

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 15 January 1997

The Council met at half-past Two o'clock

MEMBERS PRESENT

THE PRESIDENT

THE HONOURABLE ANDREW WONG WANG-FAT, O.B.E., J.P.

THE HONOURABLE ALLEN LEE PENG-FEI, C.B.E., J.P.

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

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

THE HONOURABLE NGAI SHIU-KIT, O.B.E., J.P.

THE HONOURABLE SZETO WAH

THE HONOURABLE LAU WONG-FAT, O.B.E., J.P.

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

THE HONOURABLE RONALD JOSEPH ARCULLI, O.B.E., J.P.

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

DR THE HONOURABLE EDWARD LEONG CHE-HUNG, O.B.E., J.P.

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHIM PUI-CHUNG

THE HONOURABLE FREDERICK FUNG KIN-KEE

THE HONOURABLE MICHAEL HO MUN-KA

DR THE HONOURABLE HUANG CHEN-YA, M.B.E.

THE HONOURABLE EMILY LAU WAI-HING

THE HONOURABLE LEE WING-TAT

THE HONOURABLE ERIC LI KA-CHEUNG, O.B.E., J.P.

THE HONOURABLE FRED LI WAH-MING

THE HONOURABLE HENRY TANG YING-YEN, J.P.

THE HONOURABLE JAMES TO KUN-SUN

DR THE HONOURABLE SAMUEL WONG PING-WAI, O.B.E., F.Eng., J.P.

DR THE HONOURABLE PHILIP WONG YU-HONG

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE HOWARD YOUNG, J.P.

THE HONOURABLE ZACHARY WONG WAI-YIN

THE HONOURABLE CHRISTINE LOH KUNG-WAI

THE HONOURABLE JAMES TIEN PEI-CHUN, O.B.E., J.P.

THE HONOURABLE LEE CHEUK-YAN

THE HONOURABLE CHAN KAM-LAM

THE HONOURABLE CHAN WING-CHAN

THE HONOURABLE CHAN YUEN-HAN

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE PAUL CHENG MING-FUN

THE HONOURABLE CHENG YIU-TONG

DR THE HONOURABLE ANTHONY CHEUNG BING-LEUNG

THE HONOURABLE CHEUNG HON-CHUNG

THE HONOURABLE CHOY KAN-PUI, J.P.

THE HONOURABLE DAVID CHU YU-LIN

THE HONOURABLE ALBERT HO CHUN-YAN

THE HONOURABLE IP KWOK-HIM

THE HONOURABLE LAU CHIN-SHEK

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

DR THE HONOURABLE LAW CHEUNG-KWOK

THE HONOURABLE LAW CHI-KWONG

THE HONOURABLE LEE KAI-MING

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE BRUCE LIU SING-LEE

THE HONOURABLE LO SUK-CHING

THE HONOURABLE MOK YING-FAN

THE HONOURABLE MARGARET NG

THE HONOURABLE NGAN KAM-CHUEN

THE HONOURABLE SIN CHUNG-KAI

THE HONOURABLE TSANG KIN-SHING

DR THE HONOURABLE JOHN TSE WING-LING

THE HONOURABLE MRS ELIZABETH WONG CHIEN CHI-LIEN, C.B.E.,
I.S.O., J.P.

THE HONOURABLE LAWRENCE YUM SIN-LING

MEMBER ABSENT

DR THE HONOURABLE DAVID LI KWOK-PO, O.B.E., LL.D. (CANTAB),
J.P.

PUBLIC OFFICERS ATTENDING

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

THE HONOURABLE JEREMY FELL MATHEWS, C.M.G., J.P.
ATTORNEY GENERAL

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

MR RAFAEL HUI SI-YAN, J.P.
SECRETARY FOR FINANCIAL SERVICES

MR BOWEN LEUNG PO-WING, J.P.
SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS

MR KWONG KI-CHI, J.P.
SECRETARY FOR THE TREASURY

MISS DENISE YUE CHUNG-YEE, JP
SECRETARY FOR TRADE AND INDUSTRY

MR PAUL LEUNG SAI-WAH, JP
SECRETARY FOR TRANSPORT

MRS DORIS HO KO SUET-YIU, JP
SECRETARY FOR HEALTH AND WELFARE

CLERKS IN ATTENDANCE

MR RICKY FUNG CHOI-CHEUNG, SECRETARY GENERAL

MR LAW KAM-SANG, DEPUTY SECRETARY GENERAL

MISS PAULINE NG MAN-WAH, ASSISTANT SECRETARY GENERAL

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

ORAL ANSWERS TO QUESTIONS**Mortgage Corporation**

1. **MISS CHRISTINE LOH** asked: *Mr President, will the Administration inform this Council whether the recent proposal of the Hong Kong Monetary Authority to use a sum of HK\$1 billion from the Exchange Fund for the purpose of establishing a Mortgage Corporation is in breach of sections 3(1A) and 3(1B) of the Exchange Fund Ordinance; if not, whether there are any restrictions on the uses to which the Exchange Fund may be put?*

SECRETARY FOR FINANCIAL SERVICES: Mr President, the use of the Exchange Fund to provide the initial capital for the establishment of the Mortgage Corporation is fully consistent with sections 3(1A) and 3(1B) of the Exchange Fund Ordinance. Section 3(1A) of the Ordinance provides that, in addition to using the Fund for its primary purpose, the Financial Secretary may, with a view to maintaining Hong Kong as an international financial centre, use the Fund as he thinks fit to maintain the stability and the integrity of the monetary and financial systems of Hong Kong. Section 3(1B) provides that the Financial Secretary, in using the Fund for the purpose specified in section 3(1A), shall have regard to the Fund's primary purpose of affecting the exchange rate of the Hong Kong dollar.

The Financial Secretary, having consulted the Exchange Fund Advisory Committee, is of the view that the establishment of the Mortgage Corporation will be conducive to the maintenance of the stability and the integrity of Hong Kong's banking and monetary systems. The establishment of the Mortgage Corporation will improve banking stability by reducing the concentration of liquidity risks in mortgage lending. It will also reduce the maturity mismatch in mortgage lending by channelling long-term savings to meet the rising demand for long-term home financing. Furthermore, the establishment of the Mortgage Corporation will enhance the resilience of the monetary system to interest rate shocks by encouraging the origination of fixed rate mortgages, which will help to insulate borrowers from short-term interest rate fluctuations.

The proposed capital injection of \$1 billion by the Exchange Fund to the Mortgage Corporation represents 0.2% of the total assets of the Fund. The Financial Secretary, having consulted the Exchange Fund Advisory Committee, is satisfied that the use of the Fund for the establishment of the Mortgage Corporation will not adversely affect the use of the Fund for its primary purpose of maintaining the stability of the exchange rate of the Hong Kong dollar.

The uses to which the Exchange Fund may be put are already specified in the various provisions of the Exchange Fund Ordinance. Under section 3(1), the control of the Fund by the Financial Secretary is exercised in consultation with the Exchange Fund Advisory Committee. In relation to the strategic purposes of the Fund, sections 3(1) and 3(1A) of the Ordinance require that the use of the Fund must serve either the primary purpose of affecting the exchange rate of the Hong Kong dollar or the secondary purpose of maintaining the stability and integrity of the monetary and financial systems of Hong Kong.

MISS CHRISTINE LOH: *Mr President, in the last part of the Secretary's response in which he talks about secondary purpose, obviously this is very vast and I wonder whether he can give us some other examples of what this might be? But in regard to the former part of his response, and since the use of the Exchange Fund for investment in the Mortgage Corporation implies that not all the resources of the Exchange Fund are needed for the maintenance of the primary purpose, that is, the stability of the Hong Kong dollar, will the Secretary consider setting a limit on the accumulation of retained earnings by the Fund and dividending the excess back to the Government?*

PRESIDENT (in Cantonese): Are you talking about other uses to which the remaining profits could be put?

SECRETARY FOR FINANCIAL SERVICES: Mr President, on the basis of the relevant provisions of the Exchange Fund Ordinance, it is in fact not possible, nor indeed desirable, to differentiate in hard and fast quantitative terms the resources available for the so-called secondary or the so-called primary purposes. Although there are two different purposes, the primary function really is to

maintain the stability and the integrity of the financial and banking system, which in fact has a direct bearing, although not the only bearing, on the stability of the exchange rate. So, in totality, I do not think it is advisable nor necessary to make such a distinction in terms of resources allocated.

Miss LOH earlier asked about whether there are other examples. Now, once again it is a question of deciding on whether it is primary or secondary. The Exchange Fund, of course, also is the sole owner of the Hong Kong Note Printing Company, which of course has a bearing on the protection of the integrity of our currency. Also, there is the Clearing Company, which of course is an integral part of our banking system. Now, these are the other so-called investments that the Exchange Fund has been put, but in overall terms I do not think it is advisable to make such a distinction.

Thank you, Mr President.

PRESIDENT (in Cantonese): Miss Christine LOH, are you claiming that your question has not been fully answered by the Secretary for Financial Services? Which part of it?

MISS CHRISTINE LOH: *The primary purpose is the defence of the Hong Kong dollar. The secondary purpose, I have asked for certain examples of what they might be and the Secretary is telling us that it is not desirable to have these examples. I am just wondering how far can it go, and is this the purpose for which our intention is to put the Hong Kong Exchange Fund towards? It seems to be going very far, Mr President.*

PRESIDENT (in Cantonese): The Secretary for Financial Services has already given us an example. Secretary for Financial Services, do you want to cite one more example?

SECRETARY FOR FINANCIAL SERVICES: Mr President, contrary to what Miss LOH might have inferred, there are not all that many undertakings that the Exchange Fund, as managed by the Hong Kong Monetary Authority, has been put. So, in fact, there is a scarcity of examples.

But I would just like to respond to the earlier part of Miss LOH's follow-up question. Clearly, one has to look at the individual circumstances and the individual propositions that are being considered by the Financial Secretary in consultation with the Exchange Fund Advisory Committee as to whether something that has a bearing on the so-called secondary purpose is worth doing, and whether that particular proposal is consistent with the law. We do seek legal advice as to whether a certain project or a certain form of investment is consistent with the provisions of the law.

I would also like to repeat again that, the primary function of the Exchange Fund, of course, is to defend the Hong Kong dollar, to put it in layman's terms. At the moment at least, it is not in fact possible for the authorities to lay down a ceiling as to how much is enough for that particular purpose.

As for the secondary purposes, although these are more related to the internal domestic stability of the banking system, they do have an overall effect on the soundness of our monetary system and therefore there is also a linkage between the primary and the secondary purposes.

Thank you, Mr President.

DR HUANG CHEN-YA (in Cantonese): *Mr President, I share the Honourable Miss Christine LOH's concern. According to the rationale of the Government, a sum of money will be drawn from the Exchange Fund to provide capital for the Mortgage Corporation if that would be conducive to the maintenance of the stability and integrity of the banking and monetary systems of Hong Kong. In that case, the Exchange Fund would very often be put to this use. In view of such, will the Government inform this Council that the recent proposal to use the Exchange Fund to provide capital for the Mortgage Corporation is but a measure that will be conducive to the stability of the banking and monetary systems of Hong Kong for a longer term; and that it will not put the Exchange Fund to such use as a short term measure such as to boost a falling stock market in order to maintain the stability of the banking and monetary systems, or to support a bank facing liquidation so as to help it out? I hope the Government is not going to put the Exchange Fund to such use readily.*

PRESIDENT (in Cantonese): Dr HUANG, next time please request the Government to confirm whether your statement is true or not in the form of a question.

SECRETARY FOR FINANCIAL SERVICES: Mr President, I can only reiterate the fact that the use to which the Exchange Fund is to be put can only be in accordance with the law. The second point to be made is that I do not think anybody would have the impression that the Exchange Fund had been deployed in the past in any way that is irrelevant or not of an essential nature to the monetary stability and the systematic soundness and integrity of our system. Therefore, I do not think I can give a sort of cast-iron guarantee that so-called short-term difficulties will not be looked after, as it were. Nonetheless, each particular use would be very, very seriously considered in the context of the purposes as provided for under the Exchange Fund Ordinance.

MR HOWARD YOUNG: *The Secretary has very clearly stated that the primary purpose of the Exchange Fund is to uphold the exchange rate, and the other purpose, maintaining stability and integrity of the monetary system, is secondary. To achieve the purpose, you need, I think, two factors. One is size and the other, liquidity. In view of the fact that putting money into the Mortgage Corporation will really reduce its liquidity, can the Secretary tell this Council whether in fact, by going after the secondary purpose, would it hinder your ability to carry out the primary purpose of the Fund because of your loss of liquidity, and whether you have any benchmark ratio in mind which you must not exceed so that we do not face that danger?*

SECRETARY FOR FINANCIAL SERVICES: Mr President, I do not think there is any hard and fast benchmark. All I can say, of course, is to confirm to Mr YOUNG that the deployment of \$1 billion constitutes a very small proportion of the amount of the Exchange Fund, and therefore the primary purpose of safeguarding the external value of the currency is in no way affected.

MISS CHRISTINE LOH: *Mr President, I just want to make it clear that the purpose of the question is not to criticize either the existence of the Mortgage Corporation or the amount. The question really is to what purposes should the Exchange Fund be put? The Secretary talks about legal advice. Would he agree that the Ordinance, as presently framed, gives the Financial Secretary extremely wide discretion for the secondary purposes? And further, does the Financial Secretary therefore have any administrative policy guidelines for use to which the Exchange Fund may be put? And if so, whether they can be published?*

SECRETARY FOR FINANCIAL SERVICES: Mr President, I do not think the discretion given to the Financial Secretary on the basis of the existing law is too wide. There is a clear necessity for flexibility and discretion in the operation of central banking matters because we do need to deal with developing market situations and various currency situations.

As for guidelines, the Hong Kong Monetary Authority, again in consultation with the Exchange Fund Advisory Committee, does have internal investment guidelines as to what would be necessary to achieve the particular purpose of safeguarding the external value of the Hong Kong dollar. But these so-called guidelines are investment guidelines which tend to be revised from time to time in the light of market conditions and in the light of prevailing economic circumstances, not only in Hong Kong but also elsewhere in the world. So, there is really no hard and fast rule as such, and therefore apart from what is laid down in the Ordinance itself, and apart from public statements made in connection with various activities of the Hong Kong Monetary Authority and the Exchange Fund, there is no guideline as such.

Elderly CSSA Recipients

2. **MRS ELIZABETH WONG** asked: *Mr President, will the Government inform this Council whether the children of elderly persons are required to declare that they cannot or will not support their parents before these elderly persons can receive assistance under the Comprehensive Social Security Assistance (CSSA) Scheme; if so, what the reasons are?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, the CSSA Scheme provides a "safety net" for those members of our community who do not have sufficient means to support themselves. It is a non-contributory scheme and is funded entirely from General Revenue. It is necessary to ensure that benefits provided under the Scheme are available only to those who are genuinely in need. Beneficiaries are therefore means-tested, both to determine their eligibility and assistance entitlement.

To determine their financial status, all CSSA applicants are required to declare their financial resources. Elderly persons applying for CSSA go through the same procedures as CSSA applicants in other age groups.

An elderly CSSA applicant, who has hitherto been supported by his/her children, is asked to submit a declaration by the children confirming

- (a) the extent of the support; or
- (b) that the support will cease.

If the declaration from the children is not forthcoming, a declaration by the elderly applicant to the same effect will suffice. This process is also applicable to applicants of other ages, who claim that they have been receiving some form of support from other family members.

This requirement is part of the process to ascertain the financial resources available to and the needs of the applicant. It is to ensure that assistance is provided only to those in need and that public funds are properly spent.

Having said this, I want to emphasize that no elderly person in need of assistance has been deprived of CSSA simply because he/she has not been able to provide a declaration on this count.

MRS ELIZABETH WONG: *Mr President, with reference to the last paragraph of the Secretary's reply, in view of the fact that this required declaration provides the single most deterrent to elderly people applying for CSSA, thereby it is believed they live in enforced poverty, and in the light of the commitment made by Hong Kong Special Administrative Region Chief Executive (Designate) that more should be done for elderly people, does the Secretary not think that this declaration should be lifted altogether?*

SECRETARY FOR HEALTH AND WELFARE: *Mr President, the intention of the procedure is not to deter any elderly from applying for assistance. It is to deter people who do not require assistance from making applications. If in the event the elderly are not coming forward because of this requirement, then clearly publicity must be stepped up to assure them and to reassure them that what is really required as a basis for checking is that they do not have the means. So, we will continue to step up our publicity to explain to the elderly what is behind this requirement.*

DR YEUNG SUM (in Cantonese): *Mr President, the Government underlined in the last paragraph of its reply that no elderly person in need of assistance has been deprived of CSSA simply because he/she has not been able to provide a declaration from his/her children. Mr President, such an argument is in fact a circular argument. This is because an elderly person who approaches an office to apply for CSSA should have already got a declaration. If his/her children refuse to declare, he/she will naturally be unable to meet the criteria for obtaining CSSA.*

As filial piety still exists in Hong Kong society, the failure to maintain one's parents is regarded as an inglorious conduct. Though the Government requires the applicants' children to make a declaration, how can the parents ask their children to make such a declaration? In fact, a number of elderly persons have been deterred from applying as a result of this stringent requirement. Can the Government undertake to review this piece of legislation expeditiously?

SECRETARY FOR HEALTH AND WELFARE: Mr President, when an elderly applicant comes forward to apply for assistance, the field worker on the front-line explains to them clearly and gets the information required to process that application. One of the steps that is required is to submit this declaration. It is explained to the applicant in great detail and very carefully the reason behind such a requirement, and it is explained very clearly that in the event that neither the children nor any other member of the family would come forward to make such a declaration, then all that is required is for the elderly to declare that he or she does not have such support. So, it is not a deterrent in the sense that this requirement, this step, is put in place to stop people from coming forward for assistance.

I will emphasize again that, out of all the applications from the elderly, 90% of the applicants have come forward with a declaration.

PRESIDENT (in Cantonese): Dr YEUNG Sum, is your question not fully answered?

DR YEUNG SUM (in Cantonese): *Mr President, the question I raised just now was very simple. I asked whether the Government would undertake to review this piece of legislation expeditiously. The Government did not answer this question at all.*

SECRETARY FOR HEALTH AND WELFARE: Mr President, it is good management practice to review all necessary administrative procedures, and I am sure the Director of Social Welfare will undertake such a review in looking at the steps taken in the application of CSSA.

MR LAW CHI-KWONG (in Cantonese): *Mr President, my question is similar to the questions raised by Mrs Elizabeth WONG and Dr YEUNG Sum just now. Very often, it is very embarrassing for an elderly person to ask his/her children to sign the declaration and this will also lead to unpleasant situations. Will the Government consider amending its policy to the effect that elderly persons are*

no longer required to ask or get their children to make a declaration and a declaration from themselves will suffice? The original reply pointed out that the elderly persons could make a declaration themselves only when they were unable to submit one from their children. Can the elderly basically make a declaration themselves without the need to prove that they are unable to produce a declaration from their children?

SECRETARY FOR HEALTH AND WELFARE: Yes, we will certainly review the procedure as I have just said. The fact of the matter is that when applicants come forward to make the application, it is explained to them the need to do so. And, it is explained very clearly to them that in the event that they are not able to obtain the declaration from their children, a declaration from themselves would suffice. So, yes, we will look into the matter. The intention is not to embarrass any applicant whatsoever.

PRESIDENT (in Cantonese): We have four more Members who wish to raise supplementary questions and I will draw a line there.

MR LEE CHEUK-YAN (in Cantonese): *Although just now the Secretary for Health and Welfare said that the intention of asking for a declaration is not to deter any elderly person from applying for CSSA, what matters most is whether it is really the case even though it is not intended to be so. We feel that this is the crux of the matter if there really exists such a deterrent effect. Mr LAW Chi-kwong just said that a declaration from the elderly persons' children should not be required and a declaration from the elderly themselves would suffice. However, I would like to raise a further question: Why does the Government not allow the front-line social workers, after investigating the cases and acquiring the information, to judge whether the relevant elderly persons are genuinely in need so that CSSA can be granted without the need to produce the children's declaration or the need for the elderly persons to make any declaration? Can the Government allow the front-line workers to make this decision in vetting the cases?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, the frontline worker, in processing and interviewing the candidate, already makes quite sure that it is explained to the applicant what is required. In answer to his concern that because of this requirement, eligible applicants are not coming forward to make the application, as I said previously, clearly the measure that should be taken is to step up publicity to explain to those who are eligible that they have nothing to fear from this step and that assistance is readily available after they have put in their applications.

PRESIDENT (in Cantonese): The question is whether the declaration, be it made by the elderly applicants or their children, can be abolished entirely —the abolition of the declaration.

SECRETARY FOR HEALTH AND WELFARE: Mr President, the step there is to ensure that public money is spent on the people who most need it. I am sure that all Members would agree that it is a responsibility of this Government to ensure that public funds are properly spent. This is the reason behind this requirement. So, yes, we can consider how best to achieve the same result. If it means that some other step can be put in place to do this, we would consider the abolition of such a step.

MR WONG WAI-YIN (in Cantonese): *Mr President, I support that this requirement be abolished completely. The Secretary for Health and Welfare said in the third paragraph of her reply that the elderly persons themselves can make a declaration to the same effect. Now that the elderly can complete this procedure themselves, can the Secretary undertake to abolish the requirement of asking the applicants' children to make a declaration and allow the applicants to make the declaration instead of giving them two options: to make the declaration themselves or to ask their children to do it? It will then be only necessary to ask each of the elderly applicants whether he/she is willing to make the declaration.*

SECRETARY FOR HEALTH AND WELFARE: Mr President, let me perhaps explain that the requirement for the children to make the declaration in our experience has shown that this step does have a deterrent effect. Let me quote an example that our front-line workers have come across. It is that in the case of children who come and make the declaration, they sometimes have second thoughts because of declarations that they have made on other occasions, for example, filing claims under dependant parent allowances in their tax returns. Now, if they then claim that they do not support their parents, then they are not telling the truth in one case or the other. And, we have noticed that by making or requiring children to make this declaration, there has been this deterrent effect.

So, we will certainly consider the steps that would simplify and make life easier for the elderly in making their applications, but I cannot answer the Honourable Member that we will immediately restore this requirement or only request the elderly to make the declaration instead of the children.

MRS ELIZABETH WONG: *Mr President, I am glad to hear the Secretary is prepared to review the whole declaration, and I just ask the Secretary to consider the legality of this declaration requirement against the recently-enacted Personal Data (Privacy) Ordinance.*

SECRETARY FOR HEALTH AND WELFARE: Mr President, the declaration is made with the consent of the applicant, so I do not think that there is a contravention of the Personal Data (Privacy) Ordinance, and the information is kept confidential.

MR JAMES TO (in Cantonese): *Mr President, the Secretary's reply contains one sentence that reads: If the declaration from the children is not forthcoming, a declaration by the elderly applicant to the same effect will suffice. I would like to ask: Under what circumstances will the Government accept that the declaration from the children is not forthcoming? Can the Secretary quote some examples? If an applicant declares that his/her children are unwilling to make the declaration, can it be taken as a reason for his/her failure of submitting*

the declaration and subsequently, he/she can make another declaration to the effect that he/she is not being supported? Can this meet the requirements then?

SECRETARY FOR HEALTH AND WELFARE: Mr President, perhaps I need to clarify that it is only in the cases where the applicant comes forward and claims that he or she is currently receiving some form of support from his or her children then we would request a declaration from the children that this support will either cease or is of a limited amount. So, that is what we require. We try to get the children to complete the declaration, but the social security field unit staff would try to get the children of the elderly CSSA applicant to complete a declaration of support, if any, they provide to the elderly applicant. Verbal confirmation would suffice, and it is only when that is not forthcoming then the elderly are asked to just make the declaration themselves.

Office Premises for Chief Executive (Designate)

3. **MR FRED LI** asked (in Cantonese): *Mr President, it is reported that the arrangement made by the Administration in providing a new office for the Hong Kong Special Administrative Region Chief Executive-designate at Edinburgh Tower in the Landmark has been widely criticized, and the Chief Executive-designate has indicated openly that the location of the office premises picked by the Administration is not suitable. In this regard, will the Administration inform this Council:*

- (a) of the criteria adopted in selecting the office premises for the Chief Executive-designate;*
- (b) whether it has consulted the Chief Executive-designate before deciding on the location of the office premises mentioned above; if not, why not;*
- (c) whether it has signed the lease for renting the above office premises; if so, what the monthly rent is; and*
- (d) of the amount of public money (including payment of rent, deposit and other expenses) which will be wasted in the above office site selection exercise, as the Chief Executive-designate has not accepted the office premises in question?*

SECRETARY FOR THE TREASURY (in Cantonese): First of all, Mr President, let me say that the criticism of the offer to the Chief Executive (Designate) of the office at Edinburgh Tower is somewhat misplaced. Furthermore, when he indicated that he found these premises not suitable, we have readily been able to accommodate him to his satisfaction in other offices that we have identified.

I nevertheless welcome this opportunity to set the record straight on this issue.

It has always been our intention to consult the Chief Executive (Designate) on the provision of office accommodation to meet his requirements. While it would not have been possible for us to consult the Chief Executive (Designate) until he was selected, it would clearly be desirable if we could have identified potentially suitable accommodation ready for his consideration as soon as possible after his selection. The office premises at Edinburgh Tower emerged as such an option after we had considered office premises available in the market at that time, having regard to location, accessibility, size and quality.

We consulted Mr TUNG on 28 December 1996 on the possibility of using the space at Edinburgh Tower as his new office. We then arranged a site visit two days later to let Mr TUNG see for himself whether the space could fully meet his requirements. After Mr TUNG had indicated that the premises would not meet all his requirements we immediately identified alternatives for his consideration, including the premises in Asia Pacific Finance Tower which he has now accepted.

The Edinburgh Tower premises were leased in November for an initial period of three years and we now intend on grounds of urgency to make them available for use by the Commission of Inquiry into the Garley Building Tragedy (the Commission). As rental levels are commercially sensitive information, I would prefer not to disclose the actual rent agreed. I can, however, assure members that it is at a discount to the current market rate.

To date the works that have been carried out at Edinburgh Tower consist of basic building services such as partitioning, electrical work and air conditioning. In order to accommodate the requirements of the Commission, some repartitioning is necessary, but the cost of this is minimal. Overall the fitting-out works for the Edinburgh Tower premises is near the lower end of the

range of costs that we normally expect to incur for works of this type.

MR FRED LI (in Cantonese): *Mr President, I would like to follow up the issue of a waste of public money. I know that the Secretary for the Treasury is keyed up when money is involved. Therefore, I am now going to discuss about money with him. As reported, one of the criteria for the selection of office premises for the Chief Executive-designate is geomancy. Has the Administration spent public money on inviting a geomancer to select office premises for the Chief Executive-designate? If it has, does it acknowledge such expenses and consider them as non-recurring expenses on the selection of offices for any government officer?*

PRESIDENT (in Cantonese): Are you referring to the Edinburgh Tower or the newly selected premises?

MR FRED LI (in Cantonese): *Mr President, it seems to me that a geomancer has been invited to look at each and every building.*

SECRETARY FOR THE TREASURY (in Cantonese): As far as I know, we have not spent public money on geomantic study.

MR ERIC LI (in Cantonese): *Mr President, when the Administration leased the premises at Edinburgh Tower in November, the Commission of Inquiry was probably not established. When selecting the office sites at that time, tailor-made premises were not sought for the Chief Executive-designate, having regard to location, accessibility, size and quality. Can we assume that other uses were not considered at the time when the premises were being selected? Moreover, for what reasons did the Administration assume and believe that the selected Chief Executive-designate would certainly accept the premises for his office, hence, the public money so spent, including the relatively higher rent would not be wasted?*

SECRETARY FOR THE TREASURY (in Cantonese): Mr President, in fact, the question raised by the Honourable Eric LI comprises two questions. I have

just answered his second question. We did not assume that the Chief Executive-designate would certainly accept the office unit at the Edinburgh Tower we proposed. The first question was, when we selected the premises, certainly, we would first consider whether the premises could be a suitable office for the Chief Executive-designate. However, we found that leasing the premises would not be a waste because we had other government departments and some other government uses that would need office space in Central at that time. Therefore, under such circumstances, even if the Chief Executive-designate finally decided that he would not use the premises, we would be able to find other government uses to occupy the office very soon.

MR LEE WING-TAT (in Cantonese): *Mr President, it is mentioned in the last but one paragraph of the original reply that the Commission needs to use the premises now. As far as I know, the Treasury Branch has been requesting government departments to abide by a principle, that is, if it is not necessary to lease premises at high rents, other premises at lower rents should be leased instead. According to this principle, if it is not a must for an office to be set up in Central, it should be set up in Wanchai, Causeway Bay and so on in order to save public money. Now the Administration requests or makes arrangements for the Commission to set up an office in Central, would this comply with the principle set by the Treasury Branch? If the Commission sets up its office in Wan Chai or Kowloon, would this fail to facilitate its work? How would its investigation work be facilitated by an office in Central?*

SECRETARY FOR THE TREASURY (in Cantonese): Mr President, it should be the Finance Branch instead of "the Treasury Branch". The Finance Branch has given the Government Property Agency a guideline for making arrangements for offices for government uses. Certainly, if we can look for suitable premises when the needs arise, our most important consideration would be whether we could manage to do so within the available time. As the Commission has to commence work very urgently, and that the unit at Edinburgh Tower is being decorated, it can be handed over to the Commission for its use very soon. I therefore made such a decision.

PRESIDENT (in Cantonese): Mr LEE Wing-tat, are you claiming that your question has not been fully answered?

MR LEE WING-TAT (in Cantonese): *Mr President, I think that the Secretary has not answered my question. I was asking whether the Administration was not able to find any premises at lower rent and can be decorated in time in other districts outside Central for use by the Commission.*

SECRETARY FOR THE TREASURY (in Cantonese): Mr President, it would be very difficult for me to prove that such premises are not available. When we proposed to the Government Property Agency that the Commission needed an office, they had to look for premises for the Commission, and the premises the Government Property Agency could make available would certainly be used first. Therefore, the unit at Edinburgh Tower was chosen.

MR CHAN KAM-LAM (in Cantonese): *Mr President, I heard that the Commission only comprises one person. In his original reply, the Secretary for the Treasury said that the Government could only seek the advice of the Chief Executive-designate after he had been selected. The Chief Executive-designate was elected on 11 December but the Administration waited until two days after 28 December before consulting Mr TUNG in respect of the unit and the decoration works had been in progress for many days. Obviously, the Administration had already begun the decoration works of the unit before consulting Mr TUNG and this led to the question today. Was the Administration dealing with the matter improperly?*

SECRETARY FOR THE TREASURY (in Cantonese): Mr President, I just said that the decoration works in progress for the unit at Edinburgh Tower were basic building services. Therefore, most of such works are also suitable for other office uses.

PRESIDENT (in Cantonese): There are still four Members asking supplementary questions. I shall draw a line there.

MISS EMILY LAU (in Cantonese): *Mr President, I still want to follow up the question raised by the Honourable LEE Wing-tat. It is because I believe Edinburgh Tower can be said to be one of the most expensive premises in Central. When the Administration has to spend a large sum of money on the provision of an office, I believe it will certainly consider which kind of office is in question before setting up an office there. Mr President, in the Secretary's original reply, the Administration said that a three-year lease was signed in November last year while the Chief Executive-designate would only be in office for six months. I believe the Administration has actually planned at the very beginning to let other people use the office. However, who is so high ranking? Who is going to use the office? It seems that such a person does not exist, and the Administration has only named the Commission in a hurry. I am really puzzled. Which department can use a grade A+ office? Why was the office leased for such a long time as three years at that time?*

SECRETARY FOR THE TREASURY (in Cantonese): Mr President, according to the information provided by the Government Property Agency, the departments presently in need of offices include the Lands Tribunal (1120 square metres), the Small Claims Tribunal (280 square metres), the Obscene Articles Tribunal (380 square metres) and the Insider Trading Tribunal (350 square metres).

MISS EMILY LAU (in Cantonese): *The Secretary for the Treasury has not answered my question. My question is what departments have to use grade A+ offices? Is he saying that all the departments just mentioned have to use grade A+ offices?*

SECRETARY FOR THE TREASURY (in Cantonese): Mr President, the examples just given are deemed by the Government Property Agency as suitable users of the unit at Edinburgh Tower.

MR HOWARD YOUNG (in Cantonese): *Mr President, the Administration just said that the lease was signed in November, but, if I have not recalled wrongly, the three candidates for the office of the Chief Executive were determined in mid-November. Had the Administration considered asking the three candidates at that time whether the premises were suitable so that it could look for other sites if it knew at an early date that the premises were not suitable? Had the Administration considered that?*

SECRETARY FOR THE TREASURY (in Cantonese): Mr President, this is a hypothetical question because we actually waited for the selection of the Chief Executive-designate before consulting him.

MR FRED LI (in Cantonese): *Mr President, the Commission of Inquiry comprises only one member, the Honourable Mr Justice WOO, supported by four staff. Now, it seems that the unit at Edinburgh Tower has become his office. However, what is the area he is going to occupy? Who else could have taken but was not able to use the unit at Edinburgh Tower until Mr TUNG had taken a look, as they could only use the office if Mr TUNG did not want it? Nevertheless, the Insider Trading Tribunal is now saying that it will not use the office. The Administration is actually forcing people to use the office now. What really happened? Who are really going to use the office at Edinburgh Tower?*

SECRETARY FOR THE TREASURY (in Cantonese): The Commission will occupy about half of the area of the office at Edinburgh Tower. The Government Property Agency is now considering which departments are suitable and it hopes that a decision can be made within two to three weeks. The related decoration works will only be completed by around February. Therefore, when the works are completed, the department concerned can move into the premises as soon as possible.

PRESIDENT (in Cantonese): Mr IP Kwok-him. The last supplementary

question.

MR IP KWOK-HIM (in Cantonese): *Mr President, I am still concerned about the first point of the original question, that is: What are the criteria for the selection of office premises for the Chief Executive-designate? Now, the Chief Executives finds the premises not suitable but it is mentioned in the reply that the location, accessibility and size have been considered. I want to know why the Administration, well aware of the surroundings of the premises, had not taken the inconvenience of access to the premises, as deemed by Mr TUNG, into consideration when it made the decision? Why was such an important factor neglected? I have to ask in turn, how were these criteria worked out?*

SECRETARY FOR THE TREASURY (in Cantonese): Mr President, different people certainly have different opinions. In my opinion, the important things are, as I just said, location, accessibility, size and quality. However, when the final decision was made by the Chief Executive-designate, he also took into account such factors as not too congested traffic and elevators going up to the office directly from the carpark. This shows that different people have different needs.

Traffic Accidents at Causeway Bay Junction

4. **MR HOWARD YOUNG** asked (in Cantonese): *Will the Government inform this Council whether there has been any marked increase in traffic accidents at the road junctions and pedestrian crossings at the Sogo Department Store and Times Square in Causeway Bay since the operation of Luminescent Electronic Display (LED) advertising signs at such locations?*

SECRETARY FOR TRANSPORT (in Cantonese): Mr President, from the installation of the advertising sign at Sogo Department Store in late 1993 up to the end of 1996, there were 16 traffic accidents in the section of Hennessy Road between Percival Street and Great George Street. There were six accidents in 1994, two in 1995 and eight in 1996. Eight of the accidents involved sudden stopping or starting of bus or tram and passengers losing balance; four involved careless changing of lane by vehicles; two were related to disobeying traffic light;

one related to jaywalking and one to a passenger being trapped by the door of a bus.

Regarding the sign at Times Square on Russell Street, there were 23 accidents in that location during the period from the installation in late 1993 to 1996. There were eight cases in 1994, eleven in 1995 and four in 1996. Nine of the accidents involved jaywalking; four cases involved vehicles turning negligently; three were related to careless driving; two related to vehicles starting negligently; one to driving too fast; one to careless lane cutting; one involved a person being hurt by the door of a vehicle and two involved unknown causes.

At both locations, an analysis of the causes of traffic accidents does not reflect any correlation between the installation of the advertising signs and traffic accidents in the areas.

Thank you, Mr President.

MR HOWARD YOUNG (in Cantonese): *Mr President, many organizations such as the Hong Kong Association of Signboard Manufacturers have repeatedly lobbied Members of this Council, expressing the hope that the Government can relax its regulation over LED advertising signs so as to increase the attraction of Hong Kong as a tourist spot. Since there seems to be no correlation between LED advertising signs and traffic accidents at the locations concerned, will the Government consider the possibility of reduced regulation or further relaxation so as to popularize the installation of these advertising signs in more areas?*

PRESIDENT (in Cantonese): I am not quite sure whether the Secretary for Transport is the appropriate government official to answer this question, which is the real question hidden behind the original question.

SECRETARY FOR TRANSPORT (in Cantonese): Mr President, I can answer this question. The problem of safety has always remained our primary concern, be it air safety, sea transport safety or road safety. And, it is precisely due to this concern that we have adopted a more cautious approach to the issue of LED advertising signs. In regard to whether or not it is possible to relax the existing

system of regulation, as pointed out by the Honourable Howard YOUNG just now, the Legislative Council has held some discussions before and so has the Economic Services Panel. We understand that while there are voices of support, there are voices of objection as well. Those who support the idea of relaxation maintain that Hong Kong will thus become more attractive as a city. Those who are against the idea, however, fear that safety problems may result, and they are also worried that such advertising signs may cause nuisance to the people living nearby. At a meeting of the Economic Services Panel last year, the Secretary for Economic Services undertook to review the existing situation to ascertain the possibility or otherwise of any adjustments. I understand that the review is near completion. So, we will shortly brief the Economic Services Panel, or the Transport Panel if necessary, on the findings of the review.

MRS SELINA CHOW (in Cantonese): *Mr President, about the review mentioned by the Secretary for Transport just now, did he play any part in it? Since the Secretary has said in his main reply that there is no correlation between LED advertising signs and traffic accidents, can he confirm that LED advertising signs are in fact no different from neon lights and that they produce the same impact? If so, then is it right to say that Hong Kong drivers are poorer in skills and slower in response than their American and Japanese counterparts? If not, why is it that Hong Kong cannot accept these advertising signs while other cities are able to do so?*

SECRETARY FOR TRANSPORT (in Cantonese): Mr President, I have stated that our primary concern is safety. As far as this issue is concerned, Hong Kong is indeed different from other major cities because its population density is extremely high. I agree with the Honourable Member that other countries are able to permit the existence of these LED advertising signs. On the other hand, it cannot be denied that these LED advertising signs will produce larger impacts on pedestrians than neon lights in general. In regard to the first part of the Honourable Member's question, I can confirm that the Transport Department has taken part in the review. We have drawn up some tentative guidelines on the conditions under which the installation of such advertising signs are to be permitted in case of a relaxation in the relevant legislation. We will brief the Council's Transport Panel on this matter.

MR HOWARD YOUNG: *Mr President, the subject of flashing and movable neon signs has been an area of no man's land as far as policy is concerned because various branches and departments have quite often quoted other branches and excuses for not loosening the regulations. Can the Secretary give us an assurance that he will produce his findings as just cited to this Council to all other departments that are in this working party, so that they are aware that there is at least one less reason to prohibit such signs?*

SECRETARY FOR TRANSPORT: Yes, Mr President.

Greening the Environment

5. **MR CHOY KAN-PUI** asked (in Cantonese): *Regarding greening the territory's environment, will the Government inform this Council:*

- (a) *whether the criteria and policies adopted by the Government in greening the environment in the urban areas are the same as those in the New Territories; and*
- (b) *which government departments are responsible for planting trees at roadsides and road dividers and what the specific responsibilities of the departments concerned are; and whether the Government adopts the same criteria and policies in carrying out such tree planting work in both the urban areas and the New Territories; if not, why not?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Mr President,

- (a) Tree planting, greening and landscaping play an important role in preserving our natural environment and improving its visual impact. Our policy on greening is to conserve natural landscapes and habitats and to provide new planting and landscaping to improve the environment. There is no difference in the criteria and policies of greening the environment between the urban areas and the New

Territories.

- (b) A number of government departments are involved in the provision of landscaping at public roads. At the planning stage, the Planning Department, in consultation with concerned departments, reserves space for roadside amenity areas in Outline Development Plans for landscape planting to improve the environment. When new roads are constructed by the Highways Department or the Territory Development Department, the design and implementation of landscape planting are carried out as part of the road project.

Planting may also be introduced when roads are reconstructed by the Highways Department, or as environmental improvement by the Home Affairs Department, Urban Services Department and Regional Services Department.

For roadworks entrusted to developers as required by lease conditions, developers may also be required to provide roadside planting and hand over the same to the Government when required.

Apart from the more spacious environment in the New Territories, which affects the landscaping design and the amount and species of the plants being planted, there is no difference between the work done in the urban areas and the New Territories.

MR CHOY KAN-PUI (in Cantonese): *Mr President, which government department is currently responsible for planting trees at the roadsides and road dividers of completed roads? If the work of greening is undertaken by different government departments, how can the Administration ensure that there are no shifting of responsibilities among the departments, waste of resources or even policy confusion?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Mr President, in general, roadside tree-planting work in the New Territories is undertaken either by the Highways Department (HD) or the Territory Development Department (TDD), depending on the locations of the

roads concerned. Generally speaking, the TDD is responsible for the tree-planting work inside the development areas of new towns and the related roads.

Regarding the question of how to avoid shifting of responsibilities in case several departments are given the task of greening and tree-planting, I must point out that for the development of each and every place, especially the development of new towns in the New Territories, the Planning Department (PD) will draw up an Outline Development Plan (ODP), which includes an outline plan for integrated landscaping. The ODP will then be distributed to the relevant government departments for implementation. On the whole, all the departments concerned should know very clearly their respective scope of work and responsibilities.

DR JOHN TSE (in Cantonese): *Mr President, will the Government please tell us how much money has been spent over the past three years on the work of roadside tree-planting and greening the territory? How many trees have been planted over this period? What improvement schemes will be implemented in the future?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Mr President, I cannot answer the question on how much money has been spent because many of the trees used for greening are not purchased. Instead, these trees come from the Agriculture and Fisheries Department or even the Urban Services Department and the Regional Services Department, which cultivate the seedlings required in their nurseries as part of their routine work.

As for the number of trees actually planted, I have the figure for last year only. Last year, a total of 6.7 million trees, bushes, bedding plants and various other kinds of vegetation were planted. Nearly half of such planting work was undertaken by the Urban Services Department and the Regional Services Department. The rest of the work was done by other government departments.

MR CHOY KAN-PUI (in Cantonese): *Mr President, the plants at the roadsides and road dividers of completed roads are just like abandoned babies, and no government department is willing to assume the responsibility of looking after*

them. In the urban areas, the Urban Council is supposed to do the work. But, in the New Territories, the Regional Council does not get involved. Will any future review take this into account?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Mr President, I am rather surprised by this question because under the existing government policy, the HD is responsible for the greening work at roadsides and road dividers. The only problem may be that the HD will only carry out planting work within five metres of a roadside, and after what is called the maintenance period, that is, one year after the date of planting, all the plants will be handed over to the Urban Services Department or the Regional Services Department for maintenance thereafter. In view of this, if the Honourable Member notices any individual cases where he thinks that the existing policy has not been properly executed, we will undertake to look into the situation.

DR JOHN TSE (in Cantonese): *Mr President, as far as I know, the cost of planting a tree in the urban areas is \$3,000 to \$4,000 now. Will the Government please tell us whether there are any ways of cutting down the cost in this respect?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Will the Honourable Member please excuse me because I do not quite understand what he meant when he said that the cost was \$3,000 to \$4,000. Did he mean that the purchase price of a tree was \$3,000 to \$4,000? Or did he mean that the labour cost of planting a tree was \$3,000 to \$4,000? Mr President, the Honourable Member has to clarify this point before I can answer his question.

PRESIDENT (in Cantonese): Dr John TSE, will you please clarify whether you are referring to seedlings or trees?

DR JOHN TSE (in Cantonese): *Mr President, as far as I know, the cost of planting a tree in the urban areas now is \$3,000 to \$4,000 on average. The cost is indeed very high. Are there any ways of cutting down the cost?*

PRESIDENT (in Cantonese): Secretary, you may wish to go back and find out how you should answer the question!

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): I know how to answer this question now. Mr President, one major way of reducing the cost is for government departments to cultivate the seedlings required. Actually, the nurseries under the Agriculture and Fisheries Department are producing as many as 800 000 to 1 million seedlings every year in order to cater for the needs of other government departments. However, under some special circumstances, as when a unique landscaping project imposes special needs, or when the Urban Council or Regional Council needs to plant some rare species which cannot be cultivated in Hong Kong, it will be necessary to make purchases from outside sources. In such cases, we will seek to invite tenders as far as possible. Alternatively, in order to reduce costs, we may make purchases from places which offer lower prices, one example being mainland China, which supplies huge quantities of seedlings to us. The fact is that the Government and the two municipal councils usually would not purchase "grown-up" trees. Instead, they would purchase seedlings and the costs involved, including transportation costs, are generally not very high.

Measures of Task Force on Land Supply and Property Prices

6. **MR CHAN WING-CHAN** asked (in Cantonese): *Mr President, as the measures proposed by the Task Force on Land Supply and Property Prices in 1994 have been implemented for two years, will the Government inform this Council:*

- (a) *whether it has reviewed the effectiveness of such measures; if so, what the results are; if not, why not; and*
- (b) *of the reasons for the recent spiralling of private housing prices, and the measures in place to tackle the problem?*

SECRETARY FOR HOUSING (in Cantonese): Mr President,

- (a) The Government introduced a series of measures in June 1994 to dampen property speculation, stabilize prices, increase land and flat supply and enhance consumer protection.

Dampening property speculation

The measures to dampen speculation has successfully stabilized property prices and curbed short-term speculative resale activities. Property prices in general had dropped steadily from the peak in April 1994 to the trough in October 1995 since the implementation of these measures, showing a drop of 26%. However, due to the increase in market activities, property prices then slowly approached the price level of April 1994. Property prices in December 1996 rose to a level close to that in April 1994, but after adjusting for inflation, the real prices were still 17% lower than the peak in April 1994.

The ratio of short-term resale cases to the total number of transactions of residential property has been decreasing, from 22% in June 1994 to 9% in July 1995. Since then this ratio has been maintained at a level of 10% to around 14%. This shows that the series of measures have been effective in controlling the speculative activities of short-term resale. Unfortunately, in the past two months, the speculative ambience among the luxury residential property market has pushed up this ratio to 20%.

Land Supply

In respect of increasing land supply, we are committed to increase 70 ha of land for housing development. In the land disposal programme for 1994-95, we successfully disposed of 65 ha of land for residential use, while in 1995-96, we disposed of 80 ha for the same purpose. In the land disposal programme for 1996-97, we reserved 89 ha of land for residential development.

Housing Supply

Concerning housing supply, enough land has already been disposed of and earmarked for developing 292 000 public housing flats and 24 000 Sandwich

Class Housing flats. Meanwhile, we have disposed of 65% of the land required for developing 195 000 private residential flats. The rest will be disposed of in a phased manner to meet the demand.

In 1994, we selected about 50 ha of land as land reserve, of which 30 ha have already been allocated to the Housing Authority for developing public housing and Home Ownership Scheme flats. The remaining sites have also been zoned for housing purpose. The departments involved will certainly take active actions to identify suitable additional sites for further injection into the so-called land reserve.

The Housing Project Action Team (HPAT), tasked to speed up housing development and to solve problems that are likely to delay progress, has been established for two years under the leadership of the Secretary for Housing. At present, HPAT is fast-tracking 56 housing and public works related projects, involving over 130 000 flats.

Consumer Protection

On the protection of consumer interest, we have already provided information on property development in various districts and the latest development of the property market in the monthly magazine, *Choice*, published by the Consumer Council.

Besides, in November 1995, the Housing Branch introduced the Estate Agents Bill into the Legislative Council for examination. It is expected that the Bill can be passed by the Legislative Council this year.

Property Market

Regarding part (b) of the question, the property market has revived since October 1995, with property prices rising steadily to the 1994 level by December 1996. The main reasons are as follows:

- (i) the desire to buy flats for their own use has been growing among the general public, and there are people who consider buying property

as a long-term and profitable investment;

- (ii) both the lowering of interest rates and the proactive approach of the banking institutions in their mortgage policy have helped the public to buy flats;
- (iii) the reduction of stamp duty by the Government for the purchase of small flats has lowered the cost of property acquisition.

The Government is in fact very concerned about the recent speculative activities in the residential property market, their effects on the general public and the genuine end-users. In early December, we established an inter-departmental group to collect information, analyze the market situation and closely monitor the speculative activities.

We have maintained very close liaison with property developers, and have worked together to curb and dampen unhealthy speculative activities. Recently, the Real Estate Developers Association of Hong Kong (RED A) has taken the initiative to respond positively to the call of the Government and announced last week several measures which were to be introduced with immediate effect (Annex 1). Such measures can improve the procedures of flat sale, reduce speculative activities and enhance protection for the genuine end-users.

Yesterday, we discussed with RED A again on further measures and I can now announce officially that RED A members have decided to introduce with immediate effect the following additional measures:

- (i) to prohibit completely the resale of uncompleted flats under the Consent Scheme through companies by way of change of directorship in the period between registration and completion of assignment (that is, issue of the certificate of compliance or consent to assign, whichever is the earlier);
- (ii) flat sale to companies will be limited to the last 15% of each batch of flats under the Consent Scheme put up for sale so as to ensure that genuine end-users' interests are protected. In other words, the flats will first be allocated to genuine end-users before allocated to companies;

- (iii) to promulgate clearly in sales brochures and newspaper advertisements the total number of flats available for pre-sale in each housing development under the Consent Scheme;
- (iv) to ensure that the 10% of flats under the Consent Scheme disposed by private sale will only go to genuine end-users and will not become available in the open market for speculation; and
- (v) REDA has also agreed to encourage its members to adopt the above measures for sale of flats which have already been given consent for pre-sale, and sale of flats which fall outside the Consent Scheme.

