

OFFICIAL RECORD OF PROCEEDINGS

Friday, 2 July 2004

The Council continued to meet at Nine 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, S.B.S., 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.

DR THE HONOURABLE ERIC LI KA-CHEUNG, G.B.S., J.P.

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

THE HONOURABLE NG LEUNG-SING, S.B.S., J.P.

THE HONOURABLE MARGARET NG

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

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHAN KWOK-KEUNG, J.P.

THE HONOURABLE CHAN YUEN-HAN, J.P.

THE HONOURABLE BERNARD CHAN, J.P.

THE HONOURABLE CHAN KAM-LAM, J.P.

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

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE SIN CHUNG-KAI, J.P.

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

THE HONOURABLE WONG YUNG-KAN, J.P.

THE HONOURABLE JASPER TSANG YOK-SING, G.B.S., J.P.

THE HONOURABLE HOWARD YOUNG, S.B.S., J.P.

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE YEUNG YIU-CHUNG, B.B.S., J.P.

THE HONOURABLE LAU KONG-WAH, J.P.

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

THE HONOURABLE MIRIAM LAU KIN-YEE, G.B.S., 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

DR 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, B.B.S., J.P.

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

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

THE HONOURABLE MICHAEL MAK KWOK-FUNG

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

DR THE HONOURABLE LO WING-LOK, J.P.

THE HONOURABLE WONG SING-CHI

THE HONOURABLE FREDERICK FUNG KIN-KEE, J.P.

THE HONOURABLE IP KWOK-HIM, G.B.S., J.P.

THE HONOURABLE LAU PING-CHEUNG, S.B.S.

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

MEMBERS ABSENT:

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

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

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE HUI CHEUNG-CHING, S.B.S., J.P.

DR THE HONOURABLE PHILIP WONG YU-HONG, G.B.S.

THE HONOURABLE LAU CHIN-SHEK, J.P.

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

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE MA FUNG-KWOK, S.B.S., J.P.

PUBLIC OFFICERS ATTENDING:

DR THE HONOURABLE SARAH LIAO SAU-TUNG, J.P.
SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

THE HONOURABLE FREDERICK MA SI-HANG, J.P.
SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY

CLERKS IN ATTENDANCE:

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

MS PAULINE NG MAN-WAH, ASSISTANT SECRETARY GENERAL

BILLS**Second Reading of Bills****Resumption of Second Reading Debate on Bills**

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Waste Disposal (Amendment) (No. 2) Bill 2003.

WASTE DISPOSAL (AMENDMENT) (NO. 2) BILL 2003**Resumption of debate on Second Reading which was moved on 17 December 2003**

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

DR LAW CHI-KWONG (in Cantonese): Madam President, in my capacity as Chairman of the Bills Committee on Waste Disposal (Amendment) (No. 2) Bill 2003 (the Bills Committee), I now report to the Council on the deliberations of the Bills Committee.

The Waste Disposal (Amendment) (No. 2) Bill 2003 (the Bill) seeks to strengthen the control against illegal disposal of waste and provide statutory basis for the introduction of a charging scheme for waste disposal facilities. Since the Administration will table, after the enactment of the Bill, Regulations on waste disposal charges and designated waste disposal facilities, the Bills Committee has also examined the policy aspects of these two Regulations to ensure that they are consistent with the policy intent of the Bill.

The Bill recasts the existing offence of unlawful depositing of waste under section 16A of the Waste Disposal Ordinance. According to the provision, it is

an offence for any person who deposits or causes or permits to be deposited waste in any place except with the lawful authority or excuse or the permission of the owner or lawful occupier of the place. Besides, the driver of a vehicle (not being a public transport carrier) from which waste is deposited and also the employer of that driver are presumed as persons causing the waste to be deposited. However, defences of reasonable precautions and due diligence are provided to a defendant.

Members have expressed concern about the liability of drivers and employers. Given that a driver is an employee generally acts according to the instructions of his employer, members question whether it is fair to apply the presumption on the driver and require him to ensure that an offence will not be committed. The authorities consider that it is necessary to apply the presumption to the driver because the waste will not have been deposited from the vehicle in the first place without the participation of the driver. Nevertheless, the authorities agree that as an employee, a driver may not know what steps the Court will expect him to take to ensure that an offence will not be committed. To this end, the authorities will move Committee stage amendments to the effect that the driver can establish a defence if he can satisfy the Court that he has no reason to believe that an offence will be committed. As for the liability of a client who hires a self-employed driver, the authorities explain that the client will not be covered by the Bill because he generally will not have any control over the manner in which the driver performs the task.

Under new section 23EA proposed in the Bill, the Director of Environmental Protection (DEP) has power to enter without warrant any places, other than domestic premises or dwelling place on private land, to remove the waste deposited illegally in cases where there is an imminent risk of serious environmental impact. If it is necessary for the DEP to enter any domestic premises or dwelling place on private land, a warrant must be obtained from a Magistrate beforehand. Members are concerned that since the DEP must believe that an offence of illegally depositing waste has been committed before he can exercise this power, it may be difficult for him to make a decision. However, the removal of such a requirement will give the DEP extensive power to remove waste on private land, which may have human rights implications. The authorities admit that there may be situations where it will be more difficult for the DEP to ascertain that an offence has been committed. But it is also

considered that such situations are rare, and that the DEP can consider circumstantial evidence to exercise judgement.

New clause 18A proposed in the Bill empowers a Magistrate to order a person convicted of depositing waste on government land to remove such waste or to pay the DEP the expenses incurred in removing the waste in case the DEP has already taken actions of removal. Members have expressed concern about whether new sections 16A, 18A and 23EA will also be applicable to waste deposited before the enactment of the Bill. The authorities' explanation is that the number of such cases will be few and far between. This is particularly so because according to section 26 of the Magistrate Ordinance (cap. 227), any complaint in respect of any offence of illegal deposit of waste under section 16A of the Waste Disposal Ordinance must be made or laid within six months from the time when the matter of complaint arose. Besides, according to the presumption against retroactivity, orders issued by a Magistrate under new sections 18A and 23EA should not be construed as applicable to any offences committed before the enactment of the Bill.

While noting that the authorities rely on a rule of construction of statute to attain the legislative intent of the relevant sections, members also note the alternative suggestion from the Legal Adviser to the Bills Committee on the need to reflect the legislative intent of sections 16A, 18A and 23EA by express statutory provisions. Following negotiations between the legal advisers to the two sides, members accept that from the practical point of view, cases like this may be rare, and that the authorities will also handle such rare cases in a fair and equitable manner. Therefore, members accept the Bill as it is currently worded.

The Bill also proposes to amend section 33(4) of the Waste Disposal Ordinance to empower the DEP to determine whether a charge is to be imposed in respect of any class of waste accepted at a waste disposal facility. The relevant details will be set out in the Regulations on charges for construction waste disposal and designated waste disposal facilities. In order not to affect the work of the Subcommittee to be set up to scrutinize such Regulations in the future, members have therefore only commented on their policy directions, including the charging mechanism, types of construction waste to be accepted at the waste disposal facilities and level of disposal charges. Members also advise that a Subcommittee should be set up as soon as possible following the tabling of

the relevant Regulations to the Legislative Council, so that the charging scheme can be implemented early.

In the course of deliberations, members have pointed out the lack of measures to prevent land filling activities on private land. While agreeing to the need to respect the rights of private land owners in respect of the use of their land, members consider that measures should be put in place to prevent private land, particularly agricultural land in the New Territories, from becoming land filling areas or dumping sites of waste. To this end, the authorities are exploring the feasibility of a clean record system from which the Town Planning Board can make reference in considering planning applications. Another possible option is to subject major land filling activities for any purposes to the Environmental Impact Assessment Ordinance. Under this option, land filling areas of not less than 2 hectares in area and with a depth of filling of not less than 1.2 m will be regarded as designated projects under the Environmental Impact Assessment Ordinance, and proponents of these projects will be required to apply for an environmental permit from the DEP before project commencement, so that avoidance or mitigation of the related impact can be considered at the earliest possible opportunity if necessary. Members welcome this proposal but also emphasize that the relevant legislative amendment concerned must be completed as early as possible to tie in with the commencement of the Bill.

In view of the public concern about the indiscriminate demolition of buildings by developers, members suggest the authorities to consider including in the Bill punitive measures for indiscriminate demolition of buildings. The authorities explain that while there are at present no punitive measures for discriminate demolition, it is a mandatory requirement under the waste management plan of public works projects for demolition works under contracts invited on or after 1 July 2003 to carry out "selective demolition", which involves demolition and removal of materials of the same category one at a time to avoid mixing of recyclable with non-recyclable materials and inert with non-inert materials. Furthermore, the charging scheme will provide an economic disincentive for developers/contractors to demolish buildings indiscriminately. Members however express the concern that the charges will not have much effect in reducing construction waste since they are negligible as compared to the huge gains in property development. At members' request, the authorities agree to include in the speech to be delivered by the Secretary for the Environment, Transport and Works at the resumption of Second Reading debate

on the Bill measures which the authorities will take to respond to public concern about indiscriminate demolition of buildings by developers.

Madam President, since the authorities have accepted most of the suggestions of the Bills Committee, I support the resumption of Second Reading debate of the Bill.

Madam President, since I have been following the progress of this policy for more than a decade, I am very delighted to recommend the Bill to the Legislative Council today. Thank you, Madam President.

MR LEE CHEUK-YAN (in Cantonese): Madam President, I speak on behalf of the Hong Kong Confederation of Trade Unions to support the Waste Disposal (Amendment) (No. 2) Bill 2003. As Dr LAW Chi-kwong just said, the advocacy of the Bill has been dragged on for 10 years, it is indeed a pity. These 10-year old problems are mainly related to the interest of waste haulers and waste collection drivers, and they should indeed be dealt with earlier. I am very glad to note, though the problems have not been fully solved, the Government's sincerity in addressing the issue. We should also think hard to work out radical solutions to these problems. These waste collection drivers are not polluters, but only involved in the delivery, so I hope their livelihood will not be jeopardized as a result of the passage of the Bill.

The Bill is indeed very important, as we have only three landfills in Hong Kong. Among the 6.5 million tonnes of waste, 2.5 million tonnes are construction waste, accounting for a very huge volume. If we can reduce these 2.5 million tonnes of construction waste by way of recycling, it will be most satisfactory. The Government should at least sort the waste to ameliorate the problem of waste pollution as a whole. We are therefore very much in support of the charging scheme; after all, the responsibility should be borne by polluters. However, as I have just mentioned, as far as the interest of waste collection drivers are concerned, notwithstanding the sincerity of the Government, we still have some worries which have yet to be addressed. I would like to explain our worries.

With large construction sites, I believe the problem has been solved. As principal contractors of large construction sites will be required to open billing accounts, all dump truck drivers will deliver waste to landfills by means of

payment through the account, and the charge so incurred will thus be paid by the principal contractors. As a result, the problem in this aspect should have been addressed.

The present problem is, about 30% of the construction waste comes from renovation or decoration contractors. As we all know, renovation contractors are generally less disciplined. They would hire waste haulers to collect construction waste generated by household decoration, such as mud and waste, for depositing at landfills. However, under the new charging scheme, all waste producers, that is, renovation contractors at the present case, are in principle required to open billing accounts for entry to the landfills. Nevertheless, under this new regime, as everyone can open a billing account, we would not know who the account holder is.

Of course, we would ask a question, "Though everyone can open a billing account, why would someone do so without a reason?" Our worry is, in future, renovation contractors would ask dump truck drivers or waste haulers if they have opened billing accounts, and only those with billing accounts will get the business. As such, we are worried that waste haulers will be compelled to open billing accounts. If the operation is smooth, they can of course collect their payment. The arrangement of opening billing accounts seems to be right. Yet, we reckon two major problems will arise then. The first one is waste haulers may fail to collect the payment, and there have been a lot of disputes in this aspect which result in drivers not getting paid. At present, the charge of each dump truck trip is around \$200 to \$300. If the landfills charge is taken into account, it may amount to more than \$1,000. These drivers will suffer great loss if they cannot get the money back on one occasion.

Someone may put the blame on waste haulers for not thinking thoroughly enough. This leads to the second problem, and that is the last thing we want to see, that is, the possibility of waste haulers engaging in illegal dumping for not being able to get the money. We of course do not encourage fly tipping, and also hope to enforce strictly against fly tipping under the Bill. Yet, it may lead to additional pressure. If waste haulers fail to collect payment by opening billing accounts, they may engage in fly tipping. This is our greatest worry.

For this reason, we have been holding discussions with the Government on the possibility of requiring decorators to open billing accounts. However, this may lead to another problem. For this purpose, we must have a very clear

definition of decorator. To address this problem, we may resort to a registration system. Otherwise, under the present business registration system, anyone can call himself a decorator; the problem will then continue. Therefore, in the long run, we should have a registration system for decorators, so as to tackle other problems, such as illegal workers, tax evasion, and so on. This is another way forward, but we hope the passage of the Bill will not be held up as a result.

I do hope that the Government can truly address the problem. The present arrangement of allowing everyone to open billing accounts may lead to the following result: the responsibility of opening billing accounts may shift from polluters to waste haulers. The pressure will still be borne by waste haulers.

I have no idea as to how this problem can be resolved in actual enforcement. We have been discussing with waste haulers who suggested tackling the problem by collecting a deposit for opening an account, but the amount of which has yet to be determined. They are thinking of setting the amount of deposit at \$50,000 to \$100,000, so as to discourage waste haulers from opening billing accounts. If a waste hauler is required to pay the deposit at the time of opening an account, he may consider it more seriously if he is not actually engaging in renovation works. I hope the Government will take this into consideration. I also hope that the Bill can, ultimately, make waste producers think of means to reduce disposal of waste at landfills, but recycling and sorting the waste instead, so as to develop the recycling industry. This is the most desirable scenario.

To this end, I believe it is imperative to ensure that waste producers are made to pay the landfills charges, thus giving them an economic incentive to reduce cost, with a view to slowing down the depletion of our landfills capacity.

Finally, I also hope the Government can pay special attention to the issue of illegal dumping, which was raised by a number of members of the Bills Committee in the course of deliberations. I believe the Government also notes this situation, particularly with dumping which is not necessarily illegal but taking place on private land outside the regime of regulation, thus rendering a lot of agricultural land into landfills in future. If the agricultural land were transformed into landfills, would it affect the environment in the neighbourhood, especially villages in the vicinity? I believe the Government has received a number of such complaints from the New Territories, in particular complaints

about illegal car parks. If we do not want to receive complaints about agricultural land being turned into landfills, in addition to those about car parks, the Government should pay more attention to this. Thank you, Madam President.

MS MIRIAM LAU (in Cantonese): Madam President, in the year 1995, the Government proposed the formulation of a charging scheme for the disposal of construction and commercial/industrial waste. However, owing to strong opposition from waste haulers, the scheme failed to be implemented eventually. This time around, the Government has submitted the Waste Disposal (Amendment) (No. 2) Bill 2003 (the Bill) to give legal effect to the charging scheme. I believe the Government will be able to implement the relevant scheme, for it has taken sound advice readily. The Government has conducted several rounds of consultation with the waste haulers beforehand, and accepted most of the suggestions of the trade in improving the charging scheme, so that the charging scheme targets only on waste producers but not waste haulers, relieving worries of the trade and their resistance to the scheme.

Madam President, regarding the present achievement made in respect of the waste disposal charging scheme, I think, in addition to the efforts made by the Government, the waste hauling sector has made substantial contribution, devoting much time to meetings with the Government to communicate in advance. Anyway, the experience this time brings out a clear message, that if the Government is willing to have more consultation and communication, if the parties involved can be more understanding, accommodating and rational in dealing with problems, solutions can be found to many thorny issues.

Initially, the Government proposed under the Bill that waste disposal charges charged to project contractors be collected through waste haulers. To allay the worries of waste haulers, the Government then proposed the collection of charges on a monthly basis with a credit term of 30 days. For waste haulers with evidence proving their failure to recover the relevant charges from waste producers, that is, the contractors, they are allowed to defer their payment temporarily, but the charges in question will not be waived. However, this requirement is at variance with the "polluter pays" principle since waste haulers

are not waste polluters but only involved in the delivery of waste. Moreover, under this mechanism, waste haulers are responsible for recovering charges from project contractors. There is the possibility that such charges cannot be recovered ultimately, in such case, waste haulers will face cash flow and bad debt problems.

To address the concern of waste haulers, instead of collecting charges through waste haulers, the Administration has agreed to revise the charging mechanism by removing the on-site payment arrangement, and to require all charges to be paid through billing accounts.

However, waste haulers consider that the revised payment arrangement may only help to solve the cash flow problem. They still have grave worries that project contractors may, by means of pyramid contracting tactic, compel waste haulers to open billing accounts to make advance payments, forcing waste haulers who are unable to recover the relevant charges from the waste producers to pay the charges out of their own pockets in the end.

In respect of contractors of large-scale projects valued over \$1 million, there may not be a great problem, for they are required by law to open billing accounts. However, for contractors of minor projects, mainly renovation works, who are waste producers, employers of waste haulers, they are not required by law to open billing accounts. Waste haulers are thus restrained by the contractors of these minor works.

Therefore, I hope the Administration will expeditiously conduct a study on the introduction of a registration scheme for contractors of small to medium scale works, aiming to require all registered contractors to open billing accounts. Only this can remove the worries of waste haulers and implement the principle of "polluter pays".

Meanwhile, the Administration should launch publicity among renovation contractors of small to medium scale that they, as waste producers, should take the initiative to fulfil their responsibilities in paying waste disposal charges. The Administration should encourage those contractors to open billing accounts with the Environmental Protection Department for direct payment of charges even though they are not required to do so under the law. I believe only if waste disposal charges are targeted on "polluters" can the amount of waste produced be effectively reduced.

Madam President, the Bill seeks to amend section 33 of the principal Ordinance to empower the Chief Executive in Council to make regulations to provide for substances to be defined as construction waste. The regulation also empowers the Director of the Environmental Protection Department to refuse to accept any waste at a designated waste disposal facility in such circumstances as the Director may think fit. According to the draft of the Waste Disposal (Charges for Waste Disposal) Regulation submitted by the Government for the perusal of the Legislative Council, the Government provides three types of waste disposal facilities, namely, landfills, sorting facilities and public fill reception facilities. It is proposed that site staff at these facilities be empowered to determine, based on visual inspection, whether a waste load is construction waste. Site staff will be empowered to stop vehicles and the waste loads carried from entering the facilities, and also to decide whether waste disposal charges should be imposed. Decisions in this respect are not subject to appeal. Madam President, first, determining whether a waste load is construction waste by visual inspection is in no way scientific, where errors may easily arise. Moreover, since the decisions of site staff are not subject to appeal, it may lead to abuse of power or corrupt practices. The Government should lay down clear and categorical guidelines to prevent any unfair situation and minimize the risk of disputes between site staff and drivers. That is to say, in cases where the driver has already driven the vehicle to the entrance of the facilities, but admission of the vehicle is not allowed by the site staff, confrontations and disputes between the two parties may occur. The Government must lay down clear guidelines to minimize the possibilities of confrontations and disputes in this respect. In drafting these guidelines, the Government should consult the trade of waste haulers thoroughly and pay heed to their opinions, so as to ensure that every regulatory measure is fair and reasonable, and is recognized and accepted by the trade.

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

MISS CHOY SO-YUK (in Cantonese): Madam President, the crisis of voluminous refuse is imminent. The most effective approach is to tackle the problem at source, to reduce waste generation and to facilitate the sorting and recycling of waste.

Waste disposal charging has been proved an effective way to achieve this aim as it provides an economic incentive for waste reduction. In fact, as early

as 1995, the then Legislative Council already enacted a piece of legislation on landfill charging. However, the whole charging scheme has been subject to repeated discussions over the past 10 years without taking effect. Today, the charging scheme is finally accepted by the Government, the trade and green groups, representing a breakthrough on the waste disposal policy and also a result of concerted efforts of various parties.

Nevertheless, the enactment of the Bill only symbolizes the formal kick-off of the waste reduction work. The problem we are facing is still severe, and as we have not much time left, the situation is worrying. According to government information, the waste produced last year totalled 19 million tonnes, enough to fill up a 26-storey building at the race course, and the remaining capacity of our landfills can only last for four to six years. In other words, we do not have another 10 years to allow us to implement waste reduction work in a gradual manner. The Government must speed up and introduce as early as possible a number of more effective waste reduction measures to make up for the time already lost.

At the meetings for the scrutiny of the Bill, the Government, waste haulers, green groups and Members of this Council have discussed thoroughly the details of implementing the charging scheme; nevertheless, we could not fully anticipate the various situations that will probably emerge when the charging scheme has come into operation. Hence, after the enactment of the Bill, the Government should, first and foremost, launch a pilot scheme before the formal implementation of the charging scheme, with a view to identifying potential problems in the system and making amendments as necessary. And most importantly, sufficient communication with waste producers and waste haulers should be maintained throughout the whole process to take on board their views, in order to ensure that the implementation of the scheme will not be unduly impeded.

In addition, we must address some serious problems squarely. Firstly, it can be anticipated that in order to avoid paying the landfill charges, the problem of fly tipping is bound to increase. As such, after the legislation has come into effect, the Government must step up enforcement and impose heavier penalties, so that the implementation of environmental protection legislation will not at the same time bring about another environmental problem that causes more nuisances to the public.

The Government is aware of the seriousness of land filling activities on agricultural land, thus introducing an amendment to the Bill to require land filling activities of a certain scale to conduct Environmental Impact Assessments (EIA) in advance, so as to step up regulation. However, I am of the view that these proposals will fail to achieve the desired effect. For one thing, the mechanism for triggering an EIA is far too relax, people can easily get around by breaking up the land filling activities into smaller operations to obviate the need of conducting an EIA, thereby going on to damage seriously the ecology on agricultural land. For another, even if polluters are required to conduct an EIA, we cannot ascertain if the fill is of an inert nature or of content causing adverse environmental impact. In other words, by resorting to the EIA mechanism to regulate land filling activities on agricultural land, there will be far too many loopholes and the requirement will be very difficult to enforce effectively. Madam President, on the one hand, only land filling areas of 2 hectares in size are required to conduct EIA, so given such an enormous area requirement, most agricultural lands do not have such a large Plot for land filling; on the other, the filling is required to reach a depth of 1 m. The impact caused by land filling of 2 hectares in area and 1 m in depth is already very serious. The EIA requirement alone will not be able to curb the land filling activities or prevent the ecology on agricultural land from being damaged. As a result, we suggest the Government to monitor closely the activities of waste handlers by way of a licensing regime, and also formulate expeditiously a well-defined conservation policy. We need a two-pronged approach to protect the ecology of our valuable agricultural land.

Also, to prevent enterprises from seeking profits unscrupulously and put forward proposals not in the interest of the entire community, the SAR Government should impose punitive charges on waste producers that generate large volumes of construction waste. One of the approaches is to implement the charging scheme in a progressive manner, that is, to impose a heavier financial burden on polluters, so as to curb the absurd recurrence of indiscriminate demolition. As in the case of the new building blocks in Hung Hom Peninsula, the developer concerned once intended to demolish the blocks and deposit the 20 tonnes of waste at landfills. In the long run, the SAR Government also needs to formulate a mechanism to regulate indiscriminate demolition activities, and to promote proactively corporate social responsibility, thereby preventing enterprises oblivious of social responsibility from continuing to injure the well-being of society as a whole.

Madam President, although the above dissatisfactory situations and loopholes may emerge, as the legislation is formulated in accordance with the "polluter pays" principle, it is indeed a very important step in the way forward. Also, as the issue on charging scheme has become imminent in the face of our overflowing landfills, we need to address the problem right away. We do not want to defer the enactment of the legislation for some minor details and therefore support the Bill. Madam President, the landfill charging scheme is only part and parcel of the entire waste disposal system. The successful operation of the system relies on other matching measures, such as recycling inert materials, promoting the use of recycled materials, encouraging the adoption of "selective demolition" in private demolition works, and finding a way out for excessive inert materials. The SAR Government needs to think harder to come up with innovative measures, so as to really relieve the pressure on our landfills.

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

MR LEUNG FU-WAH (in Cantonese): Madam President, I speak in support of the Waste Disposal (Amendment) (No. 2) Bill 2003 (the Bill). As a member of the Bills Committee, in the course of deliberations, I have convened a meeting to discuss with representatives of trade unions and waste haulers on the content of the Bill. For a period in the past, I frequently received complaints from dump truck drivers, saying that they failed to receive payment or wages after having deposited waste or construction waste. These drivers were therefore very worried. They were afraid that they might suffer additional loss after the implementation of the Bill as, apart from their wages, they would have to pay in advance the land filling charges.

In the course of meetings, the Administration has arranged for the Deputy Secretary of the Bureau and officials from the Environmental Protection Department to hold lengthy discussions with representatives of trade unions and dump truck drivers. We could see that the Government has been very sincere in taking on board the views of workers and trade unions. I believe that most of the problems have been solved by the Government in the process. Nevertheless, the drivers of dump trucks are still concerned that the implementation of the Bill may not be able to take care of all their interest or may cause them to suffer double losses. As such, while supporting the Bill, I would like to remind the Government that should any deficiency leading to a heavier burden for drivers or

any loophole in implementation is identified, it must address the problem and make improvement as soon as possible.

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

MS EMILY LAU (in Cantonese): Madam President, I speak in support of the Second Reading of the Waste Disposal (Amendment) (No. 2) Bill 2003. I am very much in support of this Bill.

The Legislative Council passed a Bill in 1995, at that time, Madam President, you were not there, and the Bill sought to provide that fees be charged on certain kinds of building, commercial and industrial wastes. At that time, the Bill was passed and as far as I am remember, there were not too many contentions. But problems began to surface soon afterwards because the Bill could not be put into force. At that time, some drivers voiced their strong discontent by driving their trucks to the landfills and blockaded them for two days. The event might also involve some more complicated factors. The authorities at that time and even the authorities today would become scared when so many people blockaded a place, so the law was shelved. As many as eight or nine years have since lapsed. With respect to this, Madam President, I have got some figures and perhaps the Secretary could confirm with me whether or not these figures are correct or not. The figures say that during the 10 years past, there was as many as 130 million tonnes of building waste alone and the cost of handling the waste when it was sent to the landfills was \$13.8 billion.

