OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 20 December 2000

The Council met at half-past Two o'clock

MEMBERS PRESENT:

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

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

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

THE HONOURABLE DAVID CHU YU-LIN

THE HONOURABLE CYD HO SAU-LAN

THE HONOURABLE ALBERT HO CHUN-YAN

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

THE HONOURABLE LEE CHEUK-YAN

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

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

DR THE HONOURABLE DAVID LI KWOK-PO, 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 JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE HUI CHEUNG-CHING

THE HONOURABLE CHAN KWOK-KEUNG

THE HONOURABLE CHAN YUEN-HAN

THE HONOURABLE BERNARD CHAN

THE HONOURABLE CHAN KAM-LAM

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

THE HONOURABLE LEUNG YIU-CHUNG

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 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 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.

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

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

THE HONOURABLE LI FUNG-YING, J.P.

THE HONOURABLE HENRY WU KING-CHEONG, B.B.S.

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

THE HONOURABLE MICHAEL MAK KWOK-FUNG

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE LEUNG FU-WAH, M.H., J.P.

DR THE HONOURABLE LO WING-LOK

THE HONOURABLE WONG SING-CHI

THE HONOURABLE FREDERICK FUNG KIN-KEE

THE HONOURABLE IP KWOK-HIM, J.P.

THE HONOURABLE LAU PING-CHEUNG

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

MEMBERS ABSENT:

THE HONOURABLE LAU CHIN-SHEK, J.P.

THE HONOURABLE ANDREW CHENG KAR-FOO

PUBLIC OFFICERS ATTENDING:

THE HONOURABLE MRS ANSON CHAN, G.B.M., J.P.
THE CHIEF SECRETARY FOR ADMINISTRATION

THE HONOURABLE ELSIE LEUNG OI-SIE, J.P.
THE SECRETARY FOR JUSTICE

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

MR DOMINIC WONG SHING-WAH, G.B.S., J.P.
SECRETARY FOR HOUSING

MISS DENISE YUE CHUNG-YEE, J.P.
SECRETARY FOR THE TREASURY

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

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

MRS REGINA IP LAU SUK-YEE, J.P.
SECRETARY FOR SECURITY

MR LEE SHING-SEE, J.P.
SECRETARY FOR WORKS

MRS CARRIE YAU TSANG KA-LAI, J.P.
SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING

MRS FANNY LAW FAN CHIU-FUN, J.P.
SECRETARY FOR EDUCATION AND MANPOWER

MS MARIA KWAN SIK-NING, J.P.
SECRETARY FOR ECONOMIC SERVICES

CLERKS IN ATTENDANCE:

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

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

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY GENERAL

TABLING OF PAPERS

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

Subsidiary Legislation/Instruments	*L.N. No.*
Waterworks (Amendment) Regulation 2000	358/2000
Dangerous Drugs Ordinance (Amendment of Second Schedule) Order 2000	359/2000
Public Health and Municipal Services Ordinance (Public Pleasure Grounds) (Amendment of Fourth Schedule) Order 2000	360/2000
Public Health and Municipal Services Ordinance (Public Swimming Pools) (Designation and Amendment of Fourteenth Schedule) Order 2000	361/2000
Electricity Supply Lines (Protection) Regulation (Cap. 406 Sub. Leg.) (Commencement) (No. 2) Notice 2000	362/2000

Other Papers

No. 42 — The Accounts of the Lotteries Fund 1999-2000

No. 43 — The audited Statements of Accounts of the Provisional Regional Council for the period 1 April 1999 to 31 December 1999 and the Director of Audit's Report

No. 44 — The audited Statements of Accounts of the Provisional Urban Council for the period 1 April 1999 to 31 December 1999 and the Director of Audit's Report

No. 45 — Hong Kong Housing Authority Annual Report 1999/2000

No. 46 — Hong Kong Housing Authority Financial Statements for the year ended 31 March 2000

No. 47 — Report of the Chinese Temples Committee on the Administration of the Chinese Temples Fund for the year ended 31 March 2000

No. 48 — Report of the Chinese Temples Committee on the Administration of the General Chinese Charities Fund for the year ended 31 March 2000

No. 49 — Report of the Brewin Trust Fund Committee on the Administration of the Fund for the year ended 30 June 2000

No. 50 — Grantham Scholarships Fund Annual Report for the year 1 September 1999 to 31 August 2000

No. 51 — The Sir Murray MacLehose Trust Fund Trustee's Report for the period 1 April 1999 to 31 March 2000

No. 52 — Legal Aid Services Council Annual Report 1999-2000

No. 53 — The Police Children's Education Trust, The Police Education and Welfare Trust Annual Report 1999/2000

No. 54 — Report on the Administration of the Fire Services Welfare Fund together with the Director of Audit's Report and Audited Statement of Accounts for the year ended 31 March 2000

No. 55 — Report by the Controller, Government Flying Service on the Administration of the Government Flying Service Welfare Fund for the year ended 31 March 2000

Reports

Report of the Bills Committee on Adaptation of Laws Bill 2000

Report of the Bills Committee on Dutiable Commodities (Amendment) Bill 2000

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. I would like to inform Members that question time normally does not exceed one and a half hours, with each question being allocated about 15 minutes. Supplementaries should be as concise as possible. Members should not make statements when asking supplementaries and should not ask more than one question.

First question.

Mainland Women Entering Hong Kong to Engage in Prostitution

1. **MR FREDERICK FUNG** (in Cantonese): *Madam President, regarding the problem of women from the Mainland who enter Hong Kong on two-way exit permits to engage in prostitution, will the Government inform this Council:*

(a) of the number of women arrested in Western Kowloon by the police since January this year for suspected prostitution; and among them, the respective percentages of local and mainland women; and

(b) whether it will introduce legislative amendments to impose heavier penalties on mainland women for prostituting in Hong Kong; if so, of the details; if not, the reasons for that?

SECRETARY FOR SECURITY (in Cantonese): Madam President, in regard to the Honourable Member's question, my reply is as follows:

(a) For the period from January to early December this year, the police arrested in Kowloon West Region a total of 3 236 mainland women

who were suspected to have been engaged in prostitution. The breakdown is as follows:

	Number of Persons	*Percentage*
Local Residents	465	14.4
Mainland Women	2 470	76.3
Others	301	9.3
Total	3 236	100

(b) If mainland women are found practising illegal prostitution activities in Hong Kong, the police will arrest and prosecute them having regard to the circumstances of individual cases. One of the most common offences committed by prostitutes from the Mainland is "soliciting for an immoral purpose" under the Crime Ordinance. The maximum penalty of the offence is a fine of $10,000 and imprisonment of six months. Depending on the circumstances of individual cases and whether the persons have any previous convictions, most of the persons convicted of the offence will be fined, or sentenced to imprisonment of less than three months.

If the prostitutes are proved to have breached their conditions of stay (for example, visitors to Hong Kong), or have arrived Hong Kong illegally, the police and Immigration Department can charge the persons concerned with the offences of "breach of conditions of stay" and "illegal remaining" under the Immigration Ordinance. The maximum penalty of "breach of conditions of stay" is a fine of $50,000 and imprisonment of two years. For "illegal remaining", the maximum penalty is a fine of $25,000 and imprisonment of three years. Among the persons convicted of the offence of "breach of conditions of stay", the majority of them were awarded suspended sentence (75%) or sentenced to immediate imprisonment for seven days to nine months (24%). The remaining (1%) were either fined or fined with suspended sentence.

We consider that the maximum penalties of the relevant offences stipulated in the above Ordinances have sufficient deterrent effect on prostitutes from the Mainland. We have no plan to raise the maximum penalties of the prostitution-related offences for the time being.

MR FREDERICK FUNG (in Cantonese): *Madam President, sometime ago, the public security authorities covering Guangdong, Hong Kong and Macao and the Hong Kong Police Force took joint actions to arrest and combat the activities of triad members, and such actions were proved very effective. I understand that similar actions were taken by the relevant authorities in November against prostitutes from the Mainland. Will the Government co-operate with the mainland public security bureaus, in particular in combating syndicated prostitution activities of mainland women on a regular basis in the future?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, the answer is yes. Both the Hong Kong Police Force and the Immigration Department will strengthen liaison with the mainland public security authorities to combat syndicated prostitution activities of mainland women in Hong Kong. Relevant measures to be taken include regular exchange of information, and according to such information, we will learn about the origins of most of these women in the Mainland and whether syndicates are involved in such activities. We will then enhance educational activities on the Mainland by publicizing in the relevant rural towns and villages that prostituting is a punishable offence in Hong Kong and telling them it is dangerous to come to Hong Kong by illegal means, for example their life may be endangered if they come to Hong Kong in high-powered speed boats. The Immigration Department will also pass on the information of women who were convicted of having breached their conditions of stay or of engaging in prostituting activities to the mainland authorities, so that appropriate actions can be taken, and more caution can be exercised in vetting the two-way exit permit applications of these women.

MR JAMES TO (in Cantonese): *Madam President, it seems that the Secretary for Security has not answered part (b) of the Honourable Frederick FUNG's question, and that is, whether legislative amendments will be introduced to impose heavier penalties on mainland women for prostituting in Hong Kong. In other words, does the Secretary think that there is a special need to impose heavier penalties on mainland women and local men or women for prostituting in Hong Kong on legal or security grounds, and whether it is feasible to do so?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, the answer is we will not target at mainland men or women, or women from a certain country, and we will not impose heavier penalties on them in particular. This is because everyone is equal before the law; and if heavier penalties are to be imposed, the same penalties will be imposed on all offenders. In 1997, heavier penalties were already imposed on prostitution under the relevant Ordinances in response to public request, and we think that the penalties stipulated in the existing legislation have already had sufficient deterrent effect. Moreover, it could be seen from the example quoted by me just now, that the Court will not impose the maximum penalty especially in the case of first offenders. So, we think that the existing penalties already have sufficient deterrent effect, and we have no plans to introduce any legislative amendments.

DR LUI MING-WAH (in Cantonese): *Madam President, may I ask the Secretary how many of the 2 470 mainland women engaged in prostitution in Hong Kong are repeated offenders?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, as I do not have such information on hand, I cannot answer the question on the number of repeated offenders.

MR LAU KONG-WAH (in Cantonese): *Madam President, the Secretary just said that she took a serious view on syndicated prostitution activities in Hong Kong. I would like to know whether there are any statistics on the actions taken by the authorities concerned against these syndicates in the past, and whether the deterrent effect of the existing legislation or penalties is sufficient?*

SECRETARY FOR SCURITY (in Cantonese): Madam President, I believe Members are aware that prostitution is not a crime in itself. However, activities in connection with prostitution such as causing prostitution, trafficking women to Hong Kong for the purpose of prostitution, keeping a vice establishment, living on earnings of prostitution of others, letting premises for use as a vice establishment, or tenants permitting premises or vessels to be used for

prostitution, are crimes. We think that there are sufficient provisions under the existing legislation to punish those persons who make arrangements for women to engage in prostitution activities.

According to the information we got, most of the mainland women prostituting in Hong Kong have done so voluntarily, and very few of them were forced by syndicates. However, of course, there are people who provide supporting services in the background, such as arranging transport at a certain meeting place on the Mainland to smuggle these women to Hong Kong, or teaching them how to apply for permits, and so on.

Once we get hold of any information on the black spots of these activities, or find out which "snakeheads" are involved in making arrangements for these women to come to Hong Kong, we will co-operate with our mainland counterparts to take actions in both Hong Kong and the Mainland to bring these people to justice.

MR LAW CHI-KWONG (in Cantonese): *Madam President, I do not know whether this supplementary question is within the scope of the main question.....*

PRESIDENT (in Cantonese): Mr LAW Chi-kwong, I am sorry, will you please hold on. Mr LAU, which part of your supplementary question has not been answered?

MR LAU KONG-WAH (in Cantonese): *Madam President, the Secretary has not responded to my question on whether there is any information or figures to show that the authorities concerned have made great efforts to combat the activities of these syndicates.*

SECRETARY FOR SECURITY (in Cantonese): Madam President, I do not have information on hand to show the effectiveness of our actions on combating the activities of these syndicates. As I have just indicated, we believe that nowadays, many of the mainland and local women who are engaged in

prostitution activities have not been forced to do so. Most of them have done so on a voluntary basis. Some women have to rely on others to provide them with transportation services to come to Hong Kong illegally. However, there are also women who are aware that there is such a market in Hong Kong, so they have applied for two-way permits to come to Hong Kong as tourists or visitors. The police and the Immigration Department will also keep a close watch to see whether syndicates are involved. However, I do not have the information requested by Mr LAU at hand, that is, information on the effectiveness of our actions in combating such activities.

MR LAW CHI-KWONG (in Cantonese): *Madam President, will you please rule whether my supplementary question is within the scope of the main question? In order to prevent this Council from being accused of violating the principles on discrimination, may I ask the Secretary whether the Government will consider introducing legislative amendments to impose heavier penalties on mainland men for prostituting in Hong Kong?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, I think we have to examine the relevant legislation. However, I believe the existing legislation is not targeted at women only, for it should cover both sexes.

MR CHAN KAM-LAM (in Cantonese): *Madam President, according to the reply of the Secretary, quite a substantial number of women have come from other places or countries to engage in prostitution activities in Hong Kong. Since the Secretary is working with the mainland authorities in combating the illegal activities of mainland women in Hong Kong, will the Secretary also consider making the same arrangements with other countries or governments to combat the illegal prostitution activities of those women in Hong Kong?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, Mr CHAN's observation is certainly correct. Apart from mainland women, women from other countries such as Southeast Asia have also come to Hong Kong to engage in prostitution activities. Once the police get hold of any information on these transnational syndicated activities, we will definitely make

requests with the governments of these countries to seek co-operation from their police force. However, we cannot make complaints to the governments of other countries simply because the figures show that there are increases recently in the number of women from a certain country being suspected or successfully prosecuted of prostituting in Hong Kong. Otherwise, we will be accused of discriminating against the tourists of a certain country. However, if we have substantial evidence to show that there is a need for co-operation with other countries, we will certainly bring up the issue with the government of that country.

MRS SELINA CHOW (in Cantonese): *Madam President, according to the reply of the Secretary, some mainland women have come to Hong Kong as tourists to engage in prostitution activities. Of the 2 470 mainland women suspected to have been engaged in prostitution, how many of them have come to Hong Kong legitimately on two-way exit permits, and how many of them are illegal immigrants? As regards those women who have come to Hong Kong on two-way exit permits, are there any ways for the authorities concerned to distinguish those who are engaged in prostitution, and are there any ways to prevent them from engaging in such illicit activities?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, as regards the 2 470 mainland women to whom I have referred, there is not any breakdown to show how many of them have come to Hong Kong on valid travel documents, and how many of them are illegal immigrants. However, I do have some figures on the number of mainland women, irrespective of whether they are passports or two-way exit permits holders, who have been prosecuted by the Immigration Department. The police and Immigration Department will usually charge the persons concerned with offences of "breach of conditions of stay" and "illegal remaining". If mainland women are found to be engaged in prostituting rather than being tourists or have breached their conditions of stay, they will be prosecuted. In 1998, the average number of prosecutions against mainland women monthly is 122; in 1999, the average number is 119; and from January to November this year, the average number is 218 monthly. These figures show that there is a tendency for the number of mainland women being prosecuted to increase. Only very few of these women have arrived illegally. A small number of them have come to Hong Kong on passports, and some have come as tourists or visitors on two-way exit permits. The Immigration Department deals

with this matter by providing the mainland authorities with a list of these women. This way, the mainland authorities can be more careful in vetting the two-way exit permit applications of these women. If such information or record shows that a woman has a record of multiple entries and been prosecuted, then the mainland authorities will exercise more caution in vetting the application, or may even reject it.

PRESIDENT (in Cantonese): Last supplementary question.

MR HENRY WU (in Cantonese): *Madam President, Mrs Selina CHOW has just asked the question which I would like to ask. My supplementary question is: Regarding the 2 470 mainland women, can the Secretary tell us what is the percentage of these women in relation to the total number of prostitutes in Hong Kong?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, I do not have such information on hand. I will provide a written reply to Mr WU's supplementary question after I have looked up the relevant information. (Annex I)

PRESIDENT (in Cantonese): Second question.

Change of Tariff Structure by Hongkong Electric Company Limited

2. **DR YEUNG SUM** (in Cantonese): *Madam President, in September this year, the Administration approved the Hongkong Electric Company Limited (HEC)'s revision to the components of its tariff structure, which comprised an upward adjustment of the basic unit tariff and a corresponding increase in the fuel rebate, thereby maintaining the net unit tariff. In this connection, will the Government inform this Council:*

(a) of the justifications for approving the HEC's revision to the components of its structure;

(b) whether each of the adjustments to the fuel rebate or surcharge made by the HEC in the past three years roughly followed the changes in import price of fuels in the relevant period; if not, of the reasons for that; and

(c) of the mechanism for adjusting the fuel rebate or surcharge; whether the Administration is empowered to reject such adjustments, and the measures in place to prevent the HEC from increasing its tariff under the guise of such adjustments?

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Madam President,

(a) The tariff components of HEC comprise the Basic Tariff, the Fuel Clause Rebate and the Rate Reduction Rebate. In accordance with the Scheme of Control Agreement (SCA), the HEC's Basic Tariff for the year 2000 has to be increased and the Rate Reduction Rebate would need to decrease owing to reduction in the Development Fund in 1999. Therefore the tariff payable by customers would increase. Since Hong Kong economy has yet to recover fully, the HEC proposed to increase the Fuel Clause to stabilize tariff. This would avoid an increase which would add to the burden of its customers. As the HEC's customers would not need to pay more tariff in the year 2000 and the HEC would not earn more than the permitted return under the SCA as a result of such an arrangement, the Government agrees to the HEC's proposal.

(b) In the past three years, the HEC's fuel costs have seen a downward trend and there has been an increase in the Fuel Clause Rebate or surcharge every year, consideration would be given not only to the fuel cost forecast and the balance in the Fuel Clause Recovery Account, but also to the need to stabilize tariff. There may be variation between the Fuel Clause Rebate or surcharge and the difference between the standard fuel cost and the forecast or actual fuel cost. Therefore, there could be positive or negative balance in the Fuel Clause Recovery Account. In the long run, the Fuel Clause Recovery Account should be in balance, and the difference between the standard and actual fuel cost would be reflected in the tariff through the fuel clause adjustment mechanism.

(c) The existing fuel clause adjustment mechanism of the power companies is to set the Fuel Clause Rebate or surcharge having regard to the difference between fuel cost forecast and the standard fuel cost included in the Basic Tariff, the Fuel Clause Recovery Account balance and the need to stabilize tariff. The rebate or surcharge would be put to the Government for approval during the Annual Tariff Review. Any subsequent adjustment would also require further approval by the Government. The HEC has also said in public that any future adjustments to the Fuel Clause Rebate will only be effected after going through the established procedure and with the Government's agreement.

DR YEUNG SUM (in Cantonese): *Madam President, according to the SCA executed between the Government and the HEC, if the HEC earns a profit higher than the permitted return in a year, the surplus will go to the Development Fund. If the HEC's revenue falls short of a certain level, fund will then be voted from the Development Fund to adjust the company's profit. However, the Development Fund has been decreasing over the past few years. In 1999, the balance of the Fund was $89 million. As a result, the HEC cannot make use of the Development Fund to attain the permitted return. Can the Government clarify whether the HEC, forecasting that it will be unable to attain the permitted return this year, strives to attain the permitted return by altering the components of its tariff structure in order to maintain its credit rating?*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Madam President, the HEC can arrange to have sufficient revenue in order to meet the operating expenses and attain the permitted return under the SCA. Thus, in last year's Annual Tariff Review when the HEC found that revenue of this year earned from tariff could not meet its operating expenses and attain the permitted return, it was allowed to propose tariff increase. However, as Hong Kong economy had yet to recover fully, the HEC proposed to increase the Fuel Clause Rebate in order to maintain the tariff in 2000 at the level of 1998 so that the customers need not pay additional tariff. As I explained just now, the Government agrees to the HEC's proposal on this ground.

MR SIN CHUNG-KAI (in Cantonese): *Madam President, the Government stated clearly in the past that the purpose of the Development Fund was to stabilize tariff. But in part (c) of the main reply, it now mentions an additional tariff stabilizing element which is the Fuel Clause Rebate. Under the SCA executed between the HEC and the Government, it is stipulated that the tariff structure concerning fuel should reflect the cost of fuel. Has the Government come to an agreement with the HEC in private that the fuel clause adjustment mechanism is changed so that it will become another tariff stabilizing mechanism? I ask this question because there is no such provision in the SCA.*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Madam President, this mechanism has been in existence for more than a decade. When this mechanism commenced operation, the objective of stabilizing tariff had been taken into account. We have not deliberately included this objective in the mechanism only now.

MISS CYD HO (in Cantonese): *Madam President, I understand that, in deciding whether employees are really self-employed, the Government will send inspection teams to inspect these places. When some companies are visited and found that ……*

Sorry, Madam President, I made a mistake with the subject. I should raise a supplementary question on Mr LEE Cheuk-yan's oral question.

PRESIDENT (in Cantonese): Miss HO, I would let other Members raise questions first.

MR FRED LI (in Cantonese): *Madam President, the Secretary mentioned in part (b) of the main reply that in the long run, the Fuel Clause Recovery Account should be in balance. However, the HEC's representatives made it clear here yesterday that the fuel rebate is used to stabilize tariff. Fuel price or coal price in recent years has been very stable without much fluctuation. But this time, the HEC has simply lowered the fuel rebate resulting in a tariff increase. From this, we can see that the fuel rebate is used more to stabilize tariff than to reflect the actual fluctuation of coal price. How can the Government say that in the long run, the Fuel Clause Recovery Account should be in balance?*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Madam President, the Fuel Clause Recovery Account, which basically reflects fuel price fluctuations, can enable the power companies to recover the actual fuel cost from customers eventually. Just now Mr LI mentioned that the HEC's representatives had said at the meeting of the Panel on Economic Services that the fuel rebate could have the effect of stabilizing tariff. In fact, the Government will set the rebate having regard to the difference between the standard fuel cost and the forecast fuel cost included in the Basic Tariff, the balance of the Fuel Clause Recovery Account and the trend of tariff as a whole. Thus, the rebate may sometimes be higher or lower than the difference in the year.

MR FRED LI (in Cantonese): *Madam President, I think the Secretary has not answered one very important point. Since coal price has been very stable without much fluctuation in recent years, why is the fuel rebate changed?*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Madam President, Mr LI said that coal price is very stable. This is only relative. As I pointed out in part (b) of the main reply, fuel costs have seen a downward trend in the past three years.

MISS CHOY SO-YUK (in Cantonese): *Madam President, the Secretary said that the fuel rebate is to reflect fluctuations of fuel costs. But in part (a) of the main reply, she clearly pointed out that the HEC had proposed to increase the Fuel Clause Rebate in order to stabilize tariff. May I ask the Secretary whether the purpose of the fuel rebate has been extended or basically changed and whether the fuel rebate has been included in the HEC's tariff increase mechanism?*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Madam President, the purpose of the fuel clause adjustment mechanism is no different from that when it was first established. As I pointed out in the main reply, in setting the rebate, consideration would be given not only to the difference between the standard fuel cost and the forecast fuel cost, but also to the balance in the Fuel Clause Recovery Account and the need to stabilize tariff. The

Government will determine whether a rebate should be granted or surcharge imposed after having considered these three factors. Thus there has been no change in the purpose of the mechanism since it was first established.

MR CHAN KAM-LAM (in Cantonese): *Madam President, I think there is some inconsistency in the Secretary's reply. She said in the first part of her reply that the purpose of fuel rebate is to stabilize tariff. But in the final paragraph, she said that any future adjustments to the rebate will only be effected after going through the established procedure and with the Government's agreement. This gives us an impression that the Government is helping the HEC to play games of figures. Can the Government affirm that the rebate is an independent item? What criteria are adopted in effecting the agreement?*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Madam President, I have to state clearly that the Government has not played any game of figures. In fact, the purpose of the basic adjustment mechanism is to pass the actual fuel cost onto consumers. However, in doing so, when fuel price suddenly surges or falls and if we do not take into account the need to stabilize tariff, the tariff that the public has to pay may fluctuate like a roller-coaster. Thus, when considering the fuel rebate for the power companies, the Government must also consider the factor of tariff stability before coming to a decision on fuel rebate or surcharge.

PRESIDENT(in Cantonese): Third question.

Labour Protection for Employees Forced to Become Self-employed

3. **MR LEE CHEUK-YAN** (in Cantonese): *Madam President, A lot of employers have arranged for their employees to become self-employed before the implementation of the Mandatory Provident Fund (MPF) Scheme. As a result, these employees are deprived of their right to the contributions made by their employers, and no longer enjoy the protection of labour legislation such as the Employment Ordinance and the Employees' Compensation Ordinance. In this connection, will the Government inform this Council:*

(a) of the respective current numbers of construction workers, container truck drivers and massage workers joining the MPF schemes as employees and self-employed persons;

(b) whether it knows the measures the Mandatory Provident Fund Schemes Authority (MPFA) will take to compel those de facto employers to make MPF contributions; and

(c) of the measures the Labour Department will take to ensure that those persons who have a self-employed status but are actually not self-employed will enjoy the labour protection and rights provided in the various labour ordinances?

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam President,

(a) According to the Mandatory Provident Fund Schemes Ordinance, the MPFA requires approved MPF trustees to provide relevant information on employees, including their names and business registration numbers. However, such information is not categorized according to the types of business. Therefore, we cannot provide detailed data on employees of different industry enrolled in MPF schemes. A breakdown by industry is, however, available from the two Industry Schemes as these schemes are established specifically for the catering and construction industries.

On the basis of the Census and Statistics Department (C&SD) figures, the MPFA estimates that there are about 16 700 employers, 21 600 self-employed persons and 239 400 employees in the construction industry who are required to participate in MPF schemes.

Up to yesterday, the number of employers, self-employed persons and employees in the construction industry having participated in the two Industry Schemes were 6 820, 13 550 and 69 300 respectively. These figures do not, however, fully reflect the actual participation, as some employers and self-employed persons may choose to join the master trust schemes or employer sponsored schemes under the MPF system, instead of the Industry Schemes.

According to Transport Department statistics, 36 000 persons were holders of container truck driving licences. However, the number of employees and self-employed persons who are actually engaged as container truck drivers have enrolled in MPF schemes are not available.

According to the statistics of the C&SD, massage workers (masseurs) are grouped under the "Personal Services Industries" category. The MPFA has to estimate the number of relevant employees and self-employed persons on the basis of the general category of "Personal Services Industries" and cannot arrive at a separate estimation of the number of masseurs in the category. Hence, the MPFA does not have the number of masseurs enrolled in MPF schemes nor the information on their employment status.

(b) Under the MPF legislation, employers are required to enroll their employees in MPF schemes and make contributions to the relevant scheme to fulfill their legal obligations. As long as there is a *de facto* employer-employee relationship between the employer and employee, it will be an offence under the MPF legislation if the employer fails to enroll the employee in an MPF scheme and make contributions for him. Upon conviction, the employer may be fined $100,000 and imprisoned for six months. The MPFA's enforcement team is responsible for inspection and investigation into non-compliance cases in order to protect the interests of scheme members. For those complaints related to labour relations, the MPFA is working closely with the Labour Department and will take joint actions where appropriate. Moreover, the MPFA has stepped up its public education and publicity efforts to remind employers of their MPF responsibilities.

(c) The Honourable LEE Cheuk-yan asks what measures the Labour Department will take to ensure that those persons who have a self-employed status but are actually not self-employed will still enjoy the labour protection and rights provided in various labour legislation.

Under the Employment Ordinance, employers cannot vary their employees' employment terms without seeking the latter's prior

consent. If an employer unilaterally varies the employment terms, for example, changing his employees' status into self-employed to the detriment of the employees' protection and rights, the employees concerned may claim remedies for unreasonable variation of employment terms under the Employment Ordinance, which include reinstatement or terminal payment compensation. Since varying employment terms unilaterally is a breach of employment contract which may amount to constructive dismissal of an employee under common law, the employee concerned may, alternatively, claim compensation for dismissal in accordance with the contract and the Employment Ordinance against the employer.

Most importantly, even if an employer has changed the status of his employee into self-employed, he still has to fulfill his obligations under the various labour legislations, including the Employment Ordinance and the Employees' Compensation Ordinance, if the relationship between the parties remains essentially an employer-employee relationship.

Previous Court rulings indicated that the Courts would not simply look at the labelling of the person to determine the employment relationship. In determining employment relationship, the court has to consider a number of factors, for example, controlling power, that is, who is responsible for employing and terminating employees? Who pays the wages of the employees? What is the method of payment? Who decides the production procedure, production time and work practice, and so on? The other factor for consideration is the ownership and provision of essential elements for production, that is, who owns the production tools, who provides production materials and the workplace. Another factor is economic consideration, that is, is the person-in-control or personal-in-charge conducting a business. Who is responsible for the "profit and loss" risk? Therefore, if the relationship between the employer and employee involves employment relationship in essence, an employer cannot evade the responsibilities stipulated in the labour legislation or Mandatory Provident Fund Schemes Ordinance.

The Labour Department takes a serious view and has widely publicized the distinction between self-employed persons and

employees in respect of their rights and protection entitlement under various labour legislation. Employees are reminded to be aware of the fact that they will be deprived of their rights and protection once they become self-employed. They are also encouraged to approach the Labour Department for assistance whenever they are in doubt or difficulties.

Finally, the Labour Department actively provides conciliation services to help resolve disputes between employers and employees. If breach of labour legislation is detected, the Labour Department will take positive measures to gather evidence for taking out prosecutions to uphold justice for the employees. The Labour Department received a complaint against an employer who asked his employee to become a contractor instead of continuing to be employed under an employment contract during the year. The Labour Department has carried out conciliation for the case and subsequently referred it to the Labour Tribunal for arbitration as both parties failed to reach agreement. Moreover, the Labour Department is actively following up on the complaint case(s) put forward by the labour side on the tripartite meeting with the MPFA and labour representatives on employers' act of turning employees into self-employed to avoid making contributions to the MPF. If the employers concerned are found to have contravened the provisions of the Employment Ordinance, the Labour Department will certainly take thorough follow-up and investigation actions.

MR LEE CHEUK-YAN (in Cantonese): *Madam President, the figures show an unusual phenomenon, that is, of all the participants of MPF schemes, over 70% are self-employed persons while only 30% are employees. Why is there such a phenomenon? In fact, the reason is very simple. It is because the employers have changed the status of all the employees into self-employed, therefore the number of self-employed persons participating in MPF schemes is particularly high. We have learnt from cases reported to us that a lot of construction workers were changed to self-employed status by their employers. If these workers were changed to self-employed status, they will also lose the work injury protection under the Employment Ordinance. The Secretary mentioned in part (c) of the main reply that the Labour Department would take follow-up actions on complaint cases. However, I consider it futile and helpless. I would like to*

ask either of the two Secretaries present in this Chamber this question: Is it possible to modify the existing system by means of discussing with the Hong Kong Construction Association and see whether they can provide self-employed persons with protection like labour insurance protection, or drawing up legislation to demand principal contractors of all construction sites to make contributions for their employees and self-employed persons regardless of their status, so as to enable them to enjoy labour insurance protection? It is because when the existing employees are turned into self-employed status, they will lose their entitlement to work injury compensation, thus it will become a very serious problem. I therefore hope that the system can be modified in this respect.

PRESIDENT (in Cantonese): Which Secretary will answer this supplementary question? Secretary for Education and Manpower.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, I think employed persons and self-employed persons are different in nature. We have explained repeatedly that the Mandatory Provident Fund Schemes Ordinance does not allow employers to change the status of his employee into self-employed arbitrarily. If the persons concerned can prove their *de facto* employee status in light of some criteria used in Court precedents, employers will be unable to evade all the responsibilities under the employment contract. I think what we have to do now is not forcing the employers to discharge their obligations in order to keep the rights of self-employed persons level with the rights of the employed persons, as the working conditions of both groups of people should not be the same.

On the other hand, I think the figures mentioned by Mr LEE were inaccurate. I have to stress that we are now talking about the percentage of participation, and the number of employed persons enrolled in MPF schemes has in fact outnumbered self-employed persons. Notwithstanding we have heard a lot of stories about many employers apparently having changed the status of employed persons into self-employed; in fact, we have not received many complaint cases, as there are only 12 cases referred by trade unions. The Labour Department has conducted active follow-up action on these 12 cases. Moreover, it is found in several cases that some employers have denied of such actions. As a result, we have to carry on the follow-up action and investigation. However, the stance of the Government is very firm and clear, that employers

are not allowed, and I wish to remind employers not, to change the status of their employees arbitrarily.

We also call on all employees to bring along the evidence and report their cases to the Labour Department as soon as possible if they consider themselves employed persons but are treated unfairly by their employers who forced them to become self-employed persons. Undoubtedly, we will conduct thorough follow-up action. In fact, other than the case which has been referred to the Labour Tribunal as mentioned by the Secretary in the main reply, we will also refer the second case to the Tribunal for arbitration.

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam President, I would like to clarify the figures mentioned by Mr LEE Cheuk-yan a moment ago. Overall speaking, as of yesterday, 86% of the total workforce in Hong Kong has joined MPF schemes. It can be said that it is a rather high percentage. In the meantime, about 64% self-employed persons have joined MPF schemes. In other words, employees have already outnumbered self-employed persons. However, when I mentioned Industry Schemes in my main reply earlier, I said that those figures did not fully reflect the actual participation rate, as some employers might choose the Master Trust Schemes for their employees instead of the Industry Schemes.

MR LEE CHEUK-YAN (in Cantonese): *Madam President, I would like the Secretary for Education and Manpower to reply this supplementary question. Will she hold discussions with the Hong Kong Construction Association? It is because in her explanation, she has just explained repeatedly how the complaint cases were handled.*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, in fact, there is already a tripartite consultative body for the construction industry under the Labour Department, which consists of representatives of employers, employees and government officials. Through this tripartite body, we have been continuously promoting all kinds of rights and requirements under the labour legislation to employers and employees. At the same time, we have launched a series of MPF-related publicity efforts through this body. However, I think we cannot agree that the employment terms and

conditions of self-employed persons are identical to those of employed persons. It is incorrect to amend the legislation so that self-employed persons will enjoy the same benefits as employed persons.

MISS CYD HO (in Cantonese): *Madam President, thank you for allowing me to follow up this question once again. In case the MPFA enforcement team obtains evidence on the spot which proves that certain self-employed persons are actually employed by some employers during the inspection of some organizations, can the Government take some summary procedures to protect the rights of the employees? Or is it just like what the Government has said before, that the relevant employer will only assume its obligation and make contribution required by the MPF system after going through some procedures of the Labour Department or the Court?*

PRESIDENT (in Cantonese): Which Secretary will answer this supplementary question? Secretary for Financial Services.

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam President, in fact, the MPFA enforcement team will have certain figures at hand when it conducts inspections, such as whether or not the relevant employer has enrolled its employees in MPF schemes, and so on. Actually, I mentioned in my main reply earlier that the trustee is obliged to provide the information of the employer to the MPFA enforcement team, because when it conducts inspections, it will focus on whether or not the employer has enrolled its employees in MPF schemes. Certainly, the concern of Miss HO is whether some self-employed persons are actually not self-employed, but *de facto* employed persons. If this is the case and if the enforcement team finds it suspicious, it will leaf through the former accounts of the company and check the previous conditions of the relevant persons before the change of status as I have just mentioned in my main reply, such as who is in charge of the work schedule, who purchases production tools and how the proceeds are split. Certainly, some information can be obtained after looking up these accounts. However, the most important thing is whether or not the employees are forced to have their employed status changed into self-employed status against their will. If that really happens, we very much encourage the relevant persons to lodge their complaints with the MPFA or the Labour Department, because it will only make our follow-up action easier if

they come forth and testify against the relevant employer. I can assure them that we will follow up each and every case if such complaints are received. Mr LEE has helped us a lot by referring over 40 cases to us. We can reassure that we will follow up these cases one by one.

PRESIDENT (in Cantonese): Miss Cyd HO, which part of your supplementary has not been answered?

MISS CYD HO (in Cantonese): *Madam President, I thank the Secretary for a detailed reply. However, my supplementary is: Does the Government have any summary procedure in place to make the relevant employer assume its obligation of making MPF contributions for its employees immediately, instead of following the old practice of settling the case through the Labour Department or court proceedings?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, perhaps I shall add a few points here. Currently, personnel from the Labour Department will jointly inspect some workplaces of higher risk (where the occurrence of such cases is possible) together with the MPFA enforcement team, including construction sites. Why do they have to carry out inspection together with personnel from the Labour Department? It is because Labour Department staff understand employment contracts better, so they can identify more clearly whether the workers are of self-employed status or employed status. As to whether there is any summary procedure in place to deal with these cases, I should say that the existing procedure is quite simple. If a worker files a complaint with the Labour Department, the Department will arrange a meeting with the relevant employer immediately and conduct conciliation work. If both parties come to agreement upon the completion of the mediation, then we may say that the complaint case has been resolved there and then. If the mediation fails, the case will be referred to the Labour Tribunal for arbitration. The waiting time for the Tribunal to handle such cases will not be too long, as the first hearing can take place after seven or eight days. As a result, the existing procedure is relatively simple. So far, we have only received 12 complaint cases from self-employed persons, in which only two have to be referred to the Labour Tribunal for arbitration.

PRESIDENT (in Cantonese): We have spent more than 17 minutes on this question. However, only two Members have been able to ask supplementaries. The questions of Members are quite long, the replies of officials are also very long, and everybody has spoken in detail, but it ought not happen. Supplementaries should be as concise as possible. As we are running short of time, I can only allow two more supplementary questions, even though many Members in the queue will be disappointed.

MR TAM YIU-CHUNG (in Cantonese): *Madam President, my supplementary is very simple. I know that as the unemployment rate in the construction sector is quite high, therefore even if the abovementioned cases exist, most of the workers will only choke with silent fury. As a result, not many complaint cases have reached the Labour Department. However, can the Government consider some practices similar to the work injury compensation system, which requires principal contractors to supervise their sub-contractors to enroll in MPF schemes, just as the one proposed by Mr LEE Cheuk-yan a while ago? I think this is also the proposal of our union, the Hong Kong Construction Industry Employees General Union. I hope the Government will consider this proposal seriously and see if the approach is workable. I hope the Government will respond to this question.*

PRESIDENT (in Cantonese): Which Secretary will answer this supplementary question? Secretary for Financial Services.

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam President, I shall be brief. I hope employees will give vent to their fury. The most important thing is, they have to lodge their complaints. According to the relevant legislation, they can certainly identify who their employers are. This is my advice from beginning to end: the most effective regulatory mechanism is for the relevant persons to stand forth and complain.

PRESIDENT (in Cantonese): Last supplementary.

MR LAU PING-CHEUNG (in Cantonese): *Madam President, there is a big difference between the number of people in the construction industry and the number of participants enrolled in MPF schemes. May I ask the Secretary if a concrete timetable and list of participants are already in place for the implementation and enforcement of the MPF Scheme?*

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam President, I think I have already answered the supplementary of Mr LAU in my main reply. Concerning the figures, I have already made clear that they are not so representative. Overall speaking, as of yesterday, 86% of the total workforce in Hong Kong has joined MPF schemes. Since employers have the right to choose, therefore, it is not necessary for them to choose the two Industry Schemes, as they can opt for the Master Trust Schemes for their employees. In other words, the participation rate seems to be quite low in the light of the figures, but it does not necessary reflect the whole truth. On the other hand, the closing date for participation in the Master Trust Schemes is 29 January. In this respect, MPFA staff will certainly conduct inspection in due course in order to ensure that all employers have enrolled their employees in the schemes.

PRESIDENT (in Cantonese): Fourth question.

Broadcasting of Culture, Education and Current Affairs Programmes

4. **MR SIN CHUNG-KAI** (in Cantonese): *Madam President, will the Government inform this Council whether it will request subscription television operators to provide a channel for the Administration to broadcast the culture, education and current affairs programmes produced by Radio Television Hong Kong (RTHK), and the cultural presentations organized by the Leisure and Cultural Services Department (LCSD); if so, of the details; if not, the reasons for that?*

SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTNG (in Cantonese): Madam President, following a comprehensive review of television policy in 1998, the Government made the policy decision to open up the television market to promote competition and encourage investment. Early this month, the Government took a major step in

liberalizing the television market by granting four new pay television licences. The new services are expected to bring in over 100 additional television programme channels.

Overseas experience indicates that under a multi-channel operating environment, operators will make their best endeavours to provide different types of programmes to meet the demands of different markets. The new pay television service operators had, in their applications, submitted that they would provide channels of different programme types, including culture, education, and current affairs programmes.

Whether a domestic pay television programme service licensee would produce its own programmes or from whom it would acquire programmes for inclusion in its service are purely the decisions of individual broadcasters. It will be in their own interest to select programmes which best meet the tastes and interests of different sectors of the audience. This arrangement is in line with our broadcasting policy objective, which is to provide a level playing field conducive to the continued investment in the industry, ensure editorial independence of broadcasters, and widen programming choice for viewers.

At present, programmes produced by the RTHK are already included in the two existing domestic pay television services. Some of the new licensees are also discussing similar arrangements with the RTHK. The RTHK welcomes the scheduling of its programmes on new pay television services as this will further expand its audience reach.

The recording and broadcasting of cultural presentations organized by the LCSD involve technical and copyright issues. Television licensees interested in covering such programmes are welcome to approach the LCSD to discuss the feasibility of such arrangements.

Under the emerging multi-channel and multimedia environment, there will be new business opportunities for broadcasters to bring in diversified services for the audience. At the same time, there will be more opportunities for both the RTHK and the LCSD to co-operate with broadcasters by arranging their productions or presentations to be screened on new channels or via new media. In step with the global trend to open up the television market, we consider that the Government's role should be to create an open and competitive market to promote the development of the broadcasting industry. The Government should, as far as possible, refrain from intervening in the market, such as imposing

mandatory requirements on domestic pay television programme service licensees to provide a channel to broadcast the programmes produced by the RTHK or the cultural presentations organized by the LCSD.

MR SIN CHUNG-KAI (in Cantonese): *Madam President, I have asked this main question because I feel that under the existing arrangement, some well-known RTHK productions in the past, such as "Below the Lion Rock" and "When We Were Young", will unlikely be broadcast again by the two free television broadcasters during prime time slots. Although the forms of television transmission have now increased in number (with the introduction of subscription television programme service, for example), what incentives can the Government offer to make sure that the various media, including the future subscription television service providers, are willing to broadcast the quality productions of the RTHK which are now stored in our archive? Since the licensing conditions do not seem to contain such a requirement, may I ask what incentives can be offered to make sure that these media are willing to do so in the free market?*

SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING (in Cantonese): Madam President, in the subscription television market, programme choices are made by individual subscribers themselves, so the scope of services are determined by the market. As long as there are market demands for quality programmes like those mentioned by Mr SIN, the operators will naturally be prepared to provide them to their subscribers.

MR YEUNG YIU-CHUNG (in Cantonese): *Madam President, it is mentioned in the Secretary's main reply that programmes produced by the RTHK are already included in the two existing domestic pay television services. May I ask whether the RTHK is now able to recover all the production costs? When can it recover all such costs?*

SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING (in Cantonese): Madam President, so far, the RTHK has not been able to recover all its production costs. Since the RTHK is a public broadcaster, its production costs are definitely higher than those of private broadcasters.

MR NG LEUNG-SING (in Cantonese): *Madam President, it is mentioned in the third paragraph of the main reply that broadcasters will "select programmes which best meet the tastes and interests of different sectors of the audience", and that "this arrangement is in line with our (the Government's) broadcasting policy objective". This gives me the impression that the policy objective of the Government is now met only because it so happens that operators will select programmes which best meet the tastes and interests of different sectors of the audience. May I therefore ask the Government whether it can assure us that its policy objective and the arrangement adopted by operators can remain consistent in the long run?*

SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING (in Cantonese): Madam President, we have just granted four new pay television licences, and there will be as many as 135 television programme channels. These new operators have in fact proposed many new programmes in their proposals, covering such areas as music, education (even distance-learning), culture and community activities. This is in line with the Government's policy objective of providing a diversified range of programmes.

MISS CYD HO (in Cantonese): *Madam President, the fifth paragraph of the main reply mentions the copyright issues connected with the cultural presentations organized by the LCSD. And, I know that such issues have once led the Hong Kong Philharmonic to refuse to allow the RTHK to broadcast its concert. May I ask the Secretary whether there is any policy of co-ordination between these publicly-funded arts companies and government departments such as the RTHK, under which the public can enjoy these cultural performances at low costs? The Hong Kong Philharmonic, in particular, is now considering the possibility of corporatization in the future. If it is really corporatized, will it simply refuse to release its copyright and require people to pay before they can enjoy its performances?*

PRESIDENT (in Cantonese): Secretary for Information Technology and Broadcasting, this supplementary question appears to have deviated from the main question. But if you have the relevant information to hand, you may choose to reply to it.

SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING (in Cantonese): Madam President, I am sorry that I do not have any information about any individual cases now. But I still wish to provide some information for Members' reference. When I talked about copyright, I was referring to the principle that in a free society, before we can broadcast the shows of any artistes or performers, we must naturally negotiate with them to reach some mutually acceptable arrangements.

MR LAW CHI-KWONG (in Cantonese): *Madam President, it is said in the last part of the main reply that the Government will not consider the imposition of any mandatory requirements on domestic pay television programme service licensees to provide a channel to broadcast the programmes produced by the RTHK and the LCSD. However, the governments in many other places have adopted the practice of creating a channel for broadcasting information to the public, so as to let them know the information relating to their governments. In connection with the Honourable SIN Chung-kai's supplementary question on such a channel, may I ask the Government whether it will give some thoughts to the idea? I mean, besides the programmes of the RTHK and LCSD, will the Government require the operators to create a channel for it to broadcast its information to the public?*

SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING (in Cantonese): Madam President, under the existing arrangement, every licensee is required under the terms of its licence to broadcast the publicity filmlets of the Government, as a means of ensuring that government information can always reach the homes of the people.

MR LAW CHI-KWONG (in Cantonese): *Madam President, my supplementary question is about a separate channel, but the Secretary replied to it by referring to publicity filmlets. There is a huge difference between the two. Can the reply of the Government be taken to mean that the Government will not consider the possibility of creating a separate channel?*

SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING (in Cantonese): Madam President, I am not sure whether the Honourable Member is referring to the creation of a separate channel for

broadcasting cultural, musical and other programmes produced by the Government. If this is indeed what he means, then I must reiterate that we do find the existing arrangement most satisfactory, because we have already sought to transmit information to the people on quite a broad front through many different channels.

MR FRED LI (in Cantonese): *Madam President, it is mentioned in the main reply that some of the new licensees are holding discussions with the RTHK on the inclusion of the latter's programmes in their services. Would the Government please tell us how many of the four new operators have agreed to broadcast the programmes of the RTHK? How many hours weekly will they broadcast RTHK programmes?*

SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING (in Cantonese): Madam President, I am afraid it is inappropriate to disclose the details of the relevant discussions here. However, if Members are interested in knowing which television stations are broadcasting the programmes of the RTHK, I can give some examples here. Currently, while the two free television broadcasters have allocated specific time slots for the broadcasting of RTHK programmes, the Cable TV also broadcasts "Media Watch" and "City Forum"; the iTV of Pacific Century CyberWorks also broadcasts "Sex Education", "Doctor and You" and "Parenting". And, the Star TV also broadcast the "Top Ten Chinese Gold Songs Award Presentation".

MR SIN CHUNG-KAI (in Cantonese): *Madam President, may I ask the Government whether the broadcasting of RTHK programmes is part of the terms governing the issue of these new subscription television licences, or whether this is simply a commercial decision reached between the RTHK and the subscription television operators? I understand that because of the requirement of the Broadcasting Authority, the two free television broadcasters are required to broadcast the programmes of the RTHK during prime time slots. This is a licensing condition. In the case of the new subscription television licences, is there a compulsory requirement on the broadcasting of RTHK programmes? Or, is this just a voluntary arrangement of the operators?*

SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING (in Cantonese): Madam President, this is a voluntary arrangement of the operators. As I said just now, there are already quite a number of channels in the subscription television market. The situation as such, and if we study the experience of foreign countries, we will notice that in a multi-channel market, the needs, interests and special tastes of minority viewers will definitely be looked after. If we believe that foreign subscription television markets and the local market are identical, then we will have good reasons to also believe that market forces should already be sufficient to induce operators to broadcast RTHK programmes.

PRESIDENT (in Cantonese): Fifth question.

Monitoring of Performance of Consultants Conducting Environmental Impact Assessments

5. **MR WONG YUNG-KAN** (in Cantonese): *Madam President, I am sorry that I have developed an inflammation in the vocal cords.*

Regarding the monitoring of the performance of consultants conducting Environmental Impact Assessments (EIAs) and the works of the project contractors concerned, will the Government inform this Council:

(a) of the commencement and completion dates, the commissioned consultancy firm and the place of registration of the parent company of the consultancy firm, and the government department(s) responsible for monitoring the performance of the consultancy firm in respect of each of the EIAs it has commissioned in the past three years;

(b) whether there are provisions in the consultancy contracts which allow the Government to hold the consultancy company responsible for the situation in which the environmental impact caused by the works far exceeds the relevant estimations made in the EIA report; if there are such provisions, of the actions it has taken in the past three years to hold consultancy companies responsible; if there is no such provision, the reasons for that; and

(c) of the government department(s) and consultancy firms which are responsible for monitoring the project contractors' compliance with the requirements stipulated in the relevant EIA reports, and whether it has taken disciplinary actions against government officials and consultancy firms for their failure to discharge their monitoring duties properly; if not, of the reasons for that?

SECRETARY FOR WORKS (in Cantonese): Madam President,

(a) The Government of Hong Kong Special Administrative Region (SAR) has always placed considerable emphasis on environmental protection. Before the commencement of large-scale public works projects, preliminary environmental reviews and EIAs will be conducted to ensure proper protection of our environment.

In the past three years, there were 64 EIA agreements undertaken by 14 consultancy firms for seven bureaux/departments of the SAR Government. Detailed information, including the titles of the consultancy agreements, the commencement and completion dates of the EIAs, the consultancy firms commissioned and the government departments responsible for monitoring their performance, is given in the table attached.

The consultancy agreements listed in the table include:

(i) Standalone EIA consultancy agreements awarded with the approval of the Engineering and Associated Consultants Selection Board or government departments; and

(ii) Feasibility studies or design and construction consultancy agreements involving EIAs, which have been awarded with the approval of the Engineering and Associated Consultants Selection Board or government departments.

The procedures we use in selecting consultancy firms are fair and non-discriminatory. In the selection process, we would only

consider the consultancy firm's ability to complete the consultancy work as well as whether the price is reasonable, and not the place of registration of its parent company. For this reason, we have not requested the consultancy firms to provide information about the place of registration.

(b) The General Conditions of Employment of Engineering and Associated Consultants stipulate that the consultants should exercise all reasonable professional skills, care and diligence in the performance of the services. Besides, the consultants should indemnify the Government against all claims, damages, losses or expenses arising out of any negligence in the conduct or performance of the services by the consultants.

Therefore, according to the consultancy agreements, if the environmental impact of a certain project far exceeds the estimations made in the EIA report and it can be proved that this is due to the negligence of the consultancy firm concerned in the conduct or performance of the services, the consultancy firm should be held responsible. In the past three years, there has been no established case whereby consultancy firms have been negligent and caused environmental impact by works far exceeding the estimations made in the EIA reports.

(c) The responsibility for monitoring the project contractors' compliance with the requirements of the EIA reports rests with the works departments in charge of the projects or the consultancy firms commissioned by them to carry out the design and construction work.

In the past three years, there have not been any cases in which the works department or the consultancy firms commissioned have failed to discharge their monitoring duties properly. As such, no disciplinary action has been taken against any government officials or consultancy firms.

