OFFICIAL RECORD OF PROCEEDINGS

Thursday, 22 June 2000

The Council met at half-past Nine o'clock

MEMBERS PRESENT:

THE PRESIDENT
THE HONOURABLE MRS RITA FAN, G.B.S., J.P.

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

THE HONOURABLE DAVID CHU YU-LIN

THE HONOURABLE HO SAI-CHU, S.B.S., J.P.

THE HONOURABLE CYD HO SAU-LAN

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

THE HONOURABLE ALBERT HO CHUN-YAN

THE HONOURABLE MICHAEL HO MUN-KA

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

THE HONOURABLE LEE WING-TAT

THE HONOURABLE LEE CHEUK-YAN

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

THE HONOURABLE ERIC LI KA-CHEUNG, J.P.

THE HONOURABLE LEE KAI-MING, S.B.S., J.P.

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

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

THE HONOURABLE NG LEUNG-SING

PROF THE HONOURABLE NG CHING-FAI

THE HONOURABLE MARGARET NG

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

THE HONOURABLE RONALD ARCULLI, J.P.

THE HONOURABLE MA FUNG-KWOK

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE HUI CHEUNG-CHING

THE HONOURABLE CHRISTINE LOH

THE HONOURABLE CHAN KWOK-KEUNG

THE HONOURABLE CHAN YUEN-HAN

THE HONOURABLE BERNARD CHAN

THE HONOURABLE CHAN WING-CHAN

THE HONOURABLE CHAN KAM-LAM

DR THE HONOURABLE LEONG CHE-HUNG, J.P.

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

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE GARY CHENG KAI-NAM, J.P.

THE HONOURABLE SIN CHUNG-KAI

THE HONOURABLE ANDREW WONG WANG-FAT, J.P.

DR THE HONOURABLE PHILIP WONG YU-HONG

THE HONOURABLE WONG YUNG-KAN

THE HONOURABLE JASPER TSANG YOK-SING, J.P.

THE HONOURABLE HOWARD YOUNG, J.P.

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE YEUNG YIU-CHUNG

THE HONOURABLE LAU CHIN-SHEK, J.P.

THE HONOURABLE LAU KONG-WAH

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

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

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

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

THE HONOURABLE CHOY SO-YUK

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE SZETO WAH

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

THE HONOURABLE LAW CHI-KWONG, J.P.

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

THE HONOURABLE FUNG CHI-KIN

MEMBERS ABSENT:

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

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

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

PUBLIC OFFICERS ATTENDING:

MR MICHAEL SUEN MING-YEUNG, G.B.S., J.P.
THE CHIEF SECRETARY FOR ADMINISTRATION

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

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

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

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

MR DAVID LAN HONG-TSUNG, J.P.
SECRETARY FOR HOME AFFAIRS

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

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

MS EVA CHENG, J.P.
SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING

CLERKS IN ATTENDANCE:

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

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

MS PAULINE NG MAN-WAH, ASSISTANT SECRETARY GENERAL

BILLS

Council went into Committee.

Committee Stage

CHAIRMAN (in Cantonese): Good morning, Honourable Members. Council is now in Committee and will continue considering clause 3 of the Building Management (Amendment) Bill 2000.

BUILDING MANAGEMENT (AMENDMENT) BILL 2000

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam Chairman, in view of the need for some time to deal with matters related to the proposed amendments to clause 3 and to discuss with our legal advisers, I move under Rule 40(4) of the Rules of Procedure of the Legislative Council that further proceedings of the Committee be now adjourned. Should this motion be passed, I will seek leave from the President to waive the notice required in respect of proceedings in relation to this Bill. I hope the President can understand that we need time to discuss the matter with legal advisers before resuming the Committee stage on 26 June.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Home Affairs, that proceedings in relation to the Building Management (Amendment) Bill 2000 be now adjourned, be passed.

Does any Member need any clarification? If so, I can do some explaining. The Secretary has moved a motion to adjourn all proceedings in relation to the Bill in this Meeting. What the Secretary would like to do is he would ask this Council to, in the next Meeting, the one to be held on 26 June, to resume the proceedings for the Bill. If the Secretary deems it necessary to revise certain amendments after consideration or owing to certain changes as a result of the decision made by this Council yesterday, he will need to give notice. However, owing to insufficient time, I might need to exercise my power to waive the requisite notice time.

Do Honourable Members have any questions? If so, please put them to me for the present situation is relatively rare.

MR LEE WING-TAT (in Cantonese): Madam Chairman, thank you for letting me ask a question. In accordance with the Rules of Procedure, the Chairman may in her discretion dispense with notice. But I would like to ask if the dispensation of notice is only applicable to the Secretary for Home Affairs? We do not have sufficient time to deal with the clauses following clause 3 yesterday, in other words, some amendments have to be proposed under other clauses. If so, should the dispensation of notice applicable to the Secretary be applicable to other Members as well?

CHAIRMAN (in Cantonese): I have to consider the contents of the amendments to be proposed by the Secretary for Home Affairs before deciding whether I will dispense with the notice by him. If all his amendments are new, I will consider whether Members will have sufficient time to examine the contents of the amendments and I will not dispense with the notice if they do not have sufficient time. But if the relevant amendments must be made as a result of the decision made yesterday, I will dispense with the notice to facilitate the smooth examination of this Bill.

Thus, if Members wish to propose certain amendments at this stage, they should consider whether they are new amendments. Although Members have the right to seek dispensation of notice, I will consider whether they will have sufficient time to examine the contents of the relevant amendments before deciding whether notice should be dispensed with.

MISS EMILY LAU (in Cantonese): Madam Chairman, I just want to discuss the explanation you have just given because I do not think we can propose something new so late. Even if we have not proposed anything new but only the amendments that have not been proposed, we must handle these very carefully. But we definitely do not have time for discussion. The Chairman has just said that she may dispense with notice by the Secretary. If she dispenses with notice by the Secretary in relation to the introduction of the Bill to the Council for consideration next week, there will certainly be no problem, but

if the Secretary wants to propose some other amendments for discussion — the Secretary may elucidate this later — I believe it is impossible for us to handle them now.

Moreover, Madam Chairman, as we were not quite familiar with certain issues raised yesterday, in particular, some of us were not members of the relevant Bills Committee, I hope that the Secretary will provide us with the relevant papers expeditiously, specifying in black and white what may happen after the passage or rejection of the various amendments because this will be very helpful.

CHAIRMAN (in Cantonese): Do Members have any other questions?

MR MARTIN LEE (in Cantonese): Madam Chairman, I would like to discuss what colleagues have just asked and I hope that the Secretary will give us time for consideration regardless of whether he wants to propose new amendments or retain the original amendments. However, time is very limited because another meeting will be held next Monday. That being the case, can the meeting be held on Tuesday instead of Monday? In any case, the Secretary should give us time to understand what he wants to do.

CHAIRMAN (in Cantonese): Members have stated their wishes and concerns very clearly and they all hope that they can have sufficient time to consider the amendments to be proposed by the Secretary for Home Affairs. I will try my best, as Chairman of the Committee, to ensure that Members will have sufficient time to consider the relevant matters. As voting on legal provisions is a solemn matter, we must have sufficient time to handle the relevant matters and we must understand the consequences of vote.

There being no other questions, I now propose the question to you and that is: That the motion moved by the Secretary for Home Affairs, that proceedings in relation to the Building Management (Amendment) Bill 2000 be now adjourned, be passed. Does any Member wish to speak?

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

Council then resumed.

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): Council will now resume and continue to handle the Human Reproductive Technology Bill. Please turn to P.54 of the script.

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Human Reproductive Technology Bill.

HUMAN REPRODUCTIVE TECHNOLOGY BILL

Resumption of debate on Second Reading which was moved on 9 September 1998

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

MISS CYD HO (in Cantonese): Madam President, I will speak in my capacity as the Chairman of the Bills Committee first and then express my views as a member of the Bills Committee.

The Bills Committee has held 26 meetings with the Administration, and also met representatives of the Department of Obstetrics and Gynaecology of the Chinese University of Hong Kong, the Department of Public and Social Administration of the Faculty of Humanities and Social Sciences of the City University of Hong Kong and the Family Planning Association of Hong Kong. In addition, the Bills Committee has met with eight other organizations and received a written submission from an individual. The main suggestions put forward by the Bills Committee to the Administration in the course of the scrutiny are as follows.

With regard to limiting reproductive technology services to infertile couples, a member has pointed out that in 1987 when the Committee on Scientifically Assisted Human Reproduction, appointed by the then Secretary for Health and Welfare, discussed the usage of reproductive technology, it was agreed that reproductive technology procedures should only be used as a substitute for natural fertilization if a married couple was medically proven to be infertile. As this important principle is not covered in the Bill, the member considers it necessary to add a provision to specify this point. Members agreed that for the welfare of the child, reproductive technology services should be limited to married infertile couples and that "infertility" should be defined in the Bill. They also agreed that the infertility requirement should be spelt out at the outset. Taking into consideration members' views, the Administration has recast the long title of the Bill to confine the provision of reproductive technology procedures to infertile couples, subject to any express provisions to the contrary in any code.

Regarding the membership of the Council on Human Reproductive Technology (CHRT), clauses 3(2)(a) and (b) stipulated that the chairperson and deputy chairperson of the CHRT should not be registered medical practitioners. A member considers that there is no reason to prohibit medical practitioners who are not involved in reproductive technology activities from being appointed as chairperson and deputy chairperson of the CHRT. Other members consider that to avoid conflict of interests, the chairperson and deputy chairperson should not be registered medical practitioners. However, they agreed that such

prohibition could be arranged by administrative means instead of being expressly written in law. The Administration accepted the suggestion and will move an amendment to remove the restriction.

Clause 3(3)(a)(ii) provides that the person responsible under a licence or the licensee shall not be appointed to be a member of the Council, but a member considers the expertise of such persons useful to the CHRT. While their appointment could lead to conflict of interests in some circumstances, it is most important to put in place a proper mechanism for declaration of interests so that everyone knows whether any conflict of interests is involved. After detailed consideration, the Administration agreed to move an amendment to delete the subclause.

Regarding the licensee and the person responsible under a licence, clause 21(2) of the Bill prohibits the licensee and the person responsible for carrying out reproductive technology activities to be the same person. The Administration's view is that requiring the licensee and the person responsible to be two separate persons will facilitate checks and balances, thereby safeguarding the interests of all parties concerned. Members noted that the Provisional Council on Reproductive Technology had discussed the issue and held the view that under certain circumstances, the licensee and the person responsible could be the same person. Dr LEONG Che-hung supported the view of the Provisional Council and indicated that he would move an amendment to make it possible for the licensee and the person responsible to be the same person. Having carefully considered the clause, the Administration proposed to add new subclauses 2A and 2B to clause 21 to empower the CHRT to allow the licensee and the person responsible to be the same person if the CHRT is satisfied that such an arrangement will not prejudice the discharge of duty by the person responsible.

On the question of sex selection, members noted that a couple who wish to select the sex of an embryo by means of a reproductive technology procedure are required to meet the two criteria in clause 13(3). Firstly, the purpose of such selection is to avoid a severe sex-linked genetic disease that may prejudice the health of the embryo and secondly, not less than two registered medical practitioners state in writing that such selection is for that purpose. As the risks and severity level of a sex-linked disease vary from person to person, the Provisional Council recommended that a list of sex-linked genetic diseases be provided in the Code of Practice for reference by members of the profession.

However, given that it is a non-exhaustive list that does not define the severity of the diseases, some members considered the proposed control too loose. The Administration agreed to tighten up control and will move an amendment to incorporate the list into the Bill.

On the termination of reproductive technology procedures on change of marital status, clause 13(5) stipulates that no person shall provide a reproductive technology procedure to persons who are not parties to a marriage. Members have discussed with the Administration whether and when reproductive technology procedures will be discontinued when one of the parties to a marriage has died. To address members' concern, the Administration proposed to add a new subclause (7) to clause 13, providing that subsection (5) shall not operate to prohibit the continuation of a reproductive technology procedure provided to persons who were parties to a marriage when gametes were, or an embryo was, placed in the body of a woman pursuant to that procedure.

On the definition of surrogate mother, members have expressed grave concern that the present definition of surrogate mother in clause 2(1) will carry a connotation that various permutations of surrogacy will be permitted by the law, including pregnancy pursuant to normal sexual intercourse. They shared the view that only a woman who conceives a child in consequence of a reproductive technology procedure with the genetic materials coming from the commissioning couple without involving normal sexual intercourse in the process can be regarded as a surrogate mother. To address members' concern, the Administration, after a review, agreed to amend the definition of surrogate mother in clause 2 to make it clear that the child must have been conceived by a reproductive technology procedure.

As regards the marital status of surrogate mother, members noted that under clause 13(5) a surrogate mother must be a party to a marriage. They considered it unnecessary for a surrogate mother to be a party to a marriage but she must have the experience of a successful normal pregnancy. In this connection, members asked the Administration to relax the requirement in respect of the marital status of surrogate mothers. The Administration accepted members' proposal and will add a new subclause (6) to clause 13 to provide that subsection (5) shall not apply in the case of a reproductive technology procedure provided to a person who is to be a surrogate mother.

Miss CHAN Yuen-han expressed strong reservation about incorporating surrogacy arrangements into the Bill. She pointed out that there are divergent views from different sectors of the community and that there has not been sufficient discussion on the subject by the community. She, therefore, proposed that all the provisions relating to surrogacy arrangement in the Bill be taken out to allow an opportunity for the community to have in-depth discussions. The Administration pointed out that while it does not advocate surrogacy, it is nevertheless necessary to regulate surrogacy arrangements to prevent abuse and to ensure that all parties involved in the arrangements are aware of the risks and consequences. If all references to surrogacy arrangements are taken out from the Bill, such arrangements will remain unregulated, which is unsatisfactory. Miss CHAN did not agree with the Government. She will move amendments later to remove all provisions relating to surrogacy arrangements.

In respect of access to information, clause 30 requires the CHRT to keep information in a register, namely Register A, where reproductive technology procedures involve donated gametes or donated embryos, and regulates the circumstances under which information may be disclosed. The Administration pointed out that the welfare of the child born in consequence of a reproductive technology procedure must be taken into account in the legislation. It would be unfair if such a child, in the event that he/she needs an organ transplant for survival, is deprived of the chance of finding his/her genetic parents. Under the present provision, it is not against the law for the staff of the reproductive technology centre to approach the donor to convey to the donor the precarious health condition of the child to whom the donor has donated the gametes and to seek the donor's consent to the disclosure. Members expressed strong reservation about this clause. A member, who is against the release of identifying information regarding the donor under any circumstances, considered that the welfare of the child born in consequence of a reproductive technology procedure is already adequately safeguarded by the relevant provisions in the Parents and Child Ordinance. Should the child need an organ transplant for survival, he/she can appeal to the public for donation of the organ. He also pointed out that the proposed arrangements will deter potential donors from making donations and that it is unfair to place a moral burden on the donor in the special circumstances envisaged. To address members' concern, the Administration redrafted clause 31 to the effect that disclosure can only be made in certain circumstances, such as the donor has given consent in writing before the provision of the reproductive technology procedure.

Finally, Madam President, I wish to thank all members of the Bills Committee, staff of the Secretariat, the Legal Adviser of the Legislative Council and government officials for the time and efforts they expended in scrutinizing the Bill in the past year or so. The Bills Committee supports the resumption of the Second Reading debate on the Bill as well as the amendments proposed by the Government.

Madam President, I now speak in a personal capacity.

The idea of regulating the application of reproductive technology has prevailed in Hong Kong for quite some time. In 1987, the Government tried to consult the Medical Council of Hong Kong and the public on this issue, but failed to arouse much public attention.

At meetings of the Bills Committee, members fathomed two possible reasons for this: First, not many couples need reproductive technology services; there are only some 200 cases annually even for the simplest semen donation. Secondly, couples in need of controversial reproductive technology services, such as donated gametes or surrogacy arrangement, do not wish to have their identities disclosed. They do not wish to reveal their identities to the public. Nor do they wish to make known the identities of their children. Therefore, users of reproductive technology services have neither the motive nor reason to participate in public discussion.

In 1996, the Bill was finally tabled at the former Legislative Council but elapsed eventually due to time constraint. Given that the Provisional Legislative Council could only scrutinize essential bills and as reproductive technology services did not appear to fall in this category, it was only in 1998 that the Bill was re-introduced to the Legislative Council. It took 16 months to complete deliberations and public consultation was conducted as of usual practice but public response received was never enthusiastic.

In the course of deliberations, Madam President, individual members also made an effort to facilitate public discussion and debate on this issue. For instance, Miss CHAN Yuen-han had held consultative sessions with women's organizations in districts. I had also taken great pains to expound to the media, hoping to remove possible misconceptions. Finally, during the Lunar New Year when not much news was worth reporting, this issue became a topic of

news reports, and it was discussed in radio phone-in programmes and talk shows. While this issue was discussed in almost every radio talk show, public discussion was not particularly enthusiastic. So, when compared to other issues, say, economic recovery, employment, reduction of salary, and so on, the public generally does not take a keen interest in reproductive technology services.

Yet, continuous technological advancement has at the same time resulted in the increasingly wide application of technology. For example, in respect of sex selection that is known to all, couples can now select the sex of their child by selecting a male or female gamete with the use of highly concentrated protein solution. This procedure, which is not subject to any form of regulation, has become popular and a legitimate business to make profits. As for the little known surrogacy, we are very concerned about how pervasive it is now. So, while the public does not have the time or interest to thoroughly discuss this issue, I maintain that regulatory legislation should be expeditiously made so as not to allow reproductive technology to remain unregulated as it is since 14 years ago in 1987. For this reason, I strongly support the Second Reading of the Bill.

In fact, the greatest controversy of the Bill revolves around two points. One is surrogacy arrangement. As Miss CHAN Yuen-han will move amendments in this connection later on, I will leave the discussion until the Committee stage. I now wish to discuss the question of sex selection.

Under the proposal of the Bill, sex selection is allowed only when it is medically proven that the child of a couple stands a high chance of contracting a severe sex-linked genetic disease. Let me elaborate a little more. Take thalassaemia as an example. Males are genetically more prone to this disease than females, and this is a congenital inequality. As female genes are endowed with better immunity, male infants thus stand a higher chance of contracting certain severe sex-linked genetic diseases. Sex selection is allowed for couples whose babies are medically proven to be prone to genetic diseases. This, the Bills Committee agreed almost unreservedly except that we would like a list of sex-linked genetic diseases to be incorporated as a Schedule into the Bill. The Government ultimately supported the proposal and will move an amendment to this effect.

As far as this point is concerned, it turns out to be very interesting in that a question undisputed by the Bills Committee has received divergent views in the community. Such being the case, I think I must say this once again. Chinese people traditionally consider males more valuable than females. If a woman, as a daughter-in-law, does not give birth to a boy, she will face pressure from the elder members of the family. While this pitiful ordeal is not as common as in the past, we can see that it still exists in present-day community. Although men can no longer marry a concubine on the ground that his wife does not give birth to a boy, this has become a pretext for many who engage in extra-marital affairs or a cause of quarrels between mother-in-law and daughter-in-law. We are well aware that some women are still under this pressure. They position themselves as a daughter-in-law and confine themselves to the role of a daughter-in-law in a family. They consider bearing and rearing children one of the goals they must attain so as to please the elder members of the family, and they dare not say "No" to this pressure. From data published by commercial service providers, 90% of the service users chose to give birth to a boy whilst only 10% of them chose to give birth to a girl. This shows that allowing sex selection to continue on a commercial basis will actually entrench sex discrimination, encouraging acts driven by the perception of boys being more valuable than girls to formally begin even before a child is born.

While there are views urging Members to oppose the prohibition of sex selection so that women who are under pressure of the elder members of the family can choose to give birth to a boy by means of this technology. However, I hope members of the public, the women community in particular, will understand that the most important role required of a pregnant woman is not to be a daughter-in-law, but the mother of her child. She has the responsibility to enable her child to grow up healthily and happily. Imagine if a couple who already have two daughters still want a boy and if they succeed, what will their two daughters think? They will feel that it was not their parents' intention to give birth to them and that they are unwanted because what their parents really want is a son. The two girls, in this psychological state, simply cannot grow up healthily and happily. If their son is a child so sensitive that he puts himself in the position of his sisters, he may feel guilty for all his life, thinking that he has made his two sisters feel so badly. If he is a somewhat egotistic child, he may be easily spoilt and become conceited for he knows well that he is considered more valuable by the elder members of the family. All these will only create hindrances to the growth and personality development of the children.

Therefore, Madam President, I hope that mothers of this generation can stand up bravely and say "No" to pressures that stemmed from tradition. In particular, those who are victims of sex discrimination and who have been playing the submissive role of a daughter-in-law to please elder members of the family should bravely say "No" to these pressures. We must put an end to this discriminatory act in this generation. Let us not turn ourselves into a tool of the tradition to effect suppression and allow discrimination to pass on from one generation to another.

Thank you, Madam President.

DR LEONG CHE-HUNG: Madam President, I rise to support the Second Reading of this Bill. In fact, Madam President, this Bill, its introduction and its resumption of Second Reading has been long delayed. Yet it is better late than never.

Let me begin by declaring my interest. Firstly, I was the Chairman of the Committee on Scientifically Assisted Human Reproduction set up under the Secretary for Health and Welfare in 1987, the report of which is the basis for this Bill. This Committee is, of course, now disbanded. I am also currently a member of the Provisional Council on Reproductive Technology and the Convenor of its working group on the Code of Practice.

Madam President, in 1987, in its wisdom, the Government set up a Committee that I just mentioned. The pushing force then was that whilst some forms of reproductive technology has been practised for quite some time in Hong Kong, specifically semen donation, there has been no control or regulatory mechanism. Furthermore, the revelation of surrogacy and problems associated with procedure in other countries has prompted the Government to take a serious consideration, not so much on the technical aspects of reproductive technology, but on the social, moral and legal aspects of the whole issue. More importantly, it is how the child so conceived and born could be best protected and cared for — not only when young, but for the rest of his/her life. The Honourable Miss Cyd HO just said that, as a woman and a mother, her main concern is not to be on being a daughter-in-law, but rather, her main concern should be for the child. I would say I support that. Even more, the welfare of the offspring of reproductive technology should be given the topmost concern.

Madam President, that Committee took some five years to complete a final report, during which time it had to take on board new technologies that had since been introduced into the medical world. During the phase of deliberation, there were repeated public consultation and definite two major consultation — at the presentation of an Interim Report and then the Final Report. There were public responses, and as the Chairman of the Bills Committee said, it was never overwhelming. This is obvious as the society at large is divided basically into two groups:

Firstly, those who do not need the service of reproductive technology, and thus are not concerned.

Secondly, those who need or have had the service of reproductive technology. They, understandably, do not want to and would never want to come forward to give their views.

The Final Report was endorsed by the Administration on which basis the present Bill was introduced initially in 1997. That Bill elapsed because the legislature then had no time to study this Bill, it was re-introduced again in 1998.

In putting forward this Bill, it is obvious that the Government has accepted the principles of the then Committee, and these include:

(1) This Bill is not to promote the procedure or services of reproductive technology. But seeing that there will always be people who will need reproductive technology either medically or otherwise, proper law, rules and regulations should be set up to protect societal values, the commissioning couples and the child so born. To this end, law and regulations have to be established.

(2) Yet it should not stifle development, and must be flexible enough to accommodate scientific further development.

(3) To give the best for the children so born, reproduction technology should only be provided to married couples proven to be unable to raise a family by other means.

(4) Reproduction technology is a procedure that goes beyond getting pregnant. Proper counselling is of paramount importance before and during pregnancy, and well after the delivery of the baby.

(5) To provide a machinery for watertight protection of the detail and data of the donors, be they donating gametes or embryos.

(6) To provide a mechanism to prevent incest.

(7) To prevent commercialization as such could invite abuses.

On these principles, the Bill, therefore, not only provides control for reproductive technology procedures in general, but also makes provisions to regulate different methods of reproductive technology. This is done through this Bill itself and also through a Code of Practice to be completed and promulgated by a proposed Council on Human Reproductive Technology.

Madam President, time will not allow me to go through all the details, suffice it to say that I will bring on a few examples to highlight the importance of what is stated in the Bill:

(1) To prevent incest, donated semen will be discarded after the specimens of that same donor have successfully produced three pregnancies. There are, of course, countries where the "limit" is set to 10. Taking into consideration the small geographic size of Hong Kong, it was felt that a smaller number should be recommended. The suggested limit of three as stipulated in the Bill should, therefore, be supported.

(2) To prevent the abuse associated possibly with surrogacy, the law only allows surrogacy for infertile married couples where the embryo to be placed in the surrogate mother must be genetically related to the commissioning parents. In short, the egg (or ovum) and the sperm must come from the same husband and wife.

(3) To prevent the possible negative societal impacts of gender choice, the Bill only allows such practice be applied for conditions involving severe sex-linked genetically related diseases.

(4) To assure complete protection of privacy and secrecy of donors in reproductive technology, and yet to ensure that the child so born could one day have the right to know, the Bill stipulates that the child could be told of the fact, when he/she has reached the age of majority, that his/her parents were involved in some form of reproductive technology procedures at the time when he/she was conceived. The details and data of the donors would never be revealed even to a court unless the donor specified at donation of willingness to have these disclosed.

(5) To give the maximum protection of the child so born, to ensure that he/she has the care and love of both (and I stress the word "both") parents, stored gametes or embryos for specific use must be discarded upon the death of one party, or the dissolution of the marriage.

Madam President, many of the principles to control and regulate reproductive technology are covered in this Bill. Yet, it is obvious, too, that not all areas, not all loopholes, could at this stage be identified nor closed. For one, gaps could only surface after the law is put into practice. Secondly, medical sciences do advance by leaps and bounds. New rules and regulations would be needed to suit these developments.

It is on this basis that the Bill proposes the setting up of a Human Reproduction Technology Council to consider policies and practices to address new procedures and whatever defects this Bill may be found to have. I would call on the Government to set up this Council without delay after the passage of this Bill, as many procedures of reproductive technology are now being practised that need urgent regulating.

Madam President, are there any flaws in this Bill? To be honest, the original Bill as presented leaves much to be desired.

Let me, therefore, take this opportunity to thank members of the Bills Committee and the Administration not only for their detail scrutiny of the Bill, but also for the useful proposals for amendment, many of which the Government has taken on board. For the details of these, Madam President, I will deliberate at the Committee stage. The result now is a more watertight Bill that hopefully could produce the very much needed regulatory machinery for reproductive technology procedures to be performed by proper and responsible people. Let

me elaborate again before I close, Madam President, that this Bill is not to promulgate or to promote any form of reproductive technology. It is definitely not to promote surrogacy, nor is the aim of this Bill to legalize surrogacy. Instead, it aims to introduce stringent control to give maximum protection to the different parties concerned, in particular, the child so born. Without this Bill, or without any part of this Bill, the different forms of reproductive technology will have no control, to put it rudely, will become "無皇管"[1].

With these remarks, Madam President, I support the Second Reading of the Bill and urge Members to do so. It is long overdue.

MISS CHAN YUEN-HAN (in Cantonese): Good Morning, Madam President. Today, we resume the Second Reading debate of the Human Reproductive Technology Bill. In fact, the Human Reproductive Technology Bill consists of two parts. The first part relates to test-tube babies and the selection of sex of babies, while the second part relates to surrogacy. In other places like the United Kingdom, there are two pieces of legislation regulating the different areas of human reproductive technology. However, in Hong Kong, this Bill is a combination of the two pieces of legislation of the United Kingdom.

As the Honourable Member just said, our deliberation of this Bill spanned from September 1998 to January 2000. In the course of deliberation, we have aired a lot of views regarding the inadequacies of the Bill. I find that there are some technical problems that the Government is unable to solve. However, since we have to legislate on the regulation of surrogacy at this stage, I think that we have to bring up this issue for public discussion. I have, therefore, put forward an amendment and I hope that Members will support it.

The Government submitted this Bill to the Legislative Council in September 1998, and we completed our deliberation of it in January this year. In this course, we found that the Government has not learnt from the experience of those countries that already have surrogacy arrangements. For instance, this Bill is originated from the United Kingdom where, during the last eight to 10 years, there have been many problems arising from surrogacy. As a matter of fact, we can learn from the experience of others and conduct extensive discussions in Hong Kong.

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[1] "無皇管" can mean unregulated.

Of course, I understand very well that many people do not know what human reproductive technology is all about. We cannot expect public interest in discussion be stimulated simply by us speaking briefly on it. That is why I think that we have to make use of the efforts of the Government. The Honourable Miss Cyd HO just mentioned that she had tried very hard to promote discussion on this subject, and I did try very hard, too. However, both of us find it very difficult to do so. We, therefore, believe that the Government's efforts are necessary.

In the course of scrutinizing this Bill, I have, for many times, proposed to the Government that it should lead the community into discussion on matters relating to surrogacy. However, it seems that the Government has no intention to take any action at all. Despite my repeated references to this proposal, it was not until May this year that the Government conducted a seminar, but we had already completed the deliberation in January. However, the number of people attending this seminar was very small, only about 20 people, while some 100 people attended the seminar organized by me together with a women organization last year. I, therefore, cast doubts on the attitude and the position of the Government in conducting this kind of consultation. I feel that the Government is only responding to the views of local women organizations and professional organizations in a perfunctory manner. I cannot accept the Government's approach as this is tantamount to putting the cart before the horse.

Having learnt of the issues to be discussed, local women organizations like the Women Affairs Committee of the Hong Kong Federation of Trade Unions (FTU) and the Hong Kong Women Development Association tried very hard to promote discussion in society. These organizations held a seminar in September and invited the Government to participate. In the seminar, quite a number of representatives for women organizations also expressed strong concern for surrogacy arrangements. In the course of discussion, the impact of the provisions relating to surrogacy on the rights and interests of women and children naturally came into light. They considered consultation was insufficient and hoped that the Government could do better in its promotion work. It was September last year.

In May this year, the Government held a seminar which was attended by merely 10 to 20 participants, some coming from the FTU and some from a few women organizations. The Government raised some questions for discussion, for example, whether they were in support of surrogacy arrangements or not, and whether they were in support of selection of sex. However, representatives for the women organizations and professional organizations attending the seminar put forward a common question: Why did the Government not conduct consultation? I should emphasize that this is the question put forward to the Government by the women organizations and professional organizations. Some organizations even indicated that if the Government did not know how to conduct consultation, they could offer assistance in that respect. They think that surrogacy arrangements are very important because these arrangements are related to continuation of our next generation and in which, technology is particularly involved. We do not deny that such things already exist today. But I would consider it very serious when it comes to legislation. Therefore, our common question is: How could the consultation work be like this?

I believe that if the Government has the intention of promoting consultation, consultation can be very effective, as this cannot simply rely on the efforts of the community. I personally have an intimate knowledge in that respect. During the course of our deliberation on the Bill, I did mention to the mass media, such as the radio and television broadcasting companies, that we were deliberating a very important bill. But I understand very well that from the angle of the mass media, if there is nothing underway, they will not take heed of that. Whenever I brought this subject up with other people, I found myself in a very difficult situation. However, if the Government is willing to make use of its financial and material resources, consultation can be effectively promoted.

For instance, today, we have very active consultation on the education reform. But in fact, the Government has done a lot of work beforehand, with local bodies and some organizations being indirectly supported by the Government in promoting consultation vigorously. Let us also look at medical financing. This is a discussion topic straddling two centuries. In the '90s, there were five options on the financing of health services. As they were not supported by members of the community after discussion, the proposition was started all over again. And now, we have the Harvard Report. All these are examples of active promotion by the Government. With the efforts of the Government, members of the community, who originally might be indifferent,

will become more interested in a topic. I understand that the general public may not be too interested in subjects like human reproductive technology. However, when we point out that this actually is an issue of many facets, they will put forward many ideas. Therefore, I insist that whenever we find any technical problem that could not be resolved during the deliberation of the Bill, we should consult public opinions. I do not want the judgement of right or wrong to be made by us.

Madam President, there are indeed other voices in society. There have been many voices coming from society incessantly since 1987. And these are voices from the industry and from some professional groups, airing different views on the content and scope. According to the result of the questionnaire survey conducted by the City University of Hong Kong in March last year, over 60% of the respondents were strongly against surrogacy arrangements involving money terms, or in other words, commercial surrogacy. Nevertheless, commercial surrogacy aside, over 50% of the respondents were against the proposal of this Bill today. We can thus learn from this that if the professional groups have the intention to promote consultation, they can at least obtain some kind of message which can then be relayed to the Government. The question thereafter is how we are going to handle that message: Should it be decided by the professionals or should we leave it to discussions in society? I think that this is a major difference between the Government and I.

I take a keen interest in this Bill because it comprises provisions on surrogacy. If we are to make legislation to regulate surrogacy, we have to consider the provisions very carefully, as this is an issue involving society, ethics, morality and interpersonal relations. Mother may become grandmother, while grandmother may also become mother, and many relations will become all the more complicated. A child so born does not know anything about this. What rights does it have? As the third party, what negative impact will the surrrogate mother have on the family concerned? There are numerous similar cases in the United States and the United Kingdom. In fact, the Government can conduct consultation in regard to these examples.

Madam President, as I said earlier, this Bill is a combination of two pieces of legislation of the United Kingdom, namely the Surrogacy Arrangements Act 1985 and the Human Fertilization Embryology Act 1990. In recent years, there have been not a few criticisms on this issue in the United Kingdom, questioning

why the Government passed the Surrogacy Arrangements Act so hastily. We can frequently see such comments on the Internet, criticizing that there are a lot of loopholes in the Acts. These two Acts were enacted in 1985 and 1990 respectively. The problems arisen can, of course, be attributable to the legislators then who were not careful or scrupulous enough in drafting the Acts. There are problems even when two pieces of legislation were enacted to address the issue, let alone combining them into one, like what we are doing today. I think we have to give more thought and exercise more caution in handling this Bill. This is very important. We should also consider that people in a Western society may adopt a rather open attitude towards this issue. But in a Chinese society like Hong Kong, how are we going to treat this matter? All these warrant our consideration.

Madam President, why would I move a drastic proposal that all provisions relating to surrogacy be removed in the hope that the Government would submit the Bill anew to the next Legislative Council for discussion? It is because there are quite a number of technical problems which we cannot overcome. First of all, the Bill prohibits surrogacy arrangements of a commercial nature. However, there is no clear definition in the Bill of "commercial". The Bill only mentions about the expenditure incurred from human reproductive technology procedures, or the medical expenses genuinely incurred from pregnancy and from giving birth to the child due to such arrangements. How should we define such medical expenses? This has given rise to some very interesting discussions. We asked whether the expenses for purchasing some bird's nest for the surrogate mother would fall into this category. What about purchasing 20 to 30 catties of bird's nest for her? What I actually want to point out is that, it is very difficult to define what is of a "commercial nature". For another instance, will some precious articles be of commercial nature? Of course, if she is given a flat or $100,000, that will be commercial. However, what about the case if she has to take protracted rest in bed after pregnancy and cannot go to work for nine months while her monthly salary used to be $30,000? I think all these questions need to be discussed.

However, in my view these such matters should not be decided by us, but by the general public instead. The existing law of the United Kingdom also prohibits commercial surrogacy, but there are still a lot of arguments about it. I think that the definitions of "commercial" and "non-commercial" should be discussed by society, and it would be better that the definitions be drawn by society rather than by us.

Another major grey area of great concern to me is that if surrogacy is legalized, it is believed that paid surrogacy will be more common than unconditional surrogacy, and that is where the problem lies. After I had raised this question, the Government responded that the Employment Ordinance would need to be amended to specify that the surrogate mother was also entitled to a leave period of four weeks before and six weeks after confinement, which I think is absolutely necessary. However, when we actually get down to doing something, the situation may not be as expected. When other problems arise during the process, how are we going to position ourselves? The Bill can totally not address our concerns.

Moreover, we are also worried that if surrogacy arrangements are really permitted, that may open a back door for illegal activities of commercial surrogacy to come forth under legal disguise. Of course, some people will say that this is an extreme, but that is absolutely possible. Some will say that there are such cases now when there is no supervision. But after we have made legislation to address these problems, we do not want to see such cases any more. In similar cases in the United Kingdom, the judge may have to turn a blind eye to them. Then how are we going to deal with these questions? I think that we should not draw our own conclusion, but we should let the community discuss the problems and then draw a bottomline.

The other problem is that the Bill cannot regulate surrogacy outside Hong Kong. I am worried that when some Hong Kong people find it difficult to look for a qualified surrogate mother, they may resort to commercial surrogacy outside Hong Kong. Although surrogacy arrangements made out of commercial dealings outside Hong Kong are prohibited in law, as the legal adviser has told us, within our jurisdiction, we are still unable to deal with illegal acts committed outside our territory for the time being.

Madam President, it is said that some statutory regulation is better than none. However, the above two situations have illustrated that legislation may not always exercise effective regulation.

The Bill has also imposed no restrictions on the criteria to be a surrogate mother, and therefore, any woman can become a surrogate mother. In Western countries, one may find her own mother to be the surrogate mother. But after the child is born, is she the child's mother or grandmother? Do these relations warrant discussion? In Taiwan, after discussion in society, it is stipulated that close relatives of four kinds of relationship cannot act as surrogate mother. However, neither have we discussed these questions nor have we consulted members of the community for their views on them.

Frankly speaking, children's rights and interests are my utmost concern. The child thus born has no right to decide his or her status. In case any problems arise in the future, how are we going to tackle them? The Government responses that such questions can be addressed by an ethical committee. However, I still opine that these questions have to be discussed by society.

In the light of these various problems, some people still hold the view that we should first pass the Bill and then monitor the situation gradually. However, as legislators, when we see that there are so many technical problems that cannot be overcome (due to the time constraint, I have not mentioned all the problems yet), when we have not conducted extensive consultation in society and thus a bottomline is still lacking, does it worth to pass the Bill so hastily? I want to emphasize that if we take away all provisions relating to surrogacy today, we will be able to force the Government to submit the Bill anew to the next Legislative Council expeditiously.

With these remarks, Madam President, I hope that Members will handle this Bill in a scrupulous manner. Thank you.

MR MICHAEL HO (in Cantonese): Madam President, this Human Reproductive Technology Bill has been brewing for a very long time. It has been 14 years since 1987 when the then Secretary for Health and Welfare appointed the Committee on Scientifically Assisted Human Reproduction (the Committee).

During the past 14 years, we have seen the appointment of the Committee and then the Provisional Council on Reproductive Technology (the Provisional Council). Under the chairmanship of Dr the Honourable LEONG Che-hung, members of both the Committee and the Provisional Council have indeed done a lot of work. They conducted two public consultations in 1989 and 1993 respectively. After collecting views from all sectors, the Provisional Council began to seriously draft the Bill and the Code of Practice in 1995 and has since conducted another consultation exercise.

Some people may say that these few consultation exercises failed to arouse enthusiastic discussion by the public. This is true, because those who make use of this service amount to a minority in the community. Besides, even those who need to use this technology will not come out and say that they have family problems to the effect that they are infertile and need to find surrogate mothers, or that their children were not born out of natural fertilization but donation of sperm. No one will confide this to others, definitely not. Therefore, the views received basically come from people of the religious, legal and medical sectors, as well as those engaging in social ethical or research activities. In that connection, I have to say that even those who may need to use reproductive technology may not be aware that they are infertile instantly after marriage. It is bound to take a long period of time and after a long period of consultation with the doctor that the problem of infertility is detected and the need to adopt reproductive technology was verified. Hence, we can understand that this kind of consultation exercise will be very different from those general meetings of public housing estate tenants where a lot of residents will attend to discuss about, for example, whether the Housing Department should install iron gates for the households. It is because they understand what they are going to discuss and what they really care. If we are going to discuss the topic of technology assisted fertilization in a housing estate, it is quite certain that no residents will attend the meeting.

Because of this, Madam Resident, since September 1998, the Bills Committee has held more than 20 meetings to discuss the Bill. As I can recall, although there were reporters present at the first two meetings, we could see people yawning and drooping in the public seats ever so often while the meeting was in progress, and they even left before the end of the meeting. Since the third meeting, we could not see reporters any more. Even though our discussion was reported, not a lot of people expressed their concern. But the

real picture is always like this: Whenever we discuss any bill which is rather technical, reporters in the public seats will surely find it very boring and thus will find it difficult to write their stories.

In all these years when there was no relevant legislation, Madam President, I was very worried indeed. It is because when there is no legislation to regulate the activities, anything can happen. And since there is no legislation to regulate the situation, anything done is not unlawful. Then what are the worst scenarios? The worst scenarios can be some unmarried people or homosexuals adopting reproductive technology for fertilization. Although these are achievements in technology, once these problems arise, how should society react? This explains exactly why we have to regulate these acts with legislation.

Madam President, the scenarios that I worry finally appeared a couple of years ago. A few years ago, a commercial clinic appeared in Hong Kong, offering services of sex selection (of babies) with the assistance of technology. When the advertisement of this clinic appeared in the newspaper, I instantly knew that we had no means at all to regulate this situation. Neither did we have any means to regulate what terms that it asked from people in offering such services, nor did we have any means to regulate or monitor its services, standard of management, and the kind of safeguards given to service users. Today, I am glad to see that the Second Reading debate of this Bill can eventually be resumed, although I agree that there are still some loopholes in this Bill, and the loopholes will continue to exist. As the development of technology is very rapid, it will take on a completely new look every two years. Therefore, our legislation should be dynamic. While evolving on its own, it can be amended to tie in with the development of technology in order to plug the loopholes which may appear as a result of new technology. I reckon that this is definitely better than imposing no regulation at all.

Madam President, if we should choose to wait, I can assert that one or two years later, technology will take on a different look and the problems thus arise will also be different. Madam President, at least the legislation today will regulate that the technology of sex selection can be used only in connection with severe sex-linked genetic diseases, and that such reproductive technology can only be used by married couples. During the deliberation of the Bill, Mr Gregory LEUNG, Deputy Secretary for Health and Welfare, made a lot of efforts in summing up various views of Members to be incorporated into the

Government's amendments today. My request, namely those severe sex-linked genetic diseases related to sex selection should be dealt with in the Schedule of the Bill, of course, has been taken care of. This approach of readily accepting good advice is indeed commendable. Had we adopted the same approach in dealing with each and every bill, the incident yesterday would not have happened.

Miss Cyd HO just now looked at selection of sex from the point of view of woman's liberation, while Dr LEONG Che-hung proposed to look at this issue from the perspective of the well-being of infants. Apart from all these, we also have ethical considerations. If we allow this technology to be abused, allow such technology to control the gender of infants in society, there will likely be clashes with the cultural tradition of this Chinese society in which men are generally regarded as superior to women. It is against my will that there should not be any regulation on the use of such technology by anybody.

Madam President, as regards surrogacy, since the Government submitted this Bill or during our deliberation for more than 10 months, or going back to the two consultations 14 years ago or to the consultation conducted by the Provisional Council, we could not see anyone upholding surrogacy, but rather, some people thought that this practice should be banned altogether. This is an ethical or moral issue, not a question of black and white. The yardstick of ethics or morality actually is different with different families and individuals, and we cannot apply our own yardstick to the public. It is, of course, true that we do not encourage surrogacy. However, the fact remains that for some cases, if a woman wants to have her own child, a child born out of the sperm of her husband and the egg of herself, she has to entrust a surrogate mother to give birth to this child. To put it simply, some women whose wombs were cut due to various reasons have to borrow other women's wombs to rear the foetus. Under this situation, surrogacy is necessary. But the crux lies in how we regulate surrogacy.

During our discussion, we did have consensus on prohibiting commercial surrogacy. Of course, I agree that we should have more discussions on questions like who can be eligible to be surrogate mothers and who cannot. Apart from the existing scope of regulation, should we have discussions from a wider perspective? I agree that we should. But we do have a scope of regulation at present, which Miss Cyd HO just mentioned, so I shall not repeat it

here. For instance, those who are married and have given birth, and are physically fit to give birth can be eligible to be surrogate mothers. All these criteria will be clearly laid out in the legislation.

Miss CHAN Yuen-han has proposed an amendment to remove all provisions regulating surrogacy. This is tantamount to not regulating any acts related to surrogacy, or to giving some leeway to commercial surrogacy. Since it is clearly stipulated in the Bill that commercial surrogacy is prohibited, the Democratic Party cannot support this amendment. I will explain the details at the Committee stage.

Madam President, I very much hope that this Bill can be passed smoothly today. The issues that we discuss today have been discussed for 18 months. It is likely that loopholes will continue to appear. However, if we do not do what we should today and continue to wait, we will be back to the situation a few years ago under which we were confronted with a commercial clinic offering sex selection services but we had no relevant legislation to deal with it. I do not want to see any advertisements about wombs for hire on the Internet tomorrow. If this Bill is passed, it will be illegal to offer wombs for hire and this act is unlawful. Members may still remember that not long ago, a famous Western model offered her eggs for auction on the Internet. This happened not long ago and has become a piece of news worldwide. I hope that when anything happens, we will not feel at a loss as to where to pull any statutes to prevent any undesirable incidents.

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

MR YEUNG YIU-CHUNG (in Cantonese): Madam President, today, this Council has to scrutinize a bill which is very complex. It is complex in that a very long time was spent on its scrutiny as the deliberations took as long as two years in this term alone, not to mention the time spent by the former Legislative Council. Technically, it is also rather complex mainly because ethics, morals and other values are involved.

Infertility is, for various reasons, very unfortunate and distressful. Thanks to technological advancement, human beings can now have their offspring by means of technology. Not only does it bring good news to infertile

couples, it also brings along an array of ethical, moral, family and social questions. For instance, can unmarried persons have children by means of reproductive technology? How to define infertility? Who are allowed to use reproductive technology? Can reproductive technology be used to select the gender of babies? Can a person save his sperms for a reproductive technology procedure to be conducted when he is old or after his death? Indeed, it is never easy to say "yes" or "no" to all these questions. However, after a series of meetings, members have basically reached some consensus.

The failure of the Bill to fully address the question of surrogacy warrants our greatest concern. Surrogacy is a matter of great importance but the public has not been widely consulted. I understand that we cannot give a green light to it rashly notwithstanding lacklustre public response. In fact, Britain and the United States have already learned a lesson, so why can we not take this matter into serious consideration and impose stringent regulation? The loopholes or defects in the Bill today will certainly lead to never-ending contention in future. In view of this, Miss CHAN Yuen-han of the Democratic Alliance for the Betterment of Hong Kong (DAB) has proposed amendments to take out the provisions relating to surrogacy from the Bill. In so doing, she hopes that the Government will table at the Legislative Council a separate bill to govern surrogacy. If the amendments of Miss CHAN Yuen-han are negatived, the DAB can only abstain in the vote to be taken on this Bill.

Some hold that despite loopholes in the Bill, it is better to have some sort of regulation and governing legislation than having no control and no legislation at all, so the relevant provisions should be supported as well. I have reservation about this view because putting in place unsound regulation and flawed legislation are not necessarily better than having no regulation, suffice it to say that the question of surrogacy involves the rights and interests of different stakeholders and the babies. Therefore, explicit definitions and restrictions are all the more necessary. Otherwise, who can be protected when disputes arise? I hope Members will consider this seriously. Thank you, Madam President.

MR HOWARD YOUNG (in Cantonese): Madam President, Members of the Liberal Party did not participate in the deliberations of the Bills Committee on Human Reproductive Technology Bill, but we did keep abreast of the work of the Bills Committee. The scrutiny of the Bill took a very long time to complete

and we were aware of the ongoing efforts made by the Bills Committee. We greatly appreciate the efforts that the Chairman and members of the Bills Committee have dedicated to this complex and controversial Bill.

Now that the Bill is finally tabled for approval by the Legislative Council, and the Government, when tabling the Bill, did submit a paper to explain the Bill to Members. I intended to be the last speaker as I would like to listen to the speeches of other Members first. I also received papers explaining the views of the Hong Kong Federation of Trade Unions and the Hong Kong Women Development Association on the amendments to the Bill. I do not wish to speak on the Bill at great length for I have not participated in the discussion on the details of the Bill, and we have listened to almost all the arguments just now. My view is that human reproductive technology does exist and this is an established fact disregarding whether or not we acknowledge it and whether we like it or not. The question really lies in how it should be handled. Therefore, we support the resumption of the Second Reading debate on this Bill. Meanwhile, we are glad to see that the Bills Committee has basically accepted the amendments proposed by the Government, and we also support that.

As regards the amendments, I wish to make a few simple remarks here for I am not going to speak at the Committee stage later on. It is true that we are now faced with two options: Is it better to impose no control at all by striking out all clauses on surrogacy given that the provisions are not good enough? Or is it better to at least put in place some sort of regulation? Earlier on Mr Michael HO said that even if there is regulation, it may not necessarily be sound and proper. But from the two examples cited by Mr HO just now, one of which occurred overseas and the other in Hong Kong, I note that the absence of any form of regulation or control on human reproductive technology could give rise to incidents that we are most unwilling to see. I have not heard of misgivings on the part of the Government about the effectiveness of the regulatory provisions in this Bill, if enacted. In the past, we did discuss in the Legislative Council how best certain regulatory provisions could serve their purpose, and we often heard the Government say that regulation would be useless for enforcement would be impossible. But insofar as this issue is concerned, I have not heard the Government say such things. Under these circumstances, the Liberal Party is inclined not to support the amendments of Miss CHAN Yuen-han.

We, however, noted that this is not a piece of perfect or flawless legislation, as also stated by the Bills Committee. I hope that the Government will not close the subject and consider it unnecessary to continuously review the situation after the passage of the Bill. Given rapid technological development, if it is found that the established regulation or control requires enhancement or changes, the Government must work to this end. Even though the time required for the subsequent Bills Committee meetings might be longer than 18 months, the Government should re-introduce a bill at the Legislative Council to further improve the one we shall pass today.

Thank you, Madam President.

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

(No Member responded)

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam President, first of all, I should thank Honourable Members for supporting the Human Reproductive Technology Bill. I would also like to extend my gratitude to the Honourable Miss Cyd HO, Chairman of the Bills Committee on the Human Reproductive Technology Bill, as well as all other members of the Bills Committee who have thoroughly examined the Bill and put forward valuable and constructive comments and suggestions.

Reproductive technology is a complicated and sensitive subject which involves various medical, legal, social and ethical issues. The Bills Committee has held a total of 26 meetings in the past 20 months, and at those meetings we have exchanged views with Members on various issues. Later on, I will move Committee stage amendments to a number of clauses under the Bill to reflect the views expressed by members of the Bills Committee. The amendments are proposed to make the provisions of the Bill complete.

The Bill seeks to regulate reproductive technology procedure, use of embryos and gametes for research and other purposes, to regulate surrogacy

arrangement and to establish a Council on Human Reproductive Technology. The goal is to ensure that reproductive technology will be applied in a safe situation and to protect the rights of users and children born out of reproductive technology procedure. In particular, we propose to restrict the procedure to married couples and prohibit commercial dealing and use of gametes and embryos. Commercial arrangement of surrogacy is also an offence.

As I have just mentioned, reproductive technology is such a complicated issue that there are different views in the community regarding the application and control of the technology. The Honourable Miss CHAN Yuen-han has just expressed her views regarding surrogacy and prepares to move amendments on this subject at the Committee stage. I will address this issue again when we come to it in a moment. However, I want to emphasize here, that there is currently no legislative control over surrogacy. If the provisions relating to surrogacy were taken out, we would be back to the *status quo*, that is, surrogacy could be practised without any regulation.

Although there are divergent views on reproductive technology, we have already taken into consideration views from the majority of the community when finalizing the regulatory framework. One important consensus we have reached with the Bills Committee during our deliberations on this Bill is that the welfare of the child to be so born should be given the highest order of importance.

Upon the passage of the Bill, we will proceed immediately to set up the Council on Human Reproductive Technology to work out the details of the regulatory measures.

Nowadays, reproductive technology is developing at a rapid pace, as pointed out by a number of Members. Given the dynamic nature of this subject, I can reassure Honourable Members that we shall keep tabs on the latest developments in this area, and consider amending our legislation as appropriate to ensure its validity and relevance.

Madam President, I hereby commend this Bill to Members for Second Reading. Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Human Reproductive Technology Bill be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Human Reproductive Technology Bill.

Council went into Committee.

Committee Stage

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

HUMAN REPRODUCTIVE TECHNOLOGY BILL

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Human Reproductive Technology Bill.

CLERK (in Cantonese): Clauses 1, 5, 6, 9, 10, 11, 18, 19, 20, 23, 24, 26, 28, 29, 33, 34, 35, 37 to 40, 44 and 45.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese):Clause 3.

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam Chairman, I move the amendments to clause 3, as set out in the paper circularized to Members.

In the Bills Committee meetings, Members have expressed different views regarding whether registered medical practitioner could be appointed as Chairperson or deputy Chairperson of the Council on Human Reproductive Technology (CHRT). According to the Bill, a registered medical practitioner shall not be appointed as the Chairperson or the deputy Chairperson of the CHRT. This is to assure the public that the CHRT will not be biased towards the medical perspective in regulating reproductive technology. After a series of discussions, and considering that the final authority of appointment is vested in the Chief Executive, who will appoint the most appropriate person according to different circumstances, we agreed that it might not be necessary to explicitly spell out the requirement in the Bill. As such, we propose to amend clause 3(2).

In addition, Members have also expressed views regarding the composition of the CHRT, in particular, whether the licensee and the person responsible could be appointed as members of the CHRT. Based on the reasons I have just mentioned and in response to Members' request, we propose to amend clause 3(3).

I earnestly urge Members to support and pass the amendments. Thank you, Madam Chairman.

Proposed amendment

Clause 3 (see Annex IX)

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

MISS CHAN YUEN-HAN (in Cantonese): Madam Chairman, the Secretary has just touched upon clause 3(2)(a) and (b) and he has mainly discussed the proposed deletion of the provision that the Chairperson and Deputy Chairperson of the CHRT should not be registered medical practitioners as proposed by individual colleagues in the course of scrutiny. We oppose these amendments because they are unsatisfactory. In our view, if the post of Chairperson or Deputy Chairperson is assumed by a medical practitioner, there will be indirect or direct conflict of interests, therefore, we find this inappropriate.

We will support the amendment to clause 3(3)(a)(ii) proposed by the Administration. The Government has explained that the relevant clause allows the CHRT to appoint a person responsible under a licence or a licensee as members of the CHRT. We agree to this point because we think that there should be representatives of these people in the CHRT to represent their views, and most of them have medical background. For the above reasons, we oppose clause 3(2)(a) and (b) because the Chairperson of the CHRT can be a medical practitioner after the passage of this amendment. But we accept clause 3(3)(a)(ii), that is, the arrangement for people from the medical sector to become members of the Council. Therefore, we oppose the deletion of clause 3(2)(a) and (b) but we accept the deletion of section 3(3)(a)(ii). Thank you, Madam Chairman.

DR LEONG CHE-HUNG (in Cantonese): Madam Chairman, the Bill specifies that registered medical practitioners cannot assume the posts of Chairperson and Deputy Chairperson. I certainly understand this. If the work of a registered practitioner is related to reproductive technology (RT), and if there is really a conflict of interest if the medical practitioner takes up the post, he should definitely not become the Chairperson or Deputy Chairperson. Then, it will not give people an impression that there is a conflict of interests and capacities of

these people or that the Chairperson or Deputy Chairperson is biased towards certain people.

Firstly, a registered medical practitioner may not necessarily have any ties with reproductive technology, and many registered medical practitioners may even not have knowledge of reproductive technology. For example, an orthopaedic surgeon I know does not have any ties with reproductive technology. Besides, many registered medical practitioners in Hong Kong are not in active practice. I know that a few major property developers are registered medical practitioners and they are still registered medical practitioners under the Medical Registration Ordinance, yet, they are not practising medicine.

We also know that Dr Edgar CHENG, Head of the Central Policy Unit, is a medical practitioner who is registered and eligible for registration but I believe he does not have any ties with human reproductive technology. It is ridiculous that Dr CHENG cannot take up the said post because he is a registered medical practitioner. If we extend the provision that these people cannot take up this post because they have medical background or are medical practitioners to other sectors, I believe the provisions for the composition of many statutory bodies in Hong Kong have to be amended. Does this mean that a businessman cannot take up any post in the Trade Development Council?

As the Secretary has said, the appointment to these posts is definitely a decision to be made by the Chief Executive. Before the Chief Executive appoints any person, I believe he will consider if there will be conflict of interest and whether it will make people misunderstand that there will be a conflict of interest if the person takes up the post before making the decision to appoint that person. Thus, I hope that Honourable colleagues will support the amendment proposed by the Secretary for Health and Welfare.

MR MICHAEL HO (in Cantonese): Madam Chairman, having read the script this morning, I find that clause 3 is rather sensitive.

Madam Chairman, in the course of scrutiny by the Bills Committee, we have discussed the assumption of the post of Chairperson or Deputy Chairperson by a registered medical practitioner, and we agree that there will be potential conflict of interest. However, we think that it may not be necessary to prohibit

all medical practitioners from taking up these posts in a broad brush. Therefore, we can support this amendment by the Government, but we also hope that we can trust the Government, and I would especially like to remind the Government that it should be particularly prudent when implementing the provision. I so submit.

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

(No Member responded)

CHAIRMAN (in Cantonese): Does the Secretary for Health and Welfare wish to speak again?