Madam President, currently no money has to be paid for disposing waste of any kind. Figures for last year, if I am not wrong, are that for the year 2003, a total of 6.5 million tonnes of waste was sent to the landfills. The waste can be divided into the following types: 53% being solid urban waste, including household waste, commercial and industrial waste; 38% being construction waste, that is, the waste from the materials referred to in this Bill; the remaining 9% being special waste, that is, sludge, animal carcasses, and so on. I think the last type would also include medical waste, the handling of which has been the subject of some meetings in this Council but it has unfortunately disappeared into oblivion now.

The problem is that the authorities dropped certain matters at the very moment when the situation had heated up. I am not saying that we should do things in a heated manner. It looks as if the Bill on school-based management will take up a lot of time next week for debates. But certain things ought to be done anyway. Why should those polluters not be asked to pay? With respect to this, I have to commend the Secretary as this issue is like some human excreta that has such a lingering stink that can be traced all the way back to 1989. Madam President, I am not referring to anything repulsive. The word can be said without causing any impropriety. Now since the matter can be handled, why should it be handled only after so many years? Should the matter be shelved if people blockade the landfills for two days? It can be said that an answer is found finally. But why does it have to take so many years, from 1995 to 2004, to find an answer? Moreover, the two regulations under this legislation may only be passed in the next Legislative Council term and it is simply not known when they can be put into force, possibly not even by the middle of 2005.

Madam President, I said in the Bills Committee that actually I would very much like to go to the scene to see what should be done. However, the authorities said that there was not much that could be seen and so they showed us some slides. Some colleagues said earlier that it would be unfair to pass the problem onto the drivers and require them to pay the charges. That is really unfair for they are not the actual polluters.

The system in Hong Kong is different from many other places, for example, everyone here runs his own business and many have not registered their business. I understand that there are some difficulties, but still they should be tackled. I feel most sorry that this matter has dragged on for so many years. Maybe we should not put all the blame on Secretary Dr Sarah LIAO, but at least she could explain to us why something which is clearly in public interest has been allowed to drag on to the present day just because some people used their trucks to blockade the landfills for two days in 1995? Also, why was the Bill introduced only last year? And if the Secretary knows how medical waste would be treated, could she care to tell us as well?

Certainly, the crux of the matter is domestic waste. Perhaps the Secretary could also tell us why the types of waste to be treated have reduced. In 1995, it was said that construction, commercial and industrial wastes would be treated, but now only construction waste would be treated while commercial and

industrial wastes would not. So what should be done? It is costly to construct a landfill and it will soon be filled up and a lot of things should be done as a result. Can we not offer some incentives to the polluters and those waste producers so that they will produce less waste or resort to recycling and recovery? I hope the Secretary could give answers to these. The people just fail to see how come something which started way back in 1995 could have been delayed for so many years.

I would also like to discuss with Honourable colleagues who have spoken just now on the topic of the existing charging scheme. We hope that nothing would go wrong. As many as 70% to 80% of the large developers or producers of waste on a massive scale can pay direct for the wastes they have produced. There should be no problem with them. Then there are those small waste producers, especially those who produce waste in the course of domestic decoration and furnishing. Madam President, with respect to this, the people must be informed that should they undertake any decoration and furnishing works for their premises, they have to pay for the wastes produced. They should not get upset or ask the truck drivers to pay for this fee or to use any means to force them to do so. I know that this is not something which can be solved easily and thousands of disputes may occur. But the Secretary should tell us these are precisely the kind of cases which are likely to happen. For cases of massive production of waste, things will be all right if charges are paid direct. Problems may arise when it comes to minor cases. The truck drivers may get very upset as they may be forced to pay the charges or that others may refuse to reimburse them the money paid. And other things may happen. So their living may be affected. So there must be some sort of mechanism to handle this, to prevent them from blockading the landfills again. Also, efforts should be made to ensure that they would not be refused entry to the landfills or that something like 125 is mentioned to them or that they will be instructed to go to one side. I think the Secretary would be short of means to resolve these problems. These are trivial problems, but solutions must still be found. For if not, they will trigger off some explosive issues. And when disputes arise, some people may blockade the Legislative Council Building and the Government may not be able to enforce the law again. Madam President, then we will have to wait for another eight years, and the landfills will be straight heading for a disaster. Then where can we get so much money to put things right again?

I think the people should begin to get prepared psychologically. Madam President, if we talk about "polluter pays", then everyone should be required to

comply and it is not right that we should single out construction waste. What is going to happen to other kinds of waste? We hope that people from all quarters will reduce the amount of waste they produce, and they should think how waste should be treated when it is produced. How would the Secretary teach the people of Hong Kong to do in this connection? I think the Secretary should really begin to do something, something which the Secretary herself very much supports. Madam President, there are really some difficulties with this kind of work. But one will get more praises for completing a difficult task. It would not be the case for any easy job, for this is something everyone is capable of doing. A difficult job well done would convince the public, even to the extent of making them willing to pay out of their pockets. Now with regard to the collection of trade effluent surcharge, the Secretary has made some achievements. Despite the fact that voters from the constituency which Mr Tommy CHEUNG represents may not like it so much, the Secretary has done her best. The most important thing is that the people would think that it is fair and just and that even if disputes arise, there is a mechanism to handle them swiftly and without delay. I hope the Secretary will do this.

Lastly, Madam President, I would like to talk about the Hunghom Peninsular case. During the deliberations on this Bill, I asked if a punitive charge could be devised on top of the charge proposed. The reason is, Madam President, as you are aware, the case of the Hunghom Peninsular came as a great shock to Hong Kong. The public was outraged to see the site sold as such a rock bottom price. The land with the HOS flats built on it was sold at a premium of some \$860 million only paid by the developer, and the place has such a gorgeous harbour view. The people have all along been upset about this event. Now the developers come out and say that these small HOS flats cannot fetch a good price and big luxury flats should be built with a superb harbour view. Then hundreds of pricey flats would be constructed. The developers say that all of the 10-add blocks there will be pulled down, and that means some 2 000 flats. This is really shocking. Madam President, what do you think should be done? Some newly constructed buildings are pulled down recklessly and the developers say that does not matter, urging that this Bill be passed expeditiously so that the developers can be required to pay. How much waste will be produced by that time? Some 200 000 tonnes, according to estimations made by the authorities. And how much should the developer pay? It is \$25 million according to the existing formula. It is really a negligible sum to them. Madam President, what do you think should be done?

We will surely pass this Bill for it is supported by all of us. But only \$25 million can be collected from the developer. May I ask the Secretary what deterrent effect this would achieve? Now the green groups are voicing their discontent. But the developers do not care a dime, for they can expect to make hundreds of million dollars from the project. And the sum of \$25 million paid to the Government is like dropping a dime on the street and that is nothing. Despite the discontent shown by the public, nothing can be done. The matter seems to have been forgotten yesterday. Among the people who went to the march, why did no one oppose the pulling down of Hung Hom Peninsular?

This is a very serious matter. I know that it may not be possible to add a provision to this effect in the Bill quickly, but that does not mean that nothing can be done. Of course, I am not saying that the Government should throw out some threats at the developers. Threats may not work. The Government should talk with the developer in terms of public interest or environmental protection or from some other perspectives. If the developers can get the land at such a low price, pull down the newly completed buildings there to make way for luxury flats and make hundreds of million of dollars, the public will certainly be outraged about this. Madam President, this is for sure. So I think the Secretary must do something about it. The Secretary tells us not to worry for there is a waste management scheme in place and when developers pull buildings down, they must dispose of the waste properly, recycle it and minimize waste production. But that is far from being enough. At that time, some people made a proposal, not to Secretary Dr LIAO, but Secretary Michael SUEN. The proposal was to blacklist developers who fail to comply with the waste disposal requirements so that they will not be awarded any government contracts. This proves that there are lots of ways the Government can do about it only if it wants to.

I would like to urge Secretary Michael SUEN to lend his full support, not just to Secretary Dr Sarah LIAO, but to uphold the policy of "polluter pays" and safeguard public interest, forbid the developers from wilfully pulling down new buildings after they have bought them, thereby filling up the landfills with waste. If people should really want to do this and as we are in a free society, those who do so will have to pay money or some other consideration. That means apart from money, the developer concerned will be subject to some penalties. Why? We are not targeting on these two developers or any other particular developer. For any person who recklessly does such things to increase the load of the landfills, I agree, and many people would also agree, that the authorities must act swiftly to send these people or developers a message, that we will not tolerate

such reckless demolitions and the dumping of the wastes so caused at our landfills. I can note from the report written by the Council Secretary that in the Second Reading debate, Secretary Dr Sarah LIAO will talk about how the Administration will address the worries expressed by the public on the wilful demolition of buildings by developers and what measures the authorities will take. I trust Dr LIAO will not let us down.

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

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

(No Member indicated a wish to speak)

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Cantonese): Madam President, the main objective of the Waste Disposal (Amendment) (No. 2) Bill is to provide statutory basis for the formulation of relevant regulations for the introduction of a charging scheme for disposal of construction waste.

We are now facing an acute waste problem. Several Members have spoken on this subject earlier. Construction and demolition wastes generated from local construction works is on a constant rise. Though we have introduced a series of measures to encourage the construction industry to minimize waste production and to recycle or re-use construction and demolition wastes, the volume of construction and demolition wastes produced in 2003 still amounted to 19 million tonnes, of which 2.5 million tonnes of construction wastes were disposed of at landfills. The three landfills are now filling up much faster than expected. If we fail to introduce new initiatives in time to alleviate the pressure on landfills imposed by construction waste, they may be filled up in four to six years.

The construction waste disposal scheme is an essential component of our waste management strategy. The proposed charging scheme is consistent with the "polluter pays" principle, aiming to provide an economic incentive to waste producers to reduce waste and to carry out sorting to facilitate the re-use or recycling of waste.

I have to express my deepest thanks to Dr LAW Chi-kwong, Chairman of the Bills Committee, and other Members for their support for the early implementation of the construction waste disposal charging scheme. During the scrutiny of the Bill, the focus of discussion has been placed on "how" the scheme should be implemented instead of "whether or not" the scheme should be implemented. I have to thank the Bills Committee for the many valuable opinions expressed. I also wish to take this opportunity to thank the construction industry and the transport industry for their support for the charging scheme. I understand that the implementation of the charging scheme will have considerable impact on the trade. Therefore, during the formulation of the charging scheme, we have maintained constant discussion with the trade all the way, and developed a series of charging schemes in response to their opinions and concerns.

The Bill is an enabling legislation. Upon the passage of the Bill, we will submit to the Legislative Council two new regulations, the Waste Disposal (Charges for Waste Disposal) Regulation and the Waste Disposal (Designated Waste Disposal Facility) Regulation, setting out the details of the charging scheme. The Bills Committee has also discussed the draft of the new regulations. We will incorporate Members' opinions when we finalize these regulations.

The key features of the construction waste charging scheme include:

First, to impose charges on the disposal of construction waste at landfills, sorting facilities and public fill reception facilities; and to set the disposal charge at \$125 per tonne, \$100 per tonne and \$27 per tonne respectively to fully recover the construction cost and recurrent expenditure of those facilities.

Second, to establish a direct settlement system requiring major construction contractors undertaking contracts of \$1 million or above in value to open billing accounts, paying waste disposal charges to the Government direct. Construction waste produced by these major waste producers represents 70% to 80% of the total construction waste.

This charging arrangement is generally accepted, and has not added nuisance to the construction industry, for the arrangement has made reference to the \$1 million threshold adopted under the Pneumoconiosis (Compensation) Ordinance, and we have not exerted additional pressure in this respect.

Actually, this charging method does provide some kind of safeguard to waste haulers who, as pointed out by Members in their earlier remarks, are unable to collect even their wages and transportation costs in some cases. We have also learnt that among disputes between haulers and contractors, a lot of small claims cases are involved. The problem we are now facing is the lack of evidence for waste haulers to prove to which contractor the waste loads they deposited belong. For this reason, waste haulers cannot recover their fees in case of disputes. According to our proposed charging arrangement, a clear record is kept to indicate for which contractor a waste hauler is working and the location where the waste is collected. Therefore, in respect of over 80% of projects, we can efficiently help waste haulers to recover the due payment. I also like to respond to Ms Emily LAU's question. With the advancement in technology and popular application of computer nowadays, our task in recording and tracing is getting much easier. In respect of staffing and feasibility, the advancement in technology will also help us to achieve this.

Third, to remove on-site payment arrangement and require all charges to be paid through billing accounts for the remaining 20% to 30% construction waste arising from renovation works.

But some aspects still remain controversial. In requiring all waste producers of minor works to open billing accounts, we are still unable to come up with an effective method that will not cause nuisance to the public. Of course, all of us probably may have carried out renovations before and know that demolition waste is produced in the process of renovation. We hope to require both parties to step up their supervision of this process by means of public education. Renovation workers should know that demolition waste produced during home decoration is required by law to be disposed of at designated places, like landfills, specified by the Government, and is subject to charges. The receipt for payment will be evidence for the public to prove that they have acted in compliance with statutory requirement in the disposal of waste. We hope that direct improvement in the management of demolition waste can be achieved through education and promotion.

Fourth, to exempt all construction contracts that are awarded before the commencement of the charging scheme. Though the Government proposed the formulation of a charging scheme for construction and commercial/industrial wastes disposal as early as 1995, the charging scheme was not implemented as

consensus with waste haulers regarding the charging arrangement could not be reached. We hope that by discussing different options with the associations of waste haulers, we can come up with a solution addressing the concerns of waste haulers over cash flow and bad debts.

After careful deliberations on the pros and cons of different options, we have further revised the payment arrangement by abolishing the on-site payment arrangement and requiring all charges to be paid through billing accounts. Under this arrangement, we will not levy charges on waste generated from minor works through waste haulers, and payment of all charges will have to be made through billing accounts. The transport trade accepts and supports the revised payment arrangement. We understand that several Members, as expressed earlier, still have reservations about this arrangement, for anybody can register for the setting up of billing accounts. In this connection, discussions have been held with "mud dumping workers", that is, waste haulers. Some of them expressed that the Government should not limit the registration to renovation workers only, for this may deprive other transportation companies intending to open billing accounts to make direct payment of the business opportunities. Thus, we have to take on board the operation of all parties concerned in a free market, and would like to introduce some measures after we have a better understanding of the situation.

The Bills Committee has discussed whether all contractors and renovation contractors should be required to open billing accounts to eliminate the possibility of shifting the payment responsibility onto waste haulers. As I mentioned earlier, minor works may not necessarily be bound by an agreement, and the commencement of most of the works does not require prior permission from the Government. Given that, we primarily reckon it hardly feasible to require the registration of every works project. Nor is it entirely practicable in enforcement. As the Bills Committee understands the situation, it does not demand requiring all contractors to open billing accounts. Regarding the suggestion of requiring all renovation contractors to open billing accounts, the main obstacle lies with the absence of a registration system for the relevant trade, rendering it difficult to define who should be regarded as renovation contractors. Apart from the practical and implementation difficulties, we agree to the proposals put forth by Members, that any proposed arrangement should be discussed in detail with the trade before further study is conducted. The Bills Committee states no objection to this. We will review the operation of the

charging scheme after implementation, and consider whether any amendment should be made in this respect.

We propose to require all major contractors undertaking construction works projects of \$1 million or above in value to open billing accounts, and to stipulate that any such contractor failing to apply for the opening of billing accounts with the Environmental Protection Department within 14 days upon the granting of the contract commits an offence. Some Members have proposed lowering the \$1 million threshold to \$500,000 to cover more works contracts. Since construction works ranging from \$500,000 to \$1 million in value are usually of smaller scale, lowering the threshold will incur additional administration costs and work on small and medium sized companies, which have to go through legal procedures to undertake the liability even for some very simple works. After comparing the merits and demerits of lowering the threshold, we consider setting the threshold at \$1 million appropriate. However, to facilitate major contractors to act in compliance with the relevant requirements, we have extended, according to Members' suggestions, the time limit from 14 days to 21 days.

Upon the passage of the Bill and the relevant regulations by the Legislative Council, we will introduce a series of publicity and education programmes, as I said earlier, to publicize extensively the construction waste disposal charging scheme. In addition to informing the trade and the public of the relevant arrangements of the charging scheme, we will educate waste producers, including renovation contractors, of their responsibility to open billing accounts for the payment of waste disposal charges.

We understand that the operation of the charging scheme must be compatible with the existing operation of the trade to avoid any impact on their business operation. We are now preparing the establishment of a tripartite working group with a membership of representatives drawn from the construction industry, waste haulers and the relevant government departments to discuss the operational details of the charging scheme. Prior to the implementation of the charging scheme, a systems trial will be carried out to test out the relevant procedures and adjustments will be made where necessary. Upon the implementation of the charging scheme, regular reviews of the operational procedures and monitoring mechanism will be conducted in the light of feedback from the trade.

The other very important objective of the Bill is to strengthen the control against illegal disposal of waste. The existing Waste Disposal Ordinance has already set out the sanctions for illegal disposal of waste; however, the introduction of the charging scheme may aggravate the problem of illegal disposal of waste. In order to prevent unruly elements from evading their responsibilities, we strengthen the legal provisions against illegal disposal of waste under the Bill, which include:

- first, to empower the Court to order the person convicted of illegal disposal of waste on government land to remove the waste. In cases where the removal work has already been carried out by the Government, the Court may order the convicted person to repay all or part of the removal cost incurred by the Government;
- second, to empower the Director of Environmental Protection (DEP) to enter without warrant any places, other than domestic premises and dwelling places on private land, to remove the waste deposited illegally in cases where there is an imminent risk of serious environmental impact and that immediate remedial actions are required. The DEP shall only enter domestic premises and dwelling places on private land when a warrant is obtained. The DEP would be entitled to apply to the Court to recover from the convicted person the cost of removing the waste; and
- third, to amend the existing offence of unlawful depositing of waste to provide for statutory defences where a defendant can prove that he has the lawful authority or excuse or the permission of the owner or occupier of the land to deposit the waste on his land; to further stipulate that the driver of a vehicle from which waste is deposited as well as the employer of that driver are to be regarded as the persons causing waste to be deposited; and to provide for the defendant a statutory defence, so that where a defendant can prove that he has no reason to believe he is committing an offence may be regarded as innocent.

I know that the land filling activity recently carried out on a piece of private agricultural land at She Shan Tsuen, Tai Po, with the consent of the land owner has aroused public concern over the possibility that the introduction of the construction waste disposal charging scheme may cause such activities to

increase. The Housing, Planning and Lands Bureau is now studying the issue in the context of land use and planning to see how this should be handled.

From the angle of environmental protection, we have consulted the Bills Committee on a possible option to include large-scale land filling activity of any purpose under the scope of control of the Environmental Impact Assessment Ordinance. This option does not prohibit land filling activities on private land, but imposes regulation on those activities to prevent such activities from creating unacceptable impact on the environment. We understand that the public is concerned about the possible damage that land filling activities on private land may have on rural environment. However, owing to other considerations, the rights of land owners, for example, we consider it not justified to adopt a broad-brush approach to prohibit land owners from carrying out such activities on their private land where the relevant ordinances are not contravened. After weighing the pros and cons, we consider it more appropriate to regulate than to prohibit such activities under these circumstances. We will consider the proposals of the Bills Committee to study further the details of this possible option, and will complete the amendment of the relevant legislation as soon as possible to cope with the implementation of the Bill.

Like Members, environmental protection organizations and the general public, I am gravely concerned that some developers of the private sector may demolish newly completed buildings to unnecessarily produce a large amount of construction waste, thus exerting greater pressure on the landfills. As far as I understand it, the developers concerned have yet to decide whether or not the buildings should be demolished. I would like to take this opportunity, of course, to urge developers in the first instance to fulfil the social responsibility commercial enterprises should undertake by adopting other options as far as possible instead of demolishing the newly completed buildings.

Upon the implementation of the charging scheme, different disposal charges will be levied on different facilities, with charges at landfills being the highest and those at public fill reception facilities the lowest. Such an arrangement should act as an effective economic disincentive preventing developers or contractors from demolishing buildings indiscriminately. This will also encourage developers to think of more ways to re-use the materials. Moreover, we are consulting the relevant Policy Bureaux and departments about preventive measures against indiscriminate demolition of buildings.

On the proposal of some Members on adopting punitive measures against indiscriminate demolition of buildings, we undertake to monitor closely whether there are indiscriminate demolitions. We will also review the situation after the implementation of the charging scheme to determine whether it is necessary to impose punitive disposal charges on construction waste produced by indiscriminate demolition of buildings.

All along, the Government has been endeavouring to promote the "polluter pays" principle. We firmly believe that we will be able to promote environmental protection and foster sustainable development by economic means, while leaving the operation of the free market intact and creating business opportunities for the recovery industry. Among these means, the introduction of the construction waste disposal charging scheme is the first step. Just now, some Members queried why it had taken as long as 10 years before the charging scheme was relaunched. Our society is ever changing. Among the different types of waste, namely domestic waste, commercial waste, industrial and construction waste, domestic waste which is related to every citizen accounts for the largest portion. Thus, in addition to the implementation of a waste disposal charging scheme, the Government should also offer a waste reduction option.

Regarding construction waste, we have provided three options, including public fill reception facilities and recycling plants, with landfills being the last resort. The construction industry also has many options in their business operation to reduce and recycle waste. In respect of domestic waste, we hold a different opinion. We consider that we should first of all offer a convenient waste reduce option for the public. The existing recycling arrangement of placing recovery bins of three different colours for the collection of different materials, for example, has not been effective in reducing waste. As laid down by the principle on waste management, waste reduction should always be the prime concern. We are thus working hard to identify different options. In the second half of this year, we will introduce some relatively extensive waste reduction programmes. Thus, in the end when charges are levied on domestic waste, members of the public will be more ready to accept it. For the Government only levies charges on the public after it has provided the best option to them in reducing the waste they inevitably produce. This is our direction.

In respect of commercial waste, at present, a large part of this waste is charged indirectly. For example, waste transported to refuse transfer stations is already chargeable. Therefore, at the moment, we will concentrate on the disposal of construction waste, for the introduction of construction waste disposal charging scheme has already aroused considerable controversy.

As for clinical waste, the relevant Bill has in fact been finalized. However, we fail to strive for the submission of the Bill to the Legislative Council within this Legislative Session. We hope that Members of the coming term will continue to support the relevant Bill.

Finally, I would like to seek Members' support for the Bill and the amendments I am going to move at the Committee stage. Upon the passage of the Bill, we will submit the new regulations as soon as possible in the coming Legislative Session for the scrutiny of the Legislative Council with a view to implementing the charging scheme in the year 2005.

Madam President, I move the Second Reading of the Bill. Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Waste Disposal (Amendment) (No. 2) BILL 2003 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): Waste Disposal (Amendment) (No. 2) Bill 2003.

Council went in Committee.

Committee Stage

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

WASTE DISPOSAL (AMENDMENT) (NO. 2) BILL 2003

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Waste Disposal (Amendment) (No. 2) Bill 2003.

CLERK (in Cantonese): Clauses 1, 2, 6 to 9 and 11 to 17.

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 3, 4, 5 and 10.

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Cantonese): Madam Chairman, I move that the clauses read out just now be amended as set out in the paper circularized to Members. I wish to explain these amendments briefly to Members.

Clause 3 of the Bill seeks to recast the existing offence of unlawful depositing of waste under the current Ordinance. Originally, we proposed to provide defences to a defendant if he can prove that he has taken all reasonable precautions and exercised all due diligence to avoid the commission of the offence. The Bills Committee considers that an employee who is acting under his employer's instruction may not necessarily know what additional steps the Court will expect him to take to ensure that an offence will not be committed. Having considered the concerns of the Bills Committee into account, we propose to amend clause 3 such that the defendant can establish a defence if he can also satisfy that he has no reason to believe that an offence will be committed.

The amendment to clause 4 of the Bill seeks to clarify that it will not be an offence even if a convicted person fails to pay the Director of Environmental Protection any expenses incurred in removing the waste that he fails to remove according to the order issued by a Magistrate.

The amendment to clause 10 provides that any amount payable pursuant to an order made under section 18A(1)(b) or 23EA(2) is recoverable by the Director of Environmental Protection as a civil debt due to the Government.

With regard to the amendment to clause 5 of the Bill, we have accepted the proposal of the legal adviser of the Bills Committee, that is, where the Director enters any domestic premises in accordance with a warrant issued under the proposed section 23EA(4), he shall, if required, produce that warrant. The above amendments are supported by the Bills Committee. I implore Members to support and pass them.

Thank you, Madam Chairman.

*Proposed amendments***Clause 3 (see Annex II)****Clause 4 (see Annex II)**

Clause 5 (see Annex II)

Clause 10 (see Annex II)

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

MR ABRAHAM SHEK: Madam Chairman, the Real Estate and Construction Constituency which I represent has been very supportive of the measures which reduce construction waste and arrest the rapid depletion of our limited landfill capacity, and has therefore given its support to the passage of this Bill.

I am very happy to hear earlier that the Secretary has given a number of positive measures which will form the very solid foundation in seeking the support and co-operation of the Real Estate and Construction Constituency in arresting this problem. However, the Constituency does realize that even with the passage of this Bill today, the legislative process of scrutinizing the policy proposal will certainly not end.

The present Bill does provide a statutory basis for introducing the charging system, but the implementation details, particularly the charging mechanism, will be tabled to this Council for further deliberation in the form of two subsidiary by-laws, namely the Waste Disposal (Designated Waste Disposal Facility) (Amendment) Regulation 2004, and the Waste Disposal (Charges for Waste Disposal) Regulation. The Bills Committee for this legislation has already recommended that a subcommittee be set up to deal with these by-laws in the next Legislative Council Session.

Considering that it will be several months before the Regulations are introduced to this Council, I urge the Government to consult the relevant trade organizations, as the Secretary has earlier stated that she would, to carry out discussions on this contested issue and make revised proposals to the Bill. In particular, the Government should consider:

- (a) Firstly, lowering the levels of landfill and sorting charges, and waiving the public fill charge. The proposed landfill fee of \$125 per ton is unreasonable. It would place heavy burden on the

industry, particularly at this time. Instead, a charge of \$60 is more appropriate. I would urge the Government to consider this proposal.

- (b) Secondly, implementing the charging system under the Government's waste management plan across the board of the construction industry, including the private sector. This must be done.

