

# **OFFICIAL RECORD OF PROCEEDINGS**

**Tuesday, 24 June 1997**

**The Council met at Nine 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.

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

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 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, J.P.

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, J.P.

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

## **PUBLIC OFFICERS ATTENDING**

THE HONOURABLE MRS ANSON CHAN, C.B.E., J.P.  
CHIEF SECRETARY

MR GORDON SIU KWING-CHUE, C.B.E., J.P.  
SECRETARY FOR TRANSPORT

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

MRS KATHERINE FOK LO SHIU-CHING, O.B.E., J.P.  
SECRETARY FOR HEALTH AND WELFARE

MR JOSEPH WONG WING-PING, J.P.  
SECRETARY FOR EDUCATION AND MANPOWER

MR PETER LAI HING-LING, C.B.E., J.P.  
SECRETARY FOR SECURITY

MISS DENISE YUE CHUNG-YEE, J.P.  
SECRETARY FOR TRADE AND INDUSTRY

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

MRS STELLA HUNG KWOK WAI-CHING, J.P.  
SECRETARY FOR HOME AFFAIRS

MR RAFAEL HUI Si-yan, J.P.  
SECRETARY FOR FINANCIAL SERVICES

## **CLERKS IN ATTENDANCE**

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

MR LAW KAM-SANG, J.P., DEPUTY SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY  
GENERAL

**PRESIDENT** (in Cantonese): Council will now resume.

### **Third Reading of Bill**

THE SECRETARY FOR SECURITY reported that the

### **CRIMES (AMENDMENT) (NO. 2) BILL 1996**

had passed through Committee with amendments. He moved the Third Reading of the Bill.

*Question on the Third Reading of the Bill proposed and put.*

*Voice vote taken.*

Miss Emily LAU claimed a division.

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

**PRESIDENT** (in Cantonese): Since Dr LEONG Che-hung's motion is valid only in the Committee stage, the division bell will ring for three minutes.

**PRESIDENT** (in Cantonese): I would like to remind Members that they are now called upon to vote on the question that the Crimes (Amendment) (No. 2) Bill 1996 be read the Third time and passed.

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 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, Mr LEUNG Yiu-chung, Mr Bruce LIU, Miss Margaret NG and Mr SIN Chung-kai voted for the motion.

Mr Allen LEE, Mrs Selina CHOW, Dr David LI, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr Eric LI, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Paul CHENG, Mr CHENG Yiu-tong, Mr IP Kwok-him, Mr Ambrose LAU, Mr LEE Kai-ming and Mr LO Suk-ching voted against the motion.

THE PRESIDENT announced that there were 23 votes in favour of the motion and 20 votes against it. He therefore declared that the motion was carried.

Bill read the Third time and passed.

### **Resumption of Second Reading Debate on Bill**

### **WEAPONS OF MASS DESTRUCTION (CONTROL OF PROVISION OF SERVICES) BILL**

### **Resumption of debate on Second Reading which was moved on 23 April 1997**

**MR JAMES TO** (in Cantonese): Mr President, I am speaking in support of this Bill, but I would like to clarify a few points for the Government's attention.

First, we have noted that this Bill mainly deals with the control of provision of services behind the proliferation of some weapons of mass destruction. In fact, I also agree with the Government that Hong Kong is not a conduit for the proliferation of strategic commodities. But recently there have been some reports that Germany or the United States are concerned about whether Hong Kong will be able to maintain an effective system of controlling

deals involving weapons of mass destruction, nuclear or biological weapons under the "one country, two systems" concept in future. It has long been my belief that officers from the Customs and Excise Department are competent and efficient in the enforcement of such legislation. However, I understand that financial and other services in this respect have been ever-changing and expanding in tandem with the development of technology. As a result, the amount of cash involved and the speed with which deals are done are way ahead of what our control and surveillance system of the past could handle. If we cannot convince our trading partners that our control system after 1 July will be as effective as before, the provision of materials and services for the finance, banking, telecommunications and trading sectors will be affected.

Mr President, another subject of concern is about a question that has been raised recently. As China will retain the responsibilities for defence and foreign affairs for the future Hong Kong Special Administrative Region (SAR), will this piece of legislation come under the ambit of foreign and defence policies, which are China's responsibilities under these exceptional powers? In other words, there is concern about whether China will extend these policies to Hong Kong through its foreign and defence policies. For instance, some countries have recently expressed concern over the sale of weapons to countries such as Pakistan and Iran by China, and they doubt whether sovereignty will prevail over such legislation. I hope that the authorities concerned will clarify this point. My understanding is that the defence and foreign policies adopted by China, such as the recently promulgated Garrison Law, have some clash with our current legislation. They may be incompatible with some laws in Hong Kong, in particular with those concerning the powers of law enforcement agencies such as the Police Force and the Customs and Excise Department. It is very important to explain clearly and co-ordinate these two sets of laws through legislation or other means. We should also enable the world to fully understand the situation and make their judgments.

I do not believe that China will provide services involving weapons of mass destruction through Hong Kong, but it is necessary to clarify our stance in the form of legislation. Without this move, our trading partners will find cause for concern, especially when conflicts in their parliaments or between their political parties arise. Hong Kong and China may be subject to criticism on one ground or another, which may not be totally justified. Therefore, I hope that the future Chief Executive of the SAR will study this sensitive issue in detail with the Central Government. Moreover, some incoordination may emerge from the



interface between China's responsibility for foreign affairs and the laws of Hong Kong. I would like to raise one more issue which concerns the enforcement of laws on national security. How are responsibilities divided between the national security agencies in Hong Kong and the local law enforcement agencies? Will the former exercise their law enforcement powers in Hong Kong? All of these require further studies.

Mr President, I am supportive of this Bill. Although this Bill is not aimed at implementing provisions in a particular convention, we can actually boost our trading partners' confidence in Hong Kong if we can let them see the existence of such legislation. Thank you.

**SECRETARY FOR TRADE AND INDUSTRY:** Mr President, the Weapons of Mass Destruction (Control of Provision of Services) Bill was introduced into this Council on 23 April 1997. The Bill seeks to make it an offence for a person who knowingly provides services to assist the development, production, acquisition or stockpiling of weapons of mass destruction. Examples of such services are financing, sourcing of materials, the provision of training, technological information or know-how, and other consulting services.

After the introduction of the Bill, we have exchanged views with Honourable Members who have indicated interest in the Bill. As a result of these discussions, the Administration will be introducing a number of technical amendments to impose conditions on the exercise of certain powers provided for under the Bill, to provide a clear definition of the agencies responsible for enforcing the Bill, and to improve the drafting of a number of provisions. I will explain these amendments during the Committee stage, but I would like to take this opportunity to thank Members for the thought they have put into studying the Bill.

I would also like to take this opportunity to thank in particular the Honourable James TO's support of the Bill. I would wish to state for the record that under the "one country, two systems" concept embodied in Hong Kong's two legal documents, namely the Joint Declaration and the Basic Law, Hong Kong will continue to enjoy after the transition a high degree of autonomy in trade and economic affairs. Hong Kong will continue to legislate and enforce its own trade controls system, maintain the integrity of the system to our satisfaction and to the standards expected of us by our international trading partners. It is in

Hong Kong's own interests to ensure that our trade controls system is one that is respected by the rest of the world. I wish to emphasize that we are doing this for Hong Kong's own interests and not as a result of pressure put on Hong Kong by any other country.

I have already explained the necessity for the Bill when I moved the Second Reading in April. The need arises from Hong Kong's necessity to have uninterrupted access to high-tech goods to support our commerce and industry. To this end, it is indispensable for us to have a strategic trade control system which closely follows the highest standards accepted by the international community. The enactment of this Bill represents a further step towards this goal.

The Honourable James TO referred just now to the issue of foreign affairs. Under the Joint Declaration and the Basic Law, Hong Kong will remain a separate trading entity and a separate customs territory after 1997. Part and parcel of this autonomy would mean Hong Kong maintaining a separate and autonomous import and export control system, including control on strategic commodities. The basis of our control is trade and economic oriented and therefore falls squarely within Hong Kong's autonomy, now and after 1997. As a world class trading economy and a responsible community, we are committed to exercising the highest level of control in all illegal activities including the illegal trading of weapons of mass destruction. Hong Kong will continue to implement its own law to the full professionally and impartially.

Mr President, I commend the Bill to this Council's support subject to the amendments that I will be moving in the Committee stage. Thank you.

*Question on the Second Reading of the Bill put and agreed to.*

Bill read the Second time.

*Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).*

**Committee stage of Bill**

Council went into Committee.

**WEAPONS OF MASS DESTRUCTION (CONTROL OF PROVISION OF SERVICES) BILL**

Clauses 1, 2, 3, 5 to 9 and 12

**SECRETARY FOR TRADE AND INDUSTRY:** Mr Chairman, I move that the clauses specified be amended as set out in the paper circularized to Members.

The amendments to clauses 1, 5 and 12 are technical amendments mainly to improve the drafting of the Bill. The other amendments serve mainly two purposes: to impose conditions on the exercise of certain enforcement powers provided for under the Bill, and to clarify the definition of the agencies responsible for enforcing the Bill.

*Enforcement powers*

Amendments to clauses 6 and 7 deal with the power of enforcement agencies to enter and search premises. Under the existing clauses, enforcement agencies can enter and search premises and place without a warrant except for domestic premises. The amendments will require enforcement agencies to apply for a warrant before entering and searching any kind of premises and place. The amendments to clause 6 will also specify the time limits for the detention of aircraft and vessels of a specified tonnage.

The amendments to clause 8 makes it clear that a suspect cannot be detained for further inquiries longer than it is necessary while a maximum detention period of 48 hours has already been provided in the clause.

*Enforcement agencies*

Amendments to clauses 3 and 9 seek to clarify the definition of agencies responsible for enforcing the Bill. The Bill, as currently drafted, empowers the

uniformed branch of Customs and Excise Department and authorized officers to exercise any powers conferred by the Bill. The term "authorized officers" is currently defined under clause 3 to include, apart from a police officer of the rank of inspector or above, any public officer authorized by the Commissioner of Customs and Excise. The purposes of authorizing public officers are twofold: (1) to allow the Trade Controls Officer Grade, a non-uniformed branch in the Customs and Excise Department, to enforce the law, and (2) to allow technical experts, for example, Government Chemists, to assist in the investigations. The former will play a major role in the enforcement of the Bill while the latter will mainly play an assistant role. To better spell out the two different roles, amendments to clause 3 provide specifically that public officers mean officers employed in the Trade Controls Officer Grade in the Customs and Excise Department while a corresponding amendment is made to clause 9 to allow enforcement agencies to bring in assistants necessary for the performance of duties.

Thank you, Mr Chairman.

*Proposed amendments*

**Clause 1 (see Annex VIII)**

**Clause 2 (see Annex VIII)**

**Clause 3 (see Annex VIII)**

**Clause 5 (see Annex VIII)**

**Clause 6 (see Annex VIII)**

**Clause 7 (see Annex VIII)**

**Clause 8 (see Annex VIII)**

**Clause 9 (see Annex VIII)**

**Clause 12 (see Annex VIII)**

*Question on the amendments put and agreed to.*

*Question on clauses 1, 2, 3, 5 to 9 and 12, as amended, put and agreed to.*

Clauses 4, 10, 11, 13, 14 and 15 were agreed to.

Council then resumed.

### **Third Reading of Bill**

THE SECRETARY FOR TRADE AND INDUSTRY reported that the

### **WEAPONS OF MASS DESTRUCTION (CONTROL OF PROVISION OF SERVICES) BILL**

had passed through Committee with amendments. She moved the Third Reading of the Bill.

*Question on the Third Reading of the Bill proposed, put and agreed to.*

Bill read the Third time and passed.

### **Resumption of Second Reading Debate on Bill**

### **FAMILY STATUS DISCRIMINATION BILL**

**Resumption of debate on Second Reading which was moved on 23 April 1997**

**DR LEONG CHE-HUNG:** Mr President, subsequent to the lengthy debate on the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 two weeks ago, three other equal opportunity Bills, namely the Family Status Discrimination Bill, Equal Opportunity (Family Responsibility, Sexuality and Age) Bill and Equal Opportunity (Race) Bill will receive Second Readings at this sitting.

As the Chairman of the Bills Committee on all these Bills, I shall now speak on the Family Status Discrimination Bill (FSDB). Mr President, this Bill is the only bill among these four that is introduced by the Administration. It is to outlaw discrimination on the grounds of family status as a result of overwhelming support of legislation against discrimination in this area as reflected in the Government's 1996 consultation exercise on this issue. This Bill is basically modelled on the Sex Discrimination Ordinance which we passed a few years ago.

The subject matter of this Bill overlaps in substance, in particular Part II of the Equal Opportunity (Family Responsibility, Sexuality and Age) Bill introduced by the Honourable LAU Chin-shek as a Member's Bill. All these Bills cover family status discrimination areas of activities, including employment, education, the provision of goods, facilities, services and premises.

There are, however, two main differences. Firstly, the scope of family status or family responsibility defined under this Bill is narrower than that defined under Mr LAU Chin-shek's Bill. Given the strong public objection to legal recognition for the *de facto* spouse relationship as a form of family status, the Administration proposes to define family status as the status of having responsibility for the care of an immediate family member. As "immediate family member" must be related to the person concerned by blood, marriage, adoption or affinity, this proposed definition will cover *inter alia* relationships between husband and wife, parent and child as well as near relatives. On the other hand, under Mr LAU's Bill "family responsibility" or "family status" in relation to persons means the following:

1. having responsibility for the care of another person, whether or not that person is dependent, other than in the course of paid employment;
2. the status of being a particular relative; or

3. the status of being a relative of a particular person.

Secondly, Mr President, this Bill proposes to empower the Equal Opportunities Commission to oversee its implementation while Mr LAU's Bill proposes to empower the District Court to hear cases brought there under this Bill. It is very obvious that Mr LAU's proposal is for the reason of avoiding the charging effect.

As in the case of Sex and Disability Discrimination (Miscellaneous Provisions) Bill which we passed a couple of weeks ago, Members of the Bills Committee have divergent views on the FSDB, and we have not come to any consensus.

Mr LAU has attempted twice to amend the definition of family status in this Bill by broadening it along the lines of the definition of his Bill. All versions have been ruled out by you, Mr President, on the grounds of charging effect and the scope of the Bill. I understand Mr LAU will be proposing amendments to this Bill, some of which have been claimed by the Administration as having charging effect which will obviously need your ruling.

Mr LAU has finally said also to have Part II of his Bill on discrimination against family status deleted. I am sure he will speak on this some time later.

Mr President, after heated debates some provisions of the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 were passed a couple of weeks ago, but after serious consideration the Administration has said they are not to make parallel amendments passed in that Bill to the FSDB, and the Honourable Miss Christine LOH will introduce parallel amendments.

Now, I would like to say some of my personal thoughts on this particular Bill and all the other bills at the same time. Mr President, I welcome the Administration's introduction of this Bill, but regrettably the Government has still not made enough progress in other areas of anti-discrimination necessitating Members to introduce Member's Bills in the line of this legislation as we see today.

I am also disappointed that the Administration is unwilling to make parallel amendments to those passed in the Sex and Disability Discrimination

(Miscellaneous Provisions) Bill. Not only will this delay the activity of this Council in its very busy schedule over the next few days, but worse it would be against the interests of Hong Kong in general and this Council in particular to see similar laws on anti-discrimination yet have different provisions.

With those remarks, Mr President, I commend to Members the Second Reading of this Bill.

**MR LAU CHIN-SHEK** (in Cantonese): Mr President, discrimination on the ground of family status has always existed in our society. Many employers are unwilling to employ or promote women who have to look after their children. They may also look at those people who are burdened with family responsibility through coloured spectacles for fear that employing them is against the interests of the company.

In 1993, that is, during the past term of office of Legislative Council Members, Ms Anna WU, who was then a Member, drafted a bill outlawing discrimination on the ground of family responsibility. Unfortunately, it was voted down at the end of the 1994-95 legislative session.

In October 1995, I started to prepare for the introduction of a similar bill to this Council. However, the Government indicated at the end of last year its intention to draft a bill on discrimination on the ground of family status. But the draft bill was not brought before us until April this year. I wonder if my bill has prompted the Government to introduce a related, yet more conservative bill. Whatever the case is, it is after all a good thing to the public that the Government is willing to introduce this Bill.

I say that the Government is conservative due to the major difference between the Government's Bill and mine, which lies in the definitions of the term "family status". My definition includes non-matrimonial relationships, which are not merely confined to relationships by blood, marriage, adoption or affinity as defined under the Government's Bill. My view is that no one should be discriminated against and denied employment, provision of goods and services, or rental of accommodation on the ground of family responsibility.

In fact, the "family responsibility" of a person refers to the responsibility to take care of another person or persons "who need to be taken care of" in the



family. Such responsibility as caretaker normally arises from registered relationships in a family setting. Yet, it can also arise from cohabitation relationships which are not registered formally but have almost all the essential characteristics of a family. My bill mainly concerns that no one should be discriminated against because of his or her need to shoulder the responsibility of a caretaker in a family and that no one will be deprived of the right to equal opportunities in developing and choosing his or her life style.

The Government has been very critical of my bill in that it does not exclude homosexuality from the definition of "family responsibility". In this regard, I share the view with most of my friends who are aware of the principle of equal opportunities that we surely will not condone discriminatory acts against male and female homosexuals on the ground of their family responsibility. Therefore, it is unfair and unreasonable to confine the definition of "family responsibility" in the Bill to relationships between husband and wife, by blood, affinity and adoption, disregarding discrimination against other people on the ground of their family responsibility.

I really cannot figure out why some people think that broadening the definition of family responsibility will only encourage cohabitation. Our society is progressing and developing. With a change in the social climate, the older generation cannot impose their values on the younger generation. Social norms should make adaptations to suit the changing social climate. At present, legislation has been enacted and amended to meet changing social needs, as reflected by the extension of protection to people with non-matrimonial relationships in Domestic Violence Ordinance, Inheritance (Provision of Family and Dependents) Ordinance and Employees' Compensation Ordinance.

Similarly, if the community finds non-matrimonial relationships unacceptable, they will be rejected. There will be domains such as public opinion to prevent the proliferation of such trend. This is not what my Equal Opportunities (Family Responsibility, Sexuality and Age) Bill tries to address. The spirit of my bill is to ensure that no one, regardless of the social group they belongs to, will be discriminated against because of their family responsibility. This is a matter of principle and it is a basic right to which every human being should be entitled.

Should the Family Status Discrimination Bill introduced by the Government be carried, the part of my bill on family responsibility will be

redundant and left with only a few incomplete clauses, so I cannot help but delete this part from my bill. I hope that the Government will make every endeavour to fight discrimination. Today, it has dismissed the rights of some people who are subject to discrimination. I hope that it will conduct a review on this as soon as possible. Everyone makes mistakes, but I hope that it will not take the Government too long to correct them.

I so submit. Thank you, Mr President.

**MRS MIRIAM LAU** (in Cantonese): Mr President, on behalf of the Liberal Party, I speak in support of the Family Status Discrimination Bill (FSDB) introduced by the Government.

The Liberal Party has all along supported equal opportunities and objected to all forms of discrimination. However, we have to understand that discrimination should be considered in the contexts of personal beliefs, moral concepts and social values. Therefore, we think that new laws and new measures to prohibit discrimination should not be introduced in haste. Instead, extensive public consultation should be conducted. Only with the support of the community can we promote equal opportunities effectively.

In implementing anti-discrimination legislation, governments of other countries always give their citizens sufficient time to adapt to the new laws. New laws or amendments are never introduced hastily. The Liberal Party supports the Government's current prudent approach in introducing anti-discrimination legislation step by step in Hong Kong.

The FSDB is the third bill about equal opportunities introduced by the Government. Before introducing the Bill to this Council, the Government conducted a two-month consultation exercise in January last year to solicit public opinions on discrimination on the ground of family status. Results showed that there was overwhelming public support for legislation against discrimination in this respect.

By introducing the FSDB, the Government aims to outlaw all discriminatory acts on the ground of family status. The areas of activities covered by this Bill are similar to those covered by the Sex Discrimination

Ordinance. The Liberal Party considers that this approach is in the interest of the public, who will find it easier to understand and adapt to the new anti-discrimination legislation.

As to who can be protected under the Bill, the Government mainly based on the public views gathered from the consultation exercise, and defined "family status" as the status of having responsibility for the care of an immediate family member who must be related to the person concerned by blood, marriage, adoption or affinity. The Bill, once implemented, can further protect single-parent families, especially those people who have to look after the elderly, young or disabled members of their families.

The Bill does not offer protection to *de facto* spouses. This is the major point of departure between the Government's Bill and the equal opportunities bill proposed by the Honourable LAU Chin-shek in respect of the part on family responsibility. It is obvious that the public oppose giving recognition to cohabitation relationships through legislation. Hong Kong has always been subject to the influence of Chinese tradition and culture. Whilst many people find cohabitation acceptable, whether we should give it legal recognition, directly or otherwise, is another matter. The Liberal Party fully understands this and respects the views of the public in this regard.

The FSDB is a new piece of legislation. On this front, Hong Kong has gone ahead of other Asian countries, and even the United Kingdom and the United States, which have yet to enact laws to prohibit discrimination on the ground of family status. Australia passed the Sex Discrimination Act in 1984. It was only eight years later, that is, in 1992, that amendments were made to include provisions outlawing dismissal of employees on the ground of family responsibility. As this Bill advocates a new concept, only limited overseas precedents are available for reference. In this connection, before implementing the FSDB, the Government should give the public, employers and employees in particular, sufficient time to understand the new legislation and adapt to it.

In fact, the Sex Discrimination Ordinance and the Disability Discrimination Ordinance have been implemented for only six months or so and many people have yet to fully understand them. Many employers of small businesses are still working hard to formulate new personnel policies and

administrative procedures in accordance with the Codes of Practice issued by the Equal Opportunities Commission, in order to ensure full compliance with the provisions under these two anti-discrimination ordinances by July or August, 1998. The introduction of the third anti-discrimination ordinance at this time will add pressure on these employers immediately. On the one hand, they will feel very confused. On the other hand, they may not have enough time and resources to comply with this anti-discrimination bill. As such, the Liberal Party supports the provision of a grace a period for small businesses as proposed by the Government.

Although the Liberal Party supports the FSDB today, it maintains the view that imposing hard-and-fast legal provisions is not the most effective way to eliminate discrimination in the society. At best it can only play a complementary role. Among the various kinds of discrimination found in our society, some bear unique cultural, religious and moral background. To eradicate discrimination at its roots, the Government should step up publicity and public education with a view to changing gradually the moral standards and social values held by the public.

With these remarks, and on behalf of the Liberal Party, I support the FSDB.

**MISS CHAN YUEN-HAN** (in Cantonese): Mr President, the Hong Kong Federation of Trade Unions (FTU) supports the Family Status Discrimination Bill (FSDB) proposed by the Government. We think that the Bill can give employment protection to the "working class", especially female workers.

I have been involved in union activities for many years. Very often, I come across workers who have to look after their families or who are single-parents. They tell me that when they apply for jobs, they are subject to discrimination on the ground that they are married and have to take care of their children or elderly family members. Quite often, their applications are rejected. Moreover, from what I see, among people who cannot go to work or can only work part time because they have to look after their family members, many are very keen to work full time or have more job opportunities. However, our community leaves these human resources to lie wasted.

Since a single-parent family or a new immigrant family consisting of several family members can receive Comprehensive Social Security Assistance (CSSA) payment of almost \$10,000 a month, some people think that members of such families are encouraged to laze around and they just idle away their time without the slightest intention of finding a job. Hence these people say that the CSSA policy encourages people to idle around. This, in my view, is a very unfair accusation. According to some single parents, it is not out of their wish to stay idle and live on CSSA payments. In fact, because of their age and family responsibilities, they are victims of discrimination in the labour market. Some employers, once knowing that they are single parents, simply turn down their applications. Faced with such unfair treatment, they have no other choices except living on CSSA payments, although it is not out of their own accord. I believe that they will never give up their work for CSSA payments. They are keen to have a stable job and are eager to work hard to support their families. This is their wish.

We can imagine the discrimination they face in employment. In fact, at present, many employers look at their employees from a management point of view. In their opinion, it will be ideal if their employees can stand by for work round the clock and work overtime whenever they are instructed to do so. Their employees should never refuse to work on the ground that they have to go back home to prepare meals or to look after their children. Neither should they unexpectedly ask for a day off to take a family member to see a doctor or a child to sit for a school entrance examination. With these considerations in mind, employers usually refuse to offer employment to people with family responsibility. They would rather employ applicants who are single or without any children. As such, I totally support legislation as a way to prohibit discrimination in employment on the ground of family status and to ensure equal opportunities for all. Very often, we ask ourselves why our society goes on tolerating such unfairness and allowing employers to sustain such mentality, and why human beings should be treated like machines and our society lack any sense of humanism. Therefore, we support the use of legislation to address this issue.

Moreover, discrimination in employment against woman workers and single parents has much to do with the provision of child care services by the Government, which are neither adequate nor good enough. The Government has admitted so itself. It has indicated that apart from introducing legislation to eradicate family status discrimination, support services such as child care

services, elderly services and residential services will be provided to those families in need of help to solve their problems. At the moment, there is obviously a serious shortfall of such support services.

Taking child care services as an example, in 1996-97, government and subsidized day nurseries provided a total of about 25 000 nursery places. However, the number of applicants was as large as 30 000 and there are over 300 000 children between the age of two and six in Hong Kong. Although it is difficult to compute the actual demand for nursery places, it is obvious that the present supply definitely falls short of the demand of grass-root families for such places.

I have served woman workers for over 20 years and have urged the Government to enhance child care services time and again. However, it has turned a deaf ear to such requests. I remember that in the 1980's, I visited Singapore and upon my return to Hong Kong, I relayed the Singaporean experience in this respect to the Government. Unfortunately, it has all along adopted a very conservative manner. It is not until today when the Government introduces the FSDB that the issue is brought to light again. I hope that the Government will look into it seriously, or else people with family responsibilities will continue to face pressure and may be forced to go against their wishes and stop working in order to look after the family.

Lastly, as regards the amendment proposed by the Honourable LAU Chin-shek concerning the removal of the three-year grace period, the FTU Women Affairs Committee (WAC) and I are of the view that a three-year period is far too long. Yet, if no grace period is given, some small employers may shout for "help". As the WAC has all along been urging the Government not to give such a long grace period, we will support Mr LAU Chin-shek's amendment.

Mr President, these are my remarks.

**DR JOHN TSE** (in Cantonese): Mr President, I speak on behalf of the Democratic Party in support of the Family Status Discrimination Bill.

"Family Status" refers to the status of having responsibility for the care of an immediate family member. In fact, many people with different kinds of family status, particularly single parents, have always been subject to discrimination in various areas in Hong Kong. This Bill can effectively provide

protection against discrimination on the ground of family status by outlawing this kind of discrimination. Therefore, no one should be treated less favourably on the ground of his or her family status and no unfair conditions should be imposed on such persons. Generally speaking, people with certain kinds of family responsibilities are subject to discrimination in various areas, including education, accommodation, employment and the provision of services. This Bill offers protection to a certain extent to people who are discriminated against in such areas.

The Democratic Party will also support the amendment proposed by the Honourable LAU Chin-shek on the removal of the grace period provided for employers of small businesses, as well as the Honourable Miss Christine LOH's amendment. We believe that employees who have fallen victims to discrimination on the ground of family status should be entitled to reinstatement, and the ceiling of \$150,000 imposed on damages that can be awarded should be scrapped. We hope that upon its passage, this Bill will help eliminate discrimination more effectively.

Thank you, Mr President.

**MISS CHRISTINE LOH:** Mr President, only two weeks ago the Administration lobbied aggressively against every aspect of my Member's Bill to strengthen the Sex and Disability Discrimination Ordinances. I am sure over the next few days the Administration will again aggressively lobby Members not to prohibit discrimination on the basis of age, sexual orientation or race.

The Administration claims that it has a policy of incremental progress in regard to equal opportunities, but its actions are too tentative. The Bill is meant as an example of incremental progress in this case, but Mr President, it is limited to the smallest possible increment.

The Sex Discrimination Ordinance (SDO) already prohibits discrimination on the basis of marital status. This Bill will similarly prohibit discrimination based on the person's family status, which means the person's responsibility for the care of an immediate family member, such as a child. The Bill defines family status in the narrowest possible way so that any family or dependent relationship that is not already recognized by the law will enjoy no protection from private discrimination under the Bill.

I recall, for example, the reported case of a woman who raised a child abandoned by her neighbours as if the boy were her own. That family will not be covered by this Bill nor will any other *de facto* family relationship no matter how long-standing or how well-recognized it may be in the local community. The heartless policy reason for this limitation is, and I quote the word used by the Administration during the Bills Committee, "clarity". The Administration invoked the charging effect rule to block the Honourable LAU Chin-shek's efforts to widen the definition as well as his efforts to make other minor improvements by amendment.

Rarely has such a large bill, Mr President, been used to take such a small step. No one in this Council should mistake the Bill's bulk for meaningful content. The 69 clauses and three schedules in it do no more than exhaustively reproduce the provisions and limitations of the SDO. The only novel provision in this Bill is its bare minimum definition of family status.

The Administration could have, Mr President, achieved exactly the same effect by simply amending the SDO instead of wrapping one new provision in a huge re-enactment of that entire ordinance. But I suppose the Administration would not wish to use my Member's Bill as the vehicle to amend the SDO. As usual, the imperative to squelch Member's Bills triumphs over good sense and thus we have a separate and almost wholly redundant Bill before us.

Remarkably in some respects, the Administration apparently wants this Bill to regress from existing law. The SDO was changed in important respects two weeks ago when Members passed key clauses of my Member's Bill. In particular Members will recall removing the damages cap that crippled that ordinance, and authorizing the remedy of reinstatement by votes of 31 to 25 and 33 to 22 respectively.

The Administration did not accept defeat gracefully, however, and has declined to move parallel amendments to this Bill. I will, therefore, have to do it at Committee stage. I assume the Administration, however, will not object to these amendments this time.

With these words, Mr President, I support this Bill, but I deplore the cramped and grudging mentality that shaped it.



**MR BRUCE LIU** (in Cantonese): Mr President, I speak on behalf of the Hong Kong Association for Democracy and People's Livelihood (ADPL) in support of this Bill.

The Member's Bill introduced by the Honourable LAU Chin-shek also covers the subject of family status. However, one of the major defects of his bill is that there is no reference whatsoever to the role played by the Equal Opportunities Commission (EOC). In other words, no mechanism of "conciliation before proceedings" is in place. If Mr LAU's bill is passed, the public may get very confused and cannot figure out why there is no reference to the EOC's role in this Bill. Yet, Mr LAU's bill had the direct effect of prompting the Government to introduce a bill to this Council which was originally in the course of drafting. For this direct response from the Government, I would like to congratulate Mr LAU. Thanks to his bill, this Council is able to scrutinize this bill before 30 June.

The definition of "family status" under this Bill of the Government is in line with the Hong Kong context. Under this Bill, "family status" means, in relation to a person, the status of having responsibility for the care of an immediate family member, and an "immediate family member" refers to a person who is related to that person by blood, marriage, adoption or affinity. These definitions give us a clearer idea of who are protected under the Bill when compared with those in Mr LAU's bill. The definitions under his bill cover *de facto* spouse relationships, which I find vague. Moreover, cohabitants and people who are not related by blood or marriage are also protected under his bill. This not only makes his bill too loose, but also renders it against the interest of the public as Hong Kong people have adopted a definition of the term "family" in its narrow sense and will find Mr LAU's *avant-garde* definition unacceptable. The second merit of this Bill is that it provides for the role of the EOC.

Later when the Council goes into Committee, the ADPL will support the Honourable Miss Christine LOH's amendment which seeks to bring this Bill in line with the Sex Discrimination Ordinance (SDO) and the Disability Discrimination Ordinance (DDO). She proposes that the power of the court provided under this Bill should be similar to those provided under the SDO and DDO. We need not worry about this amendment. Even though the power has been provided under the two ordinances, there have not been any precedents so far. The reason why no one goes to court for cases in relation to discrimination

may be that these ordinances are new to the community and public education is yet to step up. Hong Kong people are not accustomed to bringing such cases to court. As for the amendment to remove the cap on damages under this Bill, we will support it on the same grounds as those we stated two weeks ago.

These are my remarks.

**SECRETARY FOR HOME AFFAIRS:** Mr President, I am grateful to Dr the Honourable LEONG Che-hung and members of the Bills Committee, in particular the Honourable LAU Chin-shek, for their careful examination of this Bill and their comments.

After the enactment of the Sex Discrimination Ordinance (SDO) and the Disability Discrimination Ordinance (DDO), this is the third anti-discrimination bill introduced by the Government. In line with the Government's step-by-step approach and as clear support was expressed in the public consultation exercise last year for legislation to protect persons with family status from discrimination, this is the opportune time to introduce such legislation.

Under clause 2 of the Bill, family status is defined as the status of having responsibility for the care of an immediate family member. The term "immediate family member" in relation to a person means someone who is related to the person concerned by blood, marriage, adoption or affinity. The merit of this definition is that it is clear and certain. It also meets the aspirations and actual needs of our community.

The definition of immediate family member does not extend to co-inhabitants of the same or opposite sex who are not legally married to each other. During our public consultation exercise, an overwhelming majority of the respondents expressed disapproval of giving legal recognition to such *de facto* relationships. We understand and respect such views.

From the submissions received, it appears that most, if not all, of the persons who require the protection from family status discrimination are single parents. The definition in the Bill covers them regardless whether the children they have to care for are born in wedlock or are illegitimate. In either case the children are related to their parents by blood. Other examples of persons related

by blood are brothers, sisters, grandparents, grandchildren, nieces, nephews and cousins. This list is not exhaustive.

There was concern whether the definition covers couples whose marriages have not been officially registered in Hong Kong. I can confirm that a couple whose marriage is contracted and registered in a system of law outside Hong Kong are considered to be related by marriage for the purpose of the Bill.

As regards a couple who are married under traditional Chinese customs or who have been living together for such a long duration that they are regarded as husband and wife by their friends, relatives and neighbours, the principles of family law apply and a couple whose marriage is valid under these principles will be regarded as related by marriage for the purpose of the Bill.

Two persons are related by adoption only after the necessary procedure has been completed and the adoption recognized by law. This is for the sake of clarity.

Affinity is the relationship between a husband and his wife's blood relatives and between a wife and her husband's blood relatives, for example, father-in-law, mother-in-law and the spouse's brothers and sisters. Again, the list is not exhaustive.

As can be seen from the above, the definition of family status covers a wide range of relationships recognized in law and our customs. I believe the definition is broad enough to include those with family status who actually require protection against discrimination on grounds of such status.

Mr President, during the Committee stage I shall move a number of amendments to the Bill. The proposed amendments to the definition of "estate agent" in clause 2 is to tie in with the definition of the same term as used in the Estate Agents Bill passed by this Council on 21 May 1997.

The proposed deletion of subclause (5) of clause 8 is necessary because the legislative provision referred to in the subclause, that is, section 14(2)(d) of the Employment Ordinance, was repealed by the Employment (Amendment) Bill 1996 which was passed by this Council last week on 17 June 1997.

The proposed amendment to Schedule 1 Item 11 takes account of the new title of the Open University of Hong Kong, which was approved by this Council

in the context of the Open Learning Institute of Hong Kong (Amendment) Bill 1997 passed on 21 May this year.

As regards the other Committee stage amendments which I shall move, they are all textual amendments to improve the drafting or to correct clerical errors in the Bill.

I note that the Honourable Miss Christine LOH and Mr LAU Chin-shek will move Committee stage amendments. I am afraid we do not support these amendments.

Mr LAU's proposed amendment to clause 8 seeks to remove the three-year grace period proposed in the Bill to be given to employers in small business, that is, those having not more than five employees, for compliance with the provisions in the Bill. The proposed amendment, if adopted, will cause difficulties to employers of small businesses. Anti-discrimination legislation in respect of family status is new, not only in Hong Kong but also in overseas jurisdictions. In the absence of experience of precedence it takes time for the community, especially employers, to understand their new obligations and take steps to comply. Compared with large companies, small enterprises have much less manpower and resources to fulfil these new obligations. The removal of the proposed grace period would actually burden the small employers who are already required to develop new personnel policies and administrative procedures so as to comply with all the provisions of the SDO and the DDO by July and August 1998 respectively.

Miss Christine LOH's proposed amendments to clause 54 seeks to empower the courts to order re-employment and also to remove the maximum limit of \$150,000 in respect of damages in relation to employment matters. The proposed amendments differ from the two provisions enacted by this Council as recently as last week on 17 June in relation to unfair dismissals. Under the new section 32(n) of the Employment Ordinance enacted by this Council last week, reinstatement orders may be made only where both the employer/employee concerned consent. The requirement for such mutual consent is in the interests of good labour relations and protects the employer and employee alike. Yet, such a requirement has not been written into Miss LOH's proposed amendment.

Also under the new section 32(p)(4) of the Employment Ordinance, the maximum damages to be awarded are set at \$150,000, that is, the same as in the Bill. As anti-discrimination legislation is new in Hong Kong and employers are

worried about breaching the law for insufficient understanding, the removal of the maximum limit would cause anxiety to them. This would not be conducive to our present objective of counter-weighting acceptance in the community of such new anti-discrimination legislation.

Miss LOH also proposes to amend clause 64 such that the time taken for conciliation by the Equal Opportunities Commission (EOC) will not count towards the period within which legal proceedings may be brought. Clause 64 at present provides proceedings to be brought within 24 months after an allegedly discriminatory act is done. A conciliation by the EOC would normally take much less than 24 months. Furthermore, the clause provides for the courts to consider any claim out of time if it is just and equitable to do so. In the circumstances, we see no need for the proposed amendment.

Mr President, with these remarks, I commend the Bill to Members.

*Question on the Second Reading of the Bill put and agreed to.*

Bill read the Second time.

*Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).*

### **Committee stage of Bill**

Council went into Committee.

### **FAMILY STATUS DISCRIMINATION BILL**

Clauses 1, 3, 5, 6, 7, 9 to 15, 17, 18, 19, 22 to 53, 55 to 63 and 65 to 69 were agreed to.

Clauses 2, 4, 16, 20 and 21

**SECRETARY FOR HOME AFFAIRS:** Mr Chairman, I move that the clauses specified be amended as set out under my name in the paper circularized to Members.

As I have explained at the Second Reading debate these are technical amendments.

*Proposed amendments*

**Clause 2 (see Annex IX)**

**Clause 4 (see Annex IX)**

**Clause 16 (see Annex IX)**

**Clause 20 (see Annex IX)**

**Clause 21 (see Annex IX)**

*Question on the amendments put and agreed to.*

*Question on clauses 2, 4, 16, 20 and 21, as amended, put and agreed to.*

Clauses 8

**MR LAU CHIN-SHEK** (in Cantonese): I move that clause 8 be amended as set out in the paper circularized to Members.

Mr Chairman, I was to propose three amendments to this Bill of the Government. They sought to remove the grace period provided for employers of small businesses, offer protection to employees when they are requested by their employers to provide information, and broaden the definition of "family status". Unfortunately, with the exception of the first one, the other two amendments could not be proposed as a result of the President's ruling that they

carried a charging effect and were outside the scope of the Bill. Without these amendments, more people will fall victims to discrimination.

Mr Chairman, the Government always claims that once new legislation is enacted, employers will need time to familiarize themselves with the legislation and to make adaptations accordingly. Given the limited resources of employers of small businesses, they should be allowed a grace period of a few years.

Is it necessary to provide a three-year grace period to small business establishments with not more than five employees? I find it unnecessary. Doing so will only subject people with family status to three more years of discrimination.

Thinking that the Sex Discrimination Ordinance and the Disability Discrimination Ordinance passed in mid-1995 were laws incorporating new concepts, the Government provided a three-year grace period for employers of small businesses so that they might not break the law. I know that many Members objected to that provision at that time. If anti-discrimination is a brand new concept, employers, irrespective of the scale of their businesses, are all exposed to it at the same time. If the message of no discrimination is conveyed to employers and they only need to avoid discrimination in respect of recruitment, appointment and promotion upon the implementation of the Bill, the question of the availability of resources is irrelevant here. Contrary to what the Government has claimed, the fewer employees there are, the simpler the business operation will be.

Now, the Government has once again provided a three-year grace period for employers of small businesses under its Family Status Discrimination Bill (FSDB). We find it both funny and annoying. For the past two years, what has the Home Affairs Branch (HAB) done to disseminate the anti-discrimination message? Has the Equal Opportunities Commission (EOC) accomplished anything at all in promoting equality through public education since its establishment in May last year? If so, why should another three-year grace period be given to employers of small businesses to allow them opportunities to discriminate against employees on the ground of family status? In the event that another piece of anti-discrimination legislation is passed five years later, is it necessary to provide another three-year grace period?

The concept of anti-discrimination has been around for some time. I cannot see why it should take three years upon the passage of the FSDB for employers of small businesses but not those running large-scale businesses to understand that employees with family responsibility should not be discriminated against. What is more, the Government has advised that this Bill will only be implemented in early 1998 should it be passed. If the HAB and EOC are confident that within this six-months, they can spread the message among employers of large businesses that they should not discriminate against employees on the ground of family status, why then do they not have the ability to convey such a simple message to employers of small businesses?

The provision of such an exemption by the Government will upset the sense of equality and rationality in the anti-discrimination concept. More people will fall victims to discrimination. Mr Chairman, unless the HAB confesses that it will do nothing and the EOC does not accept any work in respect of family status discrimination, I urge Members to support the removal of the exemption provided for employers of small businesses.

With these remarks, I move the amendment.

*Proposed amendment*

**Clause 8 (see Annex IX)**

**MRS SELINA CHOW** (in Cantonese): Mr Chairman, I would like to call on Members to vote against the amendment proposed by the Honourable LAU Chin-shek.

Just now, Mr LAU seemed to be saying that giving exemption to employers of small businesses meant allowing them to discriminate against others. This is absolutely not true at all. As we are aware, there are many employers running small businesses in Hong Kong and they are faced with many difficulties in operating conditions and other aspects. Given the various operating constraints, these employers of small businesses find it inconvenient to comply with legislative requirements. In this connection, I support giving them a "buffer period" or a "grace period" so that they can make adaptations like the large companies. This does not mean that they do not need to change their attitude towards discrimination. Rather, we have to take into account the



prevailing situation in Hong Kong. In fact, many policies do give special allowance and consideration to small and even medium enterprises, having regard to their actual difficulties. Therefore, on behalf of employers of small businesses, I call on Members to help them by voting against Mr LAU's amendment.

**MRS MIRIAM LAU** (in Cantonese): Mr Chairman, the Liberal Party objects to the amendment proposed by the Honourable LAU Chin-shek regarding the removal of the grace period provided for small business establishments.

We have to understand that the implications of anti-discrimination legislation brought to small enterprises are much greater than those brought to large enterprises. Moreover, as compared with large business establishments, limited manpower and resources are available for small businesses to comply with new legislation. Employers of small businesses will find it unbearable if they are required to change their existing practices and policies in order to comply with the two existing anti-discrimination ordinances, with the addition of the present one. Therefore, a grace period of a suitable length is both appropriate and necessary for the survival of small enterprises in Hong Kong.

When the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 was read the Second time in this Council on 11 June this year, I pointed out that if anti-discrimination legislation was introduced too hastily, small business establishments, for fear of breaching the law, might be forced to close down. Should it be the case, we would suffer a lot before having any benefits.

Mr Chairman, for the above reasons, the Liberal Party objects to Mr LAU's amendment.

**MR LEE CHEUK-YAN** (in Cantonese): Just now, the Honourable Mrs Miriam LAU said that if anti-discrimination legislation was introduced, employers of small businesses would be forced to close down their establishments. I think this is a bit too exaggerated. In fact, with regard to the issue of equal opportunities, what we hope to do is to change attitudes instead of putting a heavy burden on employers. Employers will be considered as having complied

with the law as long as they understand the legislative requirements and discard traditional beliefs that people with children should not be offered any employment or should never be considered for promotion on the ground that they definitely have no spare time after work. Doing so will not lead to any considerable escalation in costs and what employers should do is simply change their attitudes. Changing attitudes itself is already a sound management practice.

I urge Members to support the amendment proposed by the Honourable LAU Chin-shek as it will not really deal a heavy blow to employers of small businesses in practice.

Thank you, Mr Chairman.

**DR JOHN TSE** (in Cantonese): First of all, if we allow small business establishments to have exemption, we are in fact adopting double standards. Why should large business establishments be regulated but not small ones? Surely we should not allow such double standards. Secondly, in recruitment exercises, employers should consider the capability and competence of the candidates, not their family status. In my view, it is also true for small businesses. Applicants should be considered on the ground of their education, qualifications and capability. Appointment should never be based on the family status of the applicant.

**SECRETARY FOR HOME AFFAIRS:** Mr Chairman, I explained at the Second Reading debate it would not only be fair but also necessary to give employers of small companies time to familiarize with the new legislation and to adapt their existing practices to comply with it. A three-year grace period is necessary and reasonable.

Mr Chairman, the Administration objects to the Committee stage amendment.

**MR LAU CHIN-SHEK** (in Cantonese): Mr Chairman, I urge Members of this Council to support my amendment. Thank you, Mr Chairman.

*Question on Mr LAU Chin-shek's amendment put.*

*Voice vote taken.*

THE CHAIRMAN said he thought the "Noes" had it.

Mr LAU Chin-shek claimed a division.

**CHAIRMAN** (in Cantonese): Committee shall 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 8 moved by Mr LAU Chin-shek 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?

**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 Martin LEE, Mr SZETO Wah, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Michael HO, 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, Miss CHAN Yuen-han, Dr Anthony CHEUNG, Mr LAU Chin-shek, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Miss Margaret NG, Mr SIN Chung-kai, Dr John TSE, Mrs Elizabeth WONG 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, Mr CHIM Pui-chung, Mr

Frederick FUNG, Mr Eric LI, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr Paul CHENG, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Dr LAW Cheung-kwok, Mr Bruce LIU, Mr LO Suk-ching, Mr MOK Ying-fan and Mr NGAN Kam-chuen voted against the amendment.

Mr CHAN Wing-chan, Mr CHENG Yiu-tong and Mr LEE Kai-ming abstained.

The electronic display showed 24 votes in favour of the amendment and 24 votes against it.

**CHAIRMAN** (in Cantonese): The voting result showed that there were 24 Members in favour of the amendment and 24 Members against it. In accordance with the rule laid down by Speaker DENISON in 1867, the Chairman will exercise his voting in the negative in the absence of a majority. The amendment is negatived.

**SECRETARY FOR HOME AFFAIRS:** Mr Chairman, I move the amendment set out under my name in the paper circularized to Members.

As I have explained at the Second Reading debate, the proposed deletion is a technical amendment.

*Proposed amendment*

**Clause 8 (see Annex IX)**

*Question on the amendment put and agreed to.*

*Question on clause 8, as amended, put and agreed to.*

Clause 54

**MISS CHRISTINE LOH:** Mr Chairman, I move that clause 54 be amended as set out in the papers circularized to Members.

The amendment to clause 54 removes the \$150,000 cap on damage awards for unlawful discrimination at work. It also authorizes several specific remedies including reinstatement.

The damages cap comprehensively undermines the Bill's enforcement scheme. As under the other discrimination ordinances, an award of costs is not normally available under the Bill, a victim of discrimination must, therefore, plan on paying litigation costs out of his or her damage award and no one can realistically litigate on a budget of \$150,000. With little or no prospect of court enforcement, an alleged discriminator will also have no incentive to cooperate in conciliation. Finally, the rare complainant who navigates this obstacle course will not be able to obtain just compensation at the end.

