

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 24 April 2002

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, G.B.S., J.P.

DR THE HONOURABLE DAVID CHU YU-LIN, J.P.

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, G.B.S., J.P.

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

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

THE HONOURABLE NG LEUNG-SING, J.P.

THE HONOURABLE MARGARET NG

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

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE HUI CHEUNG-CHING, J.P.

THE HONOURABLE CHAN KWOK-KEUNG

THE HONOURABLE CHAN YUEN-HAN, J.P.

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, B.B.S.

THE HONOURABLE LAU CHIN-SHEK, J.P.

THE HONOURABLE LAU KONG-WAH

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

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

THE HONOURABLE AMBROSE LAU HON-CHUEN, G.B.S., J.P.

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

THE HONOURABLE CHOY SO-YUK

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE SZETO WAH

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

THE HONOURABLE LAW CHI-KWONG, J.P.

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

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.

THE HONOURABLE MA FUNG-KWOK

MEMBER ABSENT:

THE HONOURABLE JAMES TO KUN-SUN

PUBLIC OFFICERS ATTENDING:

THE HONOURABLE DONALD TSANG YAM-KUEN, J.P.
THE CHIEF SECRETARY FOR ADMINISTRATION

THE HONOURABLE ANTONY LEUNG KAM-CHUNG, G.B.S., J.P.
THE FINANCIAL SECRETARY

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

MR STEPHEN IP SHU-KWAN, G.B.S., 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

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

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

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

MS SANDRA LEE SUK-YEE, J.P.
SECRETARY FOR ECONOMIC SERVICES

MR JOHN TSANG CHUN-WAH, J.P.
SECRETARY FOR PLANNING AND LANDS

MR LEO KWAN WING-WAH, J.P.
SECRETARY FOR HOME AFFAIRS

CLERKS IN ATTENDANCE:

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

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

MS PAULINE NG MAN-WAH, ASSISTANT SECRETARY GENERAL

MR RAY CHAN YUM-MOU, 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	<i>L.N. No.</i>
Prevention of Copyright Piracy Ordinance (Amendment of Schedule 1) Order 2002	51/2002
Fixed Penalty (Public Cleanliness Offences) Ordinance (Cap. 570) (Commencement) Notice 2002	52/2002
Fixed Penalty (Public Cleanliness Offences) Regulation (L.N. 44 of 2002) (Commencement) Notice 2002	53/2002
Matrimonial Causes (Amendment) Rules 2002 (L.N. 26 of 2002) (Commencement) Notice 2002	54/2002

Other Papers

- No. 72 — Audited Statement of Accounts of the Quality Education Fund together with the Director of Audit's Report for the year ended 31 August 2001
- No. 73 — Audited Statement of Accounts of the Hong Kong Rotary Club Students' Loan Fund together with the Director of Audit's Report for the year ended 31 August 2001
- No. 74 — Audited Statement of Accounts of the Sing Tao Foundation Students' Loan Fund together with the Director of Audit's Report for the year ended 31 August 2001
- No. 75 — Annual Report 2000-2001
Hong Kong Broadcasting Authority

- No. 76 — Annual Report 2001
Kowloon-Canton Railway Corporation
- No. 77 — Annual Report 2000-2001, including Statement of Accounts
and Auditors' Report, of the Hospital Authority
- No. 78 — Report and Statement of Accounts of the Samaritan Fund,
together with the Director of Audit's Report, for the year
ended 31 March 2001
- No. 79 — Report No. 38 of the Director of Audit on the results of
value for money audits - March 2002

Report of the Bills Committee on Medical and Health Care (Miscellaneous
Amendments) Bill 2001

Report of the Bills Committee on Travel Agents (Amendment) Bill 2001

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. First question.

Immigration and Customs Booths at Lok Ma Chau Control Point

1. **MS MIRIAM LAU** (in Cantonese): *Madam President, there are 24 pairs of immigration and customs kiosks for clearing vehicles at the Lok Ma Chau (LMC) Control Point, which are less than those at the Huanggang Border Control in the Mainland. As a result, lorries and container trucks have to queue for a longer time on the Hong Kong side for immigration and customs clearance, thus affecting the development of the local logistics business. As the 24 pairs of kiosks have to be closed, demolished and re-provisioned in phases as part of the expansion works being undertaken at the LMC boundary crossing, and the number of private cars and coaches crossing the boundary via the control point has increased significantly in recent years, traffic congestion in the area has deteriorated. In this connection, will the Government inform this Council:*

- (a) *of the number of immigration and customs kiosks currently in operation at the control point while the expansion works are proceeding;*

- (b) *of the timetable for the re-provisioning of the kiosks, the latest progress and the scheduled completion date of the works, as well as the target date for all the kiosks to become operational; whether it has considered advancing the completion date of the re-provisioning works; if so, of the earliest possible date of completion; if not, the reasons for that; and*
- (c) *whether it will consider increasing the number of immigration and customs kiosks at the LMC Control Point to bring it in line with that at the Huanggang Border Control in the Mainland; if so, of the implementation timetable; if not, the reasons for that?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, to cope with the persistent growth in cross-boundary vehicular and passenger traffic, the Administration implemented a two-phase expansion project at the LMC Control Point. The first phase of the project mainly comprised the construction of five pairs of vehicular kiosks for south- and northbound traffic and the construction of three new pairs of kiosks on the southbound direction to re-provision part of the old kiosks. The project was completed towards the end of 1999. The second phase of the expansion project commenced in November 2000. Apart from improving the immigration hall and boundary crossing facilities for passengers, the Administration would rebuild 11 pairs of the old vehicular kiosks under the expansion project phase two. The expansion project phase two is expected to be completed in September 2003.

Our reply to the Honourable Miriam LAU's questions is provided as follows:

- (a) Under the LMC expansion project phase two, we need to progressively demolish and rebuild the 11 pairs of old vehicular kiosks. To minimize the impact of the works on the cross-boundary traffic, the contractor is required to maintain operation of at least nine pairs of kiosks in each direction (a total of 18 pairs of kiosks) when the rebuilding works are in progress. There are presently nine pairs of vehicular kiosks plus one coach lane open to traffic in both directions. During August and September when freight traffic is at its peak, the contractor has to suspend the rebuilding works and keep all 24 pairs of kiosks open to meet demand.

- (b) As part of the contractual requirements under the LMC expansion project phase two, the contractor is required to rebuild the 11 pairs of kiosks in three sequences. The reconstruction works of the first sequence (three pairs of northbound and two pairs of southbound kiosks) has been completed in December 2001. The works on the second sequence (two pairs of kiosks on each side) commenced in December 2001 for completion in July 2002. The works on the third sequence (the remaining two pairs of northbound kiosks) would start in October this year after the freight traffic peak season and is expected to be completed in July 2003. If the project progresses smoothly, all kiosks would be open in August 2003.

Within the scope of the contractual requirements and consideration of cost-effectiveness, the Architectural Services Department (ASD) is closely liaising with the contractor with a view to identifying practical means to expedite the project so that all 24 kiosks could be open before the expected date of completion of the project.

- (c) Given the constraints of the physical environment, layout and ancillary facilities of LMC Control Point, there is very limited room for constructing additional kiosks thereat. As such, we have no plan to increase the number of kiosks at the Control Point.

We are fully aware of the great demand for vehicular crossing. Considering the lack of scope for expanding the hardware facilities, the Customs and Excise Department (C&ED) has implemented a series of measures to enhance clearance efficiency and streamline the relevant procedures. Through improvement in the software for freight clearance, the handling capacity for cross-boundary vehicles of our control points can be enhanced.

In early March this year, the C&ED has started an exercise to streamline the customs clearance procedures for cargo vehicles in phases. The Department will also install 42 sets of Automatic Vehicles Recognition System (AVRS) at LMC and the other two road crossings in phases. The AVRS installation programme will commence in June this year at LMC. The installation works at 22 kiosks thereat will be completed by November this year while the

installation of the systems at the remaining two kiosks will be completed by September 2003 when the expansion project is finished. Coupled with the AVRS, the streamlining exercise will substantially increase our handling capacity for cross-boundary vehicles. Following the implementation of the simplified procedures and the automation programmes, the C&ED's average clearance time for processing a laden cross-boundary vehicle will be reduced from 45 seconds to approximately 30 seconds. In addition, fixed X-ray vehicle scanning systems will be installed at the freight examination platform at the LMC Control Point to provide more speedy clearance service for cross-boundary freight vehicles.

MS MIRIAM LAU (in Cantonese): *Madam President, the Secretary mentioned in part (c) of the main reply that there was very limited room for constructing additional kiosks at the LMC Control Point given the constraints of its physical environment. Although the Government stated that it would improve its software, the effectiveness of such improvement is actually constrained by its lack of hardware. The major problem facing us is that there is a huge difference between the numbers of kiosks on the two sides, with 24 pairs on the Hong Kong side, and 52 pairs on the Huanggang side. This explains why bottlenecks often arise. Will the Government inform this Council whether it will consider exploring with the mainland Government the feasibility of "placing immigration and customs checks under one roof" by diverting some freight vehicles to the Huanggang Control Point, where there are more clearance kiosks, to handle immigration and customs clearance separately for both sides, so as to relieve the pressure on control points in Hong Kong?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, as pointed out by Ms Miriam LAU, there was very little room for providing additional kiosks at the LMC Control Point due to constraints of the physical environment. According to the information I have acquired, I understand the room available at Huanggang for expansion is much bigger than that in Hong Kong. The layout of Huanggang is also different: passenger vehicles and freight vehicles are required to pass different accesses. While only 10 lanes are opened for clearing cross-boundary passengers at the Huanggang Control Point, 20 lanes are available for freight traffic. According to the information I have acquired,

however, one inspection kiosk is responsible for supervising two lanes, and each kiosk has only one computer. Therefore, the kiosks can only supervise 10 lanes though there are 20 cargo lanes. Our customs clearance capacity is thus actually the same as that of the Mainland.

Of course, we will actively consider other means to alleviate freight congestion. The concept of "placing immigration and customs checks under one roof", as mentioned by Ms Miriam LAU, is among the proposals under active consideration. One of the ways under consideration is to separate passenger traffic from cargo traffic so that either passenger or cargo traffic can be cleared at Huanggang. Under the concept of "placing immigration and customs checks under one roof", officials from both sides will gather in the same place to carry out clearance independently according to their respective laws, institutions and computer systems. Another way is to separate passenger traffic from freight traffic. Passenger vehicles will be directed to the Huanggang Control Point for clearance, and the kiosks at the LMC Control Point will then be made available for handling cargo clearance. We believe this is the most effective means to resolve congestion in the short and medium term. An expert working group has been set up by both sides to handle this problem. Our goal is to resolve the technical problems associated with the proposal of "placing immigration and customs checks under one roof" within this year.

MR WONG SING-CHI (in Cantonese): *Madam President, in responding to part (a) of the question raised by Ms Miriam LAU, the Secretary proposed that at least nine pairs of kiosks in each direction should be maintained in order to minimize the impact on cross-boundary vehicular traffic, and all 24 pairs of kiosks would be opened during August and September when traffic is at its peak. In the past, we could see that traffic was particularly congested when there were long holidays or special events, and passenger clearance would be significantly affected. Will the Secretary inform this Council whether the Government will consider opening all the 24 pairs of kiosks on weekdays to ease traffic flow when such needs arise, and whether other matching measures would be put in place to address congestion on Fanling Highway when traffic is heavy?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, the suspension of the re-provisioning works and reopening of all kiosks in August and September are meant to be an extraordinary measure to cope with the freight

peak period. At present, there are only 14 pairs of kiosks at the LMC Control Point, but the number will increase to 24 upon the completion of the works. A lot of associated works will have to be undertaken. They include expansion of the passenger clearance hall, provision of additional space for lorries to receive X-ray examination and more passenger conveyors, and so on. We cannot suspend these works and re-open the kiosks when traffic is congested on a particular day. However, staff at the LMC Control Point will work closely with the Huanggang Control Point to ease congestion whenever it occurs. Actually, both sides have achieved good co-operation. Though passenger traffic will inevitably increase substantially during festive occasions, I believe Mr WONG should have noticed that severe congestion caused by operational problems or extremely heavy passenger or freight traffic has been reduced over the past year or so.

MR KENNETH TING (in Cantonese): *Madam President, the Secretary indicated in the main reply that the second phase of the expansion project which commenced in November 2000 was scheduled to take four years to complete in September 2003. This, in my opinion, is too long. According to the Government, the progress of re-provisioning the vehicular kiosks would be expedited. Will the Government inform this Council of the progress of its discussion, and how much time can be saved? This will have great impact on the logistics and can help Hong Kong to develop itself into a logistics centre. How much time can be saved after the works are expedited?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, as I explained earlier, it would take quite a long time for the kiosks to be demolished and re-provisioned because planning would have to be done anew. The layout of the present LMC Control Point is grossly unsatisfactory. As Members are aware, passengers have to leave their vehicles twice carrying with them their luggage and walk through a maze of freight and passenger vehicles before reaching the immigration clearance hall. It is indeed not very safe for the passengers to do so. Therefore, we will expand the clearance hall, improve the location of the boarding and alighting areas, provide new passenger conveyors, and designate specific areas for freight vehicles to undergo X-ray examination. It would take quite a long time for the kiosks to be demolished and reprovisioned because it is necessary to carry out so many works projects at the same time. When applying for funding for the LMC expansion project, we expected the

relevant works to be completed in September 2003. We are now discussing with the ASD and the contractor in the hope that the completion date of the works can be advanced to July 2003 to enable the kiosks to start operating in August. To ensure the smooth implementation of the works, the ASD has applied to the Environmental Protection Department for permission to carry out works after midnight. The ASD is prepared to give the contractor approval to carry out works after midnight in the event of any delay or unsatisfactory progress.

MR YEUNG YIU-CHUNG (in Cantonese): *Madam President, will the Secretary inform this Council of the average waiting time for vehicles before the commencement of the expansion project and the waiting time that can be saved after the expansion?*

SECRETARY FOR SECURITY (in Cantonese): *Madam President, I do not have the relevant information on hand. I will provide a reply in writing later. (Annex I)*

MR LAU KONG-WAH (in Cantonese): *Madam President, the entire project will not be completed until the middle of next year. However, I can see that the current conversion works might pose traffic hazards, such as ambiguous signals for "merging", unsafe concourse for private cars and container trucks, the use of manual illumination at night, and so on. Serious traffic congestion will surely occur when car accidents happen. Will the Government introduce any improvement measures in these aspects?*

SECRETARY FOR SECURITY (in Cantonese): *Madam President, we are aware that inconvenience will arise when the works are in progress. We have requested immigration and customs staff to help direct traffic and monitor the operation as far as possible.*

MR CHAN KAM-LAM (in Cantonese): *Madam President, the Secretary mentioned in the main reply that the physical environment and layout of the LMC Control Point are constrained. As our expanding logistics industry will have a*

keen demand on cross-boundary facilities, is it true that there is indeed no room for expansion insofar as the physical location and environment of the Control Point are concerned?

SECRETARY FOR SECURITY (in Cantonese): Madam President, people who have the experience of passing through the LMC Control Point should have known that there is really not much room for expansion there. A new control point is required in order to resolve the problem caused by the heavy passenger and freight traffic in the long run. Honourable Members should have known that the Government is constructing the Shenzhen-Hong Kong Western Corridor, which is scheduled for completion by 2005. As for railways, the East Rail spur line is expected to be completed in 2007. Upon the completion of the Shenzhen-Hong Kong Western Corridor, the capacity of the new control point thus created will increase from 28 000 vehicles at the beginning to 80 000 vehicles during the peak period. As for the railways, it is expected that, upon the completion of the LMC spur line in 2007, 150 000 passenger trips can be handled daily during the initial period. I believe these two new control points can greatly assist us in handling passenger and freight flow.

PRESIDENT (in Cantonese): This Council has spent more than 17 minutes on this question. We shall now proceed to the second question.

Fishing Vessel Fires at Typhoon Shelters

2. **MR WONG YUNG-KAN** (in Cantonese): *Madam President, it has been reported that a fire broke out in the Cheung Chau Typhoon Shelter last month and engulfed three fishing vessels. With regard to vessel fires at typhoon shelters, will the Government inform this Council:*

- (a) *of the number of vessel fires in various typhoon shelters in the past three years, the extent of the damage to the vessels in question broken down by vessel category, as well as the average time taken by fireboats to arrive at the scene after receiving a vessel fire report;*
- (b) *of the time taken by fireboats to arrive at the scene of the reported vessel fire last month; and*

- (c) *whether fireboats are stationed in all districts where typhoon shelters are located; if not, of the ways to ensure that fireboats from other districts will arrive at the scene of a fire without delay?*

SECRETARY FOR SECURITY (in Cantonese): Madam President,

- (a) The number of fires breaking out in various typhoon shelters in the territory in the past three years is as follows:
- | | |
|----------------|------------|
| - Yau Ma Tei | five cases |
| - Causeway Bay | one case |
| - Shau Kei Wan | one case |
| - Aberdeen | five cases |
| - Cheung Chau | two case |
| - Tuen Mun | one case |

Please refer to the Annex for the types of, and the extent of damage to, the vessels concerned.

Among the above 15 cases, one was reported to the police after the fire had been put out by the people on board. In the other 14 cases, both land-based firemen and fireboats were deployed. In respect of these 14 cases, the land-based firemen took an average time of five minutes and nine seconds to arrive at the scene, and, in two cases therein, have extinguished the fires before the arrival of the fireboats. As regards the remaining 12 cases, the fireboats took an average time of 13 minutes and 25 seconds to arrive at the scene.

- (b) The fishing vessels which caught fire in the Cheung Chau Typhoon Shelter last month were close to the shore. The firemen of the Cheung Chau Fire Station responded to the alarm and managed to arrive at the scene in two minutes' time. They carried out the fire fighting operations by boarding the small boats there and making use of the portable fire-fighting equipment they brought along. As the scene was within the southern waters of Lantau Island, the fireboat stationed at the Mui Wo Fireboat Pier was also dispatched

to provide reinforcement. The fire happened some time after 9 pm and the night had fallen. The fireboat took about 27 minutes to arrive at the scene.

- (c) The Fire Services Department has divided the waters of Hong Kong into six areas, and deployed the eight fireboats at the best strategic position of each area to ensure the most effective fire safety protection of the Hong Kong waters. The 14 typhoon shelters in the territory are covered by the protection. The response time for the fireboats to arrive at a scene will depend on the distance, weather, time of the day, and the conditions of the sea.

In order to deal with incidents and fires occurring in the sea in an effective manner, different alongshore and offshore deployment strategies will be used. In case of incidents or vessel fires occurring near the shore, such as in typhoon shelters, land-based firemen will be urgently sent to the shore near to the scene to carry out rescue and fire-fighting operations. If necessary, they will carry portable fire-fighting equipment on board other government vessels (for example, police launches) or available private vessels to get near to the scene. On the other hand, the fireboat responsible for the area will also carry land-based firemen to the scene to provide reinforcement. For offshore incidents, such as fires breaking out on board vessels far away from the shore, the major rescue and fire-fighting operations will be carried out by fireboats.

In addition to land-based firemen and fireboats of the area concerned, fireboats from the neighbouring areas as well as helicopters of the Government Flying Service will also be deployed to provide assistance as necessary. For instance, the fireboat stationed in Central had also been deployed to the recent fire in the Cheung Chau Typhoon Shelter.

To conclude, the fire-fighting and rescue operations in respect of fires in typhoon shelters do not rely solely on fireboats. Depending on the circumstances and needs, the Fire Services Department will appropriately deploy different units and resources to carry out rescue and fire-fighting operations in the most effective manner.

Annex

Information of Fires Breaking Out in Typhoon Shelters between April 1999 and March 2002

Date	Typhoon						Type of Vessels Involved	Extent of Damage
	Yau Mei Tei	Causeway Bay	Shau Kei Wan	Aberdeen	Cheung Chau	Tuen Mun		
5 April 1999			1 ^{Note (1)}				Fishing Vessel	Wheelhouse slightly damaged
13 April 1999					1 ^{Note (1)}		Motor Ship	Bow damaged
19 September 1999	1						Barge	Rear starboard slightly damaged
18 October 1999				1			Dwelling Vessel	Main deck slightly damaged
23 January 2000				1			Floating Restaurant	Store room slightly damaged
18 April 2000		1					Five Pleasure Crafts	All pleasure crafts severely damaged
14 July 2000	1						Barge	Stern slightly damaged
29 July 2000	1						Barge	One 20-foot cargo container slightly damaged
19 March 2001						1 ^{Note (2)}	Barge	Kitchen slightly damaged
20 April 2001				1			Fishing Vessel	Bow slightly damaged
26 September 2001	1						Cargo Ship	Engine room slightly damaged
27 September 2001				1			Three Fishing Vessels	One fishing vessel severely damaged and two fishing vessels slightly damaged
25 October 2001	1						Barge	Crane slightly damaged
6 January 2002				1			Pleasure Craft	Engine room slightly damaged
7 March 2002					1		Three Fishing Vessels	Three fishing vessels severely damaged
Number of Fires	5	1	1	5	2	1		
Total	15							

Note (1) - Fire extinguished by land-based firemen and fireboats *en route* were recalled.

Note (2) - Fire extinguished by people on board.

MR WONG YUNG-KAN (in Cantonese): *Madam President, in part (b) of her main reply, the Secretary said that the fireboat stationed at Mui Wo took about 27 minutes to arrive at the scene at Cheung Chau because the night had fallen. I understand there are more fishing vessels at Cheung Chau than Mui Wo. Will the Government inform this Council whether it would consider relocating fireboats stationed at Mui Wo to Cheung Chau to shorten the sailing time in the event of a fire so that fireboats may arrive in less than 27 minutes? A fishing vessel may be burned to the keel after 27 minutes.*

SECRETARY FOR SECURITY (in Cantonese): Madam President, though I said in my main reply that the fireboat took 27 minutes to arrive at the scene, I also pointed out that firemen from the Cheung Chau Fire Station had arrived at the scene in two minutes on receipt of the report and boarded the fishing vessel with their portable fire-fighting equipment to tackle the fire.

I wish to reiterate that there are at present 14 typhoon shelters in Hong Kong. We have six fireboats, with only one of them being moored at the Aberdeen typhoon shelter. One reason for this is there is a berth for the fireboat at the Aberdeen typhoon shelter. More importantly, fireboats are responsible not just for fire fighting at typhoon shelters. In fact, fires in many of the vessels moored at typhoon shelters could be more speedily tackled by land-based firemen, such as firemen from the Cheung Chau Fire Station. Fireboats have other duties such as rescue operations at sea, as in the case of a shipwreck, in which firemen may have to carrying out diving and retrieval operations; providing assistance from off shore to put out fires, as in the case of fires that break out in shore front buildings. They may also be engaged in siphoning water from the sea to tackle fires. Of course, they also perform fire-fighting duties at typhoon shelters. So, a fireboat is responsible for fire fighting at more than one typhoon shelters.

I had made a study with the Fire Services Department (FSD) about services at Cheung Chau. The FSD explained to me that the Cheung Chau typhoon shelter and the Hei Ling Chau typhoon shelter belong to the southern waters off Lantau. The fireboats responsible for the region have a wide range of duties. They have to provide fire-fighting and rescue services to vessels at Cheung Chau, Peng Chau, Mui Wo, Discovery Bay, Penny's Bay and Hei Ling Chau, as well as protection for ocean-going vessels at the anchorages to the west of Hong Kong and at Kau Yi Chau. The Mui Wo Fireboat Pier is at the centre of the waters there and is a strategic point to station.

DR RAYMOND HO (in Cantonese): *Madam President, though one may say land-based firemen could tackle the Cheung Chau fire with portable fire-fighting equipment, if the blaze is strong, the equipment may not suffice. If it is considered 27 minutes is too long for fireboats to arrive at the scene, will the Secretary inform this Council what mechanism is in place to decide whether to enlist the help of the Government Flying Service?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, in the case of a fire, firemen at the nearest land-based fire station will respond, so will fireboats. If, however, fireboats are too far away from the scene, for example, a fire breaks out at Tai Mong Tsai and there is no land-based fire station, what shall we do? There are two options for the FSD. First, Marine Police will be deployed. Firemen may board a police launch to reach the scene. Second, the Government Flying Service may be engaged. If circumstances, such as those due to weather, marine conditions or time factors, make it impossible for fireboats to arrive at the scene in a short time, the Administration can always engage the Government Flying Service.

DR RAYMOND HO (in Cantonese): *Madam President, the Secretary did not say clearly: Through what mechanism can the Government Flying Service be engaged to tackle a fire?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, in case a responsible officer of the FSD considers that a substantial amount of time is needed for fireboats to arrive at the scene and it is unlikely that land-based firemen will succeed in putting out the fire immediately, the Government Flying Service may of course be considered. Members may know that the Government Flying Service now has a fleet of new helicopters, the Super Puma, with a smaller capacity in fire fighting. Whereas before a helicopter had a capacity of 800 gallons, it now has only 650 gallons. Before, a helicopter carried water with a bucket but it can now carry fire foam and the water tank is in its "belly". If the FSD decides that it is appropriate for a helicopter to drop water from its water tank above a scene of fire, they will make a decision to do so. This is an operational decision.

MR IP KWOK-HIM (in Cantonese): *Madam President, in part (a) of her reply, the Secretary mentioned the number of fires at various typhoon shelters. Do the*

figures point to a high rate or a low one? If they point to a high rate, what will the Administration do to improve the situation and enhance the fire-fighting capability?

SECRETARY FOR SECURITY (in Cantonese): Madam President, the answer is that the rate is low. In the last three years, fireboats were deployed 2 749 times to deal with emergencies and provide support. There were only 191 cases of fire that broke out on vessels. Of these, only 15 happened at typhoon shelters.

MR MICHAEL MAK (in Cantonese): *Madam President, my observation is that vessels moored densely at typhoon shelters. If one vessel is on fire, other vessels stand a high risk of catching fire. Will the Government inform this Council what fire-protection measures there are at typhoon shelters?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, the Honourable Michael MAK was right. We do not want to see fires spreading from one vessel to another. Indeed, the Marine Department and the FSD both note the high density at which vessels are moored at typhoon shelters. Under what circumstances will there be particularly many vessels crowding together? First, during a fishing moratorium, when all vessels have returned at bay. Second, when there is a typhoon. Third, when there is a holiday. On special festive occasions, some vessel owners will worship their gods and naked lights may be made. Therefore, the Marine Department and the FSD will carry out frequent inspections at all fairways at major typhoon shelters to ensure they are not blocked. At those times such as the Chinese New Year, someone may burn joss sticks and candles (not too dangerous a thing to do during a typhoon because there is usually rain then and fire risk is low). Boats from the Marine Department will patrol the shelters 24 hours a day during such times and fireboats will launch fire-prevention campaigns at typhoon shelters to urge vessels to moor at proper positions and refrain from blocking the fairways.

PRESIDENT (in Cantonese): Third question.

Non-payment of Hospital Charges by Non-Hong Kong Residents

3. **MR BERNARD CHAN** (in Cantonese): *Madam President, it is learnt that quite a number of non-Hong Kong residents use the services of public hospitals during their stay in Hong Kong but they do not pay the required charges. In this regard, will the Government inform this Council whether it knows:*

- (a) *the number of cases in which non-Hong Kong residents failed to pay hospital charges in each of the past three years; the default amount involved and its ratio to the overall revenue of public hospitals;*
- (b) *the number of infants born in public hospitals to parents either of whom was not a Hong Kong resident, in each month from March last year to February this year and, among these cases, the number of those which involved non-payment of hospital charges; and*
- (c) *how public hospitals can recover the outstanding payments, and if they will consider introducing a guarantor system or other means to reduce the number of default cases?*

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

- (a) At present, subsidized public medical services are provided to Entitled Persons (EP) who are either:
 - (i) holders of Hong Kong Identity (HKID) card or their children under 11 years of age; or
 - (ii) "other persons" approved by the Chief Executive of the Hospital Authority (HA) or the Director of Health.

In this connection, "other persons" include spouses of HKID card holders. Non-entitled Persons (NEP) who use public medical services normally will be charged the full cost of the services provided.

While the HA's patient billing and revenue collection system captures payment statistics on NEP, it does not separately capture payment statistics on non-Hong Kong residents. The number of NEP cases with medical fees waived/written-off and the corresponding amounts involved, and ratio of the amounts waived/written off to the medical income of public hospitals for 1999-2000, 2000-01 and the first half of 2001-02 are listed in Table 1 of the Annex. Information on the NEP cases for the latter half of 2001-02 is not yet available.

- (b) The HA's clinical information system only captures statistics on the number of infants born in public hospitals whose mothers are non-Hong Kong residents from the Mainland. The corresponding monthly statistics for the period of March 2001 to February 2002 are set out in Table 2 of the Annex. It should be noted that the statistics in question include infants with non-Hong Kong resident mothers who are entitled to subsidized public medical services because their husbands are HKID card holders. The monthly statistics for those infants born in public hospitals whose mothers are NEP from the Mainland are set out in Table 3 of the Annex. The HA's patient billing and revenue collection system does not separately capture information on non-payment cases involving non-Hong Kong residents who give birth in public hospitals.
- (c) At present, the HA requires an NEP or a person who could not be established as an EP to pay a deposit of \$19 million, which is equivalent to six days of hospital charges, prior to or on admission into a public hospital. Thereafter, a demand note for payment of hospital fees will be issued to such a person every seven days of hospitalization. That said, an NEP or a person who could not be established as an EP may not be required to settle payment of the requisite deposit prior to or on admission into hospital under the following exceptional circumstances:
 - (i) the patient requires medical treatment or service of an emergency nature; or
 - (ii) the Hospital Chief Executive is personally satisfied with a written guarantee of payment of hospital fees due by the

patient's employer or the organization responsible for the patient's hospital fees.

In respect of (i) above, HA hospitals will issue a demand note for payment of deposit and/or hospital fees as soon as practicable after the patient is admitted to the hospital.

If a patient fails to settle the medical bill, the HA will contact his next of kin for payment. The HA will also follow up with the defaulter by sending the final bill to the patient followed by subsequent reminders, and a final notice to be sent by registered mail, to urge the patient on early settlement of the medical bill. Follow-up telephone calls will also be made to the patient or his next of kin. Where appropriate, legal action may be instituted against defaulters.

The HA's information system also generates on a weekly basis a defaulter report to keep track of those patient currently admitted into HA hospitals but have not yet settled previous medical bills so as to facilitate the collection of the outstanding amounts from such patients.

Annex

Table 1 — Attendance and Payment Statistics of NEP

	<i>Total no. of NEP attendances with fees waived</i>	<i>Amount of medical fees waived+ (\$ million)</i>	<i>Total no. of NEP attendances with fees written-off</i>	<i>Amount of medical fees written-off+ (\$ million)</i>	<i>Total medical income* (\$ million)</i>	<i>Ratio to total medical income(%)</i>
		<i>(a)</i>		<i>(b)</i>	<i>(c)</i>	<i>(a+b)/c</i>
1999-2000						
Inpatient	484	7.2	1 314	15.5	601.5	3.8%
Outpatient	525	0.4	0	0	365.3	0.1%
Subtotal:	1 009	7.6	1 314	15.5	966.8	2.4%
2000-01						
Inpatient	707	16.0	1 694	15.7	621.8	5.1%
Outpatient	454	0.2	2	0	391.7	0.1%
Subtotal:	1 161	16.2	1 696	15.7	1 013.5	3.1%

	<i>Total no. of NEP attendances with fees waived</i>	<i>Amount of medical fees waived+ (\$ million)</i>	<i>Total no. of NEP attendances with fees written-off</i>	<i>Amount of medical fees written-off+ (\$ million)</i>	<i>Total medical income* (\$ million)</i>	<i>Ratio to total medical income (%)</i>
		<i>(a)</i>		<i>(b)</i>	<i>(c)</i>	<i>(a+b)/c</i>
April to September, 2001						
Inpatient	518	11.8	447	3.4	298.3	5.1%
Outpatient	422	0.2	3	0	200.9	0.1%
Subtotal:	940	12.0	450	3.4	499.2	3.1%

+ Medical fees waived and written off are computed on full cost recovery basis.

* Medical income includes both EP charges (that is, subsidized medical charges) and NEP charges (that is, medical fees charged on full cost recovery basis).

Table 2 — Number of Infants Born in Public Hospitals whose Mothers are non-Hong Kong residents from the Mainland

<i>March</i>	<i>April</i>	<i>May</i>	<i>June</i>	<i>July</i>	<i>2001</i>					<i>2002</i>		<i>Total</i>
					<i>August</i>	<i>September</i>	<i>October</i>	<i>November</i>	<i>December</i>	<i>January</i>	<i>February</i>	
571	549	541	578	607	608	656	787	652	679	596	537	7 361

Table 3 – Number of Infants Born in Public Hospitals whose Mothers are NEP from the Mainland

<i>March</i>	<i>April</i>	<i>May</i>	<i>June</i>	<i>July</i>	<i>2001</i>					<i>2002</i>		<i>Total</i>
					<i>August</i>	<i>September</i>	<i>October</i>	<i>November</i>	<i>December</i>	<i>January</i>	<i>February</i>	
30	23	19	20	31	42	55	49	47	60	46	44	466

MR BERNARD CHAN (in Cantonese): *Madam President, according to the explanation of the Secretary, the mothers of infants mentioned in Table 3 of the Annex are NEP, in other words, it would be impossible for the Secretary to know whether these people had actually paid a deposit of \$19,000. The Secretary said just now that the deposit was \$19 million, but I believe he has made a slip of the tongue; the amount should be \$19,000. If they have been repatriated to the Mainland, what channels are available for recovery of the fees? According to*

the explanation given by the Secretary just now, these people have to remain in Hong Kong for the fees to be recovered.

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam President, generally speaking, patients are required to pay part of the fees, that is, a deposit, before they are admitted into hospitals. If a patient did not pay a deposit, we will collect it from him or his next of kin after he is admitted to the hospital, or from the organization responsible for the patient's hospital fees. Even after the patient is discharged, we will try to recover the default fees as far as possible. If the patient has returned to the Mainland, then there will be difficulties. However, some of these patients have provided an address in Hong Kong, so we will continue to recover those fees.

MR ERIC LI (in Cantonese): *Madam President, children without the right of abode in Hong Kong do not seem to be entitled to free education in Hong Kong even though their parents are Hong Kong residents. However, the wives of Hong Kong residents, who do not have the right of abode in Hong Kong, are entitled to medical services which are almost free. May I ask whether the Chief Executive of the HA, in exercising the so-called power of approval, has adopted criteria which are entirely different from other government departments and is being too generous?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam President, in fact approved EPs entitled to subsidized medical services have all along been required to meet conditions which have not changed over the years. These conditions were not put in place after the establishment of the HA. This practice was followed in the era of the Medical and Health Department, before the HA was established. Of course, in the future we will further review what kind of people meet the requirements for subsidized medical services.

MR ERIC LI (in Cantonese): *Madam President, the Secretary has not replied whether different criteria are adopted.*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam President, this is not so. The Department of Health and the HA both adopted the same practice.

PRESIDENT (in Cantonese): Mr LI, has your supplementary not been answered?

MR ERIC LI (in Cantonese): *Madam President, my point is in the context of comparing with the policy on education. It can be seen clearly from the policy on education that non-Hong Kong residents are not entitled to subsidized education in Hong Kong. According to my understanding, to a certain extent the financial rules of Hong Kong do not permit Hong Kong's resources to be used outside Hong Kong, which means that the resources cannot be used on non-Hong Kong residents. The criteria adopted in this policy seem to differ from those adopted in the policies of the HA. Is this the case?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam President, I believe it would be difficult to draw comparisons between different policies, because the objectives of medical services are somewhat different. However, I agree that we should carry out a review in the future.

DR LO WING-LOK (in Cantonese): *Madam President, in Table 1 of the Annex to the main reply, I think the Secretary did not provide one rather important item, that is, the number of cases in which NEPs have made payments and the total amount involved, since it is necessary to know these figures before a comparison can be made. I hope the Secretary can provide these figures. In addition, Table 1 also mentions fees that were written off. Does this mean that despite all kinds of efforts, the fees could not be recovered, so the fees in these cases had to be written off? Before fees in these cases were written off, had attempts been made to institute legal proceedings?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam President, concerning the first question raised by Dr the Honourable LO Wing-lok, I will provide the relevant data in writing. (Annex II) However, generally

speaking, cases in which the fees for in-patient services could be recovered accounted for about 45% of the cases; in cases not involving hospitalization, that is, out-patient services, the rate is about 80%. However, I will provide the correct data to Dr LO in writing.

As to the question on writing off medical fees, the fees in those cases were written off only after a rather lengthy procedure, which includes issuing letters to patients and making calls to their next of kin to recover the fees, so the fees in these cases will be written off only as a last resort. Generally speaking, we do not write off the cases in the same year, but will do so only after a rather lengthy procedure. In some cases, it is after taking legal proceedings or after the Small Claims Tribunal had handled the cases and when it became known that the people concerned really could not pay the relevant fees that we wrote them off.

MR NG LEUNG-SING (in Cantonese): *Madam President, is there any guideline or clear definition for the term "next of kin" mentioned in the main reply? What kind of next of kin will the HA get in touch with? If a patient does not have any next of kin, will the HA get in touch with his friends, or whether there is any other person from whom the fees payable can be recovered?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): *Madam President, we will try to recover the fees from whoever admits to be the patients' next of kin. However, if the people concerned are not their next of kin but only family members, sometimes it is difficult to request them to pay the fees. Naturally, we will try every means possible to recover the fees.*

DR TANG SIU-TONG (in Cantonese): *Madam President, Table 3 of the Annex indicates that the number of infants born to mothers who were NEPs from mainland China in public hospitals nearly doubled, rising from 30 in March to 60 in December in 2001. What are the reasons for the increase? What preventive measures have been put in place? From how many of these mothers can the fees be recovered?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): *Madam President, we do not keep any data in our system concerning the number of people from whom we could recover the fees. To acquire such data, it requires*

slow manual computation. We have requested the HA to study whether the system concerned could capture this kind of data in the future.

As to the number of infants mentioned by Dr the Honourable TANG Siu-tong, in fact the monthly figure fluctuates and there is no indication of a rising trend for the time being. The number of such infants born each month is between 19 to 60, the highest number is found in December, but the figures for January and February this year are 46 and 44 respectively and there is no sign of a rising trend.

PRESIDENT (in Cantonese): Fourth question.

Concept Plan Competition for Development of West Kowloon Reclamation

4. **MR LAU PING-CHEUNG** (in Cantonese): *Madam President, regarding the results of the Concept Plan Competition for the Development of an Integrated Arts, Cultural and Entertainment District at West Kowloon Reclamation in Hong Kong, will the Government inform this Council:*

- (a) *of the details of how each winning proposal was evaluated by the jury; and*
- (b) *as participants of the competition have been required to prepare their proposals by making reference to the relevant vision put forward by the Culture and Heritage Commission, that is, "what West Kowloon Reclamation ought to reclaim is not only land but our history, identity and creative spirit evokes memories: a new exciting place that people can still relate to and find comforting familiarity with", whether this vision has been taken by the jury as one of the assessment criteria; if so, of its weighting in the overall rating scheme, and the ratings given to each winning proposal on the basis of this assessment criterion; if not, how the jury came to the view that the winning proposals can reflect Hong Kong's history, identity and creative spirit?*

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

- (a) The results of the West Kowloon Reclamation Concept Plan Competition were announced on 28 February 2002 and given wide publicity. The results announcement included a commentary by the jury on the merits of the five prize-winning proposals. The commentary is rather lengthy and instead of reading it to Members, I have attached a copy to the written version of this answer for Members' reference.
- (b) The Competition Document for the Competition invited participants, in preparing their proposals, to make reference to the Culture and Heritage Commission's vision on the development of an arts and cultural district at the reclamation. This was stated as a point of reference for participants, not as a judging criterion for the jury.

The judging criteria, which were set out in the Competition Document, required consideration of the planning and design merits of the proposals and the overall benefits to Hong Kong. The overall objective is to enhance our position as a centre of arts and culture and generate civic pride. The criteria were couched in broad terms, as is appropriate for a competition inviting conceptual plan proposals. The jury was not required to assess the entries to the Competition specifically from an historical perspective or in terms of reclaiming identity and creative spirit.

As regards specific details of the jury's evaluation of the winning proposals, including aspects concerning scoring, the Competition Document provides for the adjudication process to be confidential and binds the Organizer not to disclose the details of the jury's assessments.

Annex

West Kowloon Reclamation Concept Plan Competition

Commentary by the Jury on the Winning Entries (28 February 2002)

First Prize winner: A team led by Foster and Partners

The Jury felt that this submission, more than any other, fulfilled the purpose of the competition to define a conceptual architectural plan to establish Hong Kong

as a city of world class arts and cultural activity. The signature feature of the design, a great canopy, "flows over the various spaces contained within the development" to create a unique landmark. The sinuously flowing form of the site contours and the canopy produce a memorable effect.

The master layout plan, even at this conceptual level, organizes the site to take full advantage of its prime waterfront location and its proximity to Kowloon Park and the Canton Road retail district. The primary components of the design include a cultural hub of auditoria, museums, galleries and performance venues along with a dense collection of shops, bars and retail spaces. The combination of uses proposed lends a great vitality to the scheme, and a continuous promenade along the smooth curvature of the waterfront further enhances the development for cultural and commercial purposes.

In particular, eight aspects distinguish the winning scheme.

The first is the singularity of image, offering coherent visual authority and something that will become immediately recognizable with Hong Kong and an icon around the world. The image is also progressive, well suited for Hong Kong in the 21st century.

The second aspect is the horizontality of the scheme across the site that does not attempt to compete with but rather counterpoints the tall buildings behind.

The third aspect is the presence of a multiplicity of public-space opportunities at various scales.

The fourth is the introduction of substantial green space into the heart of Hong Kong, both symbolically and as a real amenity for citizens.

The fifth aspect is the logical and imaginative deployment of programmatic elements and the inherent idea of drawing people through the commercial and entertainment portion of the complex to the arts and cultural centre beyond. The scheme also allows for a good balance between public and private interests and, in particular, the mix of arts facilities offered. One aspect of the project which gave rise to concern was the lagoon which struck the Jury as perhaps impractical. However, this concern would not negate the construction of a similar public space, including a water body disconnected from the harbour.

The sixth distinguishing aspect of the scheme, is the skilful way in which integration can be achieved with surrounding neighbourhoods and complexes. The links to Kowloon Station and to Kowloon Park, in the east, are particularly good examples, as is the people mover supporting this linkage.

The seventh aspect is the viability of the scheme, which is technically straightforward, consisting of a large mall, two taller structures at either end of the site — one associated with the arts and cultural complex — and a large roof that is well within the ambit of known technology and experience.

Finally, as the eighth aspect, the Jury was impressed by the well-argued case in support of the scheme.

In conclusion, the Jury felt that this bold scheme is a clear and deserving winner of the competition. The great canopy would create an unmistakable landmark for Hong Kong. It would be a major tourist attraction. It would symbolize the community's vision of their city as a future centre of arts and culture and realize that vision with great style.

Second Prize winner: A team led by Mr Philip Y K LIAO

The Jury felt that this submission has immense energy and dynamism in its bold horizontal architectural forms and is well suited to the vibrant nature of Hong Kong. It has many interesting ideas. Imaginative contouring of the site produces a waterfront park and green oases within the landscape. The extensive use of water-pools, waterfalls and mists — as a landscape element — is prevalent throughout the master plan and culminates in a spinal waterway running the length of the scheme area, effectively bringing a part of Victoria Harbour onto the site.

In several regards, the second prize-winning scheme has similar features to the winning submission, including a general feeling of horizontality, a multiplicity of environments and a coherent programmatic response. Although the expressive architectural language is different, the second place scheme does also offer a distinctive image with a progressive spirit. The well-articulated arts and cultural complex is notable, although, on balance, the scheme lacks the expressive authority of the winner and is less straightforward in accommodating some programmatic components.

Honourable Mentions (three of equal standing):

Three schemes were selected by the Jury for Honourable Mentions because they offered interesting alternative ways in which the site could be tackled.

A team led by Professor Minoru TAKEYAMA (the "Jewel scheme")

The "Jewel scheme" was selected because of its simplicity, elegant and well-balanced image and appropriate distinctions between cultural and commercial spaces.

A joint team led by Mr Alan MACDONALD, Urbis-LPT (Architects) Association (the "West End scheme")

The "West End scheme" prescribed what can be called a "fieldscape" in response to the need for both horizontality and continuity across the site, but where fragmentation of buildings and landscape, together with considerable local variety, were used to achieve the effect.

A team led by Mr Rocco Sen Kee YIM (the "New Leaf scheme")

The "New Leaf scheme" was found praise-worthy with regard to the integration of movement across the site within the life-scape of the scheme. This project also proposed an upbeat, media-oriented image and took explicit advantage of the site's location and public outlook back towards central Hong Kong.

MR LAU PING-CHEUNG (in Cantonese): *Madam President, basically speaking, I understand the main reply given by the Secretary. Nevertheless, may I still ask him how Hong Kong's identity and creative spirit are going to be genuinely reflected through the implementation of the development proposal when the contract for the entire project is put out to tender in future?*

SECRETARY FOR PLANNING AND LANDS (in Cantonese): *Madam President, the five prize-winning proposals are very original in their planning concepts and have each of their respective merits. We hope to expeditiously implement the development programme and are therefore making active efforts to assess the different proposals. At the same time, we are also looking into*

appropriate ways to expedite the formulation process of the master programme and the layout plan, and then promptly put out contracts under the development project to tender. We are currently drawing up a specific timetable to help speed up the implementation of the development. So far, the direction for development has yet to be finalized, but we expect to come up with a decision in the near future.

MR LAU PING-CHEUNG (in Cantonese): *Madam President, my supplementary question was on the way the Government would implement the relevant requirements to enable the development programme to genuinely reflect Hong Kong's history and culture. However, the reply given by the Secretary just now talked mainly about expediting the relevant procedures without answering the question on "implementation".*

SECRETARY FOR PLANNING AND LANDS (in Cantonese): Madam President, regarding the question on "implementation", I believe the issue will be looked into only after we have finalized the timetable and the relevant direction of development. We may then invite the participation of the various sectors of society or the Culture and Heritage Commission to help us achieve our intended objective.

MISS CHAN YUEN-HAN (in Cantonese): *Madam President, I have found the West Kowloon Reclamation Concept Plan Competition rather interesting because the participants have to take into account the history, identity and creative spirit of Hong Kong in preparing their land use proposals. On the other hand, I have also noted that in replying the question raised by the Honourable LAU Ping-cheung, the Secretary pointed out that those were not the judging criteria employed by the jury. In my view, the vision stated is of great importance to town planning. May I ask the Secretary why the vision was made a point of reference for participants if it was not any judging criteria employed by the jury?*

SECRETARY FOR PLANNING AND LANDS (in Cantonese): Madam President, as I pointed out in the main reply, the vision was stated as a point of reference for participants; besides, it was also set out clearly in the Competition Document that the vision was not any judging criterion for the jury. So, this rule of the game was explained clearly to the participants then.

MISS EMILY LAU (in Cantonese): *Madam President, may I ask the Secretary whether the rule of the game as set out in the Competition Document has stated clearly that the First Prize winner would certainly have a part in the implementation of the development programme; and whether the Administration has borne in mind throughout the deliberation process the scandal relating to the design of The Hong Kong University of Science and Technology, in which the second prize winner rather than the first prize winner was commissioned to implement the project and thereby causing Hong Kong into disrepute in the international community?*

SECRETARY FOR PLANNING AND LANDS (in Cantonese): Madam President, we have pointed out very clearly in the Competition Document that the Competition has nothing to do with the ultimate development right of the planning area. Even if the Administration should finally decide to develop the area in accordance with the proposal of the first prize winner, the winner concerned would still have to participate in the open tender to bid for any chance of further participation in the relevant development projects.

DR RAYMOND HO (in Cantonese): *Madam President, in the event that the Government adopts in future a certain development plan designed by an overseas firm, will the Government require the overseas firm to set up a long-term office in Hong Kong and keep on training up the local workers during and after the construction period, rather than leaving the territory upon completion of a single project and then return again to participate in another one? Could the Secretary inform this Council whether the Administration has any planning in this connection?*

SECRETARY FOR PLANNING AND LANDS (in Cantonese): Madam President, contracts under the development projects of the planning area will be put out to open tender, and local firms will certainly have a chance to participate in bidding for the projects. We will not specify the ratio of local firms to overseas firms participating in the programme, nor will we specify that certain works projects must be carried out by local firms. Regardless of whether the bidders are local or overseas ones, we will still adhere to our standing practice of fairly awarding the contracts to the right bidders in the light of the merits of their tenders.

DR RAYMOND HO (in Cantonese): *Madam President, the Secretary has not answered my supplementary. Just now I said there had been a past case in which an overseas firm left Hong Kong after completing a certain project of its winning proposal without making any active efforts to train up the local manpower. Given the enormity of the programme in question, I therefore asked the Secretary whether the Government would, in the event of the proposal adopted being submitted by an overseas firm, require the firm concerned to accede to the relevant requirements before awarding it the project contract. Madam President, the Secretary has not answered this part of my supplementary.*

SECRETARY FOR PLANNING AND LANDS (in Cantonese): *Madam President, we will adhere to the standing practice of awarding the contracts in a fair manner, but the issue raised by Dr the Honourable Raymond HO just now should fall outside the scope of our standing practice.*

PRESIDENT (in Cantonese): *Fifth question.*

Counterfeit \$10 Coins and Banknotes

5. **MR NG LEUNG-SING** (in Cantonese): *Madam President, two kinds of legal tender of \$10 denomination are concurrently in circulation in Hong Kong, namely the banknotes which have been used for years and the coins which were first issued in 1994. It has been reported that the police seized a total of 460 000 counterfeit \$10 coins last year, representing a triple increase over the preceding year. On the other hand, while \$10 banknotes are no longer issued, there is still a certain demand for them. In this connection, will the Government inform this Council:*

- (a) *of the quantity of \$10 counterfeit coins seized by the police in each of the past five years, and the amount of counterfeit \$10 banknotes seized by the police during the three years before and after the first issuance of the \$10 coins;*
- (b) *how banknotes compare to coins in terms of security features, durability and issuance cost; and*

- (c) *whether it has considered changing the existing arrangements for the issuance of legal tender of \$10 denomination, including reverting to issuing \$10 banknotes; if so, of the details; if not, the reason for that?*

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

- (a) The quantity of counterfeit \$10 coins seized by the police in each of the past five years was as follows:

<i>Year</i>	<i>No. of coins</i>
1997	106 084
1998	103 141
1999	168 612
2000	115 292
2001	460 835

As for counterfeit \$10 banknotes, the amount seized by the police during the three years before the first issuance of \$10 coins by the Hong Kong Monetary Authority (HKMA) in November 1994, that is, 1992 to 1994, was only 12; whereas the total number seized in the years 1995 to 1997 was 259.

- (b) Generally speaking, banknotes contain more security features than coins, including holographic windowed security thread, embedded fluorescent fibres, security metal thread, watermark, highlight watermark, intaglio printing, fluorescent denomination blocks, concealed denomination and see-through patterns. As for coins, the features include bi-metals, alternate plain and milled edge, milled edge with raised lettering in a groove, milled edge or scalloped edge, detailed and clear three-dimensional relief of the bauhinia, as well as clear and sharp wording (Chinese characters, English letters and numbers) using a regular, well-defined font. I hope Honourable Members understand the features I have just mentioned.

In general, the life span of coins ranges from 15 to 30 years while that of banknotes is about two years. The production cost of \$10 coins is higher than that of banknotes.

- (c) The HKMA and the police have been conducting reviews and assessments of matters relating to the legal tender, which include counterfeit coins and notes. They have also been considering actively various options, having regard to the needs of the general public, to improve the circulation of banknotes and coins, to enhance the security features, and to prevent and tackle crimes related to counterfeit notes and coins.

MR NG LEUNG-SING (in Cantonese): *Madam President, I would like to thank the Secretary for informing us some of the security features. It would be rather difficult to understand all of them. Meanwhile, when the HKMA issues the relevant banknotes, it will also conduct road shows to introduce them to the public. I hope the Government will explain those security features to us. However, if we compare the figures in the main reply, we will find that the total number of counterfeit \$10 banknotes seized in the years 1995 to 1997 and the three years before was 259 and 12 respectively, but the number of counterfeit \$10 coins seized during the period increased suddenly from some 100 000 to over 400 000? May I ask the Government whether it will decide to stop issuing \$10 coins and replace them with the reissue of \$10 bank notes under such circumstances? Will it cause losses and how much will it cost?*

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): *Madam President, I thank the Honourable NG Leung-sing for the supplementary. Certainly, we have been paying close attention to the quantity of counterfeit coins and banknotes mentioned by me just now as well as ways to enhance security measures. I understand very well the views of the public and I know that a lot of people prefer \$10 banknotes to \$10 coins. Just as I have mentioned in part (c) of my main reply, we would consider various proposals suggested by Mr NG and we would consider actively the issue of whether we should reissue \$10 banknotes.*

MR LEUNG FU-WAH (in Cantonese): *Madam President, the Secretary mentioned in the main reply that in the past five years, over 900 000 counterfeit*

\$10 coins had been seized. May I ask the Government how those counterfeit coins were dealt with? The Secretary said that the Government would take measures to prevent and tackle crimes related to counterfeit banknotes and coins. May I ask the number of prosecutions?

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam President, concerning the figures of prosecution, perhaps I should defer to the Secretary for Security. As to the recovery of counterfeit coins, it was usually performed by correspondent banks. Once they discover counterfeit coins, they will recover and convert the counterfeit coins into metal.

SECRETARY FOR SECURITY (in Cantonese): Madam President, with regard to prosecution, the police will closely co-operate with the relevant public security authorities in Guangdong in order to detect people or gangs producing counterfeit banknotes or coins. In 1997 and 1998, the Guangdong Provincial Security Bureau had cracked down on two production plants which manufactured counterfeit \$10 coins. Since 1999, the police have been conducting intelligence-oriented operations to detect activities involved counterfeit \$10 coins, arrested a total of 31 persons and seized 16 537 counterfeit \$10 coins. As a result of this, 17 persons among those arrested were prosecuted and 11 were sentenced to jail with the highest term of imprisonment being three years and nine months.

MR ABRAHAM SHEK (in Cantonese): *Madam President, may I ask the Government should it decide to issue the banknotes if it will issue them itself instead of letting banks to do the job?*

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam President, certainly there can be different proposals. Generally speaking, banknotes are of course issued by note-issuing banks. I believe Honourable Members will know that all of the three note-issuing banks issue banknotes.

MR ERIC LI (in Cantonese): *Madam President, the main reply of the Secretary stated that the life span of banknotes was about two years. May I ask the*

Secretary whether he knows that there is a certain new technology which may help to extend the life span of banknotes, making it better value for money? In Australia, for example, the banknotes are made of plastic, thus they will not wrinkle and will not be damaged easily. Just now Mr NG Leung-sing asked how much it would cost if the authorities were to replace the coins with banknote, but it seemed that the Secretary had not answered that question. I therefore would like to bring it up altogether.

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam President, in general, the life span of banknotes is about two years. However, the situation of \$10 banknotes is a little bit different. The simplest reason is that it is hard to find \$10 banknotes in circulation these days, as \$10 banknotes only emerge before the Chinese New Year. Since the public treasure up \$10 banknotes, thus their life span is usually longer than two years. Certainly, when considering what material should we use for the production of our currency, just as the Honourable Eric LI has mentioned, we will consider using plastic material, but it will still have pros and cons. I believe that if we use plastics, it will be difficult for the public to fold them up, and it is impossible to be ironed smooth. In fact, we will consider every alternative. Of course we will take the pros and cons of plastics and paper into consideration, and we will keep an eye on the development of technology in future whilst considering them. The HKMA is keeping close contact with mints and note printers all over the world, and we will keep a close eye on the development in every respect before deciding what material should be adopted in future for the production of our currency.

MR LAU PING-CHEUNG (in Cantonese): *Madam President, as Mr Eric LI has just asked the supplementary I wish to ask, it is therefore not necessary for me to ask it again. Thank you.*

MISS EMILY LAU (in Cantonese): *Madam President, the Secretary said in his main reply that there was a serious increase in the quantity of counterfeit \$10 coins seized; and Mr NG said in his main question that it had represented a triple increase over the preceding year, but in reality, it was over four times. May I ask the Secretary whether he knows why the increase has been so serious, and is it just as the Secretary said in part (b) of his main reply, that the security features of coins are inferior to banknotes, or there are other reasons?*

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam President, I believe the Secretary for Security will answer this supplementary. I just wish to say that, in general, as the number of security features of banknotes are greater than those of coins, therefore the quantity of counterfeit \$10 banknotes seized was smaller. Perhaps the Secretary for Security can provide some additional information on that.

SECRETARY FOR SECURITY (in Cantonese): Madam President, according to the information at hand, counterfeit \$10 coins are usually seized under the following circumstances: firstly, they are found by transport operators when they deal with their daily proceeds, so the number of counterfeit coins found under this circumstance is the highest; secondly, they are found when banks deal with customer deposits; and thirdly, they are found when individuals try to use them, which only accounts for a small number of the total quantity seized. It shows that most of the counterfeit coins were found by the relevant public transport operators or banks as the quantity built up, then they were handed over to the police for investigation. As soon as these cases were reported, the police had advised organizations collecting large quantity of coins in their operations on a regular basis to check the authenticity of the coins before returning them to the market. After the advice was made, the quantity of counterfeit coins discovered by banks and public transport corporations had increased in the next few months. We believe one of the reasons that prompted the increase of the quantity of counterfeit coins was the increased alertness of relevant organizations against counterfeit coins.

DR LO WING-LOK (in Cantonese): *Madam President, can the Secretary inform us of the cost for minting a \$10 coin? And how much will it cost for printing a \$10 banknote? If the information on \$10 banknotes is not available, the Secretary may provide the cost for \$20 banknotes.*

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam President, I thank Dr LO for the supplementary. I think I know the answer, but it is not convenient to reply here. The major reason is when note printers are awarded the contracts, these figures are sensitive commercial information. As there will be tenders for the printing of banknotes and the printers will participate

in bidding in future, we therefore believe they do not hope the printing cost of banknotes to be disclosed. The cost of printing the banknotes will depend on the contractual quantity at the time the contract is concluded, therefore we will not make them public, and we hope Honourable Members will appreciate this.