It is my belief that the above measures can effectively tackle speculation through the sale of chips and through companies by ensuring parity of treatment for company and individual purchasers.

I would like to stress that, if the above measures are not effective in achieving their objectives, the Government will take appropriate measures to restore the normal operation of the residential property market. At the same time, the Inland Revenue Department is actively following and investigating likely speculative cases through the use of company, and will issue profits tax returns to the concerned parties. The Hong Kong Monetary Authority has also advised banking institutions to exercise additional care in relation to their exposure to property lending and to adhere strictly to the 70% loan to value ratio in respect of mortgage lending.

In addition, in order to help ease the demand at the top end of the market, the Government has sold or let the remaining government quarters. Last December, we sold 14 quarters units. Preparation is in hand with a view to achieving the target of selling 400 quarters units this year. Since last November, the Government has already put forward about 150 quarters units for rental purpose. In the short run, the Government will rent out more quarters units.

I can assure Members that we will continue to increase land supply in the next few years to meet demand. The supply of flats will increase steadily from 1998 onwards. A current preliminary estimate for flat supply in 1998 is about 36 000 flats. There is no cause for panic buying either.

Thank you, Mr President.

Annex 1

*The measures introduced with immediate effect by
The Real Estate Developers Association of Hong Kong
on 10 January 1997*

- (i) Sale of units to company purchasers will be limited to 15%.
- (ii) For each batch of 100 flats put up for sale, the first 85 will go to individual purchasers, the next 15 to company purchasers.
- (iii) For company purchasers, registration of the names of directors will be made mandatory and no change of directorships will be allowed prior to the signing of the formal Sale and Purchase Agreements.
- (iv) Developers will also devise a different way of registering potential purchasers including accepting subscriptions from purchasers by post in order to minimize speculative activities through the sale of "chips".

MR CHAN WING-CHAN (in Cantonese): *Mr President, I would like to thank the Secretary for Housing for giving a reply that is five pages and a half long to my question. However, I do not think I can agree to part (a) of the reply which compared the property prices in 1996 with that in 1994. The prices he quoted might be true, but I am not going to discuss that. In view of the recent rates of increase in property prices and the trend of price increase, one can only feel worried. Recently, speculative activities through the sale of "chips" have become very common and the price of a "chip" could range from \$450 000 to as high as \$2.3 million. Such a situation did not occur in 1994, so I think the Government should look into the matter. Although the Secretary has proposed five new measures in paragraph 13 to monitor speculative activities*

PRESIDENT (in Cantonese): Mr CHAN, please raise your question.

MR CHAN WING-CHAN (in Cantonese): *To me, however, these five measures cannot reduce speculative activities because they are not supported by laws. Can the Secretary inform this Council whether the Government will announce further anti-speculation measures, such as introducing property transfer tax to tackle speculative activities and curb the spread of such activities so as to protect the interests of the genuine end-users?*

SECRETARY FOR HOUSING (in Cantonese): Mr President, the new measures referred to in paragraph 13 of my main reply should be able to tackle the problems that the Honourable CHAN Wing-chan has mentioned just now. These measures, in particular the one that prohibits the change of directorship after registration, should be very effective in dampening such speculative activities as resale of flats or "chips" through companies. Certainly, it takes time for the measures to demonstrate their effectiveness. Only after the developers have implemented the measures for some time and submitted their assessment results to the Government can we make any judgement. I agree that these measures are not supported by any laws, yet since the residential flats under the Consent Scheme approved by the Government are involved, the developers should follow such guidelines when they put up the flats for sale. The developers have also promised to adopt such measures for the sale of flats that fall outside the Consent Scheme. Their initiative in this respect is highly appreciated.

Just now Mr CHAN asked whether the Government would announce any alternate measures to combat speculative activities in the property market. At the present stage, the Government would concentrate on discussing the matters with the developers and it is our hope that the developers would take the initiative to exercise self-discipline. Several discussion meetings have been held and yesterday the developers agreed to adopt more measures.

As to whether the Government would enact laws to tackle the problems, I

think we should be very careful and prudent because taxation is involved here. The existing taxation system in Hong Kong is a comparatively simple system and we do not wish to alter it arbitrarily. Should circumstances warrant any changes, the Government would take the matter into serious consideration. In addition, if the speculative activities in the property market really need to be tackled by legislation, the Government would give very careful consideration to the issue before taking any action.

PRESIDENT (in Cantonese): I still have nine more names on the list. I would like to remind Members that this is the question time, not time for debate. I hope Members would phrase their supplementaries in question form and keep their preambles not just concise but short as well. I also hope that the Secretary for Housing would answer the questions raised directly instead of going too broadly when making his replies. I will draw a line there after these nine Members, otherwise the question time will become out of control.

DR LAW CHEUNG-KWOK (in Cantonese): *Mr President, paragraph 16 of the Government's main reply mentions that 400 quarters units will be put up for sale this year. Will the Secretary inform this Council how many percent of the market supply of luxury residential flats would these 400 quarters units represent? In addition, what is the extent to which these 400 quarters units are expected to help ease up the price level of luxury residential flats?*

PRESIDENT (in Cantonese): Should this supplementary be answered by the Secretary for the Treasury or by the Secretary for Housing? Secretary for the Treasury?

SECRETARY FOR THE TREASURY (in Cantonese): Mr President, regarding the supply of luxury residential flats, I think it would be more appropriate for the Secretary for Housing to provide an answer. *(Laughter)*

SECRETARY FOR HOUSING (in Cantonese): Mr President, with regard to newly constructed luxury residential flats, the supply, in general, has been relatively limited. According to past figures, the number of luxury residential flats supplied varies from year to year but is always around 1 500 to 2 000 units. If the Government is to put up 400 quarters units for sale (these are not luxury

flats but large units suitable for many uses), such an amount would represent 20% to 25% of the luxury residential flats in the market.

PRESIDENT (in Cantonese): That the Secretary for the Treasury defers this question to you implies that he also regards such units as luxury residential flats. Dr LAW Cheung-kwok, are you claiming that your question has not been fully answered?

DR LAW CHEUNG-KWOK (in Cantonese): *Mr President, my supplementary has a second part as well and I asked about the extent to which those 400 quarters units are expected to help ease up the price level of luxury residential flats.*

SECRETARY FOR HOUSING (in Cantonese): Mr President, I think these units would certainly help to relieve the supply situation. Regarding the impact on property prices, as Secretary for Housing, I am not in a position to make any estimation. It is my hope that once the supply has been increased, the purchasers will not worry that much, and there will not be any cause for panic buying which would in turn push up property prices.

MR ERIC LI (in Cantonese): *Mr President, in a free market economy, both supply and demand are the determining factors for prices. The three reasons that the Secretary for Housing has referred to in paragraph 10 of the main reply can in fact be summarized as increase in demand. Why did he not admit that the number of flats constructed in 1995 and 1996 had not increased but decreased? If this could explain the situation, why did he not target the efforts at the core of the problem, but just guaranteed that the supply of land would be increased? Does increase in land supply not imply any increase in the number of flats to be constructed? If the number of flats to be constructed is to increase, the Government has to explain to the general public why the developers, in view of the various administrative measures introduced to control property prices, would still like to invest in land and increase the supply of flats in real terms.*

SECRETARY FOR HOUSING (in Cantonese): Mr President, this is because the past land grant exercises have left an impact on the present situation. The number of new buildings constructed in 1995 and 1996 was relatively small because the number of land lots granted several years earlier had been comparatively small. However, next year (1998), the number of new flats available would increase to 36 000. I expect that the number of new flats available in the years to come will continue to increase. Why would there be an increase in supply from next year onwards? This is because we have been granting more land lots since two or three years ago. As such, we can see that past development would have an impact on this issue, the greater the amount of land lots granted, the greater will be the amount of flats constructed several years later. In the past, we granted very limited land lots and the number of flats constructed in subsequent years would therefore be very limited. That is why we could not increase the supply of flats over the past two years.

MR TSANG KIN-SHING (in Cantonese): *Mr President, the Secretary for Housing mentioned in the fourth paragraph of the main reply that land supply would be increased. However, increase in land supply is just new wine in old bottles. Take today's land auction as an example, the cost of a luxury residential flat, which comprises the premium and the construction cost, would be \$18,000 per sq ft if calculated in the light of the plot ratio concerned. We can see that the Government is in fact taking the lead in boosting property prices, so how could there be any intention to dampen speculation? When land lots are granted through auctions, how could premium levels be controlled? Land premium is, in fact, the most expensive item of all.*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Mr President, many factors are involved in this issue. First, according to our analysis of the data collected over the past few decades, there is no direct nor pegged relationship between the prices at which we sold the land lots and the prices of the flats that developers constructed later on. The developers simply set the prices of flats in the light of the current average prices.

Secondly, if land lots are to be leased or sold fairly, other than through auctions or tenders, does it mean that we have to subsidize the developers?

Certainly we will not give any subsidization with regard to land lots to suppress the premiums and then allow the developers to sell their flats according to market prices, especially not with regard to land lots for luxury residential flats which the Honourable Member has just mentioned.

Thirdly, to cater for the overall needs of Hong Kong is different from providing a certain sector of our society with the flats they want to buy. The greatest responsibility of the Government in this respect is to provide enough land for the the construction of rental public housing units or subvented home purchase units. We have all along been working along this line, and in recent years, we have allocated more land to the Housing Authority (HA). So far, we have been able to meet every single demand of the HA regarding land supply. In respect of our planning for the coming five years, the amount of land lots that we have planned to allocate to the HA is even more than what the HA has asked for over the past five years.

PRESIDENT (in Cantonese): Mr TSANG Kin-shing, are you claiming that your question has not been fully answered?

MR TSANG KIN-SHING (in Cantonese): *Mr President, why does the Secretary for Housing not strive to allocate all the land lots to the HA for development? Such a move will not be in breach of anything. If all buildings are developed and constructed by the Housing Department, then no developers could be benefited. The existing situation is that what the Governor promised has not been implemented.....*

PRESIDENT (in Cantonese): Mr TSANG Kin-shing, this point is not a part of the supplementary you have raised just now. However, you have succeeded in slipping in yet another supplementary. Secretary for Housing, the question is why does the Government not allocate more land to the HA and Housing Society (HS) for the construction of more housing units?

SECRETARY FOR HOUSING (in Cantonese): Mr President, let me repeat once again, regarding the amount of land that the HA needed for the construction of public housing estates, after our internal assessment, all such needs have been fully met by the Government. In respect of future planning, we have also made some estimated figures and we will publish a consultation paper in this respect in the near future. Concerning the land required by the HA to construct public housing estates in the coming phases of planning, we will allocate the land lots in the light of the estimated figures. We should never allocate all the land available to the HA or HS to construct public housing estates because such move would cut down the supply of land for the development of private residential buildings, and would in turn push up the prices of private residential flats.

MR JAMES TIEN (in Cantonese): *Mr President, I think the types of buildings that the general public concern most are the ones in which they are living. According to the Government, speculative activities are more rampant in the luxury residential property market. In my opinion, it is not fair to classify a flat as luxury residential flat by its size. For instance, in the Mid-levels, a piece of land measuring 1 000 sq ft might be more expensive than a piece of land measuring 2 000 sq ft in Sheung Shui. Can the Government provide the public with a clear concept of what luxury residential flat is by classifying the flats according to their prices? According to the Government, is the price of a so-called luxury residential flat \$10 million or \$20 million? Does the Government really have any guideline for that?*

SECRETARY FOR HOUSING (in Cantonese): Mr President, the term "luxury residential flat" is not invented by the Government, it is a term commonly used by people in the market.

If we are to classify the flats, we will classify them into three categories, namely large, medium and small. Large flats refer to those units that are at least 100 sq m in size, among which some would be regarded as luxury residential flats. However, some people might think that the size of a luxury residential flat should at least be 150 sq m. On the other hand, some people might classify flats in the light of their prices. Those sold for high prices are luxury flats. Some would say over \$10 million is the baseline, but some would say \$15 million. As for the Government, we do not have any fixed definition for the term.

MR ALBERT CHAN (in Cantonese): *Mr President, the major factor leading to the rampant speculative activities in the property market is insufficient supply, which, in turn, is a consequence of the insufficient land supply in 1993 and 1994. It is estimated that the number of residential units completed this year could be maintained at some 20 000. Can the Secretary inform this Council whether the Government would try to find ways to increase the number of flats available this year, such as reviewing the time limit concerning the presale of uncompleted flats and allowing the flats that can only be put up for sale in 1998 to be sold in 1997, and those scheduled for sale in 1999 be sold in 1989, so as to increase the supply of flats in the coming two years in real term and to alleviate the pressure?*

SECRETARY FOR HOUSING (in Cantonese): *Mr President, the Government will give consideration to this respect, and we need to be very prudent. I agree to the suggestion to relax the time limit on the presale of uncompleted flats. If the flats are put up for sale earlier, the pressure on market supply will be alleviated and the desire of certain flat buyers will also be met earlier. However, we must be very careful to ensure that the relaxation of time limit would not lead to more rampant speculative activities. We have already relaxed the time limit from nine months to 12 months in December 1995. We are still considering this issue, but we will only make further decision after we have prudently taken everything into consideration.*

MR ALBERT HO (in Cantonese): *Mr President, the Secretary mentioned in paragraph 10 of his main reply that property prices have risen in recent years because there are investors who consider buying property as a long-term and profitable investment. This situation implies that some people still have confidence in the future prospect of the property market. These people might think that if they do not invest now, they will not be able to protect the value of their assets. I think it is just natural for people to act this way. The measures introduced by the Secretary for Housing seem to be incapable of deterring a large number of investors from entering the property market and competing with the end-users. As a result, they would still boost up property prices, thus rendering it impossible for the end-users to buy flats at reasonable prices. If*

such problem is to be tackled, it seems that the only solution is to introduce capital gain tax so that the long-term investors will also have to pay tax and their desire to concentrate their investments in the property market would in turn be dampened. I wonder if the Secretary for Housing would consider this policy.

SECRETARY FOR HOUSING (in Cantonese): Mr President, I have already referred to this issue when answering a supplementary question earlier on. In respect of the tax system, the Government will not make any change arbitrarily. Our existing tax system is relatively simple and can easily be implemented, any new tax items will have to be introduced through legislation. However, I have also mentioned in my main reply that the information of any party engaged in speculative activities (irrespective of whether they are individual purchasers or company purchasers) will be forwarded to the Inland Revenue Department (IRD) by the developers. The IRD will then directly investigate into the speculative activities to see if the parties concerned have made any profits. If so, tax will be levied on such parties as appropriate. I believe this is a comparatively easier and normal way to deal with the problem.

MR ALBERT HO (in Cantonese): *Mr President, my question is about the long-term investors. The existing tax system cannot identify these investors but can only deal with the short-term investors*

PRESIDENT (in Cantonese): Mr Albert HO, just now Mr CHAN Wing-chan has already asked about this matter and the Secretary for Housing has also given his reply to that supplementary. Again you raised a supplementary about the tax regime and the Secretary for Housing replied that the relevant laws cannot be amended easily. The reply is clear enough. If Members are not satisfied with this reply, please discuss that with the Secretary for Housing at meetings of the Council's Panel on Housing.

MR HOWARD YOUNG (in Cantonese): *Mr President, afterall, the main*

reason leading to such speculative activities is supply falling short of demand. Last year, right after the Secretary for Planning, Environment and Lands had announced that the plot ratio for hotel development would be increased, the developers immediately showed their interest in increasing the supply of hotel development. Will the Secretary for Housing or the Secretary for Planning, Environment and Lands consider making use of the plot ratio as a means to increase the supply of flats?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Mr President, in respect of increasing the supply of land in the long run, the Government is now considering the following scenarios: First, can the use of certain reserved yet undeveloped sites be changed, such as changing the land use of certain industrial sites? Second, can the residential development density of a certain district be further enhanced? Third, can new population development projects be introduced to new towns where the population upon completion of development falls short of the population estimated? Fourth, just as what the Honourable Member has mentioned, can development density of certain sites be enhanced? Such density will include not only private housing development but also public housing estates. We are still considering such issues.

MR LEE WING-TAT (in Cantonese): *Mr President, recently both the Governor and the Financial Secretary have mentioned in public occasions that they are very concerned about the speculative activities in the property market. However, last Sunday when the Secretary for Housing returned from Shanghai, he told the press that the transactions concerning small to medium-size residential flats are still normal. It seems to me that the Secretary for Housing is more sympathetic towards and in support of the speculators than the end-users*

PRESIDENT (in Cantonese): Mr LEE Wing-tat, please raise your question.

MR LEE WING-TAT (in Cantonese): *The Financial Secretary has mentioned in a radio programme about the criteria according to which the Government would adopt further measures: If rental income represents only 3% to 4% of the*

flat price, the yellow light will be on; and when it is only 1% to 2%, the red light will be on, that means the Government must intervene. Can the Secretary for Housing inform us whether he accepts this analysis? Does it imply that the Government will intervene on the speculative activities in the property market when the rate of rental income falls to 1% to 2%?

SECRETARY FOR HOUSING (in Cantonese): Mr President, in respect of the activities in the property market concerning the small to medium-size flats, the Government does not have any internal criteria to define when further action should be taken to intervene. Last Sunday, when I returned from Shanghai, I mentioned that the speculative activities in the luxury residential property market was still rampant while the transactions in the small to medium-size flats market remained normal, yet we would keep an eye on the situation very closely. I have also said that if we see any speculative activities in the small to medium-size flats market, we will consider taking positive action to tackle the situation. As a matter of fact, I have already done some work on the problem since I returned from Shanghai. I have also noted in the main reply that I discussed with the Real Estate Developers Association of Hong Kong yesterday and that they have agreed to the ideas of the Government and promised to take the initiative to adopt more self-discipline measures, including the five measures that I have officially announced today. I believe all these are appropriate measures.

PRESIDENT (in Cantonese): Miss CHAN Yuen-han. The last supplementary question.

MISS CHAN YUEN-HAN (in Cantonese): Mr President, I do not accept what the Secretary for Housing has just said. I think such a statement was made by the Government in around 1992 and 1993, but then the climax in 1993 and 1994 had not yet arrived. We could all see that the speculative activities are developing step by step in a very regular pattern. In fact, such a pattern is

repeating itself now. This time the starting point is luxury residential flats while the last time it was industrial buildings. The Secretary for Housing should summarize the experience gained in the past when property price levels were at their highest to make preparation for future challenges. We certainly will not ignore the efforts made by the Secretary for Housing, including his discussions with the developers. However, what have been achieved? Mr President, the result is, just like what the Honourable CHAN Wing-chan has noted, a gentleman's agreement concerning some measures without any legal support. Such agreements, to me, are just like conspiracies. I am not saying that the developers and the Government are conspiring against anybody, but such agreements do seem like conspiracies to me. In my opinion, if the Secretary for Housing is to tackle the problem from the point of view and in the interests of the general public, why does he not make preparations in the light of the opinions expressed by the people

PRESIDENT (in Cantonese): Please raise your question.

MISS CHAN YUEN-HAN (in Cantonese): *Can the Secretary inform this Council what further measures would the Government take if the agreements he has just mentioned failed to achieve their objectives? Do they have to wait for one month, two months, half a year, or one year? Can the Secretary for Housing inform this Council of the circumstances under which the Government would take further actions to combat the speculative activities in the property market?*

SECRETARY FOR HOUSING (in Cantonese): Mr President, we will monitor closely the transaction activities in the property market and the relevant government departments will collect and analyse data every week. I can only inform this Council that we will keep on monitoring the situation, and should things worsen, we will take actions positively and promptly.

PRESIDENT (in Cantonese): Miss CHAN Yuen-han, are you claiming that your question has not been fully answered? Which part of it ?

MISS CHAN YUEN-HAN (in Cantonese): *Yes, Mr President. Just now I asked the Secretary how long would he have to consider it, say one month, two months, half a year or one year. I wish he could inform us of the specific time.*

SECRETARY FOR HOUSING (in Cantonese): Mr President, as I have just said, we will keep on monitoring the situation. Should things worsen, we will consider what measures need to be adopted. As such, I am able to announce several measures earlier on today after my discussions with the developers yesterday. All these measures have been taken into consideration during our discussions, and the developers have agreed to take the initiative to exercise self-discipline and announce that they would adopt such measures, thus no intervention from the Government would be required. In this respect, I think the developers are in fact co-operating with the Government and will announce the adoption of new measures from time to time. However, we cannot announce new measures at any time, we will only adopt additional measures when the situation changes or worsens.

WRITTEN ANSWERS TO QUESTIONS

Regulation of Insurance Companies

7. **MR ANDREW CHENG** asked (in Chinese): *Regarding the operation of insurance companies, will the Government inform this Council:*

- (a) *how the Office of the Commissioner of Insurance (the Office) regulates the sale of the assets and liabilities of one insurance company to another or the merger of one insurance company with another;*

- (b) *of the protection provided for policy holder under the circumstances described in (a) above; whether it is obligatory for the insurance company concerned to obtain the consent of its policy holders prior to transferring their policies to another company, and whether the policy holders can recover the premiums paid if they object to such a transfer; and*
- (c) *the total number and categories of complaints concerning the operation of insurance companies received by the Office over the past three years?*

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

- (a) and (b) Under common law, the transfer of insurance business from one insurer to another can only be executed with the prior consent of each and every policy holder. This represents a "novation" of the contract and the Office of the Commissioner of Insurance is not involved in the process.

Such a process is, however, extremely time-consuming and costly, particularly where a large number of policies are involved. The Insurance Companies Ordinance (ICO) therefore provides for an alternative mechanism for transfer of insurance business which will not only save time and costs for the insurer concerned but also ensure that policy holders are properly and readily protected with another policy issued by an existing authorized insurer.

The ICO provides that transfer of general business may be effected with the approval of the Commissioner of Insurance. As for the transfer of long term business, due to the long term nature of the policies, the sanction of the High Court is required, and the Commissioner of Insurance has the right to be heard. Regarding corporate mergers, if they involve the transfer of insurance business, the above provisions will apply.

The Commissioner of Insurance or the High Court will approve or sanction the transfer only if they are satisfied that the transferee is or will be authorized to carry on the relevant business in Hong Kong

and that other conditions stipulated in the ICO for the protection of policy holders have been fulfilled. These conditions, *inter alia*, require the transferor to publicize the scheme of transfer in the newspapers and to notify the affected policy holders in writing.

The affected policy holders are given an opportunity to make representations which must be properly considered by the Commissioner of Insurance or the High Court. The most important consideration is whether a policy holder would be adversely affected by the transfer.

A policy holder who feels aggrieved by the decision may apply for leave for judicial review in the case of a decision by the Commissioner of Insurance, or appeal to a higher court against the decision of the High Court in the case of a court sanction.

A policy holder can also choose to terminate the policy and obtain, in the case of a general business policy, refund of the unexpired portion of premium, or in the case of a long term business policy, payment of the "surrender value" of the policy. The "surrender value" of a policy is determined on an actuarial basis in accordance with the terms of the policy.

- (c) The total number and categories of complaints concerning the operation of insurance companies received by the Office of the Commissioner of Insurance in 1994, 1995 and 1996 are as follows:

<i>Nature of Complaints</i>	<i>Number of Complaints</i>		
	<i>1994</i>	<i>1995</i>	<i>1996</i>
Delay in Settlement	-	2	6
Quantum of Indemnity/Surrender Value	4	6	6
Repudiation of Liability	-	5	5

Cancellation/Non-renewal of Policy	2	-	3
Twisting of Policies	1	2	-
Misrepresentation	-	2	4
Transfer of Business	-	-	2
Poor Service	-	3	4
<i>Nature of Complaints</i>	<i>Number of Complaints</i>		
	<i>1994</i>	<i>1995</i>	<i>1996</i>
Quality of management of insurer	-	4	-
Others	2	5	10
Total	9	29	40

Corporate Governance

8. **MR ERIC LI** asked: *Will the Government inform this Council whether it is aware of the specific actions taken by the Stock Exchange of Hong Kong (SEHK) and the Securities and Futures Commission (SFC) since January 1995 to improve corporate governance with a view to preventing corporate fraud and mismanagement; if so, does the Government know of the following:*

- (a) *the total provisions set aside by the SEHK and the SFC respectively for the above purpose in the last two years;*
- (b) *the results of any evaluations conducted by the SEHK or the SFC on the impact of their preventive actions; and*
- (c) *the respective number of cases involving corporate fraud and*

mismanagement reported to the SEHK and the SFC monthly since January 1995?

SECRETARY FOR FINANCIAL SERVICES: Mr President, the statutory framework on corporate governance is provided under a number of ordinances, including:

- the Securities (Disclosure of Interests) Ordinance (Cap. 396) which obliges directors and substantial shareholders to disclose their interests in shares of the company;
- the Securities (Insider Dealing) Ordinance (Cap. 395) which governs the use of price sensitive information; and
- the Companies Ordinance (Cap. 32) which deals with the reporting of unfit directors by liquidators of companies being wound up.

In addition, the corporate governance framework is strengthened by the Takeovers Code issued by the SFC which obliges directors to consider the interest of their shareholders in takeovers, and the Listing Rules issued by the SEHK which set out the compliance requirements.

Specifically, section 29A of the Securities and Futures Commission Ordinance empowers the SFC to investigate cases of suspected fraud, misconduct or inadequate disclosure to shareholders in relation to listed companies. It also empowers the SFC to inspect listed companies' books or records and if the inspection reveals impropriety, to apply to the High Court for orders including injunction against directors and the appointment of a receiver to the listed companies concerned. In 1995 and 1996, the SFC invoked these powers on five occasions.

The SEHK is the frontline regulator of corporate activities. Under the Listing Rules, companies are required to sign listing agreements before they are listed on the SEHK. One of the major corporate governance initiatives of the SEHK is the education of listed company directors of their fiduciary duty and duty of care owed to the company. This message has been reinforced through the SEHK's publications, conferences and public statements, the work of four SEHK-sponsored working groups on corporate governance, and through

enforcement of the Listing Rules.

The specific action taken by the SFC and the SEHK to improve corporate governance since January 1995 include:

- In 1995, the SEHK's Listing Rules were amended to require all listed companies to include in their annual and interim reports a compliance statement with respect to their code of best practice.
- In 1995 and 1996, the SFC and the SEHK jointly hosted conferences on the duties of directors of listed companies under the SEHK's Listing Rules.
- In 1996, SEHK's Listing Rules were amended to set out the procedures for director's declarations and undertakings that must be completed by all directors.
- In 1996, the SEHK set up a Working Party on Corporate Governance in which the SFC also participated. Amongst other matters, the Working Party is considering the Hong Kong Society of Accountants' report on corporate governance.
- In 1995 and 1996, the SFC and the SEHK assisted the Administration in the drafting of legislation which seeks to provide statutory protection for auditors of listed companies who report in good faith suspected fraud, unlawful conduct, misfeasance or other misconduct discovered in the course of audit to the SFC and the SEHK.

The answers to the three sub-questions are as follows:

(a) *Budgetary provision*

Neither the SFC, nor the SEHK has prepared the budget for the last two years in a format which could clearly delineate the budgetary provision for investigation work on listed companies or for the prevention of corporate fraud and mismanagement.

(b) *Evaluation of preventive measures*

Neither the SFC nor the SEHK has carried out specific evaluation on the impact of the preventive action they have taken. Nevertheless, the SFC believes that the enforcement action taken under section 29A of the Securities and Futures Commission Ordinance would be an effective deterrent and should help prevent corporate fraud and mismanagement.

(c) *Statistics on reports*

The SEHK does not maintain statistics on cases of corporate fraud and mismanagement reported by members of the public. The statistics from the SFC are as follows:

Number of cases reported

<i>Year</i>	<i>suspected mismanagement</i>	<i>suspected fraud</i>
1995	4	1
1996	13	1

Urban Renewal

9. **DR DAVID LI** asked: *In the policy statement on "Urban Renewal in Hong Kong" issued by the Administration in June 1996, it was stated that in 10 years' time, more than 40% of the private housing stock in the urban area will be over 30 years old, as compared with the present figure of 20%. In this connection, will the Government inform this Council whether it plans to commit more resources to speed up the urban redevelopment programme; if so, what the details are?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, in the policy statement on "Urban Renewal in Hong Kong" published in June 1996, we proposed to introduce a package of immediate measures to facilitate and speed up planned urban renewal schemes and, in the longer term, to consider more fundamental changes to the existing arrangements to increase the speed and scale of urban renewal.

Resources have been committed to a number of immediate measures which are being implemented. These measures include establishing dedicated urban renewal teams in the Planning, Environment and Lands Branch, Lands Department and Planning Department, and commissioning studies to prepare for the introduction of a building safety inspection scheme. Resources have also been earmarked for other measures, including granting land at reduced premium to the Hong Kong Housing Society for the construction of rehousing units, and testing the linked-site approach by which a profitable site is granted to cross-subsidize a financially non-viable redevelopment project.

In the longer term, we are considering a number of proposals which will likely have significant resource implications for the Government. These proposals include transforming the Land Development Corporation into an Urban Renewal Authority, and setting up a rehabilitation fund to provide low-interest or interest-free loans to owners of domestic units to renovate common parts of buildings and upgrade building services.

Licentiate Examination for Non-Commonwealth Trained Medical Practitioners

10. **DR HUANG CHEN-YA** asked (in Chinese): *Will the Government inform this Council:*

- (a) *of the number of candidates who took the licentiate examination for non-Commonwealth trained medical practitioners in 1996, together with a breakdown of the examination results by different ranges of marks in the written and oral examinations;*
- (b) *of the criteria adopted by the Medical Council of Hong Kong (the Medical Council) in marking and how the pass mark of the licentiate examination is determined; and*
- (c) *whether, in notifying the candidates of the examination results, the Medical Council provides them with the marks they have obtained in different parts of the licentiate examination; if not, why not and*

whether the Medical Council will consider enhancing the transparency of the licentiate examination by providing the above-mentioned marks to candidates?

SECRETARY FOR HEALTH AND WELFARE (in Chinese):

- (a) The number of candidates who participated in the Licentiate Examination for non-Commonwealth trained medical practitioners held by the Hong Kong Medical Council in 1996, and their results, are shown in the Annex.
- (b) The standard of the Licentiate Examination and the criteria for assessing the candidates are pitched at that of a local final MB BS/MB ChB examination.
- (c) The candidates are informed of their performance in each and every part of the Licentiate Examination, in either actual marks or grades obtained.

Annex

Results of Licentiate Examination held in 1996

<i>Licentiate Exam</i>		<i>Licentiate Exam</i>		<i>Licentiate Exam</i>		
<i>1996 (Jan)</i>		<i>1996 (Mar)+(May)</i>		<i>1996 (Jul)</i>		
<i>Multiple Choice</i>		<i>Written Paper on</i>		<i>Oral Examination on</i>		
<i>Paper on</i>		<i>Professional English</i>		<i>Professional</i>		
<i>Professional</i>				<i>Knowledge</i>		
<i>Subjects</i>						
<i>Overall</i>	<i>Result</i>	<i>(No grading is given</i>	<i>Grade</i>	<i>Medicine/</i>	<i>Surgery &</i>	<i>Obstetrics &</i>
<i>marks*</i>		<i>for this part of the</i>	<i>Obtained</i>	<i>Paediatrics</i>	<i>Ortho</i>	<i>Gynaecology</i>
		<i>exam)</i>			<i>Surgery</i>	
0-20	52		A	0	0	0
21-40	162		B	5	1	5
41-60	46		C	25	22	27

over 60	0			D	11	17	13
				E	10	4	2
Total no. of Candidates	260	Total no. of Candidates	14	Total no. of Candidates**	58	58	58
Total no. of Candidates passed	13	Total no. of Candidates passed	11	Total no. of Candidates passed		22	

* The overall mark only serves as an indicator of the examination result. In order to pass the examination, a candidate is required to obtain a minimum mark/grade in each individual subject of the paper.

** Includes candidates who were absent and who passed some of the subjects in earlier examinations. The number therefore does not equate the sum of candidates with grades listed above.

University Language Training Courses

11. **DR LAW CHEUNG-KWOK** asked (in Chinese): *Is the Government aware of:*

- (a) *the respective language training courses organized by each of the universities in the territory for students with lower Chinese language and English language standards, so as to improve their language proficiency; and*
- (b) *the mechanism in place in each university to assess the proficiency in the Chinese and English languages of each undergraduate on a periodic basis?*

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

- (a) Details of language training courses organized by each of the publicly-funded universities in the territory for students with lower Chinese language and English language standards are set out at Annex A.

The City University of Hong Kong, Hong Kong Baptist University, Hong Kong Polytechnic University and Hong Kong University of Science and Technology require their first-year undergraduate students with low grades in Chinese and/or English language subjects in the Hong Kong Advanced Supplementary Level (As Level) Examination to attend compulsory language courses.

At the University of Hong Kong, all first-year undergraduates are required to attend English enhancement courses. Chinese language enhancement programmes are offered mainly on a voluntary basis, but are compulsory for students in the Department of Architecture.

The Chinese University of Hong Kong offers elective Chinese proficiency and English proficiency courses as well as discipline-specific English courses on a credit-bearing basis. With effect from 1996-97, compulsory language course requirements have been introduced for all first-year undergraduate students in the Faculties of Business Administration, Engineering and Social Sciences.

The Lingnan College, which is also a degree-awarding institution, requires their students with low grades in Chinese and English language subjects to attend compulsory courses.

In addition, all degree-awarding institutions have independent language learning centres where students can improve their language skills on a self-initiated and self-paced learning basis.

- (b) All publicly-funded universities have in place mechanisms to monitor their students' proficiency in Chinese and English on an on-going basis during their courses. Students' proficiency is assessed in a variety of ways including assignments, tests, projects, oral presentations and examinations. Details are set out in Annex B.

Annex A

Language Enhancement Programmes
conducted by UGC-funded degree awarding institutions

A. *The Chinese University of Hong Kong*

1. Compulsory Courses:

English for Specific Purposes (ESP) Courses were started in 1996-97 for all first-year students in the Faculties of Business Administration, Engineering and Social Science. The courses are credit-bearing and specially designed to meet the specific needs of students of different disciplines. Details are as follows:

<i>Faculty</i>	<i>ESP Courses</i>
- Business Administration	Communication for Business Studies
- Engineering	Technical Communication
- Social Science	one of the following courses: Business Chinese Chinese for Executives English Improvement Strategies II Introduction to Academic Writing Business Communication

Intensive Language Enhancement Courses. The University is actively planning for the introduction of compulsory intensive courses on English, Cantonese and Putonghua for undergraduate students.

2. Elective Chinese Proficiency Courses, English Proficiency Courses and Putonghua Courses are credit-bearing. To provide students with greater opportunities to enrol in language proficiency courses, summer sessions have been introduced from summer 1996.

3. Independent Learning Centre is a bilingual language centre encompassing a Chinese Section and an English Section, with the objective of encouraging students to adopt a self-initiated and self-paced learning approach in improving their language ability. The Centre continues to explore a greater variety of multi-facet language enhancement programmes and activities. It is also planning to extend its opening hours so as to enable students to make full use of its facilities.
4. Language Enhancement Programmes on English, Chinese and Putonghua are organized by the University's four Colleges in less formal setting with smaller groups, and in more flexible hours and dates, so as to cater for different needs of students. A total of \$4 million has been assigned for this purpose in 1996-97.

B. *The City University of Hong Kong*

1. Compulsory Courses for Full-time First-year Students:

English Foundation Programme for Undergraduate Students:

- Intensive Pre-sessional English Course (78 hours) for students who score Grade E or below in Use of English in the AS Level Examination.
- Core English Foundation Programme (28 hours) for students who score Grade D or below in Use of English in the AS Level Examination.

English Foundation Course for Diploma/Higher Diploma Students:

- Supplementary English Course for College Students (30 hours) for students who score Grade E or below in Hong Kong Certificate of Education Examination (HKCEE) English Language (Syllabus B).

- Core English Foundation Programme (28 hours) for students who score Grade D or below in HKCEE English (Syllabus B).

2. Optional Courses:

- Chinese Foundation Programmes for Degree Students (28 hours) for first-year undergraduate students who score Grade D or below in Chinese Language and Culture in AS Level examination and who enrol in courses of study that have a Chinese communication skills component.
- Chinese Foundation Programme for Diploma/Higher Diploma Students (28 hours) for first-year Diploma/Higher Diploma students who score Grade D or below in HKCEE Chinese Language.
- Putonghua Foundation Programme (56 hours) for beginners and is open to all.
- English Enhancement Programme for Research Degree Students for selected students, having taking into account the English Diagnostic Test after admission. These students are invited to attend the following courses:
 - Grammar workshop (30 hours)
 - Writing research paper (30 hours)
 - Speaking workshop (30 hours)

3. Other Enhancement Service Open to All Students:

English Enhancement Service (various modules 14- 26 hours)

Chinese Enhancement Service (various modules 14- 26 hours)

Putonghua Enhancement Service (various modules 14- 26 hours)

4. Self-Access Language Learning Centre (open to all students).
5. Other Language Enhancement Activities Introduced in 1996-97 organized to promote the facilities provided in the Self-Access Language Learning Centre. For example, four clubs are organized to boost student motivation, and to promote the use and the learning of English in an informal setting: the Conversation Club, the Listening Club, the Extensive Reading Club and the Writing Club on the World Wide Web.

C. *The Hong Kong Baptist University*

1. Mandatory Bridging Courses for Full-time First-year Students (44 hours) who score Grade E or below in the Use of English in the As Level Examination. These students are required to take this bridging course before they start their programme of studies at the University. It is a graduation requirement for these students.
2. Optional Non-credit-bearing Enhancement (not remedial) Courses for all university students to supplement their regular language courses.

Supplementary English Course

Supplementary Putonghua Course (at Elementary, Intermediate, Higher and Advanced Levels)

3. Language Facilities Open to All Students:

English and Chinese Writing Enhancement Service (WES) helps students improve their writing skills in English by means of one-to-one tutorials; produces self-study materials; publishes a newsletter providing information on language enhancement, that is; and conducts workshops. Some students are sent to the WES by

their lecturers by referral.

Writing Laboratory (WL) is equipped with 586-based computers and some audio-visual equipment and tapes, Computer Aided Language Learning programmes, newspaper clippings and books on grammar and various language skills. Apart from improving their language skills through the use of these facilities, students can do their assignments using the computers and other facilities in the Laboratory and get on-the-spot help on language matters from the tutor on duty.

D. *The Hong Kong Polytechnic University*

1. Compulsory Courses:

Supplementary English Programme is compulsory for those students who are identified by their English class teacher as in need of additional help with their English (783 students in 1995/96). The Supplementary English Programme and the Regular "Service English" programmes require students to reach a pass standard of Grade D or above in the University's common grading scheme.

Chinese Enhancement Programme is compulsory for 59 degree course entrants who have not scored Grade E or above in the AS Level subject Chinese Language and Culture. It is a 42 contact hour course specially designed for remedial purpose. There will be formal assessment and the results will be reported to the respective host departments for their consideration. The programme will prioritize the Chinese enhancement needs of students who have no Chinese component in their own curriculum.

2. English Summer Programme

3. Independent Learning Scheme

4. Centre for Independent Language Learning

E. *The Hong Kong University of Science and Technology*

1. Compulsory Courses for First-year Students:

English for Academic Purposes is conducted for all first-year students admitted with a grade below "C" in the Use of English in the AS Level Examination.

Business Communication Programme. All Bachelor of Business Administration (BBA) programmes require students to acquire the enhanced English proficiency provided by Business Communications course.

Technical Communications. All Bachelor of Engineering (BEng) programmes (except those in Civil and Structural Engineering and Mechanical Engineer), and Bachelor of Science (BSc) programmes in Biochemistry and Chemistry require students to acquire the enhanced English proficiency provided by Technical Communications course.

2. Elective Courses:

Advanced English Reading and Writing and Advanced English Reading and Speaking courses are offered as elective courses to provide advanced communication skills for business students.

Chinese Language Enhancement Programmes are elective and non-credit bearing.

3. English Writing Centre

4. Self-Access Centre

F. *The Lingnan College*

1. Compulsory Courses:

English Foundation Course is a non-credit-bearing programme for most first-year students. It is run alongside regular courses and is designed to equip students with the basic skills needed to function successfully in an English-medium tertiary institution. Students with Grade "D" or above in the AS Level "Use of English" subject may be exempted from this course.

Chinese Foundation Courses are designed for students who do not meet any of the following requirements:

- obtained a Grade "C" or above in Chinese Language in the HKCE;
- obtained a Grade "E" or above in Chinese Literature or a Grade "C" or above in Chinese Language and Culture in the Hong Kong Advanced Level Examination;
- obtained a Grade "C" or above in the course "Communication in Modern Chinese" in the College; or
- completed one of the Chinese Foundation courses.

(Students may also enrol in these courses on a voluntary basis.)

2. Language Centre has been recently established to co-ordinate and extend the provision of language courses throughout the College.
3. Self-Access Centre is a language resource centre where students will find extensive language learning materials for four main languages: English, Putonghua, Japanese and French. A variety of media and trained staff are available to assist the students. As part of this centre, the Writing Centre offers help to students with

writing problems in English, where one-to-one consultation with English teachers is available. Conversation groups are also offered.

G. *The University of Hong Kong*

1. Compulsory Courses:

English Enhancement Courses are compulsory for all first-year undergraduates in all faculties. Typically, these are run in both semesters with a total of 60 hours, including a component of guided self-access work. The number of students taking such courses in 1995-96 was 3 035.

HKU normally requires candidates for admission to have obtained a Grade D in the Use of English examination. Candidates with good HKCEE results but only a Grade E in the Use of English in the AS Level are, according to the University's announced policy, eligible for admission to a number of BSc programmes and to the BEng curriculum. Such students are identified at the start of the English enhancement programmes, and their progress is carefully monitored by the English Centre. They are encouraged to take advantage of the self-access learning facilities and provided with advice and assistance by the consultants of such services.

Business Communication Course (24 hours) are funded by the Business School as an additional compulsory course for second-year undergraduate students. This course involves 136 students.

Chinese Language Enhancement Programmes are offered to students from the Faculties of Architecture, Engineering, Law, Medicine, Science and the School of Business in 1995-96, and also the Faculty of Social Science starting in 1996-97. In the case of Medicine, the course was specifically designed for first-year Bachelor of Medicine and Bachelor of Surgery students. Only the Department of Architecture has made this programme compulsory for its students.

2. Optional Courses

Additional Putonghua and Intensive Putonghua Course.

Intensive Voluntary Course (including the Summer Institute and other intensive courses) In the summer of 1996, an additional Putonghua course was specifically offered to Engineering students, and an intensive Putonghua course to students in the School of Economics and Finance. These courses will be offered again in the summer of 1997, with an additional intensive Putonghua course to the Medical students.

English Enhancement Programmes for Postgraduate Students (on Writing support service, Thesis writing workshop and Oral English skills.)

3. Self-Access Consultancy Services

Annex B

Mechanism adopted by the UGC-funded degree awarding institutions to assess students' standard in English and Chinese languages

<i>Institution</i>	<i>Details of mechanism adopted by the institution to assess students' standard in English and Chinese languages</i>
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CUHK	<i>Credit-bearing Courses</i>
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As a formal mechanism for assessing the language standards of students who take the credit-bearing elective language proficiency courses and the language courses required by Faculties, they have to sit for and pass the examinations for the courses before they can earn the credits. Students who fail the examinations have to take the courses again and re-sit for the examinations.

Non-credit-bearing Courses

It is planned that students have to sit for and pass the examinations for the compulsory enhancement courses on English, Cantonese and Putonghua which are being planned for introduction in the University. The intensive courses will not be

credit-bearing but the University will consider recording the results of the examinations in the students' transcripts.

City U

Credit-bearing Courses

Language modules are offered as part of the undergraduate curricula as appropriate and are credit-bearing. Each module has its own assessment method, for example, by coursework and/or examination which is related to the specific objectives of the module rather than to overall language proficiency. Students are required to pass all modules, including these language modules, before they can progress or graduate. Students may need to fulfil pre-requisite requirement before they are allowed to take another language module and they should obtain a pass in the module for successful completion of the course they enrolled in. At present, there is no exit Chinese or English requirement as such.

Institution

Details of mechanism adopted by the institution to assess students' standard in English and Chinese languages

Non-credit-bearing Courses

All language enhancement courses organized by the Language Institute are non-credit-bearing but students are required to take achievement tests at the end of the course.

HKBU

Credit-bearing Courses

There is on-going assessment, through the reading/writing assignments, written projects, oral presentation, written tests, and so on for students taking the required credit-bearing language courses. Final examinations are also required for most of these courses. Though students who fail in any of the required language subjects are still allowed to progress into subsequent years of undergraduate study, they will have to repeat the subjects concerned until a pass is achieved for graduation. All examination papers and the markings are monitored by External Examiners.

Non-credit-bearing Courses

There is on-going assessment. Students' progress is monitored closely and individual needs are addressed when necessary.

Poly U

English Language

- There is continuous assessment of the English Language ability of all students on the "Service-English" programmes through a series of assignments, tests and lecturers' evaluation and, in one or two cases, an examination.

Institution

Details of mechanism adopted by the institution to assess students' standard in English and Chinese languages

- Currently there is no pre-requisite language requirement before students graduate from their studies except that they have to successfully complete the specified English components of their course (if any). All degree students from the 1997-98 academic year onwards will be required to undertake two components (one component for sub-degree students) each of 42 hours of English tuition as a mandatory minimum requirement. Students will be required to pass the English component(s) of their course before they can graduate.
- The University is introducing the Graduating Students Language Proficiency Assessment (GSLPA) in 1998. This will be compulsory for all language-based courses but "voluntary" for students of other courses.

Chinese Language

- Where a subject on Chinese language skills forms an integral part of a programme of study, there will be formal

compulsory assessment usually in the form of continuous assessment (as opposed to end-of-period examination), which includes a series of tests/tasks throughout the period of the subject, with or without a larger-scale test at the end of the period. In general, before a student progresses, he is required to pass a subject (whether a language subject or not) which is considered to be a pre-requisite for another subject in the following year of study.

- In 1995-96, exit tests on Chinese language proficiency, comprising a test on written Chinese proficiency and a test on Putonghua proficiency, were launched. The tests were made available to graduating students of programmes with a substantial Chinese language component. These students were encouraged to take the tests on a voluntary basis. However, starting from 1998-99, students of language-oriented programmes will be required to undergo the GSLPA.

Institution

Details of mechanism adopted by the institution to assess students' standard in English and Chinese languages

HKUST

- Students whose grade on the Use of English AS Level Examination are below C must get a pass in the English for Academic Purpose course, or face dismissal. With rare exceptions, this requirement must be satisfied by the end of the summer session preceding the second year of study. All students on the BBA and BEng programmes are also required to obtain a pass in the specific English enhancement courses designed for them.
- The University is considering to require all its students to take English language enhancement courses in all six semesters of study. These courses will be credit-bearing and students' performance will be assessed on a continuous basis.

LC

Exit Language Examination

- The College requires all students on its undergraduate

programmes to sit "Exit" tests in English and Chinese. The "Exit" tests will be introduced tentatively to students admitted from the 1997-98 academic year.

- These tests are general proficiency tests aimed to ensure that graduates are competent to fulfill the language needs of the workplace.
- The scores for these tests form part of a student's official transcript and are presented as Fail, Pass, Credit, or Distinction. Graduation is not dependent on successful completion of the exit tests. Students who fail one or more of the tests may retake the following year and may be awarded a Pass grade if successful, and only the latest results will be shown in the transcript.

Institution

Details of mechanism adopted by the institution to assess students' standard in English and Chinese languages

Credit-bearing courses

Assessment is either in the form of a year-end examination or continuous assessment throughout the term/year when the course is undertaken. Graduation is dependent on successful completion of these courses.

HKU

English Language Enhancement Programme

- Most compulsory English Enhancement programmes are credit-bearing courses, and grades usually appear on academic transcripts. Most courses are assessed by means of assignments and a final written test, although the Business Communication course is assessed by means of assessed course-work tasks. Failure in an English Enhancement programme does not normally bar progression to later years of study, but failing students will be required to repeat the

programme. English Enhancement courses are normally a requirement before graduation is possible.

- Voluntary courses are normally not assessed, but students may obtain an attendance certificate if they wish.

Chinese Language Enhancement Programme

The Chinese language enhancement courses are normally non-credit-bearing and are taken by students on a voluntary basis. The Department of Architecture, however, makes the Chinese language course compulsory for its second-year students. The Faculties of Science and Social Sciences require students to take one-paper examination at the end of the course. Continuous assessment is conducted during all these courses.

Injuries Caused by Falling Objects

12. **MR WONG WAI-YIN** asked (in Chinese): *At the Legislative Council sitting on 16 October 1996, the Secretary for Housing stated that the occurrence of incidents of injuries caused by falling objects in public housing estates was more obvious in Tseung Kwan O and Tuen Mun. In this connection, does the Government know:*

- (a) *of the five districts in which the problem of incidents of injuries caused by falling objects was most serious in the last three years, together with the number of such incidents in each district; and*
- (b) *of public housing estates in the districts mentioned in the answer to (a) above which are not provided with covered walkways; and what measures have been put in place by the Authority concerned to ensure the safety of residents living in these estates?*

SECRETARY FOR HOUSING (in Chinese): Mr President, in the past three years, there were 38 reported incidents of injury caused by falling objects in public housing estates. The highest number of incidents occurred in Tseung Kwan O (seven incidents), Tuen Mun (six incidents), Sha Tin (five incidents),

Kowloon West (three incidents), and Hong Kong West (three incidents). A breakdown by estates is at Annex.