As for reinstatement, it is now available as a remedy both under the Sex Discrimination Ordinance and the Disability Discrimination Ordinance. It would therefore make no sense to not allow it under this particular Bill before us. The court will naturally take account of whether an order for reinstatement is practical in the particular case. We know, however, that in many cases, reinstatement will not only be practical, it will be the best remedy for a person who was forced to leave a large organization because of unlawful discrimination.

I am surprised to hear from the Secretary during her speech that the reason for not supporting this amendment today is that it creates anxiety to employers because they do not know how to apply the Bill. Surely we are legislating for the community at large, not for any particular group. And I would suggest to the Secretary if she were so unlucky or if any member of her family were so unlucky as to face discrimination at work and a \$150,000 damage cap was imposed, that she herself would find it extremely unfair.

So, I hope Members will remember how they voted last time and will support my amendment.

*Proposed amendment*

**Clause 54 (see Annex IX)**

**MR LAU CHIN-SHEK** (in Cantonese): Mr Chairman, the Government is deliberately evading the law and such an ostrich policy is worrying. At the meetings of the Bills Committee set up to study this Bill, the Government pursued vigorously the issue of consistency and queried repeatedly whether my bill on equal opportunities was consistent with the other anti-discrimination ordinances. Thinking that the court would be confused, the Government said it would not accept different wordings even though they had the same meaning. I agree that this is a prudent approach to legislation. However, the Government only asks others to pay attention to consistency, but it does not set an example itself. At the meetings of the Bills Committee, the Honourable Miss Christine LOH time and again asked the Government if it would move parallel amendments to the Family Status (Discrimination) Bill (FSDB) where necessary should the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 be passed in order to make the two bills consistent with each other. However, the Government only gave an elusive answer. Given the passage of Miss LOH's bill on 11 June after three Readings, the Government has not introduced any parallel amendments to its bill to bring it in line with the new legislation. As a result, under the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996, employees can ask for reinstatement and promotion, and damages to be awarded are not capped. However, under the FSDB, employees are not only barred from asking for reinstatement and promotion, but also subject to a \$150,000 cap on damages. I would like to ask the Government: Would this inconsistency between the two bills not cause even greater confusion to the court? Or does it think that offences relating to family status discrimination are comparatively minor and hence should be subject to a lower level of damage awards?

Mr Chairman, the Hong Kong Confederation of Trade Unions has all along maintained that aggrieved persons should be entitled to reinstatement as it is their basic employment right. With these remarks, I support the amendment.

**MRS MIRIAM LAU** (in Cantonese): Mr Chairman, the Liberal Party objects to the Honourable Miss Christine LOH's amendment to clause 54.

Regarding Miss LOH's proposal to empower the district courts to order an employer to promote or re-employ an employee who has been discriminated against, the Liberal Party considers it impractical. It is because to maintain, by means of a court order, employment relations which have already been broken

off, will only bring added clashes and conflicts to the employer and employee to the detriment of both parties.

Moreover, the Liberal Party also objects to the proposed amendment to remove the cap imposed on damages to be awarded. As anti-discrimination ordinances are newly enacted, we must give employers sufficient time to understand them and to make adaptations accordingly. When new ordinances are put into effect, some employers may unwittingly break them at the beginning as they have not yet fully understood these anti-discrimination ordinances. We consider it inappropriate to be too harsh to these employers. We must understand that anti-discrimination legislation will bring significant impact on the business sector. In order to avoid scaring employers out of their wits from the outset, it is necessary to impose a cap on damages to be awarded.

It is proposed in the Bill that damages to be awarded should be capped at \$150,000, which is in line with the maximum compensation to be awarded in case of arbitrary dismissal as provided under Employment (Amendment) (No. 2) Bill passed on 17 June 1997. The Liberal Party considers it reasonable to cap the award at that level as a start. To some owners of small businesses, the amount is not a small sum and it should be able to serve a punitive and cautionary purpose. Any increase or removal of the cap should be considered in the future when the ordinance has been implemented for some time and a certain number of court precedents have been established. Amendments should only be made when it is indeed practically necessary. Meanwhile, I consider it necessary to cap the amount of damages to be awarded at this stage.

Mr Chairman, for the above reasons, the Liberal Party objects to Miss LOH's amendment.

**MISS CHAN YUEN-HAN** (in Cantonese): Mr Chairman, the Hong Kong Federation of Trade Unions (FTU) supports the Honourable Miss Christine LOH's amendment to clause 54.

In the same way as we supported the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 last time, we consider it necessary to provide explicitly at court that an employee be reinstated.

Moreover, as the Honourable LAU Chin-shek has said just now, I am shocked to find that the Administration is inconsistent in the legislative requirements. Since the \$150,000 cap on damage awards was removed when the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 was passed, why then does the Government not introduce parallel amendment to this Bill? At the meetings of the Bills Committee set up to study this Bill, we asked the Government if it would introduce parallel amendments to this Bill should Miss LOH's bill be passed. I wonder why the Government still insists not to do so even up to now.

The FTU and I support Miss LOH's amendment.

**MR JAMES TIEN** (in Cantonese): Mr Chairman, last time when we had a debate on the removal of the \$150,000 cap, we stated the reasons for our objection. I think most members of the public understand what sex discrimination is, and in this context, sex refers to the condition of being male or female, which is clear and easy to understand. Moreover, the relevant ordinance has been implemented for one year. I believe many employers of small and medium enterprises know very well by now that they should use the term "cleaner" instead of "female cleaner" in their recruitment advertisements. Although we objected to the amendment to remove the \$150,000 cap last time, it was carried with the support of the Hong Kong Federation of Trade Unions and the Democratic Party, which rendered itself a "labour party". The passage of the amendment last time does not necessarily mean that the same amendment will be carried today.

Just now I asked the Honourable LEE Cheuk-yan about the Chinese title of the Family Status Discrimination Bill (FSDB). It is "家庭崗位歧視條例草案". I wonder how many people understand what "family status" means. I believe nine out of ten respondents do not understand it. This being the case, how can we expect employers to comply with the FSDB? Without the \$150,000 cap, employers who have breached this ordinance may be liable to a fine as much as several hundred thousand dollars or several million dollars, which may force them to wind up their businesses. The \$150,000 cap for compensation to be awarded in cases of unfair dismissals is also stipulated in other ordinances. As such, I do not know why it is necessary to remove the cap in this Bill. Why



should we do so in such a hurry when the Bill is introduced to this Council for the first time?

In fact, this Bill may not be of much concern to the Federation of Hong Kong Industries or the Hong Kong General Chamber of Commerce, which consist of the so-called "big employers". They will not be involved as they will leave affairs in this respect to the personnel managers. It is the manager or a senior officer that an aggrieved employee may sue and these people are employees themselves. The Hong Kong Confederation of Trade Unions says that even the boss will suffer. Under the FSDB, if someone is barred from promotion because of discrimination on the ground of family status but the company has never issued any guidelines on family status discrimination, should the judge order the senior officer who receives higher pay to compensate the victimized employee? I believe many people, not only employers of small businesses, will find such practice confusing. Moreover, many people who are subject to penalties are employees themselves.

Should this Bill be passed today, the cap of penalty at \$150,000 is by no means a small sum of money. In introducing this kind of legislation, most overseas countries impose a cap on compensation to be awarded. It is a more acceptable approach to consider removing the cap after the ordinance has been implemented for some years with related problems resolved.

Mr Chairman, with these remarks, I object to this amendment.

**DR JOHN TSE** (In Cantonese): Mr Chairman, I speak in support of the Honourable Miss Christine LOH's amendment. The amendment to clause 54 aims at stipulating clearly that the courts can order the defendant to stop discriminatory acts and pay a reasonable amount of damage award, to give the victim the right of reinstatement and to move the \$150,000 cap on damage award.

Many Members have spoken on their reasons for supporting or objecting to the amendment. One argument is that anti-discrimination legislation is newly enacted, but I think this kind of legislation is not new at all as it has been implemented for two years. Many Members have pointed out, and even the Government has said, that we must let the public and in particular employers in

the industrial and business sectors learn what is meant by discrimination. In fact, what we are discussing is not a new concept. The public have actually been discussing the issue for several years. After the passage of the relevant pieces of anti-discrimination legislation in the Legislative Council, the Equal Opportunities Commission has been established to enhance public awareness of the legislation. Therefore, if the amendment is voted down on the ground that the legislation is new, I believe it is not well-justified. Why must there be a limit to the damage award? This is rather unreasonable and no one can explain why the cap is set at \$150,000. Why is not it set at \$1,500,000, or at \$250,000? No one can fully justify why there must be a limit to the damage award. Why should not the amount of compensable be commensurate with the severity of the discrimination? Why is not it dependent on family responsibility? We believe that no cap should be imposed, particularly on damages for work-related injuries, which often depend on individual circumstances.

Miss LOH's amendment also deals with the question of reinstatement. However, up to now no Member has mentioned this point. I see no reason why reinstatement should not be supported. Why should discriminatory behaviour be condoned? Why cannot we offer assistance to people who have suffered from discrimination on the ground of family status? There are many cases involving single-parent families, which, for various reasons .....

**CHAIRMAN** (In Cantonese): Dr TSE, we are now discussing the amendment to clause 54.

**DR JOHN TSE** (in Cantonese): Mr Chairman, I will speak on clause 54, in particular on the question of setting a cap on the fine. One argument, as the Honourable James TIEN has said, is that a fine of \$150,000 should be sufficient already. However, whether \$150,000 is sufficient depends not only on the amount of the fine but also on the rate of successful prosecutions. If the fine is heavy but the rate of successful prosecution is low, it serves no purpose. Only a heavy fine and a high chance of being caught can successfully deter employers from engaging in discriminatory acts in this aspect. The provision to cap the damage award must be deleted as we do not find \$150,000 an especially heavy penalty. Nor do we think that the likelihood of being caught would increase,

unless the Government proposes measures such as making use of the mechanism of the Equal Opportunities Commission (EOC) to facilitate the detection and prosecution of those who discriminate against others on the ground of their family status. However, no such mechanism is in place since at present the functions of the EOC are confined to those specified in the Disability Discrimination Ordinance and the Sex Discrimination Ordinance. If the Government does not introduce special measures to increase the rate of arrest, we see no reasons why the \$150,000 cap should not be scrapped.

Just now Members from the Liberal Party have mentioned that since this is a new piece of legislation, we have to wait for more court rulings, so that the general public and people in the industrial and business sectors will be aware of this legislation, and that the general public will have a better understanding of the provision. In fact this is not how things should work. In our opinion, after a law is enacted, it is the duty of the general public, as well as the industrial and business sectors, to understand and abide by it. They need not wait for court rulings or outcome of court cases before they abide by the law. Mr Chairman, this kind of argument is totally unsound. We cannot wait for somebody to break the law before we determine whether the penalty should be heavy or light; nor can we wait for rulings before we decide whether people have to abide by the law. We think such arguments are totally absurd.

Mr Chairman, Mr James TIEN has asked what "family status" refers to. I am surprised at such a question being raised in the Committee stage. In fact, "family status" refers to the status of having the responsibility to take care of an immediate family member. One's immediate family members consist of people who are related to him or her by blood, marriage, adoption or affinity. It is a pity that the spouse relationship of unmarried cohabitants is not included in the present Bill. People who fall into the above definition are protected by the Bill. Two weeks ago, the \$150,000 cap of another discrimination bill was scrapped. So, why should we set a limit for this Bill? I think this is totally groundless.

Moreover, some Members have mentioned that we should first try out the cap. They suggest that we wait for court cases to try out the cap since there are at present no courts precedents. Mr Chairman, we are not talking about buying a car or a pair of shoes. We should not try things out that way. We are talking about some illegal actions, some discriminatory behaviour. We should not test the law like this: If the punishment is light, one can break the law; if the punishment is heavy, no one dare to act rashly. I believe the overwhelming

majority of the general public are law-abiding people who have no desire to test the law, to test the cap or to test whether the \$150,000 cap is strictly enforced. In other words, those with money can discriminate against others. This is unjustifiable. If we enact a law, at least it should have a deterrent effect. If there is no deterrent effect at all, it implies that the Legislative Council of this term is not determined to eliminate discrimination.

Ms Anna WU of the last Legislative Council has devoted a lot of effort in eliminating discrimination, particularly in relation to damage award and the cap. We do not see any new arguments, any justified arguments which can convince us to retain the \$150,000 cap on damage award. Therefore, Mr Chairman, we must support this amendment in order to outlaw discrimination. Penalties ought to have certain deterrent effects. If a cap is set, the deterrent effect will depend on the wealth of a person. For the rich ones, the penalty will have no deterrent effect. Mr Chairman, I reiterate that we are not talking about trying out a car or a pair of shoes. We can try out those things. What we are talking about now is the issue of discrimination.

Mr Chairman, I would like to say a few words on the issue of small businesses since some colleagues have said that these companies may encounter certain difficulties. They say that big corporations with money can afford the damage award while small companies may not have the money, and therefore we must take care of their interests. Do they mean that small companies can discriminate against others, while big corporations cannot? Mr Chairman, I cannot agree with such double standards, especially as a Member of the legislature. We should treat all people equally. We cannot take care of small companies simply because they cannot afford to pay the \$150,000 damage award. As legislators, we are not planning for their business. We have to enact laws to protect the general public as far as possible. We are talking about the rights of people being discriminated against because of their family status, and therefore we should not speak in defence of small companies only. If we speak in defense of small companies, why should not we speak in defense of big corporations as well? We can also say that imposing a fine on big corporations is unfavourable to the shareholders.

Mr Chairman, I believe we must do all we can to scrap the \$150,000 cap, otherwise we are condoning discriminatory behaviour. No matter we are

dealing with the small shareholders of big corporations or people in charge of small companies, such kind of discrimination should not be allowed.

Thank you, Mr Chairman.

**MR LEE CHEUK-YAN** (In Cantonese): Mr Chairman, firstly, I want to point out specifically that the concept of family status is very important. The Honourable James TIEN said that the general public would have difficulty in understanding the concept, but if he assumes himself to be a genuine employee, he will know that a lot of women will, in looking for a job, be asked by their prospective employers questions such as whether they have any children, how old their children are, which grades their children are in, whether they have to hurry back home to take care of their children and so on. Such questions are in fact very common. I do not know if Mr TIEN asks such questions when he employs his staff, but I hope that he will not do so from now on. If he does so, he will be breaking the law. In fact, the whole concept is that family status and responsibility should not constitute the basis of one's consideration for employment. Some single parents have told me that there are people who will not employ them on hearing that they are single parents.

**CHAIRMAN** (In Cantonese): Mr LEE Cheuk-yan, please confine yourself to the topic. We are now discussing the amendment to clause 54, which is a very specific issue.

**MR LEE CHEUK-YAN** (In Cantonese): I will now speak on the \$150,000 cap, although just now I have to respond to Mr TIEN's comments, which are irrelevant to this topic. Furthermore, Mr TIEN has also said that at the end of the day it is the personnel manager who is held responsible. The law, nevertheless, clearly states that the employers should be held responsible. Since the personnel manager is employed by the employer, the final responsibility should therefore rest with the employer, not with the personnel manager.

Under what circumstances will the employer be fined \$150,000? In my opinion, an employee who has been employed for many years but is subsequently dismissed because of his family responsibilities may be awarded a higher amount

of compensation. However, if a first time job-seeker is being discriminated against, his loss may not amount to as much as \$150,000. That is certainly the case. If an employee who has worked for more than 20 years is dismissed merely because he or she has become a single parent, we will all consider the dismissal unjustified. In fact, the employee can have another choice. That is why I ask Members to vote in support of the right of reinstatement. The employer is given two options. By reinstating the employee, he need not pay \$150,000 in damage award, since the victim no longer suffers any losses. However, if reinstatement is only possible with the consent of both the employee and the employer, problems may arise since the employee may insist on receiving pecuniary compensation while the court cannot order his reinstatement and deny him of his right to compensation. This is not in the interest of employers either.

If one does not want to pay \$150,000 in damage award, a possible means is of course to avoid breaking the law as far as possible. The other possible means is to support the right of reinstatement, so that the court can, after carefully considered all evidences, rule on whether \$150,000 in damage award or reinstatement should be ordered as remedy.

Thank you, Mr Chairman.

**MR LAW CHI-KWONG** (In Cantonese): Mr Chairman, most of the comments that I want to raise have been covered by Dr the Honourable John TSE in his detailed speech. However, I would like to briefly add two points. Firstly, all legal amendments take time for adjustment, and very often, the general public or employers alike, will adapt to changes in law only at the very last moment.

Secondly, regarding the question of the so-called cap, I think whether a cap is imposed or not in fact hinges on our confidence in the rulings of the court and in the fairness of such rulings. If we think that court rulings are fair, what is the point in imposing a cap? I hope Members will support the Honourable Miss Christine LOH's amendment.

**MR JAMES TIEN** (in Cantonese): Mr Chairman, I know how to behave and will speak only on the issue of the \$150,000 cap.

Mr Chairman, Dr the Honourable John TSE has said that the amount of compensation is dependent on the rate of successful prosecutions. He means that if a lot of people are successfully prosecuted, the amount is just about right; but if not many people are successfully prosecuted, it is not high enough. This theory is in fact not very reasonable. It seems contradictory if we hope that people would not discriminate against others while at the same time we would like to see a high rate of successful prosecutions. A high rate of successful prosecutions is incompatible with the absence of discrimination.

If the democratic camp finds the \$150,000 cap not high enough and proposes to revise it to \$200,000 or \$250,000, we can consider giving our support. However, if the cap is removed, the amount of compensation can reach astronomical figures. Today this piece of legislation is approved for the first time. The public may not know what is meant by "family status". I do not mean that we Members do not understand the definition. I am referring to many members of the public, including employees and employers of small businesses, who may not know what "family status" is all about. I believe it is inappropriate not to set a cap on the amount of damage award for a piece of newly passed legislation.

Mr Chairman, the difference between employers of a small company and a big corporation lies in the fact that the boss of a big corporation does not have to care about these provisions. All he has to do is to employ a personnel manager and ask him to get familiarized with this piece of legislation or the guidelines and act accordingly. The boss does not have to bother about this new law at all. It is a different case for an owner of a small business. He has to take care of everything, dealing with all matters of paying the rent, merchandising and meeting clients. With so many things to attend to, can he pay heed to the issue of "family status" in times of recruitment?

Moreover, a Member has mentioned about trying out a car or a pair of shoes. As a matter of fact, there are many new laws which, when initially implemented, have provided a cap on compensation. The cap will not be revised until some years later. This is not the first time that a piece of new legislation provides for a cap on the fine. There are many other laws passed by the Legislative Council which have caps on damages as well. Why does the democratic camp support those caps and not compare them to trying out a car or a pair of shoes? Why do they pick specifically on this legislation?

**MR LEUNG YIU-CHUNG** (in Cantonese): Mr Chairman, on behalf of the Neighbourhood and Workers Service Centre, I support the Honourable Miss Christine LOH's amendment.

We think that the \$150,000 cap should be removed. The reason is very simple. For example, if the Honourable James TIEN had bought a very sleek car which was worth \$300,000, when I damaged it and the law provided that the maximum amount of compensation was only \$50,000, would Mr TIEN be satisfied? I am sure he would not.

We are now discussing the monetary compensation given to aggrieved workers or employees. If the damage they suffer is in fact more than \$150,000, would a deliberately set limit be fair to them? As in the example I have just given, would it be fair to Mr James TIEN? He will definitely not accept that amount of compensation, because he will think that the damage he has actually suffered is more than \$50,000. His loss may be \$300,000.

I think the most important consideration is the damage done to the employee due to the discrimination. They should be awarded compensation for the damage they have suffered. This involves the issue of respect for their dignity. When their dignity is injured, why should we set a cap on the compensation for the damages? Why is the cap set at \$150,000? When they are discriminated against and harmed, is human dignity worth only \$150,000?

Moreover, the amount of damage award cannot be arbitrarily fixed by the employee himself. He cannot be "voracious" and ask for just any amount of money, because the final ruling lies in the court. Unless we have no confidence in the judges, the final ruling on the amount of damages payable can be left to them. Therefore, I hope Members will understand this is the reason for which we do not support setting a cap.

Regarding reinstatement, I think this is a matter of dignity. The Government and other Members have stressed that under such circumstances, the employee would not ask for reinstatement. They think that since the employment relationship is so strained, an employee would not possibly ask for reinstatement. In fact, if the employee himself has such a wish or makes such a request, and if the court has made a ruling after taking into consideration the relationship between both parties, why should we not allow an employee to have



the right of reinstatement, the ruling of which is made by a third party? The employer is not forced to accept reinstatement. In fact it is a court ruling. Unless we have no confidence in the ruling and in the court, why should we not allow such a right? Reinstatement is in fact a right. I hope Members would understand that damage award and reinstatement are the rights of the employee, and I hope Members will attach importance to such rights.

Mr Chairman, I so submit.

**DR JOHN TSE** (in Cantonese): Mr Chairman, I merely want to respond briefly to the views of the Honourable James TIEN concerning the \$150,000 cap.

I want to clarify that normally two factors are involved when people commit a crime. First, their chances of being caught are slim; and second, they think that even if they are caught, the penalty imposed on them will be very light. Why is it necessary to remove the \$150,000 cap, then? To a wealthy businessman, the fine is only a small amount which serves no deterrent effect. Hence we have to give these wealthy businessmen the message that although their chances of being caught is still unknown, a heavier penalty may be imposed on them by the legislators, who can at least exercise some control in this respect at this moment, to prevent discrimination.

I hope my comments can clarify Mr TIEN's queries. Thank you, Mr Chairman.

**MR JAMES TIEN** (in Cantonese): Mr Chairman, the Honourable LEUNG Yiu-chung has asked me several questions and I would like to respond to them briefly, although they are irrelevant to the issue discussed today.

He gave an example and asked how I would react if I was only given \$50,000 to compensate the damages done to my car which was worth \$300,000. If Mr LEUNG Yiu-chung damaged my car and gave me only \$50,000 as compensation, I would claim the remaining amount from the insurance company.

**CHAIRMAN** (In Cantonese): Are there any members who want to speak? If so, please speak on the subject and do not repeat the same point.

**SECRETARY FOR HOME AFFAIRS:** Mr Chairman, as I explained at the Second Reading debate, the court should only be empowered to order re-employment where both the employer and employee concerned consent. There is also a need to impose a maximum amount of damages in relation to employment matters in this new area of anti-discrimination legislation in Hong Kong.

The provisions in the Bill are in line with the Members' decision made in the context of the Employment (Amendment) Bill 1996 enacted last week.

Mr Chairman, the Administration objects to the Committee stage amendments.

**MISS CHRISTINE LOH** (in Cantonese): Mr Chairman, I would like to make some responses. First, both the Government and Members representing employers speak from the interests of employers. The Honourable LEE Cheuk-yan has already explained very clearly that the right of reinstatement is very fair to both workers and employers. If the right of reinstatement is stipulated, the judge will make a decision only after considering whether reinstatement is possible. Under such circumstances, the court cannot ask the employer to pay the damage awards. Therefore, we should not determine how the law should be like from the interests of a certain group. The law should be fair to all.

I have been an employer as well as an employee and therefore I understand the situation very well. Perhaps the Honourable James TIEN and Members of the Liberal Party are mostly self-employed or employers, so they will not look at the Bill from the employees' perspective. In fact it is very fair to both employers and employees. The Honourable Mrs Miriam LAU has said just now the maximum of \$150,000 is already sufficient to deter employers from discriminatory behaviour. However, from the the victims' point of view, if their losses really exceed \$150,000, why should we compel them to accept less? No matter the victim is an ordinary employee or a senior staff member, the \$150,000 cap may discourage them from lodging complaints or initiating legal proceedings. If we look at this issue from the viewpoints of both employers and employees, we should let the courts decide whether an employee should be reinstated, and no cap should be set for the damage award.

Last time, a debate was held on this issue and Members gave their approval. The provisions in the Sex Discrimination Ordinance and the Disability Discrimination Ordinance are consistent. Therefore, I hope Members will not object to the amendment today, since this will baffle employers and employees, and the general public will be confused in their understanding of the legislation on discrimination.

**MRS MIRIAM LAU** (in Cantonese): Mr Chairman President, I would like to seek clarification from the Honourable Miss Christine LOH. Did she say that if the courts ruled that an employee had to be reinstated, it would not order the employer concerned to pay the damage award?

**MISS CHRISTINE LOH** (in Cantonese): Mr Chairman, I would like to make some clarification. Since the Honourable Mrs Miriam LAU is a lawyer, I believe she also knows very well that if the law has ruled out the provision for reinstatement, even if reinstatement was a possibility, the courts would not rule that an employee be reinstated. If the judge believes that reinstatement can sufficiently solve the problem, he probably would not rule that the employer should pay damage award to the employee. I believe the courts will give a fair ruling.

*Question on the amendment put.*

*Voice vote taken.*

Mr James TIEN claimed a division.

**CHAIRMAN** (in Cantonese): Committee shall 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 54 moved by Miss Christine LOH 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?

**CHAIRMAN** (in Cantonese): Before I declare the results, 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 CHAN Wing-chan, Miss CHAN Yuen-han, Mr CHENG Yiu-tong, 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, Miss Margaret NG, Mr SIN Chung-kai, Dr John TSE, Mrs Elizabeth WONG 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, Mr Eric LI, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr Paul CHENG, 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 amendment.

Mr LEE Kai-ming abstained.

THE CHAIRMAN announced that there were 32 votes in favour of the amendment and 19 votes against it. He therefore declared that the amendment was carried.

*Question on clause 54, as amended, put and agreed to.*

Clause 64

**MISS CHRISTINE LOH:** Mr Chairman, I move that clause 64 be amended as set out in the paper circularized to Members.

As I said two weeks ago in this Council, there is no sensible reason to oppose this amendment. It merely ensures that any time spent in conciliation does not count against the time limit to bring court proceedings. Conciliation is a slow process and no one should have to abandon it prematurely for fear of losing the right to bring proceedings later.

The Administration argues that the Bill already offers persons engaged in conciliation adequate reassurance that they will not run out of time. In fact the Bill does not. For reasons I explained in detail last time the Bill offers such persons hope but not certainty. They need certainty which the amendment provides.

Members supported the amendment then and I urge them to do so again today.

*Proposed amendment*

**Clause 64 (See Annex XI)**

**MRS MIRIAM LAU** (in Cantonese): Mr Chairman, the Liberal Party is not prepared to give in merely because the same amendment proposed by the Honourable Miss Christine LOH on 21 June this year relating to the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 was carried. The Liberal Party still objects to the amendment because we believe that there should be a time limit to any legal proceedings initiated in relation to the relevant discrimination legislation. If a district court thinks that the grounds relating to a case are justified, it will probably allow the legal proceedings to be conducted out of time. The amendment in question proposed by Miss LOH will only extend the time limit on an application significantly, which is very unfair to employers.

Thank you, Mr Chairman.

**SECRETARY FOR HOME AFFAIRS:** As I said at the Second Reading debate that there is no need for the proposed amendment since the Equal Opportunities Commission would normally take much less than 24 months for conciliation, and the clause provides for the court to consider any claim out of time if it is just and equitable to do so.

Mr Chairman, the Administration objects to the proposed amendment.

**MISS CHRISTINE LOH:** The Administration objects to certainty in the law.

*Question on the amendment put.*

*Voice vote taken.*

THE CHAIRMAN said he thought the "Ayes" had it.

Mr James TIEN claimed a division.

**CHAIRMAN** (in Cantonese): Committee shall 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 64 moved by Miss Christine LOH 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?

**CHAIRMAN** (in Cantonese): Before I declare the results, Members may wish to check their votes. One 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 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 CHAN Wing-chan, Miss CHAN Yuen-han, 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, Miss Margaret NG, Mr SIN Chung-kai, Dr John TSE, Mrs Elizabeth WONG 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, Mr Eric LI, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr Paul CHENG, 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 amendment.

Mr CHENG Yiu-tong and Mr LEE Kai-ming abstained.

THE CHAIRMAN announced that there were 31 votes in favour of the amendment and 19 votes against it. He therefore declared that the amendment was carried.

*Question on clause 64, as amended, put and agreed to.*

Schedule 1

**SECRETARY FOR HOME AFFAIRS:** Mr Chairman, I move that Schedule 1 of the Bill be amended as set out under my name in the paper circularized to Members for reasons as I have explained in the Second Reading debate.

*Proposed amendment*

**Schedule 1 (see Annex XI)**

*Question on the amendment put and agreed to.*

*Question on Schedule 1, as amended, put and agreed to.*

Schedules 2 to 3 were agreed to.

Council then resumed.

### **Third Reading of Bill**

THE SECRETARY FOR HOME AFFAIRS reported that the

#### **FAMILY STATUS DISCRIMINATION BILL**

had passed through Committee with amendments. She moved the Third Reading of the Bill.

*Question on the Third Reading of the Bill proposed, put and agreed to.*

Bill read the Third time and passed.

### **Resumption of Second Reading Debate on Bill**

#### **COPYRIGHT BILL**

#### **Resumption of debate on Second Reading which was moved on 26 February 1997**

**MRS SELINA CHOW:** Mr President, as the Chairman of the Bills Committee on Copyright Bill, I now report on its deliberations.

The Bill seeks to localize the law of copyright and provide for a comprehensive regime for copyright protection. The extent of public concern



on the Bill is evident by the number of organizations requesting to meet with the Bills Committee and of submissions received. It represents the many interests, some of them conflicting and others overlapping, which are at stake. In more than two-month's deliberations, the Bills Committee has held 19 meetings, met with 15 organizations and received 113 submissions. Members have also been approached individually and in groups by the intensive lobbyists on all sides. Given the large number of issues examined by the Bills Committee, I shall not exhaust all in my speech but just touch upon those which are controversial and have aroused considerable public concern.

Before I embark on the various issues, I must stress the very strong consensus among all parties concerned. The need for Hong Kong's own Copyright Ordinance before 1 July is unequivocally recognized and supported, and the call for tough action against piracy is loud and clear. The broad position and direction of the Administration is endorsed. What was asked of the Bills Committee was to address the balance between the opposing forces in the trades in the context of the wider public interests of the copyright owners and the consumers. The Bills Committee was engaged in a tightrope exercise in which should any one lose his balance the technicians controlling the tightrope below were certain they might be squashed to injuries or even death. As a result, and given the limited time available, the officials and the Bills Committee went through a highly pressurized two months. I am therefore extremely grateful to all those individuals who have co-operated remarkably to reach the final outcome.

As Members are aware, the subject of parallel importation of copyright articles is the most contentious issue in the Bill. There are strong views for and against parallel imports being permitted *per se*, and for and against the proposal of decriminalization in the Bill. The retail trade call for total deregulation of parallel importation while consumers would like relaxation along the lines of the Law Reform Commission report. The music and film industries, on the other hand, object to decriminalization. Each camp has advanced a number of reasons to support its stance. Without going into the details of their arguments, I must say that the Bills Committee has carefully considered each and every point made by the depositions. The fact that no international standard or consensus has been reached on parallel importation is self-explanatory of the controversy, delicacy and intricacy surrounding the issue. It seems that every country or territory would look at how its own interest would be affected or best served in determining whether to restrict or relax on such imports, and therefore whether a

country is an exporter of intellectual property products is a major, if not the most, important factor in deciding the manner in which parallel imports are handled. In general, most developed countries with high standards of copyright protection prohibit parallel importation. We were told that most of them have retained criminal sanctions in their statute books against parallel imports but prosecutions have been few and far between. In fact we were told that many of our partners in the World Trade Organization is watching the outcome of our debate from which they might draw lessons. In mapping out a regime that suits our needs, both Members and the Administration have not lost sight of Hong Kong's particular position as a major exporter and consumer of copyright products, especially for films and sound recordings. Against this background, and as a result of strong request for our local producers, the Administration has proposed to amend its original decriminalization provisions in the Bill to the effect that parallel importation of copyright works remain a criminal as well as civil infringement within 12 months of first publication of the work anywhere in the world. After the initial 12 months, civil remedies would still be available to the copyright owner and the exclusive licensee until the end of the copyright term. It would be a defence for a person who imports a work without the licence of the copyright owner if the owner or the exclusive licensee has acted unconscionably, that is by withholding supply on unreasonable grounds, or by agreeing only to supply on unreasonable terms.

Members of the Bills Committee have different views on the adequacy of a 12-month criminal sanction period. Some are sympathetic with the film industry and maintain that this period is inadequate to protect exclusive licensees of foreign films in Hong Kong. Others, however, consider this period acceptable from the consumers' perspective. Taking into account Members' divergent views, the Administration has subsequently revised its proposal to extend the period of criminal sanctions to 18 months. I must point out that the Bills Committee has not reached a consensus on this issue. Nor has it agreed on the need to define "unreasonable ground" and "unreasonable terms" in the Bill. Since some of my colleagues have given notice to move amendments relating to these issues, I shall leave the debate on these points until the Committee stage.

Another issue related to parallel importation is the level of evidentiary requirement for proof of knowledge of infringing activities. The plaintiff has to prove under the existing law that the defendant has actual knowledge of the infringing activity. Under the Bill, the copyright owner is required only to prove that the defendant "knows or has reasons to believe" that he is dealing with

infringing copies. While copyright owners and licensees were satisfied that this new move to lower the threshold of proof for the plaintiff, the retailers were extremely unhappy, for two reasons. First, whereas under the 1956 United Kingdom Act whether imports in breach of a licensing agreement are infringing copies had been unclear in the law and therefore inconclusive the position is absolutely clear in the Bill. In other words, they will be infringing copies once the Bill is passed. Second, without spelling out what constitutes "reasons to believe" retailers can be placed in extreme uncertainty or would be deprived of products to sell even if the licensees have behaved unreasonably. The Administration has acknowledged retailers' concern over the need for certainty and has proposed to add new provisions to clarify circumstance under which a defendant may claim that he has no reasons to believe in that goods that he has been dealing with are infringing copies. The new provisions spell out matters that the court may have regard to in determining whether a defendant has no reason to believe. Again, members of the Bills Committee have different views on this issue and it would be another subject for debate at the Committee stage.

I would like to turn to another issue on which the Bills Committee has received opposite views also, namely, whether decompilation should be expressly permitted in the Bill. Two major business software associations have strongly objected to permitting decompilation for the purpose of interpretability. Other computer organizations, albeit supporting the inclusion of a specific provision for that purpose, criticize the Bill for allowing contractual restrictions on decompilation. The two camps have each put forward different reasons to substantiate their positions. Members in general agree that the provision for decompilation in the Bill fails to address the needs for the computer industry and that the issue should be dealt with in the context of fair dealing. To this end, the Administration has proposed amendments to the Bill, which, Members are told, have been agreed by the software industry.

The subject of re-transmitting non-encrypted satellite broadcasts has also been high on the agenda of the Bills Committee. The Bill proposes to remove the exemption currently enjoyed by licensees of Satellite Master Antennae Television (SMATV) systems to re-transmit non-encrypted satellite broadcasts without infringing copyright. Whilst major broadcasters in Hong Kong welcome changes, SMATV operators, on the other hand, have argued that non-encrypted programme signals should be presumed to be intended for general reception. Since prevailing licensing conditions of SMATV prohibit them from paying copyright owners for retransmission of non-encrypted broadcasts,

SMATV operators have serious concern over the viability of the trade once the Bill comes into operation. To ensure minimal disruption to services currently enjoyed by SMATV subscribers without compromising the rights of broadcasters to distribute their signals, the Administration proposes to provide for a revocable implied license to SMATV operators to retransmit non-encrypted broadcasts. The maker of a non-encrypted broadcast may revoke the license by publishing a six-month revocation notice in the newspaper. Members have been told that the effective date of this proposal will tie in with the change in SMATV licensing conditions following the broadcasting review in 1998. Although the Bills Committee has agreed to support the Administration, the broadcasters remain dissatisfied, and I understand a Member will move an amendment at Committee stage, so I expect the debate to continue.

I would like to take this opportunity to thank all the organizations which have submitted views to the Bills Committee and have made suggestions to improve on the Bill. May I also express the Bills Committee's appreciation of the Administration's hard work, open-mindedness, and promptness in providing information requested by Members in the course of deliberations. The enactment of the Bill is certainly an indisputable proof of Hong Kong's commitment to protecting intellectual property rights.

Mr President, I shall now spend a few minutes to express my own view as a Member towards the Bill. I have to admit that this is one of the most difficult bills that I have scrutinized in my long career in this Council. Nevertheless the process has been challenging and I might even say, at times, enjoyable. No Member can be unimpressed by being waylaid by my good friend Jackie CHAN, and petitioned by Jackie CHEUNG, two of the most influential and, dare I say, sexy men in Hong Kong. But with all the razzmatazz, we must not lose sight of what this is all about.

Having spent a substantial part of my career in the creative industry myself, I cannot help but be a defender of copyright. On this my position is absolutely clear. Any unauthorized reproduction of a work and its exploitation through trade or performance, is an act of theft, a criminal act, and therefore deserves the same punishment as any other kind of theft.

But when it comes to parallel importation, the picture changes somewhat. Here we often are talking about the dealing of legitimate products in the realm of right assignments, licences and contracts. This question is how much should

the law intrude into this layer of activities. I suspect this is why so many governments around the world find it hard to determine the rules. To my mind this is not about infringing copyright. It is about fairness and orderliness in a market. If the industry has established for itself a regime, such as the window system for the film industry, and rights have been licensed to parties in a territory, then it is up to those parties to exploit such rights without interference or intrusion. However these licences are not the rights owners. They are the bridge between the rights owners and the public and have the responsibility to fulfill their obligation as such, that is, to bring the product to the attention of the widest public and then to supply the products to where there is a demand. We in the Liberal Party have based our deliberation and final decisions on the Bill on these principles, and believe we have achieved the correct balance. But I worry that our preoccupation with parallel import has somewhat overtaken the very important attention that we must pay to pirated goods, which remains a headache to Hong Kong, especially in the context of our role in the world trade. In the last few years, I have repeatedly called for stronger action against piracy, requesting more resources and tougher laws. The Golden Arcade and such black spots are the living pillars of shame for Hong Kong, and high-profile and resolute action is necessary to demonstrate to the culprits as well as to the rest of the world our determination to stamp out these crimes. Hong Kong people should be told in no uncertain terms that although the law does not penalize consumers, that they are nevertheless partners in crime in buying such products. Feeding their business at the sacrifice of our own legitimate trades and industries is wrong. I am somehow disappointed that the Administration's efforts to persuade members, especially our Members who belong to the legal fraternity, to put some responsibility on landlords to reject pirates as their tenants have failed. Government says this Bill when passed will help enforcement. I look forward to that, and pledge here and now to monitor the developments closely.

**MISS MARGARET NG:** Mr President, just a few words to support the Bill. This is a highly complex and technical piece of legislation. I would say, if I may, that it is a job well done by the Administration team. During the scrutiny in the Bills Committee, all efforts were made to ensure that affected groups and persons had a fair chance to voice their views. These groups and persons took great trouble over their representations which were listened to sympathetically.

Here, there is a great deal of conflict between rights and interests and among different interests. Everyone worked very hard to find the right solution,

not least the Administration team. We were hard-pressed for time but, as a member of the Bills Committee and a keen participant in the process, I can assure Honourable Members that no corners were cut. I can say that the Administration has got it about right in the amendments the Secretary for Trade and Industry will move later today, and I recommend these to Members.

Mr President, I support the Bill.

11.25 pm

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

**DR HUANG CHEN-YA** (in Cantonese): Mr Deputy, copyright legislation is a very complicated and difficult piece of law. As my two colleagues have said, it is very important. The Bills Committee has met many times to scrutinize this Bill, and has spent a lot of time to meet with deputations of the trade. As the Chairman of the Bills Committee, the Honourable Mrs Selina CHOW has worked very hard on and contributed much to this issue. However, overall speaking, it still gives us the impression that the scrutinizing process has been too hasty. There was no time for in-depth examination. The final version of the Bill made under the circumstances still has a lot of deficiencies which need to be remedied in future. We all know why the situation is so bad. The reason is that the 4-year term for this Legislative Council has been illegally cut short. However, I am not going to discuss this issue today. Though the scope of the Copyright Bill is very wide, in the final analysis, most of the discussions were focused on parallel importation. Another issue is related to satellite broadcasting, which will be raised by the Honourable SIN Chung-kai in due course. The other major amendments introduced today are related to parallel importation. I would like to speak on this issue on behalf of the Democratic Party.

At the beginning, we actually followed the recommendations of the Legal Reform Commission (LRC) and hoped that parallel importation could be discriminalised, while copyright owners and exclusive licensees would have a better chance to institute and win in civil proceedings. The LRC unanimously considered that the execution of contractual rights should not be interfered by criminal proceedings. Thus, the original purpose of the LRC was to make the existing legislation more favourable to copyright owners and exclusive licensees without imposing criminal liability. However, under the lobbying and pressure

from the film and sound recording industries, the Government recoiled one step after another. Finally, protection by civil proceedings is enhanced while criminal liability is reinstated as well. As a result, the Bill provides more protection to copyright owners and exclusive licensees than the existing legislation.

First of all, we have to distinguish between parallel imports and infringing copies. Everybody knows clearly that we are strongly opposed to piracy, as they would tarnish Hong Kong's international reputation. However, parallel imports are not infringing copies. Products sold by parallel import traders are also produced or manufactured by the copyright owners, and thus have not infringed the copyright of the owners. Then why are there parallel imports? The reason is that the same product can be priced differently in different areas and the date of issue may also vary, and consumers can obtain these products earlier or at cheaper prices through parallel imports. That is why there is parallel importation. Take portable phones as an example. They initially cost more than ten thousand dollar each, but with the inflow of parallel imports, prices dropped rapidly and they cost only a few thousand dollars each at present, and the burden of the public has been greatly reduced. It is obvious that consumers prefer more choices at cheaper prices. That is why parallel import traders can "hitch a ride" and sell parallel imports without sharing the promotion expenses of the exclusive licensees. On the one hand, exclusive licensees certainly suffer commercially and feel that it is unfair. On the other hand, parallel imports introduce competition into the market and prevent monopolization, and this benefits consumers. Undeniably, parallel import traders play an important role in the market and to the economy at large. Moreover, though the production costs for products sold in different areas are the same, copyright owners do hope to make more profits in some areas. As for exclusive licensees, they all look forward to maximizing their profits in monopolized markets. In commercial terms, it is understandable that they think this way. However, their position is obviously against the benefit of consumers. To be objective, a right balance should be struck between the benefits of both parties, and a lopsided situation should not be allowed. If copyright owners or exclusive licensees are overprotected, consumers will have to pay more, or have less choices, or have to wait longer for the products. On the contrary, if copyright owners or exclusive licensees are not protected at all and do not even have the right to initialize civil proceedings, promotion activities on these products will be reduced and this is not necessary a good thing. Therefore, the crux of the issue is to strike the right balance between both parties.

The film production and recording industries support criminal regulation because of the special operational feature of their trades. For example, the film industry will, apart from film production, issue laser discs and video tapes some time after the theatrical release. However, owing to the allotment of screening slots, and the fact that some copyright owners cannot obtain the distribution rights immediately, the films may not have been screened in Hong Kong when laser disc and video tapes from other areas are already available. The recording industry also considers that parallel import traders are taking a free ride, and as a result, the promotional efforts of some of their records are undermined. Local film producers also admit that the contracts they enter into with the agents of other areas allow them to have products cheaper than those in Hong Kong. If those products are imported into the territory, their profits in Hong Kong would certainly be affected. Sometimes films produced by Hong Kong producers will be screened first in areas outside Hong Kong. Though the industry can apply technological means like special and authorized labels to control the market, in fact they have never done so. Hence they have to depend on criminal sanctions for protection.

Actually, the film production and recording industries should be aware that the times are changing, and that shopping on Internet is becoming popular. I believe that after 1 July, dealings between Hong Kong and Shenzhen will be simpler and more convenient in the years to come. If the products in Hong Kong are too expensive or the choices are limited, the public can shop on Internet or at Shenzhen, or simply rent the products. Thus, parallel import traders will no longer be the only source for parallel imports, and the existing legislation cannot really combat parallel imports. The film and sound recording industries should think in advance on how to promote their products in a much larger market, that is, the China market incorporating Hong Kong.

The problem of parallel import traders taking free rides must certainly be solved. In the big cities in China, whether it is Shanghai, Beijing or Guangzhou, the purchasing power is much stronger than that in the neighbouring districts. If the product prices in those cities are too high, the problem of parallel imports may also arise. Evidently, the product prices in other areas are lower than those in the big cities, and different cities in China are not even separated by border lines like that of Hong Kong. Therefore, if the film and sound recording industries do not take a macroscopic view on the China market, and instead depend only on criminal proceedings for protection, they are in fact giving up the



opportunity to enter the China market, and fail to make bigger profits in that market by improving their marketing strategies and efficiency. The Democratic Party understands the situation of the film industry, and knows that the trade has no immediate means to solve the existing problem. We therefore agree that there should be an 18-month criminal sanction period for their protection. However, we consider that other publishers and copyright owners should only be protected by a 12-month criminal sanction period. As for books and software copyright owners, we do not see at present why they must be protected by criminal sanction. Nevertheless, since we do not have sufficient time to scrutinize the Bill in this respect, we have finally agreed that they will be given the protection of a 12-month criminal sanction period too.

Mr Deputy, as I have just mentioned, we must strike a balance between the rights of copyright owners and exclusive licensees and the rights of consumers. Therefore, 12 to 18 months after the release of the products, the effect of the criminal sanction provisions will lapse and civil proceedings will be the means of protection instead. By then, consumers will have more choices and will not have to pay unreasonable prices because of short supply. Both Mr Howard YOUNG and I shall move amendments to provide for the situations where parallel importation should be allowed. We hope that neither the rights of exclusive licensees nor those of consumers will be seriously affected.

**MR CHAN KAM-LAM** (in Cantonese): Mr Deputy, the Bills Committee has held more than a dozen meetings, and half of the time has been spent on discussing the problem of parallel importation. This is indeed a very controversial issue, and no international consensus has been achieved yet. Given the tight legislative timetable, the Bills Committee can only reach a compromise with the Government and decides to demarcate criminal sanction by time.

The Democratic Alliance for the Betterment of Hong Kong (DAB) thinks that this is not an ideal solution. It can only be said to be a compromise trying to address the special situations of different parties in Hong Kong, particularly the local film production and record industries. At the same time, the proposals indirectly place restrictions on the rights of exclusive licensees. If exclusive licensees try to withhold the supply of products or raise the price of the products unduly, the relatively lenient restriction provision of the Bill on parallel

importation can prevent exclusive licensees from "sweeping" all products and deprive the rights of consumers.

Regarding parallel importation, we have listened to the arguments for and against the proposals on many occasions. On the one hand, we agree with the arguments of the retailers that parallel imports are products manufactured legitimately overseas with the consent of the copyright owners. Thus, these products should not be mixed up with pirated goods and be considered as "infringing copies". On the other hand, as for overseas works, if there are no exclusive licensees in Hong Kong, parallel imports can certainly provide a greater consumer choices in the territory.

However, we do not accept the arguments of the retailers that parallel imports can bring about price competition and safeguard the interests of consumers. We think that other than the wholesale prices for the agents, the lion's share of the retail prices of copyright works, in particular audio-visual products, are profits of the retailers. Taking, for examples, the two record retail chain stores which give full support to the decriminalization of parallel importation, the retail prices of their records are usually 10% to 20 % higher than legitimately imported products or genuine products. In fact, we find that the price of a record supplied by the exclusive licensees is cheaper than parallel imports.