MR MICHAEL MAK (in Cantonese): *Madam President, Mr NG Leung-sing did not mention the quantity of other counterfeit coins seized in his main question, as a result, may I ask the Secretary of the figure in that respect? If the answer is yes, then we can make a comparison and see whether it is just as the Secretary has explained, that bad elements keep on manufacturing counterfeit \$10 coins because the security features of \$10 coins are not comprehensive or not advanced enough in addition to rather lenient penalties, thus having prompted a more than double increase in the quantity of counterfeit \$10 coins seized last year.*

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): *Madam President, the quantity in this respect is rather insignificant. I think bad elements will manufacture counterfeit coins only if the crime is profitable, as they have production costs to bear. Let us take the figure of last year as an example. The quantity of counterfeit \$5 coins seized was just 500, and the quantity of counterfeit \$2 coins was about 1 100; they accounted for a small amount only. Honourable Members should be aware of the fact that as far as counterfeit banknotes are concerned, we have been enhancing the security measures, therefore, although over 3 000 counterfeit \$1,000 banknotes were seized in the year 2000, the amount has dropped to around 500 last year, because we had issued new \$1,000 banknotes. In the first quarter of this year, only 70 counterfeit \$1,000 banknotes were seized. It can thus be seen that there have been improvements.*

MR MICHAEL MAK (in Cantonese): *Madam President, I am sorry, may the Secretary also reply that whether the relatively lenient penalties have become the incentive for bad elements to manufacture counterfeit coins?*

PRESIDENT (in Cantonese): *Secretary for Security, do you have the information in this respect?*

SECRETARY FOR SECURITY (in Cantonese): Yes, I have. Madam President, producing or using counterfeit banknotes or coins is a serious crime. Under the Crimes Ordinance, if a person who makes a counterfeit of a currency note or protected coin, intending that he or another shall pass or tender it as genuine, commits an offence and is liable on conviction upon indictment to imprisonment for 14 years. The same penalty applies to the passing or tendering of counterfeit banknotes or coin. That is, if anybody passes or tenders the counterfeit currency or coin, he commits an offence and is liable on conviction upon indictment to imprisonment for 14 years.

DR RAYMOND HO (in Cantonese): *Madam President, can the Secretary provide this Council any information on the experience of other countries that they have to convert coins into banknotes of the same denomination regardless of the higher production cost, just because coins are more susceptible to forgery than banknotes?*

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

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam President, I thank Dr HO for his supplementary. This supplementary shows that our transparency is extremely high. I believe that Honourable Members seldom hear of the amount of counterfeit banknotes or coins seized in places outside Hong Kong, mainly because other governments do not disclose the number of counterfeit banknotes or coins. Certainly, it does not necessarily mean that fewer countries are willing to issue coins. Let us take the Euro as example. This new currency consists of a series of coins, of course it also consists of banknotes, therefore we should not make a sweeping generalization.

PRESIDENT (in Cantonese): Last supplementary.

MISS EMILY LAU (in Cantonese): *Madam President, I would like to follow up what the Secretary for Security has just said, that is, the police advised the public*

to be alert to counterfeit coins only in August last year. Should we give consideration to the fact that actually before last August, there were already a lot of counterfeit coins in circulation, but they were not found because we had not heightened the alertness?

PRESIDENT (in Cantonese): Which Secretary will answer this supplementary? Secretary for Security.

SECRETARY FOR SECURITY (in Cantonese): Madam President, it is hard to prove this hypothesis. However, according to the figures, just more than 100 000 counterfeit coins were seized from 1999 to 2000, and the quantity only rose in 2001. Looking back at the first three months of this year, over 100 000 counterfeit coins were seized. I believe we should observe it over a period of time before we can come to a conclusion that whether there are reasons other than the reason I have just mentioned, that is, the call of the police for heightened public awareness. I think we should be able to answer the supplementary of the Honourable Emily LAU after a period of time.

PRESIDENT (in Cantonese): Last oral question.

Newspaper Inscriptions by Chief Executive, Executive Council Members and Government Officials

6. **MR CHEUNG MAN-KWONG** (in Cantonese): *Madam President, with regard to the headings of the feature pages of a newspaper which constantly bear the inscriptions by the Chief Executive, certain Executive Council Members and government officials, will the Government inform this Council:*

- (a) *whether the Chief Executive and Executive Council Members provide their inscriptions for the newspaper in their official capacity; if so, whether it has assessed if such practice is proper, and whether it will be regarded as an effort to publicize and promote individual newspapers, thus giving rise to unfair competition in the industry, and whether such practice will bring about damage or benefits to the Government's image; if not, whether the public will consider the*

personal deeds of the individuals concerned as being performed in their official capacity;

- (b) of the newspapers the feature pages of which have been provided with the inscriptions of the names of the Chief Executive, Executive Council Members and government officials over the past three years, the time when such practice started, the specific contents of the inscriptions and the reasons for providing such inscriptions; and*
- (c) whether policies or guidelines are in place to impose restrictions on the above-mentioned persons' practice of providing inscriptions of their names for newspapers, magazines or other publications of the mass media; if so, of the details; if not, whether, upon invitation, the above-mentioned persons may decide at will to use the inscriptions of their names?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President,

- (a) The Chief Executive provides inscriptions to the header of feature pages of newspapers in his official capacity. The Chief Executive has provided inscriptions to newspapers at their invitation; his considerations were the consistency of the feature page contents with the policies advocated by the Government and the promotion of readers' understanding of the issues concerned. Generally speaking, Executive Council Members would provide apothegms for special events or celebrations as well as inscriptions for the header of feature pages in newspapers at the invitation of community groups and the media to show their support for the social services and activities. As the inscriptions are not meant to publicize or promote individual newspapers, we do not see discriminatory considerations in the acceptance of such invitations and the question of creating unfair market competition does not arise.
- (b) According to record, the Chief Executive, one Executive Council Member and government officials have provided inscriptions bearing their names for the feature pages of some newspapers. Please refer to the Appendix for details.
- (c) The Administration has not formulated specific policies or guidelines on the provision of inscriptions for newspapers,

magazines and other publications of the mass media by the Chief Executive, Executive Council Members and government officials. This does not imply that they will accept the invitation at will and provide inscriptions bearing their names. Generally speaking, they will carefully consider whether the relevant feature page ties in with the policies advocated by government and helps promote readers' understanding of the issues concerned before deciding on the invitation.

Appendix

<i>Year</i>	<i>Name of Newspaper</i>	<i>Inscription in the header</i>	<i>Reasons for providing inscriptions</i>
<i>The Chief Executive</i>			
1999	<i>Wen Wei Po</i>	Hong Kong — The City of High Productivity (香港·生產力之都)	As mentioned in the reply to question (a), the Chief Executive provided the inscription at the invitation of the newspapers, taking into account the consistency of the feature page contents with the policies advocated by the Government and the promotion of readers' understanding of the issues concerned.
	<i>Wen Wei Po</i>	Civil Servants Corner (公務員園地)	
2001	<i>Ta Kung Pao</i>	Logistics and Shipping (物流與航運)	
	<i>Ta Kung Pao</i>	Ta Kung Education (大公教育)	
	<i>Hong Kong Commercial Daily</i>	Hong Kong Tour (香港遊)	
<i>The Honourable LEUNG Chun-ying</i>			
2002	<i>Ta Kung Pao</i>	The Professional World (專業世界)	The Honourable LEUNG Chun-ying has accepted the invitation to provide an inscription for the newspaper in his personal and professional capacity.

<i>Year</i>	<i>Name of Newspaper</i>	<i>Inscription in the header</i>	<i>Reasons for providing inscriptions</i>
<i>Secretary for Commerce and Industry</i>			
2002	A feature page of <i>Ta Kung Pao</i> and Hong Kong Productivity Council in <i>Ta Kung Pao</i>	A new course for technology and trade in the Hong Kong-Pearl River Delta (香港 — 珠江三角科貿新里程)	As the subject matter of the feature page fell within his purview and as the page provides an opportunity for the relevant institution to promote its causes, the Secretary for Commerce and Industry accepted the newspaper's invitation for an inscription.
<i>Commissioner for Innovation and Technology</i>			
2002	<i>Ta Kung Pao</i>	Innovation and Technology (創新科技)	The Innovation and Technology Commission has all along been actively promoting innovation and technology in the community and redoubling their efforts in publicizing the significance of innovation and technology. On the launching of its feature page on "Innovation and Technology", the newspaper invited the Commissioner for Innovation and Technology to analyse the development of innovation and technology in Hong Kong in an interview and to provide an inscription for the header of the page. The Commission considered this a good opportunity to publicize the message of innovation and technology and therefore acceded to the request.

MR CHEUNG MAN-KWONG (in Cantonese): *Madam President, as the fourth power in society, newspapers and magazines are the major media responsible for monitoring the Government. That being the case, should the Chief Executive not keep an appropriate distance from those media? While there should not be any great controversy if the inscriptions were done for special celebrations, the situation would be very different if the Chief Executive and other public officers should constantly or daily provide inscriptions for the different feature pages of a few commercially-run newspapers competing with other newspapers in the local market. Nevertheless, the Government's reply is that the inscriptions will not help to publicize or promote the publications concerned. In this connection, could the Secretary inform this Council how the Government came up with such a conclusion and whether the Government has sufficient arguments to support its conclusion?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, I have already explained in the main reply just now the reasons why the invitations to provide inscriptions were accepted. As regards the question of fair competition, I have also explained very clearly that the inscriptions were only for the header of certain feature pages; they were not meant to publicize or promote individual newspapers. We therefore consider that the inscriptions will not give rise to unfair competition among newspapers or cause certain individual newspapers to enjoy special benefits.

MR SZETO WAH (in Cantonese): *Madam President, it is a popular practice in mainland China to invite leaders to provide inscriptions and many people are invited to provide inscriptions for a wide range of purposes. For some people, even though they have bad handwriting or even the tendency to write the wrong words, they still accept the invitations anyway. Given that the Chief Executive, principal government officials and an Executive Council Member are constantly providing inscriptions for certain newspapers, may I ask the Secretary whether the mainland practice concerned has spread to Hong Kong, and whether this is a phenomenon reflective of the fact that Hong Kong politics have become increasingly China-like?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, just now I have already made it very clearly in the main reply the Chief Executive

and government officials provided the inscriptions for the header of certain feature pages at the invitation of the certain newspapers concerned after careful consideration. Invitations will be accepted after taking into account such factors as the consistency of the feature page contents with the policies advocated by the Government and the promotion of readers' understanding of the issues concerned.

DR YEUNG SUM (in Cantonese): *Madam President, the Government pointed out in part (a) of the main reply that the Chief Executive had accepted newspapers' invitation to provide inscriptions after taking into account the consistency of the feature page contents with the policies advocated by the Government and the promotion of readers' understanding of the issues concerned. However, as shown in the newspaper I have in hand, the inscriptions provided by the Chief Executive are but some very vague terms, such as "Logistics and Shipping" or "The Professional World" provided by the Honourable LEUNG Chun-ying, as Members can see here. Could the Secretary inform this Council what consistency do vague terms like "Logistics and Shipping" or "The Professional World" have with the policies advocated by the Government and in what ways they can promote readers' understanding of the issues concerned?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): *Madam President, as Members all know, logistics and shipping is an important industry in Hong Kong and the relevant newspaper has a feature page introducing the industry to its readers, which I believe is consistent with the development of Hong Kong and the policies advocated by the Government. As regards the inscription "The Professional World", the Honourable LEUNG Chun-ying has provided the inscription for Ta Kung Pao in his personal and professional capacity.*

MR SZETO WAH (in Cantonese): *Madam President, since it is mentioned in the reply provided by the public officer that the invitations to provide inscriptions were accepted on account of the consistency of the newspapers' contents with the policies advocated by the Government, does it follow that government officials will refuse to provide inscriptions for newspapers the contents of which are not in line with the views of the Government?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, as I said just now, the Chief Executive and other public officers provided the inscriptions listed in the Appendix at the invitation of the newspapers concerned.

DR RAYMOND HO (in Cantonese): *Madam President, if the Government considers that the present practice of providing inscriptions for newspapers will not pose any problem, may I ask the Secretary whether the Government will issue relevant guidelines or encourage those people whose names are on the Precedence List of the Hong Kong Special Administrative Region to add the words "an inscription by" before their names when providing inscriptions at the invitation of newspapers or other publications, so that people will not mistake them for the chief editors of the pages concerned?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, I thank Dr HO for his suggestion. I will reflect his idea to the relevant parties.

PRESIDENT (in Cantonese): Question time ends here.

WRITTEN ANSWERS TO QUESTIONS

Developing Kat Hing Wai as a Tourist Attraction

7. **MISS CHOY SO-YUK** (in Chinese): *Madam President, I have received a proposal from members of the public that Kat Hing Wai (KHW) should be better preserved and developed jointly with other scenic spots in its vicinity to form a cluster of tourist attractions. In this connection, will the Government inform this Council whether:*

- (a) *it has considered declaring KHW as a heritage to be protected by law;*
- (b) *in the course of considering the proposal, it has plans to carry out regular repair and maintenance works to the antiquities and monuments in KHW and set up explanatory plaques to introduce such items; and*

- (c) *it has considered developing a tourist route covering KHW and the nearby scenic spots (including the Wishing Tree in Lam Tsuen, the Kadoorie Farm and the Shek Kong Camp, and so on), and putting up sufficient directional signboards for such spots along the route?*

SECRETARY FOR HOME AFFAIRS (in Chinese): Madam President,

- (a) KHW is a privately owned property. The Antiquities and Monuments Office is negotiating with its owners with a view to obtaining their agreement to preserve the walled village as a monument.
- (b) As KHW is a private property and the Government has not yet obtained the consent of its owners to declare it as a monument, therefore the owners are still responsible for its repair and maintenance. At present, an illustrative board introducing its history and characteristics in Chinese and English is installed at the village entrance. Moreover, the Hong Kong Tourism Board (HKTB) and the Home Affairs Department have separately published promotional pamphlets to introduce to tourists and local residents the history, architecture and characteristics of KHW, among other sites.
- (c) The HKTB is responsible for promoting and publicizing Hong Kong's tourist attractions. It takes account of a number of considerations in assessing whether or not to promote a certain tourist site. These include market demand, meaning the tourists' interest in the site concerned; the views of the industry, such as whether or not there can be joint promotion of the site concerned together with other tourist products nearby to enhance effectiveness and add value for visitors; the attractiveness of the site concerned and its surrounding environment, including whether or not there are complementary tourist sites nearby to form a cluster so as to give visitors a variety of experience and enjoyment within a short timeframe; and other complementary facilities such as transportation, hygiene provisions, safety amenities, and so on. Other considerations also include the co-operation of the site owners and support of the local community.

KHW, the Wishing Tree in Lam Tsuen, the Kadoorie Farm, and so on, are promoted by the HKTB. The Wishing Tree, for instance, is one of the tourist sites covered by the HKTB's "Heritage & Architecture Walk: New Territories" self-guided walk programme which also features a group of nearby attractions including Tai Po Market Railway Station, the old District Office, Hong Kong Railway Museum, Tai Po New Market, Man Mo Temple, Lam Tsuen Tin Hau Temple and She Shan Village. KHW is covered by many commercially operated sight-seeing tours.

The Tourism Commission and the HKTB have plans to put up visitor directional signage at suitable locations so as to guide visitors to these tourist sites from the main transportation nodes nearby. The HKTB is always on the look-out for new products and attractions to promote to our visitors. It will explore and follow up on the proposal to develop KHW and other tourist sites nearby into a tourist route with relevant commercial tour operators.

Use of Electronic Seals for Customs Clearance

8. **MR HUI CHEUNG-CHING** (in Chinese): *Madam President, it has been reported that in order to shorten the customs clearance time of the cross-boundary container trucks, the Government is actively studying various feasible measures, including the introduction of an electronic declaration scheme. Under such scheme, electronic seals will be issued to departing container trucks by the Hong Kong or mainland customs authorities to certify that the goods on the truck have been inspected, so that the authority of the other side can exempt the arriving container truck from clearance formalities upon the presentation of the electronic seal. In this connection, will the Government inform this Council:*

- (a) *of the progress of the study on the scheme and the implementation date; and*
- (b) *whether it has assessed the amount of time which container trucks can save on clearance formalities under the scheme, and the resultant amount of additional freight capacity handled by the Kwai Chung Terminal?*

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

- (a) At present, for transshipment of air cargoes to the Mainland, a private company already provides services whereby after the cargo arrives at the Hong Kong International Airport and is cleared by the Customs, it will be loaded onto a truck of the company, sealed by the company, and transported to the Huanggang Control Point on the Mainland. At Huanggang, the cargo will be sealed by mainland Customs and then transported directly to designated mainland ports. In support of this service, Hong Kong Customs have adopted measures to exempt such cargo from inspection at the Lok Ma Chau Land Boundary Control Point under normal circumstances, provided that the cargo has been cleared by Customs at the Hong Kong International Airport.

In addition, the Customs of both sides are jointly studying a scheme under which standardized seals will be applied to cross-boundary transshipment containers cleared by its own side. Trucks carrying the sealed containers will be allowed to pass through the land boundary control points en-route without inspection, thus saving the time on clearance formalities at such land boundary control points. The Customs of both sides have started a feasibility study of the scheme. Whether the seal will be in electronic or other form has not yet been decided. Since the feasibility study is at an initial stage, no implementation date for the scheme has been set.

- (b) The effectiveness of this scheme can only be assessed after the feasibility study is completed.

Convenience Store Operated in All-night Drop-in Centre

9. **MR AMBROSE LAU** (in Chinese): *Madam President, it has been reported that the Youth Outreach (YO) is planning to run a convenience store with unemployed young persons at-risk working as shop assistants in an all-night drop-in centre set up by the Social Welfare Department on an experimental basis. In this regard, will the Government inform this Council whether:*

- (a) *it knows if the YO has assessed the effectiveness of running such a convenience store; and*
- (b) *it has considered encouraging operators of the existing commercial convenience stores to employ those young persons who have gained sales experience through operating the experimental store; if so, of the details?*

SECRETARY FOR HEALTH AND WELFARE (in Chinese): Madam President, the YO organization has been entrusted to manage the All-night Drop-in Centre to be set up in Kwun Tong. The Centre will provide a place where young night drifters can interact and be engaged in activities. They will be provided with social and recreational activities (including some relatively inexpensive entertainment) and personal space with discreet supervision. The Centre will also serve as a venue where staff can counsel the young people and support their emotional and other needs. The purpose is to minimize the chance of these youngsters falling prey to negative influences on the streets. The Centre will also support the work of existing Integrated and Outreach Social Work Teams, in particular the 18 extended Integrated Teams who provide outreach services to young night drifters.

A grant of \$16 million was approved in February from the Lotteries Fund to cover social work staff costs, rent and rates, and the fitting out and furniture and equipment costs.

On the specific questions:

- (a) The YO has proposed to set up a variety of facilities in the Centre, which include counselling rooms, a cyber cafe, karaoke and band rooms, function rooms for recreational and cultural activities, and so on. In addition, it has earlier advised that consideration is being given to setting up a convenience store in the Centre to provide food and beverages for their drop-in clients. They envisage that the store will provide job opportunities and training for young people. However, the Administration has yet to receive a detailed proposal from the YO regarding the setting up of the store.
- (b) Should the convenience store be set up in the Centre, the Administration will, together with YO, consider measures to

promote the employability of ex-employees of the store. In this regard, it should be noted that measures already exist to promote youth employment, through job matching, career guidance services, and a variety of training programmes.

Performance Appraisal for Civil Servants

10. **MR LEUNG FU-WAH** (in Chinese): *Madam President, at present, civil servants are required to undergo performance appraisal at least once a year and the outcome of the appraisal will have substantial bearing on their promotion prospect and posting consideration. As for those who have not reached their maximum salary points, they may even be subject to stoppage or deferment of their annual increment if their performance has been assessed to be unsatisfactory. In this connection, will the Government inform this Council:*

- (a) *of the profile of the outcome of the civil servants' performance appraisal, broken down by rank, over the past two years; whether it has analysed the profile to see which major phenomena or problems are reflected; and the actions to be taken to solve these problems;*
- (b) *of the number of civil servants assessed to have performed poorly over the past two years, broken down by their departments, ranks and years of service and, among them, the number of civil servants whose increments were stopped or deferred, and the specific ways to handle such cases;*
- (c) *of the civil servants who were assessed to have performed poorly, the number of those who have reached their maximum salary points; the measures in place to assist and motivate them in enhancing their individual productivity and efficiency, so as to achieve the objective of overall improvement in the efficiency of civil servants;*
- (d) *whether it has assessed if the existing mechanism for appraising the performance of civil servants is perfect, and whether it can reflect the overall performance of civil servants comprehensively and objectively; and*
- (e) *whether it has considered implementing in all departments the performance-based system as the mode of remuneration?*

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

(a), (b) and (c)

The information requested is readily available for the year 2001 only and with details on the profile of those officers who have received an unsatisfactory rating in their performance. Last year, the performance of over 90% of civil servants was rated satisfactory or above in their performance appraisal reports. There were about 164 civil servants whose performance was unsatisfactory. They came from 42 departments in 88 grades/ranks. Among them, 63, 58 and 43 had less than 10 years, between 10 to 20 years, and more than 20 years of service respectively.

The above profile on performance shows that most of the civil servants perform their duties satisfactorily. As regards civil servants whose performance is unsatisfactory, departmental management would consider whether these officers' increment should be stopped/deferred on the next incremental date^{Note 1}. In addition, departmental management would assist the officers to address any problems in their performance by advising them of their shortcomings and how they should improve to achieve the appropriate level of performance expected of them. Suitable counselling, guidance and assistance with a view to helping them improve their performance would also be provided. Where appropriate, career development posting and training would be considered to assist them to bring their performance up to the expected standards. Should the performance of an officer continue to remain persistently substandard despite the above actions, consideration would be given to retire the officer in the public interest under the Public Service (Administration) Order for permanent officers or termination of their contract for agreement officers.

For the 164 officers whose performance was rated unsatisfactory in 2001, departmental management has taken various courses of action,

^{Note 1} Civil Service Regulations provide that a civil servant may be granted an increment only if his/her performance at work (including conduct, diligence and efficiency) have been satisfactory during the appraisal period.

including stoppage or deferment of salary increments and providing guidance and other assistance to help the officers to address their problem. Detailed information is provided at Annex.

- (d) We believe that the present performance appraisal system provides a balanced and objective assessment of the overall performance of individual civil servants. Under this system, the supervisor and the appraisee would set clear performance objectives and standards against which the appraising officer would assess the appraisee's performance at the end of the appraisal cycle. The appraising officer will interview the appraisee and discuss and show him the report. The report will be countersigned by another officer who should normally be at least two substantive ranks higher than the officer being appraised. The report will be reviewed by the Head of Grade or another officer delegated by him.

To ensure the effectiveness of the performance appraisal system, we review the performance appraisal system regularly. In recent years, we have been encouraging Heads of Grades to adopt a complementary competency-based approach in assessing their staff. Under such an approach, departments would use a structured way to define and describe the expected performance at different ranks as an officer's progresses through the grade. It helps assess staff's potential and promotability to the next higher rank, identify development needs of staff and enhance the objectivity and transparency of performance assessment.

We have also been encouraging Heads of Departments and Heads of Grades to establish assessment panels to undertake leveling and moderating work among staff reports to ensure that the assessment standards and performance rating are fair and consistent.

To enhance civil servants' knowledge on the performance appraisal system and their skills on performance appraisal report writing, the Civil Service Training and Development Institute organizes regular training programmes for supervisors at various level.

- (e) The Administration has not come to a firm view on whether a performance-based remuneration system should be implemented to

all civil servants. The subject of performance pay is in fact an area which we have asked the Standing Commission on Civil Service Salaries and Conditions of Service, the Standing Committee on Disciplined Services Salaries and Conditions of Service and the Standing Committee on Directorate Salaries and Conditions of Service to look into as part of the ongoing comprehensive review on civil service pay policy and system. Under the first phase of the review, the three advisory bodies have been asked to research into the latest developments in civil service pay administration in other countries and to identify best practices that may be of particular relevance to Hong Kong. One of the areas to be covered in this analytical study is the experience of introducing performance-based rewards into the civil service pay system elsewhere and whether such experience is of any relevance to us. The first phase review report is expected to be available by middle 2002.

Separately, the Administration has embarked on a pilot scheme on team-based performance rewards in six voluntary departments to explore the feasibility and effectiveness of such rewards in driving enhanced performance in government departments. The pilot scheme is now in progress. We shall make an evaluation upon the completion of the pilot schemes in the six departments later this year.

Annex

Civil Servants with Unsatisfactory Performance in 2001

- I. Officers who have had their increments stopped/deferred due to unsatisfactory performance
- No. of officers who have had their increments resumed after having shown improvement in performance 8
 - No. of officers who have been retired/dismissed under the Public Service (Administration) Order or the Civil Service Regulations due to unsatisfactory performance, misconduct or other reasons 7

-	No of officers who have resigned during stoppage/deferment of increment	1
-	No. of officers who are currently on stoppage/deferment of increment and whose performance is closely monitored	14
II.	No. of officers whose increments would be stopped/deferred on their next incremental date; whose probation bar would be deferred due to unsatisfactory performance;	34
III.	No. of officers who have reached their maximum point of salary	100
	Total number of civil servants with unsatisfactory performance*	164

* Civil servants with unsatisfactory performance would be advised of their shortcomings and provided with guidance and other assistance to help them improve their performance. Please refer to the answer in the main reply to parts (a), (b) and (c) of the question.

Services to Psychiatric Patients

11. **MR MICHAEL MAK** (in Chinese): *Madam President, regarding the provision of services to psychiatric patients, will the Government inform this Council of:*

- (a) *the number of persons diagnosed for the first time as suffering from mental illness in each of the past 10 years and, among them, the number of persons sent to the Accident and Emergency Department upon their first attack and then transferred to the hospital for treatment; the types of illness they suffered from, the relapse rate and its trend; if such information is not available, whether the Government will collect such data;*
- (b) *the number of community psychiatric nurses in the respective local administration districts in each of the past 10 years, and the average number of cases handled by each nurse;*

- (c) *the annual number of patients in the two psychiatric hospitals and in the psychiatric wards of the general hospitals since 1997, and whether these figures exceeded the handling capacity of the respective hospitals; if so, of the details; and*
- (d) *the annual number of persons living in half-way houses and long-stay care homes in Hong Kong, the admission targets, the number of patients on the waiting list and the waiting time since 1997?*

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

- (a) The number of persons diagnosed for the first time as suffering from mental illness and admitted to public hospitals in 2001 was 4 822. Some 2 185 of these patients were admitted through the Accident and Emergency Department. The disease profile of these 4 822 patients is set out below:

<i>Type of Diseases</i>	<i>No. of Patients</i>
Organic mental disorders	276
Mental disorders due to the use of psychoactive substance	534
Schizophrenia and other psychotic disorders	1 708
Mood disorders	887
Neurotic disorders	472
Childhood and adolescent mental disorders	37
Others	451
Total	4 365*

* Diagnosis information for 457 cases was not available.

Prior to 2001, the Hospital Authority (HA) has no readily available statistics relating to persons diagnosed for the first time as suffering from mental illness.

The HA does not routinely collate statistics on relapse rate. The chronic nature of mental illness, with varying degree of control of symptoms for individual patients during the course of illness, and with a group of patients with severe mental illness who will never be completely free from any psychiatric symptoms, render the process to precisely and consistently define relapse complex. For the majority of patients whose symptoms have been under control after intensive treatment, the degree of severity of the re-emerged symptoms may vary from person to person and fluctuate from time to time. There is also the added complication of multiple relapses where the question of differentiation arises. As such, relapse would need to be clearly conceptualized as the re-emergence of symptoms beyond a defined level of severity. In view of the extensive logistic support as well as time and effort required for such an exercise, collation of relapse rate is normally done in research settings. It is for these reasons that internationally relapse rates are not routinely collated as a reporting indicator. Since 1998, the HA captures information on the unplanned readmission rate of its psychiatric service which are set out below.

		<i>1998</i>	<i>1999</i>	<i>2000</i>	<i>2001</i>
Unplanned	Readmission	3.1%	2.6%	3.8%	3.5%
Rate of Psychiatric patients					

The year-to-year fluctuations in unplanned readmission rate can be attributed by a number of interacting factors, including the availability of family and social support, the provision of community and ambulatory medical services to psychiatric patients, the presence of co-morbidities, and the disease type of patients.

- (b) The HA organizes its community psychiatric services based on hospital clusters, instead of local administration districts. Information on the number of community psychiatric nurses (CPNs) in each of the five mega-clusters in the past 10 years is as follows:

<i>Mega-cluster</i> *	1992-93	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-2000	2000-01	2001-02
Hong Kong (HK)	12	12	12	12	12	14	14	16	16	18
Kowloon East (KE)	9	9	9	9	10	14	14	14	13	14
Kowloon West (KW)	15	16	17	17	18	19	19	26	28	29
New Territories East (NTE)	4	4	4	4	5	5	5	6	11	12
New Territories West (NTW)	8	8	8	8	8	8	8	17	17	17
Total	48	49	50	50	53	60	60	79	85	90

* The HK mega-cluster comprises HK East and HK West clusters, KE mega-cluster comprises KE and Kowloon Central clusters, KW mega-cluster comprises the KW and New Territories South clusters, NTE mega-cluster comprises the NTE cluster, and NTW mega-cluster comprises the New Territories North cluster.

The HA's information system only started capturing the number of home visits made by the CPNs in 1994-95. The average number of home visits conducted by each CPN during the period 1994-95 to 2001-02 are set out below:

1994-95	1995-96	1996-97	1997-98	1998-99	1999-2000	2000-01	2001-02
497	487	515	529	581	541	569	553

- (c) The total in-patient and day patient discharges and deaths handled by the two psychiatric hospitals and the psychiatric wards of the general hospitals in the HA, as well as the number of patient days involved since 1997 are listed below:

	1997	1998	1999	2000	2001
Total psychiatric in-patient and day patient discharges and deaths	10 625	11 792	12 501	13 248	14 093
Total number of patient days for psychiatric services	1 641 629	1 668 163	1 629 726	1 616 053	1 479 437

The average bed occupancy rate of psychiatric hospitals and wards in the HA has decreased from 90.3% in 1997 to 81.6% in 2001. Over the years, the capacity of HA psychiatric hospitals and psychiatric wards in handling the demand of psychiatric in-patient services has improved. The existing bed occupancy rate can cater for contingencies and seasonal fluctuations in service demand while providing a reasonable standard of care.

- (d) The monthly average of enrolment in Half-way Houses (HWH) and Long Stay Care Home (LSCH) in Hong Kong, the target occupancy rates of resident places in HWH and LSCH, the number of patients on the waiting list for HWH and LSCH, and their average waiting time for the period 1997-98 to 2001-02 are as follows:

<i>Year</i>	<i>1997-98</i>		<i>1998-99</i>		<i>1999-2000</i>		<i>2000-01</i>		<i>2001-02</i>	
	<i>HWH</i>	<i>LSCH</i>	<i>HWH</i>	<i>LSCH</i>	<i>HWH</i>	<i>LSCH</i>	<i>HWH</i>	<i>LSCH</i>	<i>HWH</i>	<i>LSCH</i>
Monthly average of enrolment in HWH and LSCH	922	569	1 106	569	1 179	569	1 266	592	1 302	920
Target occupancy rate of resident places*	N/A	N/A	N/A	N/A	95%	N/A	95%	98%	95%	98%
No. of patients on the waiting list (position as at end of calendar year)	587	1 135	359	1 241	403	1 347	385	1 397	452	1 038
Average Waiting Time (in months)	27.6	64.1	16.4	39.3	2.4	37.2	2.4	62.4	3.6	55.2

* The Social Welfare Department started to stipulate the target occupancy rates for HWH and LSCH in their Funding and Service Agreement with the subvented operators with effect from 1999-2000 and 2000-01 respectively.

N/A : Not available

Oversupply of Large PRH Flats

12. **DR DAVID CHU** (in Chinese): *Madam President, in allocating public rental housing (PRH) units, the Housing Department (HD) determines the size and type of a PRH unit to be allocated according to the size of the household concerned. It has been reported that, due to the excess supply of large PRH units, the HD has allocated such units to households of smaller sizes. In this connection, will the Government inform this Council of:*

- (a) *the respective supply of the following types of PRH units in each of the past and next three years: small units, one-bedroom units, two-bedroom units and three-bedroom units;*
- (b) *the respective demand of households on the Waiting List for the above types of PRH units;*
- (c) *the ways to deal with the surplus PRH units of larger sizes; and*
- (d) *the measures in place to ensure that the PRH units under construction could match the actual demand of households on the Waiting List so as to avoid a mismatch of resources?*

SECRETARY FOR HOUSING (in Chinese): Madam President,

- (a) The supply of new PRH flats in the past and next three years is shown at the Annex. In addition to new flats, refurbished flats of different sizes vacated by existing tenants are also available from time to time for allocation.
- (b) According to past experience, about 70% of all families/individuals on the Waiting List will be eligible and still wish to move to public housing by the time their turns mature. On the basis of the current number of Waiting List applicants at 86 400, the effective demand in the next three years is about 60 500. The types of flats by size required are as follows:

<i>Small flat</i>	<i>1-bedroom flat</i>	<i>2-bedroom flat</i>	<i>3-bedroom flat</i>	<i>Total</i>
32 800	15 000	10 500	2 200	60 500

Apart from the Waiting List, demands for PRH are also generated from the Comprehensive Redevelopment Programme, squatter clearances and compassionate rehousing. These are not included in the above figures.

- (c) In view of a greater supply of large flats in recent years, the Housing Authority has launched several flat transfer exercises to allow overcrowded households in existing estates to improve their living conditions, thereby vacating small flats for reallocation to small families. Prospective tenants are also given a choice of more spacious accommodation in selected estates.
- (d) It is the Housing Authority's objective to ensure that the supply of different types of PRH matches with actual demand. A Working Group on Flat Mix has been set up in the HD to assess the pattern of demand and adjust flat production as required.

Annex

Supply of New Public Rental Flats
by the Housing Authority
from 1999-2000 to 2004-2005

A. Supply in the past three years

Flat Type by Size

<i>Year</i>	<i>Small flat</i>	<i>1-bedroom flat</i>	<i>2-bedroom flat</i>	<i>3-bedroom flat</i>
1999-2000	8 683	9 986	9 550	3 587
2000-01	11 326	14 751	14 707	6 768
2001-02	4 973	8 434	11 203	9 019
Total	24 982	33 171	35 460	19 374

B. Estimated supply in the next three years

Flat Type by Size

<i>Year</i>	<i>Small flat</i>	<i>1-bedroom flat</i>	<i>2-bedroom flat</i>	<i>3-bedroom flat</i>
2002-03	6 820	4 862	6 354	3 452
2003-04	5 237	4 341	5 225	2 319
2004-05	10 526	7 251	7 342	418
Total	22 583	16 454	18 921	6 189

Utilization Rates of Community Halls in Tin Shui Wai

13. **DR TANG SIU-TONG** (in Chinese): *Madam President, regarding the utilization rates of community halls in Tin Shui Wai and the provision of new community halls in the northern part of the district (that is, north of Tin Wah Road), will the Government inform this Council:*

- (a) of the utilization rates of community halls in Tin Shui Wai in the past five years;*
- (b) of the areas which the existing community halls in Tin Shui Wai were expected to serve at the time of planning, as well as the population in such areas;*
- (c) of the population in Tin Shui Wai North;*
- (d) given that residents in Tin Shui Wai North have been requesting the provision of community halls in the vicinity, whether it has assessed if the request is justified in terms of the seven factors for consideration as set out in the Hong Kong Planning Standards and Guidelines (HKPSG); if the assessment result is in the affirmative, of the implementation timetable(s) and the selected site(s); if the assessment result is in the negative, the factor(s) which the request is considered to have failed to meet; and*

- (e) *as this Council was advised in February 1999 that in order to determine if there was still a need to build community halls on the 68 reserved community hall sites, the authorities had undertaken a review of these sites, including two at Tin Shui Wai Area 27 and Tin Shui Wai Reserve Zone 112, of the findings of the review regarding these two sites; if it has been found that these two sites are no longer needed for the provision of community halls, the reasons for that?*

SECRETARY FOR HOME AFFAIRS (in Chinese): Madam President, my reply to the five-part question is as follows:

- (a) There are two community centres/community halls (CCs/CHs) in Tin Shui Wai, namely the Tin Yiu CC and the Tin Shui CC. Their average utilization rates in the past five years are as follows:

<i>Name</i>	<i>Year</i>	<i>Average utilization rate (%)</i>
Tin Yiu CC	1997	83.1
	1998	87.8
	1999	85.2
	2000	79.0
	2001	75.8
Tin Shui CC	1997	70.3
	1998	73.2
	1999	79.7
	2000	72.6
	2001	78.0

- (b) At the time of planning, the Tin Yiu CC was expected to serve primarily the residents living in its vicinity, mainly people living in Tin Yiu Estate and Tin Yau Court. The current population of these two estates is about 30 000. The Tin Shui CC was planned to serve mainly the residents in the Tin Shui Estate and the Tin Oi Court which together house about 28 000 people at present.
- (c) The present population in Tin Shui Wai North (that is, north of Tin Wah Road) is about 58 000.

- (d) On the basis of the criteria set out in the HKPSG, we consider that there is a need for a CH in Tin Shui Wai North. Under the HKPSG, CHs should, as far as possible, be planned and provided as part of an integrated development (such as a joint-user building), instead of a standalone development, in order to ensure the optimal use of land. We are in the process of identifying possible sites for this integrated development. At the same time, we are looking for other users who are prepared to co-locate with the CH in this project. An implementation schedule will be drawn up once suitable sites and sufficient and appropriate joint users have been identified.
- (e) A site was originally reserved at Area 27 in Tin Shui Wai South for construction of a CC/CH. As the earlier demand for CC/CH facilities in Tin Shui Wai South was met by the provision of the Tin Yiu CC and the Tin Shui CC, the site has been released for other uses.

The site at Tin Shui Wai Area 112 (Tin Shui Wai Reserved Zone 112) in Tin Shui Wai North is not a reserved CC/CH site. In fact, it is a site reserved for a Fire Station and Ambulance Depot. As mentioned in (d) above, we are planning to develop a CH in Tin Shui Wai North to serve the population there.

Bacteria Content in Water of Victoria Harbour

14. **MISS CHOY SO-YUK** (in Chinese): *Madam President, it has been reported that the Government stated publicly some time ago that, after the implementation of the first stage of the Harbour Area Treatment Scheme, the water quality on the eastern side of Victoria Harbour had improved considerably, and the bacteria content therein had also dropped significantly to such a level that it was safe for people to swim in the water. As such, it would actively consider resurrecting the cross-harbour swimming race that had been suspended for years in the Harbour. In this connection, will the Government inform this Council:*

- (a) *of the data on which it based its conclusion that the cleanliness of the water in the Harbour had reached a level that would be safe for people to swim in; and*

- (b) *whether it will take other water quality indicators (including the level of harmful pollutants such as heavy metal, and so on) into consideration before deciding whether the Harbour is suitable for holding the cross-harbour swimming race?*

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Chinese): Madam President, no official has ever stated earlier that the Government was considering resurrecting cross-harbour swimming race in the Victoria Harbour. The Victoria Harbour is used mainly for commercial purposes. Apart from water quality, the Government has to take into account other factors (such as water current, vessel traffic) before advising whether the Harbour is suitable for holding a swimming race.

In terms of water quality, the bacteria level is the main criterion in deciding whether or not a water body is suitable for swimming. After the full commissioning of deep tunnels of Stage I of the Harbour Area Treatment Scheme in December 2001, the bacteria level in the seawater in the eastern Victoria Harbour has shown preliminary signs of an obvious reduction from an average of 5 371 *E. coli* per 100 ml of seawater to an average of 529 *E. coli* per 100 ml of seawater, representing a drop of about 90%. We must, however, continue to monitor the position during the rainy summer months, before definitive conclusions can be drawn on these preliminary signs. Given the existing stringent controls over the discharge of pollutants from industrial sources, the small amount of contaminants like heavy metals in the Victoria Harbour would not lead to unacceptable health impact on the public.

Remunerated Members of Appeal Boards

15. **MR FRED LI** (in Chinese): *Madam President, regarding those members of the appeal boards of government and public organizations (appeal boards) who receive remuneration, will the Government inform this Council:*

- (a) *of the lists of the remunerated members of the various appeal boards and the respective amounts receivable by such members;*
- (b) *of the number of cases handled and the hours worked by each of the remunerated members in each of the past three years;*

- (c) *whether there were individual members who did not handle any case in a year but were still remunerated; if so, of the reason for that; and*
- (d) *as the time of and background to establishing the various appeal boards vary significantly, and as they are under different government departments and public organizations, whether it has considered conducting a comprehensive review of the criteria and mechanism for remunerating members of these appeal boards with a view to achieving standardization and avoiding wastage of public monies; if so, of the timing of the review; if not, the reasons for that?*

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

- (a) The Civil and Miscellaneous Lists of the Government of the Hong Kong Special Administrative Region compiled by the Administration Wing of the Chief Secretary for Administration's Office list out all the appeal boards and their members. The chairmen, deputy chairmen or members of 18 of them are remunerated and the rates of remuneration are published in the website of the Finance Bureau. The updated information is in the Appendix.
- (b) Of those appeal boards members of which are remunerated, the number of cases dealt with and the number of hearings held for the past three years are listed in the Appendix. Hearings will be held on a need basis and will normally be attended by some (including the Chairman or Deputy Chairman) and not all of the members. In addition, the work of members is not confined to just attending hearings. They have to read relevant papers, examine each appeal case (including whether the case is valid and requires hearings), make references to other documents, and so on. As such we do not have record of the number of hours they actually worked.
- (c) In the past three years, the chairmen/deputy chairmen of two appeal boards had not dealt with any case in a year but were still remunerated. This is because they were remunerated on a retainer basis.

- (d) When the Administration considers remuneration in accordance with the relevant legislation or asks the Finance Committee to approve the rates of remuneration, we take into careful consideration various factors including the nature and functions of each appeal board and the qualifications required of the persons involved. Controlling Officers also have to make reference to the general principles and guidelines issued by the Finance Bureau and the remuneration of other appeal boards to ensure that public monies are not wasted.

Appendix

<i>Appeal Board</i>		<i>Rate of remuneration</i>	<i>Caseload of remunerated members from the past three years</i>
Administrative Board	Appeals	Chairman paid since 24 October 2001 Annual retainer: \$86,510 Per fully day sitting: \$4,400 Per written decision: \$8,880	Five hearings on five cases
Air Pollution Appeal Board	Control	Chairman: Annual retainer: \$86,520 Per sitting: \$4,440 Per written decision: \$8,870 Members: (paid since 5 February 2001) Per sitting: \$735	1999 - two cases dealt with by Chairman 2000 - one case involving two half-day hearings dealt with by Chairman and two members 2001 - one case dealt with by Chairman
Noise Control Board	Appeal	ditto	1999 - three cases dealt with by Chairman 2000 - one case involving two half-day hearings dealt with by Chairman and two members 2001 - one case dealt with by Chairman

<i>Appeal Board</i>	<i>Rate of remuneration</i>	<i>Caseload of remunerated members from the past three years</i>
Water Pollution Control Appeal Board	ditto	1999-2000 - no cases and no annual retainer fee was paid to Chairman as he was also Chairman of other pollution-related appeal boards 2001 - one case handled by Chairman
Waste Disposal Appeal Board	ditto	1999-2001 - no cases and no annual retainer fee was paid to Chairman as he was also Chairman of other pollution-related appeal boards
Dumping at Sea Appeal Board	ditto	1999 - no cases and no annual retainer fee was paid to Chairman as he was also Chairman of other pollution-related appeal boards 2000 - one case involving one half-day hearing dealt with by Chairman and one member 2001 - the same case carried forward from 2000 dealt with by the Chairman and two members involving five full-day hearings
Environmental Impact Assessment Appeal Board	Members: (paid since 5 February 2001) Per sitting: \$375 Remuneration for Chairman specially employed for the 2001 case - Per day: \$7,025 Writing decision: \$8,870	2001 - one case involving 20 full-day hearings and seven half-day hearings dealt with by a specially employed Chairman and two members

<i>Appeal Board</i>	<i>Rate of remuneration</i>	<i>Caseload of remunerated members from the past three years</i>
Appeal Board Panel (Town Planning)	Chairman/Deputy Chairman: Annual retainer: \$86,520/\$57,650 Per sitting: \$4,440 Per written decision: \$8,870 Members: \$735 per hearing	Five cases each for the past three years with 12 hearings in 1999-2000, 16 hearings in 2000-01 and 44 hearings in 2001-02
Board of Review (Inland Revenue Ordinance)	Chairman/Deputy Chairman: Annual retainer: \$86,510/\$57,680 Per sitting: \$4,440 Per written decision: \$8,880 Members: Per sitting: \$220	1999-2000 - 161 cases in 333 sessions 2000-01 - 194 cases in 328 sessions 2001-02 - 154 cases in 288 sessions
Mandatory Provident Fund Schemes Appeal Board	Chairman/Deputy Chairman: Annual retainer: \$50,000/\$30,000 Hearing a case: \$3,500 Writing a decision: \$3,500 Members for hearing a case: \$2,500	Four cases in 2000
Occupational Retirement Schemes Appeal Board	ditto	No cases for past three years
Securities and Futures Appeals Panel	ditto	1999 - one case 2000 - three cases 2001 - seven cases
Telecommunications (Competition Provisions) Appeal Board	Chairman: Annual retainer: \$400,000 \$4,000 per hour of service with accommodation, transportation and related expenses on a reimbursement basis	Established only in August 2001. Two cases dealt with by Chairman and Deputy Chairman. Both cases were later withdrawn.

<i>Appeal Board</i>	<i>Rate of remuneration</i>	<i>Caseload of remunerated members from the past three years</i>
	<p>Deputy Chairman: Annual retainer: \$300,000 \$4,000 per hour of service with accommodation, transportation and related expenses on a reimbursement basis</p> <p>Members: \$735 per day</p>	
<p>Appeal Board Panel (Consumer Goods Safety)</p>	<p>Chairman/Deputy Chairman: Full day hearing: \$5,670 Half day hearing: \$2,830</p> <p>Members: Full day hearing: \$1,470 Half day hearing: \$735</p>	<p>2001 - one case of three half-day hearings with four members</p>
<p>Appeal Board Panel (Electricity)</p>	<p>Members: \$735 per meeting</p>	<p>No cases for past three years</p>
<p>Appeal Board Panel (Toys and Children's Products Safety)</p>	<p>Chairman/Deputy Chairman: Full day hearing: \$5,670 Half day hearing: \$2,830</p> <p>Members: Full day hearing: \$1,470 Half day hearing: \$735</p>	<p>2001 - one case of two half-day hearings with four members</p>
<p>Appeal Tribunal Panel (Buildings)</p>	<p>Chairman: \$790 per hour</p> <p>Members: \$720 per hour</p>	<p>1999-2000 - 77 cases involving 295 chairman hours and 603 member hours</p> <p>2000-01 - 72 cases involving 284 chairman hours and 470 member hours</p>

<i>Appeal Board</i>	<i>Rate of remuneration</i>	<i>Caseload of remunerated members from the past three years</i>
		2001-02 - 83 cases involving 253 chairman hours and 463 member hours
HKSAR Passports Appeal Board	Chairman: \$5,670 per day Members: \$3,780 per day	1999-2000 - 86 cases in 38 sessions 2000-01 - 79 cases in 25 sessions 2001-02 - 32 cases in 14 sessions

Awarding Contracts by Single Tender

16. **MR ALBERT CHAN** (in Chinese): *Madam President, regarding the award of contracts by single tender in public sector and the Housing Department (HD), will the Government inform this Council whether:*

- (a) *it knows if the Equal Opportunities Commission, the Consumer Council, the Hong Kong Tourism Board, the Hong Kong Trade Development Council, the Construction Industry Training Authority, the Hong Kong Monetary Authority, the Hong Kong Sports Development Board and the Vocational Training Council have awarded by single tender contracts valued at over \$1 million over the past three years, if so, of the number of such contracts awarded, the details and justifications;*
- (b) *it has assessed if it is proper for the organizations mentioned in (a) above to award contracts by single tender; if the assessment is in the affirmative, of the reasons for that; and*
- (c) *The HD has awarded contracts values at between \$1 million to \$10 million over the past three years; if so, of the number of such contracts awarded, the details and justifications?*

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

- (a) Based on the information provided by the Equal Opportunities Commission, the Consumer Council, the Hong Kong Tourism Board, the Hong Kong Trade Development Council, the Construction Industry Training Authority, the Hong Kong Monetary Authority, the Hong Kong Sports Development Board and the Vocational Training Council, the number of contracts which exceeded \$1 million each and which were awarded through single tender over the past three years is as follows:
- the Equal Opportunities Commission - one contract
 - the Hong Kong Tourism Board - 10 contracts
 - the Construction Industry Training Authority - one contract
 - the Hong Kong Monetary Authority - nine contracts
 - the Vocational Training Council - three contracts

Details of the contracts and justifications are given at Appendix A.

Over the past three years, the Consumer Council, the Hong Kong Trade Development Council and the Hong Kong Sports Development Board have not awarded any contract of over \$1 million by single tender.

- (b) The organizations mentioned in (a) above have their own procurement procedures and make their own assessment on whether or not to award contracts by using single tender. From the justifications provided by the organizations concerned in Appendix A, they consider the award of the relevant contracts by single tender appropriate and in line with their own established procedures.
- (c) Over the past three years, the HD has awarded 21 contracts with a value between \$1 million and \$10 million by single tender. The details of the contracts and justifications are at Appendix B.

Appendix A

Contracts Awarded by Single Tender in 1999, 2000 and 2001

Name of Organization : Equal Opportunities Commission

No. of Contracts Awarded : 1

<i>Year</i>	<i>Description of Contract (including contract title and contract duration (if applicable))</i>	<i>Value of Contract (in \$M)</i>	<i>Reasons for Using Single Tender Approach</i>
1999	<p>1. Contract awarded to RTHK Educational Television Centre to produce a series of TV docu-drama (nine episodes) on discriminatory cases, entitled "A Very Special Equal Opportunities Mission".</p> <p>The objectives of the docu-drama series were:</p> <ul style="list-style-type: none"> - to enhance awareness of the public on the concepts and issues related to discrimination and equal opportunities; - to promote understanding among the general public on the Sex Discrimination Ordinance (SDO), Disability Discrimination Ordinance (DDO), and Family Status Discrimination Ordinance (FSDO); and - to promote public understanding of the work of the EOC especially on the investigation and conciliation processes. 	2.00	<p>RTHK Educational Television Centre was the only supplier that could arrange to broadcast a docu-drama series to promote social messages on all TV channels, namely TVB, ATV and Cable TV, ensuring that the series would be viewed by the largest audience in Hong Kong. The air-time arranged for the EOC docu-drama series was good time slots for all three channels.</p> <p>The EOC therefore considered that the award was appropriate in this case.</p>

Name of Organization : Hong Kong Tourism Board

No. of Contracts Awarded : 10

<i>Year</i>	<i>Description of Contract (including contract title and contract duration (if applicable))</i>	<i>Value of Contract (in \$M)</i>	<i>Reasons for Using Single Tender Approach</i>
1999	<p>1. Production of footages for Mr Martin YAN cooking in scenic spots in Hong Kong</p>	2.00	<p>The producer is also a well known TV star for cooking shows. No other personalities could provide comparable service.</p>

<i>Year</i>	<i>Description of Contract (including contract title and contract duration (if applicable))</i>	<i>Value of Contract (in \$M)</i>	<i>Reasons for Using Single Tender Approach</i>
	2. Production of promotional film	2.98	The contractor was selected because it was the largest film equipment supplier company in Hong Kong and because of its capability to handle project of such enormous scale after considering their experiences in feature film production and the technical support that they could offer.
	3. Renovation works for HKTB office at 9-11/F Citicorp Centre	1.49	(a) The contractor was selected to handle the fitting out work through competitive bids when the HKTB moved in to its current office premises. (b) The contractor was retained to perform maintenance and re-fitting out work from time to time as they are familiar with the HKTB's fit out standards and requirements. (c) Comparative quotes were sought at periodic intervals from other contractors and the quotes supplied by the concerned supplier had always been found to be competitive.
2000	4. Production of pyrotechnics effects for the "Hong Kong is it !" launching ceremony on 1 April 2001	1.10	The contractor was selected because of the creative elements involved and of its experience in handling pyro and fireworks. It was also the company used by the HKSAR Government for New Year Firework display.
	5. Development of Intelligent Travel Planner	2.00	The contractor was appointed through tender to develop the site "discoverhongkong.com" at the beginning. The concerned contract was to extend the functions of the original site.

<i>Year</i>	<i>Description of Contract (including contract title and contract duration (if applicable))</i>	<i>Value of Contract (in \$M)</i>	<i>Reasons for Using Single Tender Approach</i>
2001	6. Production of a fung shui documentary film	2.00	The production company partly sponsored the production of the film.
	7. Production of 12 episodes of "Hong Kong is it !" game show	1.40	The contractor was selected because it offered the highest TV viewership at the requested broadcast time.
	8. Design and installation fee of the musical fountain at The Urban Council Centenary Memorial Garden for "Hong Kong Lights Up" event	1.80	The contractor was selected because it was the contractor who built the fountain in the Urban Council Centenary Memorial Garden. The transformation of the static fountain to a musical fountain required the concerned contractor's knowledge and technical background on the setting up of the fountain.
	9. Production of pyrotechnics effects for "Hong Kong Lights Up" opening ceremony at Victoria Harbour on 9 December 2001	1.20	The contractor was selected because: (a) it was the appointed contractor for the pyrotechnics effects for "Hong Kong is it" opening ceremony on 1 April 2001 with satisfactory result; and (b) it had ready made pontoons for the pyro effects required and hence less cost was required.
	10. Renovation works for HKTB office at 9-11/F Citicorp Centre	1.25	(a) The contractor was selected to handle the fitting out work through competitive bids when the HKTB moved in to its current office premises. (b) The contractor was retained to perform maintenance and re-fitting out work from time to time as they are familiar with the HKTB's fit out standards and requirements.

<i>Year</i>	<i>Description of Contract (including contract title and contract duration (if applicable))</i>	<i>Value of Contract (in \$M)</i>	<i>Reasons for Using Single Tender Approach</i>
			(c) Comparative quotes were sought at periodic intervals from other contractors and the quotes supplied by the concerned supplier had always been found to be competitive.

Name of Organization : Construction Industry Training Authority

No. of Contracts Awarded : 1

<i>Year</i>	<i>Description of Contract (including contract title and contract duration (if applicable))</i>	<i>Value of Contract (in \$M)</i>	<i>Reasons for Using Single Tender Approach</i>
1999	1. Physical Training Programme for Trainees of the Construction Industry Training Authority (CITA) (10 September 1999 to 15 August 2000) The contract included the following services: design suitable training programme, provide trainers, organize activities, book and manage venues and facilities, assess trainees' performance, administer discipline control and put in place safety measures. The number of trainees of the CITA Basic Craft Courses covered by the training programme in the contract period was about 1 600. Each trainee was required to undergo physical training for half a day every week.	3.30	After some research, the CITA found that the other physical training consultants in the commercial market concentrated only on the training and enhancement of skills for playing different ball games and could not meet the requirements of this Authority. Only the contractor was found to have expertise in physical training activities like sport climbing, parade and weight training, which could meet the requirements of the Authority. In addition, the coverage of the services provided by the contractor includes the delivery of tailor-made training programmes and the provision of the required manpower. It also has professional knowledge and abundant experience in assessing the progress of trainees. It was found to have good reputation in organizing training programmes for various large organizations like the KCRC and the Lands Registry.

Name of Organization : Hong Kong Monetary Authority

No. of Contracts Awarded : 9

<i>Year</i>	<i>Description of Contract (including contract title and contract duration (if applicable))</i>	<i>Value of Contract (in \$M)</i>	<i>Reasons for Using Single Tender Approach</i>
1999	1. Office automation – PC standardization	3.46	<p>(a) The use of specific brand of PC was decided by Hong Kong Monetary Authority (HKMA) in 1998 through a selection exercise. The HKMA also decided in the same year to adopt a standardization of PCs to minimize the total cost of ownership of PCs and the implementation of PC management system.</p> <p>(b) The supplier is the appointed distributor of the selected brand of PC and guaranteed the best price for the HKMA.</p> <p>(c) The PCs provided by the supplier are configured and tested to fit the HKMA's office automation standard.</p>
	2. Annual maintenance services for the investment management systems – CityDealer and Midas for the year 1999	2.07	Maintenance service could only be provided by the vendor of the software application.
2000	3. Office automation – PC standardization (Second phase)	2.62	Continuation of PC standardization [See Item 1].
	4. Annual maintenance services for the investment management systems – CityDealer and Midas for the year 2000	3.28	Maintenance service could only be provided by the vendor of the software application.

<i>Year</i>	<i>Description of Contract (including contract title and contract duration (if applicable))</i>	<i>Value of Contract (in \$M)</i>	<i>Reasons for Using Single Tender Approach</i>
	5. System hardware upgrade for the SWIFT – a secure messaging system provided by the Society for Worldwide Interbank Financial Telecommunication	1.04	Proprietary hardware could only be provided by the hardware vendor.
2001	6. Office automation – PC standardization (Final phase)	1.47	Final phase of PC standardization [See Items 1 and 3].
	7. Annual maintenance service for the investment management systems – CityDealer and Midas for the year 2001	3.55	Maintenance service could only be provided by the vendor of the software application.
	8. System hardware upgrade for the production machine of the investment management systems – Midas	1.36	Proprietary hardware could only be provided by the hardware vendor.
	9. System hardware upgrade for the backup machine of the investment management systems – Midas	1.39	Proprietary hardware could only be provided by the hardware vendor.

