privacy of some people was trampled on by the media doing abnormal practices, such as acting deplorably by taking photos of a person changing clothes and publishing such photos on a magazine. Therefore, I very much understand why Mr LEUNG and several other Members proposed to regulate the media by different means.

However, I find it very strange and uncomfortable that, soon after the revelation of the incident, the Chief Executive was the first one to step forward, saying that clandestine photo-taking must be regulated. I wonder if I am being a bit over-sensitive. I have been quite cautious about the knee-jerk behaviour of the Government. It was pointed out by some colleagues earlier in the meeting that, during the scrutiny of surveillance legislation, the Government put forward some absolutely abnormal arguments, including the essentiality and importance of protecting its ordinances. There is no problem with this. Yet, should the same standard be adopted towards the media, then I think we would have to stop here to ponder about this.

A number of examples, including one relating to Canada, have been cited by Mr Andrew LEUNG earlier. I have also been listening for quite a while. However, the Canadian example should be examined under two circumstances. First, the example was also cited during the scrutiny of surveillance legislation. President, it was pointed out by a Member earlier that Canada's regulation and requirements of acts of tapping are more stringent than legislation enforced in Hong Kong back then.

Second, of the places cited, there is one unique point indicating that Hong Kong is at least different from them in terms of the source of government authority. President, in the places cited earlier, such as Australia and New Zealand, the source of the authority of their governments is very clear in the sense that it is derived from universal suffrage. Where do the differences lie? As the mandate and authority of the governments are from the people, the ultimate goal of surveillance is to regulate such despicable acts as invasion of personal privacy through the executive organ. The basis is therefore very strong.

If we look back at Hong Kong, however, when will universal suffrage be implemented? Under the present circumstances, the source of power of the Government, the only law-enforcement organ in the territory, is in fact not entirely clear. It is impossible for the people to monitor the Government's conduct by a fairer means. At this point in time, we know it too well that not every member of the media is law-abiding. However, the matter has to be viewed from another angle. If in future clandestine photo-taking is essential owing to the need of the press or of the Government to monitor public figures, who is there to protect the media?

I do not wish to repeat the examples, such as those relating to bribery, secret deals, and so on, cited by a number of colleagues. Actually, if a simple method of classification is used so that clandestine photo-taking is criminalized, all will be captured in one net, and nothing will be allowed to pass.

Yet, from another angle, is it feasible to rely entirely on the media to exercise self-censorship? I am a bit worried too. The Hong Kong Press Council (the Press Council) is a perfect example. Two major newspapers in Hong Kong have chosen not to join the Press Council, saying they can rely entirely on the self-discipline exercised by the media. Yet, I doubt whether the exercise of the self-discipline that we required of it can be achieved. Is it feasible to regard such as civil acts? As Members know it too well that, under

common law arrangements, it is very difficult for ordinary citizens, unless supported by relatively strong financial capability or resources, to make a request for fair treatment through civil actions. This is not at all easy.

Up to a certain stage, I believe we have to accept that some practitioners of the media have deliberately neglected respect for the personal privacy of a concerned party, though actually, it is absolutely unnecessary to act in that manner for the sake of news coverage. For instance, is the incident of any news value? It is simply of no news value, right? The changing of clothes by a female artiste cannot be regarded as news. Earlier, when a female artiste had been admitted to an intensive care unit of a hospital, a foreign domestic helper was even manipulated by the media to go in under disguise with an undesirable intent. All these are not news. Neither are they acceptable to us. However, it will be over-simplistic should an "all-embracing" approach be adopted including acceptance of all legislation proposed by the Law Reform Commission or the Government in future.

I cannot accept in toto. Of course, neither will I completely negate all the arguments, including those put forward by Mr Andrew LEUNG, as many points raised by him are actually worthy of reference. However, given the present circumstances, if the motion is accepted in its entirety, I would have to take in some proposals unacceptable to me altogether. Therefore, I can only support Mr Albert CHAN's amendment. However, this does not mean that follow-up actions cannot or should not be taken in respect of protection of personal privacy, prohibition of invasion of rights, and so on. I believe we ultimately have to take action from several aspects, including self-regulation, civil actions, and so on. Insofar as criminalization is concerned, at a certain stage and in order to meet specific needs, as has been pointed out by Ms Margaret NG, the acts may be criminalized upon thorough discussion and under some particular circumstances.

However, one last point that must be settled concerns the source of power of the Government and government surveillance. Without a source of power completely drawn from every citizen of Hong Kong and a proper method to supervise our present Government, we can hardly deprive the media of its right at will.

I so submit. Thank you, President.

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

**MR SIN CHUNG-KAI** (in Cantonese): President, the motion being discussed today actually involves two major issues. The first one concerns the publication by the media of information, including the so-called news, photos and messages covered by the "paparazzi". The second one is inclined towards the lower stretch. If we talk about the situation at the upper stretch, our concern should be about clandestine photo-taking. It is certainly comparatively difficult for the two issues to be jointly discussed in the debate today.

The Democratic Party supports the idea of examining, under the existing mechanism, the regulation of publication by the media in various areas such as enforcement, imposition of sentence, and sentencing of repeated offenders, and whether there is scope for improvement with respect to enforcement under the existing Control of Obscene and Indecent Articles Ordinance, in other words, regulation of publication. The regulation of publication has one merit because publication will give rise to commercial interest, thus making it easy for the Ordinance to be enforced. This is because people will only go after or take photos of value.

Conversely, if personal privacy is involved, it is worthwhile to examine Mr Albert HO's amendment at the present stage. However, I am a bit worried if legislation is enacted hastily at this stage because clandestine photo-taking is not necessarily a behaviour of the media. One important factor in clandestine photo-taking by the media is that it is targeted at commercial interest. Nowadays, however, every person might have several cameras at hand and can take photos any time. Meanwhile, the mechanisms of publication are not necessarily — not necessarily — operated in Hong Kong.

Members may have known that two days ago, a company named YouTube was bought by Google for US\$160 million. With only 67 employees, the company has yet to make any money and merely allows the publication of information, such as videos, on the Internet, and in a day, the number of videos uploaded may reach 100 million. The point I wish to state is that, even if an ordinance on personal privacy is enforced, we still have to consider that not only the media is to be regulated technically. Suppose Mr Andrew LEUNG was on his way to the toilet as I took a photo of him while I was talking on the phone, and the photo was then uploaded onto a website not based in Hong Kong. Although Mr LEUNG was terribly angry about that — I was certainly wrong to have done something like that — it is practically extremely difficult for the incident to be traced. I can produce a photo in a library operated by the Hong Kong Government and upload it via a public telephone booth or a public website to YouTube. It will be extremely difficult, if not impossible, to pursue the matter, as the website is not based in Hong Kong.

I reckon that it is very difficult to exercise control of this sort at the upper end of the stretch, and certainly I do not approve of such behaviour. I therefore consider that putting aside economic incentives — I believe this is important insofar as publication of the media is concerned — for in simple terms (taking the medium of writing, for instance), there is a public standard worthy of reference.

Certainly, as for promoting implementation of what has been studied or consider criminalizing the invasion of personal privacy, is it necessary to give consideration? I agree it is necessary. At the present stage, however, it is quite difficult to support its implementation. I hope our colleagues of the Liberal Party will not be misled because we have also expressed great support in condemning a certain weekly magazine for clandestine photo-taking the other day. However, we also agree on one point, that is, we must be careful when the behaviour of clandestine photo-taking is actually criminalized. Nevertheless, actions must be taken to clamp down on the publication of photos for immoral purposes. We can see from history that clandestine photo-taking was particularly targeted at (guess who are being targeted at the present stage?) — the show business. Members might have some reservations about the case in question, for the act was utterly undesirable. However, clandestine photo-taking could very often make history in political surveillance or political acts. I wonder if Members are aware of an incident in which peep photos of a Washington mayor taking drugs in a hotel room were taken and the revelation of the incident finally led to his downfall. There have been numerous political incidents like this. It is actually undesirable to impose a total ban on all acts of clandestine photo-taking, for example, if there are secretly-taken photos showing me, SIN Chung-kai, committing some immoral acts, it is equally improper to ban their publication. Insofar as such acts are concerned, as it is within the power of the public to monitor political figures like us, I feel that it is inappropriate to impose a total ban on acts of clandestine photo-taking for such purposes.

Hence, we have been debating such questions as whether clandestine photo-taking of figures in the show business, the political circle, judges and the Chief Executive should be prohibited. Imagine a photo showing the Chief Executive having a meal with a tycoon in his backyard being taken. If such a photo is prohibited from being published, I think the newspaper might probably resort to fighting, or not to speak of fighting.....

Frankly speaking, if a photo is taken, it is simply impossible to ban it. If the photo is not allowed to be published in Hong Kong, the method mentioned

earlier can be used whereby the photo can be uploaded onto a website in such places as Islands of Alabama, and then Internet users can be notified to visit the website to browse the photo. Therefore, great caution must be exercised in prohibiting so-called activities of the upper stretch with respect to clandestine photo-taking. As regards prohibition of publication in the lower stretch, we may render our support. I so submit.

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

**MS AUDREY EU** (in Cantonese): President, the original motion and the amendment today in fact contain two different parts. The motion's short title indeed bears a slight difference with the two parts because, while the short title reads "Introducing legislation to regulate clandestine photo-taking", the two parts of the motion are related, first, to the imposition of sentence under the Control of Obscene and Indecent Articles Ordinance and second, to the invasion of privacy.

Just as pointed out by a colleague earlier, obscene and indecent acts are confined neither to clandestine photo-taking or invasion of privacy inside a house, nor to the act of entering a house to invade privacy, as stated by Members earlier. A lot of contexts are therefore involved.

Actually, the greater part of the motion is endorsed by the Civic Party. For instance, we absolutely agree that the imposition of sentence under the existing Control of Obscene and Indecent Articles Ordinance has to be reviewed because its deterrent effects are inadequate. Today, many publications in Hong Kong are overflowed with obscene and indecent material. Very often, they are of no news value at all. Neither is any freedom of the press involved. It is a great pity that what kind of readers would generate what kind of media. As we cannot regulate readers, we can only regulate some obscene and indecent publications in this respect.

In this respect, it has been pointed out by a number of colleagues that the existing penalties are relatively high. However, regrettably, the sentence imposed by Court cannot produce adequate deterrent effects. In my opinion, the penalties, even if further raised, may still not produce adequate deterrent effects because of the existence of such markets. Very often, we must really consider more stringent penalties, including imprisonment or penalties targeting against the responsible persons behind the publications. The Civic Party expresses our full consent in this respect in the hope that public morals can be improved and upgraded.