We all know that, when distributors or agents launch an audio-visual product, they have to make large investments in publicity. Advertising costs in fact take up a large portion of the overall costs. However, parallel import traders do not have to pay for the promotion and advertising. The operational costs of these parallel import traders are substantially reduced, and they can just sit idle and enjoy the gain. If parallel imports are sold at the same price as the exclusive licensees' products, the profits on parallel imports are enormous. In terms of market competition, this is indeed not a level playing field.

Therefore, we consider it necessary to protect the rights of copyright owners and exclusive licensees to ultimately safeguard the interests of consumers.

The DAB fully understands the concerns of the film and sound recording industries on total decriminalisation of parallel imports. Recently, copyright infringement of films and records has been rampant. Infringing copies of some

overseas films which have not been formally released in Hong Kong can already be found. For example, the Customs and Excise Department found earlier a large batch of infringing VCD of "Jurassic Park - The Lost World", a film yet to be released in Hong Kong. Decriminalization may encourage people to disguise infringing copies as parallel imports, and thus infringing the rights of copyright owners and exclusive licensees. Such situations should never be allowed.

Moreover, we agree that, under normal circumstances, withholding the goods or products from the market will bring nothing but harm to exclusive licensees who have bought the exclusive distribution rights from the copyright owners and they have to bear the subsequent market risks and economic losses. Of course, we have to understand that, from the business point of view, the exclusive licensees, being agents, have to project the market situation and understand the need of consumers before they release their films or records. There is a saying that "May and June are slack seasons, and July is the good time for business", and this has almost become the norm of the film and sound recording industries.

The Secretary for Trade and Industry will later move a Committee stage amendment concerning parallel imports to provide that parallel importation of copyright works will remain a criminal infringement within 18 months of the first publication of the work anywhere in the world. The DAB welcomes, in principle, the Government recognizing that the rights of local copyright owners should be protected. However, we have reservations on whether the 18-month sanction is an appropriate period. Therefore, we will move a Committee stage amendment to extend the period to 24 months.

Mr Deputy, Hong Kong is at present one of the production centres of audio-visual works in the world. This is also one of the local industries which generate foreign exchange for Hong Kong. The industry accommodates many excellent film, music and art creators, performers and backstage professionals. These people not only enrich our cultural education but also provide spiritual food to our community. They also play an indispensable role in maintaining Chinese culture among overseas Chinese. Governments all over the world provide statutory protection for their local creation, and therefore I think the Government of Hong Kong should do the same to our creative industries.

I think that without minimum protection for our local creative industry, the film and sound recording industries in Hong Kong will inevitably suffer. These

industries will shrink and their competitiveness will be undermined, and the consumers will ultimately suffer as well.

Mr Deputy, with these remarks, I support the Second reading of the Bill.

**DR LAW CHEUNG-KWOK** (in Cantonese): Mr Deputy, the Copyright Bill is a piece of legislation work that involves economic activities. It aims at protecting the private property rights of creators and copyright owners, which is an important pillar in a free economy. Consumer rights do not exist by themselves. Only when the rights of creators are fully protected can such rights be developed. The current market practice is that copyright owners generally authorize exclusive licensees in different regionals. Therefore, if the Government of Hong Kong can protect the legitimate rights of exclusive licensees in the territory by keeping out parallel imports and infringing copies, it is actually protecting the rights of the creators and copyright owners. The local film and sound recording industries are very successful. They not only create much wealth, job opportunities and joy to the community, but also give full play to the excellent culture of Hong Kong and spread it to places all over the world. In formulating the copyright legislation, the main factors for consideration are to protect the rights of the film and sound recording industries and promote their development. Therefore, I believe that a longer criminal sanction period, say 24-months, for parallel importation is reasonable. Under the existing legislation, it is extremely difficult for exclusive licensees of copyright products to sue parallel importers. However, the new legislation will make little improvement in this respect. Therefore, we support the Government's proposal to slightly simplify the procedures for exclusive licensees to initiate prosecution. We hope that this can be a more effective arrangement in combating illegal parallel importation.

Finally, some Members request to amend the legislation to the effect that when exclusive licensees cannot reasonably make available the products, retailers can bring in parallel imports under reasonable arrangement. The Hong Kong Association for Democracy and People's Livelihood and I support this proposal in the hope that it can provide suitable protection to consumers. However, I must point out that many parallel importers claim that parallel imports can provide wider choices to consumers and the community, and can definitely lower the price of the products substantially. This may not necessarily be the case. According to our observation, some parallel imports are

priced even higher than the legitimately imported products. Therefore, we do have reservation on whether the arrangement of parallel importations will bring benefits to consumers.

Thank you, Mr Deputy.

**MR SIN CHUNG-KAI** (in Cantonese): Mr Deputy, the Government was rather late in submitting the Copyright Bill to the Council and we, as members of the Bills Committee, are weighed down with work and are really tired out. Frankly speaking, we do not have enough time to study the Bill in detail. Therefore, I hope that after the enactment of the Bill, say one year later or at any other appropriate time, the Government will conduct more frequent reviews as I believe there is still some other remedial work to be undertaken. As mentioned by many colleagues just now, the Trade and Industry Branch (TIB) and the Intellectual Property Department (IPD) have been very co-operative and have offered us a great deal of assistance in respect of this Bill. They have exercised a good spirit of co-operation. The Democratic Party supports the Copyright Bill, which is the last piece of legislation on intellectual property, after the laws on trade-related aspects of intellectual property rights (TRIPS), Registered Designs Ordinance and Patents Ordinance. We think these ordinances are very important for the future development of trade and industry in Hong Kong. Thus, upon the enactment of the Copyright Bill, the TIB and the IPD should consider some strategic work, so as to enhance the respect of Hong Kong people as well as the trade and industrial sectors for copyright.

We think that at present, the community and even some members of the trade and industrial sectors have not paid sufficient respect for copyrights. Infringement of copyright is sometimes rather common in China. The Government should therefore think of ways to seek cooperation with the Chinese authorities after the transitional period to combat activities that infringe property rights. The Copyright Bill is a very complicated bill, and the concept of copyright itself is undergoing a process of evolution. During such process, the Government should conduct a series of reviews, such as to what extent will the future development of internet affect the copyright. In fact, the Government should conduct in-depth studies and maintain close supervision. The Copyright Bill comes up with a new concept: the very same act which does not constitute a criminal offense today will be a criminal offence 18 months later. I believe the Government has to conduct reviews upon the implementation of this new concept.

Some developing countries or other countries may observe how Hong Kong implements the copyright provisions. Hong Kong may serve as a model for other places in the world in this respect. Therefore, being the government branch responsible for protecting property rights, the TIB should closely monitor the situation.

The ordinances mentioned above in fact do not provide sufficient protection on property rights. We can still find a lot of copyright infringement activities in Hong Kong. The most typical examples can be found in places we are all familiar with, such as the Golden Arcade and several shopping centres on Hong Kong Island, where infringement activities are rampant. This time, the Government tries to combat infringement activities through the enactment of the Bill, and I believe it would be effective to a certain extent. Yet I have to stress that the Government should make more efforts.

The Broadcasting, Culture and Sports Branch has set up an ad hoc team to combat obscene and indecent articles. Remarkable results have been achieved over the past few months. The Government should draw on such an experience. Upon the enactment of the Copyright Bill, the Government should adopt suitable measures to combat infringement activities. Computer software, VCDs and CDs should be the targets of combat operations. Today, we are discussing the issue of parallel importation. We certainly have to balance the interests between both parties. However, as far as the present situation of Hong Kong is concerned, copyright owners and exclusive licensees are most seriously affected by infringement activities. Therefore, after the enactment of the above Ordinances, the Government should exercise the powers so entitled. It should also review the adequacy of such Ordinances so that large scale operations can be carried out in a year's time to combat infringement activities. I believe the joint efforts of the Customs and Excise Department and the Government are needed in this respect. During the debate of the Bill, the Government has refused to set up a central registry for the registration of laser discs and CDs. In fact, such a registry will allow different sectors to identify the copyright owners and exclusive licensees of a product. I am baffled by the attitude of the Government on this issue. Both copyright owners and retailers hope that a central registry can be set up; it is only the Government who is most unwilling to do so. In today's debate on parallel importation, many conflicts between both parties can be solved if the Government agrees to set up a central registry. Therefore, although the Government has refused to do so due to the tight legislative schedule, I still hope it will reconsider this in future.

Finally, I would like to say a few words about the film and sound recording industries in Hong Kong. I certainly agree with my colleagues that these two industries have made great contributions to the territory. However, we should also consider the true spirit in formulating the legislation. Should our legislation protect specific industries in the territory, or should it protect intellectual property on a whole? Over the past few months, we have made efforts to protect the film and sound recording industries in Hong Kong. However, I consider it inappropriate to formulate legislation to give special protection to these industries. We should introduce legislation to protect copyright owners or exclusive licensees instead of just a certain industry. We should introduce legislation to create an environment where genuine creators can engage in creative works under the protection of property rights. We should not give special protection to any specific industry. Should an industry fail to compete in the new international arena, no matter how it is protected by legislation, it will finally diminish. Therefore, the focus of the issue is that the Government should provide for an environment in which intellectual property is well protected, instead of giving special protection to any specific industry.

Mr Deputy, I appreciate the Government's effort in the past two years to put into effect the protection of intellectual property and localisation of laws. However, since this Bill is enacted rather hastily, I urge the Government to review the law one year after its enactment to see if there are any deficiencies that have to be rectified and then propose amendments to the Council.

With these remarks, I support the Bill. Thank you, Mr Deputy.

**MR HOWARD YOUNG** (in Cantonese): Mr Deputy, long before the Copyright Bill was introduced by the Government, many colleagues of this Council and I, and certainly Members from the Liberal Party, had been lobbied by different parties. Apart from attending meetings of the Bills Committee, we have met various representatives and deputations representing the interest of different parties almost every alternate days to listen to their views on the pros and cons of enacting the Copyright Bill and how their trades will be affected.

The objective of the Liberal Party has all along been hoping for a level playing field for all parties. The Liberal Party hopes that with the enactment of

the legislation, the interests of copyright owners, manufacturers, retailers, exclusive licensees and consumers can be balanced.

For retailers, no matter they are speaking for their own interests, or for the interests of customers and consumers which they have often claimed, they generally support a more open and relaxed approach in amending the legislation. For the tourist industry of which I am a representative, tourists will inevitably shop around when they visit Hong Kong. Therefore, the greater the choices offered, the more attractive Hong Kong is to them, and Hong Kong can really live up to its reputation of being the "shoppers' paradise".

On the other hand, if we want to develop our film and sound recording industries, we certainly have to try hard to protect intellectual property and combat infringement activities. People of the local film and sound recording industries consider that parallel imports should be restricted as well. In recent years, local artists have reached beyond Hong Kong and Asia, and have won various awards in film and music festivals in European countries and the United States. This indicates that local film and music productions are getting international recognition.

In order to boost the image of Hong Kong in the mind of overseas tourists, and to increase our attraction to tourists, the Hong Kong Tourist Association and the Government are now studying the need to develop new tourist attractions. One of the proposals is to build a "film city" related to local film industry or a television city. To pave for this project, we must have a sound system on copyright protection. Mr Deputy, I shall move some Committee stage amendments on the Copyright Bill later. The amendments I am going to move do not go against the principles of the Government's amendments. They only supplement the amendments moved by the Government by making clarifications with specific provisions to ensure that the interests of copyright owners, exclusive licensees, retailers and consumers are well balanced.

The new provisions that I am going to move include issues related to reasonable grounds and defence.

I also propose to add a provision regarding transitional arrangements in Schedule 2. They are significant as well as controversial. Current stocks which have been imported to Hong Kong through non-illegal means before the enactment of the new legislation should not be affected immediately with the



enactment of the legislation, nor deemed illegal or infringing articles. I believe this provision will ease the concern of retailers on their limited number of stock on hand, which used to be legal articles but suddenly become illegal upon the enactment of the Bill.

At present, the wording of the Bill is so drafted that retailers must take the initiative to check whether their goods are infringing articles or infringing copies. However, the Bill fails to state clearly whether copyright owners and exclusive licensees are required to provide information related to the copyright of their goods. I think this is unfair to retailers, and therefore I shall move some amendments to rectify it. In fact, the wordings of my amendments are consistent with Dr the Honourable HUANG Chen-ya's.

The success of Hong Kong lies very much on the *laissez-faire* policy of the Government in this free port. To avoid excessive intervention by the Government and to allow normal and free operation of commercial activities, it is necessary to amend the legislation. The amendment should require copyright owners and exclusive licensees to provide retailers with sufficient information on copyright, so as to allow retailers to analyse whether their goods are in compliance with the Copyright Bill.

Mr Deputy, I would like to speak briefly on the amendments to be moved by other Members on this Bill, some of which are similar to mine and some are in no way related. First, regarding the criminalization and decriminalization of parallel importation, how long should the sanction period be? The Liberal Party supports the Government's proposal of an 18-month sanction period, as we think this can strike the right balance. The original proposal provides for complete decriminalization of parallel importation. Later a 12-month sanction period was proposed. However, it is considered that a 12-month sanction period may cause difficulties to certain trades, especially the film industry, while a 24-month sanction period may seem too long. Dr HUANG Chen-ya suggests a classification system to separate films from other copyright products. Some people may then query: For products such as books and computer software, which do not need any sanction period, how are they going to be classified? Is the proposal technically feasible? We think there may be some difficulties. Therefore, the best solution is to adopt the 18-month proposal of the Government. On the other hand, my amendment regarding some subclauses under the new clause 35A is similar to that of Dr HUANG Chen-ya. The Liberal Party at first only hopes to add a subclause under the original amended version of the

Government. Its wording is the same as Dr HUANG Chen-ya's. We all accept the original amended version of the Government. The only difference between ours is that Dr HUANG Chen-ya slightly amends subclause 4 of the Government's amended version, a provision we do not want to touch on. We hope that, as suggested by the Government, the discussion can be focused on issues related to copyright owners and exclusive licensees and not any further because we do not have enough time to study the pros and cons of such an amendment. Therefore, under this circumstance, we do not support amending the Government's amendment on subclause 4.

**SECRETARY FOR TRADE AND INDUSTRY:** Mr Deputy, I am deeply indebted to the Chairman, the Honourable Mrs Selina CHOW, and members of the Copyright Bills Committee for the time, patience and insight given to the Bill.

The Bills Committee met 19 times between late March and early June and has been receiving countless representations from parties representing copyright owners, exclusive licensees, retailers, consumer lobbyists, and so on. This must be a record in itself. The hours spent and parties involved are indicative of the vital importance we all attach to the Copyright Bill.

I must thank all for adopting a pragmatic and flexible approach in trying to reach a consensus view on many of the often controversial issues for it is imperative for us to agree on and put in place a copyright law before the transition. Failure to do so would give rise to a lacuna in copyright protection. This is not something Hong Kong could afford to have.

The Copyright Bill is not a mere replication of our existing largely United Kingdom-based legislation. We have proposed new provisions which have been widely welcomed. Let me highlight some of these before turning to the more controversial issues.

Firstly, broadened scope. Copyright protects the expression of ideas and as such is important to our maintaining a vibrant and competitive economy. Our existing legislation already offers protection for various categories of copyright works from literary, dramatic, musical and artistic works to sound recordings, films, broadcasts, cable programmes, published editions and the rights of performers. The Copyright Bill extends the scope of protection to

cover those persons having exclusive recording contracts for public performances. We will also protect copyright works made public in the Internet and digital environment. We will offer a new moral right to object to the derogatory treatment of works in addition to the existing right to be identified as author and right against false attribution. These changes are all in line with the latest and best international trend.

Secondly, open policy. In line with other intellectual property laws and our open trade policy our new copyright regime will feature an open qualification system. Any original works created or published by anyone anywhere in the world would qualify for copyright protection in Hong Kong. This effectively extends copyright protection to, for instance, broadcasts originated outside but down-linked in Hong Kong.

Thirdly, more effective enforcement tools. Proof of copyright subsistence is often the stumbling block in civil and criminal proceedings against copyright infringements. To facilitate enforcement efforts we have reinforced provisions in the Copyright Bill that allow courts to accept an affidavit as a basis of proof. We have introduced a provision that allows customs officers the discretion to seize and forfeit suspected pirated goods. We have also doubled the penalties for first offenders of copyright infringement to increase the deterrent effect.

Fourthly, greater transparency. We have introduced a voluntary registration system for the collective copyright administration societies to ensure that essential information such as scales of royalty charges will be available to the public. We have also proposed to re-establish the Copyright Tribunal with extended jurisdiction to handle copyright licensing disputes to ensure balance of interests. I hope all these serve to demonstrate that the new copyright law will be a more comprehensive, modern, fair and effective tool to protect the interests of copyright owners and deter infringing activities at all levels.

Mr Deputy, I will now turn to the more controversial issues in the Copyright Bill. Given the degree of public concern I shall start with the regulation of parallel imports.

When the Copyright Bill was introduced into this Council in February we had proposed to decriminalize the act of parallel importing copyright works. We believed civil remedies would suffice to discourage any form of free riding

on the hard work and substantial investment of copyright owners and exclusive licensees. Since the publication of the Bill, copyright owners and exclusive licensees have lobbied intensively for retaining criminal sanctions against parallel imports.

Representatives from the film industry have argued that their copyright cannot be exploited commercially and adequately unless they have exclusive distribution rights in the local market. They have further made known that they are very much constrained by the established international practice of a sequential release of films in different formats. The normal release sequence is first to arrange for theatrical release followed by home video release, release on video-on-demand programmes, pay-TV and eventually free TV, taking about eighteen to 24 months time in total. A forceful argument has been made that parallel importation would disrupt this conventional trade practice and seriously undermine the film market.

Representatives of the sound recording industry have also submitted that parallel importation of licensed products from developing countries would undercut and seriously damage the local market for recorded music. They have claimed that right holders would very rarely be able to obtain effective civil remedies against parallel importation. Together with representatives of the film industry they have asked to retain criminal sanctions for at least two years from the first release of their products anywhere in the world.

On the other hand, importers, retailers and consumer groups have voiced strong objection against any restrictions on parallel importation. Their concern is that restrictions on parallel importation will distort the market and restrict free trade, competition and consumer choice. They want to see the removal of all criminal and civil sanctions against parallel imports.

We have reviewed our proposal in the light of the representations made. We accept that the economic exploitation of a copyright work is usually most critical during the period immediately after the work is first published or released in the market. We acknowledge that criminal sanctions, though rarely exercised, have a practical deterrent effect. We accept that complete decriminalization could be misconstrued as the Government relaxing controls against intellectual property infringements. We also accept that consumer interests should not be compromised as a result of failure of copyright owners or their exclusive licensees to provide certain demanded products.

Since there is a clear wish amongst all parties to strive towards a compromise, and since we are not bound by any international standards on this matter, we have proposed an alternative package. I underline the word "package" which covers three elements.

Firstly, retain criminal sanction against the parallel importation of goods within 18 months of the first publication or release of the copyright products anywhere in the world. Civil remedies will still be available throughout the copyright term but an exclusive licensee can only proceed with civil actions when the copyright owner has joined as a plaintiff. This change meets the concerns of the copyright owners and exclusive licensees.

Secondly, introduce a defence provision for a person to parallel import a copyright product even without a licence from the copyright owner or exclusive licensee if the latter has acted unconscionably, that is, by withholding supply on unreasonable grounds or by agreeing to supply but on unreasonable terms. This defence only applies when the importation takes place 18 months or more after the first publication or release of the product anywhere in the world.

Thirdly, as an additional safeguard for importers and retailers, introduce a new provision to deter groundless threats for civil proceedings against alleged parallel imports and to provide remedies for such unwarranted threats.

Mr Deputy, we believe this carefully-constructed package strikes the right balance between the rights of copyright owners and exclusive licensees to exploit their works and investments on the one hand, and the interests of the importer and retail traders and expectations of consumers on the other. We believe it is a pragmatic compromise. I will be moving Committee stage amendments to effect this compromise.

I urge Members to support my amendments. In doing so I recognise that different affected parties would each have wanted more. However, to modify any elements of this carefully-constructed package would upset the delicate balance and risk unravelling the whole package.

Another controversial issue is whether licensees of satellite master antennae television, hereafter referred to as SMATV systems, should continue to be exempted from seeking copyright clearance. In the Bill gazetted, we had

proposed to remove this exemption so that television and sound recording broadcasters could either withhold copyright permission to re-transmit unencrypted signals or impose royalties or conditions for such re-transmission. We considered this to be consistent with our commitment as well as the best international norm to protect intellectual property rights.

Nevertheless, the SMATV operators have submitted to the Bills Committee that, under the existing broadcasting policy and the terms of their licences, they are debarred from either collecting subscriptions from users of their systems or indirectly charging fees for the right to receive programmes. Therefore much as they are prepared to pay the broadcasters they would not be allowed to do so. The Copyright Bill, as originally drafted, would thus create conflicting obligations on the SMATV operators should the copyright owners exercise their rights. As a consequence the SMATV operators might have to discontinue their service abruptly. This would also disrupt the viewing habits of the many SMATV subscribers.

In seeking to balance the concerns of the broadcasters on the one hand and the practical constraints of SMATV operators on the other, the Bills Committee has asked us to review the matter. Our alternative approach, which the Bills Committee has supported, is to state in law that unless otherwise notified, SMATV operators would be deemed to have been licensed by the broadcasters to re-transmit their programmes. The latter can give notice to revoke the implied licence by putting up an advertisement in one Chinese and one English newspaper in Hong Kong. However, pending a review of the television broadcasting policy in 1998, we will not activate this revocable implied licence provision. Doing so would expose the SMATV operators to conflicting obligations and probably cause disruption to existing services. I will be moving Committee stage amendments to pursue this alternative approach.

A third controversial issue relates to whether de-compilation of computer programmes should be allowed. De-compilation is the process of translating the more or less intangible object codes to ordinary programming languages or source codes. In the gazetted Copyright Bill, we have proposed to allow some limited degree of de-compilation when it was indispensable to facilitate inter-operability between different computer systems. This right to de-compile would itself be subject to agreements to the contrary. In the light of representations from the software industry, we accept that the de-compilation

provision as drafted would be so limited as to be of little practical help to software companies wanting to de-compile.

On the other hand, as an exception to copyright restriction the provision has aroused serious concern amongst leading software companies. They assert that the provision suggests condoning piracy in computer programmes.

We have reviewed our policy intention on de-compilation. We would like to encourage competition in the information technology industry by facilitating timely access to information and ideas underlying computer programmes. Doing so is necessary for the independent creation of new products that attach to or compete with the programmes under study. We accept that the incidental copying of a computer programme by a lawful user during the course of de-compilation or other reverse engineering performed to understand the operation of the programme under study, or to develop a product inter-operable with the programme under study, need not be absolutely restricted by copyright nor should it be completely de-regulated.

In determining whether the act should be allowed we believe the overriding test is whether such act conflicts with the normal exploitation of the work by the copyright owner and unreasonably prejudices the legitimate interests of the copyright owner. If it does it would not be a fair use.

With this objective in mind we have reviewed the language adopted in the gazetted Bill. We have concluded that the de-compilation exception clause should be deleted and that the provisions on fair dealing should be modified. The object is to allow de-compilation to be deemed a fair use provided it does not conflict with the normal exploitation of the rights and legitimate interests of the copyright owner.

Drawing from the relevant provisions in the United States we propose that other factors, including the purpose and nature of the dealing, the nature of the copyright work and the amount and substantiality of the portion dealt with in relation to the copyright work as a whole, will also be taken into account in determining what constitutes fair use. We are pleased that the Bills Committee and the software industry have both found the proposal acceptable. I will be moving Committee stage amendments later on to achieve this.

A fourth issue arousing much debate relates to whether we should institute new and more powerful measures to seek to clamp down on copyright piracy. During the deliberations in the Bills Committee, we have proposed to amend a clause so that landlords who knowingly allow their premises to be used in piracy businesses should be subject to civil or even criminal sanction. While accepting the need to consider new measures to combat copyright piracy, the Bills Committee has asked us to consider the implications more carefully. We will do so. We will wish to conduct a proper consultation exercise on the matter which will take time. When that has been done, we will as necessary refer the matter to Members for further consideration.

As Mrs Selina CHOW suggested a while ago, we have indeed been giving serious thought to new ideas to eradicate copyright piracy. Views may well be polarised on a few issues during our debate on the Copyright Bill, but combating copyright piracy is not one of those. The Administration and Members are united in our determination to combat piracy which has been putting Hong Kong's reputation at stake. The Administration is actively considering the need to control the import and export of CD presses and to bring copyright piracy within the ambit of the Organized and Serious Crimes Ordinance.

We will continue our regular dialogues with the copyright owners and step up publicity against the use of pirated copyright products. We welcome constructive suggestions to help combat copyright piracy.

The last issue I wish to highlight relates to the transitional clauses in the Copyright Bill. It has been suggested to us that the transitional arrangements for deeming whether certain acts infringe copyright are not clearly drafted, and that they should be amended such that goods legitimately imported before the commencement of the new copyright law should be allowed to continue to be sold.

It is a well-established legal principle that acts done before the commencement of a new law would only be subject to the provisions of the previous law in force, if any, when those acts concerned were done. Clearly goods imported after the commencement of the new law would be subject to the new provisions. Goods imported legitimately under the existing copyright framework will no doubt remain legitimate after the enactment of the Copyright Bill.



However, goods imported illegitimately under the existing law will not and should not be sanitised retrospectively. An infringing copy will not simply cease to be infringing with the passage of time, and any subsequent dealings in the copy may still be sued upon. This is precisely the purpose for which the transitional clauses have been drafted following well-established and well-tested legal principles. I would strongly advise against any tampering with the transitional clauses as they appear in the gazetted Copyright Bill.

Mr Deputy, I have spoken at some length in order to elucidate those issues of common interest and concern in the Copyright Bill. Other than those Committee stage amendments I have highlighted just now, there are some other technical, textual or translation-related refinements which I will not flag up in the interest of time. Most of these have been considered and agreed by the Bills Committee.

The Copyright Bill as drafted and amended reflects the collective wisdom of Members and that of leading representatives of various trades in Hong Kong. We have worked hard to make it as comprehensive and effective as possible. The Administration is grateful for the recognition given by Honourable Members to its efforts. Throughout the exercise the Administration has one fundamental objective in mind, and that is to put in place a protection regime for copyright which meets the highest standards in the world and which Hong Kong can be proud of.

Mr Deputy, with the support of this Council, I hope we can enact the proposed legislation in time for bringing it into force on 27 June 1997. The enactment of the Copyright Bill prior to the transition is essential to maintaining continuity in copyright protection.

With these remarks, I recommend the Bill to this Council, subject to the Committee stage amendments that I shall move shortly. Thank you.

12.26 pm

THE PRESIDENT resumed the Chair.

*Question on the Second Reading of the Bill put and agreed to.*

Bill read the Second time.

*Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).*

### **Committee stage of Bill**

Council went into Committee.

### **COPYRIGHT BILL**

Clauses 2, 4, 5, 10 to 13, 16, 17, 18, 20 to 25, 27, 28, 30, 31, 32, 34, 39, 40, 41, 43 to 48, 50, 52 to 58, 62, 63, 64, 66, 67, 69 to 75, 77 to 81, 83 to 86, 88 to 104, 106, 107, 109, 111, 112, 114, 116, 117, 120 to 126, 128, 130 to 146, 148 to 159, 161, 162, 163, 165, 167 to 192, 204, 207, 213, 217, 220, 221, 227, 229, 230, 232, 233, 236, 237, 238, 240 to 243, 245, 248, 257, 261, 262, 263, 266 and 271 to 276 were agreed to.

Clause 1

**CHAIRMAN** (in Cantonese): The Secretary for Trade and Industry and Mr SIN Chung-kai have separately given notices to move amendments to clause 1.

I propose that the amendments to clause 1, proposed separately by the Secretary for Trade and Industry and Mr SIN Chung-kai, be debated together in a joint debate.

Committee shall now debate the amendments to clause 1, proposed separately by the Secretary for Trade and Industry and Mr SIN Chung-kai, in a joint debate. I will first call upon the Secretary for Trade and Industry to move her amendment, as she is the public officer in charge of the Bill.

**SECRETARY FOR TRADE AND INDUSTRY:** Mr Chairman, I move that clause 1 be amended as set out in the paper circularized to Members.

I have proposed this amendment in order that I can specify different dates for bringing different provisions in the Bill into force. My intention is to activate all provisions once the Bill is enacted and gazetted on 27 June with only two exceptions.

The first exception relates to the rights of broadcasters to revoke their implied licences that allows satellite master antennae television operators, or SMATV operators in short, to re-transmit unencrypted signals as I have explained in the Second Reading debate. Pending a review of the television/broadcasting policy in 1998, it would not be appropriate to activate the related clause 82 subclause (4) and clause 254 subclause (4A). Doing so would expose the SMATV operators to conflicting obligations and probably cause disruptions to existing services.

The second exception relates to the setting up of the reconstituted Copyright Tribunal. I will activate the related provisions, that is, parts of clause 141 subclause (4), clauses 142 to 149, and section 5 of Schedule 4, as soon as the administrative formalities are completed.

The first exception has aroused concern from broadcasters on the ground that deferring the commencement of clause 82 subclause (4) and clause 254 subclause (4A) of the Bill would compromise their right to restrict re-transmission of their signals. The Honourable SIN Chung-kai has moved an amendment so that these sections would come into operation along with all other key provisions. The Administration does not support this amendment because the licences of the SMATV operators stipulate that they can only charge for the setting-up and maintenance of the physical facilities but not a programme fee. Pending the review on broadcasting policy it will not be fair if the SMATV operators are obliged to pay broadcasters for the right to transmit on the one hand but are debarred from charging their subscribers for the cost incurred on the other.

Although this is not my policy area, I have been authorised by the Secretary for Broadcasting, Culture and Sports to reassure Members that the broadcasting review will, as promised, take place in 1998 and the issue of making the copyright and broadcasting policies compatible in this area will indeed be examined. We would also add that the broadcasters will not be put in a worse-off position as compared with existing arrangements. Quite on the contrary, their rights will be explicitly recognized in the Copyright Bill.

Mr Chairman, I urge Members to support the Administration's amendments to clause 1 and vote against Mr SIN Chung-kai's amendment.

*Proposed amendment*

**Clause 1 (see Annex X)**

**CHAIRMAN** (in Cantonese): I will call upon Mr SIN Chung-kai to speak on the amendment moved by the Secretary for Trade and Industry as well as his own proposed amendment, but will not ask Mr SIN to move his amendment unless the Secretary for Trade and Industry's amendment has been negatived. If the Secretary for Trade and Industry's amendment is agreed, that will by implication mean that Mr SIN Chung-kai's proposed amendment is not approved.

**MR SIN CHUNG-KAI** (in Cantonese): I urge members to vote against the amendment of the Secretary for Trade and Industry. Her amendment is in fact quite similar to mine. The only difference lies in the commencement date for repealing the copyright of satellite master antennae television (SMATV) operators.

I would like to raise one point to the Government. When the Government introduced the blue bill, broadcasters or copyright owners were empowered with rights and copyright owners were happy about this. However, towards a very late stage, that was some time in June, the Trade and Industry Branch (TIB) suddenly proposed a Committee stage amendment (CSA). In fact, we only got the CSA at a very late stage and we could hardly have sufficient time to listen to the arguments for and against the new proposals raised by both parties. Of course, we listened to the views of the SMATV operators. However, when the broadcasters concerned received the amendments of the Government, they grouped together and lobbied the Legislative Council Members. Thus we also had the chance to listen to their opinions.

I just want to emphasize that our discussion today is on the Copyright Bill. The spirit of the Bill is to protect the rights and interests of copyright owners. Since the Government has totally recognised in the blue bill the status of copyright owners, why should it wait for the results of the review of the Broadcasting, Culture and Sport Branch (BCSB) before taking any actions? We

can say that there is a lack of coordination between the two policy branches. How should we handle the situation? We believe that since we are now dealing with the Copyright Bill, we have to uphold Hong Kong's international image in showing respect for copyright. As we are now facing a lot of international media, we have to show them our respect for copyright.

We have listened carefully to the opinions of the TIB and the BCSB. During the past few days, we have held meetings with them to listen to their views and have reflected those views to the parties concerned. We believe many international organisations operate without encryption. Basically, these organisations hope that other people can receive their broadcast through satellite so that they can really be "free to air". The spirit behind this arrangement is to disseminate information, while operators would certainly not want their copyright to be infringed through such arrangements.

In fact, we find that many SMATV operators charge excessive rates, from \$6 to \$25 per household. When we referred the case to the Office of the Telecommunications Authority, the Director General just said that they would only deal with the problem when they have received complaints, but the problem has existed for a long time.

Mr Chairman, over ten international organisations of the media have already written to Members to put forward their arguments. We believe that we must strike a balance between protecting the right of copyright owners and enabling the community to continue to enjoy their rights to view broadcast programmes. After listening to the opinions of both parties, we do not think that the proposed change will do great harm to the interest of the community. Under such premises, since we are going to pass the Copyright Bill today and that the TIB has already recognised the right of copyright owners in the blue bill, I think we should implement these provisions as soon as possible and need not wait for the completion of the review of the BCSB. After all, we do not know when the legislation will be introduced again after the review is completed. It may take as long as two to three years.

Mr Chairman, with these remarks, I move my amendments.

**CHAIRMAN:** MR SIN Chung-kai, you may not move your amendment yet.

**MR SIN CHUNG-KAI** (in Cantonese): As I have mentioned in the beginning, I urge my colleagues to vote against the proposals of the Secretary for Trade and Industry, because my amendment is very similar to hers, with the only difference in the commencement date.

**CHAIRMAN** (in Cantonese): Members can now speak on the amendments of the Secretary for Trade and Industry as well as the amendments of Mr SIN Chung-kai.

**MRS SELINA CHOW** (in Cantonese): Mr Chairman, regarding the amendments moved by the Secretary for Trade and Industry and Mr SIN Chung-kai, I believe we have to understand fully the implications and consequences of these amendments. It is beyond doubt that both amendments confirm the copyright of non-encrypted broadcasts. The only difference between them is the effective time to exercise such a right. If there is no need to consider the existing broadcasting policy, licensing condition or current market situation, certainly there will not be any problem at all.

But in fact, as the Secretary for Trade and Industry has just now clearly stated, the current licenses for satellite master antennae television (SMATV) forbid licensees to collect subscription from their users for broadcasting programmes. Licensees can only charge transmission fees. What is the purpose of this policy? The purpose is to confirm that licensees only act as programme transmitters, not as paid TV services providers. This is a very important point.

In proposing his amendment, the Secretary for Trade and Industry has taken into consideration that the Secretary for Broadcasting, Culture and Sport is now conducting a review and has promised to make adjustments to subscription television next year. The Secretary for Trade and Industry thus proposes that the commencement date of this particular provision should tie in with the changes in the overall policy on subscription television. This is a reasonable proposal, which would ensure orderly market adaptation. It is not, as some people claim, depriving indefinitely the right of copyright owners, as the Ordinance has already confirmed their rights. The amendment of Mr SIN Chung-kai, which aims at bringing the provision to immediate effect, will cause

some chaos. Without a buffer period, broadcasters holding the copyrights will exercise their right immediately, and the Government will be forced to change the existing policy. With no other options, the Government will be compelled to change the existing policy hastily. This will certainly cause confusion and may affect the interests of the audience, disrupting their viewing of some programmes. If there are no suitable transitional arrangements, viewers will be denied access to certain programmes. Although the number of viewers affected is not known, we are sure that some will be affected. In addition, SMATV licensees may also suffer to a certain extent. This is not a wise move. It is interesting to note that, although the Democratic Party always claims that it cares about the interests of consumers, it has disregarded the interests of consumers in the SMATV issue as consumers' choices on programmes may be affected by the amendment. I am baffled by the position of the Democratic Party on this issue.

Mr SIN Chung-Kai has said just now he had been lobbied by many broadcasters. Maybe they are so persuasive that he has been convinced. However, I think the reasonable and rational solution to this problem is to let the Secretary for Broadcasting, Culture and Sport act as the person-in-charge of this policy. He can then negotiate with both the broadcasters and the SMATV licencees to reach a fair and mutually acceptable commencement date for this particular provision. Unfortunately, up to now, nothing in that direction has been done. The broadcasters are notified that the Government has made the decision. It is thus understandable why their reactions are so strong. The crux of the problem lies in how the issue is handled, not the rationale behind. We should not, simply because of the reactions of the broadcasters, support the amendment of Mr SIN Chung-kai as it may sacrifice an orderly change in policy. We should allow reasonable time for the change and adopt reasonable steps. Therefore, I hope that Members would support the amendment moved by the Secretary for Trade and Industry. We must remember that a reasonable transitional period must be allowed for any new legislation. Apart from protecting certain interests, we should also bear in mind that disruption to public services should be avoided. On the other hand, I also urge the Broadcasting, Culture and Sport Branch to complete the review as soon as possible, and to have the provision concerned come into effect within 1998.

Thank you Mr Chairman.

**MR ANDREW CHENG** (in Cantonese): Mr Chairman, I rise to support the amendments moved by the Honourable SIN Chung-kai on behalf of the Democratic Party.

Mr Chairman, I would like to clarify the position of the Democratic Party on the broadcasting issue. First of all, as Mr SIN Chung-kai has just mentioned, when the blue bill was introduced to the Council, we noted that there was obviously no co-ordination between the Broadcasting, Culture and Sport Branch (BCSB) and the Trade and Industry Branch (TIB) on this amendment. We must not forget that this blue bill is an official bill introduced by the Government. However, when the Government drafted this Bill, it failed to fully understand that this Council has been asking the BCSB for years to formulate a more practical and forward looking broadcasting policy. If we have to wait until 1998, it is indeed too late. During this term and the previous term of this Council, Members have commented on this issue repeatedly, and I do not believe the Trade and Industry Branch has never heard about this.

If the Honourable Mrs Selina CHOW from the Liberal Party criticises us for ignoring the interests of consumers in this issue, I really feel disappointed and regretful. I believe we have struck a balance between consumer right and consumer protection. The focus of this Bill should be copyright. A few weeks ago, Mrs Selina CHOW listened to the views of theater operators on the amendments of the Places of Public Entertainment Bill. She paid heed to the concerns of the trade and called for a special meeting to make an urgent appeal to Members. I would like to remind her that every political party has to balance the interests of consumers and the interests of the trades concerned. This time, I think the Democratic Party has listened to the views of the trade and shown concern for the interests of consumers. After listening to the opinions of the officials of the BCSB, we do have some worries. What worries us is that some people will think that satellite master antennae television (SMATV) subscribers may suddenly be cut off from information outside Hong Kong after the handover. Will this give rise to the impression that the political change will bring about a change in the freedom of speech, or even a restriction on the freedom of speech? However, after discussion with the trade, we know that 12 broadcasters call for the negation of the amendments to the Copyright Bill. Mr Chairman, I believe Mrs Selina CHOW will not turn a deaf ear to these opinions. I hope the Government will understand that the problem lies in the lack of co-ordination between the BCSB and the TIB, and Members are thus subject to pressure. Mr Chairman, that is unfair to us.



After studying and reviewing the Bill as a whole, we believe we should respect the principle spirit of the Bill. As Mr SIN Chung-kai has just said, which I shall not repeat, this is a Bill on copyright which also involves the interests of consumers. We hope that the BCSB will finalise the broadcasting policy as soon as possible. I believe if the amendment moved by Mr SIN Chung-kai is carried, it will exert more pressure on the BCSB to expedite the review. At this moment, I still doubt whether the Broadcasting, Culture and Sport Branch can complete the review by 1998.

Mr Chairman, these are my remarks.

**MRS SELINA CHOW** (in Cantonese): Mr Chairman, as the Honourable Andrew CHENG has mentioned my name two or three times in his speech, I feel obliged to respond. Just now, he has made a comparison by mentioning the question of whether theatres should be shut down within one year if their operators fail to obtain the licences. I believe there is no need for such a comparison. As Legislative Councillors, we are always subject to pressure from various parties, either from members of the trade or from the community. I believe the most important of all is that Members should base their consideration on justifications. We are not trying to protect the interests of a particular party. What we have to consider are facts and reasons and we should avoid misunderstandings.

The amendment now moved by the Secretary for Trade and Industry will not deprive broadcasters of their copyright. I know that some broadcasters have written to Members, saying that their copyright would be exploited indefinitely by the amendment of the Secretary for Trade and Industry. This is not true. In fact, if this Bill has not been introduced, their copyright would not be recognized. The Bill confirms their copyright. The problem only lies in when such right can be exercised. Let me clarify further on the deliberation of the Bills Committee. All meetings of the Bills Committee were open to the public. When satellite master antennae television (SMATV) operators met the Bills Committee to express their views, the process was open and all other broadcasters should be aware of it. The Government then conducted an internal consultation on the views we have received, and then published the blue bill. Why does the Government publish a blue bill? It is because that the provisions on a blue bill can be amended. The provisions of the Bill may be incorrect or may have

problems, and there may be a lack of co-ordination within the Government, and that is why this blue bill is published. It is open to amendments. After listening to the views of the public expressed to us, the Government then studied the Bill to see whether there were any problems. If there are problems, the Bill will be amended. This is a right and proper procedure. Member of the public who are interested in the Bill can attend our meetings and reflect their views to us after the meetings. Therefore, it is not correct to say that the Bill has been amended hastily.

In fact, the Government decided to revise the policy in mid May, some time before 20 May. The Bills Committee supported the amendment at that time, and no one raised any objections. When the Trade and Industry Branch submit the Committee stage amendments (CSA) to Members in June, not many people voiced objections. Later, perhaps after the CSA were published, some broadcasters started to voice their opinions. I have to admit that objections have become stronger and stronger. However, I still believe the deciding factor is not on the voice of objections. In fact, many subscribers to SMATV have no means to organise themselves to voice their opinions. These people may not have expressed their views to us, but we, as legislators, should base our decision on facts and reasons. Do we really deprive the copyright of copyright owners? No. What we are discussing now is how to introduce a reasonable transitional arrangement for exercising the copyright. Therefore, I hope Members can have a clear picture of the situation and understand what the consequences will be. I hope Members will support the amendments of the Secretary for Trade and Industry.

**MR SIN CHUNG-KAI** (in Cantonese): Mr Chairman, my reply will be very short.

**CHAIRMAN** (in Cantonese): My script is so written that I have to say, "I will invite the Honourable SIN Chung-kai to speak for the second time." In fact, in the Committee stage, Members are allowed to speak for the second time. Therefore, I have not read that sentence. That sentence is not correct. If Mr SIN Chung-kai would like to speak, he is now entitled to do so.

**MR SIN CHUNG-KAI** (in Cantonese): I would like to respond to what the Honourable Mrs Selina CHOW has said. The blue bill has in principle stated the respect for the copyright of broadcasters. As she has just said, the problem only lies in the effective date of the provision. Therefore, respect for copyright is the main purpose of the Bill. On this premise, there may be some incoordination between the Trade and Industry Branch (TIB) and the Broadcasting, Culture and Sport Branch (BCSB). These two policy branches have thus made some technical amendments. In fact, even if the Bill is enacted, the BCSB and the Government will still have six months to make preparations if they want to. I do not think we are forcing the Government to expedite its work by means of this amendment. We definitely do not have such an intention. The question is the main principle. Our rationale is that, since we are discussing the Copyright Bill and we respect for copyright, we should take this as the guiding principle. All other technical problems should be secondary ones. The TIB should, before drafting the Bill, seek the consensus of the BCSB on the provisions of the blue bill, and consult the trades concerned, including the satellite master antennae television (SMATV) operators as well. The existing problem is, after the SMATV operators have expressed their views, the Secretary for Trade and Industry then introduced the amendments. However, the relevant trades do not have sufficient time to state their positions and arguments. I am sorry about this situation because we did not have enough time to listen to their views. If compared to the issue on parallel importation and the opinions of the retailers that were mentioned in the debate just now, we have spent much more time on discussing that issue and in listening to the views of both sides. Mr Chairman, I would like to point out once again that the only one difference between my amendment and that of the Secretary for Trade and Industry is the effective date of the particular provision. The rest of my amendment is completely the same as that of the Secretary. With regard to the effective date, since we consider it essential to respect for copyright and since some people should own the copyright, why should the Government delay implementing the provision?

Thank you Mr Chairman. I urge Members to vote against the amendment of the Secretary for Trade and Industry.

**SECRETARY FOR TRADE AND INDUSTRY:** Mr Chairman, very briefly, I just want to put on the record that the proposal incorporated in my Committee stage amendment on clause 1 was first put to the Bills Committee in late April,

which allowed the Bills Committee some one and a half months to consider the proposal behind the Committee stage amendment I have just moved.

As the Chairman of the Bills Committee has just said, the Bills Committee was an open forum. The Bills Committee, indeed any Honourable Member and any member of the Administration, is constantly in a listening mode, is constantly reacting and responding to comments voiced by members of the public as well as comments and opinions expressed to us by interested parties.

Thank you, Mr Chairman.

*Question on the Secretary for Trade and Industry's amendment put.*

*Voice vote taken.*

THE CHAIRMAN said he thought the "Noes" had it.

Mrs Selina CHOW claimed a division.

**CHAIRMAN** (in Cantonese): Committee shall 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 1 moved by the Secretary for Trade and Industry 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?

**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 Edward HO, Mrs Miriam LAU, Mr Frederick FUNG, Mr Eric LI, Dr Philip WONG, Mr Howard YOUNG, Miss Christine LOH, Mr Ambrose LAU, Dr LAW Cheung-kwok, Mr LEE Kai-ming,

Mr Bruce LIU, Mr LO Suk-ching, Mr MOK Ying-fan and Miss Margaret NG voted for the amendment.

Mr SZETO Wah, 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 James TO, Dr YEUNG Sum, Mr WONG Wai-Yin, Mr LEE Cheuk-Yan, 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 LAU Chin-shek, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr NGAN Kam-chuen, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted against the amendment.

THE CHAIRMAN announced that there were 16 votes in favour of the amendment and 34 votes against it. He therefore declared that the amendment was negatived.

**CHAIRMAN** (in Cantonese): As the amendment to clause 1 proposed by the Secretary for Trade and Industry has been negatived, I now call upon Mr SIN Chung-kai to move his amendment to clause 1.

**DR LEONG CHE-HUNG** (in Cantonese): Mr Chairman, I move a motion in accordance to Section 37(4) of the Standing Order that if any Members claim for further divisions in respect of any amendments to the Copyright Bill, the committee of the whole Council shall proceed to each of such divisions immediately after the division bell has been rung for one minute. Thank you.

*Question on Dr LEONG Che-hung's motion proposed, put and agreed to.*

**MR SIN CHUNG-KAI** (in Cantonese): I move that clause 1 be amended as set out in the paper circularized to Members.

*Proposed amendment*

**Clause 1 (see Annex X)**

*Question on the amendment put and agreed to.*

*Question on clause 1, as amended, put and agreed to.*

1.06 pm

**CHAIRMAN** (in Cantonese): I now suspend the sitting for lunch and it will take one hour. Council will resume at 2.00pm.

Sitting suspended.

2.05 pm

**CHAIRMAN** (in Cantonese): Council will resume. Council goes into Committee.

Clauses 3, 6 to 9, 14, 15, 19, 26, 29, 33, 36, 37, 38, 42, 49, 51, 59, 60, 61, 65, 68, 76, 82, 87, 105, 108, 113, 118, 119, 127, 129, 147, 160, 164, 166, 193 to 203, 205, 206, 208 to 212, 214, 215, 216, 218, 219, 222 to 226, 228, 231, 234, 235, 239, 244, 246, 247, 249 to 256, 258, 259, 260, 264, 265 and 267 to 270

**SECRETARY FOR TRADE AND INDUSTRY:** Mr Chairman, I move that the clauses specified be amended as set out in the paper circularized to Members.