EIA Consultancy Studies Commissioned by the Government between 1998 and 2000
1998 至 2000 年政府聘任顧問進行的環評顧問研究

Department 部門	Name of Consultancy Agreement 顧問協議名稱	Name of Consultant 顧問名稱	EIA Start date 環評開始日期	EIA Completion date 環評完成日期
CED 土木工程署	EIA for Yung Shu Wan Development, Engineering Works, Phase 2 榕樹灣第二期發展工程環境影響評估	Maunsell Consultants Asia Ltd 茂盛(亞洲)工程顧問有限公司	11/00	On-going 仍在進行中
CED 土木工程署	EIA Study for Construction of an International Theme Park in Penny's Bay of North Lantau and Its Essential Associated Infrastructure 北大嶼山竹篙灣國際主題公園及有關主要基礎設施建造工程-環境影響評估研究	Scott Wilson (Hong Kong) Ltd 偉信顧問(香港)有限公司	11/99	04/00
CED 土木工程署	Environmental and Drainage Impact Assessment for Tai O Sheltered Boat Anchorage 大澳船隻碇泊保護區環境及渠道影響評估研究	Scott Wilson (Hong Kong) Ltd 偉信顧問(香港)有限公司	08/98	03/00
CED 土木工程署	Environmental Impact Assessment for Dredging an Area of Kellett Bank for Reprovisioning of Six Government Mooring Buoys 環境影響評估在奇力灘挖泥以重設六個政府繫船浮筒	ERM-HK Ltd. 香港環境資源管理顧問有限公司	Before 1998 早於1998	03/00
CED 土木工程署	Environmental Impact Assessment Study for Demolition of Kwai Chung Incineration Plant (KCIP) and proposed Kannedy Town Comprehensive Development Area 葵涌焚化爐及堅尼地城綜合發展區拆卸工程-環境影響評估研究	Atkins China Ltd 安建顧問有限公司	09/99	On-going 仍在進行中
CED 土木工程署	Formation and Servicing in Area 36, Fanling - Environmental, Traffic and Drainage Impact Assessments 粉嶺第三十六區平整及基礎設施工程環境,交通及排水影響評估	Maunsell Consultants Asia Ltd 茂盛(亞洲)工程顧問有限公司	Before 1998 早於1998	05/99
CED 土木工程署	Northshore Lantau Development Feasibility Study 大嶼山北岸發展可行性研究	Scott Wilson (Hong Kong) Ltd 偉信顧問(香港)有限公司	06/98	12/00
CED 土木工程署	Planning and Engineering Feasibility Study for Development at Anderson Road 安達臣道發展計劃-規劃及工程可行性研究	Maunsell Consultants Asia Ltd 茂盛(亞洲)工程顧問有限公司	Before 1998 早於1998	08/99
CED 土木工程署	Planning and Engineering Feasibility Study for Development near Choi Wan Road and Jordan Valley 彩雲道和佐敦谷需發展規劃及工程可行性研究	Scott Wilson (Hong Kong) Ltd 偉信顧問(香港)有限公司	Before 1998 早於1998	01/99

Department 部門	Name of Consultancy Agreement 顧問協議名稱	Name of Consultant 顧問名稱	EIA Start date 環評開始日期	EIA Completion date 環評完成日期
CED 土木工程署	Road Traffic Impact Assessment, Marine Traffic Impact Assessment and Environmental Study for the Proposed Kwai Chung Public Filling Barging Point 擬建於葵涌的公眾填土駁船轉運站-交通影響評估-海事影響評估及環境研究	Scott Wilson (Hong Kong) Ltd 偉信顧問(香港)有限公司	01/00	On-going 仍在進行中
CED 土木工程署	Tseung Kwan O Development Phase III Road P2 connecting Town Centre and Western Coast Road (Including SA-Air Impact Assessment Study) 將軍澳發展第三期連接市中心及西邊海岸公路之P2路(環境評估)	Scott Wilson (Hong Kong) Ltd 偉信顧問(香港)有限公司	09/98	11/00
DSD 渠務署	Main Drainage Channels and Poldered Village Protection Scheme for San Tin, NWNT : Environmental Impact Assessment Study 新界西北區新田防洪主渠與鄉村防洪計劃：環境影響評估研究	ERM-HK Ltd. 香港環境資源管理顧問有限公司	Before 1998 早於1998	04/99
DSD 渠務署	Outlying Islands Sewerage Stage I Phase II. Package J - Sok Kwu Wan Sewage Collection Treatment and Disposal Facilities 離島污水系統第一階段第二期第J項工程 — 索罟灣污水收集、處理及排放設施	Maunsell Consultants Asia Ltd 茂盛(亞洲)工程顧問有限公司	05/98	On-going 仍在進行中
DSD 渠務署	Shatin Sewage Treatment Works Stage III Extension – EIA Study 沙田污水處理廠第三期擴建工程 - 環境評估研究	ERM-HK Ltd. 香港環境資源管理顧問有限公司	05/98	On-going 仍在進行中
DSD 渠務署	Tuen Mun Sewerage – Eastern Coastal Sewerage Extension Environmental Impact Assessment 屯門東部海岸污水收集系統伸延工程 – 環境影響評估報告	Mouchel Asia Ltd 萬碩亞洲顧問工程有限公司	10/98	09/00
DSD 渠務署	Yuen Long and Kam Tin Sewerage and Sewage Disposal Stage 1Sewers, Rising Mains and Ancillary Pumping Stations Environmental Impact Assessment and Traffic Impact Assessment Studies 元朗及錦田污水收集系統及污水排放第一期污水渠、污水泵送管和污水抽水站工程環境影響評估及交通影響評估	ERM-HK Ltd. 香港環境資源管理顧問有限公司	12/99	On-going 仍在進行中
DSD 渠務署	Yuen Long Bypass Floodway – Environmental Impact Assessment Study 元朗排水繞道：環境影響評估	Binnie Consultants Limited 賓尼工程顧問有限公司	Before 1998 早於1998	10/98
DSD 渠務署	Yuen Long, Kam Tin, Ngau Tam Mei and Tin Shui Wai Drainage Improvement, Stage 1 元朗、錦田、牛潭尾及天水圍雨水排放系統改善工程第一期	Binnie Black & Veatch (HK) Ltd. 博威工程顧問有限公司	08/99	On-going 仍在進行中

Department 部門	Name of Consultancy Agreement 顧問協議名稱	Name of Consultant 顧問名稱	EIA Start date 環評開始日期	EIA Completion date 環評完成日期
EPD 環境保護署	Strategic Sewage Disposal Scheme Environmental Impact Assessment Study 策略性污水排放計劃－環境影響評估研究	Montgomery Watson HK Limited 環協顧問工程公司	Before 1998 早於1998	08/00
HyD 路政署	CE 1/96 Castle Peak Road improvement between area 2 and Ka Loon Tsuen, Tsuen Wan - Design and Construction Assignment 荃灣第二區與嘉龍村之間的青山公路改善工程--設計與施工顧問合約	Mouchel Halcrow Joint Venture 萬樂聯營有限公司	Before 1998 早於1998	On-going 仍在進行中
HyD 路政署	CE 31/98 - Lautau North-South Road Link between Tai Ho Wan and Mui Wo-Investigation and Preliminary Design Assignment 大嶼山連接大蠔灣與梅窩的南北連接路--勘察及初步設計顧問合約	Mott Connell Ltd 萬隆工程顧問有限公司	07/98	On-going 仍在進行中
HyD 路政署	CE 75/97- Central Kowloon Route-Design and Construction Assignment 中九龍幹線--設計與施工顧問合約	Atkins China Ltd 安建顧問有限公司	06/98	On-going 仍在進行中
HyD 路政署	CE38/37 PWP Item No. B645TH Sai Sha Road Widening between Kam Ying and proposed Road T7 Junction - Investigation Assignment 工程計劃項目第B645TH號介乎錦英路與日後的T7號主幹道路交界處的西沙路擴闊工程－調查研究	Maunsell Consultants Asia Ltd 茂盛(亞洲)工程顧問有限公司	Before 1998 早於1998	10/99
HyD 路政署	Choi Hung Road Widening - Feasibility Study 彩虹道路面擴闊工程-可行性研究	Atkins China Ltd 安建顧問有限公司	01/98	On-going 仍在進行中
HyD 路政署	Deep Bay Link - Investigation and Preliminary Design 后海灣連接路 - 勘探及初步設計	Ove Arup & Partners HK Ltd 奧雅納工程顧問(香港)有限公司	09/99	On-going 仍在進行中
HyD 路政署	Design and Construction of Central - Wan Chai Bypass and Island Eastern Corridor Link 中環及灣仔繞道和東區走廊連接路的設計及建造	Maunsell Consultants Asia Ltd 茂盛(亞洲)工程顧問有限公司	Before 1998 早於1998	On-going 仍在進行中
HyD 路政署	Environmental Impact Assessment and Traffic Impact Assessment Studies - Widening of T6 Bridges, Sha Tin 沙由T6橋擴闊工程 - 環境影響評估及交通影響評估	Montgomery Watson HK Limited 環協顧問工程公司	04/99	On-going 仍在進行中
HyD 路政署	Environmental Impact Assessment Study for Footbridge and Improvements to Ap Lei Chau Bridge Road & Ap Lei Chau Drive 鴨脷洲橋道及鴨脷洲徑道路改善及行人天橋工程環境影響評估研究	ERM-HK Ltd. 香港環境資源管理顧問有限公司	02/98	06/99

Department 部門	Name of Consultancy Agreement 顧問協議名稱	Name of Consultant 顧問名稱	EIA Start date 環評開始日期	EIA Completion date 環評完成日期
HyD 路政署	Improvement to Castle Peak Road between Ka Loon Tsuen and Siu Lam - Investigation Assignment 青山公路嘉龍村至小欖的改善工程	Maunsell Consultants Asia Ltd 茂盛(亞洲)工程顧問有限公司	10/99	On-going 仍在進行中
HyD 路政署	Investigation Assignment for Widening and Reconstruction of Tai Po Road (Sha Tin Section) 大埔道（沙田段）擴闊及重建工程勘查研究	Babtie Asia Ltd. 百泰工程顧問有限公司	02/98	11/99
HyD 路政署	Investigation Assignment for Widening of Tolo Highway/Fanling Highway between Island House Interchange and Fanling 舊政務司官邸附近道路交匯處與粉嶺之間一段吐露港公路及粉嶺公路的擴闊工程－勘測研究	Mott Connell Ltd 萬隆工程顧問有限公司	02/99	7/00
HyD 路政署	Investigation of Improvements to Island Eastern Corridor section between North Point Interchange and Sai Wan Ho. 研究東區走廊改善工程北角交匯處至西灣河段	Maunsell Consultants Asia Ltd 茂盛(亞洲)工程顧問有限公司	Before 1998 早於1998	3/98
HyD 路政署	Lei Yue Mun Road Underpass, Modification at junction with Yau Tong Road and Associated Improvement Works - Feasibility Study 鯉魚門道下通路，油塘道與鯉魚門道交界處之修改及相關改善工程-可行性研究	Babtie Asia Ltd. 百泰工程顧問有限公司	08/99	On-going 仍在進行中
HyD 路政署	Road Improvement and Pedestrian Schemes in the Salisbury Road, Canton Road and Austin Road Corridors 梳士巴利道，廣東道及柯士甸道的道路改善及行人系統	Maunsell Consultants Asia Ltd 茂盛(亞洲)工程顧問有限公司	Before 1998 早於1998	7/99
HyD 路政署	Route 10 (North Lantau to Yuen Long Highway) Investigation & Preliminary Design 十號幹線－北大嶼山至元朗公路 勘察及初步設計研究	Mott Connell Ltd 萬隆工程顧問有限公司	03/98	12/00
HyD 路政署	Route 9 between Cheung Sha Wan and Sha Tin (previously known as Route 16 from West Kowloon to Sha Tin) - Investigation Assignment 九號幹線長沙灣至沙田段 (前稱由西九龍至沙田的十六號幹線) - 勘測研究	Scott Wilson (Hong Kong) Ltd / Parsons Brinkerhoff (Asia) Ltd Joint Venture 偉信顧問（香港）有限公司及柏誠（亞洲）有限公司聯營	Before 1998 早於1998	05/99
HyD 路政署	Route 9 between Tsing Yi and Cheung Sha Wan - Detailed Feasibility Study 九號幹線青衣至長沙灣段 - 詳細可行性研究	Atkins China Ltd 安建顧問有限公司	Before 1998 早於1998	10/99

Department 部門	Name of Consultancy Agreement 顧問協議名稱	Name of Consultant 顧問名稱	EIA Start date 環評開始日期	EIA Completion date 環評完成日期
HyD 路政署	Widening of Yuen Long Highway between Lam Tei and Shap Pa Heung Interchange - Preliminary Design and Ground Investigation 元朗公路藍地至十八鄉段擴闊工程 - 初步設計及土地勘測	Scott Wilson (Hong Kong) Ltd 偉信顧問(香港)有限公司	03/99	On-going 仍在進行中
HyD/HD 路政署/房屋署	Widening of Hing Wah Street 興華街擴闊工程	ERM-HK Ltd. 香港環境資源管理顧問有限公司	01/99	On-going 仍在進行中
ITBB 資訊科技及廣播局	Infrastructural Works for the Proposed Development at Telegraph Bay – Engineering Feasibility Study - EIA Study for Scheme 1 鋼線灣發展計劃的基礎建設工程 - 工程可行性報告 - 計劃一的環境影響評估研究	Maunsell Consultants Asia Ltd 茂盛(亞洲)工程顧問有限公司	01/99	02/99
TDD 拓展署	Central Reclamation Phase III -Comprehensive Feasibility Study for Minimum Option 中環填海計劃第 III期 - 最低限度方案的整體可行性研究	Atkins China Ltd 安建顧問有限公司	01/99	On-going 仍在進行中
TDD 拓展署	Comprehensive Feasbility Study for the Revised Scheme of South East Kowloon Development 東南九龍發展修訂計劃整體可行性研究	Ove Arup & Partners HK Ltd 奧雅納工程顧問(香港)有限公司	11/99	On-going 仍在進行中
TDD 拓展署	Feasibility Study for Housing Development at Whitehead & Lee On in Ma On Shan, Sha Tin 在馬鞍山白石及利安的房屋發展的可行性研究	Binnie Black & Veatch (HK) Ltd. 博威工程顧問有限公司	11/99	On-going 仍在進行中
TDD 拓展署	Feasibility Study for Intensification and Extension of Tseung Kwan O New Town 將軍澳新市鎮增加發展密度及擴展可行性研究	Scott Wilson (Hong Kong) Ltd 偉信顧問(香港)有限公司	Before 1998 早於1998	On-going 仍在進行中
TDD 拓展署	Feasibility Study for South East Kowloon Development 東南九龍發展可行性研究	Maunsell Consultants Asia Ltd 茂盛(亞洲)工程顧問有限公司	Before 1998 早於1998	Terminated 已終止
TDD 拓展署	Feasibility Study for Tseung Kwan O Development at Area 131 將軍澳第131區港口發展計劃可行性研究	Maunsell Consultants Asia Ltd 茂盛(亞洲)工程顧問有限公司	Before 1998 早於1998	On-going 仍在進行中
TDD 拓展署	Feasibility Study on the Alternative Alignment for the Western Coast Road, Tseung Kwan O 將軍澳西岸公路另一路線可行性研究	Maunsell Consultants Asia Ltd 茂盛(亞洲)工程顧問有限公司	Before 1998 早於1998	07/00

Department 部門	Name of Consultancy Agreement 顧問協議名稱	Name of Consultant 顧問名稱	EIA Start date 環評開始日期	EIA Completion date 環評完成日期
TDD 拓展署	Investigation Study for Widening of Tate's Cairn Highway between Shek Mun Interchange and T6 Interchange 擴闊石門交滙處與T6號道路交滙處之間一段大老山公路之研究	Babtie Asia Ltd. 百泰工程顧問有限公司	06/98	On-going 仍在進行中
TDD 拓展署	Kai Tak Airport North Apron Decommissioning 啓德機場北停機坪遷拆	Maunsell Consultants Asia Ltd 茂盛(亞洲)工程顧問有限公司	Before 1998 早於1998	09/98
TDD 拓展署	Main Drainage Channels and Poldered Vilage Protection Scheme for San Tin, NWNT: Environmental Impact Assessment Study 新界西北區新田防洪主渠與鄉村防洪計劃：環境評估研究	ERM-HK Ltd. 香港環境資源管理顧問有限公司	Before 1998 早於1998	09/99
TDD 拓展署	Ping Ha Road Improvement – Ha Tsuen Section EIA & DIA Studies 屏廈路改善工程-廈村段渠務影響評估及環境影響評估	Scott Wilson Kirkpatrick 史偉高顧問工程師	Before 1998 早於1998	03/98
TDD 拓展署	Planning and Development Study of Potential Housing Site in Area 54, Tuen Mun 屯門第54區有潛質發展的房屋用地規劃及發展研究	Scott Wilson (Hong Kong) Ltd 偉信顧問(香港)有限公司	Before 1998 早於1998	04/99
TDD 拓展署	Planning and Development Study of Potential Housing Site near San Wai Court, Tuen Mun 屯門新圍苑附近可作房屋用途地點的規劃及發展研究	Scott Wilson (Hong Kong) Ltd 偉信顧問(香港)有限公司	12/98	On-going 仍在進行中
TDD 拓展署	Planning and Development Study on North East NT 新界東北規劃及發展研究	Maunsell Consultants Asia Ltd 茂盛(亞洲)工程顧問有限公司	01/98	On-going 仍在進行中
TDD 拓展署	Remaining Development in Tung Chung and Tai Ho - Comprehensive Feasibility Study 東涌及大嶼餘下的發展計劃 - 整體可行性研究	Mott Connell Ltd 萬隆工程顧問有限公司	Before 1998 早於1998	On-going 仍在進行中
TDD 拓展署	Sha Tin New Town Development - Stage II (T3 Road Environmental Impact Assessment) 沙田新市鎮發展第二階段 (T3道路環境影響評估報告)	Maunsell Consultants Asia Ltd 茂盛(亞洲)工程顧問有限公司	Before 1998 早於1998	On-going 仍在進行中
TDD 拓展署	Tang Lung Chau Dangerous Goods Anchorage Environmental Impact Assessment 燈籠洲危險貨品船隻碇泊區環境影響評估報告	Maunsell Consultants Asia Ltd 茂盛(亞洲)工程顧問有限公司	Before 1998 早於1998	05/99
TDD 拓展署	Tseung Kwan O Development - Contract F: Grade Separated Interchange T1/P1/P2 將軍澳發展計劃合約F: T1/P1/P2分層道路交匯處	Maunsell Consultants Asia Ltd 茂盛(亞洲)工程顧問有限公司	Before 1998 早於1998	10/99
TDD 拓展署	Tseung Kwan O Development Phase III - Dualling of Hang Hau Road 將軍澳發展計劃第III期-擴建坑口道	Maunsell Consultants Asia Ltd 茂盛(亞洲)工程顧問有限公司	Before 1998 早於1998	On-going 仍在進行中

Department 部門	Name of Consultancy Agreement 顧問協議名稱	Name of Consultant 顧問名稱	EIA Start date 環評開始日期	EIA Completion date 環評完成日期
TDD 拓展署	Tsuen Wan Bay Further Reclamation, Area 35 - Engineering, Planning and Environmental Investigation 荃灣海灣進一步的填海工程,荃灣第35區 – 工程, 規劃及環境研究	Maunsell Consultants Asia Ltd 茂盛(亞洲)工程顧問有限公司	Before 1998 早於1998	11/98
TDD 拓展署	Wan Chai Development Phase II - Comprehensive Feasibility Study 灣仔發展第 II期 - 綜合可行性研究	Maunsell Consultants Asia Ltd 茂盛(亞洲)工程顧問有限公司	06/99	On-going 仍在進行中
TDD 拓展署	West Kowloon Reclamation Contract No. WK30 - Remaining Roadworks Stage 4, Link Roads G & L 西龍填海計劃合約WK30號-在荔灣迴旋處的G及L號連接路環境影響評估研究	Mott Connell Ltd 萬隆工程顧問有限公司	10/99	On-going 仍在進行中
TDD 拓展署	Yuen Long – Tuen Mun Corridor – Engineering Works for Hung Shui Kiu 元朗至屯門走廊-洪水橋工程	Ho Tin & Associates Consulting Engineers Ltd 何田工程顧問有限公司	Before 1998 早於1998	01/98
TDD 拓展署	Yuen Long Bypass Floodway Flexibility Study – Environmental Impact Assessment Study 元朗排水繞道可行性研究報告-環境影響評估報告	Binnie Consultants Limited 賓尼工程顧問有限公司	Before 1998 早於1998	10/98

MR WONG YUNG-KAN (in Cantonese): *Madam President, why am I concerned about the performance of the consultancy firms? It is because I note from the attached table that the same consultancy firm has been commissioned to undertake six projects out of the 11 projects carried out by the Civil Engineering Department. The fact that the firm was awarded a number of agreements indicates that its performance should be good. However, I find its performance in some of the projects not up to the standard. For instance, the Penny's Bay construction project requires reclamation of 380 hectares of land. The relevant EIA report was completed in six months. However, it took more than a year for the remaining 63 EIA reports to be completed. Will the Government inform this Council how this large-scale project should be assessed?*

SECRETARY FOR WORKS (in Cantonese): Madam President, the supplementary question raised by the Honourable Member can be divided into two parts. First, he asked why one of the consultancy firms was awarded so many consultancy agreements. The 64 consultancy agreements set out in the attached table were awarded to a total of 14 consultancy firms. Therefore, not a single firm has been awarded particulary more agreements. As I pointed out in the main reply, in commissioning a consultancy firm, we will only consider the consultancy firm's ability and whether the price is reasonable.

As regards the question raised by Mr WONG as to why it took only six months for the EIA report on the Penny's Bay project to be completed, it is mainly because a number of EIAs have been conducted at Penny's Bay previously due to other reasons. Therefore, the time required for carrying out the EIA report for the reclamation project could be shortened.

DR TANG SIU-TONG (in Cantonese): *Madam President, will the Secretary for Works inform this Council whether consultancy firms have been commissioned to conduct EIAs for the Long Valley line and the Lantau North-South Road Access. If the consultancy reports are rejected by the Environmental Protection Department (EPD), will a discount be given on the consultancy fees?*

SECRETARY FOR WORKS (in Cantonese): Madam President, as far as I know, the Long Valley line is a Kowloon-Canton Railway Corporation (KCRC) project. Therefore, the EIA should be conducted by the KCRC or the

consultant commissioned by it. The EIA report of the Lantau North-South Road Access is only part of the agreement. It has been completed and passed the Advisory Council on the Environment (ACE).

DR TANG SIU-TONG (in Cantonese): *Madam President, how will the Government calculate the charges if an EIA report is rejected by the EPD?*

PRESIDENT (in Cantonese): Secretary for Works, do you have anything to add?

SECRETARY FOR WORKS (in Cantonese): Madam President, I do not have anything to add.

MR HOWARD YOUNG (in Cantonese): *Madam President, the Secretary indicated in part (a) of the main reply that the Government would not consider the place of registration of the parent company of a consultancy firm. He also stressed in reply to the supplementary that consideration would be made only for the consultancy firm's ability and whether the price is reasonable. Will the Secretary inform this Council whether the possession of multinational experience will be taken as one of the factors of consideration in appointing a consultancy firm?*

SECRETARY FOR WORKS (in Cantonese): Madam President, I did mention in the main reply that we would take a fair and non-discriminatory attitude in selecting consultancy firms. We will mainly consider the consultancy firm's ability and whether the price is reasonable. We will not specially request for information on its parent company.

PRESIDENT (in Cantonese): Mr YOUNG, which part of your supplementary question has not been answered?

MR HOWARD YOUNG (in Cantonese): *Madam President, the Secretary was apparently repeating my supplementary question. I asked whether the possession of multinational experience by the consultancy firm will be taken as one of the factors of consideration. I was not asking about the place of registration.*

SECRETARY FOR WORKS (in Cantonese): Excuse me, Madam President, I did not catch Mr YOUNG's question clearly.

In considering the consultancy firm's ability, we will make reference to its past experience, including its multinational experience, its knowledge of the local environment, and so on. Of course, such other factors as the staff to be recruited by the firm, the staff's experience, preparatory procedures and execution of work will be considered as well.

MR NG LEUNG-SING (in Cantonese): *Madam President, in part (b) of the main reply, the Secretary mentioned that in the past three years, there has been no established case in which consultancy firms have been negligent and caused environmental impact by works far exceeding the estimations made in the EIA reports. Was such a phenomenon of "mutual protection" caused by the fact that the verifying work was undertaken by consultants frequently commissioned to carry out EIAs and because they were often commissioned to carry out EIAs, they were thus unable to prove that the relevant consultancy firms had been negligent? Will the Government commission independent consultancy firms to assess these so-called incidents of negligence?*

SECRETARY FOR WORKS (in Cantonese): Madam President, in conducting EIAs, we will go through detailed procedures such as items included in the EIA reports. Upon the completion of the EIA reports, we will also consult the public and the ACE. The current EIA procedure is meticulous. I believe there are rare cases in which the impact of works actually implemented has far exceeded the estimations made in the EIA reports. In fact, we will send other staff to monitor the actual implementation of the works. We might even commission independent consultancy firms to examine and monitor the impact on the environment.

MR TAM YIU-CHUNG (in Cantonese): *Madam President, I have recently received some complaints lodged by certain fishermen organizations alleging that the consultancy firms commissioned by the Works Bureau to monitor the water quality in connection with reclamation projects have not taken a serious attitude in their marine sampling work. Will the Government inform this Council of the ways to monitor the consultancy firms in the course of conducting EIAs to ensure that they will take a serious and meticulous attitude in carrying out their work?*

SECRETARY FOR WORKS (in Cantonese): Madam President, monitoring staff will be present on construction sites during the construction period. As I pointed out earlier, it is our usual practice to commission independent consultancy firms to carry out monitoring and examining work. A meticulous procedure will be adopted in implementing such work as marine sampling and testing.

MR HENRY WU (in Cantonese): *Madam President, in selecting consultancy firms, the Government will only consider the consultancy firm's ability and whether the price is reasonable. Will the scale, capital and manpower resources of the firm be considered in addition to its ability? In the course of assessing the consultancy firm, will the Government consider the number of government projects the firm has been awarded during the agreement period to see if manpower problems will arise?*

SECRETARY FOR WORKS (in Cantonese): Madam President, in the main reply, I only briefly mentioned that we would consider the consultancy firm's ability. I also explained in answering the supplementary questions that we would take into account many other factors such as the past experience, international experience, knowledge of the local environment and local operation, recommended manpower scale, timetable, work procedure of the consultancy firm, in addition to its ability.

PRESIDENT (in Cantonese): Mr Henry WU, which part of your supplementary question has not been answered?

MR HENRY WU (in Cantonese): *Madam President, I was trying to raise a question in connection with the financial position of consultancy firms. This is because a lack of capital will always affect the future operation of the firm.*

SECRETARY FOR WORKS (in Cantonese): Madam President, the answer is in the affirmative. We will definitely consider this factor.

DR RAYMOND HO (in Cantonese): *Madam President, will the Secretary for Works inform this Council whether, in selecting EIA engineers, the local experience of the consultancy firm, in addition to the engineers' skills and fees, will affect the rating upwards or downwards?*

SECRETARY FOR WORKS (in Cantonese): Madam President, I have mentioned the point in answering questions raised by other Members, that we will consider such factors as the consultancy firm's knowledge of the local environment, its local experience, the staff proposed to be recruited by the firm, as well as the staff's knowledge of the local environment and their experience.

PRESIDENT (in Cantonese): Last supplementary question.

MR CHAN KAM-LAM (in Cantonese): *Madam President, according to the information provided by the Secretary, one of the consultancy firms has been awarded 22 projects. Will the Secretary inform this Council whether the Government will, in assessing consultancy firms, consider that some consultancy firms have been awarded too many projects and the projects may end up being "sub-contracted" and undertaken by firms which cannot give us guarantee in terms of quality?*

SECRETARY FOR WORKS (in Cantonese): Madam President, in the course of selection, consultancy firms will be required to furnish detailed technical

reports. In the reports, the firms will need to set out the staff they plan to recruit and their timetables. Therefore, it is unlikely for the problems cited by the Honourable Member to arise. In fact, the great majority of consultancy firms will undertake EIAs themselves unless there are special items requiring the commissioning of sub-contract consultants. In that case, the firms will be required to put up their proposals to the selection committee and seek its consent.

PRESIDENT (in Cantonese): Sixth question.

Service Quality of Private Residential Care Homes for the Elderly

6. **MR IP KWOK-HIM** (in Cantonese): *Madam President, as it has been reported that the service quality of private residential care homes for the elderly is unsatisfactory, will the Government inform this Council:*

(a) whether the Social Welfare Department (SWD) informs persons in charge of the private residential care homes concerned prior to inspecting such homes, and whether it will consider conducting surprise inspections;

(b) of the criteria adopted for assessing the service quality of private residential care homes, and whether such criteria include the availability of proper measures to protect the privacy of residents in these homes; whether different criteria are adopted for assessing residential care homes which participate in the Bought Place Scheme or the Enhanced Bought Place Scheme (EBPS) and those which do not; if so, whether it will consider adopting standardized criteria; and

(c) of the mechanism in place to ensure that substandard private residential care homes will improve their service quality, and the established procedure for revoking the licences of residential care homes?

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

(a) As part of its efforts to monitor their service quality, the SWD carries out surprise inspections of private residential care homes. Only in special circumstances, such as there is a need for the care home management to arrange for an Authorized Person to be present to answer building relating matters, will the SWD inform the care home management of the inspection beforehand.

(b) The Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) sets out the minimum statutory standards for the service quality of all residential care homes, including space and staffing standards, building and fire safety, location and design, heating, lighting and ventilation, maintenance of residents' records, and so on. The Ordinance also empowers the Director of Social Welfare (DSW) to issue a Code of Practice setting out principles, procedures, guidelines and standards for the management of residential care homes in the areas of health and care services, nutrition and diet, cleanliness and sanitation, social care, and so on. In section 15.2 of the Code, home mangers are required to protect the privacy of their residents. Observance of the Code of Practice is a licensing requirement. In addition, nurses and health workers employed in residential care homes have received training on ethical principles in care giving, including paying due respect to the privacy of their clients.

The service quality of all residential care homes is assessed against the statutory standards and the guidelines set out in the Code of Practice. For private residential care homes participating in the EBPS, they are also required to comply with the 19 service quality standards (SQS) implemented by the SWD for subvented welfare services. These SQS set out the principles regarding the provision of information, service management, service to clients and respect for the rights of the clients.

The DSW has fixed and promulgated a target date of March 2001 for all private residential care homes to achieve licensing standards. When this target is attained, the Administration will consider

introducing appropriate measures to encourage and facilitate private residential care homes further to upgrade their service quality.

(c) The service quality of private residential care homes varied tremendously in the past. To improve the situation, the Administration enacted the Ordinance in 1996 to provide a statutory framework to regulate their service quality. Through joint efforts of the SWD and the private care home sector, the service quality of private care homes has since been improving. In June 1996, there were only three licensed private care homes. At present, 477 out of 513 private care homes are operating with licence while 36 are still on Certificate of Exemption (CoE). As stated in (b) above, the Administration has set out a timetable requiring all private residential care homes to reach licensing standard by March 2001. To monitor the service quality of private care homes, the SWD has taken the following steps:

(1) inspectors of the Licensing Office of the SWD conduct regular inspections at residential care homes to monitor building and fire safety, care home management, health and care services, and so on;

(2) the SWD has established a telephone hotline to receive public inquiries and complaints relating to services of residential care homes; and

(3) caseworkers and families of elderly persons are encouraged to report any irregularity or malpractice in the operation of private residential care homes.

If any irregularity or malpractice is substantiated, the SWD would notify the residential care home in writing to require them to take remedial action. If remedial action is not taken or it is not taken to the satisfaction of the SWD, it would serve the residential care home with a warning letter. If the irregularity or malpractice persists, the SWD would consider taking prosecution action or cancelling its licence/CoE. If cancellation of licence is contemplated, the DSW may serve a notice on the person holding the licence, stating the grounds and containing an intimation that such person may make

written representations to her within a prescribed period of not longer than one month, depending on the nature of the case. If the Director eventually decides to cancel the licence, she shall make a written order and send a copy thereof by registered post to the person holding the licence.

MR IP KWOK-HIM (in Cantonese): *Madam President, just now the Secretary mentioned in part (c) of the main reply that the service quality of private residential care homes varied tremendously in the past, and that after the enactment of the Ordinance in 1996, 477 out of the existing 513 private care homes were licensed while only 36 were still operating with CoE. I have recently received many complaints relating to services of private residential care homes for the elderly, including complaints about poor meals and about the management of care homes locking up doors with chains. There has also been media coverage of such incidents. I do not know whether the 36 care homes operating with CoE have anything to do with these incidents. In view of the aforementioned situation, could the Secretary inform this Council whether the Government would consider setting up any specific mechanism for appraisal of care home service, so that the elderly and their families can make informed decisions in choosing care homes?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam President, I do not have any information on hand showing whether or not those 36 care homes operating with CoE have anything to do with the reportedly problematic care homes mentioned by the Honourable IP Kwok-him just now. If Mr IP could provide us with information on the care homes which have been reported as problematic by the media, we would be able to check whether those 36 private care homes are involved. Although the service quality of private residential care homes still varies, the situation has improved now. Indeed, we believe there is still room for further improvement. For this reason, we will keep looking into possible ways to further enhance the service quality of private residential care homes. Our initial plan is to require all private residential care homes to reach licensing standard by the target date of March 2001. So, there will not be any exemption granted by the Government in the future. But we will keep up with our efforts to look into ways to further enhance the service quality of private residential care homes.

PRESIDENT (in Cantonese): Mr IP, which part of your supplementary question has not been answered?

MR IP KWOK-HIM (in Cantonese): *Madam President, the Secretary has not answered the part of my supplementary asking whether the Government would consider setting up any specific mechanism for appraising services of care homes to enable the elderly and their families to make informed decisions in choosing care homes.*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam President, actually we have already in place an appraising mechanism, only that the elderly and their families are still unable to make use of this mechanism to obtain precise information about the relevant residential care homes. Speaking of providing the public with the relevant information, in addition to discussing the overall policy on private residential care homes, we are also examining what further assistance could the Government offer in relation to the operation of private residential care homes. In deliberating policies, we will also take into consideration the suggestion made by the Honourable Member, which is to provide the elderly and their families with more information to enable them to make informed decisions in choosing private residential care homes.

PRESIDENT (in Cantonese): Since there are about 10 Members waiting for their turn, will Honourable Members please try to keep their supplementaries as concise as possible so that more supplementaries can be raised.

DR PHILIP WONG (in Cantonese): *Madam President, the Secretary mentioned in part (b) of the main reply that the minimum statutory standards set out under the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) for the service quality of all residential care homes included also the location and design of the care homes. In this connection, could the Secretary inform this Council what factors the Government would take into consideration when drawing up location and design standards for the care homes; and whether the distance between the care homes and nearby hospitals is a factor of consideration?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam President, when drawing up location and design standards for private residential care homes for the elderly, we take into consideration two major factors: firstly, whether the environment of the residential care home concerned is suitable accommodation for elderly persons; and secondly, at present, most of the residential care homes for the elderly are located on the lower floors of a building because elderly persons would have difficulty escaping from a fire accident if their care homes were located on higher floors. So, the Government will make consideration in different aspects.

MR WONG SING-CHI (in Cantonese): *Madam President, the Secretary mentioned in part (a) of the main reply that the Government would carry out surprise inspections as part of its effort to monitor the service quality of residential care homes. In this connection, could the Secretary inform this Council whether such surprise inspections are effective; how many surprise inspections have been conducted so far; and how did the Government handle the aforementioned complaints during inspections? I should like to know more about the effective inspection procedure of the Government.*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam President, at present, there are 34 staff members serving on the inspection team of the SWD, including social workers, nurses, and professionals responsible for checking the building and fire safety of the care homes. They will inspect the care homes from different aspects. According to the information available, while on average each private residential care home will be inspected two to four times in surprise annually, the members of the inspection team will carry out inspection at different times. I consider surprise inspection an effective way to monitor the operation of private residential care homes. As regards whether or not relying on surprise inspections alone is sufficient to monitor the situation, this is another issue. If we are to ensure the service quality of private residential care homes, relying on surprise inspections alone is by no means sufficient.

The existing monitoring regime comprises three parts: first, surprise inspections; second, a telephone hotline established to receive complaints lodged

by the public; and third, encouraging casework social workers and the families of elderly persons residing in residential care homes to provide information on the care homes concerned. In the long run, we will consider introducing other measures to help enhance the effectiveness of the regime.

MISS EMILY LAU (in Cantonese): *Madam President, I should like to follow up the supplementary on surprise inspections raised the Honourable Mr WONG Sing-chi just now. The arrangement for a 34-strong team to inspect each care home two to four times a year is certainly commendable. Since the Secretary mentioned just now that the inspection team would inspect each and every private residential care home, may I ask him whether this is true? With regard to the media coverage of the scandals and other problems of private care homes that Mr IP Kwok-him referred to earlier, could the Secretary inform this Council whether the SWD had investigated into the situation or taken any actions like serving warning letters on the problematic private care homes or even cancelling their licences as a result of inspections over the past 12 months?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam President, I am afraid I do not have such information to hand. On the other hand, over the past two years we have altogether received 296 complaints, of which 76 were substantiated. Among the 76 substantiated cases, the majority were related to poor service quality, while others were related to food and diet. I do not have on hand information showing whether these 76 cases were disclosed during the surprise inspections or they were reported by the public, the elderly persons residing there or their families. If the Honourable Member wishes to have the relevant information, I can provide a written reply later on specifying how many of these 76 cases were complaint cases and how many of them were uncovered during surprise inspections.

MISS EMILY LAU (in Cantonese): *Madam President, I would like the Secretary to provide such information. However, apart from information showing how many of these 76 cases were complaint cases and how many of them were uncovered during surprise inspections, I should like the Secretary to provide this Council with information on the follow-up actions taken by the Government after investigation. It is because the inspection efforts would be*

futile if the Government did not take any follow-up action after the problems of the care homes concerned had been exposed. Could the Secretary provide us with an answer now or would he furnish us a written reply later on?

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam President, I will provide the detailed information in writing later on. According to my understanding, in most cases the SWD would require the care homes concerned to immediately rectify the problems identified. Besides, the SWD would also follow up the case continuously to see whether there is any improvement to the situation. If no improvement were made to the situation, we would consider prosecuting the care home. I shall provide a detailed reply in writing. (Annex II)

MR LEE CHEUK-YAN (in Cantonese): *Madam President, according to the main reply, the Residential Care Homes (Elderly Persons) Ordinance sets out the minimum statutory standards for the service quality of all residential care homes including staffing standard. However, according to my understanding, in some care homes a care worker has to look after 20 elderly residents. I wonder whether this meets the staffing standard mentioned by the Secretary just now. Could the Secretary inform this Council of the details of the standard; and whether the Government has stipulated that care workers of residential care homes for the elderly should work eight hours a day rather than 12 hours a day for a meagre salary of slightly more than $5,000 monthly?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam President, I will answer the supplementary on staffing standard raised by Mr LEE Cheuk-yan in writing later on. Given that the staffing standard covers personnel in a number of fields, such as nurses, care workers, health workers, and so on, and that it has also specified the number of nurses and health workers required to take care of a certain number of elderly persons, the information is rather complicated. That is why I need to provide the answer in writing. (Annex III)

As regards the hours of work of care home staff, we have not specified any standards for this; we have only specified the number of staff members required.

PRESIDENT (in Cantonese): The Council has spent 17 minutes on this question. So, this will be the last supplementary.

MR TAM YIU-CHUNG (in Cantonese): *Madam President, if the service quality of a certain private care home were below standard, families of the elderly persons residing there could make arrangement for their elders to move out. In this connection, may I ask the Secretary whether the Government would consider helping elderly persons and their families to collect more information on the service quality of private care homes, with a view to facilitating their removal arrangements? In addition, could the Secretary also inform this Council whether the Government has any improvement measures for this?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam President, as I said just now, the Government is now reviewing how the residential care home services for the elderly should be provided in the future. At the same time, the Government is also considering introducing a pilot scheme to enable elderly persons and their families to have access to more information, thereby helping them to choose care homes.

PRESIDENT (in Cantonese): Question time shall end here.

WRITTEN ANSWERS TO QUESTIONS

Consultation on Removal of Minimum Brokerage Commission

7. **MR HENRY WU** (in Chinese): *Madam President, the Competition Policy Advisory Group Report 1999-2000 stated that the Hong Kong Exchanges and Clearing Limited (HKEx) would consult the exchange participants on whether to remove the minimum brokerage commission by April 2002. In this connection, will the Government inform this Council whether it knows the details and progress of the consultation; and how the Government will follow up the findings of the consultation?*

SECRETARY FOR FINANCIAL SERVICES (in Chinese): Madam President, on 8 March 2000, the subsidiary exchanges under the HKEx, namely the Stock Exchange of Hong Kong Limited and the Hong Kong Futures Exchange Limited separately issued a consultation paper on a proposal to remove the minimum commission rule from their respective exchange rules with effect from 1 April 2002. The consultation exercise ended on 19 April 2000. The Board of the HKEx endorsed the proposal on 17 May 2000 and the exchanges participants and the markets were notified of the resolution on the same day. The consultation with exchange participants on the subject is a matter for the HKEx and no follow-up action on the part of the Government is required.

Resale of Flats under Home Ownership, Tenants Purchase and Sandwich Class Housing Schemes

8. **MR LAU PING-CHEUNG** (in Chinese): *Madam President, regarding the resale of flats under the Home Ownership Scheme (HOS), Tenants Purchase Scheme (TPS) and Sandwich Class Housing Scheme (SCHS), will the Government inform this Council whether:*

(a) it knows the respective numbers of HOS, TPS and SCHS flats which were sold back to the Hong Kong Housing Authority (HA) and the Hong Kong Housing Society by their owners and are currently in stock and available for sale;

(b) it knows the respective numbers of HOS and SCHS flats put up for sale previously which are currently in stock and available for sale; and

(c) a mechanism is in place for co-ordinating the resale of the above HOS, TPS and SCHS flats in relation to their timing, order of priority and pricing; if so, of the details; if not, whether it will establish such a mechanism?

SECRETARY FOR HOUSING (in Chinese): Madam President, the HA has about 500 HOS flats and four TPS flats which were sold back to the HA by their owners. The Housing Society has not bought back any SCHS flat.

There are 470 HOS flats and about 1 700 SCHS flats left over from previous sale exercises.

There is no established mechanism to co-ordinate the resale of HOS, TPS and SCHS flats. The objectives and target applicants of the three schemes are different, and the resale of flats under each scheme does not have a direct impact on the other schemes. A co-ordinating mechanism for flat resale is not considered necessary.

Assisting Small and Medium Enterprises to Overcome Financial Difficulties

9. **MR ALBERT CHAN** (in Chinese): *Madam President, will the Government inform this Council of:*

(a) the number of small and medium enterprises (SMEs) which closed down last year and, among them, the number of SMEs which went into liquidation because of insolvency; and

(b) the current government measures to help SMEs solve their cash flow problems, and help them secure loans from financial institutions?

SECRETARY FOR COMMERCE AND INDUSTRY (in Chinese): Madam President,

(a) The Business Registration Office of the Hong Kong Special Administrative Region Government maintains a record of the annual figures of the revocation of business registration, the number of applications for voluntary winding up as well as that of compulsory liquidation. However, since the relevant statistics are not classified according to the size of business establishments, we are unable to ascertain the number of SMEs among them.

From November 1999 to October 2000, the Business Registration Office has revoked a total of 79 300 business registration. During this period, 3 027 companies had applied for voluntary winding up, whilst 931 companies were put into compulsory liquidation. However, the authority has no record of the reasons behind the liquidation.

(b) The Government is committed to helping SMEs solve their financing problems. For instance, the introduction of the Special Finance Scheme for Small and Medium Enterprises (the Scheme) by the Government in the wake of the Asian financial turmoil has eased the then prevailing liquidity crunch faced by SMEs. Between the establishment of the Scheme in August 1998 and the closing of application in April this year, approximately 10 000 SMEs have obtained loans amounting to more than $9 billion from lending institutions under the Scheme.

In addition, the Hong Kong Export Credit Insurance Corporation (HKECIC) has been providing a wide range of insurance facilities and credit advisory services to Hong Kong exporters, including those that are SMEs, to minimize their liquidity problems arising from non-payment by overseas buyers. The HKECIC has recently stepped up their efforts by engaging local banks and financial institutions in discussions to persuade them to accept the insurance policies issued by the HKECIC as effective export bills in discounting collateral, so that SME exporters holding such policies can secure the loans they require. A considerable number of banks have already accepted this arrangement that should greatly reduce the liquidity pressure on exporters prior to the receipt of payments from buyers.

We believe that the ultimate solution to the liquidity problems of SMEs lies in long-term measures that help to gradually change the business culture of both the banking sector and SMEs. For the banking sector, the Hong Kong Monetary Authority is considering the setting up of a "Commercial Credit Reference Agency". This should help increase the credit transparency of SMEs as well as strengthen the ability of the banking sector to assess credit risks and result in easier assess to loans for SMEs with good credit records.

As for SMEs, we will provide assistance to enhance their management capability and financial transparency. Measures in this regard include the Pilot Mentorship Programme launched in November and a series of regular seminars jointly organized by the Government and various organizations. The first of these seminars will be held on 18 January next year. At the forum,

representatives from the banking sector and financial institutions will give detailed explanations on the documents and information required for loan application to the participating SMEs.

Lastly, the new Small and Medium Enterprises Committee will fully examine the ways and means to help SMEs build and expand their businesses, including feasible options that could help address their financing problems.

Determination of PRH Rentals

10. **MR LEUNG YIU-CHUNG** (in Chinese): *Madam President, the Housing Ordinance (Cap. 283) stipulates that whenever the Hong Kong Housing Authority (HA) has revised the rents of public rental housing (PRH) units, the overall median rent-to-income ratio (MRIR) after revision shall not exceed 10%. Also, it is an established policy that the MRIR of prospective tenants of newly completed estates should not exceed 18.5%. Regarding the determination of PRH rentals, will the Government inform this Council:*

(a) given that the MRIRs of the single-person households and two-person households have persistently exceeded 10%, even reaching as high as 19.5%, in the past few years, whether the HA had specifically taken into account the affordability of such households when it determined their rentals in the past; if it had, of the measures taken in this connection; if not, why not; and whether it will review or reformulate the existing policy, and introduce measures to alleviate the financial burden of such households; if so, of the details; if not, the reasons for that;

(b) whether the HA has assessed if the MRIR of prospective tenants of Home Ownership Scheme estates allocated for rental use will exceed 18.5%; if it will, whether it will consider setting a lower level of rent; if it will not consider this, of the reasons for that; and

(c) given that the overall rentals of private domestic premises have dropped by 30% in the past three years, whether the HA will consider lowering PRH rentals; if so, of the implementation date; if not, the reasons for that?

SECRETARY FOR HOUSING (in Chinese): Madam President, tenants' affordability is the major consideration by the HA in setting rents for PRH. In doing so, the HA takes into account the overall affordability of PRH households, and not the affordability of any special group. The Housing Ordinance provides that the MRIR of all PRH estates shall not exceed 10% after rent variation. This restriction applies to PRH households as a whole and does not relate to particular categories of tenants. The HA adheres to this restriction when making rent adjustments.

Households in PRH with long-term financial problems may apply for Comprehensive Social Security Assistance, under which they will receive full reimbursement of rents from the Social Welfare Department. Households with short-term financial problems may apply for rent reduction under the HA's Rent Assistance Scheme. The heavily subsidized public housing rents, together with other established assistance schemes, should provide sufficient assistance to households in need.

The MRIR of prospective tenants of Home Ownership Scheme flats to be allocated for rental use is projected to be 14.5%.

Rents for PRH are set with regard to tenants' affordability, and bear no fixed relationship to private housing rents.

Progress in Implementing Enhanced Productivity Programme

11. **MR CHEUNG MAN-KWONG** (in Chinese): *Madam President, regarding the implementation of the Enhanced Productivity Programme (EPP) and the creation of directorate posts in the Policy Bureaux and departments, will the Government inform this Council:*

(a) of the progress and difficulties encountered in implementing the EPP by various bureaux and departments;

(b) whether it has assessed if the creation of new directorate posts in the bureaux or departments renders it difficult for them to achieve the EPP target or requires them to reduce the existing non-directorate posts in order to achieve the target; if it has, of the details; and

(c) whether it will stipulate that the number of directorate posts should be linked to that of non-directorate posts in the bureaux and departments?

SECRETARY FOR THE TREASURY (in Chinese): Madam President,

(a) The EPP is progressing well. In 1999-2000, ahead of the implementation of the EPP, bureaux, departments and subvented organizations already delivered productivity gains amounting to $818 million. Three quarters of this amount was redeployed to provide new or improved services in the year while the remaining one quarter was reflected in reduced expenditure. In the first year of implementation of the EPP, viz. 2000-01, against the target of savings of 1% of operating expenditure, we achieved savings of 1.2%, or $1,148 million. The full amount has been redeployed to fund new and improved services. For 2001-02, we are on target to deliver 2% savings, releasing some $2,000 million from the baseline operating expenditure. These savings will also be redeployed for new and improved services.

The EPP requires government bureaux/departments and subvented organizations to make extra efforts to achieve savings and, at the same time, ensure that there is no deterioration in the quality of public service as a result of the implementation of the EPP. So far bureaux/departments and subvented organizations have been able to achieve this objective, overcoming the difficulties that they may have encountered. To enable the public to monitor how well we discharge this duty, we publish an annual booklet which reports on how we achieve the productivity gains, the initiatives on new or improved services provided through the savings achieved, and measures taken by us to safeguard the quality of service and support the implementation of the EPP. The first booklet was published in March 1999 and the second one in March 2000. The next one will be published in March 2001. In addition, all Controlling Officers report their performance targets and indicators in their Controlling Officers' Reports in the annual Estimates.

(b) So far all bureaux/departments have been able to meet the target savings under the EPP. There are therefore no cases where a bureau/department is unable to meet the EPP targets because of creation of directorate posts. Nor is there any case where a bureau or department deletes non-directorate posts in order to fund the creation of directorate posts. Furthermore, the creation of directorate posts is subject to stringent scrutiny involving not only vetting by the Administration, but also obtaining the support of the relevant independent advisory committee and the approval of the Finance Committee of the Legislative Council.

(c) Civil service posts, whether directorate or non-directorate, are only created where they are needed for delivering services to the public. Such service needs will also determine what is the best mix of directorate and non-directorate staff for a task. We do not think it is possible or appropriate to predetermine a one-size-fits-all ratio between directorate and non-directorate posts for all bureaux/departments.

Cases of Creutzfeldt-Jakob Disease

12. **MR LAW CHI-KWONG** (in Chinese): *Madam President, will the Government inform this Council:*

(a) of the number of reported cases of Creutzfeldt-Jakob disease (CJD) in each of the past five years, with a breakdown by causes;

(b) of the mechanism in place to co-ordinate the Department of Health (DH), Hospital Authority (HA) and other relevant organizations in tracing the causes of CJD in their patients;

(c) whether it will consider performing autopsies for those cases in which the type of CJD a patient died of has not been ascertained or the cause for the disease is unknown; and

(d) given the possible link between the causes of some patients' contracting CJD and their consumption of beef infected with pathogens of the mad-cow disease, whether it plans to ban the

import of beef or beef products from countries where the mad-cow disease has been found; if it has no such plan, how it can ensure that beef infected by the pathogens of the mad-cow disease will not reach the market?

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

(a) Eighteen cases of CJD were reported to the DH in the past five years, as follows:

Year	*No. of reported cases*
1996	6
1997	3
1998	4
1999	2
2000 (January to November)	3

These were all sporadic cases with no identifiable causes. So far, no cases of variant CJD, which is closely related to exposure to Bovine Spongiform Encephalopathy in cattle, have been reported.

(b) Since 1996, the DH and the HA have set up a surveillance programme for CJD, including variant CJD. The HA will report to the DH all suspected and confirmed CJD cases, for the surveillance and identification of causes of the disease.

(c) Both CJD and variant CJD may be diagnosed by clinical presentation and special investigations, including electroencephalography, cerebrospinal fluid tests and brain scans. For cases which cannot be established by these procedures, neuropathological examination of the brain through autopsy would be conducted to establish the diagnosis.

(d) The Food and Environmental Hygiene Department (FEHD), in line with recommendations of the relevant international authorities, including Office International des Epizooties and World Health

Organization, has imposed additional sanitary requirements on beef products imported from European Union countries which have reported cases of mad-cow disease to prevent and control the spread of the disease in Hong Kong.

Under the present requirements, importers have to obtain prior written approval from the FEHD before importing beef products into Hong Kong from countries with history of mad-cow disease. In addition to reporting explicitly the exporting country's mad-cow disease status, importers are required to submit health certificates issued by recognized authorities stating that meat-bone-meal is not used to feed cows in the exporting country, that all cows have passed antemortem inspection by professional staff and that specific high risk parts like brain and spinal cord have not been included in beef products for export. The consignment in question can only be imported into Hong Kong after the FEHD has assessed and approved the application. On arrival in Hong Kong, the beef products will be detained. They will only be released for sale after the FEHD has checked the health certificates and inspected the products to ascertain that they do not include specific high risk parts like brain and spinal cord.

Parent Education

13. **MRS SOPHIE LEUNG** (in Chinese): *Madam President, will the Government inform this Council of the measures for helping parents to appreciate parental responsibilities and acquire the skills in communicating with their children, so that they can give their children proper guidance in their physical and psychological development as well as create harmonious homes?*

SECRETARY FOR EDUCATION AND MANPOWER (in Chinese): Madam President, the Government provides parent education through a variety of channels, including the Education Department (ED), the Social Welfare Department (SWD), the Department of Health (DH), and subvented non-governmental organizations (NGOs). The emphasis of the programmes delivered may vary depending on the needs of the target group.

(a) The ED

The ED organizes a wide range of parent education activities with emphasis on raising parents' awareness of their role in the education process, and helping parents understand how they could work in partnership with schools in their children's education. NGOs are commissioned by the ED to organize courses to teach parents how to participate meaningfully at different stages of their children's schooling. The Department also publishes from time to time leaflets, brochures and other promotional materials on relevant topics. In addition, the Radio Television Hong Kong has been commissioned to produce a series of education television programmes in relation to parent education. At the school level, student guidance officers and student guidance teachers in primary schools, and school social workers in secondary schools play an active part in promoting parent education through, for example, seminars and talks.

In addition, a Committee on Home-School Co-operation (CHSC) with members drawn from parent representatives and educators, was set up under the ED in 1993. Since its establishment, CHSC has been playing an active role in promoting better home-school co-operation through, for example, publishing brochures on parenting skills and school profiles, and producing television programmes on effective communication with children.

(b) The SWD

The SWD and subvented NGOs have been promoting parent education under their family life education programmes, with emphasis on equipping parents with the necessary skills in raising children, and helping parents understand the importance of a harmonious family life. Examples of these programmes include workshops and talks on communication skills with children, supportive groups for parents to share experiences, and a website on parent education. In addition, the SWD and its subvented NGOs provide counselling and support services for parents who have problems in parent-child relations. The Department will further strengthen its support in the coming year by organizing tailor-made courses for "high-risk" parents, such as low-income groups, single parents and new arrivals.

(c) The DH

The DH has also been conducting parent education programmes. Their focus is to help parents understand their role in the physical, mental and intellectual development of children at different stages. Examples of the DH's programmes include classes for pregnant mothers on children's physical and mental health, and talks on early childhood and communication skills with children.

(d) Co-operation amongst departments and NGOs

To further strengthen parent education, the Chief Executive announced in his 2000 policy address that $50 million will be set aside for this purpose. A Steering Committee on Parent Education involving all relevant departments and stakeholders has been set up to formulate an overall strategy on parent education, and to consider how funds may best be used and how existing programmes can be better co-ordinated. Special efforts will focus on new arrival parents and parents of pre-primary school children. For example, the ED, the SWD and the DH are now working together to produce reference materials featuring children's physical, mental and intellectual development for parents and child care workers.

Maintenance of Slopes on Private Land

14. **DR RAYMOND HO** (in Chinese): *Madam President, regarding the maintenance of man-made slopes on private land, will the Government inform this Council:*

(a) of the number of landslides involving such slopes in the past three years and, among them, the number of those attributable to the lack of proper maintenance;

(b) of the current measures for tackling the problem of private slopes lacking proper maintenance and the effectiveness of such measures; and

(c) whether it plans to enact legislation requiring the relevant owners of private land to inspect and properly maintain their slopes on a regular basis; if so, of the details; if not, the reasons for that?

SECRETARY FOR WORKS (in Chinese): Madam President,

(a) From 1997 to 1999, 172 landslides occurred in slopes of which the maintenance responsibility falls wholly or partly on private owners. About 25% of these landslides have been assessed to be caused by improper maintenance.

(b) Whenever a private slope is found to be improperly maintained but not yet posing any danger, the Building Department (BD) will, on the recommendation of the Geotechnical Engineering Office (GEO), issue a non-statutory Advisory Letter to the private owner concerned requesting him to rectify the situation. If the state of the slope has deteriorated to a dangerous or potentially dangerous level, the BD will, as recommended by the GEO, serve a statutory Dangerous Hillside (DH) Order on the owner requiring him to carry out investigation and the necessary slope upgrading works. The Community Advisory Unit (CAU) of the GEO reaches out to private owners to provide them with advice and information services. Since its establishment in April 1999, the CAU has provided advice and assistance for 121 cases involving DH Orders or slope maintenance. As at today, our services have enabled the slope upgrading or maintenance works in 44 cases to be completed successfully, and another 30 cases are in progress.

In 1994, the Building Management Ordinance (BMO) was amended to include "slopes and retaining walls" in the definition of "common parts". In 2000, new provisions were added to the BMO empowering the Secretary for Home Affairs to publish in the Gazette a Code of Practice on Building Management and Maintenance. This Code of Practice stipulates that Geoguide 5 (Guide to Slope Maintenance) be adopted as the standard of good practice for slope maintenance. The revised BMO also empowers the Secretary for Home Affairs to appoint a building management agent for buildings with serious maintenance defects (including slope maintenance defects).

(c) There are currently no statutory requirements for private owners to inspect and maintain their slopes regularly. We believe that the best approach is voluntary compliance with good slope maintenance practice by private owners to improve slope safety. For the past few years, we have maintained good partnership with parties interested in slope maintenance, including the Hong Kong Association of Property Management Companies, the Hong Kong Federation of Insurers, the Consumer Council, lawyers and a number of District Council members and Legislative Council Members. This has made it possible to promote awareness of and information on slope maintenance, and to discuss slope maintenance and safety which are of common concern.

We have also gradually stepped up publicity and public education on slope safety to enhance public awareness of and support for slope safety. We have seen fruitful results from our concerted efforts, particularly from our community advisory services provided by the CAU. We plan to further strengthen our work in this area, including provision of assistance to owners with financial difficulties to maintain their slopes through a revised loan scheme on building safety improvement to be set up in 2001; setting up the Slope Maintenance Responsibility Information System on the Internet, distributing a training video on slope maintenance and model slope maintenance plans for use by private owners; conducting an Internet course on slope maintenance, and further enhancing slope maintenance audit.

We do not think that there is a case at the present stage for introducing legislation on mandatory routine slope maintenance, which would be very costly to enforce and could have serious social repercussions. Enacting legislation on this matter is seen as a last resort, and we believe more can be done to encourage voluntary good practice by private owners. We will continue to adopt the existing legal and administrative measures, that is, issuing DH Orders and Advisory Letters to tackle the problem of seriously deteriorating slopes.