The second part is related to privacy, a matter also taken very seriously by the Civic Party. In his speech earlier, Mr Andrew LEUNG proposed that Members should consider enacting legislation on privacy as protection of privacy in Hong Kong is inadequate. I agree with the proposal absolutely, because protection of privacy, though mentioned in our Basic Law, is not implemented in legal provisions. What our Privacy Commissioner for Personal Data is capable of doing is very little. Besides the daily occurrence of incidents involving invasion of privacy in Hong Kong, our privacy has often been invaded by government departments too. There has also been frequent leakage of relevant privacy data.

Therefore, we have to consider enacting a more comprehensive privacy ordinance to protect the privacy of Hong Kong people, or we may consider enhancing that part of civic education relating to the public, expanding the power of the Privacy Commissioner for Personal Data or his scope of investigation, or providing additional resources. The Civic Party agrees with these absolutely.

The second part of the original motion and other amendments involve an even more controversial issue, which is criminalizing the invasion of privacy, and the recommendations made by the Law Reform Commission (LRC) on the protection of personal privacy in March this year is also mentioned therein. The issue has become increasingly complicated because criminalization mentioned in the LRC report is absolutely not confined to a narrow scope such as clandestine photo-taking in a toilet or changing room, rather, observation intent in private premises, attempts to acquire personal data through observation, tapping, or placing equipment in private premises are mentioned too. Can public interest be used as a ground for defence? Public interest has been narrowed down to such a restrictive scope that serious offences, committed or being committed, have to be involved. Therefore, serious offences must be prevented or detected. However, the public interest we generally refer to is not necessarily confined to such a narrow scope.

Some colleagues mentioned the Watergate incident or CHEN Shui-bian. The two cases have something in common in the sense that they contain the Chinese character "水" (meaning water). I find it unnecessary to digress from the subject. We may just say a few words on "HEUNG (also mean fragrance in Chinese)'s residence" — I am referring to the residence of Daniel HEUNG, not those of female artistes. Did he use his metal shack as a warehouse or private villa? How can we know about that if no one had gone inside for clandestine photo-taking? Is this involving a fact that should be known by the public or is

this involving public consideration? If not, such an act of clandestine photo-taking should absolutely be criminalized. Should the reporter take photos inside the metal shack? Should the reporter step on the line?

Actually, we still have a lot of similar examples that can be cited, and actually a lot of factors have to be considered too. The Civic Party actually agrees with most parts of the original motion and the amendments we are now faced with. When it comes to clandestine photo-taking, acts not to be countenanced anywhere in the world, the "Easy Finder" incident, and the incident involving Lydia SHUM, we all agree that such behaviours should be condemned and deterrent measures be considered. However, should all behaviours involving clandestine photo-taking be thus criminalized just like that? We also hope Members can give serious consideration. As pointed out by Ms Emily LAU, legislation is, more often than not, a very thick and blunt knife. The word "blunt" has often been used by us to describe the knife. If a piece of legislation is likely to affect freedom of the press, we must give very serious consideration to it.

Based on this point, therefore, the Civic Party will abstain from voting on the original motion and other amendments, except for the one proposed by Mr Albert CHAN. Thank you, President.

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

**MR JAMES TO** (in Cantonese): President, I would express great support after listening to Ms Audrey EU's speech.

Perhaps allow me to add a few points specifically. First, during our scrutiny of the legislation relating to wiretapping and interception of communications two months ago, we have, in real terms, raised opposition to disciplined forces breaching the law, invading privacy, and not acting in accordance with criminal or civil law. What was said then is similar to what is discussed today. These unlawful acts are opposed by many political parties, including the Liberal Party. Hence, when I heard Mr Jeffrey LAM comparing "home" to a "fortress" and Mr Howard YOUNG mentioning the case of failure to draw the curtains at home, it suddenly struck me that the point concerning the failure to draw the curtains was precisely raised during the deliberations of the legislation two months ago. At that time, it was pointed out that disciplined forces regarded the degree of disturbance caused as low and therefore photos

could be taken indiscriminately. Under such circumstances, the comparison of a home to a fortress precisely coincides with the remarks made by Ms Emily LAU, Ms Margaret NG and me at that time. However, when the media is involved as in the present case, the case became subject to criminalization. The disciplined forces, when breaching privacy, are highly organized and systematic, and their acts, even though committed in the identity as disciplined forces, are not considered to be in breach of civil or criminal law. How can we start our discussion if this is the case? It is indeed quite difficult.

Of course, it can be said that the matters can be discussed jointly during future discussions. However, when it comes to regulating, it seems logical for our Government, as a starting point, to take the lead. For instance, government vehicles should take the lead in switching off idling engines, right? It cannot be said that disciplined forces are to be treated differently. This is indeed hard to understand. If discussion is to be conducted, we would ask why is there still a need to study. It must be understood that in some cases there is nothing at all to do with freedom of the press. Therefore, we must study the matter carefully.

Let me talk about this in concrete terms. For example, this report, which is the report of the Law Reform Commission, the creation of two new criminal offences is recommended. One of them reads: "It should be an offence to enter or remain on private premises as a trespasser with intent to observe, overhear or obtain personal information." Let me start discussing this offence.

First, Members must understand that this matter can be treated as quite serious if this is really the case because if the reporters of some reports of an investigative nature, such as "News Magazine", "Hong Kong Connection" and so on, are all treated as trespassers, it will nearly be impossible for such programmes to be filmed. This is because it was very often the case that behaviour-wise, the reporters actually entered private premises, not to mention having the intent of doing so, as trespassers for the purpose of collection. Furthermore, wiretapping, in addition to unauthorized filming with the use of a device, is considered an offence, though wiretapping is not spelt out in great detail in the report. The second offence clearly indicates the application of a sense-enhancing device. In other words, overhearing is considered an offence. The intent would become even clearer if observing is also taken into account. For instance, observers visiting a beauty parlour to observe how customers are being abused or cheated are actually acting as trespassers because they might be disguising themselves to conceal their intent. They might even enter the premises under other excuses, and the persons being observed definitely will not agree to allow them to enter their premises to conduct such acts. A great impact

will therefore be produced on news reports, particularly reports of an investigative nature.

Another point I would like to raise is: If we reckon that the ultimate goal of journals to issue publication is to make money, why do we consider taking combating actions as the last step to be most effective? Of course, if the purpose of the persons taking ladies' underskirts photographs is for interest's sake or private collection, the matter should be dealt with differently. However, if the publication is aimed at profit-making, the aspect of profits should be pinpointed instead. I proposed a number of initiatives to the Director, Ms WONG, when I had a meeting with him. I have even added one or two more initiatives afterwards.

First, if a case is deemed appropriate, an appeal can be lodged so that the Court of Appeal can give a guideline on whether sentencing should be calculated in terms of tens of thousands or hundreds of thousands dollars. Of course, full preparation has to be made for it beforehand to find out, for instance, how the publication makes money and how many copies will be printed. In addition, some existing criminal law can be used as a reference. Actually, the imposition of sentence in this manner can be found in some regulations, and the penalty is pegged with profit. For instance, some bogus Certificates of Origin are being regulated by laws of this category. A deterrent effect will definitely be produced should the penalty be pegged with profit or even multiplied, as the publication might merely make a profit of hundreds of thousands or a million dollars per issue (gaining a million dollar as profit per issue is already a great deal of money, right? It cannot be that much). While the penalty for first offenders might not be as high, repeated offenders will be given heavier penalty. An invariable imposition of fine is crucially important if penalty is to achieve deterrent effect.

Furthermore, some people will certainly argue from the technical aspect as to whether the discretionary power of for the Court in imposing sentence will be affected. This is not going to happen in reality. For the sentencing of some offences, we will specifically outline some circumstances under which penalties are to be increased. For instance, this is the case with the Organized and Serious Crimes Ordinance. We have also, in the past year or so, passed legislation specifying that the penalty can be doubled if drugs are sold to young people. Under certain circumstances, we can introduce legislation with a guiding nature so that these factors can be considered by the Court. I believe that in fact an instant deterrent effect can be effectively produced as a result.

Lastly, relatively fewer colleagues are present in this Chamber today. Except for Ms Audrey EU who pointed out in her speech that amendment to the privacy legislation has been progressing very slowly, I am the only Member who go along this way. A decade has passed, so I hope the Government can pay more attention. This has been raised by someone months ago. Furthermore, the Privacy Commissioner for Personal Data has also raised some proposals. It can be seen from the incidents in recent years or recent months that it is impossible for prosecutions to be instituted in some cases. Actually, the Commissioner will find that if his authority is not enhanced, the higher the public expectation gets, the greater will be the public disappointment. Judging from the incidents over the past years, he can hardly command any credibility should the situation remain unchanged.

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

**MRS SELINA CHOW** (in Cantonese): President, the recent incidents involving Gillian CHUNG and Lydia SHUM have aroused great public concern and extensive discussion on invasion of privacy. Actually, such incidents have been in existence for a long time. I remember a couple of years ago — Members may probably recall it too — there was a gathering of mask-wearing artistes in protest of the media's invasion of their privacy. In the eyes of the media, public figures do have a certain value because reports about them can definitely boost sale of newspapers or books. Hence, they will definitely become the media's target of invasion of privacy. Yet there is no need for the media to invade the privacy of ordinary people because they are virtually of no value. This explains why the majority of people are unconcerned if it were not for the occurrence of such incidents.

It has often occurred to me that these public figures are constantly treated unfairly. We must address the issue and refrain from saying that public figures do not have privacy at all, as stated by Emily LAU earlier. Emily, you are a public figure. Imagine you open a window at home and someone films at a distance with tele-lens, like what has happened to a certain singer and artiste. We have studied the issue for quite some time and also consulted a professional photographer where those tele-lens come from and how is it possible to film what happens inside a house. Should this happen to you, Emily, I believe you will not say so casually that public figures do not have privacy. You would not be able to say something like that.

Hence, I reckon that we surely have to address the issue. Mr Andrew LEUNG today said that the report of the Law Reform Commission should be used as the basis. We certainly agree with the remarks made by a number of Members earlier. We even agree with Mr Albert HO's amendment. Even if legislation is not immediately enacted, discussion must be held to identify a solution.

Some people criticized the Chief Executive and asked why he had reacted to the incident so swiftly. This is a very political move. Should he fail to react, then the Chief Executive would have been criticized for being unconcerned about the comments. There is indeed widespread concern about the incident. I remember many people found the "Gillian CHUNG incident" greatly offensive. In particular, the weekly magazine made another great fortune by reprinting more copies. I think we expect the Chief Executive to react in this manner. He would be regarded as extremely insensitive should he fail to do so. This is why I think we must address the issue seriously.