The amendments proposed by the Administration for these clauses are all technical in nature. Most of the changes needed are to deal with the consistency of the Chinese and English texts of the Bill.

Thank you, Mr Chairman.

*Proposed amendments*

**Clause 3 (see Annex X)**

**Clause 6 (see Annex X)**

**Clause 7 (see Annex X)**

**Clause 8 (see Annex X)**

**Clause 9 (see Annex X)**

**Clause 14 (see Annex X)**

**Clause 15 (see Annex X)**

**Clause 19 (see Annex X)**

**Clause 26 (see Annex X)**

**Clause 29 (see Annex X)**

**Clause 33 (see Annex X)**

**Clause 36 (see Annex X)**

**Clause 37 (see Annex X)**

**Clause 38 (see Annex X)**

**Clause 42 (see Annex X)**

**Clause 49 (see Annex X)**

**Clause 51 (see Annex X)**

**Clause 59 (see Annex X)**

**Clause 60 (see Annex X)**

**Clause 61 (see Annex X)**

**Clause 65 (see Annex X)**

**Clause 68 (see Annex X)**

**Clause 76 (see Annex X)**

**Clause 82 (see Annex X)**

**Clause 87 (see Annex X)**

**Clause 105 (see Annex X)**

**Clause 108 (see Annex X)**

**Clause 113 (see Annex X)**



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**Clause 118 (see Annex X)**

**Clause 119 (see Annex X)**

**Clause 127 (see Annex X)**

**Clause 129 (see Annex X)**

**Clause 147 (see Annex X)**

**Clause 160 (see Annex X)**

**Clause 164 (see Annex X)**

**Clause 166 (see Annex X)**

**Clause 193 (see Annex X)**

**Clause 194 (see Annex X)**

**Clause 195 (see Annex X)**

**Clause 196 (see Annex X)**

**Clause 197 (see Annex X)**

**Clause 198 (see Annex X)**

**Clause 199 (see Annex X)**

**Clause 200 (see Annex X)**

**Clause 201 (see Annex X)**

**Clause 202 (see Annex X)**

**Clause 203 (see Annex X)**

**Clause 205 (see Annex X)**

**Clause 206 (see Annex X)**

**Clause 208 (see Annex X)**

**Clause 209 (see Annex X)**

**Clause 210 (see Annex X)**

**Clause 211 (see Annex X)**

**Clause 212 (see Annex X)**

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**Clause 214 (see Annex X)**

**Clause 215 (see Annex X)**

**Clause 216 (see Annex X)**

**Clause 218 (see Annex X)**

**Clause 219 (see Annex X)**

**Clause 222 (see Annex X)**

**Clause 223 (see Annex X)**

**Clause 224 (see Annex X)**

**Clause 225 (see Annex X)**

**Clause 226 (see Annex X)**

**Clause 228 (see Annex X)**

**Clause 231 (see Annex X)**

**Clause 234 (see Annex X)**

**Clause 235 (see Annex X)**

**Clause 239 (see Annex X)**

**Clause 244 (see Annex X)**

**Clause 246 (see Annex X)**

**Clause 247 (see Annex X)**

**Clause 249 (see Annex X)**

**Clause 250 (see Annex X)**

**Clause 251 (see Annex X)**

**Clause 252 (see Annex X)**

**Clause 253 (see Annex X)**

**Clause 254 (see Annex X)**

**Clause 255 (see Annex X)**

**Clause 256 (see Annex X)**

**Clause 258 (see Annex X)**

**Clause 259 (see Annex X)**

**Clause 260 (see Annex X)**

**Clause 264 (see Annex X)**

**Clause 265 (see Annex X)**

**Clause 267 (see Annex X)**

**Clause 268 (see Annex X)**

**Clause 269 (see Annex X)**

**Clause 270 (see Annex X)**

*Question on the amendments put and agreed to.*

*Question on clauses 3, 6 to 9, 14, 15, 19, 26, 29, 33, 36, 37, 38, 42, 49, 51, 59, 60, 61, 65, 68, 76, 82, 87, 105, 108, 113, 118, 119, 127, 129, 147, 160, 164, 166, 193 to 203, 205, 206, 208 to 212, 214, 215, 216, 218, 219, 222 to 226, 228, 231, 234, 235, 239, 244, 246, 247, 249 to 256, 258, 259, 260, 264, 265 and 267 to 270, as amended, put and agreed to.*

Clause 35

**SECRETARY FOR TRADE AND INDUSTRY:** Mr Chairman, I move that clause 35(3) be amended as set out in the paper circularized to Members.

The proposed amendment is needed to clarify that an accessory work such as labels or instruction manuals for non-copyright products will not be considered an infringing copy under the Copyright Bill, and as such parallel importation of goods containing such accessory work will not be restricted under the Bill.

The amendment is technical in nature and I will move another Committee stage amendment to add a new subclause 6(a) to clause 35 to define the concept of an accessory work. The Bills Committee has discussed and endorsed the proposed amendments.

Thank you, Mr Chairman.

*Proposed amendment*

**Clause 35 (see Annex X)**

*Question on the amendment put and agreed to.*

**CHAIRMAN** (in Cantonese): The Secretary for Trade and Industry, Dr HUANG Chen-ya and Mr CHAN Kam-lam have separately given notices to move amendments to clause 35(4).

I propose that the amendments to clause 35(4), proposed separately by the Secretary for Trade and Industry, Dr HUANG Chen-ya and Mr CHAN Kam-lam, be debated together in a joint debate.

**CHAIRMAN**(in Cantonese): Committee shall debate the amendments to clause 35(4), proposed separately by the Secretary for Trade and Industry, Dr HUANG Chen-ya and Mr CHAN Kam-lam, in a joint debate.

**CHAIRMAN**(in Cantonese): Mr Howard YOUNG, a point of order?

**MR HOWARD YOUNG** (in Cantonese): Mr Chairman, just now you said that two Members have moved to amend clause 35(4), should it be clause 34(4)?

**MR CHAIRMAN** (in Cantonese): Would you please repeat your question?

**MR HOWARD YOUNG** (in Cantonese): Just now I heard you say that two Members have moved to amend 34(4), I doubt whether it should be clause 35(4).

**CHAIRMAN** (in Cantonese): The amendments moved are on clause 35(4). I would ask the Secretary for Trade and Industry to move the amendments first as she is the public officer in charge of this Bill.

**SECRETARY FOR TRADE AND INDUSTRY**: Mr Chairman, I move that clause 35 subclause (4) be amended as set out in the paper circularized to Members.

The Government's Committee stage amendment to clause 35 subclause (4) has two effects. It serves to maintain criminal sanction for the parallel importation of copyright products during the 18 months after their first publication or release anywhere in the world. It also clarifies that the parallel importation of accessory work is not subject to criminal sanctions. Only the first part of our amendment is subject to debate.

As I explained during the Second Reading debate, the 18-month criminal sanction is part of a carefully-constructed package to resolve the issue of parallel importation. It is designed to strike a balance between the rights of copyright owners and exclusive licensees to exploit their works and investments on the one hand, and the interests of the import and retail traders and expectations of consumers on the other. We believe that the proposed 18 month period for criminal sanction is the correct and pragmatic balance in the circumstances.

I would strongly caution against changing it. Shortening it, as proposed by Dr the Honourable HUANG Chen-ya, would tilt the balance too much against the interests of the copyright owners and exclusive licensees. Prolonging it as proposed by the Honourable CHAN Kam-lam would be too much to the detriment of consumers, importers and retailers.

Mr Chairman, the Administration does not support Dr HUANG Chen-ya's amendment of stipulating different criminal sanction periods for different kinds of copyright products, that is, an 18-month period for films and a 12 month period for other kinds of copyright products. This would compromise our policy intention of offering copyright protection to all kinds of copyright products on a non-discriminatory basis.

Advances in technology also mean that copyright in one kind of product can very often be embedded in another kind. For instance, films are likely to contain literary works, sound recordings or even broadcast programmes that are themselves subject to copyright protection. Enforcement would be extremely difficult if the parallel importation of the film is no longer subject to criminal sanction but the underlying works are. I urge Members to vote in support of the Administration's amendments.

*Proposed amendment*

**Clause 35 (see Annex X)**

**DR HUANG CHEN-YA** (in Cantonese): Mr Chairman, I move the amendment that the provisions on criminal sanction shall only be applicable within one year for copyright products after the first day of their publication and within 18 months for films.

As I have just said, according to the original version of the Copyright Bill, parallel importation did not constitute a criminal offence. However, after the lobbying of the film industry, the Government introduced amendments to provide for a 18-month criminal sanction period. Why should the sanction period be fixed at 18 months? That is because of the special nature of the film industry which is different from other copyright products. Apart from film production, the industry also produces laser discs and video tapes. The film industry worries that, if the criminal sanction period is too short, laser discs and video tapes may be imported to Hong Kong before or during the screening of the film, and thus there will be fewer people going to cinemas. A longer criminal sanction period allows flexibility in arranging the time for releasing the film and facilitates the film industry in making suitable arrangements.



We understand the special nature of the film industry, but the inefficient operation of the trade gives rise to many problems. Very often, the audience in Hong Kong are unable to watch a new film on its first release or within a short period. Sometimes they may have to wait for one whole year or more before they can see the films they like.

People nowadays are very busy. They would like to spend their leisure time on individual activities. How many people are really interested in going to cinemas? Many people prefer to watch laser discs at home at any time convenient to them. Therefore, during the criminal sanction period, people who prefer to watch laser discs or video tapes will have to wait, as the films are still on at the cinemas. If the problem of films currently shown at cinemas does not exist, people may enjoy the laser discs or video tapes at an earlier time.

The audience may be waiting in vain because only some of the films produced in other places over the world will finally be screened in Hong Kong. Therefore, it may serve no purpose for audience to wait if the film is not going to be screened in Hong Kong. However, consumers can never know whether a film will be screened in Hong Kong. If the criminal sanction period is too long, it will be unfair to consumers.

Without criminal sanction, there will be fewer opportunities for imported films to be screened in cinemas, as most people can enjoy the films released in the form of laser discs and video tapes. I believe that film producers will, for fear of parallel imports and in the hope of getting more profits from the screening of films, arrange an early release of the films in Hong Kong while the films are being released in Europe or the United States. Consumers will actually benefit from this arrangement.

We know that an important effect of stipulating a criminal sanction period is to provide assistance to local film producers. I have mentioned earlier on that, owing to operational reasons, there will be inflow of parallel imports from other countries and thus affect the business of film producers. Therefore, as I have said before, legislation can only provide protection to them for a certain period of time, and changes in technology and borders will have much greater impact. I hope the film industry will take these changes into account and not rely on the protection provided by legislation.

Obviously, it is impossible for the film industry to improve its efficiency overnight. In order to minimize the impact of the Bill on the local film industry, the Democratic Party considers the 18-month criminal sanction period the longest they can accept, and this can strike a balance between the interests of the film industry and those of the consumers. We think a 24-month criminal sanction period tilts to the interests of the trade and ignores the needs of the consumers.

As regards books, computer software and records, we see no reasons why these copyright products should have a criminal sanction period for as long as 18 months. We think this is not justified and we do not see any need to set such a long protection period. Therefore, we consider that a 12-month criminal sanction period is already sufficient, and a shorter period may also be adequate. Unfortunately, the Bills Committee did not have enough time to discuss this issue in detail.

I hope the Government will conduct an in-depth study again to examine whether it is really necessary to protect other copyright products by criminal sanctions instead of civil proceedings, and how a right balance can be attained. I hope the Government will examine this issue thoroughly in future.

Finally, about the issue on voting order and the inclinations of Members, the Secretary for Trade and Industry has just said that the Government's proposal is impartial, while the proposals of the Democratic Party and I are favourable to consumers, and the amendments of Mr CHAN Kam-lam are in favour of the trades concerned. Due to the voting order, the amendments of the Democratic Party may be voted down if the amendments of the Government are not carried. Therefore, the Democratic Party has to support the amendments of the Government very reluctantly.

**MR CHAN KAM-LAM** (in Cantonese): Mr Chairman, the Democratic Alliance for the Betterment of Hong Kong (DAB) supports the principle proposed by the Secretary for Trade and Industry to maintain criminal sanction for a certain period after the first publication or release of copyright products anywhere in the world. Yet, we consider it practicable to extend the sanction period from 18 to 24 months, as the principle is totally in line with the practice of the Government.

The DAB thinks that the amendment of the Government aims at striking a balance among the interests of copyright owners, exclusive licensees and

consumers. People engaged in the film and sound recording industries also think that a sanction period of 18 months is not sufficient to safeguard the interests of exclusive licensees, in particular those of the film industry. The most desirable period is 24 months.

In our opinion, since the Government agrees that criminal sanction has a better deterrent effect than civil proceedings, it should respect the present mode of operation of the trade and listen to the views of the people concerned by extending the criminal sanction period, instead of setting the sanction period according to its own projection. The request of the trade for a 24-month criminal sanction period is in line with the principle of the Government's proposal, and has not compromised the principle of fair dealing or fair trade. In fact, in overseas countries where copyright legislation is implemented, there is no time limit for criminal sanction. Mr Chairman, my proposal to extend the criminal sanction period mainly serves to ensure that creators and copyright owners are better protected. Such protection benefits not only the local intellectual property owners but also international copyright owners. Hong Kong should have a better reputation in the international trading scene. As we strive for a longer criminal sanction period, I shall vote for the amendment of the Government. If the Government's amendment is not carried, I hope Members of this Council would support my amendment to extend the criminal sanction period to 24 months.

Mr Chairman, these are my remarks.

**MR HOWARD YOUNG** (in Cantonese): Mr Chairman, apart from the Secretary for Trade and Industry, the Democratic Party and the Democratic Alliance for the Betterment of Hong Kong (DAB) have moved amendments respectively on the same clause of the Bill. The Liberal Party has not moved any amendments on this clause, but would like to state our views.

As I recall, in a meeting of the whole Council, Members debated on the suitable period of criminal sanction. When the Bill was first introduced, it was provided that parallel importation should be decriminalised, which meant a complete opening up of the market. Retailers found the proposal most suitable. Subsequently, after the lobbying of the trades concerned, in particular the sound recording and film production industries, the Government considered that immediate decriminalisation of parallel importation would have substantial

impact on the trade. Of course, the trade considered permanent criminalisation the best solution. Later the huge gap between decriminalisation and permanent criminalisation was narrowed. Upon much persuasion, the Government convened a meeting attended by representatives of the trade and retailers. Some Members were also invited to the meeting. I attended the meeting, but I did not make any speech on the subject. It seemed that those who were present had opposing views; yet they managed to reach a mutually acceptable balance. However, such balance was very delicate. If either side goes back on the agreement, both sides will suffer.

Actually, three sides may suffer from this voting. Why? If we vote against the 18-month criminal sanction period proposed by the Government and vote for the 12-month period proposed by the Democratic Party, many Members who consider 12 months too short will vote against this amendment. Then, some Members will vote for the 24-month period proposed by the DAB, and maybe some Members who consider 24 months too long will vote against the amendment. If all three amendments proposed are voted down, the situation will be bizarre. The Bill may finally be reverted to the original proposal of a complete decriminalisation of parallel importation.

I remember that in a poll at the meeting of the whole Council, Members were found to have divided into three groups among themselves: one-third of the Members considered a 12-month period most suitable, another one-third considered a 18-month period appropriate, and the remaining one-third considered a 24-month period the best. The Liberal Party considered that an 18-month period seemed to be the best choice, though some might think that we were taking the middle road. At the meeting, one-third of the Members formed into a group and the three groups formed had their own opinions. At that meeting, two-third of the Members present supported that the criminal sanction period should exceed 12 months, while two-third of the Members supported that the period should be less than 24 months. In other words, Members might have already reached some consensus on the 18-month period. Although not all Members are willing to support this, and there might be Members present who have not participated in the meeting of the whole Council. I notice that Dr the Honourable HUANG Chen-ya and the Honourable CHAN Kam-lam just now have said that they would support the Government's amendment out of consideration for the general interest. I hope those Members who do not belong to any party, those who enter the Chamber during the division, and those who oppose to any proposals of the Democratic Party or the Liberal Party, will clarify

the facts. I hope Members will give unanimous support to the Government's amendment.

**CHAIRMAN** (in Cantonese): Before I put the motion of the Secretary for Trade and Industry to the whole Council, I would like to advise Members that if her motion is agreed, it implies that the respective amendments proposed by Dr HUANG and Mr CHAN are not approved. If the motion is negatived, I shall call on Dr HUANG to move his amendment. Whether or not Mr CHAN will be able to move his amendment will depend on the Council's decision on Dr HUANG's motion. If Dr HUANG's motion is negatived, then Mr CHAN will be able to move his amendment. If Dr HUANG's motion is agreed, it implies that the amendment proposed by Mr CHAN is not approved.

*Question on the amendment put and agreed to.*

**CHAIRMAN** (in Cantonese): As the amendment to clause 35(4) moved by the Secretary for Trade and Industry has been agreed, it is not possible for Dr HUANG or Mr CHAN to move their respective amendments, as they are inconsistent with the decision already taken.

**SECRETARY FOR TRADE AND INDUSTRY:** Mr Chairman, I move that subclause (4)(a) to clause 35 be amended as set out in the paper circularized to Members.

The proposed amendment is technical in nature and clarifies that customs border measures do not apply to parallel imported copyright works.

Thank you, Mr Chairman.

*Proposed amendment*

**Clause 35 (see Annex X)**

*Question on the amendment put and agreed to.*

**SECRETARY FOR TRADE AND INDUSTRY:** Mr Chairman, I move the addition of subclause (6A) to clause 35 as set out in the paper circularized to Members.

As I have explained earlier, for the technical amendment to clause 35 subclause (3), subclause (6A) defines an accessory work which will include labels, packaging, instructional materials and so on, attached to a product. It is also stipulated that the economic value of such accessory works should not be a major proportion of the total economic value of the product.

Mr Chairman, the proposals have been discussed by the Bills Committee and I am pleased that the Bills Committee supported the proposed amendments.

Thank you, Mr Chairman.

*Proposed amendment*

**Clause 35 (see Annex X)**

*Question on the amendment put and agreed to.*

**SECRETARY FOR TRADE AND INDUSTRY:** Mr Chairman, I move that clause 35(7) be amended as set out in the paper circularized to Members.

The proposed technical amendment is to clarify that a copyright work is not lawfully made when it is made in a place where the copyright in the work has expired but may still enjoy copyright protection in Hong Kong. This proposed amendment has been endorsed by the Bills Committee.

Thank you, Mr Chairman.

*Proposed amendment*

**Clause 35 (see Annex X)**

*Question on the amendment put and agreed to.*

*Question on clause 35, as amended, put and agreed to.*

Clause 110

**CHAIRMAN** (in Cantonese): The Secretary for Trade and Industry and Dr HUANG Chen-ya have separately given notices to move amendments to clause 110.

I propose that the amendments to clause 110, proposed separately by the Secretary for Trade and Industry and Dr HUANG Chen-ya, be debated together in a joint debate.

Committee shall now debate the amendments to clause 110, proposed separately by the Secretary for Trade and Industry and Dr HUANG Chen-ya, in a joint debate. I will first call upon the Secretary for Trade and Industry to move her amendments, as she is the public officer in charge of the Bill.

**SECRETARY FOR TRADE AND INDUSTRY:** Mr Chairman, I move that clause 110 be amended as set out in the paper circularized to Members.

The Administration's Committee stage amendment to clause 110 seeks to clarify that, in relation to civil proceedings on parallel importation, exclusive licensees may not without leave of the court proceed with civil action against parallel importers unless the copyright owner is joined as a plaintiff.

This has already limited the rights of exclusive licensees because in civil proceedings for other kinds of copyright infringements exclusive licensees can take civil action when the copyright owner is either joined as a plaintiff or added as a defendant.

Dr the Honourable HUANG Chen-ya has proposed to change the word "proceed" to "commence". This may look innocuous. However, in practice, it translates into forbidding exclusive licensees to apply on their own for interlocutory injunctions against possible infringements to their rights in so far as parallel imports are concerned. We know all too well that one has to act fast in protecting one's intellectual property rights. It would not be fair to deprive an exclusive licensee of speedy access to the useful remedy of interlocutory injunction when confronted with suspected parallel imports.

Mr Chairman, the Administration's amendment to clause 110 is part of the carefully-constructed package to resolve the issue on parallel importation. As I have explained during the Second Reading debate, all the concerned parties are prepared to accept the revised formulation as a pragmatic compromise. Dr the Honourable HUANG Chen-ya's amendment imperils the delicate balance that has been struck. It departs from the agreed consensus. Accordingly, the Administration does not support the proposed amendment.

Mr Chairman, I urge Members to vote for the Administration's proposed amendment.

*Proposed amendment*

**Clause 110 (see Annex X)**

**CHAIRMAN** (in Cantonese): I will call upon Dr HUANG Chen-ya to speak on the amendment moved by the Secretary for Trade and Industry as well as his proposed amendment, but will not ask Dr HUANG to move his amendment unless the amendment of the Secretary for Trade and Industry has been negated. If the amendment of the Secretary for Trade and Industry is agreed, that will by implication mean that Dr HUANG's amendment is not approved.

**DR HUANG CHEN-YA** (in Cantonese): Mr Chairman, the Secretary for Trade and Industry has already explained my proposed amendment, that is, exclusive licensee may not commence civil actions against infringement unless the copyright owner has joined as a plaintiff. The Secretary for Trade and Industry uses the word "proceed" in her amendment. It is true that my amendment will pose more difficulties to exclusive licensees. However, they can still institute civil proceedings and take other legal actions. Exclusive licensees should make the necessary arrangement in advance, so that copyright owners will take joint actions with them in order to protect their own interests. Exclusive licensees should not "take action at the eleventh hour" to seek the consent of the copyright owner for joint legal actions. We believe exclusive licensees should be able to do so.



The Copyright Bill has already provided exclusive licensees with a prolonged criminal sanction period. Just now, we have just carried the motion that the period shall last for 18 months. As regards the kind of actions that can be taken through civil proceedings, we think the existing legislation has already provided sufficient civil protection. Therefore, we must be cautious to avoid granting excessive power and we must prevent the power from being abused. Furthermore, general licensees, I do not mean exclusive licensees, or sole agents may wrongly conceived themselves as exclusive licensees or they may think they have such great powers. They may thus initiate improper civil proceedings or legal actions.

My amendment can in fact avoid these unnecessary proceedings. Therefore, I urge Members to vote against the amendment of the Administration and to vote in support of my amendment. I think this amendment can help strike the balance and protect the interests of consumers.

**CHAIRMAN** (in Cantonese): Members may now speak on the amendment moved by the Secretary for Trade and Industry and the amendment to be moved by Dr HUANG Chen-ya.

**MRS SELINA CHOW** (in Cantonese): Mr Chairman, the Liberal Party has considered these two different amendments in detail. It is undeniable that the major difference between the two amendments is that if the amendment of the Secretary for Trade and Industry amendment is carried, licensees may apply for injunctions. People engaged in the trade, in particular in the film and sound recording industries, have stressed that if they are not allowed to apply for injunctions at the time when parallel imports are imported to Hong Kong, those parallel imports may have already been sold out by the time they are allowed to do so. This situation is beyond their control. Therefore, injunctions are a very important means to licensees to combat illegal or infringing products. If they are deprived of such a means, the consequences may be far-reaching.

Legitimate importers will not be affected. We understand that licensees have to go through a serious of procedures and pay for the fees involved when they apply for injunctions. Therefore licensees will not resort to this means at will. Some unscrupulous importers or ad hoc importers, in particular those from the neighbouring countries, will import infringing parallel goods to Hong Kong

at such a quick pace that precaution can hardly be taken. Therefore, if licensees are not allowed to apply for injunctions, the local industries will be adversely affected and the trade concerned seriously battered. I hope Members will support the amendment of the Secretary for Trade and Industry.

2.40 pm

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

*Question on the amendment put.*

*Voice vote taken.*

**CHAIRMAN** (in Cantonese): Committee will now proceed to a division. The division bell will ring for one minute.

2.41 pm

THE PRESIDENT resumed the Chair.

**CHAIRMAN** (in Cantonese): I would like to remind Members that they are called upon to vote on the question that the amendments to clause 110 moved by the Secretary for Trade and Industry 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 results, Members may wish to check their votes. Are there any queries? The results will now be displayed.

Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr CHIM Pui-chung, Mr Frederick FUNG, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Miss

Christine LOH, 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, Dr LAW Cheung-kwok, Mr LEE Kai-ming, Mr Bruce LIU, Mr LO Suk-ching, Miss Margaret NG and Mr NGAN Kam-chuen voted for the amendment.

Mr SZETO Wah, 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 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, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, 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 28 votes in favour of the amendment and 23 votes against it. He therefore declared that the amendment was carried.

**CHAIRMAN** (in Cantonese): Dr HUANG Chen-ya, as the amendment to clause 110 moved by the Secretary for Trade and Industry have been agreed, you may not move your proposed amendments to clause 110 as they are inconsistent with the decision already taken.

*Question on clause 110, as amended, put and agreed to.*

Clause 115

**SECRETARY FOR TRADE AND INDUSTRY:** Mr Chairman, I move that subclauses (1), (2) and (3) of clause 115 be amended as set out in the paper circularized to Members.

The proposed amendments are editorial changes which have already been endorsed by the Bills Committee.

Thank you, Mr Chairman.

*Proposed amendment***Clause 115 (see Annex X)***Question on the amendment put and agreed to.*

**CHAIRMAN** (in Cantonese): The Secretary for Trade and Industry and Mr Howard YOUNG have separately given notices to propose the addition of subclauses (5A) and (5B) to clause 115.

I propose that the addition of subclauses (5A) and (5B) to clause 115, proposed separately by the Secretary for Trade and Industry and Mr Howard YOUNG, be debated together in a joint debate.

Committee shall debate in a joint debate the addition of subclauses (5A) and (5B) to clause 115, proposed separately by the Secretary for Trade and Industry and Mr Howard YOUNG. I will first call upon the Secretary for Trade and Industry to move her amendments, as she is the public officer in charge of the Bill.

**SECRETARY FOR TRADE AND INDUSTRY:** Mr Chairman, I move that subclauses (5A) and (5B) be added to clause 115 as set out in the paper circularized to Members.

The Administration has proposed to amend clause 115 by adding two new subsections to clarify, in relation to criminal proceedings against parallel importation, the circumstances in which a defendant might claim that he has no reason to believe he has been dealing with infringing copies.

I appreciate that retailers have expressed concern that they sometimes have difficulty identifying the right owners or exclusive licensees and would need clarification on what reasonable steps they are expected to take before they can establish that they do not have a reason to believe that the goods they are about to be trading in are infringing articles.

Much as we are against tying the hands of the court by prescribing what constitutes a reason to believe, we have elaborated on the concept and provided indicative non-binding guidelines on possible steps for making enquiries. The wording proposed for clause 115 subclauses (5A) and (5B) have been drawn up after careful thought. We do not agree with the Committee stage amendment proposed by the Honourable Howard YOUNG to further extend the long list. This is neither necessary nor desirable. It risks tilting the balance too much in favour of the defendants and undermining the applicability of criminal proceedings on parallel importation.

Mr Chairman, I urge Members to support the Administration's amendments and to vote against Mr Howard YOUNG's amendment.

*Proposed amendment*

**Clause 115 (see Annex X)**

2.44 pm

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

**CHAIRMAN** (in Cantonese): I will call upon Mr Howard YOUNG to speak on the amendment moved by the Secretary for Trade and Industry as well as his own amendment, but will not ask Mr YOUNG to move his amendment unless the Secretary for Trade and Industry's amendment has been negated. If the amendment of the Secretary for Trade and Industry is agreed, that will by implication mean that Mr Howard YOUNG's amendment is not approved.

**MR HOWARD YOUNG** (in Cantonese): Mr Deputy, regarding the new clause 35A and 35B, I think Members have already received the letter on this amendment. Though my amendment seems rather long, the first part of it, except the last paragraph which runs about seven lines, is exactly the same as the amendment proposed by the Government. Originally, apart from me, Dr the Honourable HUANG Chen-ya was to propose an amendment, but our wordings were exactly the same. We both think the interests of copyright owners, consumers and retailers must be well balanced without being tilted to any party.

Two amendments have just been approved. One is on whether the criminal protection period should be 12 months, 18 months or 24 months. Regarding the 18-month sanction period, copyright owners are entitled to greater protection than that offered by the blue bill. Just now, Members supported the arguments of the Secretary for Trade and Industry on the choice of words between "commence" or "proceed". The amendment has also been approved and the protection to copyright owners has been further enhanced.

It is now time to consider whether retailers should be granted some benefits as well. Therefore, we consider the series of proposals raised by the Administration completely acceptable. The Government only moves some additional requirements, that is subclause (a) to (b), to state the kind of information copyright owners has to provide when the proceedings are taken by the defendant under this Bill.

We only want to make the amendments of the Government more substantive. We think that copyright owners are obliged to provide information. If someone claims to be the copyright owner, he should at least provide valid documentary proof on the name of the product, the address of the copyright owner and the commencement date of the copyright. Verbal declaration is not sufficient. That is why we propose to add these provisions. We do not object to the Government's proposals, but technically, we cannot say that since we support the Government's amendments, we may just add these three amendments because technically, we have to amend the whole provision. That is why I adopt all the amendments of the Government and only add a few provisions to make the amendments clearer.

Even if Members agreed to the amendments of the Government, I urge them to tolerate a short pain and vote against them. Some Members may think that my amendments are tricks to gain your support by making compromise. However, I hope Members will understand that because of the technicalities involved, Members have to object to the amendments of the Government before they can support my amendments. Since my amendments have incorporated the Government's proposal, this would give us a perfect solution.

2.46 pm

THE PRESIDENT resumed the Chair.

**MR SIN CHUNG-KAI** (in Cantonese): Mr Chairman, we find that copyright owners, film producers and retailers all have the same request. Just now I have mentioned in my speech that they urge the Government to take the initiative to establish a central registry, so that copyright owners, the so-called exclusive licensees and retailers may have a centralised place to check the information on copyright. This may help minimize confrontation between the two parties.

As I have just said, retailers and the trade hope that the Government will take up this responsibility, but the Government is unwilling to do so. Today, the Honourable Howard YOUNG moves three amendments, that is subclause (e), (f) and (g), because without these amendments, the Government will not agree to provide a place for central registry.

If someone has provided information on copyright, the Government should also require copyright owners or exclusive licensees to provide some basic information to retailers. I think we should strike a balance in this respect. Even though we have these requirements, the Government should not give up considering the possibility of establishing an authority for central registration. This may enable copyright owners to register in Hong Kong, and there will be a central registry for quick search of copyright information.

Mr Chairman, the Democratic Party supports Mr Howard YOUNG's amendments. Therefore, I appeal to Members to vote against the amendments of the Government.

**MRS SELINA CHOW** (in Cantonese): Mr Chairman, I would like to provide some extra information. During the deliberation of this matter, the Liberal Party has paid great attention to the issue of proper balance. When retailers suggested to us that information provided by licensees should include terms of contracts, we considered it unreasonable for retailers to request for contract terms as that might involve commercial secrets. It would be impossible for licensees to provide such information and the request of retailers was unreasonable. Thus, during our discussion with retailers, we told them that this requirement could not be incorporated. The amendments of the Honourable Howard YOUNG do not include such a requirement. We consider other requirements, such as requiring

exclusive licencees to provide proof of licensing status or date of first release of products, quite reasonable.

We consider the amendments of Mr Howard YOUNG reasonable. This may also allow retailers, in particular law-abiding retailers, to know clearly what kind of information they may obtain. Therefore, I urge Members to vote against the Government's amendments and support Mr Howard YOUNG's amendments.

**SECRETARY FOR TRADE AND INDUSTRY:** Mr Chairman, I think it is appropriate for me to respond to the suggestion that has repeatedly been made by the Honourable SIN Chung-kai, which is the establishment of a central registry with statutory effect by the Hong Kong Government requesting copyright owners and exclusive licensees to register ownership or exclusive dealer-right of copyright works with the registry.

In the United States Library of Congress Copyright Registry, there is no up-to-date system to record copyright assignments or management arrangements. No country or economy to my knowledge has ever set up such a system. On the other hand, the representatives of the film and music industries in Hong Kong do have an up-to-date database covering some 90% of the repertoire available here.

In view of this particular situation, the Administration does not consider it cost-effective to use taxpayers' money to set up such a central registry as has been proposed by Mr SIN Chung-kai.

Thank you, Mr Chairman.

*Question on the Secretary for Trade and Industry's amendment put and negatived.*

**CHAIRMAN** (in Cantonese): As the amendment of the Secretary for Trade and Industry has been negatived, I now call upon Mr Howard YOUNG to move the addition of subclauses (5A) and (5B) to clause 115.

**MR HOWARD YOUNG:** Mr Chairman, I move the addition of subclauses (5A) and (5B) to clause 115 as set out in the paper circularized to Members.



*Proposed amendment*

**Clause 115 (see Annex X)**

*Question on the amendment put and agreed to.*

*Question on clause 115, as amended, put and agreed to.*

Heading before New clause 35A

Defences

New clause 35A

Defence for the purposes of sections  
30 and 31

*Clause read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(6).*

**CHAIRMAN** (in Cantonese): The Secretary for Trade and Industry, Dr HUANG Chen-ya, Mr Howard YOUNG and Mr CHAN Kam-lam have separately given notice to propose the addition of Heading before new clause 35A and new clause 35A to the Bill.

I propose that the addition of heading before new clause 35A and new clause 35A, proposed separately by the Secretary for Trade and Industry, Dr HUANG, Mr YOUNG and Mr CHAN, be debated together in a joint debate.

**MR HOWARD YOUNG** (in Cantonese): Mr Chairman, just now you said that the three of us have moved amendments. However, I found the wordings of these three amendments the same. As my proposed amendment has just been passed, is it the same as that of the Secretary for Trade and Industry? We are now proposing the addition of heading and it will be applicable to any one of the amendments. In that case, what is the purpose of separate voting and debate? Are there any technical differences?

**CHAIRMAN** (in Cantonese): If I said amendments just now, it is not correct. They should be different proposals raised by four Members. I just try to make things simple. These four proposals are mutually exclusive. That is, for the same issue, if you choose item (1), you have to give up items (2), (3) and (4). If you choose item (2), you have to vote down item (1). There are four alternatives: A, B, C and D. A is moved by the Secretary for Trade and Industry. We shall first vote on this. If this is negatived, we will vote on B. Those who are in favour of C and D will have to vote against B and so on. Under this situation, a joint debate is completely suitable.

**MR HOWARD YOUNG:** Mr Chairman, you say that the Secretary for Trade and Industry, Dr the Honourable HUANG Chen-ya, myself and the Honourable CHAN Kam-lam have separately given notice to propose the addition of heading before new clause 35(A) and new clause 35(A) to the Bill, which we have already just passed. Is it so that we are only talking about the heading, in which case I think it is only one word and all four of us seem to have the same word? I just want to know whether by voting for the Secretary for Industry and Trade's heading, which goes on to my amendment which is passed, whether that has any implications which will render either of them void.

**CHAIRMAN:** We vote on the clauses, the content of the clauses. But we do not read out the clauses, we read out the number and the heading of the clause. So, it is a technicality. The vote will be on the contents of the clauses — that we add a new clause 35A to the Bill. But there are four alternative propositions as to how and what contents to add as new clause 35A. Is that clear?

**CHAIRMAN** (in Cantonese): I will first call upon the Secretary for Trade and Industry to speak and move the second reading of her proposed amendment, as she is the public officer in charge of the Bill.

**SECRETARY FOR TRADE AND INDUSTRY:** Mr Chairman, I move that the Heading before new clause 35A and new clause 35A as set out under my name in the paper circularized to Members be read the Second time.

The insertion of the new heading is non-controversial and appears in the proposal to be moved by the Honourable Howard YOUNG, Dr the Honourable HUANG Chen-ya and the Honourable CHAN Kam-lam.

The new clause 35A is proposed by the Administration to offer two new defences in civil proceedings against parallel importation. The first defence described in our new clause 35A subclause (1) and (2) clarifies the circumstances under which a defendant may claim that he has no reason to believe that he has been dealing with infringing copies. The second defence, described, in our new clause 35A, subclauses (3) and (4) stipulates that it shall be a defence for a person who imports a work without the licence of the copyright owner or exclusive licensee if the latter has acted unconscionably, that is, by withholding supply on unreasonable grounds or by agreeing to supply but on unreasonable terms.

Mr Chairman, the Bills Committee has deliberated long and hard on both provisions and heard numerous submissions from all the relevant parties. As a result of the Bills Committee's hard work and the co-operative approach adopted by all concerned, we have already achieved broad consensus in support of introducing the two defences. What remains is a matter of fine-tuning.

On the first defence relating to reason to believe, I have already explained in responding to Mr Howard YOUNG's Committee stage amendment to clause 115 subclauses 5A and 5B why we cannot agree to elaborate on the list of circumstances in which a defendant might claim that he has no reason to believe he has been dealing with infringing copies.

Mr YOUNG and Dr HUANG Chen-ya have moved similar Committee stage amendments to clause 35A to extend the very long list as applied to civil rather than criminal proceedings. I do not agree with these Committee stage amendments. Extending the list risks tilting the balance too much in favour of the defendants and undermining the applicability of civil proceedings on parallel importation.

On the second defence relating to unconscionable acts, the Administration has set out in clause 35A subclause (4) that in considering what constitutes an unconscionable act, the court shall take into consideration the established practices of the copyright owner or exclusive licensee for the orderly distribution of copies of that category of work. We consider this appropriate since this is,

after all, a Bill to protect copyright owners and exclusive licensees which has been so repeatedly stressed this morning and up to now this afternoon.

Mr Howard YOUNG and Dr HUANG Chen-ya have proposed inserting an extra section to oblige the court to have regard to the reasonable requirements of the retail traders and public. Dr HUANG Chen-ya has also proposed to amend the wording "established practices of the copyright owner or the exclusive licensee" as the "established practices of the particular trade". The Administration does not support these changes. They are not necessary. They upset the delicate balancing of the interests of copyright owners and those of the retailers. They overly and unnecessarily fetter the discretion of the court.

Separately, Mr CHAN Kam-lam has also proposed to amend clause 35A subclause (3)(c) to the effect that the defence relating to unconscionable acts would not apply until after the expiration of 24 months of the first publication of a copyright work. This is meant to be in line with the other Committee stage amendments that Mr CHAN Kam-lam has intended to move to clause 35 subclause (4) were the Administration's Committee stage amendment to be defeated. This amendment or this proposal by Mr CHAN Kam-lam should no longer be necessary as the Administration's Committee stage amendment on the 18-month criminality period has just been voted in favour of by Members.

Mr Chairman, the Administration has already drafted clause 35A subclause (3)(c) in such a way that the defence against unconscionable acts will automatically apply after the period of criminal sanction stated in clause 35 subclause 4(b), so there is no need to specify this period separately.

Mr Chairman, I urge Members to support the Administration's amendments to clause 35A and to vote against the amendments by Howard YOUNG, Dr HUANG Chen-ya as well as, Mr CHAN Kam-lam.

Thank you.

**CHAIRMAN** (in Cantonese): I will call upon Dr HUANG Chen-ya first to speak on the motion of the Secretary for Trade and Industry and his own proposal, as well as the respective proposals by Mr Howard YOUNG and Mr CHAN Kam-lam. After Dr HUANG has spoken, I will call upon Mr Howard YOUNG and Mr CHAN Kam-lam to speak. Both Mr YOUNG and Mr CHAN may speak

on the four proposals. However, no motion may be moved by Dr HUANG Chen-ya, Mr Howard YOUNG or Mr CHAN Kam-lam at this stage.

**DR HUANG CHEN-YA** (in Cantonese): Mr Chairman, the defence clause is the fruit of repeated arguments. I am glad that the Government has finally agreed to add this amendment because it would be fairer. There will not be any impartialities for any trade and the interests of consumers and importers will not be neglected. The basic spirit of this amendment is not to infringe the interest of exclusive licensees. It only seeks to prevent importers from entering the prohibited areas unintentionally. As importers have done all they can to avoid infringing the copyrights of copyright owners and exclusive licensees, they should not be punished.

We found the trades concerned very cooperative in this issue. The original purpose in amending the Ordinance is to increase the transparency of the mechanism and to set up a registry system. We have to thank people engaged in the relevant trades for their cooperation.

The only difference between my amendment and the Government's lies in subclause(4), that is to replace "copyright owners" or "exclusive licensees" by "particular trade". Moreover, my amendment has added subclause (5) and subclause (e), (f) and (g) of Mr Howard YOUNG's amendment, which we have just debated on. The only difference between my amendment and Mr Howard YOUNG's is that he prefers to retain the Government's original version. In determining whether copyright owners or exclusive licensees have acted unconscionably, the court shall not only consider the interest of copyright owners and exclusive licensees, but also take into account objectively the established practices of the trade. In this way, importers may follow the established practice and consider from a normal commercial perspective whether the goods can be imported. Consumers' interest will not be affected by arbitrary, unusual or peculiar conduct of individual copyright owners or exclusive licensees.

I think the Government's amendment still fails to provide sufficient protection to consumers. Therefore, I consider my amendment better. As for the addition of subclause (5), I think that apart from the interests of copyright owners and exclusive licensees, the court should also consider the reasonable requests of the public. I thus add these wordings to subclause (5), which ensure

that the role and interests of consumers will not be deprived, and that they will have a chance to air their grievances.

**MR HOWARD YOUNG** (in Cantonese): Mr Chairman, we are now discussing the issue concerning the addition of Heading and some supplementary contents. We have already debated and voted on the contents of these amendments, and the argument on the 12-month, 24-month or 18-month criminal sanction period was over. As I understand it, the Heading proposed by the Honourable CHAN Kam-lam is related to a 24-month criminal sanction period. Since we have just accepted the 18-month period, if we are going to vote on the 24-month period again, it does not seem logical.

Moreover, despite the Government's disagreement to add some provisions to Clause 35, we have, upon voting, accepted some clearly stated provisions, and we have made a decision on the Heading proposed by the Government.

Dr HUANG Chen-ya has just explained his amendment, and we have debated on sub-clause (4). We do not want to amend the original version of sub-clause (4) when we are not sure about the consequences it may bring.

Under these circumstances, because of the sequence of voting, it seems that relatively more Members will accept the amendment I have just moved. Therefore, according to voting procedure, if Members want to vote on my proposed Heading, they have to firstly vote against the amendments of the Government and Dr HUANG Chen-ya before they can vote for my amendment. I thus think that Members should vote against the Heading proposed by the Government.

**CHAIRMAN** (in Cantonese): Mr Howard YOUNG, I do not understand why you mention "Heading"? All four amendments are on Clause 35A, and the Heading before the newly added Clause 35A is "Defence", and the Heading for Clause 35A is "Defence for the purposes of sections 30 and 31". However, the contents of the four proposals are different. Therefore, if the Secretary for Trade and Industry moves the Second Reading, the Second Reading will be on her proposal. Though they are under the same Heading, they are different in content. Do you understand?

Just now, I have said that proposals for the addition of these new provisions are not amendments. What I mean is that, these are not amendments to the clause, but they are still regarded as amendments to the Bill. If you amend, delete or replace any words in any clauses, or delete a complete clause, you are making amendments. Proposal for addition of new clause is also regarded as an amendment to the Bill, because it adds the clause which is originally not included in the Bill. Therefore, the aim of this proposal is also to amend the Bill as a whole. I may have to clarify this.

**MR CHAN KAM-LAM** (in Cantonese): Mr Chairman, the principal objective in formulating the Copyright Bill is to protect the copyright of creators, and all the provisions therein should give the best protection to the interest of copyright owners. Although the 18-month criminal sanction period can be accepted to a certain extent, somehow we find it a hodgepodge.

Some Members said that the aim of the Copyright Bill is to protect the interests of consumers. If this is the case, it is better to enact rules of equity on copyright and consumers' interests. Otherwise, it will only ruin the Copyright Bill on the whole and turn it into neither fish nor fowl. As a matter of fact, when we talk about copyright owners or exclusive licensees, we should consider their interests in a boarder sense and should not only talk about the interests of consumers, because the interests of both sides are in line with each other.

In this connection, the Democratic Alliance for the Betterment of Hong Kong thinks that the interests of creators and consumers should be protected, and that the copyright of creators should come first. I can hardly agree with Dr the Honourable HUANG Chen-ya, who says that we tilt towards the interests of the trade. Nowadays, creative industry in Hong Kong is on the decline. Since several thousands of people are employed in the film production and sound recording industries or the related retail industry, the Copyright Bill will have enormous effect on them.

If the trades concerned are not duly protected, the interest of consumers will ultimately be affected. Though it is regretful that the criminal sanction period just passed was limited to 18 months, I still find it acceptable. Thank you, Mr Chairman.

**MRS SELINA CHOW** (in Cantonese): Mr Chairman, regarding the amendment of the Honourable CHAN Kam-lam, he has mentioned the unconscionable acts of copyright owners or exclusive licensees committed within 24 months after the first publication of a copyright work in Hong Kong or other places. This implies that it would be all right if these unconscionable acts are committed within the 24-month criminality period, and only those acts committed after the 24-month period will be regarded as unconscionable. This seems unreasonable. I think Mr CHAN Kam-lam may have to further consider this issue, and I hope Members will not support his amendment.

As there are so many amendments to this Bill, Members may be a bit confused. Perhaps I can clarify. The Honourable Howard YOUNG's amendment is almost the same as that of the Government, except for subclause (5). Excuse me, Mr Chairman, how to say subclause (5) in Chinese?

**CHAIRMAN** (in Cantonese): This should be "款". Clause is called "條" and subclause is called "款". Just like "section" and "subsection".

**MRS SELINA CHOW** (in Cantonese): Why do we want to add in subclause (5)? It is because we have accepted some of the opinions of the retail industry. The retail industry has mentioned that they would like to include in the provisions some common practices of the trade, such as the requirement of a 5-day supply. We have considered the suggestion, but we think that the legislation should not include such a restrictive and narrow requirement, and thus we have not accepted their request. Why then do we agree to add in subclause (5) in principle?

In subclause (4), the Government confirms the right of copyright owners. It is clearly stated that "..... the court shall also take into consideration the established practices of the copyright owner or exclusive licensee for the orderly distribution of copies of that category of work ....." In other words, consideration is given to protecting the interests of copyright owners and exclusive licensees. However, retailers find that the relevant provisions give no indication as to what reasons or terms are unreasonable, and therefore fail to strike a right balance. They deem it necessary to have similar provisions. We accept this opinion and consider it necessary to add subclause (5).



Dr HUANG Chen-ya moves to amend subclause (4) by replacing the established practices of copyright owners in the provisions mentioned by the Government with the established practices of the specific trade. We think that if consideration for the established practices of copyright owners and exclusive licensees is deleted from subclause (4), the provision will fail to strike the right balance.

Therefore, I hope Members will vote against the Government's amendment and vote for Mr Howard YOUNG's amendment to add subclause (5) to the Bill.

**SECRETARY FOR TRADE AND INDUSTRY:** Mr Chairman, I would like to appeal to Members to support the Administration's motion on clause 35A and I would like to highlight a feature that has just occurred to the Administration. And that is, if the Administration's motion is rejected, the voting will then go to the motions to be moved by Dr the Honourable HUANG Chen-ya, the Honourable Howard YOUNG and the Honourable CHAN Kam-lam. If the voting is split between Dr HUANG Chen-ya and Howard YOUNG's motions, Members will then have to vote on the third motion to be moved by Mr CHAN Kam-lam.