Covered walkways have been provided in all the estates listed in the Annex, except Tin King Estate, Sha Kok Estate and Cheung Sha Wan Estate. A covered walkway in Sha Kok Estate will be completed by the end of this month. Construction work for a covered walkway in Tin King Estate 2 will begin in mid-1997. No covered walkway can be provided in Cheung Sha Wan Estate owing to site constraints. Nevertheless, alternative measures, such as increased patrol and regular use of estate newsletters and posters to remind residents of the danger resulting from falling objects, are in place to safeguard residents' safety.

In addition to providing covered walkways, the Housing Department will continue to remind residents of the importance of preventing objects falling from their flats. The Department has launched a territory-wide public education campaign in public housing estates and one of the key themes is on "falling objects from above". The campaign uses posters, estate newsletters, roving exhibitions and the media to remind residents of their responsibility and the danger to other people posed by falling objects.

Annex

<i>District</i>	<i>Estates</i>	<i>Number of incidents</i>	<i>Total number of incidents in the district</i>
Tseung Kwan O	Po Lam Estate	5	7
	Tsui Lam Estate	2	
Tuen Mun	Tin King Estate	2	6
	Leung King Estate	2	
	Tai Hing Estate	1	
	Wu King Estate	1	
Sha Tin	Chuk Shek Estate	2	5
	Sun Tsui Estate	1	
	Sha Kok Estate	1	
	Kwong Yuen Estate	1	
Kowloon West	Cheung Sha Wan Estate	1	3
	Shek Kip Mei Estate	2	

Hong Kong West	Shek Pai Wan Estate	2	3
	Lei Tung Estate	1	

Insider Dealing Tribunal

13. **MISS EMILY LAU** asked: *It is learnt that the Insider Dealing Tribunal has recently ordered the chairman of a company identified as an insider dealer not to be a director of a listed company for one year, but the ban will not take effect until December 1997. The Insider Dealing Tribunal has also ordered him to pay a fine of \$1.46 million and imposed an added penalty of \$1.7 million. It is also learnt that the person concerned has resigned from the chairmanship of the company with effect from 1 December last year and has appointed his wife to replace him as the company's chairman, but he would continue to render his expertise and experience to the company. In this connection, will the Administration inform this Council of the measures which will be taken by the authorities concerned to safeguard the interests of investors should similar incidents occur in the future?*

SECRETARY FOR FINANCIAL SERVICES: Mr President, we believe that the question is in relation to a recent case dealt with by the Insider Dealing Tribunal which ordered, *inter alia*, that:

- (a) the chairman (the person concerned) of a listed company identified as an insider dealer shall not for a period of one year from 1 December 1996 without leave of the High Court be a director or a liquidator or a receiver or manager of the property of any listed company or the subsidiaries of any listed company or in any way, whether directly or indirectly be concerned in, or take part in the management of any listed company or its subsidiaries; and
- (b) penalties of \$3.16 million (that is, \$1.46 million, being the full amount of the loss avoided plus \$1.7 million, being the penalty) be imposed against the person concerned.

Any person who is subject to a prohibition order and who participates in any way in the affairs of a company to which the prohibition applies should take care that his participation is not in breach of the scope of the prohibition. Under section 30 of the Securities (Insider Dealing) Ordinance (Cap. 395), contravention of a prohibition order is a criminal offence, punishable by fines

and imprisonment.

The order of the Insider Dealing Tribunal in question does not pose any bar whatsoever against the wife of the person concerned from serving as a director of the concerned company or any other company. It was announced by the company on 13 December 1996 that the person concerned resigned as director and executive director on 28 November 1996 but would continue to render his expertise and experience to the company as a consultant under a service contract. Our legal advice is that no action would need to be taken as long as the activities and action of the person concerned are not in contravention of the prohibition order. The Securities and Futures Commission, as the regulator of the securities market, will take the necessary action within its powers under the law if it appears that there has been a breach of the prohibition order, or the interests of investors are compromised.

Trading of Warrants and Covered Warrants

14. **MR CHIM PUI-CHUNG** asked (in Chinese): *Regarding the trading of warrants and covered warrants, does the Government know:*

- (a) *given that each listed company may have, in addition to its ordinary shares, a number of warrants and covered warrants which can be traded in the market, whether the authorities concerned have examined if such trading will affect the development of the market; if so, what the details are;*
- (b) *whether the authorities concerned have considered introducing legislation or issuing guidelines to regulate such trading; and*
- (c) *whether the authorities concerned have assessed the impact of these products on the levy of stamp duty on securities?*

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

- (a) An active derivative market is a positive feature and a natural development of a sophisticated financial market as long as the risk management systems and the regulatory aspects involved have been fully addressed. Warrants and derivative warrants provide companies alternatives for raising capital. They also add to the range of products available to the investing public, and are useful instruments for hedging and spreading risks.

There has been growing demand from retail investors for derivative warrants in particular. The trend is indicative that warrants have provided them access to certain securities which used to be the preserve of institutional investors and high net worth individuals.

Hong Kong's warrants and covered warrants market is now relatively mature and is one of the most active in Asia. Studies by academics and market professionals have indicated that the introduction of derivatives has not affected the trading volume of the underlying securities or increased their volatility. While there is evidence of futures-induced short-run volatility, such as that occurring on futures contract expiration days, such volatility does not appear to carry over to longer periods of time. On the contrary, since warrants have a limited life, transaction volumes would be increased when new warrants are replaced or re-issued after expiration of the old warrants. In general, the development of the market has helped to consolidate Hong Kong's position as a premier regional financial market.

- (b) There is a comprehensive set of rules governing the listing and trading of warrants and covered warrants. These rules aim at ensuring the quality and independence of the issuers, the appropriateness of the underlying shares for the issue of such warrants, and the number of warrants that may be issued on particular securities. For example:

- Issuers or guarantors must be of suitable financial standing

with net assets of over \$1 billion if regulated by specified bodies (namely, the Hong Kong Monetary Authority, overseas regulatory authorities acceptable to the Stock Exchange of Hong Kong Limited (SEHK), or those which are regulated by the Securities and Futures Commission (SFC) as registered dealers under the Securities Ordinance), or \$2 billion otherwise.

- Controlling shareholders are prohibited from issuing warrants on their own shareholdings.
- Issuers must make periodic financial reports to the SEHK.
- Underlying securities must have market capitalization of at least \$10 billion and public float of at least \$4 billion, or otherwise have exceptionally high liquidity as required by the SEHK.
- The aggregate number of warrants over a particular underlying share must not exceed 20% of total issued shares or 30% of public float.

These rules are closely monitored and revised from time to time to keep abreast of changes in the market.

In addition, the SFC maintains a data base in relation to derivative warrants and regularly tracks the market values of outstanding warrants and the expected changes in such values under various hypothetical market movements using options pricing models. This is done on a per warrant basis, per underlying stock basis, per issuer basis, and in aggregate. The SFC also collects periodic data on the hedging positions of warrant issuers, including hedging in underlying stocks.

- (c) While warrants trading may appear to reduce stamp duty revenue in the sense that warrants could be perceived as a lower priced proxy for the underlying securities, its impact on revenue is usually positive because warrant issuers often hedge their exposures via delta hedging, involving purchases and sales of the underlying

securities, which in turn generate stamp duty revenue. Moreover, stamp duty is payable if the warrants are exercised into the underlying securities and stamp duty is also payable for the trading of warrants. The impact of derivatives warrants trading on stamp duty must therefore be positive.

Legal Basis for Linked Exchange Rate System

15. **MISS CHRISTINE LOH** asked: *At present, the linked-rate system linking the exchange rate of the Hong Kong dollar to the United States dollar is an administrative practice and is not enshrined in law. As Article 111 of the Basic Law stipulates that the issue of Hong Kong currency must be backed by a 100% reserve fund and that the system regarding the issue of Hong Kong currency and the reserve fund system shall be prescribed by law, will the Administration inform this Council whether it plans to introduce legislation establishing the linked exchange rate system on a firm legal basis before 30 June 1997; if not, why not?*

SECRETARY FOR FINANCIAL SERVICES: Mr President, we have already met the requirements of Article 111 of the Basic Law referred to in the question. The Exchange Fund Ordinance provides for the legal framework for the reserve fund system. Section 4(1) of the Ordinance requires note-issuing banks to pay to the Financial Secretary for the account of the Exchange Fund the face value of the bank notes they issue or the equivalent in foreign exchange against a certificate of indebtedness issued by the Financial Secretary which they hold as backing for their note issue. Section 3(3A) of the Ordinance stipulates that the value of any coinage issued shall be credited to the Exchange Fund. This provides that the face value of the coins will go to and in effect be backed by the Exchange Fund. The Legal Tender Notes Issue Ordinance and the Coinage Ordinance respectively provide for the legal framework for the issue of legal tender notes and coins in Hong Kong.

The Hong Kong Government is fully committed to the maintenance of the linked exchange rate system, as demonstrated by the track record in the past 13 years as well as our efforts to strengthen the monetary management system for the purpose of ensuring exchange rate stability. These include the introduction, in the past several years, of the Accounting Arrangements which allows the Exchange Fund to have effective control over the level of inter-bank liquidity;

the Exchange Fund Bills programme which strengthens the Hong Kong Monetary Authority's (HKMA) ability to conduct open market operations; the Liquidity Adjustment Facility which enables the HKMA to influence short-term inter-bank interest rates. Recently, the HKMA has signed a series of bilateral repurchase agreements (involving the use of United States Treasury papers as collaterals) with eight central banks in the region to enhance further their co-operation in the efforts to maintain currency stability. There is now a high degree of credibility, both locally and internationally, on the Hong Kong Government's commitment and ability to maintain the link in the future.

Given that we have already met the requirements stipulated in Article 111 of the Basic Law and that the linked exchange rate is already a well-established system, we do not consider it necessary to introduce any new and separate legislation in respect of the exchange rate which, in any case, is not a matter for specific legislation in most other places.

Unemployment Assistance

16. **MR FRED LI** asked (in Chinese): *It is reported that the number of recipients of unemployment assistance at the end of last year has risen by nearly 90%, compared to those at the end of the previous year. In this connection, will the Government inform this Council:*

- (a) *of the reasons for the substantial rise in the number of recipients of unemployment assistance whereas the unemployment rate last year, as released by the Census and Statistics Department, showed a continuous decrease; and*
- (b) *whether the Government has any plan to grant additional allowances (such as allowances for transport expenses and monthly fee for pager service) to recipients of unemployment assistance, to enable them to meet the necessary expenses while seeking employment, and to encourage them to actively look for jobs; if so, when such a plan will be implemented; if not, why not?*

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

- (a) The increase in the number of unemployed people in receipt of Comprehensive Social Security Assistance (CSSA) benefits may be due to a number of factors, such as greater public awareness of the Scheme, improved level of benefits as well as a change in attitude towards receiving CSSA.

Greater efforts have been made to publicize the Scheme. For example, the Labour Department informs all those who register as unemployed about the Scheme, and new immigrants are also specifically informed about the Scheme on arrival in Hong Kong.

The improvements to the CSSA Scheme introduced in April 1996 have also allowed more people to become eligible for CSSA.

Nevertheless, it should be noted that while the number of CSSA unemployed cases did grow substantially by about 90% between 1995 and 1996, the growth rate slackened towards the end of 1996 to about 60% on a year-to-year basis.

- (b) Travelling expenses incurred in registering with the Labour Department and job interviews are covered by a special grant under the CSSA. There are also special grants for telephone charges (one-off and recurrent). We do not think that there is a case for introducing additional allowances for such items as pagers which are not essential for job-hunting purposes. According to the Commissioner for Labour, a contact address or a contact telephone number should be able to provide adequate avenue for keeping in touch with potential employers.

It has always been our policy to encourage CSSA recipients, especially those who have the ability to work, to seek employment to support themselves rather than rely on Government assistance:

- (i) able-bodied adult CSSA recipients aged between 15 and 59 are required to register with the Labour Department: these job seekers are offered priority in their registration with the Local Employment Service; and they will be advised to join the Employee Retraining Scheme, if it is considered useful in helping them to find employment; and
- (ii) there are provisions in the Scheme which encourage unemployed persons to look actively for work. These include the arrangement to disregard, when making an assessment on CSSA entitlement, any retraining allowance received by the unemployed person.

Hospital Authority Utilization Reviews

17. **DR HUANG CHEN-YA** asked (in Chinese): *As the Utilization Reviews conducted by the Hospital Authority have assisted in containing expenditure on medical expenses and reducing wastage, does the Government know:*

- (a) *whether the Hospital Authority has conducted any Utilization Review on the number of admissions, length of hospitalization, diagnostic and surgical procedures as well as use of drugs in the various specialist services; if not, why not; and*
- (b) *if the answer to (a) is in the affirmative, of the items in each specialist service which have been identified as inappropriately utilized, their utilization rates, the reasons for inappropriate utilization, and the proportion of the wasted resources to the total expenditure in each specialist service?*

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

the Hospital Authority adopts good management practice by examining regularly the utilization pattern, mode of delivery and cost-effectiveness of different services to identify potential scope for economization and/or resource redeployment. Variations from agreed benchmarks are carefully examined with a view to improving service efficiency.

Apart from the annual planning process which provides a broad basis for each hospital to indicate the service volume, quality and performance targets in the form of a service agreement, some major reviews on service utilization carried out by the Hospital Authority are set out below:

- medical audit provides a peer review mechanism in which the entire clinical care process, including length of hospitalization and method of treatment, is critically appraised to evaluate and improve the standard of service.
- drug utilization review committees have been established at both the hospital and head office levels to contain expenditure through dissemination of data on consumption patterns, prudent introduction of new drugs and implementation of good prescription practices.
- accident and emergency service is reviewed at periodic intervals to monitor the utilization pattern and trend of admission, as well as to identify pressure points for better demand management, service reorganization and staff deployment.
- value for money studies are carried out in respect of selected clinical support services, including diagnostic procedures, to promote the use of best practices and optimal utilization.
- specialty costing is conducted each year to generate service utilization profile as an agreed benchmark for each clinical specialty.
- in line with the corporate strategy of "outcome focused service

delivery" and evidence based medical practice, information on patient's case-mix, treatment outcome and costing is systematically collected and analysed to formulate clinical guidelines/protocols.

New initiatives arising from the above reviews cover "continuous quality improvement" and "outcome management" projects to enhance clinical outcome and optimize resource utilization, more vigorous public education on the proper use of accident and emergency services, rationalization of service induced by unfavourable variance compared with the benchmark set by specialty costing, as well as efforts to minimize variations in clinical management among different hospitals through clinical guidelines and protocols. Although the impact of these improvement measures cannot be clearly quantified, they have contributed significantly towards enhancing the effectiveness and efficiency of services delivery.

Stock Transaction Levies

18. **MR CHIM PUI-CHUNG** asked (in Chinese): *Will the Government inform this Council:*

- (a) *given that the Government favours the adoption of the "user pays" policy, of the reasons for requiring investors to bear the transaction levies in addition to brokerage and to pay stamp duties in trading stocks;*
- (b) *whether the authorities concerned will consider abolishing the transaction levies imposed on investors; if not, why not; and*
- (c) *whether the authorities concerned have considered if the above multiple-tax and multiple-fee policy will affect the territory's status as an international financial centre?*

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

- (a) The arrangement whereby the purchaser and the seller of securities recorded on the Stock Exchange of Hong Kong (SEHK) are required to pay a transaction levy is provided under section 52 of the Securities and Futures Commission Ordinance (Cap. 24). The transaction levy now contributes towards the funding of the Securities and Futures Commission (SFC) and the SEHK which are the bodies responsible for the regulation and operation of the securities market. To the extent that the two bodies serve the interests of the investing public, the levy arrangement is in line with the "user pays" principle.
- (b) As always, we are prepared to consider any proposal to reduce the total transaction costs of which transaction levy only forms a part. The securities market is well aware of our position.
- (c) We do not think that the present level of costs for securities transaction would adversely affect Hong Kong's status as an international financial centre. Our overall transaction costs compare favourably with those of other securities markets in the region, including Singapore and Tokyo. Nevertheless, we are mindful of the need to keep securities transaction costs in Hong Kong as low as possible. Over the years, we have taken a number of steps to reduce costs. The stamp duty has been reduced on three occasions since 1991 from 0.30% to 0.15%. The transaction levy has also been reduced twice since 1993 from 0.025% to 0.013%, and the Special Levy was suspended in August 1993. Regrettably, the same cannot be said of the third element which makes up the total transaction cost, namely fixed commissions. There are on-going discussions between the SFC and the SEHK, as well as within SEHK itself, regarding further ways of reducing transaction costs.

Civil Servants Going Abroad for Medical Treatment

19. **MISS EMILY LAU** asked (in Chinese): *It is learnt that the medical expenses amounting to HK\$1 million incurred by a directorate officer of the Architectural Services Department, who went to the United States several months ago for treatment of disorders of cardiac blood vessels, were paid for by the Government. In this connection, will the Government inform this Council whether:*

- (a) *it is aware of the above case; if so, of the basis on which the authorities concerned granted approval for the expenses to be paid by the Government; and what monitoring measures are in place to prevent the abuse of the arrangement of permitting civil servants to receive medical treatment in a foreign country;*
- (b) *there is an upper limit on the amount of payment by the Government in respect of the medical expenses incurred by a civil servant who is permitted to receive medical treatment in a foreign country; and*
- (c) *all civil servants are eligible to apply for receiving medical treatment in a foreign country?*

SECRETARY FOR THE CIVIL SERVICE (in Chinese): Mr President,

- (a) The Government is aware of this case. The officer was recommended to receive medical treatment in the United States for a serious and rare health condition. The form of treatment prescribed is not available in Hong Kong. Under existing policy, serving civil servants may be sent abroad for medical treatment and be reimbursed for the necessary costs involved provided that the treatment is essential on medical grounds, that such treatment is not available in Hong Kong, and that prior approval has been obtained from the Director of Health. In processing applications, advice will be sought from the attending Hospital Authority doctor, a second doctor in the Hospital Authority headquarters, and a third doctor in the Department of Health. These criteria have been applied in the case in question. The amount reimbursed was about \$640,000.
- (b) There is no upper limit set on the reimbursement of the cost of

overseas medical treatment. However, only the cost of treatment which fulfils the relevant criteria will be reimbursed. The cost of any follow-up treatment which could be carried out in Hong Kong will not be reimbursed. The criteria are applied strictly and we are confident that there have been no abuses of these arrangements.

- (c) Civil servants are eligible to apply to receive medical treatment in a foreign country, subject to the conditions listed in my answer to part (a) of this question.

CSSA Recipient Profile

20. **MR CHENG YIU-TONG** asked (in Chinese): *Will the Government inform this Council of the following in the past three years:*

- (a) *the respective proportions of Comprehensive Social Security Assistance (CSSA) cases in the unemployed and low-income categories to the total number of CSSA cases;*
- (b) *the average number of unemployed persons per household of the CSSA recipients in the unemployed category, together with a breakdown of the trades in which they were formerly engaged and the types of jobs in which they were employed;*
- (c) *the number of CSSA recipients in the unemployed category who were unemployed for a total period of:*
 - (i) *less than six months,*
 - (ii) *six months to less than one year,*
 - (iii) *one to less than two years,*
 - (iv) *two to less than four years, and*

(v) *four years or above,*

and the total number of recipients in the above groups who were aged between 20 and 50 and possessing academic qualifications above Secondary Three level; and

(d) *the average number of working persons per household of the CSSA recipients in the low-income category, together with a breakdown of their respective occupations and positions held?*

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

(a) During the period 1994 to November 1996, the percentage of "unemployed" and "low earnings" cases to all Comprehensive Social Security Assistance (CSSA) cases is set out as follows:

As a percentage of all CSSA cases

<i>Year</i>	<i>"Unemployed" cases</i>	<i>"Low earnings" cases</i>
1994	4%	1%
1995	6%	1%
1996 (January-November)	8%	2%

(b) In the same period, a CSSA "unemployed" household had, on average, one unemployed eligible member. We do not have information on the trades and jobs in which these people were previously engaged.

- (c) In the past three years, about 70% of the CSSA recipients in the "unemployed" category were aged between 20 to 49. We do not have ready information on the duration of unemployment nor the education attainment of CSSA recipients.
- (d) In the past three years, a CSSA "low earnings" household had, on average, one working eligible member. We do not have ready information on the trades and positions in which these recipients were engaged.

GOVERNMENT BILLS

First Reading of Bills

HUMAN REPRODUCTIVE TECHNOLOGY BILL

INSURANCE COMPANIES (AMENDMENT) BILL 1997

Bills read the First time and ordered to be set down for Second Reading pursuant to Standing Order 41(3).

Second Reading of Bills

HUMAN REPRODUCTIVE TECHNOLOGY BILL

THE SECRETARY FOR HEALTH AND WELFARE to move the Second Reading of: "A Bill to regulate reproductive technology procedures, and the use, for research and other purposes, of embryos and gametes; to regulate surrogacy arrangements; to establish a Council on Human Reproductive Technology; and to provide for matters incidental thereto or connected therewith."

She said: Mr President, I move the Second Reading of the Human Reproductive Technology Bill.

The Human Reproductive Technology Bill aims to put in place statutory measures to ensure that human reproductive technology will be safely practised and the rights of consumers protected.

A Provisional Council on Reproductive Technology was established in 1995 to advise the Government on the drafting of legislation and a Code of Practice. Following public consultations and advice from the Provisional Council, we propose to establish a statutory Council on Human Reproductive Technology, which will be responsible for licensing providers of reproductive technology services and persons conducting embryo research. The Council will also monitor their compliance with operational guidelines in a code of practice.

We propose to prohibit sex selection through human reproductive technology for non-medical reasons, for example, because of a family's particular reference for children of one or the other sex. Its use for medical reasons, to prevent sex-linked diseases, will be allowed subject to control. Commercial surrogacy, that is, the use of a woman who is paid to carry another couple's child, will be prohibited. Also prohibited will be trading in gametes and embryos or fetal ovarian and testicular tissues.

Having taken into account the majority of public views that the welfare of children could be best protected when they are brought up by married couples, we propose to limit generally the provision of human reproductive technology services to persons who are married to each other.

Human reproductive technology is a sensitive subject which is often complicated by ethical considerations. An Ethics Committee has therefore been set up by the Provisional Council to consider carefully the ethical aspects of human reproductive technology and make recommendations which the majority of the public finds acceptable. The Bill provides for the setting up of a statutory Ethics Committee.

Three public consultations have been conducted to gauge public views on the subject. All views expressed were carefully considered and examined by the Provisional Council and the Government when drafting the Bill.

Mr President, I beg to move.

Question on the motion on the Second Reading of the Bill proposed.

Debate on the motion adjourned and Bill referred to the House Committee

pursuant to Standing Order 42(3A).

INSURANCE COMPANIES (AMENDMENT) BILL 1997

THE SECRETARY FOR FINANCIAL SERVICES to move the Second Reading of: "A Bill to amend the Insurance Companies Ordinance."

He said: Mr President, I move that the Insurance Companies (Amendment) Bill 1997 be read a Second time.

The main objectives of the Bill are to amend the Insurance Companies Ordinance to provide regulatory concessions for captive insurance in Hong Kong and to empower the Insurance Authority to make regulations to specify professional standards to be observed by Appointed Actuaries for enhanced protection of policy holders.

It is the Government's aim to enhance Hong Kong's status as a regional insurance centre and the development of captive insurance business has been identified as one of the means to achieving this. We believe that the development of captive insurance would promote competition in the market place and provide a wider range of insurance options. Moreover, the establishment of captive insurance companies would also bring about an inflow of capital funds and new business, and also provide additional job opportunities.

To encourage multinationals and overseas conglomerates to set up captive insurance companies in Hong Kong, we propose to relax some of the regulatory requirements under the Insurance Companies Ordinance. The proposed regulatory concessions include the lowering of the minimum paid-up capital and solvency margin requirements, and exemption from the local asset requirement and the valuation regulation.

The proposed concessions are considered appropriate because a captive

insurance company only underwrites business from its group companies and no outside parties are involved. To ensure that the protection afforded to third party claimants under compulsory insurance requirements on employees' compensation, and motor and vessel liabilities insurance in respect of risks located locally, a captive insurance company is not allowed to underwrite such business, even from its own group. We believe that our proposal strikes a balance between our wish to be competitive on the one hand and the need for maintaining the integrity and reputation of Hong Kong's regulatory regime on the other.

The Bill also empowers the Insurance Authority to make regulations to specify professional standards to be observed by an Appointed Actuary of a long-term business insurer and to monitor the compliance with such standards by the actuaries. This proposal will enable the Insurance Authority to implement the full-fledged Appointed Actuary System, such as that practised in other jurisdictions, whereby the Appointed Actuary is not only responsible for valuation of liabilities but also for reporting on other aspects of the financial condition of the business such as reserving and investment policies. This will enhance the protection of policy holders.

The opportunity is also taken to incorporate the detailed provisions of the Life Insurance Act 1774 of the United Kingdom into the Insurance Companies Ordinance. This Act requires that a person taking out an insurance contract must have an insurable, in other words pecuniary, interest in the life or event insured. Such requirement is an important safeguard against abuses by policy holders whose motives are to profit from wagering on lives and events which they have no insurable interest. The Act currently applies to Hong Kong through the Application of English Law Ordinance. It is however referred to by title only in that Ordinance and it would be tidier and more transparent if the detailed provisions of the Act are incorporated into the Ordinance itself.

Finally, the Bill seeks to recognize that a parent has an insurable interest in the life of his/her child. This is to rectify the anomaly recently identified by the insurance industry that juvenile policies, whereby a parent takes out insurance on the life of his/her child and naming the parent as a beneficiary, are illegal in Hong Kong, following the United Kingdom's common law. In addition, the Bill also recognizes that a guardian has an insurable interest in the life of his/her

ward to cater for the situation where the parents are deceased and the maintenance of a child depends upon the guardian.

Thank you, Mr President.

Question on the motion on the Second Reading of the Bill proposed.

Debate on the motion adjourned and Bill referred to the House Committee pursuant to Standing Order 42(3A).

MEMBERS' MOTIONS

PRESIDENT (in Cantonese): Two motions with no legal effect. I have accepted the recommendations of the House Committee as to the time limits on speeches for the motion debates and Members were informed by circular on 13 January. The movers of the motions will each have 15 minutes for their speeches including their replies, and another five minutes to speak on the proposed amendments. Other Members, including the movers of the amendments, will each have seven minutes for their speeches. Under Standing Order 27A, I am obliged to direct any Member speaking in excess of the specified time to discontinue his speech.

LEGISLATION ON FAIR TRADE AND SETTING UP OF THE COMPETITION AUTHORITY

MR FRED LI to move the following motion:

"That, as the Consumer Council has, in its report on the overall review and assessment of the competition environment in Hong Kong, recommended, among others, that Hong Kong should introduce a fair competition policy, enact fair competition legislation and establish a Competition Authority, so as to promote fair competition for the benefit of the industrial and commercial sectors and consumers, and strengthen Hong Kong's competitiveness on the international level, this Council urges the Government to accept the principles of formulating a fair competition policy, enacting fair competition legislation and establishing the Competition Authority put forward by the Consumer Council, and to listen to the views of this Council and the public, so as to decide on the specific

details and contents for implementing such principles."

MR FRED LI (in Cantonese): Mr President, the motion we are debating today can be regarded as a continuation of the motion moved by Dr the Honourable LAW Cheung-kwok in mid-1996. The motion moved by Dr LAW last time was to urge the Government to enact legislation on fair trade as well as to set up a Fair Trade Commission and it was carried by this Council. However, when the Secretary for Trade and Industry gave her speech in reply, she used the study report of the Consumer Council as a shield and made no commitment regarding the enactment of legislation on fair trade.

The Consumer Council has recently given us a very clear conclusion, and that is Hong Kong should introduce in full the fair competition policy, enact the legislation on fair competition, as well as set up the Competition Authority. As such, I am moving this motion today to urge the Government not to find excuses to delay the necessary actions any more but to accept the principles proposed by the Consumer Council and carry out the necessary work as soon as possible. However, as for the specific details, further discussion should be necessary.

I would like to stress that this is my intention to highlight the term "principles" in my motion. It is my hope that the details could be formulated after the general public as well as Members of this Council have expressed their opinions. I do not believe that each and every principle recommended by the Consumer Council would be fully agreed to by all of us, but I do hope that my Honourable colleagues would accept the principles as a general premise and then formulate the details.

As such, it is my hope that Honourable colleagues who voted in support of the motion last time would support today's motion as well. I also hope that those Members who abstained from voting or voted against the motion last time would think it over again, face the situation of unfair competition in Hong Kong squarely, take the needs of Hong Kong into serious consideration, and support this motion.

Last Christmas, I received several friends from overseas and they asked

me a number of interesting questions that I could not answer. A friend from Thailand asked me, "In Thailand, petrol prices differ from company to company. How come the petrol prices charged by different petrol filling stations here in Hong Kong are the same?" Certain, each and every petrol station would also give out bottled distilled water to drivers. But why are the petrol prices essentially the same? Another friend from the United States asked me, "Why are the package tour fees charged by different travel agencies more or less the same?"

How are Members of this Council going to answer these questions? I think we will have a hard time giving an answer because we could not say as a matter of fact, "This is the result of competition in a free market." These two questions have caused me to think about other existing problems concerning fair competition, such as why competition does not exist in these trades while other trades have to face keen competition in terms of prices and fees? I repeat, "prices and fees". In the present situation, does it not imply that travel agencies or petrol companies that are poorly operated do not need to improve their services or enhance their efficiency to safeguard their profit margins? The competition they are engaged in with regard to prices and fees is by no means severe. Is this fair to those enterprises that are highly efficient? Why should there be standardized rates such that consumers cannot enjoy reasonable prices and fees?

In fact, unfair competition does exist in different trades in Hong Kong, and what I have pointed out is just the tip of the iceberg. If we are careful enough to examine the world around us, we could discover many potential anti-competition activities: Property purchasers have to pay the solicitors for their services at fixed fees and cannot "shop around". As a matter of fact, some people do try to do that secretly, but on the surface, no one could choose a law firm by "shopping around". Learner drivers have no choice as there is only one driving school in the territory. Sometimes if one needs to take out a mortgage, he or she might be forced to hire a specified insurance company instead of "making an independent choice". As such, we can see that in an anti-competition market, the consumers are at the mercy of the service providers and are "paying money for suffering".

On the other hand, unfair competition also makes it impossible for new enterprises to enter the market, thus limiting their scope of business. In

addition, competitive enterprises would be denied of the chance to develop fully and to earn more profits.

The aforementioned activities of unfair competition are by no means new to us. They have been existing for a long period of time. However, under the present system, nothing could be done against such a situation. As such, if the Government is to combat and prevent anti-competition activities, as well as to safeguard competition in a free market, the only way will be to formulate a fair competition policy, enact the legislation on fair competition and set up the Competition Authority. Besides, these three measures are fully indispensable, missing any one of them would render the rest useless. If a fair competition policy is to be formulated without the laws that authorize the Government to tackle anti-competition activities, or if the Competition Authority is not empowered to conduct in-depth investigation or to require the commercial institutions concerned to submit the information it requests, all the efforts that have been made will be either "mere gestures with no effect" or empty slogans.

Mr President, I will now speak on the arguments put forward by some businessmen and academics against formulating a fair competition policy and enacting fair competition legislation.

Firstly, some people believe that: "To formulate a fair competition policy is the same as to exercise government control. It is an intervention in the basic principles of Hong Kong's free market economy."

In my opinion, this comment is running against the principles of free market economy and the rule of law in Hong Kong. To formulate a fair competition policy does not necessarily lead to an increase in the monitoring of enterprises. In fact, such a policy might help to relieve some industries of their existing monitoring measures such as price control. Besides, the legislation on fair competition is just like the existing regulations on the protection and enhancement of market mechanism, such as the laws enacted to safeguard intellectual property and to monitor the banks. As such, the legislation on fair competition should not be regarded as UFOs, terrifying beasts or aliens. The legislation on fair competition is just a set of rules of the game, its functions is

just like that of a referee in a ball game, which is not to hinder the game but to help the players compete fairly.

There are other people who believe that: "Although legislation on fair competition does not exist in Hong Kong, the actions against as well as supervision over the monopolistic operations of certain industries such as telecommunications and public utilities should be enough to safeguard the interests of the consumers."

Such attitude of drifting along aimlessly really warrants discussion. Both the economic structure as well as the markets are constantly changing, and no one can guarantee that industries and markets will remain high competitive and open in the long run. For instance, in those countries that have enacted legislation on fair competition such as South Korea and Taiwan, anti-competition activities still exist there; and if the British colony Hong Kong is regarded as a part of the United Kingdom, which has set up its own competition authority, then anti-competition activities are also found there. In addition, the existing measures targeting anti-competition activities have obviously failed to tackle the problems that I have mentioned. Fair competition in all aspects could provide a set of mechanism and standards by which potential anti-competition activities in all industries can be tackled.

In addition, some academics noted, "The legislation on fair competition will cover all modes of business operation. In order to avoid any breach of the law on "bundled sales", the shoe makers could not put up the left shoe with the right shoe for sale while the computer dealers could not sell their computers with software together. As such, normal commercial activities will be affected and the interests of the consumers will be hampered in turn."

The assumption behind this criticism is that the interpretation of the law and the judgement concerned are indiscriminately made and that there is no mechanism for appeal. If such assumption is valid, then not only the legislation on fair competition but all other laws and regulations would also cause similar disastrous consequences.

In fact, the Competition Authority will only investigate those activities

that are suspected of having violated fair competition. For instances, is the price war among the newspapers a kind of cut-throat competition; or would the investment made by the Civil Aviation Administration of China in Dragonair be in breach of fair competition? Moreover, if any enterprise is not satisfied with the decision of the Competition Authority, it may appeal against the decision. As such, all normal commercial activities would by no means be affected.

Some academics queried, "The Competition Authority has both the power to enforce the law and the power to make judgment. In other words, it possesses not only the authority to investigate but also the power to issue injunctions and even inflict fines. Such an arrangement is in breach of the existing legal system."

This argument is neither true nor correct because a number of existing executive authorities as well as government departments do have similar functions. For instance, the Urban Services Department and the Buildings Department have both the power to enforce the law and the power to take actions against any breach of the law; and the Broadcasting Authority, the Securities and Futures Commission, as well as the Telecommunications Authority possess not only the executive power but also the power to make judgement and mete out punishment. That means they can issue warnings against or inflict fines on any party that has violated the relevant regulations. In view of such, to empower the Competition Authority to enforce the law and to make judgment is not in breach of the existing legal system. As for the scope of authority of as well as control cover the Competition Authority, these are issues that can be defined in detail later on.

Mr President, I think the Government should commission a study on the formulation of a fair competition policy, the enactment of legislation on fair competition, as well as the establishment of the Competition Authority as soon as possible. The study should cover the scope of the legislation on fair competition; the issue of defining the anti-competition activities by market structure, market behaviour or by market performance; the composition of the Competition Authority, as well as its scope of investigation and power of law enforcement; the issue of using an independent institution or the court as a channel for appeal and so on.

Later, the Honourable SIN Chung-kai and Dr the Honourable Anthony CHEUNG from the Democratic Party will speak on the benefits of the legislation on fair competition and that of the Competition Authority respectively.

With these remarks, I move the motion.

Question on the motion proposed.

MR JAMES TIEN's amendment to MR FRED LI's motion:

"To delete "so as to promote fair competition for the benefit of the industrial and commercial sectors and consumers, and strengthen Hong Kong's competitiveness on the international level,"; to add ", while supporting the principle of promoting fair competition," after "this Council"; and to delete "to accept the principles of formulating a fair competition policy, enacting fair competition legislation and establishing the Competition Authority put forward by the Consumer Council, and to listen to the views of this Council and the public, so as to decide on the specific details and contents for implementing such principles" and substitute with "to conduct an in-depth study on the aforesaid report and listen to the views of this Council and the public, in order to consider whether or not to formulate the relevant policies for promoting Hong Kong's free market operation and safeguarding Hong Kong's competitiveness in the international area"."

MR JAMES TIEN (in Cantonese): Mr President, I move that Mr Fred LI's motion be amended as set out under my name in the Order Paper.

Mr President, I absolutely support the concept of fair competition and the principle of anti-monopoly. The brilliant achievements made by Hong Kong over the past decade or so have been wholly attributed to a competitive business environment that enables all kinds of trades and industries to compete fairly. In fact, numerous authoritative economic journals have listed Hong Kong as one of the economies that enjoy the highest degree of freedom in the world.

A great majority of the some 4 000 members of the Hong Kong General Chamber of Commerce are consumers that come from the commercial and industrial sector. Most of them need to pay water charges, electricity charges and rents. Their employees need to take the Mass Transit Railway and buses

too. Only one or two companies such as the telephone company and the electricity companies provide such services themselves. For this reason, I believe, on behalf of the Hong Kong General Chamber of Commerce, I can put forward most of the issues of concern to the commercial and industrial sectors.

At a meeting of this Council's Panel on Trade and Industry yesterday, the Chairman of the Consumer Council, Professor Edward CHEN, was invited to attend and he presented a report compiled by the Consumer Council. The report has raised a number of points and the most important of which is since 1993, the Consumer Council has compiled a number of reports. These reports covered sectoral studies on the competitive environment of such markets as the broadcasting industry, telecommunications industry as well as residential property. In my opinion, this is a right approach. If a certain area has problems, we should appoint experts to make improvement in that area. Such practice will enable Hong Kong to perform better in terms of fair competition.

Citing the property market and the gas company as examples, Prof CHEN said as far as the property market is concerned, building lots owned by seven developers at present account for 70% to 80% of the total land reserves of Hong Kong. Under such circumstances, even an additional allocation of land will not bring property prices down. This is because all the land will be bought by the seven developers or they will keep the land instead of selling it. The Consumer Council proposes that this problem can be solved by reducing the areas of building lots to be sold. We are absolutely in support of this point. However, after the enactment of fair competition legislation, if it is required that the seven major developers must sell the land in their hands before they are allowed to bid for land at land auctions, I think not even the Financial Secretary will like to see such things happen.

Another example cited by Prof Edward CHEN is the monopolization of the gas fuel market by the gas company. It is proposed that the gas company should lease gas pipelines to other companies to enable them to compete with one another. Under such circumstances, how much in rental the gas company shall charge? Should the amount of rental be controlled by this Council? If the rental is to be set at a very low level, who will bother to invest hundreds of millions of dollars to build gas pipeline networks and have them rented to another company for the supply of gas? Eventually, some new areas may go without gas pipelines at all.

Prof CHEN also mentioned that at the beginning, the commercial and industrial sectors in Taiwan were against the enactment of legislation. However, after the enactment of legislation in 1990, the commercial and industrial sectors in Taiwan agreed that the result was excellent. I only heard of such remarks yesterday and I hope that Prof CHEN can provide more information about the practice in Taiwan for our reference. Nevertheless, is the political or business environment of Taiwan applicable to Hong Kong?

It is in fact very difficult to expect all goods to be "of low prices as well as good quality". A lot of goods are "of low prices but inferior quality"; while some are of "good quality but high prices". As far as the commercial and industrial sectors are concerned, they may need to pay higher electricity charges, but it is always better than taking the risk of electricity failure at any time. Can we believe that the enactment of fair competition legislation will enable the two electricity companies to compete against each other and the setting up of a few more power stations will make electricity charges cheaper? I believe this is not going to happen. Other franchised services such as the bus services and the Mass Transit Railway have already had their monitoring systems. As a matter of fact, will all the goods be "of low prices as well as good quality" after enacting the fair competition legislation? I think the result may not be like this.

The Honourable Martin LEE of the Democratic Party said at a meeting of this Council's Panel on Trade and Industry yesterday that a lot of services provided by the business sector in Hong Kong have reached Grade A. But would it not be better if Grade A+ or A++ could be reached? I absolutely agree with Mr Martin LEE that a great majority of the services provided in Hong Kong have reached Grade A. However, is it necessary to make such huge changes by enacting fair competition legislation, and setting up the Competition Authority and an appeal board in order to reach Grade A+ or A++? As far as the existing government policy is concerned, when individual industries such as the telecommunications and mobile telephone industries develop problems, the Government will appoint experts to study and deal with the cases individually. In so doing, the standards of individual industries have already been able to rise from Grade A to A+ or even A++. If a sweeping change is to be made by enacting such legislation, the standards of some services may drop from Grade A

to A- or A--. In that case, it will not be possible to meet the demand of the Democratic Party.

Mr President, though I have put forward numerous reasons of my objection, the Hong Kong General Chamber of Commerce will still need to wait until 21 January before it can hold a meeting with the Chairman of the Consumer Council to discuss this issue. For this reason, the amendment I move today is very simple. I ask Members to support that we should first listen to the views of this Council and the public before deciding on whether or not to enact fair competition legislation and establish the Competition Authority. According to the Honourable Fred LI's original motion, there is simply no need to listen to further views. He is saying that this Council should agree with enacting legislation and establishing the Authority first before discussing the relevant details.

Mr President, with these remarks, I move my amendment.

Question on the amendment proposed.

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

MR LAU CHIN-SHEK (in Cantonese): Mr Deputy, an open and fair economic system and a government which takes the fair competition policy seriously have basically no need to be afraid of the enactment of fair competition legislation. On the contrary, a Competition Authority should be set up speedily in order to demonstrate the Hong Kong Government's determination to support fair competition.

Although the general public might not understand very well the minute workings of the laws of the economy, their discontent with and their complaints against the public utilities and other large corporations which provide services in their daily lives clearly demonstrate the present problem of overpricing as a result of the quasi-monopolization of certain service markets by large corporations.

When this Council discussed the fact of the dominant market position of the Gas Company in 1995 and at the end of 1996, the unfair competition in the gas fuel market was already revealed. A large number of consumers are forced to use town gas because there is no other choice. What is particularly provoking is the fact that even now the Government still refuses to legislate to monitor the charges and service of the Gas Company. The Gas Company has been increasing its charges from year to year and there came another increase early this month. Nevertheless, the nearly one million town gas users have no choice but to accept it.

Similarly, the telecommunications market is faced with these problems. Regarding the provision of services by Hongkong Telecom as a group, the previous dominant position it enjoyed in monopolizing the market has made it impossible for many telecommunications companies which newly join the market to get a fair competitive environment. As a matter of fact, since the IDD international telephone service is still under the monopoly of Hongkong Telecom, the company is in an advantageous position both in the provision of telecommunication services on the whole and even in the competition for customers through predatory pricing. Will Hongkong Telecom abuse its dominant market position so as to cause unfair competition in the telecommunications market? This is something that consumers would really like to know.

Another example I would like to cite is the recent competition in the credit card market. Lately, American Express (AE) has been actively promoting that its credit cards charge a lower interest rate. This has made the VISA Company extremely unhappy. According to newspaper reports, VISA has threatened many operators that if any of them accepts AE credit cards, VISA would not let that operator accept VISA. Although the head offices of AE and VISA in the United States have subsequently reached a settlement, the question as to whether such behaviour amounts to abuse of market power has given us cause for concern.

In recent years, the Consumer Council has received quite a number of complaints about unfair competition involving different public utilities, banking services, supermarkets, real estate developers and the travel industry. It can be

said that almost all consumer services related to the public have been the subject of a large number of complaints. There are also plenty of complaints which do not fall within the Consumer Council's ambit. For instance, there are complaints lodged by suppliers against major supermarkets for imposing harsh supply terms which go against the principle of fair competition. However, there are no authorities that are responsible for handling such complaints. Although the Consumer Council is empowered to receive certain complaints, it has been reduced to a "toothless tiger" since there is no fair competition legislation in Hong Kong and there is no statutory commission empowered to investigate or even give verdicts. As a result, the public who lodge complaints are becoming more and more disappointed. Even the staff of the Consumer Council who are responsible for handling complaints might feel equally helpless. Since the Consumer Council, as an independent body, is commissioned by the Government to conduct a study on fair competition, the findings of the Consumer Council should be respected and taken seriously. I therefore urge the Government to accept the Consumer Council's recommendations and enact legislation speedily for their implementation.

Of course, as I have always said in the past, "competition" is certainly no panacea. Sometimes, for the sake of safeguarding the interests of consumers, it is necessary to legislate to monitor some services, especially some of the large public utilities. I am extremely dissatisfied with the fact that the Government always shirks its responsibility for protecting the public's interests. On the one hand, it indicates that there is already sufficient market competition when the public opinion asks for regulation while on the other hand, it says that one should not interfere with the operation of the market when the public opinion demands fair competition. I reiterate that no matter whether fair competition legislation is to be enacted or government regulation is to be strengthened, the interests of the public — that is, the consumers — must come first.

Mr Deputy, with these remarks, I support the original motion. Thank you.

MR CHAN KAM-LAM (in Cantonese): Mr Deputy, the enhancement of sound competition in a free market occupies an important position in the economic policy of the Democratic Alliance for the Betterment of Hong Kong (DAB). In many past debates in this Council, I pointed out that the Government should formulate policies aimed at achieving market liberalization, creating a friendly

business environment, promoting market competition, and establishing free market mechanisms. Such policies are helpful in respect of cost reduction, consumer interests and even the monitoring public utilities.

The Consumer Council has recently released a research report on fair competition. We welcome the report because it contains many ideas which merit study and discussions by the Administration and various sectors of the community.

However, the DAB hopes that the Administration will listen with an open mind to the opinions voiced by different sectors on the report of the Consumer Council. Any policies which may affect the operation of our economy should be formulated with the main direction of maintaining the free market economy of Hong Kong, enhancing its competitiveness and looking after the interests of consumers.

Mr Deputy, a free economy is an important factor contributing to the success of the territory. The degree of freedom enjoyed by the local economy has gained the recognition of the international community. For three consecutive years, the American Heritage Foundation has rated Hong Kong as a place with the freest economy in the world. So, even though there is no fair competition law in Hong Kong, this does not mean that there is an absence of fair competition in the local economy or that investors are given no room to operate their business freely. Indeed, time and again the Administration has reiterated the basic principle that market forces should as far as possible not be tampered with. The Administration also considers that non-intervention is the best way to enhance competitiveness and efficiency and to reduce costs and prices.

Moreover, the Administration may also draw up policies for some trades with the aim of fostering market liberalization and promoting competition. In this way, new operators can be admitted to those markets which lack competition, thus protecting public interests and preventing the emergence of market monopolization.

Therefore, the DAB supports the Government's efforts to create a competitive and highly transparent business environment, where market forces are left to improve operational effectiveness and to provide better products and services. What is more important is that consumers can thus be benefited, a good example being the liberalization of the telecommunications market.

Of course, we do understand that free competition cannot replace the Government's administrative regulation in all types of goods and services market. For some markets characterized by "natural monopoly", there is indeed a need for a regulatory mechanism of some kind.

Mr Deputy, we do not agree entirely to the recommendations made by the Consumer Council in its report, nor can we full accept its analysis and conclusions regarding some local market structures, practices and performance. We maintain that a number of the ideas are open to questions and further discussion. We, however, agree that competition can lower domestic operating costs; that the promotion of competition through market liberalization can reduce the pressure exerted by international trade relations on Hong Kong; that complaint mechanisms should be set up for people adversely affected by unfair competition to redress their grievances and so on. But, as we all know, since business practices in a free market economy are never of one kind, we must make sure that our mechanisms for promoting fair competition can fit the realities of the local context.

The recommendation on fair competition law aside, what is of crucial significance in the report is the setting up of an authority with the real power to conduct research and investigation. This, together with the fact that the proposed appeal mechanism will go beyond the local judicial system, has led to the worry that the Competition Authority may become too powerful, to the extent that it may become the "military police" of the free market or even a tool used by unscrupulous businessmen to beat their competitors. Ultimately, this will produce a negative effect on our free economy. The DAB urges the Government to conduct an open consultation and study as soon as possible and to address the issues concerned. It should decide whether there is a need for relevant laws only after detailed and comprehensive consideration.

Mr Deputy, there is no rose without a thorn. The enactment of fair competition legislation can let the international community know that the Hong Kong Government is determined to enhance competition. At the same time, however, we also expect a lot of disputes in the future.

Mr Deputy, in the course of economic competition, we all hope that the participants can compete in a fair, open and free environment. The Consumer Council hopes that the proposed Competition Authority can act as a referee in

such a competition, but its proposal is not the only choice. The quality of the referee will directly affect the course of a match and the response of spectators, and this is the factor which must be carefully considered if our free economy is to be maintained.

Mr Deputy, there are my remarks.

DR LAW CHEUNG-KWOK (in Cantonese): Mr Deputy, I initiated a debate on a similar motion during the last legislative session and the motion was carried. However, even today, quite a number of people in the business sector still maintain and worry that the legislation on fair trade would intervene in the market and undermine the free market mechanism in Hong Kong. My view is that it is precisely because certain markets cannot operate effectively that the Government is asked to draw up a set of comprehensive and highly transparent rules of the game so as to ensure that the market operates in an effective and fair manner.

In the western world, especially in some developed economies, similar legislation was already been in place over a century ago. In many developing countries and regions, including China, Taiwan, South Korea and India, such kind of legislation has also been enacted. In comparison, while promoting and maintaining Hong Kong's position as an international financial, commercial and trading centre, the Hong Kong Government has been ignoring the need to enact any legislation on fair trade, nor does it have any comprehensive idea regarding such concept. This kind of policy is very feudalistic and conservative.