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam Chairman, the principles of the two amendments are actually consistent. In my opinion, the so-called conflict of interest will be the same insofar as the Chairperson and members are concerned. As mentioned by a number of Members before, the final authority of appointment will be vested in the Chief Executive. We will consider the roles played by a registered medical practitioner or licensee in the Council on Human Reproductive Technology. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): The Committee will now vote on the amendments to clause 3 in two groups, since a Member has so requested beforehand.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments to subclause (2)(a) and (b), moved by the Secretary for Health and Welfare, be passed.

Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Miss CHAN Yuen-han rose to claim a division.

CHAIRMAN (in Cantonese): Miss CHAN Yuen-han has claimed a division. The division bell will ring for three minutes.

CHAIRMAN (in Cantonese): I would like to take this opportunity to tell those Members who have just entered the Chamber that the Committee will now vote on the original requirement specifying that the Chairperson and deputy Chairperson must be a person "who is not a registered medical practitioner".

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

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

Mr Kenneth TING, Mr HO Sai-chu, Miss Cyd HO, Mr Edward HO, Mr Albert HO, Mr Michael HO, Dr Raymond HO, Mr LEE Wing-tat, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Eric LI, Mr LEE Kai-ming, Mr Fred LI, Dr LUI Ming-wah, Mr NG Leung-sing, Prof NG Ching-fai, Miss Margaret NG, Mrs Selina CHOW, Mr Ronald ARCULLI, Mr MA Fung-kwok, Mr James TO, Mr CHEUNG Man-kwong, Mr HUI Cheung-ching, Miss Christine LOH, Mr Bernard CHAN, Dr LEONG Che-hung, Mrs Sophie LEUNG, Mr Andrew WONG, Mr Howard YOUNG, Dr YEUNG Sum, Mr LAU Wong-fat, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr Timothy FOK, Mr LAW Chi-kwong and Mr TAM Yiu-chung voted for the motion.

Mr David CHU, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, Mr CHAN Wing-chan, Mr CHAN Kam-lam, Mr Gary CHENG, Mr WONG Yung-kan, Mr YEUNG Yiu-chung, Mr LAU Kong-wah and Miss CHOY So-yuk voted against the motion.

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

THE CHAIRMAN announced that there were 48 Members present, 37 were in favour of the motion and 10 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

DR LEONG CHE-HUNG (in Cantonese): In accordance with Rule 49(4) of the Rules of Procedure, I move that in the event that further discussions being claimed in respect of other provisions of the Human Reproductive Technology Bill at this meeting, the Committee shall proceed forthwith to the division after the division bell has been rung for one minute.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: In the event that further divisions being claimed in respect of other provisions of the Human Reproductive Technology Bill at this meeting, the Committee shall proceed forthwith to the division after the division bell has been rung for one minute. Does any Member wish to speak?

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

I order that if a Member claims a division in respect of other provisions of the Human Reproductive Technology Bill at this meeting, the Committee shall proceed forthwith to the division after the division bell has been rung for one minute.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the deletion of subclause (3)(a)(ii) from clause 3, moved by the Secretary for Health and Welfare, be passed.

Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 3 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 7, 8, 21, 22, 25, 27, 30, 31, 32, 41 and 42.

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

Members have expressed concern about the qualifications of the person responsible in a reproductive technology centre. In response, we propose to amend clauses 21, 25 and 42 to require such qualifications be prescribed by subsidiary legislation.

The Bills Committee also discussed whether the person responsible could also be the licencee. Having taken into consideration the views of Honourable Members, we propose to amend clause 21 so that the licensee and the person responsible could be the same person if the Council on Human Reproductive Technology is satisfied that there is adequate supervision.

Honourable Members also expressed concern for the rights of users of reproductive technology centres. To address the concern, we propose to amend clause 27 to protect the rights of the users in the event of of suspension of licence.

We spent enormous time in the Bills Committee meetings to discuss the disclosure of information. We are grateful to Honourable Members for their views on this issue. We propose to amend clause 31 to require that the consent of the person in question must be obtained before any information on the identity of that person can be disclosed.

The Bills Committee also proposed that the storage period of gametes and embryos and the import and export of gametes and embryos should also be regulated. We propose to amend clause 42 to empower the Council on Human Reproductive Technology to make regulations for these two aspects.

The remaining amendments, including those to clauses 7, 8, 22, 30 and 41, are technical or textual amendments meant to make these provisions clear and concise.

All of these amendments are proposed by the Government and the Bills Committee after careful deliberation. I earnestly ask Members to support them. Thank you, Madam Chairman.

Proposed amendments

Clause 7 (see Annex IX)

Clause 8 (see Annex IX)

Clause 21 (see Annex IX)

Clause 22 (see Annex IX)

Clause 25 (see Annex IX)

Clause 27 (see Annex IX)

Clause 30 (see Annex IX)

Clause 31 (see Annex IX)

Clause 32 (see Annex IX)

Clause 41 (see Annex IX)

Clause 42 (see Annex IX)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 7, 8, 21, 22, 25, 27, 30, 31, 32, 41 and 42 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam Chairman, may I seek your consent to move under Rule 91 of the Rules of Procedure that Rule 58(5) of the Rules of Procedure be suspended in order that this Committee may consider new clause 29A, ahead of the remaining clauses and new clauses, as it is related to clause 36.

CHAIRMAN (in Cantonese): As only the President may give consent for a motion to be moved to suspend the Rules of Procedure, I order that Council do now resume.

Council then resumed.

PRESIDENT (in Cantonese): Secretary for Health and Welfare, you have my consent.

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam President, I move that Rule 58(5) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider my proposed new clause 29A, ahead of the remaining clauses and new clauses, as it is related to clause 36.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Rule 58(5) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider new clause 29A, ahead of the remaining clauses and new clauses, as it is related to clause 36.

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

(Members raised their hands)

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

(No hands raised)

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

Council went into Committee.

Committee Stage

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

CLERK (in Cantonese): New clause 29A Voluntary surrender of licence.

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam Chairman, I move that new clause 29A as set out in the paper circularized to Members be read the Second time.

Clause 29A is introduced at the request of Honourable Members to safeguard the rights of the users of a reproductive technology centre when a licensee voluntarily surrenders his licence.

I earnestly ask Members to support the passage of this amendment. Thank you, Madam Chairman

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 29A be read the Second time.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clause 29A.

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam Chairman, I move that new clause 29A be added to the Bill.

Proposed addition

New clause 29A (see Annex IX)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 29A be added to the Bill.

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

(Members raided their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 2, 4, 12, 14 to 17 and 36.

MISS CHAN YUEN-HAN (in Cantonese): Madam Chairman, I move the amendments to clauses 2,4,14,17 and 36 and the deletion of clauses 12, 15 and 16 as set out in the paper circularized to Members.

Madam Chairman, I would like to discuss my views again. In the course of scrutinizing this Bill, I have passed a rather painful stage. Hong Kong is fairly mature in respect of artificial insemination and embryo, for instance, the Hong Kong Sanatorium & Hospital excels in test tube baby, yet, we agree that monitoring should be improved. We undoubtedly support this point and we have just raised our hands to show our support.

When we examined the surrogacy issue, Madam Chairman, conflicting ideas often crossed my mind and I was hesitant. How should we define commercial surrogacy? How should we treat this issue? How should we treat cross-border surrogacy? If the cross-border surrogate mother of a child is a Hong Kong resident, she will have a host of relations in China. As we all know, there are examples of generations of migrants to Hong Kong which involve a host of relations. How should we restrict the relevant cross-border commercial activities? I have consulted the legal adviser of this Council and the Government as to how such evidently commercial activities should be regulated. I stress that these special cases have happened as a result of geographical relationships. Although Western countries do not have such complicated geographical relationships, they still encounter a lot of difficulties with the prohibition of the relevant commercial activities. The same even happens in Britain, let alone Hong Kong which has complicated geographical and human relationships. In the face of such a situation, how can our judicial system check and balance cross-border offences? We have all along failed to do so.

In my view, we can even not ask the Government to make material changes to this Ordinance as this may involve issues pending discussion in many other aspects in two jurisdictions. In our jurisdiction, it is already difficult enough to regulate and define the relevant commercial activities. What can we do in the geographical context? Is legal regulation possible? I do not think it is feasible. I do not want to make a judgment and I hope that the community will discuss this problem. How much can we tolerate? If Members do not think there is any problem, I will also think so but if the Government indicates that regulation can be carried out, I will really be convinced.

Some Members or government officials have said that some regulation is better than none. I fully agree with them but we should carefully consider the extent to which regulation should be implemented. The extent of regulation mentioned by them is subtle and it may not involve surrogacy, how should we gauge that?

Madam Chairman, we have spent more than a year scrutinizing this Bill and a few colleagues in the Bills Committee have consistently worked on this issue. I earnestly hope to know the views of the community on this issue. I have been a Member of this Council for almost five years but I have never felt so hesitant when scrutinizing a Bill. Thus, I have reservation about this and I do not think we can regulate commercial surrogacy. After reading out the provisions of the Government in my earlier speech, I wondered what we should do. From an ethical perspective, Western countries and Hong Kong may not think that there are problems, but we have not conducted extensive consultations beforehand. The survey conducted by the City University of Hong Kong (CityU) indicates that more than 60% of the respondents oppose surrogacy involving money while more than 50% of them oppose surrogacy not involving money. These are the views of the community and regardless of whether money is involved, they oppose the concept of surrogacy.

If we look into the issue academically, we may hold different levels of discussions. Why does the Government not submit the findings of the survey of the CityU, women or professional groups to this Council for discussion? We are discussing surrogacy, not sex selection or test tube baby. The community should discuss the issue, they may oppose or ban surrogacy at the end, or they may make other proposals under the premise of supporting surrogacy. Why can we not consider the views of the community in the course of policy formulation? Madam Chairman, the Government has not done so.

I would also like to discuss ethical issues. I have just said that Western societies may be ethically very open and they may not see any problems with this. Our society may also be the same or we may have different views. We began the scrutiny of the Bill in 1998, and Taiwan also held heated discussions on surrogacy arrangement in 1999. The Taiwan community, government and the party not in office promoted relevant discussions and the whole Taiwan extensively discussed it. Then one day, discussions about who should engage in surrogacy took up the whole page of a major newspaper. The discussions were

very extensive and I envied the Taiwanese very much at that time. Madam Chairman, why can the Hong Kong Government not promote the relevant discussions? Does the Government think that it is not necessary to worry about this because a surrogate mother in a Western country will naturally be a mother, next of kin, sister or sister-in-law? Madam Chairman, ……

CHAIRMAN (in Cantonese): Miss CHAN Yuen-han, I would like to remind you not to repeat what you have already said.

MISS CHAN YUEN-HAN (in Cantonese): Madam Chairman, I will try my best not to repeat what I have said before. Thank you for reminding me and I have tried my best to be careful. I have actually not repeated myself because I have just discussed consultations and I am now going to discuss the contents.

Although other people held heated discussions at that time, we did not done so and I had asked the Government to do the same. Taiwanese people discussed the levels of family members that could act as surrogate mothers and they concluded that four levels of family members could be involved. Perhaps, Hong Kong should not follow what Western countries and Taiwan have done. I have not yet drawn a conclusion and I hope that the community will discuss the issue. When I discussed the issue with professional and women bodies, they expressed many views and made a lot of points. The professional bodies wondered why surrogacy should be needed and they thought that adoption would involve much less complicated ethical relationships while some women bodies said that surrogacy was just an arrangement for a surrogate mother to carry a child, and their discussions were very elaborate. Why does the Government not let them participate in discussions? As to the class, level or place in which promotional efforts should be made, so long as the Government is willing to explore this, it can certainly promote that.

Now that the CityU survey and the people and professional bodies have different views, why does the Government not hold discussions? I would also like to respond to the remarks made by Mr Michael HO and Miss Cyd HO, Chairman of the Bills Committee. They said that we had spent over 10 years discussing this Bill and more than 10 months scrutinizing this Bill. I understand that difficulties will be encountered in promoting this issue but if the Government

wants to do so, as some professional bodies had said at a seminar held by the Government in May, they could teach us how and help promote this issue. If the Government really wants to do this and is willing to inject resources into it, it can actually use many methods.

Madam Chairman, if we lightly think that consultations have been conducted over a long time and we do not need to take actions today, I would like to ask what consultations were conducted in 1987? Some professional and religious bodies including academic bodies held discussions in 1987 and they also held discussions during our scrutiny of the Bill this time, yet, their responses were just lukewarm. Although consultations within the industry are adequate and extensive discussions have been conducted it is another matter to conduct consultations at the policy, legislative and social levels. There will be thorough brewing before the Government formulates any policy and makes any decision. The civil service reform, for example, has been in the brewing for more than 10 years and civil service bodies know that a reform will be carried out. However, discussions will be made back and forth before the real reform and we cannot simply regard the discussions among the trades, academic bodies or religious bodies as the views of the community.

As it is so difficult to promote such discussions today, we can appreciate how difficult the situation was in 1987. The way of thinking, values and ethical views of the community at that time were naturally different. Thus, if the Government replaces consultations by the discussions back in 1987, I think it does not quite understand the views of the people.

For 18 months, the professional sectors, women bodies and concerned groups have hoped that the Government would make promotional efforts and they used their only resources to give the Government a message. As the Government had not dealt with their message, the Bills Committee had to handle it. Madam Chairman, as I have said, conflicting ideas crossed my mind in the course of scrutinizing this Bill and I think that I have the responsibility to take out the provisions related to commercial surrogacy from the Bill. This does not mean that we should or should not legislate on this but I think we should hold discussions again. We cannot simply say that the views expressed are enough and it is not necessary to consider other views. There must be some loopholes and I have reservation about this.

Madam Chairman, I will stop here, but I may speak again later. Thank you.

Proposed amendments

Clause 2 (see Annex IX)

Clause 4 (see Annex IX)

Clause 12 (see Annex IX)

Clause 14 (see Annex IX)

Clause 15 (see Annex IX)

Clause 16 (see Annex IX)

Clause 17 (see Annex IX)

Clause 36 (see Annex IX)

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

MR MICHAEL HO (in Cantonese): Madam Chairman, the amendments moved by Miss CHAN Yuen-han seek to remove all provisions in relation to surrogacy. First of all, I would like to talk about clause 15; it is the most important clause for it prohibits commercial surrogacy arrangements. Clause 16 deals with the issue of whether legislation on surrogacy arrangements is enforceable, while other amendments are consequential in nature. And, the most important point of contention is the prohibition of commercial surrogacy. I fully agree that when we talk about ethical and moral implications, everyone may have different moral standards. Some people may find the idea of surrogacy acceptable, while others may not; some people may accept the idea of semen donation, while others may find the idea of semen or ovum donation hard to accept. However, if we narrow down our scope of discussion to the regulation of surrogacy arrangements as proposed in this Bill, our discussions will be more focused.

What are we actually seeking to regulate? The answer is, we seek to regulate the suitability of surrogate mother, such as who is suitable, and whether someone is allowed to become surrogate mothers or otherwise? And, from a physiological point of view, whether that person has ever been pregnant or given birth, and that is, whether the physical condition of that person is fit for pregnancy from a medical point of view? We should also consider the question of marital status, and decide whether only married couples should be allowed to do so? One thing is very clear, and that is, we should prohibit surrogacy arrangements made on a commercial basis or surrogacy arrangements which involved any payments. In fact, we have narrowed down our ethical and moral considerations, rather than all aspects of surrogacy. This is especially true for clauses 15 and 16. If our discussion is on whether a consensus can be reached over commercial surrogacy, we can rightly conclude that the Committee, the Administration, groups which have made submissions to the Legislative Council, and those who have responded to the consultative documents issued and consultation exercises conducted over the years, are basically of the view that we should not prohibit all forms of surrogacy arrangements. Only surrogacy arrangements on commercial basis should be prohibited.

So, Madam Chairman, this is a question of "womb borrowing for child-bearing purposes" versus "womb hiring for child-bearing purposes". As "womb borrowing" does not involve any payments, it will not be prohibited, while "womb hiring for child-bearing purposes" will be prohibited because payments are involved. This is the principal difference underlying clause 15. If clauses 14, 15 and 16 are deleted, then there will not be any provisions on the prohibition of surrogacy arrangements on commercial basis, and there will also not be any provisions to state that commercial surrogacy is illegal. In other words, tomorrow, someone may follow the example of a famous American model, but only this time it will be an offer of uterus for hire instead of offering ovum for sale by auction on the Internet. Some people may offer $5,000 as rental while others may offer $50,000. This is our greatest concern.

Madam Chairman, I hope Members can have a clear understanding of the crux of the problem. I would like to talk about a letter which Miss CHAN Yuen-han sent to us on 19 June. The letter, which was written under the letterhead of the Federation of Trade Unions, was addressed to colleagues of the

Legislative Council. What she said about surrogacy in the letter was not true. Let me quote a paragraph from page 2 of the letter, it said "If surrogacy were legalized, then I believe that cases where people become surrogate mothers for rewards will be far more common than those who do so on a voluntary basis, and this will cause problems. If surrogacy arrangements are allowed in Hong Kong, then it is very likely that a back door will be opened for illegal surrogacy activities to come out in a legal guise.

Madam Chairman, I do share Miss CHAN Yuen-han's concern. However, if this clause is deleted, that is, if the original clause 15 on prohibiting commercial surrogacy is deleted, then we would not prohibit commercial surrogacy. If surrogacy arrangements are allowed to exist, then this will soon lead to illegal surrogacy activities. Madam Chairman, I hope to draw Honourable colleagues' attention to the fact that we do not support Miss CHAN Yuen-han's amendment precisely because we are afraid that commercial surrogacy activities will appear after the provisions on commercial surrogacy have been deleted.

Miss CHAN Yuen-han has referred to the relevant Acts of the United Kingdom. It is true that this Bill was modelled on two similar Acts of the United Kingdom. Members may be aware that new problems and loopholes will appear after a piece of legislation has been in force for some time as a result of constant technological developments over the years. However, new problems have only arisen as a result of new technological developments, and it has nothing to do with the legislation itself. That is why I cannot accept the fact that arrangements for regulating surrogacy have not yet been made so far. We should try our very best to come up with arrangements for regulating surrogacy in the year 2000. Perhaps in another two years' time, new problems will arise as a result of new technological developments, then we will introduce amendments accordingly.

Madam Chairman, if we take a look at the surrogacy arrangement Acts of the United Kingdom, we can immediately see what will happen if Miss CHAN Yuen-han's amendments, that is, removing all clauses on surrogacy arrangements, are passed. Fortunately, the Administration has already agreed to amend certain clauses which are modelled on the United Kingdom legislation.

One of such clauses provides that surrogacy refers not only to conception resulted from semen planted in the mother body by means of reproductive technology, but also the planting of semen in the mother body by means of normal sexual intercourse. This is provided in the United Kingdom Act and included in the original Blue Bill. If we do not amend this provision and if Miss CHAN Yuen-han should successfully remove the provision on surrogacy, then the act of paying to make a woman pregnant through sexual intercourse will also be regarded as a surrogacy arrangement. Fortunately, this provision has already been deleted. From this we can see that the United Kingdom law is not any more advanced than ours, and I totally agree that an in-depth study should be carried out.

Madam Chairman, I hope everyone will understand that it does not mean that we will prohibit all forms of surrogacy arrangements by removing this clause. We will only remove the original provision on the regulation of commercial surrogacy. Miss CHAN Yuen-han referred to an opinion poll conducted by the City University. If we ask members of the public whether they are against paid or unpaid surrogacy, those who do not require such services or those who are not directly involved will find it very easy to give an answer. However, at a time when those people can have children only with the help of surrogacy, then these families or women may have entirely different opinions. I believe when a family has to decide whether it should raise a family by resorting to surrogacy, they will look at all the moral, ethical and religious implications. So, Madam Chairman, I am not surprised to find that 50% of the general public are against surrogacy. However, the problem is, should surrogacy be prohibited in Hong Kong? Madam Chairman, though I understand that there will be difficulties in enforcing the provisions on surrogacy just like we also have difficulties in prohibiting the sale of heroine and contraband cigarettes, it does not mean that we do not need to legislate to prohibit these activities.

Madam Chairman, I can anticipate and totally agree that we will face a lot of problems in enforcing the prohibition on surrogacy after this piece of legislation is enacted. However, I hope that we will be able to accumulate experience in the course of the enforcement, and further tighten up the legislation. Thank you, Madam Chairman.

MR LAW CHI-KWONG (in Cantonese): Madam Chairman, I would like to make it an exception to speak in favour of Miss CHAN Yuen-han. The remarks made by Mr Michael HO just now mean that if we pass the Bill, surrogacy arrangement on commercial basis will be an offence. As a result, if anyone arranges commercial surrogacy, this person is virtually committing an offence. Mr HO's rationale is perfectly right because if the legislation is not passed, surrogacy arrangement on commercial basis will not be an offence. However, we certainly do not agree with his argument, and I presume the Chairman understands what I mean. In fact, we are discussing the issue of legalization or decriminalization, which reminds me of the decriminalization of homosexuality. Not long ago, homosexuality was still an offence, but it was decriminalized eventually. Some people may say that we seem to have it legalized, but let me remind them that we are under the jurisdiction of the legal system of Hong Kong, not its mainland counterpart. In other words, we may engage in a specific kind of behaviour as long as there is no restriction imposed on it. The decriminalization of homosexuality is not tantamount to total legalization, and we should not have such concept in the course of deliberation. What we are trying to say is that if we do not want to prohibit a certain kind of behaviour, we shall decriminalize it. In fact, the purpose of the Bill proposed by the Government is to criminalize surrogacy arrangements on commercial basis. However, in contrast to the original Bill, the amendments of Miss CHAN Yuen-han seek to decriminalize the activities which the Government has set out to criminalize. When we were arguing about homosexuality long ago, some people had argued that decriminalization was legalization. In other words, the amendments of Miss CHAN Yuen-han may well be criticized for seeking the legalization of surrogacy arrangements on commercial basis. This is the reason why we have to examine what means legalization and what means decriminalization, furthermore, we have to understand clearly what have been said in our legal system, and we have to take certain essences of legislation into consideration.

Mr Michael HO also mentioned earlier that the issue of surrogacy was controversial. Miss CHAN Yuen-han has also raised a number of controversial issues. From the perspective of the formulation of legislation, perhaps we should not draw up legislation too hastily, in particular on issues of greater controversy. However, certain consensus has already been established, that is, surrogacy arrangements on commercial basis should not be allowed to emerge. Considering the essence of legislation, we should therefore render our full support. However, to what extent should it be restricted? Should it be the

third tier, fourth tier or fifth tier of kinship? I do not think we can reach any consensus today on a controversial issue like this, nor do I believe that any consensus can be reached even if the Government is willing to spend $10 million to $20 million on publicity or conducting a few hundred more forums with just a handful of audience to attend. As the social culture will only change after a long period of time, consensus can never be reached by simply sitting in an assembly without a single audience.

In fact, we have a very clear consensus by now, and that is to set out restriction by drawing up legislation, so as to prevent the materialization of surrogacy arrangements on commercial basis. With regard to other detailed and controversial issues, we should allow constant social, technological, moral and ethical metamorphosis before we should make any conclusion. It is impossible for us to include all these controversial issues into our discussion as we are drawing up this legislation today.

Furthermore, with regard to the cross-border issue mentioned by Miss CHAN Yuen-han, it is also a regional issue. I totally agree that this issue will bring troubles to the law enforcement. However, similar to the smuggling of illegal diesel as well as many other issues, we shall conduct cross-border talks to solve the enforcement issue. Nevertheless, does it mean that we should decriminalize all potential cross-border crimes? This is a very dangerous way of thinking. I agree absolutely with the logic that we should try our best to resolve problems in enforcement, for instance, we may consider how to improve the enforcement, but we should not stop the legislation or to avoid making restrictions.

Therefore, I hope Honourable colleagues will vote against the amendments of Miss CHAN Yuen-han and not to decriminalize surrogacy arrangements on commercial basis. Thank you, Madam Chairman.

MISS CYD HO (in Cantonese): Madam Chairman, the progress of technology has not only outpaced the progress of moral and ethical principles of society, but also the process of our legislation work, accordingly, the drawing up of this legislation is a bit late for this time. In the wake of the emergence of new technologies, perhaps everybody will agree that society can only make a decision on how laws should be drawn up to regulate these technologies after we have

familiarized ourselves with them for a while. However, our legislation is in fact two generations behind the technologies. Nowadays, we have cloning technology which can convert cells into organs, perhaps there will be no more organ transaction in the future, or we will even be able to convert our own cells into organs and put them in the fridge, and take them out from the fridge when necessary. As to whether or not we can accept the progress of these technologies, perhaps we can discuss them later. I consider the discussion has two facets, one is the debate on the policy position, which concerns the consensus on social ethics; the other is the technicalities of legislation.

Just now some colleagues have mentioned that the Bills Committee agrees unanimously that no one should make profit from one's body and organs, thus the selling of one's own blood or organs is unanimously opposed. So, we disagree with the letting out of one's womb and make surrogacy a service. Everyone, including Miss CHAN Yuen-han, has reached an absolute consensus in this aspect. I believe she also agrees that no one should make profit from one's body or organs. Yet in the ethics and social moral context, it can be said that the Bills Committee has not reached any consensus at all. In fact, the Bill is a very conservative one. A moment ago, Mr Michael HO has also made remarks on that by citing a very good example. After we have discussed it in the Bills Committee for a while, I have also given up. Madam Chairman, people who need surrogate mothers most are the gay population. In fact, they have the sperms but not the womb which is necessary for the nurturing of offspring, thus they have to look for ovum donors as well as womb provider before they can nurture offspring. Thus, they have the gravest need. However, as society has not reached a consensus on these ethics and moral principles, therefore, we should not discuss any further on that issue.

Targets of this Bill are only limited to the married and infertile couples. The so-called marriage only refers to registered marriage, not *de facto* marriage. In terms of ethics and moral principles, we have indeed reached the limit of consensus which is acceptable to everyone. Yet, the amendments of Miss CHAN Yuen-han cannot achieve her objective. She puts forward the amendments given that we are unable to legalize surrogacy and to open up a loophole, so that some people can abuse the reproduction technology in the absence of regulation. I would like to point out that the word "legalization" is in fact very misleading. Up to this second, we do not have any legislation regulating surrogacy arrangements, therefore there is no law to break, thus there

will be no offence in this aspect regardless of the involvement of money; nobody is breaking the law. Before we have reached a consensus at the ethics and moral principles level, and given that surrogacy arrangements on commercial basis are unacceptable anyway, we should accept this part of the legislation, and we should start right here by drawing up legislation to regulate surrogacy arrangements on commercial basis. Consequently, I consider there are difficulties to discuss this at the Committee stage, as we are far from starting the debate on policy position. Actually, all we need to do before making a decision is to examine whether or not the proposed amendments can reach the objective. If all the legislation on the prohibition of surrogacy arrangements on commercial basis were to be withdrawn today, the concerns stated by Miss CHAN Yuen-han in her letter to the Hong Kong Federation of Trade Unions (FTU) may be addressed, that is, there is a gigantic loophole now and we do not have suitable legislation to plug it. Some commercial arrangements we consider unacceptable may emerge if our proposal on the prohibition of surrogacy arrangements on commercial basis is negatived today.

I hope I can consider the lobbying letter issued by Miss CHAN Yuen-han to Honourable colleagues from a technical perspective. First of all, the welfare of the child can get no legal protection. In fact, the existing legislation has already provided clear-cut definitions in the determination of the child and the parentage. The Parents and Child Ordinance has made reference from provisions in the United Kingdom's Human Fertilization and Embryology Act 1990. For example, in section 9(1), it stipulates that "the woman who is carrying or has carried a child as a result of the placing in her of an embryo or of sperm and eggs, and no other woman, is to be regarded as the mother of the child." In fact, it has established that the surrogate mother is the mother of the child. The latter part of the Ordinance has also stipulated that custody of the child cannot be transferred unless the woman who carries the child (surrogate mother) agrees to hand over the child, and given that the commissioning husband and wife have applied for a court order within six months of the birth of the child; otherwise, the surrogate mother shall become the mother of the child. As the legislation has made a clear definition, we should not worry that anyone may go back on his or her words and make the child a nobody's child. With regard to the transfer of custody, section 12 has also stipulated a set of rules to ensure that custody can only be transferred with the satisfaction of the Court. These rules include: that the commissioning husband and wife must make the application within six months of the birth of the child; the child's home must be with the

commissioning husband and wife or either of them; the commissioning husband and wife or both of them must be domiciled in Hong Kong; they have been ordinarily resident in Hong Kong throughout the immediately preceding period of one year, or have a substantial connection with Hong Kong; and the Court must be satisfied that no money or other benefit (other than for expenses reasonably incurred) has been given by the commissioning husband and wife for the surrogacy arrangement. The purpose of the legislation is to ensure the legal status of the child, and to ensure that if the surrogate mother is so attached to the child in the course of pregnancy and does not want to give away the child, then she will have the custody right of the child. If we are not going to pass this law, any surrogacy arrangement (whether or not on commercial basis) can be made at any time. By that time, should any dispute arise from the custody aspect, the judge shall have no law to go by when giving his verdict, and the situation will be more confused.

Secondly, Miss CHAN Yuen-han has also mentioned that surrogacy arrangements are not legally binding. This is exactly why there should not be any agreement in advance to require that the surrogate mother must surrender the child to the commissioning husband and wife after the child is born. We should be able to understand that during the 40-week of gestation, a certain kind of physical or mental relationship should have taken place between the expecting mother and the fetus. If the surrogate mother has to go back on her words due to such relationship, the agreement between the surrogate mother and the commissioning husband and wife shall have no legally binding effect. It is just as I have mentioned earlier, the surrogate mother is the mother of the child, and she has the absolute right to consider the child her legitimate offspring. It can be said that the Bill has taken care of everything in this aspect. Madam Chairman, if we are unable to pass the legislation today, surrogacy arrangements shall go back to the old "unregulated" state, and we shall have no idea of the secret dealings behind that. By that time, even if the commissioning husband and wife have to initiate lawsuits to fight for the custody of the child with the surrogate mother after the child is born, the judge shall have to make judgment according to his or her own moral principles, or to leave it to his or her own verdict.

Madam Chairman, regarding policy position, I would like to point out that as we only have less than 10 members in this Bills Committee, therefore we are under tremendous pressure in the course of deliberations. Some people may

ask why we have to take such a long time to discuss the issue? This is exactly one of the reasons for those long and tedious meetings. I believe everyone still remembers that in 1998, the Human Organ Transplant Ordinance had also stirred up some disturbances in the public due to the defective legislation. Owing to the incompleteness of the legislation, reviews and amendments had to be made immediately. Similarly, in the course of deliberations, the Bills Committee today was also under tremendous pressure. As a newcomer, I was elected the Chairperson of the Bills Committee as none of the colleagues were willing to be the Chairperson; they were either engaged in other duties, or had participated in previous consultation exercises or relevant reproductive technology-related affairs which might bring about a conflict of interests. My way of dealing with things was to allow as much room as possible for Members to express their opinions, so that every opinion can be conveyed clearly. At that time, all the Bills Committee members and I knew that there would not be much responses from society. In fact, it was already a big problem as the entire legislation depends solely on the deliberations of this less than a dozen strong Bills Committee. As a result, the opinions among these 10 people should be discussed more thoroughly than other committees, in order to facilitate a more constructive discussion. Now the Bill is put before this Council eventually. However, I have to reiterate that the Bills Committee has not reached any consensus in the moral and ethical aspects; the only consensus is limited to the legislation of regulating surrogacy arrangements made on commercial basis, which may prevent people from letting out their bodies for the purpose of making a living as a result of the financial pressure.

Madam Chairman, there is one more thing about the legislation which has not been mentioned by colleagues: the counselling arrangement. When the commissioning husband and wife agree to make surrogacy arrangement, the law has prescribed a series of counselling arrangements for them, including counselling by medical professionals, sociologists, psychologists or people from religious sectors. Prior to agreeing on the surrogacy arrangement, they will be told clearly in advance the problems they may face when the child is born, in order to make the grown-up clients clear about the situations they may have to face in the future, and to help them to make the best possible arrangement. The purpose of the legislation is not to encourage the public to use reproductive technology. On the contrary, its objective is to let the public know better through counselling whether or not reproductive technology should be used. If there are infertile couples who wish to have their own children, and they can

overcome so many difficulties, I consider bystanders and people who have normal reproductive functions like us, shall not deprive them of the right to seek help from modern technologies. Of course, in the first place, I think we should advise them as there are many orphans in this world, they may as well adopt one. However, I think people who have normal reproductive functions can hardly understand the agony of the infertile couples. We have to do our best to prevent arrangements on commercial basis, and not to let them pay money for the body of other people when they are desperate. We have the responsibility to provide them with a comprehensive counselling beforehand, so as to let them know clearly what is the choice they are going to make. As a result, I hope colleagues will vote against the amendments, and pass the legislation that can prevent surrogacy arrangements on commercial basis today. Thank you, Madam Chairman.

DR LEONG CHE-HUNG (in Cantonese): Madam Chairman, I hope I can show Members in this Council several major reasons why they should not support the amendments of Miss CHAN Yuen-han.

First of all, I would like to talk about history. Perhaps many people think that I am going to put in good words for the Government, or they may even suspect the genuineness of the Government's concern for surrogacy. In 1987, the Government established a committee to study the issue of reproductive technology mainly because there were surrogacy arrangements in overseas countries at that time, and there were problems as we could observe them. As a result, the committee was established speedily in order to study the issue of reproductive technology.

Secondly, two issues were discussed at the first meeting. The first issue was whether or not reproductive technology could actually be totally banned. Just as many Honourable colleagues have said, families bearing their own children shall never understand the problems childless couples could have faced. The most important thing was that technology could offer help to infertile couples who genuinely wanted to have their own children. As a result, considering from this aspect, a total prohibition was impossible. Furthermore, even if it was banned, we were still unable to forbid cross-boundary reproductive technology activities just as Miss CHAN Yuen-han has said earlier. If it was banned in Hong Kong, people might seek such services overseas and it might

give rise to even more problems. Under these circumstances, we felt that reproductive technology procedures should be permitted only under certain conditions. However, by the time permission was given, should people be free to do whatever they like? We did envisage a number of problems, too. Will it become commercial? Will it be used to make profit, or can its objective be served? Therefore, while we allow reproductive technology procedures to be conducted, we should facilitate it with the best possible regulatory legislation. As a result, the Bill was drawn up.

I would like to respond to several remarks made by Miss CHAN Yuen-han. She has been using the cross-boundary issue repeatedly as her argument a moment ago. However, the cross-boundary problem is not unique to the surrogacy issue. Let me take sperm donation as an example. If people feel that the sperms of the people of Shanghai are better than that of the people of Hong Kong, they can go to get the sperm donation in Shanghai, and this is beyond our control. Another example is the selling of sperms in whatever country, which is again out of our jurisdiction. The only thing we can do is to prohibit any such advertisement in Hong Kong, or to forbid them from publicizing the arrangements in which country or region are better or where such arrangements can be conducted. That is all we can control. However, we are not saying that they are totally out of hand.

With regard to some other remarks of Miss CHAN, she said she has consulted with the Hong Kong Federation of Trade Unions (FTU), the Women Affairs Committee of the FTU, and the Hong Kong Women Development Association. In the first page of the consultation information, it states that "if unmarried mothers are allowed to be surrogate mothers ……". However, the Bill as well as the Code of Practice stipulate clearly that only women who are married and have given birth to their own children can be surrogate mothers. I want to clarify this point, otherwise colleagues may think that unmarried women can also be surrogate mothers, and thus fear that a number of problems may crop up.

The next thing I would like to discuss is the second part of this consultation information. It has mentioned the legalization of surrogacy. Just as Mr LAW Chi-kwong as well as several other Members have said, the essence of the Bill is not to legalize surrogacy, quite the reverse, its purpose is to control the existence of surrogacy under several conditions, and the main purpose is to prevent the

commercialization of such arrangements. Above all, the determiner genes of the child so born should be totally identical to the commissioning parents. Its purpose is to impose stricter regulation on surrogacy, not just as simple as to legalize surrogacy arrangements.

Moreover, as the Chairman of the House Committee, or as a Member of this Council, I do not subscribe to the following statement: "and hope Members support the amendment of Miss CHAN Yuen-han, whilst not to let the Bill pass hastily within the current Legislative Session." I very much hope all Members have meeting of minds that no bills would be passed hastily no matter in the current or former Legislative Council. In this case particularly, we have held 26 meetings in 16 months to deliberate this Bill, thus it is not in haste at all. This I must stress.

Finally, I have to several arguments of Miss CHAN Yuen-han. The first is insufficient public consultation. She has asked whether or not public consultation was conducted in 1987. As I was the Chairman of the Committee on Scientifically Assisted Human Reproduction, I have to respond to this issue. Full-scale public consultation was definitely conducted at that time. What was full-scale consultation? Every time when the Committee had finished its meeting, I would meet the press as I was the Chairman of the Committee, and that was public consultation through the press. Secondly, we published two reports, one of which was the interim report and the other the final report. Views were conveyed to the public via the press on every occasion. The existing Provisional Council on Reproductive Technology has also conducted consultations, and our Bills Committee has also conducted a number of consultations. I believe every time when we scrutinize bills tabled before this Council, each member of the Bills Committee has the responsibility to do the job, and we have met a dozen of organizations. In that case, do we have sufficient consultation? Madam Chairman, it can never be sufficient, particularly when we talk about new technology such as reproductive technology, which is changing incessantly. Likewise, the ethical, moral and legal principles in society are also changing continuously. As a result, consultation can never be sufficient. At the same time, it is obvious that no matter how hard we conduct the consultation, we can never meet the expectation of a particular person. The reason is very simple. It was mentioned by some Honourable colleagues earlier, I just want to stress it once again. Firstly, why should people who are not interested in this or people who have their own children bother? This is

absolutely something out of their question. Childless couples who get their own children through reproductive technology procedure will certainly not tell others how they have their children conceived. They will definitely disclose nothing. As a result, no matter how hard we conduct our consultations, we will not achieve the desired result. I really want people who have used reproductive technology procedure to speak out and tell us how they feel and what problems they have faced. But we will never be able to see them coming forth to tell their own experiences. The reason is simple. It is just like the sperm donation programme of the Family Planning Association, which has been serving the community for over 20 years. But most people who have successfully conceived their own children through the sperm donation programme will never go back to the Association for prenatal checkup. On the contrary, these people will go to some other doctors for the checkup. The reason is simple, the doctor who performs the subsequent checkup will never know that the fetus has come from sperm donation, which does not belong to the husband. This is a very obvious reason.

Miss CHAN Yuen-han has been saying that the legislation was faulty, thus she is of the view that it should not be passed. Actually, she has three options: first, she may vote down the Bill, and draw up another Bill; second, she may seek amendment to the Bill until she is completely satisfied; third, of course it is the approach she has adopted now, that is, to delete a certain part of the Bill. If Miss CHAN has taken the first or the second option, I will definitely respect her decision. Can she do that? She can surely do that. I have to commend the Secretary. From the very beginning, the Secretary has been saying that Members may introduce amendments, and the Government will draw up the content. In the course of a 16-month scrutiny, the Secretary has been saying that the Government is willing to draw up amendments for us if there should be any amendment that would make this Bill complete. She has just ignored that request, in contrary, she has adopted a way which will bring about an "unregulated" state. The most disturbing thing is the possibility of the emergence of surrogacy arrangements on commercial basis, which is absolutely possible.

Madam President, I sincerely urge colleagues not to support the amendments. Thank you.

MISS CHAN YUEN-HAN (in Cantonese): Madam Chairman, I have listened carefully to the views of every colleague in this Council. In fact, we know the Bill very well because it has been scrutinized for a very long period of time, and Members have made their points very clearly. However, I wish to expound my opinion in response to views of fellow colleagues.

Today, a number of colleagues who have spoken share the same view that there are still many problems concerning surrogacy, I repeat, with regard to surrogacy, such as technical problems or some loopholes. I have listened carefully to the views of many colleagues, and I find that all of them agree on that point. As we clearly know where the problem lies, and just as Dr LEONG Che-hung has said, the Government has adopted a liberal approach this time, we can either negative this part of the legislation on surrogacy or amend it, or simply remove it just as I have proposed. Such being the case, in regard to the questions I have just raised, why we are unable to veto them or make amendments to them? The reason is, if I veto them or amend them, I will be sided with the organization beside me. Why should I avoid that? Basically, being a social campaigner, I have a tendency to adopt views of the organization to which I belong, and use its position as mine. However, when I sought the opinions from my own organization, I found that they did not have a clear view. They had only a strong opinion that the issue of surrogacy was extremely controversial. Just as everyone has pointed out, they also considered some regulation on surrogacy arrangements on commercial basis was better than none at all. They have questioned whether or not the Bill would be able to achieve that objective. When I told them it was unlikely as there were many problems, they questioned the effectiveness against the British experience. I want to say that regarding some issues, such as opposing the importation of labour, I know the views of my own organization very well, because I would have conducted studies and obtained views before I come back to this Council to discuss the matter. Similarly, in the fight for maternity leave by women's concern groups, my own organization also has a very lucid view. However, when I consulted organizations surrounding me on the issue of surrogacy this time around, which include friends in the social welfare sector, I found that their views were very different. I want to tell Dr LEONG Che-hung and other colleagues that I do not oppose the Bill, nor do I want to amend it. Dr LEONG knows my stance as I have repeated my views in the course of deliberations. Therefore, I seek a removal of the surrogacy provisions with the best intentions. If the Administration is sincere enough, it can resubmit these provisions to the next

Council for discussion. Perhaps Members will suspect if it is necessary, as it has already taken a very long period of time for deliberations. However, I consider that very important, just as making a fish net, the final stitches are the most important ones. Assuming we have discussed the matter in different sectors earlier, why we are unable to take a further step to press the Government for a more comprehensive consultation at the final legislation stage? This is exactly the rationale behind my amendments. We hope the part will be removed by this Council today, and not to leave it to the judgment of individual persons or organizations. It is because if we are able to foresee so many disputes and technical problems, we should allow the public to discuss them. However, it will probably not take years for the discussion as Mr Michael HO told the press.

If we have that part removed today, it will force the Government to do something, and then table it to this Council, say, by this December, and it will only be a matter of half a year later. During this period, the Government has to do its work, unlike the approach adopted by it when we completed the discussion in January. The Government has done a pretty good job this time. Perhaps it felt that as I had so many suggestions, it therefore organized a workshop. I had thought to myself then that if the Government handled the issue neatly, I would withdraw my proposal. But responses to the workshop were very poor, with only 20 participants by the beginning of May, and they were mainly pooled together by the FTU. In any case, I still consider that we should treat the discussion of this Bill with a liberal mind. I believe my judgment is correct, as it is better to discuss the matter thoroughly now, than to handle subsequent issues when problems emerge. The Government and Honourable colleagues have told me that it would be very difficult as we need a issue. But I think when a issue breaks out, just as the issue we have mentioned earlier regarding the bill on human organ transplant, some other issues may arise due to the loopholes in the bill itself. As the public has raised some concerns, should we not give the Government some more time to study them again? I presume, perhaps I am more pessimistic, the Government will only make amendments after the loopholes have emerged, such as disasters which have claimed lives and properties. Otherwise, the controversy will probably go on and on. Therefore, as we are drafting the legislation for the issue now, why can we not allow the public to discuss the matter through driving by the Government, in order to obtain a better direction? We should not make any judgment, nor should we query the nature of the opinion poll of the City University. Please do not rely

on us when making any judgment, because we have heard different voices from organizations of professionals, social workers, women activists and friends in the community. Finally, with the above reasons, I hope every colleague, this is my last hope, will support my amendments made out of the best intentions.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Miss CHAN Yuen-han, you will have another opportunity to speak. I will call upon Miss Cyd HO to speak again now.

MISS CYD HO (in Cantonese): Madam Chairman, in fact, if the organizations, social welfare sector and community groups mentioned by Miss CHAN Yuen-han really have that many opinions, it would be very helpful to the deliberation work had they been put forward to the Bills Committee and documented in the minutes of meetings. However, it is a pity that in the course of our meetings and consultation, scores of opinions of the public have not been made available to this Council possibly due to people's unawareness of the channels available or the newspapers, or the reports of the media. In fact, public opinions are neither limited to the two meetings we have set forth, nor are they prohibited as our meetings have ended. According to the practice of the Bills Committee in the past, it does not matter even the set time limit has lapsed, as long as concerned groups or individuals have written their views to the Secretariat, or such concerns are raised by Members in the Bills Committee, as we are absolutely open-minded. Madam Chairman, with the exception of some rare cases where personal privacy or matters requiring clarification have to be discussed behind closed doors, most of the meetings in this Council are open to the public. Therefore, I feel very sorry if some professional groups or individuals really intend to express their views, but they have not made full use of these channels to express them.

Just as Dr LEONG Che-hung has said, there are three ways to handle the issue of surrogate mothers: the first one is a very straightforward way, that is, to prohibit any activity in connection with surrogacy arrangements by drawing up explicit legislation and spell out the level of penalties for offences; that will be a very simple amendment. In the 26 meetings, the executive and the legislature were in ultimate rapport with each other. In the course of the deliberations, the

Government could really help us to draw up all the amendments, which had made us feel awfully relaxed. Eventually, the Government even helped Dr LEONG Che-hung to prepare his amendment. Therefore, there would be no difficulty at all if an amendment as simple as that was to be written. In the meantime, I have to point out another point, that is, I have also been in frequent contact with Prof CHAN Ho-mun of the City University. Although he strongly opposed the surrogacy arrangements, we could still sit down and elucidate our views unhurriedly. In fact, whenever Prof CHAN was invited to comment in programmes of the media, he would suggest the organizer to invite me to join the discussion. Similarly, whenever I was invited to speak in media programmes on the issue of surrogacy arrangement, I would also remind the organizer to invite Prof CHAN, in order to ensure that the positive and negative views could be vented on the same occasion, so the public could listen to different arguments. Prof CHAN has also put forward a suggestion to me, which I believe he has also proposed it to Miss CHAN Yuen-han, perhaps she can clarify that later. Prof CHAN has suggested that surrogacy arrangement should be completely prohibited, because he feels that there are too many unsolvable problems in either the commercial or ethical aspects. Of course, I have told him that we hope all the parties involved should learn in advance the consequences of surrogacy arrangements, so as to help them to make the choice through counselling procedures. I do not wish to draw up legislation here to deprive some people's right to use reproductive technology.

Madam Chairman, Miss CHAN Yuen-han has also embedded an assumption into her amendments. Her proposal of removing all provisions in connection with surrogacy will in fact make surrogacy arrangement absolutely lawless. She has premised her proposal on the assumption that once the provisions are removed, the Government will submit to this Council substitute provisions in relation to surrogacy for discussion immediately, maybe in the next Council. Usually, I do not trust the executive authorities, in particular when the initiative to table the legislation rests in its hand. Irrespective of our withdrawal or approval of the Bill today, if there are vigorous voices among the public to raise the question that besides regulation in the commercialization aspect, there should also be regulation in the ethical and moral facets, and provided that the executive is willing to listen to public opinions, relevant provisions will be tabled before this Council naturally. But if the executive tends to ignore public opinions, even if we have removed the relevant provisions, it will simply sit back and watch without tabling the provisions to this Council. I hope we can

come up with the lowest consensus (or the so-called lowest common denominator), and to criminalize some behaviour which we have agreed unacceptable, and to make such behaviour an offence in law. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): As the President of the Council, I have a very important mission and principle to fulfil, that is, to ensure the freedom of speech of every colleague. However, on the issue, I find that the Bills Committee has spent 18 months to conduct scores of meetings. Therefore, I hope Members can put forward some new arguments in their speeches from now on. Apart from those who have not attended our debate sessions, we have heard all the arguments which have been raised in the past.

Mr James TO, this is your first speech. Please speak now.

MR JAMES TO (in Cantonese): Madam Chairman, I will not disappoint you. *(Laughter)* I have listened to views of all Members carefully. In fact, logically, there is one point I cannot follow the reasoning of Miss CHAN Yuen-han, and I hope she can respond to that. Actually, I think there are two alternatives. Firstly, Miss CHAN believes the Government will table a new proposal expeditiously when it is under pressure. In fact, according to her view, if controversies or even reservations arise in society, she should have chosen the first alternative as Dr LEONG Che-hung said. That is, to prohibit the arrangement immediately for a short period of time, not a long time or permanently. By doing so, the original situation can be maintained, thus the situations about which Miss CHAN was concerned in the past or those mentioned in the letters can be prevented. Furthermore, it will also help achieve the consensus of prohibiting surrogacy arrangements on commercial basis. Had Miss CHAN decided to adopt that alternative by prohibiting all arrangements temporarily and make reasonable relaxation at an appropriate time, I guess she would have won more support.

However, the worst thing is, despite the mention of the concerns or consultations all along in her speech, subsequently, her conclusion is to remove all the relevant provisions. It is illogical for her to arrive at that conclusion. As the case may be, things may not develop as Miss CHAN wishes during the

interval. Therefore, I am quite confused. As the case may be, I do not know if any technical assessment on her adviser's side has gone wrong. Anyway, I feel Miss CHAN should think it over after she has listened to all the views. If it is really a mistake, perhaps it is due to someone at her back, or it is a mistake of the legal adviser, she could withdraw her amendments courageously now and then talk about how to press the Government for reforms in the future. Although we realize that it is a constructive suggestion, if she keeps on insisting that, other people can only draw an inference that she is either afraid of offending some people if she suggests a total ban, or she is afraid of an absolutely lawless situation if she suggests a total liberalization and she would be subject to criticisms. As a result, she has to suggest that we should press the Government for promotion or continued efforts in this area. In reality, that can achieve nothing at all, because it seems that she is between the devil and the deep sea. I hope she can have the boldness and be courageous enough to withdraw the amendments now. I am not sure if the Rules of Procedure allows this attempt, but I hope Miss CHAN can consider the withdrawal cautiously, because it is senseless to jeopardize the lowest common denominator, that is, the prohibition of surrogacy arrangements on commercial basis. As the case may be, the message to the community will be more confusing and more debates will arise subsequently, while the discussion could become very emotional.

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam Chairman, surrogacy is a very complicated and sensitive issue. We understand that some people may not accept this matter because of various reasons including religious or ethical considerations. However, we must admit that in some circumstances, surrogacy is the only hope for a couple to have their own biological child, as when the woman's womb is removed because of disease. In view of the availability of the enabling reproductive technology, we should consider giving these couples a fair chance to have their offspring.

Having said that, I must speak with assertion that we are not encouraging surrogacy. In fact, our policy is to actively discourage surrogacy, as evidenced in the stringent control of surrogacy arrangement in the Human Reproductive Technology Bill. As there is currently no legislative control over surrogacy, we intend to impose strict regulation through legislation, but yet allow a leeway for those who have but to resort to this option. In particular, we want to ensure that surrogacy on commercial basis is strictly prohibited.

I cannot agree with the Honourable Miss CHAN Yuen-han that provisions in the Human Reproductive Technology Bill regarding surrogacy should be taken out because of inadequate discussion or lack of consensus in the community. The whole subject of reproductive technology, including surrogacy, has been brought to the community for consultation on a number of occasions since 1989. For instance, we issued consultation papers on reproductive technology, including surrogacy in 1989 and in 1993 to invite public views. This year there have been a good number of feature stories on reproductive technology in newspapers, and radio phone-in programme on the subject. Last month, the Health and Welfare Bureau, in collaboration with the Bills Committee, held a public forum to stimulate discussion among interested parties from different walks of life. Nonetheless, the response from the community has been lukewarm, to say the least. One of the plausible reasons of this lacklustre response is that this subject matters only to a very small group of people in our society. In Hong Kong, surrogacy remains a rather un-conventional option that even many infertile couples will rarely consider. For those who resort to this method to have their offspring, very few are willing to discuss it openly, mainly on grounds of privacy or the taboo nature of the subject. In short, there is simply a limit as to what the Administration, and dare I say other social service organizations, can do to generate public discussion on this subject.

More importantly, I highly doubt on a topic as controversial, as personal, and as sensitive as surrogacy, there could ever be a complete agreement as to how it should be regulated. I know of no country that claims this, and I do not believe Hong Kong is an exception. This, however, does not preclude the need to institute a legislative framework to regulate the practice of surrogacy. We firmly believe the Human Reproductive Technology Bill is an appropriate and timely opportunity to address this issue. I do concede that surrogacy involves considerable moral and ethical considerations which could sometimes be controversial. In recognition of this, there will be an Ethics Committee set up under the future Council on Human Reproductive Technology to, among other things, monitor and assess the public's ethical and moral attitudes towards surrogacy arrangements. Where appropriate, the Ethics Committee will recommend amendments to the surrogacy provisions in the legislation to reflect the prevailing views and values of the community.

If the amendments proposed by Miss CHAN Yuen-han were passed, we would be in practice allowing surrogacy without any control, including commercial dealings. This is unacceptable from the Administration's viewpoint. Taking out all the surrogacy provisions in the Bill will not address the ethical and moral complication of the issue. We will simply be ignoring them by doing nothing. Even worse, we will be sending a wrong message to the community about our stance on surrogacy, which might bring about many undesirable consequences. I therefore earnestly urge Members to support the original motion and not to strike out the provisions on surrogacy arrangement from the Bill.

Thank you, Madam Chairman.

MISS CHAN YUEN-HAN (in Cantonese): Madam Chairman, I would like to comment briefly on the remarks of the Secretary. I have not said all along that society should have a uniform opinion on surrogacy. In fact, I have just said that during this period of time, I have observed some attitudes and opinions of society, which came from the professional sector, non-governmental sector, social work sector and community groups. I feel that the Government may consider collating opinions in the course of drawing up the legislation, thus obtaining a consensus on certain issues. For example, in the commercial aspect, the Government always says that there should be a regulatory mechanism to prevent commercialization of surrogacy arrangements. Right now such kind of things have happened. Very often, the Government will say that the law can deal with it. I have said a moment ago that it was not addressed by the law, and it would be impossible. What should we do then? In view of that, I consider as it is the same situation, we can go back to that situation and look into a specific area, such as regulating the qualifications for surrogate mothers and the requirements of the commissioning parents. Concurrently, if we are unable to address some bigger issues like commercialization, we should examine the possibility of tabling the issue again and see whether the public supports the issue or the other way round; then we can discuss it again based on the consensus we have achieved. I have not mentioned we should have a uniform consensus in the course of discussion, which is a point that I have never mentioned.

Furthermore, I do not intend to talk about the issues mentioned by Mr James TO just now. In fact, I have made explanations on the three alternatives earlier, perhaps he was not in his seat at that time. That is the reason why he asked if it was a technical issue. In fact, it is not. The FTU and DAB have repeatedly discussed the best alternative. As we do not wish to decide that by ourselves, therefore, we suggest that it should be put forward for public discussion for some time. I do not consider this a passive move. I only consider this a move out of the best intentions. As there are still many questions about surrogacy, and the legislation is unable to fully regulate commercial arrangements, I have suggested whether or not we should take our time to discuss the matter further. I hope colleagues will support my amendments. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by Miss CHAN Yuen-han be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Miss CHAN Yuen-han rose to claim a division.

CHAIRMAN (in Cantonese): Miss CHAN Yuen-han has claimed a division. The division bell will ring for one minute.

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

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

CHAIRMAN (in Cantonese): No standing on the public gallery, Please sit down.

Functional Constituencies:

Mr HUI Cheung-ching, Mr CHAN Wing-chan and WONG Yung-kan voted for the motion.

Mr Kenneth TING, Mr Edward HO, Mr Michael HO, Dr Raymond HO, Mr Eric LI, Mr LEE Kai-ming, Dr LUI Ming-wah, Miss Margaret NG, Mrs Selina CHOW, Mr Ronald ARCULLI, Mr CHEUNG Man-kwong, Dr LEONG Che-hung, Mrs Sophie LEUNG, Mr SIN Chung-kai, Mr Howard YOUNG, Mr LAU Wong-fat and Mr LAW Chi-kwong voted against the motion.

Geographical Constituencies and Election Committee:

Miss CHAN Yuen-han, Mr Gary CHENG, Mr LAU Kong-wah, Mr David CHU, Mr CHAN Kam-lam, Mr YEUNG Yiu-chung and Miss CHOY So-yuk voted for the motion.

Miss Cyd HO, Mr Albert HO, Mr LEE Wing-tat, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Miss Christine LOH, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr HO Sai-chu, Mr NG Leung-sing, Prof NG Ching-fai and Mr MA Fung-kwok voted against the motion.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 20 were present, three were in favour of the motion and 17 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 25 were present, seven

were in favour of the motion and 17 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 16 and 17 stand part of the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam Chairman, I move that clauses 2, 4, 12, 14, 15 and 36 be amended as set out in the paper circularized to Members.

During the discussions in the Bills Committee meetings, Honourable Members expressed concern about the scope of surrogacy to be regulated as proposed in the Bill. It was our intention to widen the definition of surrogacy to include also those surrogacy arrangements not relating to reproductive technology procedure so that commercial dealing involving any surrogacy arrangement would be prohibited. However, to address Honourable Members' concern, we propose to amend the definition of surrogate mother in clause 2 so that it only refers to those relating to reproductive technology procedure.

All the other amendments are technical or textural amendments to make these provisions clear and concise. I earnestly ask Members to support them. Thank you, Madam Chairman.

Thank you, Madam Chairman.

Proposed amendments

Clause 2 (see Annex IX)

Clause 4 (see Annex IX)

Clause 12 (see Annex IX)

Clause 14 (see Annex IX)

Clause 15 (see Annex IX)

Clause 36 (see Annex IX)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 2, 4, 12, 14, 15 and 36 as amended.