Since Mr CHAN Kam-lam's motion incorporates a 24-month criminal sanction period for parallel importation which is blatantly contradictory to what Members have just supported in the context of the Committee stage amendment to clause 35 subclause (4), we would have an extremely difficult and precarious situation. Were Members to vote in favour of Mr CHAN Kam-lam's motion, we would end up with an ordinance with two sections which are contradictory to each other because section 35 (4) would stipulate a criminal sanction period for parallel importation of 18 months whereas this particular new clause 35A would incorporate the sense that the criminal sanction period for parallel importations should be 24 months.

I fear and I apologize that this particular complication has only occurred to myself and my colleagues sitting here listening to Members' speeches just now. I would therefore like to take this opportunity to urge Members to avoid enacting a piece of legislation that contains blatant and inherent inconsistencies, and I appeal to Members to avoid this situation from happening by voting in favour of the Administration's motion on the new clause 35A.

Thank you, Mr Chairman.

**CHAIRMAN** (in Cantonese): Before I put the motion of the Secretary for Trade and Industry to the Committee, I would like to advise Members that if the motion that the Second Reading of her proposed Heading before new clause 35A and new clause 35A is agreed, that will by implication mean that the respective proposals by Dr HUANG Chen-ya, Mr Howard YOUNG and Mr CHAN Kam-lam are not approved. If the motion is negatived, I will call on Dr HUANG Chen-ya to move the Second Reading of his proposed Heading before new clause 35A and new clause 35A. Whether or not Mr Howard YOUNG and Mr CHAN Kam-lam will be able to move the Second Reading of their proposals will depend first on the Committee's decision on Dr HUANG Chen-ya's motion.

*Question on the Second Reading of the Secretary for Trade Industry's new clause and heading put and negatived.*

**CHAIRMAN** (in Cantonese): As the Secretary for Trade and Industry's motion has not been agreed, I now call on Dr HUANG Chen-ya to move the Second Reading of his proposed Heading before new clause 35A and new clause 35A.

**MR HUANG CHEN-YA** (in Cantonese): Mr Chairman, I move the amendment as set out in the paper circularized to Members.

*Question on the Second Reading of Dr HUANG Chen-ya's new clause and heading put.*

*Voice vote taken.*

Dr HUANG Chen-ya 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 question that the Honourable Dr HUANG Chen-ya's

proposed Heading before new clause 35A and new clause 35A be read the Second time.

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 results, Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mr SZETO Wah, 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 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, 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 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 26 votes against it. He therefore declared that the motion was carried.

Clause read the Second time.

**CHAIRMAN** (in Cantonese): As Dr HUANG Chen-ya's motion on the Second Reading of his proposed Heading before new clause 35A and new clause 35A

has been agreed, it is not possible for Mr Howard YOUNG or Mr CHAN Kam-lam to move the Second Reading of their respective proposals.

**DR HUANG CHEN-YA** (in Cantonese): Mr Chairman, I move that the heading before new clause 35A and new clause 35A be added to the Bill.

*Proposed addition*

**New clause 35A (see Annex X)**

*Question on the addition of the new clause proposed, put and agreed to.*

|                               |   |
|-------------------------------|---|
| Heading before New clause 85A | Designs   |
| New clause 85A                | Corresponding design  |
| New clause 85B                | Effect of exploitation of design derived from artistic work     |
| New clause 85C                | Things done in reliance on registration of design               |
| New clause 123A               | Protection of informers in criminal proceedings                 |
| New clause 182A               | Groundless threat of proceedings in relation to parallel import |

*Clauses read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(6).*

**SECRETARY FOR TRADE AND INDUSTRY:** Mr Chairman, I move that the heading before new clause 85A and new clause 85A, new clauses 85B, 85C, 123A and 182A as set out in the papers circularized to Members be read the Second time.

The Administration's proposals seek to clarify the relationship between copyright and the rights for registered designs. It is stipulated that registerable but unregistered designs shall enjoy copyright protection for 15 years from the date of the first industrial application of such a design, whereas for a registered design the copyright protection for the design will run concurrent to the term of protection under the Registered Designs Ordinance to a maximum of 25 years. This proposal has been discussed and endorsed by the Bills Committee on both the Copyright Bill and the Registered Designs Bill.

Clause 123(A) is designed to protect the identity of informers in criminal proceedings and clause 182A to protect innocent parties from unwarranted and groundless threats of civil action. Both of these provisions have been discussed and endorsed by the Bills Committee.

Thank you, Mr Chairman.

*Question on the Second Reading of the clauses proposed, put and agreed to.*

Clause read the Second time.

**SECRETARY FOR TRADE AND INDUSTRY:** Mr Chairman, I move that the heading before new clause 85A and new clause 85A, new clauses 85B, 85C, 123A and 182A be added to the Bill.

*Proposed additions*

**Heading before new clause 85A and new clause 85A (see Annex X)**

**New clause 85B (see Annex X)**

**New clause 85C (see Annex X)**

**New clause 123A (see Annex X)**

**New clause 182A (see Annex X)**

*Question on the addition of the Heading before new clause 85A and new clause 85A, new clauses 85B, 85C, 123A and 182A proposed, put and agreed to.*

Schedules 1 and 5 were agreed to.

Schedule 2

**SECRETARY FOR TRADE AND INDUSTRY:** Mr Chairman, I move that Schedule 2 be amended as set out in the paper circularized to Members.

The proposed changes are all editorial in nature and deal mainly with the consistency of the Chinese and English texts of the Bill.

Thank you, Mr Chairman.

*Proposed amendment*

**Schedule 2 (see Annex X)**

*Question on the amendment put and agreed to.*

**MR HOWARD YOUNG:** Mr Chairman, I move that Schedule 2 be further amended as set out in the paper circularized to Members.

Mr Chairman, when we were discussing all the amendments related to this Bill at a rather late stage we did have representations from influential members of the retail trade. They said to us that they had existing stocks in Hong Kong which they had already imported quite legally, but they were afraid that should this Bill be passed then immediately these existing stocks that they had would immediately come under this new Bill and therefore bear the risk of infringing the copyright law.

Whereas it can be argued, and I believe the Secretary for Industry and Trade did argue this morning that legislation is not retroactive, and by passing a law today you cannot relate back to existing stocks, the retail trade was still not

very much relieved or content with this explanation. They said that if we do not add in something, like the subclause 4(A) which I am proposing, that provides clarity, then they said to one extreme they might have to pull out about 50% of this existing stocks from their stores now for fear of infringing the law.

As this request from the retail trade came up at a rather late stage, we do not have too much time to really go into details of whether this is a real threat or were they exaggerating the situation. However, they did put it to us very strongly and lobbied many Members to ask for some clarity and protection for what is really only existing old stock that had been imported into Hong Kong before this Bill comes into effect. Therefore that is the reason for my moving this clause.

*Proposed amendment*

**Schedule 2 (see Annex X)**

**SECRETARY FOR TRADE AND INDUSTRY:** Mr Chairman, I really cannot over-emphasize the objectionable nature of the Honourable Howard YOUNG's amendment, not only on copyright protection grounds but on legal policy and legal principle grounds.

In the consideration of the Copyright Bill there have been repeated requests that we should amend the transitional provisions as drafted and gazetted in Schedule 2 of the Copyright Bill to clarify the position of parallel importation under the existing law.

I would like to put the matter beyond doubt once and for all. I would like to state for the record that the transitional provisions as gazetted have been drafted in full accordance with established legal principles and legal policy. They stipulate clearly that acts committed before the commencement of the new law will be bound by the existing law. Acts committed after commencement will be subject to the new law. This is totally equitable and fair.

Therefore, a copyright article which has been imported before commencement of the new law and which has not infringed copyright under the

law existing at the time of importation will remain non-infringing. The subsequent possession and dealing in that article will also remain non-infringing notwithstanding the commencement of the new law. On the other hand, a copyright article which was imported under the existing law as an infringing copy cannot and should not be made non-infringing through a provision in the new law. The subsequent possession and dealing in this article should also remain infringing notwithstanding the commencement of the new law.

Whether an article has infringed copyright under the existing law is for the courts of Hong Kong to decide, having regard to how that law was drafted. It would be a grave mistake for the legislature to attempt to impose on the courts an interpretation of the existing law in favour of a particular category of parties through an amendment to Schedule 2 of the Copyright Bill, and this is exactly what Mr Howard YOUNG's Committee stage amendment would bring about.

I understand this amendment has been triggered by the consideration that the existing law is not clear on whether goods imported in breach of the terms of exclusive licence agreements constitute an infringing copy. That may be so but we still have to leave the interpretation of the existing law to the courts. The legislature should not legislate retrospectively to the effect that the terms of exclusive licence agreements should be disregarded. This unfortunately would be exactly the outcome if the Committee stage amendment on Schedule 2 of the Copyright Bill introduced by Mr Howard YOUNG was approved.

As retrospective legislation this would have significant and far-reaching consequences. I am duty-bound to explain the impact in some detail for Members' careful consideration. To legislate in the way proposed by Mr Howard YOUNG could be ruled unconstitutional because it amounts to taking away vested property right from exclusive licensees retrospectively. It amounts to legalising the existing stock of infringing copyright articles retrospectively. It means that parallel importers need not be answerable to their widely-believed potential civil liabilities and their potential criminal liabilities.

Having just voted in favour of clause 35 of the Copyright Bill which subjects parallel imports which are in breach of exclusive licence agreements to limited term criminal actions and full term civil actions, it would be irrational and contradictory for the Council to support Mr Howard YOUNG's amendment. This is because the amendment has the effect of asking the courts to disregard the



exclusive licensee's existing interests and to exempt parallel imports from both civil and criminal liabilities.

I suggest to Members that the courts would be extremely confused about the contradictory provision in clause 35 of the Copyright Bill as approved by this Council just now and that in Mr Howard YOUNG's amended Schedule 2, should it be approved. This is because clause 35 explicitly states that exclusive licence agreements are relevant to the determination of what constitutes an infringing copy. However, the proposed amended Schedule 2 suggests exactly the opposite. It suggests that the terms of exclusive licence agreements are to be disregarded when clause 35 and the proposed Schedule 2 are read together. The courts will not know what the legislative intent is.

Mr Chairman, we accept that the existing law may not be too clear on whether an article imported in breach of an exclusive licence agreement is to be caught as an infringing copy, but the new law, and clause 35 of the Bill in particular, will put the Government's policy intention which is supported by this Council, beyond doubt. We have made clear that parallel imports which are in breach of exclusive licence agreements should be restricted. Schedule 2 to the Bill also draws a clear dividing line between acts done under the existing law and those to be committed under the new law. As explained, acts done under the existing law will be subject to the ruling of the existing law, not the new one. Further amendments to this Schedule will only cloud the issue. They are not necessary and they are extremely unfair.

Mr Chairman, I appeal in the strongest terms to Members to support the Schedule 2 to the Bill as proposed by the Government and to vote against Mr Howard YOUNG's amendment.

3.44 pm

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

**MRS SELINA CHOW** (in Cantonese): Mr Deputy, I think the Secretary for Trade and Industry has overstated the case. The situation is not as serious as

she claimed. If Mr Howard YOUNG's amendment, that is the amendment to Schedule 2, is not agreed, all doubts existed before the passage of the Bill will continue to exist. For example, according to the British laws, is the importation of goods without the consent of exclusive licensees or in violation with the agreement of the exclusive licensees be regarded as infringing activities? This is doubtful. The present situation is not that those acts which are regarded under the existing law as infringing will, with the enactment of the new legislation, no longer be regarded as infringing. This is absolutely not the case. What we are discussing now is whether those infringing activities which took place before the enactment of the new legislation will still be considered as infringing under the new legislation.

Importers and retailers are on tenterhooks because of the uncertainty in this aspect. They are uncertain whether the goods imported before the enactment of the Bill are regarded as infringing products. The Secretary for Trade and Industry has just said that there will not be uncertainties in this respect with the provision of clause 35. At present, any act which violates the exclusive license agreement will be regarded as infringing activities. However, products previously imported is not bound by this definition. Therefore, we have to state clearly that products imported before the enactment of the Bill will not subject to this requirement, so as to put traders at ease. In fact, they have in stock a large quantity of imported products.

According to the Government, although the products have been imported before the commencement of the Bill, it is doubtful whether the selling of these products after the enactment of the Bill will contravene the legislation. Thus, traders will still be in doubt after the enactment of the new legislation.

If we accept Mr Howard YOUNG's amendment, uncertainty in this respect will be cleared and possible legal proceedings may be avoided. From a more pragmatic point of view, at present many imported products are parallel imports, and up till now, no one has been accused of infringing copyright under the existing legislation and no one has been prosecuted. Then why should not we address these ambiguities and uncertainties in the new legislation? Up to this moment, neither any legal actions nor legal proceedings have been instituted. So far, no exclusive licensees have ever applied to the court to fight for fair play. Such being the case, why should not the legislation stipulate clearly some transitional provisions and state explicitly those requirements applicable to

products imported before the enactment of the Bill, so as to facilitate compliance?

The Secretary for Trade and Industry has mentioned the question on retrospective effect. Since under the existing legislation, it is certain that those products are infringing copies, the question on retrospective effect is not involved. We should clarify the existing doubts and act according to the new provisions.

Thank you, Mr Deputy.

**MRS ELIZABETH WONG:** Mr Chairman, I would like to say I entirely agree with the Secretary and appreciate very much the strength of her argument, the clarity of her view, the comprehensiveness of her understanding and her moral rectitude, and I find her arguments entirely convincing and intellectually powerful, with particular reference to retrospectivity.

**DR HUANG CHEN-YA** (in Cantonese): Mr Deputy, after consulting the trades concerned, the Democratic Party originally considered it necessary to have transitional provisions. Hence we originally supported Mr Howard YOUNG's amendment. Yesterday afternoon, government officials met colleagues of the Democratic Party and raised the views just put forward by the Secretary for Trade and Industry. The government officials pointed out that the amendment might be unconstitutional and the legislation might lose its retrospective effect, hence preventing copyright owners and exclusive licensees from seeking fair treatment in relation to infringing copies. In view of the consequences, the Democratic Party considered it essential to consider the issue seriously.

Yesterday afternoon, I told Mr Howard YOUNG that the Democratic Party had to reconsider the issue. Consequently, we immediately sought legal advice last evening and examined the provision throughout the night. The legal advice we have obtained is that the provision actually does not deprive copyright owners or exclusive licensees of their original rights. In fact, the amendment seeks to deal with the issue of non-infringing copies which have been imported before the legislation comes into effect. Therefore, the Democratic Party will continue to support Mr Howard YOUNG's amendment.

**MR HOWARD YOUNG** (in Cantonese): Mr Deputy, just now I listened very attentively to the arguments put forward by the Secretary for Trade and Industry concerning the amendment. I am more inclined to adopt a pragmatic approach in seeking solutions to the problem of the existing limited stocks. I think it is not necessary to escalate the matter by saying that it is a constitutional issue. I believe every piece of legislation enacted by the Legislative Council according to statutory procedures is constitutional.

The amendment is not intended to legalize what was in the past illegal. On the contrary, it aims to prevent what was not illegal in the past from becoming illegal without reason, so as to avoid causing losses to retailers.

Apart from the legal profession and lawyers who have explained the issue to us, many influential large retailers in Hong Kong also complained to us, saying, "If this Bill is enacted but the relevant provisions remain ambiguous, we may have to destroy the existing stocks in the shops since we dare not risk breaking the law." They think that such a measure is very unfair to them. All they want is that the Bill should specify very clearly that goods imported legally in the past will not become illegal due to the enactment of this Bill.

Mrs Selina CHOW has just now rightly pointed out that, up till now, no legal proceedings have been instituted by the Government against importers for importing parallel goods which infringed copyrights. If someone is prosecuted by the Government on this account, we can at least claim that the Bill can assist the courts in making decisions. However, there are, in fact, no such cases at present and no one has been prosecuted on this account in the past. Nevertheless, retailers still very much hope that this Bill will lay down clear provisions concerning their existing limited stocks.

Therefore, our stand remains the same and we hope Members will support the amendment.

3.53 pm

THE PRESIDENT resumed the Chair.

*Question on Mr Howard YOUNG's amendment put.*

*Voice vote taken.*

**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 proposed by Mr Howard YOUNG be read the Second time.

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 results, Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mr Allen LEE, Mrs Selina CHOW, Mr SZETO Wah, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, 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 Henry TANG, Mr James TO, Dr YEUNG Sum, Mr Howard YOUNG, Mr WONG Wai-Yin, Miss Christine LOH, Mr LEE Cheuk-Yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr CHOY Kan-pui, Mr David CHU, Mr Albert HO, Mr LAU Chin-shek, Mr Ambrose LAU, 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 NGAI Shiu-kit, Dr LEONG Che-hung, 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 LEE Kai-ming, Mr LO Suk-ching, Miss Margaret NG, Mr NGAN Kam-chuen and Mrs Elizabeth WONG voted against the amendment.

Dr Philip WONG abstained.

THE CHAIRMAN announced that there were 39 votes in favour of the amendment and 14 votes against it. He therefore declared that the amendment was carried.

*Question on Schedule 2, as amended, put and agreed to.*

Schedules 3 and 4

**SECRETARY FOR TRADE AND INDUSTRY:** Mr Chairman, I move that Schedules 3 and 4 be amended as set out in the paper circularized to Members.

All the proposed amendments are editorial or technical in nature and have been endorsed by the Bills Committee.

Thank you, Mr Chairman.

*Proposed amendments*

**Schedule 3 (see Annex X)**

**Schedule 4 (see Annex X)**

*Question on the amendments put and agreed to.*

*Question on Schedules 3 and 4, as amended, put and agreed to.*

Council then resumed.

**Third Reading of Bill**

THE SECRETARY FOR TRADE AND INDUSTRY reported that the

**COPYRIGHT BILL**

had passed through Committee with amendments. She moved the Third Reading of the Bill.

*Question on the Third Reading of the Bill proposed, put and agreed to.*

Bill read the Third time and passed.

**Resumption of Second Reading Debate on Bill****SMOKING (PUBLIC HEALTH) (AMENDMENT) (NO. 2) BILL 1997****Resumption of debate on Second Reading which was moved on 23 April 1997**

**MISS CHRISTINE LOH:** Mr President, I rise to speak as chair of the Bills Committee on the Smoking (Public Health) (Amendment) (No. 2) Bill 1997. This Bill seeks to introduce further measures to control the use, sale and promotion of tobacco products. In parallel our committee also studied a Member's Bill introduced by the Dr the Honourable LEONG Che-hung. This Bill seeks to extend the prohibition of all forms and manners of tobacco advertising and to extend the scope of the designated no-smoking areas.

The Bills Committee held five meetings, four of which were attended by the Administration. The Bills Committee received over 100 written submissions, many lobbying postcards and signatures from a campaign. We also met deputations from 38 organizations. These included representatives from smoking prevention groups, medical and health associations, the tobacco industry, advertisers, the media, sports and arts groups, event marketing agents, restaurant owner associations as well as other parties.

Members note the strong support for Dr LEONG's Bill from both local and overseas smoking prevention and medical groups. Members also note the opposition to Dr LEONG's Bill from the tobacco and advertising industries in particular. The Committee also recorded the concerns by other organizations

regarding the possible difficulties created for them in the implementation of both the Government's and Dr LEONG's Bills.

In view of the time constraint, and to facilitate discussion of the two Bills, Dr LEONG proposed at the beginning of our deliberation that the Government's Bill should be used as the basis for discussion, and he would propose amendments to make the Bill more effective and that he would consider withdrawing his Bill if he was satisfied with improvements to the Government's Bill. Members supported his suggestion and to this end Dr LEONG and other Members will be raising various amendments today.

I will now briefly describe the main issues considered by the Bills Committee.

The first issue concerned whether both Bills contravened the Bill of Rights as they both seek to restrict advertisement. Members noted a 1995 Canadian court case cited by the tobacco industry in support of their claim that the Bills interfered with freedom of expression. The Administration argues that its Bill does not contravene Article 16(3) of the Hong Kong Bill of Rights Ordinance. Our own legal advisor agrees for two reasons. Firstly, the Government's Bill does not seek to ban advertisement completely, and secondly, under Article 16, the freedom of expression may be subject to restrictions which are provided by law and are necessary for the protection of public health.

The Committee notes that the Canadian case concerned a total ban on advertisement which is not the case with the Government's Bill. The Committee further notes that the Canadian Supreme Court was unanimous that the protection of health of young persons from inducement to use tobacco products were of sufficient importance to warrant overriding the freedom of expression provision in the Canadian Charter of Rights and Freedoms.

Some Members highlighted that even in the case of imposing a total ban on advertising there are existing legitimate businesses which are not allowed to advertise because of public interest or professional ethics. Thus, even for Dr LEONG's Bill it cannot be said for sure that it contravenes our Bill of Rights.

The second issue, Mr President, concerns designation of no-smoking areas. Currently cinemas, theatres, concert halls, public lifts and amusement game centres are designated no-smoking areas. Clause 3 of the Bill empowers the



manager of any premises specified in Schedule 4 to designate any such premises or part thereof as a no-smoking area.

The premises included in Schedule 4 are restaurants, department stores, shopping malls, supermarkets and banks. The Administration explains that the present proposals are targeted at sizeable enclosed areas open to the public. In response to a proposal made by Dr LEONG the Administration will move an amendment to add schools and other educational institutes in the proposed Schedule 4. Some Members consider that karaoke establishments should be included alongside restaurants. Some Members believe that supermarkets, department stores and restaurants should be included in Schedule 2 instead of Schedule 4.

Members generally share the view that the designation of no-smoking areas will be a problem for small restaurants with only a few tables and they should be exempted. In order to protect the health of non-smokers, Members of the Democratic Party consider that for restaurants exceeding a certain size at least 50 percent of the public area should be designated no-smoking area unless the whole restaurant is used for a private function, such as a banquet. Function rooms with separate air-conditioning units may also be exempted. The Democratic Party will move an amendment in this regard. The Administration considers that more time is required to refine the concept of designated no-smoking areas and will consider any further proposals for future implementation only.

The third issue concerns tobacco advertisements in printed publications. Clause 10 repeals the exemption granted under section 11 to local newspapers with a circulation in Hong Kong of less than 10 000 copies and which constitutes not more than 20 percent of the paper's total circulation. In addition to the health warning already required the advertisements will also be required to show the tar and nicotine yields instead of just the tar group designation.

Dr LEONG considers that the proposed arrangement will not be able to meet the tobacco advertising-free target by the year 2000 set by the World Health Organization Western Pacific Region. The Administration indicates that it prefers to adopt a gradual approach with no specific time table set for the next move. In view of the lack of commitment on the part of the Administration to meet the 1999 deadline, Dr LEONG will move an amendment to prohibit tobacco advertisement in printed publications by the 31 December 1999. The

exemptions under the existing section 11(3A) will be retained. In addition those publications printed in Hong Kong but are for circulation outside Hong Kong will also be exempt.

The next main issue concerns prohibition of display of tobacco advertisement. Clause 11 amends section 12 to prohibit the display of any tobacco advertisement in writing or in other permanent or semi-permanent form. The Administration proposes that this clause takes effect 24 months after the passage of the Bill. Members have divided views on the effective date. In this connection Members note from examples in countries such as China, Mongolia, Norway and New Zealand the usual lead time for tobacco control legislation to implementation is six to 12 months.

A few Members consider that as most advertisement sign contracts are for three years, a three-year period should be allowed to avoid contractual difficulties. Both the Administration and the Bills Committee's legal advisors have pointed out that under common law any contracts rendered illegal or unenforceable due to change of legislation will become voidable contracts with no legal obligations on either side. The Administration maintains the view that two years is a reasonable period, however Dr LEONG believes the period is too long since the usual lead time in other countries is six to 12 months.

A Member considers that the requirement for health warning and tar and nicotine yields should extend to tobacco advertisement in the premises of any manufacturer of tobacco products or any wholesale dealer of tobacco products in order that the staff concerned may also be made aware of the warnings and for consistency with other improvements. Some Members support his view in principle, but some envisage that it will cause operational difficulties.

Mr President, the next main issue concerns display of advertisement at point of sale. Members note that small individual cigarette retailers are hard-hit by competition from contraband cigarettes and they need the six to seven thousand dollars monthly subsidy in the form of small advertisement gifts and for displaying flags or an umbrella showing the brand name at their stalls. Members are sympathetic to their plight and one Member has proposed that display of advertisement at point of sale should be permitted. As point of sale includes convenience stores, supermarkets and department stores as well, most Members consider that the term is too wide.

The Administration points out the display of an umbrella showing the brand name will be considered as an advertisement. It considers that such an exemption will give rise to many loopholes and will reduce the effectiveness of the ban. To accommodate the small group of small individual retailers, the Honourable Mrs Selina CHOW will move an amendment to allow the display of tobacco advertisement in or upon a retail outlet where tobacco products are sold. Dr LEONG will move amendments to exempt advertisement at any stall or pitch of a licensed hawker selling tobacco products in or upon any premises of a retail dealer dealing in commodities including tobacco products and employing less than two persons, provided that it bears a health warning in the prescribed form and manner.

Members are also concerned about the proposed amendments to section 14 to refine the meaning of tobacco advertisement and to provide for exemption. In response to the concern expressed by the electronic media the Administration has reviewed the provisions in new sections 14(1)(c) and (2), but it considers that new section 14(3) already provides sufficient protection to address their concerns as it states that, and I quote, "any accidental or incidental appearance of any tobacco product or the trade mark, trade name, brand name or logo of any tobacco product where no valuable consideration has been or is intended to be given for such appearance is not a tobacco advertisement".

The Democratic Party expressed concern regarding the provision in new section 14(2)(iii) which allows the name of any company or any name associated or identified with any tobacco products to be used as the sponsor of any event, or in congratulating another person or some thing on an achievement, and asked the Administration to review the need for the provision relating to messages of congratulation. While the Administration wishes to retain the provision, Dr LEONG proposes to limit it only to the name of the company or body corporate as the sponsor of an event and will move an amendment to this effect.

Finally, the Honourable LEUNG Yiu-chung is presenting an amendment which the Bills Committee did not have any opportunity to discuss with him. This was an amendment that was put through at the very last minute, so I am unable to make any comment on it on behalf of the Bills Committee as a whole.

I would like to take this opportunity to thank Members of the Bills Committee, the Administration and Legislative Council Secretariat for their hard work in completing the task of scrutinizing this quite contentious Bill within a

very tight time table. I would like to, of course, thank all the interested organisations and individuals who wrote to us profusely and who were willing to come before the Council for many hours to help us scrutinize the Bill.

Before I close, Mr President, I would like to add a few of my own personal remarks. I know that Members were wary of the generality of Dr LEONG's original Bill when it was first introduced. It should be clear, however, that much has happened since then. The Bill before us today is a carefully formulated proposal which contains measures that are already widely implemented elsewhere. It is by international standards, Mr President, a very mild Bill. The fact has been underscored by the settlement reached in the United States America only a few days ago in which the tobacco companies agreed to many of the most stringent measures imposed by this Bill.

There is probably no other legal product that kills so many people with such grim regularity as tobacco, and Mr President, I would advise you to stop smoking yourself! Though we may not be accustomed to think of it in these terms, tobacco is in fact both addictive and toxic and the anomaly is that it remains a legal product at all rather than a strictly regulated one. It poses an international health problem of terrible magnitude, the cause of which is well established and yet in Hong Kong we are only beginning to take the first serious steps to combat it.

What steps should we take? This is the crux of the Bill of Rights argument made against this Bill. Even the tobacco industry does not have the temerity to argue that their right to commercial speech overrides the public health hazard posed by their product. Instead they argue that the effectiveness of advertising bans has not been established and that such bans, therefore, cannot be regarded under the Bill of Rights as necessary to protect public health.

It is a clever argument. It suggests that we need to know exactly why people take up such a fatal habit before we can take action to stop them doing so. This raises questions about human motives that are perhaps best left to philosophers. Certainly science cannot provide absolute answers in this area. No one will ever run a controlled test, for example, in which they expose young people to advertisements for a lethal product and count how many become addicted. There would, therefore, always be room for the tobacco industry to cast doubts on the evidence.

But we must not allow ourselves to be paralysed by such well-funded doubts. We do not need absolute evidence before we can do something. Nor is there any realistic alternative to advertising restrictions. Public health education by itself simply cannot work so long as the social environment remains saturated with direct and indirect tobacco promotions. Realistically the measures contained in this Bill are a prerequisite to effective public education. Whilst I take the Bill of Rights very seriously I do not believe that the Bill of Rights' objection to this Bill merits serious consideration.

I urge Members to support Dr LEONG's and other Members' amendments to the Bill.

**MR CHAN WING-CHAN** (in Cantonese): Mr President, we understand that both smoking and second-hand smoking are detrimental to health. To protect the health of non-smokers and smokers, as well as that of pregnant women and children, the Federation of Trade Unions (FTU) supports the anti-smoking campaign.

At present, the Government on the one hand warns the public of the hazards of smoking through publicity, and on the other hand lowers the chance of the public being induced to smoking by imposing strict requirements and restrictions on the sale, packaging, as well as the advertisements of tobacco products. The Government's Smoking (Public Health) (Amendment) (No. 2) Bill 1997 seeks to introduce further measures to control the use, sale and promotion of tobacco products. Basically, the FTU also supports this move.

Since the anti-smoking campaign will affect the catering industry, I am going to speak on the concerns and worries of the industry. Clause 3 of the Government's Bill empowers the managers of premises such as restaurants to designate the premises or part thereof as a no smoking area. That is to say, managers of restaurants can exercise flexibility in designating no smoking areas. The catering industry welcomes this proposal and thinks that the proposal is pragmatic. However, the Honourable LAW Chi-kwong's amendment proposes that "the manager of a restaurant which provides indoor seating accommodation for more than 200 persons, excluding accommodation being used exclusively for a private event, shall designate not less than one-third of the area of such as a no smoking area." Any manager who contravenes the requirement commits an

offence and is liable on summary conviction to a fine at level 4. If I remember correctly, according to the present scale, that will be a fine of \$25,000.

Mr President, on behalf of the hotel and catering industry, I would like to raise strong objections. Mr LAW may not be very familiar with the operation of the catering industry, and therefore he proposes to introduce new measures to require restaurants to designate no smoking areas, so as to publicise or promote anti-smoking campaign. Mr LAW has failed to take into account the practical operation constraints, commercial viability as well as the adverse impact on the catering industry. If restaurants want to do business, they must put customers' interests in the first place and make them at ease, satisfied and undisturbed. Therefore restaurants often have to make the best use of the space and resources. However, Mr LAW's proposal requiring restaurants with over 200 seats to designate at least one third of the area as a no smoking area is incompatible with the actual operation of restaurants and will be difficult to implement. This would affect the normal operation of restaurants. The managers of restaurants would definitely face operational difficulties because of the constraint on space. As for customers, there is no urgent need for such a mandatory requirement.

Although Mr LAW had consulted me before he moved the amendment, I was not aware of the exact contents of the amendment and the requirements concerned. I have asked Mr LAW to spare the catering industry by limiting the amendment's impact on the catering industry as far as possible. In requiring the catering industry to designate no smoking areas on a compulsory basis, a gradual and step-by-step approach should be adopted. For example, only restaurants with larger business areas are required to designate no smoking areas, so that small and medium-sized restaurants would not be immediately affected by the enactment of the Bill.

The amendment moved by Mr LAW to require that all restaurants with 200 seats to designate no smoking areas will affect numerous small and medium-sized restaurants. Recently many people in the catering industry have voiced to me their strong objections to Mr LAW's amendment. They point out that it is impractical to determine the need to designate no smoking areas on the number of seats because there would be certain implementation difficulties. I shall highlight this issue in my speech at the Committee stage.

Mr President, if we want other people to smoke less, or when we carry out anti-smoking campaigns, we should adopt persuasion, education and publicity to highlight the hazards of smoking. I appreciate this Bill of the Government,

which allows the catering industry flexibility in designating no smoking areas. In fact, since the implementation of the Smoking (Public Health) Ordinance, great efforts have been put in publicity and education. I believe there are actual figures to prove a significant decrease in the number of smokers in recent years. Maybe the experts can give their opinion on this. For example, as far as I know, among the 59 Members in this Council, only two smoke. Mr President, you know better than I do about the number because you know the habits of the Members well.

At a time when half of the seats in a cinema were designated as no smoking area, I was a frequent cinema-goer. Although I did not smoke, I liked to sit in the smoking area. Mr President, it was not because I liked to be a second-hand smoker, but as very few people chose to sit in the smoking area, I had an unimpeded view. Nowadays there are restaurants which have designated smoking area. Similarly, there are fewer customers in the smoking area. It is only when business is very good that smokers and non-smokers will be sitting side by side in a crowded restaurant. I think all of us have such experience and I need not dwell on this subject. It seems that it is not necessary to require the catering industry to designate no smoking areas by legislation, nor is there any need to do so in a hurry, since this will not serve any purpose and will only pose more difficulties and inconvenience to restaurant operators and their staff. Moreover, under the present high rental situation, if some seats in a restaurant are left vacant without being fully utilised, this will be a blow to the catering industry. At present, most restaurants display signs at the door to indicate the availability of a smoking area or a no smoking area, so that customers can freely decide whether or not to patronize that restaurant. This arrangement has worked well and there is indeed no need to change the present mode of operation.

Mr President, I am speaking on behalf of the catering industry. The catering industry does not object to the designation of no smoking areas. It only calls for a piece of moderate and unambiguous legislation. At the same time, the catering industry is also worried that if customers, despite penalty and warning, insist on smoking against the advice of waiters in the restaurant or the enforcement officer, clashes and disputes may occur at any time. This will not only increase the workload of employees in the catering industry, but also bring about a lot of trouble to the operators.

Mr President, the catering industry is already saddled with difficulties. We all know that the industry has to offer bargain prices in order to improve

business. With the approach of 1997 and the election of the Chief Executive designate of the SAR, the political atmosphere has been stable and business of the catering industry has in turn improved slightly. However, it is still difficult to do business. Upsetting the harmonious relationship between customers and restaurants will result in fewer customers. The catering industry will be severely affected and business will drop significantly, thereby indirectly affecting the employment opportunities of workers. I appeal wholeheartedly to Members to object to Mr LAW's amendment.

Mr President, with these remarks, I object to the amendment and support the Government's Bill.

**MR LAW CHI-KWONG** (in Cantonese): Mr President, the Smoking (Public Health) (Amendment) (No. 2) Bill which resumes Second Reading today and the series of amendments to be raised later involve different stances, views, analysis and many other problems. During the debate held earlier on the motion moved by Dr the Honourable LEONG Che-hung, this Council has in fact discussed all these issues. Therefore, in today's resumption of Second Reading debate, I try to present as concise as possible some of our fundamental stances on this question.

In deliberating the issue of anti-smoking, or the restriction of smoking in certain premises to prevent second-hand smoking, the Democratic Party basically adheres to two principles. The first one is concerned with advertisements. In principle, we want to minimize the inducement posed by advertisements to non-smokers, in particular to young people, so that they will not pick up the habit. The second principle is to minimize the effect of passive smoking on non-smokers. How these two principles can be put into practice is a complicated matter. The first problem we have to consider is the restriction on advertisements. In other words, we have to consider, in implementing the restrictions, whether the operators concerned will be adversely affected, and whether such restrictions, in the short term, will cause unduly adjustment problems or insurmountable difficulties, such as problems relating to contracts and employment of staff. On the other hand, we have to consider whether smoking should be equated with drug-taking. The medical profession has ascertained that smoking is harmful to the health of smokers and passive smokers, but up till now the society as a whole still does not consider smoking is drug addition. Therefore, we must strike a proper balance when formulating the overall policies.



Apart from the issue of advertisements, the Bill also covers the issue of no smoking areas. Concerning the latter, the Democratic Party believes that in principle, smoking in all public places located indoors should be completely banned. Only rooms with separate air-conditioning in these indoor places can be designated as smoking areas, like the case of the Legislative Council Building. We have separate rooms for colleagues to smoke inside, while smoking is prohibited in the rest of the building. We believe we should head towards this direction. Nevertheless, in discussing the Bill, we recognized that if amendments to the Government's Bill were moved at this stage, it would mean a facelift of the Bill, which would involve further studies and other feasible options meriting consideration. Therefore, we do not move any amendments this time. However, we do hope that in future, the trend of development on issues relating to no smoking areas or smoking areas will move towards a total ban on smoking in public places, with some areas permitted by law to be designated smoking areas. As the Honourable CHAN Wing-chan has mentioned a number of times, there are more problems in designating smoking areas than in designating no smoking areas. Since there are many amendments to this Bill, in order to avoid repetition, I would not state in detail our stances and views on each amendment at this stage. I will do so when the amendments are formally moved. However, I would like to briefly clarify one point which the Honourable Miss Christine LOH has raised in her report. In fact, Mr CHAN Wing-chan has already given an account of our basic stance on the issue of designating no smoking areas in restaurants. Initially, we intended to designate no less than half of the area in larger restaurants as no smoking area. However, after considering Mr CHAN's views, we have adjusted the proportion to one-third, in order to introduce changes gradually. In addition, originally we intended to require restaurants with 50 seats to designate a no smoking area. However, after considering other views we believed it was reasonable to increase the number of seats to 200, so that smaller restaurants would not have to face undue problems or difficulties.

Generally speaking, the Democratic Party supports the proposals in this Government's Bill to restrict advertisement and expand the extent of no smoking areas. I hope colleagues of this Council will support the Second Reading of the Bill. Thank you, Mr President.

**MR PAUL CHENG:** Mr President, I have been criticized by the tobacco and advertising companies for not representing the commercial interests of my

constituency because I raised a question of conscience during one of the Bills Committee's sessions. I represent the Commercial First Constituency, a constituency made up of the Hong Kong General Chamber of Commerce. Member companies are involved in a wide variety of businesses and deliberating any particular issue I must take into consideration divergent views and then decide what is best for the community. As legislators, our primary allegiance must be for the well-being of the community and not just the interests of one functional constituency, not to speak of one specific sector within the constituency.

Today, we are talking about health as well as life and death. It cuts across all sectors and all walks of life. It is proven beyond doubt that smoking is harmful, not only to smokers but also to those exposed to the polluted environment created by smokers. This is why governments around the world require tobacco packages and advertising materials to carry warning statements. When it comes to health no amount of profit is worth protecting. There can be no economic justification.

The tobacco industry, in using the Bill of Rights and freedom of expression to argue its case, simply shows how desperate the industry is. The Attorney General has stated that the proposed Bill does not violate Hong Kong's Bill of Rights. The recent settlement between the United States Government and the tobacco industry only underscores the fact that even the industry itself had to admit they were involved with not only a harmful product but also a product which can be addictive.

As legislators, it is our responsibility to discourage our young people to pick up this dreadful habit. We need to do everything possible to decrease the number of smokers over time. How fast we should phase in the laws and regulations and the scope of coverage colleagues in this Council will need to decide for themselves. We are dealing with our health and the health of future generations. We cannot be hypocrites. We must vote with our conscience.

I should mention that I have received close to 150 deputations supporting total ban on all forms of tobacco advertising and promotional activities. In representing the General Chamber of Commerce I am also obligated to report that the General Committee of the General Chamber of Commerce unanimously supported the ban on tobacco advertising at its last meeting earlier this month.

The majority of the members of the General Committee, however, supported allowing tobacco brands to continue to sponsor arts and sports events.

With these comments, Mr President, I intend to support the Bill and most of the Committee stage amendments.

**MR MARTIN LEE:** Mr President, I seldom see eye to eye with the Honourable Paul CHENG on many, or on any, controversial issues in this Chamber, but on this occasion not only do I see eye to eye with him, I like to think lung to lung, clean lungs to clean lungs.

But, Mr President, I have been urging Honourable Members not to smoke in this building at all. My vision is to see this building smoke-free, not even one or two or three rooms now, at least, even though in law there should be only one smoking room. I am afraid the President's Room is also, has somehow become, a smoking room.

Mr President, I have actually appealed to the Chair, shall I say, by even demonstrating before you I inhale smoke and thereby injure myself. I exhale smoke and thereby injure others. But if I inhale smoke it is a free choice, but if I exhale smoke I am not giving anybody any chance. So, how long should we continue to smoke? Until we die of lung cancer or heart disease? But perhaps before that happens there would be many around us, those dear to us, who may come to an untimely death even before us.

So, Mr President, I hope, I pray, that this will not only become a smoke-free chamber and a smoke-free building, but that everybody in it will not smoke. Perhaps it is ironical that our Deputy Chairman is a non-smoker and has been fighting all his life against smoking, and on this occasion I agree with him and not you, Mr President. Now, I switch over to the Chinese channel.

**MR MARTIN LEE** (in Cantonese): Mr President, in the past I have in fact explained in such a way. When we inhale smoke, we make a choice to injure ourselves, but when we exhale smoke, we injure those around us, those dear to us, our friends or colleagues. However, we do not give them a chance to choose, because they do not have any choice at all. I inhale smoke and thereby injure myself. I exhale smoke and thereby injure others. So, how long should we

continue to harm ourselves and others? Until we die of lung cancer or heart disease? But perhaps before that, many of those dear to us may already die.

Mr President, I therefore urge my colleagues to do all we can to support the Smoking (Public Health) (Amendment) (No. 2) Bill tabled by the Government. In so doing, the number of young people being induced into smoking can be minimized. We also understand that if the Bill is enacted, a number of elderly people may lose their jobs. Of course we are very sympathetic towards these elderly people, but how can we allow these people who have no other choice to bring about so much suffering, so much harm to so many young people?

Mr President, I so submit and support the Second Reading of the Bill.

**DR LEONG CHE-HUNG:** Mr President, I thank the Honourable Martin LEE for his usually very eloquent speech. But I would like to remind him that the only way that he could have lung to lung contact with the Honourable Paul CHENG is something that perhaps you, Mr President, will not allow in this Chamber.

Mr President, I would like to thank the Chairman of the Bills Committee, the Honourable Miss Christine LOH and all those who actually appeared in this Chamber and at the Bills Committee expressing one way or the other either lobbying for tobacco smoking or otherwise. Members would agree that we had a very good educational session. And I think all of us left the Bills Committee much richer not in tobacco smoke but richer in our knowledge. I, personally, of course, would like to thank all those who supported strongly against tobacco as some of them are obviously in the gallery watching our progress. Well, I am sure Members are aware that we are now looking at actually two amendment Bills on anti-smoking before the Council today. Both ask for one thing and one thing alone, that is, do not allow the public, in particular, the young non-smokers to be lured into this despicable habit of smoking and the indisputable bodily harm that smoking will bring. But, let me clarify to Members in this Council that what we are looking at today at this point in time is the Government's Bill, not the Bill that I put forward that Members are so worried or afraid about. Mr President, I would like to quote that "the tobacco industry has the most irresponsible corporate record of any industry in the United States". I did not initiate these words although I would gladly do so. It is actually a summary report of the recent settlement between the United States Attorney General and

the Tobacco Industry where the tobacco industry has to pay something like 360 billion US dollars over 25 years and something like 60 billion dollars more in lieu of punitive damage for past conduct. I like that word "punitive" damage for past conduct. Why does the report make this remark? It is very simple. For years the industry knows that smoking is a cause of cancer of the lung. Yet they deliberately shielded off the incidences. For years, the industry realizes that the nicotine content in tobacco is addictive. Yet it is only recently that the industry concedes in the face of mounting litigations. Let me stress, nicotine in tobacco is addictive — similar to heroin. Now the industry says that tobacco advertising aims only to lure smokers to switch brands, do not smoke Marlboro, smoke Kent, not to induce non-smokers to smoke. They want proof. But have we not heard this before?

### *Hard Facts of Smoking Addiction*

Mr President, let me repeat to *ad nauseam* that the following facts are indisputable and agreed even by the tobacco industry:

1. Smoking is a cause of lung cancer.
2. Nicotine in tobacco is addictive — the United States Attorney General has actually authorized the Food and Drug Agency to eventually eliminate nicotine entirely from tobacco products, if it is possible.
3. There is a rising trend and number of smokers among young people, and females, round the world and also in Hong Kong. Yes, the Honourable CHAN Wing-chan was right that perhaps the adult population has decreased as far as adult smoking population is concerned. But, we are looking at an increased number of young people. People who has never smoked before, are now picking up the habit.
4. The health of non-smokers are affected by second hand smoking. It has been known that lung cancer is actually higher in women who do not smoke but whose husbands do. Perhaps that is a way to kill one's wife.

### *Tobacco Ads recruit New Smokers*

Mr President, I am sure the tobacco industry and its advocates will say — hey, we are talking about tobacco advertising and our aim in advertising is to induce people to switch brands only, not to lure non-smokers to smoke. Prove it, LEONG Che-hung, if you think otherwise.

Mr President, but what nonsense is this? There are more than 300 scientific studies round this world to prove "otherwise". We have reports to show that even tobacco company executives admit that they are targeting non-smokers, in particular, young children. Not too long ago, we had, in this very Chamber, a former consultant of a large tobacco company who openly admitted that the claim that advertising is only for switching brands is only part of the truth but not the whole truth. I salute him. I commend him for his bravery to save the world after having seen the dark side of the tobacco industry. Mr President, I have with me letters, one of them, a letter from the Minister of Health of the Royal Norwegian Ministry of Health, and I quote: "there is no doubt that the Norwegian advertising ban has had a clear and substantial positive influence both on total tobacco consumption in general and smoking rates among school children in particular." I have also a letter from the Ministry of Health from the British Government and I quote what it said, "it is anachronistic to continue to allow media advertising to create a false image which links tobacco to healthy activities and suggest social acceptance".

Yes, it can never prove possible as we have just mentioned in our reality world to conduct a scientific study using a double blind method to prove that tobacco advertising induces smoking, which requires comparison of two groups of children — one being exposed repeatedly for a long time to all sorts of tobacco advertising, whilst the other being barred from any contact with tobacco ads. This is neither physically nor morally possible. Nor should this be ever done by any responsible government or society!

Furthermore, if the tobacco industry is responsible, even inducing people to switch brand is wrong. Instead, they should curtail people from smoking entirely now that they subscribe to the fact that smoking is equivalent to lung cancer; smoking is addictive.

#### *Economy and Livelihood Not Affected*

Mr President, the advocates of tobacco advertising will bring in the economic issue and the emotional livelihood issue as they have done over the last

two days outside our carpark. But most of these are misrepresentations and in many areas the industry are pulling wool over the eyes of the public and the legislators here.

To wit, in December 1990, when the Government banned tobacco advertising in television — a very good thing, advertising agencies cried wolf, saying that Hong Kong's TV stations would lose \$100 million. Yet, in the years that followed, revenues from advertising for our two TV stations surged. Revenues in the year of 1993, for example, was already up by 50% than in 1990. In Singapore and Thailand, when tobacco advertising were banned completely, within months, revenues from advertising increased. Mr President, where tobacco advertising leaves, others quickly come in to fill the vacuum! Why should it be different in Hong Kong.

Mr President, the tobacco industry has brought on a whole team of old grannies and small retailers this morning and yesterday to apply an emotional approach to influence legislators. The tobacco industry however has pulled wool over these same small vendors' eyes. The industry has not told them that at least in my amendments, I have specifically exempted the control of display advertisements from those hawkers and small vendors. This is to balance the need to curtail smoking and the immediate livelihood of these small vendors involved. This demonstrates yet another irresponsible act of the tobacco industry!

#### *Tobacco Ads in Disguise of Sponsorship*

Finally, the industry recruited the support of sports and cultural organizations, and shamefully, even rehabilitation organizations, tricking them into believing that the Bill bans sponsorship. Mr President, nowhere in this Bill nor in any of the amendments suggested banning sponsorship. What is suggested is to ban parts of sponsorship advertisements, or more accurately, advertisements under the blatant disguise of sponsorship, call a spade, a spade if they want to do so!