This time the Consumer Council has already put forth some rather moderate recommendations in a pragmatic way regarding the legislation on fair trade: Firstly, prohibit companies from making mutual agreements that hinder market competition; and secondly, prohibit those companies which have a large market share from abusing their predominant position to hinder or curtail competition. In addition, the Consumer Council also recommends that two provisions which are more controversial in nature and rather complicated be set aside for the moment.

In respect of penalty, I agree to the recommendations, which include prohibition, as proposed by the Consumer Council, that is to say, all commercial agreements which violate the legislation on fair trade such as the agreement on "uniform price" will become void immediately. Besides, the Competition Authority may require the offender to compensate the victim. This measure is more lenient than those in the western world which might send the persons-in-charge of the companies involved to imprisonment. As a matter of fact, I share the view that at the initial stage of legislation, the provisions for penalty need not be too harsh.

However, about certain recommendations made by the Consumer Council, such as the terms of reference of the Competition Authority, I do have some reservations. The recommendations say that the Authority should be independent of the administrative framework of the Government, and it is for the Chief Executive to appoint professionals as chairman and members of the Authority. Whenever the Authority has doubts over any practices which would hinder market competition, it will proceed to investigate and arbitrate. No doubt, such a mode of operation is more effective, but given the fact that the Authority has the powers of investigation, enforcement and arbitration all in one, would the powers of the Authority be too great? Also, would there be any appeal channel? How can a balance be struck between fairness and efficiency? In my opinion, these are the aspects that need to be studied in detail.

In fact, I was in the process of drafting a Members' Bill on fair trade to be submitted to this Council, and the principles of my Bill are more or less the same as the recommendations made by the Consumer Council. However, since the Government has agreed to give full consideration to the recommendations made by the Consumer Council, I have decided to shelve my Bill for the moment. I therefore hope that the Government will concentrate its efforts and put into practice the recommendations of the Consumer Council as soon and as fully as possible. In short, I support the recommendations made by the Consumer Council and the original motion moved by the Honourable Fred LI today.

DR ANTHONY CHEUNG (in Cantonese): Mr Deputy, this is already the third time in three years that this Council debates the issue of fair trade legislation or fair competition. Just now, the Honourable Fred LI, on behalf of the

Democratic Party, stated our views and some analyses in relation to fair competition policy and the enactment of legislation. Therefore, I am not going to repeat them here. I only want to respond to some of the remarks made by the Honourable James TIEN when moving his amendment just now. He seemed to have hinted that the Democratic Party intended to rush the legislation on fair competition through without conducting detailed debates and careful studies. I would like to state some facts in relation to what he said.

During a motion debate conducted by this Council as early as 17 February 1993, Mr Fred LI already moved a motion urging the Government to formulate legislation and policies on fair trading as well as setting up a fair trading authority to implement relevant policies with a view to rectifying any unreasonable phenomena of market domination and safeguarding fair competition and the interests of consumers. On behalf of the Government, the Secretary for Trade and Industry at that time responded that he would further examine the issue and consider carefully the views expressed by Members of this Council. In addition, he remarked that the Government would allocate funds to the Consumer Council to conduct relevant studies. Based on the findings of the studies, the Government would, where necessary, revise the current policies and formulate new policies and, if appropriate, consider introducing changes in legislation and in the systems. During a motion debate moved by our Honourable colleague Dr the Honourable LAW Cheung-kiok on 29 May last year on fair trade, the Government stated that it would consider carefully the findings of a comprehensive study made by the Consumer Council on Hong Kong's competitive environment as well as the opinions of members of the community before making its conclusion.

The Consumer Council published the relevant study report at the end of last year. In the report, the Council pointed out that "a comprehensive competition policy and a body of law can remove barriers to entry and ensure free competition which is not distorted by price fixing, market sharing or other anti-competition practices". It is recommended that Hong Kong should introduce relevant policies on fair competition and enact relevant legislation. It is also proposed that the Competition Authority should be set up to play the role of a "referee" to ensure that in accordance with the rules of the game for safeguarding fair competition, both the businesses and the consumers will be

"winners".

In fact, over the past few years, we have conducted numerous debates on fair competition. We all know very clearly the views and rationale for supporting or opposing the promotion of fair competition policies and the introduction of legislation. In the motion moved on 29 May last year, Dr LAW Cheung-kwok mentioned specifically the enactment of fair trade legislation and the setting up of a fair trading authority. The report compiled by the Consumer Council has also elaborated on why Hong Kong needs to formulate fair competition policies and why it needs to set up the independent Competition Authority. It is my view that members of the community have already discussed these issues for a number of years and the views of all parties concerned have been made clear. If the Government still adopts a delaying tactic at this stage by insisting that it needs to study the matter and, as proposed by Mr James TIEN in his amendment, needs further studies, it is actually turning a blind eye to the result of the discussions conducted over the past few years, the various demands of the society as well as the commitment made to this Council by the Government in the past.

Undoubtedly, it is imperative for us to formulate an effective policy on fair competition and set up an effective competition authority in order to maintain Hong Kong's competitiveness in the international community. Of course, we should not believe that the economic development of a region or a nation can rely solely on governmental intervention. Yet we should also not blindly believe that a free market economy is the only way to ensure effective operation of the market. It is our belief that fair competition is the basic principle that conforms to justice and economic effectiveness in the modern economy. A fair competition policy and the law can help make the mechanism of a free market more perfect. In fact, all the people of Hong Kong, including people in the relevant businesses and the general consumers, will be benefitted eventually.

Mr Deputy, some people doubt the feasibility of promoting fair competition. Some commentators pointed out that, apart from possessing investigation power, the Competition Authority proposed in the Consumer Council's report is also empowered to issue prohibition orders to offenders or even impose fines. Moreover, it can grant appropriate compensation to the victims. They feel that this could jeopardize the principle of "separation of powers". Is the matter really so serious?

First of all, if the fair competition policy is only an administrative

measure, its effectiveness and binding power will definitely fall short of comprehensive and well-coordinated legislation. However, if there is only the legislation without an enforcement organ, the legislation will only become a "toothless tiger". Therefore, as far as fair competition is concerned, it is imperative for us to set up an effective and independent competition authority. Its functions should include:

1. To implement the fair competition policy and advice on the relevant policy and legislation; and
2. Be empowered to investigate cases that contravene the fair competition policy and legislation.

To ensure the successful operation of the fair competition policy, these functions are indispensable.

Legally speaking, the concept of "separation of powers" carries a very wide meaning and I have no intention to conduct an academic discussion here. In fact, there are a number of statutory bodies (such as the Commissioner for Administrative Complaints and the Equal Opportunities Commission) in Hong Kong that are empowered to investigate cases. Therefore, investigation power itself does not go against the principle of the so-called "separation of powers". The Consumer Council's report proposes that we can consider whether the Competition Authority should be given the prohibition power. Of course, this point is for consideration only and we can conduct further discussions. Nevertheless, even though Members may have reservation about such power, they should not use this as a reason for negating the principle of setting up the Competition Authority. Furthermore, it is most important that while these independent bodies exercise the power conferred by the legislature through legislation, the system provides that the judiciary still has the power to conduct judicial reviews or make remedies in connection with the decisions made by these independent bodies. This is a very important spirit of the "separation of powers".

Mr Deputy, with these remarks, I support the original motion.

MR NGAN KAM-CHUEN (in Cantonese): Mr Deputy, it is the goal pursued by

all in a modern commercial society to establish a level playing field, promote fair trade and protect consumer welfare. Recently, consumer council has put forward a series of recommendations on fair competition policy. The Democratic Alliance for the Betterment of Hong Kong (DAB) does agree to the direction under which efforts are to be made to promote competition in the business sector. But we have serious doubts about the effect of the ways recommended by the Consumer Council. Regarding the recommendations, we are worried that such a policy will not only harm the interests of the consumers but will also be detrimental to the freedom of operation that the local business sector enjoys in the long run.

The Honourable CHAN Kam-lam has talked about the DAB's views on the enactment of the legislation on fair trade with regard to the impacts of the Consumer Council's recommendations on Hong Kong's economic operation, government regulation, as well as competition. Here I will point out some of the areas in the Council's recommendations that are open to question.

The recommendations made by the Consumer Council mainly include the following aspects: firstly, the Consumer Council considers that certain common operational practices in the market are anti-competition and should be prohibited by law; secondly, a Competition Authority should be established to monitor the market, and to investigate, prosecute and penalize the companies that it considers to have breached the legislation on fair trade; and thirdly, an appeal body should be set up to hear appeals against decisions by the Competition Authority and also to review its decisions.

The "fair competition" recommended by the Consumer Council is mainly based on the comparison of "prices". As such, the "non-price competition elements" have been overlooked. The deciding factors of fair competition are not confined to "prices" alone, but the quality and terms of the services are also factors to be taken into account in market competition. The recommendations are, in a disguised form, discriminating against latent competition in the market and ignoring those factors that are hard to be quantified. The result is that part of the facts are being taken as the whole picture and some non-price related modes of competition such as bundled sales have become the targets to be

combated against.

The Consumer Council proposes to prohibit such business practices as bundled sales, retail price maintenance, exclusive dealership and long-term supply contracts. A company needs to practise these in its operation is required to apply for exemption with the Competition Authority. However, the Consumer Council has no sound reasons to back up its recommendation to prohibit these practices. If it is just because of some individual cases of unfairness in the actual operation of such practices that the Consumer Council has to take this measure across the board, we think that it is a harassment to the people. In fact, some bundled sales are very reasonable and harmless to competition. The recommendation takes a "shoot to kill" approach to the practice of retail price maintenance but overlooks the fact that consumers of different products have different demands for prices and service quality. This approach is in breach of the law of pragmatic commercial operation. On the other hand, the prohibition of exclusive dealership and signing of long-term supply contracts will in fact lower the efficiency of distribution of the products in the market. From this we can see that the recommendations of the Consumer Council are somewhat excessive and does more harm than good to the interests of the consumers and the business environment.

As for the establishment of the Competition Authority, the DAB is worried that it will have too much power and can hardly be able to operate independently. The Competition Authority will not only have the power to investigate and to impose punishment, but also the "power to legislate", legislating to provide exemption for certain operational practices. The Authority will then be wielding the executive, judicial and legislative powers. The Consumer Council also recommends that the Authority be empowered to order a company suspected of having violated the law during investigation to cease and desist from a certain practice. Such a measure is to convict the suspected company prematurely and is therefore in breach of the judicial principle of "presumption of innocence". As regards the actual operation, it is still doubtful whether the many members of the Authority and the appeal body will be able to stay completely aloof from the intricate ties of business interests.

The DAB supports the spirit of fair competition. But there is too much controversy involved in the Consumer Council's recommendations. The Government should conduct more in-depth studies and extensive consultations before formulating a fair competition policy so as to enhance the fairness and

freedom of economic operation in Hong Kong.

Mr Deputy, these are my remarks.

MR SIN CHUNG-KAI (in Cantonese): Mr Deputy, the purpose of a fair competition policy is to create a market situation for fair competition and promote consumer interests. As the Hong Kong market is small while the technologies used by some industries require large scale operations, therefore, the operations must be monopolized in order to be efficient. Most of these naturally monopolized industries are public utilities but the absence of competition makes it necessary for the Administration to monitor their operations in order to safeguard consumer interests.

However, along with the development of advanced technologies, the growth of and changes in the market, the industries which used to be monopolized now have new domains for competition. The telecommunications industry is a very good example as the Administration has just deregulated the industry. Since July 1995, the Administration has opened up the telecommunication network market and introduced three new fixed telecommunication network services companies, namely New T & T Hong Kong, New World Telephone and Hutchison Telecom. With increased competition, the international call charges have been decreasing. At the end of 1996, the three new companies executed with Hongkong Telecom a regional loop agreement commonly known as "Type 2 Connection" and introduced residential telephone services at lower charges. It can thus be seen that deregulation along with the changes in market situation is an important task of the Administration in respect of policies on public utilities.

Actually, most public utilities in Hong Kong are still operating as monopolies subject to various forms of regulation by the Administration. However, most of these regulatory systems have a long history and are even out-dated. When initially formulated, they were mainly intended to attract operators to invest in the provision of services to the public. Therefore, the system itself is biased towards the protection of the interests of the operators. However, when these public utilities have been operating for quite a long time, the companies have larger scales, are more consolidated and have continuously increasing profits. On the contrary, these regulatory systems have become the

tools for safeguarding the interests of the public utilities. They have impeded economic growth and impaired consumer interests.

I am dissatisfied with the fact that the Administration has not been efficiently monitoring the public utilities. When formulating the regulatory measures, the Administration is frequently lobbied and blindly led by those who have vested interests, paying little attention to the protection of consumer interests. For example, although the profit control schemes adopted by the Administration in respect of the two power companies have all along been severely criticized by various political parties, scholars and the public, the Administration has paid no heed to them. It renewed the profit control schemes for a term of 15 years with China Light and Power and Hongkong Electric in 1993 and 1994 respectively. Recently, in respect of the incident in which China Light and Power has generated surplus electricity, precisely because of this profit control scheme, the wrongful investment of the Company can be borne by the consumers through an increase in electricity charges. Now that the incident has taken place, the Administration has still not found fault with the profit control scheme and it has only kept on urging China Light and Power to look for solutions. In regard to the suggestion of opening up the power transmission networks to allow more competition in power supply, the Administration is still not willing to conduct any relevant study.

The poor quality of service of China Motor Bus, which monopolizes some bus routes on Hong Kong Island has long been criticized. However, due to a lack of competition, the public do not have any alternatives or only have limited choices. Moreover, the indifference of the Administration has compelled the public to accept the existing bus services. This reflects that the granting of franchise and the regulatory system by the Administration can no longer make China Motor Bus improve its operational efficiency or provide better services, and these measures have even impeded competition in bus services and impaired consumer interests. It is a great pity that the Administration has still not considered formulating new policies to tackle the problem.

On the other hand, as a result of some other requirements imposed by the Administration, new competitors can hardly enter the market of some industries and this has certain impacts on fair competition in the market. The research report on the market for the supply of domestic gas fuels published by the Consumer Council in 1995 noted that Hong Kong and China Gas has a substantial market share which is still growing bigger. The report proposes that,

as Hong Kong and China Gas has become a natural monopoly and a public utility company with monopolistic advantages, the Administration should monitor the operation of Hong Kong and China Gas. However, the Administration has rejected the proposal.

Hong Kong really needs the formulation of new regulatory policies on the basis of a fair competition policy. Under such a fair competition policy, guidelines must be formulated to ensure that, when any regulatory proposals are put forward, the Administration will only accept the proposals to monitor the companies which really need monitoring. Furthermore, it is necessary for the Administration to set up the Competition Authority to be responsible for reviewing whether the existing monitoring methods are still effective and necessary, and suggesting the enhancement of monitoring or formulation of new regulations. When a comprehensive fair competition policy is introduced in Hong Kong, there would be less need to regulate some public utilities, thereby increasing competition and enhancing economic results. On the other hand, suitable monitoring can be carried out in respect of those industries which have become natural monopolies to safeguard consumer interests.

These are my remarks.

MR NGAI SHIU-KIT (in Cantonese): Mr Deputy, undoubtedly, any society will welcome fair competition. The question is, fair competition is only an ideal state of society. There is no clear-cut definition by which competitors can follow in order to reach this ideal state. To do so, we need more competition and participation instead of harsh, complicated monitoring and legislation. From a commercial point of view, activities such as trading, wholesale, retailing and even merger and takeover are closely related to commercial principles. It is impossible for decisions made with reference to commercial principles to do without the consideration of competitive factors. Clearly, only through the free operations of the market can these complicated commercial behaviour be elevated to a level close to the state of fair competition.

Mr Deputy, we can see that on the one hand, the report on competition policy published by the Consumer Council considers that certain common practices of the market in Hong Kong have violated the principles of fair competition and therefore should be prohibited by law. On the other hand, it recommends the setting up of the Competition Authority as a monitoring body to

investigate, prosecute and penalize those companies which in its view have violated the competition law. Such a recommendation may well be putting the cart before the horse because it recklessly empowers the Competition Authority to interpret the ideal criteria for market operations. Worse still, it is recommended that the Authority be given enforcement and judicial powers to intervene in the operations of the market.

The logic of the Consumer Council's recommendations is that a monitoring body can make the competitive environment of Hong Kong more sophisticated. I believe this is also part of the substance of the motion moved by the Honourable Fred LI today. However, we can just imagine that, according to such a logic, any country or region will be able to promote fair trade and strengthen competition at the international level simply by setting up a high-powered body for monitoring "fair competition". In my view, such a logic does not seem to be able to hold water.

Hong Kong has a sophisticated legal system and commercial behaviour here is governed by the company law, law of contract, the Sale of Goods Ordinance as well as other civil laws. If transactions are made under the circumstances that both the vendors and purchasers are aware of their own rights, legal proceedings can be instituted according to the relevant legislation once there is infringement of rights. Unless the dealings are illegal, the laws of Hong Kong will not make any classification of commercial activities. The Consumer Council's recommendation just goes against the grain as the proposed Competition Authority will be able to interpret "fair competition" and classify operational practices. Worse still, it can take the initiative to exempt certain trades from being governed by the competition law. Under such circumstances, business operators will have to follow the direction given by the Authority, and the prerequisite for business operations and transactions will depend on whether they can meet the requirements of "fair competition". If it goes on like this, consortia and major corporations will definitely regard members of the Competition Authority as the major targets they lobby and fight for. With the intervention of political parties and interests groups, the Authority will very probably become a political arena. Moreover, it is highly probable that normal business activities will be constantly perplexed by these political disputes. If it goes on like this, it will only do Hong Kong more harm than good.

Mr Deputy, with these remarks, I oppose the original motion and support the amendment moved by the Honourable James TIEN.

DR HUANG CHEN-YA (in Cantonese): Mr Deputy, as far as I know, most enterprises in Hong Kong are small in scale. So, I would like to tell you a story about Mr LAM.

Mr LAM ran a small business. He hoped that his products could be sold through some large-scale supermarkets and pharmacies so that they could be bought by more customers and he could achieve economy of scale. So despite a smaller profit margin, he would at least have profits. However, when he contacted these organizations, he soon found that his dream would hardly come true. First of all, he found that he had to pay the so-called "admission fee". In addition, in case his products were sold by these companies as his agents, he had to share the costs of promotion of the companies even though his products were not on their advertising list. It was even more disappointing that when his products were sold by Company A, he could not allow Company B to sell his products. Eventually Mr LAM could not sell his products in these large-scale supermarkets or pharmacies for the purpose of achieving economy of scale or making a reasonable profit.

In fact, Mr LAM's experience in running a small business is shared by many other people. They are often victimized by unfair competition. For instance, users of commercial forms cannot obtain cheaper services as the printers have set down the paper price and the minimum quantity of each order. The printers, on the other hand, are unable to provide tailor-made services to the users.

The company responsible for the transmission of satellite television does not allow users to tune in to other broadcast programmes, therefore, new television stations cannot reach the viewers.

The recent price cutting war among newspapers shows that if the *Apple Daily* had not breached the price agreement of the Newspapers Society of Hong Kong and cut its price at that time, it would have failed to attract readers. Recently, the Express News has resumed publication, and its initial circulation was only slightly more than ten thousand. After cutting its price, its circulation, as I have heard, now exceeds 100 000 and the newspaper can continue to survive. Had these two newspapers been bound by the price agreement of the trade, I am afraid they would have vanished from the trade.

Besides, the Small and Medium Enterprises Committee of the Hong Kong General Chamber of Commerce has pointed out that companies of average scale find it difficult to change their banks. As a result, they are forced to accept the service charges laid down by the Hong Kong Association of Banks (HKAB) when they use banking services. Despite that, the Government has so far turned a blind eye to the guideline of the HKAB on service charges and the small enterprises have to pay excessive and unreasonable charges.

The retail prices of textbooks have been laid down by the Textbooks Publishers' Association and the retailers cannot run their businesses by selling more at less profits in order to be beneficial to themselves and their customers.

The exporters in Hong Kong have to pay excessive charges due to the oligopoly enjoyed by the container terminals. This has not only reduced the competitiveness of our exports but has also impaired our export-oriented economy. The above examples show that there are actually a lot of unfair agreements or contract terms which abuse the dominant positions in the market. Such phenomena make it difficult for the small enterprises to survive or grow.

Mr Deputy, these phenomena are not inevitable in a free market, and they are the artificial or high-handed acts which would undermine or destroy a free market.

Why do I say that? The reason is very simple. If there is a really free market, the big enterprises should not be allowed to put restrictions on the methods of normal, reasonable and free competition, and they should not limit the targets of customers for suppliers or their selling price. If there is a really free market, practices which will hamper or intend to hamper, restrain or distort market competition should not be allowed.

What surprises me is the contradictory statement made by the Democratic Alliance for the Betterment of Hong Kong (DAB). On the one hand, it favours a fair and free economy, but on the other hand, it says nothing about these artificial practices which have distorted, destroyed and impeded a free economy. Nevertheless, it panics about the possible side-effects of the formation of the Competition Authority. How can it safeguard the free market? How would such an attitude differ from favouring the law of the jungle?

If the DAB is not shedding crocodile tears and really cares about the consumers, small businessmen and the free economy, it should propose methods to deal with the various unfair practices which are harmful to the free economy rather than merely opposing the fair competition policy.

The Honourable James TIEN is worried because he has the usual attitude of the business sector towards changes and I can understand that. But I believe that if Mr TIEN can take this issue into serious and impartial consideration, he will find that fair competition legislation will do more good than harm to the business sector.

The Honourable NGAI Siu-kit is worried that a monitoring authority may bring harmful effects to the economy but I believe the truth is obvious to us. If there is really a "free" market, the Government should not even interfere with or monitor piracy and the trade should be allowed to survive.

Needless to say, the Democratic Party will not ignore certain transitional problems and the need to strike a balance when the fair competition legislation is implemented. But these are only minor details which can all be dealt with during the legislative process. We can also make reference to the rich international experience. The fair competition legislation should not be opposed to on this basis.

With these remarks, I support the original motion.

MISS CHRISTINE LOH: Mr Deputy, 98% of all businesses in Hong Kong are small and medium-size enterprises. It is these flexible, innovative businesses which have put Hong Kong to the forefront of world competitiveness.

It is therefore a curious paradox that our economy is ringed by high concentration of monopolies with a stranglehold on essential domestic services. I am speaking about banks, power utilities, public transport, supermarkets, property development, container and air cargo terminal operations, as well as

medical and legal services.

Precisely because these services can only be provided locally, prices and levels of performance are not challenged by international competition. Most of the service providers enjoy government regulated monopoly dominance. Are consumers being charged fairly? Should these monopolies be allowed to continue as they have been? How far should existing monopolies be deregulated? And, how well is the Government doing its regulatory job in protecting consumer interest?

Recent Consumer Council reports show that the operations and price setting of many monopoly services in Hong Kong are largely hidden from public view and, therefore, oversight. Mr Deputy, that means the Consumer Council thinks local consumers are being overcharged in many cases. What we want the Government to do in today's debate is to tell us what it intends to do.

In 1992, Governor PATTEN observed that "a more sophisticated and prosperous community has become increasingly unwilling to accept unfair and discriminatory business practices. The public has already begun to voice alarm at the use of market power by suppliers in areas of special importance to the ordinary family's well-being." The Governor then decided to ask his august Business Council to put at the top of its agenda the development of a comprehensive competition policy for Hong Kong.

And yet, there is still no such policy. Indeed, we are not sure what the Business Council thinks except that many of the members' companies hold monopoly franchises and may not actually welcome deregulation.

The lack of competition in any area inevitably hides inefficiencies. The extent of these inefficiencies could be substantial. For example, since opening up the market for overseas telephone calls, consumers can in some cases, call abroad for half the price charged by the Hongkong Telecom International.

Again, consumers benefit from modest banking reforms over the last three years when interest rate caps were lifted for a few types of deposits. According to the Consumer Council, depositors earned an additional interest income of

about HK\$2,363 million between October 1994 and, I think, June 1996.

Mr Deputy, how much more do you think we would all benefit if the Government has the courage to lift interest rate caps on other forms of deposits, including saving deposits? And, what is the justification for not doing so?

I have saved my fire-power for the duopoly I know best, Mr Deputy, as you know, that is the electric utilities. I remain appalled by the Government's singular lack of insight and determination to protect consumers' interest in electricity supply. Electricity is one service none of us can do without, and thus, its provision deserves the closest scrutiny.

I am delighted that the Economic Services Panel has taken a real interest in this issue. I even think the Executive Council has semi-woken up to the fact that electricity users are being overcharged, which is why it is showing some discomfort with the China Light and Power's 50% over-capacity.

However, the Executive Council needs to wake up fully if it is to see the irrationality of its decision to allow the Hongkong Electric to carry out feasibility studies on building a new HK\$10 billion power plant that consumers do not need, but for which they will have to end up having to pay for.

I find it hard to accept that users on Hong Kong Island has to pay 15% higher tariffs than users in Kowloon and the New Territories. Furthermore, I see tariffs continuing to rise for users everywhere. If nothing changes, they will be made to pay for what they do not need because the Government cannot be bothered to modernize its monopoly agreements with the China Light and Power and Hongkong Electric.

I am also concerned that we will have a new Executive Council soon, which will have to be made to understand all over again how electricity consumers are being taken for a ride. Who is going to brief them? Most of the officers in the Economic Services Branch who knew anything about this area have been transferred elsewhere. The utilities can run rings around the new team unless they spend a considerable time understanding the intricacies.

Moreover, the Economic Services Branch is the defender of the public

interest in electricity supply. If it does not have its own permanent reservoir of expertise, how will it stand up to the utilities who can produce statistics and any number of specialist reports to create any degree of confusion to trip up the non-expert?

Mr Deputy, let me ask a more fundamental question. Does the Government as a whole have the will and the determination to get under the skin of powerful businesses in order to protect consumers? If it does, then tell us when you are prepared to open up electricity supply so that the China Light and Power and Hongkong Electric can compete with each other on a territory-wide basis. They can pay a reasonable fee for using each other's distribution grid, and I bet, Mr Deputy, consumers will benefit.

I can just hear the Secretary say but it is too difficult. Nothing is too difficult if you see that it is the right thing to do. If the Secretary is courageous enough to consider renegotiation with the Hongkong Telecom International, why not with the China Light and Power and Hongkong Electric?

Mr Deputy, monopolies inherently concentrate both commercial and political power. In the absence of a transparent legal framework to ensure competition, the Government ends up taking an industry-by-industry, ad hoc, approach. Negotiations are largely out of sight and officials are subject to hidden lobbying. The result is an inconsistent and outdated variety of government regulations and accompanying bureaucracies. All too often the public is denied the information it needs to determine whether the monopoly is being abused.

I prefer the Honourable Fred LI's motion because I think it goes further than the one being proposed by the Honourable James TIEN. I shall support the original motion.

MRS SELINA CHOW (in Cantonese): Mr Deputy, I believe that no one would oppose the concept of fair competition, especially when it also means overpowering the strong and helping the weak, and preventing the big ones from bullying the small ones.

My speech today mainly reflects the views of some members of the Hong Kong Retail Management Association and the Small and Medium Enterprise Committee. One of them has drawn a very incisive analogy. He said that

what the Consumer Council recommended was just like a game of mahjong behind closed doors in which the winning parties yield two sets of points to the losing parties. It simply would not help. Another one said that a lovely feature of the free market in Hong Kong is that it allows the "shorties" to grown into "tall guys". But if measures are taken to limit the further growth of the "tall guys", it does not necessarily favour the growth of the "shorties" and it will put an unnecessary and unfavourable restriction on the whole environment for their growth. In the end, the "tall guys" will not grow any taller, neither will the "shorties".

Another member said that maintaining the competitiveness of Hong Kong overseas is the most important policy for our economy. What affects our competitiveness are the operating costs of the various trades and industries in Hong Kong in relation to those in other markets rather than creating a "supersovereign" for the internal market to formulate or implement certain rules of the game and interfere in the operation of the market. In light of this, some have suggested that the Government should conduct a survey to look into how the views of all trades and industries can be collected and, if necessary, the Government can selectively revise its policies. For example, the Government may have to adopt their views on telecommunications policy in recent years, or the views of some industries on freight rates and the charges for dock or port services and even consider exerting pressure in order to control the operating costs and consolidate the competitiveness of Hong Kong overseas.

However, members of both the Hong Kong Retail Management Association and the Small and Medium Enterprise Committee are particularly worried about the enactment of fair competition law and the establishment of the Competition Authority as recommended in the report of the Consumer Council. They worry a lot about the existence of a "supersovereign" who is even different from the present Consumer Council. Although the Consumer Council is a pressure body, it may not have real power to put things into practice. However, that is actually if a Competition Authority is established and the fair competition law enacted, it will become a "tiger with teeth". What they are most worried is that before the benefits are seen, the harm would have already been done. They are also concerned that many big corporations will not have much difficulty in complying with the newly enacted law because they have the means to employ professionals and access to many resources. But if the law so passed treats everyone on an equal basis and will affect enterprises of all sizes, then the small and medium-sized enterprises will probably be substantially affected. With the

Authority there to deal with cases, some people may file lawsuits or complaints with the Authority. This is enough to restrain the business operators. Moreover, the enactment of the law will mean the loss of the high degree of freedom currently enjoyed in the operation of the market.

On the whole, I support the Honourable James TIEN's amendment. Although the Consumer Council has given much thought to the matter, the small and medium-sized enterprises will certainly have much reservation about the recommendations in the present report. I think that before carrying out any reforms, people have to engage in consultations and make explanations and should give the affected ample opportunities to express their views as well as to digest the impacts any such reforms will have. Therefore, I very much hope that when the Government considers the suggestions of the Consumer Council, it will give due attention to the opinions of the affected parties. Of course, apart from the views of the business sector, it must also take into consideration the views of the consumers and other parties. Yet, it cannot be denied that if we really wish to achieve the ultimate goal, that everyone can accept any significant reforms, we must be assured that the reforms are fully understood and accepted by all.

Thank you, Mr Deputy.

MR AMBROSE LAU (in Cantonese): Mr Deputy, the competitive environment in Hong Kong at present is already extremely open. Even the Chairman of the Consumer Council, Mr Edward CHEN, admits that the case of market monopoly by big firms in Hong Kong is not too serious. Therefore, in deciding whether it is necessary to promote competition by enacting legislation and setting up the Competition Authority, the Government needs to conduct an in-depth study on the report compiled by the Consumer Council and listen to the views of all sides before considering the formulation of relevant policies.

Mr Deputy, conceptually speaking, the enactment of fair competition legislation is correct. It is also one of the measures taken by some countries as well as some international economic and trade organizations in recent years and what they advocate. For instance, the criteria for assessing a free trade zone by the World Trade Organization are also changing — from considering whether or not there is free trading of goods to assessing whether there is investment

freedom as well as a free competitive environment. A responsible person of the World Trade Organization once expressed objection to the holding of international telephone franchise by Cable and Wireless (Hong Kong) Limited. However, there is a need to point out that this is only an isolated phenomenon. As we all know, so far, many international economic and trade organizations including the World Trade Organization and even numerous multinational corporations have thought that Hong Kong is one of the freest economies in the world. We should treasure Hong Kong's reputation of openness and freedom in the world economy. Any new policies or measures that may jeopardize the operation of Hong Kong's free market should be dealt with cautiously.

Mr Deputy, Annex 2 of the Consumer Council's report cited some real examples collected by the Council in the past to reflect the possible existence of unfair competition in certain trades and industries of Hong Kong. However, we need to carefully examine and assess the fact that there exist many grey areas in the specific operation of the market and competition. It is impossible to define in concrete term whether certain market behaviour is fair competition or otherwise. This is because in the process of competition, the stronger ones will occupy a dominant position while the weaker ones will occupy an inferior position. If we use the dominant or inferior positions to define the existence of unfair competition, we will be going against the basic pattern of market operation and free economy. Therefore, the Government should examine seriously the examples of unfair competition cited in the Consumer Council's report. Moreover, it can curb those cases which actually involve monopolies or unfair trading by means of administrative measures or legal intervention. This is by no mean a silly stop-gap measure because for Hong Kong, one of the freest economies in the world, it is hard to imagine that we can use a permanent legislative measure to standardize the complex operation of the market. It is also impossible to allow an all-powerful Competition Authority to amass exclusive power to interfere with market competition.

Mr Deputy, with regard to the idea in the Consumer Council's report, the Competition Authority is suspected of wielding too much power. The Competition Authority is responsible for formulating policies as well as proposing legislation to the Government. And on the other hand, it is responsible for enforcing relevant legislation by conducting investigations into suspected behaviours of unfair competition. What is more, it is responsible for

making judicial judgement to enforce prohibition or give warning. Such centralization of power implies that the Authority's power to interfere with the market is comprehensive and excessive. In the event that the Authority has any bias in its handling of things, such as putting more emphasis on consumers' interests than on the interests of businesses, it will cause huge damage to the operation of our free economy. Therefore, it is necessary for the Government to listen to the views of all sides as regards whether there is such a need to set up the Competition Authority and the way to limit its power. The Government should also examine the case seriously before formulating policies.

Mr Deputy, conceptually and academically speaking, the proposal made by the Consumer Council to enact fair competition legislation and set up the Competition Authority is correct and is in line with the current trend. Nevertheless, how a correct concept and an academic issue actually integrate with Hong Kong's economy is a complex problem. We need to vigorously protect the consumers' interests on the one hand and encourage businesses to compete fairly on the other in order to enhance Hong Kong's bargaining power in international trade. Moreover, we need to reduce costs to maintain Hong Kong's competitiveness and improve Hong Kong's investment environment. Nevertheless, what we must not do is to try to achieve such an ideal target by radical means. Instead, we should take a progressive approach.

Mr Deputy, I so submit.

MRS ELIZABETH WONG: Mr Deputy, I would like to supplement what has been stated in various coherent and eloquent arguments before. The points which have not been mentioned I would like to perhaps share with this Council.

First of all, I think there is an international dimension to the argument in support of a new policy, economic policy to encourage competition and fair trade. And that is to say, international bodies such as the World Trade Organization are increasingly making links between competition, policy and trade policy, and I think Hong Kong's ability to argue for improvements in trade policy will, no doubt, enhance our trading links with other nations.

The second point I would like to mention is that a comprehensive competition policy and a body of law, which in itself is part of the competition

policy, can remove barriers to entry into other markets and ensure free competition under a transparent atmosphere which will not be distorted by price-fixing, market manipulation or other anti-competitive practices.

The third point. It is important, I think, that competition should be encouraged through the formulation of a body, the introduction of new law, because the law itself can ensure that there is no intervention from administration. Now, without that piece of legislation, the Government can intervene quietly behind closed doors without people noticing it. But I think if we air it in the open, have a transparent piece of legislation, it will protect the interests of the consumer and promote the interests of Hong Kong.

I therefore support the original motion.

DEPUTY PRESIDENT (in Cantonese): I now invite Mr Fred LI to speak on the amendment to this motion. You have five minutes to speak on the amendment, Mr LI.

MR FRED LI (in Cantonese): Mr Deputy, in the Honourable James TIEN's amendment, the most important change is to delete the words "to accept the principles of formulating a fair competition policy, enacting fair competition legislation and establishing the Competition Authority put forward by the Consumer Council" from my original motion and to substitute with "to conduct a study and listen to views". Actually, my original motion also mentioned studying the matter and listening to views. However, while I recommend that we accept the principles first and discuss the details later, he refuses to accept anything and says we should conduct further studies and listen to views.

In fact, as an Honourable colleague pointed out just now, I moved a motion on this subject three years ago while Dr the Honourable LAW Cheung-kwok has also moved a similar motion. Since this issue has already been debated several times in the Legislative Council, I do not think we should conduct a further in-depth study or procrastinate once again. This is not a right

direction to take.

Among the several examples cited by the Honourable James TIEN just now, one example was related to town gas (Mr Edward CHEN, who attended our meeting yesterday, also mentioned the monopoly of town gas and the problem of the domestic fuel market). Mr TIEN said leasing of gas pipelines would lead to many complex problems such as the charging of fees. However, I would like to bring up another example. The local telephone network of Hongkong Telecom has already been opened up, with competitors leasing the existing network of Hongkong Telecom. These competitors, such as the new local competitors, New World, Hutchison and New T & T Hong Kong, pay Hongkong Telecom fees for leasing the network. This proves that it is feasible. Certainly, the Government has to play the key role of an arbiter. It is because when no consensus can be reached about the fees, the Telecommunications Authority under the Government must arbitrate. Thus the question merely lies in whether they can agree on the fees and whether there is a profit to be made. These companies have launched advertising campaigns and competition has already started. If you think that such a legislation will not work, this is a good example to prove that it will. Of course, gas pipelines are different from the telephone network. As gas pipelines are more complicated, I agree that it is very difficult for this to be done. Therefore, I think that the best way is to regulate the increase in gas charges rather than to open up its network. If it is not possible to open up gas pipelines, there must be regulation and I think this is an appropriate way to deal with the matter.

Some Members also commented that if we enact such a fair competition legislation, we must also make changes in other laws. I have listened to the seven-minute speech by Mr TIEN very carefully. He noted that if this fair competition legislation is enacted, other laws must be amended too, and this is a troublesome task. However, the thing is, all these laws are enacted by the Legislative Council. While I will no longer be a Member of this Council after 1 July, Mr TIEN will still be here. Whether there is a need to legislate is up to the Legislative Council to decide. Many Members mentioned just now that if such a legislation is passed, it will create a lot of trouble. However, they should note that neither the Consumer Council nor the Secretary for Trade and Industry has the power to pass such legislation. Instead, after they have proposed certain legislation, this Council can make major changes and debate the proposed legislation. If the Authority's power is too great, this Council can effect checks and balances. These are precisely the roles played by the Legislative Council

and Members. If we refrain from legislating now just because we are worried that the law would go too far and the Authority would be given too much power, I think we are putting the cart before the horse. Why should Members of this Council not play a key role? Why should the Legislative Council not be the last gatekeeper? Therefore I think these worries are totally unnecessary. The role of Members should be to make the final decision on how to handle these laws.

Therefore, I suggest that we should accept these principles first. As to how the legislation should be drafted and implemented, it would be up to the Government and Members to make suggestions. When the legislation is to be enacted in the end, the Legislative Council will still have the gate-keeping authority. Hence, there is no cause for worry.

I will respond to the comments of other Members when it is my last turn to speak. I am very grateful to Mr TIEN for moving his amendment. I can say to Mr TIEN that if his amendment is adopted, I will give it my support. However, if his amendment is negated, I hope that he will not vote against my original motion.

Thank you.

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Mr Deputy, I have listened very carefully to the views expressed by Honourable Members on both the motion and the amendment moved by the Honourable Fred LI and the Honourable James TIEN respectively. Honourable Members have made many valuable comments, and they have also urged the Government to account for its work on implementing fair competition. I do not intend to respond to Honourable Members' views one by one this afternoon. However, I can assure them that their valuable comments will be most helpful to the Government in preparing the Government's response to the Consumer Council's study report on fair competition policy. I would also like to thank the Consumer Council for its completion of this important study.

Since 1993, the Government has provided funds for the Consumer Council to conduct a series of studies on fair competition. Six sector-specific studies on banking, supermarkets, domestic water heating and cooking fuel market, telecommunications, television broadcasting and private residential property market have been published. The Government has responded, positively and

constructively, to five reports and the Government's response to the one on private residential property market is intended to be published later this month.

The last in the series is a study on the overall assessment of the competitive environment in Hong Kong. The study report was published by the Consumer Council on 25 November 1996. The Chairman of the Consumer Council, Professor Edward CHEN, briefed Members of the Panel on Trade and Industry on the findings and recommendations of the study report at its meeting held yesterday (14 January 1997).

In brief, the Council's report puts forward four main recommendations:

- (a) the adoption of a comprehensive fair competition policy for Hong Kong;
- (b) the enactment of a fair competition law to cover horizontal and vertical collusive agreements and abuse of dominant position;
- (c) the establishment of an independent Competition Authority outside the Government to investigate and decide on possible breaches of the fair competition law and advise the Government on fair competition policy; and
- (d) the setting up of an appeal body to hear appeals against decisions by the Competition Authority.

Honourable Members may recall that at the last motion debate on the same subject held in this Council on 29 May 1996, I outlined the existing government policy on the promotion of competition in Hong Kong. The Government is fully committed to the promotion of free trade and competition which is the best guarantee of economic efficiency, low prices and consumer protection. The government subscribes to the basic economic philosophy of minimum government intervention in market forces, which we believe is the best formula for enhancing competition and efficiency on the one hand, and keeping costs and prices down on the other. However, where necessary, the Government does take appropriate and pragmatic measures to rectify any unfair business practices, safeguard competition and protect consumer interests.

Mr Deputy, although we do not have a comprehensive fair competition law, we do have a fair competition policy. The Government, in the pursuit of this policy, is adopting a step-by-step, pragmatic approach in the formulation of measures and framework that are most suitable for promoting competition in the different sectors of Hong Kong's economy. The Government is taking a

sector-specific approach to promote greater competition in the relevant business sectors.

I believe Honourable Members will agree that the recommendations in the Consumer Council's report will have far-reaching implications for the future development of Hong Kong's economy. I believe that there is no disagreement within the community on the fundamental principles of promoting competition and giving consumers adequate protection. However, as evidenced from this afternoon's debate and the previous debates held in this Council, there are divergent and even conflicting views as to what regulatory framework, or what means, Hong Kong should adopt in order to enhance competition. The different approaches advocated by Honourable Members reflect the divergent views of the community towards any reform of the existing fair competition policy framework in Hong Kong.

Mr Deputy, the Government keeps an open mind as to whether or not a comprehensive competition law should be introduced and whether a Competition Authority should be established in Hong Kong. The Trade and Industry Branch is examining the recommendations of the Consumer Council's report together with other relevant Policy Branches and departments. We have also invited the public and more than 110 interested organizations to comment on the recommendations in the report by 6 January 1997. So far, about 40 responses have been received, half of which requested us to extend the deadline by one to three months on the ground that the views and proposals in the report are very complex and will produce significant effects on the long-term development of our economy. The position of the Government is that extending the consultation period would certainly make it impossible for the Government to formulate the Government's response on the report within six months from its release. On the other hand, we feel that the Government's response should reflect as much of the community's view as possible. Hence, in this respect, the Government is in a dilemma. In view of the importance and complicated nature of this issue, we are considering carefully whether we should extend the period. I would like to take this opportunity to appeal to all interested parties to let the Government have their views and comments as speedily as possible.

Finally, Mr Deputy, I would like to comment briefly on both the motion and the amendment today. Firstly, on the amendment proposed by Mr James TIEN, Honourable Members may rest assured that the Government fully recognizes the far-reaching implications of the recommendations of the

Consumer Council's report on a wide range of sectors of Hong Kong's economy. We will consider the implications of any new or additional market regulations for the smooth functioning of our market mechanism, economic efficiency, freedom of contract, consumer choice and Hong Kong's competitiveness in the international arena. As regards the motion moved by Mr Fred LI, as the Government is still receiving and considering the various comments from the public and interested organizations on the recommendations of the report, it is not yet in a position to agree or disagree with what have been advocated by the Consumer Council, namely enactment of a fair competition law, the establishment of a Competition Authority and an appeal body in Hong Kong. Respecting the fine tradition of working together with the Legislative Council and the community at large, the Government will certainly consult this Council and the public in determining the specific details and contents of the law if we do decide that a fair competition law should be enacted in Hong Kong.

Thank you, Mr Deputy.

THE PRESIDENT resumed the Chair.

Question on Mr James TIEN's amendment put.

Voice vote taken.

Mr James TIEN claimed a division.

PRESIDENT (in Cantonese): Council will now proceed to a division.

PRESIDENT (in Cantonese): I would like to remind Members that they are called upon to vote on the question that the motion moved by Mr FRED LI as amended by Mr James TIEN be approved.

Will Members please register their presence by pressing the top button and then proceed to vote by pressing one of the three buttons below?

PRESIDENT (in Cantonese): Before I declare the result, Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr CHIM Pui-chung, Mr Eric LI, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Mr Paul CHENG, Mr CHENG Yiu-tong, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Mr LO Suk-ching and Mr NGAN Kam-chuen voted for the amendment.

Mr Martin LEE, Mr SZETO Wah, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Mr LEE Cheuk-yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEE Kai-ming, Mr Bruce LIU, Mr MOK Ying-fan, Miss Margaret NG, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted against the amendment.

THE PRESIDENT announced that there were 22 votes in favour of the amendment and 31 votes against it. He therefore declared that the amendment was negatived.

PRESIDENT (in Cantonese): Mr Fred LI, you are now entitled to reply and you have five minutes 24 seconds out of your original 15 minutes.

MR FRED LI (in Cantonese): Firstly, I would like to thank the 12 Honourable colleagues who have spoken on the motion. I have paid great attention to the speech of every Member and I can briefly summarize their speeches here. The Honourable CHAN Kam-lam, the Honourable NGAN Kam-chuen, the Honourable Ambrose LAU and the Honourable Mrs Selina CHOW are worried about the power of the Competition Authority and whether the relevant legislation will interfere with the free market. I understand the worries of these Members. Just as what I mentioned in response to what the Honourable James TIEN has said, all the relevant laws will eventually have to be passed by the Legislative Council and they will not be decided by the Government on its own. The Secretary for Trade and Industry also pointed out a moment ago that the Government would cooperate with this Council in that it would listen to the views of Members before making any decisions and the Government would continue to seek the advice of Members before making any decisions in future. Therefore, I think that Members are worrying too much. If further study has to be made, I do not know when this will end.

I was appalled when Mr NGAN Kam-lam used the phrase "shoot to kill". In fact, there are always exemptions under the legislation on fair trade, that is to say, it is not a secret police. When it is implemented in other countries, it does not monitor things all the time. I therefore hope that Members would not think that the legislation on fair trade and the setting up of the Competition Authority will result in the loss of a free market in Hong Kong, with some people standing high above the masses and controlling the whole market. It is impossible that the Hong Kong market has developed to the mature stage today by merely relying on supply and demand. The forces of supply and demand cannot bring about self-discipline. Rather, certain markets will be twisted while others will be manipulated by large conglomerates. Since a market cannot count only on self-discipline, there has to be a third party such as the Government to protect the public and the small businesses. Just now the Honourable Miss Christine LOH said that 98% of all businesses in Hong Kong are small and medium-size enterprises, so we should pay attention to these businesses. Fair competition does not only protect the consumers in the lower strata but also protects the interests of the small businessmen and companies. Most of the Members who object to my original motion are from the business sector. I find it a pity that they have misunderstood it.

I often hear Members say that they support the spirit of fair competition but object to the implementation of complicated measures. If they are really supportive, they should put forward more opinions instead of only disapproving the setting up of the Competition Authority and the enactment of a legislation on

fair trade. I do not think it is a good attitude to support only the spirit of formulating a fair competition policy without expressing positive and useful views, or to criticize the proposal of the Consumer Council without expressing one's opinions.

I do not want to waste Members' time. I hope that the Government will soon complete its study and introduce a bill to this Council since Members who support the Government will soon be leaving this Council. Therefore, the earlier the legislation is introduced to the Legislative Council, the greater the chance that it will be passed.

These are my remarks. Thank you, Mr President.

Question on the original motion put.

Voice vote taken.

PRESIDENT (in Cantonese): Council will now proceed to a division.

PRESIDENT (in Cantonese): I would like to remind Members that they are now called upon to vote on the question that the motion moved by Mr Fred LI be approved.

Will Members please register their presence by pressing the top button and proceed to vote by choosing one of the three buttons below?

PRESIDENT (in Cantonese): Before I declare the result, Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Mr LEE Cheuk-yan,

Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEE Kai-ming, Mr Bruce LIU, Mr LO Suk-ching, Mr MOK Ying-fan, Miss Margaret NG, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted for the motion.

Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr CHIM Pui-chung, Mr Eric LI, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Mr Paul CHENG, Mr CHENG Yiu-tong, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU and Mr NGAN Kam-chuen voted against the motion.

THE PRESIDENT announced that there were 32 votes in favour of the motion and 21 votes against it. He therefore declared that the motion was carried.

ANTI-SMOKING

DR LEONG CHE-HUNG to move the following motion:

"That, in order to protect Hong Kong citizens, and in particular teenagers, against the health hazards resulting from direct and second-hand smoking, this Council supports a total ban on direct and indirect tobacco advertising and on tobacco sponsorship for social, cultural and sports events, and supports legislating to designate all indoor public places as smoke free areas. "

DR LEONG CHE-HUNG: Mr President, I rise to move the motion under my name as set out in the Order Paper. I move this motion in the name of "health" and "public good" of which I have the total support of the medical profession and many more of which I am now holding some 3 600 signatures — from people

who yearn for better health and cleaner environment, not only for themselves but also for our next generation. Dare I say, Mr President, the motion addresses you, too. Mr President, I do realize that Standing Order 31 prohibits a Member from making comments on the conduct of colleagues in this Council and the President, other than in the performance of their public duties. But I do hope that for your own good you would make this an exception.

Joking aside, Mr President, anti-smoking is a serious matter.

PRESIDENT (in Cantonese): Sorry to interrupt you for a while. At least I am not going to smoke during this debate. (*Laughter*)

DR LEONG CHE-HUNG: Mr President, at least you have clean air for the time being. Joking aside, Mr President, anti-smoking is a serious matter. The World Health Organization in 1995 stated that "smoking is emerging as the world's largest single preventable cause of illness and death, killing an average of six people every minute". Mr President, six people dying from a preventable cause every minute is a very serious matter indeed.

Mr President, in 1992, the Government came out with a consultation paper on anti-smoking proposal which stated that, amongst many recommendations, "tobacco advertising in printed publications and for display on billboards or signs should be totally banned". It went further to state that "in media where tobacco advertising is prohibited, the advertising of any product, service, activity and organization which recalls a tobacco product brand name should also be prohibited".