Name of Organization : Vocational Training Council

No. of Contracts Awarded : 3

<i>Year</i>	<i>Description of Contract (including contract title and contract duration (if applicable))</i>	<i>Value of Contract (in \$M)</i>	<i>Reasons for Using Single Tender Approach</i>
2000	1. Supply, Installation, Commissioning and Maintenance of a Payroll System for the Vocational Training Council (VTC)	2.42	After a detailed study, the VTC decided that its New Payroll System should be modelled on that of the Hong Kong Polytechnic University (PolyU) as both organizations adopt similar business rules. The PolyU was thus approached for the supply, installation, commissioning and maintenance of a similar payroll system for the VTC. The PolyU granted the VTC waiver of the licence fee for using their Payroll

<i>Year</i>	<i>Description of Contract (including contract title and contract duration (if applicable))</i>	<i>Value of Contract (in \$M)</i>	<i>Reasons for Using Single Tender Approach</i>
			System and charged only the cost for system modifications, customization, installation and maintenance. Single tender in this case was considered appropriate as it offered a cost-effective and reliable payroll system.
2001	2. Tender for Provision of United Kingdom/United States Industry Standards Services on CD-Rom (1 October 2001 to 30 September 2003)	1.43	The contractor is the global sole sale agent for the three authoritative industry standards viz. the British Standards Institution (BSI), Institution of Electrical Electronics Engineers (IEEE) and American Society for Testing and Materials (ASTM). There was no alternative.
	3. Tender for upgrade of the existing Hotel Information System for Front Office Training	1.04	The existing Hotel Information System for Front Office Training for the Hospitality Industry Training and Development Centre, AS400, was to be upgraded. The sole local supplier was invited to tender as there was no alternative for upgrading the existing system.

Appendix B

Contracts Awarded by Single Tender in 1999, 2000 and 2001

Name of Organization : Housing Department

No. of Contracts Awarded : 21

<i>Year</i>	<i>Description of Contract (including contract title and contract duration (if applicable))</i>	<i>Value of Contract (in \$M)</i>	<i>Reasons for Using Single Tender Approach</i>
1999	1. Maintenance of playground facilities	3.41) Since the components must fit in) with the design of the playground

<i>Year</i>	<i>Description of Contract (including contract title and contract duration (if applicable))</i>	<i>Value of Contract (in \$M)</i>	<i>Reasons for Using Single Tender Approach</i>
	2. Maintenance of playground facilities	1.82) facilities to ensure safety, it is) necessary to have the suppliers) take charge of the maintenance of) these facilities.
2000	3. Diversion of gas services for Lei Muk Shue Phases 3 and 4	1.42) Only the Hong Kong and China) Gas Company Limited could alter) their network and equipment.
	4. Diversion of gas services for Tin Shui Wai Area 31 Phase 1	1.28))
	5. Diversion of telephone services for Lei Muk Shue Phases 3 and 4	1.83) Only the Cable and Wireless HKT) Limited (now PCCW) could alter) their network and equipment.
	6. Diversion of telephone services for Tin Shui Wai Area 31 Phase 1	1.44))
	7. Diversion of cable TV services for Tin Shui Wai Area 31 Phase 1	1.51	Only the Hong Kong Cable Television Limited could alter their network and equipment.
	8. Diversion of power supply services for Tin Shui Wai Area 31 Phase 1	1.54	Only the CLP Power Hong Kong Limited could alter their network and equipment.
	9. Maintenance of playground facilities	3.09) Since the components must fit in) with the design of the playground
	10. Maintenance of playground facilities	1.45) facilities to ensure safety, it is) necessary to have the suppliers
	11. Maintenance of playground facilities	1.78) take charge of the maintenance of) these facilities.
	12. Tender for the supply, delivery, installation, commissioning, maintenance, training and other related services for the Account Receivable Module for the Housing Accounting and Financial Information System (HAFIS)	1.74	The HAFIS is made up of the account payable and general ledger modules of a proprietary package, SmartStream. To ensure the account receivable module would fully integrate with existing modules, this single tender

<i>Year</i>	<i>Description of Contract (including contract title and contract duration (if applicable))</i>	<i>Value of Contract (in \$M)</i>	<i>Reasons for Using Single Tender Approach</i>
			was issued to the existing maintenance contractor of HAFIS to implement the account receivable module of the SmartStream package.
2001	13. Tender for the enhancement, maintenance, training and other related services for the Budgeting and Forecasting Information System (BFIS)	1.36	This tender is for implementing enhancements to an existing system, BFIS. The single tender was issued to the maintenance contractor and developer of the system because they had unique knowledge on the system to ensure compatibility and implement the system within a tight schedule.
	14. Tender for the development, maintenance, training and other related services for the Service Based Costing System (SBCS)	1.69	As the SBCS was tailor-made for the Housing Authority and would make use of the existing hardware and software of BFIS, the single tender was issued to the developer of BFIS so that the system could be developed in a relatively short period of time with acceptable system performance.
	15. The supply, delivery, installation, commissioning, maintenance, training and other related services of the Employee Payroll System (HAPAY) for the Hong Kong Housing Authority	4.23	As an enhancement to the Human Resource Management Information System (HRMIS) with payroll functions, the HAPAY was acquired from the same contractor of HRMIS through single tender as it would overcome the issues mentioned below and the system integration, data integrity and operational efficiency could best be achieved. In addition, the total time required to implement the HAPAY would be greatly shortened and project costs involved were expected to be much lower as

<i>Year</i>	<i>Description of Contract (including contract title and contract duration (if applicable))</i>	<i>Value of Contract (in \$M)</i>	<i>Reasons for Using Single Tender Approach</i>
			<p>compared with that of open tender.</p> <p>Open tender was not recommended for the following reasons:</p> <p>(a) there would be problems in integrating the personnel and payroll functions if different software packages were adopted both in terms of system design, database, hardware and software platforms;</p> <p>(b) data integrity and time delay problems caused by unnecessary data duplications would be unavoidable;</p> <p>(c) the project costs of adopting a different payroll package was expected to be much higher than incorporating the payroll module of the software package of HRMIS. It was because there existed very high overhead for the payroll package to provide common functions required like security control, reporter, query, audit trail, work flow, and so on. In addition, the project overheads could not be shared between the two system functions;</p> <p>(d) additional project risks and administrative overheads would be introduced if a different payroll package was adopted. These included the additional co-ordination overheads created among Housing Authority and the two contractor project teams, integration problems created by different data definitions of the two</p>

<i>Year</i>	<i>Description of Contract (including contract title and contract duration (if applicable))</i>	<i>Value of Contract (in \$M)</i>	<i>Reasons for Using Single Tender Approach</i>
			system functions and the administrative overheads involved in the open tender exercise.
	16. Maintenance of playground facilities	2.26	- Since the components must fit in with the design of the playground facilities to ensure safety, it is necessary to have the suppliers take charge of the maintenance of these facilities.
	17. Maintenance of playground facilities	1.68	
2001	Provision of rent collection and recovery services for tenants of estates under phases 1 to 3 of the Tenants Purchase Scheme (TPS):		<ul style="list-style-type: none"> - On implementation of the New Management Model, the Tenancy Management Offices on estates under phases 1 to 3 of the TPS have been closed in turn and replaced by strategically-located District Tenancy Management Offices. - The existing property management agencies, which have offices on these estates, are considered to be suitable agents because they can best utilize available resources in providing convenient rent collection services to the tenants, saving the tenants the trouble of having to go to the District Tenancy Management Offices to pay their rents each month. - The existing property management agencies are well-experienced in matters concerning rent collection and recovery, as well as compilation of monthly reconciliation statement. - The tender prices of the said property management agencies do not exceed the in-house benchmark.
	18. Wah Ming Estate	1.34	
	19. Hin Keng Estate	1.02	
	20. Tai Wo Estate	2.43	
	21. Cheung On Estate	1.15	

Measures Against Junk Fax

17. **MR SIN CHUNG-KAI** (in Chinese): *Madam President, the Office of the Telecommunications Authority (OFTA) adopted measures in 1999 to tackle "junk fax". Such measures include the practice that fax line users who no longer wish to receive "junk fax" may register with their respective fixed network operators to put their fax numbers on a "Not-to-Call" list to be observed by all senders of fax advertisements. Moreover, receivers of junk fax may also file complaints with their fixed network operators whilst senders of junk fax may be subject to sanctions such as suspension and termination of their fax lines. In this connection, will the Government inform this Council:*

- (a) *of the respective numbers of complaints received by the Administration and fixed network operators concerning junk fax in each of the past three years; whether it knows the number of senders of junk fax whose services were suspended or terminated by their fixed network operators in the same period;*
- (b) *whether the Administration and fixed network operators had received complaints from the fax line users on the "Not-to-Call" list about their continuing to receive fax advertisements; if so, of the respective numbers of complaints received in each of the past three years;*
- (c) *whether it will review the effectiveness of the above measures for tackling "junk fax"; if so, of the criteria to be adopted for assessing the effectiveness; and*
- (d) *whether it will consider introducing legislation to prohibit senders of junk fax who have caused serious nuisances to others from applying for fax line services so as to achieve a more effective deterrent effect; if so, of the details?*

SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING (in Chinese):

- (a) The OFTA published the "Guidelines for Senders of Fax Advertisements" in July 1999. The Guidelines set out the

regulation of "junk fax", and are voluntary in nature. Statistics on complaints received by the OFTA and Fixed Telecommunications Network Services (FTNS) operators after publication of the guidelines are as follows:

Table 1

<i>Year</i>	<i>Complaints received by the OFTA (in terms of number of complainants)</i>	<i>Complaints with sufficient information received by FTNS operators for follow-up (in terms of number of complaints)</i>
1999 (September to December)	12	No categorized figure (Note)
2000	89	No categorized figure (Note)
2001	99	4 197

(Note: Before 2000, FTNS operators only recorded the total number of facsimile and telephone messages received via the "junk fax" facsimile and telephone hotline. Since 2000, they started to compile statistics on complaints with sufficient information received by FTNS operators for follow-up at the request of OFTA.)

Members should note that complaints received by the OFTA are calculated in terms of number of complainants, while those received by FTNS operators are calculated in terms of number of complaints (and the same person may make more than one complaint). Moreover, as complainants often lodge their complaints to the OFTA and FTNS operators at the same time, such cases may be counted twice in both the complaints received by the OFTA and FTNS operators.

Upon receipt of a complaint, the OFTA or FTNS operators will contact the complainant to follow up. If, with the co-operation of the complainant, a breach of guidelines is established, a penalty will be imposed by FTNS operators on the "junk fax" sender. For example, FTNS operators can temporarily suspend for 14 days, and

subsequently terminate, the fax line services of the sender concerned when the sender has breached the guidelines for three times and five times respectively. The relevant statistics for the past three years are as follows:

Table 2

<i>Year</i>	<i>Warnings issued</i>	<i>Services suspended</i>	<i>Services terminated</i>
1999 (September to December)	251	0	0
2000	1 582	11	3
2001	1 791	74	5

- (b) Among the complaints in Table 1 of reply (a), some complainants may still receive "junk fax" despite having taken the initiative to register their numbers on the "Not-to-call" list. The relevant statistics are listed below:

<i>Year</i>	<i>Complaints received by the OFTA (in terms of number of complainants)</i>	<i>Complaints with sufficient information received by FTNS operators for follow-up (in terms of number of complaints)</i>
1999 (September to December)	11	No categorized figure (Note)
2000	59	No categorized figure (Note)
2001	60	3 195

(Note: Before 2000, FTNS operators only recorded the total number of facsimile and telephone messages received via the "junk fax" facsimile and telephone hotline. Since 2000, they started to compile statistics on complaints with sufficient information received by FTNS operators for follow-up at the request of OFTA.)

- (c) The OFTA is currently reviewing the effectiveness of the measures. Matters to be considered include the number of complaints received, the degree of nuisance on the public, the follow-up action taken by the FTNS operators, and views of the public as well as senders of fax advertisements, and so on.
- (d) Before deciding on the introduction of legislation to prohibit senders of "junk fax" from applying for fax line services upon causing serious nuisance to others, there are a number of important issues to be considered. They include the merit of legislation as compared to other plausible solutions, the question of implementation, the question of how to impose effective and yet proportionate penalty on senders of "junk fax", as well as public opinion towards legislation, and so on.

As I mentioned in reply (c) above, the OFTA is currently reviewing the effectiveness of the measures. We will decide on the need for legislation and public/industry consultation after the review.

Facilitating the Disabled in Taking Taxis in Restricted Zones

18. **DR RAYMOND HO** (in Chinese): *Madam President, to facilitate people with disabilities in taking taxis in restricted zones, the Government issues to them the Certificate for Picking Up or Setting Down of Passengers with Disabilities in Restricted Zones (the Certificate), which exempts taxi drivers from being prosecuted by the police for picking up or setting down these passengers in restricted zones. It has been reported that the number of restricted zones in Hong Kong is increasing, and that some taxi drivers are unwilling to pick up passengers with disabilities in such zones, thereby causing inconvenience to these passengers. In this connection, will the Government inform this Council:*

- (a) *of the existing number of restricted zones in the territory;*
- (b) *whether the Certificate is valid for 24 hours a day throughout the year;*

- (c) *whether it constitutes an act of refusing hire when drivers of taxis for hire do not stop their vehicles in restricted zones to pick up disabled persons producing the Certificate; if so, of the penalties involved; and*
- (d) *whether other measures are in place to assist the disabled in taking taxis within restricted zones; if so, of the details?*

SECRETARY FOR TRANSPORT (in Chinese): Madam President, restricted zones are designated for the purposes of maintaining smooth traffic flow and road safety and facilitating road works. Designation of restricted zones is a dynamic task to meet changing traffic situations and different road works requirements from time to time. Some restricted zones are permanent while some are temporary in nature. Moreover, depending on the traffic situation and requirement, restricted zones may cover a certain part of a road near a junction or the whole road. As such, there are practical difficulties in counting the number of restricted zones and the Transport Department (TD) does not have any record on the number of restricted zones.

The Certificate is valid 24 hours a day throughout the year except on 24-hour restricted zones and expressways, where picking-up and dropping-off of passengers would pose a safety hazard.

The Certificate facilitates taxi drivers stopping in restricted zones when the traffic permits to pick up passengers with disabilities producing the Certificate. Whether it constitutes an act of refusing hire when taxi drivers do not stop their vehicles in restricted zones to pick up such passengers depends on the facts and evidence available. The Road Traffic (Public Service Vehicles) Regulations stipulate *inter alia* that a taxi driver shall not without reasonable excuse wilfully refuse to accept a hire from a hirer. A person who is convicted of contravening such provision is liable to a fine of \$10,000 and to imprisonment for six months.

The TD has published information booklets, such as taxi service guides and "A Guide to Public Transport Services for People with Disabilities", to acquaint taxi drivers and people with disabilities with the details on the use of the

Certificate. In addition, to enable taxis to provide a more direct and better service, the TD has relaxed clearway restrictions and providing taxi pick-up and drop-off points wherever feasible. These measures would also facilitate people with disabilities to use taxi services.

Opening Hours of Public Libraries

19. **MISS EMILY LAU** (in Chinese): *Madam President, public libraries close on some public holidays (for example, New Year's Day, the first, second and third day of the Lunar New Year, Good Friday, Christmas Day and Boxing Day) and their opening hours are shorter on one or two weekdays. Regarding the opening hours of public libraries, will the executive authorities inform this Council whether:*

- (a) *they have considered arranging for public libraries to open as usual on the above public holidays and extending their opening hours on Saturdays and Sundays, so as to facilitate the use of library services by the public on holidays and at late evening hours during weekends;*
- (b) *they have estimated the number of people who will benefit from the arrangements stated in part (a) and the additional expenditure involved; if so, of the details; and*
- (c) *they have evaluated the cost-effectiveness of the arrangements stated in part (a); if so, of the details?*

SECRETARY FOR HOME AFFAIRS (in Chinese): Madam President, my reply to the Honourable Emily LAU's question is as follows:

- (a) There are at present 69 public libraries (including eight mobile libraries) throughout the territory, providing a wide range of library services to meet public needs for information, self-learning, education and the profitable use of leisure, and to promote good reading habits in the community. Since its establishment in 2000, the Leisure and Cultural Services Department (LCSD) has extended the library opening hours several times to enhance public library services. For instance, all major and district libraries in the urban

area used to be closed on all public holidays. But starting from May 2001, these libraries are open on 10 public holidays (that is, except New Year's Day, the first three days of the Lunar New Year, Good Friday, Christmas Day and Boxing Day). Moreover, since January 2002, the closing time of the Hong Kong Central Library has been extended from 6 pm to 9 pm on Saturdays and Sundays, and from 6 pm to 7 pm on public holidays. In addition, as from April 2000, the opening hours of study rooms have been extended to 10 pm on weekdays. At present, the public libraries will make use of the closing days to carry out large-scale cleansing, repairs and maintenance, as well as routine inspection, testing and file updating of the "Library Automation System" and "Multimedia Information System" in the Hong Kong Public Libraries system to ensure their smooth day-to-day operation.

Apart from the above three extensions of opening hours, the LCSD also provides public library services beyond the bounds of time and location in an effort to further enhance its services. They include 24-hour Internet library services (for renewal and reservation of library materials, borrowing of e-books as well as searching of databases and online library catalogues), the online "Multimedia Information System" (for searching digitized materials and previewing or pre-listening to those audio and visual materials which are not restricted by copyright via the Internet), renewal of library materials by telephone as well as the provision of bookdrops at various libraries to allow readers to return library materials after the opening hours.

Since the introduction of the above new initiatives, it has been more convenient for the public to use the library services. The LCSD will conduct reviews from time to time to provide the most appropriate library services to the public.

(b) and (c)

The implementation of the above three extensions of opening hours will entail an additional annual expenditure of around \$13.6 million for the LCSD. If the libraries are to open on the above-mentioned seven public holidays according to the existing opening hours on

public holidays, the annual expenditure will be further increased by about \$3.22 million. As for extending the opening hours of all libraries on Saturdays and Sundays, an additional annual expenditure of around \$7 million will be incurred for every extra hour. The LCSD is unable to make an accurate assessment of or reach conclusion on the number of readers who will benefit from the proposed extension of service stated in part (a) of the question and the cost-effectiveness of the arrangement given that the usage rates of different libraries vary at different periods of time and that there are no specific plans to further revise the library opening hours.

Operations Against Smuggling of Firearms

20. **MR LAU KONG-WAH** (in Chinese): *Madam President, in a kidnapping case in January this year, the suspects opened fire at police officers. In this connection, will the Government inform this Council:*

- (a) *of the number of firearms seized by the police in the past year, together with a breakdown of such firearms by the source from which they were smuggled;*
- (b) *whether joint operations against the smuggling of firearms or meetings for such purpose have been held with the relevant mainland or overseas authorities on a regular basis; if so, of the details and their effectiveness; if not, the reasons for that; and*
- (c) *whether consideration will be given to imposing, by way of legislation, heavier penalties on criminals using firearms in committing crimes; if so, of the details?*

SECRETARY FOR SECURITY (in Chinese): Madam President,

- (a) In 2001, the police seized a total of 14 illegal firearms. The places of manufacture of the 14 firearms are as follows:

<i>Places of Manufacture</i>	<i>Number of firearms</i>
Self-manufactured	5
mainland China	4
United States	4
the then Soviet Union	1

Intelligence gathered by the police indicated that, some of the illegal firearms seized in Hong Kong are believed to be smuggled from the Mainland.

- (b) The Hong Kong police and the public security authorities of the Mainland often hold regular working meetings at which the issue of illegal firearms is discussed as one of the important agenda items. The two sides also have in-depth discussions and exchanged views on the matter during the recent Tripartite CID Head Meeting held in April 2002 in Qing Yuan of Guangdong.

At the Bilateral meeting between Hong Kong police and mainland public security authorities held in May 2001, the Commissioner of Police and the Head of Guangdong Public Security Bureau reached a consensus to set up a cross-boundary liaison group to fight cross-boundary crime involving firearms. The liaison group will exchange information relating to all crimes involving the use of firearms, the suspects and ballistic examination. The establishment of the liaison group has significantly enhanced the capabilities of both sides in combating armed crimes.

Moreover, targeting individual cases involving the use of firearms, the Hong Kong police maintain a very close working relationship and exchange intelligence with public security authorities in various provinces and cities of the Mainland. If necessary, the police will also pay visits to the Mainland in order to meet with relevant parties with a view to jointly drawing up strategies for tackling such crimes.

The Hong Kong police also maintain contact with overseas law enforcement agencies and co-operate closely in combating transnational crimes, including activities involving illegal firearms.

- (c) Under section 18 of the Firearms and Ammunition Ordinance (Cap. 238), a person commits an offence if he has with him any arms or ammunition or imitation firearms with intent to commit an arrestable offence, or to resist arrest or prevent the arrest of another person while he has the arms or ammunitions or imitation firearms with him. A person who commits the above offence is liable on conviction upon indictment to life imprisonment. The maximum penalty for persons committing crimes with the use of firearms under the existing legislation is considered adequate.

BILLS

First Reading of Bills

PRESIDENT (in Cantonese): Bills: First Reading.

MANDATORY PROVIDENT FUND SCHEMES (AMENDMENT) BILL 2002

LAND (MISCELLANEOUS PROVISIONS) (AMENDMENT) BILL 2002

CLERK (in Cantonese): Mandatory Provident Fund Schemes (Amendment) Bill 2002
Land (Miscellaneous Provisions) (Amendment) Bill 2002.

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.

MANDATORY PROVIDENT FUND SCHEMES (AMENDMENT) BILL 2002

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Madam President, I move that the Mandatory Provident Fund Schemes (Amendment) Bill 2002 (the Bill) be read the Second time.

In the Legislative Council motion debate on the review of the Mandatory Provident Fund (MPF) System last June, I undertook to review the Mandatory Provident Fund Schemes Ordinance (the Ordinance) for smoother operation of the MPF schemes, and to explore ways of setting up a mechanism to review the minimum and maximum levels of income for MPF contributions. Towards this end, the Mandatory Provident Fund Schemes Authority (MPFA) has conducted a comprehensive review on the operational aspects of the MPF schemes through a broad-based MPF Schemes Operation Review Committee. The Bill is the initial result of the review. At present, the Ordinance prescribes the maximum and minimum levels of relevant income for MPF contributions. The purpose of setting a minimum level is to lessen the financial burden of MPF contributions on lower-income persons. As higher-income persons often make additional voluntary contributions or use other types of investment to increase their savings for retirement, a maximum level for contribution is also set in the Ordinance. These principles were endorsed by various parties in 1995 when the Ordinance was passed. The minimum and maximum levels are currently at \$4,000 and \$20,000 per month respectively. In setting the relevant income levels in 1995, we indicated that a mechanism to adjust such levels should be established. After considering carefully views from various parties, we propose in the Bill that a review should be conducted by the MPFA every four years; and that the principles accepted by various parties in 1995 should continue to be adopted: that is, 50% of the monthly median income be adopted as the minimum level and 90th percentile of the monthly employment earnings be adopted as the maximum level.

Applying the above principles, the Bill proposes that the minimum level of income be adjusted to \$5,000 per month and as a result, 56 800 employees and self-employed persons are estimated to be excluded from the contribution net. On the other hand, in view of the current economic conditions and in order to avoid imposing additional burden of contributions on employers and employees, we propose that the maximum level of income be retained at \$20,000 per month

and be reviewed four years later. We consider that the maximum and minimum levels of income proposed in the Bill have already struck a balance between lessening the burden of lower-income persons and protecting the future retirement needs of workers.

In the light of operational experience, the MPFA considers that protection for MPF Scheme members should be further strengthened. The Bill therefore proposes to make failure of an employer to enroll his employees into MPF schemes a "continuing offence". In addition, it contains provisions to the effect of extending the prosecution time-bar for non-enrolment and default contributions from six months from the date of the occurrence of the offences to six months after the discovery of the offences by, or coming to the notice of, the MPFA. These proposals, when implemented, will enable the MPFA to tackle default contributions and non-enrolment more effectively and thus enhance protection of the interests of scheme members. The Bill also seeks to streamline the recovery procedures for the MPFA so that enforcement work can be carried out more efficiently.

In addition, the Bill puts forward a series of proposals to simplify the MPF System. These include extending the employee contribution holiday; clarifying the treatment of interest derived from monies-in-transit; simplifying the restructuring arrangement of MPF schemes and expressly providing that employees who are transferred from an MPF exempted occupational retirement scheme to another such scheme may retain the "existing member" status; prescribing the responsibilities and rights of the employers and employees when there is transfer of employees from one company to its associated company; relaxing the unnecessary restrictions on investment to allow MPF funds to be invested in quality products and providing for the set up of a register on lost members by the MPFA.

Madam President, the Mandatory Provident Fund Schemes (Amendment) Bill 2002 seeks to step up protection for scheme members and enhance the efficiency of the MPF System. The proposals contained in the Bill have consolidated the improvement measures suggested by the MPFA, employers, employees and service providers based on their operational experiences. I hope Members will support the Bill for its enactment within the current Legislative Session so that this system, which affects more than 2 million employers and employees, will be further improved. Thank you, Madam President.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Mandatory Provident Fund Schemes (Amendment) Bill 2002 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.

LAND (MISCELLANEOUS PROVISIONS) (AMENDMENT) BILL 2002

SECRETARY FOR WORKS (in Cantonese): Madam President, I move the Second Reading of the Land (Miscellaneous Provisions) (Amendment) Bill 2002 (the Bill).

The purpose of the Bill is four-folded. Firstly, it is to encourage promoters of street excavations to complete their work promptly. Secondly, it tightens up the control on promoters of street excavations and their contractors. Thirdly, it recovers the cost associated with the issue of excavation permits, and the enforcement of their conditions, on a "user pays" principle. Fourthly, it promotes the management of street excavations by electronic means.

In Hong Kong, for over a long time, due to the congested environment and highly concentrated development, the roads played an important role in accommodating all sorts of cables and pipelines. The maintenance and expansion of these cables and pipelines, as well as the maintenance of road surfaces have caused frequent road openings, which is a source of great inconvenience to the vehicles and pedestrians. The delay in completion of these works for various reasons has caused a lot of grumbling amongst the press and the local people. This is also a serious concern of the Government. We consider that it is no less important to let the public and private utility undertakings to use the space beneath the roads to lay pipelines and cables to render essential services to the Hong Kong people, than to maintain a smooth traffic flow on the roads. These underground facilities should be maintained to provide a reliable service, and should be expanded in concert with the development of the population level and society. The Government therefore, attaches the same importance to the rights of road users both above and below ground. The question is, we need to have a system which is fair and effective, and can put to best use our scarce road space resources.

The Government has been working very hard to reduce delays in street excavations. We have a regular consultation framework to enable government departments and utility undertakings to communicate on road opening matters. The Government has been co-ordinating road-opening programmes of utility undertakings with a view to reducing the number of street excavations. The Government has also introduced a computerized system for managing road opening applications and their co-ordination, which has made road-opening works performed in a more orderly manner. To sustain improvement, we deeply believe we should bring in some good incentive to make roadwork promoters complete their work on time.

I must also point out that, over the past 10 years, the Director of Audit had mentioned many times that the Government should recover all cost associated with the issue of excavation permits, and should impose a penalty on those who failed to complete street excavations on time. The Public Accounts Committee had also urged the Government similarly. After detailed consideration, as well as many consultations with utility undertakings, the construction industry and Legislative Council Panel on Planning, Lands and Works, we have drawn up the following scheme, which is also the essence of the Bill:

Firstly, we will split the land, the excavation in which is subject to control in the current Land (Miscellaneous Provisions) Ordinance, into streets maintained by the Highways Department, and other unleased land. Proposals which are applicable to both types of land include: (1) To tighten up the control on the permittee and his contractor, and to clarify the target of application of permit conditions; (2) To levy a charge on the issue of excavation permits which were previously issued free, so as to recover the cost of processing the permits and enforcement, as this is in line with the "user pays" principle; (3) To raise the maximum fine from \$5,000 to \$50,000 to maintain the deterrent effect; and (4) To allow computer records of the Authority be used in legal proceedings.

Proposals which are applicable only to streets maintained by the Highways Department include: (1) To charge economic cost for those street excavations, which are delayed unreasonably, according to the type of streets affected by the excavation; (2) If government departments want to have excavation in such streets, they have to apply for an excavation permit and be bound by its conditions, and pay all fees including economic cost for unreasonable delay in completion. It must be pointed out that, if a government contravenes the conditions, the Authority will report the incident to the Secretary for Works, and the Secretary for Works will decide what measures can be taken to prevent recurrence.

I am now going to explain the arrangement for charging of economic cost. The concept is the very first of its kind introduced into Hong Kong. Put simply, we will classify all streets in Hong Kong, based on the current road management framework, into three categories: that is, "Strategic Streets", "Sensitive Streets" and "Remaining Streets". We have worked out for each category of streets a weighted average economic cost it is likely to incur from traffic delays arising from street excavations. As only street excavations in carriageways are causing traffic delays, only delays in street excavations affecting carriageways are subject to payment of economic cost. We will assess for each application for road opening a reasonable period for completion. If the work can be completed within the period, no economic cost is levied. If the delay is not due to the fault of the permittee, he can be refunded for the economic cost paid. Any disagreement over the setting of the reasonable period for completion, and refund of economic cost, will be dealt with by a review mechanism set up in the Highways Department. For refund of economic cost, if the permittee is dissatisfied, he can have an extra channel of appealing to the Administrative Appeals Board. There will be members of the industry and the public participating in the Highways Department's review mechanism. We will strive to make the system fair, just and highly transparent.

We believe, if the Bill is approved, there will be noticeable reduction in delays in completion of street excavations. Road works promoters will be encouraged to complete their road opening works on time. The people of Hong Kong will feel the benefit of reduction of traffic jams. On the other hand, if the Bill is rejected, we will be back to square one. The Government will not have an effective means to encourage road works promoters to complete their work in the shortest possible time. Along with the growth of population in Hong Kong, traffic jams arising from road openings will deteriorate. This will impede the development of Hong Kong, and we believe this is not something Members would like to see.

With these remarks, Madam President, I recommend this Bill to Members.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Land (Miscellaneous Provisions) (Amendment) Bill 2002 be read the Second time.

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 Extension of Vetting Period (Legislative Council) Bill 2002.

EXTENSION OF VETTING PERIOD (LEGISLATIVE COUNCIL) BILL 2002**Resumption of debate on Second Reading which was moved on 13 March 2002**

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Extension of Vetting Period (Legislative Council) Bill 2002 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): Extension of Vetting Period (Legislative Council) Bill 2002.

Council went into Committee.

Committee Stage

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

EXTENSION OF VETTING PERIOD (LEGISLATIVE COUNCIL) BILL 2002

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Extension of Vetting Period (Legislative Council) Bill 2002.

CLERK (in Cantonese): Clauses 1 to 25.

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.

EXTENSION OF VETTING PERIOD (LEGISLATIVE COUNCIL) BILL 2002

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

Extension of Vetting Period (Legislative Council) Bill 2002

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 Extension of Vetting Period (Legislative Council) Bill 2002 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): Extension of Vetting Period (Legislative Council) Bill 2002.

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Medical and Health Care (Miscellaneous Amendments) Bill 2001.

**MEDICAL AND HEALTH CARE (MISCELLANEOUS AMENDMENTS)
BILL 2001****Resumption of debate on Second Reading which was moved on 13 June 2001**

PRESIDENT (in Cantonese): Dr LO Wing-lok, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's Report.

DR LO WING-LOK (in Cantonese): Madam President, in my capacity as Chairman of the Bills Committee on Medical and Health Care (Miscellaneous Amendments) Bill 2001 (the Bills Committee), I report on the deliberations of the Bills Committee.

The Bill proposes minor amendments to six Ordinances relating to medical and health care. The six Ordinances are the Dentists Registration Ordinance, the Midwives Registration Ordinance and its subsidiary legislation, the Nurses Registration Ordinance and its subsidiary legislation, the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance, the Radiation Ordinance and the Chinese Medicine Ordinance.

The Bills Committee has held two meetings with the Administration. It has also met with representatives of the Dental Council of Hong Kong (Dental Council), the Midwives Council of Hong Kong, the Nursing Council of Hong Kong and the Radiation Board, as well as the relevant professional associations to listen to their views.

Among the various amendments, two of them attracted the particular attention of the Bills Committee. One of them is related to the amendment concerning the Licensing Examination conducted by the Dental Council.

The existing section 4A(3) of the Dentists Registration Ordinance provides that the Dental Council may prohibit a person from sitting the Licensing Examination if the person has sat any one part of the Licensing Examination five consecutive times and has failed each time. In addition, section 4A(4) specifies that the Dental Council may exercise discretion to allow a person who holds a

qualification of a standard not lower than the passing of its Licensing Examination to be registered as a dentist without taking the examination. Item 2 in Schedule 1 to the Bill proposes to delete the word "consecutive" in section 4A(3) and to repeal the entire section 4A(4).

The Honourable CHAN Kwok-keung and Dr TANG Siu-tong have expressed concern about the amendment to section 4A(3). They share the view that a person should be allowed to sit the Licensing Examination for an unlimited number of attempts, since that person concerned already holds a degree in dentistry acquired outside Hong Kong.

At the request of the Bills Committee, the Administration provided information on the number of attempts allowed in the licensing examinations conducted by regulatory bodies of other health care professions for members' reference.

Members noted that in respect of doctors, candidates are allowed to sit five consecutive times in any one part of the Licensing Examination conducted by the Medical Council of Hong Kong (MCHK). However, the MCHK also intends to amend the Medical Registration Ordinance (Cap. 161) to the effect that a person may be prohibited from sitting the Licensing Examination if the person has made five attempts (not necessarily consecutive) in any part of the Licensing Examination and failed each time. Such amendment to the Medical Registration Ordinance is similar to the proposed amendment to section 4A(3) of the Dentists Registration Ordinance. As to other health care professions, whilst there is no limitation on the number of times a candidate may sit the Licensing Examination for pharmacists, two to three consecutive attempts are allowed for persons sitting examinations held by the statutory boards of other relevant professions.

The Chairman of the Dental Council has explained that the deletion of the word "consecutive" is actually to the advantage of the candidates as they will not be obliged to take any part of the Licensing Examination consecutively, which is the case at present. Instead they can sit for any part of the Licensing Examination until they are ready. The Hong Kong Dental Association has also pointed out that unless the person is already registered elsewhere and practising there or undertaking continuing education, the knowledge he acquired in his university studies will become outdated with the passage of time. The lack of

practice also adds to his disadvantage, for it will become increasingly more difficult for him to pass the Licensing Examination. The Association representatives are therefore of the view that allowing five attempts in each part is already a reasonable arrangement.

Members note that a person who has failed any one part of the Licensing Examination five times but has since undertaken further studies can apply to the Dental Council to retake the Examination.

As to the removal of discretionary power provided for under section 4A(4), the Chairman of the Dental Council has pointed out to the Bills Committee that since the Dental Council does not have the necessary resources to assess the standards of overseas dental programmes, it has never exercised such discretion. This being the case, the Dental Council has decided to relinquish this discretionary power.

Apart from the amendments to the Licensing Examination for dentists, the Bills Committee also expressed concern about the proposed amendment to section 4(4) of the Nurses Registration Ordinance to provide for the transaction of business by the circulation of papers and about the addition of new section 3A to the Radiation Ordinance to provide that the Radiation Board may transact its business by circulation of papers without a meeting.

Concerning the arrangement for the transaction of business by circulation of papers without a meeting, the Chairman of the Nursing Council of Hong Kong has explained that this procedure will only be used to deal with minor issues while major decisions will have to be made at meetings. The representative of the Radiation Board has pointed out that the new provision is aimed at allowing flexibility in dealing with simple items of business to cater for the operational need of the Board. The Administration has also clarified that in practice, only matters of a minor or routine nature will be decided by circulation of papers.

Despite the explanations provided by the relevant authorities, a few members still have reservations about the arrangement. In particular, Mr Eric LI maintains the view that such a provision gives considerable power to the chairman and the secretary of the relevant council/board. He has suggested that the Secretary for Health and Welfare should state the circumstances under which the Nursing Council and the Radiation Board would transact their business by circulation of papers in his speech to be delivered during the resumption of the Second Reading debate on the Bill. The Administration has agreed to Mr LI's suggestion.

Madam President, the Bills Committee supports the Bill, and no Committee stage amendments have been proposed by members of the Bills Committee or the Administration. Thank you, Madam President.

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

MR CHAN KWOK-KEUNG (in Cantonese): Madam President, in the Medical and Health Care (Miscellaneous Amendments) Bill 2001, one of the amendments proposed to the Dentists Registration Ordinance seeks to delete the word "consecutive" from the original section 4A(3), that is, if a person has made five attempts (not necessarily consecutive) in any part of the Licensing Examination and failed, the Dental Council of Hong Kong may prohibit that person from sitting the Licensing Examination.

Representatives of the Hong Kong Dental Association have pointed out that unless the person is already registered elsewhere and practising there or undertaking continuing education, the knowledge he acquired in his university studies will become outdated with the passage of time. Reference was made to examination mechanisms of other health care professions and it was found that there are similar stipulations. Under the principles of openness and fairness, I believe that any person should be allowed to sit any part of the Licensing Examination no matter how many attempts he has failed, instead of limiting the number of times and his chances of taking the examination.

Personally, I believe if a candidate still aspires to a career in a profession even though he has failed a number of times in its examinations, this not only demonstrates his perseverance but also his eagerness to join the health care profession, therefore I believe the candidate concerned should be given an unlimited number of chances in taking the examination. It is in such a spirit that I expressed my views in this aspect to the Bills Committee and was given an explanation by the party concerned. The authorities concerned pointed out that a person who had failed any one part of the Licensing Examination five times but has since undertaken further studies can apply to the Dental Council to retake the Examination. Since the authorities concerned will exercise discretion in dealing with such matters, I believe that on the one hand, it has taken into account the rapid changes in technology to meet the requirements of actual circumstances, and on the other, it has responded readily to the issue of limiting the number of attempts.

I would like to reiterate that to people who aspire to a career in the health care professions but cannot pass the examinations, we should maintain an open attitude of encouraging them.

With these remarks, I support the motion.

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

(No Member responded)

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam President, I am grateful for Members' support of the Medical and Health Care (Miscellaneous Amendments) Bill 2001. I am particularly grateful to the Chairman (Dr LO Wing-lok) and members of the Bills Committee for their very careful consideration of this Bill.

The objective of the Bill is to improve six health-related Ordinances. While most of the proposed amendments do not involve significant changes, their enactment is essential to the smooth operation of the regulatory schemes prescribed in these Ordinances.

In the course of their deliberation, Members have made constructive comments and suggestions, which we have asked the relevant regulatory bodies to bear in mind in discharging their duties.

A case in point is the proposed amendment to the Radiation Ordinance to allow the Radiation Board to determine its business by circulation of papers. This amendment is intended to cater for operational need and improve the efficiency of the Radiation Board, so that the Board can handle minor routine matters quickly without convening a meeting. Such practice is already found in other health-related boards and councils, including the Nursing Council. Like these boards and councils, the Radiation Board intends to handle only routine and minor matters through circulation of papers. Indeed, members of the Radiation Board, the Nursing Council and other boards and councils, also have the right to demand an issue be discussed at a formal meeting.

Besides, we also propose to amend the Dentists Registration Ordinance to prohibit a person from taking the Licensing Examination conducted by the

Dental Council if he has already failed in any part of the examination five times. Some Members are concerned that this may deprive some people of the right to pursue a career in dentistry. As testified by the representatives of the dental profession at one of the Bills Committee meetings, this amendment in fact aims primarily at upholding the standard of the dental profession. Unless the person is already registered elsewhere and practising there or undertaking continuing education, the knowledge he has acquired in his undergraduate studies will become outdated with the passage of time. Furthermore, it will also pose an unreasonable burden on the Dental Council, both financially and logistically, if candidates are allowed to make an unlimited number of attempts. In extreme circumstances, this may even compromise the number of new candidates who could be permitted to sit the examination. Similar restrictions on the number of attempts allowed in licensing examinations are common in other health care professions. Nevertheless, following the relevant amendment the Dental Council is prepared to exercise discretion to permit candidates who have failed more than five times to make further attempts in its Licensing Examination, if they have demonstrated that they have upgraded themselves through further studies. This will ensure that no one will be turned away from the Licensing Examination if he keeps himself updated on the latest developments.

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

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Medical and Health Care (Miscellaneous Amendments) Bill 2001 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): Medical and Health Care (Miscellaneous Amendments) Bill 2001.

Council went into Committee.

Committee Stage

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

MEDICAL AND HEALTH CARE (MISCELLANEOUS AMENDMENTS) BILL 2001

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Medical and Health Care (Miscellaneous Amendments) Bill 2001.

CLERK (in Cantonese): Clauses 1 to 7.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedules 1 to 6.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading.

MEDICAL AND HEALTH CARE (MISCELLANEOUS AMENDMENTS) BILL 2001

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

Medical and Health Care (Miscellaneous Amendments) Bill 2001

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 Medical and Health Care (Miscellaneous Amendments) Bill 2001 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): Medical and Health Care (Miscellaneous Amendments) Bill 2001.

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Travel Agents (Amendment) Bill 2001.

TRAVEL AGENTS (AMENDMENT) BILL 2001

Resumption of debate on Second Reading which was moved on 11 July 2001

PRESIDENT (in Cantonese): Mr SIN Chung-kai, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's Report.

MR SIN CHUNG-KAI (in Cantonese): Madam President, in my capacity as Chairman of the Bills Committee on Travel Agents (Amendment) Bill 2001, I would like to report on the deliberations of the Bills Committee.

The Bills Committee has held a total of five meetings with the Administration and met with representatives of the industry, the Travel Industry

Council of Hong Kong (TIC), the Hong Kong Tourism Board (HKTB) and the Consumer Council to listen to their views.

The Bills Committee is very much concerned about the definitions of travel agents under clauses 3 and 5 of the Travel Agents (Amendment) Bill 2001 (the Bill). Under the original draft Bill, a person will be regarded as carrying on the business of an inbound travel agent if, in Hong Kong, he holds himself out as carrying on the business of, and carries on the business of, obtaining for another person carriage, accommodation and/or other prescribed services as set out in new section 4A.

The Bills Committee has expressed concern about the drafting of the proposed section 4A. Members of the Bills Committee have also pointed out that the section could be interpreted in such a way that a person would not be regarded as an inbound travel agent if he carries on the business of obtaining for another person the services prescribed in section 4A(1) without holding himself out as carrying on such business. In particular, the Honourable Ambrose LAU has requested the Administration to clarify the policy intent of the section and to consider using "or" instead of "and" to give the meaning of the provision greater precision and clarity.

The Administration has clarified that its policy intent is to require a person to obtain a travel agent licence if he carries on the business of a travel agent. On review, the Administration has accepted Mr LAU's suggestion and will move amendments to both section 4 of the Ordinance and new section 4A of the Bill by deleting "holds himself out as carrying on the business of, and". The effect of such is that a person is an outbound/inbound travel agent if he "carries on the business of" obtaining for another person the services stipulated in the legislation.

As for the types of activities requiring a licence under the Bill, the Administration's view is that any organization that "carries on" inbound travel activities or services as a business and on a regular and commercial basis with an objective of acquisition of pecuniary gain will require a licence. The definition of the business of an inbound travel agent should therefore be interpreted in a manner consistent with this policy intent. Businesses that will require licences include travel agencies and companies and organizations the core business of which is to provide the range of services set out in the legislation.

Some members have pointed out that some community organizations or labour unions will organize local tours for their members from time to time. In

addition, local universities and professional associations also make travel arrangements for their visitors and guests occasionally. Members of the Bills Committee have expressed concern whether such activities or services will be regulated by the Bill.

The Administration has further explained that the totality of facts would be examined and taken into consideration to determine whether the activities fall within the definition. The pertinent factors that would be considered include (but are not limited to) the mode and scale of the operation, the frequency of the activities, whether the operation is conducted on a commercial basis and with a pecuniary gain as the motive, the core business of the organizer, and so on. It is the Administration's view that activities such as the occasional arrangements made by educational institutes for overseas scholars do not equate to "carrying on the business of a travel agent". However, if organizations provide such services regularly as part of their normal business and obtain a pecuniary gain from them, a licence will be necessary. Alternatively, the organizations may wish to contract out the services to a licensed travel agent. Nonetheless, each case would be determined on its own merits. Organizations should seek advice from the Travel Agents Registry or independent legal advice if they have specific questions on whether their activities/businesses require a licence.

As many complaints against travel agents are related to shopping arrangements made by them for visitors, members share the view that such malpractice should be condemned and disallowed, and visitors should also be facilitated in seeking redress from such malpractice in a timely and effective manner.

The Administration has pointed out that the TIC has already issued a directive to members requiring them to take visitors only to those shops that agree to provide a 100% refund on unused items within 14 days of purchase. The Small Claims Tribunal also provides a fast-track mechanism to handle visitors' claims. The Administration is working closely with the TIC, the Consumer Council, the HKTB and other parties concerned to develop further measures to protect tourists from consumer transaction malpractice.

The Bills Committee is also concerned about the nomination of the independent directors of the TIC. The Board of Directors of the TIC currently comprises 21 members, four of whom are independent directors appointed by the Government. The TIC has proposed to increase the number of independent directors to eight. Of the four new additional independent directors to be

appointed by the Government, two will be nominated by the TIC and two will be nominated by the Government. Although the Administration considers the proposed arrangement acceptable, the Honourable Fred LI is of the view that all four of them should be nominated by the Government to enhance the transparency and credibility of the Board of Directors. The Chairman and the majority of members of the Bills Committee support Mr LI's view.

The Administration has undertaken to take up the issue formally with the TIC again. The TIC has pointed out that as the Government has the ultimate authority to appoint all of the four additional independent directors, it may choose not to appoint any nominee nominated by the TIC if he or she is considered inappropriate. The TIC has also stressed that:

- (i) its recommendations will be based on the nominees' professional expertise, and that it will endeavour to put up as many nominations from each professional sector as possible for the Government's consideration; and
- (ii) there will be sufficient communication between the TIC and the Government before it puts up any nomination.

The Administration has assured the Bills Committee that it will assess carefully all candidates for appointment to the Board. Appointments will be made with full regard to the need to have impartial and objective independent directors for the TIC.

As regards whether there should be a statutory licensing regime for tour guides, the Administration believes that inbound travel agents must be held responsible for the quality of the services they deliver. In line with this, travel agents should be held responsible for the conduct of their tour guides. Therefore, the proposed regulatory mechanism is intended to regulate inbound travel agents instead of inbound tour guides and therefore the complaint handling mechanism is targeted at travel agents.

Madam President, the Bills Committee supports the Bill and the Committee stage amendments to be moved by the Secretary for Economic Services later.

Madam President, now I would like to speak on the Bill on behalf of the Democratic Party.

Madam President, travel agents dealing with overseas travellers are not regulated in Hong Kong. Under the legislation tabled by the Bills Committee, all inbound travel agents will be treated in the same way as outbound travel agents. Licences will only be issued to them after certain standards are met. Inbound travel agents have existed for a long time. The fact that we now find government supervision necessary actually demonstrates that they have not performed good enough. As a result, we now call for government supervision.

Tourism is one of our major sources of foreign exchange. Even members of the public will not like to read such newspaper headlines as inbound travellers being deserted or collaboration between travel agents and shops to cheat travellers, every other day. I believe most travel agents in Hong Kong follow the principle of doing their utmost to serve their customers. However, we can definitely not allow Hong Kong's reputation to be tarnished by a handful of travel agents who bring disgrace to the industry. I hope that, through the passage of this piece of legislation today, the quality of travel agents who receive inbound travellers can be upgraded so as to attract more tourists to visit the territory again.

Nevertheless, the licensing system has its demerits. First, it might reduce competition among travel agents. The licensing system is set to raise the standards to be met by newcomers. This is definitely good since travel agents failing to meet the upgraded standards will be barred from joining the business. However, competition within the industry might diminish as a result of the increase in restrictions on entry. In issuing licenses for the purpose of regulating the industry, the Government must ensure adequate competition within the industry and take appropriate measures to promote competition. Only in doing so can the standard of the industry be upgraded.

Madam President, upgrading the quality of travel agents and tour guides is undoubtedly one of the means to improve Hong Kong's image. Nevertheless, tourists will come not simply because of our quality service. We have to attract tourists by other means in order to genuinely revive tourism in Hong Kong.

According to the data provided by Forester Research as quoted by a Spanish Minister in a seminar, tourism represents approximately 36% of e-commerce internationally. Actually, many tourism businesses can now be

conducted on-line. In brief, we used to rely on travel agents to conduct brick-and-water business, which is now being replaced by e-business. More and more people have now switched to the Internet to reserve their required services, such as hotels or air tickets. Part of this Bill involves the regulation of companies particularly provide on-line services. The Government should really consider adopting less stringent principles to regulate such businesses to reduce their operating costs on the one hand, and give them more flexibility to develop their services on the other.

In addition, the HKTB should give full play to the merits of its website to provide tourists with better services, though the website has already done its job quite satisfactorily. Not only can it provide a personalized information sheet for people coming from 20 overseas countries and regions and provide them with Hong Kong-related information in their languages, it can provide information on how they can travel from their countries to Hong Kong as well. I would like to raise two points for the reference of relevant government officials so that the website can be further improved.

First, we often see a lot of backpackers consulting maps in Central. Many overseas tourists enjoy the so-called "self-help tours", which are characterized by the absence of tour guides. These tourists usually love touring around on their own. We can also find in Central a lot of tourists who speak neither English nor Putonghua. As a means to help them, the HKTB can consider posting more tips on how tourists can travel around in the territory and provide them with information on means of transport to enable them to enjoy greater flexibility in arranging their own tours. The legislation we are going to enact today is targeted mainly at the regulation of package tours, that is, businesses involving the provision of services by travel agents. But actually, the ones who tend to spend more are more often than not self-help tourists. The Government should therefore not confine its work to travel agents. Instead, it should do more for self-help tourists.

I sometimes feel that the Government has failed to give full play to some of the advantages of Hong Kong. During a visit to Macao during the Lunar New Year early this year, I saw that fireworks were allowed in some restricted areas in Macao. I do not understand why we will be arrested by the police if we let off fireworks in Hong Kong. I perfectly understand fireworks might cause

certain security problems here. However, I think licence holders (at least Hong Kong people) should be allowed to let off fireworks in certain restricted areas. This might also help attract more tourists to come to Hong Kong during festive occasions. Of course, no one might be interested in coming to Hong Kong just for the sake of letting off fireworks. This is nonetheless a means to attract tourists. For instance, the Ocean Park is probably an ideal place for letting off fireworks. The Government must not think that the quality of tourist services will be automatically improved following the passage of this piece of legislation today. Our scenic spots must be improved as well.

Madam President, the last point I would like to raise concerns the TIC. Of the 21 directors appointed by the Government, more than 10 are people from the industry. Four are independent directors appointed by the Government, with two of them being nominated and appointed by the Government, and the other two being nominated by the industry and appointed by the Government. Subsequent to the conferment of power on the TIC, the Government and the TIC have agreed that there will be four additional directors, with two of them to be appointed by the Government, and the other two to be nominated by the industry and appointed by the Government. In other words, among the eight independent directors, four will be nominated and appointed by the Government, and four nominated by the industry and appointed by the Government.

Actually, the TIC should carry out a review to examine the purpose of this agreement. Anyhow, it has been the wish of the TIC to enlist assistance from people from outside the industry to upgrade its standard, or to upgrade its corporate governance, so to speak. The TIC can be considered an institution. It should indeed take this opportunity to allow the Government to exercise the greatest flexibility to enlist more professional people to join it to help upgrade its standard. As the directors of the TIC are not directly under the regulation of this piece of legislation, we cannot possibly introduce any amendments at this stage. Otherwise, frankly speaking, we will introduce amendments in this aspect. Though the set-up of the TIC is outside the ambit of the Bill, I hope the Government can do more in this area and take this matter up with the TIC.

Secondly, the work of the directors should be separated from the investigation work as far as possible. The directors of the TIC are responsible for making rules for the game. Tourism is an industry. Suppose it has a membership of 1 000. If each member is required to submit its business details

to the TIC for regulation purposes, the directors are likely to have a chance to scrutinize the businesses operated by hundreds of travel agents. This practice is actually not at all appropriate. I agree that the industry should make rules to regulate members of the industry so that they will know what they can and cannot do. This practice is actually convention adopted by self-regulatory organizations. However, different people should be assigned to the work of making rules and carrying out investigation. Directors responsible for making the rules should not be allowed to inspect the products promoted by individual travel agents. I think a stricter line should be drawn for this.

If we ask the Government whether it can do something about it, it might tell us it is difficult to do so. This is because the Government cannot possibly take part in the management direct. It can only try to build up a culture slowly in the TIC through the appointment of independent directors who are more professional to act on its behalf. The Government will eventually tell us the reasons why this system has to be adopted. It is because the Government does not want to play the management role directly since it will be very costly and inflexible for the Government to do so. Moreover, the Government is not in a position to handle certain matters. The directors will do a better job instead.

Nevertheless, we should not let the demerits overshadow the merits. The demerit mentioned by me earlier is: Will the directors enjoy more benefit than ordinary members? In my opinion, even though the directors do not enjoy more benefit, we should let it be seen that this is not going to be possible under the system. In brief, it should be stated clearly that the directors will not be allowed to inspect the business plans of the several hundred members of the TIC. While they can make rules for the game, they cannot carry out investigation. Although most members of the investigation or disciplinary unit are non-industry members, this is only the beginning. In my opinion, it is better to have more members from outside the industry since transparency can thus be enhanced. Furthermore, employees of the TIC and investigation staff should act separately, rather than reporting to the directors direct.

In my opinion, there is still much room for the Government to make improvements. The Democratic Party supports the Bill today. We also hope we can restore the reputation previously enjoyed by inbound tourism through the enactment of this piece of legislation. I was told that some children of high-ranking cadres in the Mainland "made a snitch" to authorities in Beijing after

being "fooled" in Hong Kong. Hong Kong should really feel ashamed for this. I believe Hong Kong can get rid of such disreputable practices after the passage of the Bill.

I support the Bill. Thank you, Madam President.

MRS SELINA CHOW (in Cantonese): Madam President, to start with, I would like to put it beyond doubt that I have no interest. Nevertheless, I have to declare that I am Chairman of the Hong Kong Tourism Board (HKTB), though no direct personal interest is involved.

I welcome and support the introduction of the Bill to regulate inbound travel agents through a licensing system. The strengthening of regulation of this sector will help upgrade the overall standard of service of inbound travel agents. We must put in place effective policies to safeguard the interests of tourists, and train front-line personnel to provide quality service before we can upgrade the overall image and reputation of Hong Kong as a tourist destination and give tourists an even better experience. In doing so, we can also attract more tourists to Hong Kong. It will also boost the confidence of the business sector to invest in a flourishing tourism industry in Hong Kong. Therefore, we must not overlook the important knock-on effect of tourism on driving the Hong Kong economy forward.

It is foreseeable that the passage of the Bill can, in the first place, curb the malpractice of a minority of inbound travel agents. Earlier on, Hong Kong was discredited and dealt a serious blow by some unscrupulous travel agents who tried to attract customers by offering "zero tour fee". Although this practice has become less rampant as before, we still receive complaints from tourists complaining of unscrupulous business practices of certain tour guides and travel agents. Aimed at improving the clarity of the regulatory channel, the Bill will determine standards of service and codes for the entire industry and upgrade the professional standard of service.

To perfect the work in this area, we must make various complementary efforts. We certainly welcome the proposal of the Travel Industry Council of Hong Kong (TIC) to provide a "100% refund". However, dealing with complaints after the event cannot necessarily resolve the problem fully. This is

because travellers encountering the problem will immediately get a bad impression of Hong Kong. Their satisfaction with their trips here will also be affected. We must not let this happen, regardless of the frequency of such cases. It is therefore imperative to take preventive measures. The HKTB is launching several initiatives. They include suggesting tourists to patronize shops participating in the "Quality Tourism Services Scheme", giving them with tips on how to be a smart consumer, enhancing publicity on notes for tourists, surveying the level of satisfaction of tourists by means of questionnaires, and so on. It is hoped that unscrupulous business practices can be stemmed through effective matching efforts. Just now, the Honourable SIN Chung-kai stated that tourists would not come to Hong Kong simply because of good service. Maybe he has a point there because Hong Kong has so many distinctive features that attract tourists to come and enjoy our service. However, I am still convinced that good service will attract tourists to come back. The prosperity of the industry is indeed heavily dependent upon the support of frequent customers.

When competing with other tourist destinations, we cannot and should not seek to "lower our prices". This is because our costs are extremely high, much higher when compared to many of our neighbours. Therefore, we must compete in terms of "quality". In other words, our products must be value for money, so that tourists will be willing to spend more to travel to Hong Kong. Therefore, the expansion of the "Quality Tourism Services Scheme" to cover other trades and industries, including the service industry, should be made a general direction that deserves support from all sectors of the community. I have all along been stressing that tourism is a business concerning everyone in the community. The Scheme requires public support and participation.

Madam President, the HKTB supports the proposal of issuing inbound and outbound travel agents the same licence because most travel agents have already acquired the necessary licence for operating outbound services, and so they do not have to apply for another licence. This will also help prevent them from incurring additional expenses and the trouble of going through the licensing procedures.

We support the *modus operandi* proposed in the Bill to designate the TIC as the regulatory authority. The TIC has been responsible for regulating outbound travel agents for many years. We trust it can, making use of its experience, enhance its co-ordinating role and bring it into full play. We believe the composition of the Board of Directors of the TIC is meaningful in the

sense that it can serve the purpose of ensuring the regulatory system to be consistent with the objective of the legislation and ensuring that it continues to work effectively. We also welcome the Government's undertaking that it will carefully scrutinize the appointment of all independent directors for it agrees that it is essential for the TIC to have independent directors who can act fairly and objectively. I would like to suggest the Government and the TIC to report on the overall implementation six months after the passage of the Bill. This will help us understand if they have encountered any difficulties in the course of carrying out work in this aspect, and whether sufficient resources have been provided to enable them to meet our required standard, without imposing additional burdens on travel agencies owing to the "user pays" principle. I understand that travel agencies have expressed concern that the "user pays" principle might impose a heavy burden on them. I therefore believe regulation is essential.