Provision of PRH Units for Application for Transfer by Overcrowded Households

15. **MR FRED LI** (in Chinese): *Madam President, last month, the Hong Kong Housing Authority (HA) made available the Fu Tai Estate in Tuen Mun and Yat Tung Estate in Tung Chung for application of transfer by all eligible public rental housing (PRH) estate tenants in the territory and overcrowded households were given priority in allocation. It has been reported that the number of applications made by overcrowded households constitutes less than one fifth of the total number of applications. Regarding the provision of PRH units for application for transfer by overcrowded households, will the Government inform this Council:*

(a) of the number of applications received in respect of each of the above two estates and, among them, the respective numbers of those made by overcrowded households and other tenants;

(b) of the number of applications submitted by overcrowded households in each housing estate;

(c) whether it has evaluated the reasons for the small number of overcrowded households which applied for transfer to the two housing estates concerned; and

(d) whether it knows if HA plans to make available other newly completed public housing estates for application for transfer by overcrowded households, and whether PRH estates in urban areas will be included; if so, of the timetable and details; if not, the reasons for that?

SECRETARY FOR HOUSING (in Chinese): Madam President, as at 12 December 2000, the numbers of applications made by overcrowded households and other households to the HA for transfer to Fu Tai and Yat Tung Estates are at Annex. As the applications are under processing, the actual numbers from individual estates will not be known until a few weeks later.

The HA does not evaluate the reasons for the number of applications submitted by overcrowded households for transfer to the two housing estates.

The HA has no plan to conduct similar transfer exercises in the near future. It will look for suitable housing estates which may be made available for overcrowding relief.

Annex

Applications for Fu Tai and Yat Tung Estates

	Number	%
Overcrowded households	974	18.6%
Other households	5 237	81.4%
Total	6 211	100%

Use of Private Donations Received by Universities of Hong Kong

16. **MISS EMILY LAU** (in Chinese): *Madam President, in response to a question I raised last month, the Secretary for Education and Manpower stated that the University of Hong Kong (HKU) had not used any public funds for the payment of termination compensation to its former Vice-Chancellor, and that it was not appropriate to demand details of the termination compensation on grounds of the university's autonomy. In this connection, will the executive authorities inform this Council whether:*

(a) they know the total amount of private donations received by the HKU in the past three years; of the criteria or guidelines followed by the HKU in respect of the use of such donations; and how it accounts to the public and the donors concerned for details on the use of such donations; and

(b) they have assessed if enquiries on the details of the use of private donations would interfere with the autonomy of the university; if the assessment concludes that is the case, of the justifications for that; if the assessment concludes otherwise, whether they will seek from the HKU details of the termination compensation mentioned above?

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

(a) According to the information provided by the HKU, the total amount of private donations received in the past three years is as follows:

1999-2000	HK$290 million
1998-1999	HK$415 million
1997-1998	HK$225 million

The donations are used in accordance with the relevant legislation, internal guidelines and the donors' wish. The total amount of donations received and expended, verified by independent auditors, is published in the University's annual financial report.

(b) The Government and the University Grants Committee (UGC) encourage institutions to actively seek private donations, in addition to public funds, for the enhancement of the institutions' development. The institutions' operation is monitored by their governing Councils and their financial reports are published in accordance with relevant legislations. Whilst the institutions have to be accountable to the UGC and the Government for the use of public funds, they are accountable to the donors for the use of private donations. If the donations are not put to proper use or used in ways which do not conform to the donors' wish, the institutions' ability to raise private funds will be affected. Therefore, the Government considers it unnecessary and inappropriate to interfere with the use of private donations by the institutions.

Fires Caused by Household Electrical Appliances

17. **MR LAU KONG-WAH** (in Chinese): *Madam President, regarding fires caused by household electrical appliances (HEAs), will the Government inform this Council:*

(a) of the number of fires caused by faulty HEAs, the number of residential units involved and resultant casualties in each of the past three years;

(b) of the main reasons for HEAs causing fires;

(c) among the total number of fires caused by HEAs, of the ratio of fires caused by HEAs which were not imported through authorized agents or are counterfeit goods; and

(d) whether it will step up publicity to remind the public of the issues to be noted when buying HEAs outside Hong Kong for local use; and the department to which the public can direct their inquiries concerning the safety of HEAs?

SECRETARY FOR ECONOMIC SERVICES (in Chinese): Madam President,

(a) The Fire Services Department (FSD)'s computer record does not have statistical breakdown on fires caused by faulty HEAs. The Department currently classifies all fires caused by shortcircuit of fixed electrical installation or faulty electrical appliances as fires of electrical origin. However, the Electrical and Mechanical Services Department (EMSD) conducts investigations into accidents suspected to be related to electricity, including electrical products, which are referred to it by the police, the FSD and the Labour Department or reported by the media. Over the past three years, the number of fire accidents investigated by the EMSD and ascertained to be related to HEAs are:

Year	*Fire accidents related to HEAs*	*No. of residential units involved*	*No. of Injury*	*No. of death*
1998	59	(no information)	7	0
1999	41		7	0
2000 (up to November)	32		8	0

(b) The EMSD's investigations revealed that the fire accidents related to HEAs were generally due to overheating as a result of poor contact between plug and socket, improper use of electrical appliances (for example, insufficient space for heat dissipation), lack of maintenance or repair of old and worn-out electrical appliances and overloading.

(c) Neither the FSD nor the EMSD has statistical information on the number of fires caused by HEAs, not imported through authorized agents or are counterfeit goods, as a ratio of the total number of fires caused by HEAs.

(d) The EMSD regularly provides the public, through various channels, with safety information on the proper use and selection of electrical appliances. This includes reminding the public that in purchasing HEAs, they should select products that are designed to operate at the voltage level suitable for Hong Kong and are fitted with safe three-pin plugs. The EMSD's promotional activities in recent years include short safety video on TV, roving exhibitions, safety quiz competition, and promotion of safety messages through the EMSD website and seminars. Moreover, the EMSD also publishes and distributes pamphlets on the safety of HEAs, such as "Safety Guidelines for Household Electrical Appliances" and "How to Select Safe Electrical Products" and so on. Since 1 November 2000, the EMSD has been distributing calendar card mailers for year 2001-02, with safety messages on plugs, adaptors and extension units for electrical appliances to about 2.4 million electricity consumers in Hong Kong through the billing channels of the two power companies.

The above mentioned safety pamphlets on HEAs are available at District Offices, management offices of housing estates, customer service centres of the two power companies and the EMSD. The public may also call the EMSD Hotline at 2882 8011 for inquiries on safety issues relating to common household electrical appliances.

Complaints about Anti-competitive Practices Received by OFTA

18. **MR SIN CHUNG-KAI** (in Chinese): *Madam President, will the Government inform this Council whether the Office of the Telecommunications Authority (OFTA) plans to report regularly to this Council on the number of complaints about anti-competitive practices that it has received, the contents of such complaints and the follow-up actions it has taken?*

SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING (in Chinese): Madam President, as prevention of anti-competitive behaviour is the key part of the regulatory work of the OFTA, the OFTA has, starting from April 1999, published summaries of complaint cases it received about alleged anti-competitive practices under the "Competition Bulletin" of its homepage <http://www.ofta.gov.hk> for the information of the industry and the public. The content of each complaint case, the representations made by the complainant and the alleged offender, the OFTA's analysis of the case, the grounds for decisions made and the follow-up actions are all detailed in the case summary. The OFTA regularly updates the bulletin information each month.

The homepage of the OFTA is open to the public. Legislative Council Members can browse the latest information on its homepage at all times and request more details from the Government when necessary. Such an arrangement is more effective and appropriate than a regular reporting system.

Applications for Assessment of Regrant Premium

19. **MR ALBERT CHAN** (in Chinese): *Madam President, regarding applications made to the relevant authorities for assessment of regrant premium, will the Government inform this Council:*

(a) of the number of applications during the period between June 1998 and March 1999 made by real estate developers for assessment of regrant premium in respect of development projects, and the details of each application, including the area and location of the site, as well as the assessed premium; and

(b) how the number and details of these applications compare to those of the applications made in the same period in each of the three preceding fiscal years?

SECRETARY FOR PLANNING AND LANDS (in Chinese): Madam President,

(a) Between June 1998 and March 1999, 293 applications for lease modification and land exchange were made to the Lands Department, and agreement on premium was reached in 64 of these cases. Details of these 64 cases are provided in Appendix 1. The remaining 229 applications either continued to be processed beyond March 1999 or were unsuccessful within the above-mentioned period for various reasons (for example, the proposed modifications were unacceptable to the Government or agreement on premium could not be reached or the applications were withdrawn); and

(b) A comparison of the information in paragraph (a) above with that for the same period in each of the three preceding fiscal years is provided in Appendix 2.

Appendix 1

Breakdown of 64 Lease Modification and Land Exchange Applications Made between June 1998 and March 1999 where Premium was Agreed within the Same Period

Location	*Site area (hectare)*	*Premium agreed* ($ million)*
Hong Kong East	*3.3164*	*0.801*
Taikoo Place (portion)	1.3513	0
Shau Kei Wan Main Street East	0.072	0
661-665 King's Road	0.3404	0
1063 King's Road	0.1815	0
11 Cloud View Road	0.4815	0
16 Lin Fa Kung Street West	0.0226	0
22, 22A Westlands Road	0.3106	0
351-361 Shau Kei Wan Road	0.0452	0
104-106 Tin Hau Temple Road	0.1709	0.001
661-665 King's Road	0.3404	0.8

Location	*Site area (hectare)*	*Premium agreed* ($ million)*
Hong Kong West	*3.4698*	*0.944*
58 Bridges Street	0.0773	0
23 D' Aguilar Street	0.0081	0
69 Jervois Street	0.0575	0
16 Ice House Street	0.0505	0
48-52 Jardine Bazaar	0.0235	0
49-59 Stone Nullah Lane	0.1639	0
141-149 Thomson Road	0.1	0
4-6 Fenwick Street (portion) and 41-49 Hennessy Road	0.2	0
458-468 Hennessy Road (portion)	0.2	0
513-517 Hennessy Road	0.026	0
20 Plunkett's Road	0.8543	0
2 Gough Hill Road	0.4301	0
5 Old Peak Road	0.323	0
5 Old Peak Road	0.1615	0
53-55 Tai Hang Road	0.0847	0.001
101-111 Tai Hang Road	0.1721	0.001
8 Wilson Road (portion)	0.3437	0.002
26 Mount Kellett Road	0.1936	0.94
Hong Kong South	*2.6471*	*1.305*
Shum Wan Road (South)	1.5855	0
58 Repulse Bay Road	0.9756	0.035
39A Island Road	0.086	1.27
Islands	*18.4105*	*220*
Ngong Ping, Lantau	0.73	0
Shek Pik, Lantau	1.2393	0
Shek Pik, Lantau	7.73	0
Hok Loo Lane, Cheung Chau	0.0032	0
Tai San Back Street, Cheung Chau	0.008	0
Discovery Bay	8.7	220
Kowloon East	*7.1817*	*17.58*
3 Fu Mei Street	0.443	0
Tsz Wan Shan Sub-station	0.9921	0
8 Tsz Wan Shan Road	0.4735	0
173 Po Kong Village Road	0.4645	0
300 Junction Road	0.0557	0
4 Hiu Yuk Path	0.49	0
Wong Kuk Avenue	0.1802	0
Baptist University Road	2.7254	0

Location	*Site area (hectare)*	*Premium agreed* ($ million)*
11 Kai Lok Street	0.68	0
3 & 3A Oxford Road	0.0924	0
40-42 Kung Lok Road	0.1208	0
4 & 4A Hampshire Road	0.1018	4
64 Hoi Yuen Road	0.1765	6.17
6 Shing Yip Street (portion)	0.1858	7.41
Kowloon West	*15.2865*	*800.4*
Hung Home (KIL 9853 & extension)	8.7633	0
71-73 Pak Tai Street	0.0253	0
23-29 Jordan Road	0.0829	0.4
Junction of Tai Wan Road and Dyer Avenue	6.415	800
North	*3.588*	*0*
Fan Kam Road, Ying Pun	3.588	0
Sai Kung	*5.2827*	*10.818*
Area 19B, Tseung Kwan O	2.1218	0
Ho Chung (DD 244 Lot 2161)	0.0049	0.818
Area 17, Tseung Kwan O	3.156	10
Tai Po	*0.2733*	*0*
Ting Kok Road (TPTL 140)	0.2733	0
Tsuen Wan	*0.9132*	*0*
Sham Tseng (DD 390 Lot 265)	0.9132	0
Tuen Mun	*4.4746*	*0*
Yuk Hong Street (TMTL 416)	0.2293	0
So Kwun Wat (TMTL 374)	4.2453	0
Yuen Long	*0.32*	*0*
Hung Shui Kiu (DD 124 Lot 4295)	0.32	0
Total	65.1638	1,051.848

* Cases attracting premium of $1,000 or less involved applications for technical modifications (for example, removal of the offensive trade clause in the lease, variation of vehicular access points) and modifications to private treaty grants made at nil premium to non-profit-making bodies.

Appendix 2

Comparison of Lease Modification and Land Exchange Applications Made during the Period from June 1998 to March 1999 and in the Same Period in Each of the Three Preceding Fiscal Years

							Same period in each of the three fiscal years preceding (a)									
	(a)			*(b)*			*(c)*			*(d)*			*(e)*			
	Between June 1998 and March 1999			*Between June 1997 and March 1998*			*Between June 1996 and March 1997*			*Between June 1995 and March 1996*			*Total of (b), (c) and (d)*			
(A) No. of applications made	293			424			388			307			1 119			
(B) No. of applications under (A) where premium was agreed	64			101			74			43			218			
(C) For applications under (B):																
— total site area (hectare)	65.16			96.64			94.68			49.32			240.64			
— total premium agreed	$1,051.85 million			$65.03 million			$1,926.41 million			$76.61 million			$2,067.78 million			
— *distribution by district:*	*No. of cases*	*Site area (hectare)*	*Premium agreed ($million)*	*No. of cases*	*Site area (hectare)*	*Premium agreed ($million)*	*No. of cases*	*Site area (hectare)*	*Premium agreed ($million)*	*No. of cases*	*Site area (hectare)*	*Premium agreed ($million)*	*No. of cases*	*Site Area (hectare)*	*Premium agreed ($million)*	
Hong Kong East	10	3.32	0.8	20	1.92	0	7	2.02	301.68	1	0.4	0	28	4.34	301.68	
Hong Kong West	18	3.47	0.94	40	18.47	40.13	18	1.76	10.61	10	2.1	40.23	68	22.33	90.97	
Hong Kong South	3	2.65	1.31	2	0.43	0.4	5	2.02	14.73	1	7.01	0	8	9.46	15.13	
Islands	6	18.41	220	1	0.67	0	2	0.19	0.01	1	0.02	0	4	0.87	0.01	
Kowloon East	14	7.18	17.58	15	6.44	7.72	15	4.25	106.99	10	1.25	32.86	40	11.94	147.57	
Kowloon West	4	15.29	800.4	3	17.61	0.4	5	2.84	1.59	6	0.82	2.72	14	21.27	4.71	
North	1	3.59	0	3	5.21	0	5	14.01	574.67	1	0.65	0	9	19.86	574.67	
Sai Kung	3	5.28	10.82	2	0.11	0.15	1	0.59	6.8	3	27.54	0	6	28.24	6.95	
Sha Tin	0	-	-	1	5.95	0	3	2.05	0	1	0.8	0	5	8.62	0	
Tai Po	1	0.27	0	4	8.61	0.4	1	6.13	4	1	1.85	0.4	6	16.59	4.8	
Tsuen Wan	1	0.91	0	2	1.44	0	2	3.58	0	4	1.21	0.4	8	6.23	0.4	
Kwai Tsing	0	-	-	4	21.69	13.82	5	36.34	209.26	4	5.67	0	13	63.7	223.08	
Tuen Mun	2	4.47	0	1	3.83	0	4	16.73	0.8	0	-	-	5	20.56	0.8	
Yuen Long	1	0.32	0	3	4.26	2	1	2.16	695	0	-	-	4	6.42	697	

Note: Cases attracting premium of $1,000 or less involved applications for technical modifications (for example, removal of the offensive trade clause in the lease, variation of vehicular access points) and modifications to private treaty grants made at nil premium to non-profit making bodies.

Survey on Ethical Standards in Public and Business Sectors

20. **MR CHEUNG MAN-KWONG** (in Chinese): *Madam President, the Civil Service Bureau (CSB) conducted a survey in September last year among directorate officers to collect their views and perception of the ethical standards in the public and business sectors, and the survey report was completed in April this year. In this connection, will the Government inform this Council:*

(a) of the public expenditure involved in the survey;

(b) whether the survey report will be made public or submitted to the relevant panels of this Council; if so, when this will be done; if not, the reasons for that; and

(c) how it will follow up the concerns set out in the survey report?

SECRETARY FOR THE CIVIL SERVICE (in Chinese): Madam President, the Government is determined to uphold the highest standard of integrity in the Civil Service. The CSB has been working closely with the Independent Commission Against Corruption (ICAC) and Departments to promote a clean Civil Service. As part of our ongoing efforts, the CSB joined hands with the ICAC to launch, in 1999, the two-year "Civil Service Integrity Programme". In addition, the CSB conducted a "Survey of Business and Public Service Ethics" in September 1999. The survey was aimed at helping the Administration:

- to better understand the perceptions of senior government officers about the ethical standards prevailing in the public and business sectors; their attitude towards the problem of corruption; and

- to acquire information on what needs to be done further to enhance ethical standards in the public sector.

My reply to the three issues raised in the Honourable CHEUNG Man-kwong's question is set out below:

(a) In terms of public expenditure, the survey has entailed an outlay of $130,000.

(b) The survey provides management information for the CSB in planning its work in the promotion of integrity and prevention of corruption and malpractice in the Civil Service. The survey report was completed in April 2000. At the meeting of the Legislative Council Panel on Public Service (the Panel) held on 19 June 2000, the CSB briefed Members on the conduct of the survey. In a paper presented to the Panel, we outlined the aims of the survey and how the data collected from the survey would be used, as follows:

- under the joint CSB and ICAC Integrity Programme, the central guidelines governing conflict of interest and conduct related matters are being reviewed, updated and consolidated. Where appropriate the survey findings will be taken into account in the review process;

- when visiting departments to assist them in drawing up supplementary guidelines on conduct and discipline, and in organizing tailor-made integrity training programmes for individual departments, we would make reference to relevant survey findings; and

- the CSB and the ICAC are jointly preparing a management guidebook to provide handy reference for managers to strengthen ethical values among their staff and guard against corruption in their organizations. We would draw reference from the survey findings in preparing this handbook.

At the Panel meeting, we also highlighted that the survey report was for internal use and would not be disclosed to the public. Subsequently, in response to a media report, we issued on 28 September 2000 a press statement which included a summary of the survey findings pertaining to the respondents' views on the ethical standards in the public sector. A copy of the summary is at Annex. As regards the part concerning the respondents' views on the ethical standards in the business sector, it has been forwarded to the ICAC for reference.

(c) We have utilized the data collected from the survey in our endeavours to promote civil service integrity, in ways including the following:

- since completion of the survey report, we have visited some 30 departments under the Civil Service Integrity Programme. The survey findings have provided us with useful pointers in assisting departments to draw up supplementary guidelines and in organizing integrity training programmes for departments;

- the survey indicates that a large majority of the respondents consider that "senior staff setting good examples" is important in promoting civil service integrity. The CSB and the ICAC have jointly published a handbook "Ethical Leadership in Action" in September this year, providing handy reference for senior officers to strengthen ethical values amongst their staff and guard against corruption. The handbook has been widely distributed to departmental managers. In the foreword of the handbook, the Chief Secretary for Administration has placed particular emphasis on the important role played by senior offices in the promotion of integrity in the Civil Service, encouraging them to lead by personal example;

- one of the corruption-prone areas highlighted in the survey report is procurement and tender control. The Administration has reviewed the relevant stores and procurement regulations and has issued new guidelines to further strengthen the monitoring system, for example, reminding officers involved in tender preparation or evaluation to declare any conflict of interest;

- the survey also indicates that some of the respondents had encountered difficulties in maintaining a high ethical standard in their bureaux/departments. "Inadequate expertise in ethics management" has been quoted as one of the major difficulties. In this regard, the CSB is providing assistance to departmental managers in a number of ways. For instance,

we have plans to set up, in the next financial year, an electronic information and resource centre to facilitate access on the part of departmental managers to ethics development materials including rules and regulations on integrity management. The CSB will in conjunction with the ICAC organize added workshops and experience sharing sessions for departmental managers on common integrity issues.

The CSB will continue to work closely with the ICAC and departments to promote and sustain a strong culture of integrity within the Civil Service. We shall monitor the effectiveness of our initiatives on a regular basis.

Annex

Survey of Business and Public Service Ethics

Executive Summary

Survey Objectives

The objectives of the survey are (a) to enhance understanding of the perception of the senior government officers on the ethical standards in the public and business sectors; (b) to gain a better understanding of the senior government officers' attitude towards the problem of corruption, and (c) to acquire information on what needs to be done to enhance ethical standards in the public sector.

Target Respondents and Response Rate

The target respondents were directorate officers of rank D1 to D8 within the Civil Service. A total of 569 questionnaires were sent out and 480 completed questionnaires were returned. The response rate was 84.4%.

Summary of Key Findings

The following presents a summary of the key survey findings.

A. Perception of Ethical Standard of Hong Kong

Present Ethical Standard

The proportion of respondents who considered the present ethical standard of public bodies and government departments as high was substantially larger than that who held the opposite view (64.2% vs 4.6% for public bodies and 79.4% vs 2.1% for government departments).

Present Ethical Standard as Compared to Five Years Ago

A larger proportion of respondents considered the present ethical standard of public bodies and government departments was higher than that of five years ago (21.3% vs 16.9% for public bodies and 30.8% vs 13.5% for government departments).

Ethical Standard Two Years Later as Compared to Now

The proportion of respondents who considered the ethical standard of public bodies two years from now higher than present was similar to that who held the opposite view (17.1% vs 14.6%).

On the other hand, a larger proportion of respondents thought that the ethical standard of government departments two years from now would be higher than present (22.5% vs 13.3%).

B. Attitude towards Maintaining a High Ethical Standard within the Government

The large majority of the respondents considered that maintaining a high ethical standard within the Government would have the advantages of "enhancing public trust in the Department/Bureau/HKSAR Government" (86.0%) and "minimizing corruption, fraud and other malpractices" (72.7%). Other advantages included "creating an ethical culture in the Bureau/Department" (34.0%), "preventing conflict of interest" (31.7%), "enhancing staff's sense of pride in the Bureau/Department" (28.3%) and "enhancing service efficiency" (23.5%).

70.6% had not encountered difficulties in maintaining a high ethical standard in their Bureaux/Departments. 29.4% said the opposite, and the major difficulties they faced were "inadequate expertise in ethics management" (42.6%), "difficulties in monitoring and supervision" (40.4%), "limitation of resources" (36.2%), "inadequate support from central government" (29.8%), "lack of staff support" (27.7%) and "difficulties in rallying support from management" (25.5%).

C. Perception of Corruption Scene

The large majority considered corruption uncommon in public bodies and government departments (73.8% and 85.4% respectively) while less than one-fifth thought otherwise (16.9% and 7.9% respectively). A very small proportion even thought that corruption did not exist in public bodies (0.6%) and government departments (1.9%) at all.

For those who considered corruption common in public bodies, the majority thought that corruption was commonly found in "contractors supervision" (80.2%), "procurement and supplies control" (70.4%) and "tender control" (60.5%). A considerable proportion mentioned "staff promotion/recruitment" (29.6%), "licensing and application processing" (29.6%), "staff supervision/posting" (27.2%), "law enforcement" (24.7%) and "funds administration/accounting" (19.8%).

As for those who considered corruption common in government departments, most thought that corruption was commonly found in "contractors supervision" (73.7%), followed by "law enforcement" (55.3%), "licensing and application processing" (39.5%), "procurement and supplies control" (34.2%), "tender control" (31.6%), "staff supervision/posting" (31.6%) and "staff promotion/recruitment" (23.7%).

10.4% said that they themselves or their colleagues had come across corruption within the public service in the past 12 months while the large majority (87.3%) said the opposite.

D. Views on Implementation of Promotion of Civil Service Integrity

The great majority said that their Bureaux/Departments had taken the following actions to promote civil service integrity — "promulgating internal

guidelines on conduct and discipline" (87.5%), "senior staff setting good examples" (82.3%) and "establishing or improving system control to prevent malpractices and corruption" (78.3%). A comparatively smaller proportion mentioned "organizing talks or training on anti-corruption/integrity" (56.3%).

Over 90% considered the following actions useful in promoting civil service integrity — "establishing or improving system control to prevent malpractices and corruption" (96.7%), "senior staff setting good examples" (94.0%) and "promulgating internal guidelines on conduct and discipline" (93.3%). A relatively smaller proportion (83.2%) considered "organizing talks or training on anti-corruption/integrity" useful.

Of all respondents, 5.4% had suggested some other useful actions in promoting civil service integrity, which were mainly "rewarding good performers and punishing offenders" (2.1%) and "establishing trust and understanding among different levels of staff" (1.3%).

65.0% thought that, compared with 1999-2000, their Bureaux/Departments should allocate similar amount of resources in 2000-2001. 30.4% considered that more resources should be allocated. 2.5% considered less resources should be allocated (representing only 12 respondents), and the major reasons were "sufficient work had already been done" and "promotion was not an effective means".

Among all respondents, 67.3% had given some comments or suggestions on promotion of ethics in Civil Service. Suggestions that are most talked about include "a good job has been done" (12.5%), "senior officers should set good examples" (10.8%), "to promote ethics through education and training" (9.8%), "to maintain a clean Civil Service" (9.4%), and "to improve integrity" (6.9%).

BILLS

First Reading of Bills

PRESIDENT (in Cantonese): Bills: First Reading.

HONG KONG SCIENCE AND TECHNOLOGY PARKS CORPORATION BILL

INTELLECTUAL PROPERTY (MISCELLANEOUS AMENDMENTS) (NO. 2) BILL 2000

CLERK (in Cantonese): Hong Kong Science and Technology Parks Corporation Bill
Intellectual Property (Miscellaneous Amendments) (No. 2) Bill 2000.

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

Second Reading of Bills

PRESIDENT (in Cantonese): Bills: Second Reading.

HONG KONG SCIENCE AND TECHNOLOGY PARKS CORPORATION BILL

SECRETARY FOR COMMERCE AND INDUSTRY (in Cantonese): Madam President, I move that the Hong Kong Science and Technology Parks Corporation Bill be read the Second time.

At present, the Hong Kong Industrial Estates Corporation (HKIEC), the Hong Kong Industrial Technology Centre Corporation (HKITCC) and the Provisional Hong Kong Science Park Company Limited (PHKSPCL) are providing infrastructural support to industries of various types and scales. The HKIEC offers land at near cost to industries with new or improved technology and processes which cannot operate in multi-storey buildings. It thus facilitates upgrading the technology levels of Hong Kong and broadening its economic base. Through its technology-based business incubation programme, the HKITCC focuses on nurturing technology start-ups by providing them with support in marketing, finance, technology transfer and management during their critical initial three years of operation. The Science Park will provide an environment to encourage clustering of technology-based companies which focus on intensive

research and development activities. The competitiveness of these companies will be enhanced through active interaction and collaboration.

The objective of the Bill is to merge these three organizations to streamline the service structure and pool together resources with a view to providing a one-stop service to industry. The merged organization will be called the "Hong Kong Science and Technology Parks Corporation". It will provide support services to industry in a flexible and strategic manner, from nurturing of technology start-ups, facilitating technology transfer, creating a desirable environment to encourage applied research, to offering land for production. It will cater for the needs of industry at various stages in a comprehensive manner, hence promoting the long-term development of high value-added industries.

Apart from enabling the new corporation to continue to deliver the services currently offered by the HKIEC, the HKITCC and the PHKSPCL, the Bill also empowers the new corporation to develop new services in pursuance of its objectives. Since the new corporation will remain a publicly-funded organization with an important public mission, we consider it necessary to establish it as a statutory corporation to give it an appropriate status, to clearly define its duties and powers, and to provide for government control to ensure proper public accountability. As regards financial arrangements, the net assets of the three organizations will become the authorized capital of the new corporation. The new corporation will be required to submit to the Government its annual estimates of income and expenditure, statements of accounts and reports of activities. It shall also appoint a professional auditor to audit its statements of accounts. The audited statements of accounts and annual reports shall be tabled at the Legislative Council.

The Bill has drawn reference from the provisions of the Hong Kong Industrial Estates Corporation Ordinance and the Hong Kong Industrial Technology Centre Corporation Ordinance. We have also made improvements to the relevant provisions in the light of operating experience, so that the new corporation can operate with sufficient flexibility to respond efficiently to the needs of a changing new economy.

Upon the establishment of the new corporation, the existing three organizations will be dissolved. All their rights, obligations, assets and liabilities will be vested in the new corporation.

Madam President, the Bill will significantly improve the technological infrastructural support framework in Hong Kong and enable the provision of strategic and comprehensive support services to industries. This in turn will reinforce Hong Kong's position in the global arena of technological development. I hope Members can support the Bill to materialize an early implementation of the merger.

With these remarks, Madam President, I commend the Bill to Members. Thank you.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Hong Kong Science and Technology Parks Corporation Bill be read the Second time.

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

INTELLECTUAL PROPERTY (MISCELLANEOUS AMENDMENTS) (NO. 2) BILL 2000

SECRETARY FOR COMMERCE AND INDUSTRY (in Cantonese): Madam President, I move the Second Reading of the Intellectual Property (Miscellaneous Amendments) (No. 2) Bill 2000.

At present, the Patents Ordinance and the Registered Designs Ordinance stipulate that notices for patents and designs must be published in the Government Gazette. However, many countries such as Japan, South Korea and the United States have already offered the option of publishing such notices by electronic means. Hong Kong must move with the times. We therefore propose to amend the two Ordinances to empower the Director of Intellectual Property to specify other publications, including publications in electronic form, for publishing official notices for patents and designs. This will also reduce costs and improve efficiency.

We have also taken the opportunity to make a number of technical amendments to the relevant provisions in the two Ordinances to make them more user-friendly, for example, enhancing provisions relating to the right of priority in patent and design applications and simplifying patent application procedures.

We have received general support when we consulted the industry practitioners, the Law Society and the Bar Association on the Bill. The Legislative Council Panel on Trade and Industry also supports the proposals.

Madam President, this Bill will enhance our legislation and further improve the regime for protecting intellectual property rights in Hong Kong.

With these remarks, I urge Members to support the Bill. Thank you.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Intellectual Property (Miscellaneous Amendments) (No. 2) Bill 2000 be read the Second time.

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

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Adaptation of Laws Bill 2000.

ADAPTATION OF LAWS BILL 2000

Resumption of debate on Second Reading which was moved on 8 November 2000

PRESIDENT (in Cantonese): Miss Margaret NG, Chairman of the Bills Committee on the Adaptation of Laws Bill 2000, will now address the Council on the Committee's Report.

MISS MARGARET NG: Madam President, in my capacity as Chairman of the Bills Committee on the Adaptation of Laws Bill 2000, I would like to report on the deliberations of the Bills Committee.

The Bill seeks to adapt the Private Bills Ordinance, the Legislative Council (Powers and Privileges) Ordinance and its subsidiary legislation, and the Legislative Council Commission Ordinance to bring them into conformity with the Basic Law and with the status of Hong Kong as a Special Administrative Region (SAR) of the People's Republic of China.

Members have no objection to the amendments proposed in the Bill which are terminological changes. These include the adaptation of the terms "Governor" to "Chief Executive", "Standing Orders" to "Rules of Procedure", "Her Majesty's Government in the United Kingdom" to "the Central People's Government", and "Letters Patent or Royal Instructions" to "the Basic Law".

Apart from the amendments that I have just mentioned, the Bills Committee has also considered whether amendments should be made to sections 12 and 14 of the Legislative Council (Powers and Privileges) Ordinance.

On section 12, it is the view of the Bills Committee that the warrant prescribed by order in the Gazette for the purpose of apprehending a person who has failed to attend before the Council or its committees should be treated as subsidiary legislation. The Administration agrees to take necessary follow-up action outside the context of the current adaptation of laws exercise.

I shall now turn to section 14. Under the existing section 14(2), it is for the Governor to decide whether a public officer shall appear before the Council or its committees to give evidence relating to correspondence concerning security matters of Hong Kong. However, Article 48(11) of the Basic Law empowers the Chief Executive to determine such matters in the light of security and vital public interests.

Members have discussed whether section 14(2) is inconsistent with Article 48(11), and are of the view that the Basic Law provision is broader in scope because of the reference to the condition of "vital public interests".

According to the Administration, the following principles have been adopted for the adaptation of laws exercise:

(a) the provisions of laws currently in force should be preserved as far as possible; and

(b) the Basic Law is part and parcel of the laws in force in the SAR and, therefore, could be relied on for the purpose of providing protection to Legislative Council Members. At the same time, safeguards provided in existing laws but not in the Basic Law should be retained, provided that they do not contravene the Basic Law.

In the light of these principles, the Administration has advised that the difference in scope between section 14(2) and Article 48(11) does not render the former inconsistent with the latter.

Members accept that the Basic Law is a part of the laws in force in Hong Kong. Therefore, rights and powers provided in the Basic Law are not lost or diminished merely because they are not fully implemented in a Hong Kong enactment. However, some members consider that, when it comes to the exercise of authority of the Chief Executive to exempt people from testifying before the Council or its committees, the better course is to make clear provisions for it in the Ordinance. This would avoid the perception that such executive power is arbitrarily exercised. Further, the Rules of Procedure of the Legislative Council have already made reference to "vital public interests". It is only logical that corresponding amendment should be made to section 14(2). The Administration has subsequently agreed to consider the suggestion as appropriate.

Madam President, with these remarks, the Bills Committee supports the resumption of the Second Reading debate on the Bill.

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

(No Member indicated a wish to speak)

CHIEF SECRETARY FOR ADMINISTRATION: Madam President, the Adaptation of Laws Bill 2000 seeks to bring terminological amendments to the Private Bills Ordinance, the Legislative Council (Powers and Privileges) Ordinance and the Legislative Council Commission Ordinance, so as to bring them into conformity with the Basic Law and with Hong Kong's status as a Special Administrative Region (SAR) of the People's Republic of China.

At the Bills Committee, members discussed whether certain provisions in the Legislative Council (Powers and Privileges) Ordinance were consistent with the Basic Law. The Administration has explained that, as in the adaptation of other legislation, two important principles were adopted in the current exercise. First, provisions of laws currently in force should be retained as far as possible. Hence, safeguards provided in existing local laws but not in the Basic Law should be retained, provided that they do not contravene the Basic Law. Secondly, the Basic Law is part and parcel of the laws in force in the SAR. As such, the relevant provisions in the Basic Law could be relied on to complement the statutory protections under the Legislative Council (Powers and Privileges) Ordinance, where the protection to Legislative Council Members is less than that provided for in the Basic Law.

In the light of these two principles, we are of the view that the difference in scope does not render section 14(2) of the Legislative Council (Powers and Privileges) Ordinance inconsistent with Article 48(11) of the Basic Law. Moreover, Article 48(11) of the Basic Law has already been reflected in Rule 80 of the Rules of Procedure of the Legislative Council and, pursuant to section 15 of the Legislative Council (Powers and Privileges) Ordinance, matters relating to evidence and production of documents before the Legislative Council or its committees should be determined in accordance with the usage and practice of the Council. We do not, therefore, consider it necessary to amend section 14(2) of the Ordinance.

I would like to take this opportunity to thank the Bills Committee for its efforts, without which the scrutiny of the Bill would not have been completed so expeditiously.

Madam President, I urge Members to support the Adaptation of Laws Bill 2000. Thank you.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Adaptation of Laws Bill 2000 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): Adaptation of Laws Bill 2000.

Council went into Committee.

Committee Stage

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

ADAPTATION OF LAWS BILL 2000

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Adaptation of Laws Bill 2000.

CLERK (in Cantonese): Clauses 1, 2 and 3.

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, 2 and 3.

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.

ADAPTATION OF LAWS BILL 2000

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Madam President, the

Adaptation of Laws Bill 2000

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Adaptation of Laws Bill 2000 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): Adaptation of Laws Bill 2000.

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will resume the Second Reading on the Dutiable Commodities (Amendment) Bill 2000.

DUTIABLE COMMODITIES (AMENDMENT) BILL 2000

Resumption of debate on Second Reading which was moved on 8 November 2000

PRESIDENT (in Cantonese): Mr James TO, Chairman of the Bills Committee on Dutiable Commodities (Amendment) Bill 2000, will address this Council on the Committee's Report.

MR JAMES TO (in Cantonese): Madam President, in my capacity as the Chairman of the Bills Committee on Dutiable Commodities (Amendment) Bill 2000, I would like to address this Council on the deliberations of the Bills Committee.

The object of the Bill is to add a presumption provision in the Dutiable Commodities Ordinance to the effect that light diesel oil with a sulphur content in excess of the limit prescribed by law is presumed to be dutiable. The Administration had introduced the same presumption provision for the scrutiny of the Legislative Council in the last term. Members expressed concern on the impact of the presumption provision on professional drivers. However, as it was then close to the end of the term, the Administration could not consult the transport industry in time. So, an agreement was reached with Members to delete the presumption provision from this Bill for the time-being and then re-introduce it for the scrutiny of this Council, after consultation with the transport trade.

We fully support the need for enhanced measures to combat the use of illicit fuel. The use of illicit fuel has not only affected public revenue but also caused air pollution. The sulphur content of illicit fuel is 10 to 100 times higher than that of legitimate fuel. As sulphur content is a reliable indicator of the legitimacy or otherwise of the source of fuel and the payment or otherwise of fuel duty, we unanimously agree that it is necessary to enact the relevant presumption provision, so that Customs officers can combat the use of illicit fuel more effectively.

We also note the actions taken by the Administration in the past few months to address the concern raised by Members of the previous term of the Legislative Council. We are very happy to see that apart from consulting various organizations of the transport industry, the Administration has also agreed with the industry on a set of guidelines on keeping proper filling records. The most important point in the guideline is that professional drivers should keep the last three fuel filling receipts to prove the legitimate source of fuel in the fuel tanks of their vehicles. Government officials assured us that provided that professional drivers can produce evidence to prove their purchase of fuel from legitimate sources, they will not be held liable even if light diesel oil with a sulphur content in excess of the stipulated weight is found in the fuel tank of their vehicles. We believe this arrangement can solve the problem of professional drivers who have to use fuel remaining in the fuel tanks of their vehicles from previous shifts when they cannot confirm their sources.

Though the Administration has explained the presumption provision of the Bill to various organizations of the transport industry, to ensure that professional drivers, in particular those who have not joined any trade associations, are aware of the need to keep proper filling records, the Administration has accepted our proposal on deferring the commencement of the Bill until 1 February 2001. Later on, the Administration will move a Committee stage amendment to this effect. The Administration has assured us that it will carry out a series of publicity work after this Bill has been passed by this Council, to ensure that every professional driver is aware of the importance of the need to keep proper filling records.

Finally, I would like to point out that as the presumption provision will not apply to the 35 000 cross-boundary vehicles, and as the standards of fuel used by these vehicles have always been a subject of concern for members of the community, on behalf of the members of the Bills Committee, I urge the Administration to discuss with the transport industry as soon as possible on reducing the quantity of duty-exempted fuel in cross-boundary vehicles, subject to the condition that it will not affect the actual operations of these vehicles.

With these remarks, I support this Bill. I also urge Members to support this Bill.

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

MRS MIRIAM LAU (in Cantonese): Madam President, the object of the Dutiable Commodities (Amendment) Bill 2000 is to add a presumption provision in the Dutiable Commodities Ordinance to the effect that light diesel oil with a sulphur content in excess of the limit prescribed by law is presumed to be dutiable. On the whole, the transport industry supports this presumption provision for it is aware that the use of illicit fuel will not only affect public revenue, but also damage the engines of their vehicles, causing excessive black smoke to emit from their vehicles and pollute the air. The industry does not wish to bear the blame for causing air pollution because of the low-breaking activity of a small group of people. It has no sympathy for these black sheep and will definitely not tolerate their illegal acts. In fact, when this presumption provision was first introduced at the last term of the Legislative Council, the transport industry already clearly indicated that it had no objections to this provision.

However, I am concerned about professional drivers who have to work shifts, in particular drivers of taxis and public light buses, for it is the practice of drivers to fill up the fuel tanks of their vehicles for drivers of the next shift. Drivers on the next shift may not be aware of the source of the fuel in the fuel tanks of their vehicles. So, I think the Government should formulate a proper record-keeping system to help drivers to demonstrate the extent of their knowledge about the source of the fuel in their vehicles and avoid implicating law-abiding drivers in the use of illicit fuel.

After consulting the relevant organizations of the transport industry, the Customs and Excise Department (C&ED) designed a record-keeping system and a booklet on it. In response to the industry request for the provision of a complaint channel, the C&ED has agreed to provide a 24-hour hotline number in its booklet. It also promised that senior Customs officers will be appointed to deal with complaints on enforcement matters from members of the public, instead of just providing an automated telephone hotline where, for example, callers are requested to press one for Cantonese and two for English.

Furthermore, to allay the worries of the transport industry, the Administration has assured Members that the C&ED will initiate prosecution only if the use of illicit fuel has clearly been established in the absence of evidence to the contrary.

Finally, I would like to point out that there are several hundreds of thousands of professional drivers in Hong Kong, and not all of them have joined trade associations. To ensure that professional drivers are aware of the presumption provision and the need to keep proper filling records, I welcome the decision of the Administration to defer the commencement of the Bill until 1 February 2001. I hope that the Administration will conduct an extensive publicity exercise during the coming month or so, to let all professional drivers know what they should do, so as to prevent law-abiding drivers from being implicated in the use of illicit fuel by unlawful elements.

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

MR HUI CHEUNG-CHING (in Cantonese): Madam President, on behalf of the import and export constituency and the Hong Kong Progressive Alliance, I support the Government's proposal on adding a presumption provision in the Dutiable Commodities Ordinance to the effect that light diesel oil with a sulphur content in excess of the limit prescribed by law is presumed to be dutiable. This will definitely help the C&ED in determining the legitimacy or otherwise of the source of fuel and the payment or otherwise of fuel duty. The new provision will play a positive role in combating the sale of illicit diesel oil which is becoming more and more serious, in protecting public revenue and in preventing the deterioration of air pollution.

Our main concern about the new provision is the government proposal that drivers of diesel vehicles should keep the last three fuel filling receipts for establishing the source of fuel in the fuel tanks of their vehicles; provided that drivers can produce the required number of filling receipts to prove their purchase of fuel from legitimate sources, they will not be held liable even if light diesel oil with a sulphur content in excess of the stipulated weight is found in the fuel tanks of their vehicles. Though this arrangement can reduce the pressure on law-abiding drivers having to take the blame for no cause, law defiant drivers can still conspire to exchange receipts, or there may be "controversial cases" where drivers are made scapegoats because of the illegal actions of drivers of the previous shifts. This is unfavourable to the operation of the transport industry.

In order to avoid innocent drivers from being wrongly accused, receipts from being used repeatedly and from being passed around, the Government should consider to require that the licence plate numbers of vehicles should be included on filling receipts. The Government should also enhance its publicity efforts to ensure that the 150 000 diesel vehicle owners and drivers will try their very best to keep filling receipts.

As regards the 35 000 cross-boundary vehicles which are exempted under the new provision, whereby mainland fuel are allowed to make up three quarters of the fuel in the oil tanks of these vehicles, I think the Government should launch an early discussion on this issue with the transport industry and consider tightening the standard on the quantity of fuel, so as to reduce the quantity of substandard fuel carried by cross-boundary vehicles. With these remarks, Madam President, I support the Bill.

MISS EMILY LAU (in Cantonese): Madam President, I rise to speak in support of the Second Reading of the Dutiable Commodities (Amendment) Bill 2000.

Madam President, like many other Members who have joined the Bills Committee on Dutiable Commodities (Amendment) Bill 2000, I am concerned not only about whether public revenue will be affected, but also the problem of air pollution. Madam President, I think you will also recall that the multi-party alliance worked together to propose a number of proposals in the last term of the Legislative Council, and the proposals were accepted by the Government in no time because we were responding to the strong views of the community on the increasingly serious air pollution problem. What we are discussing today is in fact one of the many issues discussed on that day. The discussion on this issue was deferred to this term because of some problems at that time. And, when this Bill was re-introduced this term, many Members have joined the discussion because we are all very concerned about the air pollution problem. Though we support this Bill today, we also hope to send a strong message to the executive authorities, and we also believe that the consensus of the multi-party alliance still remains. Apart from the problem of air pollution, I hope that the Legislative Council can also work together with the executive authorities to solve the waste management and noise pollution problem. For the above reasons, I support the Second Reading of the Bill.

Furthermore, at that time, some members of the public told me that they were very concerned about the introduction of the presumption provision, because they thought it violated the principle of the law to put the onus of proof on the transport industry; they even asked me whether everyone would be required to carry receipts for newly bought clothes or goods around. I was also aware that the Chairman of the Hong Kong Bar Association had made some comments to the media at that time, and that the Legislative Council Secretariat had contacted the Association immediately afterwards to seek its opinion. The Association replied that they considered the Bill to be in order. We have also discussed this issue with the Government and the transport industry has accepted this arrangement. Madam President, I think that this is very important, for though the onus of proof is placed on the transport industry, they are still willing to accept it. In that case, I think we will all agree that this arrangement has not been made with the intention to repudiate an important legal principle, and it is just that we must do so under the circumstances. I hope that members of the public who have written to us will not mistake that the Legislative Council supports this Bill today because we want to destroy the rule of law or an

important foundation. We only feel that we must support the executive authorities' proposal, and this proposal is also supported by the industry. I hope that when this Bill is implemented in the future, we can demonstrate to the public that we are right in introducing this provision, so that their worries can be allayed.

Furthermore, I would also like to talk about the issue of the 35 00 cross-boundary vehicles which several Members have just referred to, for most of these vehicles are exempted under this Bill. We have been holding discussions with the Government all along, and the Environment and Food Bureau indicated at that time that it would consider taking some actions. Today, I hope Honourable colleagues and I can send a strong and clear message to the executive authorities, that even though this Bill is passed today, there is still work to be done on the problem of air pollution. We think that the public and this Council have already become very impatient, so it is hoped that the officials of relevant departments can soon introduce proposals on legislative amendments or on the formulation of other administrative measures. I appreciate the concerns of the transport industry and I also understand what Mrs Miriam LAU has just said. We fully agree that the Government should explain to the industry during this process, in particular, in relation to the enforcement of the Bill, to let them understand the arrangements. The transport industry must also be consulted on other issues, so that they will understand that certain measures must be taken. Some inconveniences may be caused in the process, but there are no alternatives because in order to solve the environmental pollution problem, some measures must be taken.

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

MR KENNETH TING (in Cantonese): Madam President, the smuggling of illegal fuel will not only affect public revenue but very often, the facilities of illegal oil filling stations are also substandard in terms of fire safety, and thus endanger the lives and properties of the public. Furthermore the high sulphur content of illicit fuel will also lead to air pollution. For the above reasons, the Federation of Hong Kong Industries thinks that the SAR Government must seek to eliminate the use of illicit fuel. The Federation of Hong Kong Industries supports the Dutiable Commodities (Amendment) Bill 2000 in principle.

However, there are two areas which the SAR Government should pay particular attention in the future in the enforcement of this piece of legislation.

First of all, in order to help the C&ED to provide evidence on crimes in relation to the supply and use of illicit fuel, the Bill has transferred the onus of proof onto the suspect. Many members of the legal profession have pointed out that this legislation is problematic. Though the C&ED has repeatedly stated that prosecution actions will only be taken against illegal fuel smugglers when there is no reasonable doubt, we think that the Government should strictly adhere to its promise, to ensure that the Bill will not violate the Bill of Rights.

On the other hand, just as Mrs Miriam LAU said, the Customs and Excise Department has not carried out adequate consultation among members of the transport industry prior to the introduction of the Bill. Therefore, it must enhance publicity work to ensure that all professional drivers of Hong Kong are clearly informed of the commencement date of the Bill and the details of its enforcement, to avoid any disputes with members of the industry which may arise as a result of their misunderstanding of the Bill.

With these remarks, I support this Bill.

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

MR JAMES TIEN (in Cantonese): Madam President, I shall be very brief. I share Honourable Emily LAU's view. I have joined the Bills Committee not because I am especially concerned about public revenue. Of course, today the Secretary for the Treasury is in charge of this issue. In fact, we have joined the Bills Committee to study this Bill because we are concerned about environmental protection and air pollution issues.

With the passage of this Bill, I hope that the Government would also look more carefully into the issue of fuel used by cross-boundary vehicles and consider how this kind of fuel can be sold legally, apart from being concerned about public revenue. However, I think our main concern should be to improve our air quality. Thank you, Madam President.

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

(No Member responded)

SECRETARY FOR THE TREASURY (in Cantonese): Madam President, I am grateful to Mr James TO, Chairman of the Bills Committee on Dutiable Commodities (Amendment) Bill 2000 and other Honourable Members in attendance of the Bills Committee meetings for completing the scrutiny of the Bill in a very short time. Apart from expressing support for the Bill, the Bills Committee also suggested the Government giving further publicity to the presumption provision in the Bill before the Bill comes into operation, so as to enable all members of the transport industry to understand clearly the effect of the provision on them and the importance of keeping proper fuel filling records. The Government has accepted the suggestion and at the Committee stage later on I will introduce an amendment to specify 1 February 2001 as the commencement date of the Bill.

Now I should like to give Honourable Members a brief account of the contents of the Bill. The proposed provision in the Bill stipulates that any light diesel oil found in the fuel tank of a motor vehicle with a sulphur content in excess of the limit prescribed by the Air Pollution Control (Motor Vehicle Fuel) Regulation is presumed to be dutiable. In other words, a motor vehicle driver is required to prove that the light diesel oil found in the fuel tank of his motor vehicle is duty-paid if the sulphur content of such light diesel oil is higher than 0.05% by weight. The rationale for this presumption provision is that since the existing legislation prohibits the supply for vehicular use of light diesel oil with a sulphur content higher than 0.05% by weight while the sulphur content of illicit fuel is generally higher than that limit, any vehicular diesel oil with a sulphur content above 0.05% is therefore very likely to be illicit fuel.

The object of the proposed presumption provision is to enhance the effectiveness of the enforcement and prosecution actions of the C&ED against the use of illicit fuel, in particular, the use of detreated oil and duty-not-paid oil smuggled into Hong Kong from other places. These two kinds of fuel are no different in appearance from legitimate fuel. In addition to protecting government revenue, stepping up actions against the use of illicit fuel also helps to improve air quality on the one hand and alleviate the fire risk that may arise indirectly from the use of illicit fuel on the other.

In the event that this Bill passes Third Reading today, starting from 22 December (which is the day after tomorrow) the C&ED will launch a series of special publicity activities to explain to all members of the transport industry, including vehicle owners and drivers, the effects of the Bill on them and the

guidelines on proper keeping of filling records. Specifically, the C&ED will put up an Announcement of Public Interest programme for broadcasting repeatedly on the radio and on television to disseminate the message, while a hotline will also be set up to answer inquiries in this connection.

Besides, the C&ED will also put up posters and distribute guidelines on keeping proper filling records at all oil filling stations across the territory, popular waiting areas for vehicles, offices of the Transport Department, licensing offices, as well as the various trade associations of the transport industry. Moreover, individual oil companies have also informed the C&ED that to complement the publicity activities of the Government, they are planning to offer some concessionary packages to consumers to encourage the transport industry to use only duty-paid fuel and to keep proper filling records. With the series of publicity activities mentioned just now, we believe the transport industry should be well aware of both the relevant provisions concerned and the importance of keeping proper filling records when the Bill comes into operation on 1 February next year.

For these reasons, I hope Honourable Members will support the Dutiable Commodities (Amendment) Bill 2000 and the amendment I will be moving to it at the Committee stage later on.

Lastly, concerning the issue of exempting from duty the light diesel oil in fuel tanks of cross-boundary vehicles entering Hong Kong mentioned by several Members just now, an inter-departmental working group under the leadership of the Secretary for the Environment and Food has been set up by the Government to study the best way to resolve the problem. Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Dutiable Commodities (Amendment) Bill 2000 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): Dutiable Commodities (Amendment) Bill 2000.

Council went into Committee.

Committee Stage

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

DUTIABLE COMMODITIES (AMENDMENT) BILL 2000

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Dutiable Commodities (Amendment) Bill 2000.

CLERK (in Cantonese): Clause 2.

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 1.

SECRETARY FOR THE TREASURY (in Cantonese): Madam Chairman, I move the amendment to clause 1, as set out in the paper circularized to Members.

As I mentioned in the Second Reading debate, the purpose of the amendment is to specify 1 February 2001 as the commencement date of the Bill. This is to cater for a request made by the Bills Committee to enable the Customs and Excise Department to launch thorough and extensive publicity activities to arouse the awareness of the transport industry of the presumption provision in the Bill and the importance of keeping proper filling records before the Bill comes into effect. The proposed amendment is supported by the Bills Committee, I therefore hope that Honourable Members will also support it.

Madam Chairman, I so submit.

Proposed amendment

Clause 1 (see Annex IV)

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for the Treasury 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 1 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.

DUTIABLE COMMODITIES (AMENDMENT) BILL 2000

SECRETARY FOR THE TREASURY (in Cantonese): Madam President, the

Dutiable Commodities (Amendment) Bill 2000

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Dutiable Commodities (Amendment) Bill 2000 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): Dutiable Commodities (Amendment) Bill 2000.

MOTIONS

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

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

CHIEF SECRETARY FOR ADMINISTRATION: Madam President, I move the resolution standing in my name on the Agenda. The resolution seeks this Council's endorsement of the appointment of Mr Justice Arthur LEONG Shiu-chung as the Chief Judge of the High Court.

The Panel on Administration of Justice and Legal Services of the Legislative Council discussed the appointment at its meeting held on 28 November. Representatives from the Administration and the Secretary to the Judicial Officers Recommendation Commission (JORC) attended the meeting and provided further information on the appointment exercise subsequently.

As the Administration has explained to the Panel on Administration of Justice and Legal Services and in the Legislative Council Brief, in accordance with Article 88 of the Basic Law, the Chief Judge of the High Court shall be appointed by the Chief Executive on the recommendation of 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 on the filling of vacancies of judicial offices. In the case of the appointment of 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 the JORC, together with the provision for endorsement by the Legislative Council for appointment of 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.

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

I now turn to the current appointment exercise.

The Chief Judge of the High Court is the court leader of the High Court. He is also the President of the Court of Appeal. Mr Justice Patrick CHAN filled the post of Chief Judge of the High Court from 1 July 1997 until 30 August 2000. Since 1 September 2000, following the appointment of Mr Justice CHAN as a permanent judge of the Court of the Final Appeal (CFA), the post has been filled on an acting basis under section 8(1) of the High Court Ordinance.

The legal qualifications required of the Chief Judge of the High Court are set out in the Basic Law and the High Court Ordinance.

Article 92 of the Basic Law stipulates that judges of the Hong Kong Special Administrative Region shall be chosen on the basis of their judicial and professional qualities. Specifically, Article 90 of the Basic Law provides that the Chief Judge of the High Court shall be a Chinese citizen with no right of abode in any foreign country.

The professional qualifications for the Chief Judge of the High Court are the same as those for a Judge of the High Court, which are stipulated in section 9 of the High Court Ordinance.