Those who value the health of our population and environment eagerly awaited strategic implementation from the Government. Legislators were advised that a bill to bring these into effect would be introduced in May 1996. But regrettably, to the shock of those who care, the bill was aborted by the Executive Council twice at the eleventh hour.

The Government's procrastination or otherwise has left me no choice but to move this motion debate.

Adverse Impact on Health

Mr President, the harmful effects of smoking on health have been recited to *ad nauseam*, all these are of course supported by irrefutable scientific evidence. Yet, I would not have done my duty, in particular to those Members in this Council who are still not converted, if I do not highlight some of the more alarming effects.

Mr President, in Hong Kong as a start, smoking was found to be responsible for 19% of all deaths. Such figures only take into consideration the three smoking directly related diseases — lung cancer, chronic airway obstructive disease and coronary heart disease. There are obviously more.

In fact, the World Health Organization estimates that some three million deaths a year is due to smoking and if this obnoxious habit is not curbed, some 10 million people will die from smoking related disease by the year 2025.

Statistics in Hong Kong have also shown that second-hand smoking are just as damaging. In the female sex, for example, lung cancer is commonly associated with exposure to second-hand smoking.

Young Smokers on the Rise

It might be argued that banning tobacco advertising will not stop those who have acquired the habit. But, Mr President, the alarming facts are that the first time smokers amongst our youngsters are ever increasing and the age when they sample the first puff is, sad to say, as young as seven years old. A survey done by the Council on Smoking and Health (COSH), and I understand that the Chairman is in the public gallery, confirmed that some 11% of student-smokers start their first smoking at that age. The same survey showed that 4% of male students and 2% of female students smoke at the age of 12 and below.

The female smoking population is also disturbing. The latest General Household Survey showed that the prevalence rate of smoking in them increased by over 26% between 1993 and 1996.

Misinformations Distributed by Tobacco Lobbyists

It would take the greatest hypocrite to say that tobacco advertising takes no part. It might be argued that banning tobacco advertising will not stop the

smokers from smoking. Yet, it will be very difficult to argue that such advertisements are not responsible at least in part, and a major part indeed, to induce non-smokers, especially the young and the fair sex, to smoke leading to these devastating harmful health effect. The tragedy is that all these are preventable if they do not smoke.

Years ago, celebrities in the United States have made pleas for people to stop smoking by recounting their stories of how they developed lung cancer through years of acquiring the bad habit, only to find it too late. It would be doomsday if we need more of these to convince the cold-blooded tobacco lobbyists that their doings are responsible for these tragedies.

Regrettably, these scientific evidence of tobacco harm has been downplayed or refuted by tobacco industry. Such misinformation is pulling wool over the public's eyes and is downright irresponsible, and should be condemned. Instead the heavily financially backed tobacco industry and their ardent lobbyists have put up arguments on why tobacco advertising of any form should not be banned. Mr President, for the past few days, Members of this Council have received countless lobbying materials and telephones calls or perhaps even free lunches from these organizations, some, I am afraid and I dare say, might well have been poisoned by the lobby.

For the rest of my speech therefore, Mr President, I would like to counter some of the points they brought forward.

Freedom of Expression at Risk?

First and foremost on the list is that banning advertising leads to suppressing freedom of expression and information and is therefore infringing the Bill of Rights.

But let us do not forget that those influenced by second hand smoking have their rights too, and that one of the five exceptions in Article 16 of the Hong Kong Bill of Rights is where there are consideration of "public health", and banning tobacco advertising is what public health is all about.

Tobacco Advertising Recruiting Kids

One of the favourite arguments is that tobacco advertising promotes

special brands only, not cigarette smoking. This may well be the case for confirmed smokers to lure them to change their brands. But a research done by the Department of Community Medicine of the University of Hong Kong has come to this conclusion, and I quote: "In Hong Kong only a partial ban is in place, cigarette advertisements are permitted in printed media and full height advertising on high rise building dominates the sky line. Such high profile that the products received projects image of maturity, excitement, glamour, confidence and success, and has been shown to raise children's awareness of cigarette and may encourage them to start smoking." Our next generation is therefore at stake!

The pinnacle of hypocrisy, Honourable Members, if you have time to go through your lobbying pamphlets, must be from the Association of Accredited Advertising Agents or known as the 4As which stated that "if people have no interest in a product, no amount of the most impressive creative or widespread advertising can ever make them interested in the product." It therefore begs the question of why tobacco companies are spending millions of dollars, if not to promote an interest on their product. Or are they being contented only with burning their own money, millions of them, whilst their followers have been already smoking their cigarettes?

Self-regulatory System Proved a Failure

The Association goes on to say that the most workable, efficient and reasonable approach is regulation of advertising through consultation with the industry which they claim is having a very good effect in the United Kingdom — obviously an argument echoed, by the powerful Tobacco Institute of Hong Kong.

But unbeknown to them, an unsolicited letter from the Director of the United Kingdom based International Agency on Tobacco and Health, who has been monitoring the voluntary agreement system in Britain for the last 11 years, has stated the following:

"Self regulation system is a failure. In particular, it fails to stop the

tobacco companies from seducing young people into taking up smoking. The only people who consider it success and recommend it usually with highly selective and distorted evidence are tobacco and advertising industry spokesmen or weak politicians who have taken the easy route of letting commercial interest come before those of people's health."

Impact on Economy and Employment

What about their worries of the loss of revenue from tobacco advertising and therefore the effect on those who depend on advertising for their livelihood? A billion dollars a year is the usual quoted figure again by the tobacco and advertising lobbyists.

But statistics from Hong Kong could easily point to the fallacy, and put the industry and the workers at rest. In December 1990 when banning tobacco advertising on electronic media became law, the same argument was cited to raise hue and cry. Fortunately for Hong Kong, evidence point to the other direction. In fact, revenue through advertising of other products have boost up the income for our two main television stations since then. Examples in Singapore and in Thailand, where total ban has been implemented, have shown that there has been a consistent increase in their advertising spending. Singapore, for example, has a 10% growth since its total ban in 1971, and Thailand a 42% within two years after its ban in 1993.

Research has shown that there are some controversies over the often stated One Billion Dollar. A study by Coopers and Lybrand commissioned by the 4As themselves have shown that in 1995, an estimated total of only \$487.6 million, not a billion, was spent on all forms of advertising and promotion of tobacco products. Let us look at another angle. My medical colleagues have conducted a thorough and scientific estimate in this aspect. It costs public hospitals and hence taxpayers over \$500 million dollars in treating just the three diseases directly related to smoking; if counting other indirect social cost like the loss of working manhour when members of the smoking colony get sick, the cost soared to something like \$3 to \$4 billion!

Sponsorship to Sports and Cultural activities

What about sports and cultural sponsorship? Ironically, I was warned that if my motion were supported, we will have to wave goodbye to future major sports and cultural activities — something essential for our physical and spiritual health.

Let me put it point blank that sponsorship in the way that the tobacco industry promotes is advertising. More, it is a lifestyle or image advertising that have particular impact on our youngsters. Worse, it is embarrassing to see high ranking government officials posing with players to promote the sports and cultural events, not realizing, or perhaps realizing, behind them is the towering advertisement of the tobacco products that they accidentally or otherwise promote! If a tobacco firm only intends to promote a sports or a cultural event, there is nothing to stop them from donating the money in an anonymous manner.

Experience in other parts of the world have shown that other sponsors do step in where tobacco industry leaves, and there has never been any significant vacuum.

Furthermore, if this Government is sincere in banning tobacco advertising, it should have made preparatory procedures, such as increasing tobacco tax progressively and channelling the revenue to sponsor those very much needed sports and cultural activities.

Finally, Mr President, it may be said that tobacco is a legal product, why could it not be advertised? But let me put it to you and this Council that it was an accident then that tobacco was regarded as a legal product. Had the harmful effects of tobacco been known then, I have no doubt history would have been rewritten.

Mr President, in my hands, I hold as I mentioned just now some 3 600 signatures requesting the Government to ban tobacco advertising. In many of today's newspapers, there is an advertisement calling for the Government to do the same. Members have received submission from concerned bodies to the same effect. There is no political involvement. They all move with one hope and that is a hope of a clean environment and better health for our next generation.

Mr President, may I call upon the colleagues who have always portrayed

themselves as champions of public good, may I call upon those who have always been asking for better health services, those who stand so firmly to say that prevention is always better than cure, to stand by me to vote for my motion in the name of "health".

Mr President, may I call upon my other colleagues who have always assumed the role of environmentalists to vote yes on my motion. It is lamentable to see the tobacco industry using the words "cool" and "fresh" for their products when we know that with every puff, heat is generated and our air is further polluted.

Mr President, the motto in my motion today is health. A vote for my motion is a vote for health. Any other vote is unacceptable and must be against one's own conscience.

Mr President, I so do move.

Question on the motion proposed.

PRESIDENT (in Cantonese): Mr MOK Ying-fan has given notice to move an amendment to this motion. His amendment has been printed on the Order Paper and circularized to Members. I propose that the motion and the amendment be debated together in a joint debate.

Council shall debate the motion and the amendment together in a joint debate. I now call on Mr MOK Ying-fan to speak and to move his amendment. After I have proposed the question on the amendment, Members may express their views on the motion and the amendment.

MR MOK YING-FAN's amendment to DR LEONG CHE-HUNG's motion:

"To delete "and indirect"; to delete "and on tobacco sponsorship for social, cultural and sports events, and supports legislating to designate" and substitute with "; restricting smoking in"; and to delete "as smoke free areas" and substitute with "to designated smoking areas; and the expeditious increase of resources for strengthening anti-smoking education"."

MR MOK YING-FAN (in Cantonese): Mr President, I move that Dr the

Honourable LEONG Che-hung's motion be amended as specified in the Order Paper.

Mr President, first of all, I would like to reiterate that the Hong Kong Association for Democracy and People's Livelihood (ADPL) and myself are against smoking, especially smoking among teenagers. Moreover, being a Chinese herbalist, I am also a member of the medical sector. Therefore, in amending Dr LEONG Che-hung's motion, I hope that it will not be misunderstood that the Chinese medicine sector advocates smoking. The most important point is the ADPL respects Hong Kong people's rights and freedom of choice, just as we will not discriminate against homosexuals. For this reason, I think Hong Kong is a lovely place.

Now let me return to the subject. According to the findings of a study on smoking released by the medical profession in 1995, 19% or some 5 600 of the more than 30 000 people died in the territory every year is smoking related. It was also discovered that the amount of money spent directly on treating patients who smoke and the losses indirectly incurred as a result of smoking was estimated at \$3 billion to \$4 billion a year. That smoking is hazardous to health is a well-known fact. I am also in support of anti-smoking measures and endorse anti-smoking legislation to reduce the number of smokers and to promote healthy living. However, I believe anti-smoking measures should be implemented in a progressive manner. In particular, we should conduct extensive public consultations before enacting the relevant legislation. At the same time, we should review the matter regularly.

Since 1990, the placing of direct tobacco advertisements on television, radio and in cinema has been prohibited. Although advertisements on printed publications, vehicle bodies, MTR light boxes, external walls of buildings and rooftops are still allowed, a health warning slogan has to be displayed as well. However, indirect tobacco advertising, such as the sales of other goods under the brand name of a cigarette or the sponsorship of social, cultural and sports events by tobacco merchants has not come under the control of legislation. I support a total ban on direct tobacco advertising by means of all kinds of media, including MTR light boxes, printed publications and external walls, in order to prohibit tobacco merchants from directly promoting their products. This will prevent members of the public from becoming smokers under the influence of the advertisements, thus affecting their health.

I think a comprehensive review should be carried out after the legislation

imposing a total ban on direct tobacco advertising has come into effect for a certain period of time to gauge its effects on smokers, advertising agents and various media before considering whether or not further control should be exercised, or indirect tobacco advertising and sponsorship for cultural and sports events should be prohibited.

As for smoking areas, I think the Government has failed to seriously and strictly enforce legislation to prosecute those who smoke in smoke free areas. At present, public transport vehicles, seating areas of cinemas, theatres and concert halls, as well as amusement game centres are all classified as smoke free areas. Restaurants have to post notices on the designation of no smoking areas too. I support legislating to prohibit people from smoking in all indoor public places, except designated smoking areas. The police should enhance their alertness of enforcing the law strictly and prosecuting those who contravene the law. Moreover, we can consider increasing the fines in order to achieve a deterrent effect.

Besides, the police should strictly enforce other anti-smoking legislation. According to the information provided by the Council on Smoking and Health (COSH), 85% of the smokers in Hong Kong started smoking before the age of 25, with nearly half of them started smoking before the age of 19. Therefore, teenagers should be the targets of the anti-smoking campaigns. According to the present legislation, retailers are not allowed to sell cigarettes to those under 18 years old. However, within the two years from the effective date of the legislation to 1995, not a single offender has been prosecuted. The police should review in detail why there are difficulties in enforcement. I believe the police should conduct a detailed discussion with the Anti-smoking Committee in this respect with a view to making it more difficult for teenagers to buy cigarettes, thereby reducing their chances of becoming smokers. In addition, the police can set up a hotline for receiving the public's complaints. This will facilitate the police to get hold of detailed information for further action.

Apart from strengthening the enforcement of anti-smoking law, the

Government should also allocate more resources to anti-smoking education. In particular, the Government should target the teenagers to prevent them from trying the first puff out of peer pressure or curiosity. The COSH may consider sending its staff to various schools in Hong Kong to promote anti-smoking education and alert the teenagers by explaining the harmful effect of smoking. It can even make use of the media to carry out the work of anti-smoking propaganda and education.

To conclude, the legislative work on anti-smoking campaigns should be done in a progressive manner. Extensive public consultations should be conducted before legislating and reviews on the various effects of the new legislation should also be conducted afterward before considering more stringent legislation. Apart from these, anti-smoking education should also be provided in a more positive and extensive manner.

Mr President, I move the amendment.

Question on the amendment proposed.

MR LAW CHI-KWONG (in Cantonese): Mr President, the motion moved by Dr the Honourable LEONG Che-hung carries two main points. The first one is the restriction on tobacco advertising and the second one is to reduce the chances of non-smokers being affected by second-hand smoking in public places. Members from the Democratic Party will discuss today's question from various angles: Dr the Honourable HUANG Chen-ya will speak from the angle of tobacco tax, the Honourable Andrew CHENG from the angle of culture and sports and the Honourable John TSE from the angle of environmental protection.

We can see from the speeches delivered by Members from the Democratic Party the complexity of today's question. To formulate a reasonable policy, we need to analyse from various aspects. Amid a number of principles which are differing as well as contradictory, it is indeed not easy to reach to a balanced position. For this reason, we have to thank Dr LEONG for moving today's motion to enable this Council to discuss this controversial issue in detail today and to prepare for any future amendment in relation to the question of smoking.

Angle of Hygiene and Health

The Democratic Party sees mainly from the angle of hygiene and health in considering our position on the overall policy.

I will not repeat the findings and statistics in relation to smoking and health discussed by two of our Members just now. In general, the findings in the medical field generally confirm the correlation between smoking and the incidence of a number of diseases (such as cancer and lung diseases). Similarly, the tobacco industry can also cite a number of findings that negate the relationship between smoking and diseases. It is possible that these contradictory findings make people at a loss as to what to do. Nevertheless, this may serve as an example reflecting that it is not always easy to find out the truth. Generally speaking, we are more inclined to accepting the findings in the medical field as the findings are more neutral. In short, the Democratic Party considers that to discourage people, particularly teenagers, from smoking is in line with the public health policy. Although in terms of the details and the implementation of policy, the Democratic Party has reservations about part of the contents of the motion moved by Dr LEONG, it strongly supports the overall spirit of the motion.

Advertising and Smoking

In answering a written question posed by Dr the Honourable David LI on 4 December 1996, the Government quoted two research studies by the University of Hong Kong and the Chinese University of Hong Kong and confirmed the relationship between tobacco advertising and smoking habits among teenagers.

The tobacco industry has often denied that there is a correlation between advertising and smoking. It also considers that restriction on advertising will limit the rights of smokers to acquire information concerning different brands of cigarettes.

I do not think the tobacco merchants will waste money to place advertisements if there is no relation between advertising and smoking. In general, cigarette advertisements have no direct connection at all with the cigarettes themselves. Very often, the advertisements make use of classical conditioning to make people associate smoking with some wonderful lifestyles so as to induce them to smoke. I have never seen any cigarette advertisements which seriously provide smokers with information such as weight, taste, nicotine content and prices which are relevant to the cigarettes advertised.

The tobacco industry will also point out that restricting advertising will only help those who are leaders in the tobacco market to maintain their market shares and this is unfair to those who newly join the competition. This argument is not unreasonable but with public health as the major premise, such consideration is of secondary importance only.

In conclusion, the Democratic Party is in favour of banning all direct tobacco advertising. Of course, the Democratic Party has considered the impact of the relevant measures on the advertising industry and newspaper industry. Nevertheless, the impact will not be too great and will also be of a temporary nature only.

Indirect Advertising and Sponsoring Cultural and Sports Events

Mr Andrew CHENG of the Democratic Party will discuss this issue in greater detail. In general, the Democratic Party considers that a number of grey areas still need to be clarified at this stage. Moreover, there is a need to conduct a feasibility study on the relationship between indirect tobacco advertising and the sponsorship for cultural and sports events.

Smoking in Public Places

In this aspect, the position and principle of the Democratic Party is to respect, as far as possible, the rights of non-smokers in refraining from second-hand smoking. Although smokers have the right to smoke, they will subject other people to second-hand smoking at the same time. Smokers are in an active position while non-smokers are in a passive position. Therefore, in balancing the contradiction between the rights of smokers and non-smokers, we tend to lay particular emphasis on the rights of non-smokers.

Regarding the restriction on smoking in public places, Dr John TSE of the

Democratic Party will conduct a detailed discussion later. As regards the designation of smoking areas in public places, I would like to share some of my experiences. Once I was sitting in a non-smoking area on a plane, but unfortunately the row of seats in front of me was designated as a smoking area and there sat three passengers who smoked. I believed the smoke I inhaled in such an indirect manner would not be less than the smoke inhaled directly by the three passengers sitting in the front. In short, the Democratic Party is in favour of the designation of smoking areas in public places on condition that non-smokers can prevent themselves from second-hand smoking. Of course, some people from the catering industry have told us that it is not easy for them, particularly small-sized food establishments, to achieve the above target. In amending the relevant legislation in future, I believe there is a need to make suitable arrangement in order not to create unreasonable difficulties for them.

In general, the position and direction of the amendment moved by the Honourable MOK Ying-fan are relatively weak. Moreover, the message conveyed is not very clear. For these reasons, the Democratic Party will vote against the amendment. Although the Democratic Party has some reservations about the details, technical problem as well as implementation problem of the original motion moved by Dr LEONG Che-hung, it considers that what matters most is to deliver a clear message. Therefore, the Democratic Party will vote for the motion.

Mr President, I so submit.

MR IP KWOK-HIM (in Cantonese): Mr President, "Smoking is hazardous to health". I trust that the message has already been imprinted on people's minds. "Anti-smoking" has become a mainstream thought in Hong Kong. In recent years, the Government has indeed done its utmost in its "anti-smoking" campaign. In as early as 1987, the Government already vowed to stride towards the target of a total ban on tobacco advertising and set up the statutory Hong Kong Council on Smoking and Health. The Council promotes the "anti-smoking" message through promotional films, anti-smoking slogans and various activities. At the same time, requirements are laid down in accordance with the relevant legislation that smoking is strictly prohibited in some indoor public places and public transport. Available data show that the number of smokers aged 15 and above has decreased from 23.3% in 1982 to 14.8% in 1995. This is an encouraging message. However, among the teenage group, in particular, the

group of youngsters aged from 15 to 19, the number of smokers has increased again from 5.5% in 1988 to 5.9% at present. A more worrying point is that recent research shows that people who pick up smoking habits while they were young will most likely keep these habits for the rest of their lives.

Mr President, the Democratic Alliance for the Betterment of Hong Kong (DAB) is concerned about the effect of smoking on the health of the people of Hong Kong, in particular the young people. There are now calls for a total ban on direct tobacco advertising. In principle, the DAB agrees to this. Although tobacco advertising on television and the radio and in the cinema has been banned, it is still allowed on newspapers and magazines and there are still some outdoor advertisements. Mr President, if we have a chance to take a look at the layouts and contents of the advertisements and the promotional strategies of the tobacco merchants, we will find that these advertisements are well thought out and extremely attractive. In 1994, the Hong Kong Council on Smoking and Health and the University of Hong Kong conducted a random survey among students in Forms One to Three and the results of the survey showed that the degree of attractiveness of the advertisements of a certain brand of cigarettes is clearly related to people's choice of that particular brand and their sticking to that brand. Although some groups have argued that tobacco advertising is not the only factor affecting the preference of smokers, as one of the members supporting the plan of the World Health Organization to "establish an area without tobacco advertising by 2000" in the Western Pacific Region, the Hong Kong Government is duty-bound to prohibit tobacco products from being directly advertised. Moreover, this method can be most effectively implemented and is the most cost-effective.

On the other hand, as regards whether legislation should be enacted to completely ban smoking in indoor public places, the DAB thinks that this should be carefully considered. At present, a lot of indoor public places, including cinemas, video game centres and so on have been made smoke free areas and restaurants are required to put up notices to indicate whether there are no smoking areas. However, if the Government really wants to enact legislation to prohibit smoking in indoor public places, it must first consider how this can be effectively enforced. I am afraid it is questionable whether the persons in charge of some restaurants and entertainment establishments would be willing to run the risk of offending their customers by enforcing the ban on smoking, particularly when business is sluggish now. In addition, it would be a very difficult task and it would entail huge administrative costs for the Government to

monitor whether these establishments have enforced the law. The DAB thinks that the Government should take positive steps to encourage restaurants and entertainment establishments to designate areas for smoking. In so doing, the persons in charge would only need to make suitable arrangements when allocating seats to customers who smoke. This is more feasible in terms of enforcement and management. Moreover, this will minimize the effects of "passive smoking" on non-smokers.

Mr President, in fact, the most effective "anti-smoking" tool is educating the public to let them understand the effects of smoking on themselves and others. The activities promoted by and the promotional films produced by the Hong Kong Council on Smoking and Health are highly acclaimed among the public. The Government should continue to develop its anti-smoking campaign in this direction and allocate more resources to support the promotion of "anti-smoking" activities so that all Hong Kong people can become aware of the fact that a smoke free city brings immense benefits to everyone.

Mr President, these are my remarks.

MISS CHRISTINE LOH: Mr President, the substance of today's debate is how far we want to go to restrict tobacco advertising, and smoking itself, in order to protect the interests of Hong Kong people, especially teenagers.

Research carried out by the Hong Kong Council on Smoking and Health shows that advertising is linked to tobacco consumption, especially in attracting young people to smoke. Surprisingly, the tobacco industry insists that advertising of its products only affect the market share of the competing brands. I leave commonsense to judge why the industry spends HK\$500 million a year to advertise its products if it has no effect on at least the hope to expand the market as a whole. The fact that the number of smokers are not rising is not due to the ineffectiveness of advertising. If that is the case no one will advertise anything.

I believe Members have all received a letter from Mr Allen CHICHESTER, representing the Association of Accredited Advertising Agents of Hong Kong. The Association claims that "even without a total tobacco advertising ban, [Hong Kong] is the most successful country worldwide in terms of cigarette consumption decline, considerably more [it says] than those countries which have instituted advertising bans". Bravo, Hong Kong! Let us keep it that way.

We should thank all those who dedicate themselves in and outside the Government to educate people about the harmful effects of smoking and to expose the dishonesty of the tobacco industry. We want even greater decline in the number of smokers, and it just might well be that the further restrictions will reduce the total number of smokers among us. Let us not miss the point, Mr President, that, the tobacco industry worldwide is feeling threatened, would let us help this process rather than hinder it.

We understand that the Health and Welfare Branch submitted a package of proposals to further restrict cigarette advertising and promotion to the Executive Council last summer. Its proposal unfortunately failed apparently because the Executive Council was concerned that the tobacco and advertising-related businesses would lose over HK\$1 billion dollars, plus 1 500 jobs could be affected. Mr CHICHESTER repeated these points in his letters to us.

The tobacco and advertising industries are protecting their self-interests. They could very well be overstating their plight. With the advertising market expanding, new businesses could well replace tobacco advertising. Let us remind ourselves that in 1990, before tobacco advertising was banned on television, the television stations estimated that they would lose HK\$100 million in revenue. Their revenues, in fact, increased 80% between 1991 and 1996. I hope Members will not, therefore, take these effects on revenues and jobs on face value.

However, if indeed a substantial number of jobs will be lost, we can still have a grace period before legislation could come into effect in order to soften the blow — like what was in fact done when restriction was imposed on the ivory trade. This way we can achieve both the objectives of improving public health and giving time to the industry to adjust.

As Dr LEONG Che-hung pointed out, the tobacco lobby also tries to put a human rights angle in its defence. They tell me that since I am a defender of human rights, I ought to agree with them. This argument seems to have frightened off some Members of the Executive Council and may be even some Members of this Council. It is argued that to ban tobacco advertisement would infringe freedom of expression, and to restrict smoking in public places would interfere with individual liberty. They further argued that it would also damage Hong Kong's open market image.

But what sort of product are we talking about? We are talking about an addictive drug which can cause disease, and in the worst case, kill. Article 16 of our Bill of Rights, as Dr LEONG has pointed out, provides that the exercise of the right to freedom of opinion and expression may be restricted where necessary for the protection of public health. We are dealing with one of these good cases that merits legislative control.

The tobacco industry sponsors many sports and arts events. Again I am being lobbied by my friends in the arts community and they say surely for somebody like you who support culture, you would not be supporting restriction? Well, again these constituencies, people in sport who are very concerned about fitness and health and people in the arts, do not love tobacco smoking. They would rather disassociate themselves with tobacco smoking if alternative funds were available. However, I wonder whether it is possible, therefore, for some other solutions to ensure that if tobacco advertising is restricted that funding for sports and the arts could continue. One solution for us to consider would be to have a tobacco sales tax and for a portion of that money to be raised to be earmarked for such events.

Mr President, I also want to support Dr LEONG in that tobacco smoke is a major airborne contaminant contributing to indoor air pollution. Ventilation and air-conditioning systems cannot eliminate the smoke in enclosed indoor environments. I am in favour of banning smoking in all confined public spaces. Since 85% of the people do not smoke in our community, it is unfair to subject them to involuntary smoking where it is possible for their health to be adversely affected.

Lastly, there must be more public education particularly to inform young people smoking is not "cool" as the advertisers try to project a trendy image. For those who are already addicted, we need to help them to break the addiction.

Mr President, I much prefer Dr LEONG's motion because that represents the ultimate objective; and that is also what Hong Kong has committed itself to do as a signatory of the World Health Organization's anti-smoking plan. I do not quite understand the Honourable MOK Ying-fan's amendment, but nevertheless, if it carries, I would not oppose it and I would then regard it as a step towards the ultimate objective which we want. Thank you.

DR HUANG CHEN-YA (in Cantonese): Mr President, cigarette smoking is undoubtedly addictive and hazardous to health. The profits made by tobacco merchants actually come from selling diseases, misfortune and death.

Cancer, heart disease and stroke are the three top killers in Hong Kong and they are all related to smoking. In the next 30 years, over 2 million Chinese will die because of smoking. Moreover, smoking causes diseases such as pulmonary emphysema and tracheitis. Being exposed to second-hand smoking at home, children will suffer from harms to their throats and tracheas. If a child inhales smoke of more than 10 cigarettes by second-hand smoking a day, he is two times more susceptible to hospitalization than other children. These diseases incur huge social costs because it is not only expensive to treat cancer and stroke, but the orphans and widows left behind also need the assistance of social welfare. The World Bank estimates that every four tons of cigarettes would bring about a loss of \$220 million as a result of medical treatment and loss of productivity. In 1992, more than 70 000 tons of cigarettes were imported into Hong Kong, that is to say, \$15 billion of social costs were incurred. The Government is always worried about the rise in medical costs, some people even say that as the medical costs of the Government have gone up, the public should pay more for hospitalization. In fact, a lot of these medical costs have been spent on diseases caused by smoking. If the indirect losses are included, the amount would soar to \$3 billion to \$4 billion a year. In other words, the profits of the tobacco industry are largely subsidized by the community that pays the price tobacco incurs. I think this is undesirable and unfair.

At present, a number of state governments in the United States are filing civil lawsuits against tobacco companies, demanding compensations for medical and social costs, and some patients have also started asking for compensations from these companies. I think that the Hong Kong Government should consider taxing the tobacco companies or using other means to recover the financial losses suffered by Hong Kong people which are brought about by the tobacco companies. The Consumer Council can also consider helping the individual victims to claim compensations by using the collective action fund.

If certain people are worried that the complete banning of tobacco advertising will make the mass media and the advertising industry suffer and would therefore like to give the tobacco companies a way out by allowing them to advertise indirectly, then they should support the levying of taxes on tobacco advertising so as to reduce the subsidy paid by the community to the tobacco industry because this will not affect the advertising industry at all.

Mr President, is banning tobacco advertising an infringement of human rights and the freedom of expression? I believe that nobody would advocate allowing heroine or soft drugs to be advertised, as this is not a question of the freedom of expression or human rights, but that these products are all harmful to people's health.

Some people say that cigarette is only a kind of merchandise and there should not be so many regulations and restrictions on it. However, the Food and Drug Administration (FDA) in the United States has recently stated clearly that cigarette is something which is addictive and has serious side effects, therefore, it should be regarded as a drug and be regulated. This is a measure worthy of our support. In fact, the standpoint of the FDA is that other drugs which may cause heart disease, stroke or cancer are either prohibited from sales or have to be labelled with specific warnings. If they are improperly sold, compensation may even have to be paid. Researches in the last decades have sufficiently proven that tobacco is hazardous and there is no reason why it should not be regulated like other drugs in the aspects of advertising, packaging and provision of supplementary information.

Mr President, countries in Europe and America have been tightening regulation of the tobacco industry year after year and as a result, the tobacco industry has to resort to exporting death to the Third World. In particular, the China market has become an important prime target of the European and American tobacco merchants and certain heartless Hong Kong businessmen. Leaving themselves a way out in Hong Kong, they hope to continue making their fortune by marching into Hong Kong and China before stricter legislation is enacted by the Hong Kong and Chinese governments and when the consumers are still not adequately aware of the hazard of smoking. We ought to tell them specifically that we do not welcome such commercial activities which build their own profits on the pain and misfortune of others. Before tobacco is categorized

as a restricted drug, we should at least ban tobacco advertising in order to curb the insidious effect of second-hand smoking in public places.

With these remarks, I support the original motion.

MR CHAN WING-CHAN (in Cantonese): Mr President, the statement "Government warning: Smoking is hazardous to health" can be seen attached to every cigarette advertisement. Smoking, whether direct or second-hand, is hazardous to our health. To safeguard the well-being of smokers, non-smokers, and even the babies still in their mothers' wombs, I am in support of anti-smoking.

At present, the packaging, sales, and promotion practices of tobacco products as well as advertising on television (of course it is now totally prohibited) are strictly regulated and restricted by the Smoking (Public Health) Ordinance so as to warn the public of the hazards of smoking and reduce the chance for tobacco advertisements to lure the public to smoke. As far as these measures are concerned, I think they are acceptable. However, I do not think it is necessary and feasible to impose a total ban on tobacco advertising. Tobacco is a legal commodity, not drugs. We can only regulate direct tobacco promotions. But as far as other indirect promotional practices are concerned, such as the production of clothing and travel bags which are sold by the brand name of a cigarette, I think it is unreasonable to intervene. It will be far more simple and straightforward to impose a total restriction on the sale of cigarettes in Hong Kong than to impose a total restriction on tobacco advertising. Nevertheless, the Government is unwilling to give up its huge tobacco revenue. (Perhaps the Government can explain later if it is not so.) It is worried that smokers will react too radically. As a result, this gives rise to such an awkward situation of "permission is given to sell cigarettes but a ban will be imposed later on advertising".

Apart from this, the Ordinance also requires that all food establishments must specify whether there are smoke free areas inside. I find this requirement acceptable and reasonable. In fact, since 1994, the owners of restaurants, food establishments and other eateries have, in compliance of the law, already started to designate "smoking area" or "No smoking area" in their establishments. To meet such needs, the Federation Of Restaurants Owners Limited immediately prepared a large quantity of stickers with "No-smoking Seating Available" or

"No-smoking Seating Unavailable" printed on them for use by restaurants, food establishments and other eateries. And in so doing, the public can freely choose whether or not to patronize these premises. This practice has been working well for two years and there is no need indeed to change this mode of operation. According to Dr the Honourable LEONG Che-hung's original motion, "all indoor public places" should be designated as smoke free areas. This will not only infringe on the smokers' freedom to smoke, but also adversely affect the catering industry. In fact, so long as the smoking behaviour of smokers does not affect the non-smokers, there is absolutely no need to impose a total ban on smoking. The designation of smoking and smoke free areas should have already achieved the desired effect.

If all indoor public places are designated as smoke free areas, food establishments will definitely be affected as smokers will unavoidably face a dilemma in patronizing food establishments in future. As the saying goes, "A cigarette after a meal makes you happier than a deity" — Mr President, I am not here to promote or encourage smoking. I am only repeating what some smokers have told me. As heavy smokers may rather choose not to patronize the food premises, the catering industry will naturally be affected. As a matter of fact, the number of patrons who smoke is quite large. It will deal a further blow to food establishments which are already struggling hard, for survival, thereby affecting the workers' job opportunities.

At the same time, some patrons may insist on smoking despite the penalty warnings and the waiters' advice. This will even lead to a row between the two parties, thereby undermining the harmony among the patrons, disrupting the operation of the food establishments, and making it more difficult for the employees to carry out their work.

Even though most of the smokers abide by the law and go to the restroom to smoke, they would still violate the rule of refraining from smoking in public places and cause serious problems. This is because the restroom will definitely become a refuge for smokers. With the accumulation of filthy smoke inside, will the restroom not drive other patrons away? The damaging effect is so serious that it will affect the operation of business. Moreover, the owners will be alleged of an offence related to "anti-smoking" as a result.

Mr President, as a Member from the Hotels and Catering Functional Constituency, I reluctantly choose to support the Honourable MOK Ying-fan's amendment.

Nevertheless, there are some comments I wish to make for the Government's reference in case the Government really enacts legislation requiring that food establishments must designate smoking and smoke free areas. Here are some situations that need to be considered: If a food establishment has only four or five tables, how can one divide it into smoking and smoke free areas? Should two of the tables be designated as belonging to the smoking area and the remaining three as belonging to the smoke free area? In the event that a row breaks out between a smoker and a non-smoker, how shall the demarcation of the "designated areas" be defined?

Mr President, I so submit.

MRS ELIZABETH WONG: Mr President, without wishing to repeat the eloquent arguments advanced in Dr the Honourable LEONG Che-hung's speech, I would like to first of all congratulate him for his motion. I think it is gratifying to know that there is someone of this Council, who is also a member — a potential member of the Provisional Legislature — who is so high-minded as to really care for the health of the people.

On this alone, Mr President, I support this motion and sincerely hope that the spirit of protecting public health behind this motion will endure in the months to come during the tenure of the Provisional Legislature.

Mr President, in so supporting the motion, I would like to appeal to the Government to consider setting up a special fund for the purpose of supporting and promoting and putting advertisements in worthwhile projects in sport and culture. I think the special fund will help to ease the lack of sponsorship from tobacco because, without parallel increase in funds elsewhere, these worthwhile activities might be left stranded. I have for many months suggested to the Government to set up a special fund for this dedicated purpose, perhaps also to make a special levy for this purpose, but to no avail. I hope in the Secretary for Health and Welfare's answer this evening she will provide a satisfactory answer.

Thank you.

MR ANDREW CHENG (in Cantonese): Mr President, the spirit of Dr the Honourable LEONG Che-hung's motion is to ban tobacco advertising so that all the Hong Kong people, especially youngsters, will not be harmed by tobacco. Regarding this point, the Democratic Party is in full support of it without any reservation. As for the proposed ban on tobacco advertising, I will speak as the spokesman of the Democratic Party on information matters and put forward the following views.

First of all, the Democratic Party supports an total ban on direct advertising. With regard to the arguments put forward by the tobacco industry which strongly opposes the ban on cigarette advertising, I would like to raise a few points.

The tobacco industry considers the ban on tobacco advertising an infringement on the freedom of expression. Firstly, Mr President, according to the "freedom of opinion and expression" as stated in section 16 of the Hong Kong Bill of Rights Ordinance, one of the five restrictions that this freedom is subject to is public health. In other words, we put public health above the freedom of expression.

Secondly, the International Covenant on Civil and Political Rights has clearly stated in its preface that civil and political rights are established for each individual and freedom of expression does not include the expression of commercial views.

The Covenant on the Protection of Human Rights and Basic Rights also maintains that where the issue of health protection is involved, freedom shall come under restriction.

The second argument put forward by the tobacco industry is that while direct cigarette advertising is not completely banned in Hong Kong, the decrease in the number of local smokers tops the rest of the world. My view is that, Mr President, I will attribute the decrease in the number of smokers to the various measures taken by the Government over the years, including restriction on the forms of advertising, enhancement of health education as well as raising cigarette prices.

Thirdly, Mr President, the tobacco industry says that cigarettes are not illegal commodities and therefore should not be deprived of the right to advertise. My view is that lawyers, legal services, physicians as well as many medical drugs are not allowed to advertise in Hong Kong as well. Therefore, after weighing the importance of the freedom to advertise and public health, we, members of the Democratic Party, believe direct advertising of tobacco products should be banned.

As regards the ban on indirect advertising, the Democratic Party thinks that there are endless ways to advertise and promote a product. No matter how detailedly a law is written, there are bound to be grey areas which will make it hard for the law to be enforced. On the other hand, when too much restriction is imposed by law, it may be highly detrimental to the dissemination and circulation of information. In view of the difficulty in implementation and the obstruction to freedom of information, the ban on indirect tobacco advertising has to be studied carefully. Although we support Dr LEONG Che-hung's motion, as regards indirect advertising, we think that further discussion is required.

Everyone knows that every year tobacco companies sponsor many large-scale cultural and recreational activities, thus making up for the insufficiency in the funding of cultural, sports and recreational activities which should have been provided by the Government. Hence, very often the public have to watch football matches or tennis competitions sponsored by big tobacco companies. If indirect cigarette advertising and also sponsorship by tobacco companies are banned, it seems that the people of Hong Kong will lose some entertainment opportunities.

We, members of the Democratic Party, have the following suggestions: Firstly, the practice of Australia to set aside a certain amount of tobacco duty could be followed. Considering that Hong Kong has a revenue of \$1.8 billion a year from tobacco duty, if 1% is being set aside, then \$18 million will be available for the promotion of cultural, sports and recreational activities, thus relieving more or less the financial stress encountered in the development of cultural, sports and recreational events. Secondly, when sponsoring cultural, sports and recreational activities, tobacco companies should be required not to use the original forms of the names and logos of their brands of cigarettes, including the patterns, colours and typefaces, in their advertisements of the

sponsored activities. With these two measures, the cultural, sports and recreational activities cannot only retain the huge amounts of funding they receive from the tobacco companies but the additional tax revenue can be used for further subsidization of such activities. This will to a certain extent prevent the organizers of the activities from being controlled by tobacco companies. Moreover, when the images of the cigarette logos do not appear in their original forms, cigarettes might be separated from cultural and recreational activities and the false positive image that tobacco tries to put up by adhering to these activities will also be broken.

Mr President, in respect of the fact that many youngsters have the habit of smoking, the Democratic Party thinks that advertising is only an immediate and catalytic cause. On the other hand, the heroic image, carefree spirit and rebellious image of triad members which are being highly exaggerated in television shows, movies, newspapers and magazines are in fact giving the young people a wrong idea that "cigarette is a symbol of maturity; smoking is a symbol of being the boss and puffing a cigarette is a symbol of having experienced many vicissitudes in life". This is basically the fundamental reason for people smoking and also the adverse impact brought about by the advertisements. In our opinion, these should be rectified as soon as possible. Therefore, Mr President, the Democratic Party is of the opinion that to solve the problem of smoking among the young people, we must suit the remedy to the case by starting with the family and education at school.

With these remarks, I support the motion.

MRS SELINA CHOW (in Cantonese): Mr President, after reading Dr the Honourable LEONG Che-hung's motion and the representations against it from restaurant operators, retailers and the association of advertising agents, the metaphor about bread versus love suddenly came across my mind.

Dr LEONG Che-hung cherishes his smoke free world and is willing to give up his bread for his love, which is quite remote. However, very regrettably, that cost of love has to be shouldered by other people who have to starve as a result.

Dr LEONG proposed a very stringent control that almost treats tobacco as contraband goods. However, the Government's policy towards tobacco cannot

be considered from the angle of health alone. It has to be considered from the economic point of view as well.

The proposal to expand the scope of no smoking areas alone can affect most indoor entertainment establishments, including restaurants, karaoke bars, lounges, shopping arcades, nightclubs, hotels, guesthouses and even homes for the aged with elderly smokers. Smoking within such premises is to be strictly prohibited. Operators of these businesses will be subject to severe limitation or even be deprived of the space for their existence. As such restrictions will limit the number of customers, the interests of both the employers and the employees alike will be seriously prejudiced.

At the moment, there are more than 8 000 restaurants and other eateries all over the territory, most of which are and cannot be entirely smoke free. To ban smoking in entertainment establishments such as karaoke bars and lounges is tantamount to closing them down. The situation of shopping arcades and shops is not any better under such a ban. Smokers will have to think twice before entering arcades and shops. Whereas it used to be a simple matter for them to decide whether or not to enter, they now have to take into consideration the cost which involves extinguishing their cigarettes.

It is said, "Love is blind." To attain the anti-smoking ideal, Dr LEONG has obviously erred in deciding the relationship of cause and effect. Consequently, he "identifies the wrong person as rival and hits the innocent".

I said the motion involves an economic issue because the motion proposes to introduce a total ban on tobacco advertising and sponsorship by tobacco companies. In addition to the result of an annual economic loss of billions of Hong Kong dollars, the ban would also cause more than 1 500 people in the advertising and relevant material supply industries to lose their jobs. What is more, small retail businesses will be hit doubly hard.

At present, small front-line retail traders can earn a total of \$15 million to \$20 million each year from advertising. When tobacco advertising is banned totally and as sale of tobacco may shrink due to anti-smoking campaigns, the income of these small traders will undoubtedly be severely jeopardised. That is why among the some 16 000 tobacco retail traders, more than 10 000 have already signed their names in protest of a ban on tobacco advertising.

In fact, ever since direct tobacco advertising was banned in the electronic media, the effects of tobacco advertising have greatly diminished. Before taking steps to eliminate all tobacco advertising, is it necessary to prove whether the remaining tobacco advertisements are capable of turning people into smokers; and is it necessary to consider whether different brands in the tobacco industry have the right to compete through promotion?

Apart from direct advertising, Dr LEONG said even indirect advertising has to be banned as well. If this is to be done, does it mean that we could not enjoy live broadcasts of any international ball games such as the World Cup and the European Champions League if there are tobacco advertisements on the boards in the fields? Or should we record the games first and then "shade" the advertising boards before broadcasting the games to our audience? Does Dr LEONG Che-hung have such ideas in mind?

If the race cars in international tournaments have cigarette brand names on them, then do we have to shade the bodies of these race cars or even ban the broadcasting of the such events?

If sponsorship and advertising are prohibited, a lot of the very popular sports and cultural activities will disappear forever. Worse still, some cup matches with a long history may not be able to continue.

The Honourable Miss Christine LOH said just now cigarettes were drugs. If what she said could be agreed to by the community and cigarettes were therefore treated as drugs and hence prohibited, then tobacco advertising should indeed be banned totally. However, so far we are just saying that smoking is hazardous to health. In fact, in today's advanced society, not all things are good for our health. Some are even harmful. Should we put them all on a list and prohibit their advertising?

Everyone can make his or her own decisions. A lot of surveys have indicated that people smoke due to influence from their peers rather than advertisement. Furthermore, the Supreme Court of Canada has ruled that a total ban on tobacco advertising is against the protection of the freedom of speech in the commercial sector of the country. The Honourable Andrew CHENG could be said to have distorted the argument to restrict tobacco advertising for public

health reasons. Advertising is only a form of expression. Advertising itself is not harmful to our health. If, as Mr CHENG said, anything harmful to our health should be banned, the list will be very long. That also amounts to an abuse of the health reason.

Mr President, with these remarks, I oppose the motion.

MISS CHAN YUEN-HAN (in Cantonese): Mr President, in the wake of the general trend of world-wide environmental protection campaigns in recent years, Hong Kong has already implemented the anti-smoking policy for a considerable period of time. The discussions among members of our society have become more and more extensive and heated. The topics discussed include the various ways members of our society look at "human rights", the fight for freedom of promoting commodities by merchants, the pursuit of maintaining a healthy environment by environmentalists, the issue of medical and public health as well as the problems of teenagers.

Here I would like to raise a few questions and one of which is that the anti-smoking campaigns staged over the past few years have not been very effective. Apart from a slight increase in the number of teenage smokers, the number of female smokers has also tended to rise. After examining thoroughly the causes for the failure of anti-smoking campaigns to make progress, I think I can sum up a few points that deserve our serious consideration.

First of all, the authorities concerned have failed to target the existing malpractices in formulating anti-smoking promotion strategies in society. For this reason, the result is far from effective. Let me cite an example. At some overseas universities: after the academic buildings are designated as smoke free areas, those lecturers or tutors who smoke will leave their offices and enjoy the pleasure of smoking outside the buildings. Even so, they do not feel that they are being deprived of their rights. What is more, they are glad that they can enjoy such moments of happiness.

The crucial factor leading to this situation is that the people in those societies in general know very well the activity of smoking. Moreover, the smokers and non-smokers are not in antagonistic positions. Basically, they look at the prohibition of smoking indoors as perfectly natural, just as we will not insist on eating meat when we go to a vegetarian restaurant. According to

my observation, Hong Kong has not yet been able to create a good social atmosphere in designating smoke free areas.

Mr President, as a matter of fact, in our daily lives, we often hear many of our friends who smoke complain that the designation of no smoking areas by law makes them feel that they are stripped of their rights. Many people, particularly those engaged in labour and services at the grassroots level, often complain to me (because I oppose smoking): "CHAN Yuen-han, I have my human rights and the freedom to smoke too." Of course, I am not totally in agreement with their views. Nevertheless, given the existing social atmosphere, the public in general know very well that "smoking is hazardous to health". To promote the designation of smoke free areas, I feel that the authorities concerned should focus on enhancing smokers' identification with this social campaign as well as on promotion and education work in respect of maintaining public health. Only in doing so can we enhance our social conditions to promote this strenuous and incessant work.

Secondly, I am of the view that, apart from setting a clear position, we should also take into account whether or not the various parties accept the enactment of legislation to monitor anti-smoking activities. The tobacco industry in Hong Kong has all along expressed its opposition to the banning of direct advertisements. Moreover, tobacco merchants propose that they are just fighting to safeguard their right to promote "legal commodities". In their opinion, their commodities, as commodities that can be sold through legal channels in society, should enjoy the same freedom of promotion as other commodities.

Mr President, I am afraid I cannot accept this argument. Judging from the angle of human rights, it is not absolutely reasonable to raise an objection. However, it is indisputable that direct smoking, as well as second-hand smoking, is hazardous to the health of the public. The relevant medical studies and arguments are already very substantial.

The Food and Drug Administration in the United States published in 1995 a report which indicated that nicotine was a kind of drugs that should come under control. Last year, President Bill CLINTON of the United States announced that nicotine was to be listed as a controlled drug, thereby further prohibiting tobacco merchants from engaging in commercial sponsorships that display their brand names in sports or entertainment events.

In this regard, I feel the most important point that we should draw lessons from is that we need to clearly determine the chemical compounds in cigarettes before assessing the monitoring details and the measures to be implemented. I believe such way of handling things is more in line with the legal requirement and we will be able to gain greater social acceptability.

Mr President, I believe there is still a long way to go for Hong Kong to reach the target of becoming a "tobacco free region" in 2000. Nevertheless, we should never rush through legislation in order to achieve our goal and, on the contrary, ignore social education. To this end, I urge the relevant departments to step up their work to enhance the public's social consciousness of participating in anti-smoking campaigns. Only in doing so can our legislative work find a better social basis and gain public support.

Mr President, I so submit.

MR MARTIN LEE (in Cantonese): Mr President, there are two groups of people in the public gallery, and I know some of them. Regrettably, my speech today cannot please both groups.

I still remember the days when I was studying at the University of Hong Kong and I enjoyed playing card games. I once played cards with six persons and they were all smoking except me. No matter how hard I tried to dissuade them from smoking, they just ignored my request. Later, I went out and bought a pack of cigarettes. I then lighted and smoked 10 cigarettes at the same time, so there were altogether 16 cigarettes giving out smoke at that moment. At last, they proposed to stop smoking together. We continued to play cards and I finally won the game.

Mr President, when I was still involved in the work of the Basic Law Drafting Committee, there were four gentlemen in a sub-committee who were chain-smokers and they kept smoking throughout the meeting. Other people felt very uncomfortable and asked them to stop smoking. There was a judge from Hong Kong at the meeting, and he pointed out that he had the freedom to smoke. Regarding the point of freedom, I immediately recognized its importance. However, I thought he did not have the right to exhale the smoke

even though he had the freedom to smoke since puffing would disturb the other people. I even proposed it should be put down in the Basic Law that people should have the freedom to smoke but not the freedom to puff. Regrettably, Mr President, just as the fate of my other splendid ideas, this one was also not included in the Basic Law.