Mr President, this Bill before us and its amendments address one thing and one thing alone — health for us, for all of us and our future generations. It asks for curtailing young people from smoking; it asks for protecting non-smokers from the deleterious effect of smoking; it asks for improving our endangered environment. Vote for this Bill and my amendments, and you will

be proud in the years to come that you have contributed to the improvement of our society.

Finally, Mr President, I was asked repeatedly why I did not move to ban tobacco smoking completely. I would have gladly done so and I am sure any government would have done likewise, if when tobacco was first introduced, the cancerous effect and the addictive effect were known and not shielded by the tobacco industry. It has been wrong to label tobacco and cigarette as a legal product! The least we can do now is to protect those who are not yet influenced by the luring effect of attractive but expensive advertisements brought forward by our Goliath — the Tobacco Industry!

Let us vote, and I quote the Honourable Paul CHENG's words, "with our conscience". May I also take this opportunity to salute Mr Paul CHENG and the General Chamber of Commerce. With those remarks, I support the Second Reading.

**MR MOK YING-FAN** (in Cantonese): Mr President, I am very glad that Dr the Honourable LEONG Che-hung tabled a Member's Bill, as it has compelled the Government to move the Smoking (Public Health) (Amendment) (No. 2) Bill 1997. Without his Bill, we would not know whether the Legislative Council could have the chance to examine this Bill, which deals with restrictions on smoking, during this legislative session or within our term of office. The Association for Democracy and People's Livelihood (ADPL) basically supports the Government's Bill, since it will further promote anti-smoking campaign in Hong Kong. This is in line with our preferred pace of development, that is, to carry out the anti-smoking campaign in a gradual and moderate pace.

Recently, I see a lot of young smokers, most of whom are female. I have to declare that I have no sex discrimination, but I am worried because I have seen many a 13 or 14-year-old girl with a cigarette in her hand hanging around in parks and Tsim Sha Tsui East. Obviously, this has become the present trend and fashion in Hong Kong. Some young people probably think this kind of behaviour is "stylish". The public and this Council should be on the alert. As a matter of fact, according to a survey conducted by the medical profession in 1995, of the 30 000 people who died in Hong Kong, 19% or about 5 600 cases were smoking-related. It was estimated that about 3 to 4 billion dollars were spent each year on treating patients suffering from smoking-related diseases or



lung diseases. Therefore, the ADPL all along believes that anti-smoking campaigns should be launched.

However, sometimes I have some slight concern and sympathy for smokers like you, Mr President. Not only does smoking affect health, smokers are also often unwelcome in many places, as though they were criminals. I remember a film starred by Michael Hui, in which he had to discharge the smoke through a plastic tube which led to the outside of the building whenever he smoked. That gave me the impression that smoking is like committing a crime. Just as the Honourable LAW Chi-kwong has put it, the society does not consider smoking as drug-taking and the public can smoke if they want to and they can buy cigarettes in the streets. However, smoking seems to be considered as a kind of undesirable behaviour. This may sometimes be rather confusing, because smoking can be considered a long-standing habit since the history of mankind. This can be attributed to the success of the tobacco companies which, with their truly vast financial power, are able to perpetuate the habit of smoking to the present day without any signs of diminishment. Although for several decades the Hong Kong Smoke-out Committee has put in a lot of efforts, the present situation seems that there are more young smokers than the aged or elderly who smoke. As far as legislation is concerned, the ADPL believes that a step-by-step process should be put in place to enhance the public's awareness on anti-smoking by means of legislation and education. We agree with and support moves in this direction and hope that through this Bill, commercial operators and tobacco companies in particular, will not dump the market with tobacco products.

Ever since I joined the bills committees of this Council, this Bills Committee has, by far, received the largest number of representations, which were indeed numerous. They came from various parties, expressing views of both pros and cons. Naturally, the anti-smoking and the pro-smoking groups have their own stances which are very different indeed. Therefore, the ADPL will base on several major principles to cast our votes during the Second Reading of the Bill and we will definitely vote in favour of its Second Reading. Regarding the various amendments to the Bill, we would also vote according to these principals. The first principle is to promote the anti-smoking message gradually. The second principle is to duly consider the existing interests of business corporations and small retailers, we do not wish to see drastic changes which will harm their interests suddenly. The third principle is related to the sponsorship of cultural and recreational activities or sports activities. We still want to give tobacco companies their appropriate room for existence and will

support amendments in this aspect. I hope very much that this Council will approve the Bill in a healthy and refreshing situation, that is, progressively. Finally, I would like to take this occasion to advise you, Mr President, to quit smoking as soon as possible.

Thank you, Mr President.

**DR HUANG CHEN-YA** (in Cantonese): Mr President, "smoking is hazardous to health" is an undisputed truth. If cigarettes were a new product, I believe that such an addictive product, which causes heart disease, brain stroke, throat cancer, lung cancer and other kinds of cancer, would surely be banned or categorized as dangerous drugs subject to the monitoring of the Department of Health. Hence, in considering the permitted extent of cigarette advertisement, we are not considering the general issue of the free flow of information or the advertisement of a general commodity. Instead, we are considering the extent of publicity and advertisement permitted for a drug which should have been regulated in the first place or may be regulated in future. As we do not allow any advertisements of drugs like blue genies, ecstasy or marijuana, the same yardstick should also be used in determining the permitted extent of cigarette advertisement.

A few days ago, the United States tobacco industry reached an agreement with the Federal Government. The tobacco industry is willing to pay out compensations, accept the regulation of the Food and Drug Administration, and comply to the requirement of banning smoking in public places. We can see that tobacco companies in the United States and Europe have already been driven to a cul-de-sac. At present, their entire strategy is to export this lethal product to Asia, just like what happened during the Opium War 150 years ago, with opium exported to Asia for money at the expense of the health of the Asian.

Apart from direct advertisement, tobacco companies also sponsor various kinds of activities, hoping to associate tobacco with images like success, chic, elegance and good taste etc., because they are aware that many people smoke because they believe smoking is "stylish". Can the ban on cigarette advertisement help reduce the number of smokers? The evidence is obvious. Banning cigarette advertisements can help reduce the number of smokers. The Bills Committee has received much evidence on this, and I need not repeat here. Apparently, direct advertisement is not the only means employed by tobacco companies to induce people to smoke. There are also indirect advertisements,

such as sponsoring high-end products or activities with the ultimate aim of fostering young people to think that smoking is "glamorous " and "prestigious". These images and beliefs will not be wiped away at once with the ban on tobacco advertisement. Thus, the ban on all kinds of tobacco advertisements will just be one of the means to reduce the number of smokers. Yet its effectiveness depends much on other supplementary measures and it takes time to achieve remarkable results. At present, many tobacco companies want to open the market in China, turning the 1.2 billion population into smokers. Since Hong Kong people have all along enjoyed quite a high status among the people in China, tobacco companies try hard to associate cigarettes with Hong Kong, misleading our compatriots into thinking that smoking is "cool and trendy". So, if we do care about China and the people in China, we should take the anti-smoking policy seriously. In this case, we are helping not only Hong Kong but also China. We cannot support the amendment moved by the Honourable LEUNG Yiu-chung because it is not an issue concerning the free flow of information. Rather, it is about advertising certain brands of tobacco products flagrantly through sponsorship.

Several television broadcasters have expressed their concerns that after the passage of the Smoking (Public Health) (Amendment) (No.2) Bill 1997, some of their programmes may be outlawed. They worry that smoking scenes in dramas, news footage on the tobacco industry, stories and historical stories of ex-smokers, or smoking-related scenes appearing in news footage and documentaries will constitute an offence. I understand that the Government will explain clearly in its speech that any accidental or incidental appearance where no valuable consideration is given for such appearance is not an advertisement. The Secretary for Health and Welfare will further elaborate on this to allay the worries of the mass media.

Obviously, "passive smoking" is detrimental to health. If more public places are designated no smoking areas, the public will be healthier. The Democratic Party therefore opines that smoking should be prohibited in banks, supermarkets, shopping malls and other public places. It will be most desirable if we can follow the practice of the United States to prohibit smoking in all public places, so that people in these places will not have their health impaired.

Regarding restaurants, however, the Democratic Party opines that the amendment proposed by the Administration can hardly be regarded as desirable because the interests of non-smokers are not adequately protected. On the other

hand, the catering industry has pointed out the difficulties in enforcement. In some restaurants, inconsiderate smokers may give rise to disputes or confrontation. It can be said that the amendment moved by the Democratic Party proposes a minimum requirement. I hope all of you will understand that we are just making room for the catering industry to adapt to the changes, paving the way for setting up more no smoking areas in future and ultimately imposing a total ban on smoking in public places. After taking into full account the views put forward by the Honourable CHAN Wing-chan, the Democratic Party has already made the greatest concession regarding the amendment to the designation of no smoking areas in restaurants. If more concessions are made, we think the interests of non-smokers will be sacrificed.

Presently, certain commodities which share the same brand name, trade mark and image with cigarettes also help promote the sale of cigarettes. I believe that even if we prohibit these products from sharing the same packaging with cigarettes, the sales volume of these products will not be affected. Unfortunately, the Bills Committee does not have enough time to deliberate on this issue in further detail, rendering it impossible to draft any appropriate legal provisions. I hope we can address this issue when this Ordinance is amended next time.

The habit of smoking indeed has a long history. The ban on tobacco advertisement and the designation of no smoking areas will inevitably affect the livelihood of tobacconists. Hence the biggest problem arising from legislating against smoking is how to deal with the economic implications and the effect on people's livelihood. Imposing a total ban on smoking therefore cannot be achieved without a hitch. It is precisely because of this that a total ban on smoking in public places as well as tobacco advertisement is still impossible.

I hope that the Government, instead of being complacent about the success achieved today, will conduct annual reviews and tighten the ban on tobacco advertisement and smoking in public places each year. More importantly, I hope that during the course of review, the Government will, firstly, consider categorizing tobacco as drugs and have it regulated by the Department of Health, and secondly, recover the expenditure on public health thus incurred from the tobacco industry.

Thank you.

**MR LEUNG YIU-CHUNG** (in Cantonese): Mr President, like many colleagues in this Council, I strongly object to smoking. My mother was sent to the Accident and Emergency Department last month because she contracted asthma and could hardly breathe. We were at our wits' end and sent her to hospital immediately. We were told by the doctor that she had great difficulty in breathing because she had lost most of her lung functions. We have been, in fact, well aware of the reason for her illness. It is simply because she used to be a chain smoker. Although she has already kicked the habit of smoking a few years ago, unfortunately, her lung functions are so seriously impaired by long term smoking that no medicine can effect a complete cure. She now has to live with this illness which makes her suffer bitterly. I believe many heavy smokers will probably face this problem when they come to an old age. I have come across many such patients in hospitals. I actually feel sorry for them for they were ignorant of the hazards of smoking while they were young and therefore kept on smoking, doing harm to their health. Nothing can be done to restore them to health now. I hope those who smoke today will learn from this experience and be more alert. Perhaps they are still healthy today; yet they may face the same problem in future. The problem may remain latent at the moment and therefore they do not realize it. By the time they come to know about its existence, it may be too late.

Mr President, I am a teacher. When I am at school, I always urge my students to concern themselves with youth problems. I advise them not to smoke because smoking will indeed affect their whole life. Just as the advertisements we have nowadays urging young people not to take drugs, both smoking and taking drugs have an everlasting effect. On many occasions, I not only urge my students not to smoke, but also lead them to participate in anti-drug activities and advise them not to take drugs. I believe both smoking and drug taking are hazardous to health and will bring about very serious consequences. The gravity of the matter will prompt us to find ways to help them. As mentioned by many colleagues earlier on, I also agree that we should consider how to restrict smoking from the perspective of public health. I fully support the requirement to designate smoking areas in public places and to stipulate that health warnings such as "Smoking is hazardous to health" or "Smoking can kill" must be displayed in tobacco advertisements. Yet we must be careful in imposing various kinds of restrictions so that the protection of the freedom of speech and expression provided by the Bill of Rights Ordinance will not be undermined. Even though certain restrictions are justifiable, for example, for

safeguarding public health, the scope of the restrictions should not be too wide or go beyond the original purpose. Restrictions regarding advertising and the sponsorship of activities by tobacco companies must, in particular, be handled cautiously. While the Government repeatedly assured the Bills Committee that this Bill is in line with the Bill of Rights Ordinance, a point mentioned by many colleagues earlier on, I still think that in any event, certain provisions in the Bill require thorough consideration and are open to dispute. Article 16 of the Hong Kong Bill of Rights Ordinance stipulates that:

- (1) Everyone shall have the right to hold opinions without interference.
- (2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
- (3) The exercise of the rights provided for in paragraph (2) of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary
  - (a) for respect of the rights or reputations of others; or
  - (b) for the protection of national security or of public order (ordre public), or of public health or morals.

Mr President, the freedom of speech and expression enshrined in Article 16 of the Bill of Rights Ordinance includes the imparting of information by different means. Precedents of other countries clearly state that the scope of protection provided by the relevant provisions also apply to commercial information, such as advertising and so on. The effect of commercial advertising is not only limited to attracting consumers to purchase the products being promoted. In a highly competitive society, consumers are able to identify the merits and the demerits of commodities of different brands through advertisements. This is a piece of useful information to which consumers will pay particular attention. We may, of course, justify the restrictions on the ground of safeguarding public health. I have no objection in this regard, but I just want to ask whether these restrictions are really so relevant to the protection of public health that they must be imposed. Are these restrictions necessarily

related to the protection of public health and therefore must be imposed even though they trample the freedom of expression? Of course I do not want youngsters to become smokers. Nor do I wish to see innocent people's health at risk because of passive smoking. Nevertheless, if we are to impose various restrictions, the question is: do we really have to exercise stringent control over tobacco advertising, ban the sponsorship of certain activities by tobacco companies or disallow them to advertise during those activities? What genuine and effective consequences will this bring in relation to safeguarding public health and protecting the health of the public? In fact, I cannot see any inexorable relevance between the two.

Mr President, in view of the reasons above, I intend to move a rather moderate Committee stage amendment so as to allow tobacco companies to advertise the cultural and sports activities they sponsor. In this way, the Bill will be more in line with the Bill of Rights Ordinance. I believe that with the implementation of the Bill of Rights Ordinance, everyone is entitled to enjoying the rights stated therein. It does not matter whether you agree to a particular kind of message or idea, other people still have the freedom of and the right to the free flow of that information. I have to reiterate that any restrictions on the freedom of speech or expression must be proportionate and should not be excessive. In my opinion, being too restrictive on tobacco advertising will only result in the continual survival of the well-known or big tobacco companies with the likelihood of the "second-rate" tobacco companies being forced out of the market. Yet the problem of smoking still cannot be solved satisfactorily.

In my opinion, unless Members agree to what was said by Dr the Honourable HUANG Chen-ya earlier on and treat smoking as drug taking, there is no way to solve the problem of smoking. If Members insist on imposing those restrictions, there is nothing more I can say. We, however, cannot equate smoking with drug taking at the present moment; yet we keep on restricting tobacco advertising. I think we have exploited the rights of the tobacco companies. Furthermore, I would like to emphasize again the point which I mentioned earlier on. Even though there is a ban on advertising by tobacco companies, smokers who consume the famous brands will keep on recommending those brands to others, resulting in the continual increase in the number of smokers of their products and close down of tobacco companies of other brands. Yet the problem of smoking remains unsolved. So what benefits can we gain at the end of the day? Therefore, I hope that Members will consider the issue from different perspectives. It is true to say that everyone is

against smoking, but does the Bill put forward the best approach? I hope Members will reconsider the matter.

Mr President, these are my remarks.

**MR NGAN KAM-CHUEN** (in Cantonese): Mr President, although the Government only introduces the Smoking (Public Health) (Amendment) (No. 2) Bill 1997 to this Council after repeated urge by Members, it can be considered a comparatively positive response in recent years to motion debates, which are not legal binding .

The Democratic Alliance for the Betterment of Hong Kong (DAB) is concerned about the effect of smoking on the general public, in particular on the health of young people. On these issues of public concern, the Bill imposes further restrictions on tobacco advertisements as well as the use and sale of tobacco products. This will further promote the work on anti-smoking. However, the DAB considers the Government's measures not progressive enough and it has not given thorough consideration to issues involving the interests of some small-scale retailers.

As we said in the motion debate held at the beginning of this year, the DAB supports a total ban on direct tobacco advertisements. As a member of the World Health Organization, the Hong Kong Government is bound to prohibit direct advertisement of tobacco products so as to achieve the goal of establishing a Tobacco-advertisement-free Region in the Western Pacific Region by the year 2000. However, the Hong Kong Government has repeatedly refused to draw up a concrete and practical work plan in the Bill to achieve this goal. More specifically, it has not yet worked out any timetable in relation to restrictions on tobacco advertisements in local newspapers and publications. This is indeed regrettable.

Concerning the extension of no smoking areas, the arrangements in the Bill in fact do not differ significantly from existing practices and are not effective in protecting the public from passive smoking. The DAB believes that the scope of no smoking areas should be further extended. For places frequented by young people, such as schools and public pleasure grounds, a mechanism should be put in place to designate statutory no smoking areas.



If the Government's Bill is passed, hawkers selling cigarettes and other small merchandise would be most directly affected. A major part of their daily income is derived from subsidies of tobacco companies for the display of cigarette-related signs. Banning the display of all forms of advertisement at one stroke will seriously affect the income of these small retailers. In enacting legislation, the livelihood of the people affected should not be totally ignored. Therefore, it is only natural and reasonable that these small-scale retailers are exempted.

In the coming Committee stage, the DAB will decide which amendments to support according to the principles mentioned just now.

Mr President, there is still a long way to go before Hong Kong can attain the goal of establishing a Tobacco-advertisement-free Region by the year 2000. However, when enacting legislation to promote anti-smoking, we cannot be too hasty and neglect public education. The DAB, therefore, would like to take this opportunity to urge the Government to step up its efforts in raising anti-smoking awareness among the public. With favourable social conditions and public support, the implementation of legislation will naturally be greatly facilitated.

Mr President, I so submit.

**MRS SELINA CHOW:** (in Cantonese) Mr President, every time this Council debates on the issue of smoking, Members will have a number of strong and divergent views. I remember a few years ago, the Honourable Martin LEE would debate heatedly with the late Honourable Stephen CHEUNG whenever this issue was brought up. On the whole, they were friends and got along with each other quite well, but whenever the issue of smoking was involved, they would have fierce arguments and one of them might even leave the conference room.

The topic of smoking is so sensational and intuitional that it makes people irrational and impulsive during the debates on it. The issue we are discussing today is not, in essence, about whether smoking is good, or who should be allowed to smoke. Just now I heard Dr the Honourable LEONG Che-hung use the word "shame" in his speech. As a medical practitioner who care so much about our health, his strong reaction is natural. However, if we say that smoking is a shame, it is very much a moral criticism or judgement. Smoking

may be bad and we dislike smoking, but we will not go so far as to describe it as something shameful. I believe that we all agree on one thing: we do not want our young people to smoke, so we do not want them to be misled into taking up a habit that is generally recognized as undesirable. But let us not forget one thing: there are still a large number of adults in the territory. In our community, which is indeed very free, our freedoms are highly respected. We often say that we respect the freedom of these adults and that we treasure the freedoms of speech, of expression, of information, of trade and so on. However, when it comes to this issue, which is not beneficial to us, we will forget everything about our freedoms.

Up to now, smoking is still allowed in our society, and it is not regarded as a crime. Though smoking is not a crime, it is almost so, as the Honourable MOK Ying-fan has put it. It makes you feel like committing a crime, though it is not forbidden by the law. Cigarettes are not illegal products, but, even so, we want to discourage people from smoking. How can we strike a balance here? I think our society has accepted that the media, such as electronic media, may have strong impact on the ideology of the public. As a result, we have banned the media from disseminating messages that would encourage people to smoke. Nevertheless, there are people, including Dr LEONG, who think that the restrictions are not sufficient, and that cigarettes should be kept completely out of sight. We advocate freedom on the one hand; yet we have strong views against smoking on the other. Should we find out whether the rigorous restrictions on the advertisement can achieve their expected effects? I would not like to quote figures, but there are in fact some examples. As far as I know, tobacco advertisements have been banned for a number of years in some countries. For instance, in Norway, tobacco advertisements have been prohibited since 1975, but in 1995, the smoking rate among its young people was much higher than that of Hong Kong, where tobacco advertisements are still allowed to a certain extent. In Norway, where such advertisements have been totally banned, the rate of young smokers was as high as 26%, while the corresponding rate in Hong Kong was only 3.8%. Against the figures I quote, anti-smoking campaigners can no doubt produce figures to prove otherwise. By referring to these figures, I simply want to point out that it is too hasty to draw the conclusion that tobacco advertisements induce young people to smoke.

The display of tobacco advertisements has been totally banned on the electronic media. I will vehemently oppose to advertisements that target at our young people, in particular, if they will lure the younger generation to smoke.

On the other hand, we have to respect adults' rights to receive such messages. In the United States, for instance, we all know that the tobacco industry has to pocket out US\$300 billion dollars in a recent settlement. But has the United States Government banned the display of advertisements in publications? No. Canada is a country that attaches much significance to environmental protection and public health. Tobacco advertisements, however, cannot be totally banned. Hence it is important that a proper balance must be struck.

Smoking is very much part of the reality in Hong Kong. I totally agree that our measures will have impact not only on smokers, but also on those people who are subject to passive smoking. As far as we can strike a balance, certain restrictions should be introduced. However, if we go so far as to introduce restrictions to restaurants as we propose now, their operation will be affected. I cannot understand why the catering industry is always victimized. In addition to its sufferings in the sewage treatment issue, it is subject to other restrictions as well. I wonder if the amendments moved by the Democratic Party are really so effective and feasible. Most importantly of all, are they enforceable? We have to take this into serious consideration.

The impact on the operation of the catering industry is another important issue we have to consider. In fact, as those restrictions lack flexibility, a heavy blow on the catering industry may be resulted. Representatives of the industry have already made submissions to us.

As the representative of the wholesale and retail sectors in this Council, especially for the retailers, I have to speak on their behalf. Will the display of advertisements, such as printed matters and posters, at points of sale turn non-smokers into smokers? People go to these points of sale because they are smokers. Since legislation is already in place to prohibit the sale of tobacco products to young people under the age of 18, the protection is in fact sufficient. Besides, as there are health warnings in the advertisements advising people that smoking is hazardous to health, it will not attract new-comers. The imposition of restrictions will certainly give rise to great difficulties to hawkers and vendors. I do not want to speak in detail on this point now, as I still have a chance to speak later. As far as the points of sale are concerned, I hope that you will not classify them according to the number of sales persons or their size. Basically, most of them are very small in scale. If there are rigid restrictions on the number of staff and so on, operators marginally outside the specified scope will suffer. I

urge Members to support my Committee stage amendment at a later stage and vote against Dr LEONG's amendments.

All in all, I hope Members can appreciate that we must strike a proper balance and take into account the needs of all sectors in the community. We must not allow harms to be felt before there are benefits, or introduce measures to the detriment of other parties who may be seriously affected.

Thank you, Mr President.

**MR WONG WAI-YIN** (in Cantonese): Mr President, I had no intention to speak. However, there is something I do not understand in the Honourable CHAN Wing-chan's speech, so I would like to bring it up to discuss with him. Just now he has said that he is against the amendment proposed by the Honourable LAW Chi-kwong, that is, the proposal which requires the manager of a restaurant which provides seating accommodation for more than 200 persons to designate not less than one-third of the area of such as a no smoking area. Mr CHAN thinks that this will deal a further blow to the catering industry, which has already been in the doldrums. I believe that he says so for the rights and interests of the catering industry, and it is very clear to us. His arguments, however, may not be helpful to the catering industry, as he mentioned that he liked very much to sit in the smoking area when he went to a restaurant. Nonetheless, he emphasized that it was neither because he enjoyed passive smoking, nor did he like the smell. He did so simply because there was more space.

**MR CHAN WING-CHAN** (in Cantonese): Mr President, I never said anything about sitting in the smoking area of a restaurant; I only talked about cinemas. Mr President, Mr WONG Wai-yin has misquoted my remarks.

**PRESIDENT** (in Cantonese): I would like to clarify on behalf of Mr CHAN Wing-chan. He referred to cinemas in his remarks.

**MR WONG WAI-YIN** (in Cantoense): Excuse me, perhaps I got it wrong. I am sorry. Let us use cinema as an example then. Mr CHAN Wing-chan said that he preferred to sit in the smoking area in a cinema because there were fewer

people. But has Mr CHAN ever wondered why there were so few people? Obviously, the majority of people did not like to sit there because they hated passive smoking. That is why there are only a few people in the smoking area, and it indicates clearly that the public are scared off by passive smoking. Mr CHAN has also mentioned that only a few of our colleagues have the habit of smoking, and according to him, not too many people in our community smoke. Hence we think the public should be protected from the hazardous effect of passive smoking.

Mr President, smokers have the freedom of choice in public places. They can choose to smoke or otherwise. If they feel like smoking, they can find an exclusive place, for instance, a sealed room, where they can indulge in smoking, smoke to their hearts' content and engage in a slow process of suicide without being interfered. Those non-smokers who are forced into passive smoking, on the other hand, do not have any choice. They can do nothing but to leave the place. As far as a public place is concerned, would it be fair to them? Therefore, lately, many people refer to smoking as an act which indeed harms the others but not to one's own benefit. I believe that my colleagues in this Council will not wish to do something which harms the others but does not benefit themselves. The example Mr CHAN quoted about cinemas could happen in any public places, including restaurants. If the majority of people prefer not to sit in the same area with smokers, and a large number of seats in the restaurant are designated as smoking area, non-smokers may choose not to patronize the restaurant. This will have adverse effect on their business. The amendment moved by Mr LAW Chi-kwong actually represents a compromise. He intends to require restaurants with 50 seats or more to designate half of the area as no smoking area. He has already made a compromise. If our colleagues, including Mr CHAN, really wish to help the catering industry, they should support not only the requirement regarding the designation of smoking areas, but also a complete ban on smoking. Only in this way can restaurants attract more customers who would otherwise be scared away by passive smoking. Therefore, I hope that my colleagues will support the relevant Bill and amendments. Mr President, with these remarks, I support the Bill.

**MR ANDREW CHENG** (in Cantonese): Mr President, on resuming the Second Reading of the Smoking (Public Health) (Amendment) (No. 2) Bill 1997, I believe many people will criticize the stance of the Democratic Party on the freedom of information or advertising by saying that we support, on the one hand,

democracy and freedom of information, but we are selective on the issue of tobacco advertising on the other.

I would like to respond to the speech made by the Honourable Mrs Selina CHOW of the Liberal Party. When the Chief Executive, Mr TUNG, put forward the consultation paper on the reinstatement of draconian laws, he emphasized the need for social stability to take precedence, and individual freedom to assume a subordinate role. Despite the fact that there has not been any major social unrest in our community, the Liberal Party supported the Chief Executive's proposal of reinstating those laws which suppress personal freedoms. Nevertheless, while there are numerous scientific data proving that smoking is hazardous to health, an International Covenant on Human Rights advocating the precedence of public health, and that in our opinion, a little bit of our personal freedoms should be sacrificed in exchange of public health, it turns around and says that we should respect individual freedoms.

I hope that in making choices on certain issues, my colleagues can hold onto the key point, that is the well-being of the public. The Honourable NGAN Kam-chuen has said this is an issue involving small business owners and hawkers and that their interests should not be neglected. Since Mr NGAN has mentioned people's livelihood by saying that we also have to take into account the livelihood of small business owners and hawkers, I would like to ask him a question. What, according to his definition, is people's livelihood? Does it mean looking after the economic interests of a few small business owners and hawkers at the expense of the health or even the precious lives of the general public? Mr President, as the saying goes, "Without freedom, it is better to die". On this subject, I would say, "Without health, one is soon to die". Without health and life, there is no point in counting the economic benefits.

I think today's debate is emotional since it has something to do with everybody's health. When our health is seriously affected, we are bound to be swayed by emotions. The death of Dr the Honourable Samuel WONG has made us become sentimental. Just now the Honourable LEUNG Yiu-chung has mentioned that his mother was hospitalized. We all feel sad when we see the elderly woman's health endangered by her chronic smoking habit. Mr President, I see that you are looking at the clock. As all of us are going to the memorial service of Dr Samuel WONG, I will cut my speech short. I have two major points supporting my argument, namely the Bill of Rights Ordinance, which Mr LEUNG Yiu-chung has already mentioned, and the International Covenant on

Civil and Political Rights. It is very clearly stated in the introduction to the Covenant that civil rights and political rights are for individuals whilst the freedom of expression should not involve any commercial considerations. Provisions safeguarding human rights and basic rights also confirm that when it comes to matters affecting public health, these freedoms should be restrained.

Mr President, I learnt from the news that when the Chancellor of the Exchequer of the Conservative Party handed over his official residence, the staff there had to use many cans of air freshener to dispel the odour which he left behind, so that the incoming Chancellor could move in with comfort. Mr President, I have been to your office once or twice, feeling very unpleasant every time. As you will leave your office, I wonder how the future President will feel about her new office. Perhaps if you have the chance to become President again then it will not be a problem. If not, the future President may still need to use a lot of air freshener to remove the odour. After all, when somebody smokes, his immediate surroundings will inevitably be affected. If I am stranded in a lift with someone smoking, I always wish I could invent a "farting machine" to counteract the repulsiveness of his smoke. In my opinion, the emission of smoke leading to passive smoking is harmful to others, both emotionally and physically. Hence we should ban smoking.

Mr President, these are my remarks.

5.37 pm

**PRESIDENT** (in Cantonese): Council will suspend now and resume at 7.15 pm.

Sitting suspended.

7.22 pm

Council then resumed.

**DR JOHN TSE** (in Cantonese): Mr President, as the Democratic Party's spokesman on the issue of environmental protection, I would like to raise three points in response.

First of all, I would like to respond to the Honourable CHAN Wing-chan's opinions that the interests of customers should come first, and that the customers are always right. I think even for businessmen, people's lives, including those of smokers and non-smokers, should always come first. Mr President, I think the main issue here is: which is more important, business turnover or people's lives? I think Members have already got the answer.

For business operators, the most important thing may be whether the designation of no-smoking areas will reduce business turnover. But I think it is not necessarily so. The designation of no-smoking zone in restaurants does not mean that they will be less attractive to customers, especially smokers.

According to statistics, 14% of our adult population are smokers, while the vast majority of people are non-smokers. Mr CHAN Wing-chan has also pointed out that smoking has already been prohibited in some places, such as cinemas and public transport. I want to supplement that smoking is strictly prohibited on some flights and in a very famous fast-food chain. Are these airlines and this fast-food chain so stupid as to totally disregard their business turnover in the designation of no-smoking areas? Absolutely not. To make money is the prime concern of businessmen. However, in the course of making money, they observe at least certain moral standards. I believe that before doing so, these airlines and fast-food chain must have conducted survey to ensure that their business volume will not be affected as a result. Therefore, Mr CHAN's theory of "customers' interests always come first" is groundless.

Secondly, Mr CHAN has mentioned that there will be difficulties in enforcement. His point is, since there has not been any problem all along, why should we propose a solution now? Likewise, no-smoking zone was not designated in restaurants before. It is like saying that since a dog has all along been sleeping there, we had better not touch it. But in fact, this miserable dog is also subject to passive smoking.

The most fundamental, or bottom-line requirement of the Democratic Party is to protect non-smokers' rights. Mr CHAN has claimed that there has not been any problem, but the problems are in fact always there; it is only that those problems have been swept under the carpet. These problems include illness, cancer and death. These are problems we have to face. Even if problems may be encountered in enforcement, or restaurants may have difficulties in



maintaining no-smoking areas, we still have to strive to solve these problems in a responsible manner, and not just vote down the proposal.

Finally, Mr President, the Honourable Mrs Selina CHOW has mentioned twice in her speech, consciously or unconsciously, the phrase "香煙", which means "fragrant cigarettes", I wonder if she was doing promotion for tobacco companies.

Mr President, cigarettes are not fragrant; they stink.

**MR HOWARD YOUNG** (in Cantonese): Mr President, other industries will be involved to a certain extent in today's debate. As some colleagues mentioned the catering and retail industries just now, I might as well share with you some opinions I have received from the tourism industry. It is perfectly normal for me to do so, as we are returned by various functional constituencies, and as representatives of the respective industries, colleagues will pay close attention to the industry's views on certain issues.

Mr President, many people in Hong Kong are engaged in tourism. People in the industry have a lot of chances to travel elsewhere, including less developed areas in the East and the West, as well as some developed regions and countries. There are undoubtedly a large number of places in the world where relatively stringent regulatory measures on cigarette smoking are imposed, but we should recognise the fact that we are talking about cigarettes. They are not opium that we had in the Opium War, and cigarettes are not listed as illegal commodities. In this case, we do not understand why we have to take overly stringent measures which are bound to stifle the industry.

As far as I know, some cities in the western part of America, especially Los Angeles and San Francisco, adopt a very tough line towards smoking. Nevertheless, the San Francisco Airport allows passengers to smoke in certain areas, instead of banning smoking completely.

Dr the Honourable John TSE also mentioned airlines a moment ago, and I would like to make a response to his comment. Many flights prohibit smoking on board, but not all. The airlines must consider whether a specific route can afford to ban smoking. For instance, it appears that quite a lot of flights in Hong Kong ban smoking on board, but this is not true. Smoking is not banned

on trips from Hong Kong to Japan. In view of the smoking habit of passengers of this particular route, the airlines concerned consider it impossible to introduce radical measures in the near future. Even though another airline which is not based in Hong Kong but operates trips between Hong Kong and London allows smoking on one of its two daily flights, the Hong Kong based airline only designates smoking and non-smoking areas on its aeroplanes. As such, we must consider the matter in the light of the customers' needs.

I hope that the measures taken in Hong Kong are not vastly different from those taken in our neighbouring regions or major cities in other countries. More than ten million visitors from all over the world visit Hong Kong every year. People are more used to the laws and customs of their own country even when they are travelling abroad, and have their own set of standards as to what can or cannot be done. If the rules of Hong Kong are far too different from those of other countries, or if they are too stringent, many visitors will feel that they are unknowingly trapped. Certainly, I am not saying that visitors can smoke as they wish, but if there are certain places where smoking or non-smoking areas are available, they will make comparisons between Hong Kong and other countries in this aspect. Thus, I am inclined to the adoption of moderate measures.

Regarding the issue of sponsorship in major sport events, many organizers of such events have discussed the topic with me. They personally do not like smoking, of course. I do not smoke either; nor do I like other people smoke. In reality, however, whether you think it is reasonable or not, some events are, to a certain extent, enjoying such sponsorship. Whether from the perspective of providing Hong Kong people with entertainment or from that of enhancing Hong Kong's attractiveness as a tourist spot, such major sport events are beneficial to Hong Kong. Therefore, among the amendments which we can choose from, I will still be inclined to the one which adopts a forward-looking but more moderate approach. As for the provisions, the Honourable Miss Selina CHOW will express the opinion of the Liberal Party on our behalf.

**MR CHENG YIU-TONG** (in Cantonese): Mr President, first of all, I must state that I do not smoke, but I do not object to people smoking.

Just now the Honourable WONG Wai-yin and Dr the Honourable John TSE criticized time and again the Honourable CHAN Wing-chan's stance on the issue of smoking, in particular in matters relating to smoking in restaurants. I

must stress that we do not agree with the Honourable Law Chi-kwong's amendment because it will be very difficult to enforce if this amendment is endorsed. Should the Bill as amended be approved, it will worsen the conflicts between smokers and non-smokers, or even among restaurants staff. We are therefore not in favour of these inflexible rules.

According to Mr WONG Wai-yin and Dr John TSE's analysis of the smoking issue, smoking is definitely hazardous to health. I fully subscribe to this argument. However, instead of banning smoking in one go, we must take a step-by-step approach.

The approach adopted by Mr LAW Chi-kwong, as well as the views expressed by Mr WONG Wai-yin and Dr John TSE, are the outcome of compromises made between Members. If the situation is really so serious as Mr Wong and Dr TSE described, I believe they will definitely object to Mr LAW Chi-kwong's amendment. Nevertheless, I do not think they will, nor dare they do so.

I would like to reiterate that the amendment in question will create conflicts and contradictions between restaurant staff and customers.

Mr President, these are my remarks

**SECRETARY FOR HEALTH AND WELFARE:** Mr President, I would like to thank members of the Bills Committee, and in particular the chairperson, the Honourable Miss Christine LOH, for the hard work they have done within such a tight schedule.

As mentioned by Miss Christine LOH, many different views were expressed by Members during the Bills Committee meetings. Amendments have been proposed to our Bill and I look forward to addressing them later on.

Let me start by explaining and elaborating once again the policy objectives of the Government's Bill. Smoking is the single most preventable cause of ill health and premature death. Because of this it has been Government's long-established policy to discourage smoking in order to protect public health. The

Smoking (Public Health) Ordinance was enacted in 1982 to provide a regulatory framework for the control over the sale, use and promotion of tobacco products and to facilitate the setting up of no-smoking areas.

With more and more medical evidence indicating the hazards of smoking, it is all the more clear that Government has been correct in taking active intervention measures. We are particularly concerned about youth and women smoking. Young people are most susceptible to the inducement to smoke and overseas experience has indicated that the smoking rate among women is linked to a territory's economic development. Tobacco advertising aims to encourage smoking among young people and women in particular in order to replace consumers who die or quit smoking because of ill health.

The earlier one starts to smoke the more difficult it is for him or her to quit and the greater likelihood of premature death. Smoking claims over 4 000 lives in Hong Kong each year. It incurs medical costs estimated to be up to \$1 billion per year and social costs of up to four times as much.

Many countries have already recognised the harm of smoking and have imposed stringent controls over tobacco sale and promotion. Many more are following suit. The latest example which Members have also alluded to is that of the United States. On top of the regulations already imposed by the United States Food and Drug Administration this year the United States tobacco industry has agreed to a ban on tobacco brand name sponsorship and outdoor display tobacco advertisements and to eliminate Internet advertising and commercial placement of tobacco advertisements in movies and on television. The United States proposals are quite similar to what we are proposing now. Given that the biggest exporting country of tobacco products has decided to introduce such measures, we should not lag far behind.

We have already banned tobacco advertising in the electronic media. We are now proposing a complete ban on display advertisements which are pervasive and have a long-term visual effect on passers-by. In view of the various promotion methods which the industry uses, we propose to ban the giving of free samples and the use of gifts to entice people to buy tobacco products. We are also introducing a new mechanism to facilitate the setting up of no-smoking areas to protect the public from passive smoking.

Our proposals tidy up the existing provisions but do not seek to change the policy intent regarding sponsorship. Tobacco corporations and non-tobacco product manufacturers will continue to be allowed to sponsor events in their own name.

When the subject was last debated in this Council on 15 January 1997 I was encouraged by the positive tone of Members' speeches to press ahead with my current proposals. I am even more encouraged by the thoughtful manner in which Members have spoken today. There can be no disagreement with the policy objective of safeguarding public health. Most Members also accept that there is a need for further legislative measures. Any disagreement concerns only the pace, not the direction of steps to be taken. As mentioned by Miss Christine LOH, our proposals also have the wide support of the medical community and smoking prevention groups. They support us because they share our concern over public health, unlike those who oppose the proposals for their own commercial interests.

I would also like to reiterate that our proposals do not contravene the Bill of Rights Ordinance. This explicitly states that the protection of public health is more important than advertising freedom. When considering this Bill and the amendments to be moved to the Bill, I hope Members will share the same concern to protect the people of Hong Kong from illness and death and not be distracted by spurious arguments. This is a matter of public health and public health alone.

Thank you, Mr President.

*Question on the Second Reading of the Bill put and agreed to.*

Bill read the Second time.

*Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).*

### **Committee stage of Bill**

Council went into Committee.

**SMOKING (PUBLIC HEALTH) (AMENDMENT) (NO. 2) BILL 1997**

Clauses 5, 7, 8, 9, 12, 16, 17, 19 to 22, 24 and 25 were agreed to.

Clauses 1 and 10

**CHAIRMAN** (in Cantonese): Mr LAW Chi-kwong and Dr LEONG Che-hung have separately given notices to move amendments to clause 1 by the addition of subclause (2A) to the clause.

I propose that the amendments, proposed separately by Dr LEONG Che-hung and Mr LAW Chi-kwong, be debated together in a joint debate.

Committee shall debate the amendments, proposed separately by Dr LEONG Che-hung and Mr LAW Chi-kwong, in a joint debate. I will first call upon Dr LEONG Che-hung to move his amendment by virtue of his seniority.

**DR LEONG CHE-HUNG:** Mr Chairman, I am also older! Mr Chairman, I move that clause 1 be amended by adding subclause (2A) as set out in the paper circularized to Members.

The result of adding subclause (2A) to clause 1 would mean that if the Bill is passed, any public display other than those that will be discussed at our later amendments would have to take effect or banned completely by the first anniversary of the passage of this Bill.

Mr Chairman, the fact that this Bill passed a Second Reading without any opposition only means one thing, that Members of this Council do realise the fact that display of tobacco in the form of tobacco advertisement is a dangerous issue. It should be banned completely because it will definitely lure people who do not smoke to acquire that habit.

If that be the case, then I would submit to Members that the earlier this takes effect the better. If you look around our neighbours, those who have actually banned tobacco advertising display, you realise that one year's grace period is already a very, very generous one. If you look towards the north of the

border, our future sovereign, China passed an anti-advertising law on tobacco back in October 1994 and the bill took effect by the first quarter of 1995. Similarly in New Zealand, we have seen that it took about four months before the bill took effect.

Actually, even in Hong Kong when the Hong Kong Government banned electronic media, it took thirteen months to take effect. So, Mr Chairman, I do feel that one year would be a good compromise to ensure that this harmful effect of display should be banned completely to ensure there will be a safe environment for our future population.

With those remarks, Mr Chairman, I would like to move.

*Proposed amendments*

**Clause 1 (see Annex XI)**

**Clause 10 (see Annex XI)**

**CHAIRMAN:** I will call upon Mr LAW to speak on the amendment proposed by the Honourable Dr LEONG Che-hung as well as his own proposed amendment, but will not ask Mr LAW to move his amendment unless Dr LEONG's amendment has been negatived. If Dr LEONG's amendment is agreed, that will by implication mean that Mr LAW's proposed amendment is not approved.

**MR LAW CHI-KWONG:** (in Cantonese) The amendment I proposed is largely based on the amendment moved by Dr LEONG. Secondly, we have taken into consideration the difficulties that may be encountered in giving notice to and in the enforcement of banning tobacco advertisements upon enactment of the Bill.

During the scrutiny of this Bill, the Government has indicated its intention to put the Bill into effect in two years' time. However, to prevent the Administration from stalling indefinitely the implementation date when it is under pressure of some sort, we, therefore, agree in principle with the spirit of Dr LEONG's amendment to provide for a timeframe.

As such, we also propose a compromising amendment which, on the one hand, is in line with the Government's wish and, on the other hand, explicitly provides for a timeframe of two years. We hope Members will support this amendment.

Thank you, Mr Chairman.

**SECRETARY FOR HEALTH AND WELFARE:** Mr Chairman, while I appreciate the sentiments behind the amendments I just wish to add that it is Government's intention to bring the display ban in section 11 into effect after two years. As in the past, this will be done by way of commencement notice. This two year grace period will allow sufficient time for the affected parties to make the necessary arrangements.

*Question on Dr LEONG Che-hung's amendment put.*

*Voice vote taken.*

Dr LEONG Che-hung claimed a division.

**CHAIRMAN** (in Cantonese): Committee shall now proceed to a division.

**CHAIRMAN** (in Cantonese): I would like to remind Members that they are now called upon to vote on the the question that the amendment to clause 1 moved by Dr the Honourable 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?

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



Dr LEONG Che-hung, Miss Emily LAU, Mr Eric LI, Miss Christine LOH, Mr LEE Cheuk-Yan, Mr Paul CHENG, Mr LEE Kai-ming and Miss Margaret NG voted for the amendment.

Mrs Selina CHOW, Mr Martin LEE, Mr SZETO Wah, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr Philip WONG, Dr YEUNG Sum, Mr Howard YOUNG, Mr WONG Wai-Yin, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Andrew CHENG, Mr CHENG Yiu-tong, Dr Anthony CHEUNG, Mr CHOY Kan-pui, Mr David CHU, Mr Albert HO, Mr IP Kwok-him, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr LO Suk-ching, Mr MOK Ying-fan, Mr NGAN Kam-chuen, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE and Mr YUM Sin-ling voted against the amendment.

Dr HUANG Chen-ya and Mr Ambrose LAU abstained.

THE CHAIRMAN announced that there were eight votes in favour of the amendment and 37 votes against it. He therefore declared that the amendment was negatived.

**DR LEONG CHE-HUNG:** (in Cantonese) Mr Chairman, I am not sure if I have to declare interest. If you think it is not necessary, I would like to move that, according to Standing Order 37(4), if there are Members who wish to claim a division on the remaining Committee stage amendments (CSAs) of the Smoking (Public Health) (Amendment) (No. 2) Bill 1997, Committee of the Whole Council will proceed to a division immediately after a division bell has been rung for one minute.

*Question on the motion proposed, put and agreed to.*

**CHAIRMAN:** Concerning the Smoking (Public Health) (Amendment)(No.2) Bill 1997, Committee of the Whole Council will now proceed to a division on the remaining CSAs. The time for the bell to ring will be one minute instead of three minutes.

**CHAIRMAN:** As the amendment moved by Dr LEONG Che-hung has been negated, I now call upon Mr LAW Chi-kwong to move his amendment.

**MR LAW CHI-KWONG:** (in Cantonese) Mr Chairman, I move that clause 1 be amended by adding subclause (2A), as set out in the paper circularized to Members.

*Proposed amendment*

**Clause 1 (see Annex XI)**

*Question on the amendment put and agreed to.*

**DR LEONG CHE-HUNG:** Mr Chairman, I move that clause 1 be further amended by adding subclause (2B) and that clause 10, which is related, be amended as set out in the paper circularized to Members.

The effect of these two amendments would mean to say that there will be a ban of advertising in printed media to take effect by 31 December 1999, in other words, by the year 2000, giving a grace period of some 30 months.

Mr Chairman, this is basically in line with Government's agreement and commitment to the World Health Organization (WHO), Western Pacific Region in that all tobacco advertising to be banned by the year 2000. I have no doubt that the tobacco advocates in this Council will say that the decision of the Hong Kong Government to the WHO has no legal binding, yet as an accountable member of the, or rather an associate member of the WHO, any agreement this Government has with the parent body must be respected.

Needless to say the advertising agencies will also cry foul. They will say that their revenue will be drastically decreased. Yet time and again, Mr Chairman, in this Council, not only today but in the last debate, it has been shown that the revenue, after banning any form of advertisement, has shot up. In Hong Kong for example, as I mentioned just now, in our two television stations after the banning of advertising their revenue shot up by 50%. In our neighbouring countries, it has been shown that after banning advertising in the

printed media the advertising revenue also shot up. And I do not see why the same thing will not occur in Hong Kong.

Now, in the debate, Second Reading debate, Mrs CHOW was saying that, "look, why should we interfere with adults who want to smoke?" But Mr Chairman, I would like to put it to you and this Committee, that we are not trying to stop adults from smoking. Basically, what we are saying is "do not induce those people, especially young people who have not smoked, to take up this habit". We are saying, "Look, there are also the non-smokers who should not be exposed to the danger and the side effects that other people's smoke would introduce".