In accordance with the Basic Law, the JORC has recommended the appointment of Mr Justice LEONG as the Chief Judge of the High Court. This recommendation has been communicated to the Chief Executive.

Mr Justice Arthur LEONG, currently a Justice of Appeal of the Court of Appeal, has served in the Judiciary since 1973. He is highly respected by members of the Judiciary and by the profession for his integrity, professional competence and judicial temperament. He will reach the retirement age of 65 on 14 July 2001. The JORC is of the view that in order for Mr Justice LEONG to function effectively as the Chief Judge of the High Court, he should be asked to hold the post for about two and a half years. Accordingly, the JORC has recommended that Mr Justice LEONG's term of office, under section 11A of the High Court Ordinance, be extended to 13 July 2003 so that he can serve as the Chief Judge of the High Court for about two and a half years until he reaches 67. Mr Justice LEONG has confirmed to the Chief Justice that he is able and willing to serve until then, and to comply with the eligibility requirements including the Chinese nationality requirement.

In the current appointment exercise, the Chief Executive was informed of the considerations leading to the recommendation of the JORC on the appointment of the Justice LEONG as the Chief Judge of the High Court. He was satisfied that the recommendation on the appointment was effective and the procedure was proper and in order. The Chief Executive, therefore, accepted the recommendation of the JORC, and subject to the endorsement of the Legislative Council, will make the recommended appointment, and will also extend the term of office of Mr Justice LEONG until 13 July 2003.

With Members' endorsement, it is intended that the appointment of Mr Justice LEONG would take effect on 1 January 2001. Accordingly, the Administration seeks Members' support for this resolution today so that the constitutional process for appointments may be completed by the end of this year.

Madam President, I invite Members to endorse the appointment.

The Chief Secretary for Administration moved the following motion:

"That the appointment of the Honourable Mr Justice Arthur LEONG Shiu-chung as the Chief Judge of the High Court 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 be passed.

Does any Member wish to speak?

MISS MARGARET NG: Madam President, I rise to support the resolution proposed by the Chief Secretary for Administration.

The recommendation of Mr Justice LEONG as Chief Judge of the High Court has been discussed in the Panel on Administration of Justice and Legal Services. Members noted with appreciation the improvement in the form and content of the Legislative Council Brief on the recommendation. It is a proper recommendation generally accepted by the legal profession. At the same time, there is clearly further room for fuller information to make the endorsement process more meaningful. I look forward to future efforts to achieve that.

I have voiced on an early occasion the view that the present process of appointment of senior judges lacks transparency. Greater transparency will more effectively protect judicial independence and enhance proper confidence in the Courts.

Members will be interested to know that the Panel has embarked on a course of studying the process of appointment of senior judges in other jurisdictions. Research reports have already been prepared for the United

Kingdom and the United States systems respectively, and views are being invited from academics and the legal profession in Hong Kong and abroad. It is envisaged that further reports will be prepared on the Canadian system and the historical development of Hong Kong's own system.

At the end of the day, Hong Kong's situation is unique, and must have a system best suited to its legal framework and special needs, but comparison will give us a useful perspective.

A response from the Judiciary will be invited in due course, to see if proposals to increase the transparency of the appointment of Hong Kong's senior judges are viable.

Madam President, it is early days to tell what will come out of the Panel's study. But any proposal to be made must be sensitive to the perception of the community on the independence of the Judiciary. It must also be such as to make it more, and not less attractive for well qualified persons to come forward and serve on the Judiciary.

With these words, Madam President, I support the resolution.

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

MISS EMILY LAU (in Cantonese): Madam President, the Chief Secretary for Administration has proposed this resolution to seek this Council's endorsement of the appointment of Mr Justice Arthur LEONG Shiu-chung as the Chief Judge of the High Court under Article 73(7) of the Basic Law.

Madam President, I also agree with the remarks made by the Honourable Margaret NG a moment ago that there were improvements in the way of handling the matter, at least improvements were made by the executive authorities in terms of the provision of information and its timely provision. Madam President, perhaps you can still remember there were much discontent in the last Legislative Session because only one single press release was issued and our opinions were totally ignored. Undoubtedly, more information has been provided in this case. However, in respect of getting across the information to this Council and allowing legislators to exercise their authority to endorse the

appointment, Madam President, I consider it useless. As a result, I find it hard to support the resolution proposed by the Chief Secretary for Administration.

Madam President, why do I say so? In fact, a point of frequent contentions in the last Legislative Session was the view of the executive authorities that the authority of the Legislative Council under Article 73(7) of the Basic Law is no more than a rubber-stamp, that is, we have to endorse whatever motions it proposes. At that time, we agreed that it was not true after a heated debate. Actually, that authority is a substantive power. We can reject any motion, and we may veto any motion. Madam President, when we exercise the authority substantively, I believe every reasonable person will agree that we should go through certain established procedures before deciding whether or not Mr Justice Arthur LEONG Shiu-chung is the right person. To be honest, Madam President, now I cannot say whether or not he is suitable (*laughter*). Just now I have praised the Chief Secretary for Administration for providing us with so much information and explaining all the relevant procedures. However, the Judiciary has not told us how the candidates are selected from the numerous applicants before a list is put forward to the JORC. In the beginning, they were even very reluctant to tell us the number of candidates on the selection list, other than saying that there were over 50 people. At that time, I asked what was the exact number of more than 50 people? Was it 53 or 54? The Honourable Martin LEE then said that it appeared to be 81. Anyway, it could be said that it was over 50 people as long as the number was greater than 50. Subsequently, they replied us in writing as if we were pulling out their teeth that 54 candidates were nominated, but only six were short-listed, and then it came down to only Mr Justice LEONG. Nevertheless, if the President or anyone should ask me how the 54 candidates are short-listed to six people and finally one person, I must say I can never tell. Madam President, is it reasonable for us to know more than that?

I consider the remarks of Miss NG right. Despite we hold different views on the entire selection process, we do not want to learn that some candidates lose the desire of taking up the post of judges because of the cumbersome procedures, or because of the candidate's privacy is infringed, or too much privacy is involved. However, we have to strike a balance, and most importantly, make the process transparent to at least let legislators know how these six people are selected from among the 54 candidates and how the final one

candidate is selected. I have to know the relevant information clearly before exercising the relevant authority. As a result, Madam President, I am sorry that I cannot support the motion proposed by the Chief Secretary for Administration.

Madam President, how does the current system work? Now, if there are judicial vacancies at or below the District Court level, advertisement of the vacancies will be made to invite qualified persons to make applications. Interview Boards would then be convened and assessments of candidates would be put forward by the Judiciary to the JORC for consideration. At least there is a procedure for this. Then, why the High Court and above cannot adopt this procedure? The Judiciary Administrator told us that it was because only eligible persons of the highest standing will be considered for appointment, and because such persons are generally well known to the Judiciary and the legal profession, therefore no advertisement was necessary. I consider this answer a far-fetched one, because even these people are aware of the vacancy, a proper channel should be in place to allow those people who wish to take up the position to learn about the vacancy and to make applications. Now I can see that the list of candidates is jointly drafted by the Chairman of the JORC, who is also the Chief Justice of the Court of Final Appeal, Mr Justice Andrew LI Kowk-nang, and the secretary to the JORC, the Judiciary Administrator; before it is put forward to the committee for selection. I consider this practice lack of transparency, and I believe even the legal profession is not at all familiar with the relevant process. As a result, Madam President, I think it is necessary to change the existing practice.

Just now Miss Margaret NG mentioned that the United Kingdom has already started revising the procedure. Actually, I have also referred to experience overseas. In the last two years, the open recruitment exercise of judges in the United Kingdom was similar to the recruitment of civil servants, and candidates who have passed the interview would get the appointment. To us, the American experience is a more valuable reference. Madam President, I am not advocating a wholesale copycat adoption, and perhaps the American way of making recommendations does not merit our adoption, because legislators have to make the recommendation, thus it is possible to turn the recommendation process into a politicized issue. In the United States, the Office of Policy Development (OPD) under the Department of Justice will deal with the recommendations made by Senators and Congressmen of different political parties. Madam President, now I am going to read out the information

compiled by the Research and Library Services Division of the Legislative Council Secretariat, which I highly recommend to Honourable Members as reference, because it is a set of neatly compiled information. The OPD has certain staff responsible for the judicial selection process of judicial vacancies. Madam President, what are their responsibilities? The staff of the OPD will interview a prospective nominee in person, that is, candidates selected from the nomination process mentioned by me earlier. They will then ask Federal and State judges, prosecutors, defenders, other attorneys and support staff about the candidate's reputation and merit for the Federal Bench. They will also examine any articles written by or about the candidate, and review all of the cases, news, writings and websites mentioning the candidate, as well as financial disclosure statements and a physician's evaluation of the candidate's health. A questionnaire will be sent to the potential candidate for the purpose of collecting personal data. With the exception of a small part of legal proceeding and taxation audit information which will be kept in confidence, most of the results of these questionnaires will be made available for public inspection, thus everybody can look up all this information.

If the preliminary evaluation of a prospective nominee is positive, the candidate's name will be referred to the Federal Bureau of Investigation (FBI) for investigation. The FBI's investigation of potential judicial nominees focuses on general background issues including the candidate's security questionnaire. I believe the scope of the FBI investigation is similar to the integrity checking of the Hong Kong Government. Madam President, you are also aware of the fact that the former Director of Inland Revenue was caught in this respect. The FBI agents will begin their investigation by verifying the candidate's background information concerning education, jobs, residences, as well as any background issues since the candidate's 18th birthday. FBI agents also interview Federal and State judges and other government officials, as well as attorneys, business and civic leaders, religious and civil rights leaders, neighbours and doctors. They will also check the candidate's records of arrests and convictions, civil lawsuits, credit history in addition to the verification of the candidate's tax record. The OPD will then make an evaluation of the candidate's suitability for the Federal Bench. Furthermore, the American Bar Association (ABA) will also conduct an evaluation. If the ABA rating, the FBI report, the Department of Justice's evaluation are positive in general, the nomination will be formally recommended to the President, and then tabled to the Senate for approval. I do not want to say much about the Senate, because many people consider it too politicized in this respect. However, I wish to propose this practice because I

think transparency can only be achieved by adopting it, but we do not have to copy everything from it. I just want to say that the difference between the selection system of the United States and Hong Kong is just like heaven and earth. Despite knowing that the resolution will be passed today, I still consider it worthy for the JORC to study what should the proper process for the recommendation of judges in future be.

As to Mr Justice LEONG, just as the Chief Secretary for Administration has mentioned earlier, he will reach the retirement age of 65 on 14 July 2001. However, in order to allow Mr Justice LEONG function effectively as the Chief Judge of the High Court, he should be asked to hold the post for about two more years. Accordingly, Mr Justice LEONG's term of office is allowed to be extended for two more years. As we do not know who else are the dozens of the rest of the candidates, thus we cannot help asking why we are unable to choose a single candidate out of so many candidates who is not reaching his or her retirement age that soon, especially when we have successfully identified some younger judges as Judges of the Court of Final Appeal a few months ago? I have no intention to criticize Mr Justice LEONG, because I have no other information on hand except the only information showing that this prospective nominee is going to retire, but he is the most suitable candidate. I do not know why it should end up like this, but the fact is we have been unable to obtain more information than that.

Furthermore, I received a letter from the Director of Administration on 13 December, which is in fact the letter mentioned by the Chief Secretary for Administration earlier. At that time, I asked the Director of Administration about the nationality of judges. It is because Article 90 of the Basic Law provides that the Chief Judge of the High Court of the Hong Kong SAR shall be Chinese citizens who are permanent residents of the SAR with no right of abode in any foreign country. My question was in fact on whether Mr Justice LEONG had renounced his foreign nationality. The Government had confirmed with a positive answer, stating that he had completed the formalities of renouncing his foreign nationality. Therefore, it was necessary for him to give up his foreign nationality. Of course it was handled according to law. However, there is no information to show us why it is unable to select another suitable candidate from so many candidates, nor is there any information showing that he is the most suitable person.

In fact, Madam President, I also wish to talk about Article 90 of the Basic Law. There are nine Judges in the Court of Appeal of the High Court, however,

because of Article 90 of the Basic Law, six of them need not bother to inquire about the vacancy because even if they are willing to renounce their original nationalities, they are basically not Chinese citizens. Even though it is stipulated in the Basic Law and I understand that there are nationality restrictions for Judges of the Court of Final Appeal as well as Judges of the High Court, sometimes I still want to ask why the nationality of a person will prevent some well qualified persons from filling up the vacancy. I consider whether a judge is qualified depends on his competence, integrity and character, not the colour of his skin.

Madam President, I have to repeat once again here that I hope we can have a more transparent mechanism in the future. Next time when the Chief Secretary for Administration puts forward some resolutions to this Council for our endorsement on some government proposals (I do not know when), I hope every Member will be able to say that they have gone through all of the papers, and they consider a certain candidate or several candidates selected from so many contenders the best choice. By that time, this Council shall give its endorsement.

Madam President, I so submit and I will abstain from voting.

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

MR ALBERT HO (in Cantonese): Madam President, on the last occasion when this Council exercised its authority to endorse the appointment of the Judges of the Court of Final Appeal, Honourable Members affirmed in their speeches that the authority of this Council is a substantive power. In other words, this Council may exercise or refuse to exercise its authority of appointment. However, we also acknowledged clearly that when we exercise the authority, we would need to establish a tradition, that is, to respect the decision of the JORC as far as possible, and under normal circumstances, respect the appointments made by the Chief Executive.

We do not wish this Council to turn into another JORC, nor do we wish to set up another committee to examine the Judges one by one before selecting the most suitable candidate for appointment. I think this is not the original intent of the Basic Law, because we ought not to be required to exercise this authority

once again (otherwise a situation may arise that two organizations have to exercise the identical authority). Then, when should we exercise the authority? That occasion comes when there have specific reasons to support our views that the recommendation of the JORC is totally unacceptable, or on the basis of other information that we are of the view that the acceptance will affect the rule of law, judicial independence and so forth. We shall only exercise the authority under such circumstances. To be exact, we should either have sufficient reasons to exercise the authority, or we should establish a tradition as far as possible and to respect the conventional mode of operation, that is, to accept the views of the JORC under normal circumstances. Since the Chief Executive has always respected their recommendations, thus this Council should respect their recommendation as far as possible.

However, I agree with the views of Miss Emily LAU to a certain extent: given the power conferred on us by the Basic Law, we should duly perform our duties. Of course, having a good grasp of the necessary information is vitally important. However, we should study how best co-ordination can be effected among the JORC, the Chief Executive and the Legislative Council in exercising their authorities respectively. I remember Miss Margaret NG once expressed that when Members of the second Legislative Council assumed office, they should conduct an in-depth study on this issue and put forward proposals. Therefore, we are conducting some comparisons and studies in order to see which system is the most suitable one.

Accordingly, the Research and Library Services Division of the Legislative Council Secretariat is now studying a whole host of information. The information quoted by Miss Emily LAU has been compiled by colleagues of the Secretariat with grave endeavours before putting forward to us in the form of a report, which I consider very useful. However, before we can come up with a set of new proposals for discussion with the Government, should we adopt the attitude as I have mentioned earlier? That is, unless we have good reasons to reject the recommendation, otherwise, we should accept the recommendation of the JORC. Nevertheless, if we can recommend a better system and discuss it with the Government in the future, or if the JORC has no reason to reject such a proposal, I think we can have a better justification to exercise our authority, and question why we have to function like rubber-stamps. Until then, we shall have stronger reasons to express our objection.

Today, under such circumstances, despite we doubt that the existing procedure is far from perfect and there are many outstanding issues to be solved, many colleagues have said that the paper submitted by the Administration Wing this time has great improvement, thus it represents a due response to our criticisms made on the previous occasion. Besides the age issue mentioned by some colleagues, we have not heard of any specific reason why Mr Justice Arthur LEONG Shiu-chung is not suitable for the appointment. Moreover, the Government has at least given us a reply on the issue of retirement on this occasion. Right now we do not intend to intervene any judicial appointment by saying who is better than who or who is the better choice. In fact, we are not studying these issues, because we do not have the information to conduct this kind of study. However, there is one thing I can say, which is, I do not see any reason at this moment why Mr Justice Arthur LEONG Shiu-chung is not the right candidate. Therefore, at this stage, I do not wish to create a precedent to show that we reject the recommendation of the JORC, an organization which has been operating independently right from the outset. This is something I do not wish to do. I rise to speak today because I want the Chief Secretary for Administration to respond to one issue later on, that is, when the committee proposes views in the future, she will discuss them with the relevant officials and departments as far as possible, and see how the system can be improved. This is a reasonable request, therefore I hope the Chief Secretary for Administration will make an appropriate response. However, today, I feel that this Council should still respect the independent decision of the JORC and support the resolution of the Government. For that reason, after we have conducted relevant studies, we shall make concerted efforts and see how the system can be improved.

I so submit. Thank you, Madam President.

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

(No Member responded)

CHIEF SECRETARY FOR ADMINISTRATION: Madam President, I have noted the comments made by the Honourable Miss Margaret NG, the Honourable Miss Emily LAU and the Honourable Albert HO. I shall, of course, discuss their comments with the Chief Justice and the Judiciary. I am very sorry that Miss Emily LAU is unable to support the resolution, although I

understand her underlying concern. Her concern is that there should be a higher standard of transparency. But at the same time, I am sure that none of us would wish to see the judicial officer's appointment being politicized. I shall be very happy to discuss Members' comments with the Chief Justice. I am sure that the information gathering exercise in which the Panel is now engaged will also provide additional information. I promise to consider this very carefully. 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 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): Motion. Proposed resolution under the Dutiable Commodities Ordinance.

PROPOSED RESOLUTION UNDER THE DUTIABLE COMMODITIES ORDINANCE

SECRETARY FOR THE TREASURY (in Cantonese): Madam President, I move that the resolution printed on the Agenda be passed. This resolution seeks to extend the concessionary duty rate (which is now at $1.11 per litre) on ultra low sulphur diesel (ULSD) to 30 June, 2001.

The purpose of the concessionary duty rate proposal is to alleviate the pressure on the operation of the transport industry and to respond to their request for extending the tax concession.

The Government fully understands that Hong Kong economy is on the road of steady recovery. Psychologically speaking and in terms of real income, the general public is still in a state of recovery in the aftermath of the financial turmoil and the economic adjustment over the past two years. They have yet to benefit from the overall economic recovery. As for the transport industry, they may have to face pressure of price increase in respect of diesel early next year because of increasing demand for energy during the winter period. Having listened carefully to the views of the industry, the Government decided to defer the timing for adjusting the concessionary duty rate on ULSD.

Since the Government expects that the fiscal deficit for the year 2000-01 will be greater than expected, we, as a responsible government, have to carefully consider the impact of extending the tax concession on the Government's overall financial position and do our best to keep expenditure within the limits of revenue while empathizing with the transport industry. In fact, the Government has already lowered or waived some duties on fuels for various reasons over the past two years or so. In June 1998, the Government reduced the duty on regular motor diesel from $2.89 per litre to $2 per litre, which represents a 30% reduction, in order to alleviate the difficulties faced by the transport industry. In order to encourage the transport industry to switch to ULSD for environmental protection, the Government granted duty concession and set the duty rate on ULSD at $1.11 per litre in July this year. As a result, the duty rate on ULSD is still lower than that on ordinary diesel by $0.89 per litre until 31 December this year. The Government's recurrent revenue will be reduced by a total of about $2.4 billion as a result of these relief measures. It is estimated that the Government's recurrent revenue will be further reduced by about $0.3 billion as a result of the proposed extension of the concessionary duty on ULSD at $1.11 per litre for six months.

We have decided to extend the existing concessionary duty rate on ULSD for six months. Apart from considering the request of the transport industry and the financial implication of extending the concessionary duty, we have also made reference to the forecasts on the trend of fuel demand made by many international experts. They generally opined that there would be room for downward adjustment when it got warmer this coming spring. It is believed that the transport industry may benefit from the economic recovery by then.

The duty rate on regular motor diesel will be adjusted to $2.89 per litre from 1 January 2001 by virtue of the existing legislation. Since most diesel vehicles have switched to ULSD, this adjustment will not affect the transport industry but will further ensure a total replacement of regular motor diesel by ULSD and the purpose of improving air quality can be achieved.

I hope Members will support the resolution. Thank you, Madam President.

The Secretary for the Treasury moved the following motion:

"That the Dutiable Commodities Ordinance be amended, in Part III of Schedule 1:

(a) in paragraph 1A(a), by repealing "31 December 2000" and substituting "30 June 2001";

(b) in paragraph 1A(b), by repealing "1 January 2001" and substituting "1 July 2001"."

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

Does any Member wish to speak?

MR FRED LI (in Cantonese): Madam President, we certainly support this resolution. In fact, the same issue was discussed by this Council not long ago and our amendment then also won the support of Members. We were concerned whether the oil companies had transferred this $0.8 (it is not $0.89 as the $0.09 has already been reflected in the pump price) benefit to consumers. However, we have now learned that the oil companies had pocketed this $0.8 per litre, giving rise to much controversy. The present proposal is to extend the effective period of concessionary duty rate for another six months and the duty concession will be maintained at $0.8 per litre. However, the Government has yet to announce any mechanism for preventing oil companies from pocketing the concession. Since the emergence of this controversy and with the wide coverage by the mass media, the oil companies have successively announced

three price reductions. I have done some calculations and found that more than $0.4 has been deducted with these three price cuts. Basically, the oil companies should have no chance of pocketing the concession. Nevertheless, we still see no mechanism forthcoming to ensure that the oil companies will not pocket the duty concessions in the coming six months. If the oil prices are further reduced, the price difference between ordinary diesel and ULSD will not be $0.4, but may be $0.3 or even $0.2, and the oil companies will have further room for price reductions. Under the circumstances, how is the Government going to monitor and what mechanism does it have to regulate in order to ensure that all duty concessions, which are public money, can benefit the transport industry and related sectors, instead of being pocketed by oil companies? This is what we are and should be most concerned about.

I cannot see any officials from the Economic Services Bureau in this Chamber today. We support the duty concession. However, I hope that the Secretary for the Treasury, as the "manager" of government finances, can study what mechanisms could be adopted to ensure that oil companies will not pocket the duty concession in the coming six months. Thank you, Madam President.

MR HUI CHEUNG-CHING (in Cantonese): Madam President, on behalf of the import and export sector and the Hong Kong Progressive Alliance, I welcome the Government's acceptance of good advice in extending the effective period of concessionary duty rate for ULSD by six months. Not only does it show that the Government is determined to improve air quality, it can also alleviate the difficulties faced by operators in the transport industry due to long-standing high oil prices. Besides, this can help to prevent them from risking using illicit diesel oil, which may be injurious to the environment and the Government's tax revenue.

It is a matter of course that the Government should ensure that all duty concessions can be transferred onto the consumers, instead of being pocketed by the oil companies again. I believe that oil companies, as commercial organizations, have the right to determine oil prices according to market needs. However, they are also public utility companies, and the Government has the responsibility of urging the oil companies to enhance the transparency of pricing, such as requiring them to constantly provide clear and easily comprehensible information to consumers, the Legislative Council and the Government. In this way, members of society can effectively monitor the oil companies to see

whether they have manipulated the prices, and whether they have reaped undue profits through improper means. In the long run, the Government should introduce a competitive mechanism so that oil companies can be induced to set prices at a reasonable level.

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

MRS MIRIAM LAU (in Cantonese): Madam President, in regard to the Government's proposal of extending the effective period of concessionary duty rate for ULSD by half a year till 30 June next year, the transport industry is somewhat disappointed as it has requested a one-year extension.

Nevertheless, we welcome the Government's move of expressing its sympathy towards the transport industry. This can at least show that the Government recognizes that the industry is facing genuine difficulties and understands that the it is not asking for an extension of the effective period of concessionary duty rate for no good causes. However, it is still early to conclude whether the industry can really have a chance to regain its breath in the coming six months. It is because if oil prices increase again, the pressure on the industry still remains. The Government therefore has to monitor the movement of oil prices closely. If oil prices continue to go up in the future, it is highly probable that the Government has to face yet another request of extending the effective period of concessionary duty rate. The Secretary for the Treasury explained in her speech earlier why the concessionary period could only be extended by six months. The Government predicts that there would be room for downward adjustments of fuel prices in spring next year, and that the transport industry may then be able to benefit from economic recovery and thus find fuel prices relatively affordable.

Madam President, I do not have a crystal ball, nor do I know what would happen in the future. However, the transport industry and I earnestly hope that what the Government can see in the crystal ball can be realized. But if things go contrary to the Government's wishes, I hope that the Government will not blame the transport industry which will then be making the request again.

Madam President, apart from monitoring the movement of oil prices, the Government should also closely monitor the operating environment of the industry. In fact, although the Hong Kong economy has already recovered, the

transport industry has not yet enjoyed the benefits brought by economic recovery (at least it is the case at this moment). The spending power of the public is still very weak. We do not see any increase in the passenger volume of taxis, minibuses and school private light buses, nor do we see any improvement in the business of light goods vehicles, freight forwarders and container trucks. Of course, we hope that this situation will not last very long. But I believe no one can predict when this situation will be reversed. If it continues, as I said earlier, I truly hope that the Government will not turn a blind eye to it.

Moreover, the oil companies announced days ago that prices for ULSD would be further reduced, and this is the third reduction since ULSD was introduced in July this year. The accumulative reduction has already reached $0.4 per litre. However, I hope that the Government can bear in mind that even though the present duty rate is maintained at $1.11 per litre and the oil companies have already reduced the price by $0.4 per litre, the present price level of ULSD is still higher than the level in June 1998. Although the $0.4 reduction by the oil companies represents to a certain extent a positive response to the criticisms of the Government and the public, the price reduction by oil companies does not mean that the mission of the Economic Services Bureau has been completed. The Economic Services Bureau should continue to monitor movements in the import price of ULSD, and look for effective ways of monitoring the oil companies and introducing effective competition.

Apart from all this, in order to reduce oil prices to a reasonable level, the Government should conduct a comprehensive review of oil duties, refer to the oil duty policies of Hong Kong's major competitors including the Mainland, and assess the impact of fuel prices on the transport industry of Hong Kong, especially the overall competitiveness of the freight forwarding industry, in order to formulate a fuel duty rate which is fair, reasonable and conducive to the economic development of Hong Kong.

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

MR CHAN KWOK-KEUNG (in Cantonese): Madam President, the Hong Kong Federation of Trade Unions (FTU) and the Democratic Alliance for Betterment of Hong Kong (DAB) support the Government's extension of the effective period of concessionary duty rate for ULSD by six months. Under the existing economic conditions, the general business environment of the transport

industry is still rather difficult. If the effective period of concessionary duty rate for ULSD is not extended, oil prices will definitely rise while the income of professional drivers will consequently decrease, hence rendering their livelihood even worse. Therefore, from the point of view of professional drivers, the FTU and the DAB support the proposal of the Government. Nevertheless, if the economy is still not fully recovered by July next year, we hope that the Financial Secretary and the Secretary for the Treasury will, on basis of the people-oriented policy, continue to extend the effective period of concessionary duty rate for ULSD so as to give some breathing space to professional drivers.

At the end of the last month, the Financial Secretary announced that the effective period of concessionary duty rate for ULSD would be extended by six months, that is, from 1 January 2001 to 30 June 2001. The Financial Secretary emphasized that although Hong Kong had recorded economic growth, the general public had yet to benefit from it. He therefore announced some relief measures, for example, a freeze on four items of charges related to the people's livelihood and an extension of the effective period of concessionary duty rate for ULSD by six months. The purpose is to relieve the burden of the public and the transport industry so that they can share of the fruits of economic growth.

Madam President, fuel prices form the most important part of the operating cost of the transport industry. Fluctuations in fuel prices will definitely affect the livelihood of professional drivers. In order to promote environmental protection in the transport industry and to clean the air of the environment, the Government encourages drivers of diesel vehicles to switch to ULSD by setting the duty rate for ULSD at $1.11 per litre. As a result, the duty rate for ULSD is $0.89 lower than that for ordinary diesel. This move serves to encourage drivers of diesel vehicles to switch to USLD as soon as possible and thus to alleviate the burden of the industry in regard to fuel prices. If the Government does not provide any duty concessions from 1 January next year onwards and the duty rate for ULSD restores to its original level, seeing that there is no duty concession, oil companies will surely increase oil prices. At the end of the day, it is the transport industry that will suffer, and the livelihood of professional drivers in general will be seriously affected. Therefore, the transport sector welcomes the Government's proposal to extend the effective period of concessionary duty rate for ULSD.

Besides, in the previous debate on the extension of the effective period of concessionary duty rate for ULSD, the FTU and the DAB made an explicit request on the Government to introduce competition into the fuel market, and to minimize monopoly of the fuel market by making use of the market mechanism so that oil prices can be genuinely reduced. We hope that in the coming six months, the Government can positively study and implement the relevant measures, so that when the concessionary period expires in June next year, oil prices can still be maintained at a reasonable and lower level. On the other hand, we still hope that next year will be a better year, when international fuel prices will be adjusted downwards and Hong Kong will have sustained economic growth, with oil prices coming down to a level affordable to the public and the transport sector. The Financial Secretary predicts that there will be sustained economic growth next year. However, the growth rate will slow down and will be less than the 10% growth rate forecast for this year. The reason is that in a matured economic system, it is not possible to have double-digit growth for two consecutive years. The Financial Secretary has pointed out that with the increase in oil prices and with uncertainties in the economic situations of major export markets like the United States and Japan, there are hidden worries as far as the Hong Kong economy is concerned. I hope that the Financial Secretary is not a prophet in the sense that he can foresee anything and that his prophecies will not come true. However, if his prophecies come true, I hope that after July next year, the Financial Secretary and the Government will still take care of the needs of the transport industry by extending the effective period of concessionary duty rate for ULSD.

Finally, it is true that the provision of concessionary duty rate for ULSD will cause loss in recurrent revenue to the Government. However, the FTU and the DAB clearly uphold that the interests of the transport industry should come first. I hope that when the operating environment of the industry improves, members of the public can also be indirectly benefitted.

Madam President, I so submit.

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

(No Member responded)

SECRETARY FOR THE TREASURY (in Cantonese): Madam President, I would like to thank Members who have spoken in support of the resolution. I have to reiterate that the Government has proposed to extend the concessionary duty rate for six months after balancing all considerations. If the industry or anybody requests for a further extension of the duty concessionary period, the Government will have to take account of its overall fiscal position, in particular, the revenues and expenditures of its recurrent account.

Some Members just now mentioned how to prevent oil companies from pocketing part or all of the concession which is to requite the consumers. As we all know, the three major oil companies in Hong Kong adjusted downward again the pump price of ULSD by $0.14 to $0.15 per litre on last Friday, 15 December. In view of the cumulative reduction on the pump price offered by the oil companies since July this year and the average difference of import prices between ULSD and ordinary diesel from July to October, the Government opines that the oil companies have transferred all the concession granted by the Government for the purpose of environmental protection to consumers. The Government will continue to monitor closely the import price trend of diesel. It will also discuss with individual oil companies with a view to stepping up mutual communication and increasing the transparency of the pricing policy for ULSD in future. I believe this will facilitate the monitoring efforts of various parties. 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 the Treasury 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): Motion. Proposed resolution under the Pneumoconiosis (Compensation) Ordinance.

PROPOSED RESOLUTION UNDER THE PNEUMOCONIOSIS (COMPENSATION) ORDINANCE

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, I move that the motion, as printed on the Agenda, be passed.

This motion seeks to amend the amount of funeral expenses payable under the Pneumoconiosis (Compensation) Ordinance. The Pneumoconiosis (Compensation) Ordinance provides for the payment of compensation to persons diagnosed to have been incapacitated by pneumoconiosis on or after 1 January 1981. For pneumoconiosis patients who die from the disease, their family members may also claim funeral expenses under the Ordinance. Since 1 August 1998, the maximum amount has been set at $16,000.

The Government reviews the levels of various compensation items under the Employees' Compensation Ordinance and the Pneumoconiosis (Compensation) Ordinance every two years and adjusts the amounts taking into account the changes in price and wage levels as well as other related factors in the interim. The 2000 review has been completed. We propose that the amount of funeral expenses payable under the Pneumoconiosis (Compensation) Ordinance should be raised from $16,000 to $35,000, to make it consistent with the amount of funeral expenses stipulated in the Employees' Compensation Ordinance.

As for other compensation items, with the economic recession in the past two years, most of the reference data, including the Nominal Wage Index and the Consumer Price Index (A), recorded negative growth of between -1.32% to -6.96%. We are of the view that if the amounts of compensation were to be adjusted downwards strictly in accordance with past practices, the rate of reduction would be insignificant. Therefore, we recommend to maintain the existing levels of compensation unchanged in the coming year. However, we will take into account the negative growth over the past two years in future reviews of the amounts. In other words, the levels of compensation would not be revised upwards until the cumulative rates of decrease have been set off by future increases in price or wage levels.

The Labour Advisory Board has endorsed the above proposal and I urge Honourable Members to support and pass the motion.

Thank you, Madam President.

The Secretary for Education and Manpower moved the following motion:

"That, with effect from 1 January 2001, the First Schedule to the Pneumoconiosis (Compensation) Ordinance be amended, in Part VI, by repealing "$16,000" and substituting "$35,000"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Education and Manpower be passed.

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): Madam President, I move that the motion of the Secretary for Education and Manpower be amended as set out on the Agenda.

Madam President, I move the amendment on behalf of the Association for the Rights of Industrial Accident Victims (ARIAV) and the Hong Kong Confederation of Trade Unions with the aim of raising the maximum amount of funeral expenses payable under the Pneumoconiosis (Compensation) Ordinance (PCO) so as to increase the sum from $35,000 as proposed by the Government to $50,000. Our reason, in fact, is simply because $35,000 is just not enough.

According to a survey conducted by the ARIAV among its members, the funeral services for an industrial accident fatality generally cost about $75,000. This is an average figure as it is not cheap to hold funeral services in Hong Kong unless one is prepared to make do with just a mat. Take cremation as an

example. The whole process often costs more than $70,000, inclusive of the cost for renting a hall and holding requiem services. Can we be so indifferent as to let bereaved families "rush around" to raise money for funeral expenses when they are already being tormented by the loss of their loved ones? If Members believe that this is not right, then please support the figure of $50,000 proposed by us. How many people indeed will benefit from it? According to a calculation based on the 1998 figure of $16,000 under the existing PCO, the total payout was $960,000. It is estimated that there are about 60 deaths every year. Honourable Members might question the possibility of a financial problem resulting from the increase of funeral expenses to $50,000. I want to remind Members that last June, when the last Legislative Council was in session, we agreed to reduce the relevant levy. We gave our consent then because we noticed that the fund had enough resources. So, if Members worry that the fund might run into financial troubles once funeral expenses are raised, I call upon them to cast aside that worry completely.

Apart from pneumoconiosis patients, we have another reason in mind in moving the amendment, one concerning the Employees' Compensation Ordinance, an ordinance pertaining to industrial accidents relating to all workers in Hong Kong as well as compensation for work injury. I would like to refresh Members' memory on how approval was granted by the last Legislative Council at its meeting on 26 June 2000 for funeral expenses to increase from $16,000 to $35,000. At that time, I opined that $35,000 was still not enough and that it should be increased to $50,000. Why, the Secretary for Education and Manpower and Honourable Members might ask, did I not move an amendment then? Madam President, I did very much wish to move an amendment at that time. However, because of the provisions of the Rules of Procedure, I could not move an amendment with a charging effect. So, if the amendment moved by me today were passed, it would really help the pneumoconiosis patients and send a strong message to the Government, to make it realize at the time of review that $50,000 is not enough for funeral expenses.

I recently dealt with a case, in which an employer told the bereaved family that he would pay just $35,000 in compensation as the funeral expenses currently stipulated by the Government for an industrial accident victim was $35,000, and that if they considered that to be inadequate, he was prepared to lend them $40,000. In the end, I phoned the employer, telling him that I was going to have a meeting with him together with the members of the bereaved family. After a lot of discussions and much hustle and bustle, that employer finally

agreed to pay $40,000 more in compensation. Must there be so much hustle and bustle every time when people are in great grief? My purpose in moving this amendment today is to save bereaved families the trouble of having to search high and low for money for funeral expenses at a time when they are in great sorrow. The Government claims that this has actually balanced the interests of the employers against those of the employees. However, is this justification for disregarding justice and reason, and not caring for those families searching high and low for money for funeral expenses? What is more, the so-called balance actually means hardship to the families. But how much does it cost the employer? Take all work injury compensations into account. On the basis of funeral expenses rising from $35,000 to $50,000, an employer need only additionally pay $2 for each employee annually even if the full annual premium is to be transferred onto the employer. Given the fact that small and medium enterprises dominate the scene in Hong Kong and most of them only hire 10 employees each, the employer is only required to pay $20 more in premium for his employees. Mr Bernard CHAN often says that such premium will not be transferred onto the employers. We see before us "hardship" on one side and an additional payment of "$2" on the other. But the Government claims that as one side is in favour and the other side objects, it must strike a balance between the two. I cannot help wondering what sort of balance this is.

I received from the Labour Advisory Board (LAB) a letter which I find very lamentable. In the letter the LAB tells me that employers and employees have struck a balance through consultation. The LAB further accuses me of ignoring the outcome of LAB consultations between employers and employees. Is it to say that there is no further need for justice and reason after consultation? The basic issue here is which of the two, the sum of $35,000 and the sum of $50,000, is more reasonable. Furthermore, I would like to know why such a consultation outcome was arrived at. The third paragraph of the LAB letter probably provides the answer: "The aforesaid amendment is injurious to the existing mechanism of consultation between employers and employees, putting employees' representatives on the LAB and employees' representatives on the Pneumoconiosis Compensation Fund Board in an unfavourable position and giving employers' representatives an excuse to delay, or actually not to hold, meetings for discussions on improvement to workers' rights and interests." To put it tartly, the employer side is really extremely unreasonable if they refuse to have further discussions once consultation gets deadlocked. If employees' representatives on the LAB have such an impression, then it is indicative of the

existence of problems in the system. When employees' representatives on the LAB stoop to compromise, does it mean that all legislators should throw in the sponge? In that case, it would be unnecessary for this Council to discuss workers' rights and interests in future because there could be no room for amendment. Since we in this Council now have the opportunity to make revision and fight for fairness, there is no need for us to throw in the sponge. All that Honourable Members have to do is to press the button to vote in its favour. The LAB threw in the sponge for certain difficulties. We in this Council have no difficulties. Should we throw in the sponge, as the LAB did? Please give this serious consideration. I call upon the Secretary to consider what I just said, namely, whether or not such a system of consultation is faulty if the employer side is in a position to temporize by refusing to hold meetings. I also call upon employees' representatives to reflect upon this. If they are to throw in the sponge on every occasion, it means reliance on favours from the employers, not on their own struggles. Please bear in mind that the LAB is, after all, just an advisory body. Even if representatives of employers or employees disagree, bills or resolutions can still be submitted to the Legislative Council, as is the case today, so long as the Government is prepared to do so. In Hong Kong, however, the strength of employers and that of the employees are often ill-balanced.

Finally, to save those families the trouble of having to going hither and thither to raise money for funeral expenses, I call upon Honourable Members to support the amendment moved by me today. On top of this, some families have also raised another request for consideration by the Education and Manpower Bureau. According to them, application procedures are too complicated and time-consuming. Sometimes it is necessary to wait for half a year. Consequently, many families are subject to a lot of invisible pressure while grieving the loss of their loved ones. It is hoped that there can be a solution to the procedural issue so that they need not wait for half a year before getting their compensation. It should be noted that it is very unreasonable to make it necessary for families to raise loans for funeral expenses. It is hoped that the Education and Manpower Bureau can make appropriate adjustment in this respect.

Finally I call upon Members to exercise their votes so as to show that they do not throw in the sponge. Thank you, Madam President.

Mr LEE Cheuk-yan moved the following amendment:

"That the motion to be moved by the Secretary for Education and Manpower under section 40 of the Pneumoconiosis (Compensation) Ordinance (Cap. 360) at the Legislative Council meeting of 20 December 2000 be amended by deleting "$35,000" and substituting "$50,000"."

THE PRESIDENT'S DEPUTY, MRS SELINA CHOW, took the Chair.

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr LEE Cheuk-yan to the Secretary for Education and Manpower's motion, be passed.

MR LEUNG FU-WAH (in Cantonese): Madam Deputy, being a legislator representing the labour functional constituency and a representative for employees on the LAB, I have to state clearly the standpoint of workers. First of all, please let me state explicitly on behalf of all the employee representatives on the LAB their views on the amendment moved by Mr LEE Cheuk-yan today.

On 24 October this year, the LAB discussed in detail compensations payable under the Employees' Compensation Ordinance (ECO) and the Pneumoconiosis (Compensation) Ordinance (PCO). Following the meeting, there came a consensus, namely, the proposal to raise funeral expenses from $16,000 to $35,000, which is today presented for Members' discussion. With the exception of funeral expenses payable under the PCO, all sums prescribed by the ECO and the PCO should remain unchanged. The Secretary for Education and Manpower has just made mention of this. The proposal is the outcome of efforts made by employers and employees in a bid to strike a balance. We have strong reservations about the amendment moved by a certain Member. Presented below are our viewpoints:

Firstly, the amendment is oblivious to the nature of the said resolution and the 218.7% hike embedded in the resolution's proposal to increase funeral expenses to $35,000. I should give Honourable colleagues a detailed

explanation. Under the existing review mechanism, review is in fact done once every two years on the basis of inflation. At the time of review, papers presented by the Government indicated that there was deflation in the past two years. So, according to the original mechanism, quite a few compensation items should have been reduced. However, there have been no cuts after the review. What is more, there is an increase of almost 200% for funeral expenses.

Secondly, we wish to make it clear that the LAB is composed of representatives of employers and employees elected by all local trade unions and the five biggest and oldest chambers of commerce in Hong Kong. The LAB is, therefore, the most authoritative and representative body in Hong Kong. If my data is correct, then of the several hundred advisory bodies in Hong Kong, the LAB is the only body with members selected to represent employers and employees by means of election. Because of this, we would like to draw Members' attention to the fact that the increase of more than two folds just mentioned is really the outcome of centralized collective consultation.

With regard to the third viewpoint, Mr LEE Cheuk-yan has already spoken for me. I am not going to repeat it.

Fourthly, I would like to make something clear for several other board members. At present, persons benefiting from the compensation fund are workers who die of pneumoconiosis. As just stated by Mr LEE Cheuk-yan, there are some 60 deaths every year. A deceased worker is entitled to different types of compensation, funeral expenses being one of them. Among those standing outside the Legislative Council are workers suffering from pneumoconiosis. In their petition, they support raising funeral expenses from $16,000 to $35,000. This is their idea, not that of the affiliate groups of the Federation of Trade Unions (FTU). Their request is merely that workers who died of pneumoconiosis before the fund was set up in 1981 should also be granted funeral expenses. We very much support this. We also agree with the workers that there ought to be simplification if application formalities are indeed too complicated.

I wish to make it clear to you all. The more or the better workers' benefits are, the more welcome they are to us, representatives of workers.

However, we do not want to leave the public with the impression that workers are unreasonable. If Mr LEE Cheuk-yan considers $35,000 to be inadequate, I to some extent think so too, and even find $50,000 not sufficient. Let me cite an example. Perhaps Members can still recall that in the oxy-acetylene cylinder explosion that occurred in Yuen Long in July this year, three workers were killed. Two of them were FTU members. We entered into negotiations with the French employer on behalf of the bereaved families. Finally we managed to get $200,000 in funeral expenses and $200,000 as *ex gratia* payment for each of the deceased. To be frank, is this sum of $400,000 enough? Perhaps it is still too low.

Some LAB members nicknamed Mr LEE Cheuk-yan as "Four Tael LEE" at LAB meetings. The meaning is that he invariably presses for four all the time. This is a big problem. I also want to be "Eight Catty LEUNG". I can even be "Thousand Catty LEUNG" if no weight is to be attached to reasoning. We, however, call upon Members to thoroughly consider the rationale behind the figure when voting. Whether the figure should be $35,000, $50,000 or $400,000 is not here or there. The problem is with the meaning behind the amendment, one that is injurious or ruinous to the mechanism of consultation between employers and employees. I totally disagree with what Mr LEE just said, namely, justice is not equivalent to compromise and compromise is equivalent to throwing in the sponge. This is very weired logic. If that was indeed the case, then all the several hundred advisory bodies in Hong Kong could be scrapped, and all issues should simply be submitted to this Council for determination. I have to put special stress on the representativeness of this mechanism, the reason being that we are the few employees' representatives elected by the several hundred registered trade unions in Hong Kong and what I just said echoes words from their hearts. Please consider this when casting your votes. Thank you, Madam Deputy.

MR FREDERICK FUNG (in Cantonese): Madam Deputy, today's topic originally was on the amount of compensation. However, it now has got the consultative framework involved. I remember that there was a debate on the issue in this Council before 1997. At that time, I put forward an opinion. Honourable Members probably can no longer recall what my opinion was. At least, I know that the Government neither gave an ear to it nor put it into effect. As such, I want to put forward my opinion again now.

I believe that certain policy panels of the Legislative Council must be the top advisory bodies. Should the Government have to seek the Legislative Council's approval of resolutions on compensation amounts after consulting its own advisory bodies, then the Legislative Council as an advisory body has to play the advisory role as well as the function of deciding whether or not to pass the resolutions. From this angle, I do not think that the conclusion already drawn by a certain advisory body that discusses certain government policy is binding on the Legislative Council. The reason is that here involved are two different advisory levels as well as two groups of people whose backgrounds are totally different. Though some people have over-lapping positions, they are few. In my opinion, while allowing individuals, political parties or functional bodies to present their views, the Government, in addition to consulting its advisory bodies such as the Labour Advisory Board (LAB), must further consult certain policy panels of this Council, for example, the Panel on Manpower. Furthermore, it is necessary to strive for support from Honourable Members for the passage of the resolutions concerned. I think the whole process should be "a duology" and not a single part should be missing. As far as possible, the Government should try to get the concurrence of the absolute majority in each of the two groups. This is the most desirable.

Under the existing mechanism, it seems that the Government has one advisory set up which it must consult, that is, its own advisory boards and committees on policies. Surely, this year the Government has had more consultation with some policy panels of this Council. However, I am of the view that on this issue, especially one asking the Legislative Council to pass a resolution on a compensation amount, this Council must be consulted. In view of this, I totally disagree that the LAB is the sole advisory body, and, in particular, that we have to concur with the conclusion drawn by the LAB. I agree that respect and consideration should be given to LAB decisions. This, however, does not mean that our Panel on Manpower or this Council must endorse its decisions. So, with regard to these issues, I hope that the Government can take its advisory boards and this Council's panels on policies as mechanisms of two different or equal levels. That is what I am looking forward to. I remember presenting this opinion here in years past. Now I repeat it once more, hoping that the Government will listen to it and put it into effect. If the Government for ever only attends to one mechanism to the total exclusion of the other, then it is only natural that some Honourable Members of this Council will not be able to present their views even though they have sound reasons. In this way, all the grudges and hostilities will just linger on.

Honourable Members speaking on this resolution today are not many, but two of them belong to the labour sector. Although they probably will vote differently, their views are, in my opinion, consistent. By that I mean $32,000 is likely to be insufficient. Even the Honourable LEUNG Fu-wah said that $50,000 might also be insufficient and that $200,000 would be the best, if possible. With regard to the sum of $32,000, certain Members from the labour sector, especially those also serving as LAB members, tend to respect LAB decisions. I call upon Honourable Members to open their minds and speak out. I totally agree that respect should be given to LAB decisions, and I do understand their decisions. But is $32,000 an appropriate amount? All these are for us, Legislative Council Members, to consider and determine. Basically I do not think $32,000 is enough. In my opinion, in today's society, it is not too much to spend $50,000 on funeral expenses. Therefore, it is hoped that, in considering this issue, Honourable Members can see things from the context of the two levels of consultation, namely, that of the LAB and that of the Legislative Council.

Moreover, regarding the case just mentioned by Mr LEE Cheuk-yan, I have also received a letter from the Pneumoconiosis Mutual Aid Association. It is hoped that the Government will listen to their complaints. Besides mentioning the issue on the amount of compensation, the Association also expressed the view that application formalities for payout of funds are too complicated, the reason being that it takes almost half a year to apply for the relevant grant from the Government following the submission of information on death compensation and funeral expenses. However, as the patients have already passed away, we should let the deceased rest in eternal peace as soon as possible. Here I, therefore want to put forward another request, to which I wish to draw officials' attention even though it does not necessarily have a direct connection with money. Is it possible to simplify the relevant application formalities? To make things even simpler, as pneumoconiosis patients have been receiving from the Government allowances or compensation payments, is it possible for the Government to pay out the money to the families concerned once those patients passed away? Given the fact that they, instead of being patients who suddenly crop up, have long been on a list within the Government, indeed the Government need not further verify their identities.

I call upon the Government to consider the two points given above. Thank you, Madam Deputy.

MR LEUNG YIU-CHUNG (in Cantonese): Madam Deputy, the Government introduced a resolution under the Pneumoconiosis (Compensation) Ordinance, proposing to raise funeral expenses from $16,000 to $35,000. This piece of news brought considerable joy to many workers. They were even happier to learn that Mr LEE Cheuk-yan would move an amendment, seeking to further increase the funeral expenses to $50,000, a figure closer to actual need. However, seeing today's debate unfolding, they became unhappy. So am I. This is because, unlike the past when disagreements occurred among the Government, the business sector and the labour sector, today's debate is one in which there is disagreement even among workers themselves. This is really regrettable and sad.

Mr LEUNG Fu-wah has just spoken on behalf of members of the LAB, calling Mr LEE Cheuk-yan "Four Tael LEE", that is, one hankering after petty gains. If my memory is correct, the Honourable CHAN Yuen-han also opined that $50,000 was a reasonable figure for funeral expenses during a debate on the same topic in June this year. That is to say, Mr LEE Cheuk-yan is not the only person hankering after petty gains; even Miss CHAN Yuen-han, who, like Mr LEUNG Fu-wah, also belongs to the FTU and who is a legislator, is also hankering after petty gains. So, what Mr LEUNG Fu-wah just said in criticizing Mr LEE Cheuk-yan also applies to Miss CHAN Yuen-han. That is why I think it looks like an internal strife among members of the FTU today and this has become an internal strife among members of the labour sector in the Legislative Council. This is not a good sign.

Today our debate is on whether funeral expenses should be $35,000 or $50,000. I, of course, support the figure of $50,000. However, I am not, as Mr LEUNG Fu-wah just alleged, "hankering after petty gains". It is based on the reality. Do Honourable Members realize how much it costs to get a 10-year lease for burial? It costs more than $21,900. How much does one round of requiem services cost? It costs $30,000 to $40,000. According to some people, it is not necessary to perform requiem services. But is it not necessary to lease a piece of land? Some might even say that it is not even necessary to lease land. One can do that, of course. It is, as pointed out by Mr LEE Cheuk-yan, all right to have just a mat as cover. Is it, however, right to do so in today's society, especially for workers who have made contribution to society? Should we perform some ceremonial services for them upon their death? Let us take a look. With burial costing some $20,000, all these, inclusive of the cost for requiem services, add up to $60,000 to $70,000. Even a "package" type

funeral may cost $20,000 to $30,000. If all these figures are added together, we will be able to see if the sum $50,000 is a closer figure. We base this on the reality, and we are not hankering after petty gains. There have been accusations against the labour sector that they often hanker after petty gains and free lunches. I find that disgusting. Let us come to consider this. Have members not of the labour sector really contributed their shares? Do our comments indeed deviate from the reality? Put it in the other way. Take the figure proposed by us or that proposed by the Government, how much more will it cost on increasing funeral expenses from $16,000 to $35,000 as proposed by the Government? It is estimated that, according to the Government's proposal, there will be an increase of just $1.1 million. Even if the amount is to increased $50,000 as proposed by Mr LEE Cheuk-yan, the total increase will not exceed $2 million. What percentage does that constitute in the fund's annual payout of $100 million? There is a way for Honourable Members to do the calculation. We notice that the fund now has $400 million. Compared to this figure, is the sum of $2 million not just a scrap? Are we not "hankering after petty gains", and "trying to be grabby"? I think Mr LEUNG Fu-wah should really search his conscience. How can he, a member of the labour sector, face the workers? How is he to treat the workers, people who have made so much contribution to society? What a scrap $2 million is when compared to $400 million?

Mr LEUNG Fu-wah just said that the LAB had been particularly generous. For the amount of funeral expenses has not been cut at a time of deflation even though every item should be keyed to inflation. Quite to the contrary (as stated by the Secretary for Education and Manpower), there is a two-fold increase for funeral expenses. However, has Mr LEUNG considered another factor? Has he not considered how meagre, how despicable and unrealistic the base figure originally used to set the amount of funeral expenses was? Has he not considered the issue from this angle? In the past, we relentlessly criticized the inadequacy of $16,000. Here comes a government proposal to increase the amount by two folds to $35,000. All of a sudden, there comes a feeling of imperial benevolence. Cut that out. Have we reflected upon the point that the original figure of $16,000 was a despicable and unrealistic amount? Now Mr LEUNG Fu-wah turns around and criticizes us for being insatiably avaricious. Can this argument stand?

Mr LEUNG Fu-wah also stated that the figure of $35,000 was the outcome of LAB consultation, and that we should respect it. I agree that we should respect the outcome of LAB consultations. Here lies a problem. It reflected

that in the process of consultation, Mr LEUNG Fu-wah should not have merely proposed the sum of $35,000, and that the LAB should not have accepted this final figure right away, otherwise Mr LEUNG Fu-wah would not have mentioned consultations. I do not know how much Mr LEUNG Fu-wah proposed at that time. I, however, think it was probably more than $35,000! Were it not the case, then why was there consultation? If he once did disapprove of the amount, why does he now wage no struggle, pin himself down and call upon Honourable Members to support his views when he has the opportunity today to free himself from any bounds? In my view, it is indeed despicable for a member of the labour sector to behave like that.

According to Mr LEUNG, we should respect the outcome of LAB consultations because the board is an advisory body. Has Mr LEUNG taken into consideration the point that it is lamentable for the Legislative Council to do so? The reason is that the Legislative Council would then degenerate into a rubber stamp if it were required to rubber-stamp without amendment all LAB-approved matters submitted for Legislative Council endorsement. In that case, what is the point for us to have discussions here? Why should we bother to conduct debates and pass bills in the Council? Just let the LAB pass bills; there is no need for us to do the work. Therefore, I think that that we cannot blindly endorse things approved by LAB. We surely respect and accept views that are good. If the views leave room for improvement and we cannot bring ourselves to accept them, then why must we accept the Board's views? This is the right place and time for Honourable Members to raise objection.

There is one more point. Do not forget that we have long been critical of the composition of the LAB. According to the current arrangement for the LAB, all trade unions, regardless of their size, have the same voting right. This is already very unfair. Why do we not open the LAB to all workers in Hong Kong for them to elect their representatives? In fact, the way in which the LAB is formed, and its composition and structure are not democratic. Why does Mr LEUNG, a member of the labour sector, still uphold it? Today, seeking our acceptance, Mr LEUNG stressed to us that the amount proposed by the Government was the outcome of LAB consultations. I cannot bring myself to accept that because the composition of the LAB or the outcome that it arrived at are undemocratic and inconsistent with the interests of the labour sector. How can I accept it?

Madam Deputy, in the course of today's discussion on the amount of funeral expenses for pneumoconiosis patients, quite a few Honourable Members mentioned the point that funeral expenses only constitute part of the compensation payment. The Secretary said that an item had to be frozen. I do not consider that to be satisfactory because if the amount of compensation is based on price indices, it cannot reflect the actual expenses. For best, it can only reflect some of the expenses for the purchase of apparatus alone is hard to reflect the price index. I therefore cannot accept the Government's current argument. Besides, as also pointed out by Mr Frederick FUNG and Mr LEE Cheuk-yan, the application formalities are very complicated and time-consuming. It is hoped that the Secretary, instead of simply ignoring what she heard, will address the matter seriously. Do not keep the bereaved families waiting too long while they are in great grief. With these remarks, Madam Deputy, I support Mr LEE Cheuk-yan's amendment. Thank you.