Mr President, passive smoking is indeed a problem. At first, I did not intend to speak today because I have caught a cold. Any person with a cold will have a strong aversion to the smell of cigarettes. When I was having my lunch today, a gentleman nearby was smoking a cigar and the smell was indeed very unpleasant. I therefore decided to talk about the problem of passive smoking. If a person takes drugs, the victim is himself only and the other people will not be harmed. However, smoking or puffing will harm other people.

Mr President, my father was once a smoker but he finally quit smoking at the age of 80. The reason for him to quit smoking was that my son would run away every time he saw his grandfather smoking. My father did not want to see his grandson running away from him every time, he therefore gave up smoking. I was very pleased about this and I told Mr SZETO Wah this incident. I told him that my father could quit smoking even at the age of 80. Mr SZETO Wah was a student of my father's. He told me not to worry about him because he would also quit smoking at the age of 80. Fortunately, Mr SZETO Wah already quit smoking at the age of 60, but I recently heard that he would take a puff or so every now and then secretly.

Mr President, I have spent eight years to persuade my honourable colleagues to designate this building as a smoke free area except room 217. At that time a Member suggested that room 217 should be better ventilated. I did not agree to this idea and I even proposed that the room should have no air-conditioning at all. I still recall the card game I had when I was at the University of Hong Kong, and I understand that if there is no air-conditioning, the room will be so stuffy that everyone will stop smoking. This should be good for their health.

Regrettably, I recently discovered that there was a strong smell of cigarettes in room 109. Mr President, room 109 is the room right behind you. If you have time, would you please do something more about it. That is to say, except room 217, all the other rooms in this building should not have a strong

smell of cigarettes.

Finally, Mr President, I hope Members and the public who are smokers can bear in mind one sentence when they inhale and exhale every smoke: "I am harming myself, and I am also harming others".

MR CHIM PUI-CHUNG (in Cantonese): Mr President, I remember that I have given up smoking for more than 10 years. When I smoked most heavily I smoked three packets of cigarettes a day. How can one give up smoking? I believe that the most important word is "determination". However, today, I find myself unable to share Dr the Honourable LEONG Che-hung's views. First, we have to make one point clear. As some honourable colleagues asked just now, what exactly is tobacco? If tobacco is classified a contraband good, we may handle it and condemn it in any way we deem fit, or we may even ban it altogether, as in the case of opium and heroin. However, if it is not so classified, we should be more reserved in our advocacy, and leave other people some room to make their choices, rather than advocate that we are absolutely correct. In this world, if everyone is as honest as he or she claims to be, there would be no need for the existence of the Independent Commission Against Corruption. If everyone is as well-behaved as he or she claims to be, there would not be any nightclubs and ballrooms. Just now, many colleagues said that since tobacco had killed many people directly or indirectly, it should be totally banned. However, we have to understand one thing. In the United States, the number of casualties caused by vehicles everyday, I am sure, is much greater than that of those killed by tobacco. Can we thus ban vehicles from our roads? Therefore, we must first determine the position of tobacco. What exactly is tobacco? Once a government, for example, the Hong Kong Government, or other authorities concerned can determine the position of tobacco, there would not be any more controversy and there would be no need for us to have a debate.

Second, the hazards posed by tobacco; and third, tobacco advertising. In the past, when people saw the fat pork in hakka dishes, they just could not help eating it. Nowadays, people are more concerned about their lives and they say that fat pork contains cholesterol. They also know that there are many kinds of food which they should not eat too much. This is the result of education and a sign of social progress.

I believe the Hong Kong Government should strengthen the education of young people in this respect, rather than strangle the tobacco industry. Recently I have received many views, some of which come from the advertising industry and the restaurant industry. I think that this is mainly a question of system. Can any system claim to be absolutely correct? For instance, there are many different religions like Buddhism, Protestantism and Catholicism, which interpret the same matter of religious faith in their own ways. Thus, before we can reach a final decision concerning the position of tobacco, I think that people in the community should respect one another.

We may decide to designate some smoking areas in a restaurant, in very much the same way as we designate VIP rooms which are separated from the public dining areas in the premises. We may decide to ban smoking in cinemas because going to the cinema is after all not an absolute necessity. If we now consider it necessary to ban smoking in various means of public transportation, we may as well implement a ban. However, if we look at this issue simply as a question of banning or not banning, as Dr LEONG has advocated, we will be behaving in an absolutely autocratic manner. He merely thinks that smoking is not right. But, very often, if we think that other people's acts may not be correct, we can actually talk with them.

I personally believe, and we of course understand, that the conduct of such a motion debate does not necessarily put the Government under any absolute obligation to implement the outcome. Therefore, I would like to take this opportunity to advise the advertising industry and operators of restaurants and other establishments that they need not start to worry immediately because motion debates in the Legislative Council are just an avenue for Members to express their different views, and they are not like a bill or a piece of legislation, which must be implemented immediately after its enactment. Members merely make use of the opportunities provided by motion debates to express our concern about social issues. In view of what I have said, Mr President, I personally think that the most important thing is for the Government to carry out civic education, so as to enable the younger generations to know their rights and

educate them to care more about their health and their future and thus reduce smoking gradually.

Once people have given up smoking, they would find the very sight of people smoking objectionable. However, this should not give them an excuse to criticize other people who like smoking because everyone is free to have his or her own hobbies. As long as smokers do not disturb other people, there is no need to interfere too much with their behaviour. As in the case of the legalization of homosexuality in many countries, Mr President, as long as they do not infringe too much on the other people's freedom, I personally think that there is no need to impose an absolute and compulsory ban. I oppose the original motion.

DR JOHN TSE (in Cantonese): Mr President, first of all, I would like to talk about the question of "definition". What is tobacco? This evening, I have heard many Members mention "fragrant cigarettes". But how can cigarettes be fragrant? Mr President, cigarettes actually have a foul smell and are hazardous to health. Why do we still encourage people to smoke? Smoking is similar to a self-destructive act. This evening, I would like to focus on the point that non-smokers have the right to decline second-hand smoking.

I think that the most important point is to balance the rights and interests of smokers and non-smokers. In respect of this, I would like to focus on the indoor air quality, and discuss the harmful effects of second-hand smoking as well as the solutions to tackle this problem from the angle of environmental protection.

Studies showed that there are 2 000 chemical compounds in cigarettes, of which 40 are carcinogen substances. The Government and even the Legislative Council certainly have the responsibility of safeguarding the health of the public, especially when second-hand smoking will increase the number of suspended particulates being taken into our bodies. We all know that suspended particulates are toxic, and more stringent controls should be imposed when the issue is being considered from the angle of environmental protection.

Second-hand smoking will also increase the level of carbon monoxide in our bodies and we know that carbon monoxide is harmful. Studies also showed that if non-smokers work for eight hours in a smoke-filled environment, their physical conditions will be comparable to those of smokers who smoke five cigarettes a day.

There is also nicotine. If a non-smoker works in a smoke-filled environment for four hours, his physical condition will be comparable to that of a smoker who smokes one to 10 cigarettes a day.

Based on the findings of different studies, the Democratic Party would like to propose the following:

We support the further prohibition of smoking in public places, especially rigidly requiring the designation of smoking areas in public places. We especially encourage the setting up of smoking areas in enclosed shopping arcades, supermarkets, restaurants, and all indoor sports complexes or cultural facilities.

We are of the opinion that it is necessary to protect the rights of non-smokers to decline second-hand smoking. The Government should conduct a further study to see how non-smokers can assert their rights to decline second-hand smoking at the places they work, and provide them with a smoke free working environment. I hope that the Government will conduct a further study in the near future.

I would also like to call upon those in the commercial and industrial sectors to encourage their employees to give up smoking. If possible, they should also set up a "health bonus". Some foreign companies have already implemented this bonus system with the aim of encouraging their staff to smoke less cigarettes during office hours, and this is actually very meaningful. It is because smoking will cause smokers or even non-smokers to be absent from work, an increase in medical expenses, the loss of production time and even disabilities. Smokers have to pay the price if they smoke during office hours.

Studies also showed that every smoker will bring \$44,000 of commercial losses to his company a year. Smoking also has adverse effects on the health of

non-smokers and these effects come to around \$4,400 a year.

From the perspective of environmental protection, we have to consider how we can enhance the efficiency of indoor ventilation systems. Let us take this building as an example, I am aware that the Government has air conditioning formulated relevant legislation to control the air flow in air-conditioned buildings but not the maintenance of the systems. The Democratic Party therefore proposes that the Government should conduct a further study to find out how we can prevent the indoor air quality from deteriorating, particularly how we can take precautions against various viruses. The Democratic Party also supports taking further steps to improve the indoor air quality, especially in the short run. This move can encourage the commercial and industrial sectors to segregate smokers and non-smokers. In the long run, I think that it is necessary for us to enact more legislation and adopt more administrative measures in order to reduce the chances of the public's exposure to harmful indoor pollutants.

To conclude, the Government is duty-bound to control smoking because this is a problem that we cannot overlook.

I would like to make an analogy here. Cigarettes are like cats and it is only suitable for cats to move around in private places and personal spaces. We seldom see cats in public places and it is very difficult for them to catch mice outdoors. Since cigarettes are very similar to cats, people should avoid bringing them into air-conditioned rooms because many cats are afraid of the cold.

Mr President, I am against smoking and encouraging people (especially teenagers) to take up smoking. I am even more opposed to other people forcing me to take up second-hand smoking! These are my remarks.

MR MICHAEL HO (in Cantonese): Mr President, as the representative of the Health Services Functional Constituency, I can say confidently that the people engaged in my original occupation will totally support the anti-smoking

campaign. I believe that it is not necessary for me to re-state the harmful effects of smoking tonight because we should not have any arguments over this issue. I support the curbing of tobacco advertising and I also agree that we should stop and discourage teenagers from continuing to smoke. For the debate tonight, we will support Dr the Honourable LEONG Che-hung's original motion. However, I must point out that we disagree with Dr LEONG over some of the points which he raised just now.

I want to raise two points here in particular. Dr LEONG said that any advertising which recalls a tobacco brand name should also be banned. This proposal touches upon the problem of indirect advertising raised by the Honourable MOK Ying-fan. As was questioned by some other Members, what about a shop which sells cigarettes as well as other kinds of products? This is precisely the reason why we have some reservations about introducing an immediate and total ban on indirect advertising. That said, we are still inclined to support the motion because we think that we should explore how best to solve the technical problems so as to make the measures contained in the motion feasible.

Nevertheless, I want to raise one point here. Dr LEONG said that if we do not support his motion, we would have no conscience. I do not know whether I have heard the sentence correctly (for he spoke in English just now), but that was the general sense of it. He was indeed too strong in his words.

The Honourable CHAN Wing-chan commented that a total ban on tobacco advertising would be both unnecessary and impracticable. I want to point out that we do in fact have a need to help some people, to protect them from second-hand smoking. The only thing is that at present, it is still not practicable or entirely practicable to do so. However, precisely because it is still not entirely practicable to do so that there is all the more reason for us to find ways to make it feasible.

The Honourable Mrs Selina CHOW said that if the proposal is implemented, the survival of many kinds of establishments will be brought to an end. Will this really be the case? The point is that if we ban smoking in all indoor public premises, there may really be such an effect. However, while we

agree in principle that we should ban smoking in indoor public premises, we can still set up smoking areas in such premises provided that, as mentioned by Dr the Honourable John TSE just now, the establishments concerned can install separate air-conditioning and other related systems for smokers and non-smokers so as to protect people from the effects of second-hand smoking.

This is a different concept. It is not a question of setting up no smoking areas in restaurants, but that we should in fact ban smoking altogether. However, if air-conditioning systems can be so adjusted to free people from the effects of second-hand smoking, smoking areas can be designated. This may be able to tackle the situation described by Mrs Selina CHOW.

As for the possible effects which may be suffered by cigarette vendors because of a ban on cigarette smoking, let me point out very frankly that as a result of the changing circumstances of our community, all kinds of merchants may somehow be affected at any time, only that in many cases they do not know when.

The sales volume of a fashion shop has to depend on whether or not the weather is cold. That means whether or not the weather is cold will affect the selling of clothes. In a commercial society such as ours, merchants are actually able to adapt to changing circumstances. So, I believe that they should be able to tackle the related problems to a certain extent. In the case of a vendor of fried chestnuts in winter, for example, will he become jobless in summer? No, because he will certainly sell other things in summer. It follows that when the atmosphere, environment and culture of our community change, merchants of all kinds should adapt themselves to the changing circumstances.

The Honourable CHIM Pui-chung asked, "What are cigarettes?" Cigarettes are actually drugs because nicotine and tar are drugs. What "policy directions" are there? On this question, we believe that the classification of cigarettes as drugs should be considered as a possible measure. As for whether or not there will be any immediate effects on the community, the motion tonight seeks precisely to explain the policy direction.

We naturally hope that the proposals contained in the motion can be implemented. However, a motion is different from a bill. In the case of a bill, its enactment will produce immediate effects on the community. On the other hand, the most that a motion can do is to set out a clear direction, and following this, we must actively explore ways of implementation. How are we going to implement the proposals? As I have pointed out just now, we should change what is not practicable now into something practicable, and proceed with the work of implementation in a prudent manner.

Mr President, please allow me to recount some personal experience. About 10 years ago, I lobbied in this Council on anti-smoking. At that time, my target was a Member who smoked. Since I had to lobby him, I had to inhale his second-hand smoke throughout our discussion. He literally chain-smoked, finishing one cigarette and lighting another right afterwards. In the end, he finished the whole pack and threw it into the litter bin. I was very delighted, thinking that my difficult time was finally over. But, very much to my surprise, he took out from a drawer a new carton with 10 packs of cigarettes. What happened afterwards was that I had to inhale his second-hand smoke until the end of my lobbying.

Mr President, I wonder if you can still remember how I lobbied you at that time. Mr President, these are my remarks.

PRESIDENT (in Cantonese): Dr LEONG Che-hung, you are now entitled to reply and you have five minutes out of your original 15 minutes.

DR LEONG CHE-HUNG (in Cantonese): Mr President, with your permission, I would like to respond briefly to the query just raised by the Honourable Michael HO. I did not say that those who refused to give support would have no conscience. I was only saying that those who refused to give support would be acting against their own conscience.

I feel surprised and a bit disappointed that the Honourable MOK Ying-fan has moved such an amendment. In fact, the purpose of his amendment is to delete indirect tobacco advertising and tobacco sponsorship from my motion. Obviously, this will make the spirit of anti-smoking equivocal. On the one hand, the amendment wants to cater to those who value their health while on the

other hand, it wants to win the support from those who are not too concerned about their health. Perhaps there is a reason for Mr MOK to move this amendment because Mr MOK is a member of the Urban Council. Maybe the Urban Council needs sponsors to help promote their recreational and sports activities. If that is the real reason, I will be even more disappointed. This is because the Chairman of the Urban Council is a veteran cardiologist, he should know very well the harmful effects of smoking. If he really adopts such an attitude, I will be even more disappointed.

Being a renowned Chinese herbalist, Mr MOK can go so far as to disregard the importance of health and comprehensive health promotion, and put health in a secondary position. This is really disappointing.

Mr President, all advertising, direct or indirect, and sponsorships are undoubtedly aimed at promoting the use of a product. We should not permit the promotion of tobacco advertising by whatever means or the promotion of commodities that are hazardous to public health unless we absolutely disagree with the harmful effects of smoking all along pointed out by the medical profession, or there is another reason to make us believe that smoking is more important than health.

Mr MOK also said that prohibiting tobacco advertising is tantamount to discriminating against homosexuality; whereas the Honourable Mrs Selina CHOW also mentioned the issue of love versus bread. However, we should bear in mind that my motion is not aimed at prohibiting people from smoking, or putting smokers in jail. I am only hoping that there will be no more promotion to induce non-smokers to smoke, and those who smoke can reduce their smoking. As regards the issue of love versus bread, I do not know which one I should choose if I have to face a second-hand smoker.

In regard to Mr MOK's emphasis on strengthening education in his amendment, I believe no one will object and people will immediately show support. However, I feel very surprised at one thing. On the one hand, we say that we have to promote education on the harmful effects of smoking but on the other, we say that we do not mind continuing the promotion of tobacco advertising. Are we not making self-contradictory remarks? I think we should consider this issue carefully.

Finally, Mr President, the spirit of my motion today regarding anti-tobacco

advertising is very simple and that is health should be given the predominant position. If we are to promote health, we must try our best to curb direct and indirect advertising and even sponsorship.

Thank you, Mr President.

SECRETARY FOR HEALTH AND WELFARE: Mr President, I thank Honourable Members for their interest in this important issue. As a Secretary responsible for health matters, I am particularly gratified to see the extent of concern being shared by so many. The need to protect individual and public health, and especially the health of the young, is a matter on which we are all agreed. There can be little doubt that smoking is hazardous to health. Who among us could say that smoking is a habit to be encouraged, rather than discouraged? What is being debated today is therefore not whether there is a need to reduce smoking in our community — only the scope of measures to be taken to achieve this.

First of all, I would like to stress that the Government's policy on smoking has always been a progressive and evolving one. As more medical evidence about the hazards of smoking emerged in the 1970s, we reviewed the situation and determined that this was an area where legislative control was required. That was how the Smoking (Public Health) Ordinance came into being in 1982. The Ordinance provides a regulatory framework for control of the sale, use and promotion of tobacco products, as well as a vehicle for the setting up of no-smoking areas.

Since then, we have regularly reviewed the need for further legislative measures, taking into account world trends and local views. Over the past 15 years, the Ordinance has been amended and updated several times, gradually moving towards a more comprehensive control scheme.

To inform people of the health hazards of smoking, all tobacco advertisements and tobacco products are required to carry a prescribed health warning. In the beginning, we had only one general health warning, stating that "smoking is hazardous to health". Since 1994, we have had four stronger and more specific health warnings. We are now planning to introduce new ones.

We have set an upper limit on the tar content allowed in cigarettes and require cigarette packets and advertisements to display a tar group designation. The purpose of this is to restrict the level of harmful substances in cigarettes and to enable smokers to make an informed choice. We propose to reduce further the maximum tar content and revise the information required to be provided on packets and in advertisements.

We impose a duty on tobacco. This seeks to discourage cigarettes consumption. The tobacco industry and others have pointed out that a high duty encourages smuggling and reduces government revenue. The question here is whether cigarettes should be made cheap and thereby encourage smoking when we know full well that even greater community cost will be incurred in the form of increased ill health and medical expenses to treat smoking-related illnesses.

To protect non-smokers from passive smoking, a number of public places have already been designated as statutory no-smoking areas. These include all public transport carriers, cinemas, theatres, concert halls, amusement game centres and public lifts. We intend to introduce a mechanism to allow managers of restaurants, supermarkets, banks and shopping malls to designate all or part of the places under their control as statutory no-smoking areas if they so wish.

Apart from setting up statutory no-smoking areas in public areas, Dr the Honourable John TSE will be pleased to learn that the Government also sees the need to promote the idea of smoke free workplaces. Since a working person stays in the workplace for many hours every day, it is important that they are provided with a safe and healthy working environment. As a responsible employer and to set a good example for other employers in the private sector, we have implemented a smoke free workplace policy for all government premises since 1 April 1996. I note with pleasure that these Chambers also have such a policy in place, thanks to the Honourable Martin LEE's efforts. The Hong Kong Council on Smoking and Health (COSH) has contributed by inviting private sector organizations to sign a "Smokefree Workplace Charter". Seventy-three organizations have already signed it. We hope that more will follow suit.

We know that most smokers started the habit before they became adults. We also know that once people start smoking, it is extremely difficult to quit, and some never succeed. To reduce the smoking population, we therefore need to prevent young people from taking up the habit in the first place. This was why we set up the COSH in 1987. The good work carried out by the COSH has been commented on by Honourable Members tonight, but I would like to inform Members of more of the COSH's untiring efforts. Its designated task is to undertake public education, publicity and information dissemination among the public, in particular, among the young in schools. Between 1992-93 and 1996-97, the Government's injection of resources into the COSH has increased by more than 80%, from \$2.8 million to over \$5 million. On top of that, an additional funding of \$7.5 million has been given to the COSH to intensify its efforts targeted at youth. These figures indicate that the Government has been substantially increasing the resources devoted to the anti-smoking campaign over the years. With the increased funding, the COSH has produced innovative TV announcements targeted particularly at youth, conducted many school projects, including talks and drama performances to get the anti-smoking message across to school children. To achieve the maximum result in our efforts to discourage smoking among the young, we have stepped up legislative control by prohibiting the sale of tobacco products to minors under the age of 18 since April 1995. There have been some 20 prosecutions for underage sales during the period from April 1995 to June 1996.

The Department of Health, which is responsible for primary health care, also plays an important role in the Government's anti-smoking efforts by promoting the concept of a healthy lifestyle to the public. In 1994, the Department set up the Health Ambassador Scheme targeted primarily at students and provided intensive training courses to the Health Ambassadors. The training course covers all aspects of a healthy lifestyle, including anti-smoking. With advice from the Department, these Ambassadors then organize different programmes in their schools, districts and neighbourhoods. Anti-smoking messages are thus disseminated effectively through these channels to our young people as well as their friends and families. The Scheme has been gradually extended also to women, teachers, and the elderly. This year, there are about 1 000 Health Ambassadors, and the number will further increase in the coming years.

All these measures and input of resources demonstrate the Government's concern and continuing efforts to reduce smoking and thus avoid the ill health that is associated with it. We have been successful in substantially decreasing the smoking population from 23.3% in 1982 to 14.8% in 1996. This is a good record, but so long as smoking causes ill health, we cannot afford to be complacent. Not only must we continue to lower the number of smokers in our community, but more important, we must not allow a reversal in the trend.

The Honourable CHAN Wing-chan asked why the Government does not ban smoking completely or prohibit the sale of tobacco products when all medical evidence points to the hazards of smoking. I have no doubt that we all share the same objective, namely, to protect individual and public health. Attempts to control through legislation are not the panacea for all social problems. We believe that public education, in combination with a step-by-step approach to regulatory legislation represents a more effective and appropriate approach. We do not believe that the problem would be solved by forcing the smoker or tobacco retailer to become a criminal. All that would happen then is that the problem would be driven underground, with increased smuggling and illegal sales posing an enforcement nightmare, and smokers being harder to reach through public education efforts. However, I do not agree with the Honourable CHIM Pui-chung's comparison of cigarettes with motor vehicles. Vehicles used according to the manufacturer's instruction do not kill.

Mr President, let me reaffirm the Government's commitment to tackling the problem. We have already taken major strides in the war against smoking by banning all tobacco advertising on television, in cinemas and on radio. In time, it may be appropriate for Hong Kong to do what many other countries have done and also ban tobacco advertisements in the printed media and on display. Meanwhile, we believe that there is nothing healthy, attractive, glamorous, or grand, or cool about smoking and we will see what can be done about advertisements which allude to such qualities.

The industry has often maintained that tobacco sponsorship of sporting and cultural events does not constitute tobacco advertising or attract people to

smoke. Hence, there is no need to restrict tobacco sponsorship through legislation. I am sure that all Members will wish to see the industry demonstrate the truth of this by eliminating the coincidental similarity in style and imagery that now exists between their sponsorship advertisements and tobacco advertisements.

The advertising industry has called for a voluntary code instead of legislation, despite their poor record of compliance in the past. Even with regard to health warnings, which are a statutory requirement, advertisers repeatedly try to make these as indistinct as possible.

The advertising industry claims that further controls on tobacco advertising will cost them \$1 billion in revenue and threaten up to 1 000 jobs. As Dr the Honourable LEONG Che-hung has pointed out, a similar argument was advanced before advertisements were prohibited on television in 1990, but evidence showed that the revenue of the two television stations actually increased, rather than declined. Against revenue from tobacco advertising, we must also bear in mind the social and economic costs — up to \$4 billion in medical bills and lost productivity and around 4 600 deaths per year due to smoking.

In implementing our strategy, we must exercise care, lest our good intentions result in actions which are perceived as draconian or unwarranted infringement of an individual's rights. I am therefore mindful of all that has been expressed in this Council this evening as to how we should proceed. I will give these views careful consideration.

To conclude, I assure this Council that the Administration is determined, as it has always been, to combat smoking. We will do what needs to be done. If we are truly to succeed, we need to build up a smoke free culture where everyone values a smoke free living and working environment. Such a smokefree culture has to be built up with contributions from each and every one of us in the community.

To coin a phrase: "a smoke free environment starts with me".

By discussing the issue here today, Members have already advanced the

issue. The Administration will continue to promote it through publicity, education and legislation. We all look forward to the day when Hong Kong is a healthier, smoke free place in which to live, work and enjoy life.

Thank you, Mr President.

Question on the amendment put.

Voice vote taken

THE PRESIDENT said he thought the "Noes" had it.

Mr MOK Ying-fan claimed a division.

PRESIDENT (in Cantonese): Council will now proceed to a division.

PRESIDENT (in Cantonese): I would like to remind Members that they are called upon to vote on the question that the motion moved by Dr LEONG Che-hung as amended by Mr MOK Ying-fan be approved.

Will Members please register their presence by pressing the top button and then proceed to vote by pressing one of the three buttons below?

PRESIDENT (in Cantonese): Before I declare the result, Members may wish to check their votes. Still one short of the head count. Are there any queries? The result will now be displayed.

Mr CHIM Pui-chung, Mr Frederick FUNG, Dr Philip WONG, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Paul CHENG, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr IP Kwok-him, Mr Ambrose LAU, Dr LAW Cheung-kwok, Mr Bruce LIU, Mr LO Suk-ching, Mr MOK Ying-fan, Mr NGAN Kam-chuen and Mr YUM Sin-ling voted for the

amendment.

Mr Allen LEE, Mrs Selina CHOW, Mr Martin LEE, Mr SZETO Wah, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr Henry TANG, Mr James TO, Dr Samuel WONG, Dr YEUNG Sum, Mr Howard YOUNG, Mr WONG Wai-yin, Miss Christine LOH, Mr James TIEN, Mr LEE Cheuk-yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Mr LAW Chi-kwong, Mr LEE Kai-ming, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE and Mrs Elizabeth WONG voted against the amendment.

Mr David CHU and Miss Margaret NG abstained.

THE PRESIDENT announced that there were 17 votes in favour of the amendment and 36 votes against it. He therefore declared that the amendment was negatived.

PRESIDENT (in Cantonese): Dr LEONG Che-hung, you are now entitled to reply and you have one minute and six seconds out of your original 15 minutes.

DR LEONG CHE-HUNG (in Cantonese): Mr President, I am quite encouraged that so many colleagues have spoken on this topic which concerns people's livelihood. I am also encouraged to know that so many colleagues are against this equivocal amendment.

However, I would like to point out that many of our neighbouring countries have already banned tobacco advertising. We know very well that mainland China has imposed a total ban on tobacco advertising. Even in Macau, which is in the vicinity of Hong Kong, a ban on tobacco advertising took effect from 1 January this year. Of course, I am a bit disappointed that the Government has adopted a rather equivocal attitude towards the so-called

sponsorship.

To my mind, any kind of sponsorship is an act to promote certain products. I certainly hope that my colleagues will support me. May I also remind the Hong Kong Government that it has signed an agreement with the World Health Organization, setting the year 2000 as the target to make Hong Kong a place free of tobacco advertising.

Thank you, Mr President.

Question on the original motion put.

Voice vote taken.

PRESIDENT (in Cantonese): Council will now proceed to a division.

DR LEONG CHE-HUNG (in Cantonese): Mr President, if the numbers of votes in favour of and against the motion are the same, how would you vote? Will you vote in accordance with Standing Orders or according to your own interest?
(*Laughter*)

PRESIDENT (in Cantonese): You will know no doubt by that time.
(*Laughter*)

PRESIDENT (in Cantonese): I would like to remind Members that they are now called upon to vote on the question that the motion moved by Dr LEONG Che-hung be approved.

Will Members please register their presence by pressing the top button and then proceed to vote by pressing one of the three buttons below?

PRESIDENT (in Cantonese): Before I declare the result, Members may wish to check their votes. Still two short of the head count. Are there any queries? The result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Michael HO, Dr HUANG Chen-ya, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr Samuel WONG, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Mr LEE Cheuk-yan, Mr Andrew CHENG, Mr Paul CHENG, Dr Anthony CHEUNG, Mr David CHU, Mr Albert HO, Mr LAU Chin-shek, Mr LAW Chi-kwong, Mr LEE Kai-ming, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted for the motion.

Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr CHIM Pui-chung, Miss Emily LAU, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr IP Kwok-him, Mr Ambrose LAU, Mr LO Suk-ching and Mr NGAN Kam-chuen voted against the motion.

Mr Frederick FUNG, Dr LAW Cheung-kwok, Mr Bruce LIU, Mr MOK Ying-fan and Miss Margaret NG abstained.

THE PRESIDENT announced that there were 29 votes in favour of the motion and 22 votes against it. He therefore declared that the motion was carried.

MEMBERS' BILLS

Second Reading of Bills

Resumption of Second Reading Debate on Bills**HOUSING (AMENDMENT) BILL 1996 and****HOUSING (AMENDMENT) (NO. 2) BILL 1996****Resumption of debate on Second Reading which was moved on 3 April 1996**

PRESIDENT (in Cantonese): Members will recall that when these two Bills were introduced to this Council on 3 April 1996, I said that the contents of the Housing (Amendment) Bill 1996 introduced by the Honourable LEE Wing-tat and the Housing (Amendment) (No. 2) Bill 1996 introduced by the Honourable Bruce LIU were not substantially the same although they were related to the same subject matter, that is, the proposed reorganization of the Housing Authority. The passage of the first Bill through any stage will not impede the proceedings on the second Bill. However, I am confident that Members will be able to make a wise choice between these two Bills. If the Second Readings of both Bills are allowed, Members will also make a wise choice among the amendments to these two Bills at the Committee stage.

To save Members' time, I propose to have the two Bills debated together in a joint debate. If the Council agrees to this, the questions on the Second Readings of the two Bills will be put separately after the joint debate.

Council shall now debate the two Bills together in a joint debate. I will first call upon Mr Frederick FUNG to speak on the two Bills, as he is the Chairman of the Bills Committee appointed by the House Committee to study the two Bills.

After Mr FUNG has spoken, Members may then speak on either one or both of the Bills. After all Members who wish to speak have spoken, I will call upon the Secretary for Housing to speak, and after the Secretary has spoken, I will call upon Mr LEE Wing-tat to reply first, followed by Mr Bruce LIU. Upon the conclusion of the joint debate, the question on the Second Reading of Mr LEE Wing-tat's Housing (Amendment) Bill 1996 will first be put to the

Council for a vote, followed by the question on the Second Reading of Mr Bruce LIU's Housing (Amendment) (No. 2) Bill 1996, irrespective of whether or not the Council has agreed to the Second Reading of Mr LEE's Bill.

MR BRUCE LIU (in Cantonese): A point of order, Mr President. Assuming that both Bills are passed by this Council after being amended, how will that be handled? Will both Bills be submitted to the Governor for his signature or just one will be chosen?

PRESIDENT (in Cantonese): I do not wish to answer this question at the moment. Should such a case come up, I will certainly advise on that.

MR FREDERICK FUNG (in Cantonese): Mr President, as Chairman of the Bills Committee on the Housing (Amendment) Bill 1996 and the Housing (Amendment) (No.2) Bill 1996, I wish to report to Honourable Members our deliberations on the Housing (Amendment) Bill 1996 introduced by the Honourable LEE Wing-tat, and the Housing (Amendment) (No.2) Bill 1996 introduced by the Honourable Bruce LIU.

I will begin first with the Housing (Amendment) Bill 1996. The Bill aims to introduce changes to the system of appointment of members to the Housing Authority. Under the current system, the Governor may appoint such number of persons to the Housing Authority as unofficial members as he thinks fit. Mr LEE Wing-tat considers the current system as lacking in representation, and the existing structure of the Housing Authority lacking in accountability and transparency. Mr LEE therefore proposes in the Bill that unofficial members of the Housing Authority should come from the three-tier system of representative government or that they should be persons with experience and knowledge in housing matters. He also proposes that the Chairman and Vice Chairman of the Housing Authority should be elected from amongst members of the Housing Authority, and that the Legislative Council should be given the power to approve or veto the list of appointees to the Housing Authority.

Members of the Bills Committee have divided views on the Bill. Most members concur that there is a need to increase the transparency and accountability of the Housing Authority, but there are different views on how this could be achieved. Some Members consider that there are already many channels for Members of the Legislative Council to influence the policy decisions of the Housing Authority. They advocate upholding the *status quo* so that the Governor can have unfettered discretion in appointing suitable persons to key positions in various organizations under his Administration.

In view of the different views expressed on the Bill, the Bills Committee made reference to the existing practices in other organizations and found that it is not unprecedented for Legislative Council Members to be nominated by Legislative Council Members themselves to sit on a number of executive boards. Examples are the Court of the University of Hong Kong, the Council of the Chinese University of Hong Kong and the Hong Kong Arts Development Council. The Administration argues that these should be taken as exceptions rather than the rule.

Regarding the power of the Legislative Council to approve or veto the list as a whole and not selectively those persons to be appointed as members of the Housing Authority, the Administration has stressed that this will politicize the choice of candidates and hamper the Authority's duties to the community. The Honourable Mrs Selina CHOW, while acknowledging the need to increase the transparency of the Housing Authority, considers it unnecessary for the Legislative Council to examine and approve the list of potential appointees and will therefore move an amendment to remove this requirement.

As regards the proposal to elect the Chairman and Vice Chairman from amongst the members of the Housing Authority, the Administration strongly opposes the idea as it is important for the Administration to ensure independence and impartiality in selecting candidates to fill these two posts which have significant influence on policy decisions. There are divided views among Members over this proposal. While some Members consider it an improvement to the present appointment system, others deem it reasonable for the Administration to retain the power of discretion in making appointment to such key posts. Mrs Selina CHOW has suggested a compromise and will move an amendment to introduce a consultative mechanism so that there is consultation before appointments are made by the Governor.

Mr LEE Wing-tat himself will move an amendment to remove the restriction on the number of members of the Housing Authority. His earlier proposal of not more than 21 unofficial members was based on the membership size prevailing at the time when the Bill was drafted. But the number of unofficial members has since then increased from 21 to the present 28. Mr LEE will also move an amendment to defer the effective date of the Bill from 1 November 1996 to 1 March 1997.

The Administration has reiterated, during the deliberations of the Bills Committee, its strong opposition to the Bill which, in its view, is a direct challenge to the concept of an executive-led government and will have serious implications for other statutory and advisory bodies. In the light of its stance, the Administration will not move any amendment to the Bill.

Such are the results of the deliberations of the Bills Committee on the Housing (Amendment) Bill 1996.

I will now report on the results of the deliberations of the Bills Committee on the Housing (Amendment) (No.2) Bill 1996 proposed by Mr Bruce LIU. Since this Bill is closely related to the Housing (Amendment) Bill 1996, and as the stands of the Administration and of the Bills Committee on most of the issues have been discussed in my report on the first Bill earlier on, I will focus my report on those aspects which have not been covered previously.

Mr Bruce LIU considers that the existing system of appointment of members to the Housing Authority lacks representation, and the policies of the Housing Authority lack credibility and the support of public housing tenants since the majority of Housing Authority members come from the business sector. Mr LIU has therefore proposed in the Bill that the Housing Authority should consist entirely of unofficial members nominated from within the Legislative Council and the district boards, and through appointment of persons with experience and knowledge in housing matters. The Chairman and Vice Chairman will also be elected by and from amongst the members. Subject to the above restrictions, the Governor will continue to be the sole authority for the appointment of Housing Authority members.

Unlike the Housing (Amendment) Bill 1996 which proposes the appointment of members from the three-tier system of representative government,

the Housing (Amendment) (No.2) Bill 1996 suggests the appointment of members from the Legislative Council and the district boards but not from the municipal councils. The Bills Committee sought elaboration on the exclusion of members of the latter category. Mr LIU advised that this should prevent possible duplication in membership between the municipal councils and the district boards. The Bills Committee is also concerned about the rigidity imposed by the mechanism of nomination by the Legislative Council and the district boards proposed in the Bill. After considering Members' views, Mr LIU will move amendments for the nomination process by the Legislative Council to be replaced by a mechanism of appointment by the Governor and for the number of persons so appointed to be changed from six to between two and six. He will also remove the restriction that persons nominated by the district boards have to be members of the district boards. In consideration of the need to retain public officers in the Housing Authority, Mr LIU will move another amendment to the Bill to allow up to four public officers to be members of the Housing Authority.

On the proposed election of the Chairman and Vice Chairman of the Housing Authority, some members of the Bills Committee are in support of the proposal while others deem it reasonable for the Administration to retain its power of discretion for appointment to such key posts. Taking Members' views into account, Mr LIU will propose an amendment to re-instate the Governor's power to appoint candidates to these two posts.

Lastly, a more controversial feature of the Bill concerns the terms of office of members of the Housing Authority. Mr LIU has proposed in the Bill that all serving Housing Authority members will have to step down immediately upon enactment of the Bill, although he adds that re-appointment is possible. Furthermore, while the tenure of the 12 members appointed on account of their experience and knowledge in housing-related matters will be for a period of two years, the terms of office of members appointed from the Legislative Council and the district boards will tie in with the respective terms of their offices in the three-tier system of representative government. The Administration disagrees with the inconsistent terms of office. It points out that Housing Authority members are initially appointed for a term of two years and that re-appointment will be made in two batches to ensure continuity in the operation of the Authority. The Bills Committee shares the view of the Administration and is worried about

the undesirable implications for Housing Authority membership to be governed by elections of the Legislative Council and the district boards. In order to address Members' concerns, Mr LIU will move another amendment to standardize the term of office as two years.

I would add in conclusion that as with the Housing (Amendment) Bill 1996, members of the Bills Committee have divided views on the proposals in the Housing (Amendment) (No.2) Bill 1996. The Administration is also firmly opposed to the Bill and will not support this motion.

Mr President, as I am the Chairman of the Bills Committee, my speech covers both the supporting and opposing views. If I have to express my own views, I may sound repetitive or have a confused role. Therefore, I do not intend to express my views now, and I would let Members from the Association for Democracy and People's Livelihood express my views for me. However, before concluding my speech, I would like to give two reasons why I support the Bills and explain how I am going to vote. Firstly, I think that there is a need to change and improve the existing system of appointment of the Housing Authority as the existing system is really disappointing. Government officials have given different explanations on the principle of appointment under different circumstances and they have given some contradictory explanations. Formerly, each time when an appointment was made, the Administration would announce in the press release on the appointment that the members of the Housing Authority had different backgrounds and were from different sectors, including representatives returned by the public and those representing the public opinion. In the course of scrutinizing this Bill, we have, during our discussions, repeatedly requested the Administration to brief us on the principle of appointment. However, the government officials told us time and again that those appointed would not be restricted to representatives of the public opinion or members of the three-tier system of representative government according to its principle of appointment. Therefore, I find the existing situation ambiguous and contradictory.

Secondly, taking an overview at the backgrounds of the members appointed throughout these years, we can see most of them are professionals from the industrial and commercial sector while only a few are representatives of the public opinion, that is, Members returned by the public, the grassroots or

people with various backgrounds, including those who are living in temporary housing, public housing and Home Ownership Scheme flats. Therefore, if the existing appointment system is maintained, the existing situation will remain unchanged and that I do not agree. For many years, the policies of the Housing Authority have been widely disputed because people with various backgrounds, especially those who are living in Home Ownership Scheme flats and public housing managed by the Housing Authority are not adequately represented. Therefore, I am going to give any systems or modes my support, so long as they can improve the present situation and increase the transparency of the appointment of the Housing Authority as well as allow more representatives of the public opinion to be appointed. Accordingly, I am going to support the Bills introduced respectively by Mr LEE Wing-tat and Mr Bruce LIU.

MRS SELINA CHOW (in Cantonese): Mr President, first of all I would like to state clearly the basic stance of the Liberal Party regarding the composition of the Housing Authority (HA). In my opinion, the HA is an executive arm of the Administration. It is therefore reasonable for its members to be appointed by the Administration. The HA is not part of the representative government, while the participation of people's representatives should be allowed, the power of appointment should also be preserved. If such power is subject to too much constraint, or the final decision does not rest with the appointer or the one who has the power to make appointments, it may lead to a radical change in the entire mode of operation of the HA.

We think that such a major change will to a certain extent weaken the integrity of the HA and we do not support such a change. It is for the above reasons that the Liberal Party opposes the Honourable LEE Wing-tat's Bill since his Bill contains a clause stipulating that the appointment will only become effective with the approval of this Council.

Such an arrangement will take away the power of appointment from the Governor because the ultimate decision power will not rest with him. In respect of the composition of the HA, the Honourable Bruce LIU has

over-emphasized district representativeness. By proposing that each district board should nominate a representative into the HA, the risk of "dividing the cake" might emerge. The rationale for nominating two to six Members of this Council to join the HA is also hard to understand. In case his idea is put into practice, the HA would consist of 40 members and such a composition would be an oversized one.

Mr President, I want to make clear how we will vote on the Second Reading. We will oppose Mr Bruce LIU's amendment but support Mr LEE Wing-tat's motion.

That we vote in this way does not mean that we support Mr LEE's Bill. Rather, it is because only after his motion has been endorsed that I can amend his Bill. I would like to explain why we want to amend Mr LEE's Bill and hope that the majority of Honourable colleagues will support my amendment.

The reason for my moving an amendment is to preserve the existing legislation and to remediate its deficiency. In fact, this has happened and being put into practice. The Secretary for Housing informed the Bills Committee that a set of eligibility criteria for appointment has already been laid down. According to past data, different tiers of representative government have had their representatives in the HA. Of course, they may not necessarily be representing their respective bodies, yet they are indeed elected members. We can see clearly that during 1996-97, three Members from this Council, one Regional Council member and four district board members have been appointed members of the HA. So, if provisions are introduced into the relevant legislation, it is nothing more than legalizing the present appointment criteria.

Besides, other criteria for appointment are also made in the light of the eligibility criteria that the Secretary for Housing told the Bills Committee. These include three different aspects. Firstly, the appointee should have experience and knowledge in housing matters; secondly, he should be reputable in his own profession or trade; and thirdly, he should have the ability to contribute to the effective and efficient operation of the HA.

In my opinion, these three criteria are sound enough and certainly better

than the sole criterion as suggested in Mr LEE's original Bill. The criterion he proposes is that the potential appointees should possess experience and knowledge in housing matters. Compared with his proposal, it is undeniable that my proposal is more comprehensive and will be constructive to the HA.

Regarding the appointment of Chairman, I propose that decision should only be made after members have been consulted. Mr President, please let me explain. Starting from the moment I proposed this amendment until yesterday, the Administration has all along been insisting that my amendment would lead to problems and was therefore unacceptable. Yesterday afternoon, however, the Administration told me that if I could make some minor changes to the wording, they would find my amendment acceptable and practicable. The necessary changes are as follows. The original wording of my amendment was: "following consultation with members", meaning that the Chairman will be appointed only after members have been consulted. The Administration suggested that the wording be replaced by "taking account of the views of members", meaning that the appointment is made after members' views have been taken into account. In my opinion, there is nothing contradictory between the two versions but the Administration's is better than mine because it ensures that members' views will be taken into consideration. So I am pleased to accept the Administration's advice.

Mr President, I would also like to ask for your permission to make some minor changes. I think the power of appointment should be exercised in an open way, the more open the better. Should members be consulted before the Chairman is appointed, it will enhance both the Chairman's acceptability and the members' support to him. On the other hand, it will certainly strengthen the unity of the HA as well.

So, I am sure that such an amendment will improve the current situation. I hope Honourable Members will support my amendment.

However, in case Members might doubt whether this may set a precedent, I would like to point out clearly to them that we already have 24 Ordinances which contain criteria and regulations regarding the power of appointment in regard to various boards, committees or autonomous authorities. These criteria

or regulations stipulate that the procedures according to which the organizations represented by the members be consulted have to be laid down. So, precedents have in fact been set already.

Mr President, with these remarks, I support Mr LEE Wing-tat's motion and oppose Mr Bruce LIU's amendment.

MR CHAN KAM-LAM (in Cantonese): Mr President, the composition of the Housing Authority (HA) has become a matter of great concern of this Council, reflecting that my Honourable colleagues have differing views on the existing housing policy. But whether the HA should really undergo a major revamp is open to question.

The HA is specially responsible for managing the construction of public housing and related resources in Hong Kong. It comprises people from all sectors and the cream of various professions who need to consider problems from the perspective of the whole society. Should the HA become a forum of political disputes, it will not be beneficial to the public. Nor will it be conducive to the implementation of long-term housing policies.

The position taken by the Democratic Alliance for the Betterment of Hong Kong (DAB) does not mean that it has no comments on the composition and the work of the HA. At present, it is indisputable that the membership of the HA lacks grassroots representatives. It is for this reason that we urge the Government to pay more attention to the public's aspirations when appointing members to the HA.

The HA was reorganized in 1988 to become an autonomous body with independent finance. It is responsible for the co-ordination of public housing matters involving the planning, construction and management of all aspects of public housing and associated amenities. This shows that what the HA deals with is the use of resources of the society as a whole rather than of a particular sector. Therefore, in considering problems and formulating policies, the HA has to consider the overall interests of society. Moreover, the composition of the HA should be flexibly adjusted by the Administration according to the needs

of society.

Mr President, at present, members of advisory bodies in Hong Kong are basically appointed by the Governor, reflecting the exercise of executive powers under the executive-led government. Changing this system will destroy the appointment system for the advisory framework and autonomous public authorities. It might also destroy the independence of various advisory bodies and make them inclined towards sectional interests. There are problems in both Amendment Bills presented by the Honourable LEE Wing-tat and the Honourable Bruce LIU. The Bills will not only weaken the Governor's power of appointment, but will also transfer the power to this Council. This is unacceptable to us.

Mr President, we agree that sometimes the policies formulated by advisory bodies are not after our own heart. But this does not mean that there is problem in the composition of these bodies. Therefore, to destroy the present appointment system is a matter open to question. The present composition of the HA, just as other advisory bodies, has already featured the voices of the people of various sectors.

Based on the above reasons, the DAB has all along considered that the HA should maintain its original appointment system and there is a need for the HA to strengthen its representativeness, accountability and transparency to ensure that the housing needs of the various sectors will be given full consideration. Therefore, the DAB supports the amendment moved by the Honourable Mrs Selina CHOW.

Thank you, Mr President.

DR ANTHONY CHEUNG (in Cantonese): Mr President, the Democratic Party supports the Member's Bill proposed by the Honourable LEE Wing-tat. In fact, after Mr LEE has proposed the Bill, there have been diverse arguments in the society about Mr LEE's Bill and Mr Bruce LIU's amendment, and these have been widely covered in the newspapers. Some of the Members who are not in this Chamber now have also expressed their views in the newspapers.

I do not intend to repeat in details the content of Mr LEE's Bill because many Members have already referred to it. I feel that Members in this Council tend to have different opinions. Some Members support a reorganization of the Housing Authority, as described by certain Honourable Members just now as

undergoing a major surgical operation, others object to it. While it is acceptable to have different views in the Council, I hope that Members have a more integral view of the basic principles of the system before they discuss the issue.

The arguments against these two Bills that we have often heard from some Honourable colleagues or from the public are that they fear the existing effective mode of executive-led government will be undermined seriously once the system is changed. Some are even worried that party politics or other kinds of politicization may appear, or think that such measure cannot reflect the parity that the Housing Authority should have when giving consideration to the general interests. They believe that only through the present full power to make appointments can the interests of all sectors be taken care of.

I would like to talk about some people's opinions on the above points. If we look at the Bill of Mr LEE Wing-tat, we can see that the power of appointment is still basically in the hands of the Governor or in the hands of the future Chief Executive, and it is still respected. Mr LEE only points out that the appointment has to be examined by the legislature and to get support from it. In reality, the power of appointment eventually still rests with the Chief Executive or the incumbent Governor.

Mr LEE's Bill also mentions that the appointment list proposed by the Governor should be considered as a whole, that is, the legislature cannot pick out any individual appointed member. The Governor can only choose between supporting or not supporting an appointment. Therefore, this spirit of appointment actually still respects very much the executive's right of appointment.

Of course some Members would ask why the power of appointment should be monitored and restrained. The Honourable Mrs Selina CHOW mentioned just now that although she would not support this point raised by Mr LEE Wing-tat, she has found among the laws of Hong Kong 24 Ordinances that are already restricting the power of appointment of the Government or the Governor.

In other words, in the existing executive-led government which we claim to be effective, a restriction on the power of appointment is already accepted. Besides, we also believe that it will not lead to any disastrous consequences.

I believe that before we take any system into consideration, we should view it from a positive angle. We expect that before the Chief Executive makes his decision on appointments, he can rationally consider factors in all aspects. The Government wants us to believe now that it will appoint rationally. By the same token, why can we not adopt the same positive attitude and expect the same thing from the legislature? When the legislature examines, in accordance with Mr LEE's idea, the appointment list proposed by the Chief Executive, the same rational attitude should be adopted and there should not be party politics or politicization involved. Why are we not worried that the Chief Executive is politicized, and that he makes appointments because he favours a particular person or because that person holds certain political views? Why do we have to be so worried that the legislature will do so?

I think this attitude is quite unfair. In fact, this is a measure acceptable under the system and is in fact practised in other parts of the world. For example, under the separation of powers in the United States, the Congress still has the right of supervision over certain appointments in the executive branch. However, we are now taking such principles which are practised in other countries as monsters, fearing that they may bring disasters.