Let us look at the opinion surveys conducted by the University of Hong Kong this year and last. In less than a year, between November last year and October this year, do you know the increase in number of respondents who considered the reports irresponsible? It has risen 15%, from 32% to 47%, and the number of those who considered the media abusing and misusing freedom of the press rose from 60% to 74%. There has been such a change in public view in less than a year. I believe when we talk about freedom of the press, we do not mean absolute freedom because human rights must be taken into account. It is vitally important for a balance to be maintained. The media must be deterred from and punished for piracy invasion.

In fact, Mr Andrew LEUNG's request is very reasonable. We also very much agree with the additional proposals made by Mr Albert HO, including the establishment of a self-regulating commission. I understand the media's saying that absolutely they cannot allow others to regulate their discipline. For a proper profession, self-discipline must be embraced in its moral conduct, and it cannot say that there is no need for self-discipline in any form. Without self-discipline, where does justice lie? In the past, people suffering from invasion of privacy — particularly public figures — wishing to lodge a complaint frequently found that there was no channel for them to seek justice. Therefore, the Liberal Party supports the establishment of a self-regulating commission. In the original motion of Mr Andrew LEUNG, we have also urged the media to exercise more self-discipline.

Members have heard the examples of overseas countries and found that even advanced democratic countries have put in place legislation to regulate clandestine photo-taking. Although the legislation is not very wide in scope, a certain balance has to be maintained. A few Members mentioned public interest earlier and this is certainly important. During the deliberation of the legislation on interception of information, it was noted that law-enforcement officers started out with the public interest in mind when carrying out their tasks. So how can they be compared to the media who resort to clandestine photo-taking for the purpose of making a fortune?

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): If no other Member wishes to speak, I now call upon Mr Andrew LEUNG to speak on the amendments. The speaking time is five minutes.

**MR ANDREW LEUNG** (in Cantonese): President, you must be very tired. I am very tired too, so I will not exhaust my five minutes.

My motion seeks to regulate the protection of privacy, not purely to regulate the media. Neither is the motion pinpointing the media because not all the clandestine photo-taking incidents are acts being done by the media. As Mrs Selina CHOW has already expressed earlier our view on Mr Albert HO's amendment, I will not make any repetitions.

Mr Jeffrey LAM's amendment emphasizes that the composition of the self-regulating commission must balance the interests of all parties, so I support it greatly, and Mr LAM is also a member of the Liberal Party.

We do not support Mr Albert CHAN's amendment as it proposes to do away with to the establishment of the self-regulation commission. We find his rationale very strange because, just as I have pointed out earlier, public interest is a defence, such is not used in any way to deter the media from doing what they are supposed to do. Therefore, we oppose Mr Albert CHAN's amendment.

President, I so submit.

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY** (in Cantonese): Madam President, as many Members have just said, the control of obscene and indecent articles and protection of privacy can be, and should be even, discussed separately. So, I would like to speak on proposals concerning the Control of Obscene and Indecent Articles Ordinance (the Ordinance) in the motion and the amendments, and my colleague Secretary Dr Patrick HO will speak on the protection of privacy.

First of all, I thank Members for their views on the Ordinance which is within my scope of responsibility. Like all Members, the Government also felt very angry at the publication of a peep photo of a female artiste changing her clothes by a magazine. We have strongly reprimanded such an immoral behaviour and taken immediate law enforcement action in accordance with the Ordinance. On 25 August 2006, the Obscene Articles Tribunal (OAT) temporarily classified the magazine as Class II article. Later, at the request of the publisher, the OAT conducted a full hearing on 19 September in order to conduct a review on the classification of the article. The OAT will announce on 1 November the review result and we will then decide on further action to be taken in due course.

I would like to response to Members' speeches from two aspects: first, the enforcement of the Ordinance, and second, the punishment and penalties prescribed by the Ordinance.

The Television and Entertainment Licensing Authority (TELA) is one of the departments responsible for enforcing the Ordinance. Its duties include inspecting publications and retail outlets, checking whether there are published articles which are suspected to be in breach of the Ordinance in the market, submitting the suspected articles to the OAT for classification and taking prosecution action against the publishers or vendors who have breached the Ordinance.

All along, the overall enforcement situation has been kept under constant review by the TELA in order to devise improvement measures so as to enhance the enforcement effectiveness. For instance, the number of inspections by the TELA was 26 000 in 2000 and increased to 78 000 in 2005. The number of obscene and indecent articles seized by the TELA has also increased from 5 200 in 2000 to 424 000 in 2005. Regarding the monitoring on publications, including entertainment magazines, the TELA has all along taken the initiative to inspect all publications sold in the market rather than act on complaints.

The TELA will actively look at the temporary classification of each submitted article and the result of sentencing. After seeking advice from the

Department of Justice, the TELA, if in the view that there are sufficient justifications, will seek a review of the temporary classification in the OAT's full hearing or a review of the sentence by Court. We hope that the High Court will have the opportunity to hand down a sentencing guideline where appropriate for the reference of the Court of First Instance in dealing with similar cases in future.

In order to enhance public understanding of the enforcement of the Ordinance by the TELA, the TELA has, starting from November 2004, released relevant statistics on its website, including the number of articles inspected, number of complaints received, number of inspections, number of articles submitted to OAT for classification and number of convicted cases.

Furthermore, starting from September this year, the TELA has been releasing on its website details concerning articles submitted to the OAT for classification and the details of convicted cases. These include the name of items published, dates of publication, brief information and classification of the items, and the sentences handed down. The public, having access to this information, will learn more clearly about the enforcement action taken by the TELA.

We understand that there are views in the community that the sentences handed down by Court on the offenders are far too lenient to achieve a deterrent effect. Of course, one of the major important points in Mr Andrew LEUNG's motion targets at this problem.

I would like to point out that the sentencing on the offenders is a matter solely decided by the Court. Under the Ordinance, the maximum penalty for anyone who publishes an obscene article is a fine of \$1 million and imprisonment of three years. Publishing an indecent article without complying with the statutory requirements is liable to a maximum fine of \$400,000 and imprisonment of 12 months on first conviction; for the second and subsequent convictions, the offender is liable to a maximum fine of \$800,000 and imprisonment of 12 months.

The sentencing of an offender is determined by the Court having taken into account the circumstances of the case. Under the premise of judicial independence, we should respect the Court's judgement. If the TELA thinks that the sentence is too lenient, it will, after consulting the Department of Justice, seek a review of the sentence in order to ensure the deterrent effect. Here I would like to cite some examples for Members', especially Miss CHOY So-yuk's, reference.

Recently the TELA, after seeking advice from the Department of Justice, has requested the magistracy to review the sentencing of four cases. One of the cases is concerned about a publication which has a record of repeated convictions being fined \$5,000 to \$7,500 on publishing indecent articles three times in the year. After a review, the magistrate decided to double the fine to \$10,000 to \$15,000. However, after careful consideration, the Department of Justice considered the sentence far from adequate and applied to the Court of Appeal for a review. Now leave has been granted and the date of hearing is being arranged.

We will continue to closely monitor the Court's sentencing on the offenders and apply for a review or appeal where appropriate.

Now, the Government and the community are highly concerned about the proliferation of obscene and indecent articles, and they can be said to be most unhappy about the present situation. We consider that there is a need to review the penalties under the Ordinance, especially for repeated offenders, and assess whether the provisions should be amended in order to enhance the deterrent effect.

Yesterday, at the special meeting of the Information Technology and Broadcasting Panel, I pointed out that during the review procedure, we had made reference to the Government's proposals in the 2000 Review of the Control of Obscene and Indecent Articles Ordinance which were not adopted because of objection by many people, including many Legislative Council Members. We will reassess these proposals whether they are appropriate and make reference to overseas practices.

I would like to cite an example. In New Zealand, if no less than three prints of a periodic publication has been classified as objectionable or restricted in a 12-month period, it may be subject to a periodic publication order. If the publication is regarded as objectionable, the New Zealand authorities may order to stop publication during the effective period of the periodic publication order. If the publication is regarded as restricted, all issues of the publication during the effective period of the periodic publication order must comply with certain conditions, for instance, they can only be sold or displayed to certain kind of people or people of certain age group.

Regarding the proposals of how to enhance the penalties on repeated offenders, such as increasing the maximum fines and other penalties under the existing Ordinance, implementation of the periodic publication order or other

more feasible measures with more deterrent effect, just as Mr James TO has mentioned earlier, under other legislation, some penalties can be fixed in proportion to the offenders' turnover, profit or even circulation volume. Of course, there may be difficulties in implementation of these measures. But we are open-minded and hope that we can positively study whether it is possible to come up some specific proposals.

Finally, I would like to thank all Members who have spoken and their views which will be taken into account in our review. I hope the review can be completed in a few months' time and the outcome of the review and really specific proposals will be presented to society and Legislative Council Members for discussion.

Thank you, Madam President.

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, first of all, I am grateful to Mr Andrew LEUNG for moving the motion on clandestine photo-taking. I also appreciate the amendments by Mr Albert HO, Mr Jeffrey LAM and Mr Albert CHAN and the valuable views of all Members. This gives us an opportunity to go into detailed discussion about the privacy protection of individuals.

The Law Reform Commission (LRC) has published a number of reports on protection of privacy, including the "Civil Liability for Invasion of Privacy" published in December 2004, the report on "Privacy and Media Intrusion" and "Privacy: The Regulation of Covert Surveillance" published in March 2006.

In the LRC's report on Civil Liability for Invasion of Privacy, it is proposed that those who have their privacy infringed upon can seek civil remedies, and examples of the behaviour of privacy invasion include:

- (a) To intrude upon the solitude of another or into his private business, if the intrusion is seriously offensive or objectionable; and
- (b) To make unwarranted publicity of others' private life, and such an act is seriously offensive or objectionable.

In the LRC's report on Privacy and Media Intrusion, it is proposed that an independent and self-regulating Commission be set up by statute to handle public complaints concerning unwarranted invasion of privacy by the printed media.

On regulation of covert surveillance, the LRC proposes to create two criminal offences, including:

- (a) To enter or remain on private premises as a trespasser with intent to observe, overhear or obtain personal information; and
- (b) To use a device with the intention of obtaining personal information relating to individuals inside the private premises in circumstances where those individuals would be considered to have a reasonable expectation of privacy.

The LRC's proposals on dealing with invasion of privacy have led to a divergence of reactions and views among the Legislative Council Members, media organizations, women organizations and different organizations. The Society of Truth and Light opines that to specify invasion of privacy as a tort will be substantially helpful to those whose privacy has been infringed upon but cannot afford expensive litigation costs. The entertainment circle and women organizations also support the idea of defining invasion of privacy as a specific tort and the regulation on covert surveillance. On the other hand, some Legislative Council Members consider it very difficult to define "privacy" and it may be too radical to make invasion of privacy a tort. Some journalists are worried that the civil liability for invasion of privacy may lead to closure of some small-scale media organizations because they cannot afford the massive litigation costs or compensation.

