

# **OFFICIAL RECORD OF PROCEEDINGS**

**Wednesday, 7 July 2004**

**The Council met at half-past Two o'clock**

## **MEMBERS PRESENT:**

THE PRESIDENT

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

THE HONOURABLE KENNETH TING WOO-SHOU, 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.

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

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

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

THE HONOURABLE NG LEUNG-SING, 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 CHEUNG MAN-KWONG

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.

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

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 CHIN-SHEK, 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 EMILY LAU WAI-HING, J.P.

THE HONOURABLE CHOY SO-YUK

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE SZETO WAH

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

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 ALBERT CHAN WAI-YIP

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.

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

**MEMBERS ABSENT:**

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

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

**PUBLIC OFFICERS ATTENDING:**

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

THE HONOURABLE MICHAEL SUEN MING-YEUNG, G.B.S., J.P.  
SECRETARY FOR HOUSING, PLANNING AND LANDS

PROF THE HONOURABLE ARTHUR LI KWOK-CHEUNG, G.B.S., J.P.  
SECRETARY FOR EDUCATION AND MANPOWER

THE HONOURABLE JOSEPH WONG WING-PING, G.B.S., J.P.  
SECRETARY FOR THE CIVIL SERVICE

THE HONOURABLE STEPHEN IP SHU-KWAN, G.B.S., J.P.  
SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR

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

THE HONOURABLE JOHN TSANG CHUN-WAH, J.P.  
SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY

**CLERKS IN ATTENDANCE:**

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

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

**TABLING OF PAPERS**

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

**Subsidiary Legislation/Instruments***L.N. No.*

Declaration of Change of Titles (Information Technology Services Department and Director of Information Technology Services) Notice 2004.....	131/2004
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**Other Papers**

- No. 101 — J.E. Joseph Trust Fund Trustee's Report and Audited Statement of Accounts and Auditor's Report for the Fund for the year from 1 April 2003 to 31 March 2004
- No. 102 — Kadoorie Agricultural Aid Loan Fund Committee's Report and Audited Statement of Accounts and Auditor's Report for the Fund for the year from 1 April 2003 to 31 March 2004
- No. 103 — Independent Commission Against Corruption, Hong Kong Special Administrative Region Annual Report 2003
- No. 104 — Independent Commission Against Corruption Complaints Committee Annual Report 2003
- No. 105 — Hong Kong Export Credit Insurance Corporation Annual Report 2003-2004
- No. 106 — Clothing Industry Training Authority Annual Report 2003

No. 107 — Construction Industry Training Authority  
Annual Report 2003

Report of the Committee on Members' Interests of the Second Legislative  
Council

Committee on Rules of Procedure of the Legislative Council of the Hong  
Kong Special Administrative Region  
Progress Report for the period July 2003 to June 2004

Report of the Panel on Manpower 2003/2004

Report of the Panel on Commerce and Industry 2003/2004

Report of the Panel on Administration of Justice and Legal Services  
2003/2004

Report of the Panel on Transport 2003/2004

Report of the Panel on Constitutional Affairs 2003/2004

Report of the Panel on Food Safety and Environmental Hygiene  
2003/2004

Report of the Panel on Financial Affairs 2003/2004

Report of the Panel on Education 2003/2004

Report of the Panel on Planning, Lands and Works 2003/2004

Report of the Panel on Economic Services 2003/2004

Report of the Panel on Environmental Affairs 2003/2004

Report of the Bills Committee on Town Planning (Amendment) Bill 2003

Report of the Bills Committee on Land Titles Bill

Report of the Bills Committee on Education (Amendment) Bill 2002

Report of the Bills Committee on Adoption (Amendment) Bill 2003

Report of the Bills Committee on Human Organ Transplant (Amendment) Bill 2001

Report of the Bills Committee on Companies (Amendment) Bill 2003

Report of the Bills Committee on Criminal Procedure (Amendment) Bill 2004

Report of the Bills Committee on Professional Accountants (Amendment) Bill 2004

Report of the Select Committee to inquire into the handling of the Severe Acute Respiratory Syndrome outbreak by the Government and the Hospital Authority

## **ADDRESSES**

**PRESIDENT** (in Cantonese): Address. Mr SIN Chung-kai will address the Council on the Independent Commission Against Corruption Annual Report 2003.

### **Independent Commission Against Corruption, Hong Kong Special Administrative Region Annual Report 2003**

**MR SIN CHUNG-KAI** (in Cantonese): Madam President, as a member of the Advisory Committee on Corruption, I feel honoured in briefing Members here on the 2003 Annual Report by the Commissioner of the Independent Commission Against Corruption tabled before this Council today.

Last year, the Independent Commission Against Corruption (ICAC) received 4 310 corruption reports, representing a reduction of 61 reports and a 1% drop from the 4 371 reports registered in 2002, a decline for the second consecutive year. This indicates that the corruption situation remained under control in Hong Kong now. This is really encouraging. In spite of this, the



ICAC has not relaxed its efforts. To meet rising public expectation, the ICAC continues to study and develop different approaches to enhance its effectiveness and efficiency in anti-corruption work, so as to uphold the good name of Hong Kong as the "cleanest city".

In the area of investigation, officers of the ICAC continue with the proactive strategy, in which the use of informants, undercover operations and analysis of intelligence combined to detect corruption cases which might otherwise go unreported. During the year, the ICAC succeeded in tackling many complex corruption-related fraud cases. The Financial Investigation Section conducted financial analysis and asset tracing in respect of some 2 000 transactions, and provided invaluable assistance to many investigation cases. To beef up the information technology muscle of the Operations Department, the Commission-wide Information Technology Management Unit established during the year was put under the charge of the Department. Furthermore, the Operations Department has conducted operation review and undergone restructuring in order to strengthen its front-line investigation work.

As regards community relations, the ICAC continues to render assistance to government departments in promoting preventive education work, reviewing or formulating departmental guidelines on staff conduct and in drawing up tailor-made integrity training programmes for civil servants, so as to entrench a culture of probity within the Civil Service. In the light of the rising inbound travels, the ICAC launched the Ethics Promotion Programme for tourism industry practitioners in last March. In addition to a trade-wide seminar and workshops, an ethical management guide and self-learning packages were produced. All this together formed a well-timed endeavor prior to the pronouncement of the Individual Visit Scheme for mainland visitors. The ICAC collaborated with various professional bodies to produce e-learning packages for use of their members. It also co-operated with chambers of commerce and related professional bodies in the production of a corruption prevention guide entitled *Ethic@Work* for business managers. To alert the young generation to the importance of corporate governance, the ICAC waged a Study Programme cum Youth Summit entitled "Corporate Governance for the New Generation" during the year. Moreover, during the rural and District Council elections held in the year, the ICAC promoted the "clean election" messages through different activities.

Regarding the area of corruption prevention, in 2003, the ICAC completed 101 assignment reports concerning government departments. It had also

provided advice in respect of corruption prevention to government departments and public bodies in the formulation of new policies, legislation and procedures. Following the tacking of a number of cases involving the misconduct of government officers in the procurement of goods and services, the ICAC conducted a series of studies into the purchasing procedures of several departments. A "Best Practice Module" had been compiled by the ICAC and was distributed to managerial and front-line staff responsible for departmental purchases for reference. Moreover, the ICAC also collaborated with professional bodies and tertiary institutions in reinforcing ethics training for professional practitioners and students of construction courses. It also organized workshops for employees of construction material testing laboratories to raise their awareness of corruption prevention and ethical practice. The ICAC continued to provide free, confidential and tailor-made corruption prevention advice to private sector organizations, in particular small and medium enterprises that lack the experience or ability to handle issues involving internal control. During the year, the ICAC offered corruption prevention advice to 336 requests raised by the relevant bodies. The ICAC also launched a special programme to assist more than 60 property management companies providing services in public housing estate in promulgating a company code of conduct for staff.

Madam President, the Commissioner for the ICAC and I would like to take this opportunity to thank this Council and members of the public for their support, and the members of the various advisory committees of the ICAC for their valuable contribution during the year. We would also like to pay tribute to all loyal and dedicated staff of the ICAC.

**PRESIDENT** (in Cantonese): Mr Tommy CHEUNG will address the Council on the Independent Commission Against Corruption Complaints Committee Annual Report 2003.

### **Independent Commission Against Corruption Complaints Committee Annual Report 2003**

**MR TOMMY CHEUNG:** Madam President, as a member of the Independent Commission Against Corruption Complaints Committee (the Committee), I hereby table the Independent Commission Against Corruption Complaints Committee Annual Report 2003 to this Council on behalf of the Committee.

The report explains in detail the functions and mode of operation of the Committee, and summarizes the work handled by the Committee in the past year. In 2003, the Committee held three meetings during the year to discuss papers and investigation reports and formed an independent view on the investigation findings concerning the complaints. An important and positive effect of this complaints handling mechanism is that, through examination of issues brought up in complaints, both the Independent Commission Against Corruption (ICAC) and the Committee are able to carefully scrutinize the ICAC internal procedures, guidelines and practices to see whether these need to be updated, clarified or formalized, with a view to making improvements.

This is the ninth annual report published by the Committee. Through publishing this report, the Committee hopes to report to the public on a regular basis the work done by the Committee and to enhance public understanding of the ICAC complaints handling mechanism. Should Members have any comments regarding the annual report, they are welcome to forward them to the Secretary of the Committee. I so submit.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): Mr LAU Chin-shek will address the Council on the Report of the Panel on Manpower 2003/2004.

### **Report of the Panel on Manpower 2003/2004**

**MR LAU CHIN-SHEK** (in Cantonese): Madam President, in my capacity as Chairman of the Panel on Manpower, I now present to the Legislative Council the report on the work of the Panel during the year 2003-04, and highlight a few major areas of work of the Panel.

Some members were concerned that the implementation of the Mainland/Hong Kong Closer Economic Partnership Arrangement (CEPA) would have negative impact on other business sectors. They were also concerned that whether employment opportunities for local workforce would be created as a result of CEPA. These members pointed out that with more integration and traders moving their business to the Mainland as a result of CEPA, job

opportunities for local workers would be adversely affected. They considered that the Administration should have conducted a detailed assessment on its impact on local employment, both positive and negative, before signing CEPA. Members urged the Administration to map out its strategies to bring about local employment opportunities arising from CEPA.

The Administration agreed to conduct a quantitative analysis on the economic impact of CEPA, including its impact on local employment after CEPA had been implemented for nine to 12 months.

Some members expressed concern about the low ratio of prosecution in respect of wage offences. These members considered that to deter wage offences, employers should be prosecuted once they were found to have violated the law irrespective of whether conciliation was in progress. They also asked the authorities to adopt measures to penalize those unscrupulous employers who deliberately defaulted payment of wages by imposing demerit points in their licence applications or tendering for government projects. Some members were of the view that the crux of the problem was that the penalty was too light to have sufficient deterrent effect on employers committing wage offences.

In view of the complicated procedures involved in making wage claims, some members suggested that a one-stop service for handling cases of arrears of wages be provided by the Labour Department. The Administration expressed that the authorities had studied the suggestion, but found that it would not necessarily help reduce the amount of time required. The authorities were reviewing whether the administrative procedures involved could be simplified and streamlined, and were discussing with the Judiciary with a view to speeding the process.

Some members were of the view that the tendering arrangements the Administration promulgated under the Stores and Procurement Regulations were not effective in preventing the exploitation of non-skilled workers by government service contractors and safeguarding the rights and interests of these workers. These members expressed concern that many government contractors were paying their workers extremely low wages. They proposed that the authorities should determine a minimum wage for workers in projects or services contracted out by the Government. However, some other members opposed the setting of a minimum wage.