That is all. Thank you, Madam Chairman.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for the Environment, Transport and Works, do you wish to speak?

(The Secretary for the Environment, Transport and Works indicated that she did not wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for the Environment, Transport and Works 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 amendment passed.

CLERK (in Cantonese): Clauses 3, 4, 5 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 Bills

PRESIDENT (in Cantonese): Bill: Third Reading.

WASTE DISPOSAL (AMENDMENT) (NO. 2) BILL 2003

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS
(in Cantonese): Madam President, the

Waste Disposal (Amendment) (No. 2) Bill 2003

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 Waste Disposal (Amendment) (No. 2) Bill 2003 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.

(Members raised their hands)

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

CLERK (in Cantonese): Waste Disposal (Amendment) (No. 2) Bill 2003.

Resumption of Second Reading Debate on Bills

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

CONSTRUCTION WORKERS REGISTRATION BILL

Resumption of debate on Second Reading which was moved on 19 March 2003

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

MR CHAN KWOK-KEUNG (in Cantonese): Madam President, in my capacity as Chairman of the Bills Committee on Construction Workers Registration Bill (the Bills Committee), I would highlight the deliberations of the Bills Committee.

The principal objective of the Construction Workers Registration Bill (the Bill) is to establish a system for the registration of construction workers and to regulate construction workers who carry out construction work on construction sites. Under the proposed registration system, construction workers are registered for individual designated trades and at different skill levels.

The Bills Committee recognizes the many merits of implementing a mandatory registration system for construction workers by way of legislation. However, the Administration has to ensure that the implementation of the proposed registration system would not, in one way or another, force any existing "competent" workers out of work or affect their wages or employment-related benefits.

The most contentious issue considered by the Bills Committee lies with the registration arrangement for "senior workers".

To recognize the skill level of the veteran workers and their contribution to the industry, it was originally proposed by the Administration that "senior workers" with relevant experience of no less than 10 years would be exempted from trade test and be registered as registered skilled workers by passing an assessment interview.

The Bills Committee notes the divergent views of various stakeholders over the registration arrangement for "senior workers". The worker unions, which represent the interests of workers, are of the view that the qualifying period for "senior workers" should be reduced from 10 years to five or six years. They consider that workers with six years' experience should have acquired the necessary skill up to the level of a skilled worker. They have pointed out that the exemption criterion of six years' working experience also applies to the registration of electrical workers over the years. Given the poor economic situation, the unions opine that a qualifying period of six years or shorter would help allay the concerns of workers.

However, the trade associations are of the view that since the skill level of construction workers cannot be ascertained in the absence of an objective assessment, 10 years' experience is therefore necessary to give a reasonably degree of assurance of their skill level and craftsmanship.

The Bills Committee is aware that the various parties stand firm on their stance and a consensus cannot be reached easily. As the scheme is implemented for the benefit of the construction industry, its effectiveness will be undermined if a consensus cannot be reached among various stakeholders. The Bills Committee therefore urged the Administration to consult the relevant stakeholders with a view to forging a consensus among them.

After further consultations with the worker unions and trade associations, taking into account the suggestion from some members, the Administration presently proposes a new one-off provisional registration arrangement to replace the original transitional registration arrangement for "senior workers". In essence, under the revised proposal, provisional registration is allowed for experienced workers who possess no less than six years' experience in the respective trade to apply for registration as registered skilled worker (provisional). Registered skilled workers (provisional) may choose to attend and complete a training course specified by the Construction Workers Registration Authority (the Authority) for the trade including an assessment which forms part of the training course, or to pass the trade test. If the worker successfully completes the course or if he passes the trade test, he can register as a registered skilled worker of the trade.

In respect of the new proposal from the Administration, the Bills Committee reiterates that the proposed registration system shall not, in one way or another, render existing "competent" workers out of work. Some members still insist that as workers with six years' experience or more have already acquired the necessary skill and technique, they should be allowed to register as skilled workers after passing an assessment interview.

The Administration explains that the new proposal has already struck a balance between the concerns of worker unions and the expectations of trade associations, major employers and training institutes. The revised proposal has given a reasonable degree of assurance on the skill level of workers. A training course pinpointing at common weaknesses observed in the respective trade tests

would be helpful to workers. To be fair to the workers who have spent their effort and time to pass the trade tests or operator tests, the new proposal should require the applicants to go through some form of assessment for quality assurance.

The Bills Committee has examined the contents and assessment criteria of the training course. Members have urged the Administration to shorten the duration of the training course. They also consider that the fees of the related training should be lowered as far as possible or be absorbed by the Authority.

The Bills Committee notes that a "senior worker" who successfully completes the training course will receive a certificate of completion. He can obtain his registration as a registered skilled worker based on this qualification. If he fails to renew his registration as required, he can still rely on such qualification to apply for re-registration. However, if the "senior worker" fails to complete the course or pass a trade test within three years from the date of the registration, his registration as a registered skilled worker (provisional) will expire after the lapse of this period.

The Administration will make amendments consequential to the newly proposed provisional registration arrangements.

The Bills Committee has examined the means to facilitate the workers in having their past experience certified. The Bills Committee notes that if workers have genuinely been working in the construction industry for such a period, they can obtain the requisite certification from their past employers, the relevant trade associations or worker unions. The experience claimed by the workers can be certified either by the employers concerned or the relevant worker unions or trade associations. Further, a certain part of their experience (no more than two years) could be certified by statutory declaration.

The Bills Committee also notes that a Review Committee will be established to allow a person to request a review of a decision of the Registrar in respect of an application for registration or renewal of registration in accordance with the Bill, and the cancellation of registration of a person. In addition, an Appeal Board, comprising representatives from relevant trade unions, trade associations, professional institutions, and so on, will be appointed by the Administration to handle appeals from construction workers.

The Bills Committee considers that there is a need to maintain a balanced composition with adequate union and trade association representatives and other professionals so as to enhance the representativeness of the Board and to pool together more expertise for advice on construction-related matters. To this end, the Administration has agreed to increase the number of representatives from trade unions from two to three. It will also expressly specify that there will be three members from professional bodies connected with the construction industry. Corresponding amendments to the Bill will be made by the Administration.

The Bills Committee considers that, as a general rule, the composition of the Authority, Qualifications Committee, Review Committee and Appeal Board Panel should not make specific reference to the names of trade associations, trade unions or training institutes. The Administration has accepted the Bills Committee's view and will move Committee stage amendments to clauses 7, 12, 16 and 54 to this effect.

The Bills Committee takes note of the proposal of the Administration that the registration fee be set at \$100 for three years, which is already set at a very low level to minimize the burden on workers.

Madam President, after detailed deliberations by Members and listening to the views submitted by 37 organizations, the Bills Committee has put forward a number of suggestions to improve the proposed registration system and drafting of the Bill. The Administration has also agreed to adopt the suggestions of the Bills Committee and will move the corresponding amendments. Thank you, Madam President.

In the following, I would like to speak in my capacity as Chairman of the Bills Committee, and now I seek the President's approval.

PRESIDENT (in Cantonese): Mr CHAN Kwok-keung, you are going to speak in your personal capacity.

MR CHAN KWOK-KEUNG (in Cantonese): Yes.

Members of the construction industry are facing increasingly higher requirements in qualification, and this gives rise to the professional registration system, which is similar to regulating the qualifications of construction workers under the Bill. Since the system is still in its initial stage, there are a lot of disputes on the details in the course of deliberation, with a view to striking a balance between the requirements of the industry and the protection of construction workers.

The Bills Committee has received submissions from 37 organizations and held 12 meetings in which it has had in-depth discussion with the Administration on the content of the Bill. The most controversial part is believed to be the registration arrangements for skilled workers, or "senior workers".

The Bill originally required that the workers concerned should have experience of no less than 10 years before they can be exempted from the trade test. However, many trade associations oppose this arrangement, saying that this 10-year requirement is tantamount to strangling the employment opportunities of workers, and fails totally to accord with the principle of impartiality and reflect the actual situation. While the exemption clause for the registration system of electrical workers only requires workers to have at least six years' experience, why are construction workers being required to have 10 years' experience? Besides, if we take 10 years' experience as the standard of exemption, it will not be fair to workers of sufficient experience. Hence, most of the members urge the Administration to amend the requirements on the qualification of skilled workers.

At present, more than 70 000 workers have already passed the trade tests for skilled workers or semi-skilled workers, while most of them may not have 10 years' working experience. We can thus see that experience is only one of the factors of consideration, and we should not be too rigid or too strict about it. Besides, before the implementation of the registration system, was the quality of all the projects undertaken by construction companies not guaranteed? The registration system is there only for standardizing the skill level of workers, and is not a tool for eliminating construction workers. Therefore, we in the labour sector opine that the requirements of registration should be loose in the first instance and then tightened, so that all construction workers can tide over to the professional ranking, thus enhancing the quality of work of the industry as a whole.

After many rounds of consultation, I am very glad that the Government has accepted our advice and put forward a compromise proposal, in which a one-off provisional registration arrangement will replace the abovementioned proposal concerning 10 years' experience. This amended proposal can balance the requirements of various parties. A veteran worker with no less than six years' experience can apply for registration as registered skilled worker (provisional). He can obtain registration as a registered skilled worker for the trade if he successfully completes a training course or if passes the trade test.

In regard to the above amendment, I still have two points to add, to which I hope that the Government or the Authority set up in future can pay more attention and propose amendment. Firstly, many construction workers work on job basis or work for subcontractors. Unlike employees of other trades, it will be more difficult for them to get certification on continuous working experience. Although the Government has already replied that the trade unions or associations or the former employers can provide such certification, I still hope that the Government can accept more flexible measures so that the workers can obtain certification of their qualification more easily. Secondly, the fees of the training courses should be kept at a low level so that the provisionally registered workers do not have to pay exorbitant course fees. It is also hoped that the hours of the course could be shortened so that workers can complete the course concerned in an intensive way.

Finally, I hope that the Administration can realize that this is a brand new scheme in the Bill. When it implements the scheme, it should consult the trade unions and look after the employment opportunities of workers.

With these remarks, Madam President, I support the passage of this Bill.

MS LI FUNG-YING (in Cantonese): I speak in support of the Bill, and I would like to express some of my personal views on the scrutiny of the Bill.

From the submission of this Bill to the Panel on Manpower for discussion to the formal deliberations by the Bills Committee, one major bone of contention was the recognition of qualification of existing workers. The point was how to protect the "senior workers" of the trade, to relieve them of the anxiety that the enactment of the law would cause any unnecessary burden to them. The most

contentious issue was whether or not to define "senior workers" as those having no less than 10 years of experience, or to draw reference from other ordinances, for example, the law concerning electrical worker registration, so that the recognized standard could be changed to six years' working experience and workers having such experience could register without going through any assessment.

However, it has been most disappointing that from the discussion of the Panel to the deliberations of the Bills Committee, the government officials have failed to actively co-ordinate and iron out differences between employers and employees. They just sat back and observe, incessantly emphasizing during the meetings that 10 years was the bottomline of the trade associations. Nevertheless, they were unable to persuade the labour sector with strong reasoning which disciplines in the construction industry require 10 years to master the craftsmanship. One more important factor is the high mobility within the construction industry. As workers usually work for subcontractors, it is very difficult for them to prove their years of experience. A lot of time has been spent in repeatedly discussing this issue. And more anxiety was shown by the business and labour sectors than the Government.

Today, I still have to mention that although I am the representative for the labour sector, I really have to thank the representative for the trade associations, Mr Abraham SHEK, and the employers' representative on the Labour Advisory Board, Mr HO Sai-chu. For many times, they helped to bring about the discussion among trade unions and associations on recognizing the proposal from trade unions concerning six years' working experience, and forming the consensus that it was reasonable and legitimate. With joint efforts, they have enhanced the understanding among all parties. As a consequence, the Bill can resume its Second and Third Readings today.

Madam President, after the enactment of the Bill, to the employees, there are still a lot of issues to be followed up. For example, they have to produce certification on their years of experience during registration, apply for the related courses, go through some assessment, and so on. In the Bills Committee, the Government undertook to assist the affected employees as much as possible. Here I would like to remind the Government that it has to honour this undertaking and should not go back on its words.

MISS CHAN YUEN-HAN (in Cantonese): Madam President, the establishment of a registration system for construction workers is originally a good move which is also the major trend of modern society. Besides, in the buildings, whether they are residential buildings, schools, commercial premises, there are always people engaging in different activities. Thus, formal training and registration of construction workers is very important to ensuring construction safety. And we in the trade unions always agree to it. To the workers, with the enactment of the Bill, those who are interested can follow a clear path in entering the industry, by gradually receiving formal training. This is necessary to an important industry as such. In fact, in 1995, it was already provided in the construction contracts of the Housing Department (HD) that contractors should employ a certain proportion of qualified workers. And this has already been implemented by the HD, the largest construction organization of the Government. Hence, people in the industry are well prepared for this. However, during the legislative process, as Ms LI Fung-ying said just now, we often had very heated arguments. Mr CHAN Kwok-keung, Chairman of the Bills Committee, had even demanded to suspend the meeting, saying, "I cannot chair the meeting any more." He had demanded to suspend the meeting in a very frustrated manner.

The emergence of these situations, as Ms LI Fung-ying said, was due to a government official acting like a gramophone. He just played the record again and again, saying the same sort of things. In my opinion, in the course of deliberations, if the Government being the middleman could not solve the problems properly when problems between employers and employees arise, but acted like gramophones instead, we would be very frustrated. Of course, the officials now sitting in this Chamber are not involved in the case then. The official concerned has already retired. I was very frustrated that day. As I said, I really want the Government to know that some good deeds are often turned sour by them. And the bad moves that they have taken are not listening to public views, not listening to the views of two industries harbouring good intention. Frankly speaking, if they behave like this, what is the point of asking government officials to attend the meetings? If this official, being the middleman, only cares about playing the same recorded tape, it would be totally meaningless.

Madam President, we could see that the Government has been stubbornly saying, "In 1994 and 1995, both the employers and employees agreed to take 10 years as the standard, why should that be changed to six years?" We have

repeatedly explained to the Government that during 1994 and 1995, both the employers and employees of the construction industry pointed out the need for workers to be registered and to have a certain level of qualification. The reason was that housing production of Hong Kong was at its peak during that period of time, and substandard piling works in government housing projects also happened during that period. As the construction industry was booming then, a lot of workers actually did not belong to the construction industry. Those who engaged in bar bending did not know how to do it, and those who engaged in die casting did not have such knowledge. The trade unions also found these situations not acceptable and thus pointed out that this system was necessary. It was 1994 and 1995 then and a tacit understanding was formed between both sides when the construction industry was booming.

Nowadays, it is impossible for those who want to enter the industry but have not worked in this industry before to find a job. It is because the unemployment situation in this industry is very serious and it has already become the hardest hit sector of unemployment in Hong Kong. The unemployment figures announced by the Government recently have highlighted that the employment situation of construction workers has not improved, and unemployment in future will still be serious. Under the circumstances, some of those who want to enter the industry will have no means to find a job. When even "senior workers" cannot find a job, they of course stand little chances. Given such circumstances, when the Government still mentions the agreement reached in 1994 and 1995, I would find it meaningless.

Some officials do not formulate policies according to the changed circumstances. In my opinion, it would be better if these officials go home and be the rigid and stubborn parents. Madam President, during the meetings, some officials only acted like gramophones, repeating the same comments while ignoring our views. Therefore, we sometimes would feel very frustrated. Of course, that said, I still find that we, including the industry, only want to help to find a solution. After much discussion, we have finally come to the present benchmark and settle for six years, as the registration requirement for electrical workers, which is more stringent than construction workers, also uses six years as the benchmark. Then, why can we not also take six years as the benchmark? Hence, we all agree that it should be six years.

However, I very much hope that the Government will not continue to be so stubborn. I would like to talk to the Secretary (I always think that the Secretary

is an open-minded person). I hope that the Secretary will also understand how we think. Now the veteran construction workers are required to take courses. Originally the trade unions thought that they did not have to take courses, as they were already "senior workers". In addition, under the proposed screening now, the senior workers remaining in the industry are numbered. They have been working in the industry for decades and are unable to switch to other industries. What courses are they required to take? Attending interviews will be fair enough. It will be fine if they can give correct answers during the interviews, plus they can prove that they have already working in that industry for no less than six years. However, the Government says no, they have to take courses. Arguing between studying and not studying, we were almost driven not to support the Bill. It is because the Government required them to take a one-week course. It originally even required them to take a 10-day course, which was then changed to one week. People in the trade unions asked me what they had to study. They thought that if what they studied was related to industrial safety, only half a day will be needed. Construction workers again asked me, "What do we have to study beforehand? All the masters have been taught by us." It is because they are all masters of masters. We believe that these people who have been working for six years and are still in the industry at present — I refer to those who have continuously worked for six years — have already accumulated a lot of experience within the industry. Some very magnificent buildings in Hong Kong were built by them. If they are required to study at present, it will be a major insult to their dignity. During these last few days, people in the trade unions have still expressed their discontent in front of me. They said that although it was presently changed into two days, was it still worth studying for only two days? What and how were they going to study?

Madam President, we all know the situation of construction workers. Generally speaking, "senior workers" will pass their skills and knowledge to apprentices. Perhaps some workers may have taken training courses under the training programme of the construction industry. For many years indeed, when the construction industry was slackening, they have experienced a lot hardship. Therefore, when they are asked to do this now, they will feel aggrieved. However, I have to reiterate that I want to help to find a solution. Thus, I agree with Mr CHAN Kwok-keung, Chairman of the Bills Committee, that a special authority has to be set up. The length of the course may not necessarily be two days. We can negotiate further. I am not so rigid. I will not oppose this Bill because of the event today, as we agree with the general principle of the Bill. I

think the question is, the Government really has to know how this should operate specifically. The construction workers have repeatedly asked me what they have to study during those two days, but neither do I know what they have to study.

Madam President, through this event, I would like to tell the officials that it was originally a good move to require workers to receive training. People in the industry all agree that workers should receive formal training, and that this is an important step towards professional development. However, during this process, we have almost met the greatest obstacle during the deliberations on the Bill. Of course, our number of votes are not large enough to impede the passage of the Bill. Nevertheless, if a group of construction workers in the labour sector feel that they have been suppressed, it is after all not a good thing.

Madam President, I earnestly hope that the Government of the Special Administrative Region (SAR) can sometimes think about this. Although the SAR and its administration has changed a lot, there are still many rigidities. For instance, in this afternoon, during the meeting of the Finance Committee, there were two key issues about which we held fast to our respective principles. One issue is related to the Government converting the Home Ownership Scheme flats into hostels for disciplined services. For the other issue, I am not going into the details, as the President has already given me a frown. I find that some officials are really very rigid. They actually do not see public views so clearly but only think in their own way. Eventually, this will only drive us to stand up against the Government. Therefore, through this event, I want to tell the Government that the issue under discussion is originally a good move which has got our consensus. Why has the atmosphere turned so hostile? Of course, as of today, we have managed to struck a balance which is relatively acceptable to the labour sector. But I hope that the authorities concerned will not be so stubborn on the issues like course fees and duration.

Madam President, we support this legislation.

MR ABRAHAM SHEK: Madam President, the proposed construction workers registration scheme is a necessary reform measure to the construction industry. It is an integral part of the sector's ongoing efforts to establish itself as a modern, disciplined industry with a quality culture. When the accredited registration

framework is in place, it is hoped the skills of the construction workers will be objectively benchmarked and substantially upgraded. In the long term, it will also help the industry gain wider recognition in the community. The construction sector fully supports this Bill and is of the view that it should be implemented as early as possible.

Along with contractors' associations, workers' associations and unions, the Government has been generally supportive of the proposed registration framework. The most hotly contested issue of the Bill, as the Chairman has earlier said, remains to be the exemption arrangements for veteran construction workers (老行尊).

The qualifying period for "senior" workers finally agreed upon by all parties is six years. To reach this consensus, the trade bodies have made significant compromises: the construction associations originally proposed a qualifying period of 15 years, and that was persuaded by the Government to reduce down to 10 years. During the scrutinizing of the Bill, and under the intense lobbying from labour unions, the exemption threshold was further relaxed to the present six years.

Madam President, the present revised qualifying period, along with a simple assessment test, has sufficiently taken into account the concerns and interests of workers. It also shows the trade bodies are willing to co-operate with unions in striking a balance between protecting workers' livelihood and maintaining work quality. Hence, I feel the present exemption arrangements should suffice.

To relieve the workers' financial burden, I would also like a grant subsidy on course fees to be considered. The success of the proposed scheme hinges very much on the participation and co-operation of all stakeholders, including workers, contractors and the Government. Construction workers are not only key players in the tripartite partnership, but the group most affected by the introduction of the new scheme. Taking this into account, we must ensure that adequate assistance is made available to all those in need. The aim should be to avoid imposing unnecessary financial or psychological pressure on them.

The tabling of today's Bill is a good testimony of the harmonious working relationship in the construction industry between the workers' unions and the trade associations like HKCA, FEMCA, and REDA. Without their understanding and compromise, the foundation of quality work in the construction industry would not have been laid.

Now, I would like to pay special thanks to the committee chairman, Mr CHAN Kwok-keung, whose patience and persuasive power is hard to match and without which, the Bill would not have seen the light of today.

Also credit must be given to the government officials though they have been criticized by my colleagues. But I must say that, their behind-the-scene effort has been able to make it possible for me to act as a bridge between the trade unions and the trade associations. They have helped considerably. Madam President, I am very proud to have been a team member of this Bills Committee, because everybody is working for the good of the industry and for the workers, and there were no party politics, that I pay my respect to Ms LI Fung-ying, Mr CHAN Kwok-keung and all the others.

Thank you, Madam President. I support the Bill.

DR RAYMOND HO: I speak to support the Construction Workers Registration Bill. I was a member of the Bills Committee, and I think we would agree that we have gone through a very difficult but very challenging process of the Bills Committee stage. In the past three to four decades, we have seen very rapid developments of our construction industry in Hong Kong, and the quality of life, particularly the living conditions of our rapidly increasing population, has really gone a long way since the '50s. However, we can see that we are still expecting even better quality of our construction work although we have seen a lot of very well-known construction projects completed. I served on the Construction Industry Training Authority for over 12 years in the past, and we did study the similar construction sector in other countries and we very much would like to see that the construction industry in Hong Kong could be upgraded, in order to catch up with not only the construction techniques, but also the quality of construction work, particularly at the construction sites. Firstly, we would like to see lowering of our construction site accident rate, also we would like to see the quality of the completed work enhanced. Of course, we have to respect the differences between our construction industry and that of other countries, due to

different conditions and requirements of the particular countries or districts. We would require very good partnering between different parties. In order to ensure that we can achieve this objective of partnering between employers, workers, professionals, and the Government, we have implemented a lot of legislation in the past to speed up the upgrading of our construction industry. And this Bill is one of the Bills that we have studied and approved in this Chamber. In the beginning, of course, there were a lot of differences between the requirement of the standards of workers before they could be given exemption. As we saw in the beginning of the Bills Committee stage, there were a lot of arguments, a lot of rather heated arguments. I think this was a very healthy process, at least in the end, we could see the Government receive a lot of co-operation from the different sectors of the industry, resulting in, I would say, very reasonable compromises, and hence we are able to discuss this Bill this morning.

Personally, I feel that everybody in any industry should give enough time for him or her to upgrade himself or herself in the work that he or she is doing. Even professionals in the engineering sector now have to at least attend 30 hours of continuous professional development every year, if we wish to renew our membership at the end of the year. Whether or not we are 50, or even in the age of 90, we still have to complete this requirement. So we think that, for the veteran workers, equally they should attend some essential lessons. I am not saying that they have to attend some written tests because that would pose difficulties to some of them, but to give them additional knowledge or some knowledge that could upgrade the quality of their work or help reduce the accident rate, or even help them teach the younger generation if they have already been in the industry for some time or if they have already been senior members in the industry. I think they should welcome this opportunity, so in the end, the minimum requirement of this kind of courses or lessons required for them to prove that they deserve this exemption was reached as a kind of conclusion in the discussions at the Bills Committee stage. I particularly like to say that only because of the very hard effort of our government officials led by Ir CS WAI (韋志成) who is sitting at the other side of the Chamber that we were able to speed up in the whole process in reaching this very happy and pleasant conclusion. Also of course, in the beginning of the discussion on the Bill, I stressed strongly that the participation of professionals in the industry in the implementation of this registration work was essential, particularly the members of the representation from the Hong Kong Institution of Engineers. This was in the end accepted by the Bills Committee.

So all in all, I would like to conclude by saying that going through the process of scrutinizing this proposed Bill on the registration of construction workers, we all have learned or picked up good experiences in this type of proposed legislation which could cause a lot of differences in opinions in different sectors involved. And in future I do hope and as already mentioned by some of the colleagues here, the Government would really study the whole thing more thoroughly by having thorough consultation with the respective sectors before the Government puts forward legislation for approval or scrutiny to the Legislative Council. Madam President, I so submit and support the Second Reading of the Bill.

MR LEUNG YIU-CHUNG (in Cantonese): Madam President, we support the general principle of putting in place a registration system for construction workers. One of the reasons for supporting this is that we used to frequently come across many disputes relating to the construction industry, and every time such disputes cropped up, our biggest difficulty was to ascertain the attendance of the workers. This is where the biggest difficulty lies. Very often, due to a lack of attendance records, substantial difficulties were encountered in making claims for compensation or wages. Therefore, we very much hope that with the passage of this Bill today, there can be a new system to help ascertain the attendance of workers, thereby providing some assistance to resolving labour disputes in future.

On the other hand, just as the Government has pointed out, the registration system can also guarantee the quality of construction operations and make available manpower data which are more reliable for manpower planning and training, thus enhancing the status of construction workers, and so on. We of course hope that this will be the case because if the status of workers are recognized and guaranteed, I hope and believe that there will be improvements in wages or other aspects of protection. However, we cannot give our full support to its content simply because the general direction of the Bill is good. In fact, in the course of scrutiny, we actually found that many aspects of the Bill were not satisfactory. I hope that real improvements can be made to them in future.