Proposals on regulation of covert surveillance have given rise to much repercussions in society. Some Legislative Council Members and journalists consider the proposed exemption clause, including the prevention or investigation of serious offence, too narrow and comment that there is no defence of "public interest" for the media. This will seriously hamper investigative journalism working in line with public interest and hinder press freedom. Some foreign domestic helper employers think that the proposals are annoying to the people and impractical while private detectives fear that this may hamper their day-to-day work.

Regarding the setting up of an independent and self-regulating Commission by statute, there are loud voices of objection in society. Media organizations unanimously oppose the establishment of such a body on the ground that this may hamper press freedom or even lead to government intervention. They opine that self-discipline can better protect press freedom

than regulation from outside. In opposing the setting up of such a Commission, the Hong Kong Human Right Monitor has pointed out that under "one country, two systems", press freedom in Hong Kong is not subject to the regulation of any democratic mechanism and it is necessary to give double protection to freedom of expression. In view of the media's worry, many Legislative Council Members do not support the regulation of media through legislation and consider that the industry should continue to exercise self-regulation.

Madam President, we attach great importance to protection of privacy, these two rights are protected under the Basic Law. Under Article 27 of the Basic Law, Hong Kong residents shall have freedom of speech, of the press and of publication. Under Articles 28 to 30, personal privacy, premises privacy and freedom, and privacy of communication of Hong Kong residents are protected respectively. The LRC's proposals are concerned about privacy and freedom of expression. Since privacy is not an absolute right, it must strike a balance with privacy, other rights and freedom. So, privacy protection law may also have a bearing on other legal rights. We understand that protection of privacy may affect the freedom of expression. However, if the freedom of expression is abused, privacy may be affected. Although press freedom is vital to the democratic system and the public, the media organizations should also have regard and respect to others' privacy. In deciding our way forward, a suitable balance must be struck between privacy and freedom of expression. Consensus of society should be obtained before any legislative proposal concerning these two human rights.

The LRC's proposals on preventing invasion of privacy are highly contentious and a lot of complicated legal concepts are involved. For instance, in the proposal, it is said that the individual concerned has a "reasonable expectation of privacy". But there is no consensus in society as to the definition of "reasonable expectation of privacy". Regarding what kind of act will be considered seriously offensive or objectionable to a reasonable person, there should be adequate discussion in the community. Besides, what kind of act can constitute a defence is also highly contentious and concerned by the people. In dealing with invasion of privacy, the LRC has proposed a two-pronged approach which includes the creation of criminal offence and civil liability. We hope all sectors in society can have detailed discussion on the relevant measure, including whether it is necessary to enact criminal and civil laws simultaneously, or whether criminal law should be enacted first or vice versa according to a priority order, or either one should be enacted only.

On the basis of the LRC's specific proposals, we will conduct a detailed discussion with the Legislative Council, the media, the general public and all relevant parties with a view to striking a suitable balance and reaching a consensus to create a basis on which the Government can present a specific legislative proposal to the Legislative Council.

Repeated serious invasion of privacy by some media has aroused public concern. Journalists, editors and media operators have to exercise self-discipline in order to restore people's confidence in the media. The Hong Kong Press Council (HKPC), founded in 2000, is an independent and self-regulatory body of the newspaper industry. It deals with complaints against newspapers for infringing privacy and carrying obscene, indecent or sensational articles. At present, only 10 newspapers have joined the HKPC, accounting for only 20% of the total readership in Hong Kong. Furthermore, the best sellers are not its members. In 2000, four major professional journalists groups drafted the Journalists' Code of Professional Ethics as the professional and ethical standards of journalists. Under item 5 of the Code, journalists should respect the reputation and privacy of individuals and reporting on the private lives of individuals who have not given their consent for doing so should only be done in a way that would not create invasion of their privacy. Under item 7 of the Code, journalists should obtain information, photographs and illustrations through proper means.

Here, we would like to urge all newspapers and magazines to actively support the work of the HKPC by joining it as members in order to show to the public their determination for self-discipline so that the self-regulatory body of the newspaper industry can have a full representation for all newspapers and magazines in Hong Kong and bring its self-regulatory role into full play. I also urge all journalists to faithfully fulfil the duties required of their post, exercise self-discipline and self-restraint in order to reflect the professional spirit of the industry and abide by the code of professional ethics.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now call upon Mr Jeffrey LAM to move his amendment to Mr Albert HO's amendment.

**MR JEFFREY LAM** (in Cantonese): Madam President, I move that Mr Albert HO's amendment be amended.

**Mr Jeffrey LAM moved the following amendment to Mr Albert HO's amendment: (Translation)**

"To add "the implementation of" after "studying"; and to add "consisting of representatives from the trade and the public," after "self-regulating commission". "

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr Jeffrey LAM to Mr Albert HO's amendment, be passed.

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

(Members raised their hands)

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

(Members raised their hands)

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, after which the division will begin.

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

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

Functional Constituencies:

Dr Raymond HO, Mrs Sophie LEUNG, Mr Howard YOUNG, Ms Miriam LAU, Mr Timothy FOK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Vincent

FANG, Mr WONG Kwok-hing, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr Patrick LAU and Mr KWONG Chi-kin voted for the amendment.

Ms Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr KWOK Ka-ki and Dr Fernando CHEUNG abstained.

Geographical Constituencies:

Mr James TIEN, Mrs Selina CHOW, Mr CHAN Kam-lam, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung and Mr LI Kwok-ying voted for the amendment.

Mr Albert CHAN and Mr LEUNG Kwok-hung voted against the amendment.

Mr Albert HO, Mr LEE Cheuk-yan, Mr James TO, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Ms Audrey EU and Mr Alan LEONG abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 19 were present, 14 were in favour of the amendment and five abstained; while among the Members returned by geographical constituencies through direct elections, 18 were present, seven were in favour of the amendment, two against it and eight abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negated.

**MS MIRIAM LAU** (in Cantonese): Madam President, I move that in the event of further divisions being claimed in respect of the motion on "Introducing legislation to regulate clandestine photo-taking" or any amendments thereto, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

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

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): I now put the question to you 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 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 motion on "Introducing legislation to regulate clandestine photo-taking" or any amendments thereto, this Council do proceed to each of such divisions after the division bell has been rung for one minute.

**PRESIDENT** (in Cantonese): Mr Albert CHAN, you may move your amendment to Mr Albert HO's amendment.

**MR ALBERT CHAN** (in Cantonese): President, I move that Mr Albert HO's amendment be amended.

**Mr Albert CHAN moved the following amendment to Mr Albert HO's amendment: (Translation)**

"To delete ", establishing a self-regulating commission" after "criminalizing the invasion of privacy"."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr Albert CHAN to Mr Albert HO's amendment, be passed.

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

(Members raised their hands)

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

(Members raised their hands)

Mr Albert CHAN rose to claim a division.

**PRESIDENT** (in Cantonese): Mr Albert CHAN has claimed a division. The division bell will ring for one minute, after which the division will begin.

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

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

Functional Constituencies:

Ms Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Ms LI Fung-ying, Mr WONG Kwok-hing, Dr KWOK Ka-ki, Dr Fernando CHEUNG and Mr KWONG Chi-kin voted for the amendment.

Dr Raymond HO, Mrs Sophie LEUNG, Mr Howard YOUNG, Ms Miriam LAU, Mr Timothy FOK, Mr Tommy CHEUNG, Mr Vincent FANG, Mr Jeffrey LAM and Mr Andrew LEUNG voted against the amendment.

Mr WONG Ting-kwong and Mr Patrick LAU abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr James TO, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Mr Albert CHAN, Ms Audrey EU, Mr Alan LEONG and Mr LEUNG Kwok-hung voted for the amendment.

Mr James TIEN and Mrs Selina CHOW voted against the amendment.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung and Mr LI Kwok-ying abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 19 were present, eight were in favour of the amendment, nine against it and two abstained; while among the Members returned by geographical constituencies through direct elections, 18 were present, 10 were in favour of the amendment, two against it and five abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negated.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That Mr Albert HO's amendment to Mr Andrew LEUNG's motion, be passed.

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

(Members raised their hands)

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

(Members raised their hands)

Ms Emily LAU rose to claim a division.

**PRESIDENT** (in Cantonese): Ms Emily LAU has claimed a division. The division bell will ring for one minute, after which the division will begin.

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

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

Functional Constituencies:

Dr Raymond HO, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Mr SIN Chung-kai, Mr Howard YOUNG, Ms Miriam LAU, Mr Timothy FOK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Mr Jeffrey LAM, Mr Andrew LEUNG, Dr KWOK Ka-ki, Mr WONG Ting-kwong, Mr Patrick LAU and Mr KWONG Chi-kin voted for the amendment.

Ms Margaret NG and Dr Fernando CHEUNG abstained.

Geographical Constituencies:

Mr James TIEN, Mr Albert HO, Mrs Selina CHOW, Mr James TO, Mr CHAN Kam-lam, Dr YEUNG Sum, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr Andrew CHENG, Mr TAM Yiu-chung and Mr LI Kwok-ying voted for the amendment.

Mr Albert CHAN and Mr LEUNG Kwok-hung voted against the amendment.

Mr LEE Cheuk-yan, Ms Emily LAU, Ms Audrey EU and Mr Alan LEONG abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 19 were present, 17 were in favour of the amendment and two abstained; while among the Members returned by geographical constituencies through direct elections, 18 were present, 11 were in favour of the amendment, two against it and four abstained. Since the question was agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was carried.

**PRESIDENT** (in Cantonese): Mr Andrew LEUNG, you may now reply and you have three minutes 10 seconds.

**MR ANDREW LEUNG** (in Cantonese): President, first of all, I would like to thank the 17-odd Members who have spoken on the motion, the content of which has been much enriched by this two-and-a-half-hour debate. However, it has led to the President ruled amiss.

Colleagues are very active in speaking up, showing that we all are very concerned about the unwarranted invasion of privacy. I also hope that the Government will listen to all our views.

I thank the Secretary for the Commerce, Industry and Technology for his speech as he agrees that there is a need to review the relevant ordinance and the review result will be submitted to the Legislative Council in order to specify clearly whether penalties for the repeated offenders should be increased.

I also thank the Secretary for Home Affairs who has confirmed the way forward hereafter. Of course, press freedom and privacy are not incompatible. But there is a very fine dividing line which should be dealt with in a serious manner. In this connection, we need to arouse widespread discussion in society.