I believe Honourable Members will agree that tour guides play an important role in Hong Kong as a tourist destination. There is no need for me to further elaborate it. Although the Bill does not cover tour guides, we understand that the TIC is looking into setting up a certification system for them. The relevant work has been progressing smoothly. We hope the system can be implemented as soon as possible. Furthermore, the Government is apparently planning to set up a licensing mechanism to upgrade the standard of tour guides. I very much hope this idea can be realized as early as possible. This is because tour guides are the front-line workers who get into contact with tourists. Their good work will naturally give tourists a good impression, and for this, tourists might come back again. Earlier on, Mr SIN Chung-kai pointed out that there is a growing number of "foreign independent travellers". By such means as browsing the Internet or making reservation by themselves, these travellers do not necessarily need to commission travel agencies to arrange tours for them. Nevertheless, it is still undeniable that input of travel agencies is strongly required in many markets. For instance, the number of mainland tourists choosing Hong Kong to be their destination has been on the rise. These tourists rely heavily on travel agencies to make arrangements for them, particularly in planning their routes and scenic spots, making transportation arrangements, and so on. All these are very important indeed. The quality of our overall service is very important because it plays a decisive role in determining our position in the world of travel. We can constantly upgrade our status if travel agents can maintain their good performance.

I was told by some friends of mine recently that the quality of the people of Hong Kong seemed to have dropped, with the overall quality and competitiveness of Hong Kong worsening as well. We can also read lots of bad news in today's newspapers. We are apparently at a loss as to what we should do. I believe this idea did strike Honourable Members in some measure. It is precisely for this reason that we should have a sense of crisis. We must tackle problems at root and strive to make improvement. The people of Hong Kong have all along been noted for their enterprising spirit and unswerving determination. We should not forget this even in face of hardships. Actually, there is some good news for the tourism sector. For instance, with the vigorous support of the Government, the HKTB has launched the first "Tourism Orientation Programme", which is a programme offering paid practical training. A recruitment drive launched by a travel agency recently has received extremely enthusiastic response too. Instead of "downsizing", a common practice employed by companies everywhere to cut staff, travel agencies take the surprising move of offering jobs. I hope travel agencies can constantly expand so that more and more package tours can visit Hong Kong. This will not only create business opportunities for other travel agencies, but also provide job opportunities for people who are interested in the industry. We can actually see that tourism has very good prospects in Hong Kong.

We must not overlook the fact that tourism in Hong Kong is now undergoing restructuring. Visitors coming to Hong Kong no longer put their emphasis solely on shopping and cuisines. Great emphasis is placed on the design of tourism products and the quality service provided by front-line personnel as well. I can tell Honourable Members that, according to the experience I have gained in serving the HKTB for two years, considerably large travel agencies are very often not protected at all when it comes to product design or trying out new products. They are severely challenged by operators who can be described as irresponsible, immoral, or slightly unscrupulous. Therefore, they are no longer interested in investing on product development since the service provided by unscrupulous operators is completely lack of quality assurance. This explains why I hope Mr SIN Chung-kin can demonstrate more faith. He expressed the fear earlier on in the debate that some people might be deterred from entering the industry if the standard of service is raised. We must put it beyond doubt that honest operators will not be impeded by newcomers. It is yet undeniable that unscrupulous operators of poor standard should be eliminated.

We hope the Bill can at least protect those considerably large operators operating with conscience. Furthermore, we hope it can encourage operators to diversify their product designs and make investment, so as to provide tourists with a wide range of activities and programmes. I believe the industry still needs a large number of people with different talents to join it in the future. They will surely enjoy a bright future if they can maintain an active and innovative attitude and work diligently.

MR FRED LI (in Cantonese): Madam President, Mr SIN Chung-kai has expressed the views of the Democratic Party and indicated support for the amendments to the Bill. Now I would like to express my personal opinions on some issues in relation to the TIC.

I greatly support the proposal of regulating travel agents since malpractices in the treatment of inbound tourists will damage the international reputation of Hong Kong. However, we must note that, as a result of the introduction of the amendments, the power of the TIC will expand subsequent to the inclusion of inbound travel agents into the Bill.

In response to our request, the Government has proposed to increase the number of independent and non-industry directors from four to eight in order to enhance transparency. However, as there are a total of 22 directors, inclusive of the incumbent and immediate past Chairmen, in the TIC, independent and non-industry directors still represent a minority in the TIC, even though their number will be raised to eight. Furthermore, four out of these eight directors will be nominated by the TIC for appointment by the Government, an arrangement strongly underlined by the TIC. I have received a reply from the Government with respect to my question of whether any persons nominated by the TIC have been rejected. I would like to tell Members that the crux of the problem precisely lies in the rejected nominee. This person, nominated by the TIC as a non-industry director, was formerly a practitioner of the tourism industry (though he no longer stays in the business). In my opinion, the Government's decision to reject him is correct. Nevertheless, the TIC's nomination reflects that it is longing to nominate its cronies as directors representing the non-industry sector. Such a mentality of "restricting the game to people in the industry" is indeed very strong. Being a commercial association, the TIC protects its own interest like other trade associations do. How can we expect it to balance the interests of all parties and regulate travel agents on behalf of consumers? This is very questionable indeed.

What will the Government do to regulate the TIC? The Government is simply not represented in the Board of Directors of the TIC. It can only rely on the Financial Secretary, who is responsible for appointing eight non-industry persons as directors. However, four of the eight directors will still be nominated by the TIC. I have actually pointed out the crux of the problem earlier. Under such circumstances, how can the TIC maintain its credibility?

In addition to the unbalanced ratio between the number of industry and non-industry members, I would like to raise another point concerning the lack of an interest-declaration mechanism in the TIC. As a result, no one will know whether the directors involve any interest outside the TIC. Declaration of information is absolutely not required. This is precisely the fatal weakness of the whole system. I will elaborate the crux of the problem later.

Both the public and the Government can hardly monitor the work of the TIC. Even though the eight so-called non-industry representatives are appointed by the Government, it is simply impossible for them to monitor on behalf of the Government because they are not required to report to the Government on a regular basis. Every one of them are appointed to the Board in their personal capacity. In addition, there is no government representative on the Board. Under such circumstances, how can the Government play the important role of monitoring the TIC?

I would like to cite an example to illustrate a point I am going to raise. The TIC's directors are empowered to inspect the commercial information submitted by their rivals. This is because travel agents are required to submit to the directors prior to departure all information relating to departing tour groups, such as destination, the number of participants, tour fees, flight number, hotel, itinerary, and so on. Let us imagine that I am a director of the TIC as well as the boss of a travel agency. At the same time, my rivals (the strongest ones) are required to submit all their information to directors of the TIC for information (not for approval). I will then have immediate access to the information submitted by my rivals. I can then do anything I like, right? Some travel agencies have complained to me and asked me why their rivals could gain access to their commercial information. At present, the TIC has this power. Most directors of the TIC are actually rivals. How can they possibly clearly define their role? How can they carry out their regulatory role since they are not required to declare their commercial interest and relations outside the TIC? How can travel agencies prevent their commercial information from being

abused by their rivals? Their rivals can do so just because they are directors of the TIC.

I have also been told by some people in the industry that the TIC has invested in a computer ticketing system under the management of a company named Abacus Distribution Systems (Hong Kong) Limited (the Abacus). According to the information I have obtained from the Companies Registry, however, both the Chairman and Executive Director of the TIC are directors and large shareholders of this company. Most travel agencies in Hong Kong, being users of the company, are now booking their air tickets through this company. These travel agencies will then be required to submit information on the travellers who make the booking to it, though two of the directors of this company are the Chairman and Executive Director of the TIC, and the Chairman himself is also an operator of a travel agency. Do Honourable Members agree that the relationship between the TIC and this company is intricately?

This is the result of my investigation as well as what the industry has told me. All the directors of the TIC are not required to declare interest. Is the Government aware of this? Are there any other problems? I have no idea at all. This is what I have observed. Is it appropriate for the industry to be self-regulatory? My greatest concern is: Can consumers enjoy better protection? Let us imagine the Chairman of the TIC is not a member of the industry, as in the case of the Estate Agents Authority (EAA). The chairman of the EAA is an accountant, not a member of the industry. Its vice-chairman is Mr Moses CHENG, a lawyer. Members should have known that both of them are not estate agents. Actually, it is inappropriate for a chairman responsible for regulating an industry to be its member as well. This is because he can then enjoy the greatest benefit and the relationship involved will be extremely complicated. This is precisely the problem with the TIC at present. Both its chairman and vice-chairman are directors of travel agencies. How can people be convinced that they can play their regulatory role effectively?

The TIC has already had enormously powers, including the power to handle consumer complaints, punish members failing to observe the rules laid down by the TIC, and levy stamp duties equivalent to 3% of tour fees on outbound travel agents. Coupled with the legislation to be passed today, the TIC's scope of regulation will be further expanded. Therefore, the Democratic Party would like to suggest the Government to radically change its existing practice of excessively relying on the industry to exercise self-regulation.

Instead, the TIC should follow the example of such statutory organs as the EAA (proposed by the Government and enacted by this Council) in regulating outbound and inbound travel agents and regulating the standards of tour guides to ensure that they reach professional standards. I will be extremely worried if interviews and written examinations of tour guides are again administered by members of the TIC. This is because all the candidates are employees of the directors.

I definitely understand that it is not easy to set up a statutory regulatory organ. As a precautionary measure, I think it would be better for all the eight non-industry directors to be appointed by the Government, instead of being nominated and recommended by the TIC, in order to demonstrate that the TIC is not associated with these non-industry directors. As for the posts of chairman and vice-chairman, they had better not be taken up by people from the industry. How can the Government further strengthen its role of regulating the TIC? I hope the Secretary, Ms Sandra LEE, can give me an answer later. In addition to the fact that the Government has not appointed any representative to attend meetings of the TIC, I was told that no records of meetings have been kept too. How can the Government regulate the TIC? What is the relationship between the TIC and the Government? Is the TIC simply a registered company?

My proposal is actually very mild. Since the eight directors will be appointed by the Government, no interference and nomination by the TIC should be permitted. I feel sorry that the TIC has put up strong resistance to this proposal. It really surprises me that the TIC has reacted so strongly to such a mild suggestion. Of course, I have eventually failed to persuade its members successfully.

Now that the Bill is going to be read the Second time, I would like to take this opportunity to express my disappointment with the Government for it is apparently unable to do anything in dealing with this matter. I hope outbound travellers and inbound tourists will not encounter any problems with respect to their protection because of the expansion of the TIC's powers and its lack of supervision. This is most worrying to me. I hope the Secretary and the Government can seriously address this problem by enhancing the transparency and credibility of the TIC to boost public confidence in the ability of the TIC to regulate the industry.

I so submit.

MR HOWARD YOUNG (in Cantonese): Madam President, to start with, I have to declare interest because I am a director of a licensed travel agency, which also carries on a business for inbound travel. Nevertheless, I support the passage of the Travel Agents (Amendment) Bill 2001 and the Committee stage amendments proposed by the Government. Extensive consultation has been carried out and the views of the industry have been sought. It is generally felt that the relevant amendments can upgrade the status of Hong Kong as a tourist destination and improve the quality of service.

For historical reasons, there is a great difference between Hong Kong and other countries where tourism is regulated. In the case of Hong Kong, legislation was first introduced to regulate outbound travel. This is in stark contrast to most countries in the world where legislation was first introduced to regulate inbound travel. These amendments have been introduced mainly in the light of the rising number of travellers being cheated. To enable inbound travel to develop in a healthy manner and to safeguard consumers, it is essential for the Government to reasonably supervise inbound travel agents.

Our inbound travel market used to target mainly at tourists from Europe, the United States and Japan. Following the opening up of the Mainland and its rapid economic take-off, mainland tourists now account for 30% or more of the total number of tourists coming to Hong Kong. Coupled with the ongoing discussion between the Mainland and the Government of the Hong Kong Special Administrative Region (SAR) on the relaxation of restrictions on entry of mainland residents to Hong Kong, it is anticipated that mainland tourists will definitely soar in the next few years, particularly upon the completion of the Disneyland. Most mainland tourists, particularly those from remote provinces in China, do not have much outbound travel experience, compared with tourists from such places as Europe, the United States, and so on. Very often, they do not fully understand their rights as consumers. In addition, Hong Kong is a strange place to them and the duration of their stay is usually short. This gives some unscrupulous operators or the so-called black sheep of the industry an opportunity to exploit the weakness of mainland tourists (their lack of outbound travel experience) and cheat them. As a result, we have heard of such stories as the offer of "zero tour fees" in exchange for the charging of commission on shopping done by such tourists. The number of complaints against frauds has thus been persistently on the rise.

In order to reinforce the status of Hong Kong as a tourist destination, inbound travel agents should, like their outbound counterparts, be subject to regulation and supervision by the TIC. They should not be allowed to continue operating like what they did in the past, when they were not bound by the law and responsible to any regulatory bodies. In addition, they could start operating as soon as they have successfully obtained a business registration certificate. Some of them could even start operating as long as they could provide a contact telephone number and address, without the necessity of obtaining a business registration certificate. We can no longer tolerate this. I believe the licensing system can be implemented immediately after the passage of the Bill. This will help eliminate unscrupulous inbound travel agents and upgrade the standard of inbound travel services. At the same time, however it is necessary for the relevant authorities to constantly examine the effectiveness of the Ordinance and take follow-up action to perfect the supervisory work. The valuable recommendations made by Honourable colleagues today will probably be useful to making continuous improvements in future.

As for the proposal of assigning the TIC to take up the responsibility of regulating inbound travel agents, I believe it can, by virtue of its past work and experience of regulating outbound travel agents, play its regulatory role fully, and will not let Honourable Members down. Subsequent to the passage of the relevant amendment, the number of non-industry and independent directors of the TIC will expand from four to eight to cope with its rising workload.

Madam President, I would like to make it clear that, according to my understanding, it is not the intention of the TIC to take over the regulatory work. If the TIC is given the choice, it might prefer letting the Government instead of itself to do the work. But what will happen then? Just like what the Liberal Party usually says, the pay of civil servants is usually much higher than the pay of employees of private organizations. I believe the pay of civil servants is much higher than the pay of employees of the TIC too. If the "user pays" principle is applied, travel agencies will then be required to pay a much higher licence fee. As a result, we have to make a choice. The TIC has existed for more than a decade. Although it can still not be considered perfect, people in the industry, whether or not they are directors, have generally accepted this system. Just now, a Member mentioned the problem pertaining to conflict of interests. We must understand that all the directors of the Board were elected by the industry after careful consideration. The industry knew it very well to which companies they belonged. They were even required to state the names of their companies when running for the election.

A Member suggested that all the four independent directors be directly appointed by the Government, instead of being nominated by the TIC, on the ground that this can strengthen the credibility of the TIC and achieve checks and balances. I believe it is evident to all people, whether outside or inside the industry, that members of the TIC have worked laboriously in silence to earn its credibility, particularly in the provision of outbound travel service in recent years, since the organization was founded more than a decade ago. The credibility of the TIC has indeed been rising constantly since its members have really done their part fully. We should have confidence in it.

According to the past practice of the TIC, non-industry directors were nominated by the TIC after consultation for appointment by the Government. Although these candidates were not directly selected by the Government, they had to go through a consultation process. The Honourable Fred LI just quoted a precedent in which a candidate recommended by the industry was rejected by the Government. This precisely illustrates that this recommendation process was subject to repeated scrutiny. If a candidate was deemed inappropriate, the TIC would have recommended another candidate or another combination of candidates. The nomination process is actually subject to repeated consultation. It is definitely not unchangeable. The final decision rests with the Government. I do not think the power of the Government or public interest will be undermined. Members should know it very well that the TIC has all along been playing the role of regulating outbound travel agents. In order to upgrade its image as a regulator, I believe the TIC will pay extra attention and exercise extreme caution in selecting candidates, instead of picking them indiscriminately. In addition, it will carry out consultation and recommendation in a rational manner. I therefore find the current requirement acceptable.

Of course, I hope the appointed directors can possess experience in the industry, in addition to their professional background and knowledge. In my personal opinion, this arrangement can serve our purpose even better. A Member mentioned earlier about a candidate who was once a member of the industry, but is no longer having business connection with it. I consider this a special advantage of the candidate. It was indeed not appropriate for the Government to have rejected his nomination purely for this reason. There should be no problem as long as there was no conflict of interest between the candidate and the appointment. The appointment of such a candidate will not only cause no conflict of interest, but also achieve a balancing effect. He can really play his regulatory role since it is easier for him to communicate with the

industry. What is the concern of the industry with respect to the appointment of candidates? Its concern is that if the nominee is completely detached from the industry, he will sometime really find understanding difficult when it comes to regulating the business of the industry. For instance, an appointed director might want to regulate some matters or refer to something, like referring to the itinerary for the sake of safeguarding tourists, as in the case referred to by a Member earlier, he might however find it completely incomprehensible because it is totally strange to him. Therefore, recommending a candidate like the one mentioned above might not be a bad idea after all.

Some doubted whether regulated inbound travel agents should include travel agents arranging local tours as well. I am aware that people in the industry are divided over this issue. In my personal opinion, we can put this matter aside for the time being since some people in the industry support this idea, but some oppose it. Why? This is because the amendments urgently made in this exercise mainly seek to eliminate the black sheep among inbound travel agents, who have been taking advantage of those tourists who are not familiar with Hong Kong and have no time and opportunities to make complaints against them. On the other hand, participants of the very popular "local tours" or "day tours" are mainly local residents. As far as I understand it, these tours do not include shopping activities. As participants of these tours are Hong Kong residents, they know how to lodge complaints with the Consumer Council if they have any grievances. For these reasons, I think it is not necessary for local tours to be included into the scope of regulation for the time being. Of course, it is still necessary for us to closely monitor the quality of local tours. In the case of foreign countries, there is no distinction between local tour groups and inbound tour groups because of the vast territories of their countries. If necessary, corresponding amendments will be made in future.

Mr SIN Chung-kai raised this question earlier: Is it definite that tourists will be attracted to Hong Kong after our standard is upgraded? Although we cannot prove that tourists will necessarily be attracted to Hong Kong purely because of good service, I dare say that unsatisfactory service will immediately scare tourists away, even if they are frequent customers. Not only will they be scared off, they will even tell their relatives and friends about their experience in Hong Kong after returning to their home countries. Negative information will naturally give rise to negative impact. Unsatisfactory service will literally "spoil our business" since a lot of tourists will be scared away. Of course, it is essential for hardware to be provided to complement the efforts made by the industry before the entire industry can be benefited.

In addition to the provision of hardware, there is another problem pertaining to manpower training. In view of the diversified standard of local tour guides, I would like to urge the Government to launch training programmes similar to those introduced for outbound tour guides to render more support for inbound tour guides and upgrade their quality, as an effort to tie in with the rapid expansion of inbound tourism service. The Government should also deploy more resources to encourage tour guides to continuously upgrade themselves. Only in so doing can we guarantee the provision of quality service by them.

Madam President, I support the passage of the Bill.

MR CHAN KAM-LAM (in Cantonese): Madam President, the Democratic Alliance for Betterment of Hong Kong (DAB) supports the Travel Agents (Amendment) Bill 2001 since the enactment of the Bill can perfect the regulation of tourism in Hong Kong. Tourism has become one of the important pillars of Hong Kong economy. It is therefore of paramount importance to regulate the inbound sector of the industry. Over the years, we have received a lot of complaints from overseas tourists. Their complaints were not just confined to certain retail shops, hotels, or poor service of restaurants. There were also complaints about improper arrangements made by travel agencies or poor guiding service provided by tour guides. I think further regulation of inbound travel agents can serve the dual purpose of promoting tourism and economic development. Of course, it is essential for tourism hardware, such as the construction of Disneyland or improvement to scenic spots, to be provided. It is nonetheless equally important for travel agents to be regulated as well.

During our scrutiny of the Bill, we did talk about self-regulation of the industry. We are actually in frequent contact with the industry. The general mentality harboured by the people in the industry is, as we were told, that they have either chosen tourism as their lifelong career or made substantial investment in it. They take it very seriously because it is closely related to them. They hope they can safeguard the reputation of the industry and look after its overall interest. Therefore, they will not monopolize the market or do anything to damage it. Very often, discussions about self-regulation are focused on the extent of our confidence and trust in the industry and its participants. We can see from the past two decades or so that the industry has already done a pretty good job in regulating outbound travel. We feel that it should be given a chance to regulate inbound travel by itself. Actually, Honourable Members should

already know that more than 80% of travel agents dealing with inbound travel are also outbound travel agents. It will be better if the industry, or the TIC, can play a self-regulatory role. The DAB is of the view that it is unnecessary for us to dispute whether it is better for non-industry directors to be nominated by the industry or entirely appointed by the Government. We totally support the arrangement of allowing the industry to nominate candidates for appointment by the Government.

Madam President, the DAB is of the view that apart from allowing the industry to practise self-regulation, we have to cater to the training of tour guides, such as designing tailor-made programmes of better quality for them. According to some mainland tourist enterprises visited by us recently, the quality of Hong Kong's tour guides seems to be deteriorating in recent years. This might be attributed to the fact that there are not enough tour guides to cope with the increasing number of tourists coming to Hong Kong, and many of them are merely "temporary tour guides". Tourists accompanied by tour guides on sightseeing tours usually find the service provided by them when introducing the historical background of Hong Kong and historical relics of scenic spots not up to the standard. Having a poor knowledge of Hong Kong, the tour guides might perhaps be thinking that the purposes of these tourists visiting Hong Kong are merely touring around on coach and visiting certain scenic spots. We feel that the Government should do more in collaboration with the relevant training providers or the industry to examine what can be done to upgrade the quality of training so as to enable tour guides to pursue continuous enhancement. We hope more young people will join the industry through such training programmes. This will add vigour and life to the industry on the one hand and give the industry an opportunity to sustain its development on the other. Thank you, Madam President.

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

(No Member responded)

PRESIDENT (in Cantonese): I would now call upon the Secretary for Economic Services to reply.

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Madam President, the Travel Agents (Amendment) Bill 2001 seeks to regulate services

provided by inbound travel agents. At the same time, a regime of self-regulation is introduced to the Travel Industry Council of Hong Kong (TIC) for complementary effects. I would like to take this opportunity to thank all members of the Bills Committee, particularly Chairman of the Bills Committee, Mr SIN Chung-kai. During the deliberation of the Bill, members of the Bills Committee have put forward a lot of valuable opinions and constructive suggestions. I am also grateful to the tourism sector and relevant organizations for their support for the Bill and their opinions.

As pointed out by Honourable Members, tourism is a very important industry concerning all people of Hong Kong. Insofar as tourism is concerned, we have made investments in quite a number of areas and taken a series of measures, which include constructing new scenic spots, improving existing tourism facilities, introducing measures to facilitate entry of tourists, and upgrading the standard of service. The Bill is meant to be an important measure of upgrading the standard of service provided by the industry. At present, the Travel Agents Ordinance only provides for the control and regulation of outbound travel agents and does not regulate services provided by inbound travel agents. The major provisions of the Bill seek to, *inter alia*, regulate inbound travel agents, and define "inbound travel service". Under the proposed licensing system, all inbound travel agents shall, like outbound travel agents, apply a licence from the Registrar of Travel Agents upon being granted membership of the TIC, and will be regulated by the code of conduct and directives issued by the TIC.

During the deliberations of the Bill, a number of members carefully examined the Bill and the intended scope of the existing Ordinance. Detailed discussions have also been held on the wordings of the Bill. We agree to the suggestions made by the Bills Committee, and will move Committee stage amendments to this effect. The purpose of the amendments is to clearly require persons who actually carry on inbound or outbound business to apply for a licence. Travel agents dealing with arranging local tours for local residents are not covered by the law.

In deliberating the Bill, some members expressed concern about the manner of self-regulation. They were of the view that the TIC was responsible for safeguarding tourists and upgrading the service standard of the industry. Therefore, the transparency and independence of the regulatory mechanism of the TIC should be enhanced to boost its credibility. Members who have spoken

earlier also raised this point. One of them held that all four new additional independent directors should be nominated by the Government, instead of having two of them nominated by the Government, and the other two by the TIC. The Government has held numerous discussions with the TIC with respect to this proposal. It was pointed out by the TIC that, according to its proposal, the final decision rests with the Government over the appointment of the four independent directors. This is an established arrangement, identical to the existing practice of appointing the four existing independent directors. The TIC has clearly indicated that it will not nominate a person who is deemed inappropriate by the Government. I hope to reassure Honourable Members that the Government will carefully vet all independent directors for appointment to the Board. Moreover, appointments will be made with full regard to the need of the TIC to handle its matters in an impartial, objective and independent manner. As we have already explained to Mr Fred LI, the Government exercised its decision-making power in a recent appointment exercise by twice rejecting candidates nominated by the TIC.

Some Honourable Members also mentioned the self-regulatory role of the TIC. In this aspect, I would like to first point out that the TIC has since 1990 been listed as a public body subject to the Prevention of Bribery Ordinance. The TIC has also laid down codes of conduct for its directors with respect to the professional conduct they should observe. Under the present proposal, the number of independent directors of the Board will be expanded from four to eight. This is undoubtedly progress. Nonetheless, we will continue to study with the TIC to see what can be done to improve its self-regulatory role. In this connection, I would like to thank Mr Fred LI, Mr Howard YEUNG and Mr CHAN Kam-lam for their relevant views.

The Government entirely agrees with Honourable Members that it is essential to upgrade the standard of tour guides, in addition to improving the standard of service provided by travel agents. Under a Skills Upgrading Scheme launched by the Education and Manpower Bureau earlier, nearly \$160 million has been put aside to provide funding for the industry to launch a tour guide training programme. The training programme will commence in the middle of this year. Tour guides must complete the programme, pass the examination and obtain the certificate. We believe this Scheme will effectively upgrade the service quality of tour guides. It is envisaged that the Bill will take effect six months after the passage of the Bill subsequent to its Third Reading.

The six-month period will give inbound travel agents sufficient time to meet the licensing requirements and complete the application procedures, and allow time for the Registrar of Travel Agents to examine such applications. All inbound travel agents will then be required to obtain a valid licence before they can operate, and will be regulated by the TIC. Mrs Selina CHOW, Mr Howard YOUNG and Mr CHAN Kam-lam have expressed concern over the supervision and operation of the industry after the implementation of the relevant law. Mr SIN Chung-kai has also raised the point that on-line travel agents should be regulated as well. We will closely monitor the operation of this system after the legislation has come into effect to ensure the standard of service provided by travel agents. I hope Honourable Members can support the Bill. I will also move Committee stage amendments later. Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Travel Agents (Amendment) Bill 2001 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): Travel Agents (Amendment) Bill 2001.

Council went into Committee.

Committee Stage

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

TRAVEL AGENTS (AMENDMENT) BILL 2001

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Travel Agents (Amendment) Bill 2001.

CLERK (in Cantonese): Clauses 1, 2, 3, 6, 7 and 9.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 4, 5, 8 and 10.

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Madam Chairman, I move the amendments to the clauses read out just now, as set out in the paper circularized to Members. During the deliberation period, some members of the Bills Committee held that the presentation of "a travel agent if he holds himself out as carrying on the business of, and carries on the business of," in clause 4 and new section 4A might result in exemption of a person who does not hold himself out as carrying on the business of a travel agent. After repeated deliberations and making reference to wordings used in overseas legislation, we finally reached a consensus with the Bills Committee and decided to delete "holds himself out as carrying on the business of," from clauses 4 and 5 so that all travel agents carrying on outbound or inbound businesses must apply for a licence.

With respect to clause 5 and the new section 4A, in order to clearly show that the travel agents regulated by the new provision refer to those providing services to inbound visitors, we propose to delete "that other person" and substitute "a visitor to Hong Kong". As for other amendments proposed to clause 5, they are purely technical amendments that seek to enhance the fluency and clarity of the provision.

The amendment to clause 8 reflects the amendment to the English text of the Bill, which is merely a technical amendment to make the text consistent. Clause 10 seeks to amend the Second Schedule of the original text of the Regulations with respect to the content of the Statement of Particulars in support of an application for a licence. The amendments proposed to clause 10 are mostly in line with the amendments to clauses 4 and 5 or merely technical amendments to enhance consistency in wordings used. As for the addition of specified services to the notes at the end of Forms 4 and 5, it is meant to facilitate acquisition of information and reference by users of the forms. All these proposed amendments have been scrutinized and supported by the Bills Committee. Thank you, Madam Chairman.

Proposed amendments

Clause 4 (see Annex III)

Clause 5 (see Annex III)

Clause 8 (see Annex III)

Clause 10 (see Annex III)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 4, 5, 8 and 10 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.

TRAVEL AGENTS (AMENDMENT) BILL 2001

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

Travel Agents (Amendment) Bill 2001

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Travel Agents (Amendment) Bill 2001 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): Travel Agents (Amendment) Bill 2001.

MOTIONS

PRESIDENT (in Cantonese): Motions. Proposed resolution under the Pharmacy and Poisons Ordinance to approve the Pharmacy and Poisons (Amendment) Regulation 2002 and the Poisons List (Amendment) Regulation 2002.

PROPOSED RESOLUTION UNDER THE PHARMACY AND POISONS ORDINANCE

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

motion seeks to amend the Poisons List Regulations and the Pharmacy and Poisons Regulations.

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

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

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

The Pharmacy and Poisons Board (the Board) proposes to add six new medicines to Part I of the Poisons List, and the First and Third Schedules to the Pharmacy and Poisons Regulations so that pharmaceutical products containing any of them must be sold in pharmacies under the supervision of registered pharmacists and in their presence, with the support of prescriptions.

In addition, the Board proposed to re-classify Nicotine, where it is intended to be used in nicotine replacement therapy and in the form of chewing gum containing not more than 2 mg of Nicotine, from Part I of the Poisons List to Part II of the Poisons List to allow its sale by an authorized seller of poisons or by a listed seller of poisons. These products can relieve nicotine craving and withdrawal symptoms, thereby facilitating smoking cessation in smokers. The proposed relaxation of control would make these products more accessible to smokers who intend to quit smoking.

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

Madam President, I beg to move.

The Secretary for Health and Welfare moved the following motion:

"That -

- (a) the Pharmacy and Poisons (Amendment) Regulation 2002; and
- (b) the Poisons List (Amendment) Regulation 2002, made by the Pharmacy and Poisons Board on 8 March 2002 be approved."

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

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Proposed resolution under the Occupational Safety and Health Ordinance and the Interpretation and General Clauses Ordinance.

PROPOSED RESOLUTION UNDER THE OCCUPATIONAL SAFETY AND HEALTH ORDINANCE AND THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

SECRETARY FOR EDUCATION AND MANPOWER: Madam President, I move that the motion, as set out in the paper circularized to Members, be passed.

With the growing use of computers at work, more and more employees are using display screen equipment for prolonged periods of time. Coupled with this growth, there are increasing concerns about related health problems, such as eyestrain and pain in the neck, which can be prevented by ensuring appropriate design of the workstation, working posture and working environment. To protect the safety and health of prolonged users of display screen equipment, the Commissioner for Labour has made the Occupational Safety and Health (Display Screen Equipment) Regulation.

The Regulation is targeted at employees who, by the nature of their work, for example, data processing, computer graphic design and telecommunications, are required to use display screen equipment for a prolonged period of time almost every day, that is, "user" as defined in the Regulation. The definition of "user" is further elaborated in a code of practice to be issued by the Labour Department to mean employees who use display screen equipment almost every day, and continuously for at least four hours during a day or cumulatively for at least six hours during a day.

Under the Regulation, "display screen equipment" means any display screen which shows letters, numbers, characters or graphics. However, the Regulation does not apply to certain display screen equipment that normally poses minimal safety and health risks, such as calculators and portable systems that are not in prolonged use.

In order that the safety and health of users be adequately protected, we consider it necessary to regulate not only display screen equipment, but also peripheral items like chairs and desks, that is, the workstation as a whole.

The Regulation requires the person responsible for a workplace to perform a risk assessment of a workstation and take steps to reduce any risks identified. The person responsible for a workplace may not necessarily be the employer. However, the employer is required to provide users employed by him with necessary safety and health training, while users are required to comply with precautionary measures. A person responsible for a workplace or an employer who fails to comply with the Regulation is liable on conviction to a maximum fine of \$50,000, and a user to a maximum fine of \$10,000.

Risk assessment of a workstation is based on a checklist, and should be performed by a person who has basic knowledge of the use of display screen equipment and the associated health risks. Safety and health training can be carried out through the showing of videos or distribution of educational materials. Most risk reduction measures would not incur any cost, for example, repositioning display screens and adjusting the height of chairs. Where furniture has to be replaced to improve individual workstations, for example, height-adjustable chairs, the expenses involved will be small. Compliance with the Regulation should not, therefore, impose a heavy financial burden on employers. The social benefits of reducing health problems associated with prolonged use of display screen equipment at work far outweigh the costs involved.

We propose that the Regulation should come into operation 12 months after enactment, so as to allow adequate time for employers and employees to prepare themselves for full compliance, as the Regulation covers a wide variety of trades and risk assessment is a new concept. The Labour Department will issue a code of practice and a health guide for employers and employees.

In enforcing the Regulation, the Labour Department will normally issue an improvement notice before taking prosecution action against the less serious breaches. The Labour Department will monitor the trend of reported health problems associated with the use of display screen equipment at work, and review the Regulation, in particular the definition of "user", taking into account the findings of relevant medical researches and enforcement experience.

The Labour Advisory Board and the Legislative Council Panel on Manpower have been consulted and given their support for the Regulation. I

am grateful to the Honourable Andrew CHENG and Members of the Legislative Council Subcommittee, which was formed to examine the Regulation. Members have thoroughly debated a range of issues arising from the Regulation which we believe would effectively raise the safety and health standard in Hong Kong.

Madam President, I beg to move.

The Secretary for Education and Manpower moved the following motion:

"That the Occupational Safety and Health (Display Screen Equipment) Regulation, made by the Commissioner for Labour on 8 November 2000, be approved, subject to the following amendments -

(a) in section 2, by deleting the definition of "user" and substituting -

" "user" (使用者) means an employee who, by reason of the nature of his work, is required to use display screen equipment for a prolonged period of time almost every day;";

(b) by deleting section 3(1) and substituting -

"(1) This Regulation applies to a workstation in a workplace that is -

(a) provided by a person responsible for the workplace to be used by users for work;

(b) not intended for use by the public; and

(c) normally used or intended to be normally used by users.";

(c) in section 4 -

(i) by deleting subsection (3)(a) to (d) and substituting -

- "(a) identifying and assessing the risk to the safety and health of users of a workstation;
 - (b) deciding whether existing precautions are adequate; and
 - (c) recording the findings.";
- (ii) in subsection (4)(a), by deleting everything after "to" and substituting "believe that there has been a significant change in the conditions of a previous assessment; or";
- (iii) in subsection(4)(b), by deleting "變動" and substituting "改變";
- (iv) in subsection (5) –
- (A) by adding ", so far as reasonably practicable," before "keep";
 - (B) by deleting "(d)" and substituting "(c)";
- (v) by deleting subsections (6) and (7) and substituting –
- "(6) The person responsible for a workplace shall –
- (a) upon request by an occupational safety officer, produce for inspection any record kept and retained by him under subsection (5); or
 - (b) in case he is unable to comply with paragraph (a), deliver a copy of the record to the officer for inspection within such period as may be specified in a request in writing sent by the officer.";

- (d) in section 6, by deleting everything after "shall" and substituting –
- ", so far as reasonably practicable, make available to users of a workstation in respect of which a risk assessment has been performed under section 4 a copy of the following documents –
- (a) a record of the findings of the risk assessment; and
 - (b) a record of any action he has taken after the assessment.";
- (e) in section 7 –
- (i) by deleting "normally used by users";
 - (ii) by deleting ", health and welfare of those users" and substituting "and health of users of those workstations";
- (f) in section 8 –
- (i) in subsection (1) –
 - (A) by deleting "(1)" before "An";
 - (B) by adding ", so far as reasonably practicable," after "shall";
 - (C) by deleting "adequate" and substituting "necessary";
 - (D) by deleting "the workstation normally used by the user" and substituting "workstations";
 - (ii) by deleting subsection (2);

- (g) by deleting section 9 and substituting –

"9. Users to co-operate with responsible person

A user of a workstation in a workplace shall, so far as reasonably practicable –

- (a) conform to any system of work and work practice that the person responsible for the workplace has established in order to comply with the requirements imposed by this Regulation; and
 - (b) comply with any risk reduction measure taken as a result of any risk identified in a risk assessment performed under section 4.";
- (h) by renumbering section 10 as section 11;
- (i) by adding –

"10. Effect of workplace code of practice

Without prejudice to section 41 of the Ordinance, in any legal proceedings for an offence under this Regulation, proof that a person contravened or did not contravene a relevant provision of a workplace code of practice issued under section 40 of the Ordinance in respect of this Regulation may be relied on by any party to the proceedings as tending to establish or negate a matter that is in issue in the proceedings.";

- (j) in section 11 –
- (i) in subsection (1), by deleting ", (6) or (7)" and substituting "or (6)(b)";
 - (ii) in subsection (2), by deleting "section 8(1) or (2)" and substituting "section 8"."

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 and Mr Andrew CHENG will each move amendments to the motion. Their amendments have been printed on the Agenda. In accordance with the Rules of Procedure, the motion and the two amendments will now be debated together in a joint debate.

I now call upon Mr LEE Cheuk-yan to speak first, to be followed by Mr Andrew CHENG, but no amendments are to be moved at this stage.

MR LEE CHEUK-YAN (in Cantonese): Madam President, the motion today touches upon some relatively new issues in relation to health. With advances in technology, practically every workplace or office is now equipped with a computer, and more and more employees now have to use computer in their work. Therefore, as pointed out by the Secretary just now, with the use of computer becoming increasingly popular, many employees have become the victims of back aches, neck pains, tenosynovitis, that is, strain injury to fingers. If the Regulation under discussion today can be passed (I am sure it will be, the only question being the extent), there will be better protection for employees.

There are actually several aspects to the Regulation. First, the need for risk assessment. Second, the need for risk reduction. Third, the need to provide training. In brief, in terms of legislative intent, this is actually a Regulation demanding self-regulation. And, I think that generally speaking, the major emphasis of the entire Regulation is on education, rather than any strict enforcement on the part of the Government to compel compliance by employers. It requires of employers only self-regulation.

In respect of costs, according to the information given to us by the Government, the conduct of a risk assessment will cost each workplace \$40; for improvement measures, assuming that all the facilities in a workplace are problematic and require improvements, the total costs will be \$1,230, but on average, the costs will just be \$90 for each workplace. Therefore, Members can see that the costs are really very low, and, compliance with the Regulation is actually "no big deal".

This is no big deal, but, still, as described by the Secretary just now, "the Subcommittee conducted very thorough discussions on the matter." But I must say that our discussions were much too thorough, so much so that they took as long as a year and a half, in the course of which a sudden turn of events cropped up. What was that sudden turn of events? I think all was triggered off by a sudden statement made by the Chief Executive in his policy address: "..... prior to formulating new policies and legislation, the impact on the business environment will be fully assessed." Afterwards, this statement of the Chief Executive seemed to have become a Sword of Imperial Sanction, and the commercial sector started to criticize this Regulation and said that more studies were required.

What were the findings of the studies? As Members may recall, the Regulation was discussed by the House Committee and later referred back to the Subcommittee for scrutiny. Following further deliberations, the Government narrowed the scope of protection under the pressure of the commercial sector, changing the definition of "user" in the Regulation from an employee having to use display screen equipment for one hour or more daily to an employee having to use display screen equipment for a prolonged period of time every day. The definition of "a prolonged period of time" is stated very clearly in the relevant code of practice — the use of display screen equipment for a continuous period of four hours every day or six hours a day on a cumulative basis. Actually, during the initial discussions, only "a continuous period of four hours" instead of "six hours on a cumulative basis" was mentioned. But following discussions in the Subcommittee, the Government changed its mind and accepted "a continuous period of four hours" and "six hours on a cumulative basis" for the purpose of definition. The amendment I have proposed today on behalf the Hong Kong Confederation of Trade Union aims precisely to define the term "user" as a person who uses display screen equipment for four hours a day on a cumulative basis. We can see that at first, the Government talked about one hour, but then it changed its mind and insisted on "a continuous period of four hours" or "six hours a day on a cumulative basis". And, my intention is to go back to the average — four hours a day on a cumulative basis.

My amendment is based on sufficient medical grounds. For the first medical ground, if Members refer to paragraph 11 of the Subcommittee report, they will read this: "The Administration has informed Members that by making reference to the survey conducted by the Occupational Safety and Health Council in 1997 on computer users in the financing, insurance, real estate and business

services sector, who were required to use computers for four or more hours every day (OSHC Survey) and the field experience of Occupational Hygienists of the Labour Department, it is estimated that about 1% to 10% of the workstations require various improvements to reduce the risks." The first medical ground is that the targets of the survey conducted by the OSHC were also persons having to use computer for four hours or more every day. As estimated by the survey, about 68% of those engaged in the financing, business services, insurance and real estate sectors have to use computer for four hours or more every day.

For the second medical ground which can support my amendment, Members can look at the findings of a survey, the survey conducted by the OSHC mentioned by me a moment ago. According to the findings, in the past 12 months, incidence of musculoskeletal discomfort associated with keyboard operation was very high — 56% for neck discomfort; 57% for shoulder discomfort; 9% for elbow discomfort; 12% for forearm discomfort; 22% for wrist discomfort; 17% for finger discomfort; 47% for upper back discomfort; 48% for low back discomfort and 74% for eye discomfort. The symptoms of musculoskeletal discomfort included pain, muscle soreness, cramp, numbness and muscle weakness. It should be noted, however, that it is not mentioned in the survey report that only people who use display screen equipment for six hours or more a day will have such problems. Instead, it is stated very clearly that a large proportion of the survey targets was found to suffer these discomforts, one example being the fact that the incidence of eye discomfort was 74%. Therefore, Members should note that because of different physical conditions, while some may not have any discomfort after six hours, others may feel unwell after just one or two hours. If we really aim to protect the health of workers, we should not seek to protect only those who are physically the strongest. I say so because if we seek to protect only those who use display screen equipment for six hours more, we will in effect be protecting only those who are physically the strongest. But our aim should be to protect workers in general. Therefore, I think it is most appropriate to make people who use display screen targets for four hours the targets of protection.

The third medical ground comes from some overseas medical research findings, which were also submitted to us by the Government. The medical research findings submitted by the Government (in LegCo Paper No. CB(2)-726(01)-(02)) indicate that according to the findings of six medical research projects on this topic conducted in Canada, Hong Kong and the United States,

the Government has reached the following conclusion: "While the results from the studies quoted varied, it may be inferred that employees who use DSE for four hours or more every day — four hours or more every day, I must stress — have a higher risk of developing health problems compared with employees who do not use DSE or employees who use DSE for four hours or less every day." It is also stated that "a major study revealed that the use of DSE for three hours or less every day was not associated with the increased prevalence of eye and musculoskeletal discomforts." This can actually show that foreign research projects also use "four hours" as the dividing line. Therefore, I really do not know why the Government has so mysteriously put forward "six hours" as the dividing line.

Coming back to the local situation (I believe Dr LO Wing-lok will also talk about this later), in his letter to the Subcommittee, local scholar Prof LAM Tai-hing says, "I opine that it is essential to include in the definition the cumulative duration of use, which is the total duration of DSE use within a working day, regardless of whether the use is continuous or not". Due to the availability of evidence (I repeat, because of the availability of evidence) that a user with an average cumulative duration of four hours or more a day may already develop health problems, it should be specified that a "user" should be defined as an employee having to use display screen equipment for a cumulative duration of four hours or more.

Members have listened to the various grounds quoted by me. To sum up, my actual intention is just to raise one point: My amendment is supported by medical evidence, and Members should respect scientific findings. The medical evidence shows very clearly that a person who uses display screen equipment for four hours or more a day may already suffer from discomforts, and that most (or, to be precise, all) medical research projects have used "four hours" as the dividing line. So, why should we make it "a continuous period of four hours" or "six hours on a cumulative basis", if we really wish to protect employees' health? This is simply ungrounded. I think the case is just like this: The Government at first wanted to offer half a catty to employees, but the commercial sector subsequently slashed seven taels from the offer. I am not trying to get back the original offer of half a catty; I am just trying to get back for employees four taels from the seven taels slashed. That is why my amendment no longer seeks to restore the Government's original proposal of one hour. Having studied the relevant medical research, we now wish to take the middle course, that is, to adopt "four hours". I hope that Members will render their support.

Members should realize (I beg your indulgence in coming back to an earlier point) that compliance with this Regulation must be preceded by risk assessment, and the whole thing is in fact an education process. Besides, if improvements to facilities are ever required, the average costs in the end will just be \$90. Since the costs are so low, why cannot we expand the scope of protection to cover more people and more workplaces? I hope Members can give some consideration to this. If not, and, if, in the end, we can only protect those people I mentioned just now — the fittest of employees — to the complete neglect of those who may feel unwell after four or three hours, then it will be a pity indeed. For this reason, I wish to call upon Members to support my amendment. I am not going to speak again any more, and I only hope that Members can support the amendment and accept the medical research findings concerned. That way, those employees who use display screen equipment for four hours or more can also be protected, can suffer less from back pains, eye discomfort and neck pains. This is very important to the health of employees.

Finally, I also wish to express my support for the Honourable Andrew CHENG's amendment because a lot of information and regulations of foreign countries do indicate that breaks are very important. Moreover, we are not exactly talking about resting time as such; rather, we are simply talking about periodical breaks or changes of activity. We are not saying that employees must be given five minutes of resting time after working for two hours, for example. Instead, we are just asking whether they can be permitted to have any changes of activities during these five or 10 minutes. Therefore, Mr Andrew CHENG's amendment, even if carried, will only involve some kind of work arrangements. What employers will then have to do is just to tell their employees that they have the right to change their activities or take a rest after using display screen equipment for a period of time. I am sure Members will agree that "even a person trying to hang himself will need a break in the process". Thank you, Madam President.

MR ANDREW CHENG (in Cantonese): Madam President, before I explain my amendment to Members, let me first brief the Council on the main deliberations of the Subcommittee on Occupational Safety and Health (Display Screen Equipment) Regulation in my capacity as the Chairman of the Subcommittee.

This Regulation looks straightforward, but is in fact rather controversial.

The Subcommittee started its work on 14 December 2000 and held a total of 15 meetings. Following its 11th meeting, the Subcommittee reported to the House Committee on its deliberations and outcomes. Some Members, however, expressed concern about the implementation details and enforcement of the Regulation as well as its impact on the business environment. The House Committee agreed that the Subcommittee should further discuss these issues of concern with the Administration. Four further meetings were thus held, and the Subcommittee finally completed its work after that.

The definition of "user" is one of the most controversial issues involved. Under the Regulation, "user" means an employee who normally uses display screen equipment (DSE) as a significant part of his daily work. The Administration has proposed an elaborated meaning of "user" in the Health Guide. As interpreted in the Health Guide, users are usually highly dependent on the use of DSE to do their jobs, and normally use the equipment for continuous spells of an hour or more at a time and more or less daily.

Some members disagree to the interpretation of "user" in the Health Guide, expressing concern about the implications on the business environment. They consider that a user should mean an employee who uses DSE continuously for four hours or more every day.

Following thorough discussions and having considered members' views, the Administration has proposed to revise the definition of "user" in section 2 of the Regulation to mean an employee who, by reason of the nature of his work, is required to use DSE for a prolonged period of time almost every day.

The Administration has also proposed to elaborate the definition of "user" in a code of practice to mean an employee who is required to use DSE, almost every day, continuously for at least four hours during a day or cumulatively for at least six hours during a day. The code of practice is to be issued by the Commissioner for Labour under section 40 of the Occupational Safety and Health Ordinance.

Some members have expressed support for the Administration's revised definition of "user" and the proposed elaborated meaning in the code of practice. Some other members, however, do not support the Administration's revised definition. These members have pointed out that the duration of the use of DSE in all the studies provided by the Administration refers to average hours per day,

which is a measure of cumulative duration of use, and that there is no mention of continuous use in the studies. The Honourable LEE Cheuk-yan has just given a detailed account of the findings of these medical studies. I am sure Members can understand the related medical concepts to a certain extent.

Madam President, under section 4 of the Regulation, a person responsible for a workplace is required to perform a risk assessment of a workstation in a workplace. To facilitate the assessment of risk, the Administration has proposed to provide a sample risk assessment checklist in the Health Guide.

As the Health Guide is just an advisory document with no legal effect, some members have suggested that the checklist should be incorporated into the Regulation as a schedule, so that it can become subsidiary legislation.

Having considered members' views, the Administration has proposed that the risk assessment checklist should be provided in a code of practice to be issued by the Commissioner for Labour under section 40 of the Occupational Safety and Health Ordinance. Members support this proposal.

Madam President, the proposal on the making of offences of strict liability is another highly controversial issue. Under section 10 of the Regulation, a person responsible for a workplace or an employer who fails to comply with the various requirements commits an offence and is liable on conviction to a maximum fine of \$50,000. The Regulation also provides that such offences are offences of strict liability.

In the absence of clear compliance standards and requirements in the Regulation, some members have expressed strong reservations about making the above-mentioned offences offences of strict liability. They have also questioned the need for the creation of offences of strict liability.

Some members have also referred to sections 5 and 7 of the Regulation, which provide for a defence of reasonable practicability in respect of the requirement that a person responsible for a workplace must take the necessary measures to reduce the risk of a workstation and ensure that the workplace is proper for work. They have suggested that the same defence should be incorporated into other provisions, and that a defence of reasonable excuse for the strict liability offences under section 10 should be provided.

Following thorough discussions and having considered members' views, the Administration has agreed to extend the defence of reasonable practicability to other sections, that is, sections 4(5), 6, 8 and 9, to allow some flexibility in compliance with requirements. The Administration is of the view that the Regulation, as amended, can strike a balance between the necessary deterrent effect and sufficient safeguard against the offences of strict liability.

The Administration has accepted the Subcommittee's various views on the Regulation and incorporated them into the agreed amendments.

Madam President, as rest breaks are important to protecting the health of DSE users, some members consider that a provision to require employers to allow DSE users to take appropriate rest breaks or do alternative tasks after prolonged DSE work should be added to the Regulation. Some other members, however, do not support this proposal. On this particular issue, I wish to move an amendment in my personal capacity.

Let me now explain my amendment to Members. Madam President, the Subcommittee held a total of 15 meetings, and as pointed out by Mr LEE Cheuk-yan and me in our speeches, we have sensed (especially since the submission of the Regulation to the House Committee following the 11th meeting) that some Members representing the industrial and commercial sector are really worried that the passage of the Regulation may impact on their business environment. We have also sensed that the Government is thus under the pressure from the industrial and commercial sector, which explains why it has revised the definition of "user" over and over again. We do think that such revisions will definitely affect the existing DSE users.

The revised definition of "user" under the Regulation consists of two criteria: (While listening to them, Members should really consider whether they are proper) First, a person who uses DSE for at least a continuous duration of four hours a day or a person who uses such equipment for a cumulative duration of six hours a day. In other words, such a definition is a far cry from the consensus between the Subcommittee and the Government in the past, that is, the use of DSE for a continuous duration of one hour. With the full-scale restructuring of Hong Kong towards a knowledge-based economy, our working population of more than 3 million are bound to use DSE more and more frequently. When compared with other countries where occupational safety legislation on the use of DSE are found, the Hong Kong Government is already

very slow in response. But the Government has still sought to revise the definition, so that only those who use DSE for a continuous duration of four hours or a cumulative duration of six hours can enjoy any protection. This definition will certainly reduce the number of those who can enjoy protection, thus failing to protect the majority of wage earners having to spend long hours with the computer every day. As pointed out by Mr LEE Cheuk-yan just now, Prof LAM Tai-hing of the Department of Community Medicine of the University of Hong Kong has stated in his letter to the Subcommittee that there is no mention by the Government of continuous use in all the studies cited in relation to the revised definition of "user". Quite the contrary, more and more medical reports have shown that an average cumulative duration of four hours or more every day may cause health problems such as tenosynovitis, "螻蛄手" and sciatica, which all require long-term treatment, and in serious cases, permanent disability may result. There are also the effects on vision such as astigmatism, myopia, eye sore, back pains and headaches and mental pressure.

Madam President, my amendment is based on this background and the related medical information. I hope that Members can support my amendment, because it is worded with reference to the relevant legislation of the United Kingdom, Taiwan and the United States. It is worded clearly that "the person responsible for a workplace shall so far as reasonably practicable ensure that users working on display screen equipment in workstations in the workplace can have periodical breaks or changes of activity so as to reduce their workload with that equipment." I hope that Members from the industrial and commercial sector can understand that even if we are so fortunate — I mean, even with the passage of the Regulation — it does not necessarily mean that employers will necessarily have to, in one way or another, let their staff to really take a rest. They may just ask their staff to engage in alternative tasks, such as office routines like filing and other non-computer-related jobs. I believe that most of the other kinds of jobs belong to this category. I hope that this amendment can provide more specific and clearer protection to employees who use DSE for a prolonged period of time. It is hoped that they can thus avoid contracting occupational diseases which may result from the prolonged use of DSE at work.

I hope Members can understand that we have always hoped that the Government can gradually build up a culture of occupational safety and health instead of taking a regressive step. However, when it comes to this amendment, we really think that the Government is precisely taking a regressive step. If the Regulation allows such a prolonged use of DSE, its existence will be largely

useless, as there will be no protection at all. I hope that while the Secretary frowns at my opinion, she can agree with me that if it had not been the intention of the Government to provide genuine protection to computer users, the Government would not have come up with the idea of continuous duration of one hour. If "continuous use for one hour" is really revised to become "continuous use for four hours" or "a cumulative duration of six hours", how can we describe the revision other than calling it a regressive step?

With respect to these computer-related diseases, both the medical sector and frequent computer users like Honourable colleagues and me do not have actually have any clear knowledge, because such diseases have not occurred yet. Since all these diseases are potential hazards, I hope that the Government can take the lead in promoting a culture of occupational safety and health and accept this amendment with sincerity. I also hope that Honourable colleagues can think about the amendment more carefully and come to realize that it will not lead to any substantial pressure on employers' business environment. I am just asking employers to allow their employees to switch to alternative tasks. They do not necessarily have to give their employees a resting time in the literal sense of the word. Therefore, I hope that Members can support the amendment.

Madam President, I so submit.

MR HUI CHEUNG-CHING (in Cantonese): Madam President, on behalf of the Hong Kong Progressive Alliance (HKPA), I speak in support of the passage of the Occupational Safety and Health (Display Screen Equipment) Regulation (the Regulation) and the resolution proposed by the Government. At the same time, I object to the amendments proposed separately by Mr LEE Cheuk-yan and Mr Andrew CHENG. In our opinion, the resolution proposed by the Government has accommodated the views of people from all sectors in the community and struck a proper balance between such elements as safeguarding the health of employees, taking care of business operation and costs, and so on.

Following office automation and the rapid development in information technology, computers have become indispensable to enterprise operation and the performance of daily work by employees. In certain individual trades or work domains, such as banking and finance, design, communications, data processing, customer services, and so on, some employees have to use computers at work for prolonged periods of time. This may, to a certain extent,

affect their health. For these reasons, the HKPA agrees that the Government should make the Regulation to safeguard the health of employees who have to use computers at work for prolonged periods of time. Actually, all employers are concerned about the health of their employees. The HKPA believes that, even in the absence of the Regulation, most employers will fulfil their responsibility to provide a comfortable and safe working environment for their employees. This is because only in doing so can the efficiency of their employees be guaranteed. The HKPA is of the view that the Government must take into account the actual operation of enterprises when enacting the Regulation. Particularly at this time when the Hong Kong economy is in the doldrums, any legislation should seek to avoid unnecessarily increasing the administrative work and business costs of enterprises. Actually, many enterprises will be affected by the Regulation. The Government is therefore obliged to handle the matter with care and prudence, and consider it in a holistic manner. Members of the public will be at a loss as to what they should do and the daily operation of companies will be affected if the Government rashly enacts laws which cannot be enforced effectively or laws that may cause nuisance to the public.

Madam President, one of the controversies surrounding the Regulation concerns how to define the "user". In the opinion of the HKPA, the definition set out in the code of practice, that is, the use of DSE continuously for at least four hours during a day or cumulatively for at least six hours during a day, is reasonable. The Government's proposal is supported by medical data. On the other hand, if the scope of application is further widened, the number of workplaces being affected will increase. This will probably pose further pressure on small and medium enterprises which are already hard-pressed and in great difficulty. Therefore, the matter must be handled carefully.

In addition, the HKPA disagrees to making it compulsory for employers to give employees regular rest periods, or arrange for other types of work from time to time. As the actual situation faced by different trades varies, regulating rest periods and work arrangements by law will make it impossible for officers in charge of enterprises to make work arrangements in a flexible manner. This will consequently affect the operation of individual trades and industries. In our opinion, legislative regulation and imposition of punitive measures on employers are not the most effective means to safeguard the health of employees. It will be most appropriate and flexible for employers and employees to work out among themselves the arrangements for rest periods. We believe employers will be willing to allow users of DSE to take a short break when necessary.

Lastly, Madam President, the HKPA will like to stress the point that in order to ensure the effective implementation of law concerning the protection of occupational safety, the Government must enhance its publicity and educate both the employers and employees to enhance their understanding of the importance of the relevant Regulation, so that they will take improvement measures on their own. I so submit. Thank you, Madam President.

MR LEUNG FU-WAH (in Cantonese): Madam President, I am both glad and sad to see that the Occupational Safety and Health (Display Screen Equipment) Regulation (the Regulation) is finally tabled before the Legislative Council to be voted upon. I am glad because, after the Regulation has been tossed around for some time, it is eventually tabled before the Legislative Council for voting, without meeting the fate of abortion. I am sad because a simple law such as this has to labour through such a difficult process before finally coming into being. Frankly speaking, the labour sector has waited for six years for the tabling of the Regulation, which is a long wait.