At its meeting on 22 April 2004, the Panel passed a motion urging the Government to adopt the average monthly salaries of selected occupations published by the Census and Statistics Department as the standard of minimum wage for workers engaged in projects or services contracted out by the Government.

Then, on 6 May, the Government promulgated a new mandatory requirement for tender assessment for contracts. Members urged the Administration to reinforce its monitoring work to ensure that the new mandatory requirement was fully met.

Members in general supported the Administration's direction of enhancing the quality of human resources in Hong Kong. However, some members were concerned that the implementation of a qualifications framework (QF) would have an adverse impact on the employment of senior workers with low educational attainment. These members considered that clear and comprehensive guidelines should be put in place to ensure that the introduction of the QF would not cause any loss to the existing workers in terms of job security and wages. Since each industry sector would have its own skills and standards required in the outcomes of qualifications, some members considered that there should be clear criteria for assessment. Regarding the membership of Industry Training Advisory Committees (ITACs), some members suggested that more employee representatives should be sitting in ITACs. The Panel asked the Administration to take into consideration members' views and concerns in respect of the implementation of the QF.

I would like to take this opportunity to thank members for their contribution to the work of the Panel and to express my gratitude to colleagues of the Secretariat and other staff for their hard work. Thank you.

**PRESIDENT** (in Cantonese): Mr Kenneth TING will address the Council on the Report of the Panel on Commerce and Industry 2003/2004.

### **Report of the Panel on Commerce and Industry 2003/2004**

**MR KENNETH TING** (in Cantonese): Madam President, in my capacity as Chairman of the Panel on Commerce and Industry, I present the report on the

work of the Panel during this year, and give a brief account on the major areas of work of the Panel.

The Panel welcomed the signing of the Mainland/Hong Kong Closer Economic Partnership Arrangement (CEPA) between the authorities and the Mainland. It was pleased to note that as at May 2004, the authorities had succeeded in striving for the elimination of tariff for over 300 types of Hong Kong products exported to the Mainland and the liberalization in market access for service suppliers in 18 services sectors. Members understood that under CEPA, for a majority of Hong Kong products, the existing Hong Kong origin rules would apply. As for products adopting value-added requirement as origin rule, such as watches and clocks, members hoped that the requirement would attract manufacturing activities with high value-added content or substantial intellectual property input to take place in Hong Kong. Moreover, the Panel also urged the authorities to continue the negotiations with the Mainland with a view to lowering the thresholds for entry to the mainland market for certain local professional and services sectors.

Some members suggested that the authorities should consider setting up a high-level committee comprising representatives from the Government and business leaders to explore innovative ways to leverage on the opportunities brought about by CEPA. In response to members' proposal for conducting a quantitative study on the impact of CEPA, the authorities agreed to conduct a quantitative analysis of the economic impact of CEPA, including that on local employment, nine to 12 months after the implementation of CEPA. The Panel would continue to keep in view further progress of CEPA.

On improving the business environment, the Panel in general agreed with the principle of "market leads, government facilitates". In studying various initiatives undertaken by the authorities to improve the business environment, members had explored whether Hong Kong should critically re-examine the need to enact a general competition law to deal with competition straddling different economic sectors. Though the Economic and Employment Council chaired by the Financial Secretary had already established a Subgroup on Business Facilitation, providing a forum for discussions related to the improvement of business environment, some members urged the Administration to set up a separate forum outside the existing institutional arrangement to tap creative ideas and new perspectives.

The Panel expressed grave concern about the effectiveness of the investment promotion work undertaken by the Invest Hong Kong (InvestHK). In response to the request of members, the authorities agreed to adopt a mechanism starting from 2005 to keep track of the development of those companies which had established their operation in Hong Kong for more than three years, as well as the capital invested and job created by those companies in Hong Kong. The Panel also noted that the InvestHK had launched some new initiatives, such as the Investment Promotion Ambassador Scheme and the engagement of external consultants to explore new markets. In examining the working relationship between InvestHK and the Economic and Trade Offices (ETOs) of the Government, members urged the authorities to ensure that there was no overlapping of work between InvestHK and the ETOs.

The Panel had examined the roles of the Hong Kong Trade Development Council (TDC) and private fair organizers in organizing major trade fairs. After listening to the views of the Government, the TDC, trade associations and members of the exhibition business, members recognized the contribution of the TDC and private fair organizers in promoting the local exhibition industry, and were of the view that there was room for collaboration between the two sides. Members urged the authorities to play an active role in facilitating the communication between the TDC and the trade, so that the local exhibition industry could successfully rise to the stiff competition from neighbouring territories.

Since quite a number of projects funded by the Innovation and Technology Fund (ITF) were rated as not useful and not beneficial to the relevant industries, and the investment of the Applied Research Fund (ARF) had also incurred loss, members expressed grave concern on the cost-effectiveness of both schemes. Arising from its examination of the Director of Audit's Report, the Public Accounts Committee had requested the Panel to examine the feasibility of continuing the ARF. The authorities agreed to conduct a detailed review and to revert to the Panel. As the authorities would adjust the existing funding model of the ITF to concentrate on supporting the establishment and development of Research and Development centres in particular focus areas, the Panel urged the authorities to consult widely and systematically with a view to identifying potential focus areas in technology development.

The work of the Panel in other areas as at the end of June this year has been set out in the report. I would like to thank Panel members and the Secretariat for their co-operation. Thank you, Madam President.

**PRESIDENT** (in Cantonese): Miss Margaret NG will address the Council on the Report of the Panel on Administration of Justice and Legal Services 2003/2004.

**Report of the Panel on Administration of Justice and Legal Services 2003/2004**

**MISS MARGARET NG:** Madam President, in my capacity as Chairman of the Panel on Administration of Justice and Legal Services, I briefly report on the major work of the Panel in the 2003-04 Session.

The review on provision of legal aid service has been one of the major areas of concern of the Panel. In considering the Administration's proposal to adjust downward the financial eligibility limits of the Ordinary Legal Aid Scheme and the Supplementary Legal Aid Scheme following the 2003 annual review, some members questioned whether the limits had been realistically set to ensure that litigants in genuine need could seek justice through legal proceedings. They considered that the Administration should undertake a fundamental review of the approach of setting the limits and the criteria for determining eligibility. Some members also considered that the feasibility of expanding the Supplementary Legal Aid Scheme should be examined. The Administration maintained its position that the existing legal aid system was able to strike a balance and achieve the policy objective.

In the last Session, the Panel formed a working group to consider issues relating to imposition of criminal liability on the Government or public officers in the course of discharging public duties for contravening any legislative provisions binding on the Government. At its last meeting in this Session, the Panel endorsed the recommendation of the working group that the Administration should consider:

- (a) in respect of regulatory offences, that Crown immunity should be removed as a matter of policy on a case-by-case basis and when legislative opportunities arose; and



- (b) the development of alternative approaches taken in the United Kingdom and New Zealand in removing Crown immunity.

The Administration's position was that there was no precedent in the Hong Kong legislation which clearly and unequivocally rendered the Government or government departments liable to criminal proceedings. The Administration maintained that the existing reporting mechanism adopted to deal with breaches of statutory provisions by public officers had been working satisfactorily, and there was no need for a radical change to the existing system. The Panel agreed that the issue should be followed up in the next Legislative Session.

On matters relating to the legal profession, the Panel had closely monitored the progress of the review of the Professional Indemnity Scheme (PIS) undertaken by The Law Society of Hong Kong (the Law Society). The Panel had requested the Administration to assume an active role in discussing with the Law Society the future scheme of PIS, and means to implement the scheme. In the beginning of the Session, the Panel was also briefed by the Law Society on the draft rules to regulate solicitors corporations. The rules are being finalized by the Law Society.

Now I shall turn to matters relating to the Judiciary which had been discussed by the Panel. On the existing system for allocation of resources for the Judiciary, some members considered that express constitutional safeguards should be introduced to ensure that the independent operation of the Judiciary would not be subject to executive interference or affected by budgetary constraints. On the appropriate system for the determination of judicial remuneration, the Panel was advised that the relevant consultancy report together with the Judiciary's proposal had been provided to the Chief Executive for consideration in April 2003.

The Panel had discussed and was generally satisfied with the improvement measures introduced by the Judiciary to streamline the statutory procedure for repossession of premises by the Lands Tribunal to protect the interest of landlords in cases where the tenants had defaulted payment of rent. The Panel also welcomed the Chief Justice's decision that the Lands Tribunal Rules as a whole should be reviewed.

In response to members' concerns, the Judiciary had set up a Working Party to review the operation of the Labour Tribunal. The Panel would follow

up the report of the Working Group which was submitted to the Chief Justice on 29 June 2004.

The Panel was also briefed on the findings of the evaluation study on the three-year pilot scheme on family mediation which was launched by the Judiciary in May 2000 to test the effectiveness of mediation in resolving matrimonial disputes. Members were generally satisfied with the success rates of the scheme.

Lastly, I would like to mention that the Panel had also held special meetings to discuss relevant issues arising from two cases which had aroused wide public concern. The first case related to the approval given for Mr Michael WONG, a retired judge, to take up full-time appointment as Chairperson of the Equal Opportunities Commission without suspension of his pension. The second case concerned the decision of the Secretary for Justice not to prosecute Mr Antony LEUNG Kam-chung, the former Financial Secretary, for his conduct in respect of a car purchase by him in January 2003.

Madam President, these are my short remarks on the report.

**PRESIDENT** (in Cantonese): Mr LAU Kong-wah will address the Council on the Report of the Panel on Transport 2003/2004.

### **Report of the Panel on Transport 2003/2004**

**MR LAU KONG-WAH** (in Cantonese): Madam President, in my capacity as Chairman of the Panel on Transport, I briefly report on the major work of the Panel in this Session.

The Panel was keenly aware of the public concern about the level of public transport fares, for that reason, the Panel was very concerned about the slow progress in taking forward the proposed fare adjustment mechanism which would allow for increase as well as reduction in fares. The Panel called on the Administration to expeditiously discuss with various public transport operators to reduce the public transport fares and re-introduce the half-fare travel concessions for students, and encourage public transport operators to co-operate in offering

more joint concessions. At a meeting in April 2004, a motion was passed by the Panel which urged the Administration to give impetus to the MTR Corporation Limited (MTRCL) to extend and improve the existing interchange fare discount arrangement between West Rail and MTR. The Panel noted that the two railway corporations would launch a new interchange fare discount scheme starting from 1 May 2004 with a view to alleviating the financial burden of the public.

For the long-term development of the economy and the logistics industry, the Panel considered that there was a pressing need for the Administration to implement various projects to enhance the transport links between Hong Kong and the Pearl River Delta Region. Nevertheless, the Panel considered that in the course of constructing various cross-boundary transport infrastructure, the Administration should give serious consideration to their impact on local transport networks, and speedily devise and implement the long-term and short-term improvement measures to cope with the increase in forecast demands. Moreover, the Panel also urged the authorities to speed up the Northern Link, Regional Express Line and Port Rail Line, in order to further improve the transport network between Hong Kong and the Mainland.

With regard to road safety, the Panel has discussed with the Administration on various issues in this Session, including the promotion of good driving behaviour, highway design and containment parapet design standards, improvement programme of the signage and signs, the review of speed limits, the regulation of the vehicle maintenance trade, as well as the safety of franchised bus and public light bus (PLB) operation. The Panel urged the authorities to formulate various preventive measures to prevent the recurrence of catastrophes.

The Panel noted that the existing transport policy was to accord priority to the mass carriers, namely, railways and franchised buses, with railways as the backbone of the public transport system. The other modes would assume a supplementary role. However, in order to make this hierarchy effective, the Panel considered that there must be a high degree of inter-modal co-ordination.