In fact, Mr LEE's Bill is only targeted at the Housing Authority. As to whether all the committees set up by the Government will later adopt such measures, it is a point we can discuss. I believe there are differences between a consultative body and an executive body which has statutory power.

We have, at present, a consultative body known as the Labour Advisory Board, some members of which are returned through elections and this is allowed by the Government. As such, I think we cannot say that any system which has an element of election or of supervision over the power of appointment, such as the one proposed by Mr LEE, is bound to damage the executive-led government. On the contrary, I believe that, through supervising the power of appointment, another form of politicization can be avoided and the

transparency of the Chief Executive's future power of appointment can be enhanced because the Chief Executive has to be accountable to the public. Besides, this kind of systematization can further ensure that the public will respect an appointment while the prestige as well as credibility of the relevant bodies (such as the Housing Authority we are now talking about) can also be enhanced.

Just now some Members pointed out that we do not want the housing issue to be politicized. This depends on how we interpret politics. If we interpret politics as public affairs, then everything is politicized. Any issue we discuss in the Legislative Council will undeniably carry political implications. Politics is related to the issue of people's interests and housing is one of the most prominent livelihood issue.

I am a member of the Housing Authority and also a member of its Management and Operation Committee. Whenever there is a meeting at the Housing Authority, a lot of residents' organizations (whether they are backed by political parties or not) would petition there. Is this a kind of politicization? It is of course politicized if political parties are involved. Although some Honourable Members object to politicization, some members from their parties may take part in the petitions and demonstrations.

Finally, I would like to talk about the representativeness of and the issue of check and balance in the Housing Authority. Mrs Selina CHOW mentioned a moment ago that when the public officers attended the Bills Committee meeting, some of the information provided by them indicated that in the present appointment system, representatives from all walks of life have already been taken into consideration, including members of the three tiers of representative government (although they may not be appointed because of their status as such members).

Mr LEE Wing-tat's Bill proposes that members of the future Housing

Authority should come from different backgrounds, its composition should include the Director of Housing, three public officers appointed by the Governor, members of the three tiers of representative government, as well as and unofficial members whom the Governor (and the future Chief Executive) believes to be experienced and knowledgeable in housing matters.

We respect the criterion of "what the Governor believes". In fact, this is quite similar to the current practice according to which the Governor unilaterally considers and appoints members to the Housing Authority. The Bill actually respects this existing practice, it only tries to make it more systematic and to establish a constitutional principle. The principle is that the legislature will have the absolute constitutional power and function to supervise the executive organ's power of appointment in the future under a system where the executive and the legislature are mutually independent and their powers are separated.

I believe this is the focus of the Bill and I think that the executive-led government will not be undermined. I have also mentioned just now that in the present system there are many precedents which show that the power of appointment is actually subject to restrictions. Of course, some people or the Government do not want to see the Housing Authority go this way, but it would be a bit over-anxious if such changes are described as causing a serious shock to the whole system.

Thank you, Mr President.

MISS EMILY LAU (in Cantonese): Mr President, the Governor has full powers to appoint members to the Housing Authority (HA). Since those members either come predominantly from the business sector or are professionals, the HA could not find recognition among the grassroots so far. The Bill that we resume the Second Reading debate today seeks to alter the composition of the HA so as to check and balance the powers of appointment to the HA. I am very much in support of this principle.

Just as Dr the Honourable Anthony CHEUNG has said, the Government and other Members who oppose this Bill have always stressed the point that the Government has been pursuing the policy of executive-led government for years,

and that this Bill is challenging this very idea. However, I do not share this view because I think this Bill simply will not affect the executive-led government, for it merely introduces a mechanism to check and balance the powers, whilst the power to appoint members still rests with the Governor. The Legislative Council can only approve or reject the list of appointees as a whole. It cannot reject any individual appointee. In other words, the entire appointment process remains to be led by the Governor. However, when he selects any individual for appointment, he has to be more careful and has to balance the views of all sectors. He can no longer adopt the present approach which is biased towards the business sector and the professionals. Rather, he has to include more representatives from the grassroots to reflect the views of the general public.

On the other hand, the Government has always emphasized on executive-led government and sees this as a golden rule. However, is it something desirable? If executive-led government means absolute power for the Government which can never be challenged, then I think this is very unhealthy and is also totally unacceptable.

At present, the mode of operation of the HA lacks both transparency and accountability. It is also free from the supervision of the Legislative Council. In addition, quite a number of important decisions are still being made behind closed doors. The Government says it worries about the politicization of the appointment process. In my opinion, this is a very absurd argument. What the Government means by politicization is that a measure will be in place so that the Governor can no longer do in whatever way he chooses to, and he must consider the views of the Legislative Council before he makes any decision. So what harm will such a kind of politicization do? The so-called harm is that when the HA makes any decision, it has to balance the interests of all sectors concerned; and that the Governor is required to appoint persons of different stands to the HA as members. This practice might make it difficult for the members to reach consensus on certain matters and cause them to take a longer time to discuss problems. However, Mr President, it is just natural for a pluralistic society like ours. Persons from all sectors who are of different backgrounds and who have different political views should be eligible for appointment to such an important Authority. I think the Bill proposed by the Honourable LEE Wing-tat is an attempt to achieve this, and therefore I support his Bill.

As to the amendment moved by the Honourable Mrs Selina CHOW, it simply does not go along with the principle of the original Bill, nor can it improve the present situation. Therefore, I oppose her amendment. In respect of the Honourable LEUNG Yiu-chung's proposal to introduce an open nomination, it is meant to provide an opportunity for members of the public to take part in it. But since Mr LEUNG Yiu-chung only proposed this view in a very short time, and neither the Bills Committee nor the public could have enough time for discussion, I will therefore oppose his amendment.

Finally, regarding the amendment moved by the Honourable Bruce LIU, he first proposed that the Governor must appoint Members of the Legislative Council and district board members as members of the HA, which is a proposal smacking of "sharing the collaborated cake". I originally intended to oppose his amendment. However, since he has changed his amendment to asking the Governor to appoint persons nominated by the district boards as members of the HA, and thus making it possible for more participation by the public, I will also support his amendment. Thank you, Mr President.

MR JAMES TO (in Cantonese): Mr President, I did not intend to speak at first. But now, I feel that as a Member of this Council, I should give full expression to my arguments and conduct a rational discussion on this occasion of a dynamic debate. I also feel that I should reflect the opinions of the people.

I have heard some arguments just now, and I have also read the views of some Honourable Members in the press. One of these arguments is that the composition of the Housing Authority will be politicized if its members are appointed by the Legislative Council. If this argument holds, I will be very puzzled. Let us now study this argument.

Article 90 of the Basic Law stipulates that the appointment of judges of the Court of Final Appeal and the Chief Justice of the High Court shall require the consent of the future Legislative Council and the nomination of the Chief Executive. That being the case, I am very surprised. How can some people, especially those who claim to support the Basic Law, really believe that it is the deliberate intention of the Basic Law drafters to allow the legislature to approve

or veto the Chief Executive's appointments with respect to such an institution like the judiciary, which requires so much independence? If they do not believe so, how can they convince us that if the Legislative Council is empowered to endorse or veto the appointment of members to the Housing Authority, the whole issue will become politicized? I believe that my Honourable colleagues from different political parties who hold this view will have ample opportunities to speak after me. I hope that they can refute my view so that we can stimulate the thoughts of one another to give full expression to our arguments.

Besides, if we accept this argument of "politicization", does it mean we will have to amend the Basic Law? This is because in that case, the appointment of judges may also be politicized. And, it is very likely that the appointment of judges to the Court of Final Appeal will also mean "dividing the cake" according to different ideological factions. If this talk of politicization is carried over to the legislature in power in the future, the ensuing arguments will indeed involve a lot of problems.

Second, in the final analysis, what the Government really wants is to retain its power of making appointments, in the hope that the Housing Authority will continue to operate under its influence, be it ideological influence, or whatever kind of influence which can ensure that a majority of Housing Authority members will always remain sympathetic towards the Government's policy of reducing the construction of public housing units. It is hoped that in the end, the secret collaboration between the Government and property developers will be able to continue, thus maintaining the policy of high land prices and bringing yet more profits to property developers. In the final analysis, the Administration simply wants to defend this last stronghold of its executive-led government. But, this is all the more worrying to us because in view of the intricate relationship between the Chief Executive, Mr TUNG Chee-hwa, and his friends in the property sector, the common people, who hope to see a relaxation of property price increases through the construction of more public rental housing and Home Ownership Scheme flats to regulate the market, have become utterly disillusioned and disappointed. We very much hope that the Government can put forward arguments which can prove these views wrong. I also look forward

to more cogent arguments from Members, arguments which can enable the community to have more in-depth discussions on this issue.

MISS CHRISTINE LOH: Mr President, I only decided how I am going to vote not very long ago. I promised the Administration which has been lobbying very hard that I would listen to both sides of the argument. I would express my views now and perhaps if the Administration feels that, when they respond, they can take up some of these points, I am willing to consider those points. I do not see how this Bill is a dangerous threat to our system of government that the Government and some Members of the Council seem to think. On the contrary, the Bill is a modest experiment in making advisory bodies more open and participatory, and really this is an area that cries out for some innovation.

We do not have to worry about executive-led government, it is firmly entrenched in Hong Kong. It is one of the legacies of our colonial history, and it is unfortunately a mixed blessing. The executive designs, approves and implements all major policies. It has exclusive power to propose expenditure, and makes all appointments to public office. In general, checks and balances on executive power range from modest to non-existent in some places.

The challenge is not how to preserve the executive-led government, which is far from being endangered. The real challenge is how to adapt it to meet the needs of the future. Our affluent and well-educated society expects to be governed more accountably and with more public participation than it was in the past. It is a fact that our executive-led government has been changing to meet those expectations, and it must continue to do so.

Our statutory and advisory bodies lag behind other parts of the Government in these respects. Both their appointment and their operations remain largely closed and unaccountable. Such bodies help shape public policy and are often relied on precisely for extra-governmental, the so-called "public" input. Yet in reality, the public has little information about what they really do and have little sense of participation or in the way they can influence them.

If the Administration were putting forward any ideas about improving the whole advisory system, a Bill of this sort may not be necessary. But the Administration instead takes a very narrow and conservative view, and refuses to

recognize any need for a comprehensive review.

For the past several months, Mr President, as you know, I am chairing a Home Affairs Panel Subcommittee on the Review of Advisory and Statutory Bodies. In the absence of action by the Administration, the Subcommittee has taken on the task of systematically reviewing the whole range of advisory bodies and attempting to develop workable principles for making them more open and participatory. This is a complex task because of the widely differing functions performed by the hundreds of advisory bodies now in existence. I believe we are nevertheless making some good progress, and I am grateful both to Members here as well as to members of the Administration for their co-operation with our very extensive requests for information.

From this perspective, I welcome Mr LEE's Bill, which takes a measured but real step forward. The Bill's main effect is that future appointments of unofficial members to the Housing Authority will be made on the basis of a consensus reached between the Administration and this Council. I do not see how such an appointment process can dilute the quality of the Authority's membership.

The Administration has attacked the Bill as impractical because it requires the Legislative Council to approve the entire roster of unofficial members in a single vote. The Administration argues that this means all the appointments may be held hostage to force the Administration to strike one, or may be a few, controversial names from the list.

I have been thinking about this argument because I am told this is the best one the Administration has. Having thought about it this afternoon, I think this argument is somewhat disingenuous. I find it hard to believe that the Administration would prefer to submit appointments to this Council on an individual basis. Such an arrangement would in fact significantly dilute the Administration's leverage over the appointment process.

The fact is that the political cost of opposing an individual appointment is much higher if that opposition blocks an entire roster of other, desirable appointments. On the other hand, it would be much easier for this Council to micromanage appointments if it approved them one by one. That is precisely

why Government Bills, such as the Environmental Impact Assessment Bill, allow the Council to approve subsidiary Technical Memoranda but not to amend them. A power only to approve or reject a proposal, but not to adjust it, makes it more difficult to tinker with its details. I do know of course that the Administration does not wish this Council to have any role at all, irrespective of whether names are approved as one list or individually. However, since I was told by officials who lobbied me this afternoon that this is their best argument, I can only say that after having given it full consideration, I just do not buy it. However, I am willing to listen to further arguments that the Administration may put forward during this debate.

The roster approval process will have the practical effect of nudging the appointment process under the Bill towards compromise and consensus. It moderates the Bill, and is in my view one reason the Bill deserves support.

If the Bill passes, Mr President, it will launch, in my opinion, an important experiment in the reform of the advisory system. There is every reason to expect that the experiment will succeed, and that the lessons learned may be widely applicable. Such innovation is overdue, and I urge Members to consider supporting Mr LEE's Bill. In any case, I am happy to listen to further arguments, if there are any.

SECRETARY FOR HOUSING (in Cantonese): Mr President, the Administration firmly opposes the amendments moved by the Honourable LEE Wing-tat, the Honourable LEUNG Yiu-chung and the Honourable Bruce LIU to the Members' Bill concerning the membership of the Housing Authority. If these amendments are adopted, the existing powers of the appointed members of the Housing Authority would be unnecessarily restricted and the effective operation of the Housing Authority and the Hong Kong Government in future would be seriously affected. Our reasons are summed up below.

Basic Principle Underlying the Composition of the Housing Authority

First, our widely recognized principle is that, when the Administration works out the membership of the various statutory bodies and advisory committees, it must cater for the interests and views of the various sectors in our society, and consider the functions and terms of reference of the relevant bodies. We have decided on the membership of the Housing Authority on the same

principle. We take into consideration a candidate's experience, knowledge of housing and related affairs, status and reputation in the relevant trade or profession, as well as his ability in helping the Housing Authority enhance the efficiency of its operation. I definitely cannot agree to the remarks just made by the Honourable Frederick FUNG and the Honourable Miss Emily LAU that, at present, most of the members of the Housing Authority are from the industrial and commercial sector. Earlier on, I have submitted a document to the Housing Affairs Panel of the Legislative Council, listing out figures to clearly illustrate that the existing Housing Authority is a balanced organization. Members can see that, in recent years, the appointed members of the Housing Authority have been made up of professionals in various fields, financial management personnel, scholars, economists, social workers, public housing tenants, Home Ownership Scheme flat owners, district board members, as well as the members of the Executive Council, the Legislative Council, the Regional Council and the Urban Council. However, I must stress that they are appointed in their personal capacity, not because of the positions they hold. However, their appointment is actually highly representative.

We believe that the existing appointment system is very effective after having been implemented for many years. In fact, there is a fairly balanced mixture of professionals and people concerned with community interests in the existing Housing Authority. If the amendments moved by the three Honourable Members are adopted, the existing balanced composition of the Housing Authority would be impaired, and there would be a serious consequence that the Housing Authority would fail to listen thoroughly to the views of the professionals in various fields.

Mr LEE Wing-tat's Bill and Amendment and Mr LEUNG Yiu-chung's Amendment

The key point of the Bill introduced by Mr LEE Wing-tat, and the amendments moved by Mr LEE and Mr LEUNG Yiu-chung is that the appointment of the members of the Housing Authority must be approved by the Legislative Council. This suggestion directly lashes at the concept of an

"executive-led government", and restricts the power of appointment of the executive body (that is, the Governor). Now that we are frequently putting emphasis on "the separation of powers" and "checks and balances", we must ensure that the executive, legislative and judicial organs are performing their respective functions. Under the present system, the executive organ is responsible for formulating and implementing policies while the legislature is responsible for legislating, monitoring the Government and controlling public expenditure. However, the proposals of Mr LEE and Mr LEUNG have mixed up their roles. This is a dangerous first step. Should their proposals become legislation, there would surely be serious adverse impacts on more than 300 statutory and advisory bodies of the Government, such as the Hospital Authority, the Mass Transit Railway Corporation, the Kowloon-Canton Railway Corporation, the Land Development Corporation and so on.

Furthermore, I must ask Members to note that, on the basis of the proposals of the two Members, when the Legislative Council exercises its right of approval, it has to make a decision of either "accepting all" or "not accepting any" appointment. If various political groups fail to reach a consensus regarding the candidates, there would finally be a "vacuum" in the Housing Authority which makes it fail to effectively perform its functions or serve the public. In this regard, I would particularly like Members to note that, from the time when the Bills Committee scrutinized the Bill till now, Mr LEE Wing-tat has so far failed to put forward a practical method of coping with the possible vacuum in the Housing Authority. He has only been subjectively hoping that such situation as "bouncing back and forth" would not possibly emerge. However, would the actual situation be as optimistic as what Mr LEE imagines? I believe Members have a pretty good idea of this.

The appointment of the Chairman and Vice Chairman of the Housing Authority is an important decision as these two high ranking personnel would have a significant impact on the decisions to be made on policies. We believe it is not appropriate for the two candidates to be elected from among the members themselves. The Government should continue to select suitable people to take up these posts in order to ensure that the people holding these posts can work independently and impartially.

The Honourable Bruce LIU's Bill and Amendment

Similarly, the Government opposes the Bill and amendment moved by Mr Bruce LIU. The existing statutory bodies and advisory bodies have important roles and functions and this system should not be confused with our representative government and the three-tier councils. These two systems should be complementary and supplementary to each other. The effective operation of the system of statutory bodies and advisory committees is dependent on its flexibility. This flexible system permits the Administration to appoint people from different social strata on the basis of their talents, so that they can take part in the work of these bodies and contribute what they are good at. If the Legislative Council put rigid (I stress the word "rigid") restrictions on the candidates of these bodies by legislating, insisting that the Administration must appoint most members from our representative government and the three-tier councils to the Housing Authority or other statutory and advisory bodies, this would weaken the complementary functions of these two systems and reduce the chances of appointment by the Administration of adequate and suitable professionals and representatives of other strata to these statutory and advisory bodies. Furthermore, this would go against the widely recognized basic principle that the appointment of members of these bodies must take into account the functions and terms of reference of the relevant bodies and their respective needs.

The Honourable Mrs Selina CHOW's Amendment

The Administration finds Mrs Selina CHOW's amendment to Mr LEE Wing-tat's Bill acceptable. The reason is that this amendment does not rigidly require that the membership of the Housing Authority must comprise a lot of members from the three-tier councils. The Administration can still appoint suitable people on the basis of the talents, experience and background of individual candidates. Moreover, we agree to the view of Mrs Selina CHOW that the general criteria for the appointment of a member of the Housing Authority are the experience and knowledge of the candidate on housing or other related affairs or his reputation and status in his profession, as well as his ability to help the Housing Authority enhance its operational efficiency. In fact, these criteria have been adopted by the Administration all along.

Conclusion

Finally, I have to remind Honourable Members that, at present, the members of the Housing Authority are appointed in their personal capacity and we hope that these members can express their views independently. If this appointment procedure becomes unnecessarily "politicized", there will probably be a lack of independent and unbiased views in the Housing Authority in the future. When Members make decisions, they may seek to compromise instead of catering for the overall interests of our society, or the fair and reasonable use of housing resources. Some necessary but widely debated programmes (such as the proposals of dealing with the rich tenants of public housing estates and the increase in rents) will hardly be approved by the Housing Authority. In other words, the Housing Authority can hardly fulfil its obligations towards our society as a whole.

In fact, I understand fairly well the purposes of Members in moving the two Bills and amendments. They want to increase the transparency and accountability of the Housing Authority. In this regard, I am willing to tell Members that, in the past few years, the Housing Authority has already adopted many positive measures to give the Housing Authority more chances to brief the Legislative Council, the district boards, the public housing tenants and the general public on its work and policies, as well as to listen to the views of the public. If we have to further improve the operation of the Housing Authority by legislating and through ordinances with adverse effects, we may be outsmarting ourselves.

Therefore, I call upon Members to oppose the amendments moved by Mr LEE Wing-tat, Mr LEUNG Yiu-chung and Mr Bruce LIU, and to support the amendment of Mrs Selina CHOW.

Thank you, Mr President.

PRESIDENT (in Cantonese): Mr LEE Wing-tat, do you intend to speak in reply?

MR LEE WING-TAT (in Cantonese): I would like to know first if there is any time limit.

PRESIDENT (in Cantonese): According to Standing Orders, the time limit for your speech is 15 minutes.

MR LEE WING-TAT (in Cantonese): Mr President, I am very happy that I have a chance to discuss with my Honourable colleagues once again about the amendment to the Housing Ordinance. Dr the Honourable Anthony CHEUNG has just provided on my behalf answers in respect of certain views. However, although we are now living in the 1990s (it is 1997 now), when we discuss about the issues debated in this Council, either political issues or the executive-led government, I have a feeling that we are still living in the 1950s or 1960s. It seems to me that there has not been any progress in our society at all. For instance, recently, the press and the Secretary for Housing have been criticizing my Bill, saying that it will challenge the executive-led government. In fact, these explanations have been repeated many times and we have repeated our standpoints many times and explained why this amendment Bill would not challenge the so-called executive-led government framework.

Actually, when I looked up the written answer given by the Chief Secretary to a question raised by the Honourable TSANG Kin-shing in March last year, I found the Chief Secretary's explanation about the meaning of an executive-led government. She said, "Under the system of an executive-led government, the executive body is responsible for formulating and implementing policies and providing the public with various services. Under such a system, the Government has to submit its legislative proposals and those on its expenditure to the Legislative Council for its scrutiny. In a word, the Government puts forward proposals while the executive body makes the decisions." The above was what the Chief Secretary said. I am merely suggesting giving the legislature the right to scrutinize the appointment of the Housing Authority. How would this go against the Chief Secretary's definition of an executive-led government? In fact, an executive-led government as generally referred to by Members means that the Government has the right to make decisions and puts forward bills of its own accord. As I suggested, the Governor still has the right to put forward the list of his own accord but we have the right of scrutiny. If we assumed that the powers of the so-called executive-led government cannot be challenged, then it would be an executive

dictator instead of an executive-led government.

Mr President, the second point of my response is related to a point put forward by Mr Dominic WONG, that is, what would happen if, institutionally, the Legislative Council does not adopt the list of appointment? In fact, the Secretary for Housing does not have to worry. In reality, this is a problem common to many constitutional arrangements. Let me ask the Financial Secretary, "What are you going to do if the Appropriation Bill is not passed when Members vote on the Bill in April?" I believe the consequence of not passing the Appropriation Bill would be far more serious than that of not passing the list of appointment of the Housing Authority. Constitutionally, we can let the Government take its average expenditure in the past six months as its budgeted expenditure. Within such a period, the Financial Secretary has to re-introduce a new Appropriation Bill to the legislature for its scrutiny. Since this system is also "bouncing back and forth" and the Bill can remain not passed next time, does the Secretary for Housing think that the whole government would be at a standstill?

Therefore, what the Secretary for Housing said is untenable. Firstly, as there is such a possibility now, why is he not worried? Why has he not asked the Financial Secretary to make changes to this system?

Secondly, my Bill has catered for this. It is because all members of the Housing Authority serve a term of two years. Even if there is a rare case that the list of appointment is not approved, there would still be more than half of the members in office and so there would not be a so-called "vacuum" as noted by the Secretary for Housing.

Thirdly, many countries have similar systems, including the scrutiny of the appointment of judges to the high courts and of diplomats and even the scrutiny of the federal budget in the United States. Why are these so-called "constitutional crises" not usually found in these countries with such constitutional arrangements? It is because the system itself will force the executive and legislative organs to make compromises and reach an understanding in respect of these problems.

We have to recognize a fact and that is, what I just said about the appointment of members is not adopted in one go but in two batches, each comprising half of the total number of members. Moreover, if the Government can include the representatives of various sectors with different political inclinations and from different professions when proposing the list, the list would then be a so-called "balanced" one. If the Government can do this, it would not have to worry about the possibility that the list would not be adopted. The reason is, if Members or political parties are unreasonably nit-picking about this balanced list, they would be subject to great public pressure and the strong reproach of Members. I do not believe that a list proposed by the Governor or the future Chief Executive which is regarded by the Administration as balanced would be rejected by this Council. In addition, from now until the appearance of the legislature formed on the basis of the Basic Law, members should more or less be able to guess the sources where members of the legislature would come from. Some will be directly elected while others will come from functional constituencies and the Election Committee. Roughly speaking, they will have various political inclinations and come from different professions. No political party would become the majority party in the legislature within this period. These people having different views would bring about a comprehensive, moderate and balanced view. I have been very confident because there will be no problem not only on the basis of theoretical analysis but also in terms of experience.

Mr President, we are sometimes worried about reform and change, but it seems that there have already been many reforms in the constitutional history of Hong Kong. For example, the issue of the direct election in 1988 or when there was direct election in 1991, many people from the industrial and commercial sector, or even those who had reservation about democratic development thought that there would be a very great social change which our society could hardly cope with. However, after five or six years, I also agree that this Council has had more debates, has become more liberal and has seen some intense arguments. But at least, we can see that the contradictions among various sectors and people with various interests can be debated in this Council by their respective representatives, regardless of whether they are elected by the industrial and commercial sector or the grassroots, in a solemn but gentle manner, and

decisions on the adoption of Members' views can be made by voting. This is far better than having some people's voices not heard or represented, forcing them to adopt measures other than exercising their constitutional rights for putting forward their claims and expressing their protests by holding demonstrations, petitioning or even other methods unacceptable to our society.

I totally agree with what the Honourable Miss Christine LOH just said, though she said that the change would be an experiment. I do not think that this is an experiment because I think little progress has been made. I have been considering the membership of the Housing Authority and I find that its membership can more or less be regarded as balanced despite the fact that it has relatively few grassroots members. If the Government has confidence in the existing membership of the Housing Authority, would it have confidence that the appointment list will be adopted once it is submitted to this Council? I think that the list can also be adopted because the Government can achieve its aim by lobbying. I do not think that there will be a major change. Why do we have to propose a change? Why do we not believe that it is enough for the Governor to make the appointments alone? If we believe that, in respect of constitutional development, the establishment of a system should not be based upon the personal orientation of one person, we shall find that it is more important to set up a system. From the time I introduced the Bill last year till now, I have been asking Mr WONG on every occasion, "Why do you think that the appointment by the Governor would be unbiased, independent and with integrity? How come the appointment by the Governor followed by a debate and scrutiny by the legislature would not be unbiased, independent and with integrity but would surely be politicized with party politics involved?" For a whole year, I have not been able to grasp the logic and views of the Administration, particularly when we believe that powers ought to be checked, borne out and shared, and the more stable a system is, the more acceptable the effects it produces will be to the majority of people. I do not understand what Mr WONG said at all. Why would there be such a good result when the appointment is made by the Governor alone but that good result would be lost after our scrutiny? After having debated this point for a year, I am still not convinced that such a mechanism would have a very great impact. I recall that when Miss LOH advocated not long ago opening the Arts Development Council, the Administration became keyed up and the Secretary for Recreation and Culture gave a lot of reasons why it was untenable and would create many problems.

However, the Arts Development Council is now more open. I would like to ask Miss LOH whether the Arts Development Council is at a standstill now? Has the Arts Development Council failed to function because there have been many arguments and the issue has become political? At present, even the Housing Authority holds open meetings. Many years ago, people are very afraid of such things. I agree that, up to this stage, more progress can be made in some respects, especially when our society are prudently supportive.

Mr President, I heard an Honourable colleague say that he is very dissatisfied with the appointment system as there is no grassroots representatives. He continued to say that he hoped the Governor or the future Chief Executive would appoint more people from the grassroots level. Sometimes, I am puzzled by such a remark. As he does not trust the person making the appointments who has failed to propose a balanced appointment list after so many years, what makes him believe that the person can do this in the future? I think this is but an excuse. He dares not adopt a more open attitude and support my proposal that a balanced legislature should scrutinize the appointment list proposed by the Governor.

Mr President, in regard to the other views expressed by the Secretary for Housing, both the Secretary and I have published many newspaper articles, and we have repeatedly debated the issue. As there are two new articles today, I just want to debate the issue again. Finally, I have to say that I hope Members who adopt an attitude of gradual development and gradual opening towards the constitutional system can reconsider this. When our society has reached such a stage and supports that more or even all Members of the Legislative Council should be directly elected, and when we support that the Chief Executive should be directly elected, we should not worry about the possibility that the representatives returned by the public may not achieve the results of safeguarding the public interests when scrutinizing the list of appointment by the Governor. I think this is a necessary change which is to appear in an unruffled manner. Certainly, some Members would doubt whether this change will have a domino effect. I never look at things this way. I would consider whether this change is good or beneficial to the public interests. Would it cause the Housing Authority to formulate better housing policies? If so, why not make the change? If this is a good experience, why should other statutory bodies refrain from making reference to it? Therefore, I would not oppose this because

I fear that this would bring about changes in other areas. We should ask, "Is this change good?" If it is, we should support it.

Thank you, Mr President.

PRESIDENT (in Cantonese): Mr Bruce LIU, do you intend to speak in reply?

MR BRUCE LIU (in Cantonese): Mr President, today is an anniversary marking the reorganization of the Housing Authority (HA). I certainly hope that this is an anniversary marking the "successful reorganization of the HA".

The sitting today is not an occasion for airing grievances against the HA. But, it still gives us a good opportunity to point out the improvements which it should make and to prescribe the right remedies for its composition.

When I say that we have to prescribe the right remedies, my premise is that the HA is suffering from a number of diseases.

The first disease is "deficiency in representativeness". Currently, members of the HA are mainly chosen from the industrial, commercial and professional sectors. There is an acute deficiency in representativeness for the grassroots. The Secretary for Housing has just denied this, though.

The existing HA is a composite group with a strong bias. This is actually a result of the deficiency and inequity of its solely appointed membership system.

Since the HA is a composite group with a strong bias towards a particular social class in society, the people will very often suspect the Government of using the HA as a means of protecting the interests of a particular social class.

The second disease is "alienation from the masses". If we follow the news everyday, we will notice the various kinds of grievances and criticisms which the people voice in regard to the existing housing policy. In recent years,

the public housing policy as a problem has aroused increasing concern, and the people have become more and more dissatisfied with the work of the HA:

- (1) More than 200 000 people still have to wait for seven years on average before they can be allocated public housing, and in the interim, they have to pay high rents for private sector housing;
- (2) Several thousand people in Hong Kong are still living in caged homes. Even the United Nations Human Rights Commission is baffled by the existence of such a situation in Hong Kong, and views that this is a disgrace to the territory;
- (3) Public housing rents have increased so drastically that they are now beyond the financial ability of the people; and
- (4) Despite public opposition, the HA has pressed ahead with the "wealthy tenants policy" and the "assets assessment policy", much to the anger of public housing residents.

The third disease is "independent kingdom syndrome". This is a serious disease which has rendered the HA immune to public monitoring. The Legislative Council has adopted a motion on abolishing the "wealthy tenants policy", and it has also opposed the "assets assessment policy". In spite of this, the HA has so far refused to listen, and has remained bent on having its own ways. If I were to choose a nickname for the HA, I would certainly call it "Wilful", the name of the cult leader in the martial art novel *Xiao Ao Jiang Hu*. The behaviour of the HA, marked by a complete neglect of the people's opinions and a highly exclusive operating framework which generates unpopular policies, is a manifestation of "independent kingdom syndrome". The HA is an independent kingdom which cannot be controlled even by the Legislative Council. So, how can members of the public take part in or monitor the decision-making process of the HA? And, how are they going to make their voices heard?

Mr President, the Members' Bill which I have moved aims precisely to prescribe an effective remedy for the aforesaid diseases suffered by the HA. This remedy will transform the HA, from an independent kingdom deficient in representativeness and alienated from the masses to a decision-making body marked by representativeness, accountability and concern for the people's

interests.

The effective remedy which I prescribe involves an appropriate application of the time-tested "nomination mechanism" to a new composition of the HA. As indicated by the relevant data given to me by the Government, 60 out of the existing 400 advisory committees or statutory bodies have adopted a "nomination mechanism", the most notable example being the Arts Development Council. In view of this, I propose that as a first step preceding others, each district board should nominate one representative to join the HA, thus giving a total of 18 district board representatives to this body. However, these representatives must first receive formal offers of appointment from the Governor.

Besides, I also propose the appointment to the HA of:

1. not more than four public officers;
2. two to six Legislative Council Members; and
3. not more than 12 unofficial members with the relevant experience and expertise.

Here, I also want to refute some of the arguments against the reorganization of the HA. Although many other Members have already done so just now, I still want to say that again:

First, on the argument that the executive-led government may be jeopardized

Those who hold this viewpoint maintain that the power of appointing HA members should belong to the executive branch. As a result, they argue that any legislative attempts to reduce the power of appointment of the executive branch must not be accepted. To them, the executive-led government is just like a "totem" which is too sacred to allow sacrilege of any kind. However, if this argument really holds, why is it that some 60 existing advisory committees and statutory bodies are practising a nomination mechanism? Why is it that in those cases, a nomination mechanism has not jeopardized the executive-led government, whereas when I propose to introduce a partial nomination system for the HA, this will jeopardize the executive-led system? Is there a double standard? What is the reason?

Constitutionally speaking, Hong Kong is practising a system of separation of powers. I have raised the point that the Legislative Council should put forward a proposal on applying a nomination mechanism to the composition of the HA. But, under my proposal, the Administration's final say in making appointments is preserved, and so is the majority part of the existing appointment system. That being the case, when my proposal is still accused of jeopardizing the executive-led system, I can only say that "one can always come up with a reason of some kind if one wants to make a charge against another person".

Second, on Mr Dominic WONG's favourite argument of "politicization"

I have read an article written by him which appeared in *Wen Wei Po* on 12 January. His oft-repeated argument in the article is that if too many members of the three tiers of representative government become HA members, the HA will be turned into a forum of "constant arguments" like the Legislative Council because all these members, in an attempt to curry favour with their voters, will put aside their proper business and stage political shows in the HA. This will lower the efficiency of the HA, and the decisions made will fail to take account of the interests of the community as a whole, thus reducing the HA to a battlefield of partisan interests. Mr Dominic WONG writes, and I quote, "If the composition (of the HA) becomes politicized, we will be unable to ensure that the HA can formulate decisions in an independent, fair and impartial manner in the future. Instead of considering the wider interests of the community, HA members may make their decisions through compromises."

I think that Mr Dominic WONG is over-worried. If his argument of "politicization" holds, the Urban Council and the Regional Council will surely be decision-making bodies which have failed to attend to their proper business, the reason being that these two municipal councils are made up entirely of members of the three tiers of representative government, unlike the reorganized HA I propose which is to be composed partially of such members only. But, the point is that these two municipal councils can still look after the interests of the people when formulating policies, and during the process of decision-making, the people's interests are also taken care of. Although the members of these two municipal councils are inevitably "long-winded" during the process of decision-making, such long-windedness should be viewed as a necessary and reasonable price of democratization.

Mr President, when it comes to efficiency, as we should all know,

dictatorship is always the most efficient. But, there is no guarantee as far as effectiveness is concerned. Bodies with democratic composition are not the best in terms of efficiency, but they provide the best guarantee for looking after the interests of the people.

Third, on the "theory of the domino effect"

This argument is nothing but a bluff. Members of this Council who hold this viewpoint compare the passage of my Bill today to the collapse of the Eastern Bloc. They maintain that if my Bill is passed, other advisory committees and statutory bodies such as the Hospital Authority, the Transport Advisory Committee, the Education Commission and the Land Development Corporation will also face the fate of reorganization. To them, the passage of my Bill will be like the fall of the first domino, which will lead to the consequential and thus inevitable collapse of other advisory committees.

Let me make it very clear that I do not have the slightest intention of altering the methods of composition of other advisory committees and statutory bodies. I only hope that after the successful reorganization of the HA, the Government will consider the application of the time-tested nomination mechanism to other advisory committees and statutory bodies. What is more, I do not think that we should apply this mechanism to other bodies in a mechanical way, because each and every advisory committee and statutory body is directly related to or at least connected in one way or another with a different and unique set of interest groups. So, if the nomination mechanism is to be given a wider application, a thorough organizational analysis must be conducted beforehand. In this connection, the Sub-committee on Review of Advisory and Statutory Bodies under the Home Affairs Panel is now conducting a detailed study. It is believed that this Sub-committee will be able to draw up a series of specific recommendations in the near future. Another point is that with the limitation imposed on them under the Basic Law after 1 July 1997, members of the SAR Legislative Council will not be permitted to introduce bills which seek to change public policies and the government structure. That being the case, it will not be possible for the domino effect to take place on or after 1 July 1997.

But, what about the period before 1 July 1997? As at today, there are only two Bills, one introduced by me and the other by the Honourable LEE Wing-tat, which seek to turn the intention of reorganizing the HA into action.

My action this time will be the first and also the last offensive before the return of Hong Kong to China in 1997. Even if I succeed, the success will at best be one-off in nature, and no others will follow. If I fail, however, I can still satisfy myself that I have done what I should do to contribute to the people's efforts for a reorganization of the HA.

Mr President, while I always adhere firmly to what I believe is true, I am also prepared to take good advice whenever necessary. For that reason, after the examination of my Bill by the Bills Committee, I have decided to make the following amendments to it:

- (1) The clause authorizing the Legislative Council to nominate six representatives is now deleted. In its place, a new clause is added under which the Governor will appoint two to six Legislative Council Members to the HA. This is intended to stop the allegation that this Bill seeks to allow the legislature to interfere with the operation of the executive. Just now, the Honourable Mrs Selina CHOW questioned why there should be six representatives. There is indeed a certain degree of arbitrariness. However, past records show that this is more or less the right number. Currently, three Legislative Council Members are serving as HA members.
- (2) The membership of not less than four public officers in the HA is retained for the purpose of preserving communication and co-operation between the HA and officials of the various Policy Branches.
- (3) The discretionary power of the Governor to appoint the Chairman and Vice-Chairman of the HA is retained. This is in response to the remark made by the Secretary for Housing in the concluding part of his article. According to the Secretary, it is not appropriate for the Chairman and Vice-Chairman to be elected by and from among the members because it is imperative that the right persons have to be selected to ensure independence and impartiality. I believe that this amendment will put the Secretary's mind at rest.
- (4) The term of office of all HA members is standardized at two years.

Mr President, I hope that Members will support my amended Bill. Let us

use our votes to introduce improvements to the HA, which has been infested with various defects and inadequacies. Let us proclaim a new beginning for the HA today and make it possible for it to draw up new policies which can serve public interests better and which can command more public support. I also want to thank the Honourable Miss Emily LAU for speaking in support of my amended Bill, and I am very pleased that I will get one more vote of support from her. Let me also urge other Members to support me, in particular the Honourable Miss Christine LOH, a member of the Sub-committee who favours the idea of a nomination mechanism. I hope that after doing more thinking, she will support my amended Bill, thus increasing the number of votes I can get. Mr President, these are my remarks.

Question on the Second Reading of the Housing (Amendment) Bill 1996 put.

Voice vote taken.

THE PRESIDENT said he thought the "Ayes" had it.

Mr LEE Wing-tat claimed a division.

PRESIDENT (in Cantonese): Council will now proceed to a division.

PRESIDENT (in Cantonese): I would like to remind Members that they are now called upon to vote on the question that the Housing (Amendment) Bill 1996 moved by Mr LEE Wing-tat be read the Second time.

Will Members please register their presence by pressing the top button and then proceed to vote by pressing one of the three buttons below?

PRESIDENT (in Cantonese): Before I declare the result, Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mr Allen LEE, Mrs Selina CHOW, Mr Martin LEE, Mr SZETO Wah, Mrs Miriam LAU, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Eric LI, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr Howard YOUNG, Mr WONG Wai-yin, Miss Christine LOH, Mr James TIEN, Mr LEE Cheuk-yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEE Kai-ming, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Miss Margaret NG, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE and Mr YUM Sin-ling voted for the motion.

Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr CHIM Pui-chung, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Paul CHENG, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Mr LO Suk-ching and Mr NGAN Kam-chuen voted against the motion.

THE PRESIDENT announced that there were 36 votes in favour of the motion and 20 votes against it. He therefore declared that the motion was carried.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

Question on the Second Reading of the Housing (Amendment)(No. 2) Bill 1996 put.

Voice vote taken.

Mr Bruce LIU, Mr LEE Wing-tat and Mr Frederick FUNG claimed a division.

PRESIDENT (in Cantonese): Council will now proceed to a division.

PRESIDENT (in Cantonese): I would like to remind Members that they are now called upon to vote on the question that the Housing (Amendment) (No. 2) Bill moved by Mr Bruce LIU be read the Second time.

Will Members please register their presence by pressing the top button and then proceed to vote by pressing one of the three buttons below?

PRESIDENT (in Cantonese): Before I declare the result, Members may wish to check their votes. Are there any queries? One short of the head count. (*The President checked the records.*) The result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Mr LEE Cheuk-yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE and Mr YUM Sin-ling voted for the motion.

Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr CHIM Pui-chung, Mr Eric LI, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Miss Christine LOH, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Paul CHENG, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Mr LEE Kai-ming, Mr LO Suk-ching, Miss Margaret NG and Mr NGAN Kam-chuen voted against the motion.

THE PRESIDENT announced that there were 27 votes in favour of the motion and 29 votes against it. He therefore declared that the motion was negatived.

MR CHEUNG MAN-KWONG (in Cantonese): Mr President, I would like to ask whether, at one time before the result was displayed, the voting result was 28 to 28.

PRESIDENT (in Cantonese): I had to wait for the machine-printed result. The screen had once shown a result of 28 to 28, but now the screen display is 27 to 29.

MR CHEUNG MAN-KWONG (in Cantonese): Mr President, the point is that you did not display the result while you checked Standing Orders. The usual practice was that the result would be displayed first and then the President would check Standing Orders to make a decision. If the initial result of 28 to 28 was subsequently changed to 27 to 29 while you did not show the result and spent time on checking Standing Orders, what should be done? I heard from the headphone that the result was 28 to 28.

PRESIDENT (in Cantonese): I would think that this was caused by a malfunctioning of the machine. I do not believe that a Member has changed his or her mind at the last minute. According to the conventional practice, Members are bound by their decisions in the voice vote. If one says "aye", one cannot press the button for "no". Nor can they change their decisions later. I do not believe that Members would do that either. It could have been a malfunctioning of the machine. I had to wait for the printed result before making a decision.

MR ALBERT CHAN (in Cantonese): Mr President, I want to record my strong protest against your delay in announcing the voting result.

PRESIDENT (in Cantonese): Mr CHAN, what you have just said is not allowed by Standing Orders. You can only raise a point of order. This is not a time for

protests.

MR ALBERT CHAN (in Cantonese): Mr President, a point of order. As far as the President's handling of voting procedures is concerned, Mr President, are there any guidelines governing the announcement of voting results? Are there any rules on a delay of such announcements?

PRESIDENT (in Cantonese): No, there are no such rules.

MR JAMES TO (in Cantonese): Mr President, suppose the Clerk is asked to tell us what he saw — was it 28 to 28 or was it 27 to 29 throughout, would you think that this is an appropriate way of putting Members' minds at rest? Mr President, would this give Members more confidence?

PRESIDENT (in Cantonese): Your request does not involve a point of order. I said that I saw the voting result was once 28 to 28 and I indicated that I needed to wait for the printed result.

MR SZETO WAH (in Cantonese): I request the President to clarify some points. First, the reason for delaying the display of the voting result. Second, whether there have been two different voting results. Please clarify and tell us the fact.

PRESIDENT (in Cantonese): Mr SZETO, are you making a request or are you raising a point of order?

MR SZETO WAH (in Cantonese): I used the word "request".

PRESIDENT (in Cantonese): I will deal with the point of order first before giving you an answer. Honourable Members, I saw the voting result on the screen was 28 to 28 just now. At that time, I wanted to check the information I had gathered on the two standard expressions to be used by the President when giving a casting vote. The information I had to check was about the date of the precedent which I had to quote if I were to vote for the motion. I found it, but it

was no longer applicable because as I looked at the screen again, the result shown was 27 to 29. That was what took place. That was why I had to wait for the printed version of the result. Incidentally, if the votes for and against a motion after its Second Reading debate are equal, this Council should in principle be given an opportunity to further consider it. Hence, bound by this principle, I will have to vote for the motion to enable the Bill to be studied further.

MR SIN CHUNG-KAI (in Cantonese): Mr President, before you make a ruling, can I inquire whether I voted for or against the motion?

PRESIDENT (in Cantonese): We have to wait for the printed result.

MR CHEUNG MAN-KWONG (in Cantonese): Mr President, I must declare that I have no intention of querying your impartiality. I do not have the slightest intention of doing that. But as I watched the whole process, I saw that you suddenly picked up a copy of the new Standing Orders. You might not be very familiar with the new Standing Orders. The problem is how the President has to deal with the voting result. When you hesitated, we, who are used to voting in this Chamber, all felt that the result was 28 to 28 or a draw and this had led you to do what you did. If one changed one's decision under such circumstances, I do not know how the votes ought to be counted. I hope that when you make a ruling, you will take this into consideration, and do what you as a President should do. Of course, you are the President and I will respect your ruling.

PRESIDENT (in Cantonese): I have heard various comments just now, in particular those made by Mr Albert CHAN and Mr CHEUNG Man-kwong. And, the discussions seemed to allege that I have not dealt with the matter properly. I do not think that such discussions are appropriate. Pending the release of the printed result, I now adjourn the sitting.

10.15 pm

Sitting suspended.

10.30 pm

Council then resumed.

PRESIDENT (in Cantonese): Honourable Members, I believe you all have a copy of the voting result in hand. Please check if there is any discrepancy with your vote. If there is no discrepancy, this should be regarded as the final result: 27 votes in favour of the motion and 29 votes against it. I hereby declare that the Second Reading of the Housing (Amendment) (No.2) Bill 1996 proposed by Mr Bruce LIU is negatived.

I would like to take this opportunity to explain one more time that Members can change their votes prior to the display of the voting result. But the principle is that the voice vote must not be different from the division held afterwards. However, in case no voice vote is taken, Members can change their votes any time prior to the display of the result. Just now I saw 56 Members cast their votes and the result was 28 to 28. Therefore, I thought I would have to apply the Speaker Eddington Principle 1796, that is: the President should vote in favour when a motion can still be debated and deliberated. However, such situation has not arisen.

MR JAMES TO (in Cantonese): A point of order. What should I do if the voice vote made by a Member as I have heard is really different from the actual voting result? Is it not allowed according to the constitution or according to the order laid down by common law?

PRESIDENT (in Cantonese): That is the principle. My view is Members should not make different votes when casting a voice vote and taking part in a division in order not to cause disputes. I am afraid there will be more confusion once such question is raised. I think it is better for Honourable Members not to ask such question. *(Laughter)*

MR CHIM PUI-CHUNG (in Cantonese): What if the two of them pull my leg?
(*Laughter*)

PRESIDENT (in Cantonese): I cannot rule on a hypothetical question.
(*Laughter*) What I said just now has already included the situation you mentioned as there will always be disputes. Therefore, even if you are very familiar with *Erskine May*, you have to apply the rules carefully.

MR MARTIN LEE (in Cantonese): Mr President, actually the Honourable James TO has already raised this question but you said in your reply that you had better not answer the question. However, before Mr TO raised his question, you did say that we could not do such a thing. Now the question Mr TO put to you is how will you deal with the case if a Member really does that. This is a perfectly rational and logical follow-up question. I hope that Mr President would not be afraid of messing things up further as we are in quite a muddle already. (*Laughter*)

MR PRESIDENT (in Cantonese): It all started with the protest.

As the Second Reading of the Housing (Amendment) (No.2) Bill 1996 has been negatived, the Amendment Bill will not be subject to further proceedings in this Council.

Committee Stage of Bill

Council went into Committee.

HOUSING (AMENDMENT) BILL 1996

Clause 1

MR LEE WING-TAT (in Cantonese): Mr Chairman, I move that clause 1 be amended as set out in the paper circularized to Members.

Mr Chairman, and Honourable Members, this is a technical amendment. The original commencement date of the legislation was set down in the Bill to be 1 November 1996. However, since we have spent too much time on scrutinizing the Bill, this date has already passed. Therefore, I have changed the date to 1 March 1997. Be it in my Bill or the Honourable Mrs Selina CHOW's Bill, this date has to be changed, otherwise problems would arise. Thank you, Mr Chairman.

Proposed amendment

Clause 1

That clause 1(2) be amended, by deleting "1 November 1996" and substituting "1 March 1997".

Question on the amendment put and agreed to.

Question on clause 1, as amended, put and agreed to.

Clause 2(a)

CHAIRMAN (in Cantonese): Mr LEE Wing-tat, Mrs Selina CHOW and Mr LEUNG Yiu-chung have given separate notices to amend clause 2(a). I propose that the amendments moved by Mr LEE Wing-tat, Mrs Selina CHOW and Mr LEUNG Yiu-chung be debated together in a joint debate.

Committee shall now debate the respective amendments moved by Mr LEE Wing-tat, Mrs Selina CHOW and Mr LEUNG Yiu-chung in a joint debate. In accordance with Standing Order 25(4) and Members' seniority, I shall call upon Mrs Selina CHOW to move her amendment first.

MRS SELINA CHOW (in Cantonese): Mr Chairman, I move that clause 2(a) be amended as set out under my name in the paper circulated to Members. I have already fully explained my rationale in my speech earlier.

The Honourable LEUNG Yiu-chung's amendment has actually completely relaxed the appointment criteria to include almost everyone in Hong Kong, and is, therefore, not very meaningful. For this reason, the Liberal Party opposes Mr LEUNG Yiu-chung's amendment.

Proposed amendment

Clause 2(a)

That clause 2(a) be amended, by deleting the proposed subsection (2) and substituting —

"(2) The Authority shall consist of -

- (a) the Director of Housing;
- (b) such number of public officers, not exceeding 3, as the Governor may appoint;
- (c) such number of persons, as the Governor may appoint by order in the Gazette from -
 - (i) members of -
 - (A) the Legislative Council;
 - (B) the Municipal Councils; and
 - (C) the District Boards; and

- (ii) persons who, not being public officers, are considered by the Governor to -
 - (A) have experience and knowledge in housing and related matters;
 - (B) have an established reputation in their business, trade or profession; or
 - (C) have the ability to contribute to the efficient and effective operation of the Authority."