The most controversial issue of the Bill centered around "senior workers", and just now, many colleagues have touched on this. Regarding the definition

of "senior workers", the labour sector has all along considered that workers who have been in the trade for five to six years should be regarded as "senior workers", and can be directly registered as skilled workers. However, the trade associations maintained that 10 years should be the qualifying period. Of course, finally, the Government proposed that workers with six years' experience could register, but only as registered skilled workers (provisional). Thereafter, they can choose to take some courses and must pass some tests. If that is the case, just as Miss CHAN Yuen-han said earlier, this is disrespect for the workers because in fact, they have been in the trade for many years, and if they are required to learn again, what do they have to learn? It may be possible that even the teachers are their apprentices. What do we have to test them? This makes us feel that it is most inappropriate. Besides, there is still the issue of livelihood because if they are only skilled workers (provisional), their wages are bound to become lower than before. This is the last thing we want to see because, as we all know, finding a job is extremely difficult now, let alone having their wages reduced after securing a job. This will only give them a feeling of increased burden. Furthermore, apart from having their wages reduced, they still have to enrol in a course which they have to pay for without any subsidy. According to the Government, the course fee will be around \$300 to \$700. Although it appears not to be much, they still have to pay. This is an extra expenditure which did not exist in the past but which has to be paid now. Therefore, it constitutes a burden to them.

Apart from the monetary burden, just as Miss CHAN Yuen-han said earlier, they have to spend three days or more on the course. For those three days, they cannot work and this means reduced income. Their wages are already reduced, but they have to pay a few hundred dollars to attend the course during which they will earn nothing. Moreover, they have to pay for transport and meals. To the workers, this so-called compromise is in fact no compromise by the Government. Rather, it is a compromise by the "senior workers" which is unfair and unequal. Therefore, just as Miss CHAN Yuen-han said earlier, I hope that the Government can reconsider this, including the time, arrangement, and so on, for the course. Otherwise, this is really unfair to the "senior workers".

Just now, Miss CHAN Yuen-han expressed her wish that the Government could make considerations with regard to the future Authority, but I am scared. Why? This is because when it comes to the Authority, a few colleagues here

will understand why I am scared. When we tackled the Chinese Medicine Council for the registration of Chinese medicine practitioners, Madam President, we had a really painful experience because superficially, it appeared to be very fair, asking some people in the trade to make some regulations. It was very good to the ears, but what in fact was the truth? It was actually very complicated, no easy task at all. The so-called fairness, openness, and so on, was merely empty talk, no such thing ever existed. This Council for the registration of Chinese medicine practitioners is even worse, paying no respect to the Legislative Council. The Complaints Division of the Legislative Council has over and over again asked them to send some representatives to discuss with us so that we can gain some understanding of the situation, but they just ignore us. Therefore, we are very much worried if the same thing may happen this time. When we invite them to come over in future, will they ignore us? Will they communicate with us? This is our worry.

Meanwhile, among the 17 members, although it is said that there will be worker representatives, if I remember it correctly, there are in fact only three, or just three out of 17. According to the Government, there are also some neutral members, for example, professionals, and so on, but in this trade, professionals are mainly the managers or bosses. Thus, on the surface, they are neutral but in fact, their background may make them biased. Against this background, when we talk about the Authority, we are much worried about its impartiality and fairness, and whether it can look after the needs and interests of workers. If the Government really wants to do something in this respect, we hope that it can listen to the views of the community, and refrain from being biased as it is now. What I dislike most and find it most unsatisfactory is the over-partiality of the Government at the moment. If we are biased even on such matters, then I think it is really meaningless. The issue before us now is the skills and recognition of the whole construction industry, with those of the workers in particular. We hope that the workers can have more representatives in the Authority so that their voices and views will be respected and valued.

Just as Miss CHAN Yuen-han said, I wish to tell the Government here that we support the passage of the Bill, but would the Government please do not just shut the door upon passage of the Bill and wash its hands of the matter. The Government should, on this foundation, continue to review the problems of the trade because the whole trade has too many problems that are so very complicated. I hope we can build on this foundation and do better, so that

whether in terms of interest or skill, the workers' development can be guaranteed and safeguarded in the future.

Madam President, I so submit.

MR ANDREW CHENG (in Cantonese): Madam President, first of all, I am very sorry because I have a husky voice. Madam President, I just want to support the Second Reading on behalf of the Democratic Party. I do not intend to read out in detail the script I have prepared because of my rather husky voice.

Nonetheless, just as colleagues said earlier, I hope the problems we had with the registration of Chinese medicine practitioners will not arise in the case of the registration of construction workers.

Thank you, Madam President.

MR JAMES TIEN (in Cantonese): Madam President, I have not joined the Bills Committee. Of course, Ms Miriam LAU has already expressed our views. Madam President, I would like to have a few words on the construction industry because I have been engaged in quite an amount of property business, and can be regarded as someone related to the industry. I would like to express my opinions on the so-called "senior workers".

Regarding the issue of 10 years or six years brought up by Members from the labour sector, I consider it inappropriate to make a decision at this moment. Frankly speaking, it is not too difficult for one to enter the industry, whether he is to become an electrical technician, a mason or a carpenter. So long as he is willing to put in an effort, he can become a first-class worker in a couple of years. On the contrary, to me, the more "senior" a worker is, the more he knows how to take the shortcut. After handing a plan to him, if he is not too sure about the location of the wires, he will break through the wall for you horizontally at the back, lay the wires, hide the ducts, and then plaster it, without you knowing it. Why? It is because depending on whether the wire ducts run horizontally or vertically, a lot of material can be saved by making a turn. If there can be supervision, the situation will be better. Workers can of course say such things have nothing to do with them as those are problems with design. However, a

lot of drawings go with design. If there are no drawings, when you, for example, employ someone to assemble the cupboards, connect the water pipes and wires, or install the plugs, the workers will mostly make their own arrangements. I believe no matter how they are supervised, there is nothing that can be done.

Moreover, I would like to talk about the attitude of the workers. We are not referring to their work attitude. Rather, it is about their attitude in performing certain tasks. At present, the whole industry is waning. In recent years, due to the problem of negative equities, the development of the property market has been short of being robust. The market for newly constructed flats sees no improvement, and the business of the construction workers will of course lag. Wage earners are beginning to have salary cuts or are becoming unemployed, and the chances for them to change their flats will naturally be reduced. As there are fewer transactions, there will also subsequently be fewer need for decoration works. In decorating their flats, a lot of people will, for example, have their cupboards, curtain rails, curtains and a lot of things made on the Mainland. Apart from costs, the things which they have paid for are not value for money. To me, the "senior workers" are masters, and the wooden cupboards they make are of course better than those made by workers who are just labourers. Those workers regard their work as labour. In addition to carpentry, they are also responsible for plastering, carrying the bricks, and so on. They are by no means "masters".

Of course, we will not tackle this problem today. Rather, we will be dealing with the so-called issue of "trade licences". The other thing which we have discovered is related to the "patching up" work referred to by workers of individual trades. In the opinion of the trade, there is a big difference between the present "workers" and the "senior workers" of more than a decade ago. Let me cite a simple example. When we hire a worker to assemble a wooden cupboard, he will work through the wall to get his job done. After the wooden cupboard is assembled, even if the surrounding plaster is damaged, he will just ignore it. The mason will only fill the cracks for you but while doing that, the wooden cupboard may be tarred or even scratched. Then, you will have to look for a carpenter to remove those things on the wooden cupboard and put on the lacquer. As regards these so-called "patching up" works, each trade will only look after its own part of the job. When the water pipe leaks, the plumber will work through the wall. Although the water pipe is fixed, you are left with problems more than before. So, you will have to look for a painter. If these

interrelated workers respect their respective trades, they should not only do their own job well, but should also have regard for the overall situation. I think this is very important. Of course, it is impossible for us to put this down in law, nor can we set it out in the regulations. Therefore, I hope that in this regard, the Government, the owners, the business sector or the representatives of the workers can encourage those "senior workers" or the "newcomers" to respect their own profession, so as to achieve a professional standard.

Why is it that buildings constructed by the Japanese do not require so much "patching up" whereas so many disputes crop up in the case of buildings constructed and decorated in Hong Kong? This is because each and every party concerned does not have much respect for its work. Getting the job done is the goal and the "patching up" is for the others. We can see that in terms of building construction, the standard of the Japanese is much higher than ours.

Madam President, I only want to raise this point.

(Mr Abraham SHEK indicated his wish to speak)

PRESIDENT (in Cantonese): I am sorry, Mr Abraham SHEK, do you want to elucidate what you have said? If not, you cannot speak again.

MR ABRAHAM SHEK (in Cantonese): I can elucidate.

PRESIDENT (in Cantonese): You are elucidating what was said earlier, and not responding to the remarks of another colleague.

MR ABRAHAM SHEK (in Cantonese): I would like to elucidate the point relating to "senior workers". At present, if construction workers in Hong Kong are called "senior workers", their standard is very high. In this regard, their spirit.....

PRESIDENT (in Cantonese): Mr Abraham SHEK, may I give you a suggestion? Later on at the Committee stage, we will have an amendment relating to "senior

workers", you can then express in detail your views in this regard. Fair enough?

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If not, I now call upon the Secretary for the Environment, Transport and Works to reply.

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Cantonese): Madam President, first of all, I would like to thank the Chairman of the Bills Committee, Mr CHAN Kwok-keung, and Members for spending much time on this Bill and for their remarks on the Bill earlier.

We always believe that the employment of construction workers with the required skill levels is a critical element in ensuring the quality of construction works. In this respect, the Government has since 1995 specified firstly in the construction contracts of the Housing Department and subsequently in public works contracts that, for certain trades, the contractors should employ a specified percentage of qualified workers. At present, only the workers in a few construction-related trades are required by law to be registered or licensed before they can perform the specified tasks. Other construction workers are not subject to statutory regulation. One of the key objectives of the proposed Construction Workers Registration System is to ensure the quality of construction workers through assessment of the skill levels of all construction workers by an objective registration mechanism.

Another objective of the proposed registration system is to ensure the availability of accurate data on the number of construction workers, their respective trades, skill levels and age distribution, and so on. The data will be useful not only to the relevant training institutions in deciding the scope of training programmes and intake, but also to the Government in evaluating the demand and supply of labour in the construction industry and formulating relevant policies in future.

Apart from these two objectives, the implementation of the registration system will also bring many other benefits. Firstly, the proposed legislation can raise the status of workers by properly recognizing their professional skills. Secondly, the registration system can foster a quality culture in the construction industry by mapping out a clear career path along a three-tier model, namely, registered skilled worker, registered semi-skilled worker and registered general worker, thereby motivating the workers to aim for higher skill levels, thus higher status and more income. Thirdly, the smart registration card embedded with a computer chip to be issued to every registered construction worker can, to a certain extent, help combat the hiring of illegal workers on construction sites since the registration status of a worker entering or leaving a construction site will be verified by a card-reading system. In addition, the system can be used by contractors to check the attendance of their workers and help reduce disputes over wages and insurance between the contractors and the workers.

The Bills Committee started scrutinizing this Bill in June 2003 and completed its work in May 2004, meeting 12 times in total during the period. When scrutinizing the Bill, the Bills Committee carefully examined the provisions of the Bill and gave a lot of positive and invaluable advice both on the content in general and specific provisions of the Bill. I am pleased that the implementation of the Construction Workers Registration System has been accepted and supported by the Bills Committee. I would therefore like to thank once again for your support.

The provisions governing the transitional arrangement for the registration of "senior workers" were most controversial during the deliberations. Some Members have already made some comments and observations on the arguments concerned, I do not intend to repeat them here. I just wish to emphasize that some Members seem to disagree a bit with the way the Government handled the different opinions, but I hope Members would trust that the Government is sincere, and I would oversee discussions in future to strengthen communication. More active response can be made to the different opinions, we will try our best to come up with options supported by all parties. We always want to get a consensus among all relevant parties.

After repeated discussions with the representatives of the industry and the trade unions, we have at last come up with an option acceptable to all parties. Under the latest proposed provisional registration arrangement, workers with no less than six years of experience will be allowed to register as registered skilled

workers (provisional). They can attain the status of registered skilled workers in their own trades by either passing a skill test or attending and completing a trade-specific training course, within three years.

The requisite training for registered skilled workers (provisional) will be in the form of condensed courses tailor-made for individual trades, and will highlight the common weaknesses observed in the skill tests. We will seriously consider Members' proposal that the training courses should be kept short and the fees kept low as far as possible. A working group with broad representation will be set up to take forward the proposal. Since the proposed amendment has passed through the Bills Committee, I will move the amendment later and explain it in detail.

The Bills Committee has made a number of suggestions about the Bill to refine the proposed registration system. We have agreed to accept them and will propose the relevant suggested amendments. These amendments mainly relate to the provisions in Part 3 governing the detailed arrangements for the establishment of the Registration Authority and its committees. Furthermore, in view of the Bills Committee's concern that the appeal mechanism may be abused by the employers, we agree to delete the relevant provisions. Moreover, as advised by the Commissioner of Police, the Hong Kong Police Force will not take enforcement action specifically under the Bill, we therefore propose to add a provision to empower the Registration Authority to institute prosecution and carry out investigation, if necessary, in respect of an offence under the Bill. In addition, with the passage of the Construction Industry Levy (Miscellaneous Amendments) Bill 2003, Part 4 and other relevant provisions of the Bill need to be amended accordingly. I will give a detailed account of each of these amendments when they are proposed later.

Upon the passage of the Bill, we will, first of all, establish the Construction Workers Registration Authority and its committees, appoint the Registrar and start imposing the levy on construction operations so that the preparatory work for registration can proceed as soon as possible. We expect that the preparation will take about one year, and hope that registration of construction workers will begin by the end of 2005.

In conclusion, the proposed registration system will not only foster a quality culture in the construction industry and improve the quality of construction works, but will also ultimately promote the healthy development of

the local construction industry. In the drafting process, we have ensured that construction workers can register according to the existing categories of trades and skill levels in the industry, and that the registration or renewal fees are kept to a minimum so as to alleviate the burden on construction workers. More importantly, the implementation of this system will not render any existing worker out of work.

I would like to take this opportunity to thank all the organizations and individuals who have given their views on the Bill. I would also like to express my gratitude to the Department of Justice and the Legislative Council Secretariat for their dedicated efforts in the drafting process.

Madam President, with a view to implementing the Construction Workers Registration System at an early date, I hope Honourable Members will support the Bill and the amendments which I will propose at the Committee stage.

Thank you, Madam President.

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

(Members raised their hands)

PRESIDENT (in Cantonese): Those against please raise their hand?

(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): Construction Workers Registration Bill.

Council went into Committee.

Committee Stage

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

CONSTRUCTION WORKERS REGISTRATION BILL

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

CLERK (in Cantonese): Clauses 1, 4, 5, 10, 11, 13, 17, 26, 27, 28, 30 to 34, 44, 45, 48, 62, 67, 68 and 69.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 2, 3, 6, 35 to 41, 43, 46, 52 and 53.

CHAIRMAN (in Cantonese): The Committee will now deal with the amendments relating to the registration of "senior workers".

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS
(in Cantonese): Madam Chairman, I move the deletion of clause 39 and the

amendments to other clauses read out just now, as set out in the paper circularized to Members.

The amendments mainly involve the replacement of a new proposed provisional registration arrangement for the original transitional registration and provisional registration arrangements. Under the original proposal, experienced workers who possess no less than six years' experience in the respective trade may apply for registration as registered skilled worker (provisional), while experienced workers who possess no less than 10 years' experience in the respective trade may apply for registration as registered skilled worker, that is, they would obtain the qualification of "senior workers".

The former can obtain the registration as registered skilled workers for the trade only if they pass the trade test within three years; the latter can also obtain the registration as registered skilled workers for the trade if they pass the assessment interview. Since the qualifying period of senior workers has been lowered from 10 years to six years, it is unnecessary to retain the original provisional and transitional arrangements. Under the revised proposal, experienced workers who possess six years' experience in the respective trade may apply for registration as registered skilled worker (provisional). They may obtain registration as a registered skilled worker for the trade through the trade test within three years or completing a training course for the trade. Therefore we propose to delete the definition and all provisions relating to registered skilled workers (transitional), and amend the relevant provisions relating to registered skilled worker (provisional), and the provisions involved are clauses 2, 3, 6, 35, to 41, 43, 46, 52 and 53.

Moreover, we also make certain textual or technical amendments to the above amendments as listed in the paper circularized to Members. They are endorsed by the Bills Committee.

I implore Members to support the amendments. Thank you, Madam Chairman.

Proposed amendments

Clause 2 (see Annex III)

Clause 3 (see Annex III)

Clause 6 (see Annex III)

Clause 35 (see Annex III)

Clause 36 (see Annex III)

Clause 37 (see Annex III)

Clause 38 (see Annex III)

Clause 39 (see Annex III)

Clause 40 (see Annex III)

Clause 41 (see Annex III)

Clause 43 (see Annex III)

Clause 46 (see Annex III)

Clause 52 (see Annex III)

Clause 53 (see Annex III)

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

MR ABRAHAM SHEK (in Cantonese): Madam Chairman, I would like to respond to the issue relating to "senior workers" mentioned by Mr James TIEN earlier. Although some personal experience of his may have caused him to be dissatisfied with the performance of some "senior workers", this does not mean that it is a common problem in the trade now. At present, be they workers or

contractors in Hong Kong, they are well-known around the world. If only we watch carefully, we can see how marvellous the achievements of the trade are, as well as the spirit and efforts of the workers. We can even realize that the works of the buildings built or places developed by Mr TIEN himself are equally beautiful, and these are all constructed with the craftsmanship of the "senior workers" together with the workers.

In that case, why are we having this Bill now? The purpose is to have less non-aspiring people posing as "senior workers" joining the trade. At present, 50 000 workers have been registered, leaving only a few thousand yet to be registered. Although Mr TIEN mentioned earlier some real facts and his personal experience, our workers in Hong Kong, with the "senior workers" in particular, will not be in any way inferior to the workers in Japan. Our workers may even be better. Thank you, Madam Chairman.

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

MISS CHAN YUEN-HAN (in Cantonese): Madam Chairman, I agree with what Mr Abraham SHEK said just now. I think every industry should in fact respect its own practice. The construction industry is a traditional industry. If the workers are not good in their craftsmanship or in the presentation of their work, it would be very difficult for them to join their peers again. However, I would not deny that such situations do exist because of flaws in the system, that is, the problem of sub-contracting. In fact, at present, everyone in the construction industry knows that in the case of some general operations, there can be five, six or even seven levels of sub-contracting, resulting in supervisory problems. The "senior workers" may not be the ones causing problems, but sub-contracting does lead to shortcomings, rendering the supervisory system non-existent.

I very much hope that the Secretary can clearly know that when John MILLER was still the Director of Housing, a group of people from the construction sector, including people of the trade associations and trade unions had made some demands. First, they demanded the establishment of a monthly salary system for construction workers; second, they demanded the prohibition of multi-level sub-contracting. Actually, under multi-level sub-contracting, the operations of the final sub-contractor are always slipshod because of costs.

Therefore, the responsibility of delivering slipshod jobs should not fall on the workers. In particular, it should not fall on the "senior workers". I wish to make this clear so that government officials will not think that the skills of Hong Kong workers are poor. This is not the fact. If there are really problems with quality, they are only caused by the sub-contracting system.

Thank you, Madam Chairman.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for the Environment, Transport and Works, do you need to speak?

(The Secretary for the Environment, Transport and Works indicated she did not wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for the Environment, Transport and Works 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 amendments passed.

CHAIRMAN (in Cantonese): As the amendment to clause 39, which deals with deletion, has been passed, clause 39 is therefore deleted from the Bill.

CLERK (in Cantonese): Clauses 3, 36, 38, 40, 41 and 43 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 7, 8, 9, 12, 14, 15, 16, 18 to 25, 29, 42 and 47, the headings before clause 49, clauses 49, 50, 51, 54 to 61, 63 to 66 and 70.

CHAIRMAN (in Cantonese): The Committee will deal with the other amendments.

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Cantonese): Madam Chairman, I move further amendments to clauses 2, 6, 35, 37, 46, 52 and 53, and the deletion of clauses 14, 15, 20, 21, headings before clause 49, clauses 49, 50, 51 and 60 from the Bill, and amendments to the other clauses read out just now, as printed on the paper circularized to Members. I wish to briefly explain some of the major amendments.

Clauses 7, 12, 16 and 54 of the Bill deal with the composition of the Construction Workers Registration Authority (the Authority), Qualifications Committee, Review Committee and Appeal Board Panel. The proposed amendments mainly deal with the composition of the Authority and its Standing Committees, and to avoid making specific reference to the names of the relevant bodies. Clauses 14, 15 and Part 6 is about the setting up of an appeal mechanism which deals with complaints that may be made against registered construction workers. The Bills Committee has expressed concern about the

possible abuse of the complaint mechanism by employers. Moreover, since only those qualified workers will obtain registration, the provisions are considered inconsistent with the purpose of the registration system. For that reason, we propose the deletion of the above provisions and amendments to other clauses related to complaints.

Since the Construction Industry Levy (Miscellaneous Amendments) Bill 2003 has already been enacted, it is necessary to amend provisions of the Bill which are relating to the imposition of levy. The new proposed amendments include clauses 18 to 25 and 29. We have proposed further amendments and improvement to clause 25 of the Bill, which includes the scope of a decision the Registrar can make after it has received the proposal from the Review Committee. Moreover, clause 53 has to be amended to specify under what circumstances and time that the relevant persons can make the appeal. We have also proposed improvements or technical amendments to clause 42 concerning the validity and renewal of registration; clause 55 concerning the appointment and composition of the Appeal Board; clause 57 concerning the appointment of a legal practitioner; clause 58 concerning Powers of the Appeal Board, and clause 65 concerning the making of rules of court. Moreover, improvements or technical amendments to other clauses of the Bill should also be made, including clauses 2, 6, 35, 37, 46, 56, 58, 59, 61 and its heading, clauses 66 and 70, and the deletion of clause 60. The above amendments have been agreed by the Bills Committee and listed in the paper circularized to Members. Thank you, Madam Chairman.

Proposed amendments

Clause 7 (see Annex III)

Clause 8 (see Annex III)

Clause 9 (see Annex III)

Clause 12 (see Annex III)

Clause 14 (see Annex III)

Clause 15 (see Annex III)

Clause 16 (see Annex III)

Clause 18 (see Annex III)

Clause 19 (see Annex III)

Clause 20 (see Annex III)

Clause 21 (see Annex III)

Clause 22 (see Annex III)

Clause 23 (see Annex III)

Clause 24 (see Annex III)

Clause 25 (see Annex III)

Clause 29 (see Annex III)

Clause 42 (see Annex III)

Clause 47 (see Annex III)

Headings before clause 49 (see Annex III)

Clause 49 (see Annex III)

Clause 50 (see Annex III)

Clause 51 (see Annex III)

Clause 54 (see Annex III)

Clause 55 (see Annex III)

Clause 56 (see Annex III)

Clause 57 (see Annex III)

Clause 58 (see Annex III)

Clause 59 (see Annex III)

Clause 60 (see Annex III)

Clause 61 (see Annex III)

Clause 63 (see Annex III)

Clause 64 (see Annex III)

Clause 65 (see Annex III)

Clause 66 (see Annex III)

Clause 70 (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 the Environment, Transport and Works 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 amendments passed.

CHAIRMAN (in Cantonese): As the amendments to clauses 14, 15, 20, 21, headings before clause 49, clauses 49, 50, 51 and 60, which deal with deletion, have been passed, these headings and clauses are deleted from the Bill.

CLERK (in Cantonese): Clauses 2, 6 to 9, 12, 16, 18, 19, 22 to 25, 29, 35, 37, 42, 46, 47, 52 to 59, 61, 63 to 66 and 70 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese):	New headings before new clause 17A	PART 3A AUTHORIZED OFFICERS
	New clause 17A	Appointment of authorized officers
	New clause 17B	Powers of authorized officers to enter construction site
	New clause 17C	Other powers of authorized officers
	New clause 18A	Value of construction operations
	New clause 18B	Total value of construction operations

New clause 18C	Application to construction operations
New clause 30A	Levy inspector
New clause 61A	Prosecution may be brought in Authority's name.

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Cantonese): Madam Chairman, I move that the new headings and new clauses read out just now be read the Second time, as printed on the paper circularized to Members.

I have just briefly explained the rationale for empowering the Authority to take prosecution and investigation actions in relation to offences under the Bill. We propose the addition of new Part 3A, which includes clauses 17A, 17B and 17C, to specify the appointment and power of Authorized Officers. That include powers to enter construction sites to carry out law enforcement work; require any person found on the site to provide the necessary information and assistance; inspect and examine the construction sites and detain evidence. Moreover, we also propose to add clause 61A to stipulate that a prosecution for an offence under this Ordinance may be brought in the name of the Authority. With the passage of the Construction Industry Levy (Miscellaneous Amendments) Bill 2003, amendments to Industrial Training (Construction Industry) Ordinance and Pneumoconiosis (Compensation) Ordinance have also been made, consequential amendments should also be made because we have taken the levy provisions of the abovementioned ordinances as the blueprint. The proposed amendments include the addition of clauses 18A, 18B and 18C to specify the value of construction operations, total value of construction operations and application to construction operations. In order to improve the text, we also propose to add clause 30A to replace the original clause 63.

Thank you, Madam Chairman.

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

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New headings before new clause 17A, new clauses 17A, 17B, 17C, 18A, 18B, 18C, 30A and 61A.

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS
(in Cantonese): Madam Chairman, I move that the new heading and new clauses read out just now be added to the Bill.

Proposed additions

New heading before new clause 17A (see Annex III)

New clause 17A (see Annex III)

New clause 17B (see Annex III)

New clause 17C (see Annex III)

New clause 18A (see Annex III)

New clause 18B (see Annex III)

New clause 18C (see Annex III)

New clause 30A (see Annex III)

New clause 60A (see Annex III)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the new heading and new clauses read out just now be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedules 2 and 3.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedules 1 and 4.

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Madam Chairman, I move the amendments to Schedule 1 and Schedule 4, as set out in the paper circularized to Members.

Schedule 1 of the Bill sets out in detail designated trades for which a person may register as registered construction workers of different types under the Bill. Since we have proposed the deletion of provisions related to transitional registration earlier, and that the amended provisions related to provisional registration have been passed, consequential amendments have to be made to the heading of Part 1 of Schedule 1 and its reference to clause numbers, and the heading of Part 2. Moreover, for correction of errors and textual improvement, reference to designated trades set out in Schedule 1 has to be amended, details of which is set out in the paper circularized to Members. Schedule 4 of the Bill contains provisions on the tenure of office of the members of, procedures of proceedings of, and other related matters relating to the Authority and other committees. Owing to the amendments to other provisions, consequential amendments have to be made to Schedule 4.