The Panel noted the concerns expressed by both franchised and non-franchised bus operators, and the PLB and taxi trades about the rapid proliferation of railway development in the territory. This coupled with the

difficult operating environment of the public transport trades had already jeopardized their businesses and livelihood. The Panel was of the view that the Administration should critically review the need, cost-effectiveness and financial viability of the planned railway projects, taking into account the latest changes in land use planning, population size and other planning parameters as well as the roles of various modes in the public transport services system and their respective operating environment.

In the course of discussing the construction of Route 4 *vis-a-vis* South Island Line (SIL) and West Island Line (WIL), the Panel passed a motion to urge the Government to shelve any further development and planning for the SIL and the WIL pending its review on the latest population growth in the southern and western districts, as well as its land use planning to develop the southern district into a tourism/commercial centre. In the meantime, the Government should expedite its study and decision process for the implementation of Route 4, so as to cope with the transport needs of the local residents. The Panel also requested the Administration to speed up the interim traffic improvement measures to improve the local traffic conditions along Pokfulam Road to a manageable level.

With regard to issues relating to railway, the Panel formed a subcommittee to follow up the planning and implementation of various railway projects in Hong Kong and to oversee the reorganization of public transport services after the opening of new railway lines.

Lastly, since the Chief Executive in Council had formally invited the MTRCL and Kowloon-Canton Railway Corporation to study a possible merger, whilst the merger would have far-reaching implications on the employees of the two railway corporations, the future fare structure as well as railway planning, the Panel urged the Government to publicize at the earliest opportunity the outcome of the merger study by the two railway corporations by this August, so as to consult employees of the two railway corporations, the public and this Council.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): Mr Andrew WONG will address the Council on the Report of the Panel on Constitutional Affairs 2003/2004.

**Report of the Panel on Constitutional Affairs 2003/2004**

**MR ANDREW WONG** (in Cantonese): Madam President, in my capacity as Chairman of the Panel on Constitutional Affairs, I would like to highlight a few major issues discussed by the Panel in the 2003-04 Session.

The review on constitutional development after 2007 was the most important and controversial subject considered by the Panel in the current Session. The Constitutional Development Task Force (the Task Force) led by the Chief Secretary for Administration had been briefing the Panel of its work progress since its establishment in January 2004.

Major issues discussed by the Panel were as follows:

- (i) issues relating to legislative process and principle identified by the Task Force;
- (ii) the Task Force's First Report on the relevant issues of legislative process in the Basic Law relating to constitutional development and the interpretation on the relevant provisions of the Basic Law promulgated by the Standing Committee of the National People's Congress (NPCSC) on 6 April 2004;
- (iii) the legal process of amending the methods for selecting the Chief Executive and forming the Legislative Council;
- (iv) the nine factors set out in the Second Report of the Task Force on issues of principle in the Basic Law relating to constitutional development and in the report submitted to the NPCSC by the Chief Executive;
- (v) decision promulgated by the NPCSC on 26 April to rule out universal suffrage in 2007 and 2008, and to maintain the 50:50 ratio for Members returned by functional constituencies (FC) and Members returned by geographical constituencies (GC) through direct elections for the election of the Legislative Council in 2008; and

- (vi) nine areas set out in the Third Report of the Task Force which may be considered for amendment in respect of the methods for selecting the Chief Executive in 2007 and for forming the Legislative Council in 2008.

The Panel was consulted on a number of proposals made by the Administration for the 2004 Legislative Council Election, which include the election expense limits, vote counting arrangements for FCs, polling and counting arrangements for GC elections, 2004 Voter Registration Campaign, the procedures for printing specified particulars relating to candidates on ballot papers for use in Legislative Council elections, and the regulation which provided for the procedures in respect of a financial assistance scheme for candidates standing in Legislative Council elections.

In the light of the experience of the 2003 District Councils Election, some members considered that certain requirements in the Guidelines on Election-related Activities in respect of the District Councils Elections (DC Guidelines) issued by the Electoral Affairs Commission (EAC) in September 2003 were too stringent, as the proposed guidelines for the 2004 Legislative Council Election would be modelled on the DC Guidelines. The Panel discussed the matter with the Administration at three meetings and made a number of comments. The Panel noted that the proposed Guidelines issued by the EAC had taken on board a number of suggestions of members.

In view of members of the public having claimed about interference by mainland officials and residents in relation to the 2004 Legislative Council Election, some members expressed concern about the adequacy of existing legislation in deterring the use of force or duress against electors with a view to influencing their voting behaviour, and the use of camera-equipped mobile telephones to take photographs of ballot papers inside polling stations. Other members noted "hearsay" cases targeting at mainland officials, though widespread, had not been substantiated. The Panel was advised that the Government was committed to conducting public elections in an open, honest and fair manner, and would not tolerate "money politics". Any person who was under threat or duress in relation to voting should report to the Independent Commission Against Corruption.

The Panel held a special meeting jointly with the Panel on Home Affairs to discuss the appointed membership of the second term DCs. Some members

were of the view that considering the strong public demand for full democracy, as demonstrated by the voting results in the 2003 DC election, the Chief Executive was not required to appoint a maximum of 102 members. Nevertheless, some other members supported appointed membership of DCs. The Administration responded that the spirit of the appointment system was appointment by merit. The Government would review the appointed membership in the context of the review on the role, functions and composition of DCs to be conducted.

Madam President, I so submit.

**PRESIDENT** (in Cantonese): Mr Fred LI will address this Council on the Report of the Panel on Food Safety and Environmental Hygiene 2003/2004.

### **Report of the Panel on Food Safety and Environmental Hygiene 2003/2004**

**MR FRED LI** (in Cantonese): Madam President, in my capacity as Chairman of the Panel on Food Safety and Environmental Hygiene, I would like to present to this Council the Report of the Panel for the year 2003-04, and I shall also speak on a few key areas of work of the Panel.

The Panel held a series of meetings with the Government at the beginning of this year to discuss the preventive and contingency measures to guard against the outbreak of avian flu in Hong Kong. At the height of a series of outbreaks in our neighbouring countries and places, the Panel urged the Administration to stop the processing of all applications for the import of poultry, poultry carcasses and poultry eggs from countries and places with avian flu outbreaks. The Panel also urged the Administration to announce a crisis-handling mechanism and discuss with the trade the disposal of live chickens in Hong Kong. As the outbreaks eased off, the Panel urged the Administration to negotiate with the Mainland on the resumption of importation of live poultry.

On the enhanced measures to prevent avian flu, the Panel supported the segregation measures at retail level to reduce contact with poultry by customers. The Panel also supported the proposal of reducing the number of poultry stalls in

retail markets to enable reconfiguration of poultry stalls to provide for separate storage and culling areas of live poultry. The Panel also gauged views from various sectors on the consultation paper on the long-term strategies to prevent avian flu.

With regard to food safety, the Panel expressed grave concern about the media reports that some food products manufactured in the Mainland had been found to contain harmful substances and unsafe for human consumption. As Hong Kong imported a large volume of food products from the Mainland, the Panel urged the Administration to review the current mechanism of monitoring these food products, and step up random inspections to ensure the safety of these foods. The Panel also urged the Administration to address the problem of parallel imports of food products from the Mainland, and hold discussions with the mainland authorities to ensure that no harmful food products were imported into Hong Kong.

In the respect of environmental hygiene, the Panel had actively followed up the long-term measures put forward in Team Clean's final report published in August 2003. The Panel had expressed concern about the hygiene problems in vacant land in the New Territories, pet keeping in public housing estates, design of refuse collection points, lack of management of old tenement buildings, and the littering problem caused by increased vehicular traffic across the boundary. The Panel also requested the departments concerned to follow up these issues.

In view of the surge of ovitrap indices in a number of areas and reports of dengue fever and Japanese encephalitis cases, the Panel discussed the effectiveness of anti-mosquito measures in June 2004. The Panel considered that the Administration should adopt a more proactive and preventive approach to tackle the mosquito problem. The Panel also urged the Administration to step up anti-mosquito efforts in black spots, such as vacant land, construction sites, village houses, private streets and back lanes. The Panel also supported the Administration's proposal to amend the legislation to enable the relevant departments to take immediate actions to remove public health hazards in private and common areas.

As to the labelling scheme on nutrition information, the Panel held a special meeting to gauge the views of the medical sector, consumers' groups and



the food industry. Some members agreed with the view of medical bodies and consumers' groups, supported the mandatory labelling scheme, and requested shortening the implementation timetable from five years to two or three years. Nevertheless, the food industry expressed concern that the proposal would have significant impact on the food trade, as many places such as the Mainland had not yet implemented similar labelling requirements, and their food suppliers might not be able to comply with Hong Kong's requirements. The Administration agreed to revert to the Panel before finalizing the nutrition information labelling requirements.

Details of other areas of work of the Panel have been presented in the Report. I shall not repeat them here.

Madam President, I so submit.

**PRESIDENT** (in Cantonese): Mr Henry WU will address the Council on the Report of the Panel on Financial Affairs 2003/2004.

### **Report of the Panel on Financial Affairs 2003/2004**

**MR HENRY WU** (in Cantonese): Madam President, in my capacity as Deputy Chairman of the Panel on Financial Services (the Panel), I submit the report on the work of the Panel during the period between October 2003 and June 2004. The report has set out the major work of the Panel over the past year. I shall only highlight a few items here.

During the current Session, the Panel had conducted in-depth studies on the economic development of Hong Kong, public finance management and issues related to the monetary system of Hong Kong. The Panel discussed periodically with the Financial Secretary Hong Kong's latest economic situation and initiatives in managing public finances. The Financial Secretary indicated the Government's commitment to tackle the deficit problem through revival of economy and controlling public expenditure. Whilst echoing the need to address the deficit problem, members reiterated the importance of attracting foreign capitals, reviving the economy and addressing the high unemployment rate. Members were particularly concerned about the adverse impact of public

expenditure reduction on the general public, in particular the underprivileged. The Financial Secretary said that a pragmatic and measured approach had been adopted in implementing expenditure cuts with due regard to community needs.

Following the dissipation of Severe Acute Respiratory Syndrome (SARS), Hong Kong economy rebounded distinctly since the third quarter of 2003 and gathered further growth momentum in the first quarter of 2004. In this connection, the Panel followed up the "Campaign to re-launch Hong Kong's economy" which was launched because of the outbreak of SARS. On the activities organized under the Campaign, members expressed serious doubt over the financial arrangements and the cost-effectiveness of some activities, in particular the Harbour Fest. Members were disappointed to note that the Government had not played an effective role in monitoring the implementation of the event. The Panel questioned the appropriateness of the Government underwriting the shortfall of the event and giving a complete free hand to the American Chamber of Commerce in Hong Kong to organize such a large-scale event. Given the low attendance rate of the 16 concerts, members further questioned if the objectives of boosting the local economy and promoting tourism had been achieved. Members reiterated that where public funds were involved, it was of paramount importance that all parties should be vigilant in exercising control over the use of taxpayers' money and in achieving the objectives of the project. The Panel noted that in the light of the observations and recommendations of the reports by the Audit Commission and the Independent Panel of Inquiry on the Harbour Fest, the Administration would strengthen measures to improve the process for committing government funds on specific projects and would consider providing training on crisis communication for senior officials. The Panel also noted that investigations into the Harbour Fest were being undertaken by the police and the Independent Commission Against Corruption.

In regard to management of public finances, members supported the Administration's proposal to securitize future revenue receivable from tolls on five tunnels and one bridge as a means to address the budget deficit problem. However, members were concerned about the details of the securitization programme. Besides, members also supported the Administration's proposal to transfer \$40 billion from the Land Fund to the General Revenue Account with a view to meeting the latter's anticipated shortfall in 2004-05. Members also welcomed the Administration's initiative in publishing the accrual-based

consolidated accounts of the Government with a view to enhancing transparency of the Government's financial position and performance. Some members expressed concern about the Government's huge liabilities of over \$320 billion for the provision of pensions and untaken leave balance of civil servants. Members requested the Administration to consider long-term strategies in tackling the liabilities.