CHAIRMAN (in Cantonese): In accordance with Standing Order 25(4), I now call upon Mr LEUNG Yiu-chung to speak on his own amendment, as well as on Mrs Selina CHOW's and Mr LEE Wing-tat's amendments. After Mr LEUNG has spoken, I will call upon Mr LEE Wing-tat to speak on his own amendment as well as on Mrs Selina CHOW's and Mr LEUNG Yiu-chung's amendments. However, no amendment shall be moved at this stage.

MR LEUNG YIU-CHUNG (in Cantonese): Mr Chairman, the Housing Authority began to operate independently and adopt the existing appointment system in 1988, when there were no directly elected seats in the Legislative Council. However, in these eight to nine years, the Governor has been appointing Housing Authority members on the basis of the criteria of personal abilities, professional knowledge, experience, conduct and sincerity in public service. However, when we review the list of people who have successively served as Housing Authority members, we will surely regret that besides government officials, most Housing Authority members chosen by the Administration and appointed by the Governor are those so-called professionals, representatives of financial consortia and people with a middle class background. There are even people from the property sector who have conflicts of interests,

but the voices of the general public have been seriously suppressed. As a result, there were many unfair and unreasonable housing policies in the past, for instance, the wealthy tenant policy and rental policy just mentioned by Mr Dominic WONG. Precisely because of this unequal and unreasonable appointment system, many public housing tenants were forced to give up their rights of living in public housing and purchase private properties. This in turn stimulated the development of the property market and consolidated the existing high land price policy. Moreover, the rental policy compelled the public housing tenants to pay higher rents. The grassroots people were heavily burdened and our society experienced an unhealthy development.

The Housing Authority has a direct bearing on the well-being of more than 3 million Hong Kong people in regard to housing. It is not only responsible for the design, construction, management and maintenance of public housing but it also handles for the Government matters related to the control and removal of houses. In addition to public housing matters, it is also in charge of the Home Ownership Scheme, Home Purchase Loan Scheme, Private Sector Participation Scheme, and the construction and management of temporary housing and cottage areas. Therefore, Housing Authority members have heavy responsibilities and the Authority has a surplus of almost \$30 billion now. However, in respect of the problems of the deteriorating quality of life of those households in abject poverty as a result of their housing expenses and the long time spent by the poor in waiting for public housing allocation, we think that the Housing Authority has done nothing at all and has totally failed to solve these problems.

For these reasons, the representativeness of Housing Authority members appears even more important. Today when there are more and more democratic elements in this Council, if we still adopt the appointment system which is devoid of accountability and public participation, I think this is a very serious problem. Moreover, the Housing Authority will be detached from our society and it will not be able to safeguard the housing rights of the grassroots level.

I am now going to introduce to Members my proposed changes to the membership of the Housing Authority. In fact, the changes are simple. The main point is that any person aged 18 and above who have been living in Hong Kong for seven years and nominated by 50 people can be a candidate to be selected, assessed and appointed by the Governor. I think that the open nomination method will initially embody the democratic spirit. It is because those people who wish to express their views in respect of public housing

matters can at least become candidates through an open channel. Certainly, the Governor has the right to choose from among the candidates people he considers suitable. Later, the mechanism of approval by this Council by resolution as proposed by the Honourable LEE Wing-tat would precisely impose certain restrictions on the Governor so that he cannot be biased towards certain candidates. This Council would only approve the appointment when it is certain that the members chosen by the Governor from the list of candidates are widely representative.

Perhaps some would ask: Why not hold a direct election for the Housing Authority. I think that there is ultimately such a possibility and the present system should develop in this direction. However, in view of the appointment of Housing Authority members now, I think it is difficult for the Authority to achieve this in one step. Therefore, I believe the adoption of a nomination system is the first step towards establishing a democratic system in the long run.

Some may also query that the nomination system may be too lax and too many candidates will create confusion as just described by the Honourable Mrs Selina CHOW. I absolutely believe that the wisdom of the public has become fairly mature. Actually, elections of the Legislative Council in the past permitted nomination by 50 people and there were no other restrictions. Nobody has queried this method of nomination and there has not been any chaos. Therefore, I believe that there should be a mechanism or channel for people who want to make contributions in respect of housing matters through the Housing Authority and would like to take part in the relevant election. We should not deny them of their rights.

The amendment I propose this time can more directly promote public participation so that people do not have to join the Housing Authority indirectly through the three tiers of representative government. In the past, some Members and I have fought for a long time for the democratization of Hong Kong, in particular, the full direct election of this Council. This is precisely the spirit we should have when establishing a democratic system. Moreover, not only this Council needs a full direct election, all the committees which are closely related to the public or similar frameworks related to some overall policies have to be democratic and should move in the direction of direct election, in order to allow participation by more people. In my opinion, if Members who supported direct election in the past are now opposed to a system which allows direct participation by the public, this will actually show that they are going

against the principle underlying their fight for direct election in the past.

I have heard some people say that appointment by the Governor does not require legislation to be enacted to permit public participation. However, I want to reiterate that we can only secure public participation by legislating. In fact, non-governmental bodies such as the Public Housing Discussion Committee has made public a recommended list for consideration by the Governor when appointing members to the Housing Authority in the past. This was not successful as the Governor would not take note of the list at all as it was not required by legislation. Moreover, such bodies representing the grassroots level as the Public Housing Discussion Committee would surely not be taken seriously by the Government. If my amendment is carried today, the channels for public participation would be protected by legislation. I believe that there would be more and more channels and chances for participation by similar representatives of the grassroots level in the future.

Mr Chairman, I actually support the part in Mr LEE Wing-tat's amendment concerning the approval by resolution of the Governor's appointment list by this Council but I think that this is not enough. For it to be more ideal, it has to be complemented by the method of composition of the Housing Authority I proposed. Mr LEE suggests selecting from the three tiers of representative government and appointing those who have experience in housing matters. However, there will basically not be any progress as this is almost the same group of people as the Housing Authority members at present. According to Mr LEE's proposal, if the Administration only choose, say, four candidates from the tiers of representative government, what effect would this have on our overall housing policies? In addition, I am very worried about the point that when the appointment list has to be adopted by the Legislative Council, there would surely be a series of lobbying and compromising which would finally allow the political parties in this Council to monopolize the seats. Such an unfair method of selection from "within a circle" would impede democratic development. Just like our proposal of enacting a law on fair trade to strike a blow at the monopoly of big consortia, we should not allow some Members of this Council to monopolize those seats.

I believe that my amendment can best meet the needs of a diversified

society. If we agree that a council should not be monopolized, we should open its seats to other interested bodies and people. At present, there are territory-wide and regional groups interested in housing matters, and such groups are found in public housing estates. Among these groups, there are people who are familiar with and eager to contribute efforts to public housing matters. Some have even spent longer time dealing with housing matters and are more experienced than the Housing Authority. Therefore, we should open more channels to allow these people to be elected as Housing Authority members and thus contribute their knowledge and experience. Other scholars, Members and even businessmen or representatives of financial consortia also have the right to take part in the election. We can expect that Housing Authority members can selflessly plan and work out for more than half of our population housing policies in the interests of the public.

Mr Chairman, my amendment is not perfect and it is still far from achieving direct election of the Housing Authority by all Hong Kong people. However, it is quite accommodating and is different from the other amendments which impede public participation. Therefore, I hope that Members can uphold the democratic spirit and support my amendment and the proposal of Mr LEE concerning the approval by resolution of the appointment list by this Council, so that the public can participate more in the selection of Housing Authority members.

Thank you, Mr Chairman.

MR LEE WING-TAT (in Cantonese): Mr Chairman, my speech will be very short. With regard to the Committee stage amendments, I hope Members will vote against the amendment moved by the Honourable Mrs Selina CHOW. Mrs CHOW's amendment seeks to delete the most important part of my Bill, which is the part that requires the proposed list of appointees to be approved by the Legislative Council, and is therefore unacceptable. As to the amendment moved by the Honourable LEUNG Yiu-chung, actually it does not contradict very much my amendment Bill. Nevertheless, Members from the Democratic Party have discussed it. We understand that Mr LEUNG Yiu-chung's amendment proposes that an appointee have to be nominated by about 50 people, yet such a nomination requirement is not for election purposes. Although Mr LEUNG kept talking about election just now, election is in fact not involved here.

The nominee is there only to be considered by the Governor. However, according to this mechanism, the Governor is not required to give any explanation even if that nominee is not being considered. In our opinion, this nomination requirement is but a symbolic public participation process. In fact, this kind of participation process could exist without any statutory provision of such kind. Any trade union representative or single individual may just write to and request the Governor to consider him for appointment, provided that he could collect 50 or perhaps 100 signatures from his supporters. In view of such, we will not support Mr LEUNG Yiu-chung's amendment. Thank you, Mr Chairman.

MR BRUCE LIU (in Cantonese): Mr Chairman, on behalf of the Hong Kong Association for Democracy and People's Livelihood (ADPL), I speak in support of the Honourable LEUNG Yiu-chung's amendment. I want to do some "shoe-shining" for Mr LEUNG because I think that the amendment moved by him this time is a manifestation of his wisdom, kindness and courage. I seldom do "shoe-shining" for a person.

First, his kindness. The nomination scheme advocated by Mr LEUNG Yiu-chung was in fact initiated by a group of young people — the Hong Kong Youth Concern Group on Housing Policy — who submitted a similar proposal to the Bills Committee. Mr LEUNG has now taken up the matter himself and submitted the proposed nomination scheme to this Council for our consideration. In my opinion, his act is full of compassionate understanding and sense of righteousness.

Second, his courage. I believe that when introducing this proposed scheme to this Council, Mr LEUNG was well aware that it might not be able to gain the understanding and acceptance of Members. But, courageously and without any fear of failure, he has still put forth the proposed scheme. I admire him a lot.

Third, his wisdom. The nomination system contained in his proposed scheme is similar to the nomination system applicable to the Selection Committee under the Basic Law. Such a system of open nomination is also a way of widening the candidature of elections, and is thus of some symbolic significance. Mr LEUNG knows that his putting forward the proposed scheme

may give people a wrong idea that he supports a nomination system similar to that applicable to the Selection Committee. In spite of this, he has still chosen to do the unpleasant job of submitting this noteworthy scheme on behalf of other people. In doing so, he has done what he considers he should do. And to me, this reveals his mastery of the art of making compromises, which is characteristic of the deed of wise man. With these remarks, I support Mr LEUNG's amendment on behalf of the ADPL.

MR DAVID CHU: Mr Chairman, the simple fact is Hong Kong's public housing success at worst ranks number two in the whole world, and the Housing Authority's operations are largely responsible for this outstanding success. No matter how elegant is Mr LEE Wing-tat's reasoning or how eloquent his speech, they cannot measure up to the commonsense imperative that if something is working well, why fix it?

The problem we are facing today is production, not representation, in the Housing Authority, therefore I support Mrs Selina CHOW's amendment. Thank you, Mr Chairman.

SECRETARY FOR HOUSING (in Cantonese): Mr Chairman, I very much agree that government policies must advance with the times. As the Honourable Bruce LIU mentioned today, there is an old saying, "One should choose what is good and hold fast to it." If something is right and good, it should go on. If Members believe in "separation of powers", "checks and balances" and "sharing of powers", they should respect the powers of the legislature and at the same time acknowledge the fact that the executive also enjoys certain powers of its own. Otherwise, what we are talking about will no longer be "separation of powers", but superfluous attempts of the legislature to assume the role of the executive instead. In that case, just how is the legislature going to monitor itself?

I will also do my best to answer the Honourable Miss Christine LOH's query. Under the present proposal put forward by the Honourable LEE Wing-tat, the Housing Authority (HA) will not be permitted to continue its operation until the full list of appointed members is approved by the Legislative Council. If this technical problem is not resolved, the passing of the Bill concerned will create a risk.

In addition, I would like to respond to Mr LEE Wing-tat's criticism. I am sure that Miss Christine LOH knows only too well that the case of the Arts

Development Council cited by Mr LEE is a misleading example. The two municipal councils are represented in the Arts Development Council not so much because of their being part of the three-tier system of representative government, but more because of their important role in promoting arts development. This role has nothing to do with the three-tier system of representative government.

I would also like to reiterate that the amendments moved by Mr LEE Wing-tat and the Honourable LEUNG Yiu-chung run counter to the existing principle under which the executive is functioning effectively, and they confuse the role of the three-tier system of representative government with that of statutory and advisory bodies.

The Administration considers that the amendment moved by the Honourable Mrs Selina CHOW is acceptable because it only sets down the appointment criteria applicable to the HA without laying down rigid requirements in respect of its composition.

Therefore, I call on Members to support Mrs Selina CHOW's amendment and oppose the amendments moved by Mr LEE Wing-tat and Mr LEUNG Yiu-chung. Thank you, Mr Chairman.

MRS SELINA CHOW (in Cantonese): Mr Chairman, I am going to respond briefly. I think just now when I spoke during the Second Reading debate, I already explained clearly why our amendment is better than that proposed by the Honourable LEE Wing-tat. Of course, I have also expressed why we object to the suggestion that the Legislative Council should approve the appointment list first before the appointment can become valid.

As regards the amendment proposed by the Honourable LEUNG Yiu-chung, I would like to remind Members of one point. What we want now is to introduce certain appointment criteria to this piece of legislation. Since the power to appoint is exercised by the Government, the introduction of such criteria by us in the Legislative Council to the legislation is in fact conducive to this power in the sense that certain standard will be set as to how the power is to be exercised. In other words, it is hoped that representation could be enhanced

or positive assistance could be made available to the operation of the Housing Authority. The amendment which Mr LEUNG Yiu-chung has been talking about in fact contains no such criteria. He is only suggesting that there should be 50 nominators and so long as the person concerned has resided in Hong Kong for seven years and aged 18 or above, he would meet the minimum requirement. His suggestion actually brings down representation and the standard and results in obscuring the appointment criteria instead. Nonetheless, he said this was not important as the Legislative Council could still consider it when approving the list. However, what criteria can the Legislative Council use when considering whether or not to approve the list? This may cause confusion and obscurity, and may in turn bring about a negative impact on the appointment of the Housing Authority. Thus, I hope that my Honourable colleagues will support my amendment and object to those proposed by the other two Members.

CHAIRMAN (in Cantonese): Before I put Mrs Selina CHOW's amendment to the Committee for a vote, I would like to advise Members that if Mrs Selina CHOW's amendment to clause 2(a) is agreed, that will by implication mean that the respective amendments proposed by Mr LEUNG Yiu-chung and Mr LEE Wing-tat are not approved. If Mrs Selina CHOW's amendment is negatived, I will call on Mr LEUNG Yiu-chung to move his amendment to clause 2(a). In that case, whether or not Mr LEE Wing-tat will be able to move his amendment to clause 2(a) will be dependent upon the Committee's decision on Mr LEUNG Yiu-chung's amendment. If Mr LEUNG Yiu-chung's amendment is agreed, it will not be possible for Mr LEE Wing-tat to move his amendment.

Question on Mrs Selina CHOW's amendment put.

Voice vote taken.

Mrs Selina CHOW claimed a division.

CHAIRMAN (in Cantonese): Committee will now proceed to a division.

CHAIRMAN (in Cantonese): I would like to remind Members that the question now put to them is: That the amendment to clause 2(a) moved by Mrs Selina

CHOW be approved.

Will Members please register their presence by pressing the top button on the voting units and then proceed to vote by pressing one of the three buttons below?

CHAIRMAN (in Cantonese): Before I declare the result, Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr CHIM Pui-chung, Mr Eric LI, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Paul CHENG, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Mr LEE Kai-ming, Mr LO Suk-ching, Miss Margaret NG and Mr NGAN Kam-chuen voted for the amendment.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-Yin, Miss Christine LOH, Mr LEE Cheuk-Yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE and Mr YUM Sin-ling voted against the amendment.

Dr LEONG Che-hung abstained.

The electronic display showed 28 votes in favour of the amendment and 28 votes against it.

CHAIRMAN (in Cantonese): Since the amendment is not supported by more than half of the Members, in accordance with the ruling I made on the basis of Speaker DENISON's decision which was made in 1867, I declare that I exercise my casting vote in the negative, so as to leave the original motion in its existing form. I declare that the amendment is negatived.

CHAIRMAN (in Cantonese): As Mrs Selina CHOW's amendment to clause 2(a) was not carried, I now call on Mr LEUNG Yiu-chung to move his amendment to clause 2(a).

MR LEUNG YIU-CHUNG (in Cantonese) : Mr Chairman, I move that clause 2(a) be amended as set out under my name in the paper circularized to Members.

Proposed amendment

Clause 2(a)

That clause 2(a) be amended, by deleting the proposed subsection (2) and substituting —

"(2) The Authority shall consist of -

- (a) the Director of Housing;
- (b) such number of public officers not exceeding 3, as the Governor may appoint; and
- (c) such number of persons, other than public officers, as may be appointed by the Governor from among persons who -
 - (i) have attained the age of 18 and have ordinarily resided in Hong Kong for a minimum of 7 years;

and

- (ii) have been nominated by 50 other persons who have attained the age of 18 and are holders of valid identity cards within the meaning of the Registration of Persons Ordinance (Cap. 177),

and any cost incurred in relation to the nomination and appointment under paragraph (c) by the Government shall be payable by the Authority."

Question on Mr LEUNG Yiu-chung's amendment put.

Voice vote taken.

Mr LEUNG Yiu-chung claimed a division.

CHAIRMAN (in Cantonese): Committee will now proceed to a division.

CHAIRMAN (in Cantonese): I would like to remind Members that the question now put to them is: That the amendment to clause 2(a) moved by Mr LEUNG Yiu-chung be approved.

Will Members please first register their presence by pressing the top button on the voting units and then proceed to cast their votes by pressing one of the three buttons below?

CHAIRMAN (in Cantonese): Before I declare the result, Members may wish to check their votes. Are there any queries? Still one short of the head count. The result will now be displayed.

Mr Frederick FUNG, Mr LEE Cheuk-yan, Mr LAU Chin-shek, Dr LAW Cheung-kwok, Mr LEUNG Yiu-chung, Mr Bruce LIU and Mr MOK Ying-fan voted for the amendment.

Mr Allen LEE, Mrs Selina CHOW, Mr Martin LEE, Mr NGAI Shiu-kit, Mr SZETO Wah, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr CHIM Pui-chung, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Eric LI, Mr Fred LI, Mr Henry TANG, Mr James TO, Dr Samuel WONG, Dr Philip WONG, Dr YEUNG Sum, Mr Howard YOUNG, Mr WONG Wai-yin, Miss Christine LOH, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Andrew CHENG, Mr Paul CHENG, Mr CHENG Yiu-tong, Dr Anthony CHEUNG, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr Albert HO, Mr IP Kwok-him, Mr Ambrose LAU, Mr LAW Chi-kwong, Mr LEE Kai-ming, Mr LO Suk-ching, Miss Margaret NG, Mr NGAN Kam-chuen, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE and Mr YUM Sin-ling voted against the amendment.

THE CHAIRMAN announced that there were seven votes in favour of Mr LEUNG Yiu-chung's amendment and 50 votes against it. He therefore declared that the amendment was negatived.

CHAIRMAN (in Cantonese): As Mr LEUNG Yiu-chung's amendment to clause 2(a) was not carried, I now call on Mr LEE Wing-tat to move his amendment to clause 2(a).

MR LEE WING-TAT (in Cantonese): Mr President, I move that clause 2(a) be amended as set out in the paper circularized to Members.

Proposed amendment

Clause 2(a)

That clause 2(a) be amended, by deleting the proposed subsection (2)(c) and substituting —

"(c) such number of other persons as the Governor may appoint by order

in the Gazette -

- (i) from among the members of -
 - (A) the Legislative Council;
 - (B) the Urban Council;
 - (C) the Regional Council; and
 - (D) the District Boards; or
- (ii) who, not being public officers, are considered by the Governor to have experience and knowledge in matters relating to housing."

Question on Mr LEE Wing-tat's amendment put.

Voice vote taken.

Mr TSANG Kin-shing claimed a division.

CHAIRMAN (in Cantonese): Committee will now proceed to a division.

CHAIRMAN (in Cantonese): I would like to remind Members that they are now called upon to vote on the question that the amendment to clause 2(a) moved by Mr LEE Wing-tat be approved.

Will Members please register their presence by pressing the top button and then proceed to vote by selecting one of the three buttons below?

CHAIRMAN (in Cantonese): Before I declare the result, Members may wish to check their votes. Are there any queries? Two short of the head count. The result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Mr LEE Cheuk-yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE and Mr YUM Sin-ling voted for the amendment.

Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr CHIM Pui-chung, Mr Eric LI, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Paul CHENG, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Mr LEE Kai-ming, Mr LO Suk-ching, Miss Margaret NG and Mr NGAN Kam-chuen voted against the amendment.

THE CHAIRMAN announced that there were 28 votes in favour of Mr LEE Wing-tat's amendment and 29 votes against it. He therefore declared that the amendment was negatived.

CHAIRMAN (in Cantonese): As the amendments moved by Mrs Selina CHOW, Mr LEUNG Yiu-chung and Mr LEE Wing-tat have all been negatived, I now put the question to you and that is: That clause 2(a) stand part of the Bill.

Question on the original clause 2(a) put.

Voice vote taken.

THE CHAIRMAN said he thought the "Ayes" had it.

Mrs Selina CHOW and Mr CHAN Kam-lam claimed a division.

CHAIRMAN (in Cantonese): Committee will now proceed to a division.

CHAIRMAN (in Cantonese): I would like to remind Members that they are now called upon to vote on the question that the original of clause 2(a) stand part of the bill.

Will Members please register their presence by pressing the top button and then proceed to vote by selecting one of the three buttons below?

CHAIRMAN (in Cantonese): Before I declare the result, Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Mr LEE Cheuk-yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE and Mr YUM Sin-ling voted for the motion.

Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr CHIM Pui-chung, Mr Eric LI, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Paul CHENG, Mr CHENG

Yiu-tong, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Mr LEE Kai-ming, Mr LO Suk-ching, Miss Margaret NG and Mr NGAN Kam-chuen voted against the motion.

THE CHAIRMAN announced that there were 28 votes in favour of the motion and 29 votes against it. He therefore declared that the motion was negated.

Clause 2(b)

MRS SELINA CHOW (in Cantonese): Mr Chairman, I move that clause 2(b) be amended as set out in the paper circularized to Members.

Proposed amendment

Clause 2(b)

That clause 2(b) be amended, by deleting the paragraph.

MR LEE WING-TAT (in Cantonese): Mr Chairman, may I know which page of the script are we now up to?

CHAIRMAN (in Cantonese): We have now moved to page 16 and we were on page 15 just now. The three amendments, including Mr LEE Wing-tat's amendment, to clause 2(a) of the Bill moved by Mr LEE have been negated. The question that the original clause 2(a) moved by Mr LEE Wing-tat stand part of the Bill was also negated. We now proceed to clause 2(b).

Mrs Selina CHOW, you have moved your motion but have not spoken yet.

MRS SELINA CHOW (in Cantonese): Mr Chairman, I want to make a correction. What I referred to just now was clause 2(c). (*Laughter*) This is

because clause 2(b) is actually about stripping the Legislative Council of its power to approve the appointment list.

CHAIRMAN (in Cantonese): The speech you delivered just now might be about clause 2(c), but you were moving your amendment to clause 2(b).

CHAIRMAN (in Cantonese): Mr Bruce LIU, do you wish to speak or raise a question?

MR BRUCE LIU (in Cantonese): Mr Chairman, my question is, while everything has become void after clause 2(a) was repealed, what is the point of our approving clause 2(b) later? I think it is utterly meaningless. Since clause 2(a) is a prerequisite for the approval of the list, as clause 2(a) was negated, why do we still have to vote? Please make a ruling, Mr Chairman.

CHAIRMAN (in Cantonese): I think what Mr Bruce LIU said is very reasonable. But I have to check and see if I have such power.

MR JAMES TO (in Cantonese): Mr Chairman, I would like to speak on the amendment.

CHAIRMAN (in Cantonese): If my ruling does not require

MR JAMES TO (in Cantonese): Mr Chairman, I wish to speak in relation to your ruling.

CHAIRMAN (in Cantonese): Then you should raise a point of order instead of asking for leave to speak on the question put. If you wish to raise a point of

order, you may do so.

MR JAMES TO (in Cantonese): Mr Chairman, may I speak on a point of order?

CHAIRMAN (in Cantonese): Yes, please.

MR JAMES TO (in Cantonese): Mr Chairman, let me give a hypothetical example. If a Bill like the Housing (Amendment) Bill 1996 is passed and is to take effect on 1 March 1997, it would then become an Ordinance which is void of content. Suppose we are unable to agree on any of the proposed amendments, it is still meaningful to put the Bill to a vote. This might sound absurd, Mr Chairman, but the fact is this Bill has been read a Second time and the motion on its Second Reading was agreed to by a vast majority. Obviously a certain kind of direction towards reform is being advocated here. It is true that this direction could not be turned by a majority of Members in accordance with the rules of order into a properly amended Bill and then become an Ordinance, yet the record of all the stages undergone is still part of the history of legislation. Both the procedures as well as the debate involved are meaningful in themselves, it is therefore worthwhile to have the question put and the result recorded.

CHAIRMAN (in Cantonese): Thank you for your input, Mr James TO.

CHAIRMAN (in Cantonese): Clause 2(a) of the Housing (Amendment) Bill 1996 submitted by Mr LEE Wing-tat requires that the appointees be appointed by order. However, the existing Housing Ordinance does not contain such "appointment by order". Clause 2(b) of the Bill requires the "order" to be laid before and approved by resolution of the Legislative Council. As clause 2(a) has already been negatived, and other than the notice of amendment given by Mrs Selina CHOW, no more notices have been received. Since Mrs CHOW's amendment seeks to delete the sub-clause, this deletion is now quite unnecessary.

In view of the fact that clause 2(a) and the amendment proposed thereto have already been negatived and the consequential deletion of clause 2(b), I therefore rule that Mrs CHOW cannot move her amendment to this sub-clause.

Clause 2(c)

MRS SELINA CHOW (in Cantonese): Mr Chairman, I move that clause 2(c) be amended as set out under my name in the paper circularized to Members.

Proposed amendment

Clause 2(c)

That clause 2(c) be amended, by deleting the proposed subsection (3) and substituting —

"(3) The Governor shall appoint, taking into account the views of members of the Authority -

- (a) one of the persons appointed under subsection (2)(c) as the Chairman of the Authority; and
- (b) one of the persons referred to in subsection (2) as the Vice-Chairman of the Authority."

MR LEE WING-TAT (in Cantonese): Mr Chairman, I sill oppose this amendment of the Honourable Mrs Selina CHOW. I proposed in my amendment that the Chairman and Vice-Chairman be elected from among the members themselves. Mr President, just now I asked what page of the script we were up to. That was because what Mrs Selina CHOW said was different from what I read, not that I failed to spot it. I hope that Honourable colleagues will

continue to support me and oppose Mrs Selina CHOW's amendment. Thank you, Mr Chairman.

SECRETARY FOR HOUSING (in Cantonese): Mr Chairman, I would like to reiterate that the Chairman and Vice-Chairman of the Housing Authority (HA) have a significant influence on the decision-making of housing policies. Therefore, it is inappropriate for candidates for these two important posts to be elected from among the members themselves. It is extremely important that the Government should continue to identify suitable persons to fill there two posts to ensure that they will carry out their work independently and impartiality.

I urge Honourable Members to support the Honourable Mrs Selina CHOW's amendment. The Government will be pleased to consider the views put forward by members of the Housing Authority (HA) when deciding on the candidates for the posts of Chairman and Vice-Chairman of the HA. Thank you, Mr Chairman.

MR BRUCE LIU (in Cantonese): Mr Chairman, a point of order. The Honourable Mrs Selina CHOW's amendment to clause 2(c) concerns the appointment of Chairman, with the Chairman to be appointed according to "proposed subsection (2)(c)" and the Vice-Chairman according to "subsection (2)". Just now, however, all attempts to effect proposed amendments have become void, that means "subsection (2)(c)" no longer exists. Then, should the alphabetical order of the paragraphs be amended accordingly? I think it should be subsection (2)(b) and subsection (2) of the Ordinance which the Bill originally refers to since these are about un-official members while subsection (2)(c) is about the group of people she proposed. I am a bit confused here as subsection (2)(c) no longer exists.

CHAIRMAN (in Cantonese): The responsibility lies with the Member who moved the motion as there was originally a clause 2(c). Is that what you mean? Although a mistake or negligence ending up in error regarding clauses can normally be handled during Third Reading, I think there is a need for Mrs Selina CHOW to clarify on the point of order raised by Mr Bruce LIU.

MRS SELINA CHOW (in Cantonese): Mr Chairman, I believe that what Mr Bruce LIU pointed out just now was that under the original subsection (2)(c), the Chairman is to be appointed from among the non-government members. Now, since subsection (2)(c) is deleted, it may be necessary to return to the original principal Ordinance and change the numbering to subsection (2)(b).

CHAIRMAN (in Cantonese): Do you need five minutes to consider? Does the Council need to resume to enable you to ask the President of the Legislative Council to exempt you from a notification period so that you may move your revised amendments?

MRS SELINA CHOW (in Cantonese): I think that is not necessary.

MISS MARGARET NG: It is a point of clarification. I feel that this is not a matter of technicality because, as the Honourable Mrs Selina CHOW's amendment suggests, obviously (2)(c) refers to (2)(c) as proposed by her earlier. Now, if (2)(c) now becomes something else, it is not a matter of technicality. The content appears to me to have become different because it refers to the original Ordinance.

Mr Chairman, may we have a clarification on that so that we know what on earth we are going to vote on?

CHAIRMAN (in Cantonese): My understanding is that although Mrs Selina CHOW also wishes to amend clause 2(c), and that her proposed amendment is also targeted at the same group of persons, the clause 2(c) here refers to the clause 2(c) of the Housing (Amendment) Bill 1996 presented by Mr LEE Wing-tat. As the three proposed amendments to clause 2(a) have been negatived, Mrs Selina CHOW has to apply to the President of the Legislative Council for approval to dispense with the notice of amendment so that the spirit of her clause 2(c) could be carried through. I shall now suspend the sitting for five minutes. When the Council resumes, it will go into Committee and Mrs Selina CHOW can then move her revised amendment. Mrs Selina CHOW, is this arrangement agreeable to you?

MRS SELINA CHOW (in Cantonese): Mr Chairman, I would like to clarify one more point concerning the Chairman of the Housing Authority, and that is: Should the part concerning the amendment of "one of the persons appointed under subsection" as be revised to become a consequential provision of the original Ordinance? Is this what it means? This is because if my amendment is not carried, Mr LEE Wing-tat's amendment will not be included as part of the Bill either. In this regard, is it necessary for us to go back to the original Ordinance and amend the relevant clauses?

CHAIRMAN (in Cantonese): You may discuss with the Clerk and Legal Advisor as to how the provision should be drafted to express what you mean. I will therefore give you five minutes. The meeting is now adjourned for five minutes.

11.35 pm

Sitting suspended.

11.40 pm

Council then resumed.

CHAIRMAN (in Cantonese): Committee now resumes. As President of the Legislative Council, I granted leave to Mrs Selina CHOW at my office just now to make a technical amendment to the clause 2(c) moved by her. The wording of the clause is now as follows:

That clause 2(c) be amended, by deleting the proposed subsection (3) and substituting —

"(3) The Governor shall appoint, taking into account the views of members of the Authority -

- (a) one of the persons appointed under subsection (2)(b) as the Chairman of the Authority; and
- (b) one of the persons referred to in subsection (2) as the Vice-Chairman of the Authority."

MRS SELINA CHOW (in Cantonese): Mr Chairman, I move that clause 2(c) be amended as announced by the Chairman just now.

CHAIRMAN (in Cantonese): Mr LEE Wing-tat, do you want to speak or is there a point of order?

MR LEE WING-TAT (in Cantonese): I want both to speak and raise a point of order. I want to say that I am still against the amendment and my point of order is about Mrs Selina CHOW changing the wording of her amendment from "following consultation with members" to "taking into account the views of". Mr Chairman, you have accepted this change of wording in very short notice. I would like to ask if this will become the practice in future. Mrs CHOW said in her speech that the Secretary for Housing has agreed to this. Does it mean that in future if the Government has agreed to something, we can propose further amendments to Committee stage amendments by giving a short notice? Thank you, Mr Chairman.

CHAIRMAN (in Cantonese): The changing of "following consultation with" to "taking into account the views of" represents a textual amendment which I approved yesterday. There have been many precedents of such textual amendments. Approval was often given despite the very short notice since no substantial change in meaning was involved. My predecessor did so, and I am also doing the same during my term. There was already one such notice this morning and another notice distributed to Members during the meeting. If the amendment moved by Mrs Selina CHOW is not agreed, the question put to Members later will be that the same technical amendment be made to the original clause 2(c) of the Housing (Amendment) Bill 1996 proposed by Mr LEE

Wing-tat because the original clause 2(c) follows immediately the original clause 2(a) and (b), thereby rendering it necessary to amend the numbering involved. By the same token, I will approve such technical amendments.

Question on the amendment put.

Voice vote taken.

Mrs Selina CHOW claimed a division.

CHAIRMAN (in Cantonese): Committee will now proceed to a division.

CHAIRMAN (in Cantonese): I would like to remind Members that the question now put to them is: That the amendment to clause 2(c) moved by Mrs Selina CHOW be approved.

Will Members please register their presence by pressing the top button on the voting units and then proceed to vote by pressing one of the three buttons below?

MISS MARGARET NG: Mr Chairman, there is something wrong with my voting machine. It will not register my vote.

CHAIRMAN (in Cantonese): Please press the top button again. Is it working now?

CHAIRMAN (in Cantonese): Before I declare the result, Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr

Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr CHIM Pui-chung, Mr Eric LI, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Paul CHENG, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Mr LEE Kai-ming, Mr LO Suk-ching, Miss Margaret NG and Mr NGAN Kam-chuen voted for the amendment.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Mr LEE Cheuk-yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE and Mr YUM Sin-ling voted against the amendment.

CHAIRMAN (in Cantonese): There are 28 votes in favour of the amendment and 28 votes against it. In accordance with my previous ruling based on Speaker DENISON's decision in 1867, my vote has to go with the "noes" so as to leave the Bill in its existing form. I declare that the amendment was negated.

As Mrs Selina CHOW's amendment to clause 2(c) has been negated, I cannot put the question to you for the time being.

Although Mr LEE Wing-tat had not made the request just now, I considered the matter while I was in my office. I told the Committee that if Mrs Selina CHOW's amendment to clause 2(c) was negated, technical amendments would also have to be made to the present motion of Mr LEE Wing-tat. Mr LEE Wing-tat, if you are willing to do so and are seeking my permission, you have it.

MR LEE WING-TAT (in Cantonese): Mr President, in accordance with what you have indicated, I confirm that I accept your permission. *(Laughter)*

CHAIRMAN (in Cantonese): Mr LEE Wing-tat, should the subsection (2)(c) as in clause 2(c) of the Housing (Amendment) Bill 1996 you originally presented for the purpose of proposing a new subsection (3)(a), which was to replace subsection (3)(a) of the Housing Ordinance, be changed to subsection (2)(b) now?

MR LEE WING-TAT (in Cantonese): Mr Chairman, under the relevant provision of the Bill I originally proposed, the Chairman and Vice-Chairman are to be elected by and from amongst the members. As the relevant provision has been turned down, I have to re-number according to the numbering of the Ordinance. Thank you, Mr Chairman.

CHAIRMAN (in Cantonese): I would like you to confirm that under the proposed subsection (3)(a) as in the Bill proposed by you, the Chairman of the Housing Authority shall be elected by and from amongst the members and the persons eligible for the election are restricted to those members of the Authority referred to in subsection (2)(b) of the Ordinance. And under the proposed subsection (3)(b), the Vice-Chairman shall be elected by and from amongst the members and the persons eligible for the election are those people referred to in section 3(2) of the Ordinance, that is, the same people referred to in Mrs Selina CHOW's amendment.

DR PHILIP WONG (in Cantonese): Mr Chairman, for the sake of fairness, could you also give Mr LEE five minutes to consider in order to avoid making another mistake?

CHAIRMAN (in Cantonese): I would like to announce one more time that the technical amendment has been approved by the President of the Council and the question as proposed by Mr LEE Wing-tat is as follows:

That clause 2(c) be amended, by repealing subsection (3) and substituting —

"(3) The Authority shall elect -

- (a) a Chairman of the Authority from those members of the Authority referred to in subsection (2)(b); and
- (b) Vice-Chairman of the Authority from those members of the Authority referred to in subsection (2),

according to rules regulating such elections at meetings of the Authority as prescribed by the Authority."

I now put the question to Members and that is: That clause 2(c), after the amendment I just mentioned, stand part of the Bill.

Question on the amendment put.

Voice vote taken.

Mr TSANG Kin-shing claimed a division.

CHAIRMAN (in Cantonese): Committee shall now proceed to a division.

MR CHAN KAM-LAM (in Cantonese): Mr Chairman, I would like to raise a point of order. Is it possible for us to move a motion at this stage to the effect of shortening the waiting time for voting to 1 minute?

CHAIRMAN (in Cantonese): Yes, you can but only after this voting is over. I have been wondering why no Member brings up the request of moving a motion without notice to shorten the time from three minutes to one minute. However, you cannot do so at this moment.

CHAIRMAN (in Cantonese): I would like to remind Members that the question now put to you for division is: That clause 2(c) stand part of the Bill.

Will Members please register their presence by pressing the top button on the voting units and then proceed to vote by pressing one of the three buttons below?

CHAIRMAN (in Cantonese): Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Mr LEE Cheuk-yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE and Mr YUM Sin-ling voted for the amendment.

Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr CHIM Pui-chung, Mr Eric LI, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Paul CHENG, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Mr LEE Kai-ming, Mr LO Suk-ching, Miss Margaret NG and Mr NGAN Kam-chuen voted against the amendment.

THE CHAIRMAN announced that there were 28 votes in favour of the amendment and 29 votes against it. He therefore declared that the amendment

was negatived.

MR LEE WING-TAT (in Cantonese): Mr Chairman, according to the order of business there should be two more amendments to the Ordinance under clause 2 of my Bill. However, as my previous amendments have been negatived, the two remaining amendments will not have much significance to the Bill. Mr Chairman, can I just withdraw these two amendments?

CHAIRMAN (in Cantonese): Honourable Members, the simple answer is yes. Withdrawal is allowed if there are no objections. Technically speaking, under Standing Orders, all clauses presented by you form part of the Bill during the Committee stage. Now that the question on clause 2 has been proposed, Members will have to consider it. If you want to withdraw two provisions in clause 2 of your original Bill, you can do so if there is no objection from Members. Consequently, there is also no need for the Honourable Mrs Selina CHOW to move her proposed amendment to delete these two provisions.

MR RONALD ARCULLI: If in fact this Council or this Committee agrees to the Honourable LEE Wing-tat's application, as it were, to withdraw, can he propose it again at a later date, because if he can then I would object to it?

CHAIRMAN (in Cantonese): Honourable Members, the clauses that the Honourable LEE Wing-tat wishes to withdraw are two of those set out in his Housing (Amendment) Bill 1996. The objective of the Bill is to amend the existing Housing Ordinance. Under the present situation, the clauses that Mr LEE is going to withdraw will not be taken into consideration for decision making by this Committee. Should Mr LEE present another amendment bill at a later date during this session, then we would have to see if the bill contains any clauses that are in breach of the decisions this Council has made. If it does not, he can move the bill. As for the clauses that have not been considered by the Council, he can also move them. However, for those clauses on which decisions have already been made by this Council, I do not think they could be presented again during this session.

MR LEE WING-TAT (in Cantonese): Mr Chairman, I would like to clarify that the two amendments I moved in my Bill will only be meaningful on the basis that the amendments I moved earlier were carried. These two amendments are of a technical nature, and the remaining one is about the transitional arrangements of public officers. As no amendments were carried, there is no need to make such transitional arrangements. I have no intention to move these amendments again in this legislative session either. Of course, it will be another story as to whether the amendments will be moved again in the formally constituted legislature in the future. Thank you, Mr Chairman.

CHAIRMAN (in Cantonese): Just now I made a ruling that under the circumstances that if there is no objection, Mr LEE can withdraw certain provisions in the Bill. Therefore, it would not be necessary for Mrs Selina CHOW to move a motion to repeal the provisions. I note that Members have not raised any objection just now.

DR LEONG CHE-HUNG: In the event that this Bill passes the Third Reading without those amendments, what would be the status of these two withdrawn amendments?

CHAIRMAN (in Cantonese): If all the other clauses of the Housing (Amendment) Bill 1996 presented by the Honourable LEE Wing-tat were negatived by this Committee, this Bill would consist of nothing but a long title, a short title and an effective date, all of which have no significance whatsoever. Even if it was passed and then signed by the Governor, it would still have no significance. However, this is merely a matter of technicality that I have not yet studied. Nevertheless, should any one of the clauses be passed, that clause would still become part of the Bill. During the Third Reading of the Bill, Members should exercise their reasoning power to decide whether the Bill should be read the Third time and passed.

MR JAMES TO (in Cantonese): What you are saying is that there is no legislative significance. Regarding its significance in other aspects, you have not expressed your view, am I right?

CHAIRMAN (in Cantonese): What I am saying is that there is no legal effect because the amendment Bill will not contain real substance after its passage. What it will have technically are just a long title and a short title, and the meaning is thus at best symbolic. However, that is another matter. The fact remains that the Bill will have no legal effect.

CHAIRMAN (in Cantonese): There is no need to deal with clause 2(d) and 2(e). In other words, clause 1 still remains part of the Bill, while clause 2 has been partly rejected and partly withdrawn. We now move to clause 3.

Clause 3

Question on clause 3 put.

Vocie vote taken.

THE CHAIRMAN said he thought the "Noes" had it.

Mr Martin LEE claimed a division.

CHAIRMAN (in Cantonese): Committee will now proceed to a division.

MR JAMES TIEN (in Cantonese): Mr Chairman, a point of order. I thought the Honourable LEE Wing-tat was withdrawing all the remaining provisions just now. How come clauses 3 and 4

CHAIRMAN (in Cantonese): What was withdrawn was part of the provisions under clause 2.

MR JAMES TIEN (in Cantonese): No, I thought that he was withdrawing all the remaining provisions that have not been discussed today.

CHAIRMAN (in Cantonese): He cannot withdraw clause 3 because if he is to withdraw the whole Bill, he has to do so before each stage. He may do that after we have passed the Committee stage and before we proceed to the Third Reading. Just now I made my ruling on whether clause 2(d) and clause 2(e) could be withdrawn. As I had already proposed the question on clause 2, if it were to be withdrawn, the consent of Members would have to be sought.

CHAIRMAN (in Cantonese): Members are now called upon to vote on the question that clause 3 shall stand part of the Bill.

Will Members please register their presence by pressing the top button on the voting units and then proceed to cast their votes by pressing one of the three buttons below?

CHAIRMAN (in Cantonese): Before I declare the result, Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG

Wai-yin, Mr LEE Cheuk-yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE and Mr YUM Sin-ling voted for the motion.

Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr CHIM Pui-chung, Mr Eric LI, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Miss Christine LOH, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Paul CHENG, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Mr LEE Kai-ming, Mr LO Suk-ching, Miss Margaret NG and Mr NGAN Kam-chuen voted against the motion.

THE CHAIRMAN announced that there were 27 votes in favour of the motion and 30 votes against it. He therefore declared that the motion was negatived.

Council then resumed.

Third Reading of Bill

HOUSING (AMENDMENT) BILL 1996

MR LEE WING-TAT (in Cantonese): Mr President, the Housing (Amendment) Bill 1996 has passed through the Committee stage with amendments. I move that the Bill be read the Third time. For the sake of historical records, I hope that Members will support me. Thank you, Mr President.

Question on the Third Reading of the Bill proposed.

PRESIDENT (in Cantonese): Secretary for Housing, is it a point of order?

SECRETARY FOR HOUSING (in Cantonese): Mr President, I wish to have a chance to speak on the motion.

CHAIRMAN (in Cantonese): Honourable Members, please note that what I have just mentioned is a question proposed but normally no Member will speak on that. And so I will then say, "I now put the question to you as stated." However, according to the Standing Orders, any Member can speak during the Third Reading but on the content of the Bill only. Secretary for Housing, I just want to remind you this.

PRESIDENT (in Cantonese): Mr WONG Wai-yin, do you have a point of order?

MR WONG WAI-YIN (in Cantonese): Mr President, I just heard you say that any Member can speak during the Third Reading. But, is the Secretary for Housing a Member of this Council?

PRESIDENT (in Cantonese): Government officials can also speak because it is within their scopes of duties to do so. Some provisions in Standing Orders are also applicable to government officials.

SECRETARY FOR HOUSING (in Cantonese): Mr President, I think it is pointless to consider this motion of Third Reading because, as I recall, what is left now is only the first amendment moved by the Honourable LEE Wing-tat. That is to say, if the Bill is passed, the date of commencement will be 1 March 1997. But as all the provisions in the Bill have been negated, how can the Bill come into effect on 1 March 1997? What is going to take effect? I really do not understand. Therefore, Mr President, I think this Third Reading is simply meaningless and should be cancelled. Thank you, Mr President.

PRESIDENT (in Cantonese): Mr James TO, do you have a point of order, or do you wish to speak?

MR JAMES TO (in Cantonese): Mr President, there might have been some misunderstanding when I spoke during the debate on the Second Reading of the Honourable Mrs Selina CHOW's amendment to clause 2(c) of the Bill. Although the Bill may look absurd now that it is bereft of its content, it will serve as a record showing that during the Second Reading, Members, including some Members from the Liberal Party, agreed to urge the Government to tend towards reform and thus carries substantive significance. Of course, Mr President, as you have said, the Bill will not have any legal impact nor will it serve any purpose as an amendment. It will, however, have some kind of symbolic meaning kept on record, and the Government can be urged to consider this historic record seriously. I hope that Members can consider this point.

ATTORNEY GENERAL: Mr President, I do not wish to in any way undermine or diminish the serious purpose of the debate that has taken place tonight and the early hours of this morning. I would simply remind Members that when this Council is in its law-making mode, it is charged with the responsibility of making laws for the peace, order and good governance of Hong Kong.

I would like to ask both rhetorically and for Members' deep consideration what law, what law is being made for the people of Hong Kong that consists, or would consist, of a short title, a long title and a commencement? Does that really reflect great credit upon this House? That does not undermine or diminish in any way the seriousness of the debate that has taken place this day, but is this truly a law-making function and is this something that this House would like to have recorded for it?

MR MARTIN LEE: Mr President, whether there is any meaning in voting "yes" to this particular Third Reading is entirely a matter for Members. As I understand it, the learned Attorney General is not taking a point of order, so that is entirely a matter for Members.

Remember, of course, that this is the end part of a long and serious debate. The Bill itself, of course, was of tremendous use to the public if it were passed in whatever form. It was unfortunate that at the end of the day we have only the title, the long and short titles and the date of commencement. But as a matter of history, of course, it has a useful purpose.

So, since the Attorney General is not taking a point of order, I would request Members to vote accordingly without paying attention to something which is not a point of order.

DR YEUNG SUM (in Cantonese): Mr President, after such a long debate, we might perhaps have set a new record in respect of the format of a Bill. It is because we would eventually have to vote on a Bill which contains nothing more than a title. However, I would like to remind Honourable Members that we were mainly discussing the principles of the Bill during the Second Reading debate. What I mean is that the majority of us have already accepted this Bill in principle although we differ about the details. As our views are different, the amendments moved by the Honourable LEE Wing-tat have been eventually voted down one after another. The essence of the basic principle is that we would like to see changes in the composition the Housing Authority (HA), and

such changes may include the one suggested by the Honourable Mrs Selina CHOW. Although certain parts of her suggestions differ from ours, we all hope that when the HA is to be composed again, its method or way of composition should have some changes. I hope Members would support the framework of Mr LEE Wing-tat's Bill on the basis of this principle.

Question on the Third Reading of the Bill put.

Voice vote taken.

Mr TSANG Kin-shing claimed a division.

PRESIDENT (in Cantonese): Council will proceed to a division.

PRESIDENT (in Cantonese): I would like to remind Members that they are now called upon to vote on the question that the Housing (Amendment) Bill 1996 be read the Third time and do pass.

Will Members please register their presence by pressing the top button in the voting units and then cast their votes by pressing one of the three buttons below.

PRESIDENT (in Cantonese): Before I declare the result, Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Mr LEE Cheuk-yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE and Mr YUM Sin-ling voted for the motion.

Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr CHIM Pui-chung, Mr Eric LI, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Miss Christine LOH, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Paul CHENG, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Mr LEE Kai-ming, Mr LO Suk-ching, Miss Margaret NG and Mr NGAN Kam-chuen voted against the motion.

THE PRESIDENT announced that there were 27 votes in favour of the motion and 30 votes against it. He therefore declared that the motion was negatived.

ADJOURNMENT AND NEXT SITTING

PRESIDENT (in Cantonese): In accordance with Standing Orders, I now adjourn the Council until 2.30 pm on Wednesday, 22 January 1997.

Adjourned accordingly at twenty minutes past Twelve o'clock.

Note: The short titles of the Bills listed in the Hansard, with the exception of the Human Reproductive Technology Bill and Insurance Companies (Amendment) Bill 1997, have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.