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

(Members raised their hands)

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

(Members raised their hands)

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

CLERK (in Cantonese): Clauses 13 and 43.

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam Chairman, may I seek your consent to move under Rule 91 of the Rules of Procedure that Rule 58(7) of the Rules of Procedure be suspended in order that this Committee may consider new Schedule 1A, ahead of the remaining clauses, new clauses and Schedules, as it is related to clauses 13 and 43.

CHAIRMAN (in Cantonese): As only the President may give consent for a motion to be moved to suspend the Rules of Procedure, I order that Council do now resume.

Council then resumed.

PRESIDENT (in Cantonese): Secretary for Health and Welfare, you have my consent.

SECRETARY FOR HEALH AND WELFARE (in Cantonese): Madam President, I move that Rule 58(7) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider new Schedule 1A, ahead of the remaining clauses, new clauses and Schedules, as it is related to clauses 13 and 43.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Rule 58(7) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider new Schedule 1A, ahead of the remaining clauses, new clauses and Schedules.

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

(Members raised their hands)

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

(No hands raised)

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

Council went into Committee.

Committee Stage

CHAIRMAN (in Cantonese): Council is now in Committe

CLERK (in Cantonese): New Schedule 1A Sex-linked genetic diseases.

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam Chairman, I move that new Schedule 1A, as set out in the paper circularized to Members, be read the Second time.

Members have expressed concern about the regulation of sex selection through reproductive technology procedure. To address the concern, we have accepted the suggestions by Members and proposed to add a list of sex-linked genetic disease as Schedule to the Bill. After the inclusion of the Schedule and the proposed amendment to clause 13 which I will move in a moment, sex selection can only be performed for the purpose of avoiding a disease in the Schedule and two registered medical practitioners have agreed that the disease is sufficiently severe to justify such selection.

I earnestly ask Member to support the passage of this amendment. Thank you. Madam Chairman.

CHAIRMAN (in Cantonese): I now propose the question to you and this is: That new Schedule 1A be read the Second time.

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

MR MICHAEL HO (in Cantonese): First, I thank the Government for acceding to the request made by me. It has now become a government amendment.

In the original Blue Bill, the regulation of sex-linked genetic diseases was not included in the Schedule of the subsidiary legislation. When we deliberated on this matter, I was worried that if certain sex-linked genetic diseases were regulated in the law instead of by means of a schedule, there might be a risk of abuse. Of course, there is also a certain risk in incorporating them into the Schedule through today's amendment. In future, if a couple suffers from a certain sex-linked disease which might cause serious harm to their child and that disease is not included in our Schedule, we will have to include that disease in the

Schedule through some procedures, in order to allow them to use a reproductive technology procedure to cause the sex of an embryo to be selected. Thus, I hope that if there are couples suffering from genetic diseases not included in the existing Schedule, this can be amended through administrative procedures. Such procedures will include the relevant couples' applications to the Council on Human Reproductive Technology, requesting the Health and Welfare Bureau to draft an amendment to the law, as well as the submission of such an amendment to the future Legislative Council for approval. I very much hope that the Government will note the problems that will arise in this respect when the law is enforced.

Thank you, Madam Chairman.

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

(No Member responded)

CHAIRMAN (in Cantonese): Does the Secretary for Health and Welfare wish to speak again?

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam Chairman, I wish to thank Members for their opinions. I have nothing further to add.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New Schedule 1A.

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam Chairman, I move that new Schedule 1A be added to the Bill.

Proposed addition

New Schedule 1A (see Annex IX)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new Schedule 1A be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam Chairman, I move the amendments to clauses 13 and 43, as set out in the paper circularized to Members.

As I have mentioned just now, Members have expressed concern regarding sex selection. To address the concern, we propose to amend the relevant subclauses of clauses 13 and 43, which are technical in nature.

According to the Bill, the provision of reproductive technology procedure is restricted to married couples only. In response to Members' views, we propose to amend clause 13 so that the exceptional circumstances are clearly listed out in the main body of the Bill.

I earnestly ask Member to vote for their passage. Thank you, Madam Chairman.

Proposed amendments

Clause 13 (see Annex IX)

Clause 43 (see Annex IX)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 13 and 43 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese):	New clause 2A	Application
	New clause 10A	Protection of members of Council, etc.

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam Chairman, I move that new clauses 2A and 10A, as set out in the paper circularized to Members, be read the Second time.

During the discussions in the Bills Committee meetings, Members reflected their views regarding the applications of the Ordinance. As public hospitals under the Hospital Authority are not part of the Government and the Department of Health has no plan to provide reproductive technology service, we considered not necessary to include a clause in the Bill to bind the Government. However, at the request of Members, we propose to include a new clause 2A to the Bill to reflect the binding effect of the Ordinance.

Honourable Members also expressed views concerning the protection of members of the Council on Human Reproductive Technology. To address Members' concern and to put the matter into proper perspective, we propose to

add a new clause 10A to protect the Council members when they discharge their duties in good faith.

The inclusion of the two new clauses are proposed by the Government after careful deliberation with the Bills Committee. I earnestly ask Members to support the passage of these amendments. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the new clauses 2A and 10A be read the Second time.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clauses 2A and 10A.

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam Chairman, I move that new clauses 2A and 10A be added to the Bill.

Proposed additions

New clause 2A (see Annex IX)

New clause 10A (see Annex IX)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the new clauses 2A and 10A be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedule 1.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedule 2.

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam Chairman, I move the amendments to Schedule 2 as set out in the paper circularized to Members.

The amendments to Schedule 2 seek to make the consequential amendment to the Offences Against the Person Ordinance clearer and complete. The definition of termination of pregnancy will be amended to clarify the legal uncertainty.

I earnestly ask Members to support them. Thank you, Madam Chairman.

Proposed amendment

Schedule 2 (see Annex IX)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedule 2 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Long title.

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam Chairman, I move that the long title be amended as set out in the paper circularized to Members.

Honourable Members have expressed views that the reproductive technology procedure should be restricted to infertile couples. While we agree that reproductive technology is developed primarily for the treatment of infertility, there would be technical difficulty to include such restriction in the Bill without compromising the flexibility allowed for exceptional circumstances that may arise. After careful deliberation in the Bills Committee, we propose to amend the long title to confine the provision of reproductive technology procedure to infertile couples, subject to any express provisions to the contrary in any code.

I earnestly ask Members to support the amendment. Thank you, Madam Chairman.

Proposed amendment

Long Title (see Annex IX)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the amendment moved by the Secretary for Health and Welfare be passed.

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

(Members raised their hands)

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

(No hands raised)

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

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading.

HUMAN REPRODUCTIVE TECHNOLOGY BILL

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

Human Reproductive Technology Bill

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Human Reproductive Technology Bill be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Human Reproductive Technology Bill.

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Broadcasting Bill.

BROADCASTING BILL

Resumption of debate on Second Reading which was moved on 16 February 2000

PRESIDENT (in Cantonese): Mrs Selina CHOW, Chairman of the Bills Committee on the above Bill, will address the Council on the Committee's report.

MRS SELINA CHOW (in Cantonese): Madam President, I speak in my capacity as Chairman of the Bills Committee on Broadcasting Bill. The Committee's report has accounted in detail for the deliberations of the Committee. Therefore, I only want to highlight several main points in my speech.

The Broadcasting Bill seeks to repeal the Television Ordinance, and to provide a new regulatory regime for the provision of television programme services to cater for the multimedia environment brought about by technological developments.

The Bills Committee supports the policy objectives of the Bill to provide wider programme choices to cater for the diversified tastes and interests of the community and to ensure fair competition.

The Bills Committee notes that the Bill seeks to regulate television programme services and excludes sound broadcasting and Internet services. Since the services proposed for exclusion in Schedule 3 can be amended by the Government, the Bills Committee has requested that Schedule 3 should be subject to positive vetting by the Legislative Council. The Administration has agreed to the suggestion.

The industry and members of the Bills Committee are very concerned about provisions in the Bill for competition safeguards and the abuse of dominance. Some deputations have further suggested that there should be a general competition law to deal with the abuse of dominance in related or co-dependent markets.

The Bills Committee notes that it is government policy to adopt a sector-specific approach for promoting competition. The competition provisions in the Bill are therefore primarily targeted at the television programme services market. However, the Administration will draft guidelines for the implementation of provisions for competition. In view of the concern expressed by the industry and the fact that competition provisions are new to Hong Kong, the Bills Committee requested that the Legislative Council and the industry be consulted on the guidelines before promulgation. As the guidelines are not ready, the Administration, in response to members' concern, has proposed that clauses 13, 14, 15 and 16 will not take effect until the consultation process is completed. The Administration has also agreed to consult the Legislative Council and the industry before promulgating practical guidelines for licensees to comply with licensing requirements.

The Bills Committee also learns that a Domestic Free licensee cannot hold a Domestic Pay licence and Schedule 1 of the Bill has laid down the definitions and restrictions for a "disqualified person" and an "Associate". The Bills Committee notes that unless approved by the Chief Executive in Council, a "disqualified person" may not be a licensee or exercise control of a licensee of a Domestic Free licence or Domestic Pay licence. In this regard, the Administration has accepted the suggestion of the Bills Committee to spell out the considerations of "public interest" in the Ordinance so that the public and the industry will have a better understanding of the criteria for issuing a licence to a disqualified person.

Regarding the proposal of the Bill to exempt artiste contracts from competition clauses, some deputations and members of the Bills Committee are very much concerned. They are worried that the exemption may hamper fair competition in the market. The Bills Committee thinks the Administration should minimize exemption as far as possible to promote fair competition in the broadcasting industry. To alleviate worries of the industry and members, the Administration has agreed to delete the exemption for artiste contracts, but proposed to retain flexibility to allow the Chief Executive in Council to impose restrictions on competition clauses where necessary.

The Bills Committee suggested the regulations to be made by the Chief Executive in Council under clause 41 (a) to (e) should be subject to positive vetting by the Legislative Council. The Government has taken on board this suggestion.

As the Bill confers new powers on the Broadcasting Authority (BA), including approving applications for Non-domestic and Other Licensable services, issuing Codes of Practice, guidelines and enforcing the competition provisions, the Bills Committee thinks that there should be greater transparency in its operation. In response to members' concersns, the Administration agrees to disclose the directions issued by the BA to licensees. The BA will also conduct open hearings on the renewal, extension, suspension and revocation of licences.

The Bill proposes to increase the financial penalty to four times the existing level for contraventions, the maximum penalty being $1 million. The industry has no objection to this. Some members have suggested there should be differential financial penalty for breaches relating to programme content requirements and those relating to competition provisions. To provide sufficient deterrence against breaches of competition safeguards, the Bills Committee proposed that the penalty should be pegged with the turnover of the licensee during the period of the breach. After consideration, the Administration finally accepts the proposal of the Bills Committee and will be moving amendments to enable the BA to apply to the Court of First Instance to impose on a licensee a higher financial penalty not exceeding 10% of the turnover of the licensee in the relevant television service during the period concerned, or a financial penalty of $2 million, whichever is the higher.

Madam President, the Bills Committee welcomes the adoption by the Administration of most of the proposals made by the Bills Committee. I think I can show my appreciation on behalf of the Bills Committee for the open and objective stance shown by the officials in charge of the Bill. Personally, I think that if all Committees, Panels, or Bills Committees can work together with government officials in the same atmosphere or attitude as we did, the relationship between the executive authorities and the legislature will take a completely different turn.

Madam President, the above represents what I as Chairman of the Bill Committee have to report. What follow are my personal views for the Bills Committee. In the Brief provided by the Government, five policy objectives were listed out:

(1) widening programme choice for the audience;

(2) encouraging investment and application of technology;

(3) ensuring fair competition;

(4) ensuring that broadcasting services do not offend the tastes and decency of the community; and

(5) promoting the development of Hong Kong as a broadcasting and communications hub.

I trust Members and people across the community will identify with these objectives. But I find one very important objective missing from these five objectives, that is, improving the quality of our programmes. While the Government may think it is not an objective that can be achieved by the Government or legislation, it may wish to consider whether it is possible for the objective to be achieved by forces of the free market alone. If it is impossible to do so, the Government may have to consider what can be done in terms of policy or promotion, to push the relevant industries to focus their attention on what has become a grave concern of the audience and the public. This is an important issue in regard to the interest of Hong Kong as a whole. Hong Kong has been well-known for its high quality programme productions, which, in economic terms, are also an important export component in the form of intellectual property. So, the Government should face this squarely. If nothing can be done by means of legislation, it has to find out other ways to reach its goal. It is because other governments have policies to give active support and encouragement to enhance programme quality.

In the issue of licences, should we give a dose of encouragement to specially enhance programme quality or investment? We hope to create an atmosphere for diversification in television broadcasting services through this Bill. I hope the Government can try its best to find out ways to do it.

Another topic is a rather controversial one. It is the regulation of video and audio services available on the Internet. In considering the issue, some think that with advances in technology television programmes are already broadcast on the Internet. So, why should they be exempted from regulation?

I do not think this is a big issue now, but developments may take place very quickly. Personally, I do not think the Internet should be regulated because the Internet is a personal choice and an important part in safeguarding freedom to information. There are of course some who think our youngsters should be protected to a certain extent, but then their parents should be responsible too. I would rather make sure the community can enjoy freedom to information and therefore I do not think we should consider regulating television services on the Internet.

Regarding competition, although there are special provisions in the Bill to safeguard fair competition, I think this is a new concept. Moreover, the responsibility of enforcement falls on the BA. Frankly speaking, I doubt the effectiveness of the provisions, although I support the provisions, their passage and the relevant policies. I mean to say that from a macro viewpoint, this is not an easy job. This is a new concept for Hong Kong. Does the BA have sufficient knowledge and expert assistance to deal with the problem? Certainly, we know the BA has consultants. But is this sufficient? Moreover, members of the BA work as volunteers. Can they effectively carry out the work in this regard? Can they take an impartial stance and offer balanced views? I do hope this is an overly pessimistic view of mine. We should wait and see. But we should pay particular attention to the issue of enforcement.

Furthermore, it is the intention of the Government to promote the development of Hong Kong as a regional broadcasting and communications hub. I trust this is also what everyone of us wants. But this is not easy! As everyone knows, CNBC moved to Singapore in 1997. Recently, I heard that BBC will move to Singapore too. Can the Government do something about this? An essential element of the so-called free development is non-intervention, which is almost a cliché, in the Hong Kong context. Under the premise of the so-called free market, and given the legislation already in place to liberalize the market, can the Government do anything about regions or countries which despise Hong Kong but go ahead to braindrain it? If it cannot, how are we going to achieve the second objective?

Lastly, Madam President, I would like to talk about the issue of fee levels. As we all know, the Bill abolishes the charging of royalties. Instead, licensees are required to pay licence fees at full costs. I am glad that the Government has heeded good advice and given this Council and the public a chance to express

their opinion on the issue. But I would like the Government to consider finding ways to make the industry reinvest the money saved from the reduction in charges, which I support, for talents training. Please do not forget that when the previous charging principles are abolished, the organizations which make enormous profits can save huge amounts. Does the Government have the policies or measures to encourage these organizations to reinvest?

In addition, many people in the industry are worried about what the Government often mentions: cost recovery. How does the Government calculate its costs? We understand that some policy areas use the ""user pays" principle" and charge excessively. Of course, I hope the Government can ensure that there would not be any overcharging and the calculation is fair so that the industry would not need to shoulder extra burden by various guises employed by the Government. Instead, we hope the Government can use other means to encourage the businesses to invest in services to enhance service quality or the quality of our export in intellectual property products. Only in this way can our entire broadcasting industry benefit. We welcome the Government's move to reduce charges and we hope to see that the community and the relevant services are benefited by the reduction.

Thank you, Madam President.

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

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

MR YEUNG YIU-CHUNG (in Cantonese): Mr Deputy, in 1998 the Government conducted a public consultation on the 1998 Review of Television Policy. The concept of Open Sky was put forward and it was hoped that through relaxing the requirements for the issue of licences and introducing competition, the quality of Hong Kong's television programmes could be improved. The Bill summarizes provisions relating to broadcasting enshrined in various Ordinances such as the Telecommunication Ordinance, the Television Ordinance, and the Broadcasting Authority Ordinance. It also introduces a technology neutral regulatory regime in response to the new setting brought

about by technology. All these are meant to promote the development of Hong Kong as a regional broadcasting and communications hub.

At the core of the Bill are several areas, including the types of licences issued, and the use of ideas such as "services targeted at Hong Kong" and whether programmes are "Free" or "Pay" as major considerations for regulation, in place of the present system where "transmission" is used as a basis for licensing and regulation. Other than this, relaxing restrictions for licensing, adding protective provisions and enhancing the powers of the BA characterize some of the major changes.

Mr Deputy, within a short span of three months, the Bills Committee has worked very hard and listened to the views of many organizations. At the same time, the Government has agreed to make amendments in many areas. But I want to point out some areas where the Bill can improve further.

First, services on the Internet are not categorized as a form of broadcasting service. The Government explains that this is because their "pervasiveness is not yet comparable to television programme services currently operating in Hong Kong". However, there were already 940 000 Internet subscribers last year. It is estimated that the number will exceed 1 million this year. It may go up to 1.22 million. Internet service providers are making efforts to promote television services on the Internet. In other words, in the foreseeable future, the Internet will be as popular as the television.

Technology advances by leaps and bounds. The demarcation between telecommunications and broadcasting, television and computer, and between broadcasting on various bandwidths will become increasingly blurred. Nowadays, we have telecommunications companies applying for licences for television programme service, and television stations broadcasting on the Internet. We can now see that even in overseas countries, it is difficult to effectively enforce the law on services provided on the Internet. But I hope the Government can monitor closely the developments on the Internet and the experience of overseas countries and, where necessary, consider imposing regulation through legislation.

Secondly, an important objective of the Bill is to widen programme choice for our audience. In this connection, the Government intends to achieve

diversification through market competition. What causes concern is the means through which more competition can be introduced into the popular and free television market currently enjoyed by Hong Kong people.

Some scholars point out that the experience gained in opening up the telecommunications market cannot be applied to the broadcasting industry due to a small local market and difficulty in stratification. Another reason is that living space in Hong Kong is small. The increase in the number of households having two television sets cannot catch up with the growth in hardware in the telecommunications industry. Doubling the number of television stations will not help either. At present, there is no lack of different channels in the broadcasting market. The problem is that in choosing between free and pay television services, most of the people still favour free services. If consumer behaviour remains unchanged, the television market will find it difficult to achieve high growth.

Another issue is: What type of broadcasting market does the Government want in Hong Kong? Does more channels mean better programming quality? If Hong Kong lacks media education and a cultural policy to upgrade the taste of the public, stratification of the market cannot be achieved. The present proposals will result in more channels but it does not necessarily mean quality will be enhanced or choice for the audience widened. In the long run, broadcasting is related to cultural policy and I hope the Government can note this.

The Bills Committee has discussed setting up an independent appeal committee, independent of the BA, to deal with complaints, especially those about competition safeguards. This mirrors the provisions under the Telecommunication Ordinance. The Democratic Alliance for the Betterment of Hong Kong consulted the industry and their reply was "neutral". Hence, at this stage we accept the Government's rationale for not setting up an independent appeal committee. Whereas the BA comprises a group of independent persons, the Office of the Telecommunications Authority comprises a civil servant who makes rulings. So, it is reasonable for the latter to set up an independent appeal committee. Since the Government expects to achieve diversification in the broadcasting industry, we need to wait and see if the Chief Executive in Council is a good appeal channel in future.

Mr Deputy, I so submit.

MISS EMILY LAU (in Cantonese): Mr Deputy, I speak in support of the Second Reading of the Broadcasting Bill.

First of all, I join Mrs CHOW, Chairman of the Bills Committee, in her praise for the Government, that is, the Secretary and his colleagues. In the course of scrutiny of the Bill, I was personally taken by surprise as the Secretary had accepted the numerous suggestions put forward by us. I was very glad, in particular when we knew the Government did not usually compromise in matters such as elections. I very much welcome the Government's approach, and I was pleased that the Government had heeded good advice and responded within a very short period of time. We all knew we had only a very short time to scrutinize the Bill but the Government agreed to many of the proposals. Mr Deputy, there are of course some problems remaining to be solved but I want to show my appreciation for the way the Government has behaved.

Mr Deputy, the Chairman of the Bills Committee, Mrs CHOW mentioned some policy objectives, two of which I am very much concerned about. First, it is the widening of programme choice. We are of course much concerned about the quality issue mentioned by Mrs CHOW and Mr YEUNG. I do hope Hong Kong can foster a favourable environment for the industry to work at their best and enhance their production quality.

Mr Deputy, another issue we are very much concerned about is fair competition, in particular, when the Bill mentions ways to deal with the abuse of dominance. In fact, like Mrs CHOW, I also have worries about how to enforce this part of the law. Mr Deputy, as we scrutinized the Bill, we interviewed many organizations, including the Consumer Council and some others. Some organizations indicated they did not want the Government to adopt the previous policies in which it did some piecemeal work to deal with competition in certain areas. Be it telecommunications or the television, they wanted a complete set of law to deal with the issue, which is also my view and that of the Frontier. But the Government was reluctant to do so and indicated that it would draw up measures to tackle specific markets. I was a little disappointed and at this stage we are not sure if this can be done.

Mr Deputy, I mentioned dominance. When we look at clause 14(2) of the Bill, we will see it defines what amounts to dominance: A licensee is in a dominant position when it is able to act without significant competitive restraint from its competitors and customers. Mr Deputy, I do not know if you understand these words, but they are rather hollow. Clause 14(3) of the Bill stipulates that the BA shall have regard to the criteria mentioned by me in considering whether a licensee is in a position of dominance. When a complaint is lodged with the BA for abuse of dominance, it must take action. But one will ask: Does the Bill define what abuse of dominance is? Mr Deputy, I can tell you it does not. Why? The Government said it had employed a consultant to help (as it often does) and the consultant pointed out it is not an appropriate time for a definition to be drawn in law at the moment. It is also not appropriate to disclose which licensee or which television station enjoys dominance. However, after the Bill is passed later on, the Government will discuss with the consultant about the matter again and will make reference to overseas experience.

Let us look at the Bill. The Government says the BA has a responsibility to tell whether a licensee is in a dominant position. What will then the BA consider when it wants to tell people there is such a case? First, the market share of the licensee, that is, the television station. Second, the licensee's power to make pricing and other decisions. Thirdly, any barriers to entry to competitors into the relevant television programme service market. These are the matters that the BA has to have regard to. Mr Deputy, I am a bit worried how it is going to enforce this part of the law. How, especially when there is no definition for dominance? In future, the BA will issue guidelines in this connection.

Just now, Mrs CHOW, Chairman of the Bills Committee said there should be consultation. I totally agree to this. It may be too hastily to conduct it now as the provisions are not yet drafted, and the Secretary also agrees this is the case. So, there is as yet no consultation and hence clauses 13, 14, 15 and 16 on competition will not take effect. I believe the Secretary will explain to this Council when she speaks later. She may say in future there will be consultation, papers will be tabled at the Legislative Council, views from the industry and the public will be considered and a consensus will be reached before drafting the guideline for everyone to follow. This I will support but I hope the future provisions will be clearer. Mr Deputy, I have read out many provisions and I am not sure if you now have a good grasp of what dominance is.

Mr Deputy, in scrutinizing the Bill, some Members pointed out there might be monopoly in existence so that there are provisions on dominance. Mrs CHOW said a while ago artiste contracts vexed some people. She said a certain television station was very powerful. After a contract is signed with a certain artiste, the artiste cannot participate in any show on another television station. We are certainly very much concerned about this.

The records industry claims it is a "co-dependent market". Mr Deputy, what does "co-dependent" mean? If there is excessive monopoly, they may feel their interest is compromised. Just now, Mrs CHOW said the Government would delete the exemption of artiste contracts from clause 13(5)(b). But the Government will not release its grasp on the matter completely. The Executive Council may retain some power. I hope the Secretary will later explain how discretion is reserved. This can be likened to opening a backdoor. After deleting clause 13(5)(b), the Government revives it by opening a backdoor. I think artistes, singers or people in the records industry may grumble too. They may say we are not useful because we make laws but we cannot deal with the matter properly.

Another more startling issue is related to dominance. Can a Domestic Free licensee hold a Domestic Pay licence? Mr Deputy, you are aware the relevant procedures are underway. There are many reports on this and the Bills Committee also held several discussions on the same. The Hong Kong Cable Television Limited (Cable TV) in particular made repeated submissions to us. Why was it so worried? It seems the Bill will certain pass today. There should be no objections. But Cable TV thinks even with the passing of the Bill, there will still be monopoly and it will not be able to get any help. The reason is that Television Broadcasts Limited (TVB) gets a lion's share of the market. Would there be any problem if TVB gets a cable television licence. Mr Deputy, in fact the Bill prohibits this. This is not allowed.

If the applicant is a holder of a Domestic Free licence, can it be a holder of a Domestic Pay licence at the same time? An applicant is a disqualified person if it is not a domestic television channel even though it may join a domestic channel. However, Cable TV pointed out there is a loophole in section 3(2) in Schedule 1. I agree this is a big problem because it allows the Chief Executive in Council to approve disqualified persons to hold the licence on grounds of public interest. Mr Deputy, I think this is worrying.

I note from a news report yesterday that the Chairman of TVB, Sir Run Run SHAW had sent a letter to the Chief Executive and they had met. Is this appropriate? Can all applicants meet with the Chief Executive? What is most important is fair competition. There have been reports that the would-be Secretary, Mrs Carrie YAU, also met with other applicants because the other applicants are not very happy about it. Some of them even threatened to withdraw their applications and stop investing further if monopoly continued. If the Secretary could explain further later to dispel our fears, we would be more confident in supporting the Bill as an essence of the Bill is fair competition and prevention of the abuse of dominance. If, however, the results to be announced soon gives people the feeling that such abuse does exist, then the people would think the Legislative Council is useless and the scores of meetings are wasted. This is very important.

We also note the responses made by the Secretary. The Secretary said the Chief Executive in Council may give exemption on grounds of public interest. They even went out of their way to list what public interest is. Mr Deputy, you know very well we have been working very hard for the interest of the public and it is on grounds of public interest that the Secretary for Justice decided not to lay charge against Sally AW Sian. What are public interest considerations? First, effects on the service market. Second, benefits to the economy as a whole. Third, effects on the choice of the audience. And lastly, effects on the development of the broadcasting industry. These are broad and empty considerations but the Chief Executive nevertheless should take them into consideration. He should not allow disqualified persons to hold licences. I hope the Secretary will tell everyone later that in considering whether a licence is to be issued or not, consideration will be done truly thoroughly, to make sure the public and the industry would not have the impression that monopoly and dominance still exist.

Mr Deputy, I would also like to talk about the powers of the BA. The Bill gives new powers to the BA. It can issue licences and make recommendations to the Executive Council in respect of Domestic Free and Domestic Pay licences. No matter how powerful the BA is, it must enforce provisions on competition. As such, we request that the BA enhances its transparency. The Secretary indicated she would accede to our request and we welcome her decision. She also said that in future, public hearings would be conducted for the grant of licences, especially licences for six years or more, the

suspension and revocation of licences. This is very important. This is a change from the Government that we welcome. In addition, we also agree with what Mrs CHOW said just now. Mrs CHOW asked whether the volunteer system should continue as the duties of the BA would become heavier in future. Would members of the BA spend a lot of time dealing with the affairs of the BA, after being paid limited travelling expenses? Is there sufficient manpower to help them study the competition provisions? I raised such questions several times at meetings. The Secretary said at the time there was sufficient manpower. She said there would be consultants to provide advice and relevant persons would be sought to join the BA. I hope the Secretary could explain this in detail so that the industry and we can be satisfied that the BA has sufficient support and it is better able to perform its duties.

Mr Deputy, lastly, I would like to talk about the Internet. Section 5 of Schedule 3 of the Bill states the Internet can be exempted. The Secretary said if an amendment is required in future, it would be subject to positive vetting. But I think regulating the Internet in future is a big issue. It must attract great attention. I agree with what Mrs CHOW said. She said just now she did not support regulating the Internet; so, please do not use subsidiary legislation to regulate the Internet. I believe at least a year should be set aside for the debate on regulating the Internet. Hence, please do not start regulation now. The amendments today are acceptable. Today, I must state beforehand I do not agree with regulating the Internet.

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

MR MA FUNG-KWOK (in Cantonese): Mr Deputy, I welcome and support the Second Reading of the Broadcasting Bill, which finally takes place today after lengthy preparation and scrutiny in the current Legislative Session. The provisions of the Bill keep pace with technological advancement and ensure there are liberalization of the market and a mechanism for competition. They also help enhance the quality of broadcasting services and satisfy public requests for wider choices. As such, they cater to the benefit of the entire community. During the scrutiny of the Bill, the Government took on board most of the suggestions made by Members and made corresponding amendments, which is an approach that should be appreciated. Basically I agree with many of the views of the Bills Committee. I just want to speak on several points.

First, the Hong Kong television industry does not have an environment for fair competition because it has been dominated by one major television station. It is estimated that at present over 90% of the local singers have signed contracts with this major television station. After so signing, the singers cannot appear in programmes, including non-music programmes, produced by other local stations. As regards actors and actresses, although the situation is not as one-sided, a similar situation arises and healthy competition is lacking. Such monopoly imposed on artistes has to a certain extent adversely affected the broadcasting industry in Hong Kong. Undoubtedly, artistes have no alternatives but sign artiste contracts on minimal rewards and harsh terms with a certain television station in view of the great influence, high ratings and high penetration of the channel. They even sign contracts for performance agents to help promote their songs. Although there is apparent mutual agreement, and, understandably, broadcasters need to protect their interests by requiring artistes to sign exclusive contracts for performance, overly harsh terms exceed the protection wanted by broadcasters. Many of the relevant contracts signed are obviously anti-competitive in nature. However, there is little we can do under existing laws.

From the point of view of the audience, their right to choose diversified programmes would be compromised because if television station operators use their dominant position to force artistes to sign contracts of overly harsh terms, unfair competition would result ultimately. Other broadcasting organizations require suitable and prominent front-stage artistes, in addition to good scripts and post-production support, before they can make excellent productions. A disadvantaged television station would find it very difficult to upgrade its ratings if there is restricted flow and, insufficient or limited supply of front-stage artistes, which is an important part of production. In the long term, a disadvantaged station will remain disadvantaged. How can the audience have sufficient choices?

If we turn a blind eye to the unbalanced position in the broadcasting industry, and if a certain station with high ratings is allowed to extend its influence to other performing arts, such as the records industry, the problem will aggravate. In fact, television stations do not invest directly on the making of singers but they have a tight clutch on the prime of the singers' artistic lives and future. It is not reasonable for an artiste who has signed a singer's contract with a television station to be barred from attending a non-singing programme hosted by another television station. Mr Deputy, we are not suggesting that the system

for artiste contracts be dismantled. We just want to ensure contracts are not anti-competitive and investors cannot monopolize the opportunities for development of artistes in areas outside the services specified in the contracts. Thus artistes should be allowed to attend award presentation ceremonies, interviews and charitable activities which are sponsored by other broadcasters but are not related to the nature of the contracts or the terms and conditions thereof. More importantly, this can allow artistes freedom in deciding their own future and adds flexibility to the relationship between artistes and investors who invest in the television stations.

Mr Deputy, if we can allow artistes to take part in the production of programmes outside what is specified in their service contracts, artistes may then develop their performing careers outside their profession on the one hand, and attract more investors to invest in industries related to performing arts and broadcasting on the other. Ultimately, it is the community which benefits. Therefore, the original provisions in the Bill which exempt artiste contracts from the provisions regarding competition obviously convey a wrong message. The Government finally agreed to delete the relevant provisions and that was a reasonable arrangement. But at the same time, the Chief Executive reserves the right to grant exemptions in future. In implementing this part of the law in future, I urge the Government to be extremely careful.

Another major consideration in the Bill is the introduction of competition. There has been particular attention to the issue of granting exemption to disqualified persons. The amendment specifies that exemptions can be granted only by the Chief Executive in Council on grounds of public interest. Hence I would urge the Government to specify as soon as possible what criteria there are for exemption on grounds of public interest. This would relieve the public of the fear there may be closed-shop business on the Government's part. Furthermore, I also wish to request that the Government undertake not to grant exemptions to some organizations too readily; otherwise anti-monopoly provisions would be rendered null and void, and the public would question the ability of the Government to implement policies on the promotion of competition.

At any rate, we should endorse the effort of the Government in promoting competition. The Broadcasting Bill is an important first step in the prevention of monopoly. It gives all parties in the community a message that anti-monopoly is a world trend, which Hong Kong would follow. Hong Kong would strive to maintain a business environment that is fairer and more open.

Lastly, about audio and visual services on the Internet, I would urge the Government to start studying the need to regulate the Internet because it is becoming more and more ubiquitous. I am neutral as to whether there should be regulation. However, at least we must take early steps to protect our youngsters, who are not yet mentally mature, from what is offered on the Internet.

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

MR ANDREW CHENG (in Cantonese): Mr Deputy, I rise to speak on behalf of the Democratic Party to support the Second Reading of the Bill.

The Bill was criticized as a chestnut cake that was never done. Today, the cake is finally done. The baker is, I think, more open than the last one, and the ingredients are better. Although everyone was working on a tight schedule, the Administration was willing to make concessions, which came as a surprise, as pointed out by Miss Emily LAU. I also think the concessions were a surprise. Therefore, we have not proposed any amendments to the Bill. We had indicated we wanted to make some amendments, but the Government said it could deal with them.

I do not want to repeat what many other colleagues have spoken about. There are three points that I would like to briefly mention, which are related to some specific areas in the Bill. They are appeal channels, anti-competitive conduct and penalties. Mr SIN Chung-kai will speak on behalf of the Democratic Party later on the Internet and other regulatory issues.

As we all know, television broadcasting has undergone great changes in the last 10 years. Some 10 years ago, people either tuned in to TVB or ATV. But now, if one is connected to cable television or satellite television, one can choose from a diversified range of programmes at different channels. In the next 10 years or so, I trust there will be even greater developments. This time, the Government is willing to follow good advice and make sure the chestnut cake is done. It has made our broadcasting industry well-prepared for future changes by laying down a complete Broadcasting Bill. We, the Democratic Party, will support the Bill.

During the scrutiny of the Bill by the Bills Committee, the Democratic Party was very much concerned about a provision about dealing with complaints or problems in the industry. We earnestly hope that there is ample opportunity for the industry and the public to state their case and express their opinions. To this end, we proposed that the Government consider setting up an appeal mechanism within the Broadcasting Authority (BA). We are of the view that the existing appeal mechanism is rather time and energy consuming because one can only state one's case to the Chief Executive in Council. So, if a licensee in the industry wants to appeal against a general penalty or warning by the BA, the licensee has to seek audience with the almost unattainable Chief Executive in Council. I think this takes a lot of time and energy. I believe the BA is in a fairly good position of establishing under its auspice an appeal mechanism to deal with licence renewal for industry licensees and complaints against decisions of the BA.

Thus in my view, we must prescribe under clauses 10 and 11 of the Bill open hearings for the extension or renewal of a licence. However, the Government still insists that the existing framework is sufficient. We are sorry that the Government has been reluctant to make concessions on this. But in her speech later, the Secretary will be proposing a review on this issue and an examination into the need in future in this respect. The Democratic Party will take a wait-and-see position. We hope the Government will note our position.

Regarding anti-competitive conduct, we have heard many colleagues praising the Government for the way it has handled the matter. Indeed, we have spent a lot of time in the Bills Committee to discuss the matter. Under clause 13(5) of the Bill, it was originally proposed that anti-competitive conduct would not apply to artistes using or exploiting their artistic talent or ability. All parties and the Frontier were against exempting licensees from this part of the Bill. Finally, the Government could indeed follow good advice and make a last-minute concession by deleting the exemption clause. I think this is commendable. We do not think there should be any continued monopoly in the broadcasting industry as a whole. Moreover, artistes and singers would not want to be monopolized by certain television stations or restricted to their mode of performance as defined in their contracts. They would certainly detest being boycotted or frozen or subjecting their livelihood to control by the television stations.

Mr Deputy, lastly, about penalty. We have had many discussions on the issue in the Bills Committee. At first, the Administration did not think it should follow the example of the Telecommunications (Amendment) Bill whereby penalties are pegged with the turnover of the licensee. However, the Administration finally accepted our views and agreed to make amendments to the provisions on penalty, thus making them consistent with those contained in the Telecommunications (Amendment) Bill passed not long ago. Under the amended provisions, a licensee who has engaged in anti-competitive conduct or abused his dominance may be fined at the new levels of financial penalties which are more deterrent. I think it is a progressive policy to peg financial penalties with turnover. I am glad the Administration was willing to listen to the views of Members expressed at the Bills Committee. I hope the same Policy Bureau will be as open when it deals with the more controversial amendments to the Control of Obscene and Indecent Articles Ordinance.

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

THE PRESIDENT resumed the Chair.

MR LEUNG YIU-CHUNG (in Cantonese): Madam President, as you were absent from the Chamber just now, you did not hear the praises that a number of Honourable colleagues heaped on the Secretary for Information Technology and Broadcasting and government officials for being so co-operative throughout the course of deliberation. Unfortunately, I was not a member of the Bills Committee. Therefore, I am sorry that I cannot praise the government officials in the same manner, since I did not have the opportunity of working with them personally.

However, we can see some orientations in the Bill which are basically very good. Just now, Mrs Selina CHOW mentioned the Government's five objectives in proposing the Bill. I am sure everyone approves of these objectives and agrees that they should be established. Mrs Selina CHOW considered these objectives inadequate and proposed a further objective, that of quality. Quality is certainly very important. At present, many viewers find the television programmes uninteresting, mainly because there is too little choice and they are too boring. When a good programme comes up from time to time,

everyone is thrilled. If the situation is not improved, it will not benefit the people of Hong Kong.

However, in addition to the sixth objective about quality, I wish to add a seventh objective, that is, bringing overall benefits to Hong Kong. In my view, this is even more important. This objective may sound rather general. However, as we all know, the present development of television broadcasting is very different from before. In the past, television basically only provided us with entertainment. Now, the development of television means much more. The programmes must also be rich in knowledge and information. If a station wants to develop in the area of knowledge and information, it should provide not only entertainment to people in their leisure, but also bringing benefits to the overall economy and various aspects. In my view, that should be a long-term objective for development, instead of merely providing more programmes catering to different tastes.

However, it seems to me that the most crucial question is how to achieve this objective. As many colleagues mentioned just now, our greatest concern is how these objectives can be achieved. For instance, I find the objective in item (b) named by the Government extremely important, that is, to encourage investment, innovation and technology transfer in the broadcasting industry. Without a favourable investment environment to stimulate people's desire to invest, it will be very hard to improve quality or bring overall benefits to the Hong Kong society.

Unfortunately, such issues are not covered in the Bill, which only deals with regulation. The relevant regulation only involves the regulation of some details, instead of big issues and general policies. That is why I hope that the Government will consider formulating some policies. If some specific policies are laid down in the Bill, I believe they will have a complementary effect and make the Bill more satisfactory. Otherwise, the situation that Miss Emily LAU fears might arise, that is, even though there is legislation, it cannot be implemented. What use will that be? That is why I hope that the Government will consider formulating specific policies and consult us extensively when the Bill is implemented, so that we could contribute to the development of policies.

Among the five objectives put forward by the Government, one very important point is in my view the level playing field. How can we have a level

playing field? This is our greatest concern. Today, the Government faces an enormous challenge and that is, can we really have a level playing field? At present, there is no longer any competition in the free television market. It is dominated by TVB. TVB has an 80% share of air time. How could there be any competition? This has persisted for a long time and nothing has changed. If the same thing happens to new development projects, I do not think it will be conducive to the overall development of Hong Kong.

As we all know and it was mentioned by several colleagues just now, the Government wants to introduce new cable television channels and open up the market by issuing licences. It is said that about 10 organizations have submitted an application. This way, investment could be introduced. However, Miss Emily LAU quoted some reports just now, questioning whether this would induce investors to continue to invest or whether investors would "beat a retreat". In my view, it all depends on whether the dominance that exists now in free television service will also appear in the development of pay television in future. If dominance exists, I believe other investors will certainly "beat a retreat".

As I said just now, if we wish television broadcasting to develop, such development should not be confined to entertainment programmes, but also programmes on knowledge and information. We must ensure diversified development, which is the prime objective. If investors are made to consider "beating a retreat", how can we achieve this objective? That is why we must maintain this objective and encourage investors to invest and develop such businesses.

The Government said that it would announce the details on the issue of licences in the middle of the year. However, it is now near the middle of the year and we do not know the details yet. Many people are waiting to see how the Government will deal with this and we are also very much concerned. If in issuing licences, the Government cannot facilitate the entry of new investors, it will be too bad indeed. In my view, we are now facing a big challenge. The Bill does lay down some restrictions by disqualifying a domestic wireless television licensee from holding more than 15% of voting shares in a pay television licensee. However, it is disappointing that the relevant provisions contain a loophole, namely, a licence may be granted if the Chief Executive in Council considers it is in the public interest to so. Just now, Miss Emily LAU named the three criteria of what constitutes public interest. As we all know, the

three criteria are not only too general, they can also be interpreted in different ways. An example is the criterion of bringing benefits to the economy. What does it mean by bringing benefits to the Hong Kong economy? Allowing dominance can also be said to bring benefits to the Hong Kong economy? Thus, these three criteria can be interpreted at will. Certainly, it is better to have some criteria than none at all. But it seems to me that these criteria are useless. We do not have very well-defined criteria. This worries me a great deal.

What worries me most is that the decision will be made by the Chief Executive in Council. Members may still remember the Cyberport case. I fear that history will repeat itself. The present Chief Executive and Executive Council were not elected democratically, but by a small clique. Will they sacrifice the overall interest of the community for the sake of protecting the interest of the small clique? As we all know, one company owned by TVB has applied for a licence. If the Chief Executive in Council grants a licence to that company, what good will it be to Hong Kong? Therefore, in my view, while the Bill seems to provide for regulation, there is no regulation in reality. Restrictions seem to have been imposed but there are no restrictions in reality, since the ultimate authority lies with the Chief Executive in Council.

In my opinion, the Government is now facing a serious test. The objectives sound great, such as ensuring fair and diversified development and encouraging investment. But how can these objectives be achieved with such a loophole in it? I find it to be totally self-contradictory. To achieve these objectives, this loophole must be plugged. This loophole makes me feel extremely worried. The case might be different if the Chief Executive were democratically elected and monitored by the people. Unfortunately, this is not the case. How can these objectives be achieved? This is indeed worrying.

Madam President, while I will support the Bill today, it has a very great defect. How can this problem be solved? I hope the Secretary will explain it to us later. I also hope the Secretary will not just give us a vague explanation, but will take real action, so as to put our mind at rest.

It is said that the announcements will be made soon, in July or August. This is a most severe test and the first test. Madam President, it is a test of the spirit of the Bill. Any wrong step will have a far-reaching effect. Actually, if we do not make this step correctly, there is no point in having the Bill.

Madam President, in my view, the development of pay television is very important and will have considerable impact on our daily lives. Compared with other countries and our neighbouring regions, the development of pay television in Hong Kong has been lagging far behind. It is said that there are 60 cable television channels in Taiwan. How many do we have in Hong Kong? Even the development in Shanghai in China is said to have surpassed ours. Why? It is because we do not have a proper environment for investment. Since there is dominance in our present investment environment, the objective cannot be achieved. If we wish to achieve the objective, we must remove the dominance.

Madam President, I reiterate that this is the most challenging time for us. Everything depends on what our Government will do.

Madam President, I so submit.

MR SIN CHUNG-KAI (in Cantonese): Madam President, I support the Bill. However, if colleagues like Mr LEUNG Yiu-chung are really so dissatisfied, they can oppose clause 33 and vote against its inclusion in the principal legislation. I also find this issue rather complicated. The Bill is neutral and it depends on how it is applied. Those relevant provisions are indeed necessary. For instance, if a television company is about to close down, it is a matter of public interest. There might be a need to allow other existing operators to take over it or buy into it. These are all special circumstances.

Actually, with regard to clause 33, the public interest referred to involves four issues — the effect on competition in the relevant service market, the extent to which viewers will be offered more diversified television programme choices, the impact on the development of the broadcasting industry and the overall benefits to the economy. These are all considerations. And as colleagues have said, it depends on how they are interpreted. It appears that these provisions will only be invoked under special circumstances. However, it hinges on our trust in the Government. If we have great trust in the Government, there would not be any problem. But if we do not trust the Government so much, as is the case now (please permit us to have our doubts), we will question how determined the Government is to create a more level playing field for the television market. Just now, Mr Andrew CHENG said that the television market in Hong Kong had undergone great changes. It is true that the number of channels has greatly

increased since the time when there were only two television stations. However, I personally find that this is nothing compared to other countries, including some advanced countries such as the United States, where there might be more than 100 television channels to choose from. In comparison, the market in Hong Kong is of course smaller, so that we might not be able to accommodate so many programmes provided by so many companies. However, apart from the smallness of the market, other factors also prevent us from having too much competition.

One of the reasons for the slow development of the Hong Kong market might be the transition in 1997. Many reviews that straddled 1997 were slowed down by the Government. That is why someone came up with a metaphor about baking a cake. I hope that today's legislation will help us leap forward. It is not only the Policy Bureaux that have to leap forward. The Government must also be resolved to create a competitive environment. The legislation is in place to provide for this and we also support it. The question is, in issuing licences, the Government must also consider the concerns of the industry.

Today, many colleagues also mentioned Galaxy, a subsidiary of TVB. In the Bills Committee, staff of the Broadcasting Authority (BA) made it very clear that Galaxy was a "disqualified person". There is no doubt about this. However, everyone in the market now thinks that Galaxy will probably be issued a licence. It believes that it is sure of a licence itself and even its competitors are sure that it will get a licence. Why would something like this happen? This gives cause for concern. Why is it that a disqualified person and even its competitors in the market think that it will get a licence? These are things that warrant our concern. I do not know why. I certainly hope the colleagues responsible will think hard on this. Nevertheless, the power still lies with the Executive Council. Can the problem be solved by deleting clause 33? I fail to see how the problem can be solved by deleting clause 33. That is why I still support the amendments today, even though it is a painful process. Can the problem be solved by deleting clause 33? If it is deleted, maybe we will need it a few years later when problems arise in the market. By that time, some of the exemptions might not apply. There is no doubt that clause 33 can only be applied under special circumstances. Is it possible to amend it so that it can only be applied in takeovers and not in issuing new licences? There is some difficulty in this. In short, our debate today is not easy, since it is quite a short time from February to now.

The second question is about competition. We support the introduction of competition provisions by the Government. However, I have to reiterate that the Democratic Party's wish is for the Government to set up a comprehensive Competition Authority. Many questions related to competition cross sectors and cannot be dealt with within one sector or by the BA alone. Thus, we hope the Government will continue to work towards this. We will say the same thing whenever we deal with questions of competition.

With regard to the Internet, I am in favour of specifying in the law that the Internet will not be regulated by the BA, as we are doing now. In the foreseeable future, I do not think the Internet should be regulated by the BA, since the Internet is already regulated. Just now, some colleagues said that the Internet was not regulated. This is not true. The Internet is being regulated. If someone attempts to set up a Category III or Category IV website in Hong Kong, broadcasting Category III or Category IV movies, I am sure the Government will press charges against him. Thus, it is not true that the Internet is not regulated. The Internet is not like media that transmit by means of airwaves, which people will involuntarily come into contact with or where they have little choice. The greatest advantage of the Internet is that one can choose not to watch or not to access it. Thus, one should be very careful about regulating media like the Internet, which people voluntarily access for information. Very soon, half the population in Hong Kong will have access to broadband services and on-line broadcasting will become increasingly common. There will be immense pressure on the Government to regulate the Internet. At this time, I have to point out that I will oppose such regulation in the foreseeable future, since there is legislation in place on its content. This means that Internet broadcasting must comply with Hong Kong laws. That is why I oppose including it in the services regulated by the BA, since this will not benefit technoogy development or the people's choice.

I also wish to raise an issue that has nothing to do with the Bill — the framework of the BA and the Television and Entertainment Licensing Authority (TELA). The Government will have to work on this immediately after dealing with this law. The BA operates on a trading fund basis. The TELA could also develop in this direction, since it collects licensing fees. Thus, in theory, it can finance itself. It can also set up a team of staff within its framework to effect

monitoring on a full-time basis. In my view, as far as content is concerned, it should not be judged by the bureaucracy. The community should decide whether it is acceptable. Therefore, it should be overseen by members of the public. As for certain areas of administration, such as maintaining a level playing field, they can only be effectively dealt with by full-time staff. Therefore, the functions of the TELA should be split into two parts. The division responsible for regulating television broadcasting should operate on a trading fund basis and be headed by a chief executive officer. As for the regulation of content, I hope the BA should continue to be in charge, since members of the public should be allowed to judge which type of content is not suitable for children and not suitable for broadcast during the prime time. However, law enforcement and certain technical tasks should be dealt with on the trading fund basis. In fact, telecommunications and broadcasting have been combined in many countries. Should the divisions responsible for regulating television in the BA and the TELA be combined, or should a new telecommunications and broadcasting authority be established? The Government can consider this in the overall review. We have to take into account the future situation. At present, we have 30 to 40 channels only. In the long run, the coaxial cables in our buildings will become bottlenecks, since we will soon have digital broadcasting. By then, we will probably have hundreds of channels. The Government must adopt a complaint-oriented approach, since it would be impossible to assign special staff to monitor television broadcasting. The regulatory framework must cater for the development a few years later. By the time we have digital television and over 100 channels in Hong Kong, the environment will be completely changed. Our broadcasting industry should not just concentrate on the domestic market. We should also allow or encourage the industry to enter overseas markets.

The last point I wish to make is about public channels. This concerns a policy and the law is difficult to draft. Should we monitor each licence and require the licensee to provide a public channel? The Government keeps procrastinating on this policy. In my view, the Government should allow the establishment of public channels in the next stage of its review. I support this measure.

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

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

(No Member responded)

PRESIDENT (in Cantonese): If not, I will call upon the Secretary for Information Technology and Broadcasting to reply. This debate will come to a close after the Secretary has replied.

SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING (in Cantonese): Madam President, I move that the debate on the Second Reading of the Broadcasting Bill be resumed. The Bill was read the First time in this Council on 16 February 2000. Its principal objective is to establish a regulatory framework to tie in with broadcasting and communications technology developments as well as the broadcasting objectives of the Government of the Special Administrative Region, which include:

(i) to widen programme choice to cater for diversified tastes and interests of the community;

(ii) to encourage investment, innovation and technology application in the broadcasting industry;

(iii) to ensure fair and effective competition in the provision of broadcasting services;

(iv) to ensure that broadcasting services do not offend public taste and decency; and

(v) to promote the development of Hong Kong as a regional broadcasting and communications hub.

As regards the point raised earlier by Mrs Selina CHOW in relation to upgrading quality, we hope the industry can be facilitated in blossoming and attracting audience with quality and diversified programmes by way of market liberalization and enhanced competition. It is essential for investors to re-invest and make new investment, including the provision of training, to enable it to gain a foothold in the television market.

Under the brilliant leadership of Mrs Selina CHOW, the Bills Committee has held 13 meetings over the past four months, with six meetings lasting up to four hours, in deliberating the Bill in a detailed and in-depth manner. The Committee has also considered views represented by 22 deputations, including broadcasters, the Consumer Council, the federation of the phonographic industry and other related deputations. I would like to thank the Chairman and Honourable members of the Committee for the efforts they have made and the valuable opinions offered in the course of deliberation. I would also like to express my sincere gratitude for Members' compliments. They should not be surprised for I believe my colleagues in other Policy Bureaux have been working with this Council with the same co-operative attitude.

The Bills Committee greatly supports the policy objectives of the Bill. The major concern of the Committee includes the scope of the competition provisions, possible fines for contravention and so on. Later, I will propose Committee stage amendments, most of which are made in response to the concerns expressed by the Bills Committee and related deputations with a view to perfecting the Bill. These proposed amendments have been discussed in the Bills Committee and have gained support from members. I hope Members can support these amendments in a while. Now I would like to take this opportunity to introduce the major provisions of the Bill and several major proposed amendments.

The Bills Committee generally supports the proposals contained in the Bill to classify television programme services into four categories to be subject to different degrees of regulation. These four categories are:

(i) domestic free television programme service;

(ii) domestic pay television programme service;

(iii) non-domestic television programme service; and

(iv) other licensable television programme service.

Of these four categories, the first two categories cover domestic services, that is, services primarily targeting Hong Kong. The third category covers non-domestic services, that is, free or pay services not primarily targeting Hong Kong. The remaining services represent other licensable services provided for less than 5 000 households. All television programme services provided for individual housing estates or hotels fall into this category.

The Bills Committee was concerned that some housing estates might have more than 5 000 households. If an applicant plans to provide television service for these larger estates, he will need to apply for more than one licence for other licensable television programme service. The original limit of 5 000 households was set mainly in consideration of the fact that services falling into this category should be operated on a small scale. At the same time, according to the findings of a survey, 87% of public and private housing estates in Hong Kong are of a size of less than 5 000 households. Nevertheless, we accept the view of the Bills Committee that television service provided for households living in a single housing estate should be dealt with flexibly. In this respect, we will introduce amendments to empower the Broadcasting Authority (BA) to exempt this category from compliance with the limit of 5 000 household under such circumstances.

Insofar as the scope is concerned, the Bill proposes that the transmission of certain audio and visual services by means of telecommunications facilities, such as Internet services, should be excluded from the scope of the Bill. To enable the regulatory framework to cope with the ever-changing broadcasting and multimedia market flexibly, the relevant exemptions are now listed in Schedule 3 so that it can be amended by legislation when necessary. In our opinion, the existing mode of Internet services is still different from broadcasting and their popularity is not yet comparable to those television services currently operating in Hong Kong, though the trend of watching television programmes on the Internet has started to develop. According to our policy, such services shall be excluded from the scope of the Bill at this stage. Of course, the protection of freedom to information as suggested by Mrs Selina CHOW and technology development as mentioned earlier by Mr SIN Chung-kai are among issues of our major consideration.

The Bills Committee supported our proposal in principle but requested that Schedule 3 should be subject to positive vetting by this Council. We accepted this proposal and will introduce relevant amendments to the Bill.

The Bills Committee fully supported the inclusion of competition provisions into the Bill. The relevant provisions are mainly concerned with two aspects: prohibition on anti-competitive conduct under clause 13 and prohibition on abuse of dominance under clause 14. Clause 13 provides two proposed exemptions, including "restriction imposed on one's artistic talent or ability". This exemption was based on the fact that the signing of exclusive contracts between television stations and artistes has become a generally accepted commercial act. Therefore, it should not be regulated by the competition provisions. Furthermore, competition legislation is generally not applicable to matters related to individual contracts of artistes.

The Bills Committee, considering it difficult to define "artistic talent or ability" and exclusive contracts signed by artistes may possibly influence the competition of the relevant market, proposed to delete this exemption. After considering the views put forward by the Bills Committee and other deputations, we have agreed to introduce an amendment to delete the exemption given in relation to artiste contracts. Taking into account the fact that the introduction of competition provisions for the broadcasting industry is a brand new regulatory policy, we deem it necessary to preserve flexibility to allow the Administration to, when necessary, provide exemptions under clause 13 by subsidiary legislation. This proposed amendment is supported by the Bills Committee.

The Bills Committee was worried that licensees might commit anti-competitive acts through their subsidiary companies in order to evade the regulation of competition provisions. We have explained to the Bills Committee that, according to cases related to competition legislation in other jurisdictions, the act of a subsidiary company shall be deemed to be the act of its parent company. In order to avoid doubts, however, we will introduce amendments to expressly provide that the BA can consider the conduct of the associates of licensees in the course of enforcing clauses 13 and 14.

To facilitate compliance by licensees, the BA has undertaken to issue guidelines on the implementation of competition provisions. We have explained to the Bills Committee that the BA will refer to relevant guidelines issued by other jurisdictions in formulating the guidelines. It is anticipated that the guidelines will cover all matters related to the enforcement of competition provisions, including the enforcement procedures of the BA, definition of "related markets", factors for assessing the market force of licensees, definition of "dominance", and so on. In order to remove the Bills Committee's worries, we have agreed to introduce amendments to stipulate that the BA must issue guidelines on the enforcement of clauses 13 and 14 and consult licensees which might be affected before issuing the guidelines. The competition provisions will be implemented expeditiously after a comprehensive consultation on the guidelines has been conducted.

As regards whether a comprehensive competition law should be formulated, the usual policy of the Government in respect of promoting competition is to take necessary measures in the light of the circumstances of individual industries. This allows us to regulate anti-competitive conduct of individual markets by adopting a flexible, sector-specific and effective approach. The proposal to include competition provisions into the Bill for the purpose of regulating the anti-competitive act of the television market is precisely in line with this policy. In the consultation on the 1998 Review of Television Policy, our proposal was supported by the industry and the community.

The Bills Committee supported in principle the Bill's proposal of empowering the BA to raise the limits of fines imposed on defaulting licensees from $50,000, $100,000 and $250,000 to $200,000, $400,000 and $1 million respectively for contraventions on the first, second and any subsequent occasions. Some members suggested differential financial penalty for breaches related to programme content requirements and those related to competition provisions. As the latter is considered to be an economic act, the relevant fines should be pegged with the proceeds of the licensees. In addition, persons incurring losses as a result of breaches of competition provisions by licensees should be allowed to lodge civil claims against the licensees.