As regards the monetary system of Hong Kong, the Panel invited the Financial Secretary and the Chief Executive of the Hong Kong Monetary Authority (HKMA) to discuss details on the division of functions and responsibilities between the Financial Secretary and the Monetary Authority in monetary and financial affairs, as well as the governance of the HKMA. Some members expressed support for the clear delineation of responsibilities in order to enhance the transparency and credibility of policies and efficiency of operations in monetary and financial affairs. Some other members requested the Financial Secretary to consider measures to define the powers and functions of the HKMA by legislation and to enhance its public accountability, in particular in relation to its remuneration policy for senior staff. Besides, the Panel also listened to three briefings delivered by the Chief Executive of the HKMA, and held detailed discussions on the maintenance of the stability of Hong Kong Dollar, the regulation of the banking sector, the development of financial infrastructure, and the management of the Exchange Fund.

Recognizing the importance of enhancing corporate governance of companies to upgrade the quality of the financial markets and reinforce Hong Kong's status as an international financial centre, the Panel continued to monitor the progress of the implementation of the Corporate Governance Action Plan drawn up by the Administration, the Securities and Futures Commission (SFC), and the Hong Kong Exchanges and Clearing Limited in early 2003. On tightening the regulation of Initial Public Offering intermediaries including sponsors and financial advisers, the Panel welcomed the initiative of the Hong Kong Society of Accountants in improving the self-regulatory regime of the accountancy profession to enhance the effectiveness and transparency of the regime through introduction of the Professional Accountants (Amendment) Bill 2004, which was introduced by Dr Eric LI. The Panel examined in detail the policy aspects of the Bill.

As regards improvements to the regulation of listing, the Panel continued to monitor the consultation conducted by the Administration in October 2003.

The Panel noted that the Administration had decided to provide more important listing requirements with statutory backing and expand the existing dual filing system. Recognizing that the recommendations would increase the duties of the SFC and confer more power on it, some members saw the need to strengthen the existing monitoring system over the SFC to ensure the cost-effective deployment of the SFC's resources and to enhance checks on its powers.

Madam President, I so submit.

**PRESIDENT** (in Cantonese): Mr YEUNG Yiu-chung will address the Council on the Report of the Panel on Education 2003/2004.

#### **Report of the Panel on Education 2003/2004**

**MR YEUNG YIU-CHUNG** (in Cantonese): Madam President, in my capacity as Chairman of the Panel on Education, I shall highlight the major work of the Panel in the 2003-04 Legislative Session.

In higher education, the Panel had discussed with the Administration, staff associations of the higher education sector, student unions and other related representatives the funding proposal for the University Grants Committee (UGC) for 2004-05, the Matching Grant Scheme for UGC-funded institutions, future developments in the higher education sector and the deregulated staff remuneration and welfare system of UGC-funded institutions. Besides, the Panel also discussed with the Administration and the City University of Hong Kong (CityU) about the future provision of associate degree programmes in the CityU.

Members asked the Administration to explain why it had decided to reduce the funding support for the UGC sector by about \$1.1 billion on the one hand, and provide a \$1 billion dollar-for-dollar matching grant on the other. The Administration pointed out that given the financial constraints, the institutions should diversify their funding source. To develop a philanthropic culture in support of higher education, the Matching Grant Scheme was established to encourage institutions to raise funds through the collective efforts of their management and staff.

Although the Administration had set a "ceiling" and a "floor" for the provision of matching grant, members were still concerned about the fund-raising capability of smaller institutions with a short history. They urged the Administration to ensure a fair distribution of matching grants to the institutions.

Members were also concerned that after the Administration had lifted the regulation on the remuneration of staff of UGC-funded institutions, all UGC-funded institutions had already reviewed the staff remuneration and welfare system. Where necessary, the institutions could amend their staff remuneration system according to their own pace. The Government would ensure that the funding for institutions would not decrease as a result. Members respected the main principle of autonomy of the institutions. However, they pointed out that the remuneration mechanism decided by the institutions should have a certain degree of transparency, and it was also necessary to consult the staff concerned and set up an appeal mechanism.

In primary and secondary school education, the Panel had discussed a number of issues with the Administration, including the planning and provision of public sector school places, the study of small class teaching, and oversupply of primary school places. It had also listened to the views of the schools and organizations concerned. The Administration had also consulted the Panel on the school-oriented professional support and the way forward on information technology in education.

Members were concerned that due to the declining population in the six to 11 age group, 31 primary schools were not allocated Primary One classes in the 2004-05 school year. Members urged the Administration to assist the schools concerned in merging with other schools and formulate a long-term policy to resolve the problem of surplus school places.

During the discussion on the planning and provision of public sector school places, members supported the proposals of the Administration, including reprovisioning and redeveloping existing substandard schools, and constructing new schools to implement whole-day primary schooling.

Madam President, I so submit.

**PRESIDENT** (in Cantonese): Dr TANG Siu-tong will address the Council on the Report of the Panel on Planning, Lands and Works 2003/2004.

**Report of the Panel on Planning, Lands and Works 2003/2004**

**DR TANG SIU-TONG** (in Cantonese): Madam President, in my capacity as Chairman of the Panel on Security (the Panel), I submit the report to this Council on the work of the Panel in the 2002-03 Legislative Session, and shall highlight a few major areas of work of the Panel.

The West Kowloon Cultural District (WKCD) development project was an item that the Panel had all along been following up actively. Since the Government launched an Invitation For Proposals (IFP) for the project in September 2003, the Panel had held a number of meetings, inviting architectural, art and cultural organizations to express their views on the project. Members were concerned that the single package development approach adopted for the project might restrict the participation opportunities of small and medium sized companies, as the amount of investment involved was enormous. Besides, given the single package development approach, the entire project would not involve any public funding, and hence the Finance Committee of the Legislative Council would not have a role in scrutinizing and approving any part of the project. Under the IFP, the proponent was required to provide a canopy for the WKCD, which should cover at least 55% of the development site area. The engineering and architectural industry expressed worries about the exorbitant costs of construction as well as repairs and maintenance. The Administration would seek the views of the Legislative Council and the Town Planning Board (TPB) on the preferred development proposal before finalizing the proposal. Notwithstanding these undertakings, members still saw the need to enhance the transparency and public participation in assessing the development proposals. The Panel intended to discuss with the Administration on the next stage of work after the deadline for submission of proposals for the development.

Another major work of the Panel was to look into the controversies over the Central and Wan Chai reclamation projects. The Panel had altogether held four joint meetings with the Panel on Environmental Affairs to listen to the views of engineering professionals, green groups and transport trades. In January this year, the Court of Final Appeal (CFA) already delivered a judgement on the Outline Zoning Plan (OZP) of Wan Chai development phase II (WDII), which upheld the High Court's decision that the TPB had, in its approval on the area of

reclamation, failed to comply with the Protection of the Harbour Ordinance. Members noted that the Administration had already announced that it would conduct a comprehensive planning and engineering review of the WDII again.

As for Central reclamation phase III (CRIII), the Panel noted that members of the public had different views on the construction of the Central-Wan Chai Bypass. As the judgement of the High Court held that the Chief Executive in Council, in exercising the right to approve the OZP concerned, had acted lawfully and reasonably, the Administration informed the Legislative Council earlier that the OZP would not be returned to the TPB for reconsideration.

The Panel was very much concerned about the Administration's proposal of using the public private partnership (PPP) approach for the reprovisioning of Sha Tin Water Treatment Works (STWTW) and the delivery of water supply, distribution, and the related customer support services. Since the STWTW provided for about 40% of the total water demand in the territory daily, members opined that the first question that needed a solution was how water quality could be ensured and maintained under the PPP model. Members were also concerned about the impact of the Water Services Department's proposal on the 800 staff. The Panel called on the Government not to make any decisions on privatization of the STWTW before the relevant consultancy report was endorsed by the Panel.

In regard to building management and maintenance, during a briefing by the Administration at the end of last year, members already pointed out the lack of concrete proposals in the consultation paper issued by the Government. Members considered that the Government should assume a more proactive role in solving the building maintenance problem and in formulating initiatives which would provide effective incentives to the parties concerned to contribute towards good building management and maintenance.

The main points of the other work of the Panel have already been recorded in the report submitted. I would like to take this opportunity to thank members for their contribution to this Panel, and thank the staff of the Secretariat for their hard work and assistance. Madam President, I so submit.

**PRESIDENT** (in Cantonese): Mr James TIEN will address the Council on the Report of the Panel on Economic Services 2003/2004.

**Report of the Panel on Economic Services 2003/2004**

**MR JAMES TIEN:** Madam President, as Chairman of the Panel on Economic Services, I would like to report on the major work of the Panel during the 2003-04 Session. As the report already gives a detailed account of our work, I would only highlight a few points here.

During the Session, the Panel continued to attach great importance to overseeing the planning and implementation of tourism infrastructure, facilities and products, and monitoring initiatives to improve the quality of service of the industry with a view to promoting tourism development.

When consulted on the new global marketing campaign "Hong Kong - Live it, Love it", we asked the Administration and the Hong Kong Tourism Board to place more concerted effort in attracting back long-haul visitors, apart from giving attention to the mainland market, so as to maintain a balanced international portfolio of visitors from all markets. We also pointed to the need to target at key source markets with reference to the potential and response of each market segment in the new global advertising campaign so as to ensure value for money and cost-effectiveness of the revival campaign plans.

Whilst noting that the tourism industry had staged a rapid V-shaped recovery after the SARS incident, we called on the Administration to further enhance our tourism infrastructure, facilities and products for visitors with a view to ensuring the sustainability of the recovery. A good environment and a convenient transport system were equally appealing to long-haul visitors. There was also a need for the Government to devise effective measures to sanction unscrupulous retail shops and strengthen the complaint mechanism, and publicize the effectiveness of such efforts to boost the confidence of visitors to spend in Hong Kong.

Given the rapid development and expansion of the mainland ports and the increasing competition from the region, we expressed grave concern about the high terminal handling charge (THC) which had eroded the competitiveness of the Hong Kong port. We urged the Administration to liaise with the relevant parties with a view to increasing the transparency of the mechanism for determining THC. There was also a need for the Government to speed up the infrastructural development programme in Hong Kong so as to cater for the rising demand, and facilitate cargo flow and passenger flow to boost the hub



status of Hong Kong. We also saw the need for the provision of designated facility for handling high-value, time-critical air cargoes and logistics parks to increase our competitiveness. We urged the Administration to speed up the related work.

As the proposed privatization of the Hong Kong Airport Authority (AA) would have far-reaching impact, we called on the Administration to consult the relevant stakeholders before introducing a bill into the Council for consideration.

The Panel sent a delegation to Europe in April 2004 to study overseas experience in port and airport management, logistics development as well as theme park management. The delegation found the overseas duty visit to Europe very timely. With the challenges ahead, we considered it important to keep abreast of the latest development in the international logistics arena, so as to facilitate the Panel to consider the related matters in the years ahead. The regulatory framework for the designated United Kingdom airports also served as useful reference when we considered the future regulatory framework for the privatized AA. Finally, with the opening of the Hong Kong Disneyland in 2005, our trip to Disneyland Resort Paris certainly provided us with very useful reference to facilitate our consideration of the theme park development in Hong Kong.