I am also grateful to the many Members who support this motion. However, I found some of their views strange, particularly those of Mr Ronny TONG. I do not understand what he meant. What he has said amounted to nothing has been spoken. He said peep photo taken on the sly would lead to public rage and we should protect our privacy. However, he considers that it is difficult to provide civil remedies and does not agree to create criminal offences

in this aspect. I am totally at a loss as to what he wanted to do. Anyway, I think this Chamber has conveyed a very good message, and that is, privacy and the freedom for news coverage are both our prime concerns. Thank you, President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Mr Andrew LEUNG, as amended by Mr Albert HO be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr Andrew LEUNG rose to claim a division.

**PRESIDENT** (in Cantonese): Mr Andrew LEUNG has claimed a division. The division bell will ring for one minute, after which the division will begin.

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

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

Functional Constituencies:

Dr Raymond HO, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Mr SIN Chung-kai, Mr Howard YOUNG, Ms Miriam LAU, Mr Timothy FOK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Mr Jeffrey LAM, Mr Andrew LEUNG, Dr KWOK Ka-ki, Mr WONG Ting-kwong, Mr Patrick LAU and Mr KWONG Chi-kin voted for the motion as amended.

Ms Margaret NG and Dr Fernando CHEUNG abstained.

Geographical Constituencies:

Mr James TIEN, Mr Albert HO, Mrs Selina CHOW, Mr James TO, Mr CHAN Kam-lam, Dr YEUNG Sum, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung and Mr LI Kwok-ying voted for the motion as amended.

Ms Emily LAU, Mr Albert CHAN and Mr LEUNG Kwok-hung voted against the motion as amended.

Mr LEE Cheuk-yan, Ms Audrey EU and Mr Alan LEONG abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 19 were present, 17 were in favour of the motion as amended and two abstained; while among the Members returned by geographical constituencies through direct elections, 17 were present, 10 were in favour of the motion as amended, three against it and three abstained. Since the question was agreed by a majority of each of the two groups of Members present, she therefore declared that the motion as amended was carried.

#### **NEXT MEETING**

**PRESIDENT** (in Cantonese): I now adjourn the Council until 11.00 am on Wednesday, 25 October 2006.

*Adjourned accordingly at twenty-five minutes past Twelve o'clock in the Morning.*

## Annex I

SMOKING (PUBLIC HEALTH) (AMENDMENT) BILL 2005

**COMMITTEE STAGE**Amendments to be moved by the Secretary for  
Health, Welfare and Food

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>By deleting the clause and substituting -</p> <p><b>"2. Commencement</b></p> <p>(1) Except as provided in subsections (2) to (4), this Ordinance shall come into operation on the day on which this Ordinance is published in the Gazette.</p> <p>(2) The following provisions shall come into operation on 1 January 2007 -</p> <p>(a) section 4(a), (c), (d), (e), (ea) and (f);</p> <p>(b) section 4(h) (only in relation to the new definitions of "indoor" and "school");</p> <p>(c) sections 5 to 8;</p> <p>(d) sections 13, 15, 17 and 19(b);</p> <p>(e) sections 20 to 22A;</p> <p>(f) sections 31A, 34 and 35A;</p> <p>(g) section 36(aa), (ea) and (f); and</p>

(h) section 38 (only in relation to sections 2 and 8 of Part 2 of the new Schedule 6).

(3) Section 14(b) shall come into operation on 1 November 2007.

(4) Sections 14(a), 35 and 36(ab) and (e) shall come into operation on 1 November 2009.”.

4 (a) By deleting paragraph (c) and substituting -  
“(c) by repealing the definition of “manager” and substituting -

““manager” (管理人), in relation to a no smoking area or a public transport carrier, means -

(a) any person who is responsible for the management or is in charge or control of the no smoking area or public transport carrier, and includes an assistant manager and any person holding an appointment analogous to that of a manager or assistant manager; or

(b) in the case where there is no such person in relation to any premises, the owner of the premises;";".

(b) By adding -

"(ea) in the definition of "public transport carrier", by repealing "while the public bus, public light bus, taxi, train, light rail vehicle, car, tramcar or ferry vessel is, subject to Schedule 1, carrying members of the public";".

(c) In paragraph (f), by deleting paragraph (b) of the proposed definition of "restaurant premises" and substituting -

"(b) any other trade or business the purpose of which is for the sale or supply of meals or unbottled non-alcoholic drinks (including Chinese herb tea) for human consumption on the premises (whether or not it is carried on by a person who is the holder of a licence under the Hawker Regulation (Cap. 132 sub. leg. AI));".

(d) In paragraph (h) -

(i) by deleting the proposed definition of "bathhouse" and substituting -

“bathhouse” (浴室) means a bathhouse -

(a) that is within the meaning of section 3(1) of the Commercial Bathhouses Regulation (Cap. 132 sub. leg. I); and

(b) in respect of which a licence granted under that Regulation is in force;”;

(ii) by deleting the proposed definition of “domestic premises” and substituting -

“domestic premises” (住宅) means any premises that have been constructed to be used, and are used, as a private dwelling;”;

(iii) by deleting paragraph (b) of the proposed definition of “indoor” and substituting -

“(b) 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;”;

(iv) by deleting the proposed definitions of “post secondary school” and “public market”;

- (v) in the proposed definition of "school", by deleting ", but excludes a post secondary school";
- (vi) by deleting paragraph (a) of the proposed definition of "workplace" and substituting -
- "(a) that is occupied for conducting a business or non-profit making undertaking; and";
- (vii) in paragraph (c) of the proposed definition of "懲教機構", in the Chinese text, by deleting "所。" and substituting "所；";
- (viii) by adding -
- "bathing beach" (泳灘) means any bathing beach specified in the Fourth Schedule to the Public Health and Municipal Services Ordinance (Cap. 132);
- "escalator" (自動梯) means an escalator within the meaning of section 2(1) of the Lifts and Escalators (Safety) Ordinance (Cap. 327);
- "massage establishment" (按摩院) means a  
massage establishment -

- (a) that is within the meaning of section 2 of the Massage Establishments Ordinance (Cap. 266); and
- (b) in respect of which a licence granted under that Ordinance is in force;

“public pleasure ground” (公眾遊樂場地)

means a public pleasure ground within the meaning of section 2(1) of the Public Health and Municipal Services Ordinance (Cap. 132);

“public swimming pool” (公眾泳池) means a

public swimming pool within the meaning of section 2(1) of the Public Health and Municipal Services Ordinance (Cap. 132);

“stadium” (體育場) means a stadium within

the meaning of section 2(1) of the Public Health and Municipal Services Ordinance (Cap. 132);”.

- 5 (a) By deleting paragraph (a) and substituting -
- “(a) by repealing subsection (1) and substituting -
- “(1) The areas described in Part 1 of Schedule 2 are designated as no

smoking areas.

(1AA) Subsection (1) does not apply to the exempt areas described in Part 2 of Schedule 2.

(1AB) The Director of Health may, by notice published in the Gazette, designate as a no smoking area the whole or a part of -

- (a) any area that consists of the termini of 2 or more modes of public transport and is used for effecting and facilitating interchange between them; or
- (b) any bus terminus of more than one specified route as defined in section 2 of the Public Bus Services Ordinance (Cap. 230).";".

(b) By adding -

“(ba) by adding -

“(2A) Subsection (2) does not prevent a person from smoking or carrying a lighted cigarette, cigar or pipe if he is exempt from that subsection under Schedule 5.”;”.

(c) In paragraph (c) -

(i) by deleting the proposed section 3(5);

(ii) in the proposed section 3(6), by deleting  
“(1AA)” and substituting “(1AB)”.

6 By deleting the clause and substituting -

**“6. Display of signs where  
smoking prohibited**

Section 5 is repealed.”.

8 By deleting the clause and substituting -

**“8. Offences under Part II**

Section 7(3) and (4) is repealed.”.

11 By deleting the clause and substituting -

**“11. Offences under Part III**

Section 10 is amended -

(a) in subsection (1), by repealing

“level 4” and substituting “level 5”;

(b) in subsection (2) -

(i) by repealing “level 4” and  
substituting “level 5”;

(ii) by repealing “載有” and  
substituting “展示”;

(c) by repealing subsection (3) and  
substituting -

“(3) Any manufacturer of tobacco products or his agent, or any wholesale distributor of tobacco products, who sells, offers for sale or possesses for the purpose of sale any tobacco product to which section 8 or 9 applies commits an offence if any packaging of the product (including any packet, retail container, wrapping, and any label attached to or printed on the packaging or the product) -

- (a) bears 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 term,  
descriptor,  
trademark,  
figurative or  
sign; or

- (b) promotes the  
product by any  
means that is  
false,  
misleading,  
deceptive or  
likely to create  
an erroneous  
impression about  
its  
characteristics,  
health effects,  
hazards or  
emissions.

(4) A person who commits  
an offence under subsection (3)  
is liable on summary conviction  
to a fine at level 5."."

- 13 By deleting the clause and substituting -
- “13. Tobacco advertisements in printed publications**
- Section 11 is amended -
- (a) in subsection (2)(b), by adding  
“printed,” after “document”;
  - (b) in subsection (3), by repealing  
everything after “publication” and  
substituting “that is published for  
the tobacco trade or as the “in  
house” magazine of any company  
engaged in that trade.”.”.
- 15 (a) In paragraph (a), by deleting the proposed section  
14(3)(b) and substituting -
- “(b) does not form a prominent part of the  
advertisement or object.”.
- (b) In paragraph (c), by deleting the proposed section  
14(4A)(b) and substituting -
- “(b) that the name does not form a prominent part  
of the advertisement or object; and”.
- (c) In paragraph (d), in the proposed section 14(6) -
- (i) in paragraph (a)(ii)(B), by deleting  
“or”;
  - (ii) by deleting paragraph (b) and  
substituting -

"(b) one price board if -

- (i) it lists only the names and prices of the tobacco products offered for sale in the premises;
- (ii) it is of a size not greater than 1 500 square centimetres;
- (iii) each item on the board containing the name and price of one type of tobacco product is of a size not greater than 50 square centimetres; and
- (iv) it bears a health warning in the prescribed form and manner; or

(c) in the case of a shop in which nothing except cigars and cigar accessories are offered for sale, 3 sets of catalogues, each listing only the names and prices of the cigars offered for sale in the shop."

New

By adding -

**"16A. Offences under Part IV**

Section 15(1) is amended by repealing "level 4" and substituting "level 5".

- 18 (a) By deleting the proposed section 15E and substituting -

**"15E. Interpretation of Part IVB**

In this Part -

"relevant offence" (有關罪行) means any offence under this Ordinance other than an offence under Part III;

"relevant provision" (有關條文) means any provision of this Ordinance other than a provision of Part III."