Under the current regulatory system, it is not necessary for the authorities concerned to prescribe the rights enjoyed by victims to make civil claims. This is because most contraventions are related to the standards of programmes rather than operating practices. Moreover, we are of the view that we should not impose financial penalties of different scales for a contravention of the same programme standard on equity grounds. Nevertheless, we agree to the arguments put forward by the Bills Committee should the competition provisions be introduced subsequent to the passage of the Bill. After considering the practices of other jurisdictions, we agreed to introduce amendments to stipulate that any person who suffers losses as a result of a breach of competition provisions can instigate legal proceedings against the relevant licensee and claim for damages. We also proposed to empower the BA to, if considering the imposition of the maximum penalty of $1 million for defaulting licensees insufficient, apply to the Court of First Instance to impose on the licensee a higher penalty of $2 million, or a penalty not exceeding 10% of the turnover of the licensee in the relevant market during the period concerned, whichever is the higher. We believe these two amendments can enhance the deterrent effect of the competition provisions and ensure a level playing field for the television market.

Some members suggested setting up an appeal body similar to the telecommunications appeal board for the purpose of reviewing decisions made by the BA with respect to competition matters. We are of the opinion that the proposal of setting up an independent appeal mechanism is not applicable to our proposed regulatory framework. First, the Telecommunications Authority is not comparable to the BA for the former is a public officer while the latter is an independent statutory organ, with its members coming mainly from non-public sectors in the community. Second, broadcasting licensees can appeal to the Chief Executive in Council with respect to decisions made by the BA. This explains why we do not agree to the setting up of an independent appeal mechanism for the purpose of reviewing decisions made by the BA. Nevertheless, taking into account the fact that the competition clauses are brand new provisions, we undertake to review the implementation of the provisions in a comprehensive manner after a period of time. The review will include considering whether it is essential to set up an appeal mechanism.

As regards restrictions on disqualified persons, Schedule 1 to the Bill stipulates that unless the Chief Executive in Council is satisfied that there is such

a need on grounds of public interest, disqualified persons shall not exercise control on Domestic Free and Domestic Pay licensees. This provision is based on an existing provision of the Television Ordinance. The Bills Committee suggested that there should be a clearer definition of the factors needed to be considered on grounds of public interest. In this respect, we agree to introduce an amendment to, in accordance with the usual criteria considered by the Executive Council, stipulate that the factors of public interest consideration with respect to the provision should include the effect on competition among television programme services, the choices to viewers with respect to more diversified programmes, the impact on the development of the broadcasting industry, the overall benefits to the economy, and so on.

Earlier on, some Members expressed worries over the Government's imminent issuance of licences. Based on our policy to open up the television market to promote competition, we have invited interested companies to apply for new television licences. We believe a robust and prosperous television market can attract investment and encourage innovation. Most importantly, choices offered to viewers can be widened. According to our policy, there should be no upper ceiling on the number of licences issued unless there are spectrum or other restrictions.

We are now at the final stage of assessing the relevant licence applications. The criteria for assessment include applicants' financial commitment, application of innovative technology, benefits to viewers and whether the applicants are in compliance with the requirements of law, licences, and so on.

We understand that the provision of a level playing field for both incumbent operators and newcomers is of utmost importance to an open television market. To this end, we have added competition provisions into the Bill to prohibit licensees from committing anti-competitive acts and prevent licensees with a dominant position from abusing their dominance in the market. Both incumbent licensees and newcomers must comply. We firmly believe the Bill can provide the television market with a level playing field and encourage investment and thus bring benefit to consumers. We will make careful consideration in assessing whether exemption should be given to certain disqualified persons and observe the factors needed to be considered as set out clearly by the amended legislation. These factors shall include the effect on competition in the relevant television programme service market, the extent to

which viewers will be offered more diversified television programme choices, the impact on the development of the broadcasting industry, the overall benefits to the economy, and so on.

Some members doubted whether the BA would be capable of dealing with complaints lodged with respect to fair competition. To enforce the fair competition provisions is going to pose a new challenge. To this end, the BA has started strengthening support in this area, including appointing the Office of the Telecommunications Authority as the BA's competition consultant and sending staff on visits to jurisdictions where broadcasting competition legislation is in force. The BA is empowered under the Bill to deal with complaints related to fair competition directly and can seek relevant professional advice when necessary. The BA will definitely be able to deal with matters relating to fair competition effectively and fairly.

Some members suggested that regulatory policies governing the telecommunications and broadcasting industries should be consistent as far as possible because of technology convergence. We agree to this proposal. I will introduce certain amendments in a moment to bring the Bill in line as far as possible with the amendments to the Telecommunication (Amendment) Bill 1999 passed two weeks ago. These amendments are mostly technical and textual in nature.

Madam President, the Broadcasting Bill seeks to set up a fair, specific and business-friendly regulatory regime for the television broadcasting industry in the hope of embracing flexibly various brand new services emerged as a result of technology convergence. The Bill will help promote application of technology, encourage competition, attract investment and stimulate the development of the broadcasting industry. The policies contained in the Bill have been formulated after extensive consultation. The proposed amendments to be introduced by me later have also been made after the detailed deliberations of the Bills Committee. I strongly believe this Bill can help the broadcasting industry to fully grasp the opportunities arisen in the new information technology era.

Madam President, I commend this Bill to Honourable Members of this Council. Thank you.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Broadcasting Bill be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Broadcasting Bill.

Council went into Committee.

Committee Stage

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

BROADCASTING BILL

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Broadcasting Bill.

CLERK (in Cantonese): Clauses 5, 8, 15, 17, 19, 22, 28, 32, 34, 36, 38, 39 and 43.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 1 to 4, 6, 7, 9 to 14, 16, 18, 20, 21, 23 to 27, 29, 30, 31, 33, 35, 37, 40, 41 and 42.

SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING (in Cantonese): Madam Chairman, I move the amendments to the clauses read out just now, as set out in the paper circularized to Members. I will now give a brief introduction on the various amendments.

I propose to amend clause 1 to enable the Bill, other than the competition clauses, that is, clauses 13 to 16, to come into operation on the day on which the Bill is published in the Gazette to enable the new regulatory framework to come into operation on an early date to promote the development of the broadcasting industry. The competition clauses shall come into operation in the next Legislative Session soon after consultation with the industry and issuance of guidelines on the enforcement of the relevant provisions by the Broadcasting Authority (BA).

As for clause 2, we will, after considering the views put forward by the Bills Committee and various deputations, amend certain provisions related to the interpretation of the Bill. The major amendments include, first, to amend the ceiling of 5 000 households in the definition of "other licensable television programme service" to enable the BA to exempt service provided for a single housing estate. Service provided in hotel rooms will also be exempted from the restriction. Second, information or document not required for submission in proceedings before the Court of First Instance is to be given the same degree of protection under the Ordinance so that persons required to produce information under the Ordinance will be protected. Third, the BA shall give reasons in writing for the legal opinions it has obtained, in addition to providing reasons in writing for making a determination, direction or decision.

We propose to amend clause 4 with respect to the issuance of guidelines by the BA to stipulate that the BA shall, as soon as is practicable, issue guidelines on the licensing criteria, competition provisions and exemption given to licensees for the provision of service in certain areas. The BA is required to consult affected licensees before issuing guidelines on competition provisions.

We propose to amend clauses 6 and 7 to provide that, in addition to the import, manufacture, sale and let for hire of an unauthorized decoder, the export of such a decoder shall be deemed to be unlawful.

We propose to amend clause 9 to stipulate that the BA shall publish as soon as possible in the Gazette the name of the licence applicant and the type of licence applied for as well as stating that members of the public may make representations on the application to the BA on a date not less than 21 days after the notice is published.

As for clauses 10 and 11, we propose to amend the provisions related to the variation, extension or renewal of licences to provide that licensees shall be given reasonable opportunities to make representations to the BA. Furthermore, the BA shall conduct a public hearing with respect to applications for an extension or renewal for a period of six years or more in respect of licences for free or pay television programme service.

Clause 12 relates to the making of a determination by the BA in relation to whether or not a television programme service primarily targets Hong Kong. We propose to introduce two amendments to this clause. First, if the BA varies its previous determination with respect to certain service, it should give the concerned licensee a reasonable opportunity to make a representation and consider the representation. Second, in making a determination, the BA shall consider whether the service covers Hong Kong, the source of income, the language of the service, whether the service is actively marketed in Hong Kong, and so on.

We propose to amend clauses 13 and 14 with respect to competition provisions. This will include adding prohibition on competitive act distorting the television programme service and specifying clearly that only television programmes produced wholly or substantially by the licensee of the service can be exempted from restrictions imposed by clause 13. Furthermore, exemptions granted in relation to the restrictions imposed on any person from using or exploiting his artistic talent or ability shall be deleted and replaced by other

exclusions in clause 13 as prescribed by way of subsidiary legislation. For the avoidance of doubt, we will also specify that clause 13 will not prejudice any rights arising from the law related to copyright or trademarks.

On clause 20, we propose to introduce an amendment to require licensees to, on or before 1 April of each year, provide relevant information in the prescribed manner to the BA to enable it to ensure whether or not licensees or persons exercising control over licensees are fit and proper.

We also propose to amend clause 23 to require the BA to make arrangement to publish in the Gazette or in such other manner as it thinks fit the guidelines issued under this Ordinance to enhance the transparency of the BA's regulation of licensees.

We will introduce two major amendments to clause 24 to, first, state clearly the BA's objective of investigating a licensee's business. This amendment defines the power conferred upon the BA by this Ordinance in a clearer manner. For the avoidance of doubt, we will add a new subclause to provide that Part XII of the Interpretation and General Clauses Ordinance with respect to unobtainable news material shall be applicable to this clause.

We propose to amend clause 25 with respect to the BA's right to obtain or acquire information from a person other than a licensee so as to better define the objective of obtaining or acquiring the information. The amendment serves to ensure that confidential information will only be disclosed in the public interest or after consideration of the representations made by the persons supplying the information. The persons shall not be liable for any civil liability under the relevant confidentiality agreement.

We will amend clause 26 to provide that the BA shall give the person supplying information in confidence a reasonable opportunity to make representations on a disclosure of information and shall consider all representations made.

We propose to amend clause 27 to empower the BA to, where it is considered that a financial penalty imposed under the section would not be adequate for a breach of the competition provisions, apply to the Court of First Instance to impose upon the licensee a financial penalty of not exceeding $2 million, or a sum not exceeding 10% of the turnover of the licensee in the relevant television programme service market in the period of the breach,

whichever is the higher. In addition, the BA shall not impose a financial penalty unless it is proportionate and reasonable.

The proposed amendment to clause 30 seeks mainly to add a new provision requiring the BA to conduct a public hearing before making the decision to suspend a licence for a domestic free or pay television programme service.

The amendment to clause 31 aims mainly to differentiate the ways to handle the suspension and revocation of licences in a more detailed manner. We will propose that the Chief Executive in Council shall, before exercising the power to revoke a licence, consider the recommendations of the BA and that the Chief Executive in Council or the BA shall, before exercising the power to revoke a licence, consider such information, matter and advice as he thinks fit.

For the avoidance of doubt, we propose to amend clause 35 to stipulate that the Court of First Instance shall not make an interim order to enforce a prohibition unless it is satisfied that it is a case of urgency.

The proposed amendment to clause 41 will provide that, unless otherwise specified by the Ordinance, regulations made by the Chief Executive in Council under the Ordinance shall be subject to the approval of the Legislative Council.

We propose to amend clause 42 to provide that Schedule 3, that is, amendments to services excluded from the Bill, shall be subject to the approval of the Legislative Council.

As for the rest of the amendments to the abovementioned clauses and clauses 3, 16, 18, 21, 29, 33, 37 and 40, they are purely technical or textual amendments, which seek to enhance the clarity of the provisions for the purpose of achieving the desired effect.

All these amendments have been proposed subsequent to detailed discussion and consensus reached between the Administration and the Bills Committee. I hope Members can support the passage of these amendments.

Thank you, Madam Chairman.

Proposed amendments

Clause 1 (see Annex X)

Clause 2 (see Annex X)

Clause 3 (see Annex X)

Clause 4 (see Annex X)

Clause 6 (see Annex X)

Clause 7 (see Annex X)

Clause 9 (see Annex X)

Clause 10 (see Annex X)

Clause 11 (see Annex X)

Clause 12 (see Annex X)

Clause 13 (see Annex X)

Clause 14 (see Annex X)

Clause 16 (see Annex X)

Clause 18 (see Annex X)

Clause 20 (see Annex X)

Clause 21 (see Annex X)

Clause 23 (see Annex X)

Clause 24 (see Annex X)

Clause 25 (see Annex X)

Clause 26 (see Annex X)

Clause 27 (see Annex X)

Clause 29 (see Annex X)

Clause 30 (see Annex X)

Clause 31 (see Annex X)

Clause 33 (see Annex X)

Clause 35 (see Annex X)

Clause 37 (see Annex X)

Clause 40 (see Annex X)

Clause 41 (see Annex X)

Clause 42 (see Annex X)

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

MISS EMILY LAU (in Cantonese): Madam Chairman, I support the amendments proposed by the Secretary just now. The Secretary was right. They represented the outcome of our discussions. Many of the views were put forward by Honourable colleagues. That is why we very much welcome the proposal of these amendments by the Secretary.

I merely wish to talk about clause 35. Just now, there was not enough time for me to speak on this clause on the prohibition of television programmes. This provision already exists. However, I do not think it has ever been invoked in Hong Kong. If the Government prohibits any television programme at any time, I am sure it will not only cause a great stir in Hong Kong, but in the whole world as well.

Madam Chairman, the clause specifies what programmes will be prohibited. They include those which incite hatred against any group of persons, being a group defined by reference to colour, race, sex, religion, nationality or ethnic or national origins, and those which are likely to result in a general breakdown in law and order in Hong Kong, or gravely damage public health or morals in Hong Kong. In any of such an eventuality, the Chief Secretary for Administration may apply to the Court of First Instance for an order under clause 35(4).

As the Secretary said just now, she would propose an amendment to dispel any doubts. The original clause provides that where the Chief Secretary for Administration believes that a programme has problematic content, the Chief Secretary for Administration may apply to the judge unilaterally for an order. However, we think that the television company should be given a chance to reply to the charges. The Secretary will now amend the clause, stating that if the Chief Secretary for Administration makes an application unilaterally, the judge shall not make an interim order unless he is satisfied that it is a case of urgency.

Madam Chairman, you will probably agree that the criteria for prohibition quoted by me just now involve extraordinary circumstances. We will certainly not approve of programmes which incite hatred or result in a general breakdown in law and order in Hong Kong. However, I wish to point out that any proposal for prohibition must be handled very carefully. I support the Secretary's amendment. But since I did not have a chance to speak on this question just now, I am now raising this point again. While the Bill gives the Government the power to apply to the Court for prohibition of television programmes, the Government must use it very carefully. We have asked if the Chief Secretary for Administration would watch the programme beforehand to exercise censorship. This is not the case. We will certainly oppose prior censorship. The Chief Secretary for Administration may apply to the Court after learning about those programmes through other channels or because those programmes have aroused a lot of discussions in the community, and the Chief Secretary for Administration thus fears that they may produce the above-mentioned effects if they continue to be aired. In my view, unless the Chief Secretary for Administration can prove to the judge that it is a case of urgency, the broadcaster should certainly be given a chance of defence.

Madam Chairman, if the Government wishes to prohibit a programme at any time, the issues may be serious. It may have tremendous repercussions on various aspects of Hong Kong, including our reputation. It has never been done before. I hope it will never be done. If it must be done, then there must be a very good reason and the television company should be given a chance of defence as far as possible. The public should also be informed. I merely wish to express my views on this question. Thank you, Madam Chairman.

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

(No Member responded)

CHAIRMAN (in Cantonese): If not, I will ask the Secretary for Information Technology and Broadcasting to speak again.

SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING (in Cantonese): Madam Chairman, I agree with Miss Emily LAU that we do not want to see the emergence of such a situation where it is necessary for this provision to be invoked.

Clause 35(1) has provided expressly that the Chief Secretary for Administration will only make an application under clause 35(2) under certain specific circumstances, that is, extremely serious circumstances. As we have stipulated clearly that the Court shall decide whether it is a case of urgency, the final decision shall be vested with the court, which shall be responsible for issuing the prohibition order. We believe this provision is able to exercise checks and balance.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese):Clauses 1 to 4, 6, 7, 9 to 14, 16, 18, 20, 21, 23 to 27, 29, 30, 31, 33, 35, 37, 40, 41 and 42 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clause 14A Provisions supplementary to sections 13 and 14.

SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING (in Cantonese): Madam Chairman, I move that new clause 14A, as set out in the paper circularized to Members, be read the Second time.

After considering the views put forward by the Bills Committee and deputations, we propose to add this new clause to, firstly, provide that the Broadcasting Authority may, for the purposes of enforcement against anti-competitive conduct or abuse of dominance under sections 13 and 14, consider the conduct of an associate of a licensee, or the position of the associate in a television programme service market.

Secondly, a person sustaining loss or damage from a breach of section 13 or 14 may, within a specific time limit, bring an action for damages, a claim or an injunction against the defaulting licensee.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 14A be read the Second time.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clause 14A.

SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING (in Cantonese): Madam Chairman, I move that new clause 14A be added to the Bill.

Proposed addition

New clause 14A (see Annex X)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 14A be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedule 6.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedules 1 to 5, 7, 8 and 9.

SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING (in Cantonese): Madam Chairman, I move the amendments to the Schedules read out just now, as set out in the paper circularized to Members. I will now give a brief account on the amendments.

We propose to amend Schedule 1 for the main purposes of: first, setting out clearly before the heading of each Part its scope; second, setting out the considerations to be made by the Chief Executive in Council for granting exemption to restrictions on disqualified person exercising control on licensees on grounds of public interest, including the effect on competition in the relevant service market, the extent to which viewers will be offered more diversified television programme choices, the impact on the development of the broadcasting industry and the overall benefits to the economy.

The proposed amendment to Schedule 4 mainly sets out, *inter alia*, the minimum period for a domestic free television programme service to be not less than five hours for each day. This is in line with the existing requirement.

Moreover, in response to the suggestions made by the Bills Committee, we propose to amend the provisions related to licence fees to the effect that licence fees shall be prescribed in the form of subsidiary legislation rather than in the licences as originally proposed. Mrs Selina CHOW can rest assured that the Legislative Council may deliberate our proposed licence fees levied in accordance with the cost recovery principle.

Schedule 7 prohibits any other licensable television programme service licensees, the persons exercising control of the licensees, and the associates of the licensees from providing service to more than 200 000 specified premises. After considering the view put forward by the Bills Committee, we will introduce an amendment to delete "the Chief Executive in Council can exempt the restriction".

We propose to introduce certain amendments to the transitional arrangement under Schedule 8 to, *inter alia*, provide for the prescribed licensee fees as amended in Schedule 4 through enactment of regulation. Subsequent to this amendment, consequential amendment shall be made to the transitional arrangement under section 5 of Schedule 8 to cover the one-year period after the Bill has come into operation to enable the Administration to enact necessary regulation during this period. Secondly, existing licensees shall continue to comply with the old Code of Practice before the Building Authority (BA) issues a new Code.

We propose to make consequential amendments to Schedule 9 to provide that the financial penalty imposed on sound broadcasting licensees by the BA shall be proportionate and reasonable.

The rest of the amendments to the abovementioned Schedules as well as amendments to Schedules 2, 3 and 5 are purely technical or textual in nature.

The Bills Committee has expressed support for these amendments. I hope Members can support the passage of these amendments too. Thank you, Madam Chairman.

Proposed amendments

Schedule 1 (see Annex X)

Schedule 2 (see Annex X)

Schedule 3(see Annex X)

Schedule 4 (see Annex X)

Schedule 5 (see Annex X)

Schedule 7 (see Annex X)

Schedule 8 (see Annex X)

Schedule 9 (see Annex X)

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

MISS EMILY LAU (in Cantonese): Madam Chairman, section 3(2) in Schedule 1 empowers the Chief Executive in Council to exempt disqualified persons, so that they will become qualified. I already expressed my great reservations about this provision just now.

Madam Chairman, I would like the Secretary to clarify one thing. Just now, in her speech during the Second Reading, the Secretary said that there would be safeguards and that public interest would be considered. This refers to the amendment being made to the Bill. However, the Secretary also said that the vetting of the relevant applications for cable television licences was now at its final stage. While the Bill will certainly be passed today, I would like to know exactly when it will come into operation. Are the safeguards mentioned by the Secretary applicable to the present vetting? The Secretary said that some 10 companies had applied for a cable television licence. Will the provisions in the Bill be applied to these applications?

I have reservations about this clause. I feel that there should not be a proviso that the Executive Council may allow certain disqualified persons to become qualified and be granted a licence. However, the Secretary said that the passage of the Bill would set people's minds at rest. Can the Secretary please tell us when the Bill will come into operation and whether the applications now being considered will be directly affected?

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

(No Member responded)

CHAIRMAN (in Cantonese): If not, I will ask the Secretary for Information Technology and Broadcasting to speak again.

SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING (in Cantonese): Madam Chairman, I think I can make a point of clarification concerning the question asked by Miss Emily LAU.

With respect to the issue of licences under the Television Ordinance, the relevant exemption criteria are precisely those adopted by the Executive Council. In the past, there were case in which we granted exemption on the basis of these criteria. We believe that when licences are issued under the existing legislation, despite the lack of any express provision in law, we must also consider these criteria before we agree to grant any exemption. And, when licences are issued under the new legislation, because there will be express provisions, we will of course have to consider these criteria and explain each case of exemption.

Therefore, the question of new legislation or old legislation is not important at all, because we will continue to adopt the criteria which we have been adopting.

MISS EMILY LAU (in Cantonese): Madam Chairman, I asked the Secretary when the Bill would come into operation if it was passed. Clause 1 is about the Ordinance coming into operation on a day to be appointed by the Secretary by notice in the Gazette. I wonder if the Secretary knows when it will come into operation. The vetting of the applications for cable television licences is now at its final stage. I feel that it would be better if it can be regulated by the new law. Although the Secretary said that there were criteria under both the new and old Ordinances, it would be best if there were express provisions on this. Does the Secretary know when the Bill will come into operation after its passage and will the date of commencement affect the present vetting procedures?

SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING (in Cantonese): Madam Chairman, we definitely need to carry out some work procedures such as checking proofs and so on. The effective date shall be the coming Friday or the following one.

I want to stress that we will follow the usual criteria in considering whether or not exemption should be granted, whether before or after this new piece of legislation comes into operation.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedules 1 to 5, 7, 8 and 9 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading.

BROADCASTING BILL

SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING (in Cantonese): Madam President, the

Broadcasting Bill

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Broadcasting Bill be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese):Broadcasting Bill.

MOTIONS

PRESIDENT (in Cantonese): Motions. Council will now deal with eight resolutions proposed by public officers. The first one is the proposed resolution under the Hong Kong Court of Final Appeal Ordinance.

PROPOSED RESOLUTION UNDER THE HONG KONG COURT OF FINAL APPEAL ORDINANCE

CHIEF SECRETARY FOR ADMINISTRATION: Madam President, I move the resolution standing in my name in the Agenda. The resolution is to the effect that this Council endorses the appointment of Mr Justice Patrick CHAN and Mr Justice RIBEIRO as permanent judges of the Court of Final Appeal (CFA), the appointment of Mr Justice LITTON and Mr Justice CHING as non-permanent Hong Kong judges of the CFA, and the appointment of Sir Gerard BRENNAN, Sir Thomas EICHELBAUM and Lord MILLETT as non-permanent judges of the CFA from other common law jurisdictions.

The Panel on Administration of Justice and Legal Services of the Legislative Council discussed the legal and administrative matters relating to the appointment of judges of the CFA at its three special meetings held on 3, 13 and 17 June. Since it is the first time that the first Legislative Council considers the appointment of CFA judges, we fully understand Members' wish to be clear about the appointment procedures, to ensure that the exercise is conducted in the proper way. Representative from the Administration and the Secretary to the Judicial Officers Recommendation Commission (JORC) attended the meetings and we believe that the discussions were helpful.

As the Administration has explained to the Panel on Administration of Justice and Legal Services, in accordance with Article 88 of the Basic Law and sections 7, 8 and 9 of the CFA Ordinance, judges of the CFA shall be appointed by the Chief Executive in accordance with the recommendation of an independent commission, namely the JORC. Under the Judicial Officers Recommendation Commission Ordinance, the JORC is entrusted with the function to advise or make recommendations to the Chief Executive regarding the filling of vacancies in judicial offices. In the case of the appointment of judges of the CFA and the Chief Judge of the High Court, Article 90 of the Basic Law provides that the Chief Executive shall, in addition to following the procedures prescribed in Article 88, obtain the endorsement of the Legislative Council. Article 73(7) correspondingly confers on the Legislative Council the power and function to endorse the appointment.

The system of appointments by the Chief Executive acting in accordance with the recommendation of JORC, together with the provision for endorsement by the Legislative Council for appointment of the Chief Justice, the CFA judges and the Chief Judge of the High Court, reinforces the constitutional guarantee of the independence of the Judiciary stipulated in Article 85 of the Basic Law.

In accordance with Article 90 of the Basic Law, after all the above steps have been taken, the Chief Executive shall report the judicial appointments to the Standing Committee of the National People's Congress for the record.

Having set out the legal and constitutional background, I now turn to the current appointment exercise.

The legal qualifications required of CFA judges are set out in the CFA Ordinance.

A person is eligible to be appointed as a permanent judge if he is the Chief Judge of the High Court, a Justice of Appeal or a judge of the Court of First Instance; or a barrister who has practised as a barrister or solicitor in Hong Kong for a period of at least 10 years.

As for non-permanent Hong Kong judges, a person is eligible to be appointed if he is a retired Chief Judge of the High Court; a retired Chief Justice of the Court; a retired permanent judge of the Court; a Justice or retired Justice of Appeal; or a barrister who has practised as a barrister or solicitor in Hong Kong for a period of at least 10 years, whether or not he is ordinarily resident in Hong Kong.

A person is eligible to be appointed as a non-permanent judge from another common law jurisdiction if he is a judge or retired judge of a court of unlimited jurisdiction in either civil or criminal matters in another common law jurisdiction; provided he is ordinarily resident outside Hong Kong and has never been a judge of the High Court or District Court or a permanent magistrate in Hong Kong.

In accordance with the Basic Law and the CFA Ordinance, the JORC has recommended the appointment of Mr Justice Patrick CHAN and Mr Justice RIBEIRO as permanent CFA judges, Mr Justice LITTON and Mr Justice CHING as non-permanent Hong Kong CFA judges, and Sir Gerald BRENNAN, Sir Thomas EICHELBAUM and Lord MILLETT as non-permanent CFA judges from other common law jurisdictions. These recommendations have been communicated to the Chief Executive.

The Chief Executive was satisfied that the recommendations of the seven appointments were in order. In accordance with Article 88 of the Basic Law and sections 7, 8 and 9 of the CFA Ordinance, the Chief Executive has accepted the recommendations of the JORC on these appointments.

Mr Justice Patrick CHAN, currently Chief Judge of the High Court, is highly respected by Members of the Judiciary, the profession and the community for his utmost integrity and his distinguished judicial qualities. Mr Justice Patrick CHAN's appointment will increase the bilingual capability of the CFA. He would also be the first locally trained law graduate to reach the CFA. Mr Justice RIBEIRO was an outstanding legal practitioner. Since he joined the bench, he has served with great distinction in the Court of First Instance and now as a Justice of Appeal.

Pursuant to section 7(1) of the CFA Ordinance, Mr Justice Patrick CHAN and Mr Justice RIBEIRO are appointed with a view to succeeding Mr Justice LITTON and Mr Justice CHING.

Mr Justice LITTON, who has already reached the retirement age of 65, is on an extended term of three years from 1999 to 2002. He is resigning as a permanent judge of the CFA with effect from 14 September this year to give priority to his family commitments overseas.

Mr Justice CHING will be reaching his retirement age of 65 in October this year.

The rule of law and an independent Judiciary are of vital importance to the Hong Kong Special Administrative Region. The establishment of the CFA at the apex of the Judiciary is of particular importance. I would like to take this opportunity to pay tribute to Mr Justice LITTON and Mr Justice CHING who have played a key role in the early years of the CFA as two of the founding judges. They have made enormous contributions to the Judiciary and to the development of Hong Kong's legal system. We are fortunate to have judges of their stature serving on the CFA in its early years and we are most grateful for their contribution to its work.

Upon their ceasing to hold office as permanent judges of the CFA, Mr Justice LITTON and Mr Justice CHING are eligible to be appointed as non-permanent Hong Kong judges. They will be invaluable additions to the list having regard to their recent judicial experience in the CFA and we are most grateful for their willingness to serve in their new capacities. The term of their new appointments is three years.

The appointment of Mr Justice LITTON and Mr Justice CHING will bring the total number of non-permanent Hong Kong judges from 11 to 13.

At present, there are six non-permanent judges from other common law jurisdictions. The Chief Justice is of the view that a panel of only six non-permanent common law judges does not give sufficient flexibility for dealing with the CFA's increasing caseload, nor enable him to appoint a non-permanent common law judge to sit in each appeal as the need arises. The retired non-permanent common law judges are sometimes engaged in inquiries, arbitrations and judicial commitments in other jurisdictions. The non-permanent common law judges who are serving Law Lords, of course, have judicial and other commitments in the United Kingdom.

At the request of the Chief Justice, the JORC has considered the matter and recommended the appointment of Sir Gerard BRENNAN, immediate past Chief Justice of Australia, Sir Thomas EICHELBAUM, immediate past Chief Justice of New Zealand, and Lord MILLETT, Lord of Appeal in Ordinary in the United Kingdom, as non-permanent judges from other common law jurisdictions. All three judges have a preeminent reputation not only in their respective jurisdictions, but also throughout the common law world. They are invaluable additions to the overseas component of the CFA and will help further enhance the international standing of the Court.

These three appointments will bring the total number of non-permanent judges from other common law jurisdictions to nine. Together with the 13 non-permanent Hong Kong judges, the total number of non-permanent judges will be 22.

I urge Members to endorse the seven appointments.

With Members' endorsement and the completion of technical formalities, it is intended that the appointment of Mr Justice CHAN and Mr Justice RIBEIRO, made under section 7(1) of the CFA Ordinance, will take effect from 1 September this year. This is because Mr Justice LITTON will take leave from early August and Mr Justice CHING will have completed his tenure of office in early October. It is also intended that the appointment of Mr Justice LITTON and Mr Justice CHING as non-permanent Hong Kong judges will take effect upon their ceasing to hold office as permanent judges of the CFA. As for the new non-permanent judges from other common law jurisdictions, it is intended that their appointments will take effect from 28 July 2000 to coincide with the start of the extended term of other non-permanent judges.

To ensure that the effective functioning of the CFA would not be adversely affected, it is intended that the new bench should start work this September. Accordingly, the Administration seeks Members' support for this resolution today so that the constitutional process for appointment may be completed in the current legislative session.

Madam President, I recommend the resolution to Members.

The Chief Secretary for Administration moved the following motion:

"That —

(1) the appointment of —

(a) the Honourable Mr Justice Patrick Chan Siu Oi; and

(b) the Honourable Mr Justice Roberto Alexandre Vieira Ribeiro,

as permanent judges of the Hong Kong Court of Final Appeal pursuant to section 7 of the Hong Kong Court of Final Appeal Ordinance be endorsed;

(2) the appointment of —

(a) the Honourable Mr Justice Henry Denis Litton; and

(b) the Honourable Mr Justice Charles Ching,

as non-permanent Hong Kong judges of the Hong Kong Court of Final Appeal pursuant to section 8 of the Hong Kong Court of Final Appeal Ordinance be endorsed;

(3) the appointment of —

(a) the Honourable Sir Gerard Brennan;

(b) the Right Honourable Sir Thomas Eichelbaum; and

(c) the Right Honourable the Lord Millett,

as judges of the Hong Kong Court of Final Appeal from other common law jurisdictions pursuant to section 9 of the Hong Kong Court of Final Appeal Ordinance be endorsed."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Chief Secretary for Administration, as printed on the Agenda, be passed.

MISS MARGARET NG: Madam President, the motion before us is of the most profound significance. On behalf of the Chief Executive, the Chief Secretary for Administration has hereby sought the endorsement of this Council of the appointment of two permanent judges and five non-permanent judges of the Court of Final Appeal (CFA) acting in accordance with the recommendation of the Judicial Officers Recommendation Commission (JORC). Thus, the three branches of the Government of the Hong Kong Special Administrative Region (SAR) meet in this one act.

What was in the minds of the drafters of the Basic Law when they gave the legislature the power of endorsement, and required the Chief Executive to seek the endorsement of this Council for the appointments that he makes? What is his role and what is ours?

Interestingly, it seems that the Chief Executive's role is largely procedural. Under Article 48(6), of the Basic Law, he has the power:

> "to appoint or remove judges of the courts at all levels in accordance with legal procedures".

These legal procedures are the procedures under the Basic Law and the relevant Hong Kong legislation, namely:

- to appoint judges on the recommendation of the JORC (Article 88 of the Basic Law and section 7A of the Hong Kong Court of Final Appeal Ordinance); and

- to obtain the endorsement of the Legislative Council, and report the appointment or dismissal of judges to the Standing Committee of the National People's Congress (Article 90 of the Basic Law).

As far as the appointment of judges on the recommendations of the JORC is concerned, he has no discretion in the matter. He cannot pick and choose whom to appoint or not to appoint. He must appoint the persons recommended by the JORC.

His power to appoint members of the JORC is not conferred by the Basic Law, but comes from the Judicial Officers Recommendation Commission Ordinance. Moreover, under that Ordinance, having appointed the seven members to the Commission, he is precluded from influencing their decision (section 12, the Judicial Officers Recommendation Commission Ordinance). It is suggested that if the JORC's recommendation is in breach of the Basic Law or the Ordinance, the Chief Executive does not have to accept the recommendation. But I very much doubt the scope of his power in this respect.

In contrast to all that, the power the Basic Law confers upon this Council is wide and substantive. Article 73(7) of the Basic Law provides that this Council has the power:

> "to endorse the appointment and removal of the judges of the CFA and the Chief Judge of the High Court."

Just that. The power to endorse includes the power to withhold endorsement. No formality or procedural requirements are prescribed. The withholding of endorsement is not limited to any specified grounds.

Article 73(7) of the Basic Law is therefore an unqualified power. It is there for a purpose. It must have been contemplated by the drafters of the Basic Law that unforeseen circumstances may arise in which the elected legislature is the only power within the SAR to protect the independence of the Judiciary under the Basic Law.

Interference with the independence of the Judiciary does not have to come from the executive or from the Central Authorities in Beijing. It can even come from within the Judiciary or the JORC itself, with the acquiescence of the executive.

Let us say if the JORC consistently considers and recommends for promotion to the CFA or as the Chief Judge of the High Court only those judges who agree with the Chief Justice. The judges concerned may all meet all the qualifications stipulated in the Hong Kong Court of Final Appeal Ordinance. Yet recommendation on such a basis must ultimately undermine judicial independence. The Chief Executive may not want to or may not have the power to go against the recommendation. This Council should, and does have the power to stop such appointments from being given legal effect.

Article 92 of the Basic Law provides that judges "shall be chosen on the basis of their judicial and professional qualities". The implication is that political considerations must be excluded. Yet the appointment of judicially and professionally well qualified judges only if they do not have any political views is just as political as only appointing judges with pro-government or pro-Beijing political views.

I would say that excluding from consideration and appointment persons who have the right judicial and professional qualities on the grounds of their personal political convictions is itself political, and therefore in breach of Article 92 of the Basic Law.

Because, Madam President, to do so would be to make the holding or not holding of certain political views a prerequisite for judicial appointment.

Madam President, when Members of this Council asked for information from the JORC and from Administration to assist them in coming to a proper and conscientious decision on today's motion, concerns have been expressed that any active inquiry by this Council into the appointment system or process would "politicize" judicial appointment. But, ironically, it is only this Council which has the constitutional power to stop a political appointment or trend of appointments, if it should ever arise. It is therefore this Council's particular duty to stop such appointments from having effect under the Basic Law.

Madam President, unlikely as the above scenario are, this Council must be ever vigilant. The appointments on which this Council's endorsement is sought today give no cause for doubt. We can give our endorsement without hesitation. I would, with great respect, say that these are excellent appointments and the community is fortunate to have the services of these distinguished judges.

The Panel on Administration of Justice and Legal Services has held three special meetings in connection with today's motion. Although there were some initial hiccups, I am glad that the Administration has quickly amended the situation. As Chairman of the Panel, it is my pleasure to record my appreciation of their assistance.

But looking at the existing system of appointment, it is clear that it is unsatisfactory. The JORC is inherited with scant modification from the colonial era. There is no insulation of the Judiciary from the executive. Rather, they are thrown together behind closed doors. The executive branch has a strong presence in the JORC through the statutory membership of the Secretary for Justice. The Chief Executive appoints all of the seven other Members of whom one is recommended by the Hong Kong Bar Association and one recommended by the Law Society of Hong Kong. But two votes are not enough for a veto. In other words, a recommendation can be made even if it does not have the support of the legal profession.

In some ways, the JORC is worse than the colonial era. Under the former tradition, there was an invisible line between the Judiciary and the executive. There was at least a formal separation of identity of the Governor as the personal representative of the Queen and the head of the executive. That separation is gone. Constitutionally, there is no bar against a Chief Justice who is the statutory Chairman of the JORC, seeking the office of the Chief Executive.

Secrecy attending judicial appointments, buckling now under severe attack in the United Kingdom, is evoked as a protection from political interference in the SAR. Is this even logical, let alone credible? Is it not time now for the system to be reviewed, for greater transparency and fairness, and for further constitutional safeguards to be put in place if necessary? A more open and fair system will better protect the independent judge who is not afraid to be unpopular or inconvenient, and better protecting him will mean better protection for the ordinary citizen who may be up against the establishment.

Madam President, that must be the work for the future. This Council must always act with wisdom and circumspection in exercising any of its powers. Otherwise, it will lose the support of the community. But it must not lightly relinquish its right under the Basic Law to intervene on behalf of the community, whenever the protection of the public good requires it to do so.

Thank you.

MR ALBERT HO (in Cantonese): Madam President, this is the first time that the first Legislative Council of the Special Administrative Region (SAR) makes a decision whether to exercise the power conferred on it by Article 90 of the Basic Law, that is, whether or not to endorse the appointment of two permanent judges and five non-permanent judges of the Court of Final Appeal (CFA) by the Chief Executive on the recommendation of the Judicial Officers Recommendation Commission (JORC).

First, I wish to say that the Democratic Party certainly approves of the seven candidates recommended by the JORC for appointment as permanent and non-permanent judges of the CFA. In fact, the two permanent judges elect, Mr Justice Patrick CHAN and Mr Justice RIBEIRO, have an outstanding record and achievement in the legal and judicial sector and are highly respected by members of the public. I am greatly honoured to say that both of them have close links with the School of Law of the University of Hong Kong.

Mr Justice Patrick CHAN was a third class graduate of the Faculty of Law of the University of Hong Kong and a classmate of mine. Over the years, he has got on very well with the academic circle and his colleagues and his character is highly respected. While practising law, he excelled in his profession and also cared greatly about social issues. For instance, he often went to teach at trade unions and social workers' and journalists' associations, as well as offered assistance to needy people. He has also been praised for his work at court. His compassion and solicitude for wretched and helpless people are well known. He has always enjoyed an excellent reputation. Therefore, I am sure that Mr Justice Patrick CHAN's promotion to the CFA will be supported and praised by many people.

Mr Justice RIBEIRO was an early lecturer at the Faculty of Law of the University of Hong Kong. He was also a teacher of mine. He taught jurisprudence and his doctoral thesis was on legal philosophy. Thus, apart from being a successfully practising barrister, he is also well-versed in jurisprudence. As we all know, he has a proven record as a legal practitioner. When he was first appointed as a judge, it was hailed as an excellent choice by many people. After the appointment of these two judges to the CFA, I expect that they will contribute considerably to the future development of law in Hong Kong.

Mr Justice LITTON and Mr Justice CHING are also two senior members of the legal sector. On their departure, I am sure many people will extend to them their heartfelt thanks for their contribution to Hong Kong.

As for the other non-permanent judges and overseas non-permanent judges under appointment, while I do not know them personally, they all possess excellent qualifications. Therefore, I believe they are the right choice for appointment. I also hope that they will contribute to the future development of Hong Kong.

I wish to take this opportunity to say that in exercising the power conferred by Article 90 of the Basic Law, we have to fully understand our constitutional role. Today, Miss Margaret NG, Chairman of the Panel on Administration of Justice and Legal Services, has already discussed this matter comprehensively. In the Panel, we had many in-depth exchanges of views. I wish to express now the views of the Democratic Party.

First, let us first discuss what kind of power is conferred on the Legislative Council by Article 90 of the Basic Law. At first, when the Government submitted the papers to us, it suggested that our power was very limited. We were only supposed to examine whether the procedures followed by the JORC and the procedures of appointment by the Chief Executive were in compliance with the Basic Law. If they complied with the Basic Law, this Council must endorse the appointments. It did not have any discretion in this matter. In this connection, many colleagues in the Panel expressed many divergent views. In our view, the power conferred upon the Legislative Council by the Basic Law is substantive. In other words, the job of the Legislative Council is not just to monitor whether the appointments made by the Chief Executive comply with the Basic Law. Instead, we must look at the whole appointment process conscientiously, solemnly and carefully to decide if the appointments are proper, apart from compliance with the law. At the same time, I certainly understand the importance of judicial independence. I also understand that the JORC needs to operate independently and judicial independence is also an important constitutional principle. When the Legislative Council exercises this power, we must try to avoid unnecessarily politicizing the whole process, in order not to cause unnecessary damage to judicial independence. How can a balance be struck between these two considerations? We must think carefully and act prudently. As I said, in exercising this power, the Legislative Council must do

so conscientiously, solemnly and carefully. We have to act carefully not only to ensure that the appointments are proper, but also to avoid excessively or unnecessarily interfering with the selection process. Therefore, our present view is that under normal circumstances, if we are satisfied that the whole selection process is consistent with the law and the Basic Law, and the appointments made are uncontroversial generally and legally, we should try to avoid interfering or actively participating in a new selection process, even if we do not entirely agree that the appointments are the best. However, I wish to stress again that we still have a gate-keeping duty. "Gate-keeping" means if Members of this Council consider the character of the appointee to be doubtful, or we have reason to believe that there are improper political considerations in the appointment process, or if some persons are considered unsuitable due to other obvious reasons, we certainly have a duty to inquire into, investigate and examine it.

Thus, even if we support the recommendation of the JORC and the appointments made by the Chief Executive this time unconditionally and unreservedly, and we have not asked them to furnish additional documents so that we can look into the matter further, it does not mean that this Council does not have the duty or power to demand further inquiry into the selection process or the result of selection to examine if it is in order. In other words, it does not mean that we cannot make an inquiry. In future, this Council may find it necessary to more actively exercise this power to conduct inquiries, ask for information or conduct in-depth discussions before endorsing or not endorsing the appointments. We will certainly need to work out a procedure carefully. As I said, we do not wish to make people think that the procedure undermines judicial independence in any way. Therefore, should examination of the procedure in future be open? Should we discuss it openly just at the initial stage or at a certain stage? In future, Members of this Council will have to work out a set of rules or conventions. I do not think we have time to finish this discussion during this term of the legislature. However, I hope that the next Legislative Council, in particular the Panel on Administration of Justice and Legal Services (which I hope Miss Margaret NG will come back and continue to lead), will continue with this deliberation and establish a good procedure, so that we can uphold judicial independence while performing our duty.

I agree with what Miss Margaret NG said, and that is, with the establishment of a new constitutional system through the Basic Law, the structure and mode of operation of the JORC needs a comprehensive review. At present, the strongest criticism against it is the lack of transparency. If we did not raise any questions and simply acceded to the request made by the Government in May on us to pass the resolution this month, we might not even know how many applicants there were. We feel that the JORC needs to improve its procedures to increase transparency and accountability, in order to enhance the confidence of the people and the legal sector in the JORC, so that they will be convinced that the JORC is fair and independent. Therefore, I believe that this issue should be put on the Agenda for discussion in the next Legislative Council.

With these remarks, I recommend this motion to colleagues and urge them to support it. Thank you, Madam President.

MISS EMILY LAU (in Cantonese): Madam President, I rise to express my reservations about the resolution moved by the Chief Secretary for Administration.

Madam President, I am also very much disappointed with the manner in which the Chief Secretary for Administration and the Director of Administration have handled the matter.

Madam President, perhaps you may also remember that the Government issued a press release on 10 May, saying that it would appoint the seven judges to whom a number of Honourable Members have referred just now. At that time, the Legislative Council was not provided with any information in this connection. Madam President, despite the Legislative Council Briefs we are frequently furnished with, not a single paper on this matter has been sent to us. Actually, the said press release indicated that the Chief Secretary for Administration would table a resolution to this Council on 31 May like she does today, but maybe Members were so busy then that there was not much response from the Council. Later, at a meeting of the Panel on Administration of Justice and Legal Services, Mr James TO brought the matter up and inquired whether we should have some discussions, as a resolution would be presented to this Council on 31 May. Since we all felt a need to discuss the matter, we then resolved to conduct a meeting for this purpose on 3 June. Subsequently, we informed the Chief

Secretary for Administration through the Panel clerk that we had decided to discuss the matter, and that we would need more information on the resolution. We also requested the Chief Secretary for Administration not to move the resolution on 31 May. Naturally, the Secretary was ready to oblige, for she knew what would happen if she insisted on moving the resolution on 31 May before we could hold our meeting. Hence, in her speech just now the Chief Secretary for Administration has also referred to the three meetings held by the Panel under the chairmanship of Miss Margaret NG on 3, 13 and 17 June respectively.

Nevertheless, it was not until the last meeting that the Legislative Council Brief mentioned by me earlier was supplied to us. As a matter of fact, at the first meeting (which was held on 3 June) Mr Jimmy MA, Legal Adviser to the Council, already reminded us to note that no Legislative Council Brief was available then. Why should I consider the unavailability of Legislative Council Brief to be a problem? This is because the actions to be taken by the Government and the laws under which the actions are to be taken will be set out in detail in the relevant Legislative Council Briefs, just like the one we received on 17 June. Anyway, the said Legislative Council Brief was not available then, but nobody seemed to be concerned either. In the end, Mr Martin LEE asked the Government under which piece of legislation and on what basis had the resolution been made, and under what sections of the Court of Final Appeal Ordinance would the appointments be made. Since the Government officials attending the meeting then were unable to answer those questions, we really felt that we were indeed wasting our time. We could not help but find the whole matter ridiculous.

Madam President, with regard to the seven candidates referred to as highly commendable by Mr Albert HO just now, I believe some people may have the misconception that their appointments would certainly be approved, and hence there should be no need to give the Legislative Council any say in this matter. In their eyes, the Legislative Council is just a rubber stamp, and so the appointments will certainly be approved. Madam President, in case you do not believe that this kind of misconception does exist, the paper I have on hand here should be able to give you a clear picture of the situation. Actually some Members have also referred to the paper just now, but one must be very careful to notice the point concerned. This is a very interesting paper prepared by the Government for the meeting on 3 June; besides, the Secretary for Justice has also

had a finger in the pie. Mr Jonathan DAW, former Legal Adviser to the Council, was also in attendance at that meeting, which was the only meeting that he has attended. The last paragraph, which is paragraph 14, of the paper provided by the Secretary for Justice and the Chief Secretary for Administration's Office on 31 May says, "The Administration considers that the Council (which means we Members, Madam President) should endorse a judicial appointment if there has indeed been a recommendation of the Judicial Officers Recommendation Commission (JORC) for the appointment and that the Chief Executive has accepted the recommendation. The Council's endorsement should only be withheld where it is satisfied that the requirements set out in the Basic Law regarding judicial appointments have not been followed." As some people put it, this paragraph is like a red rag to a bull for the Council. We could hardly believe our eyes when we read that paragraph. Is the Government not treating us as a rubber stamp? Does it follow that we must give our endorsement right away after the Government has taken all those steps? Certainly not! Members from different parties and factions all questioned this paragraph gravely. So, this is one of the causes for concern. Naturally, the paper was withdrawn later on by the Government. However, the withdrawal of the paper will never change the fact that it has indeed been submitted to this Council. For this reason, I feel that what has actually happened must be clearly kept on record.

Madam President, the manner in which the Government has handled the entire matter is indeed deplorable. Trying to extract information from the Government is like extracting a tooth from its month; what is more, we have to carry out several extractions before a tooth could finally be taken out. At any rate, I must admit that on 5 June, two days after the first meeting which had almost ended on a sour note, the Government issued a notice saying that the Chief Secretary for Administration would defer the resolution until today — the resolution was meant to be moved yesterday, but thanks to Secretary David LAN, it was further postponed to today. So, we just kept asking the Government for further information and, at the same time, went on with our discussions. Actually, Madam President, during the deliberation process we noticed that the Rules of Procedure of the Legislative Council had not laid down any rules as to how we should exercise the power conferred on us by Article 73(7) of the Basic Law. Before then, I believe all Members of the Council — perhaps including you as well, Madam President — had never expected that we would need to exercise the power conferred on us by Article 73(7) of the Basic Law so soon.

Otherwise, the Committee on Rules of Procedure under the chairmanship of Mrs Selina CHOW and deputy chairman Miss Margaret NG would have discussed the matter before. Further still, even the House Committee might have referred to Article 73(7) of the Basic Law and initiated discussions about the manner in which the power should be exercised. According to Article 73(7) of the Basic Law, we have the power to endorse the appointment and removal of the judges of the Court of Final Appeal (CFA) and the Chief Judge of the High Court. As a matter of fact, the other powers conferred on the Council by the Basic Law must also be discussed. This is something that must be done. Hence, albeit I have no idea which one of us could be re-elected, I agree very much with what Mr Albert HO said just now in that regardless of who would be returned to this Council again in the new Legislative Session commencing this October, the issues in this respect must be dealt with expeditiously. This is because incidents similar to this one are bound to occur in the future. Madam President, as you are aware, upon promotion to the CFA, Mr Justice Patrick CHAN will take up the position of Chief Judge of the High Court. So, his appointment will need our endorsement by virtue of the power conferred by Article 73(7) of the Basic Law as well. I believe the future Legislative Council will certainly handle the matter in a more serious manner, rather than giving its endorsement after conducting just a few meetings like what we do this time.

Naturally, there will be people questioning whether the Legislative Council would "politicize" the appointments in seeking to exercise its powers. Frankly speaking, any matter brought to the Legislative Council will be politicized, any matter that needs to be voted on will inevitably be politicized. Nevertheless, I do agree that we should not overdo it. In the United States, for example, candidates for judicial appointments are required to attend hearings held by the Senate to answer questions raised by the relevant committees. The Confirmation Hearings on Clarence THOMAS's nomination a number of years ago should be the greatest sensation in this connection; in particular when Justice THOMAS was later on allegedly involved in a sexual harassment case and made a great stir across the world. Perhaps we may not need to go that far, but we should at least deliberate on the proper way to handle such appointments. Time and again some people have been advising us against following the practice of the United States Senate Confirmation Hearings. I understand that very well and I do not insist on adopting the American way. But should we just give our endorsement without discussing the matters concerned as the Government had first expected of us? Or should we give our endorsement after a few token

meetings by the Panel on Administration of Justice and Legal Services? If we give our endorsement in these ways, I am afraid we are not properly exercising the power conferred on us by Article 73(7) of the Basic Law. For this reason, during the meetings I requested the Secretariat to collect information on the experience of other countries in this respect, such as the way in which their respective parliaments exercise their relevant powers to endorse the appointment and removal of judges. I believe this is the work for the future Legislative Council, and I hope the Secretariat could give Members some help here.

Madam President, I just hope that the sloppy practice adopted this time will not form any precedent. Miss Margaret NG and Mr Albert HO also agree with me that the present case should not be taken as any precedent. Hence, if I should be lucky enough to be re-elected to this Council, I hope that we would have in place a set of prescribed procedures to handle the matter when being presented with resolutions of this kind, rather than giving our endorsement casually upon receiving the nomination list.

Madam President, why should I say earlier on that I had some reservations about the resolution? This is because the manner in which the Government has handled the matter was indeed very disappointing. Nevertheless, just now Mr Albert HO said that he would not raise any question about the candidates. Perhaps Mr HO knows these judges very well and is very much pleased with their appointment. I think this is fine with him. I am not a member of the legal profession and I do not know the judges well, but I should like to make it clear that proper procedure is one important part of the rule of law. So, Madam President, how do the procedures mentioned in the paper the Government submitted to this Council as being prescribed by the Basic Law work? According to the paper, a list of candidates recommended by the JORC for the judicial appointments concerned is to be submitted to the Chief Executive who will then present the recommendation to the Council if he accepts it; if the Legislative Council approves of the judicial appointments, it will give its endorsement and report the appointments to the Standing Committee of the National People's Congress for the record. These procedures could help to reinforce the constitutional guarantee of the independence of the Judiciary stipulated in Article 85 of the Basic Law. It is certainly a good thing if the procedures are followed properly, as all the parties involved will monitor each other and keep each other in check. However, Madam President, I must admit that I really do not know what had happened during those procedures. After

going into great pains to hold the said meetings, the only information we could obtain was that the Secretary to the JORC (which was the Judiciary Administrator) had shortlisted 90-odd candidates for the appointments. As regards the exact number of people shortlisted, perhaps Members may ask the Judiciary Administrator to provide them with a concrete answer later on. Naturally, the Judiciary Administrator had consulted the Chairman of the JORC, our Chief Justice Andrew LI of the CFA, before calling meetings to discuss the list of 90-odd candidates. After discussions, the JORC eventually selected the seven candidates whom some Members have praised highly just now. To call a spade a spade, I have no idea how the 90-odd names on the list could be reduced to seven within a very short time. I have inquired about it for many times, for I need to know whether there are any even better alternatives on top of the candidates selected, who are presumably the right choices. Nobody knows. So, Madam President, what have we learnt from the information provided by the Government? According to the Government, the Chief Executive noted that the JORC had recommended a number of candidates in accordance with the criteria of selection which require judges to be chosen on the basis of their judicial and professional qualities. But what does "judicial and professional qualities" mean? Just now the Chief Secretary for Administration has already read out the respective qualities of the candidates, let me repeat them here: Mr Justice Patrick CHAN is highly respected by Members of the Judiciary, the profession and the community for his utmost integrity and his distinguished judicial qualities. Mr Justice Patrick CHAN's appointment will increase the bilingual capability of the CFA. He would also be the first locally trained law graduate to reach the CFA. Mr Justice RIBEIRO was an outstanding legal practitioner. Since he joined the bench, he has served with great distinction in the Court of First Instance and now as a Justice of Appeal.

Madam President, while I do not have any reason to believe that the Secretary was not telling the truth in making those descriptions, I still wish to raise the following question: How many of the 92 shortlisted candidates possess similar qualifications? I have no idea. Madam President, I believe that if we are to exercise the power conferred on the Legislative Council by the Basic Law, we need to have more information as to whether the JORC has made every effort to select the most suitable candidates. Today, I dare say that the information provided by the executive could hardly convince us that the JORC has really done their best. Perhaps it has, but it has not demonstrated that to us. In this connection, some people might argue that subject to the constraints of

confidentiality under which it operates, the JORC is not allowed to disclose certain information. At a Panel meeting, Miss Margaret NG sought clarification as to whether it would be lawful for the JORC to disclose any information with the permission of the Chief Executive. The answer is of course in the affirmative. The Chief Executive has every reason to permit the JORC to provide the legislature with more information, so that the legislature will be satisfied that the JORC has indeed done its job. Regrettably, the Chief Executive did not exercise this power. The Government only provided us with the information I read out just now. I have no objection to the Government praising Mr Justice Patrick CHAN or Mr Justice RIBEIRO, but the question remains that I am not interested in how the Government praises them. All I want to know is why the remaining 80-odd candidates were not recommended. If I could not have the necessary information, how could I rubber-stamp the appointments as a Member of the legislature? How could I say in this Chamber that I am satisfied that I have been fully informed of the relevant details, and that the final outcome is fair to the remaining 80-odd candidates? Could I convince myself that the candidates recommended are better than the other candidates? No, I just could not do that. However, it does not necessarily follow that I am opposed to the resolution. This is because I also share the view of some Honourable colleagues that neither the community nor the legal profession has raised any strong objection to the appointments of the judges concerned. At any rate, I still consider the procedures of the entire matter far from satisfactory, and that the role of the Legislative Council has been overlooked by the Government in this case. In the circumstances, it is imperative for the Council to obtain assistance from the executive to discharge our responsibility; yet regrettably, we are not provided with the due support in this exercise.

Before I conclude, I should like to say that I agree very much with a view expressed by Miss Margaret NG just now. I hope that in the future when the Government select candidates for appointment as judges, it could abandon the existing vetting requirement relating to residence qualification. With regard to residence requirement, there is a substantial divergence of opinion even within the legal profession. I hope that in selecting candidates for appointment as judges in the future, the JORC, which is a very important body, will not bother about whether or not the political inclination of the candidates concerned is in line with that of the Chief Executive. I also hope that if there should be any future need for the Council to endorse resolutions of this kind, sufficient information will be provided for Members to enable them to better understand

the various aspects concerned, including the question of whether or not any political vetting has been conducted. That way, the Council could genuinely give support or raise objection to the proposals. I so submit.