Regarding electricity tariff, we considered that a tariff freeze by the two power companies for 2004 was not enough to alleviate the burden on the general public and the commercial and industrial sectors. We were also disappointed that the agreement secured during the 2003 Interim Review of the Scheme of Control Agreements (SCAs) with the two power companies did not result in a tariff reduction, despite the persistent deflation over the past few years. We believed it was no longer appropriate to link the return for shareholders to the value of the fixed assets as it encouraged over-investment by the power companies. The levels of return for shareholders were also too high in today's circumstances and should be lowered. Finally, tariff should be linked to and adjusted in accordance with changes in local Consumer Price Index. We called on the Administration to ensure that the inherent limitations of the current SCAs would be avoided in the post-2008 regime. In taking forward the regulatory review of the post-2008 arrangement for the electricity supply market, some members also requested the Administration to specify a target of renewable energy contribution to electricity demand in the energy portfolios of the two power companies. There was also a need for the Government to conduct proper

consultation and speed up the related work so as to pave the way for the liberalization of the electricity market in 2008.

We had reviewed the impact of the current oil price hike on business operating cost and the general public. We called upon the Administration to formulate relief measures to assist the related trades, particularly the transport trades. The Administration should also examine means to assist the general public to minimize fuel consumption, for example, during driving.

In reviewing the competition state in the foodstuffs and household necessities retailing sector, we took the opportunity to review whether there was a need to introduce a universal competition law. Whilst members had different views over the subject matter, we requested the Government to call upon the businesses to cease existing, and refrain from introducing, restrictive practices that impaired economic efficiency or free trade.

Thank you Madam President.

**PRESIDENT** (in Cantonese): Miss CHOY So-yuk will address the Council on the Report of the Panel on Environmental Affairs 2003/2004.

### **Report of the Panel on Environmental Affairs 2003/2004**

**MISS CHOY SO-YUK:** Madam President, as Chairman of the Panel on Environmental Affairs, I wish to report on the work of the Panel during the 2003-04 Legislative Council Session. The Panel continued to monitor the various measures to improve water and air quality in Hong Kong, and to tackle the problems in relation to reclamation and waste management.

Sewage treatment remained high on the agenda of the Panel. In June 2004, the Administration released the Consultation Document for the Harbour Area Treatment Scheme (HATS) Stage 2 to gauge public opinions on its preferred option to expand and upgrade the existing Stonecutters Island Sewage Treatment Works to provide centralized chemical treatment for the whole HATS catchment as well as to build a new biological treatment plant. The Panel subsequently held two meetings to discuss the issue, the last of which was held this morning to receive views from interested parties. Given the importance

and far-reaching implications of HATS Stage 2, members urged the Administration to consider extending the consultation period from October to the end of 2004 to allow sufficient time for the public to put forward their views.

On water quality, members discussed the restoration plans for the damaged sections of the streams at Tung Chung and Sha Kok Mei as well as measures to prevent recurrence of damages to natural habitat of streams as a result of excavation and channelization.

On air quality, the Panel supported the proposed retrofitting of the remaining pre-Euro diesel heavy vehicles with emission reduction devices, but stressed the need to offer a choice between retrofitting and replacement of vehicles to eligible owners. Members also supported the proposal of making the Euro IV unleaded petrol specification the statutory standard with a view to further reducing emissions of particulate and nitrogen dioxide from motor vehicles.

As regards waste management, the Panel continued to monitor the progress of measures to tackle the problem of construction and demolition waste and municipal solid waste. The possible demolition of new building blocks in Hung Hom Peninsula by the developers had aroused much public concern on the need for measures to prevent and minimize the production of construction and demolition materials by private works. The Panel therefore supported the early implementation of landfill charging. Members also considered it necessary to promote social responsibilities among corporations in Hong Kong. They further pointed out that the existing measures on the prevention and recovery of municipal solid waste were piecemeal and not capable of tackling the waste problem in a holistic manner. In this connection, the Administration was urged to expedite the review of the waste management policy.

The Panel continued to vigilantly monitor the impact of the Central Reclamation Phase III which was aimed at providing land for, among other things, the Central-Wanchai Bypass and military dock for the People's Liberation Army. To minimize the extent of reclamation, members suggested that instead of reclaiming the Harbour to provide land for the Bypass to relieve the traffic load, consideration should be given to introducing other traffic management measures such as equalization of toll charges of the three cross-harbour tunnels. Consultation with the People's Liberation Army should also be made to ascertain the need for the berth.

For details of other aspects of work of the Panel, Members may wish to refer to the report. Madam President, I would like to express my sincere gratitude to Panel members and the Secretariat for their unfailing support over the past year. Thank you.

**PRESIDENT** (in Cantonese): Dr LAW Chi-kwong will address the Council on the Report of the Select Committee to inquire into the handling of the Severe Acute Respiratory Syndrome outbreak by the Government and the Hospital Authority.

**Report of the Select Committee to inquire into the handling of the Severe Acute Respiratory Syndrome outbreak by the Government and the Hospital Authority**

**DR LAW CHI-KWONG** (in Cantonese): Madam President, as the Chairman of the Select Committee to inquire into the handling of the Severe Acute Respiratory Syndrome outbreak by the Government and the Hospital Authority (the Select Committee), I present the Report to the Legislative Council on behalf of the Select Committee.

The Select Committee was established by way of a resolution passed by this Council on 29 October 2003, the function of which was to inquire into the handling of the Severe Acute Respiratory Syndrome (SARS) outbreak by the Government and the Hospital Authority (HA) in order to examine the performance and accountability of the Government and the HA and their officers at policy-making and management levels in that regard.

After eight months of hard work, the Select Committee has finally accomplished the mission given by the Legislative Council and now presents the Report to the full Council. The Report of the Select Committee has explained in detail the whole story of the outbreak of the epidemic in the various hospitals selected by the Select Committee for making inquiries into, its investigation findings of the incident and the subject, as well as its observations and analysis based on the evidences it had taken. During the investigation process, the Select Committee has also conducted studies on some matters related to the public health system and made some proposals based on its observations.

Although time was pressing, the Select Committee has always conducted its investigation in an extremely responsible manner and according to the principle of fairness, impartiality and openness. Just like the past select committees, this time, the Select Committee has also laid down its approach and procedure of work, incorporating Rule 81 of the Rules of Procedure. According to the Rule, the evidence taken before the Select Committee and documents presented to it shall not be published by a member of the Select Committee or by any other person before the Select Committee has presented its report to the Legislative Council. The Select Committee has also agreed that members should not reveal the contents of discussions or documents studied internally during the closed-door meetings. Furthermore, the Select Committee has also decided that enquiries about its work by the media should only be handled by the Chairman.

However, unfortunately, when the Select Committee was still conducting its investigation and before the Report was published, there had been several incidents whereby documents and contents of some internal discussions had been revealed without authorization. The Select Committee is very sorry about these incidents which have violated the principle of fairness and impartiality of the Select Committee and its approach and procedure of work. As the Chairman, I have repeatedly reminded members that the work of the Select Committee has to be kept confidential. The Select Committee has also taken special measures to prevent the leakage of the contents of the Report. With regard to the revelation of unauthorized information, the Select Committee presented a special report to the Legislative Council on 2 June 2004, and apologized to the Council and all those who might be affected. I wish to take this opportunity today to apologize again to the Legislative Council and the public on behalf of the Select Committee.

In order to prevent more effectively the revelation of unauthorized information during investigations by select committees of the Legislative Council in future, the Select Committee proposes that the Committee on Rules of Procedure of the Third Legislative Council should review if there is a need to lay down clearer and stricter rules and procedures.

Madam President, with regard to the investigation findings, analysis and recommendations, I will give my explanation when the debate on the Report of the Select Committee, which is item VII on the Agenda, is handled later. I will

not go into the details here. With these remarks, I present the Report of the Select Committee to this Council.

**PRESIDENT** (in Cantonese): Mr Andrew WONG will address the Council on the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2004, which is subsidiary legislation laid on the table of the Council on 19 May 2004.

**Electoral Affairs Commission (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2004**

**MR ANDREW WONG** (in Cantonese): Madam President, in my capacity as Deputy Chairman of the Subcommittee on subsidiary legislation relating to 2004 Legislative Council elections (the Subcommittee), I address the Council on the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2004 (the Amendment Regulation).

I will briefly report on the deliberations of the Subcommittee on the Amendment Regulation. The Subcommittee has discussed mainly the secrecy of votes and the new arrangement for decentralized counting for geographical constituencies.

Firstly, on the secrecy of votes. The Subcommittee has discussed in detail how to ensure the secrecy of votes. Members are concerned about recent claims by members of the public that some mainland officials or residents had pressurized them or promised to offer them pecuniary benefits in an attempt to coerce or induce them into voting for certain candidates in the Legislative Council Election to be held in September 2004. Some members of the public even claimed that they had been asked to use mobile telephones to take photographs of their ballot papers while voting to prove their voting decisions. The Subcommittee has requested the Administration and the Electoral Affairs Commission (EAC) to implement measures to protect the secrecy of votes.

The Subcommittee notes that Hong Kong already has a comprehensive set of electoral law governing the conduct of elections. Under section 45(1) of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (the Regulation), a person using a mobile telephone for electronic

communication, contrary to a direction of the Presiding Officer within a polling station, commits an offence. Under section 45(2), a person making video recording or taking photographs within a polling station without the express permission of the Presiding Officer also commits an offence.

Section 96 of the Regulation also prohibits certain conduct which may infringe the secrecy of votes. Any contravention of sections 45 and 96 of the Regulation may be liable upon conviction to a fine of \$5,000 and imprisonment for three months.

Moreover, under the Election (Corrupt and Illegal Conduct) Ordinance, a person offering an advantage or using duress to induce another person to vote or not to vote for a particular candidate commits an offence. Upon conviction, he is liable to a maximum fine of \$500,000 and imprisonment for seven years. The Ordinance applies to all conduct concerning an election, whether the conduct is engaged within Hong Kong or elsewhere.

The Subcommittee has asked the EAC to consider taking measures to prevent the use of camera-equipped mobile telephones by electors while voting, for example, requesting electors to deposit their camera-equipped mobile telephones with the polling staff before they enter the voting compartments. In view of the recent spate of events concerning voter intimidation, and the fact that the existing \$5,000 fine under section 45 of the Regulation is the maximum penalty the EAC can impose, some members propose that the imprisonment term be increased to six months to achieve a sufficient deterrent effect.

The EAC considers that the proposal to require electors to deposit their mobile telephones with polling staff before entering the voting compartments will bring about operational and resource implications. To address members' concern, the EAC proposes to add a new subsection under section 45(1) of the Regulation to provide that a person commits an offence if he fails to switch off his mobile telephone, contrary to a direction of the Presiding Officer.

The EAC also proposes that the imprisonment term for offences under section 45(1) and (2) (including the new offence of failing to switch off the mobile telephone and taking photographs within a polling station) of the Regulation and offences under section 96 be increased from three months to six months. The Administration will propose the relevant amendment.

The Subcommittee welcomes and supports the EAC's proposal to increase the imprisonment term for offences under section 45(2) (for example, taking photographs within a polling station without express permission) of the Regulation, and for the offences under section 96 relating to the protection of the secrecy of votes from three months to six months. However, the majority of members express grave reservations about the EAC's proposal of penalizing electors who have their mobile telephones switched on inside polling stations. Apart from considering the proposal unreasonable and the imprisonment of six months too heavy, the Subcommittee finds that the crux of the matter is about the use of camera-equipped mobile telephones or other devices for taking photographs while voting. Therefore, the EAC's proposal fails to specifically pinpoint such conduct.

After considering members' views, the Administration agrees not to further pursue the proposal of making the concerned conduct an offence. Nonetheless, the EAC will implement administrative measures to encourage electors to switch off their mobile telephones inside polling stations, and the penalty for contravening section 45(1) of the Regulation will remain unchanged.

In response to members' request, the EAC will remove the curtains in front of the voting compartments so that the general conduct of electors in the compartment can be monitored. Moreover, there will be an area outside the compartments where no other people will be allowed to enter or stay. The EAC has also undertaken to extend the distance to 2 m as far as possible. The Government will also step up educational and publicity measures so that the public can better understand the measures against corrupt and illegal conduct in elections.