In as early as 1996, the Regulation was submitted to the Labour Advisory Board (LAB) by the Labour Department. After endorsement by the LAB, the Administration submitted some proposed standards under the Regulation for discussion by the LAB and invited submissions from labour unions, commercial associations, the occupational safety profession and organizations interested in the matter. After the results of discussion and consultations were passed by the LAB, there was a long wait before the Administration tabled the Regulation before the Legislative Council for enactment. Finally, the Education and Manpower Bureau submitted the Regulation to this Council in November 2000. The Administration expected the Secretary for Education and Manpower to move a relevant motion on 6 December of that year, but, because the House Committee demanded that a Subcommittee be set up to study the Regulation, the Secretary withdrew the motion. The Subcommittee quickly convened its first meeting on 14 December. There were 14 members in the Subcommittee, who came from different political parties and sectors. It can be said there was sufficient representation from all sectors. After 11 meetings with the Administration, the Subcommittee accordingly briefed the House Committee of its deliberations on 9 November 2001. The Secretary for Education and Manpower planned to move a motion for the purpose at the Legislative Council meeting on 21 November 2001. But since some Members later indicated that they were concerned about the enforcement and the impact of the Regulation on

business costs, they requested that the Subcommittee conduct further discussions. Thus, the Secretary withdrew the motion and the Subcommittee held four more meetings. In this way, the Regulation went through some more hurdles and it finally came to this Council today. I hope the Regulation may be passed today and formally implemented a year later so that workers may be granted reasonable protection in terms of occupational safety and health.

The Subcommittee held 15 meetings over a span of 16 months. It was reasonable to conduct discussions in detail if Members thought some parts of the Regulation were unclear. We noted, however, through various channels, that some people in the business sector publicly requested the Government to withdraw the Regulation on grounds of additional costs businesses. This we would never agree to. It would be irresponsible to say that "occupational safety and health of workers may be dealt with at a later date because the economy is weak", which is nothing more than a pretext. Two Members of the Legislative Council, six members of the LAB and I held a meeting with the Secretary for Education and Manpower to express the concerns and worries of the labour sector. We understood that during a recession, employers would automatically object to any new labour legislation, for they would think that operating costs would then increase. Nevertheless, just as we must think in the long term and enhance our assets in doing business, we must give workers proper protection in occupational safety and health, as they are one of the employers' valuable resources in production. Only in this way can productivity be guaranteed. There is medical evidence to prove that improper use of the display screen can lead to occupational diseases. At a forum organized by the occupational safety and health committee of the Hong Kong Federation of Trade Unions, some workers testified that proactive measures to safeguard occupational safety and health would ultimately bring about enhanced productivity and create more wealth.

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

During discussions of the Subcommittee, the Secretary for Education and Manpower and representatives of the Labour Department often had different interpretations and understandings of provisions under the Regulation, which directly affected the judgement of members. We understand the Bureau is mainly responsible for policy matters and is not familiar with the actual operation.

But the Labour Department, being an executive arm of the Policy Bureau and responsible for the operation of the Secretariat of the LAB, should have a relatively profound understanding of the Regulation. Despite the intrinsic difference in function between the Bureau and the Department, that difference should not constitute a reason for the different interpretations that arise between them about the Regulation.

Though the Regulation did at one stage face the danger of abortion, out of perseverance, the Administration continued to provide more information to facilitate thorough discussions in the Subcommittee. The Administration even provided details on cost estimates for employees under the Regulation and found that the average compliance cost for each workstation is only \$90. Had the Administration provided information early and in an accurate manner, I trust misunderstanding among Members of this Council and the public must have been minimized and the Regulation implemented early.

About the amendments proposed by two Honourable colleagues, Mr LEE Cheuk-yan intended to amend the definition of "user". Discussions have been held in the Subcommittee on this. We thought the difference arose out of a difference in medical opinions. We are of the view that the Administration should review the definition of "user" if, in future, there are medical evidence substantiating that cumulative use of the display screen for four hours during a day, almost every day, would cause health problems. The Administration has assured members that after the Regulation has come into effect, the Labour Department will monitor the trend of reported health problems arising from work with DSE, keeping in view findings of relevant medical researches, and make reference to its enforcement experience, to facilitate the review of the definition. This point was made sufficiently clear in the Subcommittee.

As regards the amendment proposed by Mr Andrew CHENG to add a provision for regular rest breaks, the Subcommittee had not had the chance of a formal discussion because some of the members could not obtain more information and, according to some members, the amendment proposed would be directly incompatible with the mode of operation of some trades.

Madam Deputy, an important objective of the Regulation is prevention. Compared to other mature economies, Hong Kong has a shallow and inadequate sense about laws governing occupational safety and health and its employees are not made sufficiently aware of occupational safety. I hope the Regulation can

be carried smoothly to allow employees to have the protection they need in relation to occupational safety and health. I hope the Administration may carry out an in-depth promotion before the implementation of the Regulation. I do hope that labour and capital can fully co-operate to implement properly measures provided for under the guidelines of the Regulation.

With these remarks, I support the resolution. Thank you, Madam Deputy.

MISS MARGARET NG (in Cantonese): Madam Deputy, I rise to speak in support of the Occupational Safety and Health (Display Screen Equipment) Regulation (the Regulation).

It is the obligation of all employers to ensure the occupational safety and health of their employees, which is why every civilized community should support the cause without hesitation. I very much agree that laws should be made to set down the minimum legal responsibilities of employers or responsible persons. I also agree that a policy should be formulated to encourage the co-operation of employees and employers in raising occupational safety and health standards, with a view to creating a good working environment.

The use of computer at work has rapidly become very popular over the past few years; at the same time, many medical studies have shown that the prolonged use of DSE at work may lead to various health problems. It is therefore entirely appropriate for the Hong Kong Special Administrative Region (SAR) to legislate on the occupational safety and health issues related to the use of DSE at work. As a result, though I was not a member of the relevant Subcommittee, I still think that I should also exert personal efforts to assist in passing the Regulation. I am very grateful to Honourable colleagues and the Administration for their patience in explaining the issues to me and in listening to the views put forward by me only at the final stage of the scrutiny.

Madam Deputy, actually, the main problems are just about how we should define the targets of the Regulation and the legal responsibilities of employers and responsible persons. Since strict liability offences are involved, this Council must of course be exceptionally cautious, doing all it can to avoid any ambiguities in definitions, lest those affected may become too confused to take the reasonable steps necessary for meeting the requirements of the legislation.

Technically, it is all a matter of how best to ensure that the principal ordinance, the associated subsidiary legislation and the non-legally-binding code of practice can work as an integrated whole to achieve the desired legal effect and clear and practicable objectives. I am sure that with all the efforts which have been exerted so far, the resolution moved by the Administration at this meeting can already address most of our worries. Although the occupational safety standards provided for in the Regulation are rather low, we have after all taken a solid first step.

Another point which I think is worth mentioning is that in order to make the legislation clear enough, the definitions in the Regulation must be clearly worded. There must be no ambiguity, and the code of practice must not be relied upon as a means of clarification; all the definitions in the Regulation should never be expanded or narrowed in the code of practice. The proper function of the code of practice should be to cite actual examples to make it easier for members of the public to understand the application of the definitions contained in the Regulation.

The delineation of the scope of application of the Regulation actually depends most significantly on the definition of "user", because only workplaces regularly used by users, or workplaces intended for the regular use of users will be subject to regulation. The definition as amended by the Administration reads as, and I quote, "an employee who, by reason of the nature of his work, is required to use DSE for a prolonged period of time almost every day." I think this definition is clear enough and easy to enforce.

Whether an employee can meet the definition of "user" should be determined by the nature of his work. If the work involves the prolonged use of DSE almost every day, as in the case of data processing, telecommunications, computer graphics, and so on, then he should be regarded as a user as defined; there should be no further need to argue about the number of hours a week, or the number of hours a day.

There is yet another key issue. One of the basic legal responsibility of employers and responsible persons within the scope of the Regulation is that they have to conduct a risk assessment. Then, what kind of risk assessment can meet the legal requirements?

As amended by the Administration, the relevant provisions of the Regulation no longer contain any broad and ambiguous requirements, and with the code of practice specified in section 10, the following effect is achieved: As long as an employer fills out the Checklist under paragraph 3.2 of the code of practice, he can already satisfy the requirements on risk assessment.

Once this problem is solved, it is not difficult to comply with other legal responsibilities.

Madam Deputy, for the above reasons, I do not think Mr LEE Cheuk-yan's amendment is at all necessary. Actually, Mr LEE's amendment will only make the definition of "user" ambiguous, because the "use of display screen equipment cumulatively for 4 hours or more during a day" as proposed will instead lead to more difficulties in terms of onus of proof and is not conducive to enforcement.

Madam Deputy, I should perhaps explain how "user" was originally defined in the Regulation. "A continuous duration of four hours" and "a cumulative duration of six hours", as mentioned by Mr LEE Cheuk-yan and Mr Andrew CHENG, were actually not found in the Regulation; they were instead contained in the code of practice which is not legally binding. As originally defined, "user" should be "an employee who normally uses DSE as a significant part of his normal work". This is very ambiguous. Under the present definition, we can already make a decision based on work nature, and, not only this, employers will not find it so easy to take advantage of any "loopholes".

As far as the code of practice is concerned, in case an employer requires an employee to use DSE for a continuous duration of three hours and 55 minutes and then do other types of work for one hour and 30 minutes during a day, the employee will not be regarded a user as defined. But does this mean that this can free the employer from his liabilities? No, because the Court will make a judgement on the basis of the definition found in the Regulation. This means that if the employee has to use DSE for prolonged periods almost every day, he will be protected. Therefore, the employer will be held liable if the Court considers that this constitutes a prolonged period of use. The code of practice only provides actual examples for the purpose of illustration. Employers should never think that by adhering to the time arrangements given in the code of practice, they can take advantage of the "loophole" and escape their liabilities.

Therefore, I think that the present definition is better than the proposal of Mr LEE Cheuk-yan. If the present definition is revised and "a continuous duration of four hours" is adopted, then, because criminal liability must be interpreted in the narrow sense, the prosecution may have to prove that the employee has really worked continuously for four hours, not even five minutes less. I personally think that this will instead reduce the protection for employees.

As far as medical proof is concerned, we understand that the code of practice is not subsidiary legislation, and it can be revised according to the actual circumstances with the passage of time. I know that with respect to the revision of the code of practice, the Administration has made it clear that: first, the code of practice will not be revised in the immediate future following the enactment of the Regulation; second, any revision of the code of practice must be preceded by efforts to consult employers and employees under the established consultation mechanism, and the extent of consultation will not be reduced.

For this reason, I am satisfied with this part. Although I understand that the labour side may still be a bit worried, I nonetheless think that with a mechanism, there will always be room for development in the future.

I do not agree to Mr Andrew CHENG's amendment also, because the practical effects of his amendment will render a responsible person who fails to ensure that a user can have regular rest breaks or handle other types of work a criminal offender. I think the proposed provision is much too vague, to the extent that the criminal liability involved is unnecessarily enlarged. Therefore, I will not support this amendment.

Madam Deputy, finally, I wish to take this opportunity to raise one point for consideration in other meetings of this Council in the future. The power to make regulation conferred on the Commissioner for Labour under section 42 of the principal ordinance is much too large and extensive. In particular, sections 42(5) and 42(6) provide that the Commissioner may, by way of making regulations, create new criminal offences and make them "offences of strict liability". Offences of strict liability should not be created so very easily, and this is not a common and appropriate term in law. This should be reviewed.

I so submit.

MR YEUNG YIU-CHUNG (in Cantonese): Madam Deputy, the Occupational Safety And Health (Display Screen Equipment) Regulation (the Regulation) stipulates that if an employee uses DSE continuously for at least four hours during a day or cumulatively for at least six hours during a day, he is defined as a "user" or will be included in the definition of employees protected by the Regulation. It looks as if it is a simple regulation, but once it is scrutinized, we found that it is rather complicated. With 15 meetings held over a period of 16 months, the complexity does not only lies in definition alone, as the essence also includes how a balance should be struck between the interest of operators and the employees. The Regulation tabled today has gone through a series of repeated discussions and revision before completion, in which the Government has elucidated to this Council and other relevant parties of the definition of "user", risk assessment and possible additional cost in staff training and equipment improvement. In general, the Regulation may enhance the protection of occupational safety and health of employees on the one hand, and avoid unnecessary labour dispute on the other hand. Therefore it can be considered an achievement through the joint efforts of employers and employees. The Democratic Alliance for Betterment of Hong Kong (DAB) supports the Regulation.

The DAB supports neither the amendment proposed by Mr LEE Cheuk-yan nor the amendment proposed by Mr Andrew CHENG. The amendment of Mr LEE has actually been discussed in meetings of the Subcommittee, and the difference only lies in the divergent medical views on the influence of frequent use of computers to the user. In fact, the medical sector has not come to any unanimous conclusion on the issue, therefore, in order to avoid the legislation being dragged on and on for a long time, we have strong reservations about this. Meanwhile, certain employers worry that if the definition of user covers a broader area, it will increase operational cost and may prompt frequent complaints by wage earners against their employers, which may have negative impact on the harmonious labour relationship. This is also the reason why we have expressed reservations.

Moreover, the Government has also undertaken that after the Regulation is put into effect, the Labour Department would watch closely the trend of the report on health problems caused by the use of DSE, relevant medical findings as well as the implementation of the Regulation in the context of review.

Although the amendment of Mr Andrew CHENG has not mentioned any specific restriction in terms of duration, he has made a further demand for rest time for employees. Moreover, this will mean fundamental interference in the nature of work. Therefore we believe it is hard for different industries to achieve compliance due to the difference in modes of operation, otherwise, companies may have to increase manpower enormously to meet the requirement. As a result, the implementation of the provision on giving periodical breaks will face a lot of difficulties amid the current economic condition.

The DAB trusts that the Regulation *per se* is able to achieve a win-win situation in terms of employee protection as well as maintaining the business environment for the commercial and industrial sector.

With these remarks, I support the original motion.

MR LEUNG YIU-CHUNG (in Cantonese): Madam Deputy, I rise to speak in support of the amendments proposed by Mr LEE Cheuk-yan and Mr Andrew CHENG.

Just as many colleagues have said, the Occupational Safety and Health (Display Screen Equipment) Regulation has been scrutinized for a long time. Now that the final discussion focuses on two issues, namely the thrust of the amendments proposed by Mr LEE Cheuk-yan and Mr Andrew CHENG.

The amendment of Mr LEE Cheuk-yan is about the definition of "user". In fact, a lot of Honourable Members have mentioned the definition of "user"; therefore I do not wish to say any more. I just wish to point out that Mr LEE Cheuk-yan did not propose it because of personal favour, instead, he has proposed it on the basis of six reports prepared by local and overseas medical research institutes.

Just now the Honourable YEUNG Yiu-chung said that there were two schools of thought in the medical sector, both having different standpoints and therefore different conclusions. I consider that unimportant, as it is a good thing for the medical sector to have different analysis, because everybody may examine the issue in a more thorough way. However, as far as health is concerned, why we cannot consider that from a bad perspective, and why should we consider it from a good perspective? The bad perspective I have just said

means that as the medical sector considers health will be affected, why should we not consider it from this perspective, instead of believing the views of other people from the medical sector who consider there is no problem at all? Madam Deputy, I found that there is a problem with that orientation.

I would like to cite an example. I have just gone to the blood donation centre, but I was unable to give blood, because the nurse asked me whether I had been staying in England for over six months during 1980 to 1996. That six months did not mean a one-time stay, even some on and off stays. The nurse told me that, as they were unsure about how immense the consequence would be, and for the sake of safety, they refused my donation. Their action was done just because they considered things from a "play safe" perspective, they have the people's interest at heart. I consider that a good way of handling things because they consider things from the health perspective of the public.

Just now Mr YEUNG Yiu-chung said that people from the medical sector consider prolonged use of computers will affect the health of users, then why we should not consider from this perspective, instead of believing the views of some other people from the medical sector who said it is all very fine? Are we going to turn a blind eye to the health of workers or employees? I think there is a problem.

As a result, I think Mr LEE Cheuk-yan has not proposed the amendment simply of his wishful thinking, nor is he seeking to help employees on purpose. He has sought to protect the health of employees on medical grounds. I think the Government should take that into consideration. Moreover, I encourage Members in this Chamber to consider the issue more from the perspective of employees' health.

A moment ago, some Honourable Members said that if we follow the suggestion of Mr LEE Cheuk-yan, it would increase the business cost. Perhaps it is right, or perhaps it is wrong. Why should I say that? Madam Deputy, superficially, and from a simple view, the cost may go up if we have to give more breaks to employees. However, the problem is that if employees are suffering from prolonged fatigue, or their health is affected, it would not be a strange thing that their efficiency would decline and the company may suffer losses because of this. As a result, we have to strike a balance and should not look at things superficially. We should look at it from a longer perspective.

Moreover, I feel that it would not only bring negative impact to companies as it would also involve social cost. What is social cost, anyway? If the health of an employee is undermined, unless he goes to seek medical consultation on his own expenses, otherwise he will have to seek consultation from public hospitals. The Government always says that it has to subsidize such services, so if it has to make subsidy, then the cost is increased indirectly. Why have we not looked at the matter from that angle?

Therefore, when we consider the issue, we should not be that short-sighted in a utilitarian way, we should consider the protection of the health of employees from a macro viewpoint, and we should not consider the cost-effectiveness only from the angle of an individual company. We should consider the cost-effectiveness of the entire community from a longer-term perspective.

As to the amendment of Mr Andrew CHENG, it requires employers to ensure users of DSE can have periodical breaks or changes of activity after prolonged use of the equipment. Actually, he hopes to help employees to alleviate their mental stress by staying away from the same working environment after a prolonged period of time. I do not know whether Honourable Members have noticed that if we engage in a monotonous job for a prolonged period of time, the strain inflicted could be very serious, such as the muscle of typists could easily be strained because of prolonged typing action, which is hard to find a cure. As a result, the amendment is really considered from the perspective of employee protection. In fact, if the fatigue of employees can be reduced, their efficiency would improve, and the benefits should therefore be greater than the shortcomings. I hope Honourable Members can consider it from this respect.

With regard to costs, according to the estimate of the Government, the cost of compliance for each workstation would be something between \$40 and \$1,230. If we calculate a mean value from the two figures, it is just around \$90. Even if we calculate it with the highest value of \$1,230, I guess Members of the Liberal Party present in this Chamber have to pay the same amount for a bottle of fine red wine. Why we are so reluctant to pay the price of just a bottle of red wine in order to improve the health condition of employees, so that they can do their best to make profits for their employers? Why have we not thought about the issue? I think it merits our careful consideration.

Lastly, I hope we should not just look at the benefits in front of us, we should show more compassion and concern towards the employees. When we are thinking of our own business environment, we should also take the working environment of employees into account; to jointly create greater wealth together does not mean the wealth of the employers alone, it should include the wealth of the employees and the community as a whole.

Madam Deputy, I so submit.

MR HOWARD YOUNG (in Cantonese): Madam Deputy, the objective of the Government in proposing the Occupational Safety and Health (Display Screen Equipment) Regulation (the Regulation) is to hasten employers to provide protection to employees who have to use computer display screen for a prolonged period of time. The rationale behind it is perceptible and comprehensible. In the wake of advances in information technology, it is becoming more and more common that all walks of life including tourism and other industries are using computers to aid daily business operation. In the last decade, the number of people using computer has been increasing, with the result being there is a computer on the desktop of almost everyone, ranging from chief executive officers to clerical staff. They have to exchange the latest information, to check data or to input files every day. If the proposed legislation on occupational safety is too ambiguous and does not have a clear definition of terms of protection, it will cause chaos or even certain unnecessary disputes and arbitration.

The Regulation originally required protection of employees who have to use computer display screen for a period of one hour a day. If that proposal is implemented, it will bring extensive impact on many industries and cause a lot of troubles to business operators. In the current economic doldrums, the Regulation will only add trouble to the already bleak economic condition and become an added burden to them, in particular the small and medium enterprises (SMEs). In order to comply with the standards set down by the Government, employers have no alternatives but to spend the money, and some larger corporates may even have to spend several hundred thousand dollars to improve or re-examine the design of the existing workstations, and to provide adequate safety and health training to employees who have to use DSE.

Mr LEE Cheuk-yan has earlier mentioned Members from the industrial and commercial sector. As a representative of the tourism sector, which comprises travel agents and hoteliers, I shall simply admit that I am representing the industrial and commercial sector since my constituents belong to the industrial and commercial sector. However, besides the tourism industry, other industries will also use computers, such as ordinary import and export companies which take orders from their customers, the freight and forwarding industry which has to liaise with container terminals for the handling of cargoes and the sequence of loading, and even the cashiers of the catering industry who have to use DSE.

I do not know why the Honourable LEUNG Yiu-chung digressed to the subject of red wine. I feel that regardless of businessmen or SMEs, a better business environment means lower costs. In fact, the additional profit will not go only into the pockets of the employers alone, since they will also take care of the welfare of their employees or will hire more people, thereby increasing employment opportunities. People from the industry I met, such as bosses of travel agencies, have told me that if the business environment improves and so their business improves, they would be willing to give their employees bonus. As a result, I beg Honourable Members not to think that all cost saving efforts will benefit the bosses only which is in fact rather narrow and limited.

Insofar as the tourism industry is concerned, front-line employees of travel agents, airlines and hotels will only use the computer in front of them after receiving enquiries from customers or when they have to make reservations for air tickets, group tours or hotel accommodation. They will use the computer only when there is a message, and they do not use the computer for a continuous prolonged period of time. Since they will not meet the prolonged use criteria, it will only cause unnecessary impediment and affect efficiency if the regulation is compulsorily imposed on the those industries. As a result, both the Liberal Party and I consider the Government's amending the qualifying duration from the original one hour of continuous use daily to at least four hours a day or

cumulative use for six hours a day for purpose of employee protection reasonable. We support the amendment.

Since there are medical findings indicating that the chance of inflicting physical problem will only increase by continuous use of DSE for over four hours, in the absence of other strong evidence, I consider the Government's amendment good enough to protect employees who currently use DSE for a prolonged period of time. As to the amendment proposed by Mr LEE Cheuk-yan, who suggested to decrease the cumulative six hours to four hours, the Liberal considers it unnecessary.

In order to enforce the Regulation, if employers and users fail to comply with the relevant requirements, including failure to perform a risk assessment of a workstation in the workplace and keep a record of all risk assessments performed, or the workstation does not meet the required standard, the employers and persons in charge are subject to a maximum fine of \$50,000, and the user \$10,000. Mr Andrew CHENG has proposed an additional requirement, requiring employers should arrange break time or alternative jobs for employees who have to use DSE for a prolonged period of time, with a view to alleviating the workload in respect of using DSE, otherwise, the employers commit an offence and are liable on conviction to a fine of \$50,000. The Liberal Party does not support this proposal, too.

I would like to draw Members' attention to the fact that, in this Chamber, there are DSE on the desktop of at least eight Members now. Madam Deputy, we have been sitting here for four hours now from 2.30 pm, will you ask Members to take a break, or just as Mr Andrew CHENG has proposed, we should either take a break or do some other things? Madam Deputy, will you ask them to do some on-line football betting before coming back and read the relevant papers? Is it not totally illogical?

Now the Regulation stipulates that employers should provide reasonable protection to employees who use DSE continuously for four hours every day or

six hours on a cumulative basis. If we rigidly require employers to arrange from time to time other assignments for employees who have been continuously using DSE for more than four hours, I think that is unrealistic and a waste of time, and eventually the draconian regulation will only add administrative pressure and operational cost to employers. In return, more companies will relocate northward and the unemployment rate in Hong Kong will rise even higher.

With these remarks, Madam Deputy, I support the passage of the motion.

DR LO WING-LOK (in Cantonese): Madam Deputy, I am much honoured to have been able to take part in the long scrutiny work of the relevant Subcommittee. I was one of the first members of the Subcommittee at the time of its formation. In the very long scrutiny process, I had the opportunity to witness how employers and employees expounded their respective concerns about the Regulation, how they negotiated and bargained, and how they finally arrived at a scheme acceptable to the majority of Subcommittee members. I really appreciate such an approach of drawing on collective wisdom, of mutual understanding and accommodation. Certainly, I support the final product.

I participated in the work of the Subcommittee neither as an employees' representative nor as an employers' representative. Instead, I was there to study the Regulation from the professional and scientific perspectives, with at the same time a detached and objective standpoint.

One of the main issues raised during the whole deliberation process was the definition of "user". Quite a number of Members have mentioned that the term was at the very beginning defined as a person who uses DSE for a continuous duration of one hour a day. However, some viewed that such a definition was much broad, so broad that it would cover practically all desk-bound staff, and therefore, practically all employers. As a result, they put forward "a continuous duration of four hours a day" as a kind of "counter-offer".

This was mainly a proposal based on the views of the commercial sector and employers' representatives. Assuming that a person works eight hours a day, and further assuming that he works at the computer continuously for three hours and 45 minutes in the morning before going off for a half-hour lunch break and returning for another three hours and 45 minutes of continuous computer work in the afternoon, then discounting the half-hour lunch break, he will in fact be working at the computer for the whole of a working day. But if the definition of "a continuous duration of four hours" is adopted, this person will never be regarded as a user. This means that he will not be entitled to any protection. If the Regulation adopts this definition, it will not serve any real purpose.

For this reason, I advised the Government to introduce the concept of cumulative duration to the definition. Having discussed and negotiated with the various sides, the Government made a counter-offer and proposed that a person who works with the computer for a cumulative duration of six hours or more a day should be regarded as a user. This is a broader definition, being at least able to cover the person mentioned by me — one who works with the computer for three hours and 45 minutes in the morning and another three hours and 45 minutes in the afternoon.

If this definition is adopted, what should be the number of cumulative hours? Four, five, six, seven, or eight hours? To answer this question, I looked up the relevant literature, in which I discovered that "four hours" seemed to be an oft-quoted "magic figure". But the literature I read did not specify whether it should be a continuous duration of four hours or a cumulative duration of four hours. Therefore, the Government's original counter-offer about a continuous duration of four hours was in fact founded on no scientific basis. But that again, which of the two should be the case? To answer this question, I therefore sought the advice of a local expert in this field, Prof LAM Tai-hing of the University of Hong Kong. Like me, he read the relevant literature and studied the records of other countries. His professional advice was that "a cumulative duration of four hours" should be adopted as the standard. I respect his professional advice and will therefore support Mr LEE Cheuk-yan's amendment.

In the Subcommittee, I said to the Government that if in the end, "a continuous duration of four hours or a cumulative duration of six hours" was adopted for defining the term, the Government should seek to revise the code of practice and reduce the cumulative duration once sufficient medical proof became available. My request was accepted by the Government in the Subcommittee. That is why I hope that when the Secretary gives her reply later, she can repeat this undertaking of the Government.

However, if Mr LEE Cheuk-yan's amendment is not passed, I will support the mainstream scheme of the Subcommittee, because this can at least enable the Regulation to take effect, to protect at least some employees.

As for Mr Andrew CHENG's proposal, I respect it very much too, and I do appreciate his efforts of fighting for the rights and interests of workers. But if we think about the matter more carefully, we will see that it will be very difficult to enforce his amendment, because the circumstances of different trades and industries vary greatly. Therefore, having expressed my respect for him, I must say I cannot support his amendment.

Madam Deputy, I so submit.

MS MIRIAM LAU (in Cantonese): Madam Deputy, I am happy to see that the Subcommittee, after protracted discussions, has finally found a scheme of regulation which is broadly acceptable to both employees and employers. It is because all legislation on occupational safety should seek to strike a balance. That is, while it should provide employees with safeguards that are genuinely needed, it should avoid putting on employers a burden which is overly heavy or disproportionate to the actual needs. I think the Regulation proposed by the Government presently can strike this balance.

The most controversial point concerning the Regulation is the definition of "user". The Regulation provides that user means an employee who normally uses DSE as a significant part of his normal work. At first, the Administration proposed for incorporation into the health guide that "user" means an employee who normally uses the equipment for continuous spells of an hour or more at a time and more or less daily. The Liberal Party considers the limit of one hour

too draconian, for employees in many trades and industries would thus be caught by this category. This would make compliance difficult and at the same time increase the operational costs and affect the business environment.

At the request of members of the Subcommittee, the Administration submitted reports of medical studies on the subject conducted in the United States and Canada. Results show that persons who use DSE for four hours or more every day are exposed to a higher risk of developing health problems compared with those who use the equipment for less than four hours. In this connection, the Administration finally agreed to revise the definition of user to mean an employee who is required to use DSE continuously for at least four hours during a day or cumulatively for at least six hours during a day. This is a more reasonable definition, and it can target employees who are genuinely affected. The Liberal Party supports this.

On Mr LEE Cheuk-yan's amendment which seeks to amend the definition of user to mean an employee who is required to use DSE cumulatively for four hours or more during a day, the Liberal Party considers it unnecessary. It is because the Labour Advisory Board (LAB) discussed this issue in 1996 and considered that the Regulation was not intended to target at people who only used DSE intermittently at work. So, the amendment will unnecessarily expand the definition of user. It goes not only against the previous understanding of the LAB, but also represents a departure from the policy intent of this Regulation. Moreover, it will even increase the burden of the industries concerned, particularly employers running small and medium enterprises. For this reason, the Liberal Party cannot support this amendment. The Liberal Party considers that in terms of a cumulative duration, it is appropriate to draw the line at using DSE for at least six hours cumulatively. It is because on the basis of eight-hour work per day, six hours account for a substantial part of a person's work during a day. So, even if employees use DSE for six hours intermittently, they have, after all, used the equipment for six hours cumulatively, and it is reasonable to provide protection for this type of employees.

Mr Andrew CHENG's amendment requires employers to allow users of DSE to take periodical breaks every day during their use of the equipment or to allow them periodical changes of activity so as to reduce their workload with that equipment. The Liberal Party considers this amendment unspecific and unrealistic, for it is difficult for employers to define "periodical breaks" in enforcement. Should such breaks be provided in the form of "recesses" similar to those in schools? Furthermore, it is also difficult to meet the requirement of

allowing "periodical changes of activity". How possibly can employers arrange for employees specifically hired to input computer data or work on computers to perform other duties unrelated to their main duties "periodically"? How many times does "periodical" mean and what is the duration of each such period? All these problems will arise from Mr CHENG's amendment. Even though there is no statutory requirement, it does not mean that employees are allowed no rest breaks at all. Section 3.3 under Part III of the Health Guide on Working with Display Screen Equipment has made proposals with regard to arrangements in this respect for the protection of employees. We consider that this is a more flexible and more acceptable approach than rigidly providing for this requirement in the Regulation. Therefore, the Liberal Party will not support Mr CHENG's amendment.

Another point at issue in the Regulation is about the creation of offences of strict liability. The Liberal Party opposes the making of legislation and provisions that will have negative impact on the business environment given the present economic downturn and an increasingly difficult business environment. Subjecting employers to offences of strict liability arbitrarily will only increase the pressure on employers, which is not conducive to resolving the problem. After repeated lobbying efforts by Members of the Liberal Party, the Administration agreed to amend sections 5 and 7 of the Regulation to build in a defence of reasonable practicability. The Liberal Party considers that this amendment is better than the original provision, for the new provision provides a reasonable defence for persons being prosecuted for offences of strict liability. Yet, we still hope that the Government will undertake not to abuse this provision in enforcement. In fact, the spirit of enacting this Regulation is to provide guidance to the public, particularly to arouse employers' awareness of occupational safety. Therefore, publicity and education are most important. The Government should encourage employers to make improvements by means of warnings and reminders more. This, I believe, will be more effective.

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

MR SIN CHUNG-KAI (in Cantonese): Madam Deputy, this Regulation is long overdue. It was in 1996 when the Government first discussed this issue at the Labour Advisory Board. Back in 1996, one of the major industries being the target of discussion then was the paging industry. At that time, there were 1 million pager users in Hong Kong. But today, as I can see from the relevant records, there are only 250 000, and the number has been down by three quarters.

In fact, some workers in the paging industry may have become unemployed already or some may have left the trade. Most of the paging companies in which they used to work may have relocated their operations to Macao and even the Mainland. So, when the Government first intended to table this Regulation before the Legislative Council and in the first stage of the drafting of the Regulation, its thinking then still targeted at bringing certain types of job under regulation. Later, this Regulation was proposed to be tabled at the Legislative Council, and insofar as its drafting is concerned, if the draft Regulation as it stood then was tabled before the Legislative Council, that is, in the way as it was drafted in last November, the number of people to be affected would be so enormous that the Regulation could not possibly be workable.

I remember when I attended the last meeting, I urged the Government to withdraw this motion, and I was criticized for this. As Members all know, I am the representative of the information technology sector and my constituents are mostly employees. I wish to tell the labour sector that I am not a representative of employers and the employees whom I represent are workers as well. But why did I oppose this motion? It is because the coverage of the motion is inadequate indeed, and I also have the feeling that some Members of the labour sector have mistakenly thought that this Regulation is a "godsend", not knowing that what they have actually got is a blade of "grass". They think they have got a piece of legislation. But if this piece of legislation cannot protect employees and even if they keep on taking it forward, they may eventually find that this piece of legislation is totally useless.

Therefore, I felt then that the Government should withdraw this motion. As to why I considered the motion useless, I think some colleagues have already explained the reason earlier on. It is because the motion is too vague and hollow. Indeed, as long as employers have signed as required to confirm that an assessment has been conducted and that they have done everything that can be possibly done, they will be considered as having done their part already. But in fact, this cannot achieve any effect at all.

In November last year, it was proposed that the motion be tabled at the Legislative Council again. At the last meeting to discuss the motion, Members from the industrial and business sector were consulted on the motion, and to tell the truth, many of them did not attend the meeting. So, the motion was later referred to the House Committee for further discussion. Certainly, I think the amended Regulation before us today can strike a better balance in terms of the benefits and responsibilities of employees and employers. On employees'

benefits, that is, the protection afforded to employees, the Regulation before us today provides more than the blade of "grass" did; and the responsibilities borne by employers are also set out in more express terms. To put it simply, the Regulation is not totally useless. I have been a user of display screen for as long as over 20 years, and I believe I am well qualified to say a few words here, for I know to which kind of jobs such protection will be particularly important.

In fact, we also have to discuss another issue today. Earlier on, many Members opined that Mr Andrew CHENG's amendment is not at all helpful. This is wrong. Mr Andrew CHENG's amendment does have a part to play. Indeed, as far as I can recall, there is also this protection in the laws of England and so is there in the United States. Why can Hong Kong not do the same? Is it that these countries do not protect their employees? I do not think so. Should we stipulate changes of work for employees? Why is it necessary? Very often, indeed, an employee uses the display screen as an ancillary equipment only and is required to perform other duties. If changes of work or activity are allowed, it would make a great difference.

Madam Deputy, we will support this motion today. But I still think that there are certain inadequacies. I know that the two amendments will not be passed today, because I know that the Government's lobbying efforts have been very successful. The discussion on four hours or six hours also warrants attention. Certainly, we have to consider the views expressed by Miss Margaret NG earlier on. Since this limit of four hours or six hours is clearly written in the code of practice, the Government will not institute prosecution in cases of less than six hours. So, there is actually not much protection for employees. Please do not think that this motion is the best "godsend"; it is just a greener blade of "grass". Now that I have made these points clear. Mr LEE Cheuk-yan should not question me anymore. Honestly, Madam Deputy, I wish to tell Mr LEE through you that I do wish to protect employees. I just hope that we can come up with a piece of legislation that can truly protect employees. However, the motion before us still does not cover many areas.

The use of notebook computer, for example, is not included. Nowadays, more and more employees do not work at a fixed workplace. They often have to bring along their notebook computers and work everywhere. The situation where an employee works at another person's workplace is also not included for protection. Another example is that in the accountancy sector, many are

engaged in audit work, and they will bring the whole box of documents and their computers to work at others' workplace, and this is certainly outside the ambit of regulation. Why? It is because if a workplace is provided by an employee's employer, then it can be taken as the employee's workplace. But if it is not provided by his employer, it will be the workplace of someone else, and this is not covered in the motion. So, I do not have much expectation of the practical effect of this Regulation.

Therefore, I think that in the final analysis, and to achieve the most practical result, the Government should (my suggestion may sound silly) mandatorily require the persons concerned to take training courses, that is, to make arrangements for employers or employees or staff of companies to take courses on a mandatory basis; and this may be effective. The Government has arranged courses for safety officers, making it mandatory for each company concerned to arrange a few hours of training for the relevant staff, who are required to promote this area of work in their companies after they have completed training. For example, the Labour Department has organized training courses on a large scale, inviting the relevant companies to send their staff to attend the courses. I think that these courses will produce practical results and thus provide more effective protection for employees. With regard to the use of display screen, there are many methods to reduce the risk of health hazards faced by employees. Nonetheless, I believe what we need to do now is not only to focus our efforts on employees. In fact, in the education authorities led by the Secretary, or among primary and secondary students nowadays, is there anyone who does not use a computer? More and more primary and secondary students are using computers. But even if there is not enough protection provided for students, there is no reason to punish the headmaster, is there? It is because the headmaster is unable to provide an appropriate workplace for students, and primary and secondary students are not working either. That said, the fact is that students now begin to use display screen at the age of around 10 until they are 70 or 80 years old, which means that they will use computers for as long as 60 to 70 years. If they do not use computer under proper conditions from the beginning, it will have a very great impact on them.

So, I think even though the Regulation today is no more than a greener blade of "grass", its passage will still be a good thing. But the Government, after all, must make an effort in education and provide abundant information to explain, say, ways to ensure the proper use of display screen. Indeed, this is

not an easy task. Recently, in my own office, I had wanted to afford my staff protection in the best way or using the best resources by, for instance, installing some rolled-up screens. But even after everything that can be done is all done, I am still unable to provide my staff with a very comfortable and safe working environment. This shows how difficult it is to achieve the purpose.

Do not think that the problem would be resolved as soon as the motion is passed and penalty is imposed on persons violating the Regulation. Even if penalty is imposed or even if employers are punished, we still may not be able to protect the health of employees. So, the only way is for the Government to conduct more extensive publicity campaigns before this motion comes into effect. I am not asking the Government to only put up advertisements to call on the public to pay attention to their health, for this is not enough. The Government should mandatorily require the people concerned to take some relevant courses. For instance, a one-hour course can be arranged to teach the attendants the proper ways to use a computer and suggest some practical measures. I do not know if the Government is in a position to require (or invite) various major business associations and companies to send their staff to attend these training courses to be provided by the Government. I think this can be a win-win option for both employers and employees.

With these remarks, I support the amendments proposed by the two Members. I think the proposals on six hours of use and four hours of use are both important, and the proposal to provide protection only after six hours of use will cover a smaller scope. Nevertheless, I think the amendment will be negated anyway. So, I hope Mr LEE Cheuk-yan will keep up with his good efforts.

MR JAMES TIEN (in Cantonese): I am sorry, Madam Deputy. Normally before we are called upon to speak, I see that you will pass onto us a note as notification. Just now I had not been given any note and all of a sudden, I heard you call upon me to speak and so, I was in a bit of shock.

Madam Deputy, over the years, it is common that Members from the labour sector and the business sector in the Legislative Council do not see eye to eye with each other during discussions. Today, I have heard the speeches of a number of Members. At first, I had no bad feelings at all but later, I really got

fed up, because many people were invariably making deafening noises for an insignificant cause, and they were merely trying to vent their grievances. Indeed, discussions in this Council are usually reasonable and sensible, but today's discussion has given me the impression that Members from the labour sector each has an axe to grind and each puts forth a different view. If we draw an analogy with "chopping barbecue pork", the labour sector really wants to "chop off" eight taels more of the barbecue pork. Of course, the Honourable LAU Chin-shek did not say so, and the Honourable LEUNG Fu-wah has behaved rather impartially today without being entangled in the discussion.

Madam Deputy, from the viewpoint of the business sector, anything that is going to be implemented should be practical. If the consequences of implementation are neutral to or have little impact on the business environment, we certainly will not react too strongly. Madam Deputy, let me just cite an example. In 2001, 9 151 companies went bankrupt, as shown in government statistics. In the first 10 months in 2001-02, some 15 100 companies have gone broke. I believe most of these cases involved small and medium enterprises (SMEs). Even if large companies are involved, there should not be too many of them. Back to the question of display screen, I think to most SMEs, it is indeed very difficult to meet the requirement as proposed in the motion at the moment. A chair that is up to standard costs tens of dollars and a total replacement may cost over \$1,000. While this amount may still be insignificant, the question is that the offices of most SMEs basically do not allow this to be done. Employers operating the SMEs may have an office with several employees. Members of the labour sector are obviously concerned about the employment of these employees too. Members certainly do not wish to see that the employer has to sack one or two employees in order to vacate an area measuring tens of square feet to make room for those chairs that meet the specifications or size as required by the motion, and to provide the requisite space for those chairs to move about. Mr SIN Chung-kai has a point. It is true that if employees are required to bring with them notebook computers and work elsewhere, it is even more unlikely to require someone else's workplace to comply with so many restrictions.

THE PRESIDENT resumed the Chair.

Under such circumstances, to the SMEs, the greatest difficulty is not the extra spending of some tens of dollars. If \$90 is all it takes to complete a task,

that is just a small sum of money. But the problem is their offices are unable to meet the requirements. What should they do? At first, the requirement was that employees who use DSE for one hour every day would be covered by the Regulation. But Members must consider if this requirement is practical. Our secretaries and even many Members may use the computer for more than one hour a day. If this requirement is given effect, many people would be included in the scope of regulation, and even those who are not truly engaged in the relevant trades would be included. In our view, those who work in the relevant trades, that is, those who work on a computer and face a display screen all day should absolutely be given protection. But for other people, such as our secretaries who use the computer only once in a while and face a display screen every now and then, should they also be brought under regulation? If the answer is in the affirmative, then the coverage of the motion would be so extensive that it might cover over 1 million or even millions of employees.

Can the many SMEs meet all these requirements? If they are unlikely to make it, the Liberal Party's view is this: This Regulation may still be useless even if it is enacted. It is because if an hour of use of display screen is subject to regulation, nobody would be able to fully comply with this requirement, unless the many small employers are all arrested. Since it is impossible to arrest all of them, the use of display screen for one hour should not be brought under regulation. However, if regulation is not imposed, our legislative intent, as well as the efforts made by the many Members in scrutinizing this Regulation, would appear to have all gone down the drain. Put it in other words, we would be wasting our breath. We consider it more practical to draw the line at four hours. We agree that employees who use a computer for four hours continuously or six hours cumulatively every day should be brought under the protection of the Regulation. For others, such as secretaries or clerks, they can be excluded as long as they are not frequent users of computer. In that case, the number of people involved should be much smaller.

Many colleagues have cited medical statistics. The Occupational Safety and Health Council (OSHC), for example, has also conducted studies in relation to this issue. Earlier on, Mr LEE Cheuk-yan only cited some medical cases. As regards the other medical statistics, they rely heavily on results of clinical experiments. That is, regarding what medicine is being tested and against what disease the test is conducted, it will have to take a rather long time to collect abundant data for credible results. If we impose regulation over the four-hour duration now, and if medical evidence obtained by the OSHC subsequently

showed that the problem could not be resolved by regulating the duration of use at four hours, or that the problem still existed if regulation is imposed for six-hour cumulative duration, I believe we could conduct another review by then. The business sector and the Liberal Party will absolutely throw weight behind this review.

I have known Mr LEUNG Yiu-chung for more than 10 years. We came to know each other in 1985 when we took part in a drama by members of the Kwai Tsing District Board. I remember that he was a teacher at that time. Now that he is a Member of this Council and in any case, he has an income of \$60,000 and is entitled to allowances to the tune of \$100,000, which makes a total of \$180,000 to \$190,000. I think to Mr LEUNG, buying a bottle of red wine at \$1,000 is no big deal. He is at liberty to say that some members of the Liberal Party take red wine which costs \$1,000 a bottle; and I believe he was probably referring to me. This, I admit. But I must tell Mr LEUNG that many of the members of the Liberal Party are less well-off than you are. The monthly salary of many of them is only \$20,000 to \$30,000. They definitely do not make an income as much as \$60,000. Nor are they entitled to allowances of \$120,000. So, members of the Liberal Party may not necessarily be richer than Mr LEUNG.

Madam President, on the question of rest breaks, as far as I understand it, many employers in the business sector do not treat their employees too harshly. They will not bar their employees from leaving their seats for five minutes or going to the lavatory within any one hour during their office hours, thus resulting in an employee having to face a computer for three hours and 45 minutes continuously, as described by Dr LO Wing-lok. This definitely will not happen in reality. But if we legislate on this, do we really have to require employees to leave their seats for 10 minutes every hour? Can such a requirement resolve the problem? On the contrary, if an employee has worked for less than 50 minutes, is he definitely not allowed to leave his seat? I believe many employers will not do this.

There is no statutory provision on rest breaks now. If legislation is made to provide that employees can rest for five or 10 minutes for every hour of work, does it mean that they are not allowed to leave their seats within 50 minutes, that they must remain in their seats even if they need to go to the washroom, and that employees will be allowed a break of 10 minutes only after a full hour of work? To resolve most of the complaints from employees, I wonder if it is a must to

rigidly set the lunch break or rest break at one hour (but I agree that to some industries, they will have practical difficulties in this regard). Mr SIN mentioned that there is similar legislation in many other places overseas. Perhaps they have discovered some problems and they therefore come up with these measures to solve the problems. But I do not see any problem in the current operation of the business sector. I do not think that to employees who face display screens or who work in other environment, allowing them a fixed rest break would solve the problem. The problem cannot be resolved by, say, allowing employees a 10-minute break for every one hour of work, but not allowing them to take a 30-minute break cumulatively for every three hours of work or a one-hour break cumulatively for every eight hours of work a day. Insofar as the operation of the business sector is concerned, the existing practice is more flexible. Be it the restaurant business or the construction industry, the existing practices do allow flexibility and are practicable. Certainly, one can ask: When the economy gets better, will employers have less to worry about? But then, employers might say that despite improvements in the economy, such regulation is still not viable.

Madam President, overall speaking, the Liberal Party took exception to the Regulation which, at first, covered employees who use a computer for one hour. Now that it is amended to the effect that regulation is imposed on use of computer for four hours. In fact, in the Subcommittee set up to scrutinize this motion (I am not a member of the Subcommittee but I did attend its meeting for many times), having heard the views of other Members, I agree that it is also reasonable to impose regulation on use of computer for six hours cumulatively. If protection is provided for employees who use a computer for four hours continuously, the possibilities as described by a number of Members earlier in the debate would arise. While these are purely possibilities, we must address them squarely. If the use of DSE for three hours and 50 minutes is outside the scope of regulation, then if an employee works on DSE for three hours and 50 minutes in the morning and another three hours and 50 minutes in the afternoon, he will still be excluded from regulation. Then later, there was the suggestion of including cumulative use for six hours, which, in the view of the Liberal Party, merits support.

I think the Regulation should be enacted as it now stands. Let us not support the amendments proposed by the two Members. After the Regulation has come into operation for a certain period of time, we can review the situation and if problems are found, then the Government or Members of the labour sector

should bring the matter up at the Panel on Manpower for another review. We think that this is acceptable. Thank you, Madam President.

DR LUI MING-WAH (in Cantonese): I would not dispute the findings of medical studies, that computer operators who face a display screen for a long time will have their limbs and eyes adversely affected. For various reasons and to meet various needs, computer is set to become more and more prevalent. Computers are used in workplaces, schools or at home by all people, regardless of gender and age, and are used for a long time quite habitually. Given pressure from the labour sector, the Government now seeks to incorporate the use of computer at workplace into the scope of protection for occupational safety.

I think it is adequate for the Government to legislate to provide basic protection, and it is unreasonable to impose stringent requirements. If an employee is required to use a computer by reason of the nature of his work, it is very difficult to define "user" in terms of the cumulative hours of work on computer, for a definition on this basis would cause many disputes in the office. As a first step, we must define the use of computer. For instance, is typing at the keyboard only without switching on the display screen considered a use of computer? Besides, who is responsible for calculating the number of hours of computer use? Furthermore, computer users will generally take a short break when they feel tired and return to work afterwards. Who will be willing to work unceasingly until he becomes disabled? Therefore, both the amendments proposed by Mr LEE Cheuk-yan and Mr Andrew CHENG are unreasonable and difficult to implement and so, they cannot be supported. Thank you.

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

(No Member responded)

SECRETARY FOR EDUCATION AND MANPOWER: Madam President, the Honourable LEE Cheuk-yan, when introducing his amendment to the Regulation, made unfair and irrelevant reference to the Chief Executive.

Let me first set the record straight. The definition of "user" was first raised by the Legislative Council Subcommittee at its meeting on 17 January last

year. We explained that "user" was defined in the Regulation as an employee who normally uses display screen equipment as a significant part of his normal work, and elaborated in the health guide to mean employees who are highly dependent on the use of display screen equipment to do their jobs and spend long hours, more or less daily, on display screen equipment work.

At the meeting on 26 February last year, the Legislative Council Subcommittee discussed in detail overseas legislation and guidelines on the use of display screen equipment at work, including the United Kingdom Health and Safety (Display Screen Equipment) Regulations. In the United Kingdom, "user" is defined in the relevant guidelines to mean, *inter alia*, the individual who normally uses display screen equipment for continuous spells of an hour or more at a time, and the individual who uses display screen equipment more or less daily.

The Legislative Council Subcommittee considered that "user" should be defined clearly and suggested that the Administration should revise the elaboration of "user" in the health guide. Subsequently, the Administration revised the meaning of "user" along the lines used in the United Kingdom and introduced the amendment at the Legislative Council Subcommittee meeting on 29 May 2001. As members present at this very meeting included Members belonging to different political parties and they did not raise any objection at the time, we thought that the revised meaning of "user" had the blessing of everybody present, though it proved to be a wrong assumption with the benefit of hindsight.

The then revised meaning of "user" would cover a much larger population and deviated significantly from the understanding reached at the Labour Advisory Board (LAB) meeting held in October 1996. The Administration perhaps should have alerted members of the Legislative Council Subcommittee and members of the LAB to this amendment before taking it on. Had this step been taken, the subsequent challenge by Members at the House Committee meeting on 9 November 2001 could possibly have been avoided. On this, I apologize.

The Honourable LEUNG Fu-wah may be pleased to note that since the beginning of this year, we have streamlined the procedures and the division of

responsibilities between the Education and Manpower Bureau and the Labour Department over occupational safety and health matters. Hopefully, the misunderstanding and miscommunication that had occurred in this case would not happen again.

Let me now turn to Mr LEE Cheuk-yan's amendment. The medical research which Mr LEE quoted actually studied employees using display screen equipment four hours or more per day as a group without differentiating between continuous and cumulative users. It is, therefore, impossible to infer whether employees using display screen equipment cumulatively for four hours or more per day were subject to the same degree of health risks as continuous users. However, it is noteworthy that a majority (over 60%) of the employees surveyed were actually using the equipment more than seven hours during a day, and another major research reported that employees spent an average of 7.3 hours per day using display screen equipment. From these findings, it may be inferred that the employees who were studied in the medical research used display screen equipment more or less continuously rather than intermittently and, hence, had higher health risks.

Based on the above, it would be logical to make the assumption that continuous use of four hours or more per day is associated with higher health risks. Moreover, the Regulation is targetted at employees who use display screen equipment for prolonged periods of time rather than those who use it only intermittently. For these reasons, we consider it more reasonable to adopt continuous use of four hours or cumulative use of six hours in the elaborated meaning of "user". Members will also wish to note that in the code of practice to be issued by the Labour Department, breaks not exceeding 10 minutes in an hour away from the display screen equipment shall not be regarded as breaking the continuity of use of the display screen equipment.

I understand that there was majority support in the Legislative Council Subcommittee in favour of adopting this definition and the elaborated meaning of "user", which I shall consider to be more consistent with the understanding reached at the LAB in 1996. It is important that we abide by the agreement reached after exhaustive deliberations.

The Honourable Margaret NG has articulated legal arguments against Mr LEE's and the Honourable Andrew CHENG's amendments, which I concur. I just wish to add that a code of practice has a special legal status. It is issued by

the Commissioner for Labour under section 40 of the Occupation Safety and Health Ordinance and is admissible as evidence in court proceedings, if it is relevant to determining a matter that is at issue in the proceedings.

Given this, a code normally stipulates work practices and standards which are agreed by and adopted in the trade concerned. The Labour Department will monitor the trend of reported health problems associated with the use of display screen equipment at work and review the definition of "user" after a period of implementation, taking into account the findings of the most up-to-date medical researches and enforcement experience.

The amendment proposed by Mr Andrew CHENG is to add a new section 7A to require that the person responsible for a workplace shall so far as reasonably practicable ensure that users can have periodic breaks or changes of activity, and to introduce a maximum fine of \$50,000 for failing to comply with the new section.

The Regulation will cover a wide variety of trades where business practices differ considerably. The proposed mandatory requirement for employers to provide periodic breaks or changes of activity could give rise to practical operational difficulties in certain trades. As non-compliance would carry a maximum penalty of \$50,000, an unfair onus would be placed on the person responsible for a workplace to determine if the grounds for not providing periodic breaks would be legally acceptable as being reasonably impracticable.

But I must hasten to add that the Administration fully accepts the desirability of periodic breaks or changes of activity. However, we consider that such an arrangement should be dealt with through mutual agreement between responsible persons and users, taking into account the unique characteristics of individual business operators. We believe that mutual agreement between the parties concerned, coupled with education and publicity to raise general awareness, would work best to ensure that display screen users are aware of the need and would take periodic breaks to protect their health.

In this respect, we will include in the health guide to be issued by the Labour Department a recommendation that employees should vary display screen equipment tasks with other duties and where no alternative duty could be arranged, appropriate rest breaks should be provided. The LAB has also been

consulted and does not support the mandatory requirement of rest breaks or changes of activity for display screen equipment users.

Madam President, the Administration disagrees with the amendments moved respectively by Mr LEE Cheuk-yan and Mr Andrew CHENG, and I urge Members to vote down these amendments. Thank you.

MR LEE CHEUK-YAN (in Cantonese): Madam President, a point of elucidation. Just now the Secretary said that I had mentioned the Chief Executive in my speech. As far as I remember, I did not mention the Chief Executive in my speech. May I ask what the Secretary referred to? Perhaps I had spoken too much, so much that I do not even remember it myself. But perhaps the Secretary had mistakenly read my next speech. *(Laughter)*

Thank you, Madam President.

SECRETARY FOR EDUCATION AND MANPOWER: Madam President, if I remember it correctly, the Honourable LEE Cheuk-yan referred to the Chief Executive's policy of providing more favourable business environment, and he attributed the change in the definition of "user" to the Chief Executive's policy. I think that is irrelevant and unfair.

PRESIDENT (in Cantonese): Mr LEE Cheuk-yan, please move your amendment to the motion.

MR LEE CHEUK-YAN (in Cantonese): Madam President, I move that the Secretary for Education and Manpower's motion be amended, as set out on the Agenda.

Mr LEE Cheuk-yan moved the following amendment:

"That the motion to be moved by the Commissioner for Labour under section 42 of the Occupational Safety and Health Ordinance (Cap. 509) at the Legislative Council meeting on 24 April 2002 be amended by deleting paragraph (a) and substituting –

"(a) in section 2, by deleting the definition of "user" and substituting –

" "user" (使用者) means an employee who, by reason of the nature of his work, is required to use display screen equipment almost every day and cumulatively for 4 hours or more during a day;" ;". "

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.

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

(Members raised their hands)

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

(Members raised their hands)

Mr 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:

Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Mr LAW Chi-kwong, Miss LI Fung-ying, Mr Michael MAK and Dr LO Wing-lok voted for the amendment.

Mr Kenneth TING, Mr James TIEN, Dr Raymond HO, Dr LUI Ming-wah, Miss Margaret NG, Mrs Selina CHOW, Mr HUI Cheung-ching, Mr Bernard CHAN, Mrs Sophie LEUNG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr LEUNG Fu-wah, Mr IP Kwok-him and Mr LAU Ping-cheung voted against the amendment.

Geographical Constituencies and Election Committee:

Miss Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr LAU Chin-shek, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr Albert CHAN, Mr WONG Sing-chi and Mr Frederick FUNG 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, Ms Audrey EU, Dr David CHU, Mr NG Leung-sing, Mr YEUNG Yiu-chung, Mr Ambrose LAU and Mr MA Fung-kwok 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, 25 were present, six were in favour of the amendment and 19 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 28 were present, 14 were in favour of the amendment and 13 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 negated.

PRESIDENT (in Cantonese): Mr Andrew CHENG, you may now move your amendment.

MR ANDREW CHENG (in Cantonese): Madam President, I move that the Secretary for Education and Manpower's motion be amended, as set out on the Agenda.

Mr Andrew CHENG moved the following amendment:

"That the motion to be moved by the Commissioner for Labour under section 42 of the Occupational Safety and Health Ordinance (Cap. 509) at the Legislative Council meeting on 24 April 2002 be amended -

(a) by adding after paragraph (e) -

"(ea) by adding -

"7A. Periodical break

The person responsible for a workplace shall so far as reasonably practicable ensure that users working on display screen equipment in workstations in the workplace can have periodical breaks or changes of activity so as to reduce their workload with that equipment."";

(b) by deleting paragraph (j)(i) and substituting -

"(i) in subsection (1), by deleting ", (6) or (7), 5, 6 or 7" and substituting "or (6)(b), 5, 6, 7 or 7A";".

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

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

(Members raised their hands)

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

(Members raised their hands)

Mr Andrew CHENG rose to claim a division.

PRESIDENT (in Cantonese): Mr Andrew CHENG has claimed a division. The division bell will ring for three minutes.

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

PRESIDENT (in Cantonese): Is it that one Member has not pressed the "present" button?

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

Functional Constituencies:

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

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

Geographical Constituencies and Election Committee:

Miss Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr LAU Chin-shek, Miss Emily

LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr Albert CHAN, Mr WONG Sing-chi and Mr Frederick FUNG 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, Ms Audrey EU, Dr David CHU, Mr NG Leung-sing, Mr YEUNG Yiu-chung, Mr Ambrose LAU and Mr MA Fung-kwok 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, 25 were present, five were in favour of the amendment and 20 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 28 were present, 14 were in favour of the amendment and 13 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): Secretary for Education and Manpower, you may now reply.