MR MARTIN LEE: Madam President, the Democratic Party warmly supports these appointments, particularly the appointments of Mr Justice Patrick CHAN and Mr Justice Roberto RIBEIRO as permanent judges of the Court of Final Appeal (CFA). From my experience, my 34 years' experience at the Bar, I would go further than that. If any other person had been appointed instead of the two of them, I would have asked, "why not they?" They have not only shown integrity, but also judicial temperament which, to a practitioner at the Bar, is a very precious judicial quality, perhaps more important than patience on the part of a legislator. Because if a legislator is not patient, the electorate can, of course, refuse to re-elect him or her. But if a judge is not patient, I am afraid that we will be stuck with him or her.

But I have to say that I regret the way this matter was handled by the Administration. In saying this, let me not be misunderstood, as I do not intend to pass any comment or adverse comment on the appointees themselves. We have absolutely no problem with them and we warmly support them.

At the first meeting of our Legislative Council Panel on Administration of Justice and Legal Services on 3 June this year, the Administration's position was that the endorsement by this Council is not a substantive one. They did not use those words, but my impression was that we are supposed to be a rubber stamp, and that we should only challenge the appointment if the appointment has not been made according to law. My response to that was: If it was not even made according to law, it is invalid anyway. It does not require endorsement from us.

I also mentioned that in looking at our possible role in this matter, we must think of the worst case scenario. The example that I gave, was supposing that the CFA in three cases in a row were to rule against the Government; and then supposing that we are asked to appoint three additional new permanent judges to sit on the CFA, together, of course, with the existing ones. And we only find that the new ones are chosen to sit with the Chief Justice but not the old ones, although they are still there. And then suddenly, all the judgments were given in favour of the Government. Now, what would we say? Thus, we must not,

therefore, relinquish our role, our constitutional role, to carry out what I consider to be a substantive right. But of course, it does not mean that we would exercise this right every time an appointment is put before us for endorsement. But in a fitting case, I think that it would be a dereliction of duty on our part simply to rubber stamp it.

The next point, Madam President, which gave me serious concern was whether the appointments were made under section 7(1) or 7(2) of the Court of Final Appeal Ordinance. Section 7(1) appears to be a general power of appointment and it reads, "The permanent judges of the Court (that is the CFA) shall be appointed by the Chief Executive acting in accordance with the recommendation of the Judicial Officers Recommendation Commission (JORC)." So long as there is a recommendation from the JORC, the Chief Executive can appoint permanent judges. In other words, he does not have to wait until there is any vacancy. But section 7(2) has this to say:

> "If the office of any permanent judge becomes vacant, by death or otherwise and the number of permanent judges is thereby reduced to less than 3, the Chief Executive acting in accordance with the recommendation of the Judicial Officers Recommendation Commission shall as soon as reasonably possible after the office becomes vacant appoint another permanent judge to fill the vacancy."

We were shown a copy of the press statement at our first Panel meeting which was dated 10 May 2000, which contains this paragraph: "Mr Justice Patrick CHAN and Mr Justice RIBEIRO are appointed to fill the vacancies which will arise from the resignation of Mr Justice LITTON and the retirement of Mr Justice CHING", which of course is explained to us in the subsequent paragraphs that these will not take place until, in the case of Mr LITTON, 14 September this year, and, in the case of Mr Justice CHING, October this year.

Thus, I raise a query. Has the Chief Executive not jumped the gun, because these vacancies are not yet there? And I raise a number of points, because if there had been a mistake about it, if the Chief Executive had indeed jumped the gun, I would rather that he wait until the vacancies do arise in future and then make the appointments under section 7(2) and, if necessary, convene a Legislative Council Meeting as soon as the elections were over. It could be done on the day following the elections, for example on 11 September 2000, and then immediately to endorse the properly constituted appointments.

The alternative, I suggest, was perhaps to try to persuade Mr Justice LITTON to postpone the effective date of his resignation, since in the case of Mr Justice CHING, there is no problem because his retirement does not take effect until October. And I also urged the Administration not to cut corners, or they might face some possible challenge in court later on which would be most unthinkable.

At that point, of course, our Legal Adviser, Mr Jimmy MA, referred everybody, including the government representatives, to section 7(1) which I just read. In other words, the appointments could have been made under section 7(1) which is a general power and there need not be any vacancy. The appointments can be made immediately, and at the time of the financial implications involved, the Chief Executive can appoint more than three and then choose only three of them to sit with the Chief Justice and the foreign judge. And indeed, it was also not my understanding of the way the CFA has been working. Because, according to my personal knowledge, if any one of the permanent judges, including the Chief Justice, is not available because of holiday or whatever reason, then the practice is to appoint another judge from the other list, that is the list of local judges, non-permanent judges, to fill that vacancy for that case.

But of course, at the end of the day, it is a question of fact, Madam President, as to whether or not these appointments were indeed made under subsection (1) or subsection (2). So, it could be a very easy thing to resolve. It is only a question of fact. But unfortunately, we are not made wiser in spite of my raising these questions, because there is no mention of that in the resolution. We are told that the recommendations or the appointments were made simply under section 7 of the Court of Final Appeal Ordinance. We are not told whether it is subsection (1) or subsection (2). And we are also told that there was a memorandum from the JORC in which its recommendation was set out and adopted by the Chief Executive who signed his name on it. But of course, this copy of the recommendation was not produced and I have doubt if we could have called for its production.

Nor are the dates of appointments of these two permanent judges set out in the resolution, which has been criticized by Members. Nor was a draft speech of the Chief Secretary for Administration copied to Members when the notice of the resolution was given to this Council, and I understand that this was contrary to the established practice. Indeed, it was only when I rang somebody this morning that a copy was hastily faxed to me.

When these questions were raised at our second meeting, the Administration asked for time so as to be able to respond to these questions at our third meeting on 17 June. Then, the Legislative Council brief was presented by the Administration to our panel for our meeting on 17 June, which I have to say was a masterpiece of late awakening or a Jimmy MA-inspired second thought. We were told in paragraph 11 of the Legislative Council Brief that the Chief Executive had accepted the recommendation of the JORC in accordance with the Basic Law and section 7(1), and other subsections which are not relevant, of the Court of Final Appeal Ordinance. But we are not told, however, whether the JORC had made this recommendation under section 7(1) or 7(2) of the Ordinance. And paragraph 12 of the Brief reads as follows:

> "In exercising his power pursuant to section 7(1) of the Court of Final Appeal Ordinance, the Chief Executive noted the background to the need for appointments following the resignation of Mr Justice LITTON and the retirement of Mr Justice CHING respectively. The Chief Executive also noted that Mr Justice LITTON will be on pre-resignation leave as from 1 August 2000 and that Mr Justice CHING will have completed his tenure of office on 6 October 2000. The Chief Executive also noted that the appointments of Mr Justice Patrick CHAN and Mr Justice RIBEIRO are intended to the effect as from 1 September 2000 to ensure that the effective functioning of the CFA would not be adversely affected; those two judges are intended to succeed Mr Justice LITTON and Mr Justice CHING."

Now, we are not told, however, Madam President, that the Chief Executive took note of these things. Logically, he should have noted these things before or at the time of the appointments made under section 7(1), but if so, why were we not told of these very important facts earlier than that? And paragraph 28 of the same Legislative Council Brief was even more interesting. It talked about financial implications, and it reads:

> "The Administration notes that it is the intention of the Judiciary Administrator, supported by the Chief Justice, that he, as Controlling Officer, will create a supernumerary post of permanent judge of the CFA for a period of 13 days from 1 to 13 September 2000 under delegated authority to accommodate a replacement for a CFA permanent judge (that

is, Mr Justice LITTON) whilst on leave prior to completion of agreement. The Administration further notes that it is the intention of the Judiciary Administrator, again supported by the Chief Justice, that he will, under delegated authority, create another supernumerary post for a period of 36 days from 1 September to 6 October 2000 to accommodate another replacement for a CFA permanent judge (that is, Mr Justice CHING) prior to the completion of his tenure of office."

Now, we are asked to endorse these appointments even before their posts are created. The intention is not to have a pool of five permanent judges for the Chief Justice to choose three to sit with him and the foreign judge, but that Mr Justice CHAN and Mr Justice RIBEIRO should succeed Mr Justice LITTON and Mr Justice CHING. Then why are we spending more public money than necessary, and why not postpone the appointments only after the two offices fall vacant? I am afraid that the Director of Audit may have something to say as to that. But even more worrying, Madam President, is the fact that these appointments may be challenged in future by a litigant. I can only hope that these appointments were really made under section 7(1) and not section 7(2), although there is some evidence which seems to suggest the contrary, because the press notice dated 10 May this year reads:

"Mr Justice Patrick CHAN and Mr Justice RIBEIRO are appointed to fill the vacancies which will arise from the resignation of Mr Justice LITTON and the retirement of Mr Justice CHING."

So, these words, "to fill the vacancies", of course, are taken straight from section 7(2) of the Ordinance.

In spite of all that, Madam President, in spite of my worries about these matters, the appointments are warmly supported by my party.

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

(No Member responded)

CHIEF SECRETARY FOR ADMINISTRATION: Madam President, I thank Members for the views on their current exercise on the appointment of judges to the Court of Final Appeal (CFA). I note Members' concerns expressed, and I hear very clearly and I understand that the appointment arrangements will be further pursued by Members. And I can also assure Members that we in the Administration have also learnt from this experience. Next time round, we will strive to be more careful in handling similar situations.

Regarding the dates of appointment, I have already clarified the position in my earlier speech this afternoon and also in the Legislative Council Brief. As to the point raised by the Honourable Martin LEE about the press release, I think that a press release is a press release. It cannot be substituted as a legal document.

The rule of law, as I have said, and an independent Judiciary are of vital importance to the Hong Kong Special Administrative Region (SAR), and the CFA at the apex of the Judiciary is of particular importance. Indeed, the system of having judicial appointments made by the Chief Executive acting in accordance with the recommendation of the Judicial Officers Recommendation Commission, and in the case of senior judicial appointments further requiring endorsement by the Legislative Council, is of major significance in our system of constitutional checks and balances to ensure that independence of the Judiciary is preserved.

As Members have remarked, this is the first time that this first Legislative Council of the SAR exercises this important constitutional function. The Administration fully appreciates Members' wishes to ensure that the system works perfectly, and I share that, too. I hope that Members are now confident that they have fully discharged this constitutional duty with regard to the current appointment exercise.

Thank you.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by the Chief Secretary for Administration as printed on the Agenda, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Two resolutions under the Interpretation and General Clauses Ordinance. First motion.

PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

CHIEF SECRETARY FOR ADMINISTRATION: Madam President, the District Court (Amendment) Ordinance, passed by the Legislative Council on 17 May 2000, aims to adjust the various financial limits of the civil jurisdiction of the District Court and to introduce a civil procedural framework into the District Court which is more akin to that of the Court of First Instance. Following the passage of the Amendment Ordinance, the District Court Rules Committee made the Rules of the District Court and the District Court Civil Procedure (Fees) (Amendment) Rules at its meeting on 20 May. The Rules of the District Court were made to provide a comprehensive procedural framework for actions in the District Court. The District Court Civil Procedure (Fees) (Amendment) Rules incorporate the necessary amendments adopted from the corresponding provisions in the High Court Fees Rules. The two sets of Rules were presented to this Council for negative vetting on 24 May.

A Subcommittee of this Council was set up to examine the Rules. I am grateful to the Honourable Miss Margaret NG, the Chairman, and other members of the Subcommittee for their advice and useful comments in scrutinizing the Rules. Taking into account members' comments, I now move the amendments to the Rules of the District Court as attached to my notice submitted to this Council on 14 June. The amendments are minor and technical in nature and seek to bring the rules in line with the Rules of the High Court, to make both English and Chinese versions of the rules consistent, and to put matters beyond

doubt. These amendments have been considered and approved by the District Court Rules Committee at its meeting on 10 June this year.

It is our intention to bring both the District Court (Amendment) Ordinance and the two sets of Rules into operation in early September this year to allow adequate time for the legal profession and members of the public to familiarize themselves with the new civil procedural framework of the Court.

Madam President, I beg to move.

The Chief Secretary for Administration moved the following motion:

"That the Rules of the District Court, published as Legal Notice No. 186 of 2000 and laid on the table of the Legislative Council on 24 May 2000, be amended -

(a) in Order 11, rule 6(6), by repealing "具備" and substituting "以";

(b) in Order 13, rule 7A(1), by repealing "State" and substituting "state";

(c) in Order 18 -

(i) in rule 2(1), by repealing "the plaintiff" and substituting "every other party to the action who may be affected thereby";

(ii) in rule 22, by repealing "On making an order under rule 21 or at" and substituting "At";

(d) in Order 24, rule 7A, by adding -

"(7) In this rule, "a claim for personal injuries"（就人身傷害提出申索）means a claim for personal injuries or arising out of the death of a person.";

(e) in Order 33, rule 4(2), by repealing "或以不同的方式";

(f) in Order 37, rule 10(5), by repealing "聆訊要求作指示的傳票" and substituting "進行指示聆訊";

(g) in Order 52, rule 3(4), by repealing "it thinks he" and substituting "he thinks it";

(h) in Order 62, rule 9, by adding -

"(4) The Court in awarding costs to any person may direct that, instead of taxed costs, that person shall be entitled -

(a) to a proportion specified in the direction of the taxed costs or to the taxed costs from or up to a stage of the proceedings so specified; or

(b) to a gross sum so specified in lieu of taxed costs, but where the person entitled to such a gross sum is a litigant in person, rule 28A shall apply with the necessary modifications to the assessment of the gross sum as it applies to the taxation of the costs of a litigant in person."."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Chief Secretary for Administration, as printed on the Agenda, be passed.

MISS MARGARET NG: Madam President, in my capacity as Chairman of the Subcommittee on Rules of the District Court Civil Procedure (Fees) (Amendment) Rules 2000, I would like to make a few remarks on the Rules of the District Court.

To tie in with the commencement of the District Court (Amendment) Ordinance which was passed by the Legislative Council last month, the District Court Rules are proposed to be replaced by a set of new Rules. The Subcommittee has noted that the new District Court Rules are largely modelled on the Rules of the High Court where applicable, with suitable modifications to suit changing circumstances.

The Subcommittee has considered two proposals in detail.

The first proposal is that the District Court will have the power to order interim payment of costs forthwith without taxation in interlocutory proceedings. The Subcommittee has noted that it is the existing power of the High Court and the District Court to order interim payment of costs. The proposal is designed to achieve the benefits of discouraging frivolous interlocutory applications, reducing unnecessary costs and expediting the litigation process, without the risk of conducting a mini-taxation. The High Court (Amendment) Rules which were tabled in the Legislative Council on 10 May 2000 contain the same provision.

The second proposal is that the requirement of certificate of counsel should be retained where the amount recovered is less than $150,000. The Subcommittee has sought the views of the two legal professional bodies on the proposal.

The Law Society of Hong Kong supports the proposal. Some members of the Hong Kong Bar Association consider that the existing or proposed rule is discriminatory against representation by counsel and should be repealed. They also consider that "amount recovered" should be replaced with "amount claimed" as the former is ambiguous and could be interpreted to mean "amount recovered on enforcement" or the "amount recovered on execution".

In subsequent correspondence, the Administration has advised that the introduction of the rule is intended to keep costs at a reasonable level proportional to the jurisdictional limit of the District Court. It is clarified that the "amount recovered" refers to the sum awarded, since counsel's certificate is applied for and dealt with at or about the giving of the judgment. The Administration considers that this is a more objective yardstick in measuring proportionality than the "amount claimed".

Members of the Subcommittee are of different views as to the rule and the threshold for dispensation. However, noting the Law Society of Hong Kong's stance and the Administration's agreement to review the rule and the threshold of $150,000 in the context of the review of the jurisdictional limits of the District Court to be conducted in two year's time, the Subcommittee agrees to support the proposal.

In response to the Subcommittee, the Chief Secretary for Administration has just moved a resolution to introduce a number of technical amendments to the Rules of the District Court. These amendments have the support of the Subcommittee.

Madam President, now I should like to add a few words of my own, following the enactment last month of the District Court (Amendment) Ordinance. I have had the opportunity to discuss in detail the Ordinance and the draft Rules with members of both branches of the profession. The response is generally supportive, but two points are raised for the future.

First, some practitioners wish to see the District Court develop into a court with simpler rules and procedures in keeping with its limited jurisdiction. Only with simpler rules can lower costs be realistic. They understand that because of the pressure of time, rules almost identical to the High Court Rules, where applicable, have been adopted to the District Court. They agree that this is the right approach for this exercise because it would avoid confusion. But in the promise to review the operation of the District Court, the relevant committee should consider not just whether the financial jurisdiction should be further increased, but also whether the procedures could be simplified.

Secondly, there is strong feeling from the Bar that while giving solicitors a wider scope to engage in advocacy in the District Court, the new legislation should not operate to discriminate against barristers. Barristers' fees are not necessarily higher than solicitors' fees. In any event, maximum flexibility and choice should be retained for the litigants. In suitable cases, instructing barristers may, in fact, be the best way to achieve cost-effective results and maintaining quality. The Administration should gather necessary data in preparation for the review in two year's time. The rule requiring certificate for counsel and the threshold of $150,000 for the certificate to be dispensed with should be part of the review.

Madam President, I think these are fair points to raise and I urge the Administration to bear them in mind. Thank you.

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

(No Member responded)

CHIEF SECRETARY FOR ADMINISTRATION: Madam President, I would like to thank the Honourable Miss Margaret NG for her views that she has raised.

The aim of the proposed empowerment of the Court to order interim assessment and payment of costs forthwith without taxation is to discourage frivolous interlocutory applications without the risk of conducting a mini-taxation, and hence incurring further expense and delay. The proposed power can also be used effectively by the Court to redress the balance between the parties, where one party may be disadvantaged by having to pay his own lawyer heavy fees caused by unnecessary interlocutory applications brought by the other. This is of particular importance to a litigant who is less resourceful. He will be able to immediately recover at least part of his costs incurred for those applications. The interim assessment and payment of costs can reduce unnecessary costs and expedite the litigation process. The proposal will be introduced to the District Court this year.

The existing District Court Civil Procedure (Costs) Rules provide that the counsel's fee may not be allowed on taxation unless the judge has certified the matter to be fit for counsel. The working party chaired by Mr Justice KEMPSTER with members from the two legal professional bodies recommended that the certificate requirement should be retained where the amount recovered is less than $150,000, having regard to the fact that the District Court, even after the increase in its jurisdictional limits, will still deal with smaller claims at less expense. This recommendation was accepted by the District Court Rules Committee chaired by the Chief Justice.

The Judiciary has committed to conduct a review of the jurisdictional limits of the District Court following the implementation of the District Court (Amendment) Ordinance and the Rules of the District Court for two years. The level of the threshold for the dispensation of certificate requirement will be reviewed in that context.

Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by the Chief Secretary for Administration, as printed on the Agenda, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): The second motion moved under the Interpretation and General Clauses Ordinance.

PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Madam President, I move the second motion standing under the Interpretation and General Clauses Ordinance in my name on the Agenda.

In his Budget speech made in March this year, the Financial Secretary announced the Government's plan to reorganize its institutional framework in the trade and industry departments to advance initiatives for promoting innovation and technology, attracting inward direct investment and supporting industry and commerce. The reorganization plan has been considered by the Legislative Council Panel on Trade and Industry in detail and is supported by the Panel. The Establishment Subcommittee under the Finance Committee of the Legislative Council and the Finance Committee have endorsed the changes in staff establishment arising from the reorganization. The new institutional arrangement will take effect on 1 July 2000.

Following the reorganization, policy responsibilities for consumer protection and regulation of outbound travel agents will be transferred from the Trade and Industry Bureau to the Economic Services Bureau, whereas the new Innovation and Technology Commission will take over from the Industry Department general duties regarding standards on weights, measurements and product safety. As a result of these changes, certain statutory functions currently exercised by the Secretary for Trade and Industry and the Director-

General of Industry have to be transferred respectively to the Secretary for Economic Services and the Commissioner for Innovation and Technology. These include:

- functions exercised by the Secretary for Trade and Industry under relevant provisions of the Travel Agents Ordinance, the Toys and Children's Products Safety Ordinance and the Consumer Goods Safety Ordinance; and

- functions exercised by the Director-General of Industry under relevant provisions of the Weights and Measures Ordinance, the Toys and Children's Products Safety Ordinance and the Consumer Goods Safety Ordinance.

In accordance with section 54A of the Interpretation and General Clauses Ordinance, the Legislative Council may by resolution amend the relevant legislation to effect the transfer of the abovementioned statutory functions.

I hope Members will support this motion. Thank you.

The Secretary for Trade and Industry moved the following motion:

"That with effect from 1 July 2000 -

(1) the functions exercisable by the Secretary for Trade and Industry (title to be changed to Secretary for Commerce and Industry on the date this Resolution takes effect) by virtue of -

(a) section 50(1) of the Travel Agents Ordinance (Cap. 218);

(b) sections 4, 6, 14(3), 15(1) and (3), 16(1) and 35(1) of the Toys and Children's Products Safety Ordinance (Cap. 424); and

(c) sections 5, 13(2), 14(1) and (3), 15(1) and 30(1) of the Consumer Goods Safety Ordinance (Cap. 456),

be transferred to the Secretary for Economic Services;

(2) section 50(1) of the Travel Agents Ordinance (Cap. 218) be amended by repealing "Secretary for Trade and Industry" and substituting "Secretary for Economic Services";

(3) sections 4, 6, 14(3), 15(1) and (3), 16(1) and 35(1) of the Toys and Children's Products Safety Ordinance (Cap. 424) be amended by repealing "Secretary for Trade and Industry" and substituting "Secretary for Economic Services";

(4) section 2 (in the definition of "Secretary") of the Consumer Goods Safety Ordinance (Cap. 456) be amended by repealing "Secretary for Trade and Industry" and substituting "Secretary for Economic Services";

(5) the functions exercisable by the Director-General of Industry by virtue of -

(a) section 8(3) of the Weights and Measures Ordinance (Cap. 68);

(b) section 9(1) of the Toys and Children's Products Safety Ordinance (Cap. 424); and

(c) section 11 of the Consumer Goods Safety Ordinance (Cap. 456),

be transferred to the Commissioner for Innovation and Technology;

(6) section 8(3) of the Weights and Measures Ordinance (Cap. 68) be amended by repealing "Director-General of Industry" and substituting "Commissioner for Innovation and Technology";

(7) section 9(1) of the Toys and Children's Products Safety Ordinance (Cap. 424) be amended by repealing "Director-General of Industry" and substituting "Commissioner for Innovation and Technology";

(8) sections 2 (in the definition of "approved laboratory") and 11 of the Consumer Goods Safety Ordinance (Cap. 456) be amended by repealing "Director-General of Industry" and substituting "Commissioner for Innovation and Technology"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Trade and Industry, as set out on the Agenda, be passed.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by the Secretary for Trade and Industry, as set out on the Agenda, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Proposed resolution under the Fixed Penalty (Criminal Proceedings) Ordinance.

PROPOSED RESOLUTION UNDER THE FIXED PENALTY (CRIMINAL PROCEEDINGS) ORDINANCE

SECRETARY FOR TRANSPORT (in Cantonese): Madam President, I move that the Schedule to the Fixed Penalty (Criminal Proceedings) Ordinance be amended.

This motion seeks to amend the different ways of handling drivers' contraventions on the existing legislation on seat belts to make the relevant ordinances consistent.

At present, driver offences relating to himself or front seat passengers not wearing seat belts have been included in the fixed penalty schedule, but those driver offences relating to middle front seat and rear seat passengers have not been included. If prosecution is to be made, it has to be done by serving summons. To achieve consistency and facilitate enforcement actions by the police, we propose to incorporate all driver offences relating to the seat belt legislation be included the fixed penalty schedule.

Madam President, I beg to move.

The Secretary for Transport moved the following motion:

"That, with effect from 1 January 2001, the Schedule to the Fixed Penalty (Criminal Proceedings) Ordinance be amended -

(a) in the Chinese text, by repealing items 37, 38 and 39 and substituting -

"37.	第 3(1)條	在沒有戴上防護頭盔的情況下駕駛電單車	$320
38.	第 7(1)(a)條	在沒有穩妥繫上安全帶的情況下駕駛私家車	$320
39.	第 7(3)條	在前排座位乘客沒有穩妥繫上安全帶的情況下駕駛私家車	$230";

(b) by repealing items 50 to 55 inclusive and substituting -

"50.	Regulation 7A(1)(a)	Driving taxi without being securely fastened with seat belt	$320
51.	Regulation 7A(1)(a)	Driving light bus without being securely fastened with seat belt	$320
52.	Regulation 7A(1)(a)	Driving goods vehicle without being securely fastened with seat belt	$320
53.	Regulation 7A(3)	Driving light bus when front seat passenger under 15 years of age not securely fastened with seat belt	$230
54.	Regulation 7A(3)	Driving goods vehicle when front seat passenger under 15 years of age not securely fastened with seat belt	$230
55.	Regulation 7B(2)	Driving private car when rear seat passenger not securely fastened with seat belt	$230

55A.	Regulation 7B(3)	Driving private car when rear seat passenger under 15 years of age not securely fastened with seat belt	$230
55B.	Regulation 7B(6)	Driving private car when rear seat passenger occupies rear seat without seat belt when there is vacant rear seat with seat belt	$230"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Transport, as set out on the Agenda, be passed.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by the Secretary for Transport, as set out on the Agenda, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Proposed resolution under the Factories and Industrial Undertakings Ordinance.

PROPOSED RESOLUTION UNDER THE FACTORIES AND INDUSTRIAL UNDERTAKINGS ORDINANCE

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, I move that the motion, as printed on the Agenda, be passed.

Section 15(1)(b) of the Factories and Industrial Undertakings (Asbestos) Regulation mentions that the Hong Kong Laboratory Accreditation Scheme is managed by the Industry Department. As the Industry Department will be replaced by the newly established Commission for Innovation and Technology with effect from 1 July 2000, I therefore propose to amend the Regulation to transfer the responsibility of managing the Scheme to the Commissioner for Innovation and Technology.

Subject to the approval of this Council, this amendment shall come into effect on 1 July 2000.

Thank you, Madam President.

The Secretary for Education and Manpower moved the following motion:

> "That the Factories and Industrial Undertakings (Asbestos) (Amendment) Regulation 2000, made by the Commissioner for Labour on 13 May 2000, be approved."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Education and Manpower, as set out on the Agenda, be passed.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by the Secretary for Education and Manpower, as set out on the Agenda, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Two resolutions proposed under the Mandatory Provident Fund Schemes Ordinance and the Interpretation and General Clauses Ordinance.

The first resolution.

PROPOSED RESOLUTION UNDER THE MANDATORY PROVIDENT FUND SCHEMES ORDINANCE AND THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam President, I move that the first motion under the Mandatory Provident Fund Schemes Ordinance and the Interpretation and General Clauses Ordinance, as set out in the paper circularized to Members, be passed.

The mandatory provident Fund Schemes (General) (Amendment) Regulation 2000 , hereinafter referred to as "the Amendment Regulation", aims to:

(i) enhance the protection of the interests of employees and employers;

(ii) facilitate the work of the Mandatory Provident Fund (MPF) Schemes Authority;

(iii) clarify certain anomalies in the Regulation; and;

(iv) resolve some of the operational difficulties encountered by members of the MPF industry.

The Legislative Council Subcommittee on MPF Schemes has scrutinized the Amendment Regulation in detail, and members have expressed a number of concerns and consulted the trustee industry on the Amendment Regulation. In view of their concerns over the provisions of the Amendment Regulation, we have introduced several technical amendments. I shall give a concise account of the Amendment Regulation and the new amendments we have proposed.

Concerning the protection of the interests of consultants and employers, clause 6 of the Amendment Regulation proposes that as long as an employer and a preserved account holders have complied with all the statutory requirements, a trustee must not refuse their applications for participation in the relevant scheme. It is also stated that a trustee must not unilaterally request an employer or scheme member to terminate their participation in a scheme.

Under the existing Regulation, where scheme assets are placed on deposit, interest is not required to be received. Under clause 13 of the Amendment Regulation, where the scheme assets are placed on deposit, the approved trustee must ensure that the rate of interest received for the deposit is reasonable. A trustee commits a criminal offence if he fails to do so. However, in view of Members' concern about this penalty, we now propose an amendment to delete the proposal on criminal liability.

In the course of enforcing the Regulation, the MPF Authority has noticed some anomalies which need to be clarified. For example, under the Mandatory Provident Fund Schemes Ordinance, an employer must arrange for his employees to become members of a provident fund scheme within the "permitted period". Currently, the permitted period specified by the MPF Authority is 60 days. However, as the existing Regulation is worded, an employer is already required to make contributions even before the expiry of the permitted period (that is, before he is required to arrange for his employees to become members of a provident fund scheme). This is inconsistent with our policy intent of introducing the permitted period. Clause 18 of the Amendment Regulation provides that neither employers nor employees are required to make any contribution during the permitted period.

Under the existing Banking Ordinance and Insurance Companies Ordinance, for the purpose of ascertaining the assets of a bank or insurance company, the reference to "liabilities" may exclude a subordinated debt of the bank or insurance company concerned under some circumstances. However, this is not the case for the existing Regulation. To achieve uniformity, clause 2 of Amendment Regulation proposes to apply the arrangement adopted by the Banking Ordinance, so that the subordinated debt of substantial financial institutions (that is, banks, insurance companies and registered trustees) can be similarly treated. For the sake of increased clarity, I now propose to amend the new clause 7(2), so as to specify that in ascertaining the net assets of substantial financial institutions, the reference to liabilities may exclude subordinated debts in some circumstances.

People in the mandatory provident fund industry, particularly trustees and custodians, have said that since some of the provisions of the Regulation are not quite in line with the usual practices adopted in the industry, they do have some difficulties in complying with these regulations.

According to the existing Regulation, the trustee of a registered mandatory provident fund scheme must ensure that the contract appointing a custodian should include a custodial agreement which meets the requirements stipulated in Schedule 3 of the Regulation. Similarly, the agreement executed between the custodian and the sub-custodian must also meet the requirements of the relevant provisions. The industry is of the view that certain requirements under the provisions of the relevant agreements are not in line with the usual practices

adopted by the custodian industry worldwide. As a result, it is impossible for custodians and sub-custodians to fully meet the requirements under the relevant agreements.

To resolve this problem, we propose that the MPF Authority should be given discretionary power to waive or modify the requirements under Item 3 of Schedule 3 concerning the handling of scheme assets, compensation for losses and manner of keeping records of clients' assets. However, the MPF Authority should exercise this discretionary power only under the following circumstances:

(1) When it is of the view that compliance with the relevant provisions may cause excessive hardship to a custodian or his delegate;

(2) if a custodian or his delegate is rendered unable to fulfill the relevant requirements by the laws of Hong Kong or other places; or

(3) if compliance with the relevant requirements is not in line with the interests of scheme members.

During the deliberations of the Subcommittee, the custodian sector pointed out that there were anomalies in Item 1(b) of the existing Schedule 3 on the manners of handling scheme assets. It was pointed out that instead of empowering the MPF Authority to exercise discretion on a case-to-case basis, it was better to lay down the manners clearly. The Subcommittee shared this view, and we also think that this is acceptable. That is why I have moved an amendment to specify that scheme assets must be entrusted to a custodian for his proper custody, and that such assets must be separated from the assets of the custodian and the sub-custodian. The discretionary power of the MPF Authority as originally proposed will be removed accordingly.

Besides, under section 5 of Schedule 3, a custodian or sub-custodian must make compensation to a scheme for any direct or indirect losses suffered by scheme members that can be ascribed to any of their acts. As it is now worded, the relevant provision covers all indirect losses, such as the loss of profits resulting from a failure to invest in a bond with rising prices. Trustees and custodians are worried that the inclusion of indirect losses will impose unlimited liabilities on them. They are also of the view that this requirement actually runs counter to the usual practice adopted by major overseas financial markets. In

view of the concern of the Subcommittee and the industry, we agree to delete the reference to indirect losses in the relevant provision.

The industry also pointed out to the Subcommittee that a custodian may encounter practical difficulties when trying to submit regular reports on major activities in compliance with the technical requirements under sections 6(1)(a), 6(2) and 7(a) of Schedule 3 in respect of sub-custodians. In view of this, I now propose an amendment under which the MPF Authority can exercise discretion to waive or amend the relevant requirements in a custodial agreement under the special circumstances mentioned above.

Madam President, with only a few exceptions, section 65 of the Regulation and section 3 of Schedule 3 require that scheme assets must not be subject to an encumbrance. However, this requirement may cause operational difficulties to trustees and custodians. It is now a common practice among many asset depositories and custodians to charge scheme assets or exercise a lien on them. Such actions will subject scheme assets to encumbrance and therefore violate the Regulation. For this reason, if this requirement is not relaxed, the investment potentials of scheme assets in the securities market will be drastically reduced, and trustees and custodians will be prevented from using financial futures and currency forward contracts as a means of risk hedging.

In view of this, we now propose to amend the Regulation, so that depositories or sub-custodians can exercise a lien on scheme assets, and the encumbrance created for the purpose of administering margin accounts can be permitted. These amendments will not affect the protection of scheme assets. Leverage will continue to be strictly prohibited.

Besides, section 65 of the existing Regulation also provides that scheme assets shall be subject to no encumbrance, other than an encumbrance relating to specified "exceptions". These "exceptions" seek to limit borrowings to circumstances under which temporary loans are required to pay accrued benefits or complete transactions connected with scheme assets. The time limits for borrowings of these two types are 90 days and 7 days respectively. The Subcommittee and the industry have expressed the concern that section 65 as it is currently worded may not be able to reflect the actual situation, that is, the situation under which the time limits for such borrowings may sometimes have to be extended due to reasons having nothing whatsoever to do with trustees. Our

original policy intent is that when a borrowing is made, a trustee should ensure that it is unlikely that the period of borrowing will exceed the upper limit. And, we are of the view that at the time when a borrowing is made, it will be impossible to predict whether or not the period of borrowing will actually exceed the time limit in the end. For this reason, we now propose to amend section 65 to improve the drafting. We also propose consequential amendments to the same provisions contained in section 3 of Schedule 3.

In addition, we also propose to incorporate a series of technical amendments into the Regulation to remove anomalies and clarify our policy intent.

The amendments proposed by us are basically technical in nature, and they have been endorsed by the Subcommittee. The early implementation of these amendments will help remove the anomalies of the Regulation and enhance the protection of the interests of employers and employees, thereby doing good to the full-scale implementation of MPF Schemes.

I call upon Members to support the motion and endorse the Mandatory Provident Fund Schemes (General) (Amendment) Regulation with the proposed amendments. Thank you.

The Secretary for Financial Services moved the following motion:

"That the Mandatory Provident Fund Schemes (General) (Amendment) Regulation 2000, made by the Chief Executive in Council on 21 March 2000, be approved, subject to the following amendments -

(a) in section 2 -

(i) by deleting paragraph (b)(ii);

(ii) in paragraph (c), in the proposed section 7(2), by adding "in the determination of net assets as referred to" after ""liabilities"";

(b) by deleting section 12 and substituting -

"**12. Approved trustee to ensure that scheme assets are not improperly encumbered**

Section 65 is amended -

(a) in subsection (2) -

(i) by repealing paragraph (a)(iii) and substituting -

"(iii) at the time the borrowing was made, it was unlikely that the period of the borrowing would exceed 90 days; or";

(ii) in paragraph (b) -

(A) by repealing subparagraph (iii) and substituting -

"(iii) at the time the borrowing was made, it was unlikely that the period of the borrowing would exceed 7 working days; and";

(B) in subparagraph (iv), by repealing the full-stop and substituting "; or";

(iii) by adding -

"(c) is created for the purpose of securing a claim of payment for the safe custody or administration of the scheme assets by a central securities depository or a delegate of a custodian; or

(d) is created for the purpose of acquiring a financial futures contract pursuant to section 14 of Schedule 1 or a currency forward contract pursuant to section 15 of Schedule 1; or

(e) is created by the operation of law in Hong Kong or in a place outside Hong Kong.";

(b) by adding -

"(4) For the avoidance of doubt, it is hereby declared that any encumbrance created over the scheme assets of a registered scheme that is, at the time of creation, consistent with the exception under subsection (2) shall remain valid throughout the period for which the borrowing concerned remains outstanding.".";

(c) by deleting section 14;

(d) in section 23 -

(i) by deleting paragraph (a) and substituting -

"(a) by repealing section 1(b) and substituting -

"(b) to be entrusted to the custodian for safe keeping; and

(c) entrusted to the custodian -

(i) where the scheme assets are in registered from, to be -

(A) registered in the name of the custodian or its delegate; or

(B) administered and dealt with by the custodian or its delegate in such manner as may be customary and prudent in the relevant market;

(ii) where the scheme assets are in bearer form, to be held in the physical possession of the custodian or its delegate; and

(d) to be segregated from the custodian's and its delegates' assets.";";

(ii) in paragraph (c) -

(A) by deleting subparagraph (i) and substituting -

"(i) by repealing paragraphs (a) and (b) and substituting -

"(a) where the encumbrance is created for the purpose of securing an amount borrowed to enable accrued benefits to be paid to or in respect of scheme members, and then only if -

(i) the amount borrowed (together with any other borrowings made for the same purpose) does not exceed 10 per cent of the market value of the scheme assets at the time of the borrowing; and

(ii) the borrowing is not part of a series of borrowings; and

(iii) at the time the borrowing was made, it was unlikely that the period of borrowing would exceed 90 days; or

(b) where the encumbrance is created for the purpose of securing an amount borrowed to settle a transaction relating to the acquisition of scheme assets, and then only if -

(i) the amount borrowed (together with any other borrowings made for the same purpose) does not exceed 10 per cent of the market value of the scheme assets at the time of the borrowing; and

(ii) the borrowing is not part of a series of borrowings; and

(iii) at the time the borrowing was made, it was unlikely that the period of borrowing would exceed 7 working days; and

(iv) at the time the decision to enter into the transaction was made, it was unlikely that the borrowing would be necessary; or";";

(B) by deleting subparagraph (ii) in the Chinese text and substituting -

"(ii) 加入 —

"(c) 為了作為中央證券寄存處或保管人的獲轉授人妥善保管或管理計劃資產的費用申索的保證而設定的產權負擔；或

(d) 為了依據附表 1 第 14 條取得財務期貨合約或依據附表 1 第 15 條取得貨幣遠期合約而設定的產權負擔；或

(e) 藉香港法律或香港以外地方的法律的施行而設定的產權負擔。";";

(iii) by deleting paragraphs (d), (e) and (f) and substituting -

"(d) in section 5 -

(i) by repealing "The" and substituting "Subject to section 11 of this Schedule, the";

(ii) in paragraph (a), by repealing "losses incurred (directly or indirectly)" and substituting "direct losses incurred";

(e) in section 6(1) and (2), by repealing "The" and substituting "Subject to section 11 of this Schedule, the";

(f) in section 7 -

(i) by repealing "The" and substituting "Subject to section 11 of this Schedule, the";

(ii) by repealing "60 days" and substituting "4 months";

(g) by adding -

"11. The Authority may, subject to such conditions as the Authority thinks fit, by notice in writing (published in such manner as the Authority thinks fit) waive or modify the provisions of section 2 of this Schedule, and, in the case of a delegate of a custodian, section 2, 5, 6(1)(a) or (2) or 7(a) of this Schedule, where the Authority is of the opinion that the provisions -

(a) cause undue hardship;

(b) are incapable of or precluded from being complied with by virtue of a law in a place outside Hong Kong; or

(c) are not in the interests of relevant scheme members.

12. For the avoidance of doubt, it is hereby declared that -

(a) scheme assets -

(i) comprising cash held by a custodian which is an authorized financial institution, an eligible overseas bank or an approved overseas bank may be held by any

such custodian in its capacity as a bank; and

(ii) may be deposited by the custodian and its delegates with, and held in, any central securities depository on such terms as such central securities depository customarily operate; and

(b) any encumbrance created over the scheme assets of a registered scheme that is, at the time of creation, consistent with the exception under section 3 of this Schedule shall remain valid throughout the period for which the borrowing concerned remains outstanding."."."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Financial Services, as set out on the Agenda, be passed.

MR RONALD ARCULLI: Madam President, I thought for one moment that the Member was seeking to intervene there.

As Chairman of the Subcommittee on Subsidiary Legislation Relating to Mandatory Provident Fund (MPF) Schemes, I wish to take this opportunity to highlight the major points considered by the Subcommittee on the Mandatory Provident Fund Schemes (General) (Amendment) Regulation 2000.

The Amendment Regulation seeks to amend the General Regulation to address the concern of members of the MPF industry over some of the provisions which may give rise to operational problems. The Subcommittee, however, notes that the Amendment Regulation has not fully addressed the concern of the industry. The Subcommittee, therefore, had thorough discussions with the Administration and a group of trustees and custodians on the relevant provisions.

On the permitted encumbrance of scheme assets, section 65 of the General Regulation imposes a duty on the approved trustee of a registered scheme to ensure that, subject to the prescribed exceptions, the scheme assets are not subject to any encumbrance. We share the concern of the trustees and custodians that the periods of permitted borrowing are too restrictive and that flexibility should be provided to cater for situations beyond the control of the custodians and subcustodians. To address the concern about this point, the Administration has agreed to amend section 65 to clarify that the prescribed exceptions refer to situations where at the time the encumbrances were created, it was unlikely that the period of the borrowing would exceed 90 days or seven working days, as the case may be.

On the interest rate for scheme assets placed on deposit, an approved trustee is required under the proposed new section 66A of the General Regulation to ensure that a reasonable rate of interest is received for scheme assets placed on deposit. We accept the Administration's view that the proposed new section is necessary to safeguard the interests of scheme members, but we do not consider it justified to make it a criminal offence for failure to comply with the requirement under the proposed section. In response, the Administration has agreed to abdicate the proposal to amend section 67 in this respect.

As regards the requirements in respect of custodial and subcustodial agreements stipulated in Schedule 3 of the General Regulation, section 1(b) of Schedule 3 requires scheme assets to be administered and dealt with as trust property of the scheme, or if those assets are located in a place where no law of trusts is in force, to be administered and dealt with as if such a law were in force in that place. We share the view of the trustees and custodians that the stipulation of such a provision in an agreement would likely lead to uncertainty and disputes concerning how a law that does not exist could be construed as to be in existence. We also note that in a number of other countries, such as those in continental Europe, no trust law is in force. To address the concern about this

point, the Administration has agreed to amend section 1(b) to reflect the policy intent that scheme assets are to be entrusted to custodians or subcustodians for safe keeping, and that they should be properly held, registered and segregated from the assets of custodians and its subcustodians.

Under section 5 of Schedule 3, a custodian or subcustodian is required to indemnify the scheme for any losses incurred directly or indirectly by scheme members that are attributable to fraudulent, dishonest or negligent acts or omissions committed by the custodian or subcustodian or their employees. The trustees and custodians are concerned that the coverage of indirect losses would subject the custodians and subcustodians to unlimited liability. We share their view that it is unjustified to impose such a requirement, having regard to the fact that there is no reference to "indirect losses" in the principal ordinance and that the requirement is contrary to prevailing practices in major overseas financial markets. In response, the Administration has agreed to introduce an amendment to remove the reference to "indirect losses".

We also note that subcustodians are required under sections 6(1)(a), 6(2) and 7(a) of Schedule 3 to report to their custodians any material changes affecting their eligibility to be subcustodians of the scheme assets, whether or not any material events have occurred, and whether or not each of their delegates satisfy the eligibility requirements as those applicable to subcustodians. We share the view of the trustees and custodians that subcustodians, who are merely safe-keepers, may have difficulties in complying with these requirements. The Administration has agreed to introduce amendments to give the MPF Schemes Authority the discretion to waive these requirements in respect of subcustodial agreements if they cause undue hardship.

As a whole, the Subcommittee and the group of trustees and custodians are in support of the amendments proposed by the Secretary for Financial Services today. In conclusion, Madam President, I would like to say that the subcommittee, the custodians and trustees have a very fruitful and constructive discussion with the Financial Services Bureau. And we are grateful for the approach and the flexibility which the Bureau has adopted in taking on board some of the concerns and the amendments that we have just heard.

Thank you, Madam President.

MR CHAN WING-CHAN (in Cantonese): Madam President, I should like to make a few remarks on the resolution.

The Mandatory Provident Fund Schemes Ordinance will officially come into operation in December this year. Upon commencement of the Ordinance, we would most probably find that there are still many technical problems and imperfections in its provisions, and that bills proposing amendments to the Ordinance would need to be submitted to the Legislative Council in the future. Before this Council today are a number of resolutions relating to Mandatory Provident Fund (MPF) Schemes. In this connection, the Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 1) Notice 2000 seeks to clarify that only relevant employees (other than casual employees) who have been employed for a period of less than 60 days would be exempted from the Ordinance, and that relevant employees who have been employed for not less than 60 days under a continuous contract would not be exempted. In other words, so long as an employee has worked for a period of at least 60 days, the employer concerned must make MPF contribution arrangements for the employee.

In addition to the technical amendments proposed, the Federation of Trade Unions (FTU) has also noted that there are also some casual workers who will not be protected by any MPF Schemes. When the Mandatory Provident Fund Schemes (Amendment) Bill was still under consideration, we raised for many times that although industry schemes were provided for under the Bill, only employees in the construction industry and the catering industry would be protected. However, in other industries like cargo handling and retail, owing to the comparatively higher mobility of the employees concerned, employers could still find many ways to duck out of their MPF contribution responsibilities even after the Ordinance has come into operation. For example, in order to avoid employing the same worker for a period of 60 days, employers may offer employment to workers for a period of some 50-odd days or on intermittent terms.

As a matter of fact, although the unemployment rate published two days ago has dropped slightly, a large number of workers are still out of jobs. Of the 170 000-strong unemployed workforce, many are grass-roots labourers. With their limited bargaining power, it would be very difficult for these labourers to secure even the basic wage rate, to say nothing of MPF contribution by their

employers. Given the high rate of unemployment and the surplus supply of workers, employers could change employees as they wish and do things that are against the interest of wage earners. For instance, a certain employer in the catering industry has recently put forward all sorts of specious reasons to advocate postponing the commencement of MPF Schemes. What is more, in order to duck out of their MPF contribution responsibilities, some other unscrupulous employers in the industry have even resorted to forcing employees to sign new employment contracts, discontinuing the length of service of employees, as well as avoiding making long service payment in the run-up to the commencement of the Ordinance.

Madam President, although the legislation and measures relating to MPF Schemes are meant to protect employees, the interests of employees in a number of industries have already been affected adversely even before any MPF Schemes have come into operation. Moreover, regarding the industry schemes of the catering industry and the construction industry, as the specific development work is progressing very slowly, I cannot help but worry that they may not be ready for implementation when the Ordinance comes into operation at the end of the year. Hence, I earnestly urge the Government and the Financial Services Bureau to attach great importance to the aforementioned problems.

The FTU and the Democratic Alliance for the Betterment of Hong Kong have all along been urging the Government to make community-wide retirement protection its goal. To achieve this goal, relying solely on the implementation of a mandatory retirement protection system is not sufficient. A social insurance system under which the Government is also one of the contributors must be established to supplement the various MPF Schemes. Besides, basic retirement protection should also be provided for people who do not have any employment (such as housewives), who are on low incomes and who will soon retire, with a view to enabling them to live in dignity after retirement.

Madam President, I so submit.

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

(No Member responded)

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam President, first of all, I would like to thank Mr Ronald ARCULLI, members of the Subcommittee and other Members. They have indeed spent a lot of time scrutinizing the provisions. As for what Mr Ronald ARCULLI has said just now, I have said that the Administration has accepted it. Mr CHAN Wing-chan has also given us a lot of valuable advice. I would like to point out here that even as the Regulation has been amended, it does not imply that it is perfect. I think when the schemes are put into force, there may still be areas that require improvement. I hope Honourable Members and the Administration will pay attention to areas which should be improved so that continuous improvements can be made when necessary. Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by the Secretary for Financial Services, as set out on the Agenda, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): The second proposed resolution under the Mandatory Provident Fund Schemes Ordinance and the Interpretation and General Clauses Ordinance.

PROPOSED RESOLUTION UNDER THE MANDATORY PROVIDENT FUND SCHEMES ORDINANCE AND THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam President, I move that the second resolution proposed under the Mandatory

Provident Fund Schemes Ordinance (MPF Ordinance) and the Interpretation and General Clauses Ordinance, as printed on the Agenda, be passed.

The Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 1) Notice 2000 seeks to amend Schedule 1 of the MPF Schemes Ordinance, to provide clearly that exemption from the provisions of the MPF Ordinance shall be granted only to those employees employed for a period of less than 60 days. Casual employees, that is, temporary employees employed by those trades covered by registered industry schemes, shall not be granted any exemption regardless of the length of their employment.

Schedule 1 of the MPF Ordinance sets out the types of employees who can be granted exemption. Item 7 of Part I of Schedule 1 makes reference to "any relevant employee (other than a casual employee) who has been employed for not less than 60 days under an employment contract". The intent of this is to grant exemption to those employees who have been employed for less than 60 days. However, as it is currently worded, Item 7 is not precise enough. What does "not less than 60 days" actually mean? The period of "actual employment"? Or, does it simply mean the period stated in the employment contract? The exact meaning is not clear enough. Some may well think that this refers to the period stated in the employment contract. If this is really the case, then some sort of "unintended exemption" for some employees in Hong Kong may well result. For example, under the Employment Ordinance, any person who has been employed under a contract with "no express agreement on the date of expiry" for a period of more than four weeks shall be deemed to have been employed under a contract for one month renewable from month to month. For employees of this kind, although their period of actual employment is longer than 60 days, they may still be exempted under Item 7 as it is currently worded. This is a departure from our original policy intent.

In order to give greater clarity to the Ordinance, and also to avoid possible arguments over its provisions in the future, we now propose to amend Item 7 of Schedule 1, to state clearly that only a relevant employee employed for less than 60 days can be entitled to exemption from the Ordinance.

The Notice has been scrutinized by the Legislative Council Subcommittee on Subsidiary Legislation Relating to MPF Schemes. To address the concerns of the Subcommittee, we propose to introduce a technical amendment to replace "is terminated" by "ceased" in Item 7(1), so that it can become more precise.

I call upon Members to support the motion and endorse the Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 1) Notice 2000 with the proposed amendments. Thank you, Madam president.

The Secretary for Financial Services moved the following motion:

"That the Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 1) Notice 2000, made by the Chief Executive in Council on 21 March 2000, be approved, subject to the following amendment – in section 1(a), in the proposed item 7(1), by deleting "is terminated" and substituting "ceases".

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Financial Services, as printed on the Agenda, be passed.

MR RONALD ARCULLI: Madam President, as Chairman of the Subcommittee on Subsidiary Legislation Relating to Mandatory Provident Fund Schemes, I wish to point out that the Subcommittee supports the Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 1) Notice 2000 which seeks to put it beyond doubt that only relevant employees (other than casual employees) who have been employed for a period of less than 60 days would be exempted from the Mandatory Provident Fund Schemes Ordinance. To address the concern of the Subcommittee, however, the Administration has agreed to move a minor technical amendment to refine the drafting of the relevant provision.

Thank you, Madam President.

MISS CHAN YUEN-HAN (in Cantonese): Madam President, today this Council is having another discussion about the proposals to modify the Mandatory Provident Fund (MPF) Schemes. This is welcomed by both the Federation of Trade Unions (FTU) and the Democratic Alliance for the Betterment of Hong Kong (DAB). I hold that whenever there are any grey

areas, amendments should be introduced to clarify them. With regard to the amendment proposed by the Government to the 60-day requirement, while we support it in principle, we are afraid it has given rise to some other problems. In the course of scrutinizing the Notice, I asked the Government about the legal advice relating to the Employment Ordinance. Given that Hong Kong has never implemented any security scheme of such a large scale and which requires the participation of all wage earners, we were afraid that there would be further loopholes if any part of the scheme should be found inconsistent with the Employment Ordinance. Naturally, the reply from the Government was that it had sought legal advice, which pointed out that the Employment Ordinance could fully dispel our worries. So, we could only trust its words for the moment. Nevertheless, we would still like to make a few remarks. After all, the Employment Ordinance has been in force for quite some time; besides, many of the provisions contained therein are related to the relationship between employers and employees, I just hope the Government could keep them in view.

Moreover, with regard to the industry schemes, as mentioned by Mr CHAN Wing-chan just now, the Government and many trades and industries, including their respective trade unions, are now making an effort to find out ways to resolve the difficulties involved in promoting the various industry schemes. Madam President, many of the companies providing retirement protection services in Hong Kong are generally involved in large-scale schemes, they will certainly encounter many difficulties in promoting the different industry schemes. Take the construction industry as an example. How are these companies going to identify the workers employed by the different levels of sub-contractors to participate in their relevant industry scheme? This is indeed a rather complicated technical problem. I hope the Secretary for Financial Services and the officials of his Bureau will keep these issues in view. There should be ways in which the Government could help to promote the various industry schemes, so that they can be put into operation together with other MPF schemes as scheduled. I believe the Government should devote more effort in this respect; otherwise, not many companies and employees could really participate in those industry schemes. Mr CHAN Wing-chan who represents the catering industry and Members representing the labour sector, including Mr CHAN Kwok-keung, Mr CHAN Kam-lam and I, have expressed concern in this connection, since we really worry very much that this situation would arise.

In addition to these two aspects of the existing legislation (namely, the 60-day threshold and the industry schemes), I should also like to take this opportunity to expound on my other views. Recently, many fund companies have been giving publicity to the capital preservation products of their schemes. According to the Government, these products are a compromise reached when the Committee under the chairmanship of Mr Ronald ARCULLI was still in the process of scrutinizing the MPF legislation. In adopting the so-called capital preservation approach, the Government rejected the views put forward by the FTU and the DAB at that time. A wage earner once told me that he knew nothing about fund investment, so he would rather choose the capital preservation products since he could rest assured that his investment would break even. I asked him never to choose this, since such products may not necessarily preserve his capital. Why? Here I should like to explain to the Government and Honourable colleagues my views in this respect, with a view to urging the Government to square up to this problem. Actually, many wage earners still have no idea of what the specific contents of the capital preservation schemes are about, and are trying to understand the schemes from their names. Perhaps some of them may believe that the schemes could really preserve the capital, but there are also others who do not think so. It would be good for those who do not believe in the capital preservation products, but for those who do, the result could be disastrous. Why? The reason is that the Government has put forward the existing capital preservation products just because it did not support the ones suggested by us. Under the government proposal, if the rates of interest of the capital preservation products of a certain fund company should be less than the interest rates for savings deposits offered by banks, the fund company concerned would not be allowed to charge any administration fees. To be very honest, the existing rates of interest payable to savings deposits are very low. Certainly, such low interest rates should not pose any problem for the time being when we are still having negative rates of inflation. But what would happen when there should be real inflation in the future? It is for this reason that during the deliberation, the FTU and the DAB suggested formally prescribing the rate of interest for such products at P+1 (prime rate plus 1%), and that the Government or other relevant agencies would undertake to ensure a P+1 rate of return for employees if the fund companies concerned should fail to do so. So, this is the insurance product that could really offset the effects of inflation. I wish to urge the fund companies through the Government to stop

using the term "capital preservation" to give publicity to their products. I urge these companies to stop misleading wage earners into believing that the such products under their relevant schemes, which will not live up to expectations in reality, could really preserve the capital. The Government has put forward the proposal just to balance out the various forces involved. But since we could not secure enough votes in support of our proposal, the current products were introduced eventually.

As the MPF Schemes will be put into operation towards the end of the year, the issue has once again aroused the concern of many organizations. Madam President, at the additional meeting we held recently, an organization by the name of Hong Kong Social Security Society referred to social security in five different respects, including the scope of retirement protection which we have been arguing about all along ……

PRESIDENT (in Cantonese): Does the content of your speech have any direct relevance to the question proposed?

MISS CHAN YUEN-HAN (in Cantonese): Madam President, my observations are totally relevant to the subject under discussion, since they are all related to the amendments proposed to the MPF. Naturally, my views are not 100% related to the 60-day requirement, but I have at least pointed out a number of problems. Madam President, thank you for your indulgence. I should like to continue with my speech, which will be very short though. Speaking of the 60-day requirement or the capital preservation products, one would naturally worry about the arrangements for the elderly members of our existing population. I therefore hope that the Government would reconsider the issue. There are still many questions I wish to raise, but I will draw a line here at the moment. I hope the Managing Director of the MPF Authority will not find me too long-winded. For my part, I will certainly take every opportunity to express my concern over community-wide retirement protection. I just hope the Government would attach some importance to my views.

Thank you, Madam President.

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

(No Member responded)

PRESIDENT (in Cantonese): Secretary for Financial Services, you may now reply.