Secondly, on decentralized counting arrangement. Madam President, the Subcommittee has also discussed in detail the new arrangement for decentralized counting for geographical constituencies. In the 2003 District Council Election, counting of votes was for the first time conducted at individual polling stations. Therefore, the EAC proposes that this be adopted in the 2004 Legislative Council Election to replace the arrangement of having one regional counting station set up for each of the five geographical constituencies. The EAC considers that the election results could be announced earlier with the new arrangement, and security risks arising from the need to transport ballot boxes from polling stations to counting stations can be eliminated. About 500



counting stations will be designated in the 2004 Legislative Council geographical constituency election.

To ensure the secrecy of votes in the case of polling stations which serve only a very small number of electors, the EAC proposes that small polling stations (that is, polling stations with less than 200 registered electors) be put up for the 2004 Legislative Council Election, and that the ballot papers of these small polling stations be delivered to a polling station which has been designated as a main counting station. The ballot papers cast at the small polling stations and the main station are mixed before the votes are counted.

A member objects to the proposal, stressing the importance of upholding the principle of mixing of ballot papers from polling stations within a geographical constituency in order to safeguard the integrity and fairness of the electoral process. Moreover, a member considers that under the new counting arrangement, since the number of votes handled by individual polling stations will decrease substantially, the preferences of voters may be revealed. In the light of the recent speculations about acts of intimidation aimed at influencing the outcome of the 2004 Legislative Council Election, the Subcommittee proposes that the Administration should review the relevant proposal. Furthermore, members propose that the threshold for small polling stations (that is, the "200 electors" now proposed by the Government) be raised from 500 to 1 000 electors. The Subcommittee notes that for the 2004 Legislative Council Election, seven polling stations will have less than 200 registered electors, 17 with less than 500, and 30 to 40 with less than 1 000.

Although the EAC insists that under the decentralized counting arrangement, the secrecy of votes will not be compromised, to allay members' concern, the EAC agrees to raise the "200 electors" threshold to "500 electors". As it is expected that about 17 polling stations will have less than 500 electors, the EAC considers that this will not pose great difficulty to the operation. The Administration will propose the relevant amendment. The Subcommittee in general finds the revised proposal acceptable, but individual member reiterates the importance of the principle for ballot papers from different polling stations within a geographical constituency to be mixed before counting, regardless of the number of electors in the polling stations. This principle should not be abandoned easily.

The Subcommittee supports the Amendment Regulation and the motion to be proposed by the Secretary for Constitutional Affairs under item V on the Agenda. Apart from the amendments mentioned earlier, the motion also includes improvement to the recounting arrangement for geographical constituencies and some technical amendments.

Madam President, I so submit.

## ORAL ANSWERS TO QUESTIONS

**PRESIDENT** (in Cantonese): Questions. First question.

### Performance Management in Civil Service

1. **MR CHAN KWOK-KEUNG** (in Cantonese): *Madam President, regarding performance management in the Civil Service, will the Government inform this Council:*

- (a) *of the distribution of grades in the performance appraisal in the Civil Service and how the percentage of the cases in which the performance was graded C or below among all graded cases compares to the percentage in the preceding year, in each of the past three years; if the percentages show a rising trend, whether it has assessed if this is the result of appraising officers intentionally differentiating the high performers from the average or low performers;*
- (b) *whether there were cases in the past three years in which Directorate grade officers supplemented negative comments in appraisal reports not prepared or countersigned by them when they reviewed the reports, thus hampering the promotion of the relevant civil servants; if so, the reasons for condoning such situations; and*
- (c) *of the way the Civil Service Bureau deals with the relevant complaints made by individual civil servants who are disgruntled with the performance grading given to them by their appraising officers or who perceive that their appraising officers are holding*

*prejudice against them, and the measures in place to ensure that the complaints are dealt with fairly and the relevant civil servants will not be discriminated against in future?*

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Madam President, performance management is an integral part of the human resource management strategy that all public and private institutions cannot do without. In the HKSAR Government, the performance of all civil servants and contract staff is assessed on a regular basis. Through performance management, departmental objectives are translated into performance goals for staff at each level. An effective performance appraisal system strengthens communication between management and staff; enables staff to know better their job objectives as well as the expectations of their department; and helps identify the training and development needs of staff in the pursuit of excellence. By differentiating strong performers from average and/or poor performers, an honest and fair appraisal system facilitates management decisions in matters including the selection of deserving officers for advancement and the invocation of action against poor performers.

My response to the questions raised by Mr CHAN Kwok-keung is as follows:

- (a) Data related to the appraisal reports of civil servants are processed and kept by departments direct. We in the Civil Service Bureau gather samples and analyse on a regular basis the performance appraisal data of individual departments and grades. Due to resource constraints, we do not carry out full statistical analysis of appraisal results of all civil servants on a year-on-year basis.

Last year, the Civil Service Bureau conducted a relatively comprehensive study covering over 70 departments (involving more than 300 grades and 900 ranks). The results show that most departments adopt the 6-grade rating system (that is, grades A to F). On average, about 19% of civil servants received the third grade (that is, grade C) while less than 1% obtained a grade below C.

Judging from the data available to us, the percentage of officers receiving "grade C" (that is, "satisfactory" rating) or below

remained stable in the past two years and there was no obvious sign of an upward trend.

- (b) The Head of department or Head of grade himself or designated Directorate officers review appraisal reports of staff not under their immediate supervision. Based on their knowledge of the competence and standards of performance required of the rank concerned, they comment on the overall performance of individual officers, providing supplementary information, giving recognition and commendation or making moderating remarks where appropriate. This is a normal step in the appraisal process.

Compared to the appraising officers and countersigning officers, reviewing officers see and consider staff performance from wider perspectives. Furthermore, since staff in departments are usually deployed to various posts and some may even be stationed in other departments, the job nature and work pattern in the same rank may vary from post to post. It is therefore necessary for departments and grades to have appraisal standards monitored by reviewing officers as and when appropriate.

In recent years, we have been encouraging departments to set up assessment panels to ensure that appraisal criteria are consistent and assessments are fair.

Reviewing officers and assessment panels are both responsible for reviewing staff appraisal reports to assess the potential of individual officers and their suitability for promotion, monitor appraisal standards and give advice as to whether the appraising or countersigning officers need improvement in completing appraisal reports. Reviewing officers usually have a more comprehensive grasp of the relative competence of different officers in the same rank. They have right of access to data about the past performance of the officers concerned. They are also reasonably familiar with the competencies required of staff in various ranks in the same grade and the appraisal standards used. They are hence well placed to take an objective and macro view about the relative merits of individual officers in the same rank.

There are well established procedures for staff promotion. The commentary made by a reviewing officer is not the only reference. The promotion board will consider carefully the claims of all eligible officers and their appraisal reports. Moreover, promotion recommendations have to be submitted to the independent Public Service Commission for scrutiny.

- (c) We have in place well established procedures to ensure that the performance appraisal system in the Civil Service is operated in a fair and just manner.

The appraisal interview is an integral part of the system. During the interview conducted by the supervisor, the appraisee may comment on the appraisal results. The supervisor is required to record what transpired in the interview and to fully reflect any commentaries made by the appraisee.

An appraisee who is not satisfied with the appraisal results may complain to the countersigning officer, reviewing officer, senior officers of the department/grade, the assessment panel, or the Head of department/grade.

An appraisee who wishes to complain against the countersigning officer, reviewing officer or assessment panel may bring the case to the attention of the senior officers of the department/grade or the head of department/grade.

Under the existing mechanism, an officer who feels that he has been unfairly treated or discriminated against in the promotion exercise may lodge a complaint to the Civil Service Bureau, the Public Service Commission or the Chief Executive.

Complaints of this kind usually involve differences in opinion between the complainant and the appraising officer over how worthy the appraisee's performance has been. Heads of department/grade have the prime responsibility to ensure that the expected standards of performance are clearly communicated to their staff and that supervising staff at all levels are aware of and discharge their responsibilities in supervising and coaching performance in an

effective and fair manner. Hence, on receipt of such complaints, we would usually refer the cases to the respective Heads of department/grade for investigation and follow-up action. We oversee the processing of each case with a view to ensuring that both the complainant and the officer to whom the complaint is directed against are treated fairly in the course of the investigation.

**MR CHAN KWOK-KEUNG** (in Cantonese): *Madam President, I have received a complaint from a civil servant, who said that he had been given the rating of "outstanding" by his superior, but the Assistant Director made negative remarks and gave him the substandard rating of grade D. May I ask the Secretary whether this is fair to this civil servant or is this the result of some sort of disciplinary action?*

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Madam President, if the appraisal was changed from "outstanding" to a substandard rating, I would also like to look into it. If Mr CHAN can refer the case to me later, I will definitely take follow-up action. I mentioned earlier in the main reply that anyone who was not satisfied with the appraisal results, including the remarks or ratings made by the appraising officer, countersigning officer or reviewing officer might complain through the normal channels.

**MR LEUNG FU-WAH** (in Cantonese): *Madam President, the Secretary mentioned in part (c) of the main reply that if an officer was not satisfied with the appraisal results might complain to the countersigning officer, reviewing officer and senior officers. May I ask whether the Secretary has figures on the number of complaints by such officers who are dissatisfied and the number of cases in which the original results were overruled after complaints had been made?*

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Madam President, I have such figures here with me. For example, from November 2002 to April 2004, the Civil Service Bureau received a total of 18 complaints related to appraisal results. We have completed investigation into 17 complaints, and there is one case in which the ratings of individual items were revised but the

overall rating remained unchanged subsequent to investigation made by the department concerned.

**MS LI FUNG-YING** (in Cantonese): *Madam President, in the last part of his reply to the question the Secretary said that the cases would usually be referred to the respective Heads of department/grade for investigation and follow-up action. On this point, has the Secretary taken into consideration the fact that it was because the officer felt that the appraisal made by the Head of department was unfair that he lodged his complaint with the Bureau. Would it be fair to the officer if the Bureau refers the complaint back to the department for action? Besides, would consideration be given to setting up an appeal board to deal with such complaints direct?*

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): *Madam President, I would like to clarify that where a complaint involves the Head of department/grade, I will not refer it to him for investigation and follow-up action. Instead, it will be handled by the Civil Service Bureau. Therefore, we will ensure that the complainant will feel that he is given impartial treatment. However, if the complaint does not involve the Head of grade, he will be in a more detached position to handle it, so to say. In fact, I have also stated in the main reply that besides lodging their complaints to the Civil Service Bureau, officers also have other channels to lodge complaints, including the Public Service Commission, which is an independent body that can handle such complaints.*

**MR HENRY WU** (in Cantonese): *Madam President, it was mentioned in the second paragraph of part (a) of the main reply that last year, the Civil Service Bureau conducted a study covering over 70 departments. In fact, less than 1% obtained a grade below C, while 19% received the third grade (that is, grade C). In other words, a total of 80% received the first or second grade. I know that the Civil Service is an assemblage of excellent officers, but does the Government not feel that such an appraisal result, that is, 80% of civil servants are rated as "very good" or above, is just too much? Will the Government put in place some improvement measures for this?*

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Madam President, I agree that the Civil Service is an assemblage of very excellent officers, therefore, a relatively large number of officers received the first and second grades. I feel that this is not unreasonable. However, we actually hope that appraising officers and Heads of departments will make strict assessments of staff performance. As a matter of fact, we have issued relevant circulars in recent years to Heads of departments to draw their attention to the importance of taking stricter steps to reaffirm the outstanding or good performance of officers concerned before awarding them the first or second grade. We will continue to monitor the situation and so far we have not found this a serious problem that must be addressed. However, I agree that insofar as gradings are concerned, strict and fair assessments should be made.