SECRETARY FOR EDUCATION AND MANPOWER: Madam President, for the protection of the safety and health of employees who use display screen equipment at work for prolonged periods of time, I urge Members to support and pass the Regulation.

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 in the paper circularized to Members, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

MEMBERS' MOTIONS

PRESIDENT (in Cantonese): Members' motions. Two motions with no legislative effect. I have accepted the recommendations of the House Committee as to the time limits on speeches for the motion debates. I am obliged to direct any Member speaking in excess of the specified time to discontinue.

First motion: Safeguarding the reasonable and legitimate rights and interests of employees.

SAFEGUARDING THE REASONABLE AND LEGITIMATE RIGHTS AND INTERESTS OF EMPLOYEES

MR LEUNG FU-WAH (in Cantonese): Madam President, this year is the 116th anniversary of the May 1 International Labour Day. By moving a motion on "Safeguarding the reasonable and legitimate rights and interests of employees" on the eve of May Day, I hope to draw the attention of the community to the fact that the rights and interests of the local labour sector are being eroded more and more each day and to the dire consequences that this has brought about. I would also like to take this opportunity to urge the Government to adopt active measures to ensure that employees enjoy reasonable and legitimate labour protection.

Ever since the Asian financial crisis in 1998, the economy of Hong Kong has remained in the doldrums and our unemployment problem has been becoming increasingly serious. According to the latest government statistics,

the unemployment rate of Hong Kong has reached a record high of 7%, with about 240 000 people being unemployed. It can be said that the labour market of Hong Kong is already in an imbalance, and a buyer's market is formed. Against such a background, the bargaining power of Hong Kong workers has decreased and some law-defiant unscrupulous employers have even taken advantage of this situation to rub salt into the wounds of the workers by depriving them of their statutory rights. Many workers cannot even enjoy the most fundamental protection under the Employment Ordinance. Let us take a look at the following example:

Under section 23 of the Employment Ordinance, wages shall become due on the last day of the wage period or within seven days after the expiry of the wage period. Furthermore, section 25 of the Employment Ordinance also provides that on the termination of an employee's contract, any sums payable in respect of his contract shall be paid not later than seven days after the day the contract is terminated. However, in recent years, the situation of outstanding wages has been worsening. According to figures provided by the Labour Department, the number of outstanding wages and wage deduction cases has increased every year from 4 303 in 1997 to 7 612 in 2000, and the rate as a percentage of the total number of cases has also gone up from 21.1% to 26.6%. During the first three months of this year, the Labour Service Centre of the Hong Kong Federation of Trade Unions (FTU) received a total of 165 complaints against outstanding wages. We have recently dealt with a case involving 30-odd security guards. They were dismissed on 6 March this year but have not yet received wages for the month of February and other terminal compensations payable by the employer.

The Employment Ordinance provides that employees must have at least one rest day after working for every seven days and are also entitled to 12 statutory paid holidays each year. However, in the catering industry, for example, many employers have deprived employees of their rest days by means of offering a so-called "all-in-one pay package" in the contract. Since workers are in a disadvantageous position, they are often forced to accept such unfair and illegitimate terms and dare not make any objections. The above example is only the tip of the iceberg. As my other colleagues from the FTU will continue to speak on such situations, I will not go into further details. I would now like to walk Members through the history of the enactment of the Employment Ordinance.

From the post-war period to the '50s, the economy of Hong Kong was in a process of reconstruction and recovery. The livelihood of workers was very poor and there was actually no labour protection legislation. In order to fight for reasonable treatment and work conditions, workers embarked on an incessant and complicated fight. However, as the economy of Hong Kong became more developed in the '60s, the Government still did not legislate to protect workers and workers continued to live in hardship, thus eventually leading to internal conflicts in society. In addition to this, on the front of international trade, the poor working conditions of Hong Kong workers were also condemned by some countries and regions and at the time, Hong Kong was even accused as a "sweat shop". Against such a background, the Employment Ordinance was enacted and came into force in 1968. Thereafter, as the economy of Hong Kong developed, the Employment Ordinance was amended many times. However, the fundamental spirit of the Employment Ordinance in just offering the minimum and most basic protection for workers has, nevertheless, remained unchanged. I have taken great pains to describe the background of the enactment of the Employment Ordinance because I want to tell Members that the situation where the Employment Ordinance is violated and the rights of workers exploited has become more and more serious. This is undoubtedly a regression of the rule of law. It is stipulated in the law that workers are entitled to such rights and yet workers do not actually enjoy these rights, then could such rights be regarded as really statutory in nature? As such, how could it offer any protection to workers? What good could it do the community?

Therefore, I urge the relevant government policy and executive departments to adopt more active measures to ensure that employees enjoy "reasonable and legitimate" labour protection. This is especially true for the Labour Department, which is the department responsible for specific enforcement of the Employment Ordinance. I really hope that it could enhance its enforcement function in prosecuting employers who have violated the law. Take the cases of outstanding wages as an example, under section 63(c) of the Employment Ordinance, employers who default on payment of wages without reasonable excuse commits an offence and is liable to a fine of \$200,000 and to imprisonment for one year. However, in the course of our actual work, we find that the Labour Department has seldom taken any prosecution action. During the past three years, only 40-odd to 70-odd prosecution cases were instituted against employers who default on payments of wages and made illegitimate deductions from the wages of employees, with an average fine of less than \$3,000. Convicted employers were subject to an average fine of \$2,962 in

2001 and \$2,633 in 2000. We think that the "neutral and conciliatory" role of the Labour Department has too often been over emphasized while its law enforcement role is not at all prominent. Let me quote another example. I often heard that my colleague has frequently received complaints saying that under the Employees' Compensation Ordinance, an employer shall be liable to pay the wages of an employee during his sick leave as a result of injury at work on the normal pay day at four fifths of the employee's wages up to the end of sick leave period. It also provides that any employer who fails to make payments to his employee without reasonable excuse commits an offence and is liable to a fine at level 6. My colleague also pointed out that the staff of the Labour Department would usually just call or write to the employers to urge them for payments. However, if employers turned a deaf ear, the Labour Department would suggest employees to take the employers to court and make wage claims by way of civil proceedings, but employers were rarely prosecuted. On the one hand, employees injured at work have to suffer physical pains, and on the other, they also face certain financial pressure due to the lack of income, so it is most unreasonable that they should have to spend time on making claims against employers on sick leave wages. Under such circumstances, I hope the Labour Department could enhance its law enforcement function to institute more prosecutions against law-defiant employers, to ensure that the reasonable and legitimate rights of workers are protected, otherwise, our labour legislation would exist in name only.

As regards employers, though appropriate cost control is certainly important to increasing the competitive edge of our enterprises, good labour relations are also indispensable to enhancing their competitiveness. Therefore, I hope that employers would view all legislation on improving labour rights and the working environment in the same perspective, instead of measuring their gains and losses solely on the basis of pecuniary interests. Moreover, at a time when the economy of Hong Kong is in a downswing and when the employment rate is standing high, I urge all Hong Kong employers to take up their social responsibilities to ride out the storm together with employees. When employers in various trades and industries are met with difficulties in their business operations, they should take the initiative to consult the employees, so as to find solutions to the difficult prevailing economic depression problem. Resorting to retrenchment and salary cuts lightly would not only fail to solve the problem but also cause labour relations to deteriorate, thereby planting a time-bomb in the future development of our enterprises. This is certainly not beneficial to enterprises and the community alike.

Madam President, some Members have criticized the wordings of my motion as merely stating the obvious like "mothers are women". It was recently reported in the newspapers that two lesbians had given birth to a deaf baby, and since the lesbian who gave birth to the child is also a woman, the case should actually have been very simple. I understand what those Members actually meant was: Is it really necessary for us to debate on reasonable and legitimate labour protection? However, the sad reality is, it is really necessary to have a debate and we must also vote on it to reaffirm the importance of reasonable and legitimate protection. This is undoubtedly the misery of wage earners!

As regards employees in general, I hope that all Hong Kong employees can act in accordance to the spirit of Chicago workers 116 years ago, in fighting for and protecting their own rights. On 1 May 1886, the workers of Chicago launched a massive strike to fight for the protection of their own basic interests. The "May Day" commemorates the day when the working class rose to protect their interests. On the eve of the "May Day", I have to tell all employees once again that the law only offers us the most basic protection and in order to really protect our own rights, we have to unite and work together. Therefore, if workers find that their rights have been infringed upon, they have to seek help from trade unions at the first instance because trade unions are workers' organizations and represent the collective wisdom of workers. In order to give better expression to the interests of workers, I hereby conclude my speech with the old saying "unity is strength". With these remarks, I pay tribute to the May 1 Labour Day.

MR LEUNG Fu-wah moved the following motion: (Translation)

"That as, the local economy is in the doldrums, the unemployment problem persists, the labour market is in an imbalance and the situation in which employees are not duly covered by labour protection is deteriorating, this Council urges the Government to adopt active measures to ensure that employees enjoy reasonable and legitimate labour protection."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr LEUNG Fu-wah be passed.

PRESIDENT (in Cantonese): Mr Kenneth TING will move an amendment to this motion, as printed on the Agenda. The motion and the amendment will now be debated together in a joint debate.

I now call upon Mr Kenneth TING to speak and move his amendment.

MR KENNETH TING (in Cantonese): Madam President, I move that Mr LEUNG Fu-wah's motion be amended, as printed on the Agenda.

At a time when the economy is in the doldrums and with the employment rate soaring to new heights, I believe both employers and employees have a lot of grievances and complaints. However, I hope that there will be less complaints and more rational discussions in today's debate. Let us put all our heads together to find a solution.

The economy in the past few years has been very poor. Enterprise profits have dropped drastically and many companies were closed down. It is very likely that the adverse economic environment may trigger off labour disputes. The Liberal Party agrees with the original motion that the Government should take earnest actions of enforcement, so as to ensure that employees can really enjoy the rights and benefits provided under the existing legislation. For example, the staff of the Labour Department should enhance their work on mediation and prosecution to ensure that the labour legislation is effectively enforced. As regards whether further amendments should be introduced to the legislation, this issue should first be referred to the Labour Advisory Board (LAB) for sufficient discussions.

However, under the difficult economic conditions, employees are not the only victims, for most employers, in particular those running small and medium enterprises, also have their own difficulties. The original motion urges the Government "to adopt active measures" to ensure that employees enjoy reasonable labour protection. This would easily give people an impression that the Government should actively and directly intervene in the labour market and make more laws. The Liberal party does have reservations about this point.

My amendment seeks only to use more neutral wordings in the motion, while keeping the spirit consistent with the original motion.

Under the poor economic environment, the number of company closures has drastically increased. The number of bankruptcy orders issued by the

Official Receiver's Office had significantly increased from 893 in 1998 to 9 151 in 2001. There was a ten-fold increase within the short span of three years. This figure reflects how bad the business environment has been in recent years. Even companies that might have made a small profit have to resort to retrenchments through pay cuts and layoff.

Some people are of the opinion that enterprises should not lay off staff when they are still making profits, but this is really debatable. Layoff is the last option to enterprises when there are no other alternatives. On the one hand, enterprises have to be accountable to shareholders, and talking about profits, I think consideration should be given to the rate of return. Members of the community should not indefinitely enlarge the social responsibilities of enterprises by saying that they should not lay off staff as long as they can make a profit. Provided that the relevant companies are strictly adhering to the provisions of the labour legislation, members of the community should not accuse them of rubbing salt into the wounds. Such remarks are not at all conducive to attracting foreign investments to Hong Kong.

In fact, very often, enterprises would make strategic plans in the light of the future business environment, and they are only trying to tide over the present difficulties by cutting costs through staff cuts. If the enterprises do not make early preparations by bearing the pain of staff cuts, the whole company would eventually collapse and "short-term pains" would eventually become "long-term pains" and "small pains" would turn into "big pains" in face of the fiercely competitive environment.

Since wages continue to rise at the time when the economy is buoyant, conversely, it would be subject to pressures of a downward adjustment when the economy is poor. Such are the natural forces of the market. Of course, the Government also has the responsibility to provide a proper safety net in society, enhance education and training and make every effort to promote employment.

In fact, under the combined efforts of the Government and the LAB over the past years, the labour legislation of Hong Kong has become pretty sound in recent years. Our worry is that, with the legislation becoming ever more complicated, the operating costs of employers will become higher and higher. For example, the premium on employees insurance will soon be increased again. Furthermore, in recent years, many transnational companies that have set up branch offices in Hong Kong have applied for voluntary liquidation to evade payment of debts and outstanding staff wages. This has resulted in a drastic depletion of the Protection of Wages on Insolvency Fund reserve, and the

Government has proposed an enormous increase in business registration fees to make up for the difference. This is in effect a case of requiring good employers to subsidize the bad ones. Such are the problems faced by employers. If the operating costs of employers continue to rise, it would only result in further damage to the business environment and force more small and medium enterprises to close down.

Madam President, in the prevailing adverse economic environment, labour relation problems may become even more acute. However, fortunately, most Hong Kong employers are still law-abiding good employers and most employees are conscientious workers who are sympathetic to the plights of their employers. Therefore, the employers and employees of Hong Kong have already built up a relatively harmonious relationship. Since both parties are in the same boat, they should continue to understand and accommodate each other, in order to build up a harmonious social environment. Let us not allow anyone to drive a wedge between us. I reiterate that the Liberal Party supports safeguarding the reasonable and legitimate rights and interests of employees. With these remarks, I move the amendment.

Mr Kenneth TING moved the following amendment: (Translation)

"To delete ", the unemployment problem persists, the labour market is in an imbalance and the situation in which employees are not duly covered by labour protection is deteriorating" after "That, as the local economy is in the doldrums" and substitute with "and companies keep closing down, restructuring and laying off their staff"; and to delete "adopt active measures to ensure" after ", this Council urges the Government to" and substitute with "spare no effort in ensuring"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr Kenneth TING to Mr LEUNG Fu-wah's motion, be passed.

MR ANDREW CHENG (in Cantonese): Madam President, in recent years, our economy has continued to perform poorly, with frequent incidents of layoffs, pay cuts and insolvencies, thus creating tension in the local labour relations that have been harmonious all along. According to the Labour Department, last year, it

handled a total of 369 labour dispute cases, and that represented a 20% or so increase compared to 308 cases in the previous year. It is an indisputable fact that the reasonable and legitimate rights of employees have been infringed upon. The Government and employers at large must really be held responsible. I have summed up the following four points to illustrate cases where employees are obviously not given any protection under the existing legislation and labour rights are being infringed upon.

Firstly, it is the exploitation problem created by the outsourcing of government work. Take the outsourcing of security services in public housing estates by the Housing Department (HD) as an example. The senior officers of the HD have indicated that they would not take the initiative to set a reasonable minimum pay. The reason advanced by them is that the pay offered by the successful bidders is already set at the minimum level. If contractors fail to employ security guards on that pay offer, then they will naturally raise the pay of security guards in accordance with the market mechanism to attract job seekers. However, the Government has totally failed to consider the prevailing situation, whereby the supply of labour is greater than the demand, from the perspective of workers. Since the public had reflected that the two-shift system at 12 hours per shift for security guards was too long, the Government then stipulated that the two-shift system must be changed to three-shift. However, the Government did not consider the fact that the pay of security guards would also be reduced by 30% as a result. This is another example where things are changed in form but not in essence.

Secondly, it is the problem of rest days and overtime work. I believe Members are also aware that many drivers in the transportation industry work more than 12 hours in Hong Kong daily and drivers who are overworked and tired would cause traffic accidents resulting in deaths and injuries. In fact, traffic accidents that are disastrous to drivers and other people alike could have been avoided if only the Government had given some serious thoughts to legislating on the maximum number of working hours. Furthermore, I must also mention the group of medical officers working in public hospitals. I think the Government should really be blamed for the employer of these doctors, the Hospital Authority, has brazenly disregarded the provisions on rest days in the Employment Ordinance.

Thirdly, it is the issue of different "gimmicks" employed by employers to cut costs. One of such examples is, according to the traditional practice, Hong

Kong companies used to review the pay of their employees during the first one or two months of the year. However, at present, not only have wage earners not been awarded any pay rise, they also have to face pay freezes or cuts. Moreover, as there are still no marked improvements in the external economic environment, employers have revised the fringe benefits package of their employees to save their own skins. Apart from cutting the fringe benefits of their employees, some employers have even introduced retrenchment policies like "no-pay leave". Under the pressure of layoff, wage earners have no alternative but to accept the contorted contract of employment. Another of such examples is the company that has been awarded the contract for the cleansing services of the MTR Corporation Limited earlier. In order to achieve its objective of laying off workers without offering severance pay, that company employed a number of tactics and even went so far as to invent the idea of redeployment notices. The boss tried to force workers to resign by making unreasonable deployments, thereby achieving the objective of saving on severance pay. If a cleansing worker were transferred from the original workplace, such as Tsuen Wan, to North Point, which is very far away, how could he, earning a monthly salary of only \$3,000-odd, manage to live on his remaining meagre salary, after paying the expensive transportation fees?

Another target of the employers are part-time workers. If workers could be "manipulated" to work less than 18 hours weekly, then they could not enjoy any employment benefits. Such part-time workers are mostly commonly found in the construction and service industries.

Fourthly, I would like to talk about the issue of default employers' contributions to Mandatory Provident Fund (MPF) schemes. Under the existing MPF System, the portion of employers' contributions in employees' MPF has often been defaulted. According to information provided by the Mandatory Provident Fund Schemes Authority (MPFA), out of the 125 complaints received in March 2002, 70% are related to defaulted employers' contributions. In the same month, the number of first and second demand notes on surcharges for default contributions issued by the MPFA amounted to 17 400 and 12 300 respectively. It has increased by nearly 20% compared to that of the previous month. From this, we can see that more attention should be paid defaulted employers' contributions. In fact, if employers go into liquidation or bankruptcy, workers would suffer even greater losses, but because of the constraints imposed under the spirit of company law, very little can be done by the MPFA at present.

As regards to the above issues, the Government could actually deal with them in three ways. Firstly, as a model employer, in calling tenders for outsourcing work, the Government should specify the number of working hours, wages and penalties imposed upon violation of the regulations in the tender document and it should also enhance its enforcement and inspection work. Secondly, the authorities should at least speed up the process of setting a ceiling on the working hours for certain trades, such as professional drivers and medical doctors. Thirdly, the Labour Department should speed up its review of existing labour legislation to plug the loopholes by introducing amendments in relation to issues like no-pay leave, revisions to contracts of employment and salary payments for employees during the time when the company is under renovation, and so on.

Madam President, I support the motion and I urge the Government to adopt positive measures to ensure that employees enjoy reasonable and legitimate labour protection. However, the Democratic Party cannot support the amendment of the Honourable Kenneth TING of the Liberal Party. Though Mr LEUNG Fu-wah said earlier that some people had criticized his motion as stating the obvious like "mothers are women", we do not think that the wordings of his motion are really that simple. Mr Kenneth TING has deleted some key words such as "active measures" in his amendment, thus rendering the motion devoid of a central idea. As such, the Democratic Party cannot support the amendment of Mr Kenneth TING. Thank you, Madam President.

MISS LI FUNG-YING (in Cantonese): Madam President, though the International Monetary Fund has recently adjusted upwards its forecast on the economic growth of Hong Kong for this year and land sales have also been very successful, such favourable news would not be of much help to the salaried class of Hong Kong now in dire straits. However, the latest unemployment rate, a record high at 7%, announced by the Government last week, came as another blow to the salaried class. Though government officials, real estate developers and bankers have all indicated sometime earlier that the worst are over for the Hong Kong economy, I am still worried that the worst days of the salaried class still lie ahead.

In recent years, we have held repeated discussions in the Legislative Council Chamber on how to solve the employment problem and help grass-roots workers. However, the model answer that everyone, ranging from Mr TUNG,

the Chief Executive, senior government officers to members of the business sector, keep emphasizing is: little can be done by the Government and the most important thing is to improve the economy of Hong Kong; once the economy of Hong Kong improves, the difficulties confronting the salaried class can be resolved. However, to put it bluntly, the thinking behind this answer is: we must first let the "bosses" "make money", while the high unemployment rate and the unemployed and helpless wage earners, who are now in a precarious state, should be left to the mercy of God!

In the '80s, at a time when the economy of Hong Kong was blooming, the Government turned a deaf ear to the strong opposition of the labour sector and took measures to inhibit the growth of local wages by importing cheap labour. Now, the economy of Hong Kong is in the doldrums and the salaried class is living in fear of losing their jobs, the Government is still taking active measures to improve the business environment for the "bosses", telling the salaried class that little can be done for them. Is it true that the rights of the labour sector still remains at the bottom of the priority list on our social agenda?

Madam President, originally, there are specific provisions in the Employment Ordinance that offers protection for wage earners, on the wages of employees, year-end gratuity and rest days. However, under the prevailing poor economic climate, in order to keep their jobs, employees at large have no alternative but to accept everything the employers say, including salary cuts and abolition of year-end "double pay", as well as other fringe benefits cuts. Under the existing circumstances where the trend of retrenchment and layoff is riding wave over wave, can wage earners really say "no"? In addition to the increasing number of complaints received by the Labour Department and labour unions in recent years, according to information provided by the Equal Opportunities Commission, in the first quarter of this year, in the area of employment related issues, it received 169 complaints against dismissals in relation to pregnancy discrimination and more than 200 complaints against dismissals in relation to disability discrimination. And, as regards cases of complaints against disability discrimination, most people were dismissed on grounds of illness. Even statutory rights are thus infringed upon, what hopes can we have for other reasonable rights and interests? What is more unfortunate is that the day an employee resume duty after taking sick leave, work-related injury leave or maternity leave, is also very often the day he or she receives a dismissal notice. As such, what protection could there be for the legitimate and reasonable rights and interests of employees?

I agree that the improvement of the Hong Kong economy is an important issue, but I definitely do not agree that the business environment should be improved at the expenses of the rights and interests of employees. I even disagree more with the saying that there is little the Government can do to solve the high unemployment rate problem. In fact, there are a lot that the Government can do in protecting the reasonable and legitimate rights and interests of the salaried class that has lost its bargaining power. Why can the outdated employment legislation not be thoroughly amended when the mode of employment in our community has already changed? Why should people who are similarly working for employers meet the "4-1-18" continuous employment criteria before they could receive any protection when employers are given tacit consent to make a big fuss over the "4-1-18" continuous employment criteria? Why are non-civil service contract staff who are also under the employment of the Government not protected under the employment legislation when they are not protected under the Civil Service Regulations? While many local domestic helpers are actively looking for jobs, why can the policy on allowing 200 000-odd foreign domestic helpers to work in Hong Kong not be reviewed? In the face of the aspirations of workers, has the Secretary already borne in mind the opinions and sentiments of the people?

Madam President, lies that are told a thousand times will not become the truth, and sophistry repeated again and again is still sophistry. If the Government has really taken into consideration the rights and interests of the salaried class and their hardships in face of the economic difficulties, there is really a lot it can do. The May 1 Labour Day is around the corner and the labour sector is hoarse and timed with their fight for their rights. As the representative of the labour sector, I fully support the motion moved by Mr LEUNG Fu-wah today, in urging the Government to adopt active measures to ensure that employees enjoy reasonable and legitimate labour rights and interests.

I so submit. Thank you, Madam President.

MR YEUNG YIU-CHUNG (in Cantonese): Madam President, although today is not the May 1 Labour Day, it is definitely a day to fight for labour rights and interests because there are three motions related to this.

To begin with, I would like to talk about a few figures. Firstly, last week, we learned that 230 000 people in Hong Kong were forced to join the

unemployed ranks, among which the catering, construction and retail industries, which together employ a large number of low-skilled workers, were the hardest hit. Secondly, since the Asian financial crisis in 1997, the Protection of Wages on Insolvency Fund (the Fund) has dwindled from nearly \$800 million to \$206 million in the last financial year and it was anticipated that the Fund would be exhausted in this financial year. And, thirdly, according to figures provided by the Mandatory Provident Fund Schemes Authority (MPFA), there are about 2 000 cases of defaulted contributions to Mandatory Provident Fund (MPF) schemes each month as a result of company closures or "runaway" employers.

Apart from reflecting on the seriousness of the current unemployment situation, I have quoted the above figures to draw attention to the fact that certain legitimate rights and interests of employees are not protected. Theoretically, it is provided under the existing legislation that employees employed on a continuous contract are protected under the safety net of paid holidays, long service payment, MPF, the Fund and so on, and the condition should be quite favourable. However, what is the actual situation? Last year, when Mr LEUNG Fu-wah moved a similar motion debate, Members had respectively voiced their opinions on the "4-1-18" arrangement under the definition of a continuous contract. In recent years, there is a rising trend of part-time jobs, and I believe that we should show further concern for members of the public who try to scrape a living by taking up part-time jobs.

Madam President, we have often tried to offer more protection for employees out of good intentions, but individual law-defiant employers have taken advantage of the loopholes in the legislation to shirk their responsibilities. The Fund, for example, that is looked upon as the last safety net for employees was established for the purpose of making advance payments in respect of legitimate compensations to employees in the event of company closures. However, as the number of claims continues to rise in recent years, and with the number of claims amounting to as many as more than 15 000 in the year 2000-01, the Fund is caught in a financial crisis. Now the problem could only be solved by increasing the levy on business registration fees to \$600. In order to enable the safety net to continue to operate, employers' organizations have not raised any objection to the increase. However, it is suspected that individual unscrupulous and irresponsible employers have faked closures and taken advantage of the Fund to evade their responsibilities of making compensations to employees. Such acts of seeking personal gains by taking advantage of the employees' safety net have seriously undermined the efforts made by most law-abiding employers in protecting labour rights. The authorities concerned

should conduct thorough investigations and review the existing system as soon as possible, so as to plug the loopholes opened to abuse by lawless elements.

Another obvious example is, since the implementation of the MPF schemes, we have been receiving complaints on cases where employees were forced to change their employment status to self-employed. They have not only suffered losses on the part of employers' contributions, but also on statutory rights that they used to enjoy in the past. Apart from this, compensations offered under the Fund do not cover employers' contributions to the MPF schemes. According to figures provided by the MPFA, at present, the Authority receives about 10 000 cases of complaints against defaulted employers contributions each month, out of which about 2 000 cases are related to failure in recovering MPF contributions from employers as a result of bankruptcy or company closures. Such are the benefits that employees should have enjoyed but are now lost due to the loopholes in the legislation. The Government is really duty-bound to speedily amend the legislation, so as to plug the loopholes in the existing system.

Madam President, the Financial Secretary's allusion to song "Under the Lion Rock" has immediately induced many people to collectively reminisce about the times when labour protection legislation was not as sound as today. However, those were the days when harmonious labour relations could be maintained through better interpersonal relationships, "asking for favours with a pat on the shoulders", "talking things over", and mutual understanding and accommodation. Today, though there are many labour protection legislation, there are also many cases where unscrupulous employers have taken advantage of the loopholes in the legislation to infringe upon employees' rights. This goes to show that despite the laws, if the loopholes are not timely plugged, if continuous improvements are not made or if the enforcement authority is not doing its job properly, then lawless elements would have the opportunity to take advantage of the loopholes to damage the harmonious labour relations in Hong Kong.

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

MR ABRAHAM SHEK: Madam President, as the Labour Day is just a week away, today's motion is most timely to review and discuss the development of the labour market in Hong Kong.

Harmonious labour relations are vital to social stability and economic growth in any society. Fortunately, Hong Kong has a long-established and well-tested labour relations system, which provides basic protection to workers as well as an effective mechanism for speedy resolution of industrial conflict.

Thanks to this established system, labour relations in Hong Kong have largely remained harmonious. This can be reflected by the small number of strikes and working days lost due to strikes each year. The credit should be given to both the employers and the employees for their co-operation and understanding in handling labour affairs.

Hong Kong's labour market has been built on a "free market" principle and generally free of government intervention. The terms and conditions of employment, including determination and adjustment of wages, are negotiated freely between the employers and the employees. The local labour market is always dynamic, flexible and readily responsive to economic ups and downs. If we lay down every term, condition or right in law, such efficiency and dynamism would be dampened. Government intervention will violate the principle of free market operation in the labour market, and set an undesirable precedent for government intervention in the private sector.

The rights and legitimate interests of over three million local workers have not been compromised or sacrificed in the presence of such a natural adjustment mechanism. The current Employment Ordinance lays down the requirements on some fundamental employment benefits and conditions for our workers. These statutory provisions have enabled workers to enjoy reasonable labour protection. In this regard, the local work force is not as vulnerable as some labour unionists claim that it is. The statutory protection, to name a few examples, includes rest days, holidays with pay, sickness allowance, maternity protection, long service payment and termination of employment contracts. There are also legal provisions against anti-union discrimination and employment protection. Employees are protected in law to organize or join union activities.

Madam President, I agree that there is a continuing need to review and improve the present labour regulations. Proposals that will strengthen the protection for employees should be seriously considered if they are conducive to the maintenance of a harmonious employer-employee relationship.

However, a cautious approach should be adopted in considering the radical proposals of setting up minimum wage and a collective bargaining system, for these measures may bring adverse effects on labour relations and impose extra financial burden on employers. It takes time and thorough discussion for the community to determine whether Hong Kong should lay down in law mandatory systems for wage and industrial talks. Before the community reaches a consensus, the Government should, instead, improve the present established mechanism, which has proved to be effective in maintaining employer-employee relationship.

Since the second motion later in the evening will touch on the issue of setting a minimum wage system, I will speak more on the pros and cons of a minimum wage level later. Now I would like to focus on the collective bargaining system. At present, labour disputes are resolved through voluntary or direct negotiations between employers and employees, sometimes through the help of the Government. Such an approach has proven effective and its continual existence is crucial to the maintenance of a stable and peaceful labour relations scene.

The current imbalance in the labour market is due to the restructuring of the economy towards the high-valued, high-technology and knowledge-based society. With a spate of layoffs, pay-cuts, insolvency and business closures, implementation of a collective bargaining system will only intensify the temporarily strained employer-employee relationship and make matters worse.

Many of those who fall victims to this market imbalance are the less skilled and less educated who can no longer meet the new challenges in the fast-changing economy. The introduction of more statutory regulations will not guarantee that the work force can retain their jobs. What these workers need is the Government's help in the form of training, retraining and education to upgrade their capability and adaptability.

Madam President, with these words, I support the Honourable Kenneth TING's amendment. Thank you.

MR LEE CHEUK-YAN (in Cantonese): Madam President, the Hong Kong Confederation of Trade Unions (CTU) supports the original motion moved by

Mr LEUNG Fu-wah on safeguarding the reasonable and legitimate rights and interests of employees. Mr LEUNG Fu-wah said just now that his motion had criticized for stating the all too obvious fact, it was like saying "mothers are women". Therefore, he cited another example of two lesbians who gave birth to a daughter these days to show that although the mother is a woman, the father can also be a woman too. Therefore, we have to look closely at any issue. In fact, when it comes to the reasonable and legitimate rights and interests of employees, it is indeed also necessary to have a closer look.

We oppose the amendment proposed by Mr Kenneth TING because his amendment denies one crucial fact. Mr TING deleted one phrase from the original motion, that is, "the situation in which employees are not duly covered by labour protection", which is a matter of fact. We think that the wages of wage earners in Hong Kong are getting lower and lower, their working hours are getting longer and longer, their jobs are getting more and more insecure and it takes them longer and longer to reclaim their rights and interests. These are all cast-iron facts that cannot be denied.

Today I do not intend to talk about wages and working hours because these issues will probably be covered in other debates. I wish to focus mainly on issues relating to labour protection. The existing framework of labour protection can be described as a lame duck with missing features and limbs and has infringed on the justified, legitimate and reasonable rights and interests of wage earners. Today, I would like to talk about four aspects in particular. Firstly, there are a lot of loopholes in the law. For example, employees are entitled to rest days, however, because of the loopholes, a lot of people cannot enjoy such rest days. I do not wish to dwell on this point today, since this issue of rest days was raised by the Honourable LAU Chin-shek a few months ago. I hope the Education and Manpower Bureau as well as the Government can respond to this issue positively.

The second major issue is outstanding wages. Mr LEUNG Fu-wah said just now that the Labour Department often did not prosecute employers and the reason he suggested is that the Labour Department is probably half-hearted, or is more intent on mediating than instituting prosecution. I believe this can be one of the reasons, but in fact another reason is that the legislation itself is not well written. I have looked at the legislation again and found that if for prosecution to be successfully brought against employers, two concepts in the legislation are involved, that is, that of wilfulness and without reasonable excuse. In fact, how

can an employer be proven to be "wilful" in not paying the wages? That is indeed difficult. An employer can say that originally he had the money, but unexpectedly, there is no longer any money. However, who knows what the actual circumstances of the employer are? Nobody can probe the mind of the employer to see what he is thinking, and nobody knows the actual situation of the business operated by him. I do not know whether it is for this reason that the Labour Department does not institute prosecutions. I found that theoretically, as provided by section 65 of the Employment Ordinance, it is possible for employees not to go to the Labour Tribunal to take legal actions against employers for outstanding wages because Magistracies can also rule on outstanding wages. However, I believe nobody has ever made use of this channel — the Labour Department can correct me — because it is simply impossible, the reason being it is difficult to prove that the employer is wilful and does not have any reasonable excuse.

The third major issue, which has been mentioned by Mr Andrew CHENG and Miss LI Fung-ying, is the "4-1-18" requirement, that is, the problem encountered by part-time workers. I am not going to elaborate on this, since the fact that part-time workers are not entitled to any reasonable and legitimate rights and interests is obviously an incentive for employers to hire part-time employees for not more than 17 and a half hours. I know that the Labour Department is conducting a review and hope that in the end the review will not merely be a window-dressing exercise. I hope it will produce some concrete results.

Finally, I have recently found that there is yet another very serious problem, that is, that of finding ways to evade long service payment and severance payments. The employer would transfer the employees to different posts until they resign of their own accord. A recent example is the owner of the East East Wanton Noodle Restaurants who deployed his employees arbitrarily to far-flung places. In fact, security guards very often face the same situation. I find that nearly all security guards will be transferred after they have served for five years, until they resign of their own accord. Therefore, this is another loophole in the law.

Mr LEUNG Fu-wah mentioned just now that the Labour Department sometimes would not try its best when carrying out mediation and do its work slackly. Of course, officers of the Labour Department may say that is unfair because they do not have any statutory power. Employers have seen through

the system and realize that the Labour Department can simply be disregarded, so in the end it requires the Labour Tribunal to carry out mediation or give a ruling formally.

In fact, the Labour Tribunal also has its share of problems. We find that the Labour Tribunal is probably rather reluctant to give any ruling (a case in point is the incident involving doctors), therefore it has come up with the tactic of "mental bombardment" to force employers and employees to reach a settlement. I hope the legal profession can look into this matter and also wish to discuss this problem with Chief Justice Andrew LI. The Labour Tribunal would ask both sides to reach a settlement in every case, and this tactic has in fact been successful, since according to some relevant figures I have recently obtained from the Government, in 10 000 cases, only 3 000 cases were heard and 7 000 cases reached a settlement. If it is possible for the cases to be settled, why were the cases not settled when they were processed by the Labour Department, rather than referring to the Labour Tribunal and dragging on for a long time before settlement? This is because the Presiding Officers gave specious explanations of the legislation so that employers and employees were both at a loss and felt that they had a likelihood of losing the case, so in the end they reached a settlement. This is a very important issue. If the Labour Tribunal is not willing to rule on the reasonable and legitimate rights and interests of workers and instead make both parties reach a settlement in a confused state of mind, I think that particularly at a time when employees are in a disadvantaged position, it is to their disadvantage that the time it takes to recover their wages is prolonged.

Finally, I would like to spend a minute on the issue of collective bargaining raised by the Honourable Abraham SHEK. Of course I thoroughly disagree with his comments, but I am not going to repeat them here since I cannot go over all of them in quarters of a minute. However, I can assert that in the many instances of layoffs and salary cuts, in fact the conflicts between employees and employers are resolved in a high-handed manner. This approach will only cause more grievances among employees. If they have the right of collective bargaining, in contrast, they can conduct negotiations on an equal footing and the conflicts between both sides can be dissolved.

Although I have said a lot, it is in fact a waste of breath. We still have to take to the streets on Labour Day on 1 May. The CTU will organize a rally on 1 May in the hope of mobilizing employees in Hong Kong to unite and fight for their rights and interests. Thank you, Madam President.

DR RAYMOND HO (in Cantonese): Madam President, the latest quarterly unemployment rate released just last week hit yet another new record, at 7%, or as many as 239 000 people when expressed in actual number. Since the local economy is still undergoing restructuring and the trends of external economies are still very much uncertain, it is expected that the unemployment problem cannot possibly be solved in the short run, which is worrying. Moreover, under the current economic sluggishness, the various trades and industries are also facing a very difficult business environment. Layoffs and reorganization and closure of companies just keep occurring, and reports on employees' rights not being respected have become more numerous than before.

Under the current economic situation, many companies which encounter business hardships have no alternative but to propose to their employees cuts of fringe benefits, wages and double pays and flexible manpower deployment, so that they can continue to survive and live through this harsh economic cycle. As the economy undergoes downward adjustments, it is entirely in line with the operation of free market to adjust salaries and fringe benefits downwards.

Actually, most people in Hong Kong do understand that these are the laws of supply and demand in a market economy. However, when one is the affected person, one will often find it very hard to accept the realities and will understandably think that one's interests have been injured. So, in order to reduce the negative emotional responses of their employees and gain their understanding and support, whenever a company is forced to take such unpopular measures, it should try as much as possible to communicate with its employees and explain the situation to them.

Hong Kong upholds market economy, but there are at the same time laws on protecting the rights and interests of local employees. Even under the existing economic situation, we should still not reduce the protection for employees. The Labour Department and the relevant authorities should follow up all employee complaints and reports. If subsequent investigation should prove that an employer has violated the Employment Ordinance, prosecutions should be initiated without delay. The Government has the responsibility to ensure that employees can receive reasonable labour protection under the law.

Madam President, labour relations in Hong Kong have all along been very harmonious. Unfortunately, the existing economic situation has led people to

focus on their own difficulties and lose sight of the fact that harmonious labour relations have been one of the keys to Hong Kong's success so far. I hope that all employers and employees in Hong Kong can join hands once again on the basis of mutual benefits and understanding and accommodation, so as to bring the economy of Hong Kong back to the path of growth. This has been our competitive edge and should be maintained. When we look at our past, we should be proud of all the records we have made.

I once worked in the United Kingdom for some time, and I also encountered labour problems in one construction site where I worked. On one occasion, some workers could not enter the construction site to work, and the site was occupied by trade union members who stopped others from working. Such a situation was actually caused by inadequate communication between the employer and his employees. In the end, the works project was held up for quite some time, and I had to be transferred to take charge of another project. Since my return to Hong Kong, I have come to realize that Hong Kong is everybody's envy in this respect, because we have been able to deal with our labour problems on the basis of mutual understanding and communication between employers and employees. When compared with foreign countries, we are already very fortunate. It is hoped that this favourable situation can continue or even see further improvements in the future.

Thank you, Madam President. I so submit.

MR TAM YIU-CHUNG (in Cantonese): Madam President, the topic under discussion in this Council today is a very important concern to the labour sector. At present, the unemployment rate in Hong Kong stands at a high 7% and some members of the business sector even predict that it will rise to 7.5% in mid-2002. Since it may be a long-term trend for the unemployment rate to remain high, wage earners will be facing a very difficult employment situation in the future. We can see that, with economic restructuring not completing within a short time, and adding to this the integration of the Hong Kong and mainland economies, the difference in pay levels and the northward relocation of manufacturing processes, the whole job market is very unfavourable to wage earners.

The first and foremost task in protecting labour rights is to solve the unemployment problem and increase job opportunities. The Hong Kong Federation of Trade Unions (FTU) hopes that in formulating any new policies or

revising any existing policies, the Government would consider whether job opportunities would be increased or decreased as a result. If job opportunities will be decreased, then it means that the policy should not be introduced. The FTU proposes that this should be known as a "employment priority policy". In the Budget, the Government put forward the direction of developing the local community economy but so far, we have not seen any specific plans. We hope that the Government could put in more efforts to do everything in its power to speed up and facilitate proposals on increasing job opportunities.

Apart from laying down a policy objective on employment priority and creating more employment opportunities, the Government must also enhance protection for the rights of serving employees. As a result of economic restructuring, the labour market has suffered the hardest blow and the modes of employment, fringe benefits and retirement system implemented in times of prosperity are now being challenged.

Recently, in the course of my work in the districts, I met a lady who told me that she worked for a small courier company. She said all employees in her company were recently asked to become self-employed persons. They were required to choose a company name, have a company chop made and sign a contract in the name of the new company with the old company. Though the nature of her work is the same as before, she is no longer entitled to labour protection, labour insurance and Mandatory Provident Fund scheme benefits provided under the labour legislation. I became very angry when I had learned about this and promised her that I would immediately refer her case to the Labour Department for follow-up actions. However, she repeatedly urged me not to do so for she did not want to lose her job. As regards the situation of this lady, I was full of sadness and sympathy. Afterwards, I told the Director of the Labour Department that the work of law enactment and enforcement should be enhanced and more ways should be explored, and that includes legislating to prevent this trend from spreading and worsening.

Recently, many companies and organizations have resorted to laying off their staff. The Government should take steps to encourage employers to talk things over with wage earners, be sympathetic towards each other and ride out the storm together, instead of lightly resorting to layoffs. In face of the business downturn, companies should place more emphasis on staff communication than any time in the past by adopting people-oriented policies, so as to give full play to the positive factors in people, so that employers and

employees alike could be of one mind. If employees are given a chance to participate in discussions on matters relating to their own interests, they would feel respected; if employees are allowed to have a better understanding of the finances and future prospect of the companies, then they could understand more about the problems and work together to find solutions to those problems.

With these remarks, Madam President, I support the original motion of Mr LEUNG Fu-wah.

MISS CHOY SO-YUK (in Cantonese): Madam President, the Hong Kong economy continues to remain in the doldrums and the latest unemployment figure announced by the Government earlier reached a record high of 7%. This unemployment rate means that one out of every 14 people is unemployed and it also means that the number of unemployed people in Hong Kong has drastically increased to 240 000. Apart from reflecting the adverse condition of our environment, what is even more worrying is that the Government has warned that the unemployment rate has not yet reached its peak as there are no improvements in the economy as a whole. All these phenomena show that wage earners have to continue to brace themselves for future hardships and seek to be self-reliant for the long and hard winter is not yet over.

In face of the uncertain prospects, all wage earners are living under a sense of insecurity. Everyone knows that once a person is unemployed, it would be very lucky if he could return to the job market by volunteering to accept lower pay. What is even more common is for wage earners to spend half a year to one year or even indefinitely in looking for jobs. Losing a job is almost equivalent to losing self-esteem. Therefore, at the moment, to hold down their jobs is the only wish of almost all wage earners. Under such circumstances, employees basically do not have any bargaining power and as long as they could keep their jobs, they would allow themselves to be led by the nose and taken advantage of, even if employers cut their pays and benefits or even make further unreasonable demands. If the Government still fails to review the existing labour legislation and step up law enforcement, in order to safeguard reasonable labour rights and interests, we could foresee that the exploitation of wage earners will continue to deteriorate.

To put it most simply, the contract of employment signed between the employer and employee is supposed to be the starting point where employees are

protected under the law. How could we possibly talk about other rights and interests if the employment relationship could not even be established? Unfortunately, there are actually some employers who pay their employees in cash without even issuing a salary slip. Since there is basically no "concrete evidence" to prove the employer-employee relationship in such cases, employees who wish to make claims in relation to their rights and interests would encounter many obstacles. Moreover, the Labour Department only encourages employers and employees to draw up employment contracts, but there is no legislation for its mandatory enforcement, thus unscrupulous employers could take advantage of such grey areas to repress their employees. In the face of such a situation, wage earners really do not have any alternatives but to bear their grievances in silence.

Furthermore, the original intent of the Mandatory Provident Fund (MPF) schemes is to offer additional retirement protection for employees. However, owing to incomplete deliberation, the implementation of the MPF schemes has become a bad deed with good intentions. Many employers have taken advantage of the prevailing economic climate to force their employees to become self-employed persons and asked them to shoulder the responsibility of making employers' contributions, in order to evade MPF responsibilities. Thus, employees have suffered harms because of the MPF system before they can enjoy any benefits. Other employers who are not very well off financially would completely ignore the requirements of the law and blandly refuse to make contributions. After all, if a company closes down or declares bankrupt, employees would not be able to make any claims on defaulted employer contributions under normal circumstances. According to figures provided by the Mandatory Provident Fund Schemes Authority, at present, there are more than 5 000 cases of defaulted employer contributions but so far, the Government has failed to come up with an effective solution.

Madam President, we understand that we should strike a balance between the interests of employers and that of employees. We should not just be concerned about the welfare of employees while turning a blind eye to the interest of employers. In last year, for example the number of enterprises going into insolvency drastically gone up by 100% as compared with that of the previous year and amounted to 9 100-odd cases, showing that the business environment of enterprise owners are not at all easy. However, at the same time, it is also true that some employers have resorted to various means to take full advantage of the loopholes in the system to shirk all of their responsibilities. On the one hand, such employers deliberately filed bankruptcy petitions to force

their employees to apply for advance payment of their entitled severance payments from the Protection of Wages on Insolvency Fund (the Fund) through the existing mechanism. On the other hand, they also secretly completed the procedures for transfer of business only to resume operation at the same location shortly. To cope with the increasing number of severance pay applications, the Fund is also on the verge of bankruptcy. In order to save the Fund, the Government has no alternative but to drastically increase the annual levies on the enterprises. It is obvious that this is extremely unfair. If the Government continues to turn a blind eye, it would mean that it is encouraging unscrupulous employers to shirk their responsibilities onto some law-abiding enterprises, thus creating more difficulties for the small and medium enterprises that are already operating under adverse conditions.

The other difficult problem faced by wage earners is the fact that the mediation mechanism of the Labour Department is so weak and powerless that it does not have any deterrent effect on enterprises at all. There are also no specific penalties at the moment to deter acts of defaulting staff salaries, holiday entitlements, and so on. Even if employees were willing to sacrifice their jobs to seek justice and resolved to take their employers to court, they would have to win the case before they could recover any outstanding wages. Moreover, even if employers lost the case, no punitive penalties would be imposed. This has indirectly encouraged some employers to take advantage of the loopholes to repress their employees. To a certain extent, it also reflects that the existing legislation does not offer any protection for the most fundamental employment rights of the local working masses. The Government should really conduct a review and amend the existing labour legislation to make up for the inadequacies in the legislation.

With these remarks, Madam President, I support the original motion of Mr LEUNG Fu-wah.

MR CHAN KWOK-KEUNG (in Cantonese): Madam President, I really find it hard to describe the experiences of wage earners in the past year. On the one hand, they are faced with the prospect of unemployment and on the other, they live under the shadow of pay cuts. As it is hard to earn a living, employees dare not come forth to defend their own rights in virtually everything; while many employers have gone to the extreme of paying no heed to labour rights protected under the law and totally disregarded the labour legislation!

As Mr LEUNG Fu-wah said earlier, the Employment Ordinance provides that employees are enjoy certain degree of protection in regard to pay, leave, severance pay and long service payment. Moreover, the Employees Compensation Assistance Ordinance also provides that employees should be granted compensations for injuries at work, but due to imbalances in the labour market, unusual changes have occurred in labour relations. The FTU has received many complaints in this respect, and this shows that more and more employers have failed to abide by the law and totally disregarded the rule of law.

Shortly before the Chinese New Year, the double pay bonuses for Route 3 employees were deducted by half. At first, most workers resigned themselves to the deduction but the employer, seeing that the employees did not have strong objections, eventually decided to cancel all double pay bonuses at the end of February.

Section 43A to M of the Employment Ordinance, in particular subsection A, specifically distinguishes the definitions between "main nominated sub-contractor" and "sub-contractor", in order to clearly set out the rights and responsibilities of employers at various levels of the sub-contracting system. All employers, be they sub-contractors, second sub-contractors or third sub-contractors, have the responsibility to pay the entitled remuneration of construction workers in full. However, why have so many construction workers gone on strikes and spontaneously picketed construction sites to stage protests? This is because their complaints to the Labour Department were in vain, and they found that no government departments could protect their rights and interests. So, they had to take matters into their own hands and negotiated with employers or even resorted to industrial actions.

Furthermore, recently many restaurant groups planned the winding-up of their businesses systematically and defaulted all kinds of workers' compensations. Such are the tragedies of wage earners! While wage earners join the ranks of the unemployed, they are not even granted any terminal compensations to maintain their living. Company closures in the catering and construction industries are very common, and since employers immediately disappeared after the closures, employees were met with many obstacles when they applied for compensations from the Protection of Wages on Insolvency Fund (the Fund). Under section 67 of the Employment Ordinance, the Government has the power to apprehend absconding employers, but very often, this provision is not

enforced, thus encouraging employers to deliberately evade salary and severance payments. The Government should really be held responsible for the failed realization of protection offered by this Fund.

According to figures provided by the Labour Department, there were as many as 889 cases involving claims due to closure of business and it has increased by more than 30% compared to 678 cases of the previous year; and in the first quarter of this year alone, there were also 228 similar cases, reflecting that the situation is indeed very serious.

According to an official of the Eating Establishment Employees General Union, an affiliation of the Hong Kong Federation of Trade Unions, when the Beishou Seafood Restaurant and the Manchau Seafood Restaurant owed their employees one and a half month wages in arrears sometime ago, all employees were willing to bite their lips in riding out the storm together with their employers. They were willing to tolerate outstanding wages on a temporary basis because they hoped that businesses would improve and everyone could hold a job. It could be seen that workers have put themselves in the shoes of their employers and given their employers 100% support. However, in the end, the owners of these restaurants absconded and refused to clear their debts, thus leaving wage earners at loose ends.

Some employers even deliberately closed down their original businesses and resumed operation in new clones, thus totally evading all employees' terminal compensations. Where on earth is justice and fairness! I wonder whether Members would still remember that half a year ago, five transnational Internet companies closed down their businesses at the same time. The 200-odd employees of these companies suspected that they had only faked closures and transferred their capital in secret. They even instructed their employees to make wage claims from the Fund.

In order to attract investments, the procedures of handling company closures in Hong Kong are very lax, thus creating a lot of loopholes in the legislation. It has always been very common for employers to refuse paying terminal compensations. Though it is clearly provided in the legislation that employers are liable to paying outstanding wages and severance pay, employers can still easily shirk their responsibilities by closing down their businesses and continue their operation in new clones.

Hong Kong has always attached great importance to the rule of law, but many Hong Kong employers do not have the least respect for labour legislation and often violate the rules of the game by shirking their responsibilities. Moreover, the Government has adopted a *laissez-faire* policy and is reluctant to take strong measures against law-defiant employers, thus many labour legislation exist in name only. If we could not even defend labour protection legislation, the so-called "upholding the rule of law" would be nothing but empty talk. Though Mr LEUNG Fu-wah only demanded the protection of the basic rights and interests of employees in his motion, it still could not escape the fate of being amended. Therefore, I believe everyone would have an idea of what Hong Kong employees are facing. Need I say more?

Madam President, I so submit.

MR LAU PING-CHEUNG (in Cantonese): Madam President, I rise to speak in support of the original motion moved by Mr LEUNG Fu-wah and the amendment moved by Mr Kenneth TING. This is because the focus of both the motion moved by the labour sector and the amendment moved by the commercial and industrial sector is on urging the Government to take measures to safeguard the reasonable and legitimate rights and interests of employees.

Faced with the economic depression, we can see the situation mentioned by Mr LEUNG and Mr TING taking place every day. Mr LEUNG mentioned in the original motion that "the labour market is in an imbalance and employees are not duly covered by labour protection", whereas Mr TING mentioned in his amendment that "companies keep closing down, restructuring and laying off their staff". We can cite numerous cases to demonstrate the difficulty faced by employers and employees in their respective posts. Nevertheless, I am glad to see that Members representing the employer side as well as those of the employee side have placed much emphasis on the importance of safeguarding the legitimate and reasonable rights and interests of employees despite the difficult circumstances.

Actually, the economic depression facing Hong Kong is a general problem to all. It does not merely affect employers and employees. Only through enhancing our overall competitive edge can the Hong Kong economy rebound.

Madam President, the Budget delivered by the Financial Secretary for the coming year was just passed by this Council a week ago. I still remember the Financial Secretary pointed out in the Budget the need to enhance our competitive edge in four areas, including financial services, logistics, tourism and producer and professional services. While his words are still ringing in my ears, the Chief Secretary for Administration and the Financial Secretary have already embarked on their inspection visits to the Pearl River Delta to explore the possibility of co-operation and development in more concrete terms. Of course, we are waiting to explore the business opportunities brought about by our Motherland's "accession to the World Trade Organization". Nevertheless, we must firmly believe that as long as we can keep our strengths and are willing to work hard and constantly upgrade our competitive edge, we will definitely overcome our difficulties.

Let me cite the architectural, surveying and planning sector represented by me as an example. Although all the members of this sector have already acquired professional qualifications, they are similarly subject to pay cuts. At the same time, they have to handle additional workload. Nevertheless, such difficulties have not deterred us from making efforts to enhance our value and keep pace with the times. In the West Kowloon Reclamation Planning concept competition held recently, the international panel of judges selected five winners from a total of 161 participants. The fact that three winning teams are local teams has once again illustrated our strength. I would like to take this opportunity to urge public or private organizations to treasure local talents.

Madam President, about two weeks ago, I learned from a newspaper advertisement about the closure of a Japanese restaurant. The advertisement caught my attention since it was in close proximity to my office. According to the owner of the Japanese restaurant, the closure decision was made since the restaurant had found it difficult to continue operation. Nevertheless, the owner had managed to pay all the wages of his employees and repay all his debts. It can be said that there is no default. While I appreciate the owner's ability to act in such a perfectly open manner, it would be even better if he could have taken a more active approach by discussing with his employees and, with mutual consent, adjusted their wages, and worked jointly to upgrade the quality of the food and services provided by the restaurant, rather than "gloriously" winding up his business. I so submit.

DR LUI MING-WAH (in Cantonese): Madam President, like what happened last year, in the Legislative Council meeting before the Labour Day on 1 May,

representatives from the labour sector moved a motion on improving the rights and interests of employees, especially at a time when the unemployment rate reaches 7% and the population of unemployed people stands at as many as 240 000. The Members' concern about the rights and interests of employees is understandable.

We know that when the local economy is in the doldrums and when the companies are operating under very difficult conditions, many employers are forced to cut the wages and benefits of their employees. Many employees accept the employers' proposal to cut wages and benefits because they wish to tide over the difficult time together with the employers and they are aware that it is hard to find a job these days. We support this spirit of co-operation between employers and employees so that the companies can still operate under difficult conditions. This will also ensure that employees will have a job as well.

However, as the sluggish economy persists, we learn of more and more cases of employees complaining default payment or withholding of wages by employers. We are of the view that such actions of showing disrespect to the agreement between employers and employees and of damaging the mutual trust should be condemned.

Obviously, businesses are operating under difficult conditions and the employment situation is no good either. In order to improve the employment situation, the overall economic situation must change for the better. Only when the economy resumes growth that the companies can hire more employees and the employment situation improve. Our experience over the past few decades has shown a clear relationship between economic development and employment.

The motion moved by Mr LEUNG Fu-wah intends to accuse the Government of failing to make proactive efforts to ensure that employees enjoy reasonable and legitimate labour protection. As a matter of fact, he has only seen the surface of the problem but not the essence of it. Stringent enforcement and introduction of even when some more pieces of legislation will not solve the unemployment problem and prevent the unreasonable behaviour of certain employers. If Mr LEUNG Fu-wah really wants to improve the employment situation in Hong Kong, he should make recommendations to the Hong Kong Government to revive our economy. He should also co-operate with the business sector to demand the Government to permit new enterprises to import

half of the number of technical staff they need. In this way, more enterprises will be attracted to come here and more jobs can be created. These will benefit both the employers and employees and make our society a harmonious one. Thank you, Madam President.

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

MR ALBERT HO (in Cantonese): Madam President, Mr LEUNG Fu-wah pointed out in today's motion that the situation where employees are not duly covered by labour protection is deteriorating. I agree with him and I would also like to point out in my speech that certain areas in our legislation and institutions must be improved.

Of course, there are many problems and we could not just lay the blame on unscrupulous employers or companies. In fact, if there were defects in the policy itself, it would certainly create situations that are unfavourable to employees and thus deprive employees of reasonable protection.

The points that I am going to make have actually been raised on various occasions in the Legislative Council, but to date, it seems that the Government has not made any appropriate responses or taken any follow-up actions.

First of all, it is about the problem with the Protection of Wages on Insolvency Fund (the Fund). At present, the coverage of the Fund is inadequate. Firstly, long service payment is not covered. I really cannot understand why long service payment should not be covered. Secondly, it also does not cover the Mandatory Provident Fund (MPF). In fact, we have received complaints that after the closure of some companies, employees discovered that their employers have not only defaulted contributions to the MPF schemes but have also withheld the part of employees' contributions. Thus, apart from failing to recover their outstanding wages, employees also fail to recover long service payments, bonuses and their MPF contributions. However, the MPF is not covered by the Fund. As regards this point, it is really necessary to amend the legislation as soon as possible.

We have also pointed out that the greatest problem encountered by employees in relation to the Fund is that many employees could not apply for

assistance from the Fund because the defaulting employers have not filed for bankruptcy. If an employee has to make wage claims against the employer to force him or his company into bankruptcy or insolvency, then employees who have their wages owed in arrears would have to file a bankruptcy petition with the Court. However, everyone knows that very often, it is very difficult to apply for legal aid. In the case of a married couple, for instance, the income of the wife may also be taken into account in the means test. Even if the husband could hardly make ends meet, he could not apply for legal aid because his wife still has an income and he could rely on the support of his wife, or his wife may still have a little savings. Under such circumstances, how could we expect an employee, whose wages have been owed in arrears for half a year to one year, to spend another \$20,000 to \$30,000 on filing a bankruptcy petition against the company concerned? We have actually raised this point with the Government many times, so it should really try to find ways to solve this problem.