MR JAMES TIEN (in Cantonese): Madam Deputy, the several Honourable Members who have spoken today all belong to the labour sector. However, I believe workers listening to the present debate outside have become very disheartened. The reason is that leaders of the various trade unions are having rows among themselves, each presenting his own views for the sake of his own bailiwick.

As a start, Madam Deputy, I shall talk about the LAB, where the employers have quite a few representatives from functional constituencies, such as the Hong Kong General Chamber of Commerce and the Federation of Hong Kong Industries. Over the years, it has always been our representatives making concessions to the employees and the Government or the community. We invariably observe LAB decisions. When proposals are submitted to the Legislative Council for discussions, employees' representatives tend to "pocket all that can be pocketed", and then go on to fight for the amounts they originally proposed. Surely, as far as amounts are concerned, it is hard to say what is reasonable and what is unreasonable. So, whenever employees' representatives seek to get the maximum, employers' representatives will respond by saying that they can ill-afford that. A decision will then be made when the Government takes the middle-of-the-road decision. Given this, I find the so-called LAB consensus to be one reached under fair conditions. It can be considered a

relatively equitable consensus, one that members of the business and industrial sectors as well as the Liberal Party will observe. Now Mr LEUNG has joined the Legislative Council, thus giving the labour side of the LAB more representation. He has said something to the effect of showing respect to LAB decisions. I am well pleased on hearing that.

Our discussion today is on the amount of compensation. First of all, let us put aside the issue as to whether or not the LAB has reached a consensus on this. Any death is sad. It is especially true of death caused by pneumoconiosis because the patient must have suffered for years before death. We think it is absolutely necessary to give such people compensation. However, I am also aware that the said compensation payment is for the bereaved family to arrange for the deceased's funeral, and that the family can additionally collect from the fund a sum no less than $100,000 in compensation. That sum of funeral expenses is not intended for use by the bereaved family to deal with other problems. For instance, if members of the family run into problems of livelihood upon the patient's death, they may apply to the fund for another sum of $100,000, which has nothing to do with the compensation of $16,000. Surely, some big organizations might even additionally grant such employees $200,000 each. That is their business. Perhaps they are prepared to give more.

Next, on the question as to what a reasonable funeral is. Surely, in Hong Kong the rich can spend a lot on their ancestors' funerals whilst the poor have to be more modest in the matter. In fact, what is a reasonable price or a reasonable sum of funeral expenses? Madam Deputy, I think many Honourable Members, like us, are experts not on this. For this reason, the Liberal Party yesterday obtained from a funeral parlour some data for reference in a bid to find out the actual situation so as to see whether a reasonable sum of funeral expenses should be $16,000, $35,000, $50,000 or $100,000. How is a reasonably acceptable funeral for a more or less grass-root person upon his death while avoiding the ridiculous way mentioned by Mr LEE Cheuk-yan and Mr LEUNG Yiu-chung? The said funeral parlour gave us some data, which I have to read out slowly as some of the terms are not too familiar to me. The total cost of one of the packages amounts to $12,000, probably covering some basic items, such as a coffin — with specification on whether it is Western style or Chinese style. More presentable coffins show a wider price range. Western style ones can be made of copper or iron. There are also things like trimmings in the coffin,

different procedures of the undertaking services, undertakers, hearse, and hall ceremonies. All these basically cost $12,000. I suspect that the basic sum of $12,000 probably does not cover too many things. Apart from these there is a separate list of items, costing $9,140 more and probably covering the following items: $200 for body cleansing and make-up, $200 for one hall attendant, $300 for photo frame, $500 for hall decoration, $100 for the floral plaque on hearse, $800 for white funeral banners, $80 for one pair of heavenly lanterns, $600 for Chinese music — Here come two options: $1,800 for four rounds of chanting by nuns but there are two characters which are so small that I cannot read them. I have just asked the Honourable LAU Wong-fat what they are. For five rounds of chanting — I think it is by nuns, but I am sorry, it might be by monks, who charge more — the cost is $5,000. Next comes a 12 -inch photo frame for $400, $1,000 for body preservation, and $80 for a portrait of the deceased. All these add up to $9,140. On being asked by us to say what else probably were required to be done, they suggested these: $450 for three items of holy offerings, $850 for a coach, $1,200 for sundry expenses, $500 for burial shrouds, and $600 for one hour. The total adds up to $3,600. When $9,140 and $3,600 are added to $12,000, we get a grand total of more than $24,700. We also made inquiry about a burial. As rightly pointed out by Mr LEUNG Yiu-chung, because of the acute shortage of land in Hong Kong, burial indeed costs a lot. Furthermore, there is no guarantee that one can successfully apply for burial space. I was surprised when he said that could be done at a cost of some $20,000. The price appears to be too low — but Mr LEUNG was in fact talking about leasing. That is perhaps possible with a land lease. However, the Government's cremation service only costs $1,300. Cremation is very popular in Hong Kong. Adding the cremation cost to the expenses that I just worked out, and you will get a sum of $26,000.

Madam Deputy, I am not going to comment on the expenses of $26,000 being reasonable or not. The point is that these are rough figures obtained by us. That is to say, the sum of $26,000 constitutes the basic expenses. According to the funeral parlour, services just mentioned can be provided at that price. The current figure of $16,000 is, of course, too little. Employers' representatives on the LAB have agreed to the figure of $36,000. Sorry, it should be $35,000 but it seems that Mr Frederick FUNG has mentioned the figures $32,000 and $35,000. In fact, at that time there was not a detailed analysis of all the figures. The labour side just asked for more. Arguments held by them were mentioned

by Members who spoke earlier, for example, the point that a difference of $2 million is no big deal as the fund now has $400 million. Seeing it from our standpoint, we, aware of the abundance of the fund, wonder if it is possible to lower employers' contributions or let the fund provide for surviving patients better, for example, by giving them more money, instead of providing more money for their funerals. The fund is indeed holding a huge sum. Can that be said to be fair if we simply pay out more? If more is to be paid out, then how much should that be? Surely, some people consider the amount paid out to be too small. We, however, think that at least the basic amount has got to be provided. Several other figures have been mentioned by different Members. In fact, scores of people are affected every year. I think it is 80. Someone just said that it was 60. The total amount required to be paid out is several million dollars. However, what is at issue now is not the question of affordability. According to someone's proposal, as we can well afford it, we had better give out as much as possible. I disagree with that. As the fund has $400 million now, why pay out so little? In fact it is possible even to pay out $1 million. But I do not think members of the public are prepared to do so and will not even support it. We cannot spend more just because the fund is affluent. Madam Deputy, what counts most is how to arrange sensible and reasonable funeral services for the deceased. I have just presented the data collected by me. Even though the sum of $35,000 proposed by the Government is a little higher than the figures obtained by me, the Liberal Party is going to support that sum as employers' representatives on the LAB have already agreed to it. Thank you, Madam Deputy.

DEPUTY PRESIDENT (in Cantonese): Are there any Members who wish to speak?

MR ALBERT HO (in Cantonese): Madam Deputy, a few Members who represent workers have already spoken; so has the Honourable James TIEN, who represents the employers. I cannot speak from the employees' standpoint as I do not represent them. I am even a small employer myself. However, unlike Mr James TIEN, I cannot represent employers. In a bid to see if it is possible to reach a relatively equitable conclusion, I am going to approach it from an overall standpoint, or from the standpoint of an ordinary citizen so as to analyse Members' point of contention. Madam Deputy, I think a few questions have to be asked first. Firstly, is $50,000 a reasonable amount?

Mr LEE Cheuk-yan just said that the compensation of $50,000 is not enough. He did do some calculations. The amount required can be as high as $75,000. In fact Mr LEUNG Fu-wah also agreed that the amount is not enough. However, in view of the compromise reached among different parties, he waged no further dispute. So, here is the figure $50,000, the outcome of a compromise. The figures offered by Mr James TIEN are based on minimum expenditure, that is, the cheapest and most basic funeral expenses quoted by a funeral parlour. I agree that the cheapest can be done at a cost of some $30,000 (surely, not just wrapping up with a mat). Will all, especially workers long plagued by the illness, consider that to be a reasonable amount? Must their families, having spent so much effort and time looking after them, still face all the troubles and choose the cheapest price and minimum expenditure for funeral services when their loved ones finally pass away? Can they solve the problems themselves without raising loans or racking their brains? Is the figure now proposed the one demanded by us? I think we need not necessarily take such a view. In fact, Mr TIEN has omitted a few items in his calculation. Even if burial is out of the question, there still has got to be a space for the memorial tablet. The prices of memorial tablet spaces vary. Suppose that cremation, not burial, is used, it might cost some $10,000 or as much as $20,000 to $30,000 to buy a memorial tablet space. Let us take a median figure. So it is more than $10,000 for one memorial tablet space. Many columbariums offer the service for memorial tablets to be kept on a long-term basis. Furthermore, it is also a common practice for the host family of a funeral to arrange a post-funeral meal to drown their sorrows. This is nothing unusual. If Honourable colleagues have been to funerals, they must have come across this. As a token of gratitude, this meal usually has two to three tables for friends and relatives. On top of these are a lot of travel and sundry expenses. Added together, the total can easily reach or even exceed $50,000. If we leave out the possibility of price exaggeration and profit-making, even on the basis of minimum expenses, the situation is more or less the same. Otherwise it is, in my opinion, unfair. This is the first point.

Secondly, if $50,000 is considered to be a reasonable figure, here comes the next question, namely, whether or not the present increase is reasonable. We should not look at the figure in isolation. So I have to consider two points, namely, whether or not the fund can afford it, and what commitments the fund will have to take on such payments. About the first point, as just pointed out by Mr LEE Cheuk-yan, a request for reduction in the levy was made last year. In fact the fund has money, now holding more than $400 million. It is, therefore,

not an issue of affordability. Turning now to the next point. Will that become a long-term commitment? Please be reminded that funeral expenses, unlike other expenses, are paid once and for all. In fact I have also served such patients. They are all suffering badly. Because of their illness, they experience great difficulty in breathing and they suffer badly even when they try to pick up some speed while walking. It is also very tough for the families looking after those patients. When the patients die, their families, I believe, probably also want to let them rest in eternal peace, and, therefore, would like to make proper arrangements for their funerals. This is also a traditional Chinese family concept, that is, a wish to treat funerals more solemnly. Anyway, such expenses are only for once and for all. Therefore, I do not think there will be heavy burden on, or serious future financial implications for, the fund. This is the second point. Judging from this, and putting aside all others, I think it is sensible and reasonable to raise the amount to $50,000 even though the rate is perhaps a little too great.

Here is the main point of contention among Members representing the labour sector. As the Labour Advisory Board (LAB) has, by gosh, already come to an agreement, someone wonders whether or not it is an affront to LAB's decision to ask for a further increase in the amount of compensation. I think some colleagues have already commented on this. Insofar as legislation is concerned, the responsibility of legislation rests with this Council. When exercising the power of legislation, we have to consider, as far as possible, factors like justice, reality, and advisory bodies. However, we must not get into a habit or follow a convention to the effect of binding us to decisions made by certain advisory bodies. No Member will, I believe, do so. Otherwise are we not giving away our legislative power to advisory bodies like the LAB? I believe the answer is definitely in the negative. Furthermore, the LAB is an advisory body of the Government, not that of the Legislative Council. It is not even the Legislative Council's consultant. Granting that it is this Council's advisory body, we still need not necessarily accept its decision. Even in the case of our panels' recommendations, we are under no obligation to accept them as we will discuss the recommendations at meetings of the whole Council and then put them to the vote. Surely, it is necessary for us to carefully consider the arguments advanced by the LAB.

With regard to the question as to how the LAB arrived at a compromise of $36,000, we have yet to fully understand the background. We, however, received a letter today giving reasons for opposing the amendment. The letter

somewhat surprised me because its contents made no mention of the amendment being reasonable and showing justice or not, but instead it raised the point that the employer side on the LAB might, for reason of the reversal of their decision, in future refuse to have further discussions, or find an excuse to temporize or not to hold further meetings. Such a situation greatly surprised me. I also felt disturbed for the Member representing the workers. I cannot but wonder whether or not a Member representing workers can still have the free will to express workers' real worries, and fight for their genuine rights and interests when he is attending LAB meetings in such mentality. I am really concerned.

That is how the letter was written. Was there room for bargaining? Surely, the Member representing the employees can say that as the LAB has already made the decision, and the matter has already been decided, there should be no more fight and the workers should just drop the matter. As such, I will not criticize the labour representatives' approach. However, we now have a labour representative opposing an amendment moved in the Legislative Council, holding that for the Legislative Council to do so is to demean the LAB and to break up discussions among different parties in the LAB (because of the withdrawal of the employer side). The Legislative Council is then being asked not to do things demeaning to the LAB. Sorry, I cannot accept his view on this, which, in my opinion, is an incorrect mentality. Legislators have their own separate duties. Members representing employees may draw their own views during the process of discussion. This is understandable. That the Member concerned no longer stands up to fight vigorously is also understandable. However, it is, in my opinion, really too much for such a Member to come forward to assert that this Council is demeaning the LAB. I even consider his reasoning to be totally unacceptable.

According to what Mr LEUNG Fu-wah just said, they are elected Members and, therefore, have collective bargaining power. He attributes much bargaining power to the labour side. If it was so, then it would not have been necessary for him to speak to us in such terms. If the labour side indeed had collective bargaining power and refused to bargain with the employer side, the latter would be in greater panic than the former. So the situation is not like that. Anyway, I find it really hard to accept the argument justifying the worry that the LAB might break up. In fact, I think different parties in the LAB ought to clearly understand their own duties. They should try their very best to present their views and work out an agreement, and then lobby for Members' acceptance.

However, the ultimate point is that legislative power rests with the Legislative Council. The Legislative Council considers all factors, including that of the LAB. However, today I see no justification to reject the proposal of $50,000. I consider that figure to be more reasonable. Furthermore, the fund can well afford that.

Under such circumstances, the Democratic Party supports the amendment of Mr LEE Cheuk-yan. Thank you.

DR YEUNG SUM (in Cantonese): Madam Deputy, just now Mr James TIEN presented an analysis and study about the relevant expenses from a very practical and successful businessman's point of view. MAO Zedong once said, "Without having carried out research, one has no right to speak." Hence, on this question of expenses, Mr James TIEN apparently enjoys full right to speak. Mr Albert HO also raised the question again on the independent operation of the Legislative Council. Hence, I do not intend to repeat these two points. I only wish to state the Democratic Party's express support for Mr LEE Cheuk-yan's proposed amendment. Ever since I joined the Legislative Council, I have had ample opportunity to talk with patients of pneumoconiosis. If you have the chance to meet this group of people, you will know that while every morning is a new beginning for us, it is getting closer to death for them, because their lungs can no longer function. Mr Albert HO also said just now that these people would gasp even walking a little faster. For us, every day begins apparently full of hope, but for them every day begins as a step closer to death. This is why I think if I have the opportunity in the Legislative Council to fight for a little more benefit for them, to make life a little better for their family, I will endeavour to do so.

I only wish to say a few words simply. We can all look at this matter from many angles. I believe Mr LEUNG Fu-wah will also endeavour to get the most for them. However, I think if we want to help them get a little more benefit, we should support Mr LEE Cheuk-yan's proposed amendment today.

Thank you, Madam Deputy.

MR LEE CHEUK-YAN (in Cantonese): Madam Deputy, I would like to respond to what Mr James TIEN said just now about the argument between employers and employees. To our fellow workers, this is a sad thing, and I also

feel very sad about it. But Mr TIEN seems to be laughing. Even if Mr TIEN is not laughing, I am afraid the employers will still laugh. I do not want to say too much any more ……

DEPUTY PRESIDENT (in Cantonese): I am very sorry, Mr LEE, as we are having a joint debate, you cannot speak again.

MR LEE CHEUK-YAN (in Cantonese): Right, Madam Deputy. In that case, may I clarify about the "Four Tael" allusion?

DEPUTY PRESIDENT (in Cantonese): Mr LEE, if you think Honourable Members have misunderstood part of your speech, you can clarify.

MR LEE CHEUK-YAN (in Cantonese): Thank you, Madam Deputy. In fact I want to clarify the question of my being referred to just now by Mr LEUNG Fu-wah as "Four Tael". On the one hand, I want to clarify that throughout the years in our efforts to fight for labour rights and interests, we did not "slaughter and cut whatever we could". All that we did had been done on sound reasons. This, I hope, we will all take into consideration.

On the other hand, I also hope to be able to "divert a thousand-catty force with a four-tael effort". Thank you, Madam Deputy.

MR CHEUNG MAN-KWONG (in Cantonese): Madam Deputy, I am not the Democratic Party spokesman for this motion today. But just now in the Ante-Chamber I saw on the TV the "coffin sum" calculated by Mr James TIEN; so I want to say a few words.

There are many sad and painful things in life. To part alive and to bid farewell to the dead must be the greatest of all sadness and pain. Very often this sadness and pain cannot be measured by money at all, and we cannot calculate such a "coffin sum". To the mid-income family or well-off people, death in the family will bring great sadness and pain. I believe everyone, poor or rich, will feel the same sadness and pain. However, for the poor, there would be deeper

worry and suffering on top of sadness and pain, because everything needs money in attending to the deceased's funeral. And when money is lacking, the trouble, burden, helplessness and pain felt will not be an arithmetic problem at all, and cannot at all be described with pen and ink. This point is very important.

Often, the dead is no more; but the real sadness and pain, and pressure fall upon the living. When the living go about arranging for the funeral of the dead, their sadness and suffering would be reduced if they can shoulder the expenses. But if they cannot afford them, it will become another sadness and suffering. As a community caring for humanitarian warmth, and as there is the dead, we must minimize the sadness and suffering of the living, so that the living can see the dead off the last leg of the journey, and are enabled to do so.

Hence, when one calculates this "coffin sum", of course there are the most basic figures and costs, but more importantly, one must not calculate cold-bloodedly, but also consider the many living who busy themselves running about on account of the dead, their circumstances and difficulties. When someone has passed away, what we have to calculate are not limited to his coffin, the burial ground, and the funeral ceremony and other expenses. For an ordinary poor person, if he has to busy himself between the funeral parlour or the graveyard, firstly he must give up his own work, in order to attend to these matters and comfort the family. Again everything needs money and it is no laughing matter. Thus, under such circumstances, I think raising the amount from $35,000 to $50,000 goes well with human feelings and reason, because besides the "coffin sum", the surviving families, who are poor, cannot afford the price they have to pay running about on account of the dead. Hence, under such circumstances, what can be seriously wrong with raising the amount to $50,000? I am not saying because we have $400 million in the fund, we have money, so we do it like this, but because $50,000 is a necessity. $50,000 is the required amount for the whole family when an ordinary poor family busily attends to matters for the dead, and not the required expense of the coffin fund. Under such circumstances, we agree with relaxing the Ordinance.

Next, it is about the position problem of the Labour Advisory Board (LAB) and the Legislative Council. Many Honourable Members have discussed this problem. I think it is getting more and more difficult for the LAB to act as the final adjudicator by virtue of an ordinance. This is not because LAB members of the labour or employer side do not enthusiastically seek a compromise. It is because of its position in the constitutional system that the LAB's

recommendations unavoidably have to be filtered again in the Legislative Council, considered again before the decision is made. Legislative Council Members can only rely on some life principles or some practical needs in making the decision. Hence, even if the LAB has this power, the Legislative Council is still the centre where social opinions converge, to filter the recommendation once, to consider it once, and then make the decision.

Under the circumstances, I support the sum of $50,000. And I also urge Honourable Members to understand that this is a necessary amount. Therefore, one must not only hold a funeral bill to make calculations. If one calculates with such a formula, one would only make people feel really cold-blooded.

Thank you, Madam Deputy.

DEPUTY PRESIDENT (in Cantonese): Mr James TIEN, do you think that Mr CHEUNG Man-kwong has misunderstood the content of your speech so that you wish to clarify?

MR JAMES TIEN (in Cantonese): I would like to clarify that figure mentioned by Mr CHEUNG Man-kwong just now, that is, the so-called "coffin sum". The $35,000 "coffin sum" mentioned by Mr CHEUNG Man-kwong is only for the deceased's funeral expenses. As for expenses for the family running about for the deceased, in my speech just now there was also mention of another $100,000. It is this $100,000 that is paid out as expenses for the family running about for the deceased. However, Mr CHEUNG was not in the Chamber at that time.

MR CHEUNG MAN-KWONG (in Cantonese): May I clarify?

DEPUTY PRESIDENT (in Cantonese): Mr CHEUNG, you may clarify only the part of your speech just now which has been misunderstood. But if you wish to rebut the clarification made by Mr James TIEN just now, that cannot be allowed.

DR LO WING-LOK (in Cantonese): Madam Deputy, I have heard many colleagues talk about the suffering of pneumoconiosis patients. As a doctor, I have a lot of experience with this illness and can feel the suffering of the patients. As for the argument by our colleagues on the funeral expenses and the relationship between the LAB and the Legislative Council, I also feel very disappointed. In fact, we have also ignored the patients' own suffering and welfare: The patients do not know anything after they die; their greatest suffering is in fact the time when they are alive. Every step they take, they pant. They need a lot of care and money for medical expenses, and it also costs a lot to put an oxygen machine in the home. In fact, I think our colleagues need more to know whether these chronic illness patients are receiving appropriate care, whether the subsidies they receive and the resources are enough, rather than arguing how much funeral money these patients will have after they die.

To take care of patients of chronic diseases, we have to spend a lot of money. And it is exactly because of this reason I think prudent financial management is very important. If colleagues think they are not getting enough benefits while they are alive and they need be increased, and if there is concrete evidence supporting this claim, I am in full support of it. However, if it is only for reasons of ideal and emotion that they support raising the funeral expenses amount, I think it may not be necessary.

Looking at this from another angle, it is a very unfortunate matter. At present, we are not doing well enough in industrial safety. We have new patients every year who need care and benefits. As far as I know, the increase in the number of such patients every year is not small either. Thus, under such circumstances, there is more need for a prudent financial management principle in handling the welfare problem of these patients. This is why I think $35,000 for funeral expenses is a very prudent figure; so I will not support Mr LEE Cheuk-yan's proposed amendment. Thank you, Madam Deputy.

MR TAM YIU-CHUNG (in Cantonese): Madam Deputy, after my colleague Mr LEUNG Fu-wah, had spoken just now, he was strongly criticized by an Honourable Member bearing the same given name but a different surname as I.

However, I would like to talk here about the question of the LAB. As a matter of fact, neither Mr LEE Cheuk-yan nor Mr LEUNG Yiu-chung took part in LAB work. As to those here who have the experience in taking part in the LAB, there is the Honourable SZETO Wah other than myself.

When I talk about its history, it was already 15 years ago. Insofar as I can remember, Mr SZETO Wah and I were both members of the LAB at that time. I was a novice at that time, without enough experience, and we were working together at that time in the LAB and the Legislative Council. I remember at that time we wanted the passage of the motion concerning long service payment. When the long service payment motion was first mooted, reaction from employers was very vigorous, because we had never carried out such a policy, and the employers were greatly worried. Later, because Mr SZETO Wah had rich experience, he and several members of the LAB talked with employers together, hoping to reach some plans as soon as possible for early implementation and subsequent improvement. I remember that at that time we reached a plan with the employers, and had come to the stage of presenting it to the Legislative Council for discussion, when some organizations thought that plan was not good enough and raised further and higher demands, something like the demand made by Mr LEE Cheuk-yan today. Although those demands were not raised in the Legislative Council, yet these organizations also wanted me to sign my name to show support. At that time, I thought it was fine to demand a little higher, because we also hoped to be able to get some more. However, even if those organizations were to call out till their teeth bled they would not be able to reach their target, all because employers could only accept a certain degree as a start. I remember after I signed, Mr SZETO Wah reminded me I could not do that, because we had already reached an agreement with others, so we could not sign in support of the demand for more. So my memory of this episode is especially deep.

However, we can say things are different now, and making comparisons with these examples have no meaning either. Of course, any agreement reached in the LAB does not mean, when it is tabled in the Legislative Council, it cannot be changed, discussed, or amended, but to stay as the same agreement in full as reached in the LAB. The Legislative Council of course has the right to discuss and amend it or otherwise, which I think none can stop it. However, Mr LEUNG Fu-wah has been a member of the LAB for nine long years and treasures very much this collective bargaining mechanism of a central nature. In the process of their negotiations, they have done their best striving to get the most. In these processes, they hope to build up a collective negotiating mechanism of mutual trust, with which they can continuously improve upon the security of employee benefits. This I think all of us will support.

As to the opinions of the LAB, whether or not we agree to or accept them, it is a matter of individual decision and consideration. However, since we discussed just now such a lot the question of the LAB, it dug up the experience of mine 15 years ago.

I think many things in society have to go through negotiation and discussion in the search for solutions, and matters in labour rights and benefits also need to be improved upon continuously. We have never felt complacent or stopped at any level, because we believe only through continuous improvement, and maximum calmness in negotiation and consultation in the process of improvement, can we do good to labour rights and benefits, and bring good to the harmony of the whole community and the mutual trust between employees and employers.

Thank you, Madam Deputy.

MR SZETO WAH (in Cantonese): Madam Deputy, this is not the first time that Mr TAM Yiu-chung mentions this incident which happened 15 years ago. I remember he also mentioned it before in this Chamber, when I also responded to this question.

I was a member of the LAB at that time. When for the first time we strived for long service payment, I put in a lot of effort in the negotiations. I remember that when we had got some result in the negotiation, Mr Henry TANG still wanted to raise objection on the LAB at the last moment. Later I had a long talk with him, before I finally persuaded him to accept the relevant result, and long service payment became a provision in law for the first time. Mr TAM Yiu-chung was also a member of the LAB at that time, and I also discussed with them many times beforehand, asking whether they agreed to the plan, before we reached an agreement, and then handed it to the Legislative Council for discussion. That was in 1985. The former Legislative Council did not have direct elections yet. It only had a minority of Members representing functional constituencies. Things were completely different then.

Today, the component part of public opinion representatives in the Legislative Council has grown a lot. At the same time, I must emphasize that

the LAB is not a collective bargaining mechanism, because the right to collective bargaining was repealed by the Provisional Legislative Council. If it were a real collective bargaining mechanism, then after employees and employers reach an agreement after negotiations, there would be no need to hand it to the Legislative Council for discussion. Comparing the condition 15 years ago to that of now, we really cannot judge the present against the condition then. At that time, the former Legislative Council had, for the first time, indirectly elected members from functional constituencies. Moreover, it was the first few meetings then in 1985. If we did not first of all break through a gap then, it would be difficult for to make further improvements to long service payment gradually afterwards. However, it is possible today for us to have a breakthrough in this problem, because there is sufficient fund to support it. If we abandon the rights and interests of the working class now, debasing and attacking the present amendment with the first-breakthrough example of 15 years ago, do we want to dial the history clock 15 years?

Mr TAM only newly joined the Legislative Council then, but now he enjoys the honour of being a Member of the Executive Council, where he has greater speaking rights and can give more voice on behalf of the labour sector.

I think times progress. Fifteen years ago we were confined to a difficult situation with a tiny voice. Today, we cannot use it as an excuse to oppose our fight for the rights and interests of the working class.

Thank you.

DR LUI MING-WAH (in Cantonese): Madam Deputy, I thought I was the last one to speak. I see the Honourable Jasper TSANG is waiting for his turn to speak.

I originally did not intend to speak, but as a former member of the LAB and a present representative of employers, I wish to say a few words.

First, I wish to talk about the question of the status of the LAB. According to my experience, all LAB negotiations are very arduous; employees and employers both have to go through arduous negotiations in order to achieve any result, and it is not achieved by rash accommodation; and then

recommendations have to be made to the Government. Thus, I think we should respect proposals made by the LAB, and seriously consider why they make the recommendation of $35,000. They do not come up with this $35,000 figure out of thin air. It is arrived at through calculation and discussion. It is proposed only after the LAB has considered it to be sufficient. Of course everyone can have his own opinion about any suggestion, because our experience and what we have gone through, and our status are all different. Although Honourable Members can talk about anything, yet we cannot wipe out the work done by the LAB. I hope we will give consideration to this.

Second, I wish to talk a little about how much is sufficient, which is a very subjective question. If one wants a spectacular funeral, $2 million may not be sufficient. However, if we consider the actual circumstances, since the LAB after consideration says $35,000 is sufficient, I will believe it is sufficient, otherwise even $50,000 may not be sufficient either, because from a subjective point of view, it can never be sufficient, however much. Thus, this discussion of increasing it from $35,000 to $50,000 is meaningless, because it is very difficult to set a standard.

Third, I wish to say, as an employer, the attitude I hold in the LAB has always been to do my best looking after labour affairs with a sympathetic heart. Mr TAM Yiu-chung and Mr SZETO Wah and I joined the LAB at the same time, and have served as members of the LAB for more than 10 years; so, according to my experience, recommendations made by the LAB are most prudent and fair.

I hope Members can consider the few points made above. Thank you.

MR JASPER TSANG (in Cantonese): Madam Deputy, that so many colleagues have to discuss here how much is enough to bury a person is really a most unhappy thing. Besides, in the process of discussion, I have heard so many Honourable Members lash out personal attacks, this all the more makes one displeased.

I had carefully listened to Mr LEUNG Fu-wah's speech. He never said wanting the boss to "show mercy". That was a phrase used only by Mr LEUNG Yiu-chung. Nor did he accuse this Council of "debasing" some people: that was a word used only by Mr Albert HO. Why all this?

As Mr LEUNG Fu-wah is one of the members of the LAB, so, with a responsible attitude, he posed the supposition that a result obtained in the LAB after consultation between both parties is at last found to be of no effect, because when it is presented to the Legislative Council, the Legislative Council can at any time change it; so he raised his worry, which is: Will representatives of employers use this as an excuse? Why do they still have to negotiate with labour in future, if such hardship in negotiation between both parties and compromises made mutually would end up being useless? What is the point of agreeing to $35,000, if when it is presented to the Legislative Council, Members say it should be raised to $50,000, and it will indeed be changed to $50,000? He may as well stick to $16,000, leaving it all to the Legislative Council to move motions demanding increases. Why should he make such compromises? This is a reasonable concern. Having made this compromise as a labour representative, he only hopes and also asks Honourable Members to consider the representative nature of the LAB.

Ultimately, what is his worry? That is, if it is like this, if for fear that the two parties cannot agree, the other party will go away, and the employers will not show mercy, there will be no need for any more negotiation afterwards. Do we really have to say it like this? There has really been a great change in the 15 years. However, I heard Mr TAM Yiu-chung say just now that incident happened 15 years ago. Mr SZETO Wah's position then was that he had made an agreement in the meeting, which he agreed to, then he should not support another proposal after the meeting which repudiated this agreement. This is my understanding of Mr TAM Yiu-chung's speech. However, it turns out that the change in 15 years has caused this principle to change too. That is, 15 years ago, when he had come to an agreement with others, and afterwards his other colleague wanted to repudiate this agreement, his position was that this was not right. The reason is that trends change with the passage of time and it is no longer like this after 15 years, and the principle has changed. I did not hear Mr SZETO Wah clarify that this incident did not happen. Of course there has been a great change in the labour movement in the past 15 years, and there has also been a great change in the composition of the Legislative Council; but, I think, this principle which Mr TAM Yiu-chung raised just now should not change. Whether the compensation is sufficient or not, I want to emphasize again, we can proceed to discuss together, and examine how much money can be regarded as sufficient, especially when we put ourselves in the shoes of the deceased's family and look at this matter from their perspective, perhaps however much compensation cannot still be regarded as sufficient.

According to Mr LEUNG Yiu-chung's logic, why should he support $50,000? Since he said $50,000 was still not enough, why did he not demand what he had mentioned, that is, $70,000 or even higher figures? Ultimately, how should we judge the standard? If you say $2 million is extremely little in relation to $400 million, then even if we double it, or even triple it, increasing it to $6 million, this figure is still extremely little in relation to $400 million; but why should we draw a dividing line in this? I do not quite understand this either. Unless the purpose of this debate is to launch personal attacks, to make people think some Honourable Members among us are completely wrong, because they have betrayed the interests of the labour sector, and hence to pass on this message; otherwise, we really have to sit down and seriously discuss this recommendation by the LAB, to see whether it merits support by this Council. After all, I think, there is no need to use so many emotional words in a debate. Thank you, Madam Deputy.

THE PRESIDENT resumed the Chair.

MRS SELINA CHOW (in Cantonese): Madam President, I heard a moment ago Mr CHEUNG Man-kwong's attack on Mr James TIEN and I found it really disgusting, because I think he twisted Mr James TIEN's words, his reasons, his starting point, and the grounds. Of course, among us, everyone sympathizes with the pain these illnesses bring about, and when workers who have contributed to the economy of Hong Kong pass away because of this illness, I believe every Honourable Member in this Chamber is very sympathetic towards them. However, why did Mr James TIEN say a moment ago we had to calculate the amount? Because sympathy should not worth only $15,000, possibly more than $15,000, but when we propose an amendment to increase the amount to $50,000, what reasons do we have. Or perhaps we may stipulate $35,000; what then do we base on? Is this sum actually sufficient to meet the required expenses? That was all what Mr James TIEN had said: He only wanted to express these matters with such factual information. I believe Honourable Members here, including Mr CHEUNG Man-kwong, did not know these figures. However, Mr James TIEN was actually able to bring out these figures, very truly telling us that $35,000 is sufficient to meet the relevant expenses. Perhaps it is not as plentiful as Mr Albert HO wished, but whether it is plentiful is a matter of personal opinion. Hence, I think it was really very unfair to purposely reproach Mr James TIEN on this point and say he was heartless.

Moreover, I would like to talk about what Mr SZETO Wah said a moment ago. He said a lot had changed in 15 years. However, basically, the principle does not change. He took part in that first negotiation in that year, and when he and Mr Henry TANG had reached an agreement on a certain matter, others could not repudiate it. This time, we have pointed out, that the LAB had discussed this recommendation for a long time, and considered it for a long time, and everyone had discussed it from different angles and points of view. This LAB mechanism is respected by both labour and employers. However, Mr SZETO Wah had not taken part in it, so he said he could repudiate it, and he questioned why it could not be repudiated in the Council. If this is so, what would be the consequence? The consequence is that henceforth every time after the LAB has discussed a certain matter, through very long consultations, and reached a proposal acceptable to both labour and employers, it comes to the Legislative Council, only to be rejected by Legislative Council Members because Members do not like it; although they did not take part in it, yet they think not enough was strived for and obtained for labour in the LAB. If it is like this, I believe the LAB is not worth its existence any more, and we may as well have consultations in the Legislative Council, each time just like the dispute a moment ago, using emotional language to consider some questions requiring very rational and logical consideration.

Of course, I am not saying it is not appropriate for us to consider questions about people who have contributed to the community with a sympathetic view and mind. I certainly do not mean this. However, when we have to consider a decision, and this decision bears deep and far reaching effects, and when we must also have regard to certain principles, I think it is better we use excessfully emotional language less in carrying out the debate. Thank you, Madam President.

MR JAMES TO (in Cantonese): Madam President, I have never spoken in the Legislative Council specifically on questions of labour. I am now speaking purely from the angle of logic and fairness. I heard a moment ago Mr Jasper TSANG allege that Mr SZETO Wah and Mr Albert HO's opinions were not fair. In fact, a principle does not change even after 15 years. Some think we should abide by this principle, namely, if you are a member on the LAB, the commitments you have made in the LAB should not be repudiated afterwards. Having heard these opinions, I found no one raised objection. In fact, no one raised this demand. Take Mr LEUNG Fu-wah as example. Although he is a

member of the LAB, yet no one demands him to repudiate here commitments he made in the past as a member of the LAB. No one has ever objected to this principle. On the contrary, Mr Albert HO proposes, if you are a member of the LAB, or if there are many LAB members in the Legislative Council, they can go about canvassing other Honourable Members' acceptance of the opinion of the LAB. However, the problem is that many Honourable Members are not members of the LAB at the same time, and to what degree should we honour a consensus reached by the LAB? This is very difficult to do. For example, Mr LEE Cheuk-yan, who moved the amendment, belongs to an employees' alliance which does not have a representative on the LAB. I do not know whether the Government sees this problem. This problem has occurred not only once, but it has been like this on many occasions. Should we not consider whether the present LAB, which through election brings in several labour and employer representatives, does in general already represent a certain ratio of workers, and whether they are all included in this system; otherwise in future there will certainly be Honourable Members in the Legislative Council who are not on the LAB and yet they are representatives representing workers or unions substantially. This situation will continue to exist.

Therefore, I can only appeal to the Government to consider it clearly. Ten years ago, the degree of democratization of this Council was different from today. Congregated in the Council at that time were Members of different political backgrounds of the left, the centre, and the right, hence, a consensus reached at that time had a better chance to be carried out. However, as this Council presently lacks Members of certain backgrounds, motions are presented to the Legislative Council, but there are Honourable Members in the Council who represent other workers and union interests, and the issues will again lead to dispute. This is because the concerned parties have not consulted them and they have not agreed to anything. Thus, I hope the Government will take in this experience, and give consideration to this direction. However, I have to reiterate that, according to the speeches I heard just now, there is no need to make clarification at all because no one raised this demand. This is just like among us some may hope Mr TAM Yiu-chung, who is also a Member of the Executive Council, will change his mind, but in fact no one dares to raise this demand; all they can do is to express to him, when his role shows a serious conflict, whether he can guarantee he will speak for workers' interests in the Executive Council. However, according to the speeches I have heard, no one demands a LAB member or Executive Council Member to, in a different role, repudiate their promises in the past; no one at all has made such a demand.

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

(No Member responded)

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, the amendment moved by Mr LEE Cheuk-yan seeks to raise the funeral expenses payable under the Pneumoconiosis (Compensation) Ordinance from $16,000 to $50,000. We do not support such an amendment due to the following three reasons.

First, the original motion proposes to increase the funeral expenses payable to $35,000 and this proposal is made after careful considerations and marketing research in many respects. When the Employees Compensation (Amendment) (No. 2) Ordinance 2000 was being deliberated by the last Legislative Council, the Bills Committee had a heated debate on this issue. But in the end most of the Honourable Members agreed to raising the upper limit for such expenses payable to $35,000. The Bill was subsequently passed by the Legislative Council. The motion proposed by us today follows the normal practice to bring in line the amount of funeral expenses payable as stipulated in the Pneumoconiosis (Compensation) Ordinance and the Employees Compensation Ordinance. I do not see any reason why there should be a difference between the funeral expenses under these two Ordinances for workers who die from any direct or indirect work-related causes.

We are not talking about determining a new amount here. So I do not intend to argue on the point of whether $35,000 or $50,000 is more reasonable or not.

As a matter of fact, those who suffer from pneumoconiosis can receive compensation in the form of monthly payment under the Pneumoconiosis (Compensation) Ordinance for incapacity resulting from pneumoconiosis and any pain, suffering and loss of amenities arising from pneumoconiosis, as well as the expenses incurred from medical care and attention. They may also claim compensation on the medical expenses incurred and an allowance is also given for medical appliances used. I agree with what Dr the Honourable LO Wing-lok who has said, that we should care more about the attention which those who

suffer from pneumoconiosis are given before they die. Under the Ordinance, family members of the deceased may receive compensation for the funeral expenses incurred, plus a lump sum compensation for the death of the deceased calculated according to the deceased's age at the time of his death. The compensation for incapacity which the deceased received before his death will be deducted from the amount of compensation payable, but the total amount will not be less than $100,000.

Second, the original motion has been given sufficient discussion in the Labour Advisory Board (LAB) and it has been unanimously agreed by the members representing employers and employees. The Labour Department received a letter from a pneumoconiosis patients group in September and one of the suggestions made was to raise the payment of funeral expenses under the Ordinance to $35,000. This shows that the amount is acceptable to the patients. Furthermore, the Pneumoconiosis Compensation Fund Board has also discussed the amendment moved by Mr LEE Cheuk-yan in its meetings and it has expressly opposed the increase in payment for funeral expenses to $50,000.

Third, the LAB has not been consulted on the amendment moved by Mr LEE Cheuk-yan and that has disrupted the mechanism for employer and employee consultation. Please do not forget that the LAB is a well-established mechanism and it is different from other advisory bodies of the Government in that it is a very representative body the members of which are returned by elections. As a matter of principle, we will not support any proposal which has not been discussed and consulted in the LAB, nor can we accept the idea that since the Pneumoconiosis Compensation Fund has a healthy surplus and so we can increase the compensation amount at our will without considering the established principles and mechanism and rules of the game that are in place.

Owing to the above reasons, I implore Honourable Members to oppose Mr LEE Cheuk-yan's amendment and support the original motion which seeks to increase the funeral expenses payable under the Pneumoconiosis Compensation Ordinance from $16,000 to $35,000. Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the amendment, moved by Mr LEE Cheuk-yan to the Secretary for Education and Manpower's motion, 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.

(Members raised their hands)

Mr LEE Cheuk-yan rose to claim a division.

PRESIDENT (in Cantonese): Mr LEE Cheuk-yan has claimed a division. The division bell will ring for three minutes.

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

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

Functional Constituencies:

Miss Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Mr LAW Chi-kwong and Mr Michael MAK voted for the amendment.

Mr Kenneth TING, Mr James TIEN, Dr Raymond HO, Mr Eric LI, Dr LUI Ming-wah, Mrs Selina CHOW, Mr HUI Cheung-ching, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Mr Henry WU, Mr Tommy CHEUNG, Dr LO Wing-lok, Mr IP Kwok-him and Mr LAU Ping-cheung voted against the amendment.

Mr LEUNG Fu-wah abstained.

Geographical Constituencies and Election Committee:

Miss Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Miss Emily LAU, Mr SZETO Wah, Mr Albert CHAN, Mr WONG Sing-chi, Mr Frederick FUNG and Ms Audrey EU voted for the amendment.

Mr CHAN Kam-lam, Mr Andrew WONG, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Dr TANG Siu-tong, Mr David CHU, Mr YEUNG Yiu-chung and Mr Ambrose LAU voted against the amendment.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 27 were present, five were in favour of the amendment, 21 against it and one abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 25 were present, 14 were in favour of the amendment and 10 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

PRESIDENT (in Cantonese): I now call upon the Secretary for Education and Manpower to reply.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, I am very glad that most Members have abided by the resolution of the last Legislative Council and negatived Mr LEE Cheuk-yan's amendment. We believe that the amount of funeral expenses payable under the Pneumoconiosis (Compensation) Ordinance should be increased from $16,000 to $35,000, in line with the amount under the Employees' Compensation Ordinance.

We urge Members to support the original motion. 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 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.

(Members raised their hands)

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

PRESIDENT (in Cantonese): Government motion.

GOVERNMENT MOTION

SECRETARY FOR SECURITY (in Cantonese): Madam President, I move the motion standing in my name on the Agenda.

In recent months, there has been a huge controversy in our community over whether the Public Order Ordinance (POO) is a piece of "evil" legislation and whether it should be preserved. A wide range of opinions have also been expressed about my moving a motion on the POO in the Legislative Council. In view of this, I would like to explain firstly my reasons for moving such a motion and secondly the background and the need for it, followed by an elaboration on the provisions of the POO regulating public meetings and processions, as well as my response to the suggestions put forward by those calling for a revision of the POO.

The full text of my motion is as follows:

"That this Council considers that the POO's existing provisions relating to the regulation of public meetings and public processions reflect a proper balance between protecting the individual's right to freedom of expression

and right of peaceful assembly, and the broader interests of the community at large, and that there is a need to preserve these provisions."

The Government has been criticized for being undemocratic and ignoring public opinion by setting a bottomline or taking a stance even before the commencement of this debate in the Legislative Council. Yet, I would like to point out that, as the Government is responsible for formulation and implementation of policies, it is, in fact, only natural for the Government to have a stance on issues for which it is held responsible, particularly on legislation that has been implemented effectively. In our daily contact with the public, my colleagues and I gather the impression that members of our community do not object to the Government having a stance. If the public or the media are opposed to the Government's stance, they will voice their dissenting opinions. The last thing they want to see is the Government taking an ambiguous or inconsistent stance, for then they will not know what course to follow. I, therefore, consider that it is indeed the Government's responsibility to explicitly explain its stance through a debate in the Legislative Council. Moreover, as I said at a previous meeting of the Panel on Security, a debate usually has an "affirmative" side and an "opposition" side. Given the Government's clear position of defending the POO, it is entirely right for the Government to act as the "affirmative" side and put forward a proposition to allow the "opposition" side to express its different views in a distinct manner. This is indeed desirable for it enables both sides to explore the truth through a vigorous debate. Every Wednesday in this Council, there are motions moved by Members. Is it not true that many of these motions reflect Members' clear stances and convictions over certain issues? Why is it a matter of course for Members to take stance and why should the Government become the target of criticisms when it states its position? In this regard, I hope that Members can make known their views, no matter whether they are for or against the motion, in an objective and rational manner in the upcoming debate. I do believe that the more the truth is debated, the clearer it becomes. Today's debate will certainly help the public understand the facts of the matter and enable the Government to know the views of the public, especially those of the "silent majority". I hope Members will not feel offended by the wording of the motion which clearly states the stance of the Government.

Besides, I would like to make it clear to Members that the wording of my motion has been carefully considered. The objective is to point out that the POO's existing provisions relating to the regulation of public meetings and

public processions have struck a proper balance between protecting individual's freedom and the interests of the community at large. As I have said on various occasions, the existing regulatory arrangements for such activities under the POO have been drawn up in the light of experience and after careful deliberation, and should be taken as an integrated whole. Any proposal for their amendment should be considered in the light of the rationality of the arrangements as a whole, instead of examining individual provisions separately, otherwise we cannot see the wood for the trees. It is upon this basis that the motion is moved. That is to say, the POO's regulatory provisions for public meetings and public processions have generally struck a proper balance in the broader interests of the community. But it does not mean that the POO can never be reviewed or amended. In fact, the Government cannot preclude the possibility of proposing amendments to the POO in response to future social developments. It is not our intention to "put an end to the controversy" through this debate. The public can continue voicing their opinion even after the debate. The Government will continue to listen carefully to public opinion and look into the need for amendments to the POO in response to future social developments.

At a meeting of the Panel on Security last weekend, some Members queried the need for a debate today as the Legislative Council had held four public hearings within a month, in which considerable public views were collected. On the other hand, some other Members praised the Government for having improved in its performance. After collecting and listening to public views through these four hearings, media reports and other public channels, I believe that all of us will agree that the consultation exercise on whether the POO should be preserved is meaningful and valuable. Since I proposed the motion debate on 7 November 2000, the Legislative Council Secretariat alone has received 239 submissions, including 84 individuals or groups that came forward to express their views in the hearings. This is the first time ever that we have a public consultation of such a wide scope on security issues. Compared with the consultation exercise in 1995 on the amendments to the POO, and the one held by the Provisional Legislative Council in 1997, the consultation exercise this time has surpassed the previous ones in terms of its scale and scope, initiative and enthusiasm, and degree of active participation by the public. This is, in fact, a valuable experience in which we could all take pride. It also displays fully the positive value of the Government proposing a debate in the Legislative Council.

I would like to further point out that having participated in the open debate over the past few weeks, the Government and all sectors of the community have

become more mellow. Despite a minority who still insists on expressing their views by shouting slogans and even by hurling insults, I believe that all of you will agree that the debate within our community on the POO has shown marked improvement, and most of them are now conducted in a much more rational, objective, specific and thorough manner. However, let us reflect on these questions: what have we gone through before we could conduct the debate in such a rational manner today? What was the situation like at the initial stage of the controversy, particularly during the period from the end of September to early October, and even in early November before the Government proposed a motion debate in the Legislative Council.

We must take note of and remain alert to the fact that the harmony and stability of society should not be taken for granted. Just as human nature has its bright side and dark side, the community has its rational and irrational aspirations. Irrational words and deeds may break out in an apparently peaceful society if we do not take precautions. History tells us that a single spark can start a prairie fire. If we do not keep ourselves alert all the time, those irrational words and deeds may lead to violence and push society to the brink of chaos or even bring about turmoil. More than two months ago, the attitude held by some members of the community towards the POO was irrational. A scholar argued in his article that having to make an application before holding processions or meetings was tantamount to having to seek permission for wearing shoes when one went out and thus there was no need to observe such unreasonable legislation. Some Members openly defied the law and challenged front-line police officers to arrest them. There was also a Member who made a declaration as if it were the eve of the French Revolution, saying that "Civil disobedience is the strongest means to expose the absurdity of the POO. Hong Kong society has been too submissive in yielding to power and has been compromising too much. Our step-by-step retreat has only led to the supreme authority of the police …… Since prison is the terminal point of retreat, why do we not abandon the idea of retreat altogether and strike back? We should fight out of desperation and exercise our right of civil disobedience to challenge the high-handed government". These words and deeds were full of passion and incitement. Fortunately, they did not gain support from the general public and therefore have not prevailed in our society. The motion debate proposed by the Government, the public hearings and seminars organized by the Legislative Council and other organizations respectively also provided channels for discussion by all sectors of the community in a lawful and rational manner. The fact that we can calmly debate the POO in this place of solemnity today is not

easily won. I trust that Members will agree with me that reason will finally prevail over sophistry and fallacy and that we should reject irrational words and deeds. Today's debate provides a golden opportunity for us to demonstrate to the public our support for the rule of law and for our remarkable tradition of respecting rationalism.

As the motion focuses on provisions concerning processions and meetings under the POO, I will first give a brief introduction of these provisions and clarify some common misunderstandings of the POO.

Under the POO, a "public meeting" is defined as any gathering of persons in any public place which is convened or organized for the purpose of the discussion of issues of interest or concern to the general public, or for the purpose of the expression of views on such issues, and at which a person assumes control or leadership. However, gathering of persons for social, recreational, cultural, academic, educational, religious, charitable, professional, business or commercial purposes; for the purpose of a funeral; for the purpose of any public body; for the purpose of carrying out any duty or exercising any power imposed or conferred by any ordinance are excluded. In addition, the prior notice as required by the POO merely applies to public meetings of over 50 persons or gatherings of over 500 persons in private premises.

A "public procession" governed by the POO means a procession of more than 30 people in highways, thoroughfares or parks. It is organized and held for a common purpose, and includes any meeting held in conjunction with such procession.

The assembly of ships in Hong Kong waters is regulated by other provisions under the Shipping and Port Control Regulations. Written notice should be given to the Director of Marine seven days before the event.

Under the POO, application is not required to be made to the police for holding public meetings and public processions. For public meetings of over 50 people and public processions of over 30 people, a written notice should be given to the Commissioner of Police seven days before the event. However, it is also expressly provided that the Commissioner of Police may accept shorter notice. In any case where he is reasonably satisfied that earlier notice could not have been given, a shorter notice should be accepted. This illustrates that the seven-day notice is not an inflexible requirement.

In fact, the police adopt a very liberal approach in enforcing the POO. As I have said in my recent written reply to a Member, there have been 8 462 public meetings and processions held from 1996 to October this year. Among them, 1 667 cases, or not more than 20% gave notice of less than seven days, and all of them were accepted by the police. The above illustrates that for those calling for amendments to the POO on the grounds that the existing requirement of a seven-day notice is inflexible and restricts the freedom of procession and assembly, their arguments hold no water.

The legislation provides that the Commissioner of Police shall as soon as possible issue notice in writing of his objection and reasons for his objection to a meeting or procession. It also specifies the time limit within which the Commissioner should issue a notice of prohibition or objection for a public meeting or procession. If a seven-day notice is given, the Commissioner shall not issue a notice of objection less than 48 hours before the commencement of the meeting or procession. If a shorter notice of not less than 72 hours is accepted by the Commissioner, he shall not issue a notice of objection less than 24 hours before the commencement of the meeting or procession. If it is a procession and a shorter notice of less than 72 hours is accepted by the Commissioner, he shall not issue a notice of objection later than the commencement of the procession.

The legislation stipulates that if the Commissioner does not object to a procession, he shall as soon as possible issue a notice of no objection. Some people asserted that the notice is a licence in disguise and therefore called for its repeal. But I wish to point out that the Ordinance makes it clear that "If the Commissioner of Police does not notify, post or publish his having an objection in accordance with subsection (2) and within the time limit specified under this Ordinance, the Commissioner is taken to have issued a notice of no objection for the public procession." Obviously, the notice of no objection cannot amount to a licence if a procession can take place even if the notice is not served. This is because in general, without a proper licence, say a liquor licence, certain activities cannot go ahead. However, a public procession is not required to obtain a notice of no objection before it can proceed. Indeed, the purpose of a notice of no objection is to require the Commissioner to give a clear indication as soon as possible so that organizers of processions may organize their activities.

The Ordinance empowers the Commissioner of Police to regulate public meetings and public processions. However, it also clearly states that such

powers must not be exercised wantonly and the police must comply with the restrictions imposed by the law.

For example, the Commissioner is empowered to prohibit the holding of any public meeting which has given notification according to the law, but he may do so only when he reasonably considers it necessary on four grounds (that is, safeguarding national security, public safety, public order or protecting the rights and freedoms of others). These grounds for prohibition reflect the restrictions on the right of peaceful assembly as allowed under Article 21 of the International Covenant on Civil and Political Rights (ICCPR). Moreover, in prohibiting the holding of any public meeting that has given notification, the Commissioner shall abide by the other requirements of the Ordinance. First of all, he shall give notice of the prohibition within the specified time limit.

Secondly, the Commissioner shall not exercise his power to prohibit the holding of public meetings where he considers that the four concerns can be met by the imposition of conditions, and he shall state the reasons for imposing the conditions.

As for public processions, the Commissioner may also object to any public procession on the four grounds given above. Similarly, he shall abide by other requirements of the Ordinance in exercising his power. For instance, the police shall give notice of objection within the specified time limit and state the reasons of objection to the organizer of the procession.

The Commissioner shall not exercise his power to object to processions where he considers that the four concerns can be met by the imposition of conditions. He can only impose relevant conditions and inform the organizer of the reasons for such an imposition. The organizer can lodge an appeal. This shows that under the POO, the police do not have absolute power and they are in fact subject to many objective restraints. The final decision as to whether a public meeting or procession can take place rests with the Appeal Board.

As regards the appeal mechanism, the POO provides that anyone who is aggrieved by the decision of the Commissioner to prohibit a public meeting or to object to a public procession or to impose conditions on the activity can lodge an appeal to the Appeal Board on Public Meetings and Processions. The Appeal Board is chaired by a retired judge and served by three unofficial members. After hearing the appeal, the Appeal Board may uphold, overturn or change the

Commissioner's decision. This appeal mechanism was set up as recommended by the Bills Committee which scrutinized the proposed amendments to the POO in 1995. The mechanism has been working well since its inception.

Some members of the public hold onto the inflammatory argument that the 1997 amendments to the POO are tantamount to a resurrection of the pre-1995 legislation, and they labelled the 1997 amendments as "a resurrection of an evil law". What is the reality?

The POO was enacted in 1967 and in recent years was amended twice in 1995 and 1997. The current POO is by no means a resurrection of the pre-1995 law. Prior to the 1995 amendments, public processions of not more than 20 persons were exempted from applying for a licence. After the 1995 amendments, public processions of not more than 30 persons were exempted from giving notification. The relaxation in the number of participants remains valid in the current law.

As regards public meetings, the notification mechanism exists both before and after the 1995 amendments. However, under the POO as amended in 1995, the number of participants that was eligible for exemption from the notification requirement was relaxed from no more than 30 to no more than 50. This relaxation also remains valid after 1997.