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam President, I wish to thank Mr Ronald ARCULLI once again for his scrutiny of this Notice, and I also wish to thank Miss CHAN Yuen-han. I understand that she has a lot of views to put forward, but I am sure that she will have plenty of opportunities to do so in the future. Just now, she said that there might be many problems with the operation of Mandatory Provident Fund Schemes in the future, and she mentioned the Employment Ordinance and capital preservation products, for example. However, as I pointed out a moment ago, for the implementation of such a huge new project, there is bound to be a need for improvement here and there. I therefore think that our task should be to make the whole thing as satisfactory as possible when working out the design and other requirements. I hope that in the future, Members can continue to work with us in this respect. If Miss CHAN and any other Member have any opinions about the implementation of MPF Schemes, I am always prepared to listen. There is in fact no absolute need to discuss all the problems here, for we can do so on many other occasions. I only wish to say that what we are doing today is just to propose amendments for those areas which we have now seen a need for amendment. But if any further need for amendment arises in the future, we will still be prepared to discuss with Members. Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by the Secretary for Financial services, as set out on the Agenda, be passed. Will those in favour please raise your hands?

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): The last Government Motion moved under the Mandatory provident Fund Schemes Ordinance.

PROPOSED RESOLUTION UNDER THE MANDATORY PROVIDENT FUND SCHEMES ORDINANCE

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam President, I move that the Mandatory Provident Fund Schemes Rules (the Rules) be passed by the Legislative Council.

The object of the Rules is to provide for the calculation of the total amount of accrued benefits vested in a scheme member and to prescribe the information and document that should be submitted for merger or division of registered schemes.

Sections 12(1) and 12(2) of the Mandatory Provident Fund Schemes Ordinance provide that a contribution in respect of a member of a registered scheme and the profits derived from the investment of his accrued benefits shall be vested in the member as accrued benefits. Under section 12(3), the total amount of accrued benefits is to be calculated as provided by the rules. Section 3 of the Regulation specifies the ways in which accrued benefits are to be calculated. When drafting this particular provision, we made reference to section 78 of the Mandatory Provident Fund Schemes (General) Regulation, in which the items to be included in the calculation of the accrued benefits of a scheme member are set out. The Regulation also sets out the penalty for a trustee who fails to calculate the accrued benefits of a scheme member according to the relevant requirements.

Sections 34B and 34C of the MPF Ordinance empowers the Mandatory Provident Fund (MPF) Schemes Authority to approve applications filed by approved trustees for the merger and division of registered schemes. Sections 4 and 5 of the Regulation prescribes the information and documents that should be contained in such applications for the purpose of facilitating the consideration of the MPF Authority.

The Rules have been scrutinized and endorsed by the Legislative Council Subcommittee on Subsidiary Legislation Relating to MPF Schemes. I therefore call upon Members to support this motion on passing the Mandatory Provident Fund Schemes Rules.

Thank you.

The Secretary for Financial Services moved the following motion:

"That the Mandatory Provident Fund Schemes Rules, made by the Mandatory Provident Fund Schemes Authority on 8 May 2000, be approved."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Financial Services, as set out the Agenda, be passed.

MR RONALD ARCULLI: Madam President, as Chairman of the Subcommittee on Subsidiary Legislation Relating to Mandatory Provident Fund Schemes, I wish to point out that the Subcommittee also supports the Mandatory Provident Fund Schemes Rules which provides for the calculation of the total amount of accrued benefits vested in a scheme member from time to time, and prescribes the information and documents that should be contained in or accompanied with applications for merger or division of registered schemes.

Thank you, Madam President.

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

(No Member responded)

PRESIDENT (in Cantonese): Secretary for Financial Services, do you wish to reply?

(The Secretary for Financial Services indicated that he did not wish to reply)

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by the Secretary for Financial Services, as set out on the Agenda, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

MEMBERS' MOTIONS

PRESIDENT (in Cantonese): Members' motions. Proposed resolution under Article 75 of the Basic Law of the Hong Kong Special Administrative Region (SAR) of the People's Republic of China.

PROPOSED RESOLUTION UNDER ARTICLE 75 OF THE BASIC LAW OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA

MRS SELINA CHOW (in Cantonese): Madam President, I move that the resolution on the amendment of the Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region (SAR), as printed under my name on the Agenda, be passed.

The proposed amendments to the Rules of Procedure put forward by the Committee on Rules of Procedure (the Committee) this time are chiefly related to the following four issues:

First, amending Rule 66 of the Rules of Procedure to improve the procedural arrangement under the Rules of Procedure for the Chief Executive to return a bill passed by the Legislative Council for reconsideration in accordance with Article 49 of the Basic Law. The deliberations of the Committee were focused on how the Chief Executive could be enabled to put forward other proposals if he should consider it not compatible with the overall interests of the Hong Kong Special Administrative Region (SAR) to sign a bill passed by the Council, with a view to enabling a consensus to be reached between the Council and the Administration. After taking into consideration the general practice of the Council in dealing with bills, the Committee has come to the view that the Chief Executive could introduce an amendment bill to amend the bill concerned. The amendment bill would be handled in the same manner as other bills. For these reasons, the Committee considered that the mechanism provided under the existing Rules of Procedure should be adequate to cater for the return of a bill under Article 49 of the Basic Law. Nevertheless, it also accepted the proposal put forward by the Administration to set out under Rule 66(6) that in the event of the Chief Executive returning a bill to the Council within three months for reconsideration in accordance with Article 49 of the Basic Law, the House Committee should also take into account any amendment bills submitted in relation to the bill returned when deciding on the manner in which the returned bill should be dealt with.

Second, procedural arrangements for dealing with the refusal of the Council to pass a budget under Article 50 of the Basic Law. As I pointed out earlier on when presenting the Committee's Progress Report to this Council, with the approval of the House Committee, the Committee has invited the Panel on Constitutional Affairs to consult the Administration on the interpretation of the term "budget" in the context of Articles 50 and 51 of the Basic Law. According to the document presented by the Administration to the Panel, the term "budget" is not defined in the Basic Law or the laws of Hong Kong. However, if a purposive approach to interpreting the relevant provisions should be adopted, Articles 50, 51 and 52 of the Basic Law are in fact sequential and related. Article 51 of the Basic Law provides that if the Council refuses to pass a budget, the Chief Executive may apply to the Council for provisional appropriations. The term "appropriations", without a doubt, refers to the voting of expenditure,

normally through the annual Appropriation Bill. The Administration has therefore opined that the term "budget" in the context of Articles 50 and 51 should be referring to the expenditure side of the budget, which is the Appropriation Bill.

In February this year, the Panel on Constitutional Affairs submitted a report to the House Committee stating that it accepted the view of the Administration. Upon deliberation, the Committee accepted the view of the Panel that the term "budget" should refer only to the Appropriation Bill. It then commenced to examine the relevant procedural arrangements on the basis of this interpretation. The Committee has come to the view that in the event of the Appropriation Bill being rejected by the Council, if a consensus could be reached between the Council and the Administration through consultation, the Administration should be allowed to present a fresh Appropriation Bill. In this connection, the Committee has proposed to amend Rule 51 to provide that, where the motion for the Second or Third Reading of an Appropriation Bill is negatived, another Appropriation Bill containing the same or substantially the same provisions may be presented within the same Session. The Administration has given support to the amendment proposed.

Third, application of the rule of anticipation to Council Business. The Committee considers that the rule of anticipation could help the Council to handle Council business and make use of the Council's meeting time in a most effective manner, and that the rule should be applied to questions, motions, as well as bills. As regards committee deliberations, the Committee has come to the view that the application of the rule of anticipation should be confined to matters being considered by standing committees, select committees, or committees authorized by the Council to conduct inquires. With regard to the matters being considered by the aforementioned committees, the Committee has opined that such matters should not be anticipated in any less effective forms of proceeding, namely questions and motions with no legislative effect. The Committee has seen a need for the Rules of Procedure to provide for such conditions and therefore proposed amendments to Rules 25 and 31.

Fourth, procedural arrangements for allowing other Members to move an amendment which has been withdrawn. Having regard to the practices of

other parliamentary assemblies, the Committee has come to the view that more than one Member should be allowed to give notice to the same amendment. If the Member who first gives the notice should decide not to move the amendment, the amendment could still be moved by the next Member who has given the notice. In this connection, the names of the Members concerned would be listed in the order in which their respective notices were received by the Clerk. To put into effect the said arrangements, the Committee has recommended amending Rules 30 and 35 of the Rules of Procedure.

I hereby urge Honourable Members to support the resolution to amend the Rules of Procedure.

Thank you, Madam President.

Mrs Selina CHOW moved the following motion:

"That the Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region be amended –

(1) in Rule 23(3), by repealing "with no" and substituting "not intended to have";

(2) in Rule 25 –

(a) by repealing subrule (1)(e);

(b) by adding –

"(3) If the President is of the opinion that the subject matter of a question or any part thereof notice of which is given under Rule 24(2) (Notice of Questions) is substantially the same as that of any matter -

(a) raised in another question notice of which has been given earlier for the same Council meeting; or

(b) raised in a motion, or a bill, notice of which has been given earlier for a specific Council meeting; or

(c) being considered by a standing committee or a select committee, or a committee authorized by the Council to conduct an inquiry into that matter,

the President may direct that the Member be informed that the question or the part thereof is out of order.";

(3) in Rule 30, by adding -

"(4) If more than one notice is received by the Clerk for the same amendment, the Member who gave the earliest notice which has not been withdrawn shall be the mover of the amendment.";

(4) in Rule 31 –

(a) by renumbering it as Rule 31(1);

(b) by adding -

"(2) If the subject matter of a motion (not being a motion proposed to be moved by a designated public officer) not intended to have legislative effect and notice of which is given is substantially the same as that of -

(a) a motion intended to have legislative effect, or a bill, notice of which has been given earlier for a specific Council meeting; or

(b) any matter being considered by a standing committee or a select committee, or a committee authorized by the Council to conduct an inquiry into that matter,

the President shall direct that the notice be returned to the Member who signed it, as being in his opinion out of order.";

(5) in Rule 35(1), by repealing "mover" and substituting "Member";

(6) in Rule 51 -

(a) in subrule (7)(a), by adding "subrule (7A) and" before "Rule 66";

(b) by adding -

"(7A) Where the motion for the second or third reading of an Appropriation Bill is negatived, another Appropriation Bill containing the same or substantially the same provisions may be presented within the same session.";

(7) by repealing Rule 61(5);

(8) in Rule 66(6), by adding "(and if considered necessary, in conjunction with any referred bill as may have been presented for the purpose of amending the returned bill)" after "arrange"."

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mrs Selina CHOW, as set out on the Agenda, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Two motions with no legislative effect. I have accepted the recommendations of the House Committee as to the time limits on speeches for the motion debates. The movers of the motions will each have up to 15 minutes for their speeches including their replies, and another five minutes to speak on the amendment. The mover of an amendment will have up to 10 minutes to speak. Other Members will each have up to seven minutes for their speeches.

First motion: Reducing plastic waste.

REDUCING PLASTIC WASTE

MR TAM YIU-CHUNG (in Cantonese): Madam President, the progress today has been smooth. I move the motion printed on the Agenda.

Before I start speaking, please let me display two posters, both of which are by Friends of the Earth. One reads "A plastic bag a day paves the way to ruin." The other one reads "The evils from plastics never go away. Wanton use is indeed a crime." Through these two posters, I believe we can already see the significance of reducing plastic waste.

For the sake of convenience, we are becoming more and more dependent on plastic products in modern living. Please try to recollect our daily routine. In the morning, after waking up, we go to congee shops for congee, Chinese doughnut and rice rolls, or buy newspapers from news-stands. At noon, we go out to buy lunch boxes. After work, we go to the markets or supermarkets to buy groceries or daily necessities. How many plastic bags and how many styrofoam utensils do we use in one day? According to a survey conducted by the Democratic Alliance for the Betterment of Hong Kong (DAB) in April, more than 60% of the people use at least two plastic bags or utensils daily. What is

more, most of them (41%) discard these plastic products right after using them. Whilst fully enjoying the convenience provided by plastic products, have we ever thought of the amount of waste generated by us and the grave damage caused to the environment?

According to the statistics of the Environmental Protection Department (EPD), Hong Kong's daily production of municipal waste in 1998 amounted to 8 730 tonnes, of which 17.5% was plastic waste weighing 1 530 tonnes, a quantity huge enough to fill up 300 big trucks. In comparison with the situations in other major cities in the world, such as New York, Paris, Tokyo and Sydney, the proportion of plastic waste among the municipal waste of Hong Kong is more than two times that of theirs, which indicates that the wanton use of plastic products in Hong Kong has reached worrying proportions.

At present, commercial and industrial waste and domestic waste in Hong Kong are mainly collected by the Food and Environmental Hygiene Department (FEHD) and a few private refuse-collectors for delivery to three landfills respectively in the Western New Territories, the Southeast New Territories and the Southwest New Territories, for dumping via seven refuse transfer stations at different locations. The Government is planning to build two big incinerators, which, it is believed, can incinerate 6 000 tonnes of municipal waste daily upon completion. However, such methods of disposal beget serious environmental problems. Dumping is a method commonly used to dispose of plastic waste. However, plastics, made from hydrocarbons, a petroleum by-product, is highly water-proof and bacteria-resistant. It has to remain buried for centuries before disintegration. With plastic waste taking up much of their space, landfills are filled up much faster. To Hong Kong, a place with a dense population but little land, it means that our land resources will dwindle as plastic waste grows. Furthermore, because of its water-proof quality, plastic waste when buried will obstruct the permeation of water and nutrition as well as the growth of decomposing bacteria, thus changing soil quality, affecting plant growth, and rendering it hard to restore landfills for development purposes with the stability of the sites so upset. Moreover, additives in plastic waste might get into the soil, thus contaminating soil and water. Turning now to using incineration as a method to dispose of plastic waste, incineration can reduce the physical size of waste matters. However, as there are additives in plastics, such as fire retardant and stabilizers, the process of incineration might release poisonous gases like dioxin, a hazard to foetus and the human immunity system. They are

bound to imperil people's health if they are discharged into the air without filtration or decomposition. In fact, the incident in which dioxin was released from the Chemical Waste Treatment Centre on Tsing Yi Island served us a warning some time ago. There is, however, insufficient awareness in society with regard to the hazard posed by plastic waste.

To reduce environmental damage arising from plastic waste, the first and foremost task is to start with efforts to stem the generation of waste. The Government presented a consultation paper on Waste Reduction Plan as early as mid-1997. However, in the area of waste reduction policy, especially with regard to municipal waste, hardly any progress has been made so far. At present, other countries in the world are using different methods, such as holding waste producers responsible, rewards for recycling, refund of deposit, and levies on dumping, to achieve the goal of reducing waste. As Hong Kong has no such measures, the quantity of its waste has been growing year after year.

Efforts to reduce plastic waste might start with styrofoam food containers and plastic bags, items that we come across in our daily life. Styrofoam food containers are being used extensively. Unlike waste paper and metals, styrofoam, because of over production, is having supplies in excess of demands all over the world. Furthermore, because of the high cost required for collection, cleaning, segregation and recycling, little is being recycled. As a result, its dumping has brought about an ever worsening situation, known as the "white pollution". Last year, the Mainland legislated a total ban on the production and manufacture of styrofoam utensils. Yet in Hong Kong, we still dump 100 tonnes of styrofoam food containers or cups into our landfills every day. In the market now there are many products made from paper pulp or fibres that can replace styrofoam utensils. However, the cost of those substitutes is often nearly two times that of styrofoam utensils. They are, therefore, not much used by food establishments. Of course, a way to get instant result is for the Government to legislate against the use of styrofoam utensils, but it is also necessary to promote the search for more economical substitutes first. On the other hand, the Government might consider applying some financial incentives, such as the levy of disposal fee on manufacturers of styrofoam utensils, so as to use consumers' power of selection to force food establishments to put in efforts to turn to more environmentally-friendly substitutes. Here may I thank the Democratic Party for their concern for this topic. According to their recent opinion survey, most people are in favour of a ban on styrofoam utensils.

Now on the wanton use of plastic bags. Although the Government and different voluntary organizations have been trying very hard to promote various publicity campaigns, the effectiveness has not been impressive. According to EPD information, at present each Hong Kong resident throws away 2.8 plastic bags a day, making a daily total of 25 840 000. According to calculation based on this speed of accumulation, these plastic bags could fully cover up the land area of Hong Kong in four months. As a matter of fact, in many cases people throw away plastic bags only passively. A typical example is seen in the case of news-vendors, who, in order to compete with chain stores, put newspapers in plastic bags. According to the survey conducted by the DAB in April, 70% of the people think that it is not necessary to put newspapers in plastic bags. We are of the view that, to address such passiveness on the part of the consumers, efforts should start with the producers so as to stop the generation of unnecessary waste by implementing an accountability system. To complement such an accountability system, we might at the same time implement a system of deposit for recycling purposes and the method of intermediate packaging to let consumers have the right to ask sellers to do away with intermediate packaging or get rid of the packaging themselves at selling points, so as to encourage the industrial and commercial sectors to reduce the generation of waste.

In order to achieve the goal of reducing plastic waste, direct elimination at source must also be coupled with efforts to step up recovery and recycling. The Government should, in our opinion, make it mandatory for manufacturers to code their plastic packaging and products. Manufacturers should be obligated to confirm and verify the types of resin used for their products so as to enhance the efficiency in recovering materials. In fact Hong Kong already has a set of internationally established coding system for plastics. It is, however, not mandatory for manufacturers to adopt that set of codes, a system used by the American Plastics Council. If the practice can be made mandatory, then there definitely will be greater convenience in recovering plastic matters.

With regard to waste recovery, the shortage of recovery facilities is another lamentable aspect of Hong Kong. According to a survey by Greenpeace, of the some 2 000 refuse collection points and 16 000 refuse bins provided by the FEHD as refuse recovery facilities, only 118 (0.66%) are specially equipped with facilities for waste recovery. None of the seven big

refuse transfer stations of the EPD is equipped with facilities for the segregation and recovery of waste. Both the DAB and the Federation of Trade Unions (FTU) have again and again asked the Government to help the development of environmental industry. A proper system for the segregation and recovery of waste is an essential requirement for the development of environmental industry. Neither of the two is dispensable. Otherwise, more and more negative news reports will be forthcoming, such as reports on housing estate management staff sending to landfills recyclable waste already segregated by residents, and people will show less and less keenness in taking part in activities for the recovery and recycling of waste.

With regard to waste disposal, the Government should explore and develop other methods for the disposal of plastic waste as alternatives to incineration and landfilling. Foreign countries and the Mainland have some successful cases, for example, the conversion of plastic waste into diesel, gasoline or charcoal. In Beijing, there is even one technology capable of converting unsegregated waste into fuel. In this way, the ultimate physical size of waste thus generated can be greatly reduced, and useful resources recovered as much as possible.

Finally, we must again stress the importance of publicity and promotional efforts. According to the findings of some recent surveys, members of the public generally do not know much about solid waste and often consider air pollution and water pollution to be more pressing than the waste issue. Such a state of affairs is going to dampen the effectiveness of the Government's waste reduction efforts.

Madam President, for the motion of today, quite a few environmentalist bodies have provided us with many useful ideas. May I thank them for their support. Environmental protection is no luxury. To turn a blind eye to the problem of plastic waste can only make our living environment deteriorate. So the Government must adopt positive measures to reduce plastic waste, increase the re-use of non-renewable resources, promote sustainable development in Hong Kong and safeguard the health of the public.

With these remarks, I beg to move.

Mr TAM Yiu-chung moved the following motion: (Translation)

"That, as plastic waste keeps increasing in Hong Kong and the incineration of such waste generates a considerable amount of dioxin, causing serious damage to the environment and posing a threat to the health of the public, this Council urges the Government to adopt the following measures:

(a) promoting researches on and the use of environmentally-friendly cutlery and utensils and packaging materials;

(b) exploring the feasibility of legislating against the use of styrofoam lunch boxes;

(c) encouraging industrial and commercial enterprises to reduce the use of non-biodegradable plastic bags, as well as implementing an accountability system whereby producers (manufacturers and importers) are required to set and achieve targets for reducing plastic waste;

(d) requiring manufacturers to introduce a coding system for plastic packaging and products to facilitate the segregation, recovery and recycling of plastic waste;

(e) enlarging and providing additional government refuse collection points, and enhancing their waste-segregation function to facilitate the recovery of plastic waste;

(f) exploring and developing other methods for the disposal of plastic waste as alternatives to incineration and landfilling; and

(g) stepping up publicity and promotional efforts to enhance public awareness of the need to reduce plastic waste,

so as to reduce the production of waste, increase the recycling and re-use of non-renewable resources, promote sustainable development in Hong Kong and safeguard the health of the public.

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

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr TAM Yiu-chung, as set out on the Agenda, be passed.

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

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

MR LEE CHEUK-YAN (in Cantonese): Mr Deputy, I move that Mr TAM Yiu-chung's motion be amended as set out on the Agenda.

Mr Deputy, there are probably some people who believe that trade unionists are glad to see factory chimneys discharging black smoke, a sign of economic prosperity, which in turn means employment, something surely pleasing to trade unions. This is definitely a piece of misunderstanding. Some 20 years ago, I waged a campaign to combat industrial pollution in Kwun Tong, demanding the Administration to face up to the issue of air pollution in the district. Surely, those were the days as the place has no factories now. The Honourable Mr Kenneth TING certainly will concur with me. Surely, 20 years ago the focus of trade unions was mainly on workers' health. Now we have integrated environmental factors with the overall economy and employment policies. Compared to the situation 20 years ago, the environmental awareness of trade unions and the public has indeed made a leap forward. We are now in the 20th century, a sustainable development-orientated age. Today I am moving an amendment in the hope that the Government will keep pace with society and resolutely take one step forward in reducing plastic waste.

Mr Deputy, I think Members will agree that the original motion and the amendment share the same direction, the difference only lies in pace. I have had discussions with local green organizations. Our consensus is that, given the acute seriousness of the issue of plastic waste, it is necessary for the Government to address the said issue with more resolute measures. Having considered the Mainland's experience and that of other countries, we decided to introduce some

amendments on the basis of the original motion so as to urge the Government to reduce plastic waste by adopting more positive measures. These proposals are economically and technically feasible and absolutely do not constitute a "great leap forward". Take legislation banning the use of styrofoam food containers as an example. This is not a very radical proposal. Conversely, it is government measures that far lag behind the situation.

In 1998, about 120 tonnes of styrofoam were dumped into landfills daily. The seriousness of "white pollution" is plain enough to be seen. The degradability of styrofoam is poor. When it burns, it releases harmful substances that can cause cancer or pollute the air. Neither incineration nor landfilling is an effective way to dispose of styrofoam waste. Government fact sheets also state that from technical and economic standpoints, it is not feasible to recycle styrofoam. To cut down on its use is the sole option remaining. It is hoped that the Secretary for Environment and Food will no longer give people the impression that she is pro-styrofoam.

Now available for selection in the market are quite a few substitutes for styrofoam food containers. For instance, the cafeteria of the Hong Kong Baptist University has switched to environmentally-friendly food containers made from the fibre of Chinese silver grass. A local company has successfully invented a kind of environmentally-friendly food containers made from grain shells. It costs just 30 cents to 40 cents more than styrofoam containers. Fourteen primary and secondary schools are going to spearhead its use the next school year.

The Chinese Government has decided to impose a total ban on the use of styrofoam food containers within this year. Hong Kong should not remain at the stage of simply exploring the feasibility of drawing up legislation. The environmental damage arising from styrofoam food containers is incontrovertible. Their substitutes are available in the market. Please note that substitutes only cost 30 cents to 40 cents more. Mass production can probably further narrow the difference. A precedent has already been set by China. In my view, it is now time for the Government to hold discussions with members of the trade to work out a clear timetable for an expeditious introduction of legislation to ban the use of styrofoam food containers.

The second major amendment proposed by me is restricting by legislation the use of plastic bags by enterprises as well as the implementation of an accountability system for manufacturers. It is hoped that the words "restricting by legislation" have not "dazzled" you, and led you to the belief that there is going to be a ban on the use of plastic bags. This is, of course, one of the options, especially so in the case of substances proved to be pernicious to the environment, such as non-biodegradable plastic bags. "Banning the use" is the most direct and most effective method. However, I want to state clearly that my proposal is "restricting by legislation", but it is not a "blanket" ban on the use of plastic bags. Instead there are going to be additional conditions for enterprises using plastic bags. One such condition is defining clearly the responsibility of enterprises in environmental conservation. The experience of foreign countries has indeed provided us with many different ways for consideration. The Secretary probably has already acted in support of one of the options.

When interviewed by a newspaper (*Ming Pao* of 1 June 2000), the Secretary shared with members of the public her experience in environmental protection. There is a pledge between Mrs YAM and her husband that for every new piece of clothing bought, an old one has to be given away. "This is a very good method as the selection of a piece of clothing to be given up and the availability of space at home must be considered at the time of buying new clothes ," said Mrs YAM jokingly. Another piece of experience that she mentioned has something to do with today's debate. "If opportunity allows (no such opportunity for me), come to my home and see the way I hang up plastic bags," she said. Mrs YAM in fact holds that the fewer plastic bags are used, the better it is, and that everybody should exercise self-discipline and refrain from throwing them away as plastic bags can be re-used if they are washed, turned inside out, and air-dried. Though nicknamed the Iron Butterfly, here Lily YAM exhibits her gentle side seldom seen whilst at work when earnestly practising what she advocates in support of environmental protection. A new name is perhaps required, no "Iron Butterfly" any more, or maybe "Green Butterfly", and not the "Plastic Butterfly". The name "Plastic Butterfly" is not quite proper. Why? The Secretary made mention of her pledge with her husband, that is, to give away an old piece of clothing on buying a new one. This is very similar to Germany's Green Dot policy. For instance, enterprises may still import styrofoam products. However, their government stipulates that for each such item imported by an enterprise, another one must be returned to the government. So importers there have been taking the initiative to cut down on the use of styrofoam as packaging material.

Another method commonly used abroad is to require enterprises to meet a certain recovery ratio after using plastic bags and to set a timetable for the recovery ratio to be raised gradually. For instance, the law might provide that on producing or buying in 1 million plastic bags, the enterprises are obliged to recover 100 000 such bags. In the event of failure to meet the target, it is necessary to make up for that the following year, or pay to the government a sum costing twice as much. Upon the adoption of such a method, then there is no more need to hang up plastic bags. It is hoped that by then enterprises like supermarkets will put in real efforts to recover as many plastic bags as possible. The reason is that an enterprise failing to do so will ultimately have to pay double. We are of the view that only with such legislation can enterprises be made to rack their brains for ways to reduce the use of plastic bags and switch to bags that are environmentally friendly. Small and medium-sized enterprises probably do not have the manpower to recover the bags themselves. So the legislation might let them pay the cost required for recovering the same number of plastic bags instead.

For the abovementioned methods to be effective, legislation is, in my opinion, required. The Secretary at least had to make a pledge with her husband. Surely, there is room for discussion with regard to the question as to whether or not the law should be strict. For instance, Germany tends to use laws to define the different duties of enterprises and set specific targets of waste reduction whilst Holland tends to legislate in broad outline and then work out operational details through discussions between the government and the industries. No matter which type of legislation is to be adopted by us, it is still hoped that the Government can fully consult members the industries.

Mr Deputy, I basically agree with the fourth and the sixth proposals of the original motion, namely, on introducing a coding system for plastic products and developing other methods of disposal as alternatives to incineration and landfilling. In moving the amendment, I mainly seek to get the Government to indicate more clearly its approach to and position on this. I think it is indeed necessary to enhance the awareness about reducing plastic waste among government departments. Do not hold that inadequacy is entirely with the general public. Sometimes it is the Government that fails to do enough.

The original motion urges the Government to provide larger and more refuse collection points. I change the term "collection points" to "recovery systems". This is not just a change in wording. It in fact stands for a different concept. Refuse collection point is, of course, part of the entire recovery system. To provide additional collection points can be said to be a basic move. At present, of the 18 200 refuse collection facilities provided by the Food and Environmental Hygiene Department (FEHD) at public places all over Hong Kong, only 148 are equipped with segregation facilities. Consequently, the ratio of roadside refuse segregation in Hong Kong is very low. This indeed leaves room for improvement.

There are, however, other elements in the recovery system. They include matching policy arrangements and the development of waste recovery and recycling industry. We call upon the Government to help develop the local waste recovery and recycling industry. This is most important. The reason is that if the Government assists our waste recovery and recycling industry with a three-pronged approach, which involves firstly, funding, exploration and research; secondly, the application of land policy; and, thirdly, requiring enterprises to use a certain percentage of recycled materials, it is going to be beneficial to environmental conservation, thus providing us and our children with a better living environment. At the same time, the expensive methods of landfilling and incineration can be eschewed, thus lowering the Government's financial burden. Equally important is the point that the waste recovery and recycling industry can create many "green collar" posts, and thus help solve the problem of structural unemployment among workers with low education standard. According to the estimate of Greenpeace, upon the adoption of a satisfactory waste recovery and recycling system in Hong Kong, the recovery of domestic waste paper alone can directly create 2 000 jobs. It is an "all-win" solution to develop the waste recovery and recycling industry. The environment, the Government and the workers will all win. I call upon officials of the Environment and Food Bureau and the Education and Manpower Bureau to consider this carefully.

Thank you, Mr Deputy.

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

"To delete "exploring the feasibility of" after "(b)"; to delete "encouraging industrial and commercial enterprises to reduce" after "(c)" and substitute with "restricting by legislation"; to delete "non-biodegradable" after "the use of"; to add "by industrial and commercial enterprises" after "plastic bags"; to add "by legislation" after "(d) requiring"; to delete "enlarging" after "(e)" and substitute with "extending"; to delete "collection points" from "providing additional government refuse collection points" and substitute with "recovery systems"; to delete "exploring and" after "(f)"; and to delete "public awareness" after "(g) stepping up publicity and promotional efforts to enhance" and substitute with "the awareness of government departments and the public"."

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment moved by Mr LI Cheuk-yan to Mr TAM Yiu-chung's motion, be passed. We will proceed to the debate.

DR RAYMOND HO (in Cantonese): Mr Deputy, every year Hong Kong, like other advanced cities, throws away a lot of plastic waste. Plastic waste materials make up a substantial portion of our solid municipal waste, approximately representing 15% to 20% of the total weight of all the waste and about one third of its total volume. Most of the plastic waste matters come from packaging materials of consumer goods, plastic food containers, plastic bags, domestic appliances, and construction materials. As most plastic waste materials are not easily degradable, it is especially difficult to dispose of. Judging from Hong Kong's current lifestyle, the quantity of plastic waste materials to be thrown away will be ever on the increase. It is necessary for the Government to adopt effective measures to reduce plastic waste.

As a matter of fact, plastic waste is closely linked up with our lifestyle. As we all know, styrofoam containers that we commonly use are a very serious environmental problem. In 1999, styrofoam products dumped daily into landfills approximately weighed 107 tonnes, of which 86 tonnes were disposable styrofoam containers for food or drinks. Styrofoam has imposed permanent impact on the environment because it is not easily degradable. Consequently, it has aroused the attention of a few countries, and some of them, including the Mainland, even ban the use of such containers. To reduce its impact on our

environment, the Special Administrative Region Government should expeditiously look into the feasibility of drawing up legislation to ban the use of such food containers. The Government should, at the same time, adopt corresponding measures to encourage the search for, and the use of, food containers and packaging materials that are environmentally friendly.

Incineration and landfilling, the disposal methods currently used in Hong Kong, are not satisfactory solutions. In the first place, incineration of plastic waste can release a lot of poisonous substances, and, therefore, lead to serious air pollution. In the case of landfilling, additives in plastic materials also pose environmental hazards to the landfills. In the event that a landfill is on fire, plastic materials that have caught fire can still release a lot of poisonous substances, and jeopardize air quality. So it is indeed necessary for the Government to look for disposal methods that are more environmentally friendly. To promote waste recovery and recycling is a viable option.

To more effectively recover and recycle our plastic waste materials, we must adopt some matching measures. To ensure the identification of plastic containers or materials made from resin and to facilitate their collection, segregation and recycling, the EPD is implementing in Hong Kong a coding system for plastic materials. The system would not involve major expenses on the part of manufacturers or importers. At present, the EPD system is being implemented on a voluntary basis. The Government should take one step further and examine if it is possible to require manufacturers and importers to implement the said system so as to improve the effectiveness in the recovery and recycling of plastic materials.

On the other hand, the Government should also provide facilities for the recovery of materials. The authorities concerned may enlarge refuse collection points as well as roadside facilities for waste segregation and recovery so that people can segregate the waste themselves to facilitate the recovery of plastic waste materials. The authorities concerned should, of course, also step up promotional efforts. What is more, public awareness of environmental protection should also be enhanced. The most effective method is to make the people change their lifestyle so as to minimize the use of disposable plastic containers and plastic shopping bags coming with commodities or newspapers bought. At the same time, with the power of members of the public as consumers, industrial and commercial enterprises can be induced to use packaging materials or containers that are more environmentally friendly.

Mr Deputy, everybody has the duty to reduce plastic waste. However, the Government must act as a driving force, enhance public awareness in this respect, and adopt corresponding measures accordingly. I so submit. Thank you.

MR HUI CHEUNG-CHING (in Cantonese): Mr Deputy, plastic waste is an important component of our solid waste, taking up 15% to 20% of the total weight of all the waste and one third of its total volume. In other words, without reduction in plastic waste, the Government's waste reduction plan is nothing but nominal. The reality is that the Government's policy for recovering plastic waste has all along achieved little effect. Recovered plastic waste only amounts to one third of the total. The unsatisfactory recovery performance is mainly due to inadequate incentives. Plastic waste is usually relatively bulky, and is often mixed with domestic waste. The cost involved in collection, disposal, delivery and storage is relatively high. Consequently, dealers engaged in the recovery and recycling trade, waste collectors, schools and community organizations all have to pay more when recovering such waste. If the Government wants to cut down on the purchase of waste materials and raise the recovery ratio of waste materials purchased, the Government ought to offer more incentives.

Legislation perhaps can compel members of the public as well as the industrial and commercial sectors to produce less plastic waste. However, to ensure compliance with the legislation as well as fairness and reasonableness in the legislation's implementation and punishments, the Government probably will have to bear a lot of administrative expenses. Has the Government ever considered that, given the unavailability of substitutes that are more convenient and cost-effective, restricting by legislation the use of plastic bags and styrofoam might lead to strenuous efforts on the part of enterprises to look for "legal loopholes", instead of drawing their attention to the problem of plastic waste? I strongly oppose the unnecessary adoption of coercive measures by the Government for the sake of environmental protection as that can further impose a psychological burden on members of the public and the industrial and commercial sectors. Indeed I do not want to see environmental measures by the Government bother the public and waste money without effecting any environmental protection.

Why cannot the Government put in more efforts to formulate some more incentives instead of wasting energy, time and resources to draw up laws of dubious effectiveness to control or punish the general public and the industrial and commercial sectors? The Hong Kong Progressive Alliance (HKPA) holds that the Government's policy on waste reduction should embody the following points. In the first place, the Government should actively consider the deposit system, an idea long advocated by the HKPA, so as to collect deposits from manufacturers or agents that are likely to produce a lot of waste. The greatest merit of the deposit system lies in its ability to encourage manufacturers to shoulder the responsibility of environmental protection, thus minimizing the production of waste from the stage of design down to the stage of packaging, and providing manufacturers and agents an incentive to help recover usable waste. The cost of collecting and segregating waste can thus be greatly reduced for dealers engaged in the recycling trade. If there is reduction in those dealers' operation cost, they naturally will be able to encourage people to recover plastic waste by offering lower and more attractive prices. This is both environmentally friendly and cost-effective. In the second place, the Government should step up efforts to educate officials and people on environmental protection, and ask all government departments to give preference to recycled plastic products as far as possible by using, say, plastic recycled paper instead of plastic bags. In the third place, the Government should, in the long run, establish a policy offering overall support to the plastic recovery industry. In addition to promoting the coding system for plastic materials and offering flexible land leases, the Government may consider granting tax concessions. For instance, the Canadian Government has been implementing an award system, encouraging people to recover old tires and giving financial support to private factories that turn used tires into floor mats for children playground.

Hong Kong still has not got (and probably is not going to have) a self-sufficient market for environmental products, and there are not many overseas markets remaining. So it is very difficult for our waste recycling industry to make sustainable growth in response to market demands. Only with active support from the Government can the recycling industry sustain.

Mr Deputy, I so submit.

MR CHAN WING-CHAN (in Cantonese): Mr Deputy, plastic products play an important role in our daily life. Items like food containers, detergents and chemicals, and plastic bags in different forms can be seen everywhere in every home. Plastics are also commonly used in industry and commerce. It is particularly so in the case of styrofoam, a material commonly used in the food and beverage industry and packaging industry. Being low in cost, light in weight, and able to serve a variety of purposes, plastics are virtually being put to wanton uses.

In Hong Kong, the waste recovery rate has always been low. The said rate has been going downhill for several years in succession, which is particularly worrying, and the recovery rate of plastic waste is the lowest. At present, only some 31% of the plastic waste is being recycled. The main reason for the low recovery rate of plastics is that we have not made it mandatory on manufacturers of plastic products to bring in a coding system of classifying plastics. Anyone who has the smallest bit of knowledge will know that plastic is made from petroleum. Given the fact that different types of plastic carry different chemical contents, failure to segregate plastic products properly at the time of recovery is likely to lead to explosion due to chemical reaction if the material is recycled just casually. At present, the EPD is promoting a coding system for plastics. However, compliance has not been made compulsory. Consequently, there are in the market a lot of plastic products not labelled with codes, thus rendering the work of recovery and recycling far more difficult. Even though the Government places recycling boxes at housing estates and people actively co-operate, dealers engaged in the recycling trade still balk at the idea.

Furthermore, plastics are light and relatively bulky. It is, therefore, not easy to arrange storage. In order to recover plastics, it is necessary to have a lot of space for storage and segregation. The FTU has made a field trip to a Tuen Mun workshop engaged in the recovery of plastics. When asked why the workshop was set up in such a remote area, the proprietor said that he could ill afford urban rental cost and that people were lodging complaints against his workshop for causing pollution. They pointed out the difficulties. In a bid to overcome problems in connection with land and pollution, the FTU has long been advocating the idea of building an environmental industry estate for use by the recovery and recycling industry so as to provide suitable sites and basic matching facilities for lease to dealers engaged in the recovery and recycling

trade at low prices. It is disappointing to note that the Government has yet to provide the relevant matching facilities in aid of dealers engaged in the recovery and recycling trade. As a result, the recovery rate of plastics and that of all wastes have long remained stagnant.

I often hear people making the criticism that the wanton use of styrofoam is very serious in the case of the catering industry and that Hong Kong is now under the impact of the "white pollution". Referring to the fact that the Mainland has imposed a total ban on the use of styrofoam, some people ask why we are still using such styrofoam. I would like to speak on a few points. In the first place, styrofoam substitutes, that is environmentally friendly styrofoam, on the Mainland are products of state-run enterprises. With subsidies coming from the state, they are, of course, cheaper, and offer more choices, ranging from the commonly seen tin-foil boxes to new products such as lunch boxes and paper boxes made from bagasse and straws. If tin-foil boxes or the abovementioned paper boxes are to be used in Hong Kong, the cost is going to be higher. Furthermore, they offer poorer insulating effect. If their use is made mandatory for the catering industry and food establishments, then the catering business will suffer.

The Honourable LEE Cheuk-yan's amendment makes mention of a total ban on the use of styrofoam food containers. I have reservation about this. Given the fact that styrofoam food containers are being used extensively, instant legislation imposing a total ban on their use will generate great impact. I totally agree with the Honourable Mr TAM Yiu-chung's original motion. In order to formulate legislation, the Government should conduct a study into it first before coming to a decision. To help members of the industry and customers improve the environment, the Government should immediately proceed to look for cutlery and utensils as well as food containers that are environmentally friendly and available at reasonable prices.

There is a saying that "Trees planted by forefathers will offer shade to later generations". Every Hong Kong citizen has the duty to contribute to environmental protection. The motion moved by Mr TAM Yiu-chung today rightly reminds us of the environmental hazards posed by plastic waste and the need to provide a good environment for the future. So, on the one hand, we have to set targets. On the other, we should proceed to look for ways to deal with pollution caused by plastics and take corresponding actions in support.

Mr Deputy, I so submit. Thank you.

MR HOWARD YOUNG (in Cantonese): Mr Deputy, the Liberal Party endorses the orientation proposed in the motion. Solid waste poses a major environmental problem to Hong Kong nowadays. In 1998, Hong Kong produced on average 13 000 tonnes of municipal waste daily. Given this situation, all three landfills in Hong Kong will be filled up in 15 years. Plastic waste is a major component of our municipal waste, representing 15% to 25% of the total weight of all the waste and making up one third of its volume. In comparison with other recyclable materials, the recovery and recycling ratio of our plastic waste materials is low. In order to reduce waste, we must not neglect the work of reducing and recovering plastic waste.

With regard to promoting the study and use of environmentally-friendly cutlery and utensils and packaging materials, the Liberal Party is of the view that the Government should encourage shop proprietors to use recyclable materials and refrain from having excessive and unnecessary packaging. The Government should also step up research and development in this respect and bring in environmentally-friendly new materials. Styrofoam waste does not degrade easily. Yet in Hong Kong, styrofoam and other disposable products have long been very much in use. It is, therefore, necessary to reduce their consumption and look for alternatives that are suitable and economical. As a matter of fact, members of the public can avoid using disposable products or cut down on their use by different means. Is it possible, say, for schools to consider using re-usable cutlery and utensils for lunch in place of disposable food containers? We can also avoid using styrofoam utensils or other disposable containers unless food ordered is for take-away. We can likewise consider giving a little discount to those bringing along their own containers when placing take-away orders.

To facilitate the segregation and recovery of plastic waste and to promote the growth of plastics recovery industry, the Liberal Party agrees that manufacturers of plastic goods should adopt a coding system for their packaging and products. The adoption of a coding system can help open up the recovery and recycling market and better the companies' business reputation with improvement in their environmental image. There are many factors contributing to the poor recovery of waste for recycling. In the first place, the Government has failed to promote a mechanism and culture for waste recovery. In Hong Kong, because of the lack of space, most private buildings do not have waste segregation facilities. Few members of the public have the sense to

segregate their domestic waste before dumping. As a result, the recovery rate of domestic waste is as low as about 8%. To enhance public awareness of waste recycling, and to teach the people to establish environmentally-friendly living habits, and understand the importance of waste recovery and recycling as well as the need to segregate waste at home, the Government should effect large-scale publicity and education. The Government should also put in full efforts to promote a waste segregation programme that includes the setting up of waste segregation stations in different districts, a method commonly used abroad and providing waste segregation machines. For public housing estates, segregation facilities for recovery should be added to every floor level. In addition, the Government should deploy more resources for large-scale public education and publicity. With regard to developing waste disposal methods other than incineration and landfilling, the first thing that the Government can do is to look for ways to cut the cost of the waste recovery and recycling industry. This covers storage space and transportation, for example, providing the recovery and recycling industry with sites that are suitable and cheap, offering technical support, and promoting business growth.

The Liberal Party is not in favour of the amendment, the reason being that it proposes to bring in legislation to impose on the commercial and industrial sectors a ban on the use of styrofoam and plastic bags. The Liberal Party is of the view that as the development of substitutes for plastics in Hong Kong has yet to mature, it is not possible at this moment to sweepingly require the commercial sector to give up using all plastic products. This can only bring consumers a lot of inconvenience or even dampen their spending desire. At present, the Government has the duty to boost the development of environmental industry and environmental products. Once there are competitive environmental products in the market, members of the trade will naturally use them. There is simply no need to regulate with legislation. Mr Deputy, with these remarks, I oppose the amendment motion , but support the original motion.

MR CHEUNG MAN-KWONG (in Cantonese): Mr Deputy, in terms of volume, plastic waste materials represent 36% of all the municipal waste in Hong Kong, taking the top position. According to the data for 1998, of the some 600 000 tonnes of plastic waste produced in Hong Kong, 65% was delivered to landfills for disposal, leaving just 35% for recovery and recycling.

The low rate of recovery and recycling can be accounted for from three angles. In the first place, the Government has not provided an effective mechanism for the segregation and collection of recyclable waste. In the past, it was with the assistance of Urban Services Department staff in the process of segregation that plastic bottles were collected from housing estates. However, as a recent move, the Government does not allow the staff concerned to assist in the work of segregation. As a result, there has not been enough supplies of waste for dealers engaged in the recycling trade, and useful materials are dumped into landfills. This shows that segregation at source is really practicable. The question is only how. And it lies in the lack of an effective segregation system in the pipeline. In order that dealers engaged in the recovery and recycling of waste materials can collect and transport the waste away, the Government should designate spaces at large refuse collection points and other major locations for use as recovery points.

In the second place, in Hong Kong there is no legislation requiring plastic products to be labelled with codes showing materials used. As a result, there are even greater difficulties in segregation and higher costs for dealers engaged in the recycling trade. To make it possible for those dealers and members of the public to identify them, the Government should make it mandatory for plastic products to be labelled with codes showing the materials used.

In the third place, the Hong Kong Government totally neglects waste recovery in respect of plastic and paper packaging. In many cases, the packaging of goods from retail shops is made of plastic materials. These are recyclable waste materials. Unclassified by the industrial and commercial sectors, they offer little financial incentive, leading to an unstable rate of recovery. So, in Hong Kong, the few dealers engaged in recycling plastic waste materials resort to relying on imported plastic waste materials. The Government should enforce the "polluter pays" principle and encourage segregation at source by the industrial and commercial sectors.

Furthermore, styrofoam products only make up 6% of plastic waste materials, which appears to be small. However, waste materials of this kind would not break down easily. The incineration of styrofoam also releases carcinogenic substances. To forestall the "white pollution" and "white terror" posed by styrofoam, the Government must consider drawing up legislation banning its use and importation.

Though styrofoam utensils are convenient, they are not at all irreplaceable. Many substitutes for styrofoam are now available, for example, starch, bagasse or grain shell. However, members of the industries know not what course to take as the Government for long has not been able to conclude the test for standards. Furthermore, in the areas of publicity and education, the Government has not been very active too. As a result, these environmentally-friendly but relatively more expensive utensils have not been put to extensive use.

The Democratic Party calls upon the Government to take the lead. When contracting out canteens, government departments should include in the contracts terms requiring those canteen operators to use environmentally-friendly cutlery and utensils up to a certain percentage. To boost consumers' confidence, efforts should be made to speed up testing the standards of our food containers and prescribe environmental labels. This can help to open up the market for environmental products. In order to encourage more food establishments to switch to styrofoam substitutes, the Government may consider taxing styrofoam products that pose hazards to the environment so as to raise their cost to a level approximating that of styrofoam substitutes.

The Democratic Party has all along suggested that the Government should treat waste as resources. It is regrettable that the Government still insists on using incineration as the main strategy for waste disposal. This is probably the greatest obstacle to the recovery and recycling industry. The Government must change its established concept about waste, and make every effort to find outlets for waste materials so as to build a society of sustainable growth. For these reasons, the Democratic Party supports the Honourable Mr LEE Cheuk-yan's amendment as well as the original motion.

MR CHAN KWOK-KEUNG (in Cantonese): Mr Deputy, Hong Kong produces a lot of solid waste on land daily, with plastics taking up a large share. According to information from the Environmental Protection Department (EPD), plastic waste materials, though only representing 15% to 20% of the total weight of all our waste, constitute more than 30% of the volume of all the waste. This shows that plastic waste is one of the prime culprits hastening the filling up of our landfills. If we just sit by and do nothing about it, the situation might deteriorate to a level beyond imagination.

Even children know that plastic waste materials do not break down easily and that they release toxins in burning. So the disposal of plastic waste materials gives every place on earth a big headache. To find ways to make good use of plastic products and to recover and recycle plastic waste materials have become the direction and goal in the search for a solution to the problem of plastic waste materials globally. It seems that Hong Kong is no exception.

However, it is not the case in reality. Our development in this area is still very backward. We notice that cleansing workers dispose of plastic bottles collected from recycling boxes provided by the Food and Environmental Hygiene Department (FEHD) together with other domestic waste. When asked, a cleansing worker might reply with a tinge of helplessness, saying, "It is not that I want to throw away the plastic bottles. But no one comes to collect them. Plastic bottles attract cockroaches very quickly and may become smelly. Then there will be complaints against me."

The above situation reflects one fact, namely, even if the people are willing to put in efforts to segregate waste for recovery, dealers engaged in the recycling trade still would not collect them. If such a state of affairs is compared with the situation in respect of the recovery of waste paper and aluminium bottles, they are two extremes. Insofar as I understand it, this has much to do with the values of materials recovered. It pays to recover aluminium bottles. Though the prices of waste paper fluctuate a lot, the paper from a recycling box can still fetch some $10 to $20. So people often take the stuff away for sale even before a recycling box containing aluminium bottles or waste paper is full. It is, however, different in the case of plastic waste materials. Plastic bottles are different. Plastics do not weigh much and it is more difficult to compress them. Different plastic bottles have different chemical compositions. Being unable to fetch good price when offered for sale, plastic bottles attract few interested buyers.

The FTU has long been advocating the idea of promoting environmental industry so as to create jobs for grass-roots workers. It is a pity that the Government, sticking to the excuse of positive non-intervention, simply argues that the environmental industry will have its market and room for survival so long as the need exists in society. The situation in respect of the recovery of plastic waste materials just mentioned by me precisely shows that the Government's philosophy is faulty. I am sure that the recovery rate of plastic

waste materials will continue to drop if there is no assistance from the Government. By then it is going to be even more difficult for us to solve the disposal problem of our plastic waste materials.

As a matter of fact, in addition to the method of recovery, the implementation of an accountability system among producers can also help solve the pollution problem stemming from plastic waste materials. I remember a TV programme about a famous Japanese electrical appliance manufacturer who invented a way to recycle styrofoam. The packaging of electrical appliances requires a lot of styrofoam, which leads to pollution. So they send vehicles to residential areas to recover discarded styrofoam, which will then be liquefied with a chemical derived from orange peel. The styrofoam will be recycled for re-use after being air-dried. The method is environmentally friendly and also indicates the enterprise's sense of social commitment. Two goals can indeed be accomplished in one go.

It is, however, sometimes hard to rely solely on enterprise initiative. It is, therefore, necessary for the Government to strongly encourage industrial and commercial enterprises to share social responsibility, for example, granting tax concessions to environmental industries and enterprises that use environmentally-friendly materials. At the same time, the Government should implement an accountability system for producers by, for examle, requiring them to adopt a "deposit system" for drinks so that the industrial and commercial sectors and all the people in Hong Kong can jointly make contribution to our efforts in environmental protection.

Finally, I call upon the Government, the industrial and commercial sectors and all people in Hong Kong to solve our problem of waste pollution in the spirit of "Hong Kong for sure". I also again urge the Government to assist the recovery and recycling industry so as to strive for a situation in which both environmental protection and employment can emerge winners.

With these remarks, Mr Deputy, I support the Honourable Mr TAM Yiu-chung's motion.

MR LEUNG YIU-CHUNG (in Cantonese): Mr Deputy, It is the general trend in the worldwide environmentalist movement to reduce and recycle waste.

With waste reduced, there will be less damage to the environment and cut in the expenditure on waste disposal. Waste recycling is particularly important to members of the workforce as it can create jobs. It is, therefore, my hope that the Government can face up to the task of environmental protection. It is indeed regrettable that although emphasis has all along been placed on environmental protection by the Government, very little has in fact been done. This is particularly so in the case of recovery and recycling, on which there is not even a specific policy. We, therefore, earnestly call upon the Government to clearly identify the problems, expeditiously face up to reality, and formulate both short-term and long-term environmental policies so as to save society as well as the earth.

Mr Deputy, in order to reduce plastic waste, it is necessary to address the issue by starting at the sources on the one hand and to promote recovery and recycling on the other. With regard to efforts to reduce waste at source, the major sources now are, as pointed out by Honourable colleagues just now, styrofoam food containers and plastic bags. According to figures released by the Government, about 120 tonnes of styrofoam are dumped into the landfills in Hong Kong daily. In terms of weight, that amount only makes up a small fraction in the daily total of all the waste, which weighs 16 500 tonnes. However, it is quite bulky. Its impact is, therefore, very far-reaching, especially in the case of landfilling. Furthermore, as we all know, the degradability of plastic is poor. So it poses long-term hazards to the environment. Therefore, we think that it is absolutely necessary to impose a total ban on the use of styrofoam and plastic bags as soon as possible. In fact, a three-level nationwide ban on the use of styrofoam food containers has been in force on the Mainland since 1 January 2000. Recently, Hong Kong has been vigorously advocating environmental protection. But what have we done? This is indeed a pity. The Government actually knows what is the problem. In this respect, it can in fact be said that the Government's performance is close to zero. Therefore, I call upon the Government to speed up so as to make up for what it should have done. On the one hand, the Government in fact can help the industrial sector to look for materials that might substitute for styrofoam and plastic bags, which might in turn lead to business opportunities. Many substitutes are in fact already in use in many countries. It is a pity that they are not very much in use here. Therefore, I think that the Government should help the commercial sector to promote this, and see how waste can be disposed of by means of recycling. We, of course, know that recycling might increase

production cost. However, we also notice that it is not so in other countries. Take Germany as an example. They have also adopted the method of recycling. However, it does not appear that recycling has increased production cost there. On the contrary, we even notice that there is profit in the case of recycling plastic materials. So, we must look at both sides of the coin. It is hoped that the Government can gather more information and provide the commercial sector with more information for their reference. Do not stand still and refuse to make progress.

Mr Deputy, besides reducing waste at the source, it is, as just mentioned by me, also possible to use the method of recycling. However, too little has been done in this respect. The Government has long been stressing that for waste disposal, there are two main methods, namely, landfilling and incineration. Both methods, as we all know, are not good ones. With regard to landfilling, we notice that many landfills are already almost full. New sites have yet to be identified for use as landfills. Furthermore, we all know that there are pollutants from landfilling, especially the discharge via underground water of tho-dipotassium phthalate, a health hazard. It has also been repeatedly stated by us in this Council that incineration also releases a lot of toxic gases, including dioxin. So neither landfilling nor incineration is good. More resources are going to be consumed too. As an illustration, we all know that it costs hundred of million dollars to build incinerators. If we invest our money in recycling, we might be able to kill two birds with one stone, and still benefit very much from it. It is, therefore, hoped that in waste disposal, the Government would not adhere to the two aforesaid methods to the exclusion of other methods.

In fact, we are of the view that environmental protection benefits not just the environment. At a time when there is extensive unemployment in society, we ought to talk more about environmental protection, especially recycling. According to data from different nations, recycling can really create jobs. According to an American study, to dispose of every one million tonnes of waste by means of recycling can create 2 000 jobs, with incineration providing just 150 to 1 100 jobs, and landfilling contributing even fewer, just 50 to 360 jobs. So in my opinion, what counts most is the point that recycling can increase jobs.

Mr Deputy, the benefits from recovery and recycling are tremendous and yet the Government all along has not given consideration to this method. It has only placed emphasis on the two methods mentioned above. Why? In fact

local environmentalist organizations have also pointed out that if the refuse thrown away by the public is segregated for recovery and recycling, there will be employment opportunities. It is, however, a pity that at present only about 1% of the refuse is segregated. Consequently, little has been achieved. I call upon the Government to pay particular attention to this.

THE PRESIDENT resumed the Chair.

PRESIDENT (in Cantonese): Mr LEUNG, your time is up.

MR KENNETH TING (in Cantonese): Madam President, here I just want to add a point. First of all, I support this motion on behalf of the Federation of Hong Kong Industries and demand the Government to conduct more studies so as to help the environmental protection cause. However, I have to point out some erroneous reports. It has been alleged that styrofoam releases a lot of dioxin in burning. According to BASF (one of the largest chemical plants in the world), the incineration of styrofoam will not possibly produce dioxin. Why? The reason is that the molecular structure of styrofoam simply contains no chlorine, nitrogen or sodium. Moreover, during the process of producing its raw materials, that is, the raw materials of styrofoam, there is no chance of it coming into contact with sodium or chlorine. So there is no question of releasing dioxin in the process of normal incineration. Please do not quote inaccurate information for no reason at all before you have done thorough research. At the same time, as we all know, there are different types of plastics. If all the plastic products disappeared all of a sudden, modern people would run into a lot of inconvenience in their daily life. There might be effect on our livelihood. Even farming and engineering might run into a lot of problems. I agree that the Government should conduct more research to examine how waste can be recovered and reduced. I, therefore, support the original motion but oppose the amendment. Thank you, Madam President.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Mr TAM Yiu-chung, you may now speak on Mr LEE Cheuk-yan's amendment motion. You have five minutes.

MR TAM YIU-CHUNG (in Cantonese): Madam President, I often remind myself that for the purpose of being a man as well as doing things, it is necessary to be practical and realistic and to progress in a gradual and orderly manner so as to achieve the desired results step by step. In the process of doing things, to strive for as much support as possible — indeed a way of doing things — may be deemed as conservative, out of date, or not "outstanding" enough. But this does not matter, time is the best proof. Madam President, with regard to the motion moved by me today, I also have had discussions with several environmentalist bodies. We agree that if the Legislative Council can reach a consensus on the policy regarding the reduction of plastic waste so as to compel the Government to adopt some more positive measures to improve the environment and protect people's health, then the benefits thus derived will definitely outweigh a sheer declaration of policy stand. Therefore, I have moved this motion.

In moving his amendment, Mr LEE Cheuk-yan also stated that the direction of this motion and that of his amendment are identical and that the difference lies only in the pace. That is right. If I absolutely did not want to do something for waste reduction, I would not have asked the Government to conduct studies. If I started off to get the thing done in one go, I am afraid divided views might in the end lead us nowhere. The time of this Council might thus be wasted and the whole thing would become meaningless. So, Mr LEE Cheuk-yan's amendment today happens to give Members one more option, and offer more room for discussion. The Democratic Alliance for the Betterment of Hong Kong is, therefore, not going to oppose Mr LEE Cheuk-yan's amendment.