Thank you, Madam Chairman.

Proposed amendments

Schedule 1 (see Annex III)

Schedule 4 (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 the Environment, Transport and Works 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 amendments passed.

CLERK (in Cantonese): Schedules 1 and 4 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Long title.

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

Since the definition of "construction works" under clause 4 of the Bill has been amended as "construction operations", a consequential amendment to the long title has to be made.

Thank you, Madam Chairman.

Proposed amendment

Long title (see Annex III)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the amendment to the long title moved by the Secretary for the Environment, Transport and Works, be passed.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bill: Third Reading.

CONSTRUCTION WORKERS REGISTRATION BILL**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**

(in Cantonese): Madam President, the

Construction Workers Registration Bill

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

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

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Construction Workers Registration Bill.

Resumption of Second Reading Debate on Bills

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Road Traffic (Amendment) Bill 2003.

ROAD TRAFFIC (AMENDMENT) BILL 2003.**Resumption of debate on Second Reading which was moved on 22 October 2003**

PRESIDENT (in Cantonese): Ms Miriam LAU, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's Report.

MS MIRIAM LAU (in Cantonese): Madam President, in my capacity as Chairman of the Bills Committee on Road Traffic (Amendment) Bill 2003 (the Bills Committee), I will report on the deliberations of the Bills Committee.

The main purpose of the Road Traffic (Amendment) Bill 2003 (the Bill) is to increase the maximum gross vehicle weight of a light bus from 4.0 tonnes to 5.5 tonnes to allow for the installation of high back seats and seat belts on public light buses (PLBs), with a view to enhancing the safety of passengers. In addition, the Administration also proposes to transfer the power to appoint Transport Tribunals and the power to appoint members to the Transport Tribunals' panel from the Chief Secretary for Administration to the Secretary for the Environment, Transport and Works.

In the course of deliberations, members' main concern was the Administration's proposal to repeal the reference to permitted gross vehicle weight from the definition of "light bus".

The Bills Committee notes that the definitions of "light goods vehicle", "medium goods vehicle" and "heavy goods vehicle" under the Ordinance contain specific references to their respective permitted gross vehicle weight. The Bills Committee is concerned about the consistency in drafting of the definitions of "light bus" and different classes of vehicles. Further, upon enactment of the Bill, any subsequent changes to the permitted gross vehicle weight of light buses

will be effected by subsidiary legislation instead of by amendments to the principal Ordinance.

The Administration explains that amendments to the maximum gross vehicle weight of different classes of vehicles are technical in nature. It is of the view that they can be effected by subsidiary legislation to save administrative and legislative work.

Regarding the drafting of the definitions of different classes of vehicles, the Administration explains that vehicles for the carriage of passengers, such as light bus, taxi and private car, are classified with reference to the number of passengers they carry and that references to permitted gross vehicle weight of the vehicles are not strictly necessary. This explains why the Administration has proposed to remove the reference to the permitted gross vehicle weight from the definition of "light bus" under section 2 of the Ordinance.

Regarding goods vehicle, the Administration explains that one of the main criteria for defining different classes of goods vehicles is the permitted gross vehicle weight. In order to differentiate different classes of goods vehicle, there is a need to retain the references to the permitted gross vehicle weight of different classes of goods vehicles; otherwise, it would require substantial amendments to the original definitions.

As the Administration plans to bring the Amendment Regulations for the installation of passenger protection equipment on PLBs on 1 August 2004, the Bills Committee indicates that it will support the Bill as proposed by the Administration. However, the Bills Committee considers it imperative for the Administration to conduct a review, with a view to ensuring consistency in the drafting of the definitions of different classes of vehicles.

The Bills Committee notes that the Bill also seeks to transfer the power to appoint Transport Tribunals and the power to appoint members to the Transport Tribunals' panel from the Chief Secretary for Administration to the Secretary for the Environment, Transport and Works. The proposed transfer will enable the Secretary for the Environment, Transport and Works to assume full responsibility and authority in managing the statutory functions and policy portfolios of the office after the implementation of the Accountability System for Principal Officials. The Bills Committee notes that the proposed transfer of the statutory powers and functions currently vested in the Chief Secretary for

Administration to the Directors of Bureaux responsible for the respective policy portfolios is intended to apply to all bureaux and departments.

Madam President, the Bills Committee supports the Bill and agrees with Administration's proposal to specify the commencement date of the Bill as 1 August 2004.

Madam President, the following is my personal views on the Bill.

The Bill is indeed part of a package of passenger safety measures to enhance the safety of PLBs, other parts include four pieces of subsidiary legislation, two of which have been enacted at the end of 2002, while the remaining two were passed at an earlier stage this year. The four pieces of subsidiary legislation cover the licensing requirement for the fitting of high back seats and seat belts on PLBs and, in regard to wearing seat belts, define the responsibility of drivers and passengers on PLBs. Recently, the Government published on 18 June a Gazette to specify 1 August 2004 as the commencement date of the four pieces of subsidiary legislation, with a view to bringing the whole package of PLB safety measures, including the Bill, into effect on 1 August 2004.

In the course of scrutiny, the Administration pointed out repeatedly that everything was ready and so were the new models of vehicles. Once the legislation is passed, they would be launched onto the market. Based on this background, the Bills Committee supports the Committee stage amendment proposed by the Administration to specify 1 August 2004 as the commencement date of the Bill, instead of the original proposal of a date to be appointed by the Secretary by notice in the Gazette. However, it was after the Bills Committee had completed the scrutiny of the Bill, did the PLB trade learn from light bus suppliers that the LPG light bus manufacturer of the most popular short wheelbase model was unable to adjust its production line. This most popular model of LPG light buses that has been extensively used by the PLB trade will not be available on the market until November this year, not being to cope in time with the commencement date on 1 August. The PLB trade is therefore subject to a vacuum period of vehicle supply for three to four months.

For the above reasons, the PLB trade has proposed to defer the entire programme, including the Bill, by six months, but then it would be defeat the

Administration's policy objective of enhancing the safety on PLBs as soon as possible, which is also an objective shared by Legislative Council Members and the PLB trade. Furthermore, the deferral would also be unfair to other light bus suppliers who are able to put in place new models in time.

For the PLB trade, they are most concerned that the Government's incentive scheme for the replacement of LPG light buses will expire by the end of the year. If light bus owners are unable to replace their vehicles before the deadline, they would be subject to a loss of \$60,000 grant for each vehicle. Earlier on, this Council formed a Subcommittee to consider the notice on the commencement date of the above four pieces of subsidiary legislation, but I am not going to report the work of the Subcommittee here.

Nevertheless, I would like to report briefly that at the Subcommittee meeting, the Administration undertook to exercise flexibility in dealing with applications for the LPG light bus grant. A PLB owner who has placed a purchase order for a LPG PLB on or before the end of this year and who has submitted an application for the grant and the supporting documents, even though their vehicles will arrive in the following year, may be eligible for the grant for an extended period; the longest period of extension will be one year, up to the due date of their vehicle licence. On this basis, the PLB trade accepts that the whole package of safety requirements, including the Bill, shall come into effect on 1 August this year as scheduled.

Madam President, I believe that the issue arising from the commencement date of the PLB safety legislation was beyond the expectation of both the Administration and the trade. On behalf of the trade, I would like to thank the Administration for their prompt response to their requests.

Madam President, I so submit.

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

(No Member indicated a wish to speak)

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS
(in Cantonese): Madam President, I move the Second Reading of the Road

Traffic (Amendment) Bill 2003. The Bill seeks to increase the maximum gross vehicle weight of a light bus from 4 tonnes to 5.5 tonnes, to allow the installation of passenger protection equipment on public light buses (PLBs), including seat belts and high back seats. I wish to take this opportunity to thank Ms Miriam LAU and members of the Bills Committee for their constructive suggestions on the relevant issue during their deliberations on the Bill.

Considering that the accident rate and the rear seat casualty rate of PLBs have been relatively high among all classes of vehicles, the authorities considered that it was necessary to install passenger protection equipment on PLBs to enhance the safety of passengers. In this connection, two Amendment Regulations, namely the Road Traffic (Construction and Maintenance of Vehicles) (Amendment) (No. 2) Regulation 2002 and the Road Traffic (Safety Equipment) (Amendment) Regulation 2002 (the Amendment Regulations) were passed by the Legislative Council in 2002 to provide for the standards of passenger protection equipment on PLBs. The Administration had these new requirements gazetted in order to bring them into effect on 1 August 2004. To accommodate the installation of the equipment on PLBs, it is necessary to relax the maximum gross vehicle weight of light buses from 4 tonnes to 5.5 tonnes.

I appreciate the concern of the PLB trade, that as the manufacturer of a certain type of light buses may not be able to provide the local market one of the approved models of PLBs which can meet the new safety requirements within a short period of time, they are unable to apply for the subsidy scheme of replacing their vehicles with LPG light buses. In fact, the authorities have informed all suppliers of the requirement 20 months in advance and notifications have been made. The message we have been receiving all along is that they can meet the requirement before the deadline. However, since the relevant manufacturer cannot make it, therefore we will make certain flexible arrangements to allow owners of diesel PLBs which are over 10 years of age to submit their application to extend the deadline of the subsidy scheme by producing the invoice of ordering a new LPG light buses. We are currently drafting the detail arrangement and will notify the trade as soon as we can.

Moreover, as a result of the review on the implementation of the Accountability System for Principal Officials, the Bill also seeks to transfer the power to appoint Transport Tribunal and the power to appoint members to the Transport Tribunal's panel from the Chief Secretary for Administration to the Secretary for the Environment, Transport and Works. The Bill is supported by

the Bills Committee. I will move a Committee stage amendment to amend the commencement date of the Bill to 1 August 2004.

With these remarks, Madam President, I move that the Bill be read the Second time.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Road Traffic (Amendment) Bill 2003 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): Road Traffic (Amendment) Bill 2003.

Council went into Committee.

Committee Stage

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

ROAD TRAFFIC (AMENDMENT) BILL 2003

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Road Traffic (Amendment) Bill 2003.

CLERK (in Cantonese): Clauses 2 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): Clause 1.

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Cantonese): Madam Chairman, I move that clause 1 read out just now, be amended as set out in the paper circularized to Members.

The amendment seeks to revise the commencement date of the Bill to 1 August 2004, so as to allow the installation of passenger protection equipment on PLBs as soon as possible. I hope Members will support and pass the amendment. Thank you, Madam Chairman.

Proposed amendment

Clause 1 (see Annex IV)

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for the Environment, Transport and Works 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 amendment passed.

CLERK (in Cantonese): Clause 1 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bill: Third Reading.

Road Traffic (Amendment) Bill 2003

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS
(in Cantonese): Madam President, the

Road Traffic (Amendment) Bill 2003

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 Road Traffic (Amendment) Bill 2003 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): Road Traffic (Amendment) Bill 2003.

Resumption of Second Reading Debate on Bills

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Clearing and Settlement Systems Bill.

CLEARING AND SETTLEMENT SYSTEMS BILL**Resumption of debate on Second Reading which was moved on 10 December 2003**

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 Clearing and Settlement Systems Bill (the Bills Committee), I am now presenting the report of the Bills Committee. As the deliberations of the Bills Committee have already been detailed in the written report, I shall just report on the main points.

The Bills Committee supports the objectives of the Clearing and Settlement Systems Bill (the Bill) in providing express statutory backing for the oversight role of the Monetary Authority (MA) in relation to important clearing and settlement systems in Hong Kong and for the finality of settlements effected through such systems.

To ensure that the proposed statutory framework under the Bill is effective, the Bills Committee has examined the following issues in detail:

- (i) proposed designation and oversight regime;
- (ii) proposed settlement finality;

- (iii) appeals mechanism;
- (iv) penalties for offences; and
- (v) extra-territorial application of the Bill.

On the proposed designation and oversight regime, the Bills Committee notes that under clause 3(1), where a clearing and settlement system meets the criteria set out in the Bill, the MA may, by notice published in the Gazette, designate the respective clearing and settlement system. The Bills Committee also notes that, according to the specified criteria, the proposed designated systems would include the following clearing and settlement systems:

- (i) Hong Kong Dollar (HKD) Clearing House Automated Transfer System (CHATS);
- (ii) US Dollar CHATS;
- (iii) Euro CHATS;
- (iv) Central Moneymarkets Unit (CMU);
- (v) Cheque Clearing; and
- (vi) Cash settlement leg for Central Clearing And Settlement System (CCASS) in respect of equities and other securities listed and traded on the Hong Kong Stock Exchange.

The Bills Committee is concerned that, according to the proposed gazettal arrangement, members of the public who need to check whether a clearing and settlement system is a designated system may have to go through various notices published in the Gazette. In response to the request of the Bills Committee, the Administration agrees to maintain an updated list of designated systems on the website of the Hong Kong Monetary Authority (HKMA) for public reference.

The Bills Committees notes that under clause 54, systems that are specified in Schedule 2 to the Bill, that is, the HKD CHATS and CMU which are operated by the MA, are deemed to have been designated and a certificate of finality is deemed to have been issued in respect of each of such systems. The Bills Committee considers it inappropriate to exempt such systems from the statutory oversight requirements under Part 2 of the Bill as proposed under clause 54(3). After taking into account the relevant statutory oversight requirement overseas, the Administration agrees to move a Committee stage amendment to delete clause 54(3).

According to clauses 10, 51 and 52, the MA may request for information to enable him to perform his functions conferred by the Bill. The Bills Committee is also concerned about whether the system operator or settlement institution of a designated system may refuse to provide information on the ground that it is covered by the common law privileges like professional privilege and the privilege against self-incrimination. The Administration expresses that its policy intent is that such privileges will not be affected by the requirements in clauses 10, 51 and 52. In the event of non-compliance with a request for information under the three clauses and the privileges being claimed, the HKMA could take the matter to Court by virtue of the offence provisions under clauses 39 and 42.

The Bills Committee notes that for the purpose of avoiding regulatory overlap with Securities and Futures Commission (SFC), clause 3(2) provides that the power to designate will not apply to a clearing and settlement system that is, or is operated by, a company recognized as a clearing house under section 37(1) of the Securities and Futures Ordinance (SFO). The Hong Kong Exchanges and Clearing Limited (HKEx) is concerned about the possibility that the regulatory requirements imposed on a subsidiary of HKEx — the Hong Kong Securities Clearing Company Limited (HKSCC) — by the SFC under the SFO and by the HKMA under the Bill may be incompatible. The Administration has assured that the regime proposed under the Bill will not result in regulatory overlap between the HKMA and the SFC. The HKMA and the SFC will consult each other on rules to be imposed on designated systems under the Bill and those on recognized clearing houses under the SFO. In this connection, the HKMA and the SFC are prepared to enter into a memorandum of understanding to set out the relevant consultation procedures.

The Bills Committee notes that the HKMA is the owner and operator of HKD CHATS and CMU, and that the HKMA has a 50% share in the Hong Kong Interbank Clearing Limited (HKICL), which is the system operator for some important clearing and settlement systems in Hong Kong. Members express concern that there may be a role conflict when the HKMA conducts oversight of such clearing and settlement systems in which the HKMA has a direct or indirect interest (hereafter referred to as "HKMA systems"). In this connection, the Bills Committee has referred to overseas practice and noted it is a common practice overseas for the central bank to assume the role of a system overseer of important clearing and settlement systems and at the same time being the system operator/settlement institution/owner of certain key clearing and settlement systems. To provide against any potential conflict of roles of the central banks, the oversight function and the system operations function of central banks will be undertaken by different and separate units within the central banks.

The Administration expresses that, upon the enactment of the Bill, the HKMA intends to set up a new and separate Policy and Oversight Division, through redeployment of the existing resources of the HKMA, that is responsible for formulating payment systems oversight policy, developing the oversight guidelines and performing the day-to-day oversight functions. This new division will operate separately and independently from the existing Market Systems Division that is responsible for the operation of the systems including HKD CHATS and CMU and also for participation in the work of HKICL. The Bills Committee considers that a "Chinese wall" should be established between the operational and oversight teams of the HKMA for clear segregation of duties. The Administration assures that the HKMA will ensure a proper "Chinese wall" is in place to segregate the operations of the two divisions.

To strengthen the institutional arrangements to avoid any perceived or potential conflict of the HKMA's roles as an overseer as well as a system operator, the Bills Committee invites the Administration to consider setting up an independent body to review whether there is any discrepancy in the HKMA's oversight of the HKMA systems as compared to other systems, in terms of procedural fairness and adherence to due process. The Administration accepts Members' view and proposes to set up an independent process review committee; the chairman and members of the committee will be independent persons appointed by the Chief Executive. The committee will submit annual

reports to the Financial Secretary. In the light of the experience with the Process Review Panel set up for the SFC by the Chief Executive, the Administration considers it appropriate to have the process review committee set up on an administrative basis. The Bills Committee accepts this arrangement.

On the proposed settlement finality, the Bills Committee notes that the Bill provides statutory protection of the integrity of transfer orders settled through designated systems from the insolvency and other laws in Hong Kong and overseas, so as to ensure that transfer orders settled through designated systems are irrevocable and not disrupted by the insolvency of participants. In addition to stipulations on transfer orders, the Bill also provides legal certainty on the netting arrangements in designated systems, to protect netting arrangements from the risk of unwinding arising from the insolvency and other laws in Hong Kong and overseas. Participants' interests in collateral security under the default arrangements of designated systems are also protected.

The Bills Committee notes that under clause 14, the MA is empowered to issue a certificate of finality to a designated system that is in compliance with the requirements in the Bill. If the designated system fails to comply with the conditions of the certificate of finality or contrives any certain requirements under the Bill, the MA may in accordance with clause 15 revoke or suspend the certificate of finality of the designated system. To enhance the transparency of the MA's decisions, Members consider that the MA should publish in the Gazette notice of the issuance, suspension and revocation of a certificate of finality for information. The Administration accepts Members' view and agrees to move Committee stage amendments to clauses 14 and 15 accordingly.

The Bills Committee also notes that under the SFO, a recognized clearing house is under a duty to make a report on completion of default proceedings. Members suggest that the Administration should provide similar provisions in respect of designated systems under the Bill. The Administration agrees to move a Committee stage amendment to add new clause 27A for this purpose.

In respect of the appeals mechanism, the Bills Committee notes that clauses 32 and 33 provide for the establishment of an independent Clearing and Settlement Systems Appeals Tribunal (CSSAT) to hear appeals by any person who is aggrieved by a decision of the MA to designate a clearing and settlement system. The Chairman of the CSSAT is appointed by Chief Executive on the

recommendation of the Chief Justice. As for its members, not fewer than two panel members are appointed by the Financial Secretary on the Chairman's recommendation.

In examining the provisions on the proposed CSSAT, the Bills Committee has compared the provisions with relevant provisions on appeals tribunals under other ordinances. Clause 37 provides for appeals to the Court of Appeal against determinations of the CSSAT on a point of law. In this connection, the Bills Committee suggests the Administration to include an express provision providing that the lodging of an appeal to the Court of Appeal does not by itself operate as a stay of execution of a determination of the CSSAT unless the Court of Appeal otherwise orders, similar to that provided in the SFO in respect of the Securities and Futures Appeals Tribunal. The Administration agrees to introduce such an express provision in the Bill and will move a Committee stage amendment to clause 37 accordingly.

In respect of penalties for offences, the Bills Committee notes that clause 46 attributes personal liability to the officers of a corporation in respect of offences committed under certain provisions of the Bill, where the officer participated in or caused the act or omission in question. To address the concerns of certain organizations, the Administration proposes to move a Committee stage amendment to clause 46 to improve its clarity and to add the definition of "officer" in clause 2. The Administration accepts Members' suggestion to use the definition of the same term provided in the SFO.

Members express concern about the disparity in the levels of fine and years of imprisonment under the penalty provisions in clauses 40, 41, 42 and 45. The Administration expresses that where an offence is likely to be committed by an individual rather than a corporation, the fine is relatively less; where an offence is likely to be committed by a corporation, it is common to set a relatively higher level of fines to achieve deterrent effect, as imprisonment does not apply to corporations. The authorities have also advised the Bills Committee that the level of the relevant penalty is determined with reference to section 123 of the Banking Ordinance.

On the extra-territorial application of the Bill, the Administration has advised the Bills Committee that the general provisions under the Bill apply to clearing and settlement systems both in Hong Kong and overseas, as long as they

are eligible for designation or are designated. Whilst having no objection to the extra-territorial application of the Bill, the Bills Committee considers that such application should be clearly set out in the Bill. The Administration accepts Members' view and agrees to move Committee stage amendments to add new clause 2A and to add a new subclause (3) to clause 51 to stipulate the scope of application of the Bill.

To conclude, the Bills Committee supports the Committee stage amendments proposed by the Administration.

Madam President, I have given the above remarks in my capacity as Chairman of the Bills Committee. Now, I would like to make a point in brief on behalf of the Democratic Party. The Democratic Party supports the resumption of the Second Reading of the Clearing and Settlement Systems Bill. However, we also like to draw the attention of the Government to the situation last year, where another new ordinance, the Deposit Protection Scheme Ordinance, was passed in the middle of the year, in addition to the present Bill. As far as I can recall, together with the above ordinance, there are now at least four ordinances related to the HKMA, namely the Exchange Fund Ordinance, the Deposit Protection Scheme Ordinance, the Clearing and Settlement Systems Ordinance and the Banking Ordinance.

Actually, we have proposed repeatedly in the past that the HKMA, being an important organization, should consider putting in place a more comprehensive framework of governance, one to be provided by law. Upon the passage of the SFO in 2001, about 10 existing ordinances related to securities and futures at that time were incorporated under the SFO. At present, there are already four ordinances related to the HKMA and its extended terms of reference. I personally consider the Government should review the suitability of incorporating these various ordinances at an appropriate time to establish a better framework of governance in the long run. And I consider it is the right time now. For the HKMA, that is, the so called Monetary Authority, is regarded as an individual but not a committee under the legislation now. The HKMA is regarded as an individual, which unlike the SFC..... (*sound of phone ringing*) I am sorry, Madam President, I forgot to switch off my mobile phone. I hereby tender my apologies to the President and all Honourable Members. The SFC and the Mandatory Provident Fund Schemes Authority are both regarded as committees. But under the existing legislation, the HKMA is regarded as an

individual. Nonetheless, the functions of the HKMA are expanding. Hong Kong has now developed into a financial centre of a considerable scale, which is in fact what we are promoting all over the world. However, if we look around, we will find that a number of central banks are overseen by a committee. It is thus the time for us to review the role of this institution. In relation to the functions of the institution, as I said earlier, four ordinances are already in place, namely the Deposit Protection Schemes Ordinance, the Banking Ordinance, the Exchange Fund Ordinance and the present Bill. I consider it imperative for us to review the existing framework of governance. The Democratic Party put forth our opinions in this regard in 1998 and 1999. We hope the Government will conduct extensive consultations and study how the framework of governance can be improved when necessary, and that it should not only regard the HKMA as an individual. Though there may be merits in the HKMA being regarded as an individual, there may be deficiencies, in terms of checks and balances. As I mentioned in the report earlier, some contradictions, like the situation of one's left hand monitoring one's right hand are identified during our review of the clearing and settlement systems. The point is how to establish the checks and balances against this. I hope the Secretary will study the issue.

I so submit.

MR HENRY WU (in Cantonese): Madam President, I am a member of the Bills Committee on Clearing and Settlement Systems Bill and I support the Second Reading of the Bill. I believe the passage of this Bill will help consolidate Hong Kong's position as an international financial centre.

As the representative of the financial services sector, I am particularly concerned about the impact of the Bill on the industry because at present, a subsidiary of the Hong Kong Exchanges and Clearing Limited (HKEx) — the Hong Kong Securities Clearing Company Limited — is already a recognized clearing house under the Securities and Futures Ordinance (SFO). The control and requirements imposed on it by the Bill might be incompatible with the SFO and the future development of the HKEx, in particular, of its clearing and settlement system, may be affected as a result.

Subsequently, I learned that after the HKEx and the Government, and more specifically, after the Securities and Futures Commission (SFC) and the

Hong Kong Monetary Authority (HKMA) communicated and discussed with each other, the relevant concerns and problems have been resolved, and the HKMA and SFC will sign a memorandum of understanding to draw up the relevant consultation procedures and set up a framework that will take on board the HKEx. Later on, the Secretary for Financial Services and the Treasury will elaborate on this arrangement in his address on the Second Reading of the Bill.

Madam President, I believe you are also aware of my views on the issue of "having two authorities governing the same business" as prescribed in the SFO, therefore, I hope that there will also be greater transparency in matters of regulation by the SFC and the HKMA. Concerning the memorandum of understanding in the SFO involving the SFC and the HKMA, I have already requested the authorities to disclose the memorandum of understanding and obtained their consent. For the sake of consistency, I have also requested the authorities to disclose the memorandum of understanding to be signed by the SFC and the HKMA on this occasion, as well as reporting to the relevant Panel of the Legislative Council the important issues on clearing and settlement at an appropriate time in future.

Madam President, in the course of scrutinizing the Bill, we also found that there are some draconian provisions. For example, clauses 5(1) and 5(2) provide that every person who is a system operator or settlement institution of a designated system is required to inform the Monetary Authority (MA) in writing of his particulars within three days of the designation, and of the change to the particulars in writing within three days of the change taking effect respectively. In the course of scrutiny, as there were views that the time limit of three days was far too short, the authorities was amenable to these views and extended the time limit from three days to six days. In this connection, I hope the authorities concerned will also note that there are presently quite a number of similar provisions in the SFO that require stockbrokers to notify the SFC within one day, which is even shorter than the time limit of three days. If three days is too short, then the time limit of one day is atrocious and outrageous. I urge the Government to introduce amendments to the provisions of the SFO as soon as possible to extend the time limit to at least six days, so that the provisions can accord with the principles of fairness and impartiality.

Meanwhile, when scrutinizing clause 39(1), I also found that the penalties meted out to a person who, without reasonable excuse, contravenes clause 5(1) or 5(2), that is, as I have just said, fails to inform the MA in writing of a change within six days of the change taking effect, are excessively harsh. The Administration will also move a Committee stage amendment to delete the penalty of imprisonment. In this connection, I also urge the authorities to conduct a full-scale review of the many provisions specifying harsh criminal penalties in the SFO, so that the provisions can be made more in keeping with the principles of fairness and impartiality.