I remember accompanying a worker to the Labour Department and was informed by the Commissioner for Labour that he would try to examine what could be done under the law or whether it could be dealt with as an individual case if the employer were found to have deliberately defaulted payments. As Mr CHAN Kwok-keung pointed out earlier, if employers were found to have deliberately defaulted payments, the employers could be prosecuted through criminal proceedings. However, it seems that such methods are not very effective, and would not be of much help to employees whose wages are being defaulted. Therefore, I hope that the Court could make corresponding amendments to the relevant legislation to help the needy employees.

Secondly, it is the problem of making appeals to the Labour Tribunal and we have also discussed this issue at the Panel on Administration of Justice and Legal Services. I have received complaints from some workers saying that the Labour Tribunal had ruled that they were successful in their claims and could recover the outstanding wages and other outstanding payments such as bonuses, but employers requested to lodge an appeal. Under such circumstances, employees are faced with the decision of whether to make a defence. If they failed in their defence, then their gains would be outweighed by their losses. Therefore, very often, employees are forced to relinquish payments that they have recovered and settled the case with the employers out of court, otherwise, they would have to face the consequences of losing the case.

We have discussed the possibility of making an arrangement on litigation fees in respect of the appeal mechanism, so that both the winner and loser of a

case do not have to pay court fees, or to fix the ceiling of the fees at an amount affordable to employees. I think that this appeal mechanism could become part of the labour tribunal mechanism. I do not understand why legal reforms could not be introduced in this area. However, up to this moment, it seems that the Government has not yet followed up on this matter.

Thirdly, it is the problem of self-employed persons. I believe that at the time when the MPF legislation was enacted, no one would have thought that employers would employ such a tactic, that is, regardless of whether employees like it or not, employers may ask them to become their own bosses. Employees would have to sign an agreement if they wish to stay on their jobs. However, the Secretary has said that even if agreements were signed, it would still not be valid for whether or not an employment relationship exists would have to be determined by the law. However, how many cases could actually be settled in courts? Many people who are forced to become employers may still be employees under the definition of the law, but how could they exercise their rights to enjoy the respect or acknowledgement they are entitled under the law? These people would not only lose all their MPF entitlements and there is also one point which Members may not be aware, and that is, they may even lose the original protection that they are entitled to. Recently, there was a case in which a worker was involved in a serious accident and completely lost his working ability after his status was changed to self-employed. As he is a self-employed person, no one could offer him any assistance. I felt very sad when I heard about his case. Could the Government really find some ways to assist such helpless employees who are forced to become self-employed persons?

In fact, I could still cite many examples but for the time being, I hope that the Secretary could respond to the above points.

MISS CHAN YUEN-HAN (in Cantonese): Madam President, it is a pity that Dr the Honourable LUI Ming-wah is not here now. Every year on the eve of Labour Day, I think the labour sector would propose a topic related to some labour issues for a debate. This is a good practice in a civilized society. Honourable Members from the labour sector propose such a topic for debate because it is an issue which is not a concern to the labour sector alone. I think Members should lend a listening ear to the debate because we are all in the same boat. When the labour sector comes across any difficulties, the employers, employees and all parties should well understand our situation. Therefore, I think every year when we propose such topics for debate on an occasion before

Labour Day, this also indicates the health condition of society. I hope the Secretary and the officials of the Labour Department will really understand our situation.

Recently, the Government seeks to launch the accountability system for principal officials and that has aroused the concern of the entire community. Under the accountability system, which officials are the most important ones? I think all the people of Hong Kong would say that officials who are in charge of manpower and commercial and industrial affairs are the most important ones. I also believe that the labour sector and people from various social strata will also agree that the most urgent task at hand is solving the unemployment problem. From this angle, we can see that the present unemployment situation is very grave. The gravity of the situation is obviously unprecedented in the decades after the war. In other words, there is a serious imbalance in the supply and demand relationship on which we have always relied and an excessive supply of manpower. Workers have basically no bargaining power at all. I think the 60 Honourable Members here would all agree that the workers are in a very miserable state, from whatever angle we look at them. In such circumstances, I hope that the officials will really sense the urgency of the people and think what they think, as the Chief Executive has said.

What should the Government do faced with the plight met by the majority of the 3 million plus wage earners? Mr Albert HO made a good point when he quoted two examples, for these are what I would like to say as well. I would like to add that many employees do not have any bargaining power and there are many cases where the employers make unilateral changes to the employment contracts, changing the employees under their employ into self-employed persons. Such a situation is most commonly found in the catering and transport industries. The Hong Kong Federation of Trade Unions (FTU) conducted a survey recently and found that most of the complaints came from the transport industry where the status of many workers had changed from employee to self-employed. This situation is also very common in the construction industry, for the construction industry has to face the problem of MPF as well. Trade unions from these two industries have often discussed these problems with the Government, but frankly speaking, Madam President, the problems remain unresolved even to this date. Complaints are being made all the time. Given the plight of the workers, should the Government not do something to make some improvements to safeguard the reasonable and legitimate rights and interests of employees? The Government cannot just show some sympathy whenever the problems are discussed and then brush them aside.

Now many wage earners are involved in numerous labour disputes every day. Although sometimes they have won in the Court, appeals from employers are allowed since the common law is practised here. Both parties are entitled to appeals. If proceedings are initiated in the Labour Tribunal, there is no need to require any party to have barristers to represent them. So the expenses involved are not substantial for either party who wins or loses in the suit. If the party who has lost the case decides to make an appeal, then should the party who has won the case in the Labour Tribunal respond? If we can be certain that we would win, then there would be no cause for worry, but we have no idea of the result of the appeals. In view of this, the FTU has spent a number of years looking into the issue. We have come up with the view that when the Government handles such cases, an exemption should be given to the employees, like what the Equal Opportunities Commission is doing, so that the employees will be given some kind of legal protection to enable them to meet the challenge posed by employers who have lodged an appeal with the High Court. The issue has been under discussion for so many years, but there is still no response from the Government. Many a wage earner may have won a suit in the Labour Tribunal, but he may be forced to withdraw the case when the employer lodges an appeal. Some people may say that the employees may apply for legal aid, but due to a number of reasons, they may not be able to get legal aid so easily. What the officials hear today has been said in this Chamber more than once. Our trade unions have been to government departments to present their views many times, but no improvements have been made to date.

Madam President, I know that it is difficult to request the Government to intervene in this matter, but the Government must start to think about it now. I wish Honourable Members from various sectors in this Council will also think about the present state of affairs. Now the wage earners in the labour sector have reached a situation where they do not have any bargaining power at all. Whenever a move is made by the employers, the employees will not say anything for fear that they may lose their jobs. Then what can be done? In theory, and in such a situation of imbalance, the Government should really take some actions to enable the employees to say what they want to say.

In 1998, the then Commissioner for Labour, Miss J. A. WILLIS, drew up a set of guidelines upon our repeated requests. But what use is the set of guidelines to the workers? In theory, the guidelines specify that negotiations

should be carried out on an equal basis, but this is not the case in practice. Then what can be done? The Government should do something about it. I think if the employers still seek to lay off staff even when the companies have made huge profits, or if employees are asked to agree to pay cuts or reductions in benefits for no reason at all, then I think the Government should intervene in an appropriate way and in a way which is more forceful than the present.

Madam President, last Monday there were rumours that the Pacific Century CyberWorks (PCCW) had run into difficulties and was planning to lay off a few hundred people. The trade unions sought help from various quarters because of these rumours. The unionists became gravely concerned last Saturday and went to the Labour Department, the other departments concerned and the Policy Secretary. They hoped that the PCCW management would understand the situation of the staff. We know that in a capitalist society, there is nothing the Government can do, but it is of vital importance that there can be more people who can give full play to their clout. It is my conviction that the Government has not done enough work in this matter both in advance and afterwards. This is especially true when officials say one day that companies should not lay off their staff, but the other day they will say that such moves are commercial decisions. Then what are they trying to say? I think there are morality and justice in society and when confronted with problems, people should join hands to resolve them.

MR JAMES TIEN (in Cantonese): Madam President, the similarity between the original motion and the amendment lies in the last sentence. It is our consensus, and that is, to safeguard the reasonable and legitimate rights and interests of employees. The difference between the two is in the introduction of the former. Mr LEUNG Fu-wah says in the preamble of the motion that the local economy is in the doldrums, the unemployment problem persists, the labour market is in imbalance and the employees are not duly covered by labour protection. Looking at the matter from another perspective, the situation is actually not like this. What we see is that many companies are closing down, reorganizing or laying off staff. In such circumstances, we still wish to ask the Government to try its best to solve the problem. However, Honourable Members from the labour sector think that all the problems stem from the employers, and so they want the Government to formulate some laws for compliance by employers.

We fully agree with the idea that after the laws are passed, the people concerned will have to comply. So when the Legislative Council deliberates on the laws, we will express our views. When the laws are passed, we will never call on the employers not to comply with the laws, such as withholding the wages of employees, using an excuse to close down their companies one day but opening another company the next day and hiring the same staff again, and so on. We have never encouraged any employer to do such things.

Some Honourable Members say that the employees are having a very miserable time. As I have said in the last motion debate, the number of bankruptcy cases is 15 000 last year, and 9 000 for the year before last. Have they ever thought of the fact that with such a great number of labour laws, it is really a great burden to the employers. There are many things which the employers cannot do, so they can only think of other ways to get round the problems. The Honourable CHAN Yuen-han mentioned earlier that in the catering and construction industries, some employers wished to save the money for MPF contributions and so they asked their staff to become self-employed persons. If the companies are making good business, the employers will not need to think of such tricks. If business is not good, the direct consequences are the companies will close down and the staff will lose their jobs. After the Legislative Council has passed the laws, some small and medium enterprises have thought of ways to handle the situation, and that is to fold their businesses. How are we going to deal with this problem? Some Honourable Members mention the practice of the Labour Tribunal and they say that in such circumstances, if the employers lodge an appeal with the High Court, the employees should be given some exemption. But the employers will say why they cannot get any exemption under the same conditions. They think that under the existing legislation, both employers and employees are entitled to lodge appeals with the courts.

Companies have their own problems and so have employees. But in any case, both employers and employees should comply with the relevant legislation. If a demand is made on the Government to take proactive measures to enforce the requirements, the result may be counter-productive. It may lead to more layoffs among local companies or cases like foreign companies laying off hundreds of their staff in Hong Kong or closing their operations and withdrawing from Hong Kong. All these may happen.

As for the original motion, the Liberal Party agrees that measures should be adopted to ensure that employees enjoy reasonable and legitimate rights and interests. But as to the preamble of the motion, we are of the view that employers should not be made to bear all the blame. To be fair, employers do have their own difficulties. For who are going to pay them any compensation when they run into losses? In a free market economy, employers cannot ask for compensations when they run into losses in order that their staff may fare better. The Liberal Party thinks that many companies are running into difficulties and so there are restructuring and layoffs and these have aggravated the unemployment problem. We think that more efforts should be made by the Government to ensure that employees enjoy reasonable and legitimate labour protection. This we support. But the preamble of the original motion is totally targeted against the business sector. This we must beg to differ.

Thank you, Madam President.

MR LEUNG YIU-CHUNG (in Cantonese): Recently, there was a newspaper report that a bridal salon had decided to slash the year-end double pay of its staff. The female boss said that in times as these, it was lucky that the staff would not be laid off or given a pay cut. Some employers even said that when there were not enough jobs for everyone, no one could afford to talk about luxuries like labour protection, and wage earners should thank God when they have a job. Doubtless these views are shared by many employers who may include some of the Honourable colleagues from the business sector. In fact, the wage earners are well aware of the present difficult situation and they also want to tide over the difficult times together with their employers. But the question remains whether there are mechanisms, ways and means which can enable the employees to really ride out the difficult times together with their employers. In circumstances as these, very few employers can discuss their problems with their staff in a frank and open manner. In my opinion, irrespective of whether the business is making profits or running into losses, the employers will seize every opportunity to make a pay cut or lay off staff. For the employees, what they need most is not the paper tiger kind of laws, but laws which can offer them with genuine protection. It is sad to see that the existing laws do not offer them any protection at all.

Worse still, the Government is taking the lead in all this and it is setting many bad examples for the private sector to follow. Over the past couple of

years, not only did pay cuts and layoffs occur in the private sector, but there were also pay cuts, layoffs and contracting out of services within the Government. When there are layoffs by big companies, what can the Government do? The Government can only put on a miserable look and say that there is nothing it can do. It will say that it cannot stop private sector institutions from not making pay cuts and layoffs, for Hong Kong is a free market economy and this is the excuse often put up by the Government. As a matter of fact, the Government is often making all kinds of pay cuts and layoffs and so it cannot say with justification that other employers should not make any pay cuts and layoffs. That is the crux of the matter.

Take the recent proposal for a civil service pay cut as an example. We can see an important phenomenon, and that is, the civil servants always stress that the issue of pay cut is not something not worth considering, but the question is whether there is an effective mechanism to consider it. If the Government does not even want to consider this mechanism, the impression people will get is that a bad example has been set.

In addition, the Government keeps on saying that it has done a lot of work in the past, like drawing up many guidelines, especially those on pay cuts and layoffs. These guidelines ask that discussions should be made between employers and employees and that an agreement can be worked out after the discussions. But what are the results if employees do not sign this agreement when the employers want to have a pay cut or lay off some of the staff? The answer is simple — the staff will be dismissed. So the so-called discussions are not discussions at all. All that are left to the employees are two options: to accept the pay cut or to find another job, or even face unemployment.

So these guidelines can offer no protection to employees at all. On the contrary, they would create the conditions under which employees are forced to accept some unreasonable treatment. We hope that the authorities can improve on the guidelines and more importantly, set up a mechanism for bargaining. For if not, the so-called discussions will be meaningless. It is because employees do not have any chance to talk with the employers on an equal footing. There is a need to set up a mechanism for bargaining, and that is what we call the right to collective bargaining. We have discussed this issue a number of times already and I would like to repeat it again. If there is no right to collective bargaining, the employees will have no chance at all to talk with the employers on how problems can be solved.

The loopholes in the existing legislation are innumerable. Apart from the examples mentioned by me, there is also the example of legal aid. At present, if there is default on the payment of salaries, or if unreasonable compensation is made when the employees are dismissed, the employees can petition the Labour Tribunal. If the appeal is granted, compensation may be paid, but if the employer does not want to pay the compensation or if the salary is still in default, then what can be done? The answer is nothing, for the Court is not obliged to recover the compensation and the employee concerned will have to do so himself. There are two ways in which the employee may recover his salary, first is to apply to the District Court to enforce the ruling of the Labour Tribunal and to have a bailiff sent to his company to execute an attachment order. However, the applicant has to pay a charge of \$4,000 first. The problem is when the salary has been owed in arrears for a long time or when the employee has been dismissed, the requirement to pay a charge of \$4,000 first before any action can be done to recover the compensation is in fact a heavy financial burden to an unemployed person or whose salary is owed in arrears. So that is a problem. Even if the employee pays \$4,000 to have the company attached, yet another problem may arise due to the fact that often these companies have a number of branch offices and so it is not at all easy to have the branches attached. So in this way, the employee concerned may not benefit at all.

Another method is that the employee may apply for legal aid to have the company liquidated. Then he may apply to the Protection of Wages on Insolvency Fund for assistance. However, the legal aid system as it stands now is subject to a lot of restrictions from various ordinances, such as a means test, and this may pose many problems to the employees. That is why in many cases they will not get legal aid in the end. I think that the authorities should review these ordinances, especially with a view to repealing the provisions for a means test in respect of applications for legal aid.

Madam President, under the present economic conditions, it is true that the small businesses are having a tough time, but there are also quite a number of businessmen who make use of the opportunity to lay off staff or to reduce their pay despite the fact that they are making a profit, making the life of the workers go from bad to worse. Therefore, I think the Government should not allow such a state of affairs to go on, and a mechanism should be set up to enable employers and employees to sit down and discuss their problems. Otherwise, there can be no hope of resolving the problems.

Madam President, I so submit.

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

(No Member responded)

PRESIDENT (in Cantonese): Mr LEUNG Fu-wah, you may now speak on Mr Kenneth TING's amendment.

MR LEUNG FU-WAH (in Cantonese): As many Members said earlier, the core of Mr Kenneth TING's amendment to my motion is like what Mr James TIEN said earlier and he has also voiced the thoughts of Members sitting on my left. It seems that many Members believe that employees could not enjoy their entitled labour protection because of employers.

Why have I moved this motion? It is indeed very simple, and I actually agree to most of what Mr Kenneth TING has said earlier. He said he duly respects legislation that was recommended by the Labour Advisory Board (LAB) with the consensus of all parties. Here, I have in my hand, a whole book of legislation enacted with the consensus of both employers and employees in the LAB, and this is a foundation upon which our society is built. As regards what is reasonable and justifiable, everyone could look at this issue from different perspectives and come away with different interpretations. However, this legislation is a foundation and is also the most fundamental one. As regards whether workers could enjoy such fundamental rights, everyone could assess whether there is justice, rationality and legitimacy in society by applying these standards, and the assessment on legitimacy would be the simplest for we would have an answer once a matter is taken to the Court. Right? However, the problem at the moment is, as many Members have pointed out earlier, the fundamental truth is, "unscrupulous employers" are definitely in the minority, and I agree to this. Therefore, I actually do not wish to use the term "unscrupulous employers" today. I just want to use the term "law-defiant employers". In fact, employers should abide by the law, and if they do not do so, they should be sanctioned by the law. However, according to what we have seen of late, the number of law-defiant employers has been on the rise. Why has it increased? We could see results of a vicious cycle and this phenomena is very contradictory. Mr James TIEN said earlier that there is only legislation on labour protection and asked what kind of protection there is for employers. In

fact, under the existing mechanism, the interests of employers are protected under certain circumstances because there is a legal basis and a formula for calculation. Another form of protection, such as the Protection of Wages on Insolvency Fund, is actually also available for employers under certain circumstances. For instance, after employers have gone bankrupt, another fund, such as the employees compensation fund that we have all been talking about recently would provide another form of insurance. For employers who have already taken out insurance policies, compensations would be made from this fund if the insurance company becomes insolvent. However, we have often asked why the existing problems have emerged? In the final analysis, this is because some law-defiant employers have taken advantage of the fact that enforcement by the Government is not stringent enough. So, the situation has deteriorated. Why could a plate of dim sum be sold at less than a dollar? This is because some employers do not abide by the law and fail to pay employees for their work. So, food could be sold cheaply and the company would then close down. As "law-abiding employers" have to abide by the law, they could hardly compete with the law-defiant employers and were eventually forced to follow their examples. Here lies the problem. Therefore, we strongly urge the Government to step up enforcement in relation to the relevant legislation because of this reason.

We fully understand that today's motion must not induce further conflicts, disputes and disharmony among employers and employees, and that is certainly not our intention. We only hope that a foundation could be laid down. Two Members of the Liberal Party have mentioned earlier in their speeches that employees should enjoy reasonable and legitimate rights, and I fully agree with them. The Liberal Party also fully agrees with them. When I first heard the speech of Mr Kenneth TING, I thought that he would eventually support my motion, but after I had heard Mr James TIEN's speech, I got a feeling that this might not be the case for he actually opposed my motion.

I think it does not really matter whether they support my motion or not, but the problem is, the truth should be expounded. What is the nature of the problem that we are facing? We are not asking the Government to step up enforcement because we want to make the operations of employers difficult or to drive them out of business. We definitely do not wish to do so. We only hope that in a society where the rule of law is upheld, everyone could operate their businesses in accordance with standards set in the labour legislation. This is my main objective in moving today's motion.

As regards Mr Kenneth TING's amendment, as other Members have pointed out earlier, it has tried to erase a core problem and replaced it with a more moderate problem (to Members of the business sector), which is attributable to the economy. We fully agree and acknowledge that the economy is doing poorly and in the doldrums, but the fact that the economy is in the doldrums and deteriorating should not be a pretext for employers not to abide by the law. I believe no one in any place would agree that people could not abide by the law because the economy is in the doldrums. In Argentina, for instance, could its people resort to robbery if they felt like it? This should not be allowed for this would only create more chaos in society. After all, there should be a standard and both employees and employers, as well as various sectors of the community should be aware that regardless of their conflicts and grievances, they should abide by the established mechanism and standards. Thank you, Madam President.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, one more week from now, that is, on 1 May, will be Labour Day. The motion moved by Mr LEUNG Fu-wah which calls for the safeguarding of the reasonable and legitimate rights of the employees is indeed timely. Over the past year, our economy was in the doldrums as we were hit on two fronts by economic recession externally and economic restructuring at home. Many companies closed down or were forced to streamline their structure or sought ways to cut expenses or increase their income. The salaried class was threatened by pay cuts and layoffs and the unemployment rate soared.

In circumstances where people find it hard to get a job, the bargaining power of the workers is indeed diving and that is something we are able to observe. However, not all employers will ride on this trend to effect pay cuts or lay off staff. Only a few of them are law-defiant. Despite the fact that sympathy is extended towards the weak and marginalized, from a macro economic perspective, our competitive edge is being gradually eroded with the opening up of the mainland market, the increasing close exchanges between the territory and the Mainland, plus the problems we have accumulated over the years, such as the high prices, high wages, mismatch in human resources, and so on. All these have made our economic restructuring and price adjustments more difficult and more painful. Ours is a liberal and free market, no one can

stop the market forces. I believe Honourable Members are fully aware of the crux of the problem and that the future direction is pointing towards economic integration with the Pearl River Delta. In this process of development, the adjustments in salary, the enhancing of operational efficiency and the move towards high-value-added industries are phenomena that are all bound to appear.

From a social and personal perspective, layoffs and pay cuts will undoubtedly bring a lot of pain and social instability. Some people will respond positively to adversities, while some may regress and seek to escape. I hope that the people of Hong Kong will work side by side and both employers and employees will join hands to tide over the difficult times together.

It is my wish that before employers make a commercial decision, they should give more thoughts to social responsibility and the interests of their staff. They should refrain from making layoffs before they are absolutely sure of the need to do so. I also call upon those who have lost their jobs not to become disheartened, for the ups and downs in the economy are part of its cycle. We have set a safety net to help the unemployed tide over.

Many Honourable Members have cited the rise in labour dispute figures to criticize the existing legislation for its inadequate protection for the rights and interests of employees. But the fact is, the sluggish economy exerts the same pressure on both employers and employees. It is also only natural that tension starts to build up in labour relations. However, the problem does not lie in whether or not there is adequate protection in the labour legislation for employees, and as a matter of fact, the laws cannot be water-tight. If people deliberately try to find loopholes and evade responsibility, there is nothing that can prevent this and no laws can effectively regulate personal conduct.

The Labour Department attaches great importance to the enforcement of all labour laws to ensure that employees will enjoy all rights and interests provided therein. We will spare no efforts to take action against all breaches of the law. In 2001, labour inspectors made a total of 163 000 inspections on all kinds of undertakings in order to enforce the provisions of the Employment Ordinance and see to it that employers comply with the requirements laid down in the Employees' Compensation Ordinance, that is, they should take out valid insurance policies against work injuries for their employees. These actions include surprise inspections on the public toilets to check the cleansing

contractors and the checking of the insurance policies taken out by owners of small and medium enterprises for their staff. Successful prosecutions were made last year by the Labour Department against more than 3 700 cases of breaches. The Labour Department has also set up a 24-hour complaints hotline to make immediate investigations into the complaints received.

If employers are alleged to have breached the Employment Ordinance, such as not paying wages on time, deducting the wages in an illegal manner, not granting statutory holidays, default on making severance payments, and so on, and once these have come to the notice of the Labour Department, the cases will be followed up and investigated into. Mediation will be arranged.

In 2001, the Labour Department handled a total of 31 700 cases, and more than 60% of them were resolved through mediation efforts. For those which are not resolved through mediation efforts, the employees may seek arbitration in the Labour Tribunal or the Minor Employment Claims Adjudication Board.

I am aware that a minority of employers tries to evade meeting their legal obligations. Even if a ruling is made in the Minor Employment Claims Adjudication Board, they would continue to default on making payments. The recovery process thus becomes protracted. The present judicial procedures are meant to balance the interests of all parties and therefore do not have much room for streamlining. It is also difficult to prosecute employers who have breached the law or default on paying salaries. Employees should help the Labour Department by coming forth to be prosecution witnesses.

Last week the Government was forced to drop 188 charges against a cleansing company because the 38 prosecution witnesses changed their statements all of a sudden and refused to appear before the Court as witnesses. This made the prosecution efforts of the Labour Department and the Department of Justice futile. Despite efforts made by the Government to legislate for the greater protection of the rights and interests of the employees and the stepping up of enforcement, we are unable to bring law-defiant employers to justice. This is regrettable. I will examine the case with the Labour Department and the Department of Justice to see if there are ways to improve on the existing procedures and what lessons can be learned from it.

All along the Government has taken into account the changing needs of society and the socio-economic developments when drawing up and amending

labour laws to improve on the rights and interests of employees. We strive to make our labour standards comparable to those neighbouring economic systems which have a similar state of development like ours. When labour laws are to be reviewed or drawn up, the Labour Advisory Board (LAB) will be consulted. The LAB is a well-established mechanism under which employers, employees and the Government will hold consultations and this mechanism is proven in the improvement of the rights and interests of employees. If Honourable Members think that there are loopholes and room for improvement in some of these laws, I hope they can be raised, discussed and examined in the LAB.

Many Honourable Members have cited actual examples of loopholes in the labour laws, but due to the time constraint, I am afraid I cannot comment on each of these examples cited. I think many of the problems have been discussed in this Chamber before. Views from both sides have been heard. These include compensations in respect of insolvency, the issue of the self-employed, provisions regarding continuous employment, that is 18 hours of continuous employment each week in a period of four weeks, and so on. I think if the law is to be amended, a lot of considerations have to be made and these are no simple questions to answer. I know that Honourable Members have discussed with the Labour Department and heard the views of the Department and employers.

I understand that Honourable Members from the labour sector would like very much to see more laws enacted to safeguard and improve the rights and benefits of workers. But I have also heard views from the employer representatives expressing the worry that excessive legislation will cause a great surge in labour costs or frivolous proceedings. On the one hand, we will ensure that employees will be treated fairly, and on the other, we will want to see that employment conditions will make Hong Kong stay competitive in the context of globalization. So when labour policies are to be formulated, a balance between the interests of both employers and employees should be struck in order to keep pace with our social and economic development. I must say that before human resource matters are transferred to the Trade and Industry Bureau, a state of schizophrenia has actually appeared.

Irrespective of how perfect is the law or the system, it cannot eliminate the minority unscrupulous employers who violate the law. The only thing that can be done is to promote labour relations and build a harmonious society in order to maintain stability in society and make it more prosperous. The Government is

well aware of the hardships confronting employers and employees in this sluggish economy. We hope that both parties can work with us to promote growth in our economy and upgrade the quality of our human resources.

I so submit. Thank you, Madam President.

MRS SELINA CHOW (in Cantonese): Madam President, thank you for giving a chance to speak. I shall be very brief, for it is getting very late already.

On the comments raised by Mr LEUNG Fu-wah, it seems that he was not quite clear about the position of the Liberal Party. So, let me just offer a simple but clear explanation here.

Basically, as we have said already, we have no objection to ensuring the reasonable protection of labour rights under the law. I am sure that our consensus is very strong here indeed. But we nonetheless do have very great reservations about the idea of taking "positive measures". If Members have listened carefully to their colleagues' speeches, especially that of Mr LEUNG Yiu-chung, they will realize that the "positive measures" as interpreted by Members from the labour sector actually also cover the making of legislation. It is absolutely impossible for us to support any such legislative attempts, but we have no objection to the spirit of protecting labour rights and interests. And, we also think that such protection must be legal and reasonable, which is why we have proposed our amendment. If our amendment is not passed, then in view of our strong objection to the allusion to "positive measures", we will abstain from voting. Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the amendment, moved by Mr Kenneth TING to Mr LEUNG Fu-wah's motion, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mrs Selina CHOW rose to claim a division.

PRESIDENT (in Cantonese): Mrs Selina CHOW 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:

Mr Kenneth TING, Mr James TIEN, Dr Raymond HO, Dr LUI Ming-wah, Mrs Selina CHOW, Mr HUI Cheung-ching, Mr Bernard CHAN, Mrs Sophie LEUNG, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Tommy CHEUNG, Dr LO Wing-lok and Mr LAU Ping-cheung voted for the amendment.

Miss Margaret NG, Mr CHEUNG Man-kwong, Mr CHAN Kwok-keung, Mr SIN Chung-kai, Mr WONG Yun-kan, Mr LAW Chi-kwong, Miss LI Fung-ying, Mr Michael MAK, Mr LEUNG Fu-wah and Mr IP Kwok-him voted against the amendment.

Geographical Constituencies and Election Committee:

Mr Andrew WONG, Dr TANG Siu-tong, Dr David CHU and Mr Ambrose LAU voted for the amendment.

Miss Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Mr Jasper TSANG, Dr YEUNG Sum, Mr LAU Chin-shek, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr Andrew CHENG, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Albert CHAN, Mr WONG Sing-chi, Mr Frederick FUNG, Ms Audrey EU and Mr YEUNG Yiu-chung voted against the amendment.

Mr MA Fung -kwok abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 24 were present, 14 were in favour of the amendment and 10 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 27 were present, four were in favour of the amendment, 21 against it and one abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

PRESIDENT (in Cantonese): Mr LEUNG Fu-wah, you may now give your reply. You still have up to four minutes 52 seconds.

MR LEUNG FU-WAH (in Cantonese): Madam President, I would like to state again the objective of my original motion. Here I wish to make it clear that I have not raised any new legislative proposals, none whatsoever. It remains of course that other Honourable colleagues may have made some further deductions, but as evident in the wording of my motion, I only talk about ensuring reasonable and legitimate protection on the present basis. By legitimacy I mean of course the existing legislation and not any legislation to be made. So the objective of my motion is definitely not seeking to make new laws, and I do not have such an intention.

I would like to stress that employees are unable to get some protection expressly provided for in the existing legislation, such as sections 43A to 43M in the existing Employment Ordinance which are about the compensation for the wages of construction workers. These 13 provisions were mentioned by Mr CHAN Kwok-keung earlier. As a matter of fact, we have seen that a lot of these workers had to stage protests and put on strikes on the construction sites and put up protest banners before they could recover their wages. Why, despite these 13 provisions which have been enacted specifically for them, are such cases still a commonplace occurrence? This shows that there are great problems with respect to the enforcement of provisions on the protection of workers found in

the existing legislation. Workers cannot get due protection in law so I would like to stress this point in the hope that Honourable colleagues can understand.

Secondly, when the Secretary spoke in reply, she said that wages and costs here are high in Hong Kong and there is an inevitable process of adjustment. If this shows the mentality of the Government on this issue, that is, it does not have to have any stand on this, then it is quite a problem indeed. Both employers and employees should adjust the relevant mechanism and bear the difficulties that may arise in the course of adjustment. I can tell Members quite frankly that once when I was handling a labour dispute, I tried to persuade the 2 200-plus workers involved to agree to a pay cut. It is because I asked them a simple question, "Is your boss really running into losses?" Most of the workers said that their boss was really making losses. So when a company is really running into losses, the options to take are one, let the staff be laid off and the company close down or, two, to agree to pay cuts. The FTU is a rational and pragmatic trade union and there is no doubt about it. In this case which I personally handled, the 2 200-plus workers in the end accepted our proposal and agreed to the pay cut.

However, the major premise for this kind of proposal is that it should be reasonable, that is, the employers must really be making losses. I agree very much and completely with the principle of mutual understanding and accommodation and tiding over the difficulties together. But we are absolutely opposed to employers making such moves when their companies are making profits. Take another company as an example. That company wants to reduce the pay of its staff simply because it is making less profits than it used to. We will not let that company have its way, but whether the action will be successful would have to depend on whether the workers are united. What is the situation like under the existing legislation? I should cite the example quoted by Mr CHAN Kwok-keung earlier. The company which is managing Route 3 sent a letter to its staff at the beginning of February to deduct their year-end double pay by half and if the employees did not sign to agree, they would have no chance to do so after three hours and they would never have the chance to do so again. The workers all signed for fear that they would lose their jobs. Two weeks after they had signed the agreement, the company sent them a letter again to say that it would like to apologize for the fact that the remaining half of the double pay would be deducted. That is an example of the kind of protection we have under the Employment Ordinance.

Despite the existence of some sections in the Employment Ordinance specifically on the protection of year-end bonus. What will happen? In this buyer's market nowadays, the employers will say to their employees, "Are you going to sign?" The so-called protection we have just would not help at all. Protection will become non-protection, for employers are threatening employees with their jobs. These are the specific examples I wish to discuss. I hope that those people who should be afforded protection will be protected by the law. The Honourable LI Fung-ying said earlier on that although employees enjoyed paid holidays as provided for in the law, it was common to see employees being dismissed the very first day they resumed duty. Some were even dismissed before their holidays were over. All these are unacceptable and the authorities should step up their prosecution efforts.

Many Honourable colleagues have raised some further questions on this issue. However, I think that some questions can be discussed in greater details only when and as both employers and employees as well as the economic conditions permit. However, I must stress once again that the wording of my motion does not carry any intention of making further legislation at all. I hope Honourable colleagues, in particular, those from the Liberal Party, would give serious thoughts to this. We hope that all of us can work together to tide over our present difficulties and that the employers, employees and the Government can all work hard to uphold the rule of law in Hong Kong, for we cannot do anything without the co-operation from any one of these three parties. The same goes for our economy. This is a simple truth and I believe all of us will understand it. The labour sector understands this very well. It is my hope and wish that all Honourable Members can consider my original motion and lend me their support. Thank you.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr LEUNG Fu-wah, as printed on the Agenda, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

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

PRESIDENT (in Cantonese): Honourable Members, the time now is 50 minutes past nine o'clock in the evening. I have decided to continue with the meeting in the hope that the last item on the Agenda can be completed before midnight.

Second motion: The problem of "working poverty".

THE PROBLEM OF "WORKING POVERTY"

MR LEE CHEUK-YAN (in Cantonese): Madam President, I move that the motion, as printed on the Agenda, be passed.

Madam President, when the Chief Executive introduced the accountability system for principal officials, he said that, after the implementation of the accountability system, the Government of the Hong Kong Special Administrative Region (SAR) would respond to the aspirations of the people for it would understand public feelings and grasp public opinion. But I do not know how Mr TUNG understands public feelings and what public opinion he has grasped. Through our debate today, the Hong Kong Confederation of Trade Unions hopes to tell the Government what the public feelings and public opinion are.

Firstly, Hong Kong people feel that Hong Kong has now become a miserable world in which workers' wages are dropping ever lower. With a high unemployment rate, workers are forced to sell labour at low prices, so wages are spiralling downwards. According to the figures provided by the Census and Statistics Department, the number of local full-time workers (excluding domestic helpers given accommodation) with monthly wages below \$5,000 has increased by 107% from 97 000-odd in 2000 to 114 000-odd in 2001. The number of low-income workers who work long hours (more than 60 hours per week) has rapidly increased by almost 30% within a year from 20 000 in 2000 to 26 000 in 2001. The wages of the working class in Hong Kong are dropping lower and lower while their working hours are extending longer and longer. This is the plight of the people.

Secondly, the problem of disparity between the rich and the poor is so serious that an analogy can be drawn between it and such a miserable scene as "meat and wine go to waste behind the red-lacquered doors of wealthy homes while out on the road lie the bones of people who killed themselves by burning charcoal (朱門酒肉臭，路有炭燒骨)". The directors and senior managers of 33 Hang Seng Index constituent stock companies have an average annual salary of \$8.4 million, but the workers of fast-food chain stores and retail shops make an hourly wage of \$19 only, that is, an annual salary of \$48,000. The salaries of those directors and senior managers are 177 times those of such workers. In other words, a worker has to toil throughout his life for three and a half or even four times in order to earn the annual salary of a chief executive. Since the SAR Government has not actively faced up to the aggravating disparity between the rich and the poor, it will only induce social instability. The impoverishment of the Hong Kong community and the serious disparity between the rich and the poor indicate that the grassroots cannot enjoy the fruits of prosperity. Even if there is continuous economic growth, that is, a bigger pie, only the consortia and elites will have a bigger share of the pie and the grassroots will still not have fine food and they will still have to eat bits and pieces of the pie picked up under the table. People who fail to enjoy the fruits of prosperity despite their very hard toiling will ask, "Who moved the pie that keeps me alive?" If the situation continues, there will be seething popular discontent. I would like to solemnly warn the Government here that its direction of administration that makes "the top fatter and the bottom thinner" will only lead to destruction.

Thirdly, people think that the Government is an accomplice in suppressing wages to such a lowly level. In recent years, continual outsourcing by the Government has created business opportunities as well as opportunities for exploitation. Civil service posts that used to mean job security and reasonable wages are now being auctioned off at increasingly low wages. While the Housing Department implements the benevolent policy of a three-shift system (for security guards), it wilfully allows wages to drop. As a result, the wages of some security guards in public housing estates have rapidly dropped to \$4,200. As they used to make \$6,000, how can they support themselves now?

Is the Government indifferent to the public plight mentioned above and does it not care whether others live or die? When will the Chief Executive, Secretary Donald TSANG and Secretary Antony LEUNG give up evil and achieve salvation, and work out a minimum wage level to benefit everybody? I wonder if Secretary Fanny LAW has read the caricature by Zunzi (尊子) today.

When one character in the caricature says, "Hi, I am an Angle of Life", another character in the caricature asks, "Hi, is there any Angle of Bread?" Today, the Secretary and I have become Angles of Life and the Secretary symbolizes an Angle of Life. Would the Secretary also become an Angle of Bread so that all workers will be able to earn the "wages of life"? Would she intervene by way of legislation to check the continual drop in wages so that workers would earn reasonable wages in accordance with the International Covenant on Economic, Social and Cultural Rights? Would she ensure that workers would have work, meals and dignity?

Madam President, I have moved the motion today, asking the Government to set up an independent commission to work out a minimum wage system and a minimum wage level as well as their implementation details. The major objective is to change the existing situation in which labour does not have a reserve price and is becoming ever more cheaper. This is the third time I have proposed a debate on the minimum wage. During the last debate on the minimum wage, Dr LUI Ming-wah said that I had set my mind on doing something useful and as I will propose a debate on the minimum wage year after year and the debate would be as long lasting as the television series "Enjoy Yourselves Tonight". In fact, Dr LUI Ming-wah has also set his mind on doing something useful and he will propose a motion, asking the Government to formulate an industrial policy year after year. As Members know, we both have chosen the wrong audience.

Madam President, to avoid making no progress in our debate, I would first respond to the opposing arguments made by Members during the last two debates. I hope that I would be able to answer the questions raised by some colleagues and initiate deeper discussions. First of all, most colleagues who oppose setting up the minimum wage level have alluded to the free market argument. However, we all know that the market does not operate in a moral vacuum. During the last debate, even the Secretary for Education and Manpower admitted that when the market wage dropped to \$7 per hour, it would really be shameful and arouse people's scorn. In other words, the Secretary for Education and Manpower agreed that our conscience would refuse to accept the inhuman manipulation by the market. If we regard market operation as the supreme principle that can override everything, we would have buried our conscience and it would be a shame for us to be intelligent human beings. Over 100 years ago, people who upheld the free market theory in Britain thought that the free market represented mutual consent, therefore, they opposed the enactment of the Chimney Sweeper

Act to regulate the depth of the chimney that could be swept by child workers to safeguard their safety. At that time, many people who upheld the free market theory opposed the legislation. Today, we may find that their arguments are ridiculous and laughable. Actually, the logic is the same. What is the difference between the free market over 100 years ago and the free market that we are talking about in opposing the minimum wage? We must bear in mind that market operation is regulated by the morals and conscience of human beings.

At the theoretical level, conventional economic theories make the assumption that in a market with full competition in which the transaction cost is zero, an increase in wages will definitely lead to a decrease in labour demand according to the law of supply and demand. The minimum wage and the unemployment problem are inseparable and it is unnecessary to discuss the matter further. However, such clean, simple and "easily on the lips" economic theories only appear in the economics textbooks of junior secondary schools and they are a far cry from the realistic situation. Mr Joseph STIGLITZ, a Nobel Laureate in Economics, has pointed out that the transaction costs of employers and employees in the labour market are incommensurate. He deduces on the basis of his positive study on the economic activities conducted with incommensurate information that even a small difference between the transaction costs of employers and employees will have significant influence on the bargaining power of the parties. Employers very often have the upper hand and more room to suppress market wages, especially the market wages of low-skilled workers who live from hand to mouth. Thus, Mr STIGLITZ thinks that the arguments and positive studies based on the assumption of a market full of competition are unreliable.

Madam President, quite a few Members have cited some positive studies to point out that the minimum wage will lead to a rise in the unemployment rate, but they are very often incorrectly relaying erroneous theories and hearsay. For example, during the last debate, Mr YEUNG Yiu-chung said that academics had pointed out that whenever the minimum wage increased by US\$0.1, the overall employment rate would drop by one to two percentage points. This frequently cited conclusion actually came from the comprehensive analysis conducted by three United States academics, namely BROWN, GILROY and COHEN in 1982. The thesis entitled "The Effect of the Minimum Wage on Employment and Unemployment" was included in the *Journal of Economic Literature*. Their conclusion was that, an increase in the minimum wage by 10

percentage points, that is, 10%, would lead to a decrease in the employment rate of youths by one to three percentage points. I would like to remind Mr YEUNG that it should be 10% rather than US\$0.1 and it should be the employment rate of youths rather than the overall employment rate. Yet, there is this more important point that many people have failed to mention, that is, the three academics had revised their conclusion a year later (in 1983), pointing out that the previous analysis had overestimated the effect of the minimum wage on the employment of youths. They also admitted that the minimum wage did not have any effect on the unemployment rate of youths.

The comprehensive analysis made by the Organization for Economic Co-operation and Development recently is more authoritative. Their conclusion stated in black and white that, at the theoretical level or on the basis of positive information, the most correct conclusion so far on the effects of the minimum wage on employment is "inconclusive".

Mr James TIEN has said that if the Government has to set a minimum wage level to protect wage earners, does it have to establish a similar system such as establishing the minimum price of coffee or bananas to protect employers? As we all know, the difference between the labour market and the general commodity market is that if the wages of workers are too low, they will worry about whether their children will have enough to eat and wear. But a banana that has been sold at a very low price will not worry about whether it can bring up its offsprings. If a worker has to worry about the basic necessities because his wages are too low, his emotions at work and productivity will be affected. Yet, if we sell bananas at reduced prices, bananas that taste good will not taste bad. I believe Mr TIEN should understand this simple common sense very well.

Today, an editorial of a newspaper asks if some factories, production lines or work procedures would be relocated out of Hong Kong after the minimum wage is set. It has also stated that many people have asked if it would lead to the closing down of businesses or layoffs. These are definitely cost-related problems. In fact, the minimum wage only protects workers at the grass-roots level. We have made an analysis. Assuming that the minimum wage is \$25 per hour, it roughly represents a 0.6% increase in the overall wage cost of Hong Kong. Compared with the 5% Mandatory Provident Fund (MPF) contribution, the effects of the minimum wage are less serious than those of the MPF. Thus,

whenever we mention an increase in labour costs, we should not say that all production processes would be relocated northward or closed. On the contrary, the *Economist* has stated today that our competitiveness has been crippled by monopolization. Since too many consortia in Hong Kong have monopolized the prices, prices cannot drop. If we are so concerned about prices, we should not only consider how labour costs could be reduced. We should consider how a fair competition law could be introduced to reduce monopolization by consortia and make market prices more reasonable. Actually, we should finally consider how society would "squeeze out toothpaste" and from whom it would squeeze. I only wish that it would not squeeze workers.

Madam President, when the Government answered the question raised by the United Nations Committee on Economic, Social and Cultural Rights, it stated that there was a Comprehensive Social Security Assistance (CSSA) system in Hong Kong and low-income households could apply for CSSA. Therefore, it was not necessary to establish the minimum wage and it could ensure that workers and their dependants would have a decent living. I remember the Honourable Tommy CHEUNG once said that he could give me some capital to prove if the minimum wage was practicable. But I would like to clarify that he did not give me any capital at the end. I proposed \$7 million before but it was considered not feasible. But I have a new idea now and it is inexpensive. I hope Mr Tommy CHEUNG would support this new idea that is very diabolical. Though the Government is unwilling to establish the minimum wage, it gives low-income households CSSA and encourages employers to employ workers at \$1,000 per month. A café manager could then be trained up to lead the workers to apply for CSSA for low-income households. I reckon if a worker makes \$1,000, the wage cost will be \$1,000 and the Government is going to subsidize the shortfall, thus, the problem would be solved. It will certainly be profitable and advantageous, but the Government would only be victimized.

Lastly, I call upon all low-income wage earners in Hong Kong to apply for CSSA for low-income households together for the sake of their children. This is a publicized government policy and a reward for their hard work. The Government would not shed a tear easily. Provided that more and more bosses take advantage of the existing policy loophole and more and more workers apply for CSSA for low-income households since they can no longer endure, the Government would then take the minimum wage into consideration again. I wish that my prophecy just will not realize.

With these remarks, Madam President, I beg to move. Thank you.

Mr LEE Cheuk-yan moved the following motion: (Translation)

"That, as the wage level of local low-skilled workers is continuing to decline, thereby aggravating the problem of "working poverty", this Council urges the Government to expeditiously set up an independent commission to work out a minimum wage system and a minimum wage level that suit the local environment, as well as their implementation details, so as to give effect to Article 7 of the International Covenant on Economic, Social and Cultural Rights which asks States Parties to the Covenant to ensure the right of workers to receive remuneration which provides all workers, as a minimum, with a decent living for themselves and their families in accordance with the provisions of the Covenant."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr LEE Cheuk-yan be passed.

DR DAVID CHU (in Cantonese): Madam President, there is still an economic downturn and Hong Kong is undergoing arduous economic restructuring, the salaried class is hit and employers are similarly subject to enormous pressures for business is hard and life is suffocating. Under such circumstances, employers and employees especially have to work together with one heart. In my view, revisiting the establishment of the minimum wage runs counter to the proven free market economic principles of Hong Kong and will lead to unnecessary labour disputes. Although Article 7 of the International Covenant on Economic, Social and Cultural Rights requires the States Parties to ensure that all workers receive fair remuneration which provides them with a decent living for themselves and their families in accordance with the provisions of the Covenant, it has not stated that the minimum wage system must be implemented before the Covenant is considered implemented.

In particular, I do not agree with the request made by some people for the Government to establish a minimum wage system, pinpointing at the hourly wage level of chain enterprises such as fast-food shops, convenience stores and supermarkets. In fact, these chain groups provide a large number of opportunities for workers to provide such low value-added and low-skilled services as cashier, cleansing and reception services. It has certain alleviating

effects on the problem of high structural unemployment rate that is likely to remain in Hong Kong for a protracted period of time and gives the disadvantaged a way out. It is better for unemployed young people to take up such work than hanging out at places of entertainment at night or taking soft drugs. Students taking up such work would learn how to become self-reliant; middle-age people with lower academic and skill levels taking up such work would be able to support their families, which is better than relying on CSSA; and the disabled taking up such work would rebuild their confidence and integrate into society.

THE PRESIDENT'S DEPUTY, MR FRED LI, took the Chair.

I am sorry that some people do not encourage these enterprises to create more jobs but conversely criticizing them for offering workers a relatively low hourly rate and exploiting workers. Do they intend to incite labour conflicts? As to whether an hourly rate of \$15 is on the low side, the market will naturally make adjustment and it would not be determined by subjective personal desire. In fact, the wage level of workers is basically a matter of supply and demand. During economic prosperity when the supply of jobs exceeds demand, workers have more chances to choose a job and they will naturally have more chances to get higher rewards and *vice versa*. In a capitalistic free market economy, labour relation is not a zero sum game but a selfish activity in which everybody will get what he needs. On the basis of its needs, an enterprise sets the remuneration for a job and many people accept the job on the basis of their needs. Why are people still criticizing that the enterprises are fooling their employees?

More importantly, businessmen all over the world regard Hong Kong as a good place for doing business. A major reason is that they enjoy the freedom to do business in Hong Kong. The Government should endeavour not to intervene in the operation of private enterprises for private enterprises do not need the Government to teach them what to do. We should not criticize the Government for intervening in the market while inviting the Government to intervene in the determination of remuneration in the market. Given that the remuneration level has always been agreed upon in private between an employer and an employee and the arrangement has not given rise to significant disputes or problems, it is really not necessary or pressing for the Government to intervene.

With these remarks, Mr Deputy, I oppose the motion.

MR FREDERICK FUNG (in Cantonese): Mr Deputy, with the economic downturn in recent years, the number of unemployed people in Hong Kong has been rising and the latest unemployment rate is 7%, that is, almost 240 000 Hong Kong people are unemployed. On the one hand, I think that the Government certainly is duty-bound to take care of and help these unemployed workers in finding a job or to create job opportunities; on the other hand, I think that even though some wage earners may luckily have a job, as they are making only a meagre income, they may not have enough to eat. The issue warrants the Government's attention.

On basis of the data of the Population Census 2001 conducted by the Census and Statistics Department, if we define half of the median monthly income of \$10,000, that is, \$5,000 or less, as the income standard of impoverished workers, then by conservative estimation, there are more than 100 000 impoverished wage earners in Hong Kong. Most of them take up semi-skilled or non-skilled work types in the services industry such as cleaners and security guards. These impoverished workers with low bargaining power are marginalized in the labour market and many of them are the only bread winners of their families. Since they bear the heavy burden of feeding their families, they live from hand to mouth on the meagre income, lacking any security in living. The Hong Kong Association for Democracy and People's Livelihood (ADPL) and I think that even if the Government is unwilling to establish the minimum wage at once, it should set up an independent commission to study a wage system that suits the local conditions, in order to help these disadvantaged workers and ensure that every toiling worker would get a reward enough to support the basic living of himself and his family, that he could live with dignity.

Although the minimum wage system originated in the end of the last century and has a history of over 100 years, it is highly controversial. Those who oppose the system frequently argue that establishing a minimum wage would directly reduce jobs and push the unemployment rate even higher. In particular, it is disadvantageous to inexperienced new workers and low-skilled workers with a lower academic level. It appears at a glance that this opposition argument is based on basic knowledge of microeconomics, that is, under the law of supply and demand, a wage increase will certainly lead to a decrease in demand. This saying is supported by a lot of econometric analyses and studies and the reason seems very strong.

However, over the past 10 years, some academics have come up with opposing views, opining that such relational deduction was too vague and

theoretical. Therefore, they conducted positive studies to point out the limitations and blind spots of the argument. For example, in 1995, Prof D. CARD of the University of Berkeley in California and Prof A. KRUEGER of the Princeton University made an explanation on the basis of a large number of studies on the experience in the United States, international comparisons and discussions on methodologies. They stated that an increase in the statutory minimum wage would not cause a rise in the unemployment rate, conversely, it would very often increase the employment rate. The two academics chose a typical worker with the lowest income of a fast food store in New Jersey as an example and gave counter-evidence. In April 1992, the statutory minimum wage in New Jersey increased from US\$4.25 per hour to US\$5.05 per hour. After making a comparative study on the adjacent Pennsylvania that maintained the original minimum wage, they found that, after the increase in the minimum wage in New Jersey, the number of people employed obviously increased but employers had not reduced other rewards for workers to make up for the increase. In another case study reported in their writings, they pointed out that, after the minimum had been increased by 27% in 1998 in California which was facing serious economic depression, the unemployment rate of youths did not increase as expected but conversely dropped by 3%, more than the 1.9% average unemployment rate of the United States. Of course, these positive findings cannot prove that implementation of the minimum wage can create jobs, but it can at least show clearly that there is no obvious or causal relationship between the minimum wage and the unemployment rate.

Another frequently cited argument for opposition is that the minimum wage is known as the minimum price control or price floor in economics. Establishing the minimum wage will artificially upset the principle of free market in Hong Kong. As Dr the Honourable David CHU has just said, on the one hand, it will lead to an increase in business costs and cripple the international competitiveness of Hong Kong; and on the other, it will slow down the pace of recovery of our economy mainly composed of small and medium enterprises (SMEs).

The ADPL and I dare not agree without serious consideration. As Mr LEE Cheuk-yan has just said, assuming that the minimum wage is \$25 per hour, the cost will only increase by 0.5% and the effects are practically negligible. The economic competitiveness of a place is determined not only by the operating costs but also such complicated conditions as the quality of its natural and human resources, its investment environment, the current political situation and social stability. In terms of the weighting of SMEs, the case of Hong Kong is actually

not rare and there are similar cases in many free markets in the world. For instance, the proportion of SMEs to all enterprises is 96% in the United States, 97% in Britain and 98% in Hong Kong. Evidently, the situation of other places is more or less the same as ours. Thus, the argument made by opponents of the minimum wage proposal can definitely not be made under the pretext of the special business environment of Hong Kong. Their argument is untenable.

In a word, the ADPL and I support the direction of the motion. We hope that the Administration would make reference to the experience of France, Taiwan and North Korea and set up a tripartite independent commission composed of employers, employees and officials to handle matters related to the implementation of the minimum wage in Hong Kong. In all fairness, the implementation of the minimum wage in Hong Kong is not intended to cripple the motivation of workers or nurture lazy bones. In fact, the minimum wage system is a safety net to protect the livelihood of disadvantaged workers. More importantly, it will ensure that workers with low bargaining power would live with dignity.

With these remarks, Mr Deputy, I support the motion.

MR ANDREW CHENG (in Cantonese): Mr Deputy, the proposal to study the establishment of the minimum wage is not new. After the establishment of the Hong Kong Special Administrative Region, the Legislative Council Panel on Manpower discussed the issue of minimum wage in 1998. As far as I can remember, one of the suggestions made by the Hong Kong Social Security Society was that the Government should set an example and take the lead to implement the minimum wage system. It should require all suppliers and contractors that had executed commercial agreements with the Government and quasi-government organizations to pledge and declare in writing that they would implement the minimum wage system for their workers. Otherwise, the Government and the relevant organizations should not grant them commercial contracts. The business sector thought that the establishment of the minimum wage would cripple the competitiveness of Hong Kong in the Asia-Pacific Region and substantially increase production costs. It would be disadvantageous to first-time job seekers, foster bureaucracy, interfere with the free market operation and set complicated criteria for determining the minimum wage structure.

In the following year, that is, 1999, the Panel on Manpower commissioned the Research and Library Services Division of the Legislative Council Secretariat to study the feasibility of the minimum wage system. However, the response of the Government to the completed report was consistent with that of the business sector. Putting it simply, the argument of the Government was that the economic prosperity of Hong Kong in the past was brought about by the non-intervention policy implemented by the Government. As a result, Hong Kong was dependent upon market adjustment and foreign investors gladly made investments in Hong Kong.

The situation has changed three years later. The data of the General Household Survey by the Census and Statistics Department indicated that in the fourth quarter of 2001, the monthly median income of \$30,000 of professionals was the highest and the monthly median income of \$5,000 of non-skilled workers was the lowest. The monthly median income of households even dropped from \$19,000 in the first quarter to \$17,000 in the fourth quarter in 2001. Various signs indicate that the living standard of the employed low-skilled workers in Hong Kong is dropping ever lower.

The unemployment rate announced last week was at a high level of 7% and it seems that the unemployment situation would not improve in the short term. Large and small-scale layoffs were reported one after the other in various industries and sectors. At present, the low wages of local workers are not the lowest yet and many may compete for a job that offers even lower wages. Would the business sector and the Government tell me if the so-called natural adjustment of the labour market has failed? Would it still be feasible to rely on the law of supply and demand?

The Democratic Party is of the view that we should study the feasibility of establishing the minimum wage specific to trades or work types and we suggest that it must be clearly defined which industries or work types can benefit from the minimum wage system. We can initially consider studying work types in the catering, retail, security and cleansing services industries.

Although the Labour Department and the Employees Retraining Board have been making their best efforts to run retraining courses for the unemployed, the actual effects are limited. Evidently, we find that the Government is quite helpless in the face of the continual drop in the number of jobs created locally. While the workforce keeps growing, how could the number of unemployed people decrease? At the most, the Government can create jobs on agreement

terms and conduct outsourcing, but the increase in the number of such jobs will only create more unstable factors for the labour market.

The Government has repeatedly denied the feasibility of establishing a minimum wage system and it even thinks that all kinds of minimum wage will be unfavourable to our economy. The Democratic Party thinks that low-skilled workers are losing dignity in life to such an extent that they should not tolerate silently. The Government has to adopt some measures to allow workers to live normally with dignity again. We should know that work with lower wages and longer hours will only bring about abnormal family life and various social problems, and the social costs are actually quite heavy.

In the long run, the low-income people and their families will not be able to participate in the consumption market and they will most probably fall into the social welfare safety net for a long time. Is this negative strategy of the Government consistent with the economic law nowadays? Why would the Government rather subsidize workers than conducting studies to protect the disadvantaged? On the one hand, the Government uses the social security system to solve the poverty problem; yet on the other, it worsens the poverty problem by outsourcing and employment on agreement terms. Is it not self-contradictory? The Democratic Party urges the Government not to act like it did before any more. It should not be indifferent to the fact that low-skilled workers have accepted scanty wages, and it should not only put emphasis on the views of the business sector.

I support the motion on behalf of the Democratic Party. The motion urges the Government to expeditiously set up an independent commission to work out a minimum wage system and a minimum wage level that suit the local environment, as well as their implementation details, so as to give effect to Article 7 of the International Covenant on Economic, Social and Cultural Rights which asks States Parties to the Covenant to ensure the right of workers to receive remuneration which provides all workers, as a minimum, with a decent living for themselves and their families in accordance with the provisions of the Covenant.

MR HOWARD YOUNG (in Cantonese): Mr Deputy, the motion proposed by Mr LEE Cheuk-yan today is related to the problem of working poverty. Though it appears to be a new motion, it is actually related to the old subject of minimum wage that this Council has debated many times.

Superficially, establishing a minimum wage system can protect low-skilled and low-income workers and ensure that their income will be maintained at a reasonable level. If we consider the issue carefully, we will find that that is not the case and the minimum wage is only sugarcoated poison. It fails to help grass-roots workers improve their lot and it may lead them into more adverse difficulties, not to mention the creation of job opportunities.