Thank you, Madam President.

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Cantonese): Madam President, I am very grateful to the Honourable TAM Yiu-chung for moving this motion and to a number of Honourable Members for their concern over the reduction of waste, especially plastic waste.

Waste reduction and the promotion of waste recovery and recycling constitute an important part of the Government's environmental protection policy. In recent years, municipal solid wastes produced in Hong Kong have been increasing with each passing day. Last year, waste treated in landfills exceeded 9 000 tonnes daily on average, representing an increase of about 6% over 1998. The cost of waste disposal is high. The three landfills occupy a total area of 270 hectares and the annual operating costs approximate $400 million. Based on the current trend of waste production, it is forecast that one of the landfills will be filled up in 2005. We all agree that we cannot rely on opening up new landfills alone to dispose of the ever increasing waste properly. The waste reduction framework plan announced in 1998 has set out the long-term strategy for waste disposal. First, it is to avoid the production of waste; and second, to segregate, recover and recycle useful materials with a view to facilitating the effective use of resources and extending the useful life of landfills. Non-recyclable waste must be reduced in volume as much as possible for proper disposal.

Plastic is a major element of solid wastes. Last year, 700 000 tonnes of plastic waste were produced locally, representing 13% of all the waste in weight. Despite the wide application of plastic materials and their high efficiency of recycling, they must first be segregated, cleansed, pulverized and then granulated under heat before they can be reused as raw materials. In 1999, a total of approximately 150 000 tonnes of plastic materials were recovered in Hong Kong, representing 23% of the total plastic waste. Currently, the difficulty encountered in recovery and recycling is mainly due to the fact that plastic materials are light but bulky, which makes collection, delivery and storage more difficult. Besides, the collected plastic materials must be segregated for cleansing, but since they often mix up with other pollutants, so not all of them can be recycled. It is therefore less cost-effective than the recovery of other materials. In these circumstances, we think that we should consider other methods in addition to the segregation, recovery and recycling of plastic materials such as reduction in the use of plastic materials.

Mr TAM Yiu-chung mentioned many measures in his motion, which are generally close to our thinking. I would like to respond to these measures one by one. Firstly, promoting researches on and the use of environmentally-friendly cutlery and utensils and packaging materials. We have been encouraging the public all along to avoid the use of disposable products, including plastic cutlery, and we have required manufacturers to reduce

unnecessary packaging. At the same time, we also attach importance to the development of environmentally-friendly cutlery and packaging materials. At present, the Environment and Conservation Fund, Innovation and Technology Fund and Applied Research Fund have given financial support to research projects on the relevant products. In addition, we have been closely monitoring worldwide developments in this area as well as new products. We join the Consumer Council and the authorities concerned in forming a task force for the purpose of drawing reference from the experiences of various places, formulating guidelines to test the level of safety and hygiene of green products and their impact on the environment, including their degradability. It is expected that this task will be completed by the end of this year. The authorities concerned can then test utensils claiming to be environmentally-friendly on the market according to these principles so that consumers can have more choices.

Secondly, exploring the feasibility of legislating against the use of styrofoam lunch boxes. It seems that many Members are particularly concerned about the issue of styrofoam lunch boxes. I have no intention of defending the use of styrofoam, but I must point out that prohibiting the use of any materials in popular use currently will cause great inconvenience to the general public and the relevant industries. Hence, before making a decision, we should weigh the overall environmental and economic benefits on the basis of objective facts and data. We have a very clear stand on styrofoam containers. First, we encourage the public to avoid the use of disposable cutlery and utensils, including the use of styrofoam-made containers, through publicity and education. Second, although styrofoam is non-biodegradable, given that 98% of its composition is air, styrofoam waste now only accounts for 0.5% of the waste treated in landfills. I repeat: it is 0.5%. Further, there are very few alternatives claiming to serve as food containers on the market. As I have just explained, the Environmental Protection Department (EPD) has formulated guidelines to test these alternatives with the authorities concerned, including the Consumer Council. Meanwhile, we are closely monitoring the development of environmentally-friendly cutlery and utensils. Third, although some groups and Members have pointed out that styrofoam can cause cancer, EPD statistics reveal that, and as Mr TING has also mentioned earlier, it does not contain chlorine, so it will not release harmful substances upon incineration and chemical reaction will not take place easily. In fact, as far as we know, no country other than the Mainland prohibits the use of styrofoam. Most importantly, we have to take into consideration the fact that currently quite a lot of products, including

electrical appliances, are packaged in styrofoam. If we prohibit the use of styrofoam containers, should we also consider a total ban on the use of styrofoam, including packaging materials? In brief, we think that it is inappropriate to impose a mandatory ban on the use of styrofoam products at this stage. Some political parties have mentioned that quite a lot of members of the public are in favour of a ban on the use of styrofoam containers; we welcome the relevant political parties' offer of details of the survey for our reference.

Thirdly, encouraging industrial and commercial enterprises to reduce the use of non-biodegradable plastic bags, as well as implementing an accountability system whereby producers are required to set and achieve targets for reducing plastic waste. I very much agree to this proposal. Our environmental education effort is focused on encouraging the public to avoid the use of plastic bags and we actively advise the industrial and commercial sectors to reduce the supply of plastic bags. We have now formed a team with several large supermarkets and chain stores in a bid to make a further study on ways of promoting these activities. We also believe that a producer has an obligation to recover and dispose of waste connected with its products, so we are actively thinking of implementing a producer responsibility scheme to provide producers with guidelines on the use of packaging materials and the relevant measures and to encourage them to recover and dispose of the packaging materials of their products.

Fourthly, requiring manufacturers to introduce a coding system for plastic packaging and products to facilitate the segregation, recovery and recycling of plastic waste. Coding on plastic materials can facilitate recovery, segregation and recycling. The coding system is now fairly common. According to our survey conducted last year, in the major local supermarkets, 60% of the products that use plastic containers have been coded. We will continue to encourage manufacturers to implement the system for plastic products and have printed a guideline to assist them in understanding the particulars of the system.

Fifthly, expanding and providing additional government refuse collection points, and enhancing their waste-segregation function to facilitate the recovery of plastic waste. The Food and Environmental Hygiene Department has set up a total of 154 refuse collection points in Hong Kong, of which 23 have recovery facilities. However, owing to the limited area of refuse collection points, actual difficulties are encountered in the addition of recovery facilities, but we will still

increase recovery facilities as much as practicable. Within the next two years, we will set up three more collection refuse points which will be all equipped with recovery facilities.

Sixthly, exploring and developing other methods for the disposal of plastic waste as alternatives to incineration and landfilling. I take an open attitude towards the methods of disposing of waste produced locally. We are closely watching the latest development of various techniques. To our understanding, the most commonly used methods of waste disposal elsewhere are no more than landfilling, composting and waste-to-energy incineration. There are organizations testing the new technology of vaporizing waste, but this technology is still at the development stage and its effect is not yet established. I wish to stress that if Members or any group can offer any proposals that are specifically feasible, environmentally-friendly and cost-effective, I would give careful consideration to them one by one. However, whatever methods we are going to adopt for waste disposal in the future, reducing the quantity of waste is still a task of top priority. It is necessary for us to enforce the "polluter pays" principle expeditiously, to implement the industrial and commercial waste charging scheme at landfills, to induce organizations that produce large quantity of waste to reduce the production of such waste by using economic incentives and to have waste recovered and recycled. Not only will this relieve landfills of pressure, but it is also conducive to the development of the waste recovery industry.

Seventhly, stepping up publicity and promotional efforts to enhance public awareness of the need to reduce plastic waste. To enhance environmental awareness of the general public by means of public education is a key area of our work. We believe that active participation from all walks of life is necessary for effectively reducing waste and encouraging recovery and recycling of materials. On the reduction of plastic waste, we have organized a lot of promotional and educational activities. For example, we issue guidelines to schools and the catering industry, encourage them to minimize the use of disposable utensils, hold seminars for school principals, exchange opinions on how to use more environmentally-friendly food containers on campus, encourage the public to bring their own bags, and so on. However, I agree that we badly need to step up publicity and promotional efforts to achieve the target of reducing plastic waste.

Madam President, now I wish to respond to the Honourable LEE Cheuk-yan's amendment. Mr LEE has proposed the following amendment. First, legislating against the use of styrofoam lunch boxes; second, restricting by legislation the use of plastic bags by industrial and commercial enterprises; third, requiring by legislation manufacturers to introduce the coding system; fourth, expanding and providing additional government refuse recovery systems and enhancing their waste-segregation function; and fifth, enhancing government departments' awareness of the need to reduce plastic waste. In connection with the first three points, we do not agree to using legislation to achieve the target of reducing plastic waste at this stage. We are of the view that in order to reduce waste, we should consider education first to win the support of the public and the industry. Comprehensive ancillary support coupled with economic incentives is a more desirable approach. Like Mr TAM, Mr LEE has also proposed to extend the refuse recovery systems. I agree that there is such a need. Now we have formed a working group within the Environment and Food Bureau and initiated the relevant work jointly with the EPD and the Food and Environmental Hygiene Department to conduct a comprehensive study on the current component facilities for segregation and recovery. We aim to improve the overall work flow so that the public and recyclable waste collectors can segregate and recover different materials more effectively in a bid to promote the development of the environmental protection industry. Within the Government, every department has a green manager responsible for the promotion of environmental protection measures, including waste recovery. There is also a working group under the Waste Reduction Committee, which is solely responsible for examining the work of government departments in this area. We will continue to figure out how government departments can reduce waste more actively.

As regards the Honourable HUI Cheung-ching's proposal of a recycling deposit levy, we will explore the possibility of implementing this system in Hong Kong. Madam President, I would thank Mr TAM Yiu-chung again for moving a discussion on the topic of plastic waste. From Honourable Members' speeches, we can see that everybody is concerned about this issue. Promoting waste reduction, providing component facilities for recovery and recycling and imposing landfill charges for industrial and commercial waste constitute an important part of our strategy of waste disposal. With respect to air quality improvement, the Government has gained Members' support, which is already a great step forward. Next year, we will actively implement various measures of

waste disposal. I look forward to Members' continuous support, and with our concerted efforts, Hong Kong will turn into a city of sustainable development.

Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the amendment made by Mr LEE Cheuk-yan to Mr TAM Yiu-chung's motion, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

PRESIDENT (in Cantonese): Mr LEE Cheuk-yan, we now vote on the amendment moved by you.

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

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

Functional Constituencies:

Mr Michael HO, Mr CHEUNG Man-kwong, Mr SIN Chung-kai and Mr LAW Chi-kwong voted for the amendment.

Mr Kenneth TING, Mr Edward HO, Mr Eric LI, Dr LUI Ming-wah, Mr HUI Cheung-ching, Mrs Miriam LAU, Mr Timothy FOK and Mr FUNG Chi-kin voted against the amendment.

Mr LEE Kai-ming, Mr CHAN Kwok-keung, Mr CHAN Wing-chan and Mr WONG Yung-kan abstained.

Geographical Constituencies and Election Committee:

Mr Albert HO, Mr LEE Wing-tat, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Miss Emily LAU and Mr SZETO Wah voted for the amendment.

Mr David CHU, Mr HO Sai-chu, Mr NG Leung-sing, Prof NG Ching-fai, Mr MA Fung-kwok and Mr Ambrose LAU voted against the amendment.

Miss CHAN Yuen-han, Mr Gary CHENG, Mr Jasper TSANG, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr CHAN Kam-lam and Mr YEUNG Yiu-chung abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 16 were present, four were in favour of the amendment, eight against it and four abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 24 were present, 10 were in favour of the amendment, six against it and seven abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

PRESIDENT (in Cantonese): Mr TAM Yiu-chung, you any now reply. You have two minutes 15 seconds out of your original 15 minutes.

MR TAM YIU-CHUNG (in Cantonese): First of all, I have to thank Mrs YAM, the Secretary for Environment and Food. She has just responded in great length to each of the seven proposals of my motion. I hope that the Government will report to this Council every now and then the progress on the reduction of plastic waste. While proposing to reduce plastic waste, I also have to cut down on superfluous words. I am very grateful for the support of Members, especially those who have spoken. Thank you.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr TAM Yiu-chung, as set out on the Agenda, be passed.

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

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Second motion: Assisting the financial services sector in seeking business opportunities in the Mainland market.

ASSISTING THE FINANCIAL SERVICES SECTOR IN SEEKING BUSINESS OPPORTUNITIES IN THE MAINLAND MARKET

MR FUNG CHI-KIN (in Cantonese): This Council has been in session for two consecutive days. Madam President, you still manage to preside in great spirits over this motion debate, the final one for today. I am grateful and appreciative.

Busy though they are, Honourable colleagues still take part in and give support to this seemingly unexciting motion debate. I must thank them, too.

Madam President, for fear that Mr TAM Yiu-chung might criticise me for saying superfluous words, I now move the motion as printed on the Agenda.

Today, in moving the motion on "assisting the financial services sectors in seeking business opportunities in the mainland market," I hope that there may be some positive and active response from the Government to the financial services sector — small and medium-sized market participants in particular.

Most people in Hong Kong probably already know that after years of arduous and tortuous multilateral negotiations, our country has finally concluded agreements with the United States and the European Union (EU), two powerful trading partners, in the process of its accession to the World Trade Organization (WTO). It can be said that the light boat has already travelled past ranges of mountains. China's integration into the world economic and trading system is going to be more extensive, more penetrating and more sophisticated. Its participation in international economic and financial activities is also going to be more direct. To the Chinese people, this is a big event, a joyous event that they should be excited about and feel proud of.

At the same time, given Hong Kong's status as an international financial centre, the financial industry is the mainstay of our economy. Our securities market is one of the most active ones in the world. In terms of total market capitalization, it ranks high among major international markets. We have all along been playing the role as the main channel through which Mainland enterprises obtain financing and raise funds externally. We have all along been playing the role as the main bridge between the Mainland and overseas markets in the exchange of trade, finance, information, and talents. How should we strengthen and promote Hong Kong's status as an international financial centre in face of the new development of China's accession to the WTO? How should we strengthen and promote Hong Kong's role as the bridge between the Mainland and overseas markets? How should we consolidate the position of Hong Kong as a financial centre as well as the strengths of its financial industry so as to take vigorous and progressive actions to grasp the opportunity and be able to strike first under new circumstances, in which the mainland market is gaining further integration, and financially powerful world-class multinational companies are getting combat-ready to fight for the grand prize? The background to the motion moved by me today is mainly with the question as to what policies should

be adopted by the Government under the new circumstances, where new challenges and opportunities co-exist. Special reference is directed to the question as to how to encourage and help small and medium-sized market participants to actively seek business opportunities.

Madam President, fellow members of the industry and I are going to urge the Government, through this Council, to adopt measures in three areas.

In fact, the most important measure is to strengthen the link between the financial infrastructure of Hong Kong and of the Mainland.

With Hong Kong's securities market having gone through more than 10 years of reform and development, especially the aftermath of the two stock market debacles of 1987 and 1997, our financial infrastructure is becoming better and healthier. Completed earlier this year was the merger of the Stock Exchange, the Future Exchange and the Hong Kong Securities Clearing Company Limited. Trading in securities and futures has further gone electronic. Going on for years and to be continued in the future is the major task of enhancing the supervisory and regulatory regime for the financial markets. There have also been more adjustments and reforms dovetailing with modern on-line trading, market globalization, regional alliances, 24-hour trading, and multi-currency fund-raising, transactions and clearing. The huge amounts of resources put in are to effect an ambitious project of the Government of the Hong Kong Special Administrative Region (SAR) under the leadership of the Chief Executive, Mr TUNG Chee-hwa, namely, to consolidate and develop Hong Kong's status as a financial centre. Early this month, Mr TUNG Chee-hwa and Mr Andrew SHENG, Chairman of the Securities and Futures Commission (SFC), addressed an important conference held in Shanghai. The essence of their speeches is the promotion of Hong Kong's strengths and the co-operation between Hong Kong and Shanghai.

Since 1993, state-owned enterprises of the Mainland (commonly known as H-shares) have been listed on the Stock Exchange of Hong Kong (SEHK) for trading. As at the end of last month, 46 H-share companies and 44 "red chip" companies (denoting Hong Kong-registered companies mainly owned by mainland-capital shareholders) were listed on SEHK for trading. Their total market capitalization amounted to US$125 billion. China Telecommunications among them has become the listed company with the highest market value, outstripping Hong Kong and Shanghai Banking Corporation (HSBC) and Hong Kong Telecommunications. Yet to be included is China Unicom, which was

listed only today. State-owned enterprises may choose to go listed on the markets of the United States, Singapore, London, or Tokyo. However, judging from the responses and comments of international investors after years of trading, Hong Kong is still the most popular market. Following the financial turmoil of 1997, state-owned enterprises and "red chip" companies, like ordinary companies, have run into all sorts of problems. Their prices and transactions have not been good. Companies seeking listing here after the turmoil have been few and the responses lukewarm. For all these, it can still be foreseen that, after readjustment and consolidation, and consequent upon the strong economic growth on the Mainland and the implementation by China of the strategic decision to open up the west, Hong Kong can make use of the favourable geographical and human factors by bringing into play "the advantage of being in a favoured position" on the strength of its excellent financial infrastructure and actively win over more quality state-owned enterprises, even private enterprises, and hi-tech growth enterprises to go listed in Hong Kong, then play and consolidate its role as the main channel for the interflow of venture capital for the Mainland; bring in major mainland enterprises for listing in Hong Kong, and bring to the local stock market more strength and a higher degree of perfection. Take the Hang Seng Index (HSI), the indicator of the trend of our stock market, for illustration. Already covering several major state-owned enterprises and "red chips", the HSI no longer reflects just Hong Kong's economy, but also indicates the climate of certain major mainland industries. With state-owned enterprises and "red chips" listed in Hong Kong, the composition of Hong Kong stocks has been changed to cover not just financial and real estate stocks. Thus there are more choices for investors.

With regard to the link in the area of financial infrastructure, there can be full-scale co-operation between Hong Kong and mainland markets in technology, administration, information, human resources and financing. This proposal was first presented and promoted as early as 1992 and 1993, when discussions were held with the Mainland on the listing of state enterprises in Hong Kong. The Government should conduct reviews to examine the progress and effectiveness of such co-operation and exchanges. I am of the view that in recent years exchanges have been confined mainly to corresponding counterparts of the SEHK and SFC. In the case of market participants, especially the small and medium-sized ones, there is serious inadequacy as they have had fewer exchanges. To help establish a comprehensive and permanent co-operative mechanism, the Government should try to broaden the exchanges between market participants of the two places. To cut it short, in addition to working for the interests of the stock exchange by getting more mainland quality enterprises

listed in Hong Kong, the Government should also look after those market participants and equip them for the fight for business. Big companies and multinational companies have their own methods. Small and medium-sized market participants, on account of their limitations in strength, size and information accessibility, are no match with big companies. However, they have years of experience in serving small and medium-sized investors (the so-called "retail investors"). They possess the characteristic of being highly flexible, and are able to make totally different and mutually supplementary contributions. These are precisely what big companies probably will not and cannot do. The Government and Honourable colleagues may have noticed that, with the approach of a market which is more open while featuring more fierce competition, small and medium-sized market participants, in order to survive and grow, have been undergoing different forms of integration in recent days so as to develop on-line business and enhance their own competitiveness. Strong though a certain world-class bank is, it is still selling its Australian securities business while conducting discussions with an American bank on co-operation and merger. From this we know the intensity of the competition. Can the Government actively act as a an intermediary for small and medium-sized members of the industry in their search for business opportunities on the Mainland?

With regard to strengthening the link between the financial infrastructure of Hong Kong and that of the Mainland, there are two more areas, namely, inter-market listing and preparation for the development of on-line securities trading.

As members of our industry know, upon China's accession to the WTO, foreign investors and foreign funds will be able to enter the mainland securities market gradually. Why "gradually"? The key factor is that, as far as capital is concerned, in the foreseeable future Renminbi still would not be freely convertible. Mainland capital includes capital in foreign savings held by mainlanders. According to statistics, the foreign exxchange deposits of local mainland-capital bodies ("local" refers to mainland-capital bodies on the Mainland) amount to US$111.8 billion whilst the foreign exchange savings of local residents amount to more than US$60 billion. All such capitals still cannot get in or out of the country freely. However, it is indisputable that mainland investors are keen to invest in the Hong Kong stock market or even the Hang Seng Index futures market, especially with regard to some quality state-owned enterprises or "red chips", which are not open to mainland investors for trading. Mainland investors have confidence in Hong Kong's securities market

with regard to market transparency, legal protection, market regulation, corporate governance, risk management and the clearing system. That being the case, the Governments of the two places as well as market operators and regulators should actively look into inter-market listing and facilitate lawful and legitimate transactions with on-line trading, with a view to satisfying the needs of investors of the two places (the idea "investors of the two places" refers to the fact that Hong Kong investors are interested in A-shares on the Mainland) so as to safeguard the interests of mainland investors and regularize those so-called "underground transactions" which are in existence *de facto*. The combined total market capitalization of companies listed on the Shanghai and Shenzhen stock exchanges approximately amounts to US$470 billion; in the case of the SEHK, the total market capitalization of listed companies almost amounts to US$600 billion. If inter-market listing and on-line trading do materialize, then the two can join forces to take up the leading role in Asia. Surely, we do understand that for the purpose of getting listed in Hong Kong, it is not enough to rely just on the will of regulators or market operators. There are some technical problems of professionalism, such as regulatory rules and disclosure rules, to be solved. Stress should be placed on quality, not on quantity. Similarly, in the case of on-line trading and network trading, attention must be given to the security and reliability of the system as well as to the protection for mainland investors. So it is necessary to explore first and get prepared. When the opportunity is ripe, success will come.

I have proposed two other measures, one being that it is necessary to keep on strengthening the communication and co-operation between the exchanges and regulatory bodies of Hong Kong and those of the Mainland, and to broaden the exchanges between market participants of the two places with a view to establishing a comprehensive and permanent co-operative mechanism. Mention has been made of this above, so I am not going to repeat it. Now on the other measure, namely, strengthening the promotion of professionalism and resourcefulness of Hong Kong's financial services sectors to mainland and international investors. I remember that this Council had a motion debate last June on facilitating the financial industry, which was moved by the Honourable Bernard CHAN. The promotion of Hong Kong's financial industry involves non-stop painstaking visits to different nations and vigorous promotional efforts by the Chief Executive, the Financial Secretary, the Chief Executive of the Hong Kong Monetary Authority, and, of course, by the Secretary for Financial Services, as well as leaders of the SFC and the stock exchanges. However, I want to stress that it is more than that. The financial services industry is in fact a people-oriented service industry. It is a service industry combining

professional knowledge, technique, capital and strength. It is also a service industry combining high technology, mathematical formulae, and long-established basis of honesty and faith. In order that there can be a market, buyers and sellers, investors and issuers (that is, listed companies) require the go-between services of a lot of professionals and intermediaries. Given a new statutory regulatory framework and a new supervisory structure of market operation, Hong Kong's financial industry is taking part in the international competition with a new footing as well as a new starting point. It is hoped that the Government can shape the condition for members of the industry, especially the small and medium-sized ones, and lead all of us to the Mainland for the promotion of Hong Kong's financial services industry so as to further advance Hong Kong's status as a financial centre and a bridge.

With these remarks, I beg to move. I look forward to Honourable colleagues' support. Thank you, Madam President.

Mr FUNG Chi-kin moved the following motion: (Translation)

"That, as Hong Kong's financial services sector will face intense competition and challenges with a large number of foreign multinational securities companies entering the mainland market on a large scale following China's accession to the World Trade Organization and the further integration of the mainland market leading to the emergence of a huge stock market, this Council urges the Government to implement the following measures to actively strengthen and promote Hong Kong's status as an international financial centre and its role as the bridge between the Mainland and overseas markets, so as to increase the business opportunities of the local securities sector:

(a) to strengthen the link between the financial infrastructure of Hong Kong and of the Mainland by:

i. attracting more quality enterprises to list on Hong Kong's Main Board or the Growth Enterprise Market, with a view to developing Hong Kong as the main channel for facilitating the flow of venture capital to the Mainland;

ii. facilitating co-operation in the form of inter-market listing; and

iii. encouraging the stock exchanges of the two places to conduct feasibility studies on the joint development of on-line securities trading;

(b) apart from the continuous efforts to enhance the communication and co-operation between the stock exchanges and regulatory bodies of Hong Kong and of the Mainland, to broaden exchanges between the market participants of the two places, so that local small and medium-sized market participants and mainland official and trade organizations can establish comprehensive and permanent co-operative mechanisms in areas such as market information, human resources and technology; and

(c) to strengthen the promotion of the professionalism and resourcefulness of Hong Kong's financial services sector to mainland and international investors."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr FUNG Chi-kin, as set out on the Agenda, be passed.

We now proceed to the debate. Does any Member wish to speak?

MR JASPER TSANG (in Cantonese): Madam President, I speak on behalf of the Democratic Alliance for the Betterment of Hong Kong (DAB) in support of the motion moved by the Honourable Mr FUNG Chi-kin calling upon the SAR Government to strengthen our co-operation with the financial industry of the Mainland so as to bring into full play the role of Hong Kong as the Asian-Pacific financial centre, develop Hong Kong into a major base for mainland enterprises to raise funds externally, and open up new territories for the growth of our financial industry.

Madam President, about two months ago, the Honourable FUNG Chi-kin led a delegation of members of the securities and futures sector to Beijing, visiting Beijing's financial and regulatory bodies. I also participated in activities of the delegation, noticing the rapid growth of the Mainland's financial market as well as the emphasis placed by the Mainland on improving the financial regulatory system. At present, the total market capitalization of mainland stocks approximately represents 30% of their Gross National Product. The number of enterprises listed in Shanghai and Shenzhen totals well over 1 000. These indicate the significance of the financial industry to our country's economy. As China further opens her door to the outside, the different aspects of its financial industry, such as information accessibility, organizational structure, and competition environment, are undergoing far-reaching changes, bringing to our financial industry and related sectors endless opportunities.

Certainly, members of our financial industry can ill-afford the mentality of wishing to enjoy the fruits of success without labouring on their part and just wait for their mainland counterparts to extend to them the invitation to co-operate. Upon China's accession to the World Trade Organization (WTO), mainland business in the areas of banking, funds and insurance might open up faster. However, coming with this will definitely be keener competition. Members of the industry in Hong Kong must alert themselves to this. They must take the initiative to exchange views and experience with their mainland counterparts. The SAR Government must also take matching measures to strengthen the promotion of our financial services to the Mainland.

A key factor hindering the effective conversion of mainland technology into productivity for competitiveness is capital cruch. So, the Mainland is studying ways to promote the establishment of a venture investment system. Many mainland enterprises are actively considering getting listed on the Growth Enterprise Market (GEM) in Hong Kong or foreign places for fund-raising purposes. According to a recent survey on some 20 mainland hi-tech enterprises, some 60% of those mainland hi-tech enterprises consider listing on Hong Kong's GEM their first choice. Mainland enterprises are very keen to be listed in Hong Kong not only because Hong Kong can offer better fund-raising format and thus help to enhance the images of enterprises, but also because Hong Kong can facilitate the absorption of international operational experience for enterprises, and thus compel the enterprises to be more enterprising at all levels.

At present, the financial regulatory bodies on the Mainland are making some co-ordinating efforts in a synchronized move. It has been reported that according to Chairman ZHOU Xiaochuan of the China Securities Regulatory Commission (CSRC), approval will gradually be given for commercial banks as well as insurance and securities companies of the Mainland to go listed in Hong Kong. As a matter of fact, according to opinions in the market, the mainland policy of imposing strict restrictions on Hong Kong listing for state-owned enterprises or private enterprises has prevented both sides from gaining more economic benefits. Currently, the procedures for mainland enterprises to get listed here are quite complicated and the requirements are also rather stringent. To get listed in Hong Kong requires a green light from the CSRC. For example, the major shareholders of an enterprise must be mainland citizens. Furthermore, at least 50% of the enterprise's business must be generated from production on the Mainland. An enterprise is required to inform the CSRC of its plan for listing in Hong Kong for its consideration. It may go ahead only after approval is granted. To control the drain on assets of state-owned enterprises is, of course, a legitimate duty on the part of the mainland authorities. However, to the enterprises, the whole process is relatively complicated and time-consuming. Consequently, enterprises often cannot take advantage of the atmosphere in the market in timing their listing.

The DAB holds that the SAR Government should actively approach the Central Government with the suggestion that the regulatory system governing mainland enterprises seeking listing in Hong Kong be revised. Of course, there must be corresponding safeguards when the restrictions are relaxed. For instance, only enterprises possessing good management and the ability to improve business and profits may seek listing in Hong Kong. There should also be appropriate monitoring by the regulatory body on the Mainland. Only in this way can the development of our financial market be benefited. We surely do not want to see enterprises that have come here develop financial difficulties or the like shortly after listing and fund-raising. This, on the one hand, might jeopardize investors' interests and deal a blow to confidence. On the other hand, there might also be some impact on other mainland enterprises seeking to be listed in Hong Kong later.

Madam President, to promote cross listing by enterprises of the two places for trading can help deepen the markets of both places. According to a story circulating in the market, the Central Government's current strict restriction on state-owned enterprises seeking to come here to do business is for the good of Hong Kong as it seeks to prevent Hong Kong's market from being interfered by mainland capital. However, we are of the view that, given the fact that there are huge amounts of capital coming into and going out of Hong Kong every day, our market would not easily be subject to such interference. Conversely, the more mainland enterprises come here to do business, the more benefit can both sides derive from it. If mainland stocks are listed in Hong Kong for trading, there will be more market regulation for the enterprises, and the flow of capital will also be put on the correct track, thus ensuring greater transparency. This is also beneficial to mainland enterprises.

According to some studies and analyses on the development of stock markets on the Mainland, upon China's accession to the WTO, stocks in respect of transportation and power supply are probably going to be the "big winners" to benefit from inward investments. Conversely, financial stocks are not going to rank among the "big winners" as it is believed that there will be keener competition from outside. Such analyses reflect the pressure to be brought onto the Mainland's financial industry upon China's "entry into the World" (that is accession to the WTO). It so happens that this can be the driving force behind the strengthening of the co-operation between the financial services sector of Hong Kong and that of the Mainland in different areas.

The motion's proposal to promote the joint development of on-line trading between the stock exchanges of Hong Kong and the Mainland does merit support as it will give investors more choices. The securities sector on the Mainland is actively considering launching on-line trading. The new stock exchange in Hong Kong is also bent on updating the securities trading system. So, these will be one of the key areas of work in the future.

PRESIDENT (in Cantonese): Mr TSANG, your time is up.

MR HO SAI-CHU (in Cantonese): Madam President, given the fact that boundaries of financial markets all over the world are gradually disappearing,

Hong Kong, for the purpose of maintaining its status as an international financial centre, must forge strategic alliances with other markets so as to further enlarge our financial market. The Liberal Party endorses the overall direction of the motion. The link between the financial infrastructure of Hong Kong and of the Mainland should be strengthened, which can help increase the business opportunities for the industry in Hong Kong and further advance Hong Kong strengths in finance. Following 13 years' of bilateral negotiations regarding the World Trade Organization (WTO), China and the United States at last managed to reach an agreement in mid-November last year. It is believed that China will be able to become a WTO member late this year or early next year.

Some people worry that upon China's accession to the WTO, foreign multinational securities companies might enter the mainland market on a large scale, and thus challenge Hong Kong's status as a financial centre. However, the fact remains that Hong Kong enjoys quite a few advantages. So long as the Administration is able to further strengthen them, make use of information technology to provide quality services at competitive prices, and promote the link between the financial infrastructure of Hong Kong and of the Mainland, this may on the contrary help Hong Kong open up business opportunities and further consolidate Hong Kong's status as a financial centre. Hong Kong's stock market in the aftermath of the Asian financial turmoil still comes first in the Asia-Pacific Region excluding Japan. As at the end of April, the total market capitalization of the Hong Kong stock market stood at US$568.7 billion. If more mainland quality enterprises are drawn here for listing, there can be further growth for our stock market. Regrettably, there are not enough exchanges between relevant bodies of the two places and members of the public do not know much about mainland shares or mainland-capital enterprises. We think the authority concerned, the Hong Kong Exchanges and Clearing Limited (HKEx), should actively step up promotional work by setting up offices in major mainland cities like Beijing and Shanghai to organize regular seminars to exchange information and to make known to mainland enterprises with potentials the advantages of listing in Hong Kong as well as the formalities so required. Furthermore, training programmes can be organized in conjunction with mainland organizations to promote the interchange of talents and to share experiences, resources and knowledge. At the same time, encouragement and assistance should be given to our stock brokers' organizations to facilitate regular meetings with corresponding mainland bodies, such as the China Stock Brokers Association, so as to promote exchanges between the two places. In addition,

the Government may consider setting up relevant organizations to help mainland-capital enterprises fit into the Hong Kong market, provide proper assistance, simplify the formalities required for listing and shorten the waiting time. In this way, more enterprises will be drawn here for listing.

On 31 May this year, the top seven NASDAQ stocks of the United States were listed on the Hong Kong market for trading, further advancing the progress of globalization of our securities market. To continuously broaden investors' range of choices and to enhance the competitiveness of our financial markets, we call upon the Administration to strengthen the links with the relevant mainland organizations, and help to improve and upgrade the quality and standard of market regulation on the Mainland so as to establish co-operation with the Mainland in the form of inter-market listing. As hi-tech progresses, the general trend is development of on-line stock trading. The Liberal Party welcomes the preparation made by the Hong Kong market in connection with on-line trading. It is also hoped that Hong Kong can establish a good system for Internet trading with the Mainland as soon as possible and effectively regulate Internet stock trading so as to safeguard investors' interests.

With these remarks, Madam President, I support the motion on behalf of the Liberal Party.

MR ALBERT HO (in Cantonese): Madam President, upon China's accession to the WTO, its financial services sector will open up gradually. There will be new opportunities and challenges for members of the industry in Hong Kong. Coming with the opening up of the market are opportunities: Members of the industry in Hong Kong and multinational securities companies will enjoy equal opportunities to go to the Mainland for direct investments. Also coming with the opening up of the market are challenges: Foreign investors may directly participate in the mainland securities market, which is going to undermine Hong Kong's previous role as an intermediary. Many people probably do agree with the above analysis. But how about the reality? Now on opportunities. Given the current size and financial strength of our securities sector, it is no match with mega multinational securities companies. Even the local retail investors' market is coming under serious threat posed by banks and Taiwan securities companies, thus bearing much pressure that requires them to muster greater strength by merging or forming alliances. It seems that if they do not

want to see opportunities come to nothing, members of the industry must put in more efforts to enhance their own competitiveness. Turning now to challenges. As a matter of fact, Hong Kong's role as an intermediary has gone downhill significantly following the financial turmoil. The number of mainland enterprises that have been successful in their fund-raising efforts here has dropped sharply; so have the amounts raised and the volume of investment. The challenges that we are facing do not come from China's accession to the WTO. The trouble is that blows have been dealt to foreign investors' confidence as a result of Hong Kong's failure to fully play the co-ordinating and buffering role of an intermediary on the basis of "one country, two systems" after the financial turmoil.

From the standpoint of foreign banks, the main reason why they choose Hong Kong over Shanghai as the channel for capital in their investments in China is not that Hong Kong knows the Mainland better than Shanghai does. It is because our financial operations and legal system are in alignment with international practices. Under the arrangement of "one country, two systems", foreign investors can enjoy their legitimate rights and privileges under the protection of our law. Furthermore, Hong Kong is in a position to communicate with the Central Government, thus able to fully play the role of an intermediary looking after the interests of foreign investors and the requirements of the Chinese Government. However, in the cases of the closing down and winding up of the Guangdong International Trust and Investment Corporation (GITIC), Guangdong Development Enterprise and Guangnan Holdings, foreign investors did not see any capability on the part of the Hong Kong Government to offer them any assistance; nor did they see the Hong Kong Government ever taking up the matter with the Chinese Central Government to mediate a more satisfactory settlement. With regard to the regulatory bodies of the two places, the set-up of power and responsibility in respect of regulation is also unsatisfactory, thus giving inadequate protection to investors' rights and privileges. Here are some examples. When making disclosure, "red chips" and state-owned enterprises tend to be inopportune, poor in transparency, and unclear in information. With party or government offices on the top directly appointing or removing managerial staff of "red chips" or state-owned enterprises, it is particularly difficult for our regulatory bodies to perform their duties as when those companies develop problems, members of their leadership can be transferred back to the Mainland immediately.

If coupled with further progress in the reform of state-owned enterprises, China's accession to the WTO might bring new opportunities to Hong Kong's role as an intermediary. At present, we should strengthen the link between the financial infrastructure of Hong Kong and of the Mainland, re-establishing and consolidating the previous role as an intermediary. In addition to drawing more quality enterprises to Hong Kong for listing, establishing inter-market listing activities, and developing on-line stock trading, the Hong Kong Government should also sum up experience, and consider carefully its proper relationship of co-operation and co-ordination with different mainland local governments and the Chinese Central Government on the basis of "one country, two systems" so as to work out the division of labour on responsibility of regulation in the event of cross-border issues. On the one hand, efforts should be made to help mainland enterprises improve their transparency and conformity with regulations. On the other hand, efforts should also be made to fight for better information and protection of investor interest. In order that investors can clearly understand the risks involved in investing in mainland enterprises as well as their legitimate rights and privileges, clear information should be provided too.

With these remarks, I support the motion of Mr FUNG Chi-kin.

MR CHAN KAM-LAM (in Cantonese): Madam President, the Honourable Jasper TSANG, Chairman of the Democratic Alliance for the Betterment of Hong Kong (DAB), has just spoken on strengthening the link between the financial infrastructure of Hong Kong and of the Mainland, presenting our views on matters like lobbying the Central Government for relaxation of restrictions on mainland enterprises seeking listing here, and the promotion of joint development of on-line trading between exchanges of the two places. To promote the growth of the financial industry of our country and that of Hong Kong, it is indeed necessary to approach from different aspects and directions.

In the opinion of the DAB, we should attract mainland enterprises to Hong Kong for listing on the one hand, and take the initiative on the other to open up the mainland market and strengthen the links between regulatory bodies of the financial industry and market participants of the two places. To this end, the Government should put in promotional efforts to induce our small and medium-sized market participants to make real efforts to understand the development and operation of the financial markets on the Mainland and establish closer links with the government and trade organizations on the Mainland so as to promote to them our professional financial services.

In recent years, the banking, securities and insurance sectors on the Mainland have had some discussions and studies on how to meet the challenge posed by China's accession to the WTO, approaching the issue from the standpoints of their respective business. Seminars already held this year include the Symposium on International Financing and Listing 2000 held in Beijing and the Seminar on China's Financial Development Strategy held in Shanghai. As a matter of fact, according to opinions on the Mainland, there will be great impact on the development of the financial industry on the Mainland following China's accession to the WTO. At present, the Tenth Five-year Development Plan (the "Tenth Five") for the years 2001–2005 is being formulated on the Mainland. At the same time, reforms in respect of the financial industry for the period under the "Tenth Five" are under consideration, too. To dovetail with the future development of China's securities market, the China Securities Regulatory Commission also plans to revise the functions of the two major stock exchanges in Shanghai and Shenzhen. According to the preliminary plan, the stock exchange in Shanghai will be designated as the Main Board whilst that in Shenzhen, which has been doing well with hi-tech products in recent years, will be designated as the Second Board of China. So, it is necessary for local members of the industry to know the reform measures and development strategies of the financial industry on the Mainland for the next five years, and also understand how the Mainland analyses the prevailing new economic situation and deals with those new opportunities and challenges. Only in this way can the rapidly changing financial markets on the Mainland be grasped.

With regard to regulators, we also call upon the SAR Government, the Hong Kong Monetary Authority (HKMA), the Securities and Futures Commission (SFC) and the newly established HKEx to enhance communication and co-operation with regulatory bodies on the Mainland, so as to upgrade the regulatory ability of both sides and promote the stability of their financial industry. With the financial market on the Mainland speeding up the process of replacing operational mechanism, updating the systems, and actively opening up new businesses, mainland regulatory bodies are putting in efforts to learn from the regulatory experience of the international financial industry. Being the Asia Pacific financial centre, Hong Kong probably can share with the Mainland some regulatory experience in respect of the financial industry, and contribute to the growth of the financial industry of the two places through the exchange of the latest regulatory information between the two places.

In recent years, mainland enterprises have been in keen demand for foreign financing because of the necessity to satisfy the needs stemming from rapidly growing business. For instance, in 1999, a number of mainland companies featuring Internet electronic business, such as ChinaE.com, China.com, Neteasy.com, Sohu.com, Homeway.com and 8848.net were listed or getting ready to be listed on NASDAQ. Furthermore, three companies, including China Telecommunications, are already listed on the HKEx for trading. The overseas listing of our country's hi-tech companies has drawn much attention from foreign investors. In order that our financial services sector can win business amidst the fervent tide of efforts made by mainland enterprises to raise funds externally, it is not enough for them to rely on their own efforts and establish links with mainland market participants to serve as, say, listing sponsors. It is also necessary for the Government to take positive steps to promote to the Mainland the financial industry of Hong Kong, so as to reinforce the effectiveness.

There is a bright future for our country's financial industry. Judging from mainland enterprises' need to raise funds externally, the mainland market has immense potential for growth. In addition, as the Mainland has many hi-tech talents, the prospect of information technology is good. The Zhong Guan Cun Science City, a project whose development is now getting full support from the government, stands a good chance of becoming a new Silicon Valley.

Capital shortage however is an obstacle to the development of the financial industry on the Mainland. Researches and designs of many enterprises have to be commercialized as the supply of capital is inadequate. Upon our country's accession to the WTO, foreign multinational securities companies will definitely open up the mainland market actively, and, consequently, intensify market competition. So members of our financial services sector must speed up to play the bridging role in bringing in capital; otherwise business opportunities might be missed. Local investment funds that have yet to grasp on-line business opportunities on the Mainland should also get to grips with the technological achievements of the Mainland as soon as possible, so as to co-operate with the hi-tech enterprises on the Mainland to work for greater economic effectiveness.

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

MR NG LEUNG-SING (in Cantonese): Madam President, to various trades in Hong Kong, China's accession to the WTO means the emergence of business opportunities of varying magnitude. This is especially true of the financial services market on the Mainland, which, though long under heavy protection, will open up following China's accession to the WTO, and consequently bring unprecedented opportunities to members of the financial services sector of Hong Kong.

With regard to securities' financing, the two mainland stock markets in Shanghai and Shenzhen and the A-share and B-share markets are gradually heading for a merger to form a big and unified market so as to strengthen its capability to raise funds externally in a bid to draw in more foreign capital. As the market gradually opens up, the securities sector on the Mainland will also keep on upgrading their own professionalism and, in a bid to enhance their competitiveness, might even start stepping up different forms of co-operation with foreign companies.

Under such circumstances, the securities sector in Hong Kong will have to face new challenges. First of all, it is necessary to clearly identify the position of our securities market and strengthen our edge and related characteristics so as to establish with the mainland market a relationship that is mutually

complementary and supporting, and consolidate our role as the main window to the mainland enterprises through which funds are raised externally on the one hand, and a bridge leading to foreign capital on the other. For instance, the future development of our Growth Enterprise Market depends, to a certain extent, on the Hong Kong Government's efforts to further straighten out the regulatory framework, strengthen the communication and co-operation with mainland regulatory bodies and make it even more attractive for private innovative technology enterprises on the Mainland to go listed in Hong Kong.

Secondly, members of the industry in Hong Kong should catch up the speed at which the mainland market is opening up, make an effort to participate in activities of the stock market on the Mainland before foreign funds do so by capitalizing on our geographical and cultural advantages, and expand their scale of operation and enhance their international competitiveness by means of inter-market development. In this respect, the Hong Kong Government, financial authorities and regulatory bodies of the market probably can actively explore new forms of co-operation with the Mainland, and help members of the industry in Hong Kong grasp the pace in respect of the opening up of the mainland market and the improvement to the regulations for them to plan well in advance by gaining early access to the relevant information.

Madam President, being a member of the banking sector, I am particularly concerned about the major components of our financial sector as a whole, one being the way in which the banking sector is to face the opportunities and challenges stemming from China's imminent accession to the WTO. According to the statistics of the People's Bank of China, as at the end of last year, Hong Kong banks altogether had 27 mainland branches in 13 cities. Judging from some performance reports disclosed, our institutions that are doing business on the Mainland have been able to make handsome profits. However, they are currently under a lot of restrictions with regard to places of operation and business. Upon China's accession to the WTO, there will be ever-growing room for banking business. More banks will be given permission to open branch offices. There might be a chance for them to do business at the core cities of the Mainland. At the same time, they will generally be able to deal in Renminbi business and extend their clientele. This is going to bring our banking sector even bigger room for growth.

Furthermore, given the fact that China's trade environment will improve sharply upon its accession to the WTO, the volume of its imports and exports is going to see tremendous growth. Our banking sector might then get more trade-related financial business, such as business financing, import and export financing, trade clearing and insurance. At the same time, our banking sector is also going to play a more active role in raising capital for mainland organizations, for example, communication with the mainland banking sector, with mainland offices set up by foreign banks, and with foreign-financed enterprises on the Mainland. This is going to further strengthen Hong Kong's status as a centre for capital flows.

In conclusion, China's accession to the WTO will bring more opportunities for business growth, but financial services sectors from abroad are going to be strong competitors. There will be strong and powerful competition for members of the industry in Hong Kong. So, how to grasp the initiative to strike first, how to face up to all the competition, and how to fight for market participation and market share will be the major challenges that members of the industry will have to face. Forward-looking studies and arrangements by the Government on relevant links and co-ordination as well as on taxation, the legal system and accounting in respect of future cross-border trading will be of enormous help to promoting the development.

With these remarks, Madam President, I support the motion moved by the Honourable FUNG Chi-kin.

MR AMBROSE LAU (in Cantonese): Madam President, the business environment of our financial services sector has seen obvious changes in recent years. Big stock exchanges in New York, London and Frankfurt have all been using ingenious methods in their scramble for business, resorting to different forms of alliances in a bid to gain more space for operation. With the financial services sectors in America and Europe growing in strength continuously and pressing on with globalization, the attractiveness of the size of the stock market in Hong Kong is obviously losing ground even though Hong Kong is a major

financial services centre in Asia. With regard to our microclimate, following the abolition of the system of minimum commission in two years' time and the introduction of the third generation auto-matching system, the trend for customers to do transactions on-line will inevitably be accelerated. Eventually it will become difficult for our securities brokers, people serving as intermediaries between buyers and sellers, to maintain a stable income on a long-term basis. Buffeted on both sides by macroclimate and microclimate, our financial services sector (especially small and medium-sized securities brokers) are indeed coming under stern challenges affecting their survival and development.

China's accession to the WTO and the opening up of the investment market by the Mainland will not only facilitate the interflow of capital, but also give greater depth to the development of the capital market on the Mainland. This is indeed going to be a major opportunity for our financial services sector to broaden their space of survival and growth. According to the estimate made in a study on "China's Entry into the WTO and the Impact on Hong Kong Business", a report compiled by the Hong Kong General Chamber of Commerce, listed companies on the Mainland now almost total 1 000, with market capitalization reaching $386 billion, but there are only 12 fund managers managing less than 1% of the market capitalization of the stocks. If our financial services institutions and those from abroad are given permission to do business or manage funds on the Mainland, there will be better liquidity for capital flow on the Mainland whilst our financial services sector will be able to put in full efforts to open up the mainland market by virtue of their good infrastructure, professionalism and rich international experience.

Unfortunately, Hong Kong securities brokers are not going to be the first ones to have the edge in the mainland financial market that is about to open up. They are going to be those wealthy and powerful foreign multinational securities companies stationed in Hong Kong. As a matter of fact, most of our securities brokers are small and medium-sized ones. Even if they do manage to forge alliance by means of merger, there will still be tense competition from foreign securities companies in opening up the mainland market.

To promote the growth of the securities sector, the SAR Government should try to attract more quality mainland enterprises to Hong Kong for listing on our Main Board or the GEM so as to strengthen Hong Kong's role as the hub for flows of mainland venture capital. It is estimated that if our GEM alone can develop into a large-scale Second Board market, then the capital that state-owned enterprises can raise in Hong Kong within a short period of time may amount to hundreds of billions of dollars. Only in this way can the size and turnover of our stock market grow rapidly, and small and medium-sized securities brokers get more business opportunities and share the benefits stemming from the opening up of the mainland financial market.

The problem is that under the current regulatory framework of the Mainland, it is not easy for mainland enterprises to go listed externally. Application procedures are, of course, complicated. The number of mainland enterprises that might be granted permission by the Central Government during a specified period for listing externally is even more limited. As the Central Government is becoming more and more aware of the fact that the securities market is the main source of capital for the promotion of opening and reform, the SAR Government should seize the opportunity and advise the Central Government to consider relaxing or simplifying the formalities required of mainland enterprises in seeking a Hong Kong listing for fund-raising purposes. The relaxation of restrictions on such listing, if coupled with the eventual gradual reduction of control on the shareholding rights of foreign businessmen with regard to state-owned enterprises, will definitely attract more mainland enterprises to Hong Kong for listing in a bid to absorb overseas funds. If so, then Hong Kong can provide an outlet for the Mainland's entrepreneur potentials. Through this, financial services institutions here will also be able to explore potential service areas, providing professional support to the Mainland and thus maintaining a business environment allowing "the big and the small to run their own courses".

With these remarks, Madam President, I support the motion moved by Mr FUNG Chi-kin.

MR BERNARD CHAN: Madam President, it goes without saying that anything the Administration can do to assist the development of our financial services industry is most welcomed. As Mr FUNG said, this is particularly true in the case of links between the Hong Kong and mainland markets. If Hong Kong is to develop as a major international financial centre, it must also develop as the leading overseas source of capital for China.

As reform continues, more and more mainland companies will want to list on overseas stock markets. Hong Kong must remain the natural centre for this activity. Of course, it very much depends on the regulatory alignment in the Mainland. We must recognize that there is a limit to what the Government can do to influence this. However, I would urge the Administration to continue to work on those areas that it can influence.

Let us ask what makes a world-class financial centre, and then make sure that we have it. In many areas — our legal system, our tax burden and our infrastructure — I believe that we do have them. But let us also look at our market regulations, our corporate governance and our disclosure rules. Let us look at how we can reduce dealing and listing fees. Let us look at the management of our Stock Exchange. I believe that we do well in these areas, especially by regional standards. But let us benchmark ourselves against the best in the world and see if we can do even better.

If we can attract more overseas capital and more overseas fund-raising, the financial services industry will surely prove to be our biggest hope for the future.

With those remarks, Madam President, I am pleased to support the motion. Thank you.

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

(No Member responded)

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam President, I am very grateful to Mr FUNG for giving me the opportunity today to join in the debate on financial affairs and the chance to hear Members' views on how Hong Kong's status as an international financial centre in relation to developments in the Mainland can be strengthened and promoted. Today is the first time that I join in the debate on financial affairs. I have originally prepared a speech of 30 minutes. But after two days of meeting, just now a Member has told me that he is eager to go home. I certainly respect Members' opinions, so I have decided to cut my speech from 30 minutes to 10 minutes.

The Basic Law stipulates that the Government of the Hong Kong Special Administrative Region (SAR) shall provide an appropriate economic and legal environment for the maintenance of the status of Hong Kong as an international financial centre and shall encourage various forms of investments. It also clearly specifies that Hong Kong shall continue to implement a free trade policy. In order to fulfil the obligation imposed by the constitution, we are committed to ensuring that the financial markets and financial services operate in an effective and orderly way within a sound market regulatory framework, creating an open, fair and favourable business environment, assisting to improve the infrastructure of the financial markets and encouraging the securities sector to develop new financial services and products in order to meet the needs of local and overseas investors.

The status of Hong Kong today, as we all know, is attributable to commerce and market orientation as well as government co-ordination in the areas of legislation and business environment. This is also the case in the financial sector. The search for business opportunities and business development is basically led by commerce. In fact, as front-line operators, people in the trade are those who can best keep abreast of the latest market developments and make use of their own qualities to develop business in response to market changes.

Recent years have seen a rapid development in the securities market of mainland China with strong potentials for development; the economic systems, including the financial system, have been changing constantly in recent years. Specifically, the changes have taken place in three major aspects. First, an in-depth reform of state-owned enterprises will bring new impetus to the development of securities markets in the Mainland. In the process of reforming state-owned enterprises, securities markets in the Mainland will play a greater function; second, after over 20 years of economic reform in the Mainland, the market has matured gradually with a greater demand for more advanced, flexible and diversified financial services and products; and third, with the opening and reform of the financial market, the Mainland is actively establishing a set of more efficient financial regulatory systems and laws to ensure impartiality and stability of the market.

In response to the above developments, Hong Kong is also co-ordinating in several respects. First, the Securities and Futures Commission (SFC) of Hong Kong has been actively enhancing the communication and co-operation with the China Securities Regulatory Commission (CSRC). Second, the Hong Kong Exchanges and Clearing Limited (HKEx) is actively developing more diversified financial products and studying various co-operation projects with their counterparts in Shanghai, including the joint development of new futures products, and the creation of a joint information platform to strengthen the link between the two places. Third, we are striving to further perfect our regulatory regime and paying close attention to developments in overseas markets. Our experiences of market regulation and human resources can provide technical support and assistance to mainland resources. Fourth, the HKEx will keep strengthening assistance for mainland enterprises' in raising funds in Hong Kong. In particular, it will continue to promote Hong Kong's GEM to the Mainland and provide assistance to enterprises interested in listing in Hong Kong.

With China's imminent accession to the WTO, securities markets in the Mainland will further open to the outside world. Every place yearns for opening up the huge corporate financial market in the Mainland and strives to become a desirable place for international listing and cross-border transactions of China stocks. The liberalization of the mainland market will bring Hong Kong more opportunities of co-operation and development and will inevitably give rise to pressure of competition and challenge. In order to further consolidate Hong Kong's position as a prime window of international finance, we must maintain

and develop a flexible and internationalized financial market with sound regulatory systems and maintain our competitive edge under the speedy development of technology and globalization of markets so as to consolidate our position as an international financial centre. To achieve this target, every party must fulfil its duty and perform its function whether it be the Government, market regulator, exchange or market participant, and must make efforts for the benefit of the market as a whole.

The Government has been actively implementing a series of reform measures in recent years to enhance the competitiveness of the local securities and futures markets, which include the merger of the Exchanges and Clearing Houses, upgrading of the local financial infrastructure and the legal reform of securities and futures markets. The Government plays a different role in these three major reform projects. First, in his Budget delivered last year, the Financial Secretary proposed to privatize the Exchanges and Clearing Houses and merge them to bring them in line with market orientation. We are very glad to see that the securities sector has given its support with active follow-up to this direction of reform, matched with this Council's support by way of legislation. The merger was completed in early March this year. Second, with respect to developing the market infrastructure by better application of advanced technology, the Steering Committee led by the Chairman of the SFC completed a report in September last year and has put forward a specific programme and schedule. The SFC and the HKEx are actively following up and carrying out the various systems works proposed. The remaining third reform that is still in progress is a reform of the regulatory regime. Just as I have mentioned at the beginning, Article 109 of the Basic Law stipulates that the SAR Government shall provide an appropriate economic and legal environment for the maintenance of Hong Kong's status as an international financial centre. With respect to carrying through legal reform of securities and futures, the Government and the SFC are duty-bound. The White Bill on Securities and Futures was gazetted in April this year and a three-month consultation has started. The consultation period will be completed next week.

We intend to submit the Bill to this Council for scrutiny as soon as the new Legislative Session begins and expect to enact it before April next year. We hope to gain support from the Legislative Council for this Bill so that the relevant proposals can be implemented expeditiously. Apart from the reform measures just mentioned, the Government has been striving to promote our financial

industry in Hong Kong to the outside world. The Trade Development Council has set up an advisory committee on financial services. Its members include representatives of regulatory bodies, exchanges, the financial sector and the relevant government departments. The committee seeks advice from them on the development of the financial service industry's major markets overseas and the promotion of local finance, and it also organizes promotional activities in Hong Kong, the Mainland, Europe, America and Japan every year. The abovementioned organizations have also held seminars in major cities in the Mainland like Beijing, Shanghai, Dalian and Chengdu, introducing the Hong Kong securities market and the relevant fund-raising channels to mainland enterprises.

As regards market regulation, I agree that effective regulation of the market is essential for maintaining the confidence of investors and overseas markets in the local market. This is exactly the conviction of the Government and the SFC. We are committed to upgrading the level of goverance of listed companies, the quality and quantity of information disclosure and the level of regulation. Irrespective of their background and origins, all companies are treated equally. As regards the SFC, apart from striving to exercise effective regulation of the market, it will constantly review and update the relevant regulatory measures in response to market development in keeping with the integration and globalization of international financial markets. We must ensure that our regulatory level lives up to the level of major international markets, share experiences with overseas markets actively and strengthen co-operation in relation to the regulation of international financial activities. In this connection, the SFC has signed Memoranda of Regulatory Co-operation with various jurisdictions, including the Mainland, respectively to provide the basis for mutual co-operation and has actively participated in the work of the International Organization of Securities Commissions to ensure that the local regulatory system can keep up with the development of international markets.