**MR HOWARD YOUNG** (in Cantonese): *Madam President, I agree with the Secretary's statement in the main reply that performance management is a part of the human resource management strategy of public and private institutions. The organization for which I work also makes appraisals. The Secretary has mentioned performance goals, which is a feature of the appraisal, but I know that apart from performance goals, the private sector also makes assessment on the key result area (KRA) — I do not know what it is in Chinese — an objective overall rating can be made only if both of them are assessed. May I ask the Secretary whether in addition to performance goals, assessment is made on KRA as well in the Civil Service to arrive at an overall rating? It is by so doing that it will be in line with the practice of the private sector.*

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Madam President, our appraisal reports are very detailed, with performance goals set with due regard to the work of the officer. We do not have our appraisal report categorized by KRA but officers are assessed on their competency in specific areas, for example, his professional knowledge, leadership, team spirit, and so on. We will also look ahead and make assessment on the officer's potential or other aspects. Therefore, this is a very detailed report. I will be glad to give Mr YOUNG a sample of it after the meeting for his reference. If Mr YOUNG has any comments, I will also be glad to make reference to them in effecting continuous improvement to this appraisal system.



**PRESIDENT** (in Cantonese): We have spent more than 16 minutes on this question. Last supplementary question now.

**MR MICHAEL MAK** (in Cantonese): *Madam President, Mr Henry WU mentioned earlier that many civil servants had been given the rating of "outstanding" or "very good". The remuneration of civil servants are publicly-funded and they should attain "outstanding" or "very good" standard as a matter of course. However, I also worry that we may be in lack of a relatively clear-cut and objective criterion to assess the performance of civil servants, which has given rise to inconsistencies. Inconsistencies may result from favoritism or prejudice. Favoritism means the performance of a certain officer is not too good, but it is overrated. This is Mr Henry WU's concern. In addition, civil servants who received "C" grade or below may be dissatisfied. Therefore, can there be a more clear-cut and objective criterion so that everyone will see and feel that the appraisals are fair?*

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Madam President, the reply to this supplementary question can be divided into two parts. First, besides appraising officers, there are also countersigning officers and reviewing officers in the system to ensure that the grading or rating will go through several stages of adjustment. Second, as I mentioned earlier, we issued a circular several years ago to require departments or managerial staff to make strict assessments. Several examples were also quoted in the circular. For example, normally only a minority of staff, around 10% and not exceeding 20%, should be given "outstanding" rating, while the majority of staff should be rated as "very good" or "good", that is, "B" or "C". I am of the view that this can serve as some kind of guideline. In fact, performance rating distribution may vary from rank to rank and post to post, and this should be acceptable to us.

**PRESIDENT** (in Cantonese): Second question.

### **Opinion Surveys Commissioned by Central Policy Unit**

2. **MR SZETO WAH** (in Cantonese): *Madam President, regarding the opinion surveys commissioned by the Central Policy Unit (CPU), will the Government inform this Council:*

- (a) *whether the CPU commissioned any opinion surveys in the past three months concerning processions, local political parties and their members, and the incumbent Members, composition and elections of the Legislative Council; if it did, please set out, in tabular form, the details of each of the surveys, including the respective objectives and dates of conducting these surveys, as well as the specific wording of all questions concerning the above topics in the questionnaires used in the surveys; and*
- (b) *how it ensures that the opinion surveys commissioned by the CPU are conducted in a fair and impartial manner?*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): Madam President, I shall first reply to part (a) of the question.

From time to time, the CPU commissions different polling organizations to gauge public sentiment and opinion on issues relating to governance, political development and people's livelihood, which are of interest to the public. For instance, it has commissioned opinion surveys on the prevention of avian flu, Victoria Harbour reclamation, Harbour Fest, constitutional development, processions, local political parties, elections, school-based management and the annual report released by the United States — China Economic and Security Review Commission of the United States Congress in June. In other words, any matter relating to governance, political development, people's livelihood, which is of interest to the public, may become a topic for public opinion surveys regardless of the government officials or the political parties involved.

In conducting public opinion surveys, the CPU aims to assist the Government to gauge the views of the public over its governance and public policy, so as to enable it to better assess the political situation and opinion trends. In view of the fact that the findings of these opinion surveys are merely for internal reference and that they usually contain respondents' personal views, the results or the questions would not be published, so as not to affect public opinion. Therefore, we regret that we cannot set out the details in tabular form per request of Mr SZETO Wah to avoid arousing unnecessary public speculation about governance and direction of government policy. As a matter of fact, in order not to influence the viewpoints of the respondents and thus the validity of the

survey findings, interviewers are reminded not to disclose to the respondents that the survey is commissioned by the Government during the interview.

As regards part (b) of the question, the CPU's questionnaire design experts are highly experienced with the work. Their professionalism and social science research methodology ensure that the surveys are conducted in an objective and fair manner. The CPU knows well that only with scientific methodology and objective approach can the surveys they conduct help the Government gauge opinion trends accurately.

**MR SZETO WAH** (in Cantonese): *Madam President, a member of the CPU, Dr Joseph LIAN Yi-zheng, had recently been notified by the CPU that his contract would not be renewed and he was requested to take early terminal leave. He told the press that this was probably due to his frequent discord with the Government and his dissenting views on the drafting of the relevant questionnaires. Can the Government tell this Council if Dr Joseph LIAN Yi-zheng was dismissed due to his queries about the fairness and impartiality of the relevant questionnaires and his frequent expression of dissent against the Government?*

**PRESIDENT** (in Cantonese): Mr SZETO Wah, are you asking a government representative — the Chief Secretary for Administration — to confirm the truth of the press reports?

**MR SZETO WAH** (in Cantonese): *This is what Dr Joseph LIAN Yi-zheng himself said.*

**PRESIDENT** (in Cantonese): Mr SZETO Wah, according to our Rules of Procedure, we are not allowed to ask the Government to confirm.....

**MR SZETO WAH** (in Cantonese): *In that case, I will ask another supplementary.*

**PRESIDENT** (in Cantonese): Fine. You can ask another one.

**MR SZETO WAH** (in Cantonese): *For many years, the Government has made blunders in its governance. Is this related to the inability of the CPU's survey questionnaires to uphold fairness and impartiality and consequently, to gauge the true public opinions?*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): The CPU is responsible for assisting the Chief Executive, the Chief Secretary for Administration and the Financial Secretary by conducting in-depth and long-term studies on relevant policy issues. Therefore, the performance of the Government in individual policies cannot be attributed to the depth or accuracy of surveys conducted by the CPU. However, I can assure Members that the CPU, when conducting public opinion surveys, has always adopted a professional approach that is objective and impartial. Furthermore, its work includes not only public opinion surveys but also other internal research.

**MR JASPER TSANG** (in Cantonese): *Madam President, the Chief Secretary mentioned in the main reply that for a number of reasons, the Government would not publish the wording of the questions in the public opinion surveys conducted by the CPU, in order not to affect public opinion or arouse unnecessary public speculations on governance and the direction of government policy. However, recently, a newspaper published all the questions in a public opinion survey conducted by the CPU and this aroused all sorts of speculation among various parties. In view of this, may I ask the Government how it will handle this matter? How will it avoid the recurrence of similar incidents?*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): The contents of public opinion surveys are determined by the CPU. Concerning the disclosure of questions, I found that some of the reports in the press were accurate while others were not. However, the CPU has dealt with this matter prudently and also conducted an internal investigation.

**MR LEUNG YIU-CHUNG** (in Cantonese): *Madam President, the Chief Secretary kept stressing that the CPU would adopt a scientific and objective approach in conducting public opinion surveys. However, as Mr Jasper TSANG has said, recently some questions in a survey questionnaire were disclosed and the public also questioned their objectivity, scientific nature and even the impartiality of the stance adopted. Therefore, may I ask the Chief Secretary to comment on how it can be ensured that the CPU will not waste public funds and will handle these questionnaire surveys in a truly objective and scientific manner, as well as adopting an objective stance, as the Secretary has put it? Is it possible to publish the questions drawn up for public comment? Would this not be a better way? Will the transparency and openness not be greater? Is this not the best way to ensure the fairness and scientific nature of the public opinion surveys?*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): The public opinion surveys conducted by the CPU are for internal reference only because some of them touched on rather controversial issues and perhaps rather sensitive issues in the market. Therefore, to allow the public to discuss these questions will definitely give rise to unnecessary speculation. Therefore, from the viewpoint of public interest, publishing them is not very desirable.

As regards whether the questionnaires used in public opinion surveys are objective and professional, at present, among the people making up the CPU, there are experts who have profound experience in conducting public opinion surveys and statistical experts who are well-versed in handling work in the relevant areas. Since the results are meant for internal reference, there is no need to let people use them to lead or mislead other people. Otherwise, the main purpose as mentioned by me in the main reply, namely, to influence policy formulation and use them as our reference, will be defeated.

After reading the reports on public opinion surveys, it is necessary for the officials concerned to make reference to them and evaluate them objectively to understand their importance. The criticism levelled by some members of the public is that some of the questions as reported by the media seem to have come from the public opinion surveys conducted by the CPU and they are rather biased. In this regard, I have also got hold of some of the original questions and arranged for outside experts to look at them internally, but no problem was detected. If Members found a certain question to be biased or misleading, I very much want

to know about it and from which expert the opinion came, so that we can use it as reference in future.

However, I stress again that the CPU is not a major policy-making body but a support unit. Moreover, the public opinion surveys conducted by it serve only to assist the principal officials concerned and the Chief Executive in making certain policy decisions. Public opinion surveys are often long-term or medium-term forecasts and sometimes they may not bear a close relation to daily occurrences. When conducting public opinion surveys on daily occurrences, the unit will, as I have said, adhere to an objective approach in its work.

**PRESIDENT** (in Cantonese): Mr LEUNG Yiu-chung, has your supplementary not been answered?

**MR LEUNG YIU-CHUNG** (in Cantonese): *No, Madam President. Since the CPU uses public funds to conduct public opinion surveys, we do not wish to see any waste of the same, but rather, we hope that the impartiality, fairness and scientific nature of the public opinion surveys can be assured. The main question which I asked of the Chief Secretary is how the aforementioned qualities can be assured in these public opinion surveys, instead of simply finding some experts to do the job and think that the matter is settled. May I ask him how this can be assured?*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): I have said that all officials who formulate policies, including the Chief Executive and Principal Officials, have to make a personal effort to assimilate and understand the results of the public opinion surveys after receiving them and then use them as reference. This is the best thing to do. Moreover, each Policy Bureau has been long acquainted with matters relating to public opinion surveys and administration. They are no strangers to these areas. In addition, outside organizations will be invited to offer advice for reference purpose if necessary. As I have said, it seemed to be the case that when the public had doubts about any opinion survey or anybody, we would seek external advice for reference purpose, that is, to seek advice from other people or other experts and they also confirmed that our questions were free of problems.

**MR NG LEUNG-SING** (in Cantonese): *Madam President, coincidentally, I will also raise a question on public opinion surveys later on. I found that the Government said right at the beginning of the main reply that it would commission various polling organizations to gauge public sentiment and opinions. The last sentence also mentions that the CPU knows well (and I stress knows well) that these opinion surveys can only be conducted using scientific methodology and an objective approach. In view of this, may I ask the Government if, when commissioning existing polling organizations in Hong Kong, it has noticed that the approaches of some polling organizations are not sufficiently scientific or their stances are not sufficiently objective?*

**PRESIDENT** (in Cantonese): Mr NG Leung-sing, you are not asking about government public opinion surveys but other surveys, are you?