Now, Mr Howard YOUNG also said just now that, "look, let us, do not be different from our neighbouring countries". This is exactly what we should do. Our neighbours have all banned tobacco advertising. We are standing out like a sore thumb in all this by continuing with tobacco advertising.

With those remarks, Mr Chairman, I beg to move.

*Proposed amendments*

**Clause 1 (see Annex XI)**

**Clause 10 (see Annex XI)**

**MRS SELINA CHOW** (in Cantonese): Mr Chairman, I just want to point out one thing, and that is regarding the issue of smoking, the efforts the American Government made on extensive public education and on other aspects, are aiming at discouraging people from smoking, rather than banning the display of tobacco advertisement. Unfortunately, Dr the Honourable John TSE is not present at this moment. I believe that the name "cigarettes" is much the same as "fermented bean curd"; there is no implication as to whether they are good or bad.

**SECRETARY FOR HEALTH AND WELFARE:** Mr Chairman, regarding Dr LEONG's amendments to ban tobacco advertisements in printed media, I would just like to add that it is our policy to adopt a step-by-step approach in respect of

anti-smoking measures, having regard to experience and the sentiments of the community.

We are not proposing a ban on tobacco advertisements in the printed media at this time but we will review the situation seriously after the display ban has been brought into effect to see whether further measures are required.

**DR LEONG CHE-HUNG:** The Secretary mentioned that the Government's approach is a step-by-step approach. I would like to appeal to this Council and to inform the Government that my proposed ban should take effect by 31 December 1999, 30 months from now. To me, it is already too slow a step but I do respect the agreement between our Government and the World Health Organization and therefore I extend it to that period in time. I do hope Members will support this very important move and a very important step towards banning tobacco advertising.

Thank you.

*Question on Dr LEONG Che-hung's amendment put.*

*Voice vote taken.*

THE CHAIRMAN said he thought that the "Ayes" had it.

Mrs Selina CHOW claimed a division.

**CHAIRMAN** (in Cantonese): This Committee shall 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 amendments to clauses 1 and 10 moved by Dr the Honourable 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?

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

Mr Martin LEE, 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 Eric LI, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-Yin, Miss Christine LOH, Mr LEE Cheuk-Yan, 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 CHOY Kan-pui, Mr David CHU, Mr Albert HO, Mr IP Kwok-him, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr LO Suk-ching, Mr MOK Ying-fan, Mr NGAN Kam-chuen, Mr SIN Chung-kai, Mr TSANG Kin-shing and Dr John TSE voted for the amendment.

Mrs Selina CHOW, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Miss Margaret NG and Mr YUM Sin-ling voted against the amendment.

THE CHAIRMAN announced that there were 37 votes in favour of the amendment and nine votes against it. He therefore declared that the amendment was carried.

*Question on clauses 1 and 10, as amended, put and agreed to.*

Clauses 2, 3 and 4

**SECRETARY FOR HEALTH AND WELFARE:** Mr Chairman, I move that clause 2 be amended as set out in the paper circularized to Members.

These are technical amendments. We propose to change the Chinese wording of "restaurant" in order to match the wording used in the Public Health and Municipal Services Ordinance (Cap.132) to which this Ordinance makes reference.

We also propose to remove the definition of "restaurant" from the existing section 6A(4) to section 2. This is so that all references to restaurants in the Ordinance will be defined and not just those in section 6A.

*Proposed amendments*

**Clause 2 (see Annex XI)**

**Clause 3 (see Annex XI)**

**Clause 4 (see Annex XI)**

*Question on the amendments put and agreed to.*

**SECRETARY FOR HEALTH AND WELFARE:** Mr Chairman, I move my proposed amendment in paragraph (b) of my amendment to clause 3 by adding subclause (1) as set out in the paper circularized to Members.

The purpose of this amendment is to simplify the procedure of designating no-smoking areas for section 3 purposes. This simplification will shorten the time needed before such areas can become smoke-free.

*Proposed amendment*

**Clause 3 (see Annex XI)**

*Question on the amendment put and agreed to.*

**CHAIRMAN** (in Cantonese): The Honourable LAW Chi-kwong has given notice to move amendments to clauses 2, 3 and 4, which are related. The Secretary for Health and Welfare has also given notice to move an amendment to re-number clause 3 as clause 3(2).

I propose that the amendments to clauses 2, 3 and 4 proposed by Mr LAW, and the amendment to re-number clause 3 as clause 3(2) proposed by the Secretary for Health and Welfare, be debated together in a joint debate.

Committee shall debate the amendments to clauses 2, 3 and 4 proposed by Mr LAW, and the amendment to re-number clause 3 as clause 3(2) proposed by the Secretary for Health and Welfare, in a joint debate. I will first call upon Mr LAW to move his amendments in accordance with Standing Order 25(4).

**MR LAW CHI-KWONG** (in Cantonese): Mr Chairman, I move that clauses 2, 3 and 4 be amended as set out in the paper circularized to Members.

Just now Members discussed thoroughly on the provisions of the Bill. As regards how the issue of designating no-smoking areas in restaurants should be dealt with, the Honourable WONG Wai-yin and Dr the Honourable John TSE have already responded to the views given by the Honourable CHAN Wing-chan. Therefore, I am going to speak briefly on the subject.

Regarding the size of small restaurants, we propose a capacity threshold of 200 seats. In other words, restaurants which provide seating accommodation for over 200 persons will be required to designate no-smoking areas. In our preliminary discussions, we proposed that not less than half the area of a restaurant be designated as no-smoking area. After making some compromises, however, this has been scaled down to not less than one-third of the area. And yet there is one detail which requires some follow-up discussions, that is, how we should deal with banquets held in such restaurants. We understand very well that banquets are of utmost importance to the business of restaurants. We should exempt, therefore, those restaurants from the requirement of designating no-smoking areas when banquets are being held. In drafting the amendments, however, we encountered a difficulty, that is, the definition of a private event. A family dinner at a public place can be regarded as a private event. If an exemption is granted to such private events, almost every table will be exempted. So, this is a really tough problem to tackle. After deliberations, however, we finally agreed that regardless of the number of tables involved in such private events, exemptions will be granted as long as these tables are enclosed by full height partitions from the floor to the ceiling. Therefore, our amendments aim at granting exemptions to seating accommodation being used exclusively for a private event and enclosed by full height partitions, mobile or fixed. If the

remaining area can accommodate more than 200 persons, not less than one-third of such area shall be designated as no-smoking area.

As regards the problem of enforcement which restaurants staff may encounter, as Mr CHAN Wing-chan has mentioned, I believe that when we need to enforce a piece of legislation or make changes on certain matters, some people must, to a certain extent, make efforts to adapt to the changes or may be required to face some difficulties. Some decades ago, when the government banned spitting in public places, I believe similar problems had been encountered. Had they not banned spitting then, perhaps we would still see people slipping on the spit in restaurants now. Therefore, I think we should consider the issue of banning spitting as we do with the banning of smoking. Of course, we will undoubtedly encounter difficulties in the enforcement of banning smoking. But after the relevant legislation has been enacted for some time, the problems will gradually disappear.

I hope Members will support the amendments. Thank you, Mr Chairman.

*Proposed amendments*

**Clause 2 (see Annex XI)**

**Clause 3 (see Annex XI)**

**Clause 4 (see Annex XI)**

**CHAIRMAN** (in Cantonese): I will call upon the Secretary for Health and Welfare to speak on the amendments moved by Mr LAW Chi-kwong as well as her own amendments, but will not ask the Secretary for Health and Welfare to move her amendment unless Mr LAW Chi-kwong's amendments have been negatived. If Mr LAW Chi-kwong's amendments to clauses 2, 3 and 4 are agreed, that will be by implication mean that the Secretary for Health and Welfare's proposed amendment to clause 3 is not approved.

**SECRETARY FOR HEALTH AND WELFARE:** Mr Chairman, my proposed amendment is a technical amendment to cater for our addition of clause 3(1) only,



which concerns about the deletion of the reference by order in the gazette from section 3(1A) of the Ordinance.

As regards Mr LAW's amendment, I would like to draw Members' attention to the management and possible enforcement problems posed by his proposals. The amendment as drafted means that no-smoking areas might change from meal to meal and from day to day. Areas reserved for such private functions will also vary. This constant rearrangement will make it difficult for restaurant operators to delineate a smoke-free zone as required.

Apart from such practical difficulties it is also open to argument what a private event means, given that it is not defined in the Ordinance. This proposal, therefore, makes it practically impossible to set aside a permanent no-smoking area.

If the Government's proposal of giving the managers a free choice to designate any area they wish can proceed the managers will find it easier to devise a workable plan. Indeed, I hope that they will take account of the wishes of the 85% of their adult patrons who do not smoke by designating large smoke-free areas voluntarily. Overseas experience shows that after designating a no-smoking area the volume of business is not reduced.

**MR LEE KAI-MING:** (in Cantonese) Mr Chairman, in response to the Honourable CHAN Wing-chan's views on the difficulties faced by the catering industry, I would like to raise three points.

Firstly, in reply to Mr CHAN's speech, a Member mentioned that the public would welcome the measure of designating no-smoking areas, which might in turn boost the business of restaurants. If so, instead of imposing restrictions, we should allow the market forces to make automatic adjustments. As the Administration has proposed, we only need to designate no-smoking areas without setting any limit on the figures.

Secondly, since smokers make up 14% of our adult population, why is the proportion of such area capped at one third and not 14%?

Thirdly, we all know that restaurants use movable partitions. If an area is required to be partitioned from floor to ceiling, it will become a "permanent

partition". Besides, as the sizes of tables may vary at any time, how can we make sure that the proportion of 200 seats is maintained. All these are enforcement problems that the catering industry may have to face.

I therefore object to Mr LAW Chi-kwong's amendment and support the Administration's proposal.

**MRS SELINA CHOW:** (in Cantonese) Mr Chairman, on behalf of the Liberal Party, I object to the Honourable LAW Chi-kwong's amendment. During the Second Reading debate, I have already mentioned some of our views. In practice, the situation as mentioned by Mr LAW Chi-kwong just now would be difficult to implement. According to him, if a place is used exclusively for a private event, it should be required to be partitioned from floor to ceiling. As many restaurants use movable partitions, and such partitions do not extend all the way to the ceiling, will they be treated as contravening the law? I feel that this proposal really lacks flexibility and will bring difficulties to restaurants. Some restaurant operators, especially those of Chinese style restaurants, have told me that they are indeed facing difficulties, because banquets are frequently held in their restaurants, but they may not be able to partition off those tables. Therefore, when it comes to practical implementation, there will be management problems.

Based on the above reasons, I hope Members would understand that it will be impossible for restaurants, especially Chinese style restaurants, to designate one third of their areas as no-smoking areas as required by Mr LAW Chi-kwong's amendment. Thus, I hope colleagues will object to Mr LAW Chi-kwong's amendment, so as to allow restaurants more flexibility as the Government proposal has suggested, and let the restaurant management decide on how no-smoking areas are designated.

**MR CHAN WING-CHAN** (in Cantonese): Mr Chairman, when Dr the Honourable HUANG Chen-ya addressed this Council in the Second Reading debate and moved amendments to the requirement of designating no-smoking area in restaurants, he mentioned that concessions had been made in response to my views. In the Honourable LAW Chi-kwong's speech, he also indicated that his preliminary plan was to require restaurants with a seating capacity of 50 persons to designate no-smoking area, but decided to relax the limit to 200

persons having consulted my views. In any case, I would like to express my gratitude to Dr HUANG and Mr LAW in this respect.

As regards the queries the Honourable WONG Wai-yin and Dr the Honourable John TSE of the Democratic Party raised on the speech I made during the Second Reading debate, I hope they will listen to the tape recording of this Council, which provides very clear answers to their questions. I do not want to waste our time here.

I would like to point out one thing. As the rental of restaurants are high, it will deal a heavy blow to the catering industry if a large number of seats are left unoccupied at certain times of the day. During the Second Reading debate, I have pointed out on behalf of the catering industry that it does not hold strong views to the requirement of designating no-smoking area. And I will further elaborate on this point later.

Mr Chairman, Mr LAW's amendments are not feasible, as they require restaurants to designate no-smoking area according to the number of seats provided. There will be enforcement problems. If the legislation is ambiguous, it will certainly cause controversies and disputes, or even chaos. Let me quote an example here. For instance, a Chinese restaurant which normally provides 190 seats, but at times of better business, a holiday or a festival, when there are more customers coming in families, it will provide additional seats to accommodate them. Whilst Mr LAW's amendments require restaurants with 200 seats or above to designate no smoking area, this restaurant which is not required to designate no-smoking area on a normal day has already breached the law under this circumstance.

For those restaurants with more than 200 seats, in order to circumvent the law, they may deliberately hide away ten or more chairs, or just hide them away from law enforcement officers. As a Member of this Council, of course I will not encourage such practices. But who can guarantee that there will be no such cases? These situations are indeed unforeseeable.

Obviously, there are certain grey areas in Mr LAW's amendments which will create obstacles for law enforcement officers. Mr LAW has failed to contemplate thoroughly such scenarios which frequently happen in the catering industry. I am not sure if I have got the full picture; there may be other examples as well. Mr LAW has also failed to observe carefully the catering

industry and to understand some existing problems. If the Bill were passed, restaurants would be involved in constant arguments and disputes due to such laws, thus causing a lot of confusions. I therefore hope that my colleagues will vote against the amendments moved by Mr LAW.

Mr Chairman, I would like to reiterate that the catering industry has nothing against the requirement of designating no-smoking area. They just hope that the issue can be handled in a less stringent and gradual manner.

Mr Chairman, please allow me to use a famous quote from the late Mr DENG Xiaoping which goes, "Let some of the people get rich first." Mr Chairman, please let me use this quote. Back in the 1980's when China launched its reform and open policy, it proposed to let some of its people get rich first. I did not have much faith in the saying by then, and my view was shared by many. But now this has come true. Nowadays, as we all know, many people are richer than they used to be. Thank you, Mr Chairman, for allowing me to digress that far. I was afraid that the Chairman might stop me. I used this quote because I very much agree that the Administration's motion can provide for a less stringent piece of legislation for the catering industry by empowering managers of restaurants to designate no-smoking areas and exercise their discretion in designating such areas, which is indeed a gradual approach.

As we all know, there are smoking and no-smoking areas in restaurants at present, and I have mentioned that just now. All along, the catering industry has been absolutely obedient to the Government, and the Chinese restaurants will follow their lead. If western-style restaurants have observed the Government's instructions, the Chinese restaurants will follow suit the next day. Since the objective of the Government has been achieved, it will be unnecessary to impose too many restrictions in a free society like ours. As far as human rights, freedom and democracy are concerned, why smokers cannot enjoy a little freedom? Meanwhile, as pointed out by the industry, if the designation of no-smoking area is required by the law, the actual operating area of the restaurants should be used as a criterion. As I have mentioned just now, 200 seats is just a figure which can be changed easily, whilst the operating area of a restaurant cannot be changed readily. 6 000 square feet is always 6 000 square feet. Mr Chairman, do you agree? We cannot enlarge an area, but we can make it smaller. 10 000 square feet is an exact figure which remains constant at any time. If the number of seats as mentioned before is used as a basis, it may vary any time. As the legislation is not clear, before Members cast your

conscientious or rightful vote, I hope you will think over it really carefully. Your vote is very important as it affects some 9 000 restaurants and 200 000 employees in the catering industry. Please make your own decisions, my colleagues! I will not influence your decisions!

During the Second Reading debate just now, the Honourable Mrs Selina CHOW mentioned in her address that the catering industry is always victimized. Her remarks are really accurate. Offenders of the Smoking (Public Health) Ordinance are liable to a fine of \$ 25,000. For non-compliance of the requirements of the Environmental Protection Department, an offender is liable to a fine of \$300,000 on first conviction, and \$400,000 on subsequent conviction. Mr Chairman, people in the catering industry are in a worse position than hawkers, and some even say that they are even worse than being thieves. Their suffering is absolutely true. I do not want to waste colleagues' time here.

Another grey area in Mr LAW's amendments is whether managers of restaurants are only responsible for designating no-smoking area without paying attention to customers smoking in the no-smoking area. If the law requires the designation of no-smoking areas in restaurants, but customers breach the law by smoking in such areas, is it necessary for managers of such restaurants to intervene? If not, what is the point of designating such areas? It will be as good as none. As the amendments fail to make provision in this respect, no-smoking areas will only exist in name, thus causing difficulties in enforcement. If the legislation is passed, there will be inevitably a lot of disputes and conflicts among customers themselves as well as between customers and restaurant staff. If such cases are reported to the police, it will keep our enforcement officers constantly on the run.

I sincerely urge Members to oppose the amendments moved by Mr LAW Chi-kwong.

Mr Chairman, these are my remarks. Thank you.

**MR HOWARD YOUNG:** (in Cantonese) Mr Chairman, as far as I know, the first industry to designate smoking and no-smoking areas was neither the restaurants nor the cinemas, but the airlines. Although this practice has been in place for decades, up to now, I am still of the opinion that flexibility must be applied by organizations in designating smoking and no-smoking areas, or they

will have difficulties in operation. Just now Dr the Honourable John TSE mentioned about airlines in the Second Reading debate. According to my knowledge, most airlines do not have rigid rules in the designation of no-smoking seats on their flights. Those seats may be shown with dotted lines on the computer screen only and may be subject to changes at any time. The requirement of flexibility does not necessarily mean that it will encourage smoking or it is not making any progress. A sensible operator will constantly observe his customers' habit. Staff of airlines will know if their customers of certain routes have the habit of smoking at certain times. For some routes, only a few people smoke and there is basically no need to designate any no-smoking area, whilst for other routes, such practice is impracticable. On the routes between Hong Kong and Japan, for instance, passengers arriving in Hong Kong at night are mostly young people travelling in tour groups, thus only a few smoking seats are needed on such flights. However, as far as the same route is concerned, on flights arriving Hong Kong in the morning, most passengers are businessmen, so there will be more seats in the smoking area. Thus, operators need to be more flexible if they want to continue with their business.

I believe that other trades, such as restaurants, will follow the changes in the market. If they find that people are cutting down on smoking, or even quitting smoking, they will make sensible decisions in accordance with the trend and we will see an expansion of no-smoking areas. Hence, I support the Government's approach to allow more flexibility for operators.

**MR IP KWOK-HIM** (in Cantonese): Mr Chairman, I did not intend to speak on this subject at first. Regarding the issue of designating no-smoking areas, the Democratic Alliance for the Betterment of Hong Kong (DAB) feels that more people should be free from being affected by smokers. We are therefore of the opinion that the designation of no-smoking areas is beneficial to the public. The Honourable Mr CHAN Wing-chan of the DAB has applied to be exempted from taking the party's stance in this matter due to the trade he represents, and we have accepted his request.

We have just heard Mr CHAN's ardent speech, and listened attentively to Mr LAW's speech. He has pointed out that there will be a number of problems in the implementing the Bill, and that it may not be possible to enforce all the provisions of the Bill at once. As such, Members of the DAB will abstain from voting.

**MR LAW CHI-KWONG** (in Cantonese): The Honourable IP Kwok-him should know the procedure very well. He should allow me time to respond before he considers changing his mind. Just now Members have raised many questions about the problems involved. I will now try to answer the questions on my colleagues' minds.

Just now the Honourable Howard YOUNG mentioned flexibility. I think if he has this idea in mind, he should support my motion. As the Honourable LEE Kai-ming has said just now, only 14% of the population smoke. Then why do we designate only one-third of the restaurant as no-smoking area? In fact, 84% of the restaurant should be designated as no-smoking area. One-third is just the minimum level. Indeed, a shrewd businessman should designate 84% of the place as no-smoking area. We set the minimum level at one-third to allow enough flexibility for the trade. The ratio can, in fact, be higher. It can be half, three quarters or 80%. We propose the one-third ratio to convey to the community a message that we should designate no-smoking areas for those people who do not wish to become "passive smokers", so that they can have a choice. We think that businessmen should in fact designate a higher ratio in this regard. From a legislative point of view, however, our present standard is already minimal.

As pointed out by the Honourable CHAN Wing-chan, people engaging in the catering industry are very obedient. I believe that they are willing to comply with the laws made by Members of the legislature. As regards private places and full height partitions, I might have spoken too fast and might have not explained very clearly. In fact, we intended to set the threshold at one-third, but some people in the trade regarded it as not feasible. For instance, the entire hall might be dedicated to a banquet. If a smoking society wants to hold a banquet, we have no reason to refuse their booking. Therefore, no matter whether people who hold the banquet smoke, we must consider ways to resolve such problems. As I have mentioned at the beginning, the meaning of "private events" must be defined. For instance, if I reserve two tables at a restaurant and treat my siblings to a meal on my birthday, I am holding a private event. Likewise, a meal outside with one's family can be regarded as a private event as well. So, where should the line be drawn? As a matter of fact, the amendments aim at designating one-third of the area not being used for private events as no-smoking area. So, what type of events could be regarded as "private"? If people at a particular table is said to be holding a "private event", the table must certainly be

partitioned off. If other people remain unaffected, it is permissible to smoke at a private place, provided the place is partitioned off. Then why should it be specified that full height partitions should be used? This is due to the fact that there will be problems with legislation if this is not specified, as a partition can be three feet or six feet tall. Without the specification, how can we define it?

We have mentioned in the Second Reading debate that our original intention was to impose a complete ban on smoking. We can provide a place for smokers, if necessary, to ensure that the health of other people will not be affected. The amendment we are proposing now can be regarded as a compromise, as we only require at least one-third of the area be designated as no-smoking area. In fact, the meaning of a "private event" need not be specifically defined. As long as the manager of a restaurant thinks that it is a private place or a private banquet, he can partition off the place at his own discretion. If this cannot be done, he will just have to designate one-third of the place as no-smoking area. As I mentioned just now, 84% of the population do not smoke. As such, there will never be any practical difficulties if we designate one-third of the area as no-smoking area.

As regards the question of flexibility, just now Mr CHAN asked the justification of using the number of seats instead of the area in the definition. We should note that, in an application for a restaurant licence, a floor plan showing the number of seats has to be submitted. Although operators may relocate the seats in future, there are certain rules to be observed when the licence is issued. As regards the example Mr CHAN mentioned just now, if, all of a sudden, 11 more persons are accommodated into a place catered for 190 persons, what I worry about is not whether the Ordinance in question has been breached, but rather whether the Ordinances specified in the licence, or the Fire Safety Ordinance, have been breached. If 250 persons are seated in a place which is licensed to accommodate 190 persons, will there be any problem? This question, however, has nothing to do with today's motion. The most important thing is, the floor plan submitted upon application of licence should be used as a criterion. If a restaurant used to have 200 seats, but now it has only 150 seats, according to my amendment, it will not be necessary to designate one-third of its area as no-smoking area. As such, the amendment I propose is indeed very mild. In fact, at times I think that the requirement can be further tightened.

Moreover, if somebody breaches the Ordinance, what should the staff responsible for enforcing the rules do? Should they call the police to arrest the customer who breaks the law? I believe we should take a gradual approach at



the beginning. Restaurants may post notice, and may "stream" customers by asking whether they would like to sit in the smoking or no-smoking area. For those who smoke, there will be two-third of the area for them to choose from. Of course, there may be some people who like to break the rules. By claiming to be non-smokers, they may take up seats in the no-smoking area and then light up cigarettes. What shall we do if they refuse to stop smoking? Of course, as with the problem of spitting, if we go to extremes, when somebody breaks the law, others will have the duty to report to the police. But of course, one should only consider doing so provided that one is in a safe situation. You shouldn't do so if you are faced with a big, armed man insisting on smoking, should you? However, I still consider that the problem with enforcement is not as insurmountable as we may think. As mentioned just now, we should not allow people to spit or break the law, should we? Therefore, as long as no-smoking areas are clearly demarcated and restaurant customers are clearly informed of the place where they can smoke or not, I believe there will not be any problem. The problem will only come up when all the customers want to smoke at the same time, and then we will have the situation as mentioned by Mr CHAN. If all customers want to smoke and insist on taking seats in the no-smoking area, why should there be any problem? If, however, when most people do not smoke, I believe that the one-third of area designated as no-smoking area will become full very soon, leaving only the two-third of the area designated as smoking area. Under the circumstances, I cannot see why a big man insisting on smoking will persist in sitting in the no-smoking area. If we think about it carefully, we will see that by designating one-third of the area as no-smoking area, restaurant staff will be safeguarded in carrying out their job.

I hope the above answers will allay some of the doubts my colleagues may have on the amendment I propose. As a matter of fact, we are taking a gradual approach by using one-third of the area as a minimum level. But I really hope that a complete ban on smoking can be imposed in future, with the exception of separately partitioned and air-conditioned places, just like restaurants which provide barbecued food with range hoods on top of the grill. I believe if restaurant operators recognise in future that most people are non-smokers, they should designate more no-smoking areas because it will be beneficial to their business.

I hope that Honourable colleagues will support my amendment. Thank you, Mr Chairman.

*Question on Mr LAW Chi-kwong's amendment put.*

*Voice vote taken.*

**CHAIRMAN** (in Cantonese): Committee shall 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 by Mr LAW Chi-kwong on clause 2, 3 and 4 of the Bill 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?

**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, 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 James TO, Dr YEUNG Sum, Mr WONG Wai-Yin, Miss Christine LOH, Mr Andrew CHENG, Mr Paul CHENG, Dr Anthony CHEUNG, Mr Albert HO, 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.

Mrs Selina CHOW, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Wing-chan, Mr CHENG Yiu-tong, Mr CHOY Kan-pui, Mr Ambrose LAU, Mr LEE Kai-ming, Mr LO Suk-ching and Miss Margaret NG voted against the amendment.

Mr Eric LI, Mr LEE Cheuk-Yan, Mr CHAN Kam-lam, Mr IP Kwok-him and Mr NGAN Kam-chuen abstained.

THE CHAIRMAN announced that there were 26 votes in favour of the amendment and 15 votes against it. He therefore declared that the amendment was carried.

**CHAIRMAN** (in Cantonese): Secretary for Health and Welfare, as the amendment by Mr LAW Chi-kwong has been agreed, you may not move your proposed amendment to re-number clause 3 as clause 3(2) as it is inconsistent with the decision already taken.

*Question on clauses 2, 3 and 4, as amended, put and agreed to.*

Clauses 6, 13 and 15

**SECRETARY FOR HEALTH AND WELFARE:** Mr Chairman, I move that the clauses specified be amended as set out in the paper circularized to Members.

The amendment to clause 6 is purely technical so as to make the term "tar yield" consistently used throughout the Ordinance.

The amendment to clause 13 exempts Internet service providers and private correspondents from being caught under section 13(b)(i). We want to catch only those users who place tobacco advertisements on the Internet, not the service providers.

The amendment to clause 15 adds a due process for relevant parties to make representation before the magistrate can order disposal of illegal tobacco display advertisements.

*Proposed amendments*

**Clause 6 (see Annex XI)**

**Clause 13 (see Annex XI)**

**Clause 15 (see Annex XI)**

*Question on the amendments put and agreed to.*

*Question on clauses 6, 13 and 15, as amended, put and agreed to.*

**Clause 11**

**MR LEUNG YIU-CHUNG** (in Cantonese): Mr Chairman, I move that clause 11 be amended as set out in the paper circularized to Members.

Mr Chairman, the amendment in the first part of the proposed section 12 is purely technical in nature, which aims basically at deleting certain words, such as "writing or other".

The second part of amendment allows tobacco sponsors, in the course of sponsoring an event, to display tobacco advertisement with the trade name or brand name merely for the purpose of publicizing the event.

I hope colleagues can take note of the following. The original set of Committee stage amendments (CSAs) I planned to move was that "there can be advertisement for tobacco products". However, after contacting other organizations and finding out that the tobacco industry was not strongly insisting on publicizing their product, I have finally decided to amend the CSAs I proposed. I apologize to colleagues for any inconvenience caused.

I would like to reiterate that the present amendment only allows tobacco sponsors to display advertisement with their trade name or brand name during the event and to publicize the event.

I hope colleagues can support my amendment. Mr Chairman, I would like to clarify once again that the main purpose of my CSAs can be described as maintaining the *status quo*. The *status quo* here is not the *status quo* stated in the Basic Law. The present practice has seen no difficulties over the past few years, and that it is hard to prove that the audience or participants who do not smoke have become smokers as a result of the displaying of advertisements. Therefore, under the present situation, I hope colleagues will support my CSAs and have them approved.

Mr Chairman, I so submit.

*Proposed amendment*

**Clause 11 (see Annex XI)**

**DR LEONG CHE-HUNG:** Mr Chairman, I rise to speak against and strongly against the amendment moved by the Honourable LEUNG Yiu-chung. I think this is a big retrograde step backwards in promoting tobacco smoking.

Two points are being raised by Mr LEUNG. The first point is that he does not believe that using brand names and otherwise in events will detract people from smoking. Let me ask him if it does not bring on that effect, why does the tobacco company spend so much money to do this? Why? Why do they want to do that?

Let me ask Mr LEUNG as regards another example. If in front of a whole package of cigarettes, Marlboro or whatever it may be, there is Michael CHANG holding a tennis racket, how would that affect a young, keen tennis player of that young age?

Let me give him another example. If our Governor, Chris PATTEN, has a lot of fans — I do not know how many he has — and see him with a big t-shirt (and which he has done so once) with the word "Marlboro" on it. How would that affect those fans who follow him?

As I mentioned just now, Mr Chairman, in the Second Reading debate, there are over 300 literature research articles to prove that tobacco advertising in any form is really luring young people in particular to smoke and we have got examples from ministers of health from different countries, from Norway, Mrs CHOW just quoted that it does not happen, but I have in my hand a letter from the Norwegian Minister of Health to prove that this is the case, and another one from the British Minister of Health.

I do hope Members will vote against this because I really consider this as a great retrograde step backwards.

Thank you.

**MR LAW CHI-KWONG** (in Cantonese) Mr Chairman, the Democratic Party does not support this amendment. The main reason is, as mentioned by Dr the Honourable LEONG Che-hung, we feel that the amendment is a retrograde step. To the Democratic Party, all forms of tobacco advertisement, in essence, had better be banned from all sponsored events, whether they are sponsored in a direct or indirect manner. However, since the Government is, even now, still reluctant to invest in or sponsor cultural or recreational activities, we find it somewhat difficult to impose a total ban on such advertisements all at once. Thus, we feel that the set of Committee stage amendments to the Bill as proposed by the Administration has further restrained such advertisements. As for the amendment proposed by the Honourable Mr LEUNG Yiu-chung, the yardstick is in fact so loose that we find it difficult to accept. We hope, in the long run, the Government will seriously consider banning all such advertisements, be they direct or indirect ones, and at the same time, provide resources for holding those events. I hope Members will vote against the amendment.

**SECRETARY FOR HEALTH AND WELFARE:** Mr Chairman, the existing section 14 of the Ordinance deems an advertisement for a sponsored event to be a tobacco advertisement if the advertisement bears a tobacco brand name which is not used in association with a non-tobacco product.

The amendment proposed by the Honourable LEUNG Yiu-chung will have the effect of allowing any sponsorship advertisements bearing a tobacco brand name or logo to be displayed in the venue of the event and without any health warning. This defeats the purpose of banning display advertisements and represents a regression of the existing policy and is therefore totally unacceptable.

I urge Honourable Members to vote against it.

**MR LEUNG YIU-CHUNG** (in Cantonese): Mr Chairman, just now a number of my colleagues commented on my amendment as a retrograde step. I do not see myself taking any retrograde step. I think I am just staying in the same position. My proposal just sought to preserve the *status quo*. How can you say that the

present practice is by no means a retrograde step? It is just that you fail to see the reality as it is.

On the other hand, I have mentioned that it is difficult to make someone a smoker if he does not have that habit. I have actually brought up this point. Dr the Honourable LEONG Che-hung queries the need of doing promotion if it is of no use. I only want to point out one thing. Promotion can be done in many ways. There may be some people who stick to a certain brand, but in order to reinforce their confidence in the brand, continuous promotion may help in this regard. Such practice is not at all surprising. However, I do not exclude the possibility that someone may do so. As regards the data, it is difficult to produce proof. I only want to elaborate that if we include the word "A" of the brand name "A" into a event, it does not mean that the "A" brand cigarettes are to be used in the event. We just preserve our present practice, and that is all.

Mr Chairman, these are my remarks.

*Question on Mr LEUNG Yiu-chung's amendment put.*

*Voice vote taken.*

THE CHAIRMAN said he thought that the "Noes" had it.

Mr LEUNG Yiu-chung claimed a division.

**CHAIRMAN** (in Cantonese): Committee shall 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 amendments to clause 11 moved by Mr LEUNG Yiu-chung 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?

**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.

Mrs Selina CHOW, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr Frederick FUNG, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr LEE Cheuk-Yan, Mr CHAN Kam-lam, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Dr LAW Cheung-kwok, Mr LEUNG Yiu-chung, 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 Martin LEE, Mr SZETO Wah, 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 Eric LI, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-Yin, Miss Christine LOH, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Andrew CHENG, Mr Paul CHENG, Mr CHENG Yiu-tong, Dr Anthony CHEUNG, Mr Albert HO, Mr LAW Chi-kwong, Mr LEE Kai-ming, Miss Margaret NG, Mr SIN Chung-kai, Mr TSANG Kin-shing and Dr John TSE voted against the amendment.

THE CHAIRMAN announced that there were 22 votes in favour of the amendment and 28 votes against it. He therefore declared that the amendment was negatived.

**CHAIRMAN** (in Cantonese): Just now some Members asked when we are going to adjourn the meeting today, I cannot make any estimate. If you ask me whether we will deal with the next bill, I think that if Members are not too long-winded, we will need another hour to finish the scrutiny of this Bill. I appreciate Members' heated debate on this subject. I am personally very interested in this Bill, and it is a pity that I cannot speak on it. I am not so sure if an airplane where you can have food, drinks and cigarettes can be regarded as a restaurant. *(Laughter)*

**MR MARTIN LEE** (in Cantonese): You will hear about that later. *(Laughter)*

**DR LEONG CHE-HUNG**: Mr Chairman. I move that clause 11 be further amended by adding subclause (1A) as set out in the paper circularized to



Members, and if you allow me, Mr Chairman, I will also speak on another addition of subclause (1B) because they amount to the same thing.

Now, Mr Chairman, when I speak on these two amendments that I want to introduce, I do so with a bit of embarrassment because I am sure Members will say, look, I am taking a slight retrograde step compared with what the Government Bill intends. The Government Bill intends — and I beg forgiveness from those anti-tobacco people up there who is now throwing daggers at me using their eyes — the Government Bill bans display completely but I have taken into consideration of the hardship and the livelihood issue of people who have actually presented their case to the Bills Committee at the Bills Committee meeting, people who are selling cigarettes, people who are at the side streets, perhaps under the staircase of buildings, who feel that the fact that if we ban all these completely they will lose the few thousand dollars which is essential for their livelihood associated with the money they get for advertising for the tobacco company.

It is because of that, therefore, Mr Chairman, I move two amendments. The first amendment which is to add subclause (1A) is to exempt hawkers and allow them to advertise, to display obviously legally in relation to the fact that there has to be health warnings.

I will also be introducing subsequently subclause (1B) which takes into consideration and exempts small retailers who do not employ more than two employees. I thought this would be perhaps a balance between the need to move along in, banning tobacco advertising, at the same time, taking into consideration a progressive step and the livelihood of a lot of people who may be affected by this.

With those remarks, Mr Chairman, I beg to move.

*Proposed amendment*

**Clause 11 (see Annex XI)**

**MRS SELINA CHOW:** (in Cantonese) A point of order, Mr Chairman. Just now Dr the Honourable LEONG Che-hung talked about points of sale. I also

have an amendment of a similar nature. Does it mean that both amendments will be discussed in a joint debate, or will they be dealt with separately?

**CHAIRMAN** (in Cantonese): According to the speaking order, subclause (1A) is to be moved first. Thus, Dr LEONG Che-hung is supposed to speak on (1A) first. However, since he is going to move subclause (1B) as well, he mentioned the latter too. But he should not have done so. The correct approach is to deal with subclause (1A) first, and then subclause (1B). In other words, Dr LEONG's amendment and Mrs Selina CHOW's amendment to add subclause (4), which is related to Dr LEONG's proposal, will be dealt with in a joint debate.

**DR LEONG CHE-HUNG**: Mr Chairman, I did say that I only wanted to move to amend clause 11 by adding subclause (1B). But I said that if I had your permission, I would like to speak also on (1B). But I was not moving that yet.

**CHAIRMAN**(in Cantonese): I understand that you have not moved the addition of subclause (1B) yet. You do not have to worry about this because if you had so moved, I would have stopped you. I just want to explain to Members that only subclause (1A) is being dealt with now. Given that there are amendments in relation to the addition of subclauses (1A) and (1B), it does not matter if Members only touch upon it briefly. However, if a joint debate is conducted, when subclause (1B) is discussed, Members will feel very confused. Committee will now debate on subclause (1A).

**MR LAW CHI-KWONG** (in Cantonese): Mr Chairman, though my speech will mainly deal with subclause (1A), the same rationale is applicable to both subclause (1B) and the amendments to be moved by the Honourable Mrs Selina CHOW. The Democratic Party is basically in full support of the proposal behind the Government's amendment bill. Both Dr the Honourable LEONG Che-hung's amendments and Mrs Selina CHOW's amendments to be moved later will bring about possible scenarios which we fear, that is, the possible flooding of advertisements of this kind.

Nevertheless, Dr LEONG Che-hung's amendments are comparatively more acceptable as the lesser of two evils. We have, of course, taken account of the

possibility that if the amendment as suggested in the Government's Bill is passed, it may have tremendous impact on the income of some hawkers, small shops or stores. However, weighing public health against economic difficulties, we are inclined to put more weight on protecting public health. Then why do we come to the final decision of supporting Dr LEONG Che-hung's amendments? This is because we worry that if we vote against them and if Mrs Selina CHOW's amendments are carried later, the scope of exemption will be even more extensive. In consideration that a narrower scope of exemption is always preferred, we come to our final decision of voting for Dr LEONG Che-hung's current amendment and his subsequent amendment. Thank you, Mr Chairman.

**MISS CHAN YUEN-HAN** (in Cantonese): Mr Chairman, those of us who are also members of the Hong Kong Federation of Trade Unions support Dr the Honourable LEONG Che-hung's amendments. Our support for his amendment is mainly a result of our concern for cigarette hawkers, especially those small stalls with less than two employees as mentioned by Dr LEONG Che-hung. Our consideration is twofold. Firstly, the advertisements displayed at small stores are not as conspicuous as those in large tobacco stores. Secondly, if these small shops are not allowed to display some advertisements, these cigarette vendors may, frankly speaking, have difficulties in making ends meet. As the chairperson of a trade union of retailing staff and store assistants, I have received complaints from these staff that, without the proceeds generated by these small display advertisements, they could not earn their own living. For this reason, even though I give anti-smoking measures my full backing, I must take into account the livelihood of cigarette hawkers. We do not want to see that, in the process of implementing anti-smoking measures, the livelihood of a number of cigarette hawkers is affected as a result of the implementation of this Ordinance, especially at a time when the economic situation is not very favourable.

We therefore support Dr LEONG Che-hung's amendments.

**MR MARTIN LEE** (in Cantonese): Mr Chairman, in an era when "changing stance" has become a commonplace in this Council, the Democratic Party has made a painful decision of supporting Dr the Honourable LEONG Che-hung's amendments. Actually, from the point of protecting public health, I cannot find any single reason not to support the Government's proposal. Smoking is hazardous not only to the smoker himself but to other people as well. Whether

the cigarettes are sold by large companies or small shops, or even by a one-man stall, smoking remains the same harmful. Therefore, it is absolutely groundless not to support the Government's proposal if we solely consider the factor of protecting public health. Yet, why does the Democratic Party decide to vote for Dr LEONG Che-hung's amendments? There is only one reason for our decision. As I was told by Dr LEONG, his rough vote counts showed that if his amendment was voted down, the Government's proposal would not be carried either. If not for this reason, we will never give up such a cardinal principle. We therefore made the painful decision of supporting Dr LEONG's amendments. We do not want to "change our stance" but we are afraid of losing out. In consideration of Dr LEONG's advice that we are bound to lose out if we vote against his amendment, we have no alternative but to make such a decision.

**MRS SELINA CHOW** (in Cantonese): Mr Chairman, we of course support that licensed hawkers should be allowed to display tobacco advertisements. Our disagreement with Dr the Honourable LEONG Che-hung is reflected in the subsequent amendment. We support this amendment.

**DR YEUNG SUM** (in Cantonese): Mr Chairman, Members of the Democratic Party had held thorough discussion over this part of the Bill before we arrived at our decision, not without a struggle. On the one hand, we have to take into consideration the principles that we have been upholding, as was mentioned by the Honourable Martin LEE just now. On the other hand, some colleagues did mention the possible impacts on the livelihood of many elderly people who were running very small shops. It is very likely that the money brought by erecting advertisement signboards at the entrances of their shops has already formed a major part of their income. If they are not allowed to display those signboards, they may resort to applying for the Comprehensive Social Security Assistance (CSSA) from the Government. However, these elderly people would rather stand on their own feet than live on the CSSA. Indeed, this fully accords with the spirit of Hong Kong people, that is, the harder you work the more you earn. Therefore, our decision is based on these two principles and on our appreciation of the predicament faced by these elderly people and by those hawkers whose business conditions are relatively unfavourable. Of course, we have also taken account of the scenario as mentioned by Mr Martin LEE. However, I would like to point out that we have also fully considered the situation of hawkers with relatively unfavourable business conditions. This is the particular point that

many of our colleagues have raised during our discussion. Therefore, the distribution of votes is not the only consideration in arriving at our decision. Thank you, Mr Chairman.

**SECRETARY FOR HEALTH AND WELFARE:** Mr Chairman, while I appreciate the many good intentions raised by Members towards hawkers and other small retailers, I must emphasize that we envisage enormous enforcement difficulties if this exemption proposed by Dr the Honourable LEONG Che-hung were granted.

There are some 770 hawkers in the Urban Council area who have their licence endorsed to sell tobacco products. In the Regional Council area, I understand that no hawkers have their licence so endorsed. This would mean unequal treatment to hawkers in different parts of the territory.

Even in the urban area, we cannot tell by sight which hawker is licensed or unlicensed or whether his license is endorsed or not. It is therefore impossible to ascertain whether a hawker commits an offence until we can look up the records. Apart from being cumbersome, this has resource implications and we therefore object to this exemption.

On his other amendment which tries to exempt tobacco retailers employing not more than two persons from the display ban, this will again impose very great enforcement difficulties because we have to ascertain how many staff a retailer actually employs in order to determine whether they are exempted or not.

On these two amendments, we must object to this exemption.

**DR LEONG CHE-HUNG** (in Cantonese): Mr Chairman, I would like to thank my colleagues who have spoken and expressed their support for this amendment. As I have said at the outset, I have gone through a lot of struggles before deciding to introduce these two amendments. In fact, as a medical practitioner and a person who has been fully involved in pressing for a total ban on smoking, I introduce such an amendment with a bit of embarrassment. It is indeed a difficult and painful decision.

However, such amendments are moved according to my own conscience. A lot of people have made submissions to our Bills Committee saying that they

toiled every day to make ends meet and that there was a genuine need for them to display tobacco advertisement in order to earn a living. After going through all those submissions, I came to the final decision of proposing this amendment. I hope Members of this Council can support these two amendments because these two amendments moved by me at least will not leave the scope of exemption too wide. Leaving the scope of exemption too wide may pose other problems relating to tobacco advertising.

I would also like to apologize to the Government because I share the same view that such an amendment may possibly, and indeed obviously, bring about some operational and enforcement difficulties for the Government. However, the Government Bill, in itself, will also lead to a lot of enforcement difficulties. For example, how can the provisions prohibiting persons under the age of 18 years from buying cigarettes be enforced? Will the police station a police officer at every tobacco stall in order to enforce this provision? Obviously the Government must give some thought to resolving these enforcement difficulties. Last but not least, I believe the two municipal councils may have to examine the policy of providing hawkers with licences to sell tobacco products.

Thank you, Mr Chairman.

*Question on Dr LEONG Che-hung's amendment put and agreed to.*

**CHAIRMAN** (in Cantonese): We are still on clause 11. Dr LEONG Che-hung has given notice of his proposal to add subclause (1B) to clause 11. Mrs Selina CHOW has given notice of her proposal to add subclause (4) to clause 11, which is related to Dr LEONG's proposal.

I propose that the amendment proposed by Dr LEONG Che-hung and the amendment proposed by Mrs Selina CHOW to clause 11, be debated together in a joint debate.

Committee shall debate the amendment proposed by Dr LEONG Che-hung and the amendment proposed by Mrs Selina CHOW to clause 11, in a joint debate. I will first call upon Dr LEONG Che-hung to move his amendment in accordance with Standing Order 25(4).

**DR LEONG CHE-HUNG** (in Cantonese): Mr Chairman, I move that clause 11 be further amended by adding subclause (1B), as set out in the paper circularized

to members. Since I have already elaborated on the rationale of moving this amendment, I do not want to waste time by repeating my arguments. Thank you.

*Proposed amendment*

**Clause 11 (see Annex XI)**

**CHAIRMAN** (in Cantonese): I will call upon Mrs Selina CHOW to speak on the amendment moved by Dr LEONG Che-hung as well as her own proposed amendment, but will not ask Mrs CHOW to move her amendment unless Dr LEONG's Che-hung's amendment has been negated. If Dr LEONG Che-hung's amendment is agreed, that will by implication mean that Mrs Selina CHOW's proposed amendment is not approved.

**MRS SELINA CHOW** (in Cantonese): Mr Chairman, my proposed amendment is actually not very different from the current amendment moved by Dr the Honourable LEONG Che-hung. However, I want to draw colleagues' attention to the over-rigid requirement specified in Dr LEONG Che-hung's amendment that only retail dealers with not more than two employees are exempted. Generally speaking, a small business establishment, such as a store, is probably run by less than five persons. Employers of small business establishments are generally defined as employers having less than five employees. These business establishments are actually very small in scale.

However, the rigid requirement as set out in Dr LEONG Che-hung's amendment may, I believe, give rise to enforcement problems. I understand that cigarette retailers are, basically and generally, run by small individual employers, and these are only small-scale business establishments. I therefore hope that Honourable colleagues will support my amendment and, therefore, vote against Dr LEONG Che-hung's amendment. In fact, to vote for my amendment represents the support for the continued operation of small cigarette vendors. If such a rigid requirement is in force, it may have some impacts on some of the stores which have only three or four employees. I therefore hope that colleagues will vote against Dr LEONG Che-hung's amendment and support my amendment to be moved later.

**DR LEONG CHE-HUNG** (in Cantonese): Mr Chairman, I agree to the comments made by the Honourable Mrs Selina CHOW that there was not much flexibility in my amendment. However, in most small shops where there may be five or six persons at work, most of them are relatives and another two or three persons are hired to work as assistants. While understanding that Mrs Selina CHOW's amendment is moved with good intentions, such as making the requirement more flexible, I worry that people may take advantage of such flexibility. In other words, as long as cigarettes are sold in the big supermarkets and shops, they can display tobacco advertisements in their spacious display windows. I believe it is a worse-off arrangement than the present case. Since it is our intention to ban publicly-displayed advertisements, Mrs CHOW's amendment will give rise to a worse-off situation if cigarette advertising agencies switch their focus to the display windows of big shops.

Thank you, Mr Chairman.