- (b) By deleting the proposed section 15G and substituting -

**"15G. General powers and duties of inspectors**

(1) Without limiting any other provisions of this Ordinance, an inspector may, subject to subsections (2) and (3) and on production of his authority as an inspector if requested, do all or any of the following -

- (a) at any time enter any place in which the inspector reasonably suspects that a relevant offence has been or is being committed;

- (b) at any reasonable time enter and inspect a no smoking area in a public place for the purpose of ascertaining whether the relevant provisions are complied with;
- (c) seize any thing that appears to the inspector to be evidence of any relevant offence;
- (d) require any person to give his name and address and to produce proof of identity if the inspector reasonably suspects that the person has committed a relevant offence;
- (e) take photographs or make sound or video recording for the purpose of obtaining evidence in connection with any relevant offence;
- (f) require any person to produce for inspection documents or records under the control of the person for the purpose of enabling the inspector to ascertain whether the relevant provisions are complied with;
- (g) make copies of all or any part of any such documents or records;

(h) require any person to provide the inspector with such assistance or information as is reasonably necessary to enable the inspector to exercise any power or perform any duty conferred or imposed by this Ordinance.

(2) An inspector shall not enter under subsection (1)(a) -

(a) any domestic premises; or

(b) any correctional facility without the approval of the Commissioner of Correctional Services.

(3) An inspector shall not enter under subsection (1)(b) any public place that is a common part of any premises to which the public are not entitled or permitted to have access.

(4) A person who wilfully obstructs an inspector who is in the exercise of a power or the performance of a duty conferred or imposed by this Ordinance commits an offence and is liable on summary conviction to a fine at level 3.

(5) A person who fails to give his name and address or to produce proof of identity when required to do so under subsection (1)(d), or who then gives a false or misleading name or address commits an offence and is liable on summary conviction to a fine at level 3.

**15GA. Disposal of property seized by inspectors**

If an inspector seizes any property while exercising a power or performing a duty conferred or imposed by this Ordinance, section 102 of the Criminal Procedure Ordinance (Cap. 221) shall apply as if the inspector were the police within the meaning of that section and such property were property that had come into possession of the police in connection with a criminal offence.”.

19 By deleting the clause and substituting -

**“19. Regulations and Orders**

Section 18 is amended -

(a) by repealing subsection (2) and substituting -

“(2) Subject to the regulations, the Secretary may by order in the Gazette prescribe all or any of the following matters -

- (a) the form (including specifications) of -
- (i) any notice that smoking is prohibited;
  - (ii) any health warning;
  - and
  - (iii) any indication of tar and nicotine yields;
- (b) the manner in which any of the matters referred to in paragraph (a) is to be displayed.”;
- (b) by repealing subsection (2)(a)(i) (as substituted by paragraph (a) of this section).”.

**"20. Schedule 2 substituted**

Schedule 2 is repealed and the following substituted -

"SCHEDULE 2 [s. 3(1)  
& (1AA)]

DESIGNATED NO SMOKING AREAS  
AND EXEMPT AREAS

PART 1

DESIGNATED NO SMOKING AREAS

Item	Type of area
1.	Any cinema, theatre or concert hall.
2.	Any public lift.
3.	Any escalator.
4.	Any amusement game centre.
5.	Any child care centre.
6.	Any school.
7.	Any specified educational establishment.
8.	Any approved institution.

9. Any place of detention.
10. Any place of refuge.
11. Any reformatory school.
12. Any hospital.
13. Any maternity home.
14. Any public pleasure ground other than a bathing beach.
15. The following areas within any bathing beach -
  - (a) any part of the waters set aside for the sole use of swimmers under section 10 of the Bathing Beaches Regulation (Cap. 132 sub. leg. E) (which includes any beach raft and any other thing on the surface of or above those waters);
  - (b) the shore covered with sand or stones, together with any structure, showering facilities or natural feature on such shore; and

(c) any area specified under section 107(3) of the Public Health and Municipal Services Ordinance (Cap. 132) to be used as a barbecue area, camp site or children's play area.

16. The following areas within any public swimming pool -

- (a) any swimming pool;
- (b) any sidewalk immediately adjacent to the swimming pool;
- (c) any diving board or other apparatus or facility adjoining the swimming pool; and
- (d) any spectator stand.

17. The following areas within any stadium -

- (a) any pitch;
- (b) any running track;
- (c) any sidewalk immediately adjacent to the pitch or running track; and
- (d) any spectator stand.

- 
18. The Hong Kong Wetland Park designated under section 24(1) of the Country Parks Ordinance (Cap. 208).
19. An indoor area in -
- (a) any shop, department store or shopping mall;
  - (b) any market (whether publicly or privately operated or managed);
  - (c) any supermarket;
  - (d) any bank;
  - (e) any restaurant premises;
  - (f) any bar;
  - (g) any karaoke establishment;
  - (h) any mahjong-tin kau premises;
  - (i) any bathhouse;
  - (j) any massage establishment;
  - (k) any residential care home;
  - (l) any treatment centre; or
  - (m) any communal quarters (as defined in Part 3).
20. An indoor area in a workplace or public place to the extent that it is not an area described in any other item in this Part.

## PART 2

## EXEMPT AREAS

Item	Type of area
1.	An area described in item 20 of Part 1 that is situated in domestic premises.
2.	Type 1 private quarters (as defined in Part 3).
3.	Type 2 private quarters (as defined in Part 3) that are not situated within any of the following - <ul style="list-style-type: none"><li>(a) a child care centre;</li><li>(b) a school;</li><li>(c) a specified educational establishment;</li><li>(d) an approved institution;</li><li>(e) a place of detention;</li><li>(f) a place of refuge;</li><li>(g) a reformatory school;</li><li>(h) a hospital;</li><li>(i) a maternity home.</li></ul>

4. A bedspace apartment in respect of which a licence or certificate of exemption issued under the Bedspace Apartments Ordinance (Cap. 447) is in force.
5. A room or suite of rooms in a hotel or guesthouse if -
  - (a) a licence or certificate of exemption issued under the Hotel and Guesthouse Accommodation Ordinance (Cap. 349) is in force in respect of the hotel or guesthouse; and
  - (b) the room or suite of rooms is being hired for use as sleeping accommodation.
6. An area designated by the Airport Authority as a smoking area as referred to in section 16 of the Airport Authority Bylaw (Cap. 483 sub. leg. A).
7. An area in a correctional facility that is set aside for smoking by prisoners who are allowed to do so in accordance

with orders under rule 25 of the Prison Rules (Cap. 234 sub. leg. A).

8. An area that is -
  - (a) situated within a public pleasure ground other than a bathing beach; and
  - (b) specified under section 107(3) of the Public Health and Municipal Services Ordinance (Cap. 132) to be used as a smoking area.
  
9. A room designated for cigar tasting in a shop if all the following requirements are complied with -
  - (a) the shop is engaged in the retail sale of cigars;
  - (b) nothing except cigars and cigar accessories are offered for sale in the shop;
  - (c) the room is not used for smoking except for the purpose of tasting the cigars, or samples of the cigars, that are sold or offered for sale in the shop;

- (d) the room is independently ventilated and completely partitioned off from the remainder of the shop; and
  - (e) no natural person is required to enter the room while it is being occupied for cigar tasting (whether or not he could have been required to do so by contract or otherwise).
10. A room designated for tobacco tasting in the manufacturing or business premises of a business engaged in the tobacco trade if all the following requirements are complied with -
- (a) the business is not engaged in the retail sale of tobacco products;
  - (b) the tobacco tasting is carried out for the purpose of conducting research and development or quality control of tobacco products in the normal course of the business;
  - (c) the room is only used for carrying out the tobacco tasting;

- (d) the room is independently ventilated and completely partitioned off from the remainder of the premises; and
- (e) no natural person, other than one who carries out the tobacco tasting, is required to enter the room while it is being occupied for the tobacco tasting (whether or not he could have been required to do so by contract or otherwise).

PART 3

INTERPRETATION

In this Schedule -

“communal quarters” (共用宿舍) means any premises that are the living accommodation provided by an employer to 2 or more employees, or to those employees and their families, whether or not any monetary consideration is received by the employer for providing the accommodation, but does not include -

- (a) any room occupied exclusively by one employee, or by that employee and his family, within any such accommodation; and
- (b) any such accommodation that is, or forms part of, the private dwelling of the employer or any other person;

“Type 1 private quarters” (第一類私人宿舍) means any premises that comply with the following requirements -

- (a) the premises are the living accommodation provided by an employer to one employee, or to that employee and his family, whether or not any monetary consideration is received by the employer for providing the accommodation;
- (b) the accommodation is occupied exclusively by that employee, or by him and his family; and
- (c) the block of building in which the accommodation is situated consists only of such accommodation and the common

parts (if any) shared by such accommodation;

“Type 2 private quarters” (第二類私人宿舍) means any premises that comply with the following requirements -

- (a) the premises are the living accommodation provided by an employer to one employee, or to that employee and his family, whether or not any monetary consideration is received by the employer for providing the accommodation;
- (b) the accommodation is occupied exclusively by that employee, or by him and his family;
- (c) the accommodation is permanently and completely partitioned off from the remainder of any area described in Part 1 within which the accommodation is situated; and

- (d) none of any window, door or other closeable opening of the accommodation opens to an indoor part of that area (except a common part).".".

New By adding immediately after clause 22 -

**"22A. Schedule 5 added**

The following is added -

"SCHEDULE 5 [s. 3(2A)]

EXEMPTION FROM SECTION 3(2) OF THIS ORDINANCE

***Exemption for live performance  
or recording for film or  
television programme***

**1. Interpretation of Schedule 5**

(1) In this Schedule -

"film" (電影) means a film within the meaning of section 2(1) of the Film Censorship Ordinance (Cap. 392);

"live performance" (現場表演) means a performance given or done before a live audience, whether on payment or otherwise, and includes the final rehearsal of the performance;

“performance” (表演) means any play, show, entertainment or any other kind of performance;

“smoking act” (吸煙動作) means smoking or carrying a lighted cigarette, cigar or pipe;

“television programme” (電視節目) means a television programme within the meaning of section 2(1) of the Broadcasting Ordinance (Cap. 562).

(2) For the purposes of this Schedule, a venue is a designated performance venue if it is -

(a) situated in -

- (i) a school other than one that provides any nursery, kindergarten or primary education within the meaning of section 3(1) of the Education Ordinance (Cap. 279); or
- (ii) a specified educational establishment; and

- (b) designated by the manager of that school or establishment as a venue for any live performance.