Madam President, I so submit.

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

(No Member indicated a wish to speak)

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY:

Madam President, first of all, I would like to thank those Members who have just spoken on this Bill. I would also like to take this opportunity to express my heartfelt gratitude to the Honourable SIN Chung-kai, Chairman of the Bills Committee, and all other Bills Committee members for contributing time and efforts to the scrutiny of this Bill in the past several months. They have offered invaluable advice for refining the Bill to help clarify our policy intent of some provisions, and make appropriate administrative arrangements for the smooth and effective operation of the future statutory oversight regime.

A robust financial market infrastructure is essential to maintaining Hong Kong's position as an international financial centre. The Hong Kong Monetary Authority (HKMA) has been making much effort to promote the development of our financial infrastructure, with particular emphasis on the clearing and settlement systems for funds and securities. It fosters the development of local and regional clearing and settlement systems to accommodate market needs on the one hand, and sets up an oversight regime for important clearing and settlement systems to ensure their safe and efficient operation on the other.

At present, under the Securities and Futures Ordinance (SFO), a clearing and settlement system operated by a recognized clearing house is subject to the

regulation of the Securities and Futures Commission (SFC). There are however no express legal provisions for the oversight of other important clearing and settlement systems in Hong Kong, and for the finality of settlements effected through clearing and settlement systems outside the purview of the SFO to protect settled transactions from insolvency and other laws of Hong Kong and overseas. The International Monetary Fund, in its assessment of our financial system last year, recommended that we should provide statutory backing for the oversight of important clearing and settlement systems, and legislate to ensure that such systems enjoy finality of settlements.

It was for achieving these two objectives that the Administration introduced the Clearing and Settlement Systems Bill into the Legislative Council last year. The Bill would also facilitate the admission of the Hong Kong Dollar into the Continuous Linked Settlement System (CLS). The CLS is a global clearing and settlement system for cross-border foreign exchange transactions. Eleven major international currencies, including the US Dollar, Euro, Sterling and Yen, have already been admitted into the system. Our aim is to have the Hong Kong Dollar admitted into the CLS within this year to enhance the efficiency in clearing and settling cross-border foreign exchange transactions in Hong Kong dollars, thus strengthening our position as an international financial centre. In line with its standing policy, the CLS requires, as a precondition of entry, that the laws of Hong Kong provide for settlement finality.

According to the Bill, the Monetary Authority may designate for the purposes of the Bill any clearing and settlement system which is in operation in Hong Kong or accepts for clearing or settlement transfer orders denominated in Hong Kong dollars, and if the system's proper functioning is material to the monetary or financial stability of Hong Kong or to the functioning of Hong Kong as an international financial centre. Among the important clearing and settlement systems in Hong Kong, some, such as the Hong Kong Dollar Clearing House Automated Transfer System (HKD CHATS) and the Central Moneymarkets Unit (CMU), are owned or operated by the HKMA. The Bills Committee has expressed concerns about whether there would be a role conflict when the HKMA conducts oversight of such systems.

As a matter of fact, the HKMA has proposed to strengthen its institutional arrangements in this regard. By redeployment of existing resources, a new Policy and Oversight Division has been set up to formulate payment systems

oversight policy, develop oversight guidelines and perform the day-to-day oversight functions. This new division operates independently from the existing division responsible for the operation of the HKD CHATS and the CMU. The operational procedures of the new division are also subject to compliance checks by the HKMA's Internal Audit Division. In other words, in overseeing designated clearing and settlement systems, the HKMA will ensure that appropriate measures are taken to segregate the oversight and operation divisions. This is in line with the practice in other advanced economies. Furthermore, the HKMA's statutory oversight powers will be subject to checks and balances by the appeals mechanism under the Bill as well as by market participants.

Notwithstanding the arrangements and the various checks and balances just mentioned, to further avoid any perceived or potential conflict of the HKMA's roles as an overseer as well as a system operator, we have accepted the Bills Committee's suggestion to set up an independent process review committee. The committee is to review whether the HKMA, in overseeing systems which it owns or operates, has adopted the same standards applied to other systems and has adhered to the due process in enforcing compliance with such standards. The chairman and members of the committee will be independent persons to be appointed by the Chief Executive. The committee, after considering the abovementioned issues, has to prepare reports to the Financial Secretary, who shall then cause the reports to be published in the interests of transparency and accountability. We believe that by establishing this process review committee, the market will be even more confident in the new oversight regime under this Bill.

I mentioned at the beginning that some clearing and settlement systems are currently under the supervision of the SFC. To avoid regulatory overlap between the HKMA and the SFC, the Bill stipulates that the Monetary Authority's power to designate does not cover a recognized clearing house under the SFO or a clearing and settlement system which is operated by a recognized clearing house under the SFO. However, the Hong Kong Exchanges and Clearing Limited (HKEx) notes that the Hong Kong Securities Clearing Company Limited (HKSCC), its wholly-owned subsidiary, is a recognized clearing house under the SFO and also a participant in the HKMA's CMU. The HKEx is concerned about the possibility that the regulatory requirements imposed on the HKSCC by the SFC under the SFO and by the HKMA under the Bill might be incompatible, thus putting the HKSCC in a difficult position.

We have explained to the HKEx that the oversight regime proposed under the Bill would not result in regulatory overlap between the HKMA and the SFC. This is because the regulatory requirements in this Bill are primarily imposed on a system operator or settlement institution rather than a participant in a designated system. At present, we also do not envisage any specific scenario in which such regulatory overlap will arise. Notwithstanding this, we appreciate that there should be a reliable arrangement amongst the concerned parties to minimize any possible regulatory overlap and avoid the introduction of any incompatible regulatory requirement which makes it impossible for the HKSCC to comply with. In this regard, the HKMA has undertaken to consult the SFC, as appropriate, on rules to be promulgated under the Bill for governing designated systems in which the HKSCC is a participant. The SFC also agrees to consult the HKMA in similar circumstances. The HKMA and the SFC agree to enter into a memorandum of understanding to set out the relevant consultation procedures. In addition, the HKEx's Risk Management Committee, membership of which includes senior executives from the HKMA and the SFC, would be an appropriate forum to discuss these issues where necessary. All these arrangements would have addressed the HKEx's concern and we are glad to note that the HKEx welcomes the arrangements.

The Bills Committee has also deliberated on the extra-territorial application of the Bill. Taking into account the Bills Committee's advice, we have proposed to add new provisions to set out such application clearly. In general, the Bill has extra-territorial application only to the extent that the Monetary Authority may for the purposes of the Bill designate a clearing and settlement system if it accepts for clearing or settlement transfer orders denominated in Hong Kong dollars and meets the criteria for designation, no matter whether the system is in operation in Hong Kong or overseas. The general provisions under the Bill apply to systems both in Hong Kong and overseas as long as they are eligible for designation or are designated. Such extra-territorial application is required for the HKMA to ensure that the safety and efficiency of designated systems, regardless of where they operate, are up to the required standards. This provides a level playing field between local and overseas systems. It also avoids systems moving Hong Kong dollar-denominated clearing and settlement activities outside Hong Kong to get out of the HKMA's oversight. Certainly, for overseeing overseas systems, the HKMA would need to co-operate with the relevant home supervisors.

Madam President, besides the several policy issues I just referred to, the Bills Committee has also gone through all the relevant provisions of the Bill and the stakeholders' comments with us in detail. I will be moving a number of Committee stage amendments shortly on the basis of the consensus reached on the drafting of the Bill. As the enactment of this Bill will facilitate the development of the financial market infrastructure and strengthen the position of Hong Kong as an international financial centre, I hope all Members would support the Bill and my Committee stage amendments to be moved.

Lastly, I wish to thank all those parties who have provided comments on the Bill, and the Legislative Council Secretariat for the professional advice and efficient support rendered to us.

Thank you, Madam President.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clearing and Settlement Systems Bill.

Council went into Committee.

Committee Stage

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

CLEARING AND SETTLEMENT SYSTEMS BILL

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

CLERK (in Cantonese): Clauses 1, 4, 6, 7, 11, 12, 17, 19, 30, 35, 36, 38, 41, 43, 45, 55 and 56.

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 2, 3 and 5, heading before clause 8, clauses 8, 9, 10, 13 to 16, 18, 20 to 29, 31 to 34, 37, 39, 40, 42, 44 and 46 to 54.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY: Madam Chairman, I move the deletion of clause 31 and amendments to other clauses and the heading read out just now. Details of the amendments have been set out in the documents distributed to Members. I would like to give a brief account of the key amendments proposed.

The following amendments relate mainly to the proposed designation and oversight regime which include relevant offence provisions and their appeals mechanism. The Bills Committee notes that under clause 39, a person who without reasonable excuse contravenes clause 5(2), that is, a system operator or settlement institution who fails to inform the Monetary Authority after change of his particulars within the specific time limit commits an offence. The convicted offender is liable to a fine of \$400,000 and to imprisonment for two years. The Bills Committee considered it too harsh to impose imprisonment for this offence. We appreciate the Bills Committee's concern and is moving an amendment to clause 39 to remove the imprisonment penalty for contravention of clause 5(2).

On clause 37, we agree with the Bills Committee's suggestion to move an amendment to provide that the lodging of an appeal to the Court of Appeal does not by itself operate as a stay of execution of a determination of the Clearing and Settlement Systems Appeals Tribunal, unless the Court of Appeal otherwise orders.

Clause 46 stipulates that where an officer of a corporation aided or caused the corporation to commit an offence under special circumstances, the officer bears personal liability. To alleviate the concerns of some relevant parties, we propose to amend clause 46 to improve its clarity, and add the definition of "officer" in clause 2, which is similar to the definition of the same term in the Securities and Futures Ordinance (SFO).

Amendments to proposed clause 49 are to allow the disclosure of information by the Monetary Authority to the process review committee to facilitate the committee's reviews.

Under clause 53, the Monetary Authority may issue guidelines setting out the manner in which he proposes to exercise any power conferred to or duty imposed on him, or to perform any function assigned to him under the Bill. We concur with the Bills Committee's comment to amend this clause such that the Monetary Authority is required to consult the system operator and settlement institution of designated systems before issuing the guidelines. We volunteer a similar amendment to clause 48, so that the same consultation requirement applies to the making of regulations by the Monetary Authority.

According to clause 54, systems specified in Schedule 2 to the Bill, the Hong Kong Dollar Clearing House Automated Transfer System and the Central

Moneymarkets Unit operated by the Monetary Authority are deemed to have been designated, and a certificate of finality is deemed to have been issued for each of these systems.

In view of the Bills Committee's view that it may not be appropriate to exempt this system from the statutory oversight requirement under Part 2 of the Bill, we propose to delete subclause 3 of clause 54, such that systems operated by the Monetary Authority are subject to the same requirement.

The following amendments relate mainly to provisions in respect of settlement finality. If a designated system effects ultimate settlement of a transfer order and is in compliance with the requirements in the Bill which relate mainly to the safety and efficiency of the system, then pursuant to clause 14, the Monetary Authority may issue a certificate of finality to the system. However, the certificate of finality can be suspended or revoked by the Monetary Authority under clause 15 if the system fails to meet the conditions above, or if the system has contravened certain requirements under the Bill. We accept the Bills Committee's suggestion to introduce amendments to clauses 14 and 15 to the effect that the Monetary Authority should publish in the Gazette notice of the issuance, suspension and revocation of a certificate of finality. This helps to enhance the transparency of the Monetary Authority's decisions. We also agree with the Bills Committee to amend the two clauses such that a certificate of finality and a notice of suspension or revocation should specify the date and time at which they take effect.

Clause 22 provides that the finality provisions in Division 3 of Part 3 of the Bill do not apply in relation to transfer orders which are entered into a designated system after a specific point in time. We propose amendments to improve the clarity of this clause in response to comments from the Continuous Linked Settlement System (CLS). The Hong Kong Society of Accountants is concerned that the expression at the beginning of clause 25(1) may in some way limit or restrict rights to challenge underlying transactions in respect of transfer orders. To address the Society's concern, and with no objection from the Bills Committee and the CLS, we propose an amendment to delete the expression in question.

Adopting the Bills Committee's comment, we also propose to amend clauses 26 and 27. The amendments seek to provide that a relevant insolvency

office-holder's right to recover gain from a transaction at undervalue between the two participants and to recover a transfer between two participants giving unfair preference are exercisable in the case of the making of a directors' voluntary winding up statement, as in the case of a resolution for voluntary winding up being made. We accordingly propose similar amendments to clauses 21, 22 and 23. In addition, we are moving an amendment to clause 2, to add in the definitions of "directors' voluntary winding up statement" and "resolution for voluntary winding up" for clarity of the relevant provisions.

I hope Members would support the Committee stage amendments. Thank you, Madam Chairman.

Proposed amendments

Clause 2 (see Annex V)

Clause 3 (see Annex V)

Clause 5 (see Annex V)

Heading before clause 8 (see Annex V)

Clause 8 (see Annex V)

Clause 9 (see Annex V)

Clause 10 (see Annex V)

Clause 13 (see Annex V)

Clause 14 (see Annex V)

Clause 15 (see Annex V)

Clause 16 (see Annex V)

Clause 18 (see Annex V)

Clause 20 (see Annex V)

Clause 21 (see Annex V)

Clause 22 (see Annex V)

Clause 23 (see Annex V)

Clause 24 (see Annex V)

Clause 25 (see Annex V)

Clause 26 (see Annex V)

Clause 27 (see Annex V)

Clause 28 (see Annex V)

Clause 29 (see Annex V)

Clause 31 (see Annex V)

Clause 32 (see Annex V)

Clause 33 (see Annex V)

Clause 34 (see Annex V)

Clause 37 (see Annex V)

Clause 39 (see Annex V)

Clause 40 (see Annex V)

Clause 42 (see Annex V)

Clause 44 (see Annex V)

Clause 46 (see Annex V)

Clause 47 (see Annex V)

Clause 48 (see Annex V)

Clause 49 (see Annex V)

Clause 50 (see Annex V)

Clause 51 (see Annex V)

Clause 52 (see Annex V)

Clause 53 (see Annex V)

Clause 54 (see Annex V)

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 Financial Services and the Treasury be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): As the amendment to clause 31, which deals with deletion, has been passed, clause 31 is deleted from the Bill.

CLERK (in Cantonese): Clauses 2, 3 and 5, heading before clause 8 and clauses 8, 9, 10, 13 to 16, 18, 20 to 29, 32, 33, 34, 37, 39, 40, 42, 44 and 46 to 54 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese):	New clause 2A	Application
	New clause 27A	Duty to report on completion of default proceedings
	New clause 57	Notices, etc. as subsidiary legislation
	New heading before new clause 58	Consequential Amendments Electronic Transactions Ordinance
	New clause 58	Proceedings in relation to which sections 5, 5A, 6, 7 and 8 of this Ordinance do not apply under section 13(1) of this Ordinance.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY:

Madam Chairman, I move that the new heading and new clauses read out just now be read the Second time. These new clauses have been set out in the documents distributed to Members. I explained the extra-territorial application of the Bill during the resumption of Second Reading debate. The new clause 2A seeks to state clearly the application of the Bill in response to the Bills Committee's suggestion. The Bills Committee notes that we should make reference to the Security and Futures Ordinance and introduce the provision requiring a system operator or settlement institution of a designated system to make a report on completion of default proceedings. We have, therefore, proposed the addition of the new clause 27A. The new clause 57 is introduced as suggested by the Bills Committee to stipulate clearly which notices published in the Gazette under the Bill are subsidiary legislation. As regards the new clause 58, it is proposed to make clear that the Clearing and Settlement Systems Appeals Tribunal is exempted from the application of sections 5 to 8 of the Electronic Transactions Ordinance. There was a similar consequential amendment under the Deposit Protection Scheme Bill passed by the Legislative Council on 5 May this year in relation to the Deposit Protection Appeals Tribunal. Thank you, Madam Chairman.

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

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clauses 2A, 27A and 57, new heading before new clause 58 and new clause 58.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY:
Madam Chairman, I move that the new heading and new clauses read out just now be added to the Bill.

Proposed additions

New clause 2A (see Annex V)

New clause 27A (see Annex V)

New clause 57 (see Annex V)

New heading before new clause 58 (see Annex V)

New clause 58 (see Annex V)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the new heading and new clauses read out just now be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedule 2.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedule 1.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY:
Madam Chairman, I move an amendment to Schedule 1. This Schedule contains provisions relating to the Clearing and Settlement Systems Appeals Tribunal, such as the tenure of its Chairman and members as well as sittings. I move the amendment to the heading of Schedule 1 for better clarity. Thank you, Madam Chairman.

Proposed amendment

Schedule 1 (see Annex V)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedule 1 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bill: Third Reading.

CLEARING AND SETTLEMENT SYSTEMS BILL**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY:**

Madam President, the

Clearing and Settlement Systems Bill

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

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

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clearing and Settlement Systems Bill.

SUSPENSION OF MEETING

PRESIDENT (in Cantonese): I now suspend the meeting until nine o'clock tomorrow morning.

Suspended accordingly at four minutes to One o'clock.

Annex II

WASTE DISPOSAL (AMENDMENT) (NO. 2) BILL 2003

COMMITTEE STAGE

Amendments to be moved by the Secretary for the Environment,
Transport and Works

<u>Clause</u>	<u>Amendment Proposed</u>
3	In the proposed section 16A(4), by deleting "took all steps reasonably open to him to ensure that an offence would not be committed" and substituting "had no reason to believe that an offence would be committed".
4	In the proposed section 18A(4), by adding "(a)" after "subsection (1)".
5	In the proposed section 23EA, by adding after subsection (4) - "(4A) Where the Director enters any domestic premises in accordance with a warrant issued under subsection (4), he shall, if required, produce that warrant."
10	By deleting the proposed section 42 and substituting - "42. Recovery of charges and other sums by the Director as civil debts The following is recoverable by the Director as a civil debt due to the Government - (a) any charge or surcharge payable under this Ordinance;

ClauseAmendment Proposed

- (b) any amount payable pursuant to an order made under section 18A(1)(b) or 23EA(2).".

Annex III**CONSTRUCTION WORKERS REGISTRATION BILL****COMMITTEE STAGE**Amendments to be moved by the Secretary for the Environment,
Transport and Works

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	By deleting "certain kinds of construction work" and substituting "construction operations".
2(1)	<p>(a) In the definition of "authorized officer", by deleting "60(1)" and substituting "17A(1)".</p> <p>(b) By deleting the definition of "Complaints Committee".</p> <p>(c) In the definition of "construction site" -</p> <p>(i) by deleting "49 and 60(2)(a) and (d)" and substituting "17B and 17C";</p> <p>(ii) in the Chinese text -</p> <p>(A) by deleting " 建造工程或 " wherever it appears;</p> <p>(B) in paragraph (a), by deleting "'建造工程"、".</p> <p>(d) In the definition of "construction work" -</p> <p>(i) by deleting "建造工程、";</p> <p>(ii) by deleting ", except in relation to Part 4";</p> <p>(iii) in the Chinese text, in paragraph (a)(ii), by deleting "解" and substituting "除".</p>

ClauseAmendment Proposed

- (e) By deleting the definition of "levy inspector".
- (f) In the definition of "registered construction worker", by deleting paragraph (c).
- (g) In the definitions of "registered general worker", "registered semi-skilled worker", "registered semi-skilled worker (provisional)", "registered skilled worker" and "registered skilled worker (provisional)", by deleting "currently".
- (h) By deleting the definition of "registered skilled worker (transitional)".
- (i) By deleting the definition of "sub-contractor" and substituting -

""sub-contractor" (分包商), in relation to a principal contractor, means any person who enters into a contract with another person (whether or not the principal contractor) to undertake all or any part of the construction work that the principal contractor has undertaken;"

- (j) In the definition of "總承建商", by deleting "造工程" and substituting "造工作".
- (k) By adding -

""domestic premises" (住用處所) means premises used or intended to be used solely or principally for residential purposes and constituting a separate household unit;"

<u>Clause</u>	<u>Amendment Proposed</u>
3	<p>(a) In subclause (2) -</p> <p>(i) in paragraph (a), by adding "or" at the end;</p> <p>(ii) in paragraph (b), by deleting "; or" and substituting a full stop;</p> <p>(iii) by deleting paragraph (c).</p> <p>(b) By deleting subclause (3)(c).</p>
6	<p>(a) In subclause (3), by deleting "set out in subsection (8) is true" and substituting "exists".</p> <p>(b) In subclause (4), by deleting "次承建" where it twice appears and substituting "分包".</p> <p>(c) In subclause (5), by deleting "set out in subsection (8)" and substituting "exists".</p> <p>(d) In subclause (6) -</p> <p>(i) in paragraph (a), by deleting "set out in subsection (8)" and substituting "exists";</p> <p>(ii) by deleting "影響" and substituting "損害".</p> <p>(e) In subclause (7), by deleting "has" where it twice appears and substituting "had".</p> <p>(f) In subclause (8) -</p> <p>(i) by deleting "The relevant matter referred to in subsections (3), (5) and (6)(a) is" and substituting "For the purposes of subsections (3), (5) and (6)(a), the relevant matter exists if";</p>

ClauseAmendment Proposed

- (ii) in paragraph (a) -
 - (A) by adding "an offence in relation to" before "a contravention";
 - (B) by deleting "that";
- (iii) in paragraph (b) -
 - (A) by adding "an offence in relation to" before "a contravention";
 - (B) by deleting "that" where it first appears;
 - (C) by deleting "involves" and substituting "involved";
 - (D) in subparagraph (ii), by adding "or" at the end;
 - (E) by deleting subparagraph (iii);
- (iv) in paragraph (c) -
 - (A) by adding "an offence in relation to" before "a contravention";
 - (B) by deleting "that" where it first appears;
 - (C) by deleting "involves" and substituting "involved";
 - (D) by deleting subparagraph (iii);
- (v) in paragraph (d) -
 - (A) by adding "an offence in relation to" before "a contravention";

<u>Clause</u>	<u>Amendment Proposed</u>
	(B) by deleting "that" where it first appears;
	(C) by deleting "involves" and substituting "involved".
7(3)(b)	(a) By deleting "17" and substituting "18".
	(b) By adding - "(iiia) 3 persons, each of whom is, in the opinion of the Secretary, a person from a professional body connected with the construction industry in Hong Kong;".
	(c) In subparagraph (v) - (i) by deleting "2" and substituting "3"; (ii) by deleting "association representing" and substituting "union, registered under the Trade Unions Ordinance (Cap. 332), that represents".
	(d) In subparagraph (vi), by deleting "developer" and substituting "developers association".
	(e) In subparagraph (vii), by deleting "6" and substituting "3".
8	(a) By deleting subclause (1)(c).
	(b) In subclause (2) - (i) in paragraph (e), by adding "and" at the end; (ii) by deleting paragraph (f).

ClauseAmendment Proposed

9(2) By deleting "or (c) or (2)(a), 11(5), 49, 50" and substituting "or (2)(a), 11(5)".

12 (a) In subclause (2)(b) -

(i) by deleting "12" and substituting "13";

(ii) by deleting subparagraphs (ii), (iii), (iv), (v), (vi), (vii) and (viii) and substituting -

"(ii) 2 persons, each of whom is, in the opinion of the Authority, a person from a training institute in the construction industry in Hong Kong;

(iii) 1 person who is, in the opinion of the Authority, a person from a professional body connected with the construction industry in Hong Kong;

(iv) 2 persons, each of whom is, in the opinion of the Authority, a person from a contractor in the construction industry in Hong Kong;

(v) 2 persons, each of whom is, in the opinion of the Authority, a person from a trade union, registered under the Trade Unions Ordinance (Cap. 332), that represents workers in the construction industry in Hong Kong; and

(vi) 1 person who is, in the opinion of the Authority, a person from the major employers in the construction industry in Hong Kong."

ClauseAmendment Proposed

- (b) By deleting subclause (3)(a).
- 14 By deleting the clause.
- 15 By deleting the clause.
- 16 (a) By deleting subclause (2)(e), (f), (g) and (h) and substituting -
- "(e) 2 persons, each of whom is, in the opinion of the Authority, a person from a contractor in the construction industry in Hong Kong; and
- (f) 2 persons, each of whom is, in the opinion of the Authority, a person from a trade union, registered under the Trade Unions Ordinance (Cap. 332), that represents workers in the construction industry in Hong Kong."
- (b) By deleting subclause (3)(b).
- New By adding -

"PART 3A

AUTHORIZED OFFICERS

17A. Appointment of authorized officers

(1) The Authority may, subject to the approval of the Secretary, appoint in writing a person to be an authorized officer for the purposes of this Ordinance (other than Part 4).

ClauseAmendment Proposed

(2) The Authority shall issue to each authorized officer a certificate of appointment that -

- (a) gives the name of the authorized officer to whom it is issued; and
- (b) states that it is issued by or on behalf of the Authority under this Ordinance.

(3) When performing or exercising a function or power under this Ordinance, an authorized officer shall, if requested to do so, produce for inspection his certificate of appointment.

(4) An authorized officer may perform or exercise any of his functions or powers under this Ordinance with the assistance of such police officers or other persons, or both, as the authorized officer thinks fit.

**17B. Powers of authorized officers
to enter construction site**

(1) Where a warrant has been issued under subsection (2) in respect of a construction site, or where subsection (4) applies in respect of a construction site, an authorized officer may -

- (a) at any time, using such force as may be necessary, enter and search the site;
- (b) remove anything that obstructs the entry and search;

ClauseAmendment Proposed

- (c) detain any person found on the site, during such period as is reasonably required to permit the search to be carried out, where that person might prejudice the purpose of the search if he were not so detained; and
- (d) inspect, seize, detain and remove from the site anything that is or contains, or appears to the officer to be or to contain, evidence of the commission of an offence under this Ordinance.

(2) A magistrate may issue a warrant authorizing an authorized officer to enter and search a construction site if the magistrate is satisfied by information on oath that there are reasonable grounds to suspect that -

- (a) an offence under this Ordinance is being or has been committed on the site; or
- (b) there is on the site anything that is or contains evidence of the commission of an offence under this Ordinance.