One of the most significant changes introduced by the 1995 amendments was the replacement of the licensing system requiring police approval in advance by a notification system for holding of public processions. Organizers are only required to give written notification seven days in advance to the police. The current POO still retains this system and for enforcement purpose, it is clearer than the 1995 amended version.

As I have just explained, in the 1997 amendments, the notice of no objection was introduced to enable the organizers to be informed of the police's views more promptly and accurately. The notice of no objection is not a licence, as the procession can take place as scheduled if the police do not issue a notice of no objection or notice of objection within the specified time limit.

Another change brought about by the 1997 amendments is that the police may prohibit a notified public meeting or object to a notified public procession on the grounds of "national security" and "protection of the rights and freedoms

of others". The grounds for prohibiting a public meeting or objecting to a procession that can be cited by the police under the POO are consistent with the restrictions set out in the ICCPR. In fact, POO is more liberal than the Covenant because it has not adopted all the restrictions allowed in the ICCPR. As stated in section 2(2) of the POO, the expressions of "public safety", "public order", "the protection of public health" and "the protection of the rights and freedoms of others" in the Ordinance are interpreted "in the same way as under the ICCPR as applied to Hong Kong". In other words, the Commissioner must observe the international human right standards in deciding whether to impose a prohibition or raise an objection. If his decision is queried, the decision must be judged in accordance with the relevant standards.

From the above, we can see that the current POO is by no means "a resurrection of an evil law". On the contrary, the current law is not only more liberal than the pre-1995 legislation in some aspects, but also limits the power of the police more stringently, enabling organizers of processions to have a clearer understanding of the stance of the police.

In a paper we submitted to the Panel on Security last Saturday, existing legislation governing public meetings and processions in 11 places overseas was compared. By and large, the legislation and practices of Hong Kong are similar to those of other modern cities. In most places, organizers are required to give notification to the authorities concerned in advance or even to apply for a licence. As for the period for notification or application, it varies from 36 hours in New York to 90 days in Vancouver. The requirement of seven-day notification, as in the case of Hong Kong, is only to take a middle course. In most places, the police are empowered to approve the holding of public assemblies. In New South Wales and Queensland of Australia, the power of prohibition rests with the Court. This is a rather unusual practice. Actually, a formal appeal mechanism is lacking in many overseas domains. In New South Wales, organizers cannot appeal if the magistrates' court prohibits the holding of a public assembly. In other places, like London, Singapore and Paris, organizers can only appeal by way of a judicial review. In this respect, Hong Kong has a more advanced appeal system in comparison with other overseas cities.

Now let me respond to the proposals put forward in recent months for amendments to the POO.

Firstly, I would like to make it clear that the vast majority of members of the community seem to accept the requirement to give prior notice to the police. The Hong Kong Bar Association agrees that people should be encouraged to notify the police, and the Law Society of Hong Kong accepts that the notification requirement under the POO is consistent with Article 21 of the ICCPR. Besides, I have noted that the amendment to the motion moved by Mr James TO also supports the retention of the notification system. The amendments proposed by some members of the public are mainly related to specific details of the POO, such as the notice period and the threshold on the number of people who can take part in a public meeting or procession. Our views are as follows:

As regards the notice period, some organizations proposed to shorten the period of notice for processions or meetings from seven days to four days, 48 hours, 24 hours and even 12 hours. As I have mentioned before, the POO already requires that the Commissioner of Police must, under reasonable circumstances, accept a notice of less than seven days, and the Commissioner also has the discretionary power to accept a notice of less than seven days. I therefore do not see any need for amendments. As the POO already allows organizers to enjoy flexibility in respect of the notice requirements under reasonable circumstances, the police should also be allowed sufficient time to plan their manpower deployment and make traffic arrangements. This is to ensure that while participants of public assemblies express their views, the effect of their activities on others will be minimized.

Strictly speaking, there is no objective justification for the proposals made. Some individuals or groups made the proposals simply because of their habit or preference. Some people referred to the high efficiency of the police and said that they should be able to accept shorter notice. These proposals are based on personal concerns without paying heed to the rising number of public meetings and public processions, which increased from 68 in 1984 to 2 326 last year. As public meetings and public processions tend to concentrate on certain popular dates and in certain popular places, sufficient time must be allowed for the police to contact the organizer of a public meeting or procession and assess the impact on traffic having regard to the time, the place, the number of participants and the route of the procession. Moreover, in case agreement cannot be reached by both parties, the organizer may need to lodge an appeal to the independent appeal board before the commencement of the event. It is therefore necessary to maintain the seven-day notice.

Some are of the view that the statutory threshold on the number of people participating in public meetings and public processions should be relaxed. It has been suggested that prior notice to the police should be required only for a meeting or procession with 100, 200 or even 500 participants. In view of the extremely overcrowded conditions in Hong Kong, we believe that a public meeting consisting of more than 50 people or a public procession consisting of more than 30 people will inevitably affect traffic, public order or the activities of other people. The greater the number, the greater the inconvenience. When we draw up the threshold, we have taken into account the capability and availability of police resources to cope with the situation without being notified. Therefore, we cannot further relax the restrictions at will.

The offence of making announcement or promotion of an unnotified meeting or procession is also opposed by some people. In fact, the organizer will not commit an offence if he notifies the police before advertising or promoting the event. I cannot see any difficulty in complying with this requirement. I also notice that there is a similar provision in Germany which provides that notice of public meetings and processions should be given to the relevant authorities (the police or the mayor) 48 hours before the event. The legislation also prohibits the announcement of the event before notification is given as the relevant authorities have not assessed whether the event complies with the relevant law. Hence, the prohibition of prior promotion or announcement is part of the notification system.

Some people have suggested that Hong Kong should follow the model of Queensland, Australia where the decision on whether a procession or meeting can proceed rests with the court. Under this system, the Queensland police or the local authority are required to consult the organizations concerned before applying to the Court for a prohibition order if they object to a public meeting. As the decision made by the Court is final, the organizer is not allowed to make any appeal, and can only request a judicial review if he is dissatisfied with the decision.

We have studied the legislation governing public meetings and processions in various places and the Queensland model is found to be the exception rather than the rule. Generally speaking, the police is the competent authority for handling notifications or applications in respect of public meetings and processions. I cannot see any valid reason for us to follow the Queensland system. In Queensland, the whole process, from carrying out consultation as

required by the legislation to applying to the Court for prohibition order, involves a much longer time than the notice period required under Hong Kong's notification system. In contrast, under Hong Kong's system, the preliminary decisions are made by the police. If the organizers are dissatisfied with the decisions, they may lodge an appeal with an independent appeal board. This system is indeed more efficient and can better facilitate organizers to ask for reviews of the police's decisions.

Moreover, I notice that when considering amendments to the POO in 1994 and 1995, the Court's views had been sought on the appointment of serving judges to handle the appeals. After careful deliberation, the Court replied that it would be inappropriate for serving judges to handle appeals because this would politicize their work, give rise to conflicts of their role, and affect the deployment of manpower for handling judicial reviews. We should reflect on these points.

Many people are of the view that participation in an unauthorized meeting or procession should not be considered as a criminal offence and the maximum penalty should not be five-year imprisonment. First, I would like to point out that under the POO, participation in an unauthorized meeting or procession unwittingly is not a criminal offence. The offence punishable under the Ordinance is "without lawful authority or reasonable excuse, knowingly taking or continuing to take part in" such kind of unauthorized meeting or procession. Having considered the opposing views in detail, we are of the view that if we accept that anyone who enjoys the freedom of expression and assembly should also fulfill his obligation to other members of the community and that the basic obligation is to give the Administration a notice in advance, the mandatory notification mechanism is totally reasonable. The mechanism is vital for maintaining the law and order of our society and is in line with the legal principles and the philosophy advocated by some academics, that is, a right should not become absolute for the fact that it is basic in nature. In order to safeguard the integrity of the notification mechanism, it is reasonable and necessary to introduce a criminal sanction for any deliberate violation. In fact, similar examples can be found in our daily lives in which penalty, or even a maximum penalty of imprisonment is adopted to compel individuals to fulfill their social obligations.

Example one: Under section 7 of the Road Traffic (Safety Equipment) Regulations, any driver or passenger who contravenes the Regulations by not

wearing seat belt commits an offence and is liable on conviction to a fine of $5,000 and to imprisonment for three months.

Example two: Under the Noise Control Ordinance, any person who fails to ensure that the intruder alarm system installed in any premises is provided with an efficient automatic device which shall cause any audible signal to cease not more than 15 minutes after the activation of the signal commits an offence and is liable to a fine at level three and to imprisonment for three months.

Example three: Under the Waste Disposal Ordinance, any person who without lawful authority or excuse deposits any waste in a public place, or on any government land commits an offence and is liable for the first offence to a fine of $200,000 and to imprisonment for six months.

Some people, including the Bar Association, consider the maximum penalty of five-year imprisonment for participating in unauthorized meetings or processions much heavier than that for other offences under the POO, such as behaving in a disorderly manner in public places or carrying offensive weapons at public meetings or processions. They hold that the penalty seems rather severe and disproportionate. There are two points I would like to make:

First, these two crimes are different in nature. The former involves the participation of an individual in an unauthorized collective activity, while the latter involves the illegal action of a single individual. The former may do more harm to society than the latter; and

Second, penalizing those who deliberately participate in an unauthorized assembly may serve a preventive function. It has the purpose of encouraging those who intend to take part in a public meeting or procession to give prior notice to the police. This will ensure that the meeting or procession can take place in a safe and orderly manner, without affecting other people.

In addition, it should be noted that although maximum penalties are provided for in the legislation, it is at the sole discretion of the Court to decide the level of penalties having regard to the individual circumstances of each case. The maximum penalties are usually imposed only for the worst examples of the offence. As regards the offence of knowingly taking part in unauthorized public meetings or processions as stipulated in section 17A(3) of the POO, the worst example may be like this: On a rainy Saturday night, the slippery roads of

Lan Kwai Fong are crowded with hundreds of people who take part in an unnotified meeting and procession to raise their objection against police inspection of "rave party" establishments. The situation is chaotic and results in accidents causing deaths and injuries. This is not an impossible scenario. On New Year's Day in 1992, a tragedy did occur in Lan Kwai Fong owing to overcrowding. In order to avoid the recurrence of such tragedy and other mishaps caused by unauthorized assemblies, I think it is justifiable for the Government to enact legislation to enforce the mandatory notification system and provide for a maximum penalty for contravening this system in order to deal with the worst scenario.

Some have argued that the above provision was enacted in 1967 when Hong Kong was going through a relatively unstable period. "Heavy penalties are needed in times of trouble". However, the possible penalty of five years' imprisonment may not be appropriate nowadays. Of course, in considering the appropriateness of the maximum penalty, which is an important policy issue, we must take into account the prevailing circumstances and the needs of society. I would like to draw your attention to the fact that during public consultation, some members of the community have pointed out that while certain people in Hong Kong may hold strong opposing views on some issues, such as the POO, others are very critical of their behaviour. The latter may want to take vigorous action to show their discontent. I do not want to be alarmist, but being the one who is responsible for the security of the Hong Kong Special Administrative Region (SAR), I cannot preclude the possibility of turmoil arising out of diametrically opposed views between different parties or because of other issues in Hong Kong. Some Members may think that I am over-worried. Nevertheless, as the government official responsible for safeguarding the peace and security of Hong Kong, I am obliged to watch out for danger in times of peace.

I would also like to point out that the number of processions and demonstrations has not only been on the rise, but there have also been new trends and developments. A new trend in the international community is noteworthy, that is, the internationalization of processions and demonstrations. Members may have noticed that in recent years, large-scale and violent processions and demonstrations tend to take place whenever meetings on liberalization of world trade and globalization of world economy are held. The riots that broke out during the World Trade Organization Ministerial Conference held in Seattle in November last year and the Asia Pacific Economic Summit of the World

Economic Forum (WEF) held in Melbourne, Australia this September are obvious examples. Hong Kong will host the WEF East Asia Summit in October next year. We cannot rule out the possibility that a great number of non-governmental organizations will gather in Hong Kong for processions and meetings and may even make trouble. Hence, it is wise and necessary to retain the notification system, including the maximum penalty for intentionally participating in an unauthorized assembly.

In view of the opinions of some members of the public on the maximum penalty for this offence, we shall take into account social developments and further examine the issue.

In my view, the community has had a better understanding of the POO after public discussions that lasted more than three months, especially during the public hearings conducted by the Legislative Council over the past five weeks. I feel that the general public is concerned about the retention or abolition of the POO because it has a bearing on an individual's freedom of speech, freedom of peaceful demonstration as well as peace and stability of society at large. It also directly affects our daily life and even the competitiveness of Hong Kong in the international arena. In the long run, a city without stability, peace, democracy or freedom can hardly be vibrant and attractive to overseas investors.

According to the data on hand, as at yesterday the Legislative Council received a total of 239 submissions (including those submitted by organizations and individuals who had made representations to the Legislative Council). Among these submissions, 186 (78%) are in support of the Administration's stance. In other words, they believe that the POO already reflects a proper balance and therefore should be retained or need not be amended. It should be noted that those who support the Administration not only stand for the majority but also have broad representation. They include grass-roots organizations in districts such as the traditional kai fong associations, residents' associations, owners' corporations and mutual aid committees; commercial and industrial organizations such as the Chinese Manufacturers' Association of Hong Kong, the Chinese General Chamber of Commerce, the Textile Council of Hong Kong Limited, the Hong Kong Plastic Manufacturers Association Limited, the Hong Kong Exporters' Association, Hong Kong Shippers' Council and individual industrialists; the Travel Industry Council of Hong Kong; the Real Estate Development Association of Hong Kong; the Heung Yee Kuk; Hong Kong Federation of Women, Hong Kong Women Professionals and Entrepreneurs

Association, Zonta International and other women's bodies; well-established and large clansmen organizations such as Kiangsu and Chekiang Residents (H.K.) Association, Chiu Chow Association Limited, Federation of Guangdong and Fujian Communities in Hong Kong, and the Chinese Canadian Association of Hong Kong which comprises more than 3 000 returnees; many people in the middle class; Mr Allan ZEMAN, who has stayed in Hong Kong for years; veteran politicians Mrs Elsie TU and Sir Roger LOBO; Mr HO Chu-kwok and Miss Pansy HO who are from the commercial and industrial sectors; and the Hong Kong Federation of Trade Unions which comprises 150 trade unions and 300 000 members.

Another point worth mentioning is the input of some senior citizens and the so-called "patriotic bodies" or "pro-China people" who attended the first public hearing. I hope that Members would not dismiss the value of their opinion just because they have been so labelled. Although I had not met them before, I found that what they said really came from the bottom of their hearts. Their submissions fully reflected that they had gone through wartime, finally migrated to Hong Kong after passing through many places and that they wish to be able to live in a harmonious and stable society. Perhaps some may think that they are conservative but every coin has its two sides. We should respect the majority's wish for prosperity and stability as well, especially those coming from the grassroots.

In addition, the findings of a telephone survey conducted by the Hong Kong Institute of Asia-Pacific Studies of the Chinese University of Hong Kong at the end of November reveal that of all the respondents who have been interviewed, 77.8% of them are in favour of a notice to the police before a procession or a meeting is held, 45.3% support a notice period of seven days, 51.7% agree that a procession of over 30 people should notify the police, and 58.9% agree that a meeting of over 50 people should do the same. The findings of this independent survey are indeed very inspiring. In line with the findings of the consultation exercise launched by the Legislative Council, the findings of this telephone survey reveal that most of the people generally take an unbiased view. They respect the individual's freedom of speech and peaceful assembly on one hand, and acknowledge that appropriate restraint is necessary to ensure the maintenance of social order, public peace and the interests of the whole community on the other.

After the above analysis, I hope Members will agree with the Government that the current POO strikes a proper balance and should be preserved. Furthermore, there are no pressing needs or objective and sufficient justifications requiring it to be amended. Before concluding, I would like to express my views on preserving the *status quo* of the POO by quoting a paragraph in the report on a riot by a well-known British judge, Lord SCARMAN, concerning the Red Lion Square Disorders:

> "Amongst our fundamental human rights there are without doubt, the rights of peaceful assembly and public protest and the right to public order and tranquility. Civilized living collapses — it is obvious — if public protest becomes violent protest or public order degenerates into the quietism imposed by successful oppression. But the problem is more complex than a choice between two extremes — one, a right to protest whenever and wherever you will and the other, a right to continuous calm upon our streets unruffled by the noise and obstructive pressure of the protesting procession.
>
> A balance has to be struck, a compromise found that will accommodate the exercise of the right to protest within a framework of public order which enables ordinary citizens who are not protesting to go about their business and pleasure without obstruction or inconvenience."

The SAR Government actually adopts the same position as many Western democratic governments do in studying, reviewing and drafting laws on public order. As the British Government said in reviewing the British Public Order Act in 1986, our objective is "to regulate these freedoms (that is, the rights of peaceful protest and assembly) to the minimum extent necessary to preserve order and protect the rights of others". In other words, we aim at implementing the most basic and minimum measures to regulate these freedoms, freedoms of peaceful protest and assembly, so as to safeguard social order and the rights of others. I can assure Members that the Government will continue to adopt a tolerant approach in handling processions and demonstrations so that basic human rights are safeguarded whilst public order can be maintained. The police will also adhere to its objective of facilitating processions and demonstrations.

Madam President, I am thankful to Members of this Council for listening to my lengthy speech and I hope they would support my motion. Thank you, Madam President.

The Secretary for Security moved the following motion:

"That this Council considers that the Public Order Ordinance's existing provisions relating to the regulation of public meetings and public processions reflect a proper balance between protecting the individual's right to freedom of expression and right of peaceful assembly, and the broader interests of the community at large, and that there is a need to preserve these provisions."

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

SECRETARY FOR JUSTICE (in Cantonese): Madam President, the public debate over the Public Order Ordinance (POO), which began several months ago, largely involves policy considerations. As the Secretary for Justice, I see my responsibilities in this debate as being limited to three main areas. These are, firstly, to clarify what are, and are not, the current requirements of the law; secondly, to consider whether those requirements are consistent with the Basic Law and the International Covenant on Civil and Political Rights (ICCPR); and, thirdly, to consider the merits of legal arguments in favour of reform.

I have tried to clarify the legal position by means of various public statements and by giving advice to the Security Bureau, which was then relayed to the public. The Administration has also submitted a paper to the Legislative Council Panel on Security in response to the submissions made to the Legislative Council by various individuals and bodies including the Hong Kong Bar Association. I hope that this has been helpful in dispelling some misconceptions that had arisen.

The main misconception was that police permission is required for public processions. I hope Members now all appreciate that this is not the case. The Ordinance simply imposes a notification requirement in respect of most public processions of over 30 persons.

After the Commissioner of Police receives a notice of intention to hold a public procession, he must issue a notice of no objection unless he objects to the procession. If he does not issue either a notice of no objection or a notice of

objection within the specified time limit, he is taken to have issued a notice of no objection.

In other words, if the police do not issue a notice of objection, the procession can go ahead. This is clearly not a requirement of police permission.

However, there are still some who argue that the provisions in the POO reduce, or may be perceived to reduce, the freedom of peaceful assembly to something like a privilege or licence, to be enjoyed at the discretion of the Administration. For reasons that I will shortly give, I do not accept that the freedom of peaceful assembly has been so reduced. And if there is a perception problem, this can be overcome simply by helping members of the community to understand the true position.

My second responsibility has been to consider whether the current law is consistent with the Basic Law and the ICCPR. In my opinion, it is.

Article 27 of the Basic Law provides that Hong Kong residents shall have various freedoms and rights, including freedom of association, of assembly, of procession and of demonstration. However, these freedoms are not absolute.

Article 39 of the Basic Law provides that the ICCPR shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region (SAR). Article 21 of the ICCPR reads as follows:

> "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others."

For a restriction on the right of peaceful assembly to be permissible under this article, the following criteria must be satisfied.

(1) First, the purpose of the restriction must fall with one of the permitted grounds of restrictions.

(2) Secondly, the type of restriction must be rationally linked to the purpose of the restriction.

(3) Thirdly, the restriction must be the minimum that is necessary to achieve the purpose.

The current restrictions must therefore be judged in accordance with those principles. Some lawyers have objected to the terms of the current motion, saying that it is wrong to speak of "balancing" conflicting interests. They emphasize that primary importance should be given to individual rights, and that restrictions on those rights should be construed and applied narrowly. The Administration accepts that this is the correct approach, but believes that this approach can be fully recognized when deciding whether the current law reflects a proper balance between individual rights and the broader interests of the community at large.

Some people have drawn attention to other countries where the law relating to assemblies, demonstrations and processions is more relaxed than in Hong Kong. In some countries, the required notice period is shorter than here. In some countries the penalty for non-compliance is more lenient. However, that does not necessarily mean that our provisions are not appropriate for Hong Kong. What is appropriate for any particular territory must depend partly on the local environment. For example, different standards may apply in a sparsely populated area and in a densely populated one.

Such an approach is adopted when national laws are judged against international human rights principles. The doctrine known as "the margin of appreciation" applies. This doctrine requires international tribunals, when exercising the supervisory jurisdiction over State conduct, to accept initial national assessments of local needs of morality, public order, and so on and national evaluation of local conditions. By conceding a margin of appreciation to each jurisdiction, the Court has recognized that the human rights convention, as a living system, does not need to be applied uniformly by all States but may vary in its application to local needs and conditions. Let me quote from the Handyside case (1976) 1 EHRR 737 (which concerned the ban of a book in Britain which was permitted and freely available in other European countries):

> "By reason of their direct and continuous contact with the vital forces of their countries, state authorities are in a better position than the international judge to give an opinion on the exact requirement as well as the 'necessity' of a 'restriction' or 'penalty' intended to meet them."

Therefore, whilst the international covenant sets out the rights of assembly and demonstration and the principles on which restrictions can be imposed, the regulation of such rights and the penalty for non-compliance with the law should be left to the local authorities.

Of course, the individual states' working out particulars of legal requirements in the light of local conditions does not mean we should depart from the generally adopted international human rights standards. The Human Rights Committee under the United Nations regularly judges, against these standards, Hong Kong's efforts in giving effect to the human rights conventions. In its concluding observations published last year, the Committee stated its awareness of the fact that there were very frequent public demonstrations in Hong Kong. It did not question the past practices of the Hong Kong Police Force in enforcing the POO. The Committee's observation is not as negative as some have suggested. The Committee urged the SAR to review the POO. However, it did not state the reasons for the appeal, nor did it point out which provisions were inconsistent with the human rights convention.

The Administration has made relentless efforts in convincing the public and the Human Rights Committee that the provisions of the POO are consistent with the human rights standards adopted internationally. Bearing these principles in mind, I would now like to consider the following aspects of the current law, namely the requirement for notification; the grounds on which public assemblies can be restricted or prohibited; the sanctions for failure to give notice; the penalties for such failure; and the decision-making system.

The requirement to notify the police of certain public meetings and processions has two principal purposes: to enable the police to take steps to minimize traffic, public safety, and public order problems that might arise; and to enable the police to decide whether there is a need to impose conditions in respect of the assembly or to prohibit it.

The only grounds on which conditions can be imposed, or an assembly prohibited, is if the Commissioner of Police "reasonably considers" this to be necessary in the interests of national security, public safety, public order or the protection of the rights and freedoms of others. The word "reasonably" imposes an objective standard, not a subjective discretion.

These grounds of objection reflect the permissible restrictions on the right of peaceful assembly set out in Article 21 of the ICCPR. Moreover, the Ordinance expressly provides that the key expressions "public safety", "public order" and "the protection of rights and freedoms of others" are to be interpreted in the same way as under the ICCPR as applied to Hong Kong. In deciding whether to object to a public procession, the Commissioner must therefore conform to international human rights standards, by which his decision will be judged if challenged.

In addition, the Ordinance prohibits the Commissioner from exercising his power of objection where he "reasonably considers" that the interests of public safety and so on could be met by imposing conditions. That is to say, if imposing conditions would be good enough, he cannot object to the public assembly being held.

The purpose of the notification requirement is clearly within the permitted grounds of restriction specified in Article 21 of the ICCPR; the requirement of notification is rationally linked to the purpose of the restriction; and notification is the minimum needed to achieve the purpose. In short, the requirement of notification is, in my view, consistent with the ICCPR. In fact, the United Nations Human Rights Committee has already ruled that a requirement of prior notification of public meetings is a legitimate form of restriction. That ruling was made in the case of Auli Kivenmaa v Finland, Communication No. 412/1990.

Some commentators have said that the requirement to give seven days' notice of a public meeting or public procession is unnecessarily restrictive. Other periods, ranging from 12 hours to four days, have been suggested. However, what must not be overlooked is that, under the current law, the Commissioner of Police can, and invariably does, accept less than seven days' notice. In fact, if he "is reasonably satisfied that earlier notice could not have been given" he must accept shorter notice. And, if the Commissioner decides not to accept shorter notice, he is required by law to state his reasons in writing to the person who gave notice, as soon as reasonably practicable.

From an operational policing point of view, the requirement to give seven days' notice allows necessary liaison to be made with organizers, should routes or locations be impractical or clash with other known events. Day to day manning arrangements in police districts can handle public meetings of not more than 50 persons or public processions of not more than 30 persons. In order to manage larger events, additional manpower is often required. Without the ability to make arrangements in advance, police personnel may need to be redeployed from normal duties, and this could impact on beat coverage and police ability to respond to emergency calls.

In addition, if the organizers of an assembly are dissatisfied with restrictions imposed, or a prohibition of the assembly, they are entitled to appeal to an independent board. For the appeal mechanism to function effectively, there should be sufficient time to arrange an appeal board hearing before the date of the planned public meeting or procession.

In the light of these considerations, the criticism of the current notice period loses much of its sting. In practice, the existing requirement does not appear to impose a heavy burden on organizers of public assemblies. In my view, it is consistent with the ICCPR.

The requirement to give notice must be supported by some form of sanction if it is to have any meaning. Making it a criminal offence to organize a public assembly without giving notice to the police seems generally acceptable. For example, the Hong Kong Bar Association accepts that, in the interest of maintaining the integrity of a notification system, such an offence is justifiable.

However, some commentators consider it wrong to penalize those who merely participate in an unnotified public assembly. The Hong Kong Bar Association has commented that "it is unconstitutional to criminalize a peaceful assembly or procession simply on the ground of failure to give notice." Its authority for this statement is a 1936 case in the United States which concerned someone who was prosecuted simply for assisting in the conduct of a meeting which was called under the support of the Communist Party. It is difficult to see what relevance that case has to the current debate involving a notification system, which concerns entirely different issues, and which is not to be decided under the American Constitution.

In fact, the Hong Kong Bar Association does not assert that the local offence relating to participation in an unnotified public assembly is unconstitutional. It says that the constitutionality of that offence is "seriously in doubt". With great respect to the Hong Kong Bar Association, I do not accept that to be the case.

Is there a good reason why criminalizing those who organize an unnotified public assembly should be permitted, but criminalizing those who participate in such an assembly should not? It might be unfair to penalize someone who simply happens to take part in such an assembly. But the law does not do so. It is only an offence for a person "knowingly" to participate in an unauthorized assembly, "without lawful authority or reasonable excuse." Seen in this light, the offence of participating in an unnotified public assembly involves almost as much moral culpability as the offence of organizing such an assembly.

Even if, in theoretical terms, one can distinguish the degrees of culpability, would it be practicable to limit the offence to organizers? If those responsible for organizing a public assembly fail to give notice of it then, by definition, the police will not know who they are. They may not even turn up in person when the assembly takes place. Who then can be prosecuted as organizers? One cannot assume that those at the front of the assembly are necessarily the organizers. Unless particular individuals confess to being the organizers, the prosecution would probably face an impossible hurdle in bringing the culprits to justice — even though an offence has obviously taken place. Do we want to make a mockery of the law?

Seen in this light, I do not consider that the imposition of a criminal sanction for failure to give notice, or for knowingly participating in an unauthorized public assembly, can be regarded as disproportionate, or contrary to the ICCPR.

Another focus of criticism is the level of penalty laid down for organizing or participating in an unauthorized assembly. The maximum penalties are five years imprisonment for conviction on indictment, and a fine of $5,000 and imprisonment for three years on summary conviction.

The maximum penalties set for any offence are usually imposed only for the worst examples of the offence concerned. Therefore, in judging the appropriateness of the penalties relating to unnotified public assemblies we must consider some of the worst examples of the offence.

Take, for example, the situation where the police have been notified that a large demonstration is to take place at a certain time and place. A rival demonstration is then organized for the same time and place by another large group, who plan to disrupt their opponents' meeting, but the police are not notified of this. Had they been notified, the police would have justifiably imposed conditions as to the place of the second demonstration on the grounds that this was necessary in the interests of public order and public safety. The two rival demonstrations then take place at the same time and place, leading to serious injuries to participants and bystanders, and to considerable damage to property. Will it be too harsh if those who unlawfully organized the rival demonstration are liable to a more severe penalty, such as imprisonment?

Earlier in this meeting, the Secretary for Security referred to an example involving people pushing one another, resulting in many deaths by suffocation. The organizers have failed to give prior notice to the police, which leads to the tragedy that would have been avoided. Under such circumstances, if the law only stipulates a fine, is the penalty adequate to achieve the purpose of the ordinance which is to protect public safety?

It is in the context of those kinds of examples that one should judge the current penalties. The situation where a small group of demonstrators hold an unnotified, but entirely trouble-free, public assembly falls at the other end of the scale of seriousness. It is inconceivable that participants in such an assembly would receive penalties anywhere near the maximum provided for.

Some commentators accept that there must be a power, in certain circumstances, to prohibit public assemblies or to impose conditions in relation to them, but they object to the fact that it is the police who have this power. The organization JUSTICE, for example, says that a prohibition of a public assembly should have the sanction of a court. Others have said that, if any conditions are imposed by the police, there should be a right to have the decision reviewed by a judge immediately.

In assessing these comments, one must appreciate that, if the police do object to any public assembly, they must give reasons. An appeal lies against any such prohibition or objection to an independent, impartial board, which is currently chaired by a retired judge. And, if an appeal fails, the organizers can still challenge the police decision in the Courts by way of judicial review.

It is clear, therefore, that the current law contains more than adequate safeguards against any abuse of police power. Furthermore, the police as law enforcement agents are in the best position to professionally assess the dangers that may arise out of public meetings and processions. As long as their decisions are subject to an independent mechanism of appeal and judicial review, it will be most proper to leave the decision making with the police.

Each of the restrictions on the right of peaceful assembly I have mentioned is, I believe, consistent with the ICCPR. Some people have, however, emphasized that the combined effect of the restrictions, including the penalties imposed, must not be so overbearing as to have the effect of stifling or threatening any exercise of such a right.

The Administration accepts this, but can see no grounds on which the current law can be faulted in this respect. With over 6 000 public rallies since reunification, Hong Kong has become known as the "city of protests". Does anyone seriously believe that the POO has the effect of stifling or threatening any exercise of the right to take part in such rallies?

Let me finally turn to my third responsibility — to consider the merits of legal arguments in favour of reform. I emphasize legal arguments, rather than arguments based on policy considerations.

It should be clear by now that I do not accept that reform is needed in order to make the current law consistent with human rights guarantees. In my view, it is already consistent with them.

What other legal arguments are there? Contrary to what some have alleged, there has been no unfair targeting of certain demonstrators by the police; there has been no arbitrary or improper use of the discretion to prosecute; no heavy penalties have been imposed on demonstrators; and there is no evidence whatsoever that the current law unfairly restricts the right to peaceful assembly.

Some people have suggested that the Law Reform Commission should review the POO, and I note the Honourable Emily LAU's proposed amendments to the motion. But, after months of debate, the legal case for such a review has not been made out. The main criticisms levelled at the Ordinance relate to certain details of the legislative scheme — such as the required notice period and the level of penalty. Those are not suitable matters for the Law Reform

Commission to look into. That the Commission's time is better spent on broader issues. In fact, the Law Reform Commission does not take charge of all reforms in law. If anyone has doubts on the Commission's functions, he will be welcome to inquire with the Commission or to browse its website.

The Administration is willing to listen to criticism of the law. The fact that the Administration has been defending the current law does not mean that it has not, at the same time, listened to criticism. As a policy matter, the Government will consider whether to revise laws in light of operational experience. Having said that, the Government has firm belief in the constitutionality and lawfulness of the existing provisions. We have carefully considered the views that have been expressed. But, to date, we still consider that the current law reflects "a proper balance between protecting the individual's right to freedom of expression and right of peaceful assembly, and the broader interests of the community at large." I therefore urge Members to vote for the motion and against the amendments proposed by Miss Emily LAU and Mr James TO. Thank you, Madam President.

PRESIDENT (in Cantonese): Mr James TO and Miss Emily LAU will separately move amendments to this motion. Their amendments have been printed on the Agenda. The motion and the two amendments will now be debated together in a joint debate.

I will call upon Mr James TO to speak first, to be followed by Miss Emily LAU, but no amendments are to be moved at this stage.

MR JAMES TO (in Cantonese): Madam President, may I raise a point of order?

PRESIDENT (in Cantonese): Yes, you may.

MR JAMES TO (in Cantonese): Madam President, under the Rules of Procedure, there is no restriction on the speaking time and the time for reply of the Secretary for Justice and the Secretary for Security as they moved the motion. Just now, many colleagues and I have tried our very best to listen to and jot down what the two Secretaries said. Now, the Secretaries together spoke for around

an hour and 10 minutes; the Secretary for Justice's speech, in particular, contained a number of precedents, arguments and details in law. Thus, I want to raise a point of order. The reason is that in a usual motion debate, we have only 10 or 15 minutes to speak, and though I expected the government officers to speak for more than 15 minutes, I did not expect them to speak for more than an hour together. So, I hope ……

PRESIDENT (in Cantonese): Mr James TO, what is your request?

MR JAMES TO (in Cantonese): Madam President, can I request that the meeting be suspended for 15 or 20 minutes? The speeches of the Secretary for Justice and the Secretary for Security have now become public records. With their agreement, would they provide photocopies of their speeches to us so that we may give more specific responses. I know that many Members have attended meetings of the Legislative Council Panel on Security and understand some of the arguments in detail, but those Members who have never attended the meetings may find it difficult to understand within a short time the complex arguments presented. Thus, I would ask the President to accede to my request so that this Council may carry out a debate in greater depth.

PRESIDENT (in Cantonese): Mr James TO, before I make a decision on your request, can I ask you a question: Is it because you are the first Member to speak on the motion that you find things somewhat difficult?

MR JAMES TO (in Cantonese): Madam President, I do not find any difficulty because out of the 15 minutes of my speaking time, I have planned to spend 10 minutes on my speech and five on my response to the arguments of the Government. Frankly speaking, as the public officers spoke, I made notes on 20-odd pages on the points they made, hence, I have noted almost all of their arguments. I hope the President may give us some time so that colleagues who wish to take the motion seriously may give more in-depth responses. After all, the Secretaries indicated in their speeches that the Government had hoped to receive Members' views in moving its motion.

PRESIDENT (in Cantonese): Mr James TO has requested that the meeting be suspended for 15 minutes to allow time for photocopies of the speeches of the two public officers to be distributed to Members who may then understand better the speeches after going through the copies. However, I do not think this is sufficient to enable Mr James TO to make a response to his satisfaction. Unless I adjourn the meeting now until tomorrow, I do not think a 15-minute suspension can meet the request made by Mr TO ……

MR JAMES TO (in Cantonese): Madam President, ……

PRESIDENT (in Cantonese): Mr TO, that is it. Please be seated first. I do not think a 15-minute suspension would be helpful to you. That was why I asked whether you found things difficult. I was hoping the Secretariat could photocopy the speeches of the two public officers and distribute them to Members, who might then be able to think over the speeches and respond, but that decision may not help Mr TO or Miss Emily LAU.

Miss Emily LAU, do you find things difficult too?

MISS EMILY LAU (in Cantonese): Madam President, I do not think it matters. I will try my best to respond. I agree with what your point; that is, a better arrangement would be to photocopy the speeches of the two officers for Members to read and wait till tomorrow to continue the meeting. It appears from the present position that the meeting would be adjourned tonight at ten o'clock because it is unlikely the motion debate would end at even midnight tonight. Therefore, I would ask the President to consider suspending the meeting so that Members may take the photocopies of the two speeches home to read and resume the debate at nine o'clock tomorrow morning.

PRESIDENT (in Cantonese): Honourable Members, in fact, before these requests were made, I had made inquiries, through the Clerk, with Members from three different political parties so that I could figure out the number of Members who would be speaking later. I intended to adjourn the meeting tonight at around ten o'clock and resume it tomorrow as I hoped to complete the motion debate tomorrow morning. A short while ago, I was given to

understand that several Members would not be in Hong Kong tomorrow afternoon. I very much hope they can participate in the debate and I therefore do not want the meeting tomorrow to drag on into the afternoon before it is completed. At this stage, I would not suspend the meeting but I would allow some Members to speak. Today's meeting will be suspended at approximately ten o'clock. This Council will spend about three hours more tomorrow to continue the motion debate.

I consider this decision can best suit the schedule of Members, some of whom would find it difficult to change their plans if their departure is imminent. Though I understand why Mr TO made the request, I cannot accede to it.

This Council will now continue the debate. Mr TO, please proceed with your speech.

MR JAMES TO (in Cantonese): Madam President, I would try once more to convince you. Some Members may not be sure of the notes they made of the speeches of they had for Justice and the Secretary for Security though they did take notes of what they had said. Some of the arguments were made by way of a double negative. The President may consider suspending the meeting for 15 minutes may cause the meeting to continue into the afternoon tomorrow, thereby affecting the opportunities of some Members to take part in the debate. But if the President could suspend the meeting for 15 minutes, would this be fair to all Members? I hope the President can reconsider my request. I respect the President's original plan to suspend the meeting at 10.30 pm or eleven o'clock, a plan to which I would not object.

PRESIDENT (in Cantonese): Mr TO, I have considered your request. Please deliver your speech on your amendment and on the original motion.

MR JAMES TO (in Cantonese): Madam President, under Article 39 of the Basic Law, the provisions of the International Covenant on Civil and Political Rights (ICCPR) as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region (SAR). Article 21 of the ICCPR stipulates that the right of peaceful assembly shall be recognized. No restrictions may be placed on this right other than

those imposed in conformity with the law and which are necessary in a democratic society.

Just now, the Secretary for Justice and the Secretary for Security have put forward their arguments in detail. They have also put forward these arguments in detail before the United Nations Human Rights Committee (UNHRC). They might think their arguments were forceful, their principles stand to reason, and their details sufficient. Despite that, the HRC in its concluding observations dated 14 November 1999 on the first report on Hong Kong's human rights situation after the reunification expressed its views and recommendations on the Public Order Ordinance (POO) as amended in 1997. The UNHRC was concerned that the SAR Government might invoke the present POO to inappropriately limit the rights guaranteed under Article 21 of the ICCPR. Therefore, the SAR should review and amend the POO to bring its provisions into compliance with those in Article 21. Obviously, the UNHRC was clear about the arguments of the Government. The Secretary for Justice said the views of the UNHRC were not that negative, but that was not the case. The issue now is not whether the views are negative. Probably, due to diplomatic considerations, the UNHRC made good comments about reports submitted by the respective countries before unleashing unfavourable ones. Its conclusion was that the SAR Government should review and amend the POO to bring its provisions into compliance with the ICCPR. In other words, the UNHRC had made it abundantly clear that the SAR Government should review and amend the POO before it can comply with the ICCPR. However, the Secretary for Justice said she did not understand why the UNHRC had such views or that the UNHRC did not provide details for its arguments. If she did not understand it, she could make inquiries, rather than simply saying the UNHRC did not make its views sufficiently clear. In fact, in many of its reports, the UNHRC would not necessarily state clearly which countries or regions were acting in breach of the International Covenant on Human Rights (ICHR). In summary, the comments of the UNHRC were made after listening to the arguments of the Government.

The SAR Government has repeatedly indicated that according to the opinions of the SAR legal advisers, the existing POO is consistent with the ICHR. The Secretary for Security may not think the UNHRC is the authority on human rights, and other experts with comparable authority would think the existing POO is in compliance with the ICHR. However, this is not a matter of who is the expert or who commands the greatest authority.

The People's Republic of China, acting under the requirements of the ICCPR, submits to the UNHRC the SAR's report on human rights. The report allows the UNHRC to examine the measures taken by the SAR to protect the rights recognized by the ICCPR and the progress in the enjoyment by the people of the SAR of the various rights. The yardstick used by the UNHRC to measure signatories to the ICHR and countries and regions to which the ICHR applies is the same as that used to examine human rights in the SAR, to decide whether some aspects of the SAR are consistent with the ICHR. Thus, the SAR has two options. It may choose to amend the Joint Declaration, to withdraw from the relevant agreements or covenants on human rights, in which case it need not comply with resolutions made under the ICHR or bother about the comments brought about by the mechanism or accusations for acting in breach of the ICHR. That, however, is not a possible course of action. Since that cannot be done, the SAR Government must then respect and accept the criticisms and recommendations made by the UNHRC so that it can do better in complying with and implementing the ICHR.

Though the SAR Government has obtained legal opinions from its legal advisers, it does not mean the SAR Government can regard itself as acting in compliance with the ICHR and ignore the criticisms of the UNHRC, unless the Chinese Government cases to be a party to the ICHR any more.

Does the SAR Government wish to take the initiative to respond to the criticisms of the UNHRC or does it wish non-government organizations to give spontaneous response to the criticisms? The SAR Government may think more carefully about that. As Members of the Legislative Council, however, we should understand our duties and look at the issue from a wider and broader perspective. We should not ignore the concluding observations of the UNHRC, made on a solemn occasion, and go on to accept the response of the Government to the effect that the POO requires no amendment at all.

In fact, the POO was enacted after the 1967 riots and was used by the then colonial administration as a tool to suppress the freedom of expression. The law then was extremely overbearing. Public meetings or processions of more than three participants or a meeting in private places of more than nine participants, without an application beforehand, would constitute an offence punishable by a maximum penalty of five years' imprisonment. Since its enactment, there had been calls for the POO to be amended. All through the '70s, '80s, '90s and even today, whenever people who held peaceful

demonstrations were unreasonably persecuted by the overbearing law, they would re-state their demand to amend the POO.

This is not the result of what the Secretary for Security termed "a series of misunderstanding" or political reasons. Only those who, over a long period of time, have been insisting that the human rights situation be improved, freedom be allowed, and those who follow the same beliefs, are still incessantly making the demands for reasonable amendments to be made to the POO.

I firmly believe the demands would not stop because of one or two debates in the Legislative Council. This is just a beginning. The demands will continue to be made until one day the law is made in compliance with the ICHR.

Among those who object to amendments being made to the POO, some may think that to make the amendments means to abolish those provisions in the POO regulating public processions and meetings, which in turn means to repeal the POO. Some may think the POO was amended in 1997 and is not a "draconian law" as it was and therefore requires no amendment.

First, I need to clarify one thing. In this Council and outside it, 99% of the calls for amendments to be made to the POO are not intended to repeal the POO or to restore the "Chris PATTEN version of the POO". As I discussed with many groups that made submissions before us, I found the focus of most people was on what was unreasonable in the existing provisions and on comparisons with similar legislation in other places, hoping the existing law could be improved to the finest bit possible.

Before the reunification, the Government made certain amendments to the POO, including providing for a notification procedure for public processions in place of the licensing procedure. Unfortunately, upon reunification, the amendments were not adopted as laws of the SAR.

In 1997, the SAR Government made further amendments. The original notification procedure was further amended to include a requirement that there has to be a "notice of no objection" issued by the Commissioner of Police, or, if the Commissioner does not issue the notice within the time limit specified, he is deemed to have issue such notice and the procession or meeting would then be legal; otherwise it is illegal.

These amendments have been criticized as a system of application in disguise, conferring too much power on the police so that the Government may use the system to suppress dissenting voices.

Earlier, at the special meetings of the Legislative Council Panel on Security to receive public views on the POO, Members noted that various groups highlighted those parts of the POO which were not reasonable. After looking at all the views expressed and the relevant laws in other regions, the Democratic Party, in striking a balance between protecting the rights and freedoms of the people and the benefits for maintaining public order, formed the view that a true notification system should be put in place. However, some specific requirements, which are not reasonable, should be amended as described below:

(i) A true notification system. Under the present system requiring an application for a "notice of no objection", an organizer should notify the police seven days before the procession or meeting. If the "notice of no objection" is not received within 48 hours before the commencement of the procession or meeting, the organizer may conduct the procession or meeting because then the notice of no objection is deemed to have been received. In other words, the organizer has 48 hours only to promote the procession or meeting and notify participants. This shows the system is in fact a licensing system in disguise. Moreover, before the "notice of no objection" is received or deemed to have been received, the organizer cannot announce or publish any advertisement for a public procession or meeting. This proves that it is a system where examination and approval are required. That means only after, not before, approval is given, can one promote the procession or meeting. From this, we can see the nature of the system.

(ii) The Democratic Party thinks the maximum level of penalty for holding peaceful processions or meetings, of which the police have not been notified beforehand as required, should be lowered. Under the existing provision, the maximum penalty for acting in a disorderly manner or neglecting to obey police order at a general procession or meeting is imprisonment for one year; and illegally carrying weapon at a public procession or meeting, two years only. The maximum penalty for common assault causing bodily harm is just three years' imprisonment. Compared with offences involving

violence, the maximum penalty of five years' imprisonment under the existing POO is too heavy. In other regions, such as certain provinces in Australia, the law provides for no penalty for the same behaviour, except the removal of protection of an exemption clause, while in some other provinces, a fine of several hundred dollars in the local currency is imposed. Even in Singapore, where it is said to be lacking in freedom but full of Asian values, and which has not signed the ICHR, the penalty for non-compliance with the notice requirement is only imprisonment for not more than three months.

(iii) The seven-day notice period is too long. The Democratic Party suggests that the period be reduced to three days, 48 hours or 24 hours, depending on the relevant mechanism for objection or appeal. If the police or the organizer is allowed to seek a judgement from the Court, for example, if the police can seek an order to object from the Court, three days' notice is reasonable because the police need time for preparation. In the past, the police invariably received notices of less than seven days for processions or meetings. As at October this year, in the four years and 10 months before, the Government received 1 677 cases of public processions or meetings with advance notice of less than seven days, of which 512 cases had notices of less than three days, and 154 cases had notices of less than 24 hours. In all of these cases, the police could deal with the matter very efficiently, without any difficulty. In other places, such as the New York State, United States, the law requires a notice of six hours, while in New York City, 36 hours. In Australia, the notice period required ranges from four to seven days. In Britain, it is six days, and Macao, three to five days, which may be reduced to two days if the meeting or procession is of a political nature or labour-related. In Singapore, the notice period is only four days. I do not mean we should follow the practices in other places, but we should make reference to them to see if the notice period is in general more than or less than seven days. We need also to consider under normal circumstances, the support they have, the values they hold and the degree of strictness in enforcing this part of the law. I hope the Secretary for Security may understand the notice period needed is not as arbitrary as granting chicken wings to a child. Rather, it is determined out of considerations for balancing the various restrictions in a democratic society, the

capabilities of the police, the social climate, social conditions, the whole notification system and the penalty code.

(iv) A mechanism to exercise the power to prohibit. In the report of the Select Committee appointed by the Queensland Legislative Council to review the law, it is pointed out that to allow organizers to appeal after a public procession or meeting has been objected to by the police violates a very important principle. It pointed out that people who exercise the right to peaceful assembly should not be forced to go through the appeal mechanism to put forward arguments in support of the exercise of that right. It should be the party that objects to the exercise of that right to convince the Court or an independent commission why they must raise objections. Moreover, peaceful assemblies are usually targeted at the government, as can be seen from the history of such assemblies. Therefore, for an arm of the government, that is, the police, to raise objections to applications to assemble may be deemed to be unfair, and doubts will arise as to conflicts of interests and impartiality.

(v) The Democratic Party inclines to recommend a more relaxed amendment to the maximum number of participants that can be exempted from notification. Some suggest that public processions of less than 100 participants or public meetings of less than 200 participants be exempted from notification. Past experience tells us that a procession or meeting of less than the stated number of participants may proceed peacefully without causing chaos. If the Government accepts the proportionality principle as stated by the Secretary for Justice, then it should mobilize a proportional amount of available manpower according to the different levels of need so that sufficient police assistance is given to protesters in procession and to the maintenance of order during processions. Thus, the people may have greater freedom in exercising their rights and the discretion to be exercised by the police is kept to a minimum.

The colonist government in the past might restrict the freedom of the pro-Communist people by using overbearing laws. Similarly, the SAR Government today may suppress dissenting views by using the relevant laws. Every person may at different times or on different occasions be restricted unreasonably by the law. Every one of us has demands to make. There are those who, having

negative equities, are not happy with the "85 000 housing units" policy. Again there are those who are not happy with the Government's public housing policy, or its policy to curtail medical and social welfare expenditure. Therefore, it is not correct to say that relaxed laws serve only to protect the interests of a handful of protesters. Indeed, on the contrary, everybody may benefit from more relaxed laws.

We hope to be able to see our university students and people from other social strata to peacefully exercise their rights to hold public processions and meetings, and to express their views in a civilized manner without unreasonable restrictions from the police. We do not wish to see the police use pepper spray on peaceful protesters, causing them bodily harm. We believe this may help Hong Kong create a peaceful community with less hostility and a more positive image.

On behalf of the Democratic Party, I hereby move my amendment. In principle, we support prescribing in law a notification system to regulate public processions and meetings. As regards specific requirements, including those on penalties and notice periods, we think efforts must be made to rationalize and relax them so that people can enjoy better their rights and at the same time protect social stability. I hope colleagues can support my amendment. The Democratic Party will support Miss Emily LAU's amendment because it is an amendment on a mechanism for discussion. We consider the Law Reform Commission or the Legislative Council a suitable venue.

With these remarks, I beg to move.

MISS EMILY LAU (in Cantonese): Madam President, in recent months, a huge controversy has erupted over the POO in Hong Kong which may have been more heated than expected. As the Secretary said earlier, on 7 November, she proposed to have a debate on the relevant motion at the Legislative Council meeting on 22 November. The Secretary also explained the reasons why she intended to propose this motion, while we have heard rumours that there may be other reasons for it.

Madam President, at that time, there were a lot of demonstrations and protests in the community. But what had happened in the first place? At first, many Hong Kong people were distressed because some students had been

arrested. They did not wish to see such harsh treatment of students who participated in protests and demonstrations. Many people also felt that it might not be the students' fault. The arrest of many students sparked off a series of demonstrations, protests and acts of civil disobedience. I believe the Administration was at a loss as to how to deal with the situation. The Secretary also openly declared that the demonstrating students were a headache to her. How should the Secretary deal with the matter? Of course, she could arrest and prosecute the students. However, would this really solve the problem? How would the community look at this? Finally, the Secretary proposed this motion debate. To me, this shows how nervous the Government is and how helpless it apparently has become. The Government wishes to get Members of the Legislative Council to endorse the Ordinance and to secure their support for the actions taken by the Government. It is also one way to inform students and other people of this — Madam President, since the Legislative Council is in the nature of a rubber-stamp, I am sure you know that the Government will certainly obtain this endorsement. If this motion were proposed by a Member, it would never be passed. If voting is conducted separately in two groups according to the ways in which Members were returned, it would never be passed. That is why the Government had to propose this motion itself. According to some scholars, we will see more of this tactic in future. The present mechanism of conducting voting separately in two groups according to the ways in which Members were returned is more destructive than constructive. I do not think the Government will be able to secure the support of directly elected Members in many matters. In this case, the Government seems to me to be extremely worried and fightened. But what could it do? It is under the pressure of some people, who may be saying that it must not condone the students' behaviour and must arrest them. However, Madam President, if they are really arrested and prosecuted, do you think the problem will be solved?

We will probably adjourn some time after 10 pm and voting will be conducted tomorrow. But what happens after the vote? Will the demonstrations and protests with or without advance notice cease? I do not think we need a crystal ball to predict the result. We are not advocating or inciting anything here. There are many wise men do not need our incitement. When there is controversy in the community with heated arguments or even diametrically opposed views on different sides, how should the Legislative Council and the executive authorities deal with it? I wish everyone would calm down and consider the matter thoroughly to find a balanced solution. Yet the Government has suddenly tabled a motion in the Legislative Council, saying that

it considers the present arrangements are perfectly fine and do not require any amendments. Why did we object to this at the House Committee meeting of the Legislative Council on 10 November? Because the Panel on Security had already decided to hold hearings on this matter, although the dates had not yet been fixed.

Actually, the Government owes the Legislative Council some thanks, since the Council has conducted several public hearings, allowing members of the public, especially those who have engaged in civil disobedience, to come to the Legislative Council to express their views peacefully and rationally. This was highly welcome to the Legislative Council. On 12 December in particular, university lecturers and students came to the Legislative Council to express their views. But after discussing the matters of our concern, what should we do about the diverse views? Now the Secretary has proposed a motion at the Legislative Council. If the motion is passed, it would mean that the existing Ordinance is free of problems. It is certainly all right for those people who support the Government. But the Government is also well aware that a group of people oppose it. As the Secretary has said on various occasions, even if the government motion is passed, it does not mean that the matter is over. The discussion needs to continue. This is certainly a more desirable way of dealing with it. Otherwise, the reaction would be even stronger. But how should the discussion be carried out? I have proposed an amendment to that effect. Madam President, I have criticized the Secretary for not proposing a more neutral motion. The Secretary responded by saying that a motion debate could not be neutral.

Madam President, you and I know that many motion debates of the Legislative Council are neutral. As for some controversial motions proposed by the Government, Members will express their views and participate in a debate over them. The Government says that it must have a stand. If any side makes a stand after listening to the debate and after going through the procedures of debate, analysis and making conclusion, I can accept it. In such a controversial matter, the Government will certainly have a stand, since the police are already enforcing the law. However, can the Government be open-minded and listen to the views of different sides? It was precisely because of the Government's attitude that we reacted so strongly. When the Secretary proposed to move a motion debate on 22 November, Mr James TO expressed the hope that it could be postponed for four or five months. Later, I proposed a compromise, since we all hoped the motion could be moved. With the support of the Liberal Party, the motion was postponed to today. I hope the Secretary can understand that

even if the government motion is passed today or tomorrow, the problem will still not be solved.

Actually, I am a very pragmatic person. The problem must be solved. How should the Government respond to the dissenting voices outside? Even if the Government can secure enough support from the rubber-stamps in the Legislative Council, so what? If the Government is really worried and at a loss, how far can the outcome of this motion debate help? I believe we need to think about this. Madam President, the Secretary read out many names earlier, saying that a lot of people support the Government. Many colleagues were very much surprised that the Secretary could mobilize so many people. Of course, while some may have been mobilized by the Secretary, others may have come forth on their own initiative. However, we never dreamt that so many organizations were interested in the POO, including the Tai Po Children's Choir, to many people's surprise. Madam President, I did not know that the Shanghai Fraternity Association Hong Kong Limited, where you and I often go for a meal, was so interested in the POO. There is also one organization which many people may never have heard of — the Quality Broiler Development Association, which was also interested. There were numerous such organizations. I will not waste time reading them out. There is no harm for these people to participate in the discussion. However, on another occasion, the Secretary told us that the Government stressed "quality" rather than "quantity", meaning that it stressed the arguments that were put forward. Like the Secretary, I attended almost all the public hearings concerned. I did not find much "quality" in the arguments put forward by supporters of the Government. Some people did not even know the correct title of the covenants. For instance, they talked about the covenant on "civil and government rights", which should be "Civil and Political Rights". Everyone read it out like that. I saw it was written like that on their scripts. So they even copied it wrong. If one really stresses "quality", where is this "quality" to be found?