With regard to the exchanges and clearing houses, the HKEx has an obligation to maintain a fair and orderly securities and futures market and to exercise prudent risk management over activities of the exchanges and clearing houses. Within the new market framework, we expect the HKEx to make our market fulfil its function better so as to bring the financial service industry more business opportunities. I also encourage the exchanges to actively broaden their customer base, to provide more diversified financial investment tools to meet the

needs of the market and customers, and to actively improve the financial infrastructure so that the transaction and settlement system can be more reliable, modernized and efficient in a bid to reduce costs and risks.

In the promotion of market development, the Stock Exchange of Hong Kong set up the GEM in November last year, providing a more efficient public fund-raising channel for emerging companies. From its establishment in November last year up to June this year, a total of 26 companies from Hong Kong, the Mainland and elsewhere have been listed on the GEM. The fund raised amounts to over $10 billion, which is a satisfactory result. In addition, 14 companies have been granted approval for listing and 32 companies' listing applications are pending assessment.

With the rapid development of technology in recent years, especially the wide application of the Internet, the securities sector generally predicts the advent of a 24-hour global transaction pattern in the near future. The HKEx is making preparations for this trend of development and actively speeding up the pace of the local market towards internationalization. Just now Mr FUNG and a number of Members proposed to facilitate on-line inter-market securities trading between Hong Kong and the Mainland. They feel that this will bring about great business opportunities and will increase the depth of the market. I believe that no one will oppose this, but of course there are Members who caution that in exploring this possibility, we must also pay attention to the safety of systems, the standard of regulation, protection for investors and other considerations. In fact, since the successful introduction of H-share trading in 1993, coupled with the recent trading of the seven stocks from the GEM and NASDAQ in Hong Kong, the HKEx is now exploring the possibility of forging alliances with various major international exchanges. We should have confidence in the new HKEx in seeking these business opportunities. Of course, we will actively study the issues mentioned by Members with the exchanges and the SFC.

Apart from the efforts made by government regulatory bodies and the exchanges, the further consolidation of Hong Kong's position as an international centre also relies on the concerted efforts of the securities sector. As front-line operators of the market, the securities sector must maintain good professional conduct and provide quality services to ensure investors' confidence. In recent years, a key trend of world market development is the emergence of electronic

communication networks. These low-cost and highly efficient alternative trading systems pose a threat to traditional exchanges and market intermediaries. In the face of these challenges, I encourage the securities sector to advance with the times, actively seek operational methods that are more cost-effective, enhance its own competitiveness and strive to provide more diversified services to customers.

Madam President, summing up, I believe that Members are most happy to hear these words: Maintaining the competitiveness of the local market and enhancing our international status are important factors in our continued status as an international financial centre and the prime window of mainland China for external finance. To achieve the above target, the Government, regulatory bodies, exchanges and financial services sector must make concerted efforts to make our market more internationalized. We support projects and measures that promote the local market to the outside world and encourage the local market to have mutual contact with units at different levels of other markets. In view of the securities sector's interest in developing the mainland market and strengthening contact with mainland counterpart units, we will certainly give our full support to it. With their resources and efforts, the securities sector should be able to enhance the communication and co-operation with counterpart units of the Mainland and other parts of the world in search of more business opportunities. The SAR Government will continue to perform its functions and co-ordinate in various ways and strive to consolidate Hong Kong's position as an international financial centre. Thank you, Madam President.

PRESIDENT (in Cantonese): Mr FUNG Chi-kin, you may now reply. You have one minute 35 seconds.

MR FUNG CHI-KIN (in Cantonese) : Madam President, I am very appreciative of Members' understanding and thank them for speaking in support. I also thank the Secretary for Financial Services for making his debut on this occasion. He wanted to "cut a long story short", but he somehow miscalculated. I also thank you, Madam President, for being still able to preside over today's last motion debate in great spirits.

I want to stress one point. In April, I in fact led a delegation of our securities and futures sector to Beijing for exchanges and visits on the Mainland. Extensive support was received from the Financial Secretary, the Secretary for Financial Services and Members of the Executive and Legislative Councils. There was, of course, assistance from the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region. The result turned out to be very good. Today, my motion's emphasis is on market participants' contacts in this respect. The Secretary for Financial Services did make mention of that at the end of his speech. I am very grateful. I thought he would just repeat some "major" infrastructure. However, at the end he did mention his support for market participants to have such opportunities too. I am not asking the Government to find business for us. We just want it to build such a bridge for us so as to gain opportunities for such contacts. This is very important. I thank those Members who have spoken in support of my motion. Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr FUNG Chi-kin, as set out on the Agenda, be passed.

Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

NEXT MEETING

PRESIDENT (in Cantonese): Before adjournment, I have to inform you of a new arrangement. You should have already received notice about the Chief Executive's Question and Answer Session scheduled for tomorrow. There will be some technical changes then. The Chief Executive will stand here while the Clerk and I will sit where we usually sit. So, when I invite a Member to ask question, would that Member please rise and then ask the question, just in the manner as during the Question time of an ordinary Legislative Council meeting.

According to the general practice of the Chief Executive's Question and Answer Session, a Member who has asked a question may then raise a follow-up question. Would Members wishing to raise follow-up questions please raise their hands then. Do not press the "request-to-speak" button, because the screen in front of me only displays the names of Members wishing to ask questions. Any question?

I now adjourn the Council until 11.30 am on Friday, 23 June 2000.

Adjourned accordingly at twenty-five minutes to Eight o'clock.

Annex IX

HUMAN REPRODUCTIVE TECHNOLOGY BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Health and Welfare

Clause	Amendment Proposed
Long title	By adding "to confine the provision of reproductive technology procedures to infertile couples subject to any express provision to the contrary in any code;" after "gametes;".
2	(a) In subclause (1) -

(i) in the definition of "code", by deleting "the" and substituting "a";

(ii) in the definition of "notice", by deleting "告)" and substituting "知)";

(iii) in the definition of "payment", in paragraph (c)(ii), by adding "bona fide medical expenses arising from" before "pregnancy";

(iv) in the definition of "reproductive technology procedure" -

(A) by deleting "or obstetric procedure (whether or not it is provided to the public or a section of the public) for the purpose of" and substituting ", obstetric or other procedure (whether or not it is provided to the public or a section of the public)";

Clause | Amendment Proposed

(B) by adding -

"(ba) the obtaining of gametes;";

(v) by deleting the definition of "surrogate mother" and substituting -

""surrogate mother" (代母) means a woman who carries a child -

(a) pursuant to an arrangement -

(i) made before she began to carry the child; and

(ii) made with a view to any child carried pursuant to the arrangement being handed over to, and the parental rights being exercised (so far as practicable) by, another person or persons; and

(b) conceived by a reproductive technology procedure.";

Clause | Amendment Proposed

(vi) by adding -

""negotiate" (商議), in relation to a surrogacy arrangement, includes any bid or offer in relation to the arrangement;".

(b) In subclause (4) -

(i) in paragraph (a) -

(A) by deleting "paragraph (b)" and substituting "paragraph (a)(ii)";

(B) by deleting "共識" where it twice appears and substituting "理解";

(ii) in paragraph (b), by deleting "交託" and substituting "交予";

(iii) in paragraph (c), by deleting "(a) of that definition as beginning to carry it at the time of the insemination or" and substituting "(a)(i) of that definition as beginning to carry it at the time".

(c) By adding -

"(11) For the avoidance of doubt, it is hereby declared that the provisions of the Employment Ordinance (Cap. 57) shall not operate differently between a woman who is pregnant or confined as a result of a surrogacy arrangement (and whether or not the surrogacy arrangement is lawful) and a woman who is pregnant or confined otherwise than as the result of a surrogacy arrangement.".

Clause	Amendment Proposed
New	By adding before Part II - "**2A. Application** This Ordinance binds the Government.".
3	(a) In subclause (2)(a) and (b), by deleting "who is not a registered medical practitioner". (b) By deleting subclause (3)(a)(ii).
4	(a) In subclause (1)(c)(ii), by deleting "being". (b) In subclause (3), by deleting "持有牌照的" and substituting "牌照的持有".
7	(a) In subclause (1), by deleting "(including any surrogacy arrangement to which a relevant activity relates)". (b) By deleting subclause (2).
8(b)	By deleting "may" and substituting "shall".
New	By adding before Part III - "**10A. Protection of members of Council, etc.** (1) No person to whom this subsection applies, acting in good faith, shall be personally liable in damages for any act done or default made in the performance or purported performance of any function, or the exercise or purported exercise of any power, imposed or conferred on the Council under this Ordinance.

Clause Amendment Proposed

(2) The protection conferred under subsection (1) on any person to whom that subsection applies in respect of any act or default shall not in any way affect the liability of the Council for that act or default.

(3) The persons to whom subsection (1) applies are -

(a) any member of the Council or a committee;

(b) a designated public officer.".

12 By deleting the clause and substituting -

"**12. Prohibition against using donated gametes in surrogacy arrangement**

Without prejudice to the operation of the Parent and Child Ordinance (Cap. 429), no person shall, for the purposes of a surrogacy arrangement, use gametes other than the gametes of 2 persons who are -

(a) the parties to a marriage; and

(b) the persons referred to in paragraph (a)(ii) of the definition of "surrogate mother" in so far as that arrangement is concerned.".

13 (a) In subclause (3) -

(i) by adding ", whether directly or indirectly (including by the implantation of an embryo of a particular sex in the body of a woman)," after "selected";

Clause | Amendment Proposed

(ii) in paragraph (a), by deleting "severe sex-linked genetic disease" and substituting "sex-linked genetic disease specified in Schedule 1A";

(iii) in paragraph (b), by adding "and such disease would be sufficiently severe to a person suffering it to justify such selection" after "purpose".

(b) In subclause (5) -

(i) by deleting "No" and substituting "Subject to subsections (6), (7) and (8), no";

(ii) by deleting "except in the circumstances specified in regulations made under section 42(2)(e)".

(c) By adding -

"(6) Without prejudice to the operation of section 12, subsection (5) shall not apply in the case of a reproductive technology procedure provided to a person who is to be a surrogate mother where the procedure is provided pursuant to the surrogacy arrangement under which she is to be the surrogate mother.

(7) It is hereby declared that -

(a) subject to paragraph (b), subsection (5) shall not operate to prohibit the continuation of a reproductive technology procedure provided to persons who were the parties to a marriage when gametes were, or an embryo was, placed in the body of a woman pursuant to the procedure;

Clause	Amendment Proposed
	(b) paragraph (a) shall not operate to permit any further gametes or further embryo to be placed in the body of that woman pursuant to that procedure.
	(8) Subsection (5) shall not apply in the case of the reproductive technology procedure referred to in paragraph (ba) of the definition of "reproductive technology procedure" in section 2(1).".
14(1)(a)	(a) By adding "whether in Hong Kong or elsewhere," before "make".
	(b) By deleting ", whether in Hong Kong or elsewhere".
15(1)(a)	By adding "whether in Hong Kong or elsewhere," before "make".
21	(a) In subclause (2) -
	(i) in paragraph (a), by adding "subject to subsection (2A)," before "the application";
	(ii) in paragraph (b), by deleting "士" and substituting "選";
	(iii) by deleting paragraph (c) and substituting -
	"(c) the individual referred to in paragraph (a)(i) has the prescribed qualifications, the character and experience of the individual are such as are required for the supervision of that activity and the individual will discharge the duty under section 22(1);";

Clause	Amendment Proposed

(iv) in paragraph (f), by adding "referred to in paragraph (a)(i)" after "individual".

(b) By adding -

"(2A) The Council may grant a licence to an applicant notwithstanding that the applicant is an individual who is to be the person responsible if the Council is satisfied that, in all the circumstances of the case, the fact that the licensee and the person responsible are the same person will not prejudice the discharge of the duty under section 22(1) by the person responsible.

(2B) Where subsection (2A) is applicable to a licence, references in this Ordinance to a licensee shall be construed with all necessary modifications to take account of the fact that the licensee and the person responsible are the same person.".

22(1) (a) In paragraph (a), by deleting everything after "合人" where it first appears and substituting "選，而他們的經驗及所受訓練令他們有資格成為參與該活動的適合人選;".

(b) By deleting paragraph (d) and substituting -

"(d) that, in all the circumstances, proper practices are used in the course of that activity; and".

25 (a) In subclause (2)(a) -

(i) in subparagraph (i), by deleting "為監管該牌照所授權進行的有關活動所要求者" and substituting "符合監管該牌照所授權進行的有關活動所要求者";

Clause | Amendment Proposed

(ii) in subparagraph (ii), by deleting "士" and substituting "選".

(b) In subclause (5)(a), by deleting "character, qualifications and experience of the other individual are such as are required for the supervision of the relevant activity authorized by the licence and that" and substituting "other individual has the prescribed qualifications, the character and experience of the individual are such as are required for the supervision of the relevant activity authorized by the licence and".

(c) By adding -

"(7) For the avoidance of doubt, it is hereby declared that the revocation of a licence may be subject to such conditions, if any, as the Council thinks fit specified in the notice effecting the revocation.".

27 (a) In subclause (3), by adding "except as specified in any conditions to which the suspension is subject" after "effect".

(b) In subclause (4), by deleting "根據本條發出" and substituting "本條所指".

(c) By adding -

"(5) For the avoidance of doubt, it is hereby declared that -

(a) a notice under this section may be subject to such conditions, if any, as the Council thinks fit specified in the notice;

Clause | Amendment Proposed

(b) a notice under this section may be revoked and replaced by another notice under this section whether or not any conditions specified in the first-mentioned notice have been contravened;

(c) a licence the subject of a notice under this section may be revoked under section 25 whether or not any conditions specified in the notice have been contravened.".

New — By adding before Part V -

"**29A. Voluntary surrender of licence**

(1) Without prejudice to the generality of section 25(4) but subject to this section, a licensee may surrender his licence by lodging it at the office of the Council.

(2) The surrender of a licence under subsection (1) shall not have effect until the licensee is served with a notice by the Council stating that the Council accepts the surrender of the licence subject to such conditions, if any, as the Council thinks fit specified in the notice.

(3) The Council may refuse to accept the surrender of a licence under subsection (1) where the licensee has been served a notice under section 26(2) in relation to the revocation of the licence, or the Council has reasonable grounds to suspect that there are grounds for revoking the licence under section 25, unless and until the Council -

Clause | Amendment Proposed

(a) revokes the licence; or

(b) gives notice to the licensee that it will not revoke the licence.

(4) Immediately upon the surrender of a licence under subsection (1) having effect in accordance with subsection (2), the licensee shall cease to be licensed but shall remain liable for -

(a) any act or omission done, caused, permitted or made by him prior to the surrender; and

(b) any liability incurred by him under this Ordinance prior to the surrender.".

30 (a) By deleting subclause (2) and substituting -

"(2) Information falls within this subsection if -

(a) it relates to the provision of a reproductive technology procedure where a child born or intended to be born in consequence of the procedure would not be created from the gametes solely of the parties to a marriage who it is proposed will be the parents of the child; and

(b) the child, any of the parties to the marriage, or any individual whose gametes have been used, or any combination thereof, can be identified from the information.".

Clause | Amendment Proposed

(b) In subclause (6), by deleting "50" and substituting "80".

31 By deleting the clause and substituting -

"**31. Secrecy**

(1) No person who is or has been -

(a) an authorized person; or

(b) a person to whom a licence applies or the holder of a licence,

shall disclose any information contained or required to be contained in Register A.

(2) Subsection (1) shall not apply to any disclosure of information made -

(a) to a person as an authorized person;

(b) to a person to whom a licence applies, or a licensee, for the purposes of his functions as such;

(c) so that no individual to whom the information relates can be identified;

(d) in accordance with section 30;

(e) pursuant to an order under section 32(1);

(f) to the Registrar within the meaning of section 33 pursuant to a request under that section; or

Clause Amendment Proposed

(g) for the purposes of establishing, in any proceedings relating to an application for an order under section 12(1) of the Parent and Child Ordinance (Cap. 429), whether the condition specified in paragraph (a) or (b) of that section is met.

(3) Subject to subsection (4), in the case of information relating to the provision of a reproductive technology procedure for an identifiable individual, subsection (1) shall not apply to a disclosure made in accordance with -

(a) the consent in writing of the individual given before the provision of the procedure; or

(b) the consent in writing of the individual given after the provision of the procedure if, and only if, the consent were obtained in accordance with a permission in writing given by the individual -

(i) before the provision of the procedure; and

(ii) to the effect that the individual may be contacted after the provision of the procedure for the purpose of ascertaining whether or not the individual will consent to a disclosure of information relating to the provision of the procedure to the individual, either

Clause | Amendment Proposed

generally or in circumstances specified in the permission.

(4) If a disclosure cannot be made under subsection (3) in relation to an identifiable individual without a disclosure of information relating to the provision of a reproductive technology procedure to another identifiable individual, then the first-mentioned disclosure shall not be made under that subsection unless the second-mentioned disclosure can also be made under that subsection.

(5) In the case of information which shows an identifiable individual was, or may have been, born in consequence of a reproductive technology procedure, subsection (1) shall not apply to a disclosure which is necessarily incidental to disclosure under subsection (3).

(6) This section shall not apply to a disclosure to an individual of information which relates only to that individual or, in the case of an individual treated with another, only to that individual and that other.

(7) It shall be deemed to be a condition of every licence that a reproductive technology procedure that may be provided pursuant to the licence shall not be provided for an identifiable individual unless the individual has, before the provision of the procedure, given or refused to give -

(a) a consent referred to in subsection (3)(a); or

(b) a permission referred to in subsection (3)(b).".

Clause	Amendment Proposed
32(1)	By deleting "falling within section 30(2)(i) or (ii)" and substituting "which may identify any individual by virtue of whose gametes the information falls within section 30(2)".
36(1)	By adding ", or any condition specified in a notice mentioned in section 25(7) or under section 27 or 29A(2), or the condition specified in section 31(7)," after "15(1) or (2)".
41(5)	By deleting "特區".
42	(a) In subclause (1), by deleting paragraph (e) and substituting - "(e) imposing restrictions on the disclosure of information which is not information falling within section 31(1) but is information obtained by an authorized person, a person to whom a licence applies, or a licensee, on terms or in circumstances requiring it to be held in confidence.". (b) In subclause (2) - (i) by adding - "(aa) the qualifications to be met by an individual designated in an application for a licence as the person under whose supervision the relevant activity to be authorized by the licence is to be carried out;";

Clause	Amendment Proposed

(ii) in paragraphs (b)(i) and (ii) and (c)(i)(A) and (B), by deleting "licensee under" and substituting "holder of";

(iii) by deleting paragraph (e) and substituting -

"(e) specifying the maximum period or periods of storage of embryos, gametes or other biological material used or to be used for the purposes of a relevant activity, including specifying the means of disposal of such embryos, gametes or material;

(ea) regulating (including prohibiting in whole or in part) the importation or exportation of sperm or other biological material used or to be used for the purposes of a relevant activity;".

43 (a) In the heading, by deleting "**1**" and substituting "**1 or 1A**".

(b) By adding "or 1A" after "Schedule 1".

New By adding -

"SCHEDULE 1A [ss. 13(3)(a) & 43]

SEX-LINKED GENETIC DISEASES

Addison's disease with cerebral sclerosis (Addison 病 (並有腦硬化))

Clause	Amendment Proposed
	Adrenoleucodystrophy (腎上腺白質營養不良)
	Adrenal hypoplasia (腎上腺發育不良)
	Agammaglobulinaemia, Bruton type (血球蛋白血病(Bruton 型))
	Agammaglobulinaemia, Swiss type (血球蛋白血病(瑞士型))
	Albinism, ocular (眼部白化病)
	Albinism-deafness syndrome (白化病 — 耳聾綜合症)
	Aldrich syndrome (Aldrich 綜合症)
	Alport syndrome (Alport 綜合症)
	Amelogenesis imperfecta, hypomaturation type (釉質生長不全(成熟低下型))
	Amelogenesis imperfecta, hypoplastic type (釉質生長不全(發育不良型))
	Anaemia, hereditary hypochromic (遺傳性低色數性貧血)
	Angiokeratoma (Fabry's disease) (向管角質瘤(Fabry 病))
	Cataract, congenital (先天性白內障)
	Cerebellar ataxia (小腦共濟失調)
	Cerebral sclerosis, diffuse (擴散性腦硬化)
	Charcot-Marie-Tooth peroneal muscular atrophy (Charcot-Marie-Tooth 腓骨肌萎縮症)

Clause	Amendment Proposed
	Choroideraemia (無脈絡膜症)
	Choroidoretinal degeneration (脈絡膜視網膜變質)
	Coffin-Lowry syndrome (Coffin-Lowry 綜合症)
	Colour blindness, Deutan type (色盲) (綠色系列型))
	Colour blindness, Protan type (色盲(紅色系列型))
	Diabetes insipidus, nephrogenic (腎原性尿崩症)
	Diabetes insipidus, neurohypophyseal (尿崩症(神經垂體型))
	Dyskeratosis congenita (先天性角化不良)
	Ectodermal dysplasia, anhidrotic (外胚層發育不全(無汗型))
	Ehlers-Danlos syndrome, type V (Ehlers-Danlos 綜合病(第 V 類型))
	Faciogenital dysplasia (Aarskog syndrome) (面生殖發育不全(Aarskog 綜合症))
	Focal dermal hypoplasia (X-linked dominant, male lethal) (局灶性皮膚發育不良(與 X 染色體有關連的顯性，對男性而言可致死))
	Glucose 6-phosphate dehydrogenase deficiency (葡糖 6 磷酸脫氫酶缺乏)
	Glycogen storage disease, type VIII (糖原貯積症(第 VIII 類型))

Clause	Amendment Proposed
	Gonadal dysgenesis (XY female type) (性腺發育不全(XY女性類型))
	Granulomatous disease (chronic) (慢性肉芽腫病)
	Haemophilia A (血友病 A)
	Haemophilia B (血友病 B)
	Hydrocephalus (aqueduct stenosis) (腦積水(中腦水管狹窄))
	Hypophosphataemic rickets (低磷酸血性佝僂病)
	Ichthyosis (steriod sulphatase deficiency) (魚鱗癬(steriod sulphatase 缺乏))
	Incontinentia pigmenti (X-linked dominant, male lethal) (色素失節症(與 X 染色體有關連的顯性，對男性而言可致死))
	Kallmann syndrome (Kallmann 綜合症)
	Keratosis follicularis spinulosa (Spinulosa 毛囊角化病)
	Lesch-Nyhan syndrome (hypoxanthine-guanine-phosphoribosyl transferase deficiency) (Lesch-Nyhan 綜合症(次黃嘌呤 — 鳥嘌呤 — 磷酸核糖轉移酶缺乏))
	Lowe (oculocerebrorenal) syndrome (Lowe (眼腦腎)綜合症)
	Macular dystrophy of the retina (視網膜黃斑營養不良)
	Menkes syndrome (Menkes 綜合症)

Clause	Amendment Proposed
	Mental retardation, FMRI type (智力遲緩(FMRI 型))
	Mental retardation, FRAXE type (智力遲緩(FRAXE 型))
	Mental retardation, MRXI type (智力遲緩(MRXI 型))
	Microphthalmia with multiple anomalies (Lenz syndrome) (小眼症(並有多種畸型) (Lenz 綜合症))
	Mucopolysaccharidosis II (Hunter syndrome) (黏多糖貯積病 II (Hunter 綜合症))
	Muscular dystrophy, Becker type (肌營養不良(Becker 型))
	Muscular dystrophy, Duchenne type (肌營養不良(Duchenne 型))
	Muscular dystrophy, Emery-Dreifuss type (肌營養不良(Emery-Dreifuss 型))
	Myotubular myopathy (肌小管肌病)
	Night blindness, congenital stationary (先天性靜止性夜盲症)
	Norrie's disease (pseudoglioma) (Norrie's 病(假性神經膠質瘤))
	Nystagmus, oculomotor or 'jerky' (眼球震顫(眼球運動的或抽動的))
	Ornithine transcarbamylase deficiency (type I hyperammonaemia) (鳥氨酸胺甲酰轉移酶缺陷症(高氨血症第 I 類型))

Clause	Amendment Proposed
	Orofaciodigital syndrome (type I) (X-linked dominant, male lethal) (口 — 面 — 指(趾)綜合症(第I類型)(與X染色體有關連的顯性，對男性而言可致死))
	Perceptive deafness, DNFZ type (感覺性聾症(DNFZ型))
	Perceptive deafness, with ataxia and loss of vision (感覺性聾症(並有共濟失調和喪失視力))
	Phosphoglycerate kinase deficiency (磷酸甘油酸激酶缺乏)
	Phosphoribosylpyrophosphate (PRPP) synthetase deficiency (磷酸核糖焦磷酸合成酶缺乏)
	Reifenstein syndrome (Reifenstein綜合症)
	Retinitis pigmentosa (視網膜色素變性)
	Retinoschisis (視網膜裂)
	Spastic paraplegia (痙攣性麻痺)
	Spinal muscular atrophy (脊椎肌萎縮)
	Spondyloepiphyseal dysplasia tarda (遲發性脊椎骨骺發育不全)
	Testicular feminization syndrome (睪丸女性化綜合症)
	Thrombocytopenia, hereditary (遺傳性血小板減少症)
	Thyroxine-binding globulin, absence or variants of (甲狀腺素 — 結合球蛋白缺乏或變種)
	Xg blood group system (Xg血型系統)".

Clause	Amendment Proposed
Schedule 2	(a) By adding immediately before the subheading "**Administrative Appeals Board Ordinance**" - "**Offences against the Person Ordinance** 1A. **Medical termination of pregnancy** Section 47A(8) of the Offences against the Person Ordinance (Cap. 212) is repealed and the following substituted - "(8) For the purposes of sections 46 and 47, anything done with intent to procure a woman's miscarriage (or, in the case of a woman carrying more than one foetus, her miscarriage of any foetus) is unlawfully done unless authorized by virtue of the provisions of this section and, in the case of a woman carrying more than one foetus, anything done with intent to procure the miscarriage of any foetus is authorized by those provisions if - (a) the ground for termination of the pregnancy specified in subsection (1)(b) applies in relation to any foetus and the thing is done for the purpose of procuring the miscarriage of that foetus; or (b) any of the other grounds for termination of the pregnancy specified in those provisions applies.".".

Clause Amendment Proposed

(b) By adding immediately after the subheading "**Sex Discrimination Ordinance**" -

"2A. **Reproductive technology**

Section 56B(2) of the Sex Discrimination Ordinance (Cap. 480) is repealed and the following substituted -

"(2) In this section, "reproductive technology procedure" (生殖科技程序) has the meaning assigned to it by section 2(1) of the Human Reproductive Technology Ordinance (of 2000).".".

(c) In section 2, by deleting "to the Sex Discrimination Ordinance (Cap. 480)".

HUMAN REPRODUCTIVE TECHNOLOGY BILL

COMMITTEE STAGE

Amendments to be moved by the Honourable CHAN Yuen-han

Clause	Amendment Proposed
2	(a) In subclause (1) -
	(i) in the definition of "payment", by deleting paragraph (c);
	(ii) by deleting the definitions of "surrogacy arrangement" and "surrogate mother".
	(b) By deleting subclause (4).
4(1)	(a) In paragraph (a), by deleting subparagraphs (ii) and (iii) and substituting -
	"(ii) relevant activities,".
	(b) In paragraph (c) -
	(i) in subparagraph (i), by adding "or" at the end;
	(ii) in subparagraph (ii), by deleting "or";
	(iii) by deleting subparagraph (iii).
	(c) In paragraphs (d) and (e)(ii), by deleting "and surrogacy arrangements".
12	By deleting the clause.

Clause	Amendment Proposed
14(1)(a)	By deleting "procedure, embryo research or surrogacy arrangement" and substituting "procedure or embryo research".
15 and 16	By deleting the clauses.
17	By deleting "12, 13, 14 or 15" and substituting "13 or 14".
36(1)	By deleting "12, 13(1), (2), (3) or (5), 14(1) or (2) or 15(1) or (2)" and substituting "13(1), (2), (3) or (5) or 14(1) or (2)".

Annex X

BROADCASTING BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Information Technology and Broadcasting

Clause	Amendment Proposed
1	By deleting subclause (2) and substituting - "(2) Subject to subsection (3), this Ordinance shall come into operation on the day on which this Ordinance is published in the Gazette. (3) Sections 13, 14, 15 and 16 shall come into operation on a day to be appointed by the Secretary for Information Technology and Broadcasting by notice in the Gazette.".
2	(a) In subclause (1) - (i) by deleting the definition of "domestic household"; (ii) in the definition of "出租", by deleting "作出出租要約" and substituting "出租"; (iii) in the definition of "other licensable television programme service", by deleting paragraph (b) and substituting - "(b) either -

Clause | Amendment Proposed

(i) subject to subsection (11A), by an audience of not more than 5 000 specified premises; or

(ii) in hotel rooms;";

(iv) in the definition of "Telecommunications Authority", by adding "電訊" before "局長)".

(b) In subclause (9) -

(i) in paragraph (d), by adding "電訊" before "局長" where it twice appears;

(ii) in paragraph (e), by deleting everything after "require" and substituting "a person to disclose or otherwise give any information or document which the person could not be compelled to disclose or otherwise give in evidence in civil proceedings before the Court of First Instance.".

(c) In subclause (11) -

(i) in paragraph (a), by adding "under this Ordinance" after "decision";

(ii) by deleting paragraph (b) and substituting -

"(b) when forming an opinion or making a determination, direction or decision under this Ordinance, provide reasons in writing for it.";

Clause	Amendment Proposed
	(iii) by adding "電訊" before "局長".
	(d) By adding -
	"(11A) The Broadcasting Authority may, by notice in writing served on the licensee, or the person seeking to be a licensee, concerned, waive the requirement specified in paragraph (b)(i) of the definition of "other licensable television programme service" if the Broadcasting Authority is satisfied that the other licensable television programme service concerned is only intended or available for reception by a single housing estate.".
3(8)(b)	By adding "電訊" before "局長".
4	(a) By renumbering it as clause 4(1).
	(b) By adding -
	"(2) Without prejudice to the generality of subsection (1), the Broadcasting Authority shall, as soon as is practicable, issue guidelines indicating the manner in which it proposes to -
	(a) perform its function under section 9(2), including the licensing criteria and other relevant matters it proposes to consider;
	(b) perform its function under section 10(2), including the licensing criteria and other relevant matters it proposes to consider;

Clause	Amendment Proposed
	(c) perform its function in forming an opinion under section 13 or 14; (d) perform its function under section 17(2), including the criteria it proposes to consider. (3) The Broadcasting Authority shall, before issuing guidelines under subsection (2)(c), carry out such consultation with such bodies representative of licensees who may be affected by the guidelines as is reasonable in all the circumstances of the case.".
6	(a) In subclause (1), by adding "export," after "import,". (b) In subclause (3), by adding "exported," after "imported,". (c) In subclause (4) - (i) (A) by adding "exports," after "imports,"; (B) in paragraph (a), by adding "exported," after "imported,"; (C) in paragraph (b), by adding "exports," after "imports,"; (ii) by adding "電訊" before "局長" where it twice appears. (d) In subclauses (5), (6), (7) and (8), by adding "電訊" before "局長" wherever it appears.

Clause		Amendment Proposed
7	(a)	In subclause (1), by adding "export," after "import,".
	(b)	In subclause (4), by adding "電訊" before "局長".
9	(a)	In subclause (2), by deleting "第 8(1)條" and substituting "本地免費電視節目服務牌照或本地收費電視節目服務牌照".
	(b)	By adding -

"(3) Where an application is submitted to the Broadcasting Authority, it shall -

(a) cause a notice to be published in the Gazette as soon as is practicable -

(i) stating the name of the applicant and the type of licence sought by the applicant together with such other particulars as the Broadcasting Authority thinks fit; and

(ii) stating that members of the public who are interested may make representations on the application to the Broadcasting Authority by a date specified in the notice, being a date not less than 21 days

Clause | Amendment Proposed

after the notice is published; and

(b) consider the representations, if any, received by the date.".

10 By deleting subclauses (4), (5), (6) and (7) and substituting -

"(4) The Chief Executive in Council or the Broadcasting Authority, as the case may require, may, where he or it considers it is in the public interest to do so, vary a licence at any time during its period of validity after the licensee has been given a reasonable opportunity to make representations under subsection (5).

(5) A licensee may make representations to the Broadcasting Authority in relation to any proposed variation under subsection (4) and, in the case of a licence granted by the Chief Executive in Council, the Broadcasting Authority shall fairly reflect the representations to the Chief Executive in Council.

(6) The Chief Executive in Council or the Broadcasting Authority, as the case may require, shall consider the representations, if any, made under subsection (5) before implementing any proposed variation under subsection (4).".

11 (a) By adding -

"(3A) Where subsection (3) applies to a domestic free television programme service licence, or a domestic pay television programme service licence, which may be extended or renewed for a period of 6 years or more, the Broadcasting Authority shall conduct a public hearing in

Clause	Amendment Proposed
	accordance with procedures for the hearing determined by the Broadcasting Authority.".
	(b) In subclause (4), by adding "as soon as is practicable" after "them and".
	(c) In subclause (5), by adding ", at a time reasonable in all the circumstances of the case before the expiry of the licence" after "shall".
12	(a) In subclause (4), by deleting "Where" and substituting "Subject to subsection (4A), where".
	(b) By adding -
	"(4A) The Broadcasting Authority shall, before making a determination under subsection (4) -
	(a) give the licensee concerned a reasonable opportunity to make representations to the Broadcasting Authority in relation to whether or not the television programme service concerned -
	(i) primarily targets Hong Kong; or
	(ii) does not primarily target Hong Kong; and
	(b) consider the representations, if any, made.

Clause	Amendment Proposed
	(4B) In determining whether or not a television programme service primarily targets Hong Kong, account shall be taken of, but not limited to, the following matters - (a) whether the service covers Hong Kong; (b) whether the sources of advertising and subscription revenues, where applicable, of the service are derived principally from Hong Kong; (c) the language of the service and the nature and size of the audiences targeted by the service; and (d) whether the service is actively marketed in Hong Kong by the licensee or by a third party on its behalf.".
13	(a) In subclause (1), by adding ", distorting" after "preventing". (b) In subclause (3), by deleting "條文下" and substituting "規定下". (c) By deleting subclauses (5) and (6) and substituting - "(5) Subsection (1) shall not apply to -

Clause	Amendment Proposed
	(a) any restriction imposed on the inclusion in a television programme service of a television programme produced wholly or substantially by the licensee of the service; or (b) any prescribed restriction. (6) For the avoidance of doubt, it is hereby declared that nothing in this section shall prejudice the existence of any rights arising from the operation of the law relating to copyright or trademarks.".
14(4)	By adding ", distorting" after "preventing".
New	By adding - "**14A. Provisions supplementary to sections 13 and 14** (1) The conduct of an associate of a licensee, or the position of the associate in a television programme service market, may be considered for the purposes of section 13 or 14. (2) A person sustaining loss or damage from a breach of section 13(1) or 14(1), or a breach of a licence condition, determination or direction relating to that section, may bring an action for damages, an injunction or other appropriate remedy, order or relief against the licensee who is in breach.

Clause	Amendment Proposed
	(3) No action may be brought under subsection (2) more than 3 years after - (a) the commission of the breach concerned referred to in that subsection; or (b) the imposition under section 27 of a penalty in relation to the breach, whichever is the later. (4) For the avoidance of doubt, it is hereby declared that a breach of section 13(1) or 14(1) occurs when the Broadcasting Authority forms the opinion referred to in section 13(1) or 14(4) respectively.".
16(2)(c)	By deleting "practices" and substituting "principles".
18	By adding "educational" after "any".
20	(a) In subclause (2) - (i) by deleting "A" and substituting "Subject to subsection (2A), a"; (ii) by deleting "at all reasonable times when directed in writing to do so by the Broadcasting Authority" and substituting "on or before the 1st of April of each year". (b) By adding -

Clause	Amendment Proposed
	"(2A)Subsection (2) shall not apply to a licensee which has been a licensee for less than 4 months.".
21	By deleting the heading and substituting "**Prevention of interference with programming independence of licensees**".
23	(a) In the heading, by adding "電訊" before "局長".
	(b) In subclause (2), by adding "電訊" before "局長".
	(c) By adding -
	"(3) The Broadcasting Authority shall cause directions under subsection (1) to be published in the Gazette or in such other manner as it thinks fit.".
24	(a) In subclause (1), by deleting "this Ordinance, the Broadcasting Authority Ordinance (Cap. 391) or any other Ordinance" and substituting "a prescribed Ordinance in order to ensure a licensee's compliance with a licence condition, a requirement under the Ordinance which is applicable to it, a direction, order, or determination, under the Ordinance which is applicable to it, or a provision in a Code of Practice which is applicable to it".
	(b) In subclause (3)(a), by adding "as referred to in subsection (1)" after "Authority".
	(c) In subclause (10), in the definition of "有關業務", by adding "提供" before "電視".
	(d) By adding -

Clause Amendment Proposed

"(11) For the avoidance of doubt, it is hereby declared that the provisions of Part XII of the Interpretation and General Clauses Ordinance (Cap. 1) apply to this section.".

25 By deleting the clause and substituting -

"**25. Broadcasting Authority may obtain information**

(1) If the Broadcasting Authority is satisfied that there are reasonable grounds for believing that a person, other than a licensee, is, or is likely to be, in possession of information or a document that is relevant to the Broadcasting Authority's investigation of a breach or suspected breach of a licence condition, a requirement under this Ordinance, or a direction, order, or determination, under this Ordinance, the Broadcasting Authority may serve a notice in writing on the person -

(a) requesting the person to -

(i) give the information or document in writing to the Broadcasting Authority; or

(ii) produce the document to the Broadcasting Authority,

as the case requires, before a date ("the relevant date") specified in the notice, being a date reasonable in all the circumstances of the case;

(b) stating that if the person is of the view that he cannot, or does not wish to, comply with the request, then he may

Clause Amendment Proposed

make representations in writing to the Broadcasting Authority as to why he is of that view before the relevant date; and

(c) accompanied by a copy of this section in the Chinese and English languages.

(2) Where the Broadcasting Authority receives representations referred to in subsection (1)(b) from a person, the Broadcasting Authority shall -

(a) consider them; and

(b) serve a notice in writing on the person stating that the Broadcasting Authority has considered the representations and that -

(i) the notice under subsection (1) served on the person is withdrawn with effect from the date of service of the notice under this subsection; or

(ii) the notice under subsection (1) served on the person remains in force and the Broadcasting Authority will on a date specified in the notice under this subsection seek an order under subsection (3) unless the person has, before the date, complied with the notice under subsection (1) served on the person.

Clause Amendment Proposed

(3) Where a notice under subsection (1) served on a person has not been withdrawn under subsection (2)(b)(i) and the person has not complied with the notice before the relevant date, or before the date specified in the notice under subsection (2) served on the person, as the case requires, then a magistrate may -

(a) if satisfied by information on oath that there are reasonable grounds for believing that the person is, or is likely to be, in possession of the information or a document to which the first-mentioned notice relates and that the information or document is relevant to the Broadcasting Authority's investigation of a breach or suspected breach of a licence condition, a requirement under this Ordinance, or a direction, order, or determination, under this Ordinance; and

(b) after considering the representations, if any, referred to in subsection (1)(b) received by the Broadcasting Authority in consequence of the service of the notice,

issue an order that the person shall, within the time specified in the order, give the information or document in writing to the Broadcasting Authority or produce the document to the Broadcasting Authority, as the case requires.

(4) Any information or document to be given or produced to the Broadcasting Authority by a person in compliance with a notice under subsection (1) or an order under subsection (3) shall be so given or produced by reference to the information or document at the time of service of that notice except that the information or document may take account of any processing -

Clause Amendment Proposed

(a) made between that time and the time when the information or document is so given or produced; and

(b) that would have been made irrespective of the service of that notice.

(5) The Broadcasting Authority shall not disclose any information or document given or produced to him under this section except subject to the requirement in subsection (6) and if the Broadcasting Authority considers that it is in the public interest to disclose that information or document, as the case may be.

(6) The Broadcasting Authority shall give a person giving or producing any information or document under this section a reasonable opportunity to make representations on a proposed disclosure of the information or document, as the case may be, and shall consider all representations made before the Broadcasting Authority makes a final decision to disclose the information or document, as the case may be.

(7) For the avoidance of doubt, it is hereby declared that where a person gives or produces any information or document under this section notwithstanding that the information or document is the subject of a confidentiality agreement with another person that prevents the first-mentioned person from releasing the information or document, the first-mentioned person shall not be liable for any civil liability or claim whatever in respect of the giving or production of that information or document contrary to that agreement.

(8) A person commits an offence if he, without reasonable excuse -

Clause | Amendment Proposed

(a) fails to comply with an order under subsection (3);

(b) fails to comply with subsection (4); or

(c) in purported compliance with a notice under subsection (1) or an order under subsection (3), knowingly gives information that is false or misleading,

and shall be liable on conviction to a fine at level 5 and to imprisonment for 2 years.

(9) In this section, "processing" (處理), in relation to any information or document, includes amending, augmenting, deleting or rearranging all or any part of the information or document, whether by automated means or otherwise.".

26 (a) In subclauses (1)(a) and (2)(c), by adding "電訊" before "局長" wherever it appears.

(b) By deleting subclause (3) and substituting -

"(3) The Broadcasting Authority shall give the person supplying the information in confidence a reasonable opportunity to make representations on a proposed disclosure of the information under subsection (2)(c) or (d) and shall consider all representations made before the Broadcasting Authority makes a final decision to disclose the information.".

(c) In subclause (4), by adding "電訊" before "局長" where it twice appears.

Clause	Amendment Proposed
27	By adding -

"(3A) Where the Broadcasting Authority considers that if it were to impose a financial penalty under subsection (3) it would not be adequate for a breach of section 13(1) or 14(1) -

(a) the Broadcasting Authority may -

(i) within 3 years of the commission of the breach; or

(ii) if the breach comes to the notice of the Broadcasting Authority within 3 years of its commission, within 3 years of it so coming to the notice of the Broadcasting Authority,

whichever is the later, make an application to the Court of First Instance; and

(b) upon such application, the Court of First Instance may, without prejudice to any powers conferred on the Broadcasting Authority by any provision of this Ordinance or any regulation made thereunder or any licence condition, impose upon the licensee who has committed the breach a financial

Clause	Amendment Proposed
	penalty of a sum not exceeding 10% of the turnover of the licensee in the relevant television programme service market in the period of the breach, or $2,000,000, whichever is the higher, and also specify when any such financial penalty is due for payment.
	(3B) The Broadcasting Authority shall not impose a financial penalty under this section unless, in all the circumstances of the case, the financial penalty is proportionate and reasonable in relation to the failure or series of failures concerned giving rise to that penalty.".
29(1)	By adding "(including within such period and within such time of day)" after "manner".
30	(a) In subclause (2) -
	(i) by deleting paragraph (a)(ii) and substituting -
	"(ii) any financial penalty when it is due for payment -
	(A) as specified by the Court of First Instance under section 27(3A)(b); or
	(B) under section 28(4); or";
	(ii) in paragraph (b)(ii), by deleting ", or has been facilitated by a neglect of,".

Clause | Amendment Proposed

(b) In subclause (3) -

(i) in paragraph (a)(i), by deleting "and" at the end;

(ii) in paragraph (b), by deleting the full stop and substituting "; and";

(iii) by adding -

"(c) in the case of a domestic free television programme service or a domestic pay television programme service where subsection (2)(b) is applicable, conduct a public hearing in accordance with procedures for the hearing determined by the Broadcasting Authority.".

31 By deleting subclause (4) and substituting -

"(4) After section 32 has been complied with but subject to subsection (4A), the Chief Executive in Council or the Broadcasting Authority, as the case may require, may, by notice in writing served on the licensee, revoke a licence -

(a) for failure by the licensee to pay -

(i) any licence fee, or any other fee or charge owing by the licensee under this Ordinance, within 60 days beginning on the date the payment is due; or

Clause Amendment Proposed

(ii) any financial penalty within 60 days beginning on the date the payment is due -

(A) as specified by the Court of First Instance under section 27(3A)(b); or

(B) under section 28(4);

(b) if the licensee -

(i) goes into compulsory liquidation or into voluntary liquidation other than for the purposes of amalgamation or reconstruction; or

(ii) enters into a composition or arrangement with its creditors; or

(c) if, as may be applicable in the particular case, having regard to all the circumstances, including the number of occasions and the gravity in respect of which, after the issue of the licence -

(i) the licensee has contravened -

(A) a licence condition;

Clause | Amendment Proposed

(B) a requirement under this Ordinance which is applicable to it;

(C) a direction, order, or determination, under this Ordinance which is applicable to it; or

(D) a provision in a Code of Practice which is applicable to it,

and the licensee has failed to comply with a direction under section 23(1) relating to that contravention;

(ii) another person has contravened a condition, requirement, direction, order, determination or provision mentioned in subparagraph (i) and such contravention has taken place with the consent or connivance of the licensee.

(4A) The Chief Executive in Council or the Broadcasting Authority shall not exercise a power under subsection (4) until after considering -

(a) in the case of the Chief Executive in Council, the recommendations of the Broadcasting Authority; and

Clause	Amendment Proposed
	(b) in the case of both the Chief Executive in Council and the Broadcasting Authority, such information, matter and advice as he or it thinks fit.".
33(1)(a)(ii)	By adding "電訊" before "局長".
35	By adding - "(5A) Where subsection (3) applies to an application under subsection (2), the Court of First Instance shall not make an interim order under subsection (4) or (5) unless it is satisfied that it is a case of urgency.".
37(1) and (2)(a), (b) and (c)	By adding "電訊" before "局長" wherever it appears.
40(4)(c)	By deleting "妥" and substituting "具".
41	(a) In subclause (1) - (i) in paragraph (a), by adding ", additional to those specified elsewhere in this Ordinance," after "requirements"; (ii) in paragraph (b), by adding "on the grounds specified in the regulation" after "case"; (iii) in paragraph (c), by adding ", additional to those specified elsewhere in this Ordinance," after "requirements".

Clause	Amendment Proposed
	(b) By deleting subclause (2) and substituting - "(2) Subject to subsection (2A), regulations under subsection (1) shall be subject to the approval of the Legislative Council. (2A) Subject to subsection (2B), subsection (2) shall not apply to regulations under subsection (1)(f) or regulations under subsection (1)(g) to the extent that they relate to subsection (1)(f). (2B) Subsection (2A) shall not apply to regulations relating to section 13(4)(b) or (5)(b).".
42(1)	By adding "or 3" after "to Schedule 1".
Schedule 1	(a) In the heading immediately before Part 1, by adding "DOMESTIC FREE OR PAY TELEVISION PROGRAMME SERVICE" after "HOLDING". (b) In Part 2, in the heading, by adding "DOMESTIC FREE OR PAY TELEVISION PROGRAMME SERVICE" after "HOLDING". (c) In section 3, by adding - "(3) In considering the public interest for the purposes of subsection (2), account shall be taken of, but not limited to, the following matters - (a) the effect on competition in the relevant service market;

Clause | Amendment Proposed

(b) the extent to which viewers will be offered more diversified television programme choices;

(c) the impact on the development of the broadcasting industry; and

(d) the overall benefits to the economy.".

(d) In section 7(a), by deleting "local newspaper within the meaning of the Registration of Local Newspapers Ordinance (Cap. 268)" and substituting "newspaper printed or produced in Hong Kong".

(e) In section 8(2), by deleting "書".

(f) In section 9(2)(a), by adding "他" after "關乎".

(g) In section 10 -

(i) in subsection (2), by deleting "則持牌人" and substituting "則廣管局";

(ii) in subsection (3) -

(A) by deleting "凡持牌人" and substituting "凡廣管局";

(B) in paragraph (a), by adding "他" after "關乎";

(iii) in subsection (6), by deleting "書".

(h) In section 15(6) -

Clause | Amendment Proposed

(i) in paragraph (b)(iii), by deleting the semicolon and substituting a full stop;

(ii) by deleting paragraph (c).

(i) In Part 3, in the heading, by adding "(NOT APPLICABLE IN RELATION TO DOMESTIC PAY TELEVISION PROGRAMME SERVICE LICENCE)" after "CONTROLLERS".

(j) In section 19(1)(a), by deleting "妥" and substituting "具".

(k) In section 21(2), by deleting "書".

(l) In section 23(2)(a), by adding "他" after "關乎".

(m) In section 24 -

(i) in subsection (2), by deleting "則持牌人" and substituting "則廣管局";

(ii) in subsection (3) -

(A) by deleting "凡持牌人" and substituting "凡廣管局";

(B) in paragraph (a), by adding "他" after "關乎";

(iii) in subsection (6), by deleting "書".

(n) In section 29 -

(i) by deleting subsection (5) and substituting -

Clause | Amendment Proposed

"(5) Subject to subsection (6), any information which is furnished by a person in confidence under this Part shall be treated as confidential.";

(ii) in subsection (6) -

(A) in paragraph (b)(iii), by deleting the semicolon and substituting a full stop;

(B) by deleting paragraph (c).

(o) In section 30(2)(a), by deleting "附表" and substituting "部".

(p) In section 31(1) -

(i) by deleting "如在看來是，";

(ii) by adding "，" before "充".

(q) In Part 4, in the heading, by adding "DOMESTIC FREE OR PAY TELEVISION PROGRAMME SERVICE" after "RESTRICTION ON".

(r) By deleting section 33 and substituting -

"**33. Restrictions on licensees exercising control on disqualified person without Chief Executive in Council's approval**

(1) A licensee shall not exercise control on a disqualified person -

Clause	Amendment Proposed
	(a) unless the Chief Executive in Council, on application in the specified form by a licensee, is satisfied that the public interest so requires and approves otherwise; and (b) except in accordance with such conditions as are specified in the approval. (2) In considering public interest for the purposes of subsection (1), account shall be taken of, but not limited to, the following matters - (a) the effect on competition in the relevant service market; (b) the extent to which viewers will be offered more diversified television programme choices; (c) the impact on the development of the broadcasting industry; and (d) the overall benefits to the economy.".
Schedule 2	In the heading, by adding "第 2(1)條中" after "施行".
Schedule 3	In section (6) - (a) in paragraph (c), by deleting "服務" and substituting "節目";

Clause	Amendment Proposed
	(b) in paragraph (d)(i)(B), by adding "電訊" before "局長".
Schedule 4	(a) Within the square brackets, by deleting "& 7" and substituting ", 7 & 8".
	(b) In section 3(1)(a), (b) and (c), by adding "or the Broadcasting Authority" after "Government".
	(c) In section 4(2)(b)(i), by deleting "予以覆核".
	(d) By deleting section 10 and substituting -

"**10. Minimum duration of television programme service**

The duration of each language television programme service provided under a deemed licence, within the meaning of Schedule 8 to this Ordinance, falling within section 2(1) of that Schedule shall be not less than 5 hours for each day.".

(e) In section 11(2), by adding ", or would have adversely affected," after "affect".

(f) By deleting section 13 and substituting -

"13. **Annual payment of fees**

Subject to section 5 of Schedule 8 to this Ordinance, a licensee shall pay annually to the Director of Accounting Services a prescribed licence fee and such other fees as may be prescribed.".

Clause | Amendment Proposed

Schedule 5 — In section 1, by adding ", 10" after "3".

Schedule 7 — In section 1 -

(a) by deleting ", without the prior approval in writing of the Chief Executive in Council,";

(b) by adding "其他須領牌電視節目服務" before "牌照".

Schedule 8 — (a) Within the square brackets, by adding "& Sch. 4" after "43".

(b) In section 4(4)(b), by deleting "的人" at the end.

(c) By deleting section 5 and substituting -

"5. **Payment of annual fees**

(1) In the case of a deemed licence falling within section 2(1), (2) or (3) -

(a) the Financial Secretary may, by notice in writing served on the licensee, specify the fee to be paid to the Government by the licensee -

(i) for the year commencing on the relevant day; and

Clause Amendment Proposed

(ii) not later than 30 days after the relevant day; and

(b) section 13 of Schedule 4 to this Ordinance shall not apply to the licensee until the expiration of that year.

(2) In the case of a deemed licence falling within section 2(4) -

(a) the licensee shall continue to comply with the provisions of the licence relating to a licence fee until -

(i) the expiration of the licence; or

(ii) the surrender of the licence for another licence,

whichever is the earlier; and

(b) section 13 of Schedule 4 to this Ordinance shall not apply to the licensee until the occurrence of the event mentioned in paragraph (a)(i) or (ii).

(3) In the case of a deemed licence falling within section 2(5) -

Clause Amendment Proposed

(a) the licensee shall continue to comply with the provisions of the licence relating to a licence fee until -

(i) the expiration of the licence; or

(ii) the surrender of the licence for another licence,

whichever is the earlier; and

(b) section 13 of Schedule 4 to this Ordinance shall not apply to the licensee until -

(i) the occurrence of the event mentioned in paragraph (a)(i) or (ii); and

(ii) the licence held by the licensee does not specify a licence fee to be paid by the licensee to the Government.

(4) A notice under subsection (1)(a) served on a licensee shall be deemed to be a condition specified in the deemed license held by the licensee requiring the licensee to pay to the Government the fee specified in the notice.

Clause Amendment Proposed

(5) Where -

(a) a licensee has before the relevant day paid an annual fee for a deemed licence falling within section 2(1), (2) or (3);

(b) the period for which that fee has been paid would, but for the commencement of section 43(1) of this Ordinance, expire on or after the relevant day; and

(c) the licensee has paid the fee required by subsection (1)(a),

then the Financial Secretary shall remit to the licensee so much of the annual fee referred to in paragraph (c) as is equivalent to so much of the fee referred to in paragraph (a) which, on a pro rata basis, relates to so much of the period referred to in paragraph (b) which would, but for the commencement of section 43(1) of this Ordinance, run on and after the relevant day.".

(d) In section 7, by deleting "and the licence within the meaning of that Ordinance held by the licensee falls within section 2(1), (2) or (3)".

(e) In section 8 -

(i) by renumbering it as section 8(1);

(ii) by adding -

Clause | Amendment Proposed

"(2) It is hereby declared that a royalty within the meaning of the repealed Ordinance payable by a licensee (or former licensee) within the meaning of that Ordinance is payable on a pro rata basis in respect of that portion of the licensee's (or former licensee's) accounting year which has effluxed before the relevant day, and subsection (1) shall apply accordingly.".

(f) By adding -

"10. **Certain Codes of Practice applicable for interim period for licensees that are holders of deemed licence**

Where -

(a) a Code of Practice ("old Code") within the meaning of section 2 of the repealed Ordinance was in force immediately before the relevant day; and

(b) a licensee who is the holder of a deemed licence was required to comply with the old Code immediately before the relevant day,

Clause	Amendment Proposed

then -

(i) the old Code shall, in relation to the licensee, be deemed to be a Code of Practice within the meaning of section 2 of this Ordinance until the date on which a Code of Practice approved under section 3 of this Ordinance, and expressed to be in substitution for the old Code, comes into effect; and

(ii) subject to paragraph (iii), the licensee shall comply with the old Code until that date; and

(iii) the old Code shall be read and have effect with such modifications as are necessary to take into account the provisions of this Ordinance,

and the provisions of this Ordinance (including sections 22(2)(d), 23, 27(2)(d), 29(2)(d), 30(2)(b)(i)(D) and 31(4)(c)(i)(D) of this Ordinance) shall be construed accordingly.".

Schedule 9 (a) By adding immediately before section 6 -

"5A. **Schedule 1 amended**

Schedule 1 to the Telecommunications Regulations (Cap. 106 sub. leg.) is amended -

Clause | Amendment Proposed

(a) in Part I, in item 28, by repealing "Hotel Television Services Licence" and substituting "Hotel Television (Transmission) Licence";

(b) in Part II -

(i) by repealing "HOTEL TELEVISION SERVICES LICENCE" and substituting "HOTEL TELEVISION (TRANSMISSION) LICENCE";

(ii) in the "HOTEL TELEVISION (TRANSMISSION) LICENCE", in paragraph 1, by repealing "hotel television services licence" and substituting "hotel television (transmission) licence".".

(b) In section 6 -

(i) by deleting "to the Telecommunications Regulations (Cap. 106 sub. leg.)";

Clause Amendment Proposed

(ii) by deleting paragraph (a) and substituting -

"(a) by repealing "HOTEL TELEVISION SERVICES LICENCE" and substituting "HOTEL TELEVISION (TRANSMISSION) LICENCE";";

(iii) in paragraph (b) -

(A) by adding "a service, licence or licensee under" after "form to";

(B) by adding "a service, licence or licensee under" after "reference to".

(c) In section 14, in the proposed section 9(1)(d), by adding "including, without limitation, restrictions on the time of day when programmes and advertisements may be provided, whether for the same or different licensees or broadcasts" after "broadcasts".

(d) By deleting section 19 and substituting -

"19. **Authority may impose financial penalties**

Section 24 is amended -

(a) in subsection (3) -

(i) in paragraph (a), by repealing "$20,000" and substituting "$80,000";

Clause | Amendment Proposed

(ii) in paragraph (b), by repealing "$50,000" and substituting "$200,000";

(iii) in paragraph (c), by repealing "$100,000" and substituting "$400,000";

(b) by adding -

"(3A) The Authority shall not impose a financial penalty under this section unless, in all the circumstances of the case, the financial penalty is proportionate and reasonable in relation to the failure or series of failures concerned giving rise to that penalty.".

(e) In section 20, in the proposed section 25A(1), by adding "(including within such period and within such time of day)" after "manner".