(3) A warrant issued under subsection (2) continues in force until -

- (a) the expiration of 1 month after the date of its issue; or
- (b) the purpose for which entry is required has been fulfilled,

whichever first occurs.

ClauseAmendment Proposed

(4) An authorized officer may, without a warrant issued under subsection (2), exercise any of the powers referred to in subsection (1) in respect of a construction site (other than domestic premises) if -

(a) he reasonably suspects that -

(i) an offence under this Ordinance is being or has been committed on the site; or

(ii) there is on the site anything that is or contains evidence of the commission of an offence under this Ordinance; and

(b) it is not practicable to obtain such a warrant in respect of the site before exercising those powers.

(5) For the purposes of ascertaining whether the provisions of this Ordinance have been or are being complied with, an authorized officer may enter a construction site at all reasonable times.

(6) This section does not prejudice any power of entry and search conferred on police officers under any other law.

17C. Other powers of authorized officers

(1) An authorized officer who has entered a construction site under section 17B(1) or (5) may -

(a) inspect and examine the site;

ClauseAmendment Proposed

- (b) inspect and examine any plant, equipment or substance found on the site;
- (c) take photographs of the site or of any plant, equipment or substance found on the site;
- (d) require any person found on the site -
 - (i) to state whether he is a registered construction worker; and
 - (ii) if the person states that he is a registered construction worker, to produce his registration card;
- (e) in relation to any person found on the site whom the officer reasonably suspects of committing, or having committed, an offence under this Ordinance -
 - (i) on informing the person of the person's act or omission that may constitute the offence, require the person -
 - (A) to give to the officer the person's name, address and telephone number and such other personal particulars as the officer may reasonably require; and

ClauseAmendment Proposed

- (B) to produce to the officer for inspection the person's identity card issued under the Registration of Persons Ordinance (Cap. 177) or the person's other documentary evidence of identity; and
 - (ii) detain the person for a reasonable period while the officer inquires about the suspected commission of the offence;
- (f) subject to subsection (2), require any person found on the site to provide information that may enable the officer to identify -
 - (i) the principal contractor for the site; or
 - (ii) the employer of any person who personally carries out on the site construction work;
- (g) examine the records referred to in section 59(7)(a) and make copies of all or any part of those records; and

ClauseAmendment Proposed

- (h) require the principal contractor for the site, or any person who is apparently an employee or agent of that contractor, to provide the officer with such assistance and facilities as are reasonably necessary to enable the officer to perform or exercise his functions or powers.

(2) An authorized officer shall not exercise the power under subsection (1)(f) unless he reasonably believes that the person has the information.

(3) An authorized officer may, in relation to anything that the officer seizes, detains or removes from a construction site under section 17B(1)(d) -

- (a) retain the thing for such period as may be reasonably necessary; and
- (b) if he reasonably believes that the thing is evidence of the commission of an offence under this Ordinance, retain the thing until proceedings for the offence have been heard and finally determined.

(4) An authorized officer may -

- (a) in order to make copies of records referred to in section 59(7)(a), remove the records from the construction site and retain them for such period as may be reasonably necessary; and

ClauseAmendment Proposed

(b) if he reasonably believes that the records are evidence of the commission of an offence under this Ordinance, remove the records from the construction site and retain them until proceedings for the offence have been heard and finally determined."

18

(a) In the heading, by deleting "**and application**".

(b) In subclause (1) -

(i) by deleting the definition of "construction works" and substituting -

"construction operations" (建造工程), subject to section 18C, has the meaning assigned to it in Schedule 1 to the Industrial Training (Construction Industry) Ordinance (Cap. 317);";

(ii) by deleting the definition of "value" and substituting -

"value" (價值), in relation to construction operations, has the meaning assigned to it in section 18A;";

(iii) in the definition of "獲授權人", by deleting "義。" and substituting "義；";

(iv) by adding -

"construction contract" (建造合約) has the meaning assigned to it in section 2(1) of the Industrial Training (Construction Industry) Ordinance (Cap. 317);

ClauseAmendment Proposed

"contract of employment" (僱傭合約) has the meaning assigned to it in section 2(1) of the Employment Ordinance (Cap. 57);

"levy inspector" (徵款督察) means a person who is appointed under section 30A;

"term contract" (固定期合約) has the meaning assigned to it in section 2(1) of the Industrial Training (Construction Industry) Ordinance (Cap. 317);

"total value" (總價值), in relation to construction operations, has the meaning assigned to it in section 18B;

"works order" (施工通知) has the meaning assigned to it in section 2(1) of the Industrial Training (Construction Industry) Ordinance (Cap. 317).".

(c) By deleting subclause (2).

(d) In subclause (3) -

(i) by deleting "construction works" and substituting "construction operations";

(ii) by deleting "is deemed" and substituting "are deemed".

(e) By adding -

"(4) For the purposes of this Part -

ClauseAmendment Proposed

- (a) where a person carries out any construction operations for any other person under a contract of employment, the construction operations shall be regarded as carried out by -
 - (i) subject to subparagraph (ii), that other person; or
 - (ii) where the first-mentioned person is a contractor by virtue of paragraph (a)(i) of the definition of "contractor" in section 2(1) of the Industrial Training (Construction Industry) Ordinance (Cap. 317), the first-mentioned person;
- (b) where a person carries out any construction operations for himself without arrangement (except under a contract of employment) for the carrying out of such operations by any other person, the first-mentioned person shall, apart from being the person who carries out the construction operations, also be regarded as the person for whom such operations are carried out,

and the definitions of "contractor" and "employer" and the other provisions of this Part shall be construed accordingly.

(5) For the purposes of this Part, a person shall be regarded as undertaking or carrying out construction operations if -

ClauseAmendment Proposed

- (a) he manages, or arranges for, the carrying out of the construction operations by any other person for the employer concerned, whether by way of sub-contracting or otherwise; or
- (b) he provides his own labour or that of any other person for the carrying out of the construction operations."

New

By adding -

"18A. Value of construction operations

(1) For the purposes of this Part, "value" (價值), in relation to construction operations, means -

- (a) where the construction operations are carried out under a construction contract, the consideration attributable to such operations, as stated in, or ascertainable by reference to, the contract; or
- (b) where the construction operations are not carried out under a construction contract, the reasonable consideration to be expected on the open market in respect of the carrying out of such operations.

ClauseAmendment Proposed

(2) Notwithstanding subsection (1)(a), if in a particular case the consideration attributable to the construction operations concerned as determined in accordance with that subsection is below the reasonable consideration to be expected on the open market in respect of the carrying out of such operations, that subsection shall be deemed to contain a reference to the reasonable consideration described in this subsection instead of the consideration described in that subsection.

(3) For the purposes of subsections (1)(b) and (2), the Authority may, when ascertaining the reasonable consideration as referred to in those subsections in respect of the carrying out of any construction operations, have regard to all or any of the following matters -

- (a) the cost or value of materials used in the construction operations;
- (b) the cost or value of time, work and labour involved in the construction operations;
- (c) the equipment used in the construction operations;
- (d) such overhead costs incurred in relation to the construction operations as the Authority considers reasonable;
- (e) the reasonable profit to be expected on the open market in respect of the carrying out of the construction operations;
- (f) any other factors that the Authority considers appropriate.

ClauseAmendment Proposed**18B. Total value of construction operations**

For the purposes of this Part, "total value" (總價值), in relation to construction operations, means -

(a) where the construction operations are carried out under a construction contract -

(i) in the case the construction contract is a term contract, the aggregate of the respective values of all construction operations carried out as required by works orders issued under the contract;

(ii) in the case the construction operations are or form part of any construction operations that are carried out in stages, the aggregate of the respective values of all stages of the operations so carried out; or

(iii) in any other case, the value of the construction operations; or

(b) where the construction operations are not carried out under a construction contract -

ClauseAmendment Proposed

- (i) in the case the construction operations are or form part of any construction operations that are carried out in stages, the aggregate of the respective values of all stages of the operations so carried out; or
- (ii) in any other case, the value of the construction operations.

18C. Application to construction operations

(1) This Part shall not apply to any construction operations -

- (a) the tender for which was submitted before the commencement of this Part; or
- (b) that began before that commencement.

(2) This Part shall not apply to any construction operations -

- (a) which are carried out for a person who occupies any domestic premises or part of any domestic premises; and
- (b) the sole or principal purpose of which is to decorate, alter, repair, maintain or renovate the premises or such part of such premises.

ClauseAmendment Proposed

(3) This Part shall not apply to any construction operations, or any type or description of construction operations, which are or is excluded from the application of this Part by the Chief Executive in Council by order published in the Gazette.

(4) Without limiting the generality of subsection (3), an order made under that subsection may specify the circumstances under which or the purposes for which any construction operations, or any type or description of construction operations, referred to in the order are or is to be excluded from the application of this Part.

(5) In this section, a person shall be regarded as a person who occupies a domestic premises if he intends to occupy the premises."

19

By deleting the clause and substituting -

"19. Imposition of levy

(1) A levy at the prescribed rate shall be imposed on the value of all construction operations undertaken or carried out in Hong Kong.

(2) Notwithstanding subsection (1), construction operations the total value of which does not exceed the prescribed amount shall not be liable to the levy.

(3) Subject to section 24(8A), the levy shall be payable in accordance with this Part by every contractor who carries out the construction operations.

ClauseAmendment Proposed

(4) The Secretary may by notice published in the Gazette -

- (a) prescribe the rate for the purposes of subsection (1); and
- (b) prescribe the amount for the purposes of subsection (2).

(5) Any rate prescribed under subsection (4)(a) -

- (a) shall not come into effect before the expiration of 28 days after the last day of the period within which a resolution providing for the amendment of the notice may be passed in accordance with section 34 of the Interpretation and General Clauses Ordinance (Cap. 1); and
- (b) shall not apply to any construction operations if, before the date on which the rate comes into effect under paragraph (a) -
 - (i) the tender for the construction operations has been submitted to the employer concerned;
 - (ii) no tender for the construction operations has been submitted to the employer concerned, but a construction contract in respect of the construction operations has been entered into; or

ClauseAmendment Proposed

(iii) no tender for the construction operations has been submitted to the employer concerned and no construction contract in respect of the construction operations has been entered into, but the construction operations have begun."

20 By deleting the clause.

21 By deleting the clause.

22 (a) In the heading, by deleting "**works**" and substituting "**operations**".

(b) In subclause (1) -

(i) by deleting "any construction works" and substituting "any construction operations";

(ii) in paragraph (a), by deleting "undertaking the construction works" and substituting "in respect of the construction operations";

(iii) in paragraph (b), by deleting "works" and substituting "operations";

(iv) by deleting "such a contractor undertaking the construction works or such an" and substituting "the contractor in respect of the construction operations or the";

ClauseAmendment Proposed

(v) by deleting "works, as" and substituting "operations, as".

(c) By deleting subclause (2) and substituting -

"(2) Except in the case of a term contract, subsection (1) shall not apply in respect of any construction operations if it is reasonably estimated that the total value of such operations does not exceed the amount prescribed under section 19(4)(b).".

(d) In subclause (3), by deleting "value of the construction works" and substituting "total value of the construction operations".

(e) By deleting subclause (4) and substituting -

"(4) A contractor or authorized person complies with subsection (1) if he -

(a) had given a notice to CITA under section 24 of the Industrial Training (Construction Industry) Ordinance (Cap. 317) in respect of the construction operations; and

(b) sent a copy of that notice to the Authority within the period of 14 days, or such further time as the Authority may have allowed, within which he shall give notice under that subsection.".

23

(a) In the heading, by deleting "**works, etc.**" and substituting "**construction operations**".

(b) In subclause (1) -

ClauseAmendment Proposed

- (i) by deleting "Where" and substituting "Subject to subsection (1A), where";
 - (ii) by deleting "works" wherever it appears and substituting "operations";
 - (iii) by deleting "being".
- (c) By adding -

"(1A) Where any payment or interim payment is made in any calendar month to a contractor or for his benefit in respect of any construction operations that are carried out under a term contract, the contractor shall, within 14 days after the last day of that month or such further time as the Authority may in any case allow, give notice of it to the Authority in the specified form."
- (d) In subclause (2) -
 - (i) by deleting "works" wherever it appears and substituting "operations";
 - (ii) by deleting "being".
- (e) By deleting subclause (3) and substituting -

"(3) Except in the case of a term contract, subsections (1) and (2) shall not apply in respect of any construction operations if it is reasonably estimated that the total value of such operations does not exceed the amount prescribed under section 19(4)(b)."
- (f) In subclause (4) -
 - (i) by adding ", (1A)" before "or (2)";

ClauseAmendment Proposed

(ii) by deleting "works" where it twice appears and substituting "operations".

(g) By deleting subclause (5) and substituting -

"(5) A contractor or authorized person complies with subsection (1), (1A) or (2) if he -

(a) had given a notice to CITA under section 25 of the Industrial Training (Construction Industry) Ordinance (Cap. 317) in respect of the relevant payment or completion; and

(b) sent a copy of that notice to the Authority within the period of 14 days, or such further time as the Authority may have allowed, within which he shall give notice under that subsection."

(h) In subclause (6), by adding ", (1A)" before "or (2)".

24

(a) In subclause (1) -

(i) by adding "or (1A)" after "23(1)";

(ii) by deleting "from the contractor";

(iii) by deleting "works" where it twice appears and substituting "operations".

(b) In subclause (2) -

(i) by deleting "to the contractor";

(ii) by deleting "works" wherever it appears and substituting "operations".

ClauseAmendment Proposed

- (c) In subclause (3) -
- (i) by deleting "works" wherever it appears and substituting "operations";
 - (ii) by deleting "from the contractor".
- (d) In subclause (4), by deleting "works" wherever it appears and substituting "operations".
- (e) By adding -
- "(4A) Notwithstanding subsections (1), (2) and (3), where construction operations are carried out under a term contract, the Authority may defer the making of any assessment under subsection (1), (2) or (3) until such time as the Authority considers appropriate."
- (f) In subclauses (5) and (6) -
- (i) by deleting "from the contractor";
 - (ii) by deleting "works" wherever it appears and substituting "operations".
- (g) In subclause (7), by deleting "subsection (5)" and substituting "this section and payable by the contractor".
- (h) By deleting subclause (8) and substituting -
- "(8) Any assessment of levy or imposition of surcharge under this section shall be notified in writing by the Authority.
- (8A) A levy or surcharge shall not be payable by a contractor -

ClauseAmendment Proposed

- (a) if he has not been notified by the Authority of an assessment of such levy or imposition of such surcharge, as the case may be, under subsection (8); or
 - (b) to the extent that the levy or surcharge, as the case may be, has been paid by any other contractor unless the levy or surcharge, as the case may be, may be required or ordered to be repaid to that other contractor under section 25(4), 27(4) or 28(4).".
- (i) In subclause (9) -
 - (i) by deleting "An" and substituting "Subject to subsection (10), an";
 - (ii) in paragraph (a), by deleting "works" and substituting "operations";
 - (iii) in paragraph (b), by adding a comma after "surcharge".
- (j) By adding -

"(10) If construction operations are carried out under a term contract, an assessment or surcharge under this section shall be made or imposed within -

 - (a) 2 years after the completion of all construction operations to which the contract relates;

ClauseAmendment Proposed

- (b) 2 years after the expiration of the period within which all construction operations to which the contract relates have to be completed as provided for by the contract; or
- (c) 1 year after evidence of facts, sufficient in the opinion of the Authority to justify the making of the assessment or the imposition of the surcharge, comes to its knowledge,

whichever is the last to occur.

(11) For the purposes of this section, where the amount of levy due in respect of a stage of any construction operations is assessed under this section, the amount of levy shall be assessed as if such stage of the construction operations separately constitutes construction operations subject to payment of levy under this Ordinance."

- 25(4) (a) By adding "any levy or surcharge payable under subsection (1), or" after "part of".
- (b) By adding a comma after "(3)".
- 29 (a) In subclause (1) -
 - (i) by deleting "any construction works" and substituting "any construction operations";
 - (ii) in paragraph (a) -
 - (A) by deleting "works" wherever it appears and substituting "operations";

ClauseAmendment Proposed

(B) by deleting "being";

(iii) in paragraph (b), by deleting "works" where it twice appears and substituting "operations".

(b) In subclause (3) -

(i) by adding -

"(aa) to the supply of a copy of personal data in compliance with a data access request under section 18 of the Personal Data (Privacy) Ordinance (Cap. 486);";

(ii) in paragraph (c), by deleting "works" and substituting "operations".

New

By adding -

"30A. Levy inspector

The Authority may, subject to the approval of the Secretary, appoint in writing a person to be a levy inspector for the purposes of this Part."

35

(a) In subclause (1) -

(i) in paragraph (d), by deleting "屆滿" and substituting "期滿的";

(ii) by deleting paragraph (e)(iii);

(iii) in paragraph (f), by adding "and" at the end;

(iv) in paragraph (g) -

ClauseAmendment Proposed

- (A) by deleting "or (6)";
 - (B) by deleting "; and" and substituting a full stop;
 - (v) by deleting paragraph (h).
 - (b) In subclause (2)(a), by deleting "the person with whom he is dealing" and substituting "a person".
- 36
- (a) By deleting subclause (3).
 - (b) In subclause (4), by deleting ", and subsection (3),".
- 37
- (a) In subclause (2) -
 - (i) in paragraph (a), by deleting "or" at the end;
 - (ii) by adding -
 - "(aa) holds a certificate referred to in section 38(1)(b) -
 - (i) in respect of a training course that the Authority specifies under section 38(1) in relation to the registered skilled workers (provisional) for the trade; and
 - (ii) issued to the person while a registered skilled worker (provisional) for the trade; or".

ClauseAmendment Proposed

(b) In subclause (3) -

(i) in paragraph (a), by deleting "or" at the end;

(ii) by adding -

"(aa) holds a certificate referred to in section 38(1)(b) -

(i) in respect of a training course that the Authority specifies under section 38(1) in relation to the registered skilled workers (provisional) for the trade; and

(ii) issued to the person while a registered skilled worker (provisional) for the trade; or".

(c) In subclause (4) -

(i) by adding ", as at the commencement of this subsection," after "satisfied that";

(ii) by deleting "but less than 10 years".

(d) In subclause (7), by adding ", as at the commencement of this subsection," after "satisfied that".

ClauseAmendment Proposed

38

By deleting the clause and substituting -

"38. Training course for registered skilled worker (provisional)

(1) The Authority may, in relation to the registered skilled workers (provisional) for a designated trade, specify a training course -

(a) which is, in the opinion of the Authority, a course of training for those workers on carrying out on a construction site construction work that involves any work described in column 2 of Part 1, 2 or 3 of Schedule 1 opposite the trade; and

(b) in respect of which a certificate is issued to a person who -

(i) attends and completes the course;

(ii) attends and completes the assessment, conducted during or at the end of the course, of the person's competence in the area covered by the course; and

(iii) satisfies the assessor that the person is so competent.

(2) The Authority shall give notice in the Gazette of any training course that it specifies under subsection (1).

ClauseAmendment Proposed

(3) A registered skilled worker (provisional) for a designated trade may, at his own cost, attend a training course that the Authority specifies under subsection (1) in relation to the registered skilled workers (provisional) for the trade."

39 By deleting the clause.

40 (a) In subclause (1), by deleting ", or a registered skilled worker (transitional)",

(b) In subclauses (2) and (5), by deleting ", a registered skilled worker (transitional)".

41 By deleting the clause and substituting -

"41. Acceptance and rejection of registration

(1) The Registrar shall accept or reject an application for registration or renewal of registration in accordance with this Ordinance.

(2) Where the Registrar rejects an application for registration or renewal of registration, the Registrar shall notify in writing the applicant of the rejection and the reasons for the rejection."

42 (a) In subclause (2) -

(i) in paragraph (a), by deleting "date of registration or renewal of registration" and substituting "relevant date";

ClauseAmendment Proposed

- (ii) in paragraph (b), by deleting "42 months after the date of registration or renewal of registration" and substituting "48 months after the relevant date".
- (b) In subclause (6) -
 - (i) in paragraph (a), by adding "and" at the end;
 - (ii) in paragraph (b), by deleting "; and" and substituting a full stop;
 - (iii) by deleting paragraph (c).
- (c) By adding -
 - "(6A) An application under subsection (5) shall be made -
 - (a) not earlier than 3 months before and not later than 7 business days before the date of expiry of the person's registration;
 - (b) after the expiry of the period referred to in paragraph (a) but before the date on which the Registrar gives notice to the person that the Registrar intends to cancel the person's registration under section 47(1)(b); or
 - (c) in the case where the Registrar has given notice to the person that the Registrar intends to cancel the person's registration under section 47(1)(b), before the expiry of the period of 14 days referred to in section 47(2)(b).".

ClauseAmendment Proposed

(d) By deleting subclause (9) and substituting -

"(9) In this section -

"registration" (註冊) means registration under this Ordinance as -

(a) a registered skilled worker for a designated trade;

(b) a registered semi-skilled worker for a designated trade; or

(c) a registered general worker,

and "registered" (註冊) shall be construed accordingly;

"relevant date" (有關日期) means -

(a) the date of registration;

(b) in the case of an application for renewal of registration made in accordance with subsection (6A)(a), the date on which the registration would have expired but for the renewal;

(c) in the case of an application for renewal of registration made in accordance with subsection (6A)(b) -

(i) the date on which the registration would have expired but for the renewal;
or

ClauseAmendment Proposed

(ii) the date of renewal of registration,

whichever is the later; or

(d) in the case of an application for renewal of registration made in accordance with subsection (6A)(c), the date of renewal of registration."

43

(a) By deleting subclause (2).

(b) In subclause (4), by deleting ", a registered skilled worker (transitional)".

46

(a) In subclause (1) -

(i) in paragraph (b) -

(A) in subparagraph (i), by adding "or" at the end;

(B) in subparagraph (ii), by deleting "or";

(C) by deleting subparagraph (iii);

(ii) by deleting paragraph (c)(iii).

(b) In subclause (3)(a), by deleting "次承建" and substituting "分包".

(c) In subclause (8), by deleting "subsection (3)" and substituting "subsection (5)".

ClauseAmendment Proposed

- 47
- (a) By deleting subclauses (4) and (6).
 - (b) In subclause (7) -
 - (i) by deleting "or suspends";
 - (ii) by deleting "or suspension".
 - (c) By deleting subclause (10).
 - (d) In subclause (11), by deleting ", (9) or (10)" and substituting "or (9)".

Part 6 By deleting the Part.

- 52
- (a) In subclause (1) -
 - (i) by deleting "38(1), 39(1), 41(1)(a)" and substituting "41(1)";
 - (ii) by adding "on" after "serving".
 - (b) In subclause (5), by adding "of a decision" after "review".
 - (c) In subclause (6), by adding "of" after "review".
 - (d) By adding -

"(7) As soon as practicable after receiving the recommendation of the Review Committee in respect of a person's request for review of a decision, the Registrar shall -

- (a) having regard to the recommendation -

ClauseAmendment Proposed

(i) confirm, vary or reverse the decision; or

(ii) substitute the decision with such other decision as the Registrar thinks fit; and

(b) notify in writing the person of -

(i) if the Registrar confirms the decision, the confirmation;

(ii) if the Registrar varies the decision, the decision as varied;

(iii) if the Registrar reverses the decision, the reversal; or

(iv) if the Registrar substitutes the decision with another decision, that other decision,

and the reasons for doing so."

53

(a) By deleting subclause (1) and substituting -

"(1) A person who is the subject of a decision under section 41(1), 42(1) or 47(1) may, after being notified under section 52(7)(b) of the confirmation, variation or substitution of the decision, appeal against -

(a) if the Registrar confirms the decision, the decision;

ClauseAmendment Proposed

(b) if the Registrar varies the decision, the decision as varied; or

(c) if the Registrar substitutes the decision with another decision, that other decision,

by serving on the Authority a notice of appeal stating the substance of the matter and reasons for the appeal."

(b) By deleting subclause (2) and substituting -

"(2) For the purpose of an appeal under this Part, a reference to a decision of the Registrar includes -

(a) a decision of the Registrar as varied under section 52(7)(a)(i); and

(b) the other decision with which the Registrar substitutes, under section 52(7)(a)(ii), the Registrar's decision."

(c) In subclause (3), by deleting "the Authority, within 3 business days after the decision," and substituting "on the Authority".

(d) In subclause (4) -

(i) in paragraph (a), by deleting "and";

(ii) in paragraph (b), by deleting the full stop and substituting "; and";

(iii) by adding -

"(c) served on the Authority -

ClauseAmendment Proposed

- (i) in the case of an appeal against a decision under subsection (1), within 2 weeks after the Registrar notifies the person under section 52(7)(b); or
- (ii) in the case of an appeal against a decision under subsection (3), within 3 business days after the decision."

54

(a) In subclause (1) -

- (i) by deleting "The Secretary" and substituting "Subject to subsection (2), the Secretary";
- (ii) by deleting paragraphs (d), (e), (f) and (g) and substituting -

"(d) not less than 10 are persons, each of whom is, in the opinion of the Secretary, a person from a contractor in the construction industry in Hong Kong; and

(e) not less than 10 are persons, each of whom is, in the opinion of the Secretary, a person from a trade union, registered under the Trade Unions Ordinance (Cap. 332), that represents workers in the construction industry in Hong Kong."

(b) By deleting subclause (2)(d).

ClauseAmendment Proposed

(c) By deleting subclause (3) and substituting -

"(3) An appointment under subsection (1) shall be notified in the Gazette.

(3A) A member of the Appeal Board panel shall be appointed for a term of not more than 3 years."

(d) In subclause (5)(a), by deleting ", a member of the Complaints Committee".

55(2)

By deleting everything after "of 5" and substituting -

"members, of whom -

(a) not more than 2 are selected in rotation from the members of the Appeal Board panel specified in section 54(1)(a), (b) and (c);

(b) not more than 2 are selected in rotation from the members of the Appeal Board panel specified in section 54(1)(d); and

(c) not more than 2 are selected in rotation from the members of the Appeal Board panel specified in section 54(1)(e)."

56(1)(b)(i) By deleting "or order".

57

By adding -

"(3) In this section, "legal practitioner" (法律執業者) means counsel, or a solicitor, who holds a current practising certificate."