Under the prevailing adverse economic circumstances, the turnover of many industries has substantially dropped. To survive under the adverse business environment, employers can only cut costs as much as possible. The Liberal Party believes that the establishment of the minimum wage system will certainly put a heavier burden on employers. Some small and medium enterprises may also be forced to close down earlier as a result of operating difficulties. Most of these enterprises are small and medium enterprises rather than large enterprises. Finally, there will be fewer and fewer job opportunities in society and it will be more and more difficult for wage earners, especially low-skilled and inexperienced workers, to find a job.

Moreover, with an economic downturn, the minimum wage system may aggravate the problem of black market labour, further affecting the "rice bowls" of local workers.

Even if workers can keep their jobs, in a sluggish labour market, employers may only offer an employee the statutory minimum wage; therefore, the minimum wage may become the highest wage of a worker.

If the minimum wage is established as a mandatory requirement, it is inevitable for employers to raise the prices of products or services to make up for the increase in operating expenses. At that time, we may have to pay \$30 to \$40 for a hamburger set, as in other European and American countries that have established the minimum wage. The minimum wage system may only make life more difficult for low-income people, contrary to Mr LEE's idea of protecting and helping such workers.

Mr LEE said earlier that he will move the motion year after year, in that case, it will appear as though we are playing a record when we respond. I wish to take great pains to emphasize that Hong Kong is a free economy and the wages of workers should be determined through natural adjustment of the labour market on the basis of such factors as supply and demand, and the investment

environment. Implementing the minimum wage will intervene in the operation of the free market and greatly reduce the flexibility and adaptability of the market.

Although quite a few countries have established the minimum wage system, our neighbouring competitors such as Singapore and Malaysia that are intensely competing with us have not established such a system. If Hong Kong intervenes in the wage level by way of legislation, we will definitely scare off foreign investors, crippling our competitiveness in the Asia-Pacific Region. We can undoubtedly learn from the experience of foreign countries, but since different places have different economic structures and social cultures, we can definitely not copy wholesale the experience of other countries. Hong Kong is also unique for its linked exchange rate system. The Hong Kong dollar is linked with the US dollar and we cannot solve the problem of cost through delinking and depreciation. Conversely, some other countries that have established the minimum wage can narrow their difference with neighbouring countries through currency depreciation. It is not feasible in Hong Kong because our monetary system is different.

The Liberal Party understands very well the concern of Members from the labour sector for the employment and living standard of people and we also attach importance to these issues. But we have to understand that the minimum wage cannot solve the problems. As I have just said, the minimum wage cannot create job opportunities. Of course, we are worried about the high unemployment rate, but we are more concerned about how job opportunities can be created. We think that the best way to address the difficulties of wage earners is to improve the overall competitiveness of Hong Kong and promote economic growth in order to increase job opportunities. Under an economic structuring, the Government must provide more retraining and on-the-job training programmes to upgrade the quality of our human resources so that everybody can follow closely the pace of economic development and earn reasonable wages.

Mr Deputy, though the Liberal Party supports the spirit of the International Covenant on Economic, Social and Cultural Rights, we must have regard for the realistic circumstances. In establishing a minimum wage system in Hong Kong, we will only be doing something bad out of good intentions, and we will make life even harder for the grass-roots workers. Therefore, we think that it is not necessary to set up an independent commission to conduct the relevant study. With these remarks, I oppose the motion.

MR YEUNG YIU-CHUNG (in Cantonese): Mr Deputy, Hong Kong is now in the process of a rapid economic restructuring, but 54% of our population aged 15 and above only have an academic level of junior secondary school or below. Obviously, the quality of our labour force is relatively low. Now that our economy is still in an abyss, the prices of these low-skilled workers will inevitably drop because of the natural adjustment under the supply and demand mechanism.

Information shows that more than 330 000 Hong Kong workers, being more than 10% of the working population, have a monthly income of less than \$4,000. The percentage is obviously higher than 9.8% found in the Population Census in 1996. It indicates that the economic downturn obviously has adverse effects on the income of low-skilled workers. Even after deducting around 227 000 foreign domestic helpers, more than 100 000 workers still have a monthly income of less than \$4,000. Therefore, while the median wage has risen from \$9,500 in 1996 to \$10,000 last year, the wages of grass-roots workers are dropping. It proves that there is aggravating disparity between the rich and the poor, which should really be taken seriously.

Concerning the proposal in Mr LEE Cheuk-yan's motion, that the Government should set up an independent commission to study the comprehensive implementation of a minimum wage system, the Democratic Alliance for Betterment of Hong Kong (DAB) had reservations about it two years ago. Our reservations still stand today, but we cannot say that there is no progress. There are three reasons.

First, the minimum wage system undoubtedly has certain merits. I believe under the minimum wage system, if the set indicators should include the minimum wage level calculated on the basis of hourly wage, it would help solve the problem of outsourcing that involves tiers of exploitation. It will also help address the working poverty phenomenon of low-skilled workers who work long hours for only very low wages. It would ensure that their income would meet their daily needs and address the phenomenon that they would rather receive Comprehensive Social Security Assistance than working. It would also help recruit non-skilled workers for obnoxious work types and industries. It is worth noting that the minimum wage system will cause many negative problems that can hardly be solved. Since the labour market is related to the supply and demand situation after all, if the market situation improves, the employers may still use the minimum wage as an excuse to suppress wages. The minimum wage will then become the maximum wage, which will speed up the downward

tendency of wages in some industries. When the market situation worsens, aged and marginalized workers will be affected first and the problem of black market labour may worsen. Moreover, implementing the minimum wage system will inevitably undermine the competitiveness of Hong Kong. As a result of an increase in costs to employers, the loss of some jobs would become faster. For example, the air cargo logistics industry will most probably move outside Hong Kong more quickly and more workers in the construction industry may not be protected under the labour legislation because some employers may try their best to turn workers into self-employed persons or contractors.

Second, after looking up the empirical records, we find that there seems to be no consistent conclusion about the effects of the implementation of the minimum wage on society and the market. Opinions vary as to whether the minimum wage system is good or bad. Mr LEE Cheuk-yan has alluded to our old comments, but we had not reached a decision at that time. Let me give a few examples. The Honourable Frederick FUNG cited an example to illustrate whether the minimum wage would affect the employment rate. He stated that the study conducted by Prof CARD and Prof KRUEGER on the fast food industries in New Jersey and Pennsylvania in the United States in 1995 had indicated that an increase in the minimum wage had not had adverse effects on the employment rate and it might even have positive effects. Two other academics, Mr NEUMARK and Mr WASCHER, conducted a study on the case of New Jersey again using a different sample in 1996. They found, on the basis of statistics, that the changes in the minimum wage had had serious adverse effects on the employment rate. Let me give another example. Concerning the question of whether the minimum wage would change the phenomenon of uneven distribution of income, the study conducted by Mr Michael HARRIGAN and Mr Ronald MINCY in 1993 indicated that changes in the minimum wage did not have significant effects on income distribution. The result of a study conducted by Mr BERNSTEIN and Mr SCHMITT in 1996 conversely indicated that an increase in the minimum wage could alleviate the uneven distribution of income.

Third, the implementation of a minimum wage system also involves setting a poverty line or imposing working hour restrictions to protect workers, which will ultimately affect the overall social welfare system. Thus, when the SAR Government considers the comprehensive implementation of a minimum wage system, it must prudently consider the changes in the overall social welfare system. It is really unsuitable for the Government to set up a commission to study how to comprehensively implement the relevant system now.

I must emphasize that the DAB thinks that it is inappropriate to comprehensively implement a minimum wage system at this stage. Our economy is expeditiously integrating with the mainland economy. Since there is a big difference between the wage levels of the two places, the wage costs of our workforce inevitably need adjustments. Although we subjectively do not wish that to happen, if a minimum wage system is established in Hong Kong, it will most probably affect the process of the natural adjustment of labour costs, giving more incentives for a large number of medium- to- low-skilled work types and job opportunities to move to the Mainland, which will conversely be unfavourable to local workers.

To alleviate the pains during the process, thoroughly solve the problem of decreasing wages and look for a remedy without side-effects, the DAB thinks that we have to rely on the Government to bend on developing the local economy and actively support labour-intensive industries after all. It should also enhance retraining and skills upgrading services for workers as well as increase job opportunities for and the competitiveness of grass-roots workers.

Mr Deputy, I so submit.

MR LAU CHIN-SHEK (in Cantonese): Mr Deputy, the thrust of the motion debate proposed by Mr LEE Cheuk-yan today is naturally the establishment of a minimum wage system. We have discussed the merits and demerits of the establishment of the minimum wage in this Chamber for numerous times and I guess Members would most probably not have any new ideas today. I wish that Members present would explore with me how to improve the aggravating crisis of working poverty.

Increasingly long working hours and low wages specifically depict the life of most wage earners today (especially those in the middle and lower classes). Mr LEE Cheuk-yan pointed out earlier that the number of employed people earning less than \$5,000 a month and working more than 60 hours a week had increased by almost 30% last year. At present, more and more wage earners are forced into the plight of earning low wages. We can imagine that the working poverty problem is deteriorating continually.

The Hong Kong Confederation of Trade Unions (CTU) has recently conducted a survey on the hourly wage offered enterprises running chain stores

in Hong Kong. It is found that when the chain stores of 11 large enterprises recruit basic rank workers, they only offer them an average hourly wage of slightly more than \$19, that is, \$19.05. It is also found that an organization even gives workers an average hourly wage of only \$15.4, which is extremely low. With an average hourly wage of only \$19, even if a wage earner works eight hours a day for six days a week, he will make less than \$4,000 in a month. The monthly wage of a worker with an average hourly wage of \$19 is so low, needless to say how miserable is the situation of workers with an average hourly wage of only \$15.

At present, the unemployment rate exceeds 7%, a new peak in the past 20 years or so. The Chief Executive said a few days ago that the unemployment rate would continue to rise in the foreseeable future as a result of economic restructuring. In the past, the couples in low-income households could work for two incomes, but it is already a blessing nowadays for one of the family members to have a stable full-time job. With a reduction in the number of employed family members of low-income households and increasingly lower wages, and with the employed population and wages dwindling, low-income households would be caught in an increasingly difficult plight.

If a low-income household of three to four persons on average makes a very low monthly household income of less than \$5,000 on a long-term basis, how are its members going to live? How can such a meagre income support the whole household? If there are children in the household, they may be deprived of even the basic living conditions in the process of growth. Can we say that our society shows loving care for the disadvantaged and children?

I must give a warning here that, if we allow the employment market to go on suppressing wages and allow increasingly low wages to be offered, the working poverty problem will deteriorate continually. It will certainly give rise to more and more family and social problems and even impact on social stability. People from all social classes would then have a price to pay.

Mr Deputy, is establishing the minimum wage a miraculous cure? Will the minimum wage become the maximum wage? Will the minimum wage system distort the operation of the employment market? In my view, even if we debate similar questions for 10 or 100 times more, we may still not find an answer or reach a consensus. But it is a fact that the working poverty problem is worsening. Although a wage earner toils throughout the day, he still fails to

get the minimum return to support his family. It is a fact that the basic daily needs of wage earners have been neglected and their wages pressed down again and again. It is also a fact that wage earners have lost the basic dignity of earning a reasonable level of wages. This social reality is lamentable and regrettable.

I admit that the minimum wage system is not a panacea, but I believe establishing the minimum wage system would at least alleviate the aggravating working poverty crisis. Mr Deputy, I hope that colleagues and members of the community who oppose or have reservations about legislating on the minimum wage will sincerely answer a question. If we do not legislate on the minimum wage, do they have other methods to avert the rapidly worsening working poverty problem? Do they have other methods to address the difficulties of low-income households? Or do they think that they can remain indifferent without bothering about the life and death of low-income households?

Mr Deputy, Mr LEE Cheuk-yan has proposed legislating on the minimum wage on behalf of the CTU again today in the hope that people from all walks of life would look squarely at the important social and livelihood problem of the pitifully low wages of the lower class. Regardless of the voting result in this Chamber today, I believe Mr LEE Cheuk-yan, an absolute majority of workers and I would go on fighting in order to achieve the important target of establishing the minimum wage to uphold dignity, which is the strong desire of wage earners. I firmly believe that this fervent aspiration of wage earners will be realized one day.

With these remarks, Mr Deputy, I fully support Mr LEE Cheuk-yan's motion.

MRS SOPHIE LEUNG (in Cantonese): Mr Deputy, as several Members have said, it is not the first time that we discuss this subject this year and I am not sure how many times we have discussed the subject already.

Mr Howard YOUNG has just stated the position of the Liberal Party. In fact, he does not have to restate it because this Council has discussed the subject many times at a few meetings in the past.

Mr Deputy, with your permission, I would like to read out a very short article.

"Why is the minimum wage system not helpful to alleviating the problem of disparity between the rich and the poor? The reason is very simple, for so long as the wage level is still determined by the market and on the basis of performance, the pay of the employees of successful enterprises, especially the senior employees, will still be higher than that of ordinary employees, and, of course, much higher than the minimum wage. How can the minimum wage system narrow the gap between the rich and the poor? There is one way to make the minimum wage system achieve the effect of narrowing the gap between the rich and the poor, that is, restricting the wage level or establishing the maximum wage system and specifying that enterprises cannot offer employees high salaries. Before the reform, the Mainland rigidly set the maximum and minimum wage levels. So, everybody was equally poor and China managed to eliminate the problem of disparity between the rich and the poor. Is Hong Kong people willing to accept such a system?"

"Why is the minimum wage system unable to check the downward trend of pay? The answer is also very simple. Since wages continue to be determined by market forces, the wage level can only be determined by the relationship between supply and demand in the market. When the market demand for labour is weak and the supply remains unchanged or increases, wages will only decrease. If we rigidly demarcate a minimum wage line, we would only force enterprises to give up plans of employing workers or to further lay off workers to save costs, which would worsen the unemployment situation. Moreover, employees may be forced to receive wages at a lower level under the table in order to keep their jobs. Will wages not similarly decrease?"

"After all, we think that a free and flexible labour market gives employees the best protection and is the most important element that ensures the vitality and competitive edge of our economy. Only by maintaining such a free labour market can our economy expeditiously make adjustments in the light of market changes. We will then be able to avoid the emergence of a long-standing high unemployment rate as in the case of continental Europe or a stagnation as in the case of Japan. And only with such a free labour market can employees fight for every job opportunity on the basis of their qualifications, needs and the market situation, not having to lose job opportunities as a result of unreasonable rules. We think that the dignity of employees lies not in getting the minimum wage but in fighting for and seizing every job opportunity in the free market and getting their due rewards."

Mr Deputy, the above is the editorial in the *Apple Daily* today. I would like to share it with Honourable colleagues. After discussing the subject, I hope that friends from the labour sector or Mr LEE Cheuk-yan would draw on collective wisdom next year. Let us think of a new subject to celebrate the May 1 Labour Day in advance.

Thank you, Mr Deputy.

DR RAYMOND HO (in Cantonese): Mr Deputy, apart from a small group of people who go after an exciting life, most people in the world will pursue a stable and comfortable life. They wish to have a highly paid and stable job with fat fringe benefits as well as a comfortable home. Wishes are wishes, and the reality is the reality. A person's personal quality and the general environment affect whether he can have a handsomely paid job, and the overall economic environment is the most important factor other than personal qualities. Although Hong Kong is a better-developed region in Asia, our economy has been in the doldrums in recent years and we all know how serious the situation is. To improve the existing economic circumstances, we must maintain the competitive edge of Hong Kong in the international arena. In my view, the minimum wage system will not only slow down the pace of economic recovery but also will not give Hong Kong people any protection at this stage.

The unemployment rate in Hong Kong has been rising continually in recent years and the latest unemployment rate is 7%. I believe the situation would not be promising in the short term. After the implementation of the Mandatory Provident Fund schemes in Hong Kong, many companies, shops and restaurants have closed down one after another as a result of the shrunken market and the weakened consumption power of the people. Even if some companies or enterprises can hold their ground, they have to implement policies to reduce expenditures. For example, the Pacific Century CyberWorks has laid off a large number of staff and the Bank of East Asia has closed some branches recently. These policies cannot help the unemployment situation in Hong Kong at all. If we establish a minimum wage system in Hong Kong now, the business costs of businessmen will certainly rise and the unemployment rate will certainly rise to soar. Hence, the losses will outweigh the gains.

The economic downturn has not only caused the unemployment problem but also social problems. Recently, we frequently find newspaper reports on

suicides. Some of the suicides had conflicts with their lovers and a very high percentage of suicides did so because of unemployment. To avoid an increase in suicide cases, I think that improvements must be expeditiously made to the economic situation and business environment of Hong Kong. Since the minimum wage system runs counter to this idea, I would not support it.

With China's accession to the World Trade Organization, the prospects of Hong Kong are promising in the long run, yet, Hong Kong has to face competition from the Mainland. If Hong Kong fails to effectively control costs and enhance the efficiency and skills of its workforce, its competitiveness may continue to drop. Then it would hardly be able to attract foreign investors and foreign capitals already in Hong Kong may flow elsewhere.

Hong Kong enjoys prosperity as a free economy and the pay of employees will automatically adjust in the light of market supply and demand. The minimum wage system will only impede the free development of the labour market and impose obstacles on the future development of Hong Kong.

Mr Deputy, I so submit.

MR MICHAEL MAK (in Cantonese): Mr Deputy, I suspect Members representing the business sector would not support the motion moved by Mr LEE Cheuk-yan today. However, I would like to tell them that the prices of the clubs they use for playing golf during their spare time might actually be enough to pay the wages of the grass-roots wage earners for dozens of hours of work. I have cited the example because I would like them to think about the miserable situation of low-skilled workers. The value of more than 10 hours' work by a worker is even less than that of a golf club.

According to the findings of a recent survey conducted by the Hong Kong Confederation of Trade Unions on enterprises running chain stores, the minimum hourly wage of a worker is only \$15.4, the maximum hourly wage is \$22.5 and the average hourly wage is only around \$19. The monthly wage of a full-time worker is only around \$3,700 to \$4,000. Worse still, under the present economic circumstances, quite a few enterprises try to probe the bottomline of the hourly wage of a worker in order to reduce costs. Workers get less and less protection as far as wages are concerned. Virtually, an

employer who pays an hourly wage of \$15 is immorally giving alms and insulting the dignity of workers.

To evade their responsibilities in respect of labour benefits, some employers have replaced permanent workers with a large number of casual workers. As these casual workers earn low hourly wages and are not given medical and other benefits, they have to keep working part-time to make more money. As a result, these workers will work round the clock and their health will naturally deteriorate as a result, giving rise to fatigue and mental stress. Moreover, it will be harmful to them physically and psychologically.

In recent years, the economy has been in the doldrums and the number of people suffering from mental disorder has been increasing continually. Since 1997, the patient days have remained at a high level of 1.5 million. I dare not conclude without substantive data that the economic downturn has any direct relationship with mental disorder cases. However, I can affirm on the basis of my judgement and analysis that the causes of some mental disorder cases are inseparably related to financial problems.

Mr Deputy, Financial Secretary Antony LEUNG presented us with the song "Under the Lion Rock" when he presented the Budget speech, encouraging us to tide over the difficulties together. On a public occasion in October last year, he also called upon employers to consider pay reduction rather than layoffs in their attempts to cut costs in face of the difficult economic environment. Yet, the fact before us is that bosses would not overcome ills side by side with employees and wage earners have to bear the pains brought by the economic downturn on their own. We rarely find employers who could really tide over the difficulties together with workers. Precisely for this reason, a government with conscience should take the initiative to propose the establishment of a minimum wage system to protect people deprived of protection.

Whilst it is changing into a knowledge-based economy, Hong Kong definitely has to maintain its competitive edge in the international arena. Thus, everybody, employers and employees alike, must reach a consensus to tide over the difficulties together. However, if, under the pretext of the competitive edge of Hong Kong, the business sector obstinately exploits employees by reducing wages for the sake of profit-making, no matter how competitive Hong Kong is, it would be fair without, foul within.

As the representative of the health services sector, I often explain to the community the idea of primary health. Similarly, we also have to base on the primary health principles when dealing with social problems. A healthy body is built on a foundation formed by the quality of food, environmental protection and a positive outlook on life, so similarly, for our society to be healthy and have fewer problems, we have to provide low-skilled workers and the impoverished with suitable assistance and protection. Especially under the present economic difficulties, establishing a minimum wage system is one of the measures that can lay a more solid social foundation. Would the international community recognize a community with a very serious problem of disparity between the rich and the poor and numerous social ills?

Certainly, there are divergent arguments about whether the minimum wage should be supported and a consensus can hardly be reached. But I think that it is rather cold-blooded for us to refrain from supporting the setting up of an independent commission to conduct a study. Thank you, Mr Deputy.

MS AUDREY EU (in Cantonese): Mr Deputy, we started debating whether the minimum wage should be established long ago. However, it was not pressing to discuss the subject a few years ago when the economy was prosperous and the demand for workers exceeded the supply. But now, our economy is in the doldrums and there is a high unemployment rate, the wages of workers, in particular low-skilled workers, are dropping continually. The Government really has to actively discuss the working poverty problem confronting Hong Kong presently.

THE PRESIDENT resumed the Chair.

According to the result of the Population Census 2001, 10.3% of the over 3.2 million workers in Hong Kong, that is, around 336 000 workers, had a monthly salary of less than \$4,000. Statistics based on households show that around 256 000 households had a monthly income of less than \$6,000, more serious than the situation five years ago.

The survey conducted by the Hong Kong Confederation of Trade Unions recently showed that the average hourly wage of chain store workers is \$19 only.

Even if they work 10 hours a day for six days a week, they will make less than \$5,000. It is worth noting that such chain stores as fast-food shops, supermarkets and convenience stores hire many part-time workers. If these workers do not meet the "4-1-18" requirement, that is, working for four consecutive weeks for not less than 18 hours a week, they will not enjoy such basic protection under the labour legislation as paid leave and annual leave.

Madam President, Article 39 of the Basic Law stipulates that the provisions of the International Covenant on Economic, Social and Cultural Rights (the Covenant) 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 7 of the Covenant specifies the right of workers to receive remuneration that provides all workers, as a minimum, with a decent living for themselves and their families. When the United Nations Human Rights Commission (UNHRC) discussed the implementation of the Covenant in Hong Kong in 1996 and 2001, it twice proposed a review of the employment policies of Hong Kong including the establishment of the minimum wage. It is a pity that the British Hong Kong Government and the SAR Government remained indifferent. The Secretary for Justice, Miss Elsie LEUNG, also emphasized that the provisions of the Covenant only had promotional effects in Hong Kong.

As the UNHRC stressed in its discussion report, the Covenant had legal effects and constituted the legal responsibilities of the States Parties. In fact, if the Government does not intend to observe the provisions of the Covenant, would it be meaningful for it to become one of the States Parties? The UNHRC and I are very sorry that the Government has been evading its responsibilities in this respect.

Madam President, with a continual economic downturn, the business sector is worried that the business environment would deteriorate further after establishing the minimum wage. Its views are understandable. However, an effective minimum wage system depends on the participation by employers and employees together. The so-called reasonable minimum wage level is not necessarily uniformly applicable to the whole labour market. It can be determined by the representatives of employers and employees together in the light of the unique situation of individual industries. If the supply of labour exceeds demand in the market, employers would be in an advantageous position in the bargaining process. Thus, the minimum wage is not necessarily biased in favour of employees.

Government officials often emphasize that the minimum wage may become the maximum wage, that is, an employer may only be willing to offer the minimum wage, and workers may not be benefitted ultimately. The Government's view is somewhat reasonable, but the more pressing situation is that the wages of low-skilled local workers have gradually fallen to a level that they can hardly make ends meet. Therefore, the objective of establishing the minimum wage is to protect the group with the lowest income in the labour market and prevent their further exploitation by employers.

If the local wage level drops continually, it will force more people to give up self-reliance. They would prefer getting Comprehensive Social Security Assistance payments to working for low wages. Taxpayers would then have a heavier burden. The heavy economic pressure would also aggravate the problem that we are facing, that is, people would commit suicide. This is a problem that we similarly not afford to overlook.

Madam President, the stability and advancement of society rely on co-operation among people from all walks of life. The Gini Coefficient of Hong Kong has rapidly risen from 0.476 in 1991 to 0.525 last year, which reflects that there is a widening gap between the rich and the poor. Hence, I call upon employers, employees and officials to look squarely at the deteriorating problem before it is too late. They should negotiate and discuss together the working poverty problem that Hong Kong is facing.

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

MISS CHAN YUEN-HAN (in Cantonese): Madam President, I believe the problem of working poverty in Hong Kong is worsening. I recall a few years ago I moved a motion on the impoverishment of marginalized workers. The problem before us was also mentioned in that motion. Problems such as these do exist, and they have been discussed in society before. So I hope the Government can face these questions squarely. I think even the officials will agree that these problems do exist. The question remains, how we are going to solve these problems. The Government may say that more observations need to be done, but in my opinion, I do not think there is any reason for more observations to be carried out at all. Despite the fact that the annual per capita production in Hong Kong is \$193,000, but I doubt how many people can share the fruits of prosperity.

We can see that there are lots of people who work more than 10 hours a day and their monthly income is only \$5,000 or \$6,000. The situation is worsening and what I am saying is not that more and more people are making \$5,000 or \$6,000 a month, but that this trend of downward adjustment is not levelling off but keeps on declining. If Hong Kong is fortunate enough to see an economic recovery at the end of this year, will the situation improve? Looking at the double-digit growth of our economy in 1999, the situation appears not to be improving. In 1999, that is, two years ago, we recorded a double-digit growth. At that time, the people of Hong Kong as well as our Government were aware of the problem of working poverty faced by the grassroots. When the economy improves, their wages have not seen any upward adjustment. Not only are their wages not increasing, but the problem of poverty in their families has not been resolved. Some people may say that parents may get some help from their children, but the latter do not have the financial means to do so. Many of the surveys done over these past few years on this all show that the problem is growing and deteriorating.

I think that if the Government does not even want to undertake some research, we should be very disappointed indeed. Moreover, would there be any miracle in the remaining parts of this year? For my part, I do not see any foreboding of it. Some people may say that after China's accession to the World Trade Organization (WTO), there would be a lot of business opportunities for Hong Kong. At the same time, many people say that there are also many challenges as well. Granting these business opportunities, what can we do? Most of the people here have some general skills and have received some education. I must stress that these people are not low-skilled and poorly educated, they have some general skills and have received some education. What are they going to do? Even those secondary school graduates may not be able to get an upward adjustment in salaries given the prevailing imbalance of supply and demand in the labour market. With China's accession to the WTO and the globalization of the economy as well as the numerous social changes that have taken place, I think it is difficult for the wages of this group of people to see any improvement.

Let us look at the term "marginalized workers" in greater detail. Other countries have done some research on this and many academic institutions have made this topic a key subject of study. With the globalization of the world economy, the number of this group of people is increasing and their wages are dropping ever lower. I fail to see how we can help them. We have considered this problem many times before. If our economy improves, will their wages get

better as well? I agree that some improvement will be made, but it is unlikely that it can be substantial. I dare say that this problem cannot be solved now, or in the future.

What can be done when the problem cannot be solved? I hope that the Government can look into the problem just like what other labour groups, civilian groups or interested parties are doing. Other Honourable colleagues have said earlier that many other problems are caused. I do not deny that a lot of debates and discussions were made by the labour sector in the past. I think that there is a need to carry out some thorough research on that now, for we cannot let the problem go from bad to worse.

I think Mr LAU Chin-shek made a good point when he asked what could be done when we did not even want to make this move. How are we going to solve the problem? If the Government thinks that it has some solutions to solve this problem, then it may as well tell us and we can think about them.

Looking back at the contents of this motion, I think that the motion moved by Mr LEE Cheuk-yan this year is more general than the motion last year. Contents of a motion similar in nature last year were more specific. This year, he demands the Government to expeditiously set up an independent commission to work out a minimum wage system, a minimum wage level and the implementation details which will suit local conditions. I think it merits consideration by the Government. For example, the Hong Kong Federation of Trade Unions (FTU) suggested last year that the Government should take the lead in this matter. Now we can make one more suggestion. Can the system be set up in some trades or posts as a start? At least we should bring these issues up for discussion. I know that the Secretary has moved a motion on this before. That is not the motion today, I mean the one moved by the Secretary sometime ago. I see that the Secretary has been working here for many hours and I would like to express our concern for the Secretary on behalf of colleagues outside this Chamber, for she has been sitting here for more than 10 hours without leaving. I am not sure if she can stand this any longer. As a matter of fact, many people are working like the Secretary day in and day out.

I hope that the Government can really think hard over the issue. I do not know matters in this aspect would come under the brief of the Secretary for Education and Manpower or the proposed Secretary for Commerce, Industry and

Manpower. The Government should start thinking about the problem now, for if not, it will become even harder to find a solution. Many wage earners say that they do not want to receive CSSA payments. But they may be forced to do so if the Government does not make more efforts to solve the problem.

Last week, a female member of the public came to see me. She was not yet 40. She said that she and her husband depended on the few thousand dollars of income to support the family. She said that she did not want to receive CSSA payments, for she wanted to earn a living with her own hands. She hoped to tell her children and her parents that she had the ability to support them. She asked me to tell other people the truth about people like herself. They are really leading a very hard life. Now they are not those people who receive CSSA. They hope that they can have the ability to earn a living and do not have to rely on CSSA. These are really the words coming from the bottom of the hearts of countless wage earners. I think the Government should set a minimum wage level for this group of impoverished workers.

Madam President, the FTU supports this motion. Thank you.

MR LEUNG YIU-CHUNG (in Cantonese): Madam President, I recall two years ago when the then Financial Secretary was making a fanfare of publicity for knowledge-based economy in his Budget, he envisaged that technology webs could be a way out for the Hong Kong economy and provide more job opportunities for the people of Hong Kong. However, I pointed out at that time that it was all too optimistic. For according to the experience of advanced countries like the United States, a knowledge-based economy will definitely lead to polarization, that is, the rich will get richer and the poor will get poorer. This is because middle-level positions will be replaced by technology and the new jobs will be confined to low-paid ones which are not stable. And so the problem of working poverty would appear. It is unfortunate that the Government and many people were all dazzled by technology webs and they were unwilling to face this impending social crisis. So the situation of the rich getting richer and the poor getting poorer finally emerged in Hong Kong. Our Gini Coefficient rose from 0.48 in 1991 to 0.525 last year, many times higher than the caution level of 0.4 agreed internationally. Our situation is even worse than that of the United States, for we do not have technology-based industries and we have to swallow the bitter fruits of knowledge-based economy.

The Government must address the problem of disparity between the rich and the poor. Solutions must be put forward. In the past, we repeatedly suggested that a minimum wage system be set up. Apart from making such a suggestion, we also demanded that a subsidy should be introduced to help the low-income households as implemented in many other countries. But these proposals were treated with disdain and no attempt was ever made to address the problem. It does not matter even if the Government does not want to address the problem. But the people will ask what good solutions there are. The reply given is just the following words, "Things should be left to the regulation of the market." And so the problem is considered resolved.

Can the problem be solved when things are left to the regulation of the free market? Many Honourable Members have said earlier that many tragic events have taken place. Many people are indeed faced with the problem of survival. There is a recent report in the newspaper that a nine-year-old girl and her six-year-old brother had to bring plain rice to school for lunch because their parents were unemployed. We know that this injures not only the children's health, but also their self-esteem. Some people may say that this is only some kind of sensational reportage. But Madam President, I would like to tell you that in the school I am teaching, quite a number of students do not have the money to buy a lunch. They have to wait to get the lunch boxes of those students who have ordered lunch boxes but are absent from school. This is really what is happening around us.

The life of the low-income group in Hong Kong has undergone great changes over the past decade. Now we are back to the days of the television series "Under the Lion Rock". Abject poverty has passed on from one generation to the next. The situation has become so grave that we can no longer afford to ignore it. The root of the problem cannot be more obvious — the wages of the low-income group are not protected.

Findings of last year's Census show that households from the 10% of the population with the lowest income have a monthly income of only \$2,568 on average. An income of \$2,568. From this sum of \$2,568, more than \$1,000 will go to the rents, and the remaining \$1,000 or so will be the living expenses. Just imagine this amount of money will be spent on meals, transport, and other expenses. Will that be sufficient? Article 7 of the International Covenant on Economic, Social and Cultural Rights states all workers should enjoy

remuneration which provides them, as a minimum, with a decent living for themselves and their families in accordance with the provisions of the Covenant. Would an income of \$2,568, mentioned by me earlier, be able to afford workers with a decent living?

Article 39 of the Basic Law contains two international covenants, but why does the Government not address itself to these two international covenants and legislate for their implementation? Does it think that it is not reasonable to protect the basic living conditions of the people? Of course, it will not say that this is not reasonable, but where does the problem lie? Even if the Government thinks that this is not reasonable, but why is this problem allowed to exist? It is because the Government is itself a great exploiter. Why? Let me tell Members a fact. Recently, the newspapers reported that the cleansing service contractor of the Government plans to change the cleaning time of six of the public toilets in Sai Kung from the original 9 am to 6 pm, that is, the workers will work from 9 am to 6 pm, to 9 am to 11 am and then from 3 pm to 6 pm. In this way the working hours will be reduced by four or five hours. What will be the result? The result will be the contractor can cut its expenses and the income of the workers will be reduced as well. The wages will decrease from the original \$5,000-odd to \$2,000-odd. Will workers get any benefits out of this? Can their income afford them a decent living?

In these past few years, the Government and the business sector have always criticized that the manpower costs of Hong Kong are too expensive and that affects our competitiveness. That is why services are contracted out to save manpower costs in public sector organizations. They also say that wages should be pushed down to make the territory more competitive. We have said almost 20 times to the Government that such kind of outsourcing will only encourage exploitation by the contractors. The consumption patterns of big bosses and grass-roots workers are very much different. Those bosses of contracting companies will not spend all the money they earn, but for the workers, they will spend all the money they earn, for they have to pay for their living expenses. So their income will not just provide them with their living expenses, but it can also boost consumption. That is why the contracting system will only lead to adverse, rather than good, impact. I think the current practice of the Government shows that it ignores the overall economic development of Hong Kong, as well as the basic living conditions of workers. So if we do not give serious thoughts to this issue of minimum wage today, there is no hope that the lot of the workers will ever improve.

Minimum wage is no monster from which we should run away. Minimum wage will not become the "maximum wage" as many people would believe. It is precisely because, as the Government says, wages are subject to market regulation, and it did happen before. So I think the Government must reconsider the issue of minimum wage.

Thank you, Madam President.

MR ABRAHAM SHEK: Madam President, during the last four years, Hong Kong has been in the economic doldrums. The Asian financial turmoil has accelerated the switch of our economic direction. With economic restructuring, downsizing and movement of economic activities elsewhere, the unemployment rate has risen to a new record high. With an imbalance of manpower resources, there is an oversupply of low-skilled workers and this has resulted in the reduction of wage level. This unfortunate situation will persist for a longer period of time.

Wage level is determined by market supply and demand. This is a fundamental principle of economics. I believe that many of my colleagues have a better understanding of economics than myself. However, I believe that we should not give up our long-standing effective market-driven wage level adjustment mechanism in the name of protecting the "superficial" benefits of workers. Intervening in the market-driven wage level mechanism will not only change the golden rule of free-market operation, but will also affect our economic vitality and flexibility of business operation, hence our competitive edge. Neither can it solve the issue of "poverty" of our working class. Although the public controversy over the setting up of a minimum wage system continues, the business sector supports the existing market-driven principle.

Madam President, I oppose the setting up of a minimum wage system due to the following reasons:

Firstly, it violates the market-driven principle in determining the wage level. As a result, business operators' flexibility in deploying manpower resources would be greatly reduced. This is neither fair nor right for both the employers and the employees.

Secondly, it will neither bring a rise in the wage level nor will it improve the employment situation of our local workers. Probably, it would adversely affect the employment opportunities of our workers.

Thirdly, it will not enhance the productivity of our economy. Instead, it may constrain the improvement of our competitive edge.

After the Asian financial turmoil in 1997, many business sectors have adjusted the wage level downwards. The wage level of some low-skilled workers has been reduced to that of the early '90s. Because of the economic hard times, the profit margins of many sectors have been substantially reduced and many companies are suffering massive losses. With the northward movement of our manufacturing industry, it is difficult to find a large number of job vacancies in the market. If a minimum wage system is established, employers will lose their right to choose suitable workers according to their desirable wage level. In order to reduce operating costs, they would probably be forced to reduce the number of employees, move part of their business to other regions or terminate their investments in Hong Kong. As a result, the unemployment rate will further increase and our workers will be the ones to suffer.

I do not agree that we should enhance Hong Kong's competitive edge by continuously pressing down the workers' wage level, especially that of the low-skilled workers. In fact, Hong Kong still cannot compete with the Mainland in terms of low labour cost. What Hong Kong should do is to add values in terms of labour skill, quality of goods and services. Only by this way can Hong Kong maintain its competitive edge against our neighbouring regions with low labour cost. Otherwise, the business opportunities of the various sectors in Hong Kong will gradually disappear.

Improving the quality of our workers through education and retraining is an effective way to alleviate the problems of poverty and unemployment. The Government should also consider pushing through massive volume of infrastructure and development projects to create jobs and reduce unemployment, particularly in the construction industry which must now have hit a peak figure of over 30 000 workers unemployed.

Madam President, the principle of free-market operation has contributed to the success of the Hong Kong economy. The change of this long-established

principle will not solve the problems of poverty and unemployment among our working population and is doomed to fail. Thank you.

MR ALBERT CHAN (in Cantonese): Madam President, when this Council discussed the poverty problem years ago, I said that it was a sin for there to be poverty in an affluent community. However, I think it is even an unforgivable sin for there to be working poverty in an affluent community, and it is miserable and shameful.

It is queer for the working poverty phenomenon to emerge in a developed society. The phenomenon should be found during the Dickens era at the initial stage of industrial development or in some backward countries. It should definitely not be found in a place that claims to be an international financial centre. In my view, the government officials concerned should review and think over why there is a working poverty problem in Hong Kong that claims to be an advanced and developed society.

One of the factors for or the chief culprit of the working poverty phenomenon is the Government. By outsourcing and speeding up outsourcing, the Government has brought about working poverty. Some reports pointed out earlier on that after the outsourcing of government services, the hourly wage is only \$7, which is obviously a working poverty phenomenon, a phenomenon obviously instigated by the Government. In dealing with the problem, I hope that the Government would understand and show sympathy for the problems faced by those suffering from working poverty and the pressure of life on impoverished poverty households.

The plight faced by working poverty households is that their wages continually drop while the pressure of life continually rises. For instance, the increase in public transport fares and public utility charges such as the recent increase in oil prices have increased the pressure of life of working poverty households. They are helpless amid such difficulties and the quality of life of such households has gradually deteriorated.

Another phenomenon induced by working poverty is that even though employees lived in difficulties in the past, their parents could receive Comprehensive Social Security Assistance (CSSA). After the Government has changed the CSSA policy, CSSA recipients who are parents living with their children would be disqualified for CSSA payments. This change in government

policy has aggravated the working poverty problem and these households, especially the life of the two elderly parents, is really miserable. Such elderly parents are invariably living below the poverty line. I believe the officials present can absolutely not share and understand the misery they are facing every day. I wish that the Secretary and Director would find an opportunity to visit the old people in working poverty households and see how they live without income and on the old age allowance only. I often came across such old people and households when I worked in the district.

As a result of government policy, outsourcing of services and the northward relocation of processes by many large enterprises, many problems have emerged. The working poverty problem has even affected sheltered workshops. Recently, I have been told by some social workers that with reduced workload, the workers of sheltered workshops who used to make \$1,000-odd monthly in the past do not have any work or make substantially reduced monthly income now. If even sheltered workshops are affected, we can see how serious the working poverty problem is.

The poverty problem brings many destabilizing factors to society. I remember when I was a secondary student, my history teacher gave three reasons for the outbreak of the Russian Revolution. After more than 20 years, I still remember that the three reasons were unemployment, poverty and corruption. In Hong Kong today, we find two of the three factors, that is, a high unemployment rate and the poverty problem. If the Government does not deal with the problems carefully, I believe these destabilizing factors will deteriorate and, in future, officials may not be able to sit so comfortably in this Chamber and listen to Members' debates.

I hope Members would cherish the success of Hong Kong, not to let Hong Kong run into instability in a short span of several years, or the eventual disasters.

Thank you, Madam President.

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

DR LUI MING-WAH (in Cantonese): Madam President, Mr LEE Cheuk-yan is indeed persevering in fighting for the minimum wage. Today, just before the

Labour Day on 1 May, he has harped on the same old tune, for the third time I must say. As in the past, he still thinks that the wages of local low-skilled workers are continuing to decline, and this has aggravated the problem of working poverty. He, therefore, has proposed a motion again in the hope that a minimum wage system can be set up.

First, Mr LEE's motion presumes that the wages of low-skilled workers will fall indefinitely and so, he has demanded for a minimum wage system to protect the rights and interests of workers. But as we all know, the relationship between wages and the labour market is one of supply and demand. While wages may fall in times of an oversupply of labour, the fall will absolutely not continue indefinitely. When wages have fallen to a certain level, they will reach an equilibrium with labour supply in the market. This is the market rule. Employers cannot possibly adjust the wage level downwards indefinitely. This natural adjustment mechanism for wages shaped by the supply-demand relationship in the free market may not be perfect, but it is time-honoured and accepted by both employers and employees.

Moreover, as we now face structural unemployment and the external economy is weak, if a minimum wage is set rigidly against this backdrop, and if employers consider that the level is too high, so high that it outgrows the benefits of productivity enhancement, they will naturally cut employees' welfare and increase workload. If the situation deteriorates, the minimum wage will undermine the competitiveness of enterprises which can only move out of Hong Kong for survival. In that case, the employment opportunities of Hong Kong will further shrink, and the loss suffered by Hong Kong will outweigh the gains.

Mr LEE should know only too well that the continued decline in the wages of low-skilled workers is attributed to an oversupply of labour and insufficient demand in the market. Why is there insufficient demand for labour in the market? It is because the economy of Hong Kong is in the doldrums, the production costs here are too high, and industries and businesses as well as the service industry have been relocating elsewhere. Why is there an oversupply of labour in Hong Kong? The reason is that the population has been growing too rapidly, outpacing the creation of new jobs. So, as there is an imbalance between supply and demand in the market, the wages of low-skilled workers thus continue to come down. This is a law of economics in a free market. Setting up a minimum wage system will only aggravate the imbalance between the supply of and demand for labour.

Therefore, to resolve the problem of the so-called "working poverty", as Mr LEE Cheuk-yan put it, efforts are warranted in three areas. Firstly, we should work to reverse the economic downturn. Only when there is continued economic growth and improvement in the employment situation will the wages of the working population go up and by then, minimum wage will not be a concern. Secondly, we should control the supply of labour and abate the imbalance between supply and demand, in which case wages will not continue to fall. Thirdly, Hong Kong must create more social wealth and go for foreign exchange earnings by, for instance, boosting the exports of the local manufacturing industry, and attracting in-bound visitors and inward investments.

Madam President, I wish to tell Mr LEE that these point to the basic direction for resolving working poverty. With regard to what I have said today, I hope I have not, as what he said earlier on, found the wrong audience. Thank you.

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

(No Member responded)

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, Mr LEE Cheuk-yan has said that legislating for the setting up of a minimum wage is one of the two revolutions he wishes to achieve in his lifetime. I appreciate his unyielding perseverance in protecting the rights and interests of the working class, but that is something I cannot agree.

The Government, and in particular the Chief Executive, is very much concerned about the decline in the wages of grass-roots workers in recent years. Figures from the Census and Statistics Department show that, excluding the wages of foreign domestic helpers, the median monthly wage level for low-skilled workers in 2001 was \$6,500, lower than the level of \$6,800 in 2000 and \$7,000 in 1999. The deflation rate during the period was close to 8% and this could partly offset the decline in wages. But with the sluggish economy and a mismatch in human resources, the inevitable results of an excessive supply of low-skilled workers are a rise in the unemployment rate and a continual decline in wages.

The problem must be addressed and prompt measures taken to maintain social stability. It is because the people affected are not simply the workers themselves but also their families, including children who are in the process of growth. So the impact can be very far-reaching. But can Mr LEE Cheuk-yan's proposal to set up a minimum wage really ensure that workers and their families will enjoy a decent living? The problem that needs to be resolved is the imbalance in demand and supply in the labour market, rather than an artificial intervention to stop wages adjusting according to market forces.

Labour is one of the major elements of production, and its value is determined by supply and demand in the labour market. In a predominantly service-based economy like Hong Kong, wages account for a considerable proportion of the cost of production. If wages are not determined by supply and demand in the market, but according to the needs of a decent living of workers and their families, that is an outright intervention in the market that will serve to destroy our reputation as the freest economy in the world. The impact of this on international investors and the long-term effect on our economic development should not be underestimated.

While ideals remain ideals, the reality is something we have to face. The setting up of a minimum wage appears to be quite simple, but it is easier said than done. What in fact is a "decent living"? How much should a minimum wage level be set so that it meets the needs of a decent living of what number of members of a family? All these are realistic problems that are controversial and insurmountable.

A more practical approach would be to ensure that workers and their families will enjoy a decent living through a social security system. At present, we have a Comprehensive Social Security Assistance (CSSA) system and free medical services and low-rent housing are provided to those families in need. There are also transport and textbook allowances given to the children of these families. Apart from income from wages, the low-income households may obtain other kinds of allowances and subsidies to meet their basic living expenses. As to whether or not these allowances and subsidies are sufficient, I would say that people have different opinions on that and we may discuss about it.

Mr LEE Cheuk-yan thinks that he has come up with a great idea. He suggests that employers should act against their conscience and push down the

wages so that employees are forced to apply for CSSA. But I do not think employees are under any incentive to conspire with the employers, for the income which employees will get in the end are only a meagre salary and CSSA, and there is an upper limit on CSSA after all.

Apart from providing a safety net, a more effective way to help improve the lot of the low-income group is to afford them enough opportunities of self-enhancement that would increase their chances of upward mobility in the social ladder, and to upgrade the skills of those in employment and make them become more competitive. At the beginning of last September, we launched the Skills Upgrading Scheme for those grass-roots workers in employment with a low level of academic attainment. The Scheme provides skills training specific to their needs and thus make them more competitive in the labour market and better equipped for more senior posts. The Government encourages lifelong learning and a sum of \$5 billion has been set aside to provide financial assistance to adults pursue further studies. We believe that if the people can upgrade and improve themselves persistently, they will be able to get more desirable remuneration and hence improve their lot.

To an environment conducive to business, propel economic growth, broaden the economic base, increase job opportunities, formulate a comprehensive immigration and population policy, and improve on the quality and skills of the human resources in Hong Kong, is the fundamental solution that will enable the workforce to adapt to the new economic order emerging from transformation and earn a higher income through their own efforts. However, the situation is very complicated as it involves a host of problems and straddles the ambits of a number of different Policy Bureaux and departments. I think the SAR Government would be better prepared to tackle these problems during the second term of office of the Chief Executive.

As to the issue of minimum wage, it was put up for debates held in 1999 and 2000 and I believe Honourable Members are very familiar with the pros and cons. The stand of the SAR Government in this has been very clear and we oppose any form of a statutory system of minimum wage, for this will make the labour market less flexible and affect its adaptability to changes. A system of minimum wage will not only distort the wage structure in the labour market, but also impede the development and restructuring of our economy. The system will also make those low-skilled and low-income workers less enthusiastic about

making improvements to and upgrading the quality of their work, hence denying economic development the impetus.

It is never easy to determine a minimum wage level. If such a level deviates from that which is determined by the market, be it higher or lower, it will cause adverse impact on the job opportunities of employees. If owing to higher costs, employers have to scale down their operations, change their mode of production, or relocate their business or production processes to nearby places with a cheaper workforce or resources, a decline in the overall job opportunities available and a rise in the unemployment rate will result. Workers with a low-level of skill or educational attainment, especially the young people, the elderly, the disabled or those who do not have too much working ability will bear the brunt of the resultant impact. May I remind Honourable Members who support a minimum wage system that this group of workers is precisely the ones with whom the Honourable Members are trying to provide the basic and acceptable income protection by means of setting up a minimum wage. Employers, in a bid to offset the high wages, may draw up more stringent conditions of employment for their employees so as to reduce the actual labour cost. So our well-intended move may actually backfire.

My impression is that Mr LEE Cheuk-yan is trying to narrow the wealth gap through the setting up of a minimum wage system. The reality is, however, that in a knowledge-based economy, those with greater knowledge and higher education attainment will make an increasingly higher income. This disparity between the rich and the poor cannot be effectively changed with the imposition of a minimum wage. Such a disparity problem is global, which is not unique to Hong Kong alone. A minimum wage system can never solve the problem of poverty, for it is a complicated problem that must be tackled from different perspectives before a solution can ever be found.

Mr LEE Cheuk-yan and Mr Frederick FUNG have cited some overseas studies on the issue to back up their arguments. I would like to share with Honourable Members the views of three Nobel laureates in economics on the minimum wage system. George STIGLER — I am not sure if he is a brother of Joseph STIGLER — stated that a statutory minimum wage is a bad instrument to solve the problem of poverty. Milton FRIEDMAN said that many supporters of a statutory minimum wage are well-intended, but they are mistaken when they believe this will help the poor. Another Nobel laureate in economics, Paul

SAMUELSON, thinks that a statutory minimum wage will more often than not cause harm to those who would like to be helped and it is an unprofessional meddling with the operations of the price mechanism.

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

PRESIDENT (in Cantonese): Mr LEE Cheuk-yan, you can now speak in reply. You still have two minutes.

MR LEE CHEUK-YAN (in Cantonese): Madam President, Dr LUI Ming-wah mentioned earlier that this is the third time I have proposed the issue of minimum wage as a topic for debate. Will I bring this topic up again for debate? I think I will, for in each previous debate I found that I had got more votes in support of my motion. This time I think I will get at least the 12 votes from the Democratic Party, and if the DAB will vote in support of my motion next time, then I think the topic is worth another debate.

Mr YEUNG Yiu-chung said earlier that he was not standing in the same position as he used to, but I think at least he was pressing the same button, that is, the same button for abstaining. If in future he tells me that he would support the motion, I would move a motion at once so that he could change his position to support the setting up of a minimum wage. Actually, abstaining from voting does not mean a change in position. I hope more and more people will support the idea of setting up a minimum wage.

As for the position of the Liberal Party, Mr Howard YOUNG expressed his strong opposition to the setting up of minimum wage, saying that it is sugar-coated poison. But I think he was just bluffing with some of his arguments. He said that a hamburger would be selling at \$30 or \$40. That is simply exaggerating. Mr YOUNG also touched on the issue of minimum wage turning into the maximum wage. I would like to quote the words of Mr YOUNG himself: wages in a free market will be adjusted by supply and demand. So I do not think the minimum wage will turn into the maximum wage.

I believe in hope. In 1999 the Labour Party in Britain set up a minimum wage system. The Conservative Party shared the same view as our Honourable

Members. They made the attack that "a minimum wage costs a million jobs". That is to say, the setting up of a minimum wage will lead to a loss of one million job opportunities. But after the policy had been implemented for a year, the Conservative Party had to admit during the last election that "minimum wage, minimum fuss". That is to say, the setting up of a minimum wage has not caused any great problems. And so they gave their support to it. The Liberal Party in Hong Kong once said that their policy beliefs were similar to those held by the Tories. I hope that in the next debate on the issue, the Liberal Party will change its position like the Tories and support the setting up of a minimum wage.

Thank you, Madam President.

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

(Members raised their hands)

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

(Members raised their hands)

Mr LAU Chin-shek rose to claim a division.

PRESIDENT (in Cantonese): Mr LAU Chin-shek 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:

Mr CHEUNG Man-kwong, Mr CHAN Kwok-keung, Mr SIN Chung-kai, Mr LAW Chi-kwong, Miss LI Fung-ying and Mr Michael MAK voted for the motion.

Mr Kenneth TING, Dr Raymond HO, Dr LUI Ming-wah, Mrs Selina CHOW, Mr HUI Cheung-ching, Mrs Sophie LEUNG, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Dr LO Wing-lok and Mr LAU Ping-chueng voted against the motion.

Mr WONG Yung-kan and Mr IP Kwok-him abstained.

Geographical Constituencies and Election Committee:

Mr LEE Cheuk-yan, Mr Fred LI, Miss CHAN Yuen-han, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr LAU Chin-shek, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr Albert CHAN, Mr WONG Sing-chi, Mr Frederick FUNG and Ms Audrey EU voted for the motion.

Dr TANG Siu-tong, Dr David CHU, Mr Ambrose LAU and Mr MA Fung-kwok voted against the motion.

Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk and Mr YEUNG Yiu-chung abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 21 were present, six were in favour of the motion, 13 against it and two abstained; while among the Members returned by geographical

constituencies through direct elections and by the Election Committee, 23 were present, 13 were in favour of the motion, four against it and five abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

NEXT MEETING

PRESIDENT (in Cantonese): I now adjourn the Council until 2.30 pm on Wednesday, 8 May 2002.

Adjourned accordingly at seventeen minutes to Midnight.

Annex I**WRITTEN ANSWER****Written answer by the Secretary for Security to Mr YEUNG Yiu-chung's supplementary question to Question 1**

Presently, the Customs and Excise Department (C&ED) has a performance pledge of clearing a cross-boundary goods vehicle within 60 seconds. Except for those vehicles selected for secondary examination, the C&ED achieved 99.7% of this pledge in 2000 and 99.96% in 2001. This performance pledge is an indicator for monitoring the efficiency of Customs clearance at the land boundary control points.

Waiting times at control point vary considerably if measured at different times of the day and different locations. We have not conducted regular surveys to gauge the waiting times at Lok Ma Chau Control Points as we do not consider waiting times to be a reliable indicator of the efficiency of our boundary control points. Although waiting times reflect to a certain extent the handling capability of and efficiency at our vehicular kiosks at control points, they are affected by a number of factors including operation of the corresponding mainland control points, weather, traffic conditions on the connecting roads to the control points and the volume and pattern of cross-boundary traffic at a particular time. These factors are outside the Administration's control.

Lok Ma Chau Control Point currently processes about 21 000 vehicles per day. On completion of the expansion project in 2003, it will have a capacity sufficient to handle 32 000 vehicles daily. The increased throughput will have a positive impact on the waiting times at the Control Point.

Annex II

WRITTEN ANSWER

Written answer by the Secretary for Health, Welfare and Food to Dr LO Wing-lok's supplementary question to Question 3

As regards the number of attendances and the amount of income received from Non-Entitled Persons (NEP) who had paid the requisite medical fees in public hospitals in 1999-2000, 2000-01 and the first six months of 2001-02, the required statistics are as follows:

	<i>No. of paid NEP attendances</i>	<i>Amount of income received from NEP (\$Million)</i>
1999-2000		
Inpatient services	2 416	37.4
Outpatient services	2 575	1.5
2000-01		
Inpatient services	2 429	28.5
Outpatient services	2 241	1.2
April - September 2001		
Inpatient services	1 367	14.1
Outpatient services	1 747	1.2

Annex III

TRAVEL AGENTS (AMENDMENT) BILL 2001

COMMITTEE STAGEAmendments to be moved by the Secretary for Economic ServicesClauseAmendment Proposed

4

By deleting paragraph (a) and substituting -

"(a) in subsection (1), by repealing "a travel agent if he holds himself out as carrying on the business of, and carries on the business of," and substituting "an outbound travel agent if, in Hong Kong, he carries on the business of";".

5

In the proposed section 4A(1) -

(a) by deleting "holds himself out as carrying on the business of, and carries on the business of, obtaining for another person" and substituting "carries on the business of obtaining for a visitor to Hong Kong";

(b) in paragraph (a), by deleting "the outbound portion of";

(c) in paragraph (a)(ii), by deleting "that other person" and substituting "the visitor";

(d) in paragraph (b), by deleting "that other person" and substituting "the visitor";

(e) by deleting paragraph (c) and substituting -

"(c) one or more prescribed services.".

ClauseAmendment Proposed

8 In the proposed section 50(1)(fa), by deleting "persons who are".

10 (a) In paragraph (a) -

(i) in the proposed question 2A, by deleting "another person" and substituting "a visitor to Hong Kong";

(ii) in the proposed question 2A(a), by deleting "the outbound portion of";

(iii) in the proposed question 2A(a)(ii), by deleting "that other person" and substituting "the visitor";

(iv) in the proposed question 2A(b), by deleting "to that person by or on behalf of that other person" and substituting "by or on behalf of the visitor";

(v) in the proposed question 2A(c), by deleting "who is a visitor" and substituting "one or more".

(b) By adding -

"(aa) in Form 4, in the notes at the end, by adding -

"(iii) The services prescribed by regulations made under section 50(1)(fa) of the Travel Agents Ordinance are:

(a) sightseeing or visits to local places of interest;

ClauseAmendment Proposed

- (b) restaurant meals or other catered meals;
 - (c) shopping trips;
 - (d) local transport in connection with an activity referred to in paragraph (a), (b) or (c).";".
- (c) In paragraph (b) -
- (i) in the proposed question 1A, by deleting "your business includes obtaining for another person" and substituting "the business of the corporation includes obtaining for a visitor to Hong Kong";
 - (ii) in the proposed question 1A(a), by deleting "the outbound portion of";
 - (iii) in the proposed question 1A(a)(ii), by deleting "that other person" and substituting "the visitor";
 - (iv) in the proposed question 1A(b), by deleting "to that person by or on behalf of that other person" and substituting "by or on behalf of the visitor";
 - (v) in the proposed question 1A(c), by deleting "who is a visitor" and substituting "one or more".
- (d) By adding -
- "(c) in Form 5, in the notes at the end, by adding -

ClauseAmendment Proposed

"(iii) The services prescribed by regulations made under section 50(1)(fa) of the Travel Agents Ordinance are:

- (a) sightseeing or visits to local places of interest;
- (b) restaurant meals or other catered meals;
- (c) shopping trips;
- (d) local transport in connection with an activity referred to in paragraph (a), (b) or (c).". "