I certainly agree with the Secretary that the organizations which had carried out in-depth analyses were mostly from the legal sector, such as the Hong Kong Bar Association and the Law Society of Hong Kong. The two bodies hold different views. While the Bar Association points out that some parts of the law are unconstitutional, that is, the criminalization of the failure to give notice is unconstitutional, the Law Society says this is not necessarily the case. However, the Law Society recommends that the law should be reviewed and amended. I have now accepted the Law Society's recommendation and hope that the

Government will refer the matter to the Law Reform Commission (LRC), JUSTICE and university lecturers for in-depth study. I hope the Secretary will explain later on where the "quality" of the arguments of those supporting the Government's non-amendment of the law lies. Does it still stress "quality" only? With regard to the over 200 submissions received by the Legislative Council, the Government treats them separately and says that 78% of them support the Government, while the rest does not support it. Should we rely on these figures only? I am sure the public would have objection to the Government using the relevant figures like that, since it is not at all fair. If the Government really wants to substantiate this with figures, it should have said so in the first place. At best, a referendum should be held. We have only received over 200 submissions. While the Government says these organizations are very representative, I do not know if the organizations concerned have consulted all their members before making submissions to the Legislative Council.

Madam President, I think we should all discuss the arguments rationally in terms of their "quality". Speaking of "quality", I wish to respond to the speeches of the Secretary for Security and the Secretary for Justice. Mr James TO has already talked about the observations made by the United Nations Human Rights Committee (UNHRC) last year. Although Mr TO has read out its observations, I will quote them once again and that is, it is "concerned that the Public Order Ordinance could be applied to restrict unduly enjoyment of the rights guaranteed in Article 21 of the Covenant" and deems that the Government "should review ("檢討及修訂") this Ordinance" (Madam President, the Secretary for Justice did not quote the words "修訂" (to amend)). The Secretary for Justice did not explain the reasons behind this. Maybe the observations were worded like this and were quite short. However, I am sure if we ask the UNHRC why it made those observations, it would be very happy to tell us and would even point out which paragraph is problematic. I have been given to understand that the UNHRC will send representatives to Hong Kong next year. I hope we can ask them then. Since it has made these observations, we have discussed them several times in the Legislative Council. The UNHRC is the highest authority for the interpretation of the Covenant. Unfortunately, this is not recognized by the executive authorities in Hong Kong before and after the handover. They just recognize that their views differ. That is why the Government is unwilling to accept the Committee's recommendation to review (and amend) this Ordinance. We must put this on record, since this is how we interpret the observations of the UNHRC, not in the way that the Secretary for Security and the Secretary for Justice wished us to interpret them.

Madam President, the Frontier supports applying the greatest leniency in handling these issues. We agree with many commentators that the rights of assembly and public procession are the most basic rights and they are granted to us by the Basic Law. So I do not think that those people need apply to the police. As Mr TO said just now, the existing arrangement implies that permission is required. Some have used eating as an example. Do we need permission for eating? It is in fact our right. Like the Democratic Party, we accept that the police should be notified in the case of a procession. However, the notice period need not be as long as seven days. We hope that one day will be enough. As the Secretary for Security and the Secretary for Justice said, many processions can be dealt with within very short notice. This proves that it is feasible.

Why do we wish for leniency? As the Secretary said, there were over 6 000 such events since the handover, most of which were conducted peacefully. I understand that Hong Kong people are basically conservative and that assemblies are generally quite peaceful. That is why we feel that we should make reference to other countries and learn from those that treat assemblies with leniency. We have mentioned the Australian case. But this was rejected by the Secretary as a very exceptional case. If other countries have successfully applied a lenient system, why should we not follow them, instead of making a very stringent law? Five years' imprisonment is a very heavy penalty. The Secretary for Security and the Secretary for Justice said that some laws could not be compared. For instance, with regard to the issue of riot under the POO, Madam President, the penalty for participation in a riot is a $5,000 fine or five years' imprisonment on summary conviction. But how can the Government equate riots with processions? While people participating in processions are triable upon indictment and rioters convicted on indictment can be sentenced to 10 years' imprisonment, it is hard to make a comparison. The Secretary has repeatedly said this point can be considered. In my view, the Ordinance needs to be amended. If we look at other countries' experience, notification is required in London. In the case of failure to give notice, one may be fined £1,000 on summary conviction. Even if 48 hours' notice is required in Berlin and offenders are liable to imprisonment, the penalty is only one year's imprisonment or a fine. As for New York, it was said earlier that 36 hours' notice and a licence were required. However, offenders will only be sentenced to 10 days' imprisonment or fined US$25. I believe that it is worthwhile to draw on the laws of other countries for reference. We have diverse views about the motion proposed today. In my view, if this Council affirms that the existing provisions are proper and that they have struck a balance between different interests, some Hong Kong people will hardly be happy about this. Our

discussion now is on balancing our basic human rights and police power. One possible way to deal with this is to refer the issue to the LRC for consideration. I noted that the Secretary for Justice said that this was inappropriate. The details of the provisions should not be referred to the LRC for consideration, since its duty is to study macro legal issues.

Madam President, actually, in the '80s, the LRC studied an issue which is not very big — the extremely controversial loitering offence. I do not think any direct comparison could be made between the loitering offence and the motion being discussed now. However, it is also not a macro issue at all. If some issues are very controversial, I believe they should be referred to the LRC for consideration.

Madam President, last, I wish to refer to the speech made by President JIANG Zemin in Macao today, since some issues are closely related to us. The President said that Macao must uphold the Central's authority and state interests. He would not allow a small group of people to carry out activities against the Central Government or commit acts of secession in Macao. He also stressed that his remarks would also apply to Hong Kong. Madam President, what is meant by activities that are against the Central Government? Sometimes, some issues will arouse criticism. I hope that the President's speech will not result in a restriction of our freedom of expression. Since we are discussing the motion on demonstrations and protests today, I must refer to President JIANG's remarks, which are extremely worrying to us. I so submit.

MR LAU KONG-WAH (in Cantonese): Madam President, today's debate stems from the fact that some people consider it necessary to amend the POO, which has stirred up disturbances in the community for a while and come under public discussion in four meetings held by the Legislative Council Panel on Security. As Chairman of the Panel, I believe Honourable colleagues and I consider the several discussions held very useful. On the one hand, all attendants were given opportunities to fully express their diverse views and, on the other, government representatives were able to respond without being scolded.

At the close of the meetings, I repeatedly praised the attendants for being able to discuss the matter from various angles with a peaceful and rational attitude. What is more, a number of individuals and organizations have taken great pains to put forward their proposals in writing. Such tolerant and constructive discussions are indeed worth advocating.

Nevertheless, I notice that the discussions held during the past two months were mingled with some sort of emotional expressions and irrational personal attacks. Yet these are just sort of background music to our rational discussions. They have not undermined the major voices for a balance between individual rights and public order. Nor have they undermined the mainstream peaceful discussion between Members and the Government to explore the contents of the relevant provisions.

Insofar as the specific contents of the police notification system are concerned, some people advocate for the abolition of this system and for such matters to be dealt with by the Court. In my opinion, however, this is not the best solution. The notification requirement is aimed at giving participants a responsibility to take measures to ensure the smooth operation of their processions and meetings. The Court still needs to rely on the police's advice to make its judgement. As a matter of fact, we can see from the experiences of the 11 foreign regions submitted by the Security Bureau that notification for processions held in all these places is dealt with by the police authorities first.

During one of the meetings held by the Legislative Council Panel on Security, Mr CHEUNG Man-kwong elaborated on his 20 years' experience of organizing processions. What impressed me most was the handling of an assembly held on the reunification day, that is, 1 July 1997. Mr CHEUNG spent much time to discuss the detailed arrangements with Director M K LEE of the Hong Kong Police Force. Their communication might be one of the reasons why so many foreign journalists who wished to get a good shot of confusion were disappointed. It can be said that Mr CHEUNG has made definite contribution to the smooth reunification of Hong Kong. In the meeting, the two gentlemen talked to each other intimately and told us how they co-operated with each other to get things done. This shows that while provisions are "dead" and inflexible, humans are "alive" and flexible. Mutual trust and communication, which are "alive", go beyond the scope of the provisions.

Another issue we should explore is the notice period. Some organizations opposed to the seven-day notice period, thinking that it is too long. In this respect, the police responded by saying that: according to their experience, they would still render assistance to make the appropriate arrangement even they were given a notice of less than one day. Over the past three years, the police have never raised objection on the ground that the notice falls short of seven days. This response is very powerful indeed.

Such being the case, some people will then argue why the law should stipulate seven days. Actually, even those suggesting amending the law would agree that it is absolutely reasonable for the police to ask for ample time to make arrangement when some large-scale meetings are to be held or when a number of organizations hold meetings "at the same time and at the same place". Although Hong Kong Bar Association Chairman Ronny TONG proposed to shorten the notice period from seven to two days, he was also aware that some foreign countries did ask organizers of large-scale meetings to submit their applications 60 days in advance. Like what was in the mind of the Honourable Martin LEE, I once had the idea of introducing a classification system, to prescribe different notice periods for processions and meetings of different scales. Nevertheless, I finally came to the conclusion that such an amendment would complicate the matter. First, there is the problem of defining the scale of processions. For instance, even if a procession of more than 100 people is defined as a large-scale procession, there will still be a difference between a procession of 100 people held in Central and one held in Sha Tin. Under such circumstances, should a classification system be introduced for locations as well? Furthermore, a procession held by one organization of 100 people would not be the same as processions held by several organizations with 100 people each. The setting out of different types of classification systems in the Ordinance might bring even more disputes and confusions. Actually, it is most crucial that all of us will have a standard to follow if it is clearly set out in the relevant provision that a seven days' notice period is generally required. At the same time, it is clearly set out in the existing provision that the police can handle cases flexibly under special circumstances. Furthermore, we have in place an appeal mechanism and it has been proved in practice that it has caused no dispute. For these reasons, we conclude that the existing provision concerning the notice period should be retained.

I note that some people demanded to amend the Ordinance by changing seven days to four days, three days, two days, one day or even 12 hours. Some of them cited human rights as their reason. I cannot help asking this question: Seven days, four days or 12 hours, what are the differences in terms of human rights? Even if the notice period is changed to four days, those advocating a three-day notice period will say they are deprived of their human rights. Even if it is changed to two days, those asking for a 12-hour notice period will still object. This point precisely echoes the so-called reason of "diversity of views" as cited by Miss Emily LAU in her amendment. Opinions are bound to be diverse on whatever proposals made. There is nothing strange about this for

this is bound to happen in Hong Kong. Are we asking for uniform thinking? "Diversity of views" is not a good reason for amending the Ordinance. Furthermore, the Law Reform Commission has never examined individual issues with respect to the exercise of rights by the executive authorities in its previous 39 reports.

Madam President, I also note that no such wordings as the existing POO violates covenants on human rights appear in Miss Emily LAU's amendment. Let me cite some foreign experiences as examples. In Vancouver, for instance, a procession with more than 30 people is required to give 90 days' prior notice. In San Francisco, a procession with more than 250 people is required to give prior notice of 30 days only. Can we thus say that San Francisco is more democratic and enjoys more human rights than Vancouver? After going through ordinances pertaining to processions and meetings in various countries, I find the Chinese saying that "each village has its own regulation" all the more convincing. Under the prerequisite of complying with human rights covenants and the Basic Law, the POO must take into consideration Hong Kong's situation and the feelings of the public.

As regards the appeal mechanism, the existing mechanism was formulated in the 1995 amendment to the POO. The fact that no amendment was made in 1997 apparently suggests that the mechanism is the consensus reached by the "assemblies formed under two different governments". In practice, several cases were satisfactorily resolved after appeal. Some critics consider that the police should follow the proper procedure if they wish to raise objection by first approaching the appeal board to seek its consent. In doing so, we will have an additional means to guard against the abuse of police power. This is something we should further explore. The current practice is if the police object, the relevant applicant can lodge an appeal. This practice, whereby the applicant plays the active role, has actually been consistently adopted by other redress mechanisms in Hong Kong. So long as the appeal mechanism continues to operate effectively, applicants will be protected even they act as appellants.

Lastly, I would like to say a few words on whether the existing penalties are proportionate. Judging from the observation put forward by deputations and after going through foreign experiences as well as penalties prescribed under other local legislation, there is indeed a need for the maximum penalty, prescribed three decades ago, to be reviewed. Although the Secretary for Security pointed out that this is the result of consensus reached over three

decades and that no one has ever raised objection to it, I welcome the Secretary's earlier remark that a review will be carried out since we have now decided to conduct an in-depth review of the POO again. In connection with this point, Mr Martin LEE said in a meeting last week that the Secretary for Security had made great improvement for she was now willing to discuss. The Secretary responded to Mr LEE by saying that both parties could make improvement if peaceful and rational discussion could be held. I would like to add one more remark — Mr Martin LEE can make even greater improvement if he can stop taking to the streets in violation of the law and stop inciting civil disobedience.

I find it really strange that some people still pursue civil disobedience nowadays. Are the people of Hong Kong really living under totalitarian rule, with their opinions being suppressed to such an extent that there is virtually no freedom? To be fair, I believe colleagues in this Council will not agree with this. How can the SAR era compare with the Gandhi period? After all, Hong Kong is built on the rule of law. This cornerstone should not be shaken because of individual preferences. Some people romantically pretend that they are still living in the Gandhi period. I am afraid this is totally out of line with the pace of time and the feelings of the people! Some people even resort to verbal violence to launch personal attacks against government officials. Personal attack is not a rational behaviour. Those who advocate civil disobedience are actually smearing the "rational, peaceful, non-violent" ideal advocated by Gandhi.

I share with Miss Margaret NG that the students were forced to disobey the law for they were not given any opportunities and channels to express their views. It is only the reason of their action. But it does not mean their action merits encouragement. This is particular so after various parties have gone through a rational and in-depth exploration of the matter. They really deserve condemnation for continuing to pursue civil disobedience and violate the law. Members of this Council are obliged to advocate expression of ideas in a peaceful, rational and lawful manner. The Legislative Council should be a law-abiding, rational and tolerant leader.

Madam President, the world is changing rapidly and dramatically. There is no market for extremism and extreme individualism while rights and responsibilities have become twin brothers. Jurgen HABERMAS, a contemporary German sociology master, has spent his whole life on researching civic social development as well as studying modern student movements and the

development of various social campaigns. Finally, he put forward a very important connotation — the fact that a civic society, an intermediary between a state and a family, can prosper does not hinge on the so-called civil disobedience; on the contrary and most importantly, it hinges on rational communication. We need not seek every opportunity to knock down people with dissenting views. Rather we should seek every possible chance of communication with them. Democratization is a rational process. How I wish democratization and rationalization can become twin sisters and persistence and tolerance can co-exist in Hong Kong, with personal rights and public order being safeguarded simultaneously.

Madam President, according to my conscience and senses, I support the original motion.

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

MR LEE CHEUK-YAN (in Cantonese): Madam President, I believe when the community discusses the 10 major news stories of the year by the end of the year, the controversy over the POO will certainly rank first. However, it will not be as easy to choose the protagonist of this news story. Members may find that whenever the 10 major news is touched upon, there will be a shot on television showing a member of the Hong Kong Federation of Students struggling on the floor after being sprayed by the police with pepper spray and pushed. I wonder if he will become the protagonist of the news. Moreover, another person, Dr Stephen SZE, has recently become very famous and I also wonder if he will become the protagonist of the news. Even the Chief Executive has commented in Macao today, without actually naming him, that Dr Stephen SZE only knows how to hurl abuses.

However, if I were to choose the protagonist of this news story, I think it must be Secretary Regina IP, the protagonist in the controversy over the POO. I find Secretary Regina IP an extraordinary senior official. Why? It is because the Secretary likes to "ignite a fire" and "poke a fire" so much that she is absolutely a "lady of fire" when she is dressed in red. Let us consider this: Secretary Regina IP has made a lot of remarks recently and she has criticized that the remarks made by Dr Stephen SZE are incompatible with his status. Yet, I would like to ask the Secretary if she thinks that her remarks are sometimes very

extreme and "extraordinary", and are incompatible with her status and irrational? I am going to discuss her extremist remarks. Firstly, when interviewed by the *Hong Kong Economic Journal*, the Secretary said that "offence is the best form of defence." She thinks that the community's view that the Government should address their request for amendments to the POO has aroused a battle. Secretary Regina IP also considers herself an extraordinarily valiant commander. She not only fights against many adversaries but she also delivers speeches and is praised and commended at patriotic assemblies. Furthermore, when the people and public opinion started discussing the problems of the existing POO and how the Ordinance should be amended, the Secretary suddenly raised the motion debate on preserving the POO with the intention of pulling this Council and the Government into the battle. Rather than saying that the Secretary has launched an attack actively, we might as well say that she is very conceited.

Originally, the community could discuss whether the POO should be amended and how a balance could be struck between human rights and public order in a stable and harmonious atmosphere. However, the Secretary obstinately sought to upset everything and insisted on raising the motion debate on the preservation of the POO, so as to achieve division and to mobilize denounciation. I cannot help asking if this is the society we want. The Secretary has just said that it is irrational to oppose the draconian law. But is it rational to support the POO? Today, a lot of people outside this Council are hurling abuses and the expressions they use include "traitors to China and servile followers". Do you think the community has become more rational? After the Secretary has proposed this motion, will the community hold more rational discussions? The reality is exactly the opposite. If we mobilize irrational actions against actions considered irrational by the Secretary, we will ultimately suppress rational discussions. Yet, the Secretary insists on proposing the motion debate on the preservation of the POO while the community is having heated discussions on the POO, with the intention of forcing Members of this Council to take sides. She is also simplifying and turning the originally rational discussions into a polarized struggle between stabilizing and upsetting Hong Kong that will lead to social division. The originally constructive discussions have turned into unnecessary social resistance. I would like to tell the Secretary that she has ignited the flame of polarized resistance in the community in respect of the POO. I have a very deep impression of another extraordinary remark made by the Secretary a few days ago. She said at a seminar of the Hong Kong Federation of Trade Unions (FTU) that "we successfully prosecuted two well-known student leaders in 1992 but they were only sentenced to a Community

Service Order. If I were to make the judgement, I would punish them by requiring them to copy the POO 500 times." According to the report, the Secretary laughed loudly after she had made the remark. I wonder if the Secretary really hates those people who violate the POO that much that she even dreams of punishing them by hook or by crook. But if Secretary Regina IP were the judge, I wonder if those who do not abide by the POO would be made to parade through the streets carrying sandwich boards just like what people did during the years of the Cultural Revolution. Nevertheless, I must tell the Secretary that I have punished the person for her because this speech is written by him. He has written the POO many times, perhaps not as many as 500 times, but I have already punished him by asking him to write this speech.

Thirdly, another astonishing remark was made by the Secretary in an interview by a Singaporean newspaper. She drew an analogy between the dictatorial boar in the famous English novel, *Animal Farm*, and the local media that demanded the Government not to prosecute the students, and she said that the equality principle had been contravened. Although the Secretary later denied that she had drawn an analogy between the dictatorial boar and the media, I am not quite sure what she had told the newspaper, that is the impression given by the report. The media may have misled the people, but these are extremist remarks.

Fourthly, the Secretary has indicated at the Heung Yee Kuk that "Through the motion debate on the POO in the Legislative Council next month, I hope that the scope of discussion will be enlarged so that the Government would listen to more differing views rather than merely listening to the fairly extreme views expressed by the minority earlier on." At the outset, the Secretary defined opposers of the POO extremist, yet, her remark was actually not rational either. Fifthly, the Secretary later threw down the gauntlets to the students by inviting them to a meeting and indicated that "they could sit down and exchange views calmly and she could guarantee that the students would not be impolitely received and nobody would hurl abuses or shake fists". Why did the Secretary need to state that the students would not be beaten before meeting them? She was really "poking the fire" in making such a remark. Later, when Dr Stephen SZE indicated that it was time for civil disobedience to set in motion, the Secretary asked him, "Do you want to threaten the Government, do you want to drive, organize and take part in civil disobedience? Who will be responsible if people are called upon to take part in civil disobedience and are prosecuted?"

In the seventh example, this Council was "involved" for no reason. As reported in the *Ming Pao*, "a few days after the incident, Members of the Legislative Council will parade my colleagues through the streets and execute them on the spot. I definitely will not accept such politicized actions." We have never attempted to parade her colleagues through the streets and I ask her not to describe us as great scourges. Are these rational remarks? The eighth example involved Mr SZETO Wah and the Secretary rebuked Mr SZETO Wah for being "provocative" and for "asking for an arrest", and "had taken part in the demonstration, holding high his identity card which was incompatible with his status as a Legislative Council Member". I would leave Mr SZETO Wah with a response. Her ninth comment that "the police have used pepper spray in the hope of dispersing the protesters with minimal force so as to avoid the spread of agitation." However, we later discovered that the police had used excessive force. A few days ago, the *Hong Kong Economic Journal* reported that the Secretary reproached Mr HO Hei-wah for "he insisted that the Human Rights Committee also indicated that the Ordinance might violate human rights. However, please bear in mind that you should look at it in context. They argued fiercely about this issue at the Human Rights Committee. It could be said that all the human rights activists in Hong Kong forced others to criticize us and they forced the Human Rights Committee to criticize Hong Kong." Are these rational remarks? The Secretary reproached that somebody had forced the Human Rights Committee to make those criticisms. Later, the Secretary also said that as it was seldom sunny in Iceland, people there would not be so bored as to organize a procession ……

PRESIDENT (in Cantonese): Mr LEE Cheuk-yan, you have spoken for seven to eight minutes, please come back to the POO. It appears you have been responding to the remarks made by the Secretary for Security outside the Chamber, but I hope that you will respond to the remarks made by the Secretary in the Chamber.

MR LEE CHEUK-YAN (in Cantonese): Fine. As the Secretary has said, our discussion precisely seeks to "put it in context". All the remarks made by the Secretary originate from the POO and I would like to say that the whole discussion has become not too rational. Although the President has asked me to come back to the POO, I have almost given all the examples. (*Laughter*)

Madam President, looking back at the whole discussion, we think that extremist remarks have upset the harmony of Hong Kong. It can be said that "stability is not yet in danger but human rights are jeopardized" and I believe this is a specific portrayal of the present situation. Leaving prejudice aside, I believe everyone will agree that no legislation cannot be amended and all controversial laws should be reviewed and amended in order to bring them into consistence with human rights and democratic principles. The international covenant on human rights has explicitly granted people the right to peaceful assembly and the relevant rights have been consolidated through Articles 27 and 39 of the Basic Law of the Hong Kong Special Administrative Region that gives Hong Kong people legal protection. While the international covenant on human rights emphasizes the right to peaceful assembly, it has imposed certain restrictions to balance human rights and social order. It is worth noting that the international covenant on human rights gives priority to rights and its premise is to grant people rights that cannot be deprived. Whenever a law restricts in any form the people's right to peaceful assembly, the Government should prove the necessity of the relevant restriction. The Government should also prove that a measure will not excessively restrict the people's right to assembly. Those participating in a demonstration or assembly should not conversely be required to prove whether or not the law and the government measure are reasonable. Under this guiding principle, when we study the regulation and restriction effected by the POO on procession and assembly, we have to ask whether the existing arrangement can be made as relaxed as possible and what improvements can be made to the procedures. People find it most unacceptable that the Government has all along failed to specify why the law has provided to such complicated procedures to restrict procession and assembly in the recent controversy over the rationality of the POO. It has also failed to prove why the law cannot be further relaxed. Concerning the advance notice period for procession and assembly, there are many foreign examples. For instance, the notice period for procession and assembly in most Australian states is only four days, and 36 hours in metropolitan New York, United States. I believe there is also very busy traffic in these places. According to the laws of Finland, the police only need to be notified six hours before a procession or an assembly.

Thus, the length of the notice period certainly has room for amendment. Why do we have to preserve it in a clean-cut manner?

Should the participants in a procession or an assembly without advance notice be sentenced to a maximum of five years' imprisonment? Even the Secretary for Security has indicated that there is room for amendment, but why does she propose a motion today asking for the preservation of the original Ordinance? If there is room for amendment, we may not necessarily need to preserve the entire Ordinance. In fact, the Administration should allow the community to hold rational discussions over how the Ordinance should be amended. Most Australian states do not regard the failure to give notice as a criminal offence. Conversely, they will take encouraging measures such as giving the notifying party some rights to criminal exemption so that the protesters will take the initiative to give the police advance notice. Will it be better? I have just heard the Secretary for Justice and Secretary Regina IP said that the "notice of no objection" is not a licensing system and they have called upon Members not to be mistaken for processions do not require the police's approval. Yet, I think that this is playing with words. Given that the Administration actually has the right to issue notices of no objection, why can it be said that the police do not have the right of approval? In fact, the police absolutely have the right of approval and therefore the right to issue notices of no objection.

Apart from the above, there is another very important problem with the system for regulating procession and assembly under the POO. Should the police continue to unilaterally make a decision to prohibit and restrict processions and assemblies? All of us understand that most processions and assemblies are demonstrations against the Government, therefore, if the police solely make a decision to prohibit or impose conditions on processions and assemblies, people will easily have an impression that the police have a preset political stand and it will easily arouse unnecessary suspicions between the police and the participants in processions and assemblies. Actually, this will not do the police any good and it will only make things difficult for them. Therefore, the Government has to consider carefully whether the POO should be amended so as to hand over the decision to restrict processions and assemblies to another independent body such as the Court in order to reduce unnecessary conflicts between the police and the public. If the Government is willing to discuss with the public how the POO should be amended, this will definitely relieve the existing social conflicts that are unnecessary. Why does the Government not dare to make a review?

Lastly, as the General Secretary of the Hong Kong Confederation of Trade Unions, I very often have to make wages claims for workers. I particularly hope that the provisions of the POO will become more relaxed because in many past assemblies and processions for wages claims, it was not possible for us to give the Administration seven days' advance notices. The Secretary has said that sometimes an advance notice is not a must so long as an assembly is held in a peaceful manner. Yet, some workers or organizers would receive warning letters after every peaceful assembly. The police will also warn the protesters on the spot about their failure to give advance notice. As we can see, in the incidents about the North Point Estate, the Lantau Island residents and the Wah Kai Industrial Centre, when the public were dissatisfied with government policies, the Administration would warn the protesters in accordance with the POO. Trade unions will certainly make wages claims for workers and we therefore need more relaxed provisions that allow workers to have more room to fight for their rights. Therefore, I am especially disappointed today because I find it very ironic that even the FTU supports the preservation of the POO. In fact, the POO was a product of 1967. Over 30 years ago, the law was mainly targeted against the then FTU, however, the FTU today conversely supports this law. This is an irony of history. Thank you, Madam President.

THE PRESIDENT'S DEPUTY, Mr Fred LI, took the Chair.

MR LEUNG FU-WAH (in Cantonese): Mr Deputy, there has been heated discussion about the POO among people in the community over the past few months. The Legislative Council Panel on Security has also held a number of special meetings to listen to the public views on the Ordinance. This is indeed a good thing for it gives the public an opportunity to express their views and gain a fuller understanding of the Ordinance. However, I feel sorry that in this debate, people opposing the Ordinance and seeking its amendment have deliberately resorted to their old tricks of labelling things they dislike and describing the POO as an evil law or undesirable. I hope the general public can better understand the POO through this debate. As Members have spoken a lot on the specific contents of the Ordinance, I do not want to repeat it and waste our time. Nevertheless, I will definitely speak more fluently than Mr LEE who spoke earlier because most of what I am going to speak represents my personal view.

Hong Kong is only a tiny place. The Government Secretariat, a popular spot for the holding of processions, is located in the heart of the city where there are numerous passers-by even on ordinary days. To avoid destruction of public order, observance of order is essential. Just as those opponents have suggested, if the requirement of notifying the police of processions and meetings in advance is waived so that processions and meetings can be held at will without police knowledge, traffic in urban areas will be paralysed at any time and the public at large will eventually suffer. In the event that some people who try to please the public in the name of "civil disobedience" advocates choose to burn tyres, move a coffin around and occupy means of public transport in urban areas, social order will run out of control and the lives and properties of the public will become unprotected. Are these what we want?

As mentioned previously, the Legislative Council Panel on Security has held a number of special meetings to listen to public views on the POO. We can also see from the documents forwarded through the Legislative Council Secretariat that the community's position on the relevant discussion has become clearer. People from different walks of life have actively expressed their ideas. There is abundant support for the preservation of the existing POO. Kaifong organizations, workers' unions, trade associations as well as Hong Kong people who are far away in overseas countries have enthusiastically expressed their concerns about Hong Kong in the hope that Hong Kong can continue to maintain the rule of law.

As a member of the Hong Kong Federation of Trade Unions (FTU), I am honoured to see that the FTU has been able to occupy a high ranking in terms of public support in various social surveys. Throughout this debate, many people, including Mr LEE Cheuk-yan, targetted at the FTU. I would like to respond briefly in this connection.

They do not understand why the FTU agrees with the Government that there is no need to amend the POO. The reason is actually very simple. In the olden days, what was usually invoked to suppress patriotic workers' unions and patriotic workers was the "emergency ordinance", not the so-called evil law. In 1967, the POO was enacted and was subsequently amended in 1995. The "emergency ordinance" has now been completely repealed. The POO is completely different from the "emergency ordinance" enacted in the olden days. This is my first brief response.

The second point concerns why we consider it unnecessary to amend the POO. The greatest essential difference between the British Hong Kong colonial government, the executor of the evil law in those years, and the incumbent Government of the Special Administrative Region (SAR) lies in that they are entirely different in nature. The appointment of the Governor of the former British Hong Kong colonial government was made in London. The governor, from thousand of miles away, was neither relative nor friend to us. His interest was totally different from ours. We were unable to choose the so-called executive head. On the contrary, the present SAR Government was elected by the people of Hong Kong. It came from Hong Kong and represents Hong Kong's interest. It shares the same interest as us (including the senior government officials who are now present in this Chamber). We consider our interest the same as that of the entire community. This explains why we consider the two governments essentially different.

Next, although I had intended not to talk about it, I perhaps shall say a few words on it in passing. A Member said earlier that Secretary Regina IP burst into laugher after making a remark relating to the penalty of copying. I was there too and I can prove that it was not the case. The several hundreds of members of the FTU present enthusiastically responded by clapping their hands. Although I am not a member of the Legislative Council Panel on Security, I have listened to the views given by a number of people on the POO. In particular, I wish to point out the remark made by some people that the POO deprives the workers of their right to struggle through labour movements. The FTU, having been in existence for 52 years, is definitely the most experienced workers' organization in Hong Kong having staged the most workers' movements. We did occasionally decide to take to the streets as a result of breakdowns of negotiations with employers or in protest against unreasonable dismissal by employers. Let me cite two examples. Years ago, we marched from the Central Plaza to the Government Secretariat to express our dissatisfaction immediately after our negotiations with the Airport Authority in relation to the transfer of airport security staff. The second example is related to last year's massive retrenchment by the China Light and Power Company Limited (CLP). After holding a meeting, the FTU decided immediately to march from its headquarters to the headquarters of the CLP. Although both processions were decided at the last minute, we believed it was still possible for the processions to be conducted smoothly. It had only taken us a few minutes to inform the police and wait for the policemen to clear the way for us before the processions commenced. Although it might not be possible for us to give the police seven

days' notice according to the regulation, we would, if possible, inform the police by telephone as early as possible to prevent public order from being affected. This is to ensure that all demonstrations, processions and meetings held by us to strive for workers' interests can be conducted smoothly. Those who really want to safeguard workers' interests should know it very well that they can definitely not rely solely on chanting slogans on the street in order to fight for workers' legitimate interests. Ultimately, they need to pursue their cases with the employers by virtue of their strength. Procession is only one of the options available when it is absolutely necessary to exert pressure to settle a matter. The public will not support us if a procession jeopardizes public interest. It has also been proved that our way of handling the matter and our position are completely consistent with the FTU's position of striving for workers' interests. According to statistics, since the reunification, more than 6 000 processions and meetings have been held in Hong Kong, with 1 500-odd cases, more than 20%, failing to give the police seven days' notice. Yet the police have never refused any procession or meeting with less than seven days' notice. Moreover, no person has been fined or imprisoned for this reason. Compared with major cities in foreign countries, we do not see that this system is particularly stringent.

As regards unlawful processions and meetings wilfully disturbing the community and undermining public order, they are actually trying to trample on the rule of law and deliberately challenging society and the law. This reflects that they are not being responsible to Hong Kong and is negligent of the interests of the people of Hong Kong. The FTU would like to urge the police to step up enforcement and bring those who deliberately violate the law to justice. What is more, we hope the police can strengthen training for front-line policemen to enable them to enforce law more effectively.

Of all Hong Kong laws effective at the moment, we consider the POO the only piece of legislation that can exercise prior control of public order without hampering the freedom of expression. However, some people who suffer persecutionary delusion have asked the Government out of fear to give up the POO, the only legislation that can safeguard public order. Can we consider this reasonable behaviour of a civilized and democratic society? We hope all people in Hong Kong can reinforce their legal concept and have a self-awareness of obeying the law for the purpose of building a harmonious social environment conducive to the prosperity and stability of Hong Kong as well as jointly taking up social responsibility for the successful implementation of the "one country, two systems" and the "Hong Kong people ruling Hong Kong with a high degree of autonomy" concepts.

With these remarks, I support the original motion moved by the Secretary for Security.

Thank you, Mr Deputy.

MR AMBROSE LAU (in Cantonese): Mr Deputy, as stated in the Secretary for Security' motion, it is necessary to preserve the relevant provisions of the POO because "they reflect a proper balance between protecting the individual's right to freedom of expression and right of peaceful assembly and the broader interests of the community at large." The Hong Kong Progressive Alliance (HKPA) consider these reasons reasonable and correct based on the four points below:

Firstly, the existing POO is consistent with the Basic Law and the international covenant on human rights. Article 27 of the Basic Law provides that Hong Kong residents shall have freedom of procession and of demonstration, and the existing POO adequately protects such freedom. Article 39 of the Basic Law provides that the provisions of the international conventions on human rights as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region (SAR). Some reasonable restrictions imposed by the existing POO on procession and demonstration precisely originate from the provisions of the international covenant on human rights. It is because Article 19 of the International Covenant on Civil and Political Rights (ICCPR) specifies that the exercise of the right to freedom of expression carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law. The existing POO complies with this provision. Article 21 of the ICCPR also specifies that no restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. The restrictions imposed by the existing POO on procession and assembly and the additional right of the Commissioner of Police to raise objections to processions also originate from the above provisions of the ICCPR.

Secondly, for over three years after the reunification, the implementation of the existing POO also proves that a good balance has been struck between protecting the individual's personal rights and public interests. There have been a total of over 6 500 processions and demonstrations since the reunification, but only five of them were not approved for they would impede public order. In certain cases, processions and demonstrations could still be held after consultation and adjustment which adequately proves that the existing Ordinance can adequately protect Hong Kong people's freedom of procession and demonstration. According to the HKPA, while regulating the orderly exercise of the people's rights to procession and demonstration by law, we have to ensure that the relevant law will not be so excessively harsh as to make the people feel threatened or suppressed when they exercise the relevant rights. The existing POO precisely meets the above requirement. There have been more processions and demonstrations after the reunification and Hong Kong has been called the "city of demonstration". These adequately show that the existing POO has not affected or impinged on the public's rights to procession and demonstration.

Thirdly, most countries and regions in the world have laws regulating procession and demonstration and many of them are stricter than the POO of Hong Kong. Compared to a lot of cities in the world, Hong Kong is small, densely populated, has heavy traffic and centralized business organizations but most processions and demonstrations are held in the heart of industrial and business areas. To protect the safety of protesters and other people as well as normal social order and operations, it is essential to preserve the existing Ordinance that regulates processions and demonstrations.

Fourthly, after the discussions on the POO over the recent months, some issues have gradually become clearer or have been clarified. For instance, the misunderstanding that processions and meetings can only be held after the police have issued a licence has been clarified and most people find the notice system reasonable. The mainstream view of the community tends to preserve the existing Ordinance and finds an amendment unnecessary. Moreover, the market for the "draconian law" remark is gradually shrinking.

For the four reasons above, the HKPA finds it necessary to preserve the relevant provisions of the existing POO in respect of public assembly and procession.

Mr Deputy, Mr TO's amendment mentions that in its concluding observations issued after considering the report on Hong Kong's human rights situation submitted by the SAR Government in 1999, the United Nations Human Rights Committee (UNHRC) stated that the SAR Government should review the POO and bring its provisions into compliance with the relevant international covenants on human rights. We should note two issues. Firstly, the UNHRC has not specified how the POO violates the relevant international covenants on human rights. We should not assume that the conclusion of the UNHRC must be right and indisputable. We should be practical and realistic and objectively analyse, on the basis of legal principles, whether the POO has failed to comply with the relevant international covenants on human rights. Secondly, according to Article 2(7) in Chapter I of the United Nations Charter, "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter." These illustrate that whether it is necessary to amend the POO is an affair within the scope of a "high degree of autonomy" of the SAR under Chinese sovereignty and the relevant matters should be handled according to the Basic Law and the mainstream view of the community. The precious point about a civilized society is the ability to accommodate different public views, and I do not wish to see our debate today become a meeting denounciating officials. I also hope that today's debate can be conducted in a rational and polite manner.

With these remarks, Mr Deputy, I support the motion proposed by the Government.

THE PRESIDENT resumed the Chair.

MR LO WING-LOK (in Cantonese): Madam President, concerning the issue of whether it is necessary to amend the POO, I have consulted approximately 10 000 general practitioners and dentists in Hong Kong.

The consultation was conducted by means of a postcard, and the original motion of the Government was printed on the postcard in both Chinese and English, in which members of the medical sector were asked to express their views. The postcard did not incorporate any leading question or any personal

view. I did not even discuss the issue with colleagues in the medical sector, nor did I canvass for their support, because I wanted them to express their own views on the motion without any pressure.

As of noon yesterday, 110 sets of consultation papers were returned. Sixty-six people were in support of the original motion, which accounted for 60% of all respondents. Forty-four people were against the motion, which accounted for 40% of all respondents. Among people for and against the motion, some of them held strong views, I therefore quote them here:

Excerpts of views supporting the motion:

1. "I am definitely for this motion, which has served Hong Kong very well with only three queries and one objection in over 6 000 demonstrations in the past three years. I have discussed this with more than 10 of my colleagues and they are for the motion."

This general practitioner is quite enthusiastic about the debate, as he did not only express his own views, but also initiated discussion in his workplace. However, in order to maintain the accuracy of the consultation, his views were just considered views of his own, and the views of a dozen of his colleagues were not counted.

2. "I am in favour of passing the motion of the Secretary for Security on retaining the present Public Order Ordinance. I think that these days, a vocal minority of society has used the individual's right/freedom of expression to excess, so much so that the interest of the silent majority is ignored."

3. "I agree with the Government's motion. I believe that freedom is not without limit."

Excerpts of views opposing the motion:

1. "I personally believe that as society is getting more open, we should have less restriction is voicing out our values. Public protesting is one of the ways to express our views to the public."

2. "Whether a public meeting is legal or not should not be dependent on the number of participants or notification beforehand. A public meeting is legal if the activities of the participants do not break the law. However, if the participants destroy properties of the Government or other people, they should be charged. The number of participants or notification beforehand does not count."

3. "Even if the entire Public Order Ordinance is abolished, we still have other legislation such as the loitering offence, and so on, which are sufficient to protect our safety and interest.

If the views of my colleagues in the medical sector are considered society in miniature, I shall draw the conclusion that the majority of Hong Kong people do not have a strong view on the question of whether an amendment of the POO is necessary. Among those few people who hold stronger views, some consider an amendment unnecessary, while some consider it necessary. However, these people, most of them consider it unnecessary.

I believe most Hong Kong people will agree with the notification requirement if the number of participants in any given public meeting exceeds a specified number. The controversy lies in the number of participants and the notice period. As a result, the controversy lies in the variation of the extent, not the nature of the provisions. To me, I think it necessary to retain the notification requirement.

In most countries, the bodies to be notified are usually the law enforcement authorities, not the judicial or other government authorities. The reason is that the law enforcement authority has the responsibility to maintain the order of processions and assemblies, and it is the government department which has most information in hand, including the venue and route of the procession. Furthermore, the law enforcement authority should also protect the safety of participants and non-participants.

Therefore, I consider it incontrovertible to make the police the body to be notified. The only controvertible issue lies in whether the police should be empowered to approve or prohibit any application. In fact, I consider it largely inaccurate to say that as the police have the authority to object to the application, thus the police have excessive power. It is because the police's power to object is not absolute. There is an independent appeal board above the police, on top of which are the Courts.

People who have no confidence in this two-tier appeal system are basically people who have no confidence in the judicial system of Hong Kong. To people so diffident like them, I believe any amendment will be futile no matter how the POO is amended.

With regard to the penalty, the five-year term of imprisonment seems to be too heavy to participants of any given peaceful assembly. Furthermore, if participants of the meeting have committed other criminal offences at the meeting, they are criminally liable under other relevant laws. I believe nobody will disagree punishing the offenders. Any opposition is only a matter of difference in extent. As a result, I consider the retaining of the penalty clause necessary, but the degree of this penalty is open to discussion.

Another major viewpoint proposed in my consultation is that whether a certain piece of law is draconian depends on the fact that whether everybody is treated equally before it; any selective enforcement will turn the most lenient law draconian, which will subsequently undermine the credibility of the Government. The Government should take warning from the controversy aroused by the POO and exert efforts in defence of social justice.

I believe all these views are reflected in the result of my consultation exercise. In the meantime, according to the principle that the minority should abide by the decision of the majority, I will vote for the original motion. However, as the result of my consultation exercise has also reflected that among people who supported the original motion, many did not oppose an amendment of the notification and penalty provisions. Furthermore, the relevant amendment may also satisfy, to a certain extent, the demands of people disagreeing with the original motion. As a result, I also support the amendment proposed by Mr James TO.

In addition to looking after the interests of the majority, a civilized society should also fully respect and look after the demand of the minority.

Madam President, today I have to vote according to the aspirations of the majority, and at the same time I have to speak for the minority. Hopefully, I can make some contribution for the harmony and magnanimity of society.

Madam President, I so submit.

MR LAU PING-CHEUNG (in Cantonese): Madam President, the controversy over the existing POO has brewed for some time in the community. For this reason, the Secretary for Security has proposed a motion debate in this Council today to ask this Council to make a stand. As the representative of the Architectural, Surveying and Planning Functional Constituency in the Legislative Council, I consulted the professionals in my constituency through a questionnaire survey two weeks ago, for caution's sake and for the sake of greater objectivity in the debate.

I asked six questions in the questionnaire with regard to issues related to the POO that have aroused public concern. They are:

1. Do you think the existing POO can balance the need for public order against the right to freedom of expression?

2. Do you think that the police should be given advance notice of public meetings and processions, in order to ensure that they are conducted peacefully?

2a. If you agree that the police should be notified in advance, how long should be the period of notice?

3. Do you think that the number of participants in public meetings and processions which makes it necessary to give notice in the existing provisions is acceptable?

4. Do you think special measures are required to prevent conflicts from taking place, such as designating demonstration areas and forbidding the use of landspeakers?

5. Do you think the maximum penalty of five years' imprisonment under the Ordinance is appropriate?

A total of 4 374 questionnaires were issued and 479 were returned by yesterday afternoon. The return rate is approximately 11%. I wish to express my deep gratitude to colleagues who have responded actively. Apart from answering the questions in the questionnaire, some respondents have made succinct suggestions, which help me to better understand their views.

The returned questionnaires show that 56.2% of the respondents considered that the existing POO could balance the need for public order against the right to the freedom of expression, while 39.7% of the respondents disagreed. 4.2% of the respondents did not answer this question.

As to whether the police should be notified in advance, 91% of the respondents considered this necessary. However, the respondents differed greatly on the length of the notice period. While 44.5% of the respondents were in favour of retaining the present seven days' notice, 43.8% wanted a shortening of the notice period. 4.2% demanded the lengthening of the notice period, while 7.1% of the respondents have not expressed any opinion.

As for the number of participants in public meetings and processions which makes it necessary to notify the police, 61.8% were in favour of maintaining the *status quo*, while 8.1% were against any restriction in principle. 28.2% of the respondents made suggestions to relax the requirement in various degrees, while 1.9% had no opinion on this.

In terms of the restrictions on public meetings and processions, such as designating demonstration areas and prohibiting the use of loudspeakers, 73.3% of the respondents considered that there was such a need, while 23.8% were against it, and 2.9% had no opinion.

Another controversial issue is the maximum penalty of five years' imprisonment under the Ordinance. 33.4% of the respondents considered that five years' imprisonment was appropriate, while 19.4% were against the penalty of imprisonment. 42% of the respondents made suggestions to reduce the term of imprisonment by various degrees, while 1.3% demanded a heavier penalty, and 4% had no opinion.

Madam President, from the data collected in the survey, we find that 56.2% of the respondents considered that the existing POO was able to balance the need for public order against the right to the freedom of expression. 91% of the respondents agreed that advance notice should be given for public processions and public meetings. However, 43.8% of the respondents demanded the shortening of the seven days' notice period, while 61.4% were in favour of abolishing or reducing the maximum penalty of five years' imprisonment.

I interpret this result as follows: I asked respondents for their general opinion of the POO right on the outset, and more than half of them indicated satisfaction with the existing provisions. Nevertheless, they recognized that there was room for amending some details of the Ordinance, such as the notice period and the maximum penalty.

As the functional constituency I represent has made a clear stand on the issue of the maximum penalty in the POO, I wish to focus on the views on the seven days' notice period. At present, some people are biased with regard to this issue. As a result, the views are sharply divided. The seven days' notice is in fact a requirement to apply for the police's consent to a certain extent. However, it should be noted that section 9 of the POO is like a double-bladed sword. It imposes restrictions on both the participants of public meetings and processions and the police. If the participants of public meetings and processions give notice seven days in advance in accordance with the provisions, the police cannot raise objections within 48 hours before the holding of such public meetings and processions. If we shorten the notice period to 72 hours or 48 hours, in case the police have reasonable grounds for objecting to the holding of a certain public meeting or procession and this is confirmed by an independent third party, such as a standing appeal board or the Court, it would be technically difficult for the organizers of the public meeting or procession to cancel the event even if it has received the notice of prohibition beforehand. Then, the planned public procession or public meeting will become illegal. That is why we need to discuss this issue calmly and thoroughly.

Besides, some consider that public meetings and processions are a basic right of the people and object to the need to apply to the police in principle. As I said, the present notification system is a form of application to a certain extent. But the main issue is, whether such application is reasonable and necessary. I firmly believe that everyone has equal rights. If a father brings his son to play in the Chater Garden and someone comes to Chater Garden to participate in a public protest and neither of them has applied for permission, who should be given priority to use the place? Similarly, if a group of people participate in a procession along Hennessy Road, while drivers of public buses, taxis or public light buses also carry passengers on the same route, and neither side has made an application, which people should the police stop? We have to think about these questions carefully.

Madam President, my colleagues in the constituency have made their views clear. I hope the Secretary for Security will respond to them in her reply later. With these remarks, I support the Secretary for Security's original motion.

MR NG LEUNG-SING (in Cantonese): Madam President, for a certain period in the past, Hong Kong people heard some untruthful criticisms on and even irrational abuses at the POO. These criticisms were directed against the notification system for public assemblies and processions. Some even called the relevant provisions "draconian laws" and the officials of the responsible departments "inept officials". Moreover, some even criticize today that the officials are not as good as pigs and dogs. I feel sorry that some colleagues of this Council have even deliberately broken the law despite being legislators, and they have taken provocative actions "asking for an arrest". Their extremist behaviour only gives people an impression that they are "unable to advance any further arguments to justify themselves".

It find it fairly hard to understand whether these colleagues were protesting against such technicalities as the power of the police to raise objections to procession, the notice system itself, the provisions for the notice period for procession and assembly, the maximum number of participants to be exempt from the notice requirement or the severity of the punishment? Regarding Mr TO's amendment today, colleagues of the Democratic Party has at least accepted a notification system from today onwards. Insofar as this amendment is concerned, we fail to see any substantive opposition of theirs to the power of the police to raise objections to procession.

As the saying goes, "survey and investigation goes with the right to audience". Most of us have heard this saying, but we may not agree with it. If people organize the so-called illegal civil disobedience actions without research and investigation, their smattering knowledge will only harm themselves and others.

Therefore, it is indeed necessary for us to study with Members present as to what is the so-called "draconian law". Thanks to the discussions on the POO these days, the community has acquired a more specific and positive understanding of the notice system for procession and assembly. According to the Hong Kong Bar Association, it is constitutional to impose reasonable

restrictions on the exercise of constitutional rights by the public. Reasonable restrictions on the manner, time and venue of public assembly or procession will not negate the relevant constitutional rights, and the imposition of an advance notice mechanism is acceptable. I believe nobody will query whether this mechanism itself has negated people's rights and freedom today. This is the first issue concerning the understanding of the POO.

The second issue concerning the so-called "draconian law" is the power of the police to raise objections. Actually, in quite a few countries and regions overseas, this power is held by the police or the executive authorities of the government. The important point is that we have an appeal mechanism in Hong Kong to restrict the exercise of police power. The merit of this arrangement is that we can fully co-ordinate the relevant administrative departments and fully grasp the actual situation and needs such as road, traffic and venue condition. In comparison, in the POO amended in 1995, the police also have the power to ban a procession but the existing arrangement more explicitly specifies that if the police do not object to a procession, it must notify the persons concerned within the specified time. As a result, the exercise of the power by the police is regulated and explicit. Is this legislative method more desirable? If this is regarded as "draconian law", have we failed to distinguish between good and evil?

Let me turn now to the third issue concerning the so-called "draconian law", that is, some technical arrangements. When we discussed foreign experience, the Hong Kong Bar Association opined that foreign examples were irrelevant because we were considering the rights of Hong Kong people. Based on the same reason, when we consider such technical arrangements under the provisions of the existing POO for assembly and procession as the notice period and the maximum number of participants to qualify for exemption from the notice requirement, foreign examples are irrelevant for we are taking the unique social conditions of Hong Kong into consideration. In fact, as Hong Kong is small, densely populated and has busy traffic, there are more reasons for us to consider our case independent of foreign experience. I think that the provisions of the existing Ordinance in respect of the number of participants and time are quite suitable. As to unexpected assemblies and processions, there are actually corresponding measures under the POO and it is specified that if the Commissioner of Police reasonably believes and accepts that the relevant notice cannot be given in advance, he must accept a shorter notice. Thus, the arrangements under the existing Ordinance can cater for the realistic general

needs of the community as well as individual exceptional and unexpected situations. Summing up briefly the above, I believe rational people who think independently will make a fair comment on whether this is a "draconian law".

Madam President, based on the views above, despite the number of times some people have shouted that the POO is a "draconian law", the name will not match the reality. Yet, Hong Kong cannot tolerate continuous challenge and damage to the rule of law. The existing POO is reasonable and constitutionally in order, therefore, it should be an appropriate time for the legislature to do the POO justice through open, fair and rational debate, and to restate that it is the due respect enjoyed by the laws of the SAR that upholds the rule of law such that the public can enjoy good public order.

Madam President, I so submit.

MR LAU WONG-FAT (in Cantonese): Madam President, recently, there have been views that the requirement of giving the police a notice of procession or demonstration seven days in advance as provided for under the POO contravenes the human rights covenant and seriously threatens the freedoms to assembly and procession of Hong Kong people. Some people even resorted to the so-called "civil disobedience" in an attempt to challenge this requirement. Are these comments and actions sensible and reasonable?

The New Territories Heung Yee Kuk takes exception to public assembly, demonstration and procession held in the name of the so-called "civil disobedience" against the POO and begs to differ from the arguments supporting such actions.

Civil disobedience is a lofty political act. It is a righteous act against autocracy and despotism.

Hong Kong is generally recognized as a free and open society. There are checks and balances between the executive and the legislature, and we have an independent and autonomous judicial system. The so-called "civil disobedience" claimed by these people has in fact distorted the true meaning of civil disobedience.

The New Territories Heung Yee Kuk considers that the existing stipulations regarding public assemblies and processions under the POO are sensible, reasonable and lawful. Statistics show that processions and assemblies have not been restrained in any way by this notification arrangement after the reunification.

The past experience of residents in the New Territories can serve as an example. In 1994, we held many processions and assemblies with over a thousand participants to express opposition to the New Territories Land (Exemption) Ordinance which infringed on village customs and the inherent harmony. Over 10 000 people took part in one of the processions held on Hong Kong Island. Although the then POO was more stringent than the version currently in force, we did apply for the required licences in compliance with the law for we clearly understood that to act in accordance with law had all along been the basis on which our society operates, and one of the crucial factors on which Hong Kong's prosperity hinged. As we had notified the police well in advance, the police made arrangements to facilitate our activities and maintain traffic order. As a result, we did not cause too much inconvenience to society and other members of the public.

Some people are now advocating amendments to the POO to abolish the notification system. They are actually asking for the freedom to stage processions unrestrainedly and wantonly. This kind of act that neglects the interests of other members of the community should not be supported.

Hong Kong is a densely populated place. Any procession or assembly is set to affect other people. If organizers are not required to give prior notice to enable the police to make arrangements beforehand to maintain order, in minor cases, traffic congestion might be resulted and thus disturbed the daily lives of other residents, whereas the more serious consequences would be that troublemakers or people opposing the procession might seize the opportunity to make troubles that eventually lead to social unrest, in which case people's properties and safety would be at stake and the stability and prosperity of Hong Kong in jeopardy.

For the above reasons, the New Territories Heung Yee Kuk considers that the POO's existing provisions relating to the regulation of public meetings and processions reflect a proper balance between protecting the individual's rights to freedom of expression, peaceful assembly and procession, and the broader

interests of the community, and that there is a need to preserve these provisions as they now stand.

With these remarks, I support the motion of the Secretary for Security.

MR BERNARD CHAN: Madam President, scenes of protesters waving banners and chanting slogans have become part of the daily life of Hong Kong. Indeed, we should be glad that there is still freedom of protests in Hong Kong. And since the handover, there have been 6 900 protests.

No one will disagree that the right to peaceful demonstration should be respected. It is a fundamental right guaranteed by the Basic Law. Article 27 of the Basic Law reads: "Hong Kong residents shall have freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration; and the right and freedom to form and join trade unions, and to strike."

But when we exercise our right, should we not follow some regulations so that no district will be paralyzed because of too many protests taking place at the same time? Should we not follow some rules so that no inconveniences will be put to others?

To enable the insurance sector to have a better understanding of the Public Order Ordinance, I have arranged five luncheons inviting different guests to speak to insurance practitioners. The speakers included officials from the Security Bureau, who are also here this evening, and my colleagues from the Democratic Party. Most participants of the luncheons share the view that a balance should be maintained between public order and freedom of protests. Everyone has a right to protest, but a mechanism is also needed to ensure public order.

The notification system is not to scare away demonstrators but to ensure that the police will have a better assessment of traffic and security control in advance. This is to make sure that the assembly or procession will take place smoothly and peacefully.

We cannot tolerate a society without any law and order. A mechanism is required to maintain the balance between the right of an individual and the

society as a whole. Although there is not much argument that a balance should be maintained, there are queries on whether the current system is being implemented smoothly.

More than 300 demonstrations since the handover did not have notices of no objection. Only five cases were singled out. And the police did not arrest anyone until recently. We could not help asking why these cases were singled out. Are there any criteria in arresting the protesters? What is the standard? Is the standard made known to the public?

The police on the one hand warn that a demonstration without notification is illegal, but they on the other hand tolerate most of those illegal demonstrators. The police are being challenged by the so-called illegal protesters. What message is being sent to our community? How are the police going to carry out their job in future?

Other questions such as whether the penalty is too harsh, whether the seven days' notice is too long, whether the system is transparent enough and whether the appeal system is operating fairly are also subject to debate. The debate, however, should be rational. But it seems that the debate in the community nowadays is far from constructive.