<u>Clause</u>	<u>Amendment Proposed</u>
58	<p>(a) In subclause (1) -</p> <p>(i) in paragraph (a), by adding "and" at the end;</p> <p>(ii) by deleting paragraph (b).</p> <p>(b) In subclause (3)(a), by deleting "or order" wherever it appears.</p>
59	<p>(a) In subclauses (1), (3)(b) and (4)(a), by deleting "程" wherever it appears and substituting "作".</p> <p>(b) In subclause (7)(a)(ii)(A), by deleting "次 承 建" and substituting "分包".</p> <p>(c) In subcaluse (9)(b), by deleting "造工程" and substituting "造工作".</p>
60	By deleting the clause.
61	<p>(a) In the heading, by deleting "and of failure to attend inquiries or hearing as witness, etc." and substituting "of failure to attend as witness and of obstructing authorized officers, etc.".</p> <p>(b) In subclause (1) -</p> <p>(i) by adding before paragraph (a) -</p> <p style="padding-left: 40px;">"(aa) a requirement made to the person under section 17C(1)(d)(i), (e)(i)(A) or (f);";</p> <p>(ii) by deleting paragraph (b).</p>

ClauseAmendment Proposed

- (c) In subclause (2) -
 - (i) in paragraph (a), by deleting "by the Complaints Committee to attend an inquiry or";
 - (ii) in paragraph (b) -
 - (A) by deleting "an inquiry before the Complaints Committee, or";
 - (B) by deleting ", as" and substituting "as";
 - (C) by deleting "Committee or".
- (d) By adding -
 - "(3) A person who -
 - (a) without reasonable excuse, resists, obstructs or delays an authorized officer who is performing or exercising, or attempting to perform or exercise, a function or power under this Ordinance;
 - (b) without reasonable excuse, fails to comply with a requirement made to the person under section 17C(1)(d)(i), (e)(i) or (f);
 - (c) without reasonable excuse, prevents, or attempts to prevent, another person from assisting an authorized officer in the performance or exercise of the officer's functions or powers under this Ordinance; or
 - (d) directly or indirectly, intimidates or threatens -

ClauseAmendment Proposed

- (i) an authorized officer in the performance or exercise of the officer's functions or powers under this Ordinance; or
- (ii) a person assisting such an officer in the performance or exercise of those functions or powers,

commits an offence and is liable on conviction to a fine at level 3."

New

By adding -

**"61A. Prosecution may be brought
in Authority's name**

Without prejudice to any Ordinance relating to the prosecution of criminal offences or to the powers of the Secretary for Justice in relation to the prosecution of criminal offences, a prosecution for an offence under this Ordinance may be -

- (a) brought in the name of the Authority;
and
- (b) commenced and conducted by a member or employee of the Authority authorized in that behalf in writing by the Authority."

63(5)(a)

By deleting "complaint,".

ClauseAmendment Proposed

- 64(1) By deleting paragraph (b).
- 65 By deleting "Chief Justice" and substituting "District Court Rules Committee established under section 17 of the District Court Ordinance (Cap. 336)".
- 66 By deleting "Schedules" and substituting "Schedule".
- 70 (a) In paragraph (a), by deleting "(zm)" and substituting "(zn)".
- (b) In paragraph (b), by deleting "(zn)" and substituting "(zo)".
- Schedule 1 (a) By deleting "39, 40, 41, 46, 49 & 66]" and substituting "38, 40, 46 & 66]".
- (b) In Part 1 -
- (i) in the heading, by deleting ", REGISTERED SKILLED WORKER (PROVISIONAL) OR REGISTERED SKILLED WORKER (TRANSITIONAL)" and substituting "OR REGISTERED SKILLED WORKER (PROVISIONAL)";
- (ii) in item 8 -
- (A) in column 1, by deleting "清拆" and substituting "拆卸";
- (B) in column 2, by deleting "清拆、拆卸" and substituting "拆卸、拆除";

ClauseAmendment Proposed

- (C) in column 3, by deleting "清拆" and substituting "拆卸";
- (iii) in item 9 -
- (A) in column 1, by deleting "清拆工(違例建築物)" and substituting "拆卸工(違例建築工程)";
- (B) in column 2, by deleting "building works carried out" and substituting "buildings erected, or building works carried out,";
- (C) in column 3, by deleting "清拆工(違例建築物)" and substituting "拆卸工(違例建築工程)";
- (iv) in item 10, in column 2, in paragraph (a), by deleting "清拆" and substituting "拆卸";
- (v) in item 11, in column 4, by adding "for Grade A, B, C or H electrical work" after "worker";
- (vi) in item 12, in column 1, by deleting "機械";
- (vii) in item 15, in column 2, by deleting "supply systems" and substituting "fittings";
- (viii) in item 17, in column 1, by deleting "機械";
- (ix) in item 30 -
- (A) in column 1, by deleting "(Demolition)" and substituting "(Demolition) — Excavator";

ClauseAmendment Proposed

- (B) in column 2, by deleting everything after "operate" and substituting "excavators to demolish, dismantle and remove buildings or structures, or any part thereof";
- (C) by deleting column 3 and substituting -
- "Not applicable";
- (D) by deleting column 4 and substituting -
- "Both of the following -
- (a) trade test certificate for Plant and Equipment Operator (Demolition) —Excavator issued by CITA; and
- (b) certificate as defined in section 2(1) of the Factories and Industrial Undertakings (Loadshifting Machinery) Regulation (Cap. 59 sub. leg.) and applicable to excavators";
- (x) in item 45, in columns 1, 2 and 4, by adding "起重機 " after "吊臂";
- (xi) in item 53, in column 2, by deleting everything after "貨車 " and substituting "在建造工地範圍內運送建造物料、建築碎料或挖掘出來的沙石，或將該等物料、碎料或沙石運入或運出建造工地";

ClauseAmendment Proposed

(xii) by adding -

"53A. Truck Driver (Medium goods vehicles)	To drive medium goods vehicles within the meaning of section 2 of the Road Traffic Ordinance (Cap. 374) to transport construction materials, building debris or excavated materials within, into or out of construction sites	Not applicable	Full driving licence within the meaning of the Road Traffic (Driving Licences) Regulations (Cap. 374 sub. leg.) to drive a medium goods vehicle";
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(xiii) in item 54, in column 2, by deleting everything after "車輛" and substituting "在建造工地範圍內運送建造物料、建築碎料或挖掘出來的沙石，或將該等物料、碎料或沙石運入或運出建造工地";

(xiv) in item 55, in column 2, by deleting "程" and substituting"作".

(c) In Part 2 -

(i) in the heading, by deleting ", REGISTERED SKILLED WORKER (TRANSITIONAL)";

(ii) in item 1, in column 2, by deleting ", and" and substituting "and in";

ClauseAmendment Proposed

- (iii) in item 4, in column 2 -
 - (A) by adding ", maintain and repair" after "install";
 - (B) by deleting "and access control systems" and substituting ", access control systems, and building control and monitoring systems";
- (iv) in item 7, in column 2, by deleting everything after "wiring systems," and substituting "private automatic branch exchange systems, intercom systems, in-building coaxial cable distribution systems, and other wired or wireless signal transmission and reception systems";
- (v) in item 13, in columns 1, 3 and 5, by deleting "器" and substituting "氣";
- (vi) in item 21, in column 2, by deleting "building foundations" and substituting "underground caissons";
- (vii) in item 27, in column 2, by deleting "卸及修理用於建造工程" and substituting "除及修理用於建造工作";
- (viii) in item 31, in column 1, paragraph (a) of column 3 and column 5, by deleting "匠" and substituting "工";
- (ix) in item 33 -
 - (A) in column 2 -
 - (I) by adding "用於" after "修理";

ClauseAmendment Proposed

- (II) in paragraph (a), by deleting "用於";
- (B) by deleting column 3 and substituting -
 - "Either one of the following -
 - (a) trade certificate for Refrigeration/Air-conditioning/Ventilation Mechanic (Electrical Control) issued by VTC; or
 - (b) certificate of registration as an electrical worker issued under section 30 of the Electricity Ordinance (Cap. 406) on which the Director of Electrical and Mechanical Services specifies that the holder is entitled to do electrical work on an air-conditioning installation";
- (x) in item 36 -
 - (A) in column 1, by deleting "and Refrigerant";
 - (B) in column 2, by deleting everything after "water" and substituting "systems for air-conditioning systems (including air-handling and water condensing equipment)";
 - (C) in columns 3 and 5, by deleting "and Refrigerant".
- (d) In Part 3 -
 - (i) in item 1, in columns 1 and 3, by deleting "髹" and substituting "油";

ClauseAmendment Proposed

- (ii) in item 2, in column 2, by adding "(工人轆)" after "機".

- Schedule 4
- (a) By deleting "14, 16 & 66]" and substituting "16 & 66]".
 - (b) In section 2(2), by deleting "9" and substituting "10".
 - (c) In section 8(4)(a), by deleting "a member of the Complaints Committee,".
 - (d) By deleting Part 4.
 - (e) In section 14(4)(a), by deleting ", a member of the Complaints Committee".

Annex IV**ROAD TRAFFIC (AMENDMENT) BILL 2003****COMMITTEE STAGE**Amendments to be moved by the Secretary for
the Environment, Transport and WorksClauseAmendment Proposed

1

By deleting subclause (2) and substituting -

"(2) This Ordinance shall come into operation
on 1 August 2004."

Annex V**CLEARING AND SETTLEMENT SYSTEMS BILL****COMMITTEE STAGE****Amendments to be moved by the Secretary for Financial Services and
the Treasury**

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>(a) In the definition of "defaulting participant", by adding "or settlement institution" after "system operator".</p> <p>(b) In the definition of "relevant insolvency office holder" -</p> <p>(i) by deleting "office holder" and substituting "office-holder";</p> <p>(ii) in paragraph (b), by adding "under the laws of Hong Kong" after "acting";</p> <p>(iii) in paragraph (c), by adding "under the laws of Hong Kong" after "acting";</p> <p>(iv) in paragraph (d), by adding "under the laws of Hong Kong" after "appointed".</p> <p>(c) In the definition of "transfer order", in paragraph (b), by deleting the full stop and substituting a semicolon.</p> <p>(d) By adding -</p> <p style="padding-left: 40px;">""applicant" (申請人), in relation to any proceedings under Part 4, means the person who refers a decision to the Tribunal for review under section 33(1);</p>

ClauseAmendment Proposed

"Chairman of the Tribunal" (審裁處主席) means the person appointed as such under section 32(3);

"directors' voluntary winding up statement" (董事自動清盤陳述書) means a statement made under section 228A(1) of the Companies Ordinance (Cap. 32), and a reference to such a statement taking effect is a reference to it being delivered for registration as specified in section 228A(3) of that Ordinance;

"officer" (高級人員), in relation to a corporation, means a director, manager or secretary of, or any other person involved in the management of, the corporation and, where the corporation is a system operator or settlement institution of a designated system, means in addition the chief executive of the designated system;

"resolution for voluntary winding up" (自動清盤決議) means a resolution under section 228(1)(c) of the Companies Ordinance (Cap. 32);

"Tribunal" (審裁處) means the Tribunal established under section 32(1).".

New

By adding immediately after section 2 -

"2A. Application

This Ordinance applies to and in relation to -

- (a) a designated system that is established in a place outside Hong Kong;

ClauseAmendment Proposed

- (b) a system operator or settlement institution of, or a participant in, a designated system who, being an individual, is outside Hong Kong;
- (c) a system operator or settlement institution of, or a participant in, a designated system that, being a corporation, is incorporated in a place outside Hong Kong; or
- (d) an officer of a corporation that is a system operator or settlement institution of, or a participant in, a designated system who is outside Hong Kong,

as it applies to and in relation to such a system that is established in Hong Kong, such an individual who is in Hong Kong, such a corporation that is incorporated in Hong Kong, or such an officer of a corporation who is in Hong Kong."

3(2) By deleting "for the purposes of section 37" and substituting "under section 37(1)".

3(4)(e) By deleting "for the purposes of section 37" and substituting "under section 37(1)".

5(1) (a) By deleting "3" and substituting "6".

(b) In paragraph (c), by adding "in addition," before "where".

5(2) By deleting "3" and substituting "6".

<u>Clause</u>	<u>Amendment Proposed</u>
Part 2	By deleting the heading of Division 3 and substituting - "Division 3 - Matters pertaining to functions and powers of Monetary Authority".
8(3)	By deleting "agents or advisers" and substituting "advisers or consultants".
9	By adding - "(2A) In addition to any exemption granted under subsection (2) in relation to a designated system, the Monetary Authority may exempt the system operator or settlement institution of the designated system from the application of section 27A or 52, or may exempt the participants of the system from the application of section 28; and where such an exemption in relation to section 27A, 28 or 52 is in effect, that section shall not apply in relation to the system operator, settlement institution or participants to whom the exemption applies."
10	In the heading, by adding " or documents " after " information ".
10(1)	By deleting everything after "request" and substituting "the system operator or settlement institution to give him such information or documents relating to the system as may be specified in the notice."
10	By deleting subclause (2) and substituting - "(2) A request made under subsection (1) may specify a period, being a period that is reasonable in the circumstances, within which the request shall be complied with."

<u>Clause</u>	<u>Amendment Proposed</u>
10(3)	By adding "or documents" after "information" wherever it appears.
13	<p>(a) By renumbering it as clause 13(1).</p> <p>(b) In subclause (1) -</p> <p>(i) by adding "other than section 24," after "Part,";</p> <p>(ii) by deleting paragraph (c) and substituting -</p> <p style="padding-left: 40px;">"(c) any other written law or rule of law of Hong Kong which is concerned with or in any way related to the bankruptcy, winding up or insolvency of a person,</p> <p style="padding-left: 40px;">or, for the purposes of the application by a court in Hong Kong (in accordance with the rules of private international law) of the laws of a place outside Hong Kong, as a reference to any written law or rule of law of the place outside Hong Kong which is concerned with or in any way related to the bankruptcy, winding up or insolvency of a person."</p> <p>(c) By adding -</p> <p style="padding-left: 40px;">"(2) In this Part, unless the context otherwise requires, a reference to bankruptcy or winding up shall be construed as a reference to bankruptcy or winding up under the laws of Hong Kong."</p>

<u>Clause</u>	<u>Amendment Proposed</u>
14(3)	By adding "and specifying a date and time from which the certificate shall have effect" after "finality")".
14	By adding - "(7) The Monetary Authority shall publish in the Gazette notice of any certificate of finality issued under this section."
15(1)	By adding "by notice in writing, with effect from a date and time specified in the notice," after "time".
15	By adding - "(3) The Monetary Authority shall publish in the Gazette notice of any suspension or revocation of a certificate of finality effected under this section."
16(1)	By deleting "general".
18(2)	By deleting "office holder" and substituting "office-holder".
20	By deleting "relation to" and substituting "respect of".
21(2)	(a) By deleting "participant or a resolution for the voluntary winding up of a participant has been passed" and substituting "participant, or where a resolution for voluntary winding up of a participant has been passed or a directors' voluntary winding up statement in respect of a participant has taken effect".

ClauseAmendment Proposed

- (b) In paragraph (a), by deleting "office holder" and substituting "office-holder".
- (c) In paragraph (b), by deleting "or that section as applied in the case of a winding-up order under the Companies Ordinance (Cap. 32)" and substituting "(as regards the bankruptcy) or under that section as applied under the Companies Ordinance (Cap. 32) (as regards the winding up)".

22

By deleting subclauses (1) and (2) and substituting -

"(1) This Division shall not apply in relation to any transfer order given by a participant in a designated system which is entered into the designated system after -

- (a) the expiry of the day on which -
 - (i) a court makes an order for bankruptcy or winding up of the participant;
 - (ii) a resolution for voluntary winding up of the participant is passed; or
 - (iii) a directors' voluntary winding up statement in respect of the participant takes effect; or
- (b) the receipt by the system operator of notice of the event specified in paragraph (a),

whichever first occurs.

ClauseAmendment Proposed

(2) Reference in subsection (1) to the expiry of the day on which an event specified in subsection (1)(a) occurs in relation to a participant in a designated system is a reference to -

- (a) the expiry of that day according to Hong Kong time; or
- (b) the expiry of the same calendar day according to local time in the place where the designated system is established,

whichever is the later."

23

By deleting subclause (1) and substituting -

"(1) Where -

- (a) a court has made an order for bankruptcy or winding up of a participant in a designated system;
- (b) a resolution for voluntary winding up of a participant in a designated system has been passed; or
- (c) a directors' voluntary winding up statement in respect of a participant in a designated system has taken effect,

then, notwithstanding any provision of the law of insolvency, the system operator of the designated system may effect the netting of all obligations owed to or by the participant incurred up to the point of time that applies for the purposes of section 22(1)."

ClauseAmendment Proposed

- 24
- (a) By renumbering it as clause 24(1).
 - (b) In subclause (1), by deleting "office holder" and substituting "office-holder".
 - (c) By adding -
 - "(2) In subsection (1), "law of insolvency" (破產清盤法), in relation to a place outside Hong Kong, means any written law or rule of law of the place which is concerned with or in any way related to the bankruptcy, winding up or insolvency of a person."
- 25(1) By deleting "Except to the extent that it expressly provides, this" and substituting "This".
- 26 In the heading, by deleting "**office holder**" and substituting "**office-holder**".
- 26(1)(b)
- (a) In subparagraph (i), by deleting "or" at the end.
 - (b) By deleting subparagraph (ii) and substituting -
 - "(ii) the passing of a resolution for voluntary winding up of the second participant or his principal; or
 - (iii) the making of a directors' voluntary winding up statement in respect of the second participant or his principal."

<u>Clause</u>	<u>Amendment Proposed</u>
26(2)	(a) By deleting "office holder" and substituting "office-holder". (b) By deleting "is hereby entitled to" and substituting "may, unless a court otherwise orders,".
26(3)(b)	By deleting "significantly".
26(4)	By deleting "任何" where it first appears and substituting "某".
27	In the heading, by deleting " office holder " and substituting " office-holder ".
27(1)(c)	(a) In subparagraph (i), by deleting "or" at the end. (b) By deleting subparagraph (ii) and substituting - "(ii) the passing of a resolution for voluntary winding up of the second participant or his principal; or (iii) the making of a directors' voluntary winding up statement in respect of the second participant or his principal.".
27(2)	(a) By deleting "office holder" and substituting "office-holder". (b) By deleting "is hereby entitled to" and substituting "may, unless a court otherwise orders,".

ClauseAmendment Proposed

27(3)(c) By deleting "making" and substituting "deciding to make".

27(4) By deleting "任何" and substituting "某".

New By adding -

**"27A. Duty to report on completion
of default proceedings**

(1) The system operator and settlement institution of a designated system shall, not later than 6 days after the completion of any action taken under the default arrangements of the system in respect of a defaulting participant, together prepare in writing and give to the persons specified in subsection (3) a report ("default proceedings report") on such action taken.

(2) A default proceedings report -

- (a) shall state the net sum (if any) certified by the system operator or settlement institution to be payable by or to the defaulting participant, or the fact that no sum is so payable (as the case may be); and
- (b) may contain such other particulars in respect of the action taken as the system operator and settlement institution consider appropriate.

(3) The persons specified for the purposes of subsection (1) are -

- (a) the Monetary Authority; and

ClauseAmendment Proposed

- (b) any relevant insolvency office-holder acting in relation to the defaulting participant to whom the report relates or that defaulting participant's estate or, if there is no such relevant insolvency office-holder, the defaulting participant to whom the report relates.

(4) Where the Monetary Authority receives pursuant to subsection (1) a default proceedings report he may publish notice of that fact in such manner as he considers appropriate to bring it to the attention of creditors of the defaulting participant to whom the report relates.

(5) A relevant insolvency office-holder or defaulting participant who has received pursuant to subsection (1) a default proceedings report, shall, if so requested by a creditor of the defaulting participant to whom the report relates -

- (a) make the report (or a copy of it) available for inspection by the creditor; and
- (b) supply to the creditor all or any part of that report (or a copy of it), subject to receipt of payment of such reasonable fee as the relevant insolvency office-holder or defaulting participant (as the case may be) determines."

<u>Clause</u>	<u>Amendment Proposed</u>
28(1)	<p>(a) By deleting "any system" and substituting "the system".</p> <p>(b) By deleting paragraph (a).</p> <p>(c) In paragraph (d), by deleting "the" where it secondly appears.</p> <p>(d) In paragraph (e), by deleting "statutory declaration as under section 228A(1) of the Companies Ordinance (Cap. 32) by a director" and substituting "directors' voluntary winding up statement in respect".</p>
28	By deleting subclause (3).
29	<p>(a) In the heading, by deleting "office holder" and substituting "office-holder".</p> <p>(b) By deleting "office holder" and substituting "office-holder".</p>
31	By deleting the clause.
32(5)	By adding "established under section 3 of the Exchange Fund Ordinance (Cap. 66)" after "Fund".
33(2)(b)	By deleting "a further time that the Monetary Authority" and substituting "such further time as the Tribunal".
34(2)	By deleting "Subsection (1)(c) does not empower" and substituting "Nothing in subsection (1)(c), (e) or (f) empowers".

ClauseAmendment Proposed

37

By adding -

"(1A) Where an appeal has been lodged under subsection (1) the Court of Appeal may, on application made to it, order a stay of execution of the determination of the Tribunal, subject to such conditions as to costs, payment of money into the Tribunal or otherwise as the Court of Appeal considers appropriate; but the lodging of an appeal under subsection (1) does not of itself operate as a stay of execution of the determination of the Tribunal."

37(2)

By deleting everything after "affirm," and substituting "set aside or vary the determination appealed against, or may remit the matter in question to the Tribunal with such directions as it considers appropriate."

39(1)

By deleting "or (2)".

39

By adding -

"(1A) A person who, without reasonable excuse, contravenes section 5(2) commits an offence and is liable -

- (a) on conviction upon indictment, to a fine of \$400,000; and
- (b) in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues."

40

In the heading, by deleting "**provision**" and substituting "**provisions**".

ClauseAmendment Proposed

40

(a) By renumbering it as clause 40(2).

(b) By adding -

"(1) A person who contravenes section 27A(1) commits an offence and is liable on conviction upon indictment to a fine of \$200,000 and to imprisonment for 1 year."

42

By adding -

"(4) A person who, without reasonable excuse, contravenes section 52(4) commits an offence and is liable on conviction upon indictment to a fine of \$400,000 and to imprisonment for 2 years."

44(1)

By deleting "a manner that indicates" and substituting "terms that indicate".

44(3)

By deleting "a manner that indicates" and substituting "terms that indicate".

46

By deleting the clause and substituting -

"46. Liability of company officers

Where an offence under section 39(1), (2), (3), (4) or (5), 40(1) or (2), 42(4) or 43 of this Ordinance is committed by a corporation and -

(a) in committing the offence the corporation is aided, abetted, counselled, procured or induced by an officer of the corporation or a person purporting to act as such; or

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- (b) the offence is committed with the consent or connivance of, or is attributable to any recklessness on the part of, an officer of the corporation or a person purporting to act as such,

then that officer of the corporation or person purporting to act as such (as well as the corporation) commits the offence and is liable to be proceeded against and punished accordingly."

47 By renumbering it as clause 8A.

48(1) By adding "and with the system operators and settlement institutions of designated systems" after "Secretary".

48(2)(b) By adding "designated" before "system".

49(3) By adding -

"(ea) to the disclosure of information to the Tribunal;

(eb) to the disclosure of information to any person or body who may be appointed or established by the Chief Executive to review processes or procedures adopted by the Monetary Authority in making decisions under this Ordinance in so far as those decisions relate to or affect the designated systems specified in Schedule 2 or designated systems in which the Monetary Authority has a legal or beneficial interest;"

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- 49(5) By deleting "(d) or (e)" and substituting "(d), (e), (ea) or (eb)".
- 50(1) By adding "civil" after "No".
- 50(2) (a) By adding "civil" after "No".
- (b) In paragraph (a), by deleting "clearing and settlement" and substituting "designated".
- (c) By deleting paragraph (b) and substituting -
- "(b) in addition, where the system operator or settlement institution of a designated system is a corporation, any officer of the corporation."
- 51 By adding -
- "(3) This section applies to and in relation to -
- (a) a clearing and settlement system that is established in a place outside Hong Kong;
- (b) an individual who is outside Hong Kong; or
- (c) a corporation that is incorporated in a place outside Hong Kong,
- as it applies to and in relation to such a clearing and settlement system that is established in Hong Kong, such an individual who is in Hong Kong, or such a corporation that is incorporated in Hong Kong."

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52

By deleting subclause (1) and substituting -

"(1) Where any action has been taken under the default arrangements of a designated system in respect of a participant in the system, the Monetary Authority may, by notice in writing given to the system operator or settlement institution of the system, direct the system operator or settlement institution to give to any person who has responsibility for any matter arising out of or connected with the default of the participant ("nominated official") such information as the nominated official may request relating to that default or to any matter arising out of or connected with that default."

52

By deleting subclause (5).

53

(a) By renumbering it as clause 53(1).

(b) In subclause (1), by adding "after consultation with the system operators and settlement institutions of designated systems," after "information,".

(c) By adding -

"(2) The Monetary Authority shall publish in the Gazette any guidelines issued by him under this section."

54

By deleting subclause (3).

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New

By adding -

"57. Notices, etc. as subsidiary legislation

(1) A notice published in the Gazette under section 1(2) or 56 is subsidiary legislation for the purpose of section 34 of the Interpretation and General Clauses Ordinance (Cap. 1).

(2) Except as provided in subsection (1), a notice or guideline published in the Gazette under this Ordinance is not subsidiary legislation for the purpose of section 34 of the Interpretation and General Clauses Ordinance (Cap. 1).".

New

By adding immediately before Schedule 1 -

"Consequential Amendments**Electronic Transactions Ordinance****58. Proceedings in relation to which sections 5, 5A, 6, 7 and 8 of this Ordinance do not apply under section 13(1) of this Ordinance**

Schedule 2 to the Electronic Transactions Ordinance (Cap. 553) is amended -

- (a) in paragraph (zn), by repealing " ; 或 " and substituting a semicolon;
- (b) in paragraph (zo), by repealing the full stop and substituting a semicolon;

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(c) by adding -

"(zp) the Clearing and Settlement Systems Appeals Tribunal established under the Clearing and Settlement Systems Ordinance (of 2004).".

Schedule 1 In the heading, by adding "CLEARING AND SETTLEMENT SYSTEMS APPEALS" before "TRIBUNAL".