**MRS SELINA CHOW** (in Cantonese): Mr Chairman, I believe this point had been thoroughly discussed at Bills Committee meetings. Actually, it is known that, at present, supermarkets and department stores rarely sell cigarettes. All retailers are small in scale. People do not usually go to a supermarket to buy a pack of cigarettes. Therefore, the locations and the number of retail dealers are almost fixed. Most of them are really small in scale.

My amendment aims at introducing some flexibility to this requirement so that small individual vendors or employers running small business establishments will not be affected. Thank you, Mr Chairman.

**MR MARTIN LEE** (in Cantonese): Mr Chairman, I do not intend to speak. However, the speech of the Honourable Mrs Selina CHOW has only reaffirmed my support for Dr the Honourable LEONG Che-hung's arguments.

While the Democratic Party supported the elderly people, Mrs Selina CHOW expressed her support for small individual vendors. However, if it is the fact that general smokers do not patronize large retailers at all, allowing small



shops to display advertisements will only provide more places for the display of tobacco advertisements. For this reason, the Democratic Party will definitely throw our support behind Dr LEONG Che-hung's amendment. I hope we do not have to discuss Mrs Selina CHOW's amendment at all.

**CHAIRMAN** (in Cantonese): Mrs Selina CHOW, point of order?

**MRS SELINA CHOW** (in Cantonese): Mr Chairman, it seems that the Honourable Martin LEE has misunderstood my meaning. He keeps on saying "not necessary". I think he may have missed out part of my speech.

Dr the Honourable LEONG Che-hung's amendment specifies the requirement of "two employees". Making such a requirement in the law is too "rigid" indeed. A small individual retailer employing three employees will have failed to meet the requirement. However, there are plenty of such retailers. In fact, many small stores are running in such a small scale, and they are extremely dependent on the proceeds generated by these advertisements. We therefore hope that there can be some flexibility in this aspect. It is absolutely not my intention to extend the scope of exemption. The fact is that the existing retailers are usually small business establishments.

**MR MARTIN LEE** (in Cantonese): I have been listening very attentively. Still I prefer the wording used by Dr the Honourable LEONG Che-hung, such as "fewer people", "in a smaller scale", "selling less cigarettes", and so on. Compared to such wording as "in a bigger scale" and "selling more cigarettes", Dr LEONG's approach seems to be less destructive.

**CHAIRMAN** (in Cantonese): Dr LEONG Che-hung, point of elucidation?

**DR LEONG CHE-HUNG** (in Cantonese): May I speak for a second time, Mr Chairman?

**CHAIRMAN** (in Cantonese): You may, as long as you do not repeat your arguments.

**DR LEONG CHE-HUNG** (in Cantonese): The Honourable Mrs Selina CHOW is quite right in saying that, at present, cigarettes are not the most important commodities for sale in supermarkets. For this reason, tobacco companies will not place advertisements in supermarkets. Since the Bill under discussion seeks to prohibit the display of advertisements in public, what will be the strategy of tobacco companies if they can find nowhere to display their advertisements? Will they then switch their focus to supermarkets and place their advertisements at these places? I think Honourable colleagues must bear this in mind. While I agree that, at present, tobacco is not the major commodity in supermarkets, I cannot say for certain whether or not cigarettes are their major commodities. However, when tobacco companies can find nowhere to display their advertisements, they will surely switch to supermarkets. I hope colleagues can envisage such a scenario and oppose Mrs Selina CHOW's amendment.

**MR JAMES TIEN** (in Cantonese): Mr Chairman, those Members who have spoken claimed that retailers with less than two employees were bound to be business establishments run by elderly people. Their situation had been described as very miserable. The Democratic Party said they supported Dr the Honourable LEONG Che-hung's amendment in consideration of the miserable situation of the elderly people who should be allowed to sell cigarettes. I am not a smoker. If you object to smoking, just insist on that. How can one claim that a retailer with less than two employees must be one that is operated by an elderly person? It is possible that a retailer with less than two employees is one that is not operated by an elderly person, yet that retailer is allowed to sell cigarettes. On the contrary, a shop with less than five employees, which is the situation of some stores, may not be in a sound financial position. It could be that it is just a family business run by five members whose financial position may be even worse than that of a store with less than two employees. The rationale behind the arguments is more or less the same. If you support such a rationale, it makes no difference between retailers with five employees and those with two employees because both of them sell cigarettes. It does not matter whether to vote for or against the amendment. However, I find it groundless to claim that one should vote for the amendment that grants exemption to a retailer with less than two employees, while voting against the one that grants exemption to a retailer with less than five employees.

**MR ALBERT CHAN** (in Cantonese): Mr Chairman, I think the Honourable James TIEN did not quite understand the contents of Dr the Honourable LEONG Che-hung's amendment. Basically, family members are not counted as employees. Employers having two employees refer to employers of establishments where, on top of the number of family members working in the establishments, an additional two employees are employed. During the past few months, I have met many vendors, hawkers or store operators coming from various districts. Basically, Dr LEONG Che-hung's amendment has afforded sufficient protection for the interests of small individual businessmen running family-style stores, and also the interests of holders of hawker licences or newspaper licences which are endorsed to sell tobacco products. I believe their interests could be, to a certain extent, protected. Of course, as mentioned by the Honourable Martin LEE earlier, the display of advertisements should, in principle, be totally banned. However, if such a ban will create too tremendous an impact on some people, the current amendment can be regarded as a pragmatic compromise.

I hope Members will support this amendment.

**DR HUANG CHEN-YA** (in Cantonese): Mr Chairman, the Democratic Party has put it in clear terms that we intended to have a total ban on this kind of advertisements. However, having considered the impact on the livelihood of those small business operators who are dependent on this source of income, the Democratic Party supports the amendment moved by Dr the Honourable LEONG Che-hung. Nevertheless, I do hope that these hawkers and small business operators can bear in mind that such a means of livelihood will not last long. We are providing a transitional period for them in order to give them a chance to make some adaptations. This is just a transitional arrangement for them to find other means of livelihood. Sooner or later, the Government will plug this "loophole". If this is not the case, the tobacco companies will take advantage of such a loophole to induce smoking again. This is surely not the development that we want to see.

**MR MARTIN LEE** (in Cantonese): Mr Chairman, I agree to the opinions of Dr the Honourable LEONG Che-hung. If I were a public relations consultant of a tobacco company, I would say smilingly, "Let's do it this way! From now on, we will dress up the senior citizens in beautiful costumes. The colours of their

costumes must be sharp and eye-catching. Those elderly people may then sell cigarettes to young people." Actually, I worry about it very much. However, I agree to the logic of the Honourable James TIEN that a total ban on display advertisements should be imposed. I hope the Government will pay attention to this area of work. I also cherish the hope that the next Legislative Council, or the first Legislative Council of the Special Administrative Region, will make some real efforts in this aspect.

**SECRETARY FOR HEALTH AND WELFARE:** Mr Chairman, I have already spoken about Dr LEONG's proposed amendments. I would like to address the Honourable Selina CHOW's amendments.

Mrs CHOW's amendment to exempt such establishments poses again enormous difficulties for the Administration. We therefore object to these exemptions.

It is not difficult to envisage big supermarkets, convenience stores, restaurants, grocery stores, other stores being flooded with all kinds of tobacco advertisements and the sizes of these tobacco advertisements are not specified in the amendments. This is totally unacceptable and defeats the purpose of imposing a display ban. Therefore we must object to this exemption.

*Question on Dr LEONG Che-hung's amendment put.*

*Voice vote taken.*

THE CHAIRMAN said he thought the "Ayes" had it.

Mrs Selina CHOW claimed a division.

**CHAIRMAN** (in Cantonese): Committee shall 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 moved by Dr the Honourable 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?

**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, 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 Eric LI, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-Yin, Miss Christine LOH, Mr LEE Cheuk-Yan, 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 CHOY Kan-pui, Mr David CHU, Mr Albert HO, Mr IP Kwok-him, Mr LAW Chi-kwong, Mr LEE Kai-ming, Mr Bruce LIU, Mr LO Suk-ching, Mr MOK Ying-fan, Miss Margaret NG, Mr NGAN Kam-chuen, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE and Mr YUM Sin-ling voted for the amendment.

Mrs Selina CHOW, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN and Mr LEUNG Yiu-chung voted against the amendment.

THE CHAIRMAN announced that there were 38 votes in favour of the amendment and nine votes against it. He therefore declared that the amendment was carried.

**CHAIRMAN** (in Cantonese): Mrs Selina CHOW, as Dr LEONG Che-hung's amendment has been agreed, you may not move your proposed amendment to clause 11 as it is inconsistent with the decision already taken.

*Question on clause 11, as amended, put and agreed to.*  
Clause 14

**CHAIRMAN** (in Cantonese): The Secretary for Health and Welfare, Mr LEUNG Yiu-chung and Dr LEONG Che-hung have separately given notices to move amendments to the proposed section 14(2) in clause 14.

I propose that the amendments to the proposed section 14(2) in clause 14, proposed separately by the Secretary for Health and Welfare, Mr LEUNG Yiu-chung and Dr LEONG Che-hung, be debated together in a joint debate.

Committee shall debate the amendments to the proposed section 14(2) in clause 14, proposed separately by the Secretary for Health and Welfare, Mr LEUNG Yiu-chung and Dr LEONG Che-hung, in a joint debate. I will first call upon the Secretary for Health and Welfare to move her amendment in accordance with Standing Order 25(4).

I would like to elaborate here that the order in which the amendments are moved is determined by Standing Order 25(4). At times, I will point out that a motion may be moved first by a certain Member by virtue of his seniority, or that a motion may be moved first by a certain public officer by virtue of his/her being a public officer. This is because when the motions to be moved relate to the same sphere of subject, some principles will have to be followed when determining the order of moving motions.

**SECRETARY FOR HEALTH AND WELFARE:** Mr Chairman, I move that section 14(2) in clause 14 be amended as set out in the paper circularized to Members.

This is a tidying-up exercise. The policy intention remains the same as the existing provision, that is to say, we deem any advertisement which induces smoking, depicts a tobacco product, contains a tobacco brand name or logo as a tobacco advertisement.

The amendment aims to catch objects such as lighters or stickers which are not advertisements in the traditional sense but have the effect of promoting smoking or tobacco products. We also aim to clarify what is exempted.

As regards sponsorship advertisements, we will continue to exempt sponsorship in the name of a tobacco corporation or sponsorship using a name identified with a tobacco product but in association with non-tobacco product.

There is some concern that the television broadcasters will be caught by showing any smoking scene or tobacco product or brand name in their

programmes or documentaries. I can assure Members that the exemption granted under subsection (3) will give sufficient protection to those concerned. We will not initiate prosecution action just because a news report or television programme shows such a scene accidentally or incidentally.

For example, if a sports programme showing an overseas event where a banner in the venue shows a tobacco brand name or logo, or if the interviewee in a news or documentary is smoking while interviewed, such appearances are regarded as accidental or incidental to the programme. As long as no valuable consideration has been given for such accidental or incidental appearance, they will not be treated as tobacco advertisements.

*Proposed amendment*

**Clause 14 (see Annex XI)**

**CHAIRMAN** (in Cantonese): I now call upon Mr LEUNG Yiu-chung to speak on the Secretary for Health and Welfare's amendment as well as his own amendment and Dr LEONG Che-hung's amendment. After Mr LEUNG Yiu-chung has spoken, I will call upon Dr LEONG Che-hung to speak on the proposed amendment. However, no motion on either Mr LEUNG Yiu-chung's amendment or Dr LEONG Che-hung's amendment is to be moved at this stage.

**MR LEUNG YIU-CHUNG** (in Cantonese): Mr Chairman, I will introduce amendments to this Ordinance. The major part of my amendment is to lay down restrictions to the proposed section 14(2). The existing Ordinance provides that displaying advertisements for "brand A" cigarettes is prohibited. However, it is permissible for a company to sponsor an event in the name of "brand A" jeans. Yet, the reality is not like this. "Brand A" cigarette company will not subsidize the company of "brand A" jeans to sponsor an event because such a course of action is totally meaningless. My amendment is to achieve the effect that if "brand A" cigarette company sponsors an event, say a ball game, it is permissible to refer to the event as "A Cup Tournament". The content of my amendments is as simple as that. I hope the rationale is comprehensible to all of you. In other words, we allow the use of the brand names of cigarettes in sponsorship events, such as "A Cup Tournament". The situation is more or less the same as the present one. I hope Members will support my amendment.

**DR LEONG CHE-HUNG:** Mr Chairman, the whole amendment here is on sponsorship. I think there is a lot of misnomer and I would like to make this clear, and that is nobody, not in the Bill, is against sponsorship, or banning sponsorship. What we are banning is advertising in the disguise of sponsorship. Let me perhaps spend a little bit of time to explain what the situation is like now with the current law, what the Bill introduced by the Government will bring about, what Mr LEUNG Yiu-chung's amendment will bring about, and what my amendment will bring about.

The current situation, and I do hope the Secretary for Health and Welfare would correct me if I am wrong, is that if you use the words, let us take an example, Marlboro, if you say "Marlboro Tennis Match", it is actually against the law at this point in time, but the fact is that it is not refined enough that you can actually implement to take effect.

What the Government intends to do is to tighten loose ends, as it were, so that it could actually implement the law properly. But, at the same time with the Government's Bill, if you say "Marlboro Classic Tennis" or you say "Kent Holiday Rally" then you are alright. The fact remains in that situation you still see the word "Kent", the word "Marlboro", the word "Camel" or whatever it is which in the blatant eyes of the young people would be attracted by all these attractive advertisements.

Mr LEUNG's amendment is even worse. Mr LEUNG says, "Look, it does not really matter. You can actually even say "Marlboro Football Match". You do not even need to add the word "Marlboro Classic Football"". It is a direct approach to indicate that this is actually a cigarette and nothing else.

Now, what I intend to introduce is an amendment to allow only corporate sponsorship. In other words, I will not allow brand names. I will only allow "British American Tobacco Company" or "RJ Reynolds", who is the originator of Camel. That is actually basically what it is.

Now, I think I do agree that because of all this sponsorship business and because of all these issues about banning sponsorship, the cultural people, the sports people and shamefully even the rehabilitation organizing people are being drawn in to support the so-called advertisement in the disguise of sponsorship.



Well, I can understand why. Very simply, they need the money to keep them in function and we need to see the good culture aspect in Hong Kong, the good sports and to support the rehabilitation organizations.

But be that as it may, let us look at it from two angles. The first angle is that our friends who appeared in the Bills Committee actually told us that the whole year of cultural, sports, perhaps even rehabilitation, support from the tobacco company amounted to around \$500 million. This is about 1% of the interest of Hong Kong's fiscal reserve. I would appeal to the Government that if my amendment goes through, the Government should take the initiative of taking a positive step to setting up funds, for example, or introducing a tobacco levy tax, for example, to support this. Other countries have done it. Victoria has done it with very good effect. I do not see why with all our enormous reserve in Hong Kong we cannot move in this direction — one that promotes sports and culture activities and at the same time bans the harmful effects of tobacco.

So with that, Mr Chairman, I do hope Members would vote for my amendment and reject the two amendments moved by the Government and Mr LEUNG Yiu-chung. Thank you.

**CHAIRMAN** (in Cantonese): I propose that the amendments to the proposed section 14(2) in clause 14, proposed separately by the Secretary for Health and Welfare, Mr LEUNG Yiu-chung and Dr LEONG Che-hung, be debated together in a joint debate.

**MRS SELINA CHOW** (in Cantonese): Mr Chairman, we are now discussing Dr the Honourable LEONG Che-hung's proposal to exhaust every means to achieve a total ban on tobacco advertising. However, his argument is not convincing. He has been talking about advertisements. If an advertisement simply shows a "logo", as it were, how can it induce people to smoke? I consider it an over-restriction to restrict the freedom of displaying logos. I find Dr LEONG's arguments totally groundless.

If the advertisements for events sponsored by a commodity of a certain brand name only indicate such sponsorship and nothing else, how can it induce people to smoke? Certainly, if the purpose of our legislation is, as Dr LEONG Che-hung has admitted, to exhaust every means to impose a total ban on tobacco

advertisements, there is no room for discussion at all. If this is the case, the best way is to keep everything relating to cigarettes out of sight and to destroy all cigarettes by throwing them into the sea, in the same way as how opium was destroyed. Dr LEONG always remains steadfast in his stand against smoking. However, as far as a legal commodity is concerned, how can one prove that the display of the commodity's "logo" will induce people to smoke? If the argument does not sound reasonable, why should we impose such a restriction? Why should we make it impossible or improbable to hold those events simply because of this restriction? Of course the best solution would be that the Government financed those events with public money. However, if no such provision is made, it is absolutely impossible for those events to be held. Such being the case, the restriction is enforced at the expense of certain activities. Should this be a price for which we must pay? I hope colleagues will vote against Dr LEONG Che-hung's amendment and support the Honourable LEUNG Yiu-chung's amendment.

**MR LAW CHI-KWONG** (in Cantonese): Mr Chairman, the Democratic Party supports the amendment moved by the Government. As for the Honourable LEUNG Yiu-chung's amendment, we hold that it is not necessary at all. In regard to Dr the Honourable LEONG Che-hung's amendment, as a health affairs spokesman for the Democratic Party, I think this is the most difficult job I have ever come across.

It is known that the entire issue of smoking is very controversial. There are different views among members of the Democratic Party, from the extreme of imposing no restriction on tobacco advertising to the other extreme of a total ban. I would like to tell Honourable colleagues that Dr LEONG Che-hung's amendment was the ever most controversial issue in our Party. Eventually, we arrived at the final decision that we would not support Dr LEONG Che-hung's amendment because it did not fall in line with our party's views. I believe this is the point of balance after weighing all factors.

In fact, in their speeches delivered earlier, members of the Democratic Party have already mentioned that we are eager for further measures. The Democratic Party supports the spirit behind Dr LEONG Che-hung's amendment. However, the intricate point of his amendment, as mentioned earlier, remains that if the Government fails to provide adequate resources to sponsoring various events, the Democratic Party really finds it very difficult to give his amendment our support at this stage. Nevertheless, if the Government does have the

sincerity to subsidize these activities, we believe the Democratic Party will be very willing, and happy, to support the relevant amendments in future. Thank you, Mr Chairman.

**MR ANDREW CHENG** (in Cantonese): Mr Chairman, in relation to the Government's amendment, the Honourable LEUNG Yiu-chung's amendment and the Honourable Mrs Selina CHOW's views on advertisements, I would like to speak from the perspective of the Democratic Party's views on broadcasting, culture and sport policy and our views on information policy.

I have already given my views on that issue during the deliberations of the Bills Committee. The advertising agencies, or the tobacco companies, have often said that they do not display advertisements in order to induce people to smoke. They claim that even if they have such an intention, there is no evidence to prove that the display of logos induces people to smoke. They go on to say that the display of logos will only induce smokers to switch brands. I clearly remember what Mr James WONG, a very renowned advertising producer, has said. He mentioned how he attracted people's attention to the consumption of fruit salt in his first advertisement of fruit salt. He thought about it for a long time and eventually came up with this slogan: "Ah! Feel so good!" This slogan attracted Hong Kong people's attention and they began to use fruit salt. According to his theory, the fundamental purpose of an advertisement is to attract people to buy that product.

Mr Chairman, tobacco companies have argued that when they publish advertisements or when they sponsor events in the names of their brands, they do it for the sake of sponsorship only. They do not mean to attract people to buy their products. Such argument is totally unacceptable to me. If that is the case, I really cannot understand why they spend such a colossal amount of money on advertising. Based on the reasons that I have just given, if the Honourable LEUNG Yiu-chung's amendment is passed, a lot of Hong Kong people, especially young people, will be attracted by the sponsorship advertisements. Mr Chairman, many young people are under the effects of many sponsored events, in particular sports events. If you ask me how the two are directly related, I believe a number of studies have proved that such relationship does exist. However, tobacco companies will not hold discussion with us on these issues. They only discuss with us over irrelevant matters.

Setting up a fund, or a sports fund, or setting aside an amount of money from tobacco tax for the purpose of sponsoring cultural and sports events, has been discussed for many years. On the basis of a sum of \$1.8 billion tobacco tax levied each year, if the Government adopts the practice of the Australian Government by setting aside 1% of tobacco tax for this purpose, \$18 million will be set aside every year. If Hong Kong can move one further step towards this direction, the Democratic Party will definitely commit itself to supporting even Dr LEONG Che-hung's proposed amendment. However, if the Democratic Party backs Dr LEONG's amendment despite the fact that the Government does not set up such a fund from tobacco tax, we will again be subject to immense pressure from the cultural and recreational circles. For this reason, we have to move one step backward, as described by the Honourable Martin LEE just then, and accept the current amendment proposed by the Government. It is hoped that this amendment will really help tobacco companies adjust gradually because it is now clear in writing that no mention of brand names of tobacco products shall be allowed in advertisements. We hope that this measure can deal a blow to tobacco advertising so that at least our younger generation will stay away from smoking.

Mr Chairman, these are my remarks.

**MR MARTIN LEE** (in Cantonese): Mr Chairman, the public relations consultants of tobacco companies are the most highly paid people in the world. They often come up with the best gimmicks but these gimmicks sometimes do turn out to become insults to our wisdom. They claimed that advertisements were not intended for inducing non-smokers to smoke; they were just encouraging smokers to switch brands. This is the most ridiculous argument ever heard in the world! Will a cigarette seller say something like this, "Sir, are you a smoker? If not, hurry back home and never buy cigarettes. We only sell cigarettes to smokers who want to switch brands." Who would believe this at all? The Democratic Party often launches publicity campaigns. Sometimes we place our pigeon logo in the street to promote our party. In so doing, we get the name "the pigeon party". Who are our target audience? Certainly, we hope that supporters for the Liberal Party and for the Democratic Alliance for the Betterment of Hong Kong will all turn their backs and support the Democratic Party. But what about those new voters? We also endeavour to win the support of new voters. We will not tell the new voters to go home and vote no more. While tobacco companies may fool the three-year-old, even the

four-year- old will not be tricked. We should never listen to the gimmicks of tobacco companies. Well, there is no harm listening to their slogans but we must keep ourselves alert that they never tell the truth.

The Honourable Mrs Selina CHOW holds that the display of logos will not induce people to smoke. If she has watched those tennis matches, she should understand that the sponsors actually invite you to smoke. They do not simply give away T-shirts or caps. They give away cigarettes to the audience. They will ask the non-smokers to try a puff. Do you think they would advise the non-smokers not to try smoking? I therefore really cannot understand why she can make such remarks. It is a pity that she is not here in the Chamber right now.

Though I really want to throw my full support behind Dr the Honourable LEONG Che-hung's amendment, I cannot do so when it comes to voting. However, I hope the Government will endeavour to enlist support from some pro-Hong Kong funds to sponsor sports activities, so that young people can be benefited and will be free from the influence of tobacco companies. Take the Better Hong Kong Foundation as an example. They invited me to deliver a speech today and I was given a chance to meet some foreign correspondents. They have spent quite a lot of money in this regard. I do think that they should sponsor some sports activities as well, with a view to benefiting Hong Kong's young people. Hong Kong will then really become a lot better in future. Mr Chairman, I would feel a bit upset when I vote, but I wish Dr LEONG good luck in the coming days. I also hope that the Government will take steps forward in its anti-smoking campaign.

**DR HUANG CHEN-YA** (in Cantonese): Mr Chairman, as my colleagues have already talked about the Honourable LEUNG Yiu-chung's amendment, I do not want to comment further on those opposing views. In fact, I would like to talk about Dr the Honourable LEONG Che-hung's amendment. Just now the Honourable LAW Chi-kwong said that the Democratic Party held debates on this issue for more than once, and on many occasions there were heated debates. We do think that tobacco advertisements are influential. We do have a common understanding in this regard. The point of argument lies in the definition of an advertisement and the way in which the innocent parties can be assured of not being caught by the legislation.

Dr LEONG Che-hung's amendment seeks to ban advertisements associating with brand names of cigarettes, but such an amendment will be too broad in scope. Take "Kent" and "Salem" as examples, these two are originally the names of places. If such a ban is in force, many other names which have no connection with cigarettes will also be prohibited from sponsoring events. In our view, "a tobacco advertisement" refers to the use of signs that resemble the design of cigarette logos, with similar colours and fonts and with identical names and letters. If this is the case, such use of signs can be considered as a tobacco advertisement. Otherwise, it may not fall within the definition of advertisement. Actually, when we deliberated the Bill under discussion, we were not given the chance to go further and discuss the relatively complicated issues. Neither did we have a chance to discuss with Dr LEONG Che-hung with a view to coming up with comparatively proper wordings for defining indirect advertising. For these reasons, members of the Democratic Party cannot reach a common understanding on this issue. I hope that Dr LEONG Che-hung, all anti-smoking proponents and the Government will join hands in future to keep on working to this cause. In fact we hold that all advertisements encouraging people to smoke should be banned. We cannot do this at this point of time because it is technically impossible for us to do so for the time being.

**MR LEUNG YIU-CHUNG** (in Cantonese): Mr Chairman, I always feel that if we want the anti-smoking campaign to take effect, the most straightforward approach is to categorize cigarettes as dangerous drugs and prohibit their sale. This is certainly the best way to end all those endless discussions. As soon as cigarettes were categorized as dangerous drugs, the situation would be totally different. However, this is not the case in reality. On the one hand, cigarettes are not categorized as dangerous drugs. On the other hand, promotion of cigarette products is restricted. I think this constitutes a contravention of the Bill of Rights. Section 16 of the Hong Kong Bill of Rights Ordinance stipulates that everyone shall have the right to freedom of expression. This right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

Some people may say that I misuse the concept of human rights. But these rights do exist. It is true that the Bill of Rights also stipulates that public health may be taken as a reasonable ground on which behaviours are subject to restrictions and this does not contravene the Bill of Rights. Despite the hard

facts given by so many doctors that smoking is hazardous to health, cigarettes are not treated as dangerous drugs because they are not as harmful as dangerous drugs. Then how should we deal with the situation? I never encourage smoking. I always tell my students not to do so. However, if we determine to implement the anti-smoking campaign, we should not rely solely on prohibition. What we need most is education. Furthermore, cigarettes are given away free of charge not only in sports venues, but also at MTR stations.

I also understand that young people in general do not take their first puff of cigarettes when they see camels or scenery of mountains and rivers on advertisements. They take their first puff under peer group influence, without knowing even the brand names of the cigarettes. Therefore, the first puff of cigarettes is taken under the influence of peer group rather than advertisements. In other words, cigarette addiction may not be the consequence of advertisements, but is more likely to be the consequence of peer group influence. Young people will do anything under peer group influence and this is the core of the issue. If we want to deal with the problem of smoking among young people, we must focus on the issue of peer group influence. In fact, smoking, drug addiction and other misbehaviours are the consequences of peer group influence. Therefore, judging from the viewpoint of human rights, I find it difficult to accept the argument of setting restrictions against tobacco advertisements.

Of course, it is right to say that public health should be protected. However, as I have just said, I find it difficult to accept the argument unless we handle the issue with extreme measures.

Thank you, Mr Chairman.

**MR JAMES TIEN:** Mr Chairman, I think declaring my interests that I am a non-smoker does not mean much. A lot of people here probably do not smoke, but I would also like to declare my interests as Vice-President of the Tennis Patrons Association, which every year organizes the Marlboro Open Tennis Tournament in Hong Kong. So, I would just like to say a few words about Dr LEONG's proposal.

I think he is suggesting that "Marlboro Open Tennis" is not acceptable, but rather, something like "Philip Morris Open Tennis" would be. But I think from the sponsorship's viewpoint, if Philip Morris is supposed to come up with like

over 10 million every year to sponsor the Marlboro Open Tennis using the name only of Philip Morris and not as Marlboro, I do not think it will be a starter. So, you have got to be really realistic. Unless one day the Government or the Urban Council is willing to pick up the sponsorship fee, where will we get tennis players like Michael CHANG or Pete SAMPRAS to Hong Kong? Then this event will be over.

As to the Honourable Martin LEE, usually whenever he says something, I believe him because he is always correct. This is one of the rare occasions which I think he might have got his facts wrong. The Marlboro Open Tennis does not give away cigarettes. In fact, in the open stadium where we sit, with several thousand people watching Michael CHANG playing Pete SAMPRAS, smoking is actually banned from the stadium. So, from that point, I do not think, at least in the stadium, when you have a Marlboro Open Tennis, it would in that sense encourage people to smoke.

Certainly, I do agree with the rationale that staging the Marlboro Open Tennis certainly has some advertising value. I think that is a true statement. If not, who would want to do it? But on the other hand, unless we find a better solution now for the tennis tournament, for the soccer tournament, or for all the arts festivals, if we do it immediately all of a sudden, we are going to lose this event now.

Thank you, Mr Chairman.

**MR MARTIN LEE** (in Cantonese): Mr Chairman, the Honourable James TIEN is an honest man. I really appreciate him when he said, "There is certainly some advertising value in every advertisement. If not, who would want to do so?" He is absolutely correct. However, the operators of tobacco companies still refuse to admit this hard fact. They maintain that they intend to attract smokers to switch brands and that every company places advertisements for the same intention. If this is the case, why should we not ban all tobacco advertisements in one go, so as to provide a really "level" playing field for all tobacco companies? There should not be any problem by then.

Hence, Mr James TIEN has told us the truth. I hope I will not have to listen to those ridiculous arguments anymore.



**SECRETARY FOR HEALTH AND WELFARE:** Mr Chairman, the two Members' amendments go to two extremes. The Honourable LEUNG Yiu-chung's amendment will totally remove any control in relation to tobacco brand name sponsorship. We find this regression of the existing policy objectionable.

On the other hand, Dr the Honourable LEONG Che-hung's amendment will effectively ban advertising of non-tobacco related business which shares the same name of a tobacco product. We do not want our Ordinance to affect those we have no intention to control. The Government therefore objects to both these amendments. Mr LEUNG Yiu-chung's other amendments to the proposed section 14(2) will create confusion to what is a tobacco advertisement by saying only what is not a tobacco advertisement.

**CHAIRMAN** (in Cantonese): Before I put to vote the amendment proposed by the Secretary for Health and Welfare, I would advise Members that if her amendment is agreed, that will by implication mean that the respective amendments by Mr LEUNG and Dr LEONG are not approved.

*Question on the Secretary for Health and Welfare's amendment put.*

*Voice vote taken.*

**CHAIRMAN** (in Cantonese): Committee shall 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 the proposed section 14(2) in clause 14 moved by the Secretary for Health and Welfare 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?

**CHAIRMAN** (in Cantonese): Before I declare the result, Members may wish to check their votes. We are still short of the head count. Are there any queries? The result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, 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 James TO, Dr YEUNG Sum, Mr WONG Wai-Yin, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Andrew CHENG, Mr CHENG Yiu-tong, Dr Anthony CHEUNG, Mr Albert HO, Mr LAW Chi-kwong, Mr LEE Kai-ming, Mr LO Suk-ching, Mr MOK Ying-fan, Miss Margaret NG, Mr SIN Chung-kai, Mr TSANG Kin-shing and Dr John TSE voted for the amendment.

Mrs Selina CHOW, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Miss Christine LOH, Mr James TIEN, Mr LEE Cheuk-Yan, Mr CHAN Kam-lam, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Mr LEUNG Yiu-chung, Mr NGAN Kam-chuen and Mr YUM Sin-ling voted against the amendment.

Mr Eric LI and Mr Paul CHENG abstained.

THE CHAIRMAN announced that there were 26 votes in favour of the amendment and 18 votes against it. He therefore declared that the amendment was carried.

**CHAIRMAN** (in Cantonese): As the amendment to the proposed section 14(2) in clause 14 proposed by the Secretary for Health and Welfare has been agreed, it is not possible for Mr LEUNG or Dr LEONG to move their respective amendments, as they are inconsistent with the decision already taken.

**CHAIRMAN** (in Cantonese): I now call upon Mr LEUNG Yiu-chung to move his amendment to the proposed section 14(3) in clause 14.

**MR LEUNG YIU-CHUNG** (in Cantonese): Mr Chairman, I move that the proposed section 14(3) in clause 14 be amended as set out in the paper circularized to members.

*Proposed amendment*

**Clause 14 (see Annex XI)**

**SECRETARY FOR HEALTH AND WELFARE:** Mr Chairman, I do not see the point or any merit for the Honourable LEUNG Yiu-chung's amendment, and hence object to this amendment. The expression "notwithstanding a certain section" is a very common legal phrase. It serves to clarify which specific provision has the overriding effect.

*Question on Mr LEUNG Yiu-chung's amendment put.*

*Voice vote taken.*

THE CHAIRMAN said he thought the "Noes" had it.

Mr LEUNG Yiu-chung claimed a division.

**CHAIRMAN** (in Cantonese): Committee shall 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 the proposed section 14(3) in clause 14 moved by Mr LEUNG Yiu-chung 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?

**CHAIRMAN** (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.

Mrs Selina CHOW, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr CHIM Pui-chung, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN and Mr LEUNG Yiu-chung voted for the amendment.

Mr Martin LEE, Mr SZETO Wah, 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 Eric LI, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-Yin, Miss Christine LOH, Mr LEE Cheuk-Yan, 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 David CHU, Mr Albert HO, Mr IP Kwok-him, Mr Ambrose LAU, Mr LAW Chi-kwong, Mr LEE Kai-ming, Mr LO Suk-ching, Mr MOK Ying-fan, 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 10 votes in favour of the amendment and 37 votes against it. He therefore declared that the amendment was negatived.

**MRS SELINA CHOW** (in Cantonese): Mr Chairman, since the amendment to clause 11 as proposed by Dr the Honourable LEONG Che-hung earlier has been agreed, it is not possible for me to move my amendment to clause 11(4). Therefore, I now withdraw my proposed amendment to clause 14(4) which I have given notice to Members earlier.

*Question on clause 14, as amended, put and agreed to.*

#### Clause 18

**MRS SELINA CHOW** (in Cantonese): Mr Chairman, my proposed amendment to clause 18 aims at allowing the attachment of gifts to tobacco products sold by retailers at retail outlets of cigarettes, provided that the market value of the attached gift does not exceed the retail price of a 20-stick packet cigarette of the brand purchased. Why does such a situation exist? Actually, when I talked with the cigarette vendors, they specifically mentioned the current situation

where contraband cigarettes were estimated to have a market share of 30%. As the prices of contraband cigarettes are much lower than those of duty-paid cigarettes, many smokers choose to buy contraband cigarettes. In order to differentiate duty-paid cigarettes from contraband cigarettes, these vendors often attach some small gifts, such as lighters, to duty-paid cigarettes. They have also told me that if they are not allowed to do so, there will be no difference between duty-paid cigarettes and contraband cigarettes. As a result, these law-abiding vendors will lose their competitiveness. I hope our colleagues will appreciate that this is the only means for those vendors to gain a competitive edge over those who sell contraband cigarettes. Thank you, Mr Chairman.

*Proposed amendment*

**Clause 18 (see Annex XI)**

**MR LAW CHI-KWONG** (in Cantonese): Mr Chairman, the Democratic Party cannot support this amendment. The Democratic Party has considered the issue of contraband cigarettes as mentioned by the Honourable Mrs Selina CHOW. We recognize that this problem must be properly addressed. However, we consider it inappropriate to deal with the relationship between attached gifts and contraband cigarettes in the context of this Bill. We must consider, in particular, the situation in which the purchase of a packet of cigarettes is accompanied by a toy which bears a certain cigarette brand name. Such a situation will definitely lead to a lot of problems. People will take advantage of such a big loophole in the law. Under such circumstances, the Democratic Party cannot support this amendment. Thank you, Mr Chairman.

**SECRETARY FOR HEALTH AND WELFARE:** Mr Chairman, I must register my strong objection to this proposed amendment. It is full of problems. It is totally contrary to our policy objective. We aim to discourage young people from taking up the habit and encourage those who smoke to quit.

The attachment of gifts to tobacco products sold aims at encouraging people to smoke and to perpetuate the habit. Enforcement is also a problem because it is not possible to estimate the market value of the gift which is normally specifically designed for that event.

**MRS SELINA CHOW** (in Cantonese): First of all, it is specified in my amendment that the market value of the gift shall not exceed the retail price of a 20-stick packet cigarette of the brand purchased.

Secondly, the attached gift shall have a health warning.

Thirdly, I would like to draw the attention of the colleagues to the fact that gifts are presented at retail outlets at the time when smokers buy cigarettes. Since young people are not allowed to buy cigarettes, basically they should not have chances to get these gifts at all. In fact, it is an offence to sell cigarettes to people under the age of 18 years.

**CHAIRMAN** (in Cantonese): Mr Martin LEE, since this is an amendment moved by Mrs Selina CHOW, interruption will only be allowed if it relates to a point of order.

**MR MARTIN LEE** (in Cantonese): If she has raised some new points, can I ask her to give replies on them?

**CHAIRMAN** (in Cantonese): You cannot do so unless you ask for elucidation of a specific point. Please make it brief.

**MR MARTIN LEE** (in Cantonese): Perhaps I will ask for elucidation.

**CHAIRMAN** (in Cantonese): She has already replied just now.

**CHAIRMAN**: That was the final reply. I am sorry.

**MR MARTIN LEE** (in Cantonese): Suppose the packet of cigarettes is sold to an adult. However, will the attached gift be so attractive to young people or children that they are made to become desparately eager to smoke when they grow up?

**MRS SELINA CHOW** (in Cantonese): Mr Chairman, those gifts are not given away to people in the street indiscriminately, but are presented at the time when smokers buy cigarettes. Therefore, this is not the case that young people who are interested in those gifts can get the gifts whenever they like. Of course, many colleagues have mentioned that at present, some gifts are given away indiscriminately. It may then become possible that some of those gifts reach young people. However, this is not the case that we are talking about. We are talking about gifts presented at retail outlets immediately following the purchase of cigarettes, so as to differentiate duty-paid cigarettes from contraband cigarettes.

**CHAIRMAN** (in Cantonese): We are turning it into a debate if someone keeps asking for elucidation.

**MR MARTIN LEE** (in Cantonese): It seems that the Honourable Mrs Selina CHOW has not caught my question. I am not saying that young people will get the gifts themselves. I worry about the possibility that the attached gifts to cigarettes bought by the father may be so attractive to his children that they are made to become very eager to smoke when they grow up.

*Question on the amendment put and negatived.*

**CHAIRMAN** (in Cantonese): As the amendment has been negatived, I now put to your the question that clause 18 stands part of the Bill.

*Question on the original clause 18 put and agreed to.*

Clause 23

**MR LAW CHI-KWONG** (in Cantonese): Mr Chairman, I move that clause 23 be amended as set out in the paper circularized to members.

It is the intention of the Democratic Party to put those premises frequented by a large number of people, most of whom are non-smokers, such as department

stores, shopping malls and banks under Schedule 2, instead of putting those premises under Schedule 4 as was originally proposed in the Government's Bill. In other words, while the Government proposes that the managers of these premises might designate certain parts of such premises as no smoking areas, my current amendment seeks to designate all these premises as no smoking areas. As this amendment is dealt with prior to another amendment concerning the proposed addition to Schedule 2 which will be moved later, those Members who support the current amendment are requested to support the amendment to clause 22A to be moved later. If shopping malls, department stores and banks are now deleted from Schedule 4 but not added to Schedule 2, these premises will no longer be subject to the regulation of either Schedules. Therefore, I would like to draw Members' attention to the situation that supporters for the current amendment must also support the amendment to clause 22A. On the contrary, I appeal to the opponents of the amendment to clause 22A, that is, those who do not want to specify these premises as no smoking areas, not to vote for this amendment. Otherwise, the managers of these premises will be deprived of their power to designate parts of these premises as no-smoking areas.

Thank you, Mr Chairman.

*Proposed amendment*

**Clause 23 (see Annex XI)**

**SECRETARY FOR HEALTH AND WELFARE:** Mr Chairman, although we appreciate the spirit behind the amendment to make all indoor places open to the public in supermarkets, department stores, shopping centres and banks smoke-free, leaving only restaurants in section 4, we, however, believe that it is more desirable for managers to determine the location of no-smoking areas to suit their operational requirements. Since the designation is made out of their own initiative, the managers of the Schedule 4 premises would be more prepared to enforce the law.

**MR LAW CHI-KWONG** (in Cantonese): Mr Chairman, the last sentence of the speech made by the Secretary for Health and Welfare is rather incomprehensible. I do not quite understand why the Secretary would say that the managers would not be prepared to comply with or to enforce what is clearly stipulated in the law. Why would the managers be more prepared to enforce the law when the



designation is made out of their own initiative? Such logic is quite incomprehensible indeed. Nevertheless, as law-abiding citizens, the people of Hong Kong would be very prepared to enforce what is written down in our law book.

Thank you, Mr Chairman.

**MR MARTIN LEE** (in Cantonese): I would like the Honourable LAW Chi-kwong to clarify one point. Is the Legislative Council Building included in the Schedule of his proposed amendment?

**MR LAW CHI-KWONG** (in Cantonese): Mr Chairman, this amendment does not involve the Legislative Council Building.

**CHAIRMAN** (in Cantonese): I hope Members of the same party will not give a "two-man talk show" here. (*Laughter*)

**MR SZETO WAH** (in Cantonese): Will the remarks that you have just made be included in our record of proceedings? (*Laughter*)

**CHAIRMAN** (in Cantonese): I was just joking. That may be included in our record of proceedings, if Members so require.

*Question on the amendment put.*

*Voice vote taken.*

THE CHAIRMAN said he thought the "Ayes" had it.  
Mrs Selina CHOW claimed a division.

**CHAIRMAN** (in Cantonese): Committee shall 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 moved by Mr LAW Chi-kwong 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?

**CHAIRMAN** (in Cantonese): Before I declare the result, Members may wish to check their votes. Are there any queries? Still several Members short of the head count. 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, Miss Emily LAU, Mr LEE Wing-tat, Mr Eric LI, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-Yin, Miss Christine LOH, Mr LEE Cheuk-Yan, Mr CHAN Kam-lam, Miss CHAN Yuen-han, Mr Andrew CHENG, Mr Paul CHENG, Mr CHENG Yiu-tong, Dr Anthony CHEUNG, Mr Albert HO, Mr IP Kwok-him, Mr LAW Chi-kwong, Mr LEE Kai-ming, Mr MOK Ying-fan, Miss Margaret NG, Mr NGAN Kam-chuen, Mr SIN Chung-kai, Mr TSANG Kin-shing and Mr YUM Sin-ling voted for the amendment.

Mrs Selina CHOW, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr CHIM Pui-chung, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr David CHU, Mr Ambrose LAU and Mr LO Suk-ching voted against the amendment.

THE CHAIRMAN announced that there were 32 votes in favour of the amendment and 11 votes against it. He therefore declared that the amendment was carried.

**SECRETARY FOR HEALTH AND WELFARE:** Mr Chairman, I move that clause 23 be further amended as set out in the paper circularized to Members.

The amendment adds a number of educational institutes under Schedule 4.

*Proposed amendment*

**Clause 23 (see Annex XI)**

*Question on the amendment put and agreed to.*

*Question on clause 23, as amended, put and agreed to.*

New clause 3A

Display of signs outside restaurants

*Clause read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(6).*

**SECRETARY FOR HEALTH AND WELFARE:** Mr Chairman, I move that new clause 3A as set out in the paper circularized to Members be read the Second time.

The reason for this amendment has already been explained earlier. This is a technical amendment to remove the definition of "restaurant" to section 2.

*Question on the Second Reading of the clause proposed, put and agreed to.*

Clause read the Second time.

**SECRETARY FOR HEALTH AND WELFARE:** Mr Chairman, I move that new clause 3A be added to the Bill.

*Proposed addition*

**New clause 3A (see Annex XI)**

**MR MARTIN LEE** (in Cantonese): Mr Chairman, will the Secretary elaborate on the motion that she is moving? It seems that her remarks have been too brief.

**CHAIRMAN** (in Cantonese): She has already given a clear explanation when she moved the Second Reading of new clause 3A. This is the last step: That new clause 3A be added to the Bill.

*Question on the addition of the new clause proposed, put and agreed to.*

New clause 22A

Designated no smoking areas

*Clause read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(6).*

**MR LAW CHI-KWONG** (in Cantonese): Mr Chairman, I move that new clause 22A as set out in the paper circularized to Members be read the Second time. As the deletion of supermarkets, banks, department stores and shopping malls from Schedule 4 has just been agreed, I hope the colleagues would go further and support this amendment, so as to designate these places as no smoking areas.

Thank you, Mr Chairman.

*Question on the Second Reading of the clause proposed, put and agreed to.*

Clause read the Second time.

**MR LAW CHI-KWONG** (in Cantonese): Mr Chairman, I move that new clause 22A be added to the Bill.

Thank you, Mr Chairman.

*Proposed addition*

**New clause 22A (see Annex XI)**

*Question on the addition of the new clause proposed, put and agreed to.*

New clause 22B

Schedule amended

*Clause read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(6).*

**SECRETARY FOR HEALTH AND WELFARE:** Mr Chairman, I move that new clause 22B as set out in the paper circularized to Members be read the Second time.

The amendment seeks to add the new airport at Chek Lap Kok to Schedule 3.

*Question on the Second Reading of the clause proposed, put and agreed to.*

Clause read the Second time.

**SECRETARY FOR HEALTH AND WELFARE:** Mr Chairman, I move that new clause 22B be added to the Bill.

*Proposed addition*

**New clause 22B (see Annex XI)**

*Question on the addition of the new clause proposed, put and agreed to.*

Council then resumed.

### **Third Reading of Bill**

THE SECRETARY FOR HEALTH AND WELFARE reported that the

### **SMOKING (PUBLIC HEALTH) (AMENDMENT) (NO. 2) BILL 1997**

had passed through Committee with amendments. She moved the Third Reading of the Bill.

*Question on the Third Reading of the Bill proposed.*

**DR LEONG CHE-HUNG** (in Cantonese): Mr President, thank you for giving me a chance to speak. I would like to speak on three points. Firstly, I would like to take this opportunity to thank all colleagues who supported this Bill. It can be regarded as taking a step further down the road of anti-smoking, and a

crucial step forward in the campaign against tobacco advertising. I would also like to extend my gratitude to those who had attended the sitting today and given us their support. Without their support, the Bill would not have come to this stage.

Secondly, since the Bill is going to be passed with many amendments, I will not go further to move the Second Reading of the Bill under my name. With the leave of the President, I will not move the resumption of the Second Reading of the Bill. The reason is simple. As the Honourable Miss Christine LOH has just said, the Bill introduced by me serves purely as a modest spur to induce the Administration to come forward with better proposals. It is a pity that, despite my efforts, the Administration's original Bill did not contain any better proposals. However, with all these amendments that we have proposed and agreed today, the Administration's Bill has almost fully accorded with our aspirations. I am therefore very happy with the outcome. I believe all colleagues who support the anti-smoking campaign should share the same feeling.

Thirdly, those colleagues in the Chamber and those members of the public who smoke as well as the President yourself, do agree that no one should take up the habit of smoking. I wish that all smokers will quit smoking as quickly as possible, so as to keep themselves, other people and the environment healthy.

Thank you, Mr President.

And, would Mr President please quit smoking? Thank you.

**MR MARTIN LEE** (in Cantonese): We urge the President to keep up your efforts to quit smoking.

**PRESIDENT** (in Cantonese): Though I cannot make a speech, I thank you all for showing your care for me. *(Laughter)*

*Question on the Third Reading of the Bill put and agreed to.*

Bill read the Third time and passed.

**SUSPENSION OF SITTING**

**PRESIDENT** (in Cantonese): In accordance with Standing Orders, I now suspend the sitting until 9.00 am tomorrow.

*Suspended accordingly at twenty-two minutes past Ten o'clock .*