## 2. **Exemption for live performance**

For the purposes of section 3(2A) of this Ordinance, a person who does a smoking act in a no smoking area is exempt from section 3(2) of this Ordinance if he proves that -

- (a) he is performing in a live performance, and his smoking act forms part of the performance;
- (b) the no smoking area in which the live performance takes place is not a school or specified educational establishment except a designated performance venue;
- (c) the manager of the no smoking area has given his prior permission for the live performance with the smoking act to take place in the no smoking area, and in the case

of a designated performance venue in a secondary school within the meaning of section 3(1) of the Education Ordinance (Cap. 279), that prior permission has been given in writing;

(d) the live performance takes place only within the time and at the location permitted by the manager; and

(e) the smoking act complies with all the requirements specified in relation to such an act under section 4.

3. **Exemption for recording for film or television programme**

For the purposes of section 3(2A) of this Ordinance, a person who does a smoking act in a no smoking area is exempt from section 3(2) of this Ordinance if he proves that -

(a) he is performing in a performance, and his smoking act forms part of the performance;

- (b) the performance is being recorded for the production of a film or television programme (whether live or otherwise);
- (c) the film or television programme is not, and does not form part of, a tobacco advertisement;
- (d) the manager of the no smoking area in which the performance takes place has given his prior permission for the performance with the smoking act to take place in the no smoking area, and in the case of a school that provides any nursery, kindergarten, primary or secondary education within the meaning of section 3(1) of the Education Ordinance (Cap. 279), that prior permission has been given in writing;
- (e) the performance takes place only within the time and at the location permitted by the manager; and

- (f) the smoking act complies with all the requirements specified in relation to such an act under section 4.

4. **Specified requirements for smoking act**

For the purposes of sections 2(e) and 3(f), the following are the requirements specified in relation to a smoking act -

- (a) the act does not expressly or impliedly induce, suggest or request any person to purchase or smoke any tobacco product;
  - (b) the act does not illustrate smoking in a manner that is calculated, expressly or impliedly, to promote or encourage the use of any tobacco product;
  - (c) the act does not illustrate the package of any tobacco product;
- and

(d) the act does not illustrate any quality of any tobacco product except for the purpose of publicizing the harm of smoking."."

30 In paragraph (a), in the Chinese text, by deleting "內。" and substituting "內，".

New By adding immediately before clause 32 -

**"31A. No smoking signs**

Paragraph 2 of the Smoking (Public Health) (Notices) Order (Cap. 371 sub. leg. B) is repealed."

32 By deleting "of the Smoking (Public Health) (Notices) Order (Cap. 371 sub. leg. B)".

33 In the proposed paragraph 4A(4) -

(a) in sub-subparagraph (a), by adding "and" at the end;

(b) in sub-subparagraph (b), by deleting "; and" and substituting a full stop;

(c) by deleting sub-subparagraph (c).

New By adding -

**"35A. Paragraph added**

The following is added -

**"5A. Health warning on price board  
of tobacco products**

(1) For the purposes of section 14(6)(b)(iv) of the Ordinance, this paragraph applies to a price board that lists the names and prices of the tobacco products offered for sale in any premises.

(2) The price board shall bear a health warning in the form set out in Part IIIA of the Schedule.

(3) The health warning shall be of a size that covers at least 20% of the area of the price board."."

36 (a) By deleting paragraph (a) and substituting -

"(a) by repealing "[paras. 3, 4A, 4B, 5 & 8]" and substituting "[paras. 3, 4A, 4AA, 4B, 5 & 8]";

(aa) by repealing "[paras. 3, 4A, 4AA, 4B, 5 & 8]" (as substituted by paragraph (a) of this section) and substituting "[paras. 3, 4A, 4AA, 5, 5A & 8]";

(ab) by repealing “[paras. 3, 4A, 4AA, 5, 5A & 8]”  
(as substituted by paragraph (aa) of this  
section) and substituting “[paras. 3, 4A, 4AA,  
5A & 8]”;”.

(b) By adding -

“(ea) by adding -

“PART IIIA

FORM OF HEALTH WARNING ON PRICE BOARD  
OF TOBACCO PRODUCTS



Specifications:

1. The form is rectangular in shape and surrounded by a black line as demarcation.
2. The background colour is white.
3. The characters “香港特區政府忠告市民” are printed in 30 kyu (級).
4. The characters “吸煙足以致命” are printed in 90 kyu (級).

5. All characters referred to in paragraphs 3 and 4 are printed in black and in “華康中黑體” typeface.
6. The letters “HKSAR GOVERNMENT WARNING” are printed in 30 points.
7. The letters “SMOKING KILLS” are printed in 90 points.
8. All letters referred to in paragraphs 6 and 7 are printed in black and in Univers Bold typeface, all capitals.
9. If the price board is smaller than 1 500 square centimetres, the characters and letters of the health warning may be proportionally reduced in kyu (級) and points by reference to the specifications in paragraphs 3, 4, 6 and 7.”;”.

Part 4 By deleting the Part and substituting -

“PART 4

TRANSITIONAL PROVISIONS

**37. Section added**

The Smoking (Public Health) Ordinance (Cap. 371) is amended by adding -

**"19. Transitional provisions relating  
to Smoking (Public Health)  
(Amendment) Ordinance 2006**

Schedule 6 provides for the transitional arrangements relating to the Smoking (Public Health) (Amendment) Ordinance 2006 ( of 2006).".

**38. Schedule 6 added**

The following is added -

"SCHEDULE 6 [s. 19]

TRANSITIONAL PROVISIONS RELATING TO  
SMOKING (PUBLIC HEALTH) (AMENDMENT)  
ORDINANCE 2006

PART 1

REQUIREMENTS RELATING TO TOBACCO  
PRODUCT PACKAGING

**1. Interpretation of Part 1**

In this Part, "appointed day" (指定日期) means the day on which the Smoking (Public Health) (Amendment) Ordinance 2006 ( of 2006) is published in the Gazette.

2. **Sale of tobacco products with pre-amendment health warnings, etc.**

(1) During the 12 months after the appointed day, compliance with the relevant provisions of this Ordinance as in force immediately before the appointed day shall, for the purposes of sections 8 and 9 of this Ordinance, be deemed to be compliance with the relevant provisions of this Ordinance.

(2) In this section, "relevant provisions" (有關規定) means the provisions relating to health warnings and indication of tar and nicotine yields.

3. **Offence relating to tobacco product packaging**

No prosecution shall be brought under section 10(3) of this Ordinance in respect of an act done during the 12 months after the appointed day if that act would not have constituted an offence under that section as in force immediately before the appointed day.

## PART 2

DEFERMENT OF SMOKING BAN IN  
LISTED ESTABLISHMENTS**1. Interpretation and application  
of Part 2**

(1) In this Part -

"Appeal Board" (上訴委員會) means the Appeal Board established by section 12;

"certificate of compliance" (合格證明書) means a certificate of compliance within the meaning of section 2 of the Clubs (Safety of Premises) Ordinance (Cap. 376);

"club-house" (會址) means a club-house within the meaning of section 2 of the Clubs (Safety of Premises) Ordinance (Cap. 376);

"designated mahjong room" (指定麻將房) has the meaning assigned to it by section 5(2);

"Director" (署長) means the Director of Health;

"displayed name" (展示名稱), in relation to an establishment, means any name, style or description of the establishment that appears -

(a) outside the establishment; or

(b) on a signboard or any  
advertising structure relating  
to the establishment;

“exclusive entrance” (專用入口), in relation to  
an establishment, means an entrance that  
leads exclusively to the establishment;

“licensee” (持牌人) means a licensee within the  
meaning of regulation 2(1) of the  
Dutiable Commodities (Liquor) Regulations  
(Cap. 109 sub. leg. B);

“liquor licence” (酒牌) means a liquor licence  
within the meaning of section 2(1) of the  
Dutiable Commodities Ordinance (Cap.  
109);

“list of qualified establishments” (合資格場所名  
單) means the list maintained under  
section 7(1);

“listed establishment” (列明場所) means an  
establishment with its name and address  
included in the list of qualified  
establishments;

“person in charge” (負責人) -

(a) in relation to a qualified bar  
that complies with section  
4(1)(c)(i), means the licensee

- of the liquor licence that is in force in respect of the bar;
- (b) in relation to a qualified bar that complies with section 4(2)(b), means the person who has made an application described in that section;
- (c) in relation to a qualified club, means the person in whose name the certificate of compliance for the club-house is issued;
- (d) in relation to a qualified nightclub, means the licensee of the liquor licence that is in force in respect of the nightclub;
- (e) in relation to a bathhouse, means the person to whom a licence in respect of the bathhouse is granted under the Commercial Bathhouses Regulation (Cap. 132 sub. leg. I);
- (f) in relation to a massage establishment, means the person to whom a licence to operate

the establishment is issued  
under the Massage  
Establishments Ordinance (Cap.  
266); and

- (g) in relation to mahjong-tin kau  
premises, means the person to  
whom a licence is issued in  
respect of the premises under  
section 22(1)(b) of the  
Gambling Ordinance (Cap. 148);

“prescribed sign” (訂明標誌) has the meaning  
assigned to it by section 8(2);

“qualified bar” (合資格酒吧) has the meaning  
assigned to it by section 4;

“qualified club” (合資格會所) has the meaning  
assigned to it by section 5(1);

“qualified establishment” (合資格場所) has the  
meaning assigned to it by section 3;

“qualified nightclub” (合資格夜總會) has the  
meaning assigned to it by section 6.

(2) This Part does not apply to any  
premises that are under the management and  
control of the Government.

2. **Smoking ban deferred in listed establishments**

Despite section 3(1) of this Ordinance, a designation of no smoking area under that section does not have effect before 1 July 2009 in relation to an indoor area if and only for so long as -

(a) the area -

(i) is a designated mahjong room in a listed establishment that is a qualified club; or

(ii) is in any other listed establishment; and

(b) a prescribed sign is displayed in relation to the establishment in accordance with section 8(1).

3. **Qualified establishment**

(1) For the purposes of this Part, an establishment is a qualified establishment if and only for so long as -

(a) the establishment is -

(i) a qualified bar;

- (ii) a qualified club;
- (iii) a qualified  
nightclub;
- (iv) a bathhouse;
- (v) a massage  
establishment; or
- (vi) mahjong-tin kau  
premises; and

(b) the establishment complies with all the entry restrictions.

(2) For the purposes of subsection (1)(b), an establishment complies with all the entry restrictions if -

- (a) no person under the age of 18 years is permitted to enter the establishment;
- (b) no person can enter the establishment except through an exclusive entrance;
- (c) a sign in Chinese and English is placed and kept in place in a prominent position at each exclusive entrance of the establishment indicating that no person under the age of 18 years is permitted to enter the establishment; and

- (d) such signs are maintained in legible condition and good order.