The issue has become a war of words, just like this evening. One will be called pro-democracy if he supports amending the Ordinance. And those who want to preserve the Ordinance will be called royalists. That is not fair. Many of us in the insurance sector care about as much the freedom of speech and the freedom of demonstration. But a balance should be maintained.

The society is polarized and the atmosphere is filled with hostility. Is this the society that the people of Hong Kong desire? This is rather sad.

I believe most people think that the current arrangement is acceptable. And saying so does not mean that we give up our right of demonstration, neither does it mean that we do not care about our freedom of speech. There is always room for improvement.

Madam President, demonstrations in Hong Kong have been peaceful. No one would like to see riots like the one that happened early this month in France, when protesters rallied outside a conference centre where European leaders met

for a unity summit. No one would like to see the anti-globalization riot which broke out during a World Trade Organization meeting in Seattle last year.

Like other businessmen, I treasure the stability of Hong Kong. Only a stable environment can promote business and bring Hong Kong to prosperity. Thank you.

MR LEUNG YIU-CHUNG (in Cantonese): Madam President, the original motion and the amendments seek to induce discussion not on whether the POO should be abolished, but on the question of whether the POO should be preserved in its entirety or whether parts of it should be amended. From the debate that started several months ago to the debate in this Chamber now, no one has ever proposed to abolish the POO and the main issue at hand is to amend the POO.

Recent media coverage and the speeches made by some Honourable colleagues just now have all cited the comments made by the Secretary for Security of late. She has repeatedly stated that the POO has room for discussion and that includes the question of penalty. That strikes me as very strange, for unless the media and Honourable Members have misquoted her, otherwise, she has been inconsistent with her words. The motion moved by her today is inconsistent with her comments. The motion calls for the preservation of all the existing provisions of the Ordinance and that there is no need for any amendment. That is very strange. The Secretary said in her earlier speech that she believes wholeheartedly that truth will manifest as more debates are held. On the one hand she says that there is room for discussion and that truth will manifest as we have more debates on the matter, but why on the other is she trying to put an end to the discussions in such a hastily manner?

Two Honourable colleagues from the professions, that is Dr the Honourable LO Wing-lok and the Honourable LAU Ping-cheung, have put forward some very valuable opinions just now. They have conducted some surveys in their respective professions and the findings of their surveys show that although there is some difference in the views on the original motion moved by the Secretary, there is on a whole, a 60-40 split in opinions. That is to say, about 60% of the respondents support the motion moved by the Secretary, while 40% oppose it. These two sectors are composed of professionals who seldom take to the streets to protest against anything. But there is a diversity of

opinions among them. Not only do they have a 60-40 split on the original motion moved by the Secretary, but that they also have different views on the seven-day notice period and the penalties, and so on. Since there is such a diversity of opinions and that is precisely what Miss Emily LAU says in her amendment that there is "a diversity of views in the community", then why should we stop discussing the issue in such a haste and not studying the matter in detail? That really baffles me very much. I hope the Secretary can explain that to us in detail later.

The Honourable Bernard CHAN has said earlier that there are some aspects that merit study. Then as Miss Emily LAU has said, if the Legislative Council cannot look at the contents of the legislation from a professional perspective, then can we not refer this issue to the Law Reform Commission for consideration? If the Secretary thinks that the Commission is not a suitable institution for this, she can propose a more suitable institution or professional body to consider the issue and that in fact can also be a good thing. For that will negate the need to put a full stop to today's discussion and to finish the matter off. I hope the Secretary can respond to this point later.

Furthermore, on the question of whether the POO is in line with the spirit of human rights, even as many Honourable Members have stated their support for the original motion moved by the Secretary just now, what they have said does imply one point and that is, if application has to be made, then it cannot be said to be giving a notice. Mr LAU Ping-cheung seems to have said something like this: if applications are required, how can this be said to be giving a notice? For example, I now give notice to the President that I will leave this Chamber after I have made my speech. If I need to obtain the consent of the President, then it is not just a matter of giving a notice but making an application to the President. Madam President, if we agree that it is necessary to give a notice, then why do we not consider setting up a real system of notification. What we have now is only a notification in disguise or a bogus notification. It is not a real honest-to-goodness kind of notification.

In my opinion, if the system is to be made in line with the spirit of human rights, then what we should consider is not simply the question of giving notices. The most important question is how we look at a right. From the perspective of human rights, if we want to exercise a right, the executive authorities should not be allowed to decide whether such a right can be exercised. If a right requires the approval of the executive authorities before it can be exercised, then it will

not be a human right at all. Therefore, when such a decision is to be made by the executive authorities, it is in fact a deprivation of our human rights. In other places such as Queensland, to which the Secretary has alluded, such an issue is decided by the Courts. I think that is a fairer and more objective approach.

If we are now required to inform the police and the latter will inform us whether we can exercise our rights, then can it be done the other way round, as suggested by other Members, that is, if we want to exercise our rights and if the police do not give their approval, they should apply to disallow us from exercising our rights? What is wrong with that? I think that will be in line with our rights, that is, we can do whatever we want and if the police do not allow it, then they should apply for a ruling from the Courts to forbid us from exercising our rights.

Talking about the concept of human rights, I wish to talk about another issue and I hope the President would allow me to do so. Before 1997, we discussed the issue of young offenders who were detained at the pleasure of the Queen. I think that issue is quite similar to the one we are discussing today. The existing legislation stipulates that the Chief Justice will give those young offenders who used to be detained at the pleasure of the Queen a minimum sentence. If these young offenders conduct themselves to the satisfaction of the Long-term Prison Sentences Review Board, they would be given a definite prison term and they will be released after the term is served. For if not, they would have to wait indefinitely. However, as far as I know, the practice in other countries is exactly the opposite. They would give the prisoners a prison term and unless the government or the prison authorities think that the prisoner's conduct is not satisfactory, the prisoner can be released after the prison term is served. The practice in these countries is exactly the opposite to ours. This example is similar to the situation we are discussing today. That is to say, the people should be allowed to exercise the rights which they possess, if not, then explanation should be given as to why such rights cannot be exercised, instead of requiring the people to explain why they want to exercise such rights. The requirement of explanation is tantamount to not showing respect for their rights.

At the beginning of the debate, the Secretary said repeatedly that the example in Queensland is very special and exceptional, but she did not explain why is that so. May I ask the Secretary why it is so exceptional? I am not sure if the information I got is correct or not, but as far as I know, the practice in

Queensland is a recent one and it started only in the 1990s. The reason why other countries have not done so is mainly due to the fact that their public order legislation was enacted at an earlier time. That shows that only recently enacted legislation is able to keep abreast with the latest developments in human rights and that there is respect for human rights. The fact that other countries do not have such a practice does not imply that they do not think in this direction, it may only be due to the slower pace they move. As we have started our discussions on this issue, why should we keep this outdated practice and restrain ourselves from catching up with the latest developments of the times? I hope the Secretary can change her mind and will not put an end to the discussions on this topic, for I think there is a need to continue our discussions on it.

About the notice of no objection, the Secretary has really given us some very useful details in this respect, for example, things like the number of days required for giving notice to the police. I notice one point and that is, the Secretary says that if the organizers give the Commissioner of Police notification of an activity in less than 72 hours in advance, then the notice of no objection can be served no later than when the procession is due to start. We all know that if the notice of no objection is served later than the time for the procession, that is perfunctory because the time limit is passed. But the question is that even if the notice is given one or two hours before the procession is due to start, how can the organizers make the arrangements? Even if the difficulties in mobilizing people to take part in the demonstration are left aside and even if the participants are already there waiting, there will still be a lot of things that the organizers will have to do, such as making the banners ready and deciding on other things that have to be done. So I think that idea will not work, for that is not practical at all. Since the Secretary has raised such details, and since so many problems may arise, why can we not give more thoughts to these practical problems?

The Secretary has quoted many figures, such as the existence of more than 1 000 cases of which advance notice to the police was given less than seven days and which the police have accepted and handled. The Secretary gives us the impression that the authorities have been acting very generously. But I would like to ask the Secretary whether they have looked into the question of why the organizers in these 1 000-plus cases have not made their applications seven days in advance. Is it because the organizers are all aiming at inciting and causing disorder and that they are acting in civil disobedience? Is this the motive behind all organizers of these 1 000-plus cases? Madam President, I dare say there are bound to be some cases which are not motivated by this and they are not

organized by people who want to cause disorder and act in civil disobedience. Then why is that so? It is because in certain circumstances, the seven-day notice period is not realistic and will not meet the objective requirements of the situation. It is a good thing that the Secretary has quoted these figures, but these figures or events can only tell us part of the real situation, but not all of it. They can only tell us how things are seen from a certain angle, but the Secretary has not given us a full analysis and introduction of the issue at hand so that we can consider it in detail.

So I think this debate we have today is good, for it can make us understand that the POO has so many problems. I would not say that it is rotten to the core. However, there are many problems that warrant our consideration. As Mr Bernard CHAN has said, we hope that we can discuss the matter in a rational manner. I do not think that we are raising issues for discussion for no point at all, for these are problems which really do exist. Given this, why do we not act on Miss Emily LAU's suggestion and let professionals make a review of the legislation? Mr James TO has not specified how amendments are to be made. He is only suggesting a direction that we may take. But why can we not consider and review the problems in this direction?

Madam President, if we are really rational and tolerant, and if we really want to have a harmonious society, I hope we can spend some more time to ponder over this issue. Therefore, I support all the amendments.

Madam President, I so submit.

DR PHILIP WONG (in Cantonese): Madam President, there is a Chinese idiom that goes like this: "with hesitation, everything will be founded; without hesitation, everything will be unfounded". In respect of the existing POO, we should take precaution to avert danger and we will be in trouble if we do not take any precaution. This Ordinance complies with the Basic Law and the international covenant on human rights and it has been proven over the years. It has played a positive role in safeguarding people's rights and ensuring sustained economic development. All sectors of the community including the Chinese General Chamber of Commerce have expressed views on it and I would like to focus on three points today.

Firstly, Hong Kong is recognized worldwide as one of the freest and most energetic cities. The existing POO has not impeded the people's freedom of assembly and procession, and it can be described as very relaxed compared to the United Kingdom provisions and that during the time when Hong Kong was governed by the British. In regard to the relevant acts enacted by the London Government in England and Northern Ireland, the enormous law enforcement power of the British police and the strict restrictions are far beyond the tolerance of those Hong Kong people who oppose the POO. We will not forget that it was specified in the Ordinance before 1995, during the time of British Administration, that all "assemblies and processions must be issued permits or approvals by the police". The Emergency Ordinance also gave the Governor and the police immense prerogatives. The then Government could even arrest people and close down newspapers at any time. The Emergency Ordinance lapsed in 1997 and is no longer invoked. In comparison, the provisions of the existing POO can be described as very moderate.

In fact, for three years after the reunification, the police have received 6 000 to 7 000 notices for assembly and procession and the police have always observed the provisions of the Basic Law and the international covenant on human rights and exercised their power in an objective and lenient manner. Thus, the police and the people have lived in peace with one another and civil rights have not been infringed at all, and the relevant ordinance is basically there just in case. At present, even in cases that the police consider it necessary to impose restrictions, the police must specify the reasons. If the organizer objects, he can appeal to an independent committee and if he loses the appeal, he can also apply for a judicial review so that the Court will make a final judgement. These measures will adequately prevent the abuse of power by the police and ensure that the freedom of assembly and procession will be handled fairly and impartially. In these few months, some people have mocked at and trampled on the POO, giving people an impression that they obviously had double standards and they did not have a due sense of responsibility for the stability and prosperity of Hong Kong and perpetual order and security.

Secondly, Hong Kong is a free society that upholds the rule of law. Knowing and abiding by the laws and acting according to the laws are the criteria for a person's behaviour and also the important factors contributing to the success of Hong Kong. The existing POO embodies the spirit of the rule of law and creates a good business environment. The legal adviser of the Government and a lot of professional academics think that this Ordinance has a profound basis

of juridical logic. It protects the freedom of assembly and procession, caters for public interests and balances the aspirations of different sectors of the community. Moreover, the Court has not judged that any provision of this Ordinance inconsistent with the Basic Law and the international covenant on human rights, therefore, I do not think it is essential to make any amendment now.

No freedom is absolutely not subject to restriction and almost all countries and regions have statues for the regulation of assembly and procession. Besides, the legislation of a lot of major cities is much stricter than our POO. In some big American cities with a sparse population, if people want to hold an assembly or a procession, they have to give advance notice or be granted approval by the police. Hong Kong is densely populated and has heavy traffic and there is little space outside shops. An assembly or procession exceeding a certain number of people may cause unnecessary disturbance to the shops and also endanger the protesters and other people. Therefore, the organizers must notify the police in advance so that the latter can make timely arrangements, otherwise the interests of the majority will be sacrificed for additional freedom as unreasonably requested by a tiny minority. This is extremely unfair. We might as well contemplate this: If we comply with the wishes of certain "professional protesters" and "rebels", and allow them to have their own way in the heart of Hong Kong, to rush headlong into mass action and do anything they like, this will affect people's work and daily life and cause traffic congestion. The society will go out of control, the rule of law will collapse and there will even be an upheaval. Will investors have confidence in making investments in Hong Kong? How can Hong Kong continue to be a competitive international financial and business centre?

Thirdly, most Hong Kong people are law-abiding and they hope that the Government will strengthen the rule of law, enforce the law strictly and affix responsibilities for law offenders. After this discussion, if the relevant ordinance is made more stringent, the number of participants to be exempt from the notice requirement increased, and the advance notice period lengthened, I believe people will not raise any objection. It is because they know that they have freedom of expression in Hong Kong, there is a good mechanism for dispute resolution, and it is not necessary for people to take to the streets and hold a demonstration for every single issue. Moreover, they will not do anything that defies social order or injures others' interests. Conversely, only those "rebels" and "professionals" flaunting various banners and shouting

various slogans will wilfully stir up trouble for ulterior purposes, challenge the POO, abuse the exemption measures under the relevant ordinance, and advocate the amendment or even repeal of the relevant ordinance in an attempt to deprive or deprive in a disguised manner the police of the SAR of law enforcement power.

Hong Kong people know very well that the principal duty of the police of the SAR is to ensure the social and public order of this society with a population of 7 million people on 1 000 sq km of land, and allow people to live and work in peace and contentment. It is obvious to all, and the international community also affirms, that the police have performed according to the law and make sound arrangements for the notices for assembly and procession. This Council has held quite a few hearings in these few weeks and received representations from hundreds of societies. This shows that the relevant discussion has gradually become less confused and the existing Ordinance is widely supported by the public. I believe this is the mainstream public opinion.

Some people are familiar with the judicial system and they know very well the unexpected incidents that have taken place in Hong Kong over the past 50 years. Although they agree that it is essential for the POO to be preserved, they object to some crucial provisions including the preventive criminal penalty provisions. They have evidently neglected or distorted the legislative intent of the relevant Ordinance. In my view, the advance notice mechanism must be supported by criminal penalty provisions before it can be effective. If the most crucial penalty provisions are deleted or replaced by the levy of fines, the POO will become empty provisions that are not legally binding and lack deterrent effects. It will fail to ensure the orderly conduct of economic activities and that the daily life of the people will not be disturbed.

It is surprising that when the former Legislative Council reviewed the POO in 1995, some people had never queried whether the Ordinance was excessively strict and they had not complained to the then British Hong Kong Administration that the Ordinance had violated the Hong Kong Bill of Rights Ordinance. Yet, they are now demanding comprehensive amendments to the POO and the deletion of the relevant provisions. Do they mean to say that the Ordinance should be preserved during the time of British rule so as to ensure unimpeded governance by the British? Do they now think that the relevant provisions can be deleted during the time of "Hong Kong people ruling Hong Kong", thus depriving the SAR Government of a preventive mechanism in the face of an adverse incident that may occur?

I would like to say in passing that in respect of this key issue related to our persistent uphold of the rule of law and continuous development, individual media and academics have neglected the actual situation of Hong Kong and the long-term interests of the people. They spread anarchism, vilify the SAR Government, create polarization and antagonism as well as wink at illegal assemblies that upset social tranquility. I think their self-destructive acts will end in calamity and are not blessings for Hong Kong, nor are they the proper conduct of the media and academics.

I so submit.

PRESIDENT (in Cantonese): Honourable Members, although there are only 10 minutes to 11 pm, several Members are still waiting to speak. As I would like to finish this motion debate by tomorrow morning and ensure that Members will have sufficient time to express their views, I have decided to allow a few more Members to speak at this meeting.

MISS CHOY SO-YUK (in Cantonese): Madam President, I am glad I can speak now. *(Laughter)*

Recently, there have been diverse opinions in the community on whether amendments should be made to the POO. I think it is timely and essential for the Government to initiate a motion debate on the POO in the Legislative Council to clarify some points publicly so that some issues which may affect the rule of law and stability in Hong Kong may be ironed out.

Other colleagues in the Democratic Alliance for Betterment of Hong Kong (DAB) will be speaking on some specifics of the POO. I will be speaking about my personal experience only. Though I do not participate regularly in demonstrations, I have organized several demonstrations after the reunification. In fact, when we organize demonstrations, the planning, promotion and preparation of materials are done over a period of time. More often than not, over a week is needed. Therefore, a seven-day notice period would not normally pose any particular problem to us.

Madam President, I have had the experience of organizing meetings within several days in response to some unexpected incidents, making it impossible for me to notify the police within seven days. Under the circumstances, we would try our best to limit the number of participants and plan the route of the demonstration in such a way that traffic would not be obstructed. Our experience told us that in each case the police could send officers to assist on the spot. With good order from participants and co-ordination by the police, we could voice our opinions clearly and we never felt any restraint on our freedom of expression.

The community has been receptive to the POO. People have never felt it has limited their freedom. They only find that it can provide protection to the order of processions or demonstrations and to the safety and daily activities of the public. The existence of the POO is in the interest of everyone, including demonstrators. Therefore, from whatever point of view, the POO cannot be deemed "draconian". Experiences in the past have shown that the police have been very lenient in enforcing the POO. So long as demonstrators could take the initiative to keep proper arrangements and order at the scene of the event, the police would not normally take any action.

Are there really many people who oppose the existing POO? That does not seem to be the case as far as I can tell from the organizations and people I have contact with. In general, they have the impression that those who demand to amend the POO seem to have gone overboard by insisting on certain vague principles of freedom and labelling every requirement from the Administration made of demonstrators as "draconian".

Madam President, there have been 6 000-odd cases of demonstrations of various scales since the reunification more than three years ago. As far as I know, only five cases among them were not approved. They should to a certain extent reflect the prudent position of the police in raising objections to applications for demonstrations. I understand that among the five cases, two were objected to because the police wanted to prohibit the participants fighting for the right of abode to hold a public meeting outside the Government Secretariat following a scuffle that occurred there between the demonstrators and the police. In one other case, the police considered that the procession of vehicles would cause serious disruption to traffic and prohibited a procession of 100 vehicles in Central, which was the busiest business area. Two other cases

involved protesters against the compensation in connection with the resumption of land for the construction of the West Rail, who made application to hold a public meeting of 100 persons at Lo Wu Railway Station and a public procession of 100 persons along a narrow passage from Shek Wu Tong to Cheung Po Chuen. The police objected to both applications.

Thus, it can be seen the police objected to the applications for public meetings and processions in each case in the interest of public safety and public order rather than on grounds that are in any way related to the theme or purpose of the event, or even less likely to political censorship or limitation to the freedom of speech. The reality I have described tallies with my personal experience. I trust anyone, being a reasonable person and after knowing the said facts, would not consider the POO restraining the people's freedom and demand that it be amended.

As the Secretary for Security said on a public occasion sometime ago, though the Government succeeded in prosecuting two student leaders who raided the Xinhua News Agency, the sentence that was eventually meted out was only a community service order. Thus it can be seen that in general the Court has been lenient in handling such cases.

Before one can demand to enjoy personal "freedom", one must respect the freedom of others and preserve the interests of the public. This is then the spirit of "democracy". The existing POO of Hong Kong enshrines the spirit of the rule of law in a democratic society. It, being a piece of democratic legislation, can cater to both the rights to expression of demonstrators and the need to ensure that public processions or meetings will not endanger or inconvenience the public, striking a balance between the two. It is consistent with the principles and spirit of the International Covenant on Civil and Political Rights and it serves to protect the social stability and preserve democracy. Therefore, I do not support any arbitrary amendment or abolition of the POO.

With these remarks, Madam President, I support the original motion.

DR RAYMOND HO (in Cantonese): Madam President, social stability is an essential condition for the development of a place. To ensure social stability, we should not seek to create a consensus of opinion in society by suppressing

dissenting voices and political views. On the contrary, for the sake of social stability, we must allow people holding dissenting views to voice their opinions on different social issues and air their grievances by way of peaceful processions and demonstrations, provided that they will not affect the rights of others in so doing. That way, we can then carry out discussions to resolve social conflicts without resorting to violence. Over the past three years, I have participated in processions and public meetings of different types and nature, many of which were related to the salaries and benefits of civil servants.

According to Article 27 of the Basic Law, Hong Kong residents shall have freedom of assembly, of procession and of demonstration. Moreover, Article 39 also stipulates that the rights and freedom enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law, and that such restrictions shall not contravene the provisions of the international covenants on human rights as applied to Hong Kong. As regards the International Covenant on Civil and Political Rights (ICCPR), the following has been specified under Article 21 of the Covenant: "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security, public order, the protection of public health or morals or the protection of the rights and freedoms of others."

From these provisions we can see that the freedoms and rights concerned are by no means absolute and should be subject to restriction under certain circumstances. In addition to striking a balance between the people's human rights and the rights of law enforcement agencies, the ICCPR also seeks to strike a proper balance between the protection of people's freedoms of assembly and procession, and the interests of national security, public order as well as the rights of others. Hence, there is a provision under the existing POO that if the Commissioner of Police considers it to be in the interests of national security or public safety, public order or the protection of the rights and freedoms of others, he may prohibit the conduct of any public meeting or public procession. Besides, so doing is also in line with the principles and spirit of the international covenants on human rights.

On the other hand, the existing POO provides that prior notification be given in respect of the conduct of any public procession or public meeting. In this connection, the notice of the intention to hold a public meeting or public

procession must be submitted to the police seven days in advance. In my view, this requirement is consistent with the operational needs of the Police Force. Upon receiving the notice, the police can then deploy manpower and make traffic arrangements accordingly. Many countries and places overseas also have in place requirements similar to ours. In some places, the conduct of such activities will not be permitted without the approval of or a licence issued by the relevant authorities. In comparison, the requirement in force in Hong Kong is not excessively harsh, as only a written notice given seven days in advance is required and the activity concerned can be held as scheduled if no notice of objection has been received from the police. As a matter of fact, over the past three years a total of more than 6 700 public processions and demonstrations have been held in Hong Kong. These processions and demonstrations were held for quite varied purposes including politics, economic issues, labour disputes, people's livelihood, religious beliefs and cultural matters. Among them, only a few cases had been rejected by the police. Through the negotiations and agreements reached between the police and the organizers, the majority of the activities could be held with due regard being paid to public order of society.

Moreover, since the ultimate authority to determine whether or not a demonstration procession should be approved is not vested in the police, there is no question of the police being vested with excessive power. If members of the public should be aggrieved by the decisions of the police, they could appeal to an independent appeal board to redress their grievances. At the same time, they could also apply for judicial review.

Madam President, in pursuing personal freedom we must also respect the freedoms and rights of other people on the one hand, and safeguard the interests of society as a whole on the other, for this is true democracy. Basing on the considerations mentioned just now, we can see that the existing provisions of the POO have not suppressed or posed any threat to the people's rights to participate in public processions or public meetings. Indeed, the relevant provisions have all along been able to reflect a proper balance between protecting the individual's right to freedom of expression and right of peaceful assembly, and the broader interests of the community at large. As such, there is no need to introduce any amendments to the proven Ordinance at the present stage.

I so submit.

DR YEUNG SUM (in Cantonese): Madam President, I believe with the exception of a few friends of mine, I have a greater affinity with the Public Order Ordinance (POO) than any other Honourable Member in this Chamber. It is because for more than two decades, I have taken part in countless demonstration processions on the streets.

I would like to talk about the attitude which the public holds for the way the Government handles the POO. In fact, the intense reactions are also attributable to the Government and for which the Government should be held responsible. The "20 April" incident happened when a group of students protested against the Government's proposal to charge university tuition fees according to different disciplines. Some of these students were my own students. They launched a sit-in in front of the Government Secretariat and it was a very peaceful demonstration. The number of participants was not that many. However, after the demonstration had finished and when they were on their way to Lan Kwai Fong for some food, the students were stopped on a steep path by some plain clothes detectives who asked to inspect their identity cards. It so happened that I passed by and I asked the detectives what was happening. These detectives were investigating into a burglary case and they told me that they suspected a burglary case had happened in the vicinity. I said to these plain clothes detectives that they were my students and I did not believe that they were involved in any burglary. And I also told the officers that they had just demonstrated in front of the Government Secretariat to protest against the charging of differential tuition fees for different disciplines and they were there for some food. These detectives said that they might be involved in burglary and so they were stopped to have their identity cards inspected. After I had made the explanation, we all went away.

The second event is the "26 June" event and that involved some people who were fighting for the right of abode in Hong Kong. They were also holding a peaceful demonstration but that led to the use of pepper spray by the police. Some policemen were alleged to have hit these demonstrators with their fists and to date the police are still investigating into the case. I learned from the newspaper recently that the police would take disciplinary action against some of the officers involved. I do not know if this is true and maybe when the Secretary for Security makes her reply tomorrow, she will speak on how the authorities will handle these policemen who have allegedly used violence. They are alleged to have used violence, and I am not certain if this is the case.

Maybe the Secretary or the Government wishes to take stiff action against those who have taken part in demonstrations and processions so that they will not dare to take part in such activities again. However, the greater the pressure exerted, the stronger will resistance become. Since such pressure is exerted not fairly at all, the resistance that it causes will be even stronger. In the heat of the controversy, the Government wants to propose a motion debate in the Legislative Council. But it wants also to evade the mechanism of division according to how Members are returned and so it moves the motion itself. It aims at getting enough votes and putting an end to the public debate on the issue. For after the voting, it can say that the Legislative Council has given its support to the government stance. I think this way of handling things will incite intense reactions in society and even lead to hostility. I hope the Secretary can learn a lesson from this and consider whether the issue must be handled in this way.

I hope Honourable colleagues will take a serious look at the amendment proposed by Mr James TO on behalf of the Democratic Party, regardless of what they think of the members of the Democratic Party or those who take part in processions and demonstrations. The amendment moved by Mr James TO on behalf on the Democratic Party does not propose to abolish the POO, so please do not mention the words "to abolish" again. Mr TO also does not talk about abolishing the notification arrangement, so please do not mention that any more. I took part in deliberating on this Ordinance before 1997 and one of the issues we discussed was on whether notification should be required. Since the right to demonstration and procession is guaranteed by the international covenant on human rights, why is there a need to notify the police? At that time, some of my Honourable colleagues thought that there was a need to notify the police because that was the principle behind the international covenant on human rights. Everyone has the right to express his opinions, but in exercising his right he must not affect others adversely. So rights are not absolute but relative. We were very much in support of this point of view. So in the end we thought that there was a need to notify the police. It was because though everyone has the freedom of demonstration and procession, it would be good to every party if the police are there to regulate the traffic and prevent the happening of pushing and other forms of physical contact among people holding different views. So the Democratic Party accepts that everyone has the right to demonstration and procession, but the exercise of such a right should not affect others and notifying the police is a required procedure that should be complied with. Therefore, in our amendment we have not suggested to abolish the notification arrangement. I hope Honourable colleagues will pay special attention to this point. We have

not said that we want to abolish the POO, nor have we mentioned that we want to abolish the notification period. For we are convinced that when we are to exercise our human rights, we must not impinge on the human rights which other people are also entitled to enjoy. So given this regulation, this arrangement is acceptable to us in the social order perspective.

However, the question remains: Is it necessary for the notification period to be as long as seven days? Moreover, is it necessary to make those who violate the provisions in the legislation be liable to imprisonment of five years? This penalty has been in place since 1967. I note the Secretary's remark just now, that heavy penalties were needed in times of trouble then. But, may I ask, is our society in a similar state of unrest now? If not, then should we impose such a heavy penalty as this? Should the five-year imprisonment which was imposed in 1967 be amended now? If it is to be amended, then as Mr James TO proposes in his amendment, these penalty provisions should be amended. This is exactly the kind of amendment which Mr James TO is proposing. If we agree that we are not under such unrest, then it is absolutely unnecessary for the Government to impose such heavy penalties. If in the peaceful expression of their views, Hong Kong people are liable to a maximum penalty of imprisonment of five years for breaching provisions in the POO, then it is tantamount to telling the rest of the world that we are in a state of unrest. I think neither the Chief Executive nor the Secretary for Justice would want to see that. So, the Government should make a reply to this Council tomorrow that the maximum penalty of five years' imprisonment as stipulated in the Ordinance would be amended. The Government must make that clear, for if not, it is telling the world that we are now in a state of social unrest. We are definitely not in a state of unrest in Hong Kong now. I hope the Secretary for Justice or the Secretary for Security would make a clarification on that point tomorrow. If they do not accept the amendment moved by Mr James TO, they are in effect telling the whole world that we are now in a state of social unrest — this I do not agree, and I trust other Honourable Members will not either.

About the seven-day notice period, I wish to point out that our police are in fact very efficient. In view of the great number of people who took to the streets at the time of the pro-democracy movement in 1989 and during the sensitive period immediately after the reunification, the police showed their great efficiency in handling demonstrations. However, that the demonstrations were orderly should not be attributed entirely to the great efficiency of the police, for those who took part in the demonstrations were also aware of the statutory line.

It can therefore be said that we do have a very stable, law-abiding, peaceful and non-violent political culture in Hong Kong. The experience which I have got over these two decades is that these demonstrations are peaceful and non-violent. There is no need for the Government to dwell on this point and exaggerate, for that is not the truth at all. The students behaved very orderly and they did not resort to violence. On the contrary, it was the police who used pepper spray. Though this has been described as the minimal use of force, still it is force. The police officers hit the students with their fists, but is there any evidence showing that the students used their fists to hit the officers? In the last page of her speech, the Secretary quotes the arguments used by the British Government in a review of their public order legislation in 1986. As the Secretary has said, such rationale is also the position of the Administration. Let me quote, "our objective is "to regulate these freedoms (that is, the rights of peaceful protest and assembly) to the minimum extent necessary to preserve order and protect the rights of others"." As a matter of fact, this kind of minimal regulation is, as stated in the international covenant on human rights, considered necessary in any democratic society.

Notwithstanding this, I doubt whether the seven-day notice period is necessarily the minimal standard to be followed. Can it be two days? Or four days? The Secretary says that the requirement is not often enforced and that it is so flexible that it is not enforced most of the time. If this is the case, why do we not amend it? If a piece of legislation is not often enforced, it is a kind of mockery of the legislation. Why do we not amend it? That is a major amendment which Mr James TO has proposed. Will the penalty have to be five years' imprisonment? Will the notice period have to be seven days? Can the matter not be handled flexibly? Should the number of people taking part in assemblies and processions be set at 50 and 30 respectively as the threshold for regulation? Can this be made more flexible? These are our queries. Honourable colleagues, these are all the queries that we have.

If Honourable Members would look carefully at Mr James TO's amendment, they would find that the proposals made are all very sensible and pertinent to the practical situation. That shows the Democratic Party's stand on this issue, that is, we have the basic human right to express our views, however, when we exercise this freedom, we do not have to infringe on other people's freedom. The role of the police is to regulate. The question is how this is to be done. Can a low-profile approach be used? Can some adjustments be made on this? Must the penalty to be imposed be set at five years' imprisonment?

Must the required notice period be seven days? And must the maximum number of participants in assemblies and processions necessitating police regulation be set at the thresholds of 30 or 50 people? If the Government can make amendments on these few points, I think the problem can be solved. If some Honourable Members should say that Mr James TO's amendment seeks to abolish the POO, then it can lead to sparks flying. However, much of the sparks today could have been avoided in the first place. The cause of controversy, if any, is some Honourable Members failing to look at Mr James TO's amendment carefully. They thought that he wished to abolish the Ordinance. Just now Dr the Honourable Philip WONG said he had thought that Mr TO wanted to abolish the POO. I was shocked to hear it. I hope he would make himself clear about Mr TO's amendment. Mr TO has not proposed to abolish the POO. Earlier the Honourable NG Leung-sing also said that Mr TO wanted to abolish the notice period. Mr TO did not say that, he was only questioning why the notice period had to be seven days.

If Honourable Members can look at the amendment proposed by the Democratic Party carefully, they will find that the amendment is able to take into account the real situation and it is sensible. I would be very disappointed if Honourable Members think that this is not sensible. Earlier on, I was glad to hear about the findings of surveys done in two professions which included members like doctors, surveyors and architects. In general, they think that there is a need for the existing POO to be preserved, but basically they support the amendment proposed by Mr James TO, for they think that the seven-day notice period can be shortened and that the five-year imprisonment penalty can be flexibly handled and adjusted. So if Dr LO Wing-lok and Mr LAU Ping-cheung are to follow the views of the members of their professions, they should support both the original motion moved by the Government and the amendment proposed by Mr James TO. For if not, that will not be able to reflect their members' views and show due respect for them. As for Miss Emily LAU's amendment, it is gracefully put and the suggestion to conduct consultation should not cause any problems because the Government has always said that it wants to have transparency. So if we are to vote on this, we can show our support for the motion and the two amendments. I hope those Honourable Members who represent professional bodies can reflect the views of their members and show respect for them. I do not think that there is a great difference in our views on this issue as long as we do not look at it through tinted glasses.

I would like to reiterate that we enjoy the right to express our views and that the international covenant on human rights has vested in us the freedom of demonstration and procession. Moreover, Hong Kong people are believers of peaceful demonstrations and they have never resorted to violence. On the contrary, we have seen some policemen use violence in situations which they think are emergencies. So the problem does not lie with the people, but possibly with the Government. Does the Government think that it should impose heavy penalties because it is a time of social unrest? Or are we really living in a time of social unrest?

Thank you, Madam President.

MR NG LEUNG-SING (in Cantonese): Madam President, I wish to follow up on Dr YEUNG's earlier speech which referred to my speech. I wish to make a clarification.

PRESIDENT (in Cantonese): Mr NG, do you wish to clarify the part of your speech that has been misunderstood?

MR NG LEUNG-SING (in Cantonese): Yes, I do. Just now Dr YEUNG mentioned something that I had said earlier on. Let me say it again: "Regarding Mr TO's amendment today, colleagues of the Democratic Party have at least accepted a notification system from today onwards." I did not make it wrong. I just wish to clarify this point.

MR ERIC LI (in Cantonese): Madam President, I am sure that all cool-headed and sensible Hong Kong people will very much hope that our discussions can lead us closer and closer to the truth. However, despite repeated debates, it seems that the controversy surrounding the Public Order Ordinance (POO) is still far from being settled. I am sure that even after the discussions in the Legislative Council today, and even after the voting tomorrow, this problem will still remain unresolved.

Whether they support or oppose the Ordinance, the people's attitudes towards this issue all seem to be based on a considerable degree of misunderstanding. Given this, I cannot agree with the Secretary's point that what the Government should do should be confined to a simple explanation of its position. Instead, I would think that it should listen carefully to the many different voices in the community, trying as much as possible to explain the matter and play a co-ordinating role, so as to create a calm atmosphere in the community. This is especially important, because the main emphasis of the Ordinance is on striking a balance, and simply no one can claim to be absolutely right or wrong. For this reason, mutual tolerance and respect should be the only way to handle this complex matter.

Actually, this is already our fourth debate on this issue. The first debate was held in 1995, when it was still the time of the former Legislative Council, and I supported amending the POO at that time. The second debate was in 1996, and I was then a member of the Preparatory Committee. At that time, we considered whether the POO should be repealed, so as to prevent it from transit to 1997. I was one of the few Preparatory Committee members who expressed reservations about the repeal of the POO. I did not support the repeal of the Ordinance at that time.

On 14 June 1997, the Provisional Legislative Council enacted the existing POO. I faced a very difficult task at that time, for again, I had to consider the whole matter very carefully and sought to strike a right balance. I eventually supported the passage of the existing Ordinance out of the consideration that in case the POO of 1996 could not be passed, a period of legal vacuum would certainly ensue, and this vacuum must somehow be filled. I also accepted the point that the government at that time had already endeavoured to strike a balance between human rights and police powers, and a very good balance had been struck between the two. However, both before and after the passage of the Ordinance, I also expressed many opinions on a number public occasions, saying that even if the Ordinance was passed, it would still need improvements in many different areas. When the Ordinance was tabled before the Provisional Legislative Council for passage, I supported the amendments moved by Mr Bruce LIU of the Hong Kong Association for Democracy and People's Livelihood, in the hope of incorporating more latitude into the Ordinance. But all these amendments were negatived in the end. So, in the end, I could do nothing but to accept the existing Ordinance.

I have outlined the background to my support for the POO. My support for it at that time was very conditional. Besides wishing to say that we must strike a balance, I also wish to repeat what I said at that time — I support the Ordinance not because "I find any defects with the principles underlying the (original) legislation …… the aspirations of the Hong Kong people will be met more adequately if as much latitude as possible is allowed under the laws".

Five years later, today, we are discussing this issue for the fourth time. As Members can see, it is really not that easy to strike a balance. And, I also have to raise a query. There was a political background behind the first, second and third debates, because they were initiated by the then ruling authorities for discussions. But is there any urgency to initiate a new debate today? Is this at all necessary? Is this the best, the most cool-headed and the most sensible way of handling the matter?

Since its passage in 1997, the existing POO has been in operation for three years. Basically, for a considerable period of time, it has not aroused any reaction from members of the public, largely because of the lenient attitude of the authorities towards the people's rights to assembly and procession. It was not until very recently, when a series of incidents occurred, especially when it was said that the POO would be invoked to prosecute the relevant students, that resistance in the community suddenly emerged. I find the Government's approach to this problem somehow regrettable. I think that even if the Government wishes to adopt administrative measures and change its attitude towards the implementation of the POO, it should still give the people more room for discussions and more time for familiarization with the new enforcement approach before making any changes.

I have debated this issue many times; I cannot see how I can possibly change my long-standing position within such a short time, and actually, I will not do this either. Despite the ongoing discussions on this issue, I cannot detect any substantial change in the actual sensibilities of the community. What is more, I will not be influenced by just one or two incidents and then say that my past decision was wrong. Dr YEUNG Sum expressed the hope that professional bodies could conduct some surveys on this issue. It so happened that I had ample time on this occasion, so I was able to conduct a detailed survey and I distributed a set of questionnaire to some 18 000 accountants. It was no easy task to design such a questionnaire, because it was difficult to make it entirely satisfactory given its short length. But I still find the responses quite enlightening.

The findings reveal that 86.9% of the accountants, that is, about 87%, are of the view that it is a proper arrangement to require organizers of assemblies and processions to give advance notice to the police. 39% of the respondents think that an advance notice of seven days must be given; 32.2% think that four days will be enough, and a still smaller minority, that is, 23.7%, maintain that 24 hours should be sufficient. As Members can see, although most of the respondents support the idea of requiring a seven-day notice, a substantial number of respondents are in favour of a shorter notice period.

On the question of using the number of participants as a threshold to determine the necessity of notice, 72.4% of the respondents support such an idea; more than 50% of them agree that such a notice should be made in case the number of participants in an assembly exceeds 50; 11% of them think that such a notice should be required in case there are 30 participants in an assembly; 35% of them think that such a notice should be required only when the number of participants exceeds 100. It is obvious that this is still the mainstream opinion. However, we can still see that the views expressed are quite diverse. Besides, 47% of the respondents also express the hope of setting up demonstration zones.

Many of the respondents, I mean, 40% of them, say that they are satisfied with the existing provisions of the POO on demonstrations and processions. But 36% of them still wish to have some amendments. These two figures are very close, though the number of respondents satisfied with the *status quo* is slightly larger.

As for the need or otherwise to tighten or amend the Ordinance, the views expressed are even more diverse. At least 32% of the respondents think that there is no need to introduce any amendments at all, but many others also hold many different views. I have not yet been able to analyse all these views. Some people want to introduce amendments, because they wish to tighten the relevant provisions. That is why Mr James TO must not feel so delighted, because those who want amendments are not necessarily his supporters. Many of these respondents actually think that the Ordinance should be tightened, so as to make it more difficult to hold an assembly or stage a procession. Of course, some do hope to have more latitude, but the number is not very large.

All this shows us that even statistics alone can give us some kind of enlightenment. Moreover, I have also conducted very extensive exploration, because there was a whole month for me to do so. I have also discussed the matter in great detail with some young accountants. Their views are quite uniform, that is, they appreciate and agree that the police should have a role to play in maintaining public order. They also accept the idea that there should be some kind of advance notice. However, all of them do not wish to give the police any unilateral authority to object to or disapprove processions. In particular, when the grounds of objection involve political factors, the voices of resistance are especially strong. I am not saying that the existing Ordinance has actually led to such a situation. I only wish to draw attention to such a phenomenon and to such opinions.

I notice that since the outbreak of the financial turmoil, society as a whole has become a bit hot in temper. In spite of this, however, the conduct of assemblies and processions has still remained very normal. In general, we are all of the view that assemblies and processions over the past three years have been conducted in very good order. Disregarding the several recent incidents, we do find the conduct of assemblies and processions acceptable, and we also feel the same about the POO. Many people can appreciate that the POO is meant to cope with the special situation after the reunification. However, it is now already three years after the reunification. Do members of the public really think that there is absolutely no need to discuss this matter? Do they really think that such discussions are not constructive at all? And, do they really think that the Ordinance should not be amended at all? The responses collected by my survey can give a very clear answer to all these questions: Although we accept the *status quo*, we certainly do not think that there is no possibiliy for further discussions, amendments and improvements.

I have given all these opinions in such great detail because I believe it is actually possible for the Government to amend the Ordinance. Of course, I am not saying that there is such a need, nor do I mean that there is any urgency. But if the Government can now say that it is willing to consider the issue, it will certainly deliver a positive message to the community, making it easier to resolve the disputes. That way, the Government will be better able to show its tolerance in governance, to show that it is not just bent on arguing about which is right and which is wrong.

First, I think we should introduce a genuine notification system to the concept of protecting the freedom of assembly and procession. Under such a system, should the police deem that there are sufficient grounds to raise objection, it should do so through an independent committee or the Court, instead of taking any unilateral action on its own. And, even after a procession has received approval, prosecutions may still be staged in case the actual conduct of it poses any danger or harm to social order. I am sure that this is more acceptable to the community and can better enable the Government to justify the exercise of police powers.

As for specific details, I have already briefly mentioned that the notice period can be shortened from seven days to four days. Naturally, in the case of some special occasions, such as 4 June and visits by State leaders, the authorities may apply for an administrative directive through an independent mechanism to prescribe a seven-day notice. I am sure that we will accept a seven-day notice requirement for processions to be staged on some special occasions.

I think that the people of Hong Kong in general do agree that they should exercise their civil rights in a peaceful and rational manner. This is an important premise. I also think that the police are both powerful and vigilant enough. This is actually an asset of Hong Kong. I believe that given such a premise and asset, Hong Kong is actually capable of adopting a lenient and orderly approach to handle the issue of amending the POO. I also think that it is appropriate and reasonable to introduce amendments. As far as the Government is concerned, the most effective means to win the people's support should be to accept their good advice. I wish to cite an antithetical couplet, one received by Mr ZENG Guo-fan of the Qing Dynasty from his subordinates during one of his birthday banquets, to illustrate my point. Mr ZENG Guo-fan appreciated this antithetical couplet very much, and it reads to this effect: "Sternness as a means of realizing the benevolence of Buddha". In all these disputes surrounding the POO, is it really true that the measures and practices adopted by the Government do not warrant review? I have heard that even some front-line police officers are at a loss as to what they should do. And, even the Independent Police Complaints Council has had to deal with complaints relating to the Government's enforcement of the Ordinance, and it is going to hold a meeting on this issue tomorrow. I think all these are problems that need to be reviewed positively. But I believe that discussions among Legislative Council Members or their voting tomorrow alone may not help solve the problem entirely.

I have gone through the amendments proposed by Mr James TO and Miss Emily LAU. There is one point in Mr James TO's amendment which I do not agree to: his reference to the reports written by the relevant bodies under the United Nations. Such a reference may easily mislead the people of Hong Kong and the international community to think that these international bodies want to interfere with the internal affairs of Hong Kong. In fact, this is not the case in reality, because according to the United Nations Charter, international law cannot interfere with the domestic laws enacted by its member states under the principle of sovereignty. I do not think that it is a good approach for us to apply political pressure on the Government by using any reports of international bodies as the theme of motions in the Legislative Council.

Regarding Miss Emily LAU's amendment, as the Government has pointed out, the Law Reform Commission may not be the best venue to debate this issue owing to the constraints imposed by its formal terms of reference. Allowing the Legislative Council to discuss the matter openly and rationally with the Government and the relevant bodies should be better than referring it to a handful of experts for consideration. To me, referral of the matter to the Law Reform Commission may not be the best way out.

Today, I will follow the indications I receive from the accountancy sector and support the original motion of the Government. However, let me also say that as in the past, my support for the original motion does not mean that I see no further need to review and improve the existing POO. I hope that the Legislative Council and the Government can still conduct more sensible discussions in the future, instead of looking to the Law Reform Commission or a handful of individuals for a decision.

PRESIDENT (in Cantonese): The last Member to speak in the meeting today.

MR MICHAEL MAK (in Cantonese): Madam President, I am the last one to speak on the motion today. And as I am getting a bit tired, I hope that I will not mix up the positions of opposing and supporting the motion.

I hope all Honourable colleagues and members of the public will look at the motion with a sense of social justice and political neutrality. As we all know, the Basic Law provides that the people of Hong Kong can enjoy the freedoms of

speech, of assembly, of procession and of demonstration. Figures show that since the reunification, the number of processions, assemblies and demonstrations held is even more than that before the reunification. I hope this will demonstrate that we do enjoy the various freedoms and they have not been curtailed as a result of the amendments made to the POO by the Provisional Legislative Council. Regrettably, the processions and demonstrations have led to a lot of outcries of dissent, and these come mostly from the unreasonable regulation of the demonstrators by the police even to the extent of becoming unlawful treatment, such as the use of pepper spray against participants of peaceful assembly.

The Financial Secretary used the tactic of making a pre-emptive strike before the motion on "opposing the surge of increases in fees and charges" and proposed the freezing of four items of fees and charges. In a similar move, the Secretary for Security has employed the same tactic this time to make a pre-emptive move to make the Legislative Council make their stand known in supporting the existing POO in the hope of giving legitimacy to this legislation passed during the time of the Provisional Legislative Council. This move is aimed at suppressing human rights and freedom, and it is thought that this can silence the voices of the opponents. As a strong government, why is the Hong Kong Government so bureaucratic, timid and weak on this issue?

I feel very baffled and dissatisfied by the fact that the Secretary for Security still declares that the legislation does not need to be amended despite the many constructive and opposing views she has heard. About the notice period required to be given to the police before a demonstration can be held, many groups have indicated that there is a need to amend this arrangement. I think the notice period can be shortened to 48 hours. I do not see how this cannot be shortened in view of the efficiency and manpower of the Hong Kong Police Force in consideration of the public's exercise of the right to hold processions and demonstrations.

On 5 November, the Hong Kong Federation of Students held a forum at the Star Ferry concourse. There were only 20-odd participants, but the authorities used the pretext of keeping order and employed as many as more than 60 policemen against the handful of unarmed students. This shows that the police are definitely equipped with enough manpower to handle such events. The police should act in the spirit of serving the people and keeping public order. But the police are imposing all kinds of obstacles on people who hold peaceful

assemblies and this shows that the authorities are still adamantly adhering to the executive-led approach in handling peaceful assemblies and demonstrations in a selective and negative manner.

Since the public has the freedom of assembly and procession, in order to prevent the authorities from having political considerations in vetting notifications and applications, I suggest that the Administration should set up an independent department to handle these notices. What I mean is notices. The organizers should only need to notify the relevant department 48 hours in advance and approval from that department is not required.

In August, the Vice-Chairman of two United Nations human rights committees, Mr P. N. BHAGWATI made a trip to Hong Kong and he learned that some representatives of the Hong Kong Federation of Students were arrested for "taking part or organizing an unapproved assembly". He made the criticism that the provision which required a seven-day notice in advance was not practical in enforcement. He also expressed his concern that the police had selectively prosecuted the student demonstrators.

Therefore, I fail to see how the authorities can explain away that the existing arrangement in the POO is in line with the international covenant on human rights. The existing arrangement actually gives people the impression that it is aimed at imposing restrictions on the freedom of procession and assembly, rather than respecting the right of the public to express their opinions.

On the question of penalty in particular, the maximum penalty is five years' imprisonment. Are we trying to make Hong Kong a totalitarian city by giving the police and the law enforcement authorities excessive powers to impose restrictions on normal demonstrations or petitions?

As a matter of fact, irrespective of whether applications are made before an assembly or a procession is held, if only the participants broke the peace, the police could invoke other legislation, such as the Offences against the Person Ordinance (Cap. 212), to press charges and there is no need to invoke such an evil law to suppress the demonstrators.

The penalty of imprisonment should only be imposed on those who have made a breach of the peace. I would like to ask the Secretary this question: Which is a more serious offence, failing to give advance notice or inflicting bodily harm on other people? The former is liable to imprisonment for five years, and the maximum penalty for the latter is usually three years. Which one of the two is a more serious offence? The Secretary should know very well whether the penalty for the former is too heavy or not. In a public forum held recently, and on being pressed for an answer to this question, the Secretary conceded that consideration might be made to revise this maximum penalty. I hope she can really revise that maximum penalty realistically and bring it on par with the practice in Britain, that is, to change the prison term to fines. That will certainly suffice in achieving sufficient deterrent effect.

Finally, I think as Members of the Legislative Council, we should defend public interest with justice. I therefore call upon Honourable colleagues, especially those who took part in passing the POO in the Provisional Legislative Council, to be bold enough to face sensible views on amending the Ordinance and to say no to their past decisions. They should not just be "royalists" and blindly observe such evil laws in a parrot-like fashion.

Madam President, although I have not conducted any scientific opinion poll on the some 30 000 voters in my constituency, almost all of my colleagues and advisers say they think that the existing public order legislation should be amended. I am in full support of the suggestion made by Miss Emily LAU, that the Law Reform Commission should be charged with the task of making a thorough review of the POO in its capacity as an independent and objective body with a view to bringing it in line with the provisions of the international covenant on human rights. The present proposal to amend the POO does not stand any chance of success, but the debate on this topic will not come to an end. The Chief Executive says that he wishes to see more harmony instead of hostility in society, then why can the Administration not accede to public opinion and amend this evil law?

Madam President, I support the amendments proposed by Mr James TO and Miss Emily LAU and with respect to the authorities' blatant disregard for the voices of opposition, I want to show my protest in public. I must express my indignation, regret and sadness for this.

SUSPENSION OF MEETING

PRESIDENT (in Cantonese): I now declare the Council suspended until 9 am tomorrow.

Suspended accordingly at seventeen minutes to Midnight.

Annex I

WRITTEN ANSWER

Translation of written answer by the Secretary for Security to Mr Henry WU's supplementary question to Question 1

In regard to the percentage of the 2 470 mainland women arrested by the police for involvement in prostitution activities in Kowloon West for the period from January to early December 2000 in the total number of persons concerned in Hong Kong, the relevant statistics are set out in the following table for Members' reference:

	Kowloon West	*Hong Kong*	*Percentage*
Number of mainland women arrested for involvement in prostitution	2 470	2 718	90.9%

Annex II

WRITTEN ANSWER

Written answer by the Secretary for Health and Welfare to Miss Emily LAU's supplementary question to Question 6

According to the records of the Social Welfare Department (SWD), a total of 296 complaints were received between April 1998 and March 2000. Out of the 76 cases that were found to be substantiated or partially substantiated upon investigation, 41 cases were on service quality, 33 on insufficient staffing, and two on food provision. As a result, 76 verbal/written warnings were issued. All the concerned Private Residential Care Homes for Elders (RCHEs) managed to make rectifications shortly after warnings were issued.

Irregularities observed in private RCHEs during inspections over the past 12 months are tabulated below:

Nature of Irregularities	*No.*
(a) Fire and building safety (for example, fire drills not conducted within the required interval of once every six months, obstruction of means of escape, and so on)	249
(b) Management (for example, insufficient staffing, residents' privacy and dignity not adequately respected, and so on)	139
(c) Health care provision (for example, improper application and record of physical restraint, substandard arrangement of annual medical examination for residents, improper drug storage and administration, and so on)	276

WRITTEN ANSWER — *Continued*

On follow-up actions, the SWD issued 102 verbal warnings on the spot and 219 advisory letters (some of which covered more than one irregularity) to the concerned RCHEs. In addition, the SWD issued 84 warning letters against irregularities of more severe nature (for example, staffing problem, very unsatisfactory health care service, and so on). For the 19 cases where the concerned RCHEs failed to make acceptable rectifications upon receipt of the warning letter, a second warning letter was issued. Subsequent to that, the RCHEs took appropriate remedial measures to rectify the irregularities to the satisfaction of the SWD.

Annex III

WRITTEN ANSWER

Written answer by the Secretary for Health and Welfare to Mr LEE Cheuk-yan's supplementary question to Question 6

I attach at Appendix for Members' information a copy of the Schedule 1 of the Residential Care Homes (Elderly Persons) Regulation, which sets out the minimum staffing standards of several types of Residential Care Homes for Elders (RCHEs).

For your additional information, through the Bought Place Scheme and Enhanced Bought Place Scheme (EBPS), we provide incentives to private RCHEs to raise their service quality above the minimum licensing requirements. In respect of staffing standards, an EBPS home of 40 beds, as an example, will need to employ a home manager, four nurses/health workers, eight care workers and at least six ancillary workers.

Appendix

CAP. 459 Residential Care Homes (Elderly Persons) Regulation

SCHEDULE 1

EMPLOYMENT OF STAFF

		Type of residential care home		
Item	*Type of staff*	*Care and attention home*	*Aged home*	*Self-care hostel*
1.	Home manager	One home manager	One home manager	One home manager
2.	Ancillary worker	One ancillary worker for every 40 residents or part thereof, between 7 am and 6 pm	One ancillary worker for every 40 residents or part thereof, between 7 am and 6 pm	One ancillary worker for every 60 residents or part thereof, between 7 am and 6 pm

WRITTEN ANSWER — *Continued*

Item	*Type of staff*	*Type of residential care home*		
		Care and attention home	*Aged home*	*Self-care hostel*
3.	Care worker	(i) One care worker for every 20 residents or part thereof, between 7 am and 3 pm; (ii) One care worker for every 40 residents or part thereof, between 3 pm and 10 pm; (iii) One care worker for every 60 residents or part thereof, between 10 pm and 7 am	No care worker required	No care worker required
4.	Health worker	Unless a nurse is present, one health worker for every 30 residents or part thereof, between 7 am and 6 pm	Unless a nurse is present, one health worker for every 60 residents or part thereof	No health worker required
5.	Nurse	Unless a health worker is present, one nurse for every 60 residents or part thereof, between 7 am and 6 pm	Unless a health worker is present, one nurse	No nurse required

Note: As an additional requirement for a care and attention home or an aged home, any two persons being a home manager, an ancillary worker, a care worker, a health worker or a nurse shall be on duty between 6 pm and 7 am.

Annex IV

DUTIABLE COMMODITIES (AMENDMENT) BILL 2000

COMMITTEE STAGE

Amendments to be moved by the Secretary for the Treasury

Clause	Amendment Proposed
1	(a) In the heading, by adding "**and commencement**" after "**title**".
	(b) By renumbering the clause as clause 1(1).
	(c) By adding -
	"(2) This Ordinance shall come into operation on 1 February 2001.".