#### 4. **Qualified bar**

(1) For the purposes of this Part, an establishment is a qualified bar if all the following requirements are complied with -

- (a) the establishment is a bar as defined in section 2 of this Ordinance;
- (b) the establishment is permanently and completely partitioned off from any other establishment;
- (c) either -
  - (i) a liquor licence specifying the bar and no other premises as the licensed premises is in force in respect of the establishment; or

- (ii) all the requirements specified in relation to the establishment in subsection (2) are complied with;
- (d) no displayed name of the establishment contains “酒家”, “酒樓”, “餐廳”, “卡拉OK”, “網吧”, “restaurant”, “café”, “karaoke”, “internet” or similar expressions; and
- (e) the establishment is not engaged primarily in the sale or supply of meals.

(2) For the purposes of subsection (1)(c)(ii), the following are the requirements specified in relation to the establishment -

- (a) a liquor licence specifying the bar as well as other premises as the licensed premises is in force in respect of the establishment;
- (b) an application has been made under Part III of the Dutiable Commodities (Liquor) Regulations (Cap. 109 sub. leg.

B) seeking a liquor licence that specifies the bar and no other premises as the licensed premises; and

(c) either -

(i) the application has not been withdrawn or refused yet; or

(ii) if the application has been refused, the decision to refuse the application is under appeal and has not been confirmed yet.

5. **Qualified club and designated mahjong room**

(1) For the purposes of this Part, an establishment is a qualified club if all the following requirements are complied with -

(a) the establishment is a club-house in respect of which a certificate of compliance is in force;

- (b) the club-house is open 24 hours on any day on which it is open to members and their accompanied guests; and
- (c) the establishment consists of at least 10 designated mahjong rooms.

(2) For the purposes of this Part, a room in an establishment is a designated mahjong room if -

- (a) the room is furnished and used for the purpose of playing mahjong; and
- (b) the room is permanently and completely partitioned off from the remainder of the establishment.

#### **6. Qualified nightclub**

For the purposes of this Part, an establishment is a qualified nightclub if all the following requirements are complied with -

- (a) a liquor licence is in force in respect of the establishment;
- (b) either -

- (i) each displayed name of the establishment in Chinese contains the expression “夜總會” in plain and readily legible characters; or
  - (ii) each displayed name of the establishment in a language other than Chinese contains the expression “night club” or “nightclub” in plain and readily legible letters;
- (c) no displayed name of the establishment contains “酒家”, “酒樓”, “餐廳”, “酒吧”, “網吧”, “restaurant”, “café”, “bar”, “internet” or similar expressions; and
- (d) the establishment is not open for business between 6 a.m. and 12 noon on any day.

7. **List of qualified establishments**

(1) The Director shall maintain a list containing the name and address of each qualified establishment notified under this section.

(2) The person in charge of a qualified establishment may request the Director to include the name and address of the establishment in the list of qualified establishments by submitting to the Director a notification in a form specified by the Director.

(3) The person in charge shall in the notification make a statement declaring that all the information given in the notification is true, correct and complete.

(4) After receiving a duly completed notification submitted under this section in respect of an establishment, the Director shall include the name and address of the establishment in the list of qualified establishments.

(5) The Director shall make the list of qualified establishments available for inspection by the public, free of charge, during the ordinary opening hours of his office.

8. **Listed establishment to display prescribed sign**

(1) The person in charge of a listed establishment shall ensure that -

(a) a prescribed sign is placed and kept in place -

(i) in the case of a listed establishment that is a qualified club, in a prominent position at the exclusive entrance of each designated mahjong room in the club; and

(ii) in the case of any other listed establishment, in a prominent position at each exclusive entrance of the establishment; and

(b) such signs are maintained in legible condition and good order.

(2) For the purposes of this Part, a sign is a prescribed sign if it complies with all the following specifications -

(a) it is square in shape and each side is at least 15 centimetres in length;

(b) it is surrounded by a black line as demarcation and the background colour is white;

(c) it reads -

(i) in the case of a listed establishment that is a qualified club, “此房間是合資格會所的指定麻將房，而此會所已列入根據《吸煙(公眾衛生)條例》備存的合資格場所名單，此房間將於2009年7月1日起實施禁煙規定。This is a designated mahjong room in a qualified club that has been included in the list of qualified establishments

maintained under the Smoking (Public Health) Ordinance.

The smoking ban will apply to this room with effect from 1 July 2009.”; and

- (ii) in the case of any other listed establishment, “此場所已列入根據《吸煙(公眾衛生)條例》備存的合資格場所名單，此場所的室內區域將於2009年7月1日起實施禁煙規定。This establishment has been included in the list of qualified establishments maintained under the Smoking (Public Health) Ordinance. The smoking ban will apply to an indoor area in this establishment with

effect from 1 July  
2009.”; and

- (d) all characters and letters are printed in black and are plain and readily legible.

(3) The manager of a no smoking area that is not in a listed establishment shall ensure that no prescribed sign, or any other sign implying or suggesting that smoking is permitted in the area, is displayed in or outside the area.

(4) A person who fails to comply with subsection (1) or (3) commits an offence and is liable on summary conviction to a fine at level 5 and, in the case of a continuing offence, to a further penalty of \$1,500 for each day during which the offence continues.

**9. Removal of name and address  
from list of qualified  
establishments**

(1) Where there is any change in any information given in the notification submitted under section 7 in respect of a listed establishment, and as a result the establishment is no longer a qualified establishment, the person in charge of the establishment shall, within 10 days after the

change, inform the Director of the change by submitting to the Director a notification in a form specified by the Director.

(2) Without prejudice to subsection (1), if the person in charge of a listed establishment wishes to have the name and address of the establishment removed from the list of qualified establishments, he may request the Director to do so by submitting to the Director a notification in a form specified by the Director.

(3) After receiving a notification submitted under this section in respect of a listed establishment, the Director shall remove the name and address of the establishment from the list of qualified establishments.

(4) If it otherwise comes to the knowledge of the Director that a listed establishment is no longer a qualified establishment or section 8(1) is not complied with, the Director may, on his own initiative, remove the name and address of the establishment from the list of qualified establishments.

(5) The Director shall not make a decision under subsection (4) in respect of a listed establishment without giving the person in charge concerned prior written notice and an opportunity to make a written representation within 14 working days after the issue of the prior notice.

(6) A person who fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine at level 5.

#### 10. **Defence to offences under Part 2**

In any proceedings for an offence under this Part, it is a defence for the person charged to prove that -

- (a) the offence was committed without his knowledge or consent; and
- (b) he had exercised all due diligence to prevent the commission of the offence.

**11. Appeal to Appeal Board  
against Director's  
decision**

(1) A person aggrieved by a decision of the Director under section 9(4) may, within 14 days after the decision, appeal to the Appeal Board by giving a notice of appeal to the Secretary stating the substance of the matter and reasons for the appeal.

(2) An appeal under this section against a decision does not suspend the decision.

**12. Constitution of Appeal Board**

(1) There is established an Appeal Board for the purpose of hearing and determining an appeal under section 11.

(2) The Appeal Board is to be constituted according to this section.

(3) Where a notice of appeal is given under section 11, the Secretary shall appoint 3 members from the Appeal Board Panel constituted according to section 13 to serve as members on the Appeal Board for the purpose of hearing and determining the appeal to which the notice relates.

(4) The Secretary shall appoint one of those 3 members to be the Chairman of the Appeal Board in the hearing of that appeal.

(5) If a matter involved in an appeal may give rise to a conflict of interest between a person's duties as a member on the Appeal Board and his pecuniary or other personal advantage, the Secretary shall not appoint that person to serve as a member on the Appeal Board for hearing and determining that appeal.

13. **Constitution of Appeal Board Panel**

(1) Subject to subsection (2), the Secretary shall appoint an Appeal Board Panel ("the Panel") consisting of such persons as he considers suitable to serve as members on the Appeal Board.

(2) A public officer is not eligible for appointment to the Panel.

(3) Appointment under subsection (1) shall be for such period as the Secretary may determine.

(4) A member of the Panel may resign his office by giving notice in writing to the Secretary.

(5) The Secretary shall publish in the Gazette notice of every appointment under subsection (1).

(6) Upon his appointment, a member of the Panel shall submit to the Secretary, in a form specified by the Secretary, a statement setting out the particulars of any matter that may give rise to a conflict of interest between his duties as a member of the Panel and his pecuniary or other personal advantage.

(7) Where there is any change in any matter set out in a statement submitted under subsection (6), the member shall, within one month after the change, submit to the Secretary another statement setting out the change.

#### 14. **Proceedings before Appeal Board**

(1) The Chairman of the Appeal Board shall notify the appellant and the Director of the date, time and place of the hearing of the appeal.

(2) The Chairman shall fix the date of the hearing on -

- (a) a date that is within 14 working days after the receipt of the notice of appeal; or

(b) a later date if requested by the appellant.

(3) The hearing of the appeal shall be conducted in public unless the Chairman of his own motion, or at the request of the appellant or the Director, orders that all or any persons should be excluded from the whole or any part of the hearing.

(4) The appellant and the Director may be represented by an agent or legal representative at the proceedings before the Appeal Board.

(5) The Appeal Board shall determine its procedure for hearing the appeal.

**15. Powers of Appeal Board**

(1) The Appeal Board may -

(a) order a person to attend before the Board and give evidence;  
and

(b) order a person to produce documents.

(2) The Appeal Board may confirm or revoke the decision of the Director appealed against.

(3) The decision of an Appeal Board on an appeal shall be binding on the appellant and the Director and shall be final.

(4) The Appeal Board shall notify the appellant and the Director of its decision and the reasons for it.

16. **Expiry of Part 2**

This Part shall expire on 1 July 2009."."

## SMOKING (PUBLIC HEALTH) (AMENDMENT) BILL 2005

**COMMITTEE STAGE**Amendments to be moved by the Honourable Tommy CHEUNG Yu-yanClauseAmendment Proposed

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By adding –

“(bb) by repealing subsection (3) and substituting –

“(3) The manager of a no smoking area or any person authorized in that behalf by any such manager may, in respect of any person who appears to be contravening subsection (2) -

- (a) after indicating that the person is smoking or carrying a lighted cigarette, cigar or pipe, as the case may be, in a no smoking area in contravention of subsection (2), require the person to extinguish the lighted cigarette, cigar or pipe;
- (b) where the person fails to extinguish the lighted cigarette, cigar or pipe, require him to leave the no smoking area;
- (c) where the person fails, as required under paragraph (b), to leave the no smoking area, call for the assistance of a police officer to assist in the enforcement of this section if necessary.”.”.