**MR NG LEUNG-SING** (in Cantonese): *This is because these two parts of the text are related. At the beginning, it is said in the second paragraph that various polling organizations are commissioned to gauge public sentiment and opinions and at the end, it is mentioned that the CPU "knows well" what approach should be adopted in conducting public opinion surveys. Is it because the Government is also aware of the not very scientific approaches and not very objective stances adopted by some polling organizations that it has decided to take upon itself the conduct of surveys? Or has the Government found some experts to conduct the surveys on this occasion, so as to avoid commissioning organizations whose methodology is not sufficiently scientific and whose stance is not sufficiently impartial?*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): Firstly, there is an expert team in the CPU consisting of some very experienced experts on public opinion surveys, in addition, there are also senior statistical professionals and I have already mentioned this. Moreover, before conducting public opinion surveys, the CPU has a clear idea of the objectives of each survey and the information that it wants to obtain from the public. Therefore, it will set out the information it wants to obtain before inviting tenders. The CPU, when conducting public opinion surveys, will also look for qualified polling companies and choose polling organizations to conduct public opinion surveys according to the strict tender procedures laid down by the Government.

**MR ALBERT HO** (in Cantonese): *Madam President, the gist of the reply is that the CPU commissions some organizations to gauge public opinion and conduct surveys and the way in which the fairness and impartiality of public opinion surveys can be assured is also mentioned. Is there any rule in the CPU barring individual members from taking part directly in certain activities to understand public opinions, including participation in rallies to see if there is any substantial discrepancy with the results of public opinion surveys? If there are individual cases of this nature in which members took part personally in such activities to appreciate the actual situation, will this constitute a violation of the rule and result in dismissal, as in the case of Dr Joseph LIAN Yi-zheng?*

**PRESIDENT** (in Cantonese): Mr Albert HO, is the drift of your supplementary asking if the public opinion surveys conducted by the CPU consist of actual observations?

**MR ALBERT HO** (in Cantonese): *Madam President, if you look at part (b) of the main question concerning how the CPU ensures that the public opinion surveys commissioned by the CPU are conducted in a fair and impartial manner, you will note that one way is to carry out actual observations to see if the results so obtained are a far cry from the results of the public opinion surveys. Does the unit check if there may be any problems by such means?*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): Almost all the people in the leading team in the CPU at the senior and middle levels are not permanent government employees. Many of them were recruited from overseas and they may take part in the work of the Government for a short period of time because they have always longed to do so and to do something by playing a role in public service. The people who take part in this kind of work came from different fields and all of them have their own personal network. Of course, every person in the leading team will continually conduct consultations on the performance of the Government with the people within his network or solicit their views on what has happened in society. They can also give their personal views. Of course, their personal views and the results of public opinion surveys are both highly valuable reference. Their evaluations on the Chief Executive and his Principal Officials, as well as on certain matters, are influential.



**MR ALBERT HO** (in Cantonese): *Madam President, the second straightforward question that I have asked is whether, as far as the Chief Secretary for Administration knows, members in the unit can take part directly in rallies. That is, will doing so violate any rule laid down by the CPU? Will this approach be adopted to ensure and evaluate the fairness and impartiality of the public opinion surveys conducted by the CPU?*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): *Rallies are part of the life in Hong Kong and I believe it is not at all surprising if there are government employees in every rally.*

**MR ANDREW WONG** (in Cantonese): *Madam President, it can be seen from the main reply that the aim of the CPU in conducting public opinion surveys is to help the Government gauge views, so that the Government can evaluate the political situation and opinion trends. It is also mentioned at the end that the surveys help the Government gauge opinion trends accurately. May I know if the purpose of establishing the CPU is to study policies or to study what the positions of politically active people are on certain policies or issues? Is this kind of work the duty of the CPU? What I have asked is about the general state of affairs, but more specifically, how many public opinion surveys have the CPU conducted this year? How many were conducted last year? And the year before?*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): *I will answer the second part first. On average, the CPU conducts 70 public opinion surveys on various areas each year, that is, about six each month. Some of them pinpoint government policies, and others have to do with external events.*

Concerning the work objective of the CPU, I believe Members also understand that the aim of establishing the unit is to assist the Chief Executive and Principal Officials. The unit hopes that new channels of expression can be established. The unit is responsible for carrying out in-depth studies on complex policy issues, in particular, on matters involving a number of policy

areas, analysing available options and proposing practicable solutions. However, before offering such advice, the CPU will consult experts in various fields extensively, including conducting public opinion surveys of its own.

Another major responsibility of the CPU is to co-ordinate the preparation of the policy address delivered by the Chief Executive each year. We all know about this. In order to fulfil this responsibility, the CPU has two areas of important daily work, one of them being to assist the Government in keeping tabs on public opinion. The methods and channels of keeping tabs on public opinion include those already mentioned, namely, to commission polling organizations to conduct public opinion surveys. At the same time, they will exchange views with members of the public in various sectors by meeting with focus groups and through interviews. As I have mentioned, members of the leading team have their own networks which will enable them to achieve this goal. Since these members came from different backgrounds and they are not full-time consultants, and since they will hold regular meetings with other part-time consultants, therefore, they will offer advice to the Government on issues of public concern and hold frequent discussions.

In addition, the second function of the unit is to assist the Government in promoting policy studies. Let me cite some examples of the policies in which the CPU has played a part in taking forward for Members' reference. The policies in which the CPU played a part and on which it conducted in-depth and incisive studies include the creative industries, population policy, the study on the Third Sector and economic integration in the Pan-Pearl River Delta Region. It can be seen that their work is quite comprehensive and wide-ranging and does not merely consist of public opinion surveys.

**MR ANDREW WONG** (in Cantonese): *Madam President, in asking the second part of my supplementary, I wish to make a comparison to see if the CPU, in conducting public opinion surveys, has made keeping tabs on the political pulse of the public a more important direction of the CPU. That is why I asked how many surveys have been conducted this year, last year and the year before. Of course, the further the figures date back, the better. If the Chief Secretary for Administration does not have the figures on hand now, Madam President, can you ask him to give a written reply?*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): Public opinion surveys are conducted having regard to changes in public sentiment and this type of scientific study is conducted by following the examples of overseas governments, in particular, of enlightened governments that have to keep a pulse on public sentiments. I can assure Members that this type of work will increase by the year.

**PRESIDENT** (in Cantonese): We have spent more than 20 minutes on this question. Last supplementary now.

**MS EMILY LAU** (in Cantonese): *Madam President, since the Chief Secretary for Administration said that the CPU had conducted so many public opinion surveys, can the Chief Secretary for Administration tell us how many have been conducted? In addition, under what circumstances did the authorities revise government policies in view of the results of the public opinion surveys conducted by the CPU?*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): The results of public opinion surveys and the studies conducted by the CPU serve as references. It is impossible for me to quantify the influence of the unit on each policy level. Therefore, Ms LAU, I am sorry that I cannot answer your question, nor do I believe that we have the information that will answer your question very precisely.

However, we do attach importance to the results of the studies conducted by the CPU. We will study them, particularly if they are backed by public opinion surveys, and we will definitely make reference to them before making final decisions.

**PRESIDENT** (in Cantonese): Third question.

### **AsiaWorld-Expo**

3. **MR IP KWOK-HIM** (in Cantonese): *Madam President, the AsiaWorld-Expo (Expo), which is under construction, is developed and operated*

*by a management company jointly set up by the Government, the Hong Kong Airport Authority (AA) and a private-sector participant. It is expected to open by the end of 2005. The management company is now processing the applications for advance booking of the exhibition time slots of the Expo venues. In this connection, will the Government inform this Council:*

- (a) how the currently proposed allocation of the exhibition time slots of the Expo venues will be conducive to the launch of more exhibitions with new themes in Hong Kong, such as exhibitions of heavy industry products, so as to address the expectations of the exhibition industry;*
- (b) of the criteria adopted by the management company of the Expo for approving the applications, and whether it has allocated any peak season exhibition time slots to any exhibition organizers that have no international accreditation; if it has, the justifications for that; and*
- (c) whether the Expo and the Hong Kong Convention and Exhibition Centre (HKCEC) will hold exhibitions of a similar nature in more or less the same period of time; if they will, whether the authorities will make appropriate efforts to co-ordinate the exhibitions concerned?*

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY** (in Cantonese): Madam President, the Expo is a public-private partnership project. Before answering the questions raised, I should like to explain the ownership and management arrangements for the Expo.

The Expo is jointly financed and owned by three entities, namely the SAR Government, the AA, and the private-sector consortium selected through competitive international tendering. The selected private-sector consortium consists of three entities, namely Dragages Hong Kong Ltd, Yu Ming Investments Ltd and Yu Ming Investment Management Ltd. The selected private-sector consortium is responsible for partly financing the project cost of the Expo, the design, construction, management and operation of the Expo in accordance with the terms laid down in the tender exercise.

For the purpose of implementing the Expo project, the Government and the AA have formed IEC Holdings Ltd (IEC Holdings); and the selected

private-sector consortium has formed IEC Investment Ltd (IEC Investment). Together, these two companies, that is, IEC Holdings and IEC Investment, have formed a joint venture company, called Hong Kong IEC Ltd (HKIEC), to own the Expo and to finance its construction. The majority of directors of this joint venture company is appointed by the Government and the AA.

For the purpose of implementing one of the terms stipulated in the tender, that is, the selected private-sector consortium shall be responsible for management and operation of the Expo, Dragages Hong Kong Ltd and Yu Ming Investments Ltd has formed a private company called AsiaWorld-Expo Management Ltd (AWE Management). HKIEC has appointed this management company to manage, promote, operate and maintain the Expo. Under the Management and Operating Agreement signed between the two, AWE Management is obliged to, among other things, operate the Expo in the best interests of the Expo and under prudent commercial principles. The Government and the AA have no directors on the board of AWE Management.

On part (a) of the question, as part of its ongoing marketing efforts, we understand that AWE Management is actively exploring opportunities with both local and overseas organizers to further expand the trade exhibition and public event market, including those catering to heavy industry. We understand that AWE Management has already confirmed the bookings of 15 major international trade exhibitions from both local and overseas organizers for 2006, all of which are new events to Hong Kong. Thirteen of them will become recurrent annual events. One of the non-recurrent annual events is ITU Telecom World 2006. Over 80% of the accepted bookings are from local registered companies.

On part (b), we understand that AWE Management has set up an event selection process based on prudent commercial principles. AWE Management issued a letter to all the members of Hong Kong Exhibition and Convention Industry Association (HKECIA) on 29 April 2004, outlining the key parameters to be considered in processing Expo booking applications. These include tenancy size, duration and frequency, exhibitor recruitment and buyer promotion capability, as well as the track record of the organizers and so forth.

According to AWE Management, these booking guidelines have been applied consistently in processing all booking applications. All the accepted

bookings are from well-established and experienced exhibition or event organizers. AWE Management is satisfied that they have the capability and resources to organize high quality exhibitions.

On part (c), there is no legal or other impediment to the staging of similar exhibitions in both HKCEC and the Expo at the same time. We do not support restrictions of this nature as it would not be conducive to the growth and development of the exhibition industry in Hong Kong. We believe that the management of these two venues will operate in accordance with prudent commercial principles. We consider that exhibition organizers will give full regard to relevant business considerations, such as likely demand from potential exhibitors, targeted buyers and number of attendees, and so on, before making a wise commercial decision on whether or not to organize exhibitions of a similar nature in more or less the same period of time.

**MR IP KWOK-HIM** (in Cantonese): *Madam President, may I ask the Secretary to further explain whether all the bookings of those 15 major international trade exhibitions mentioned in the fifth paragraph of the main reply (which are new to Hong Kong) would be held in the peak season? Moreover, as the Secretary explained that over 80% of the accepted bookings were from local registered companies, do these 15 trade exhibitions include these companies?*

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY** (in Cantonese): Madam President, those 15 exhibitions will not only be held during peak seasons, they are distributed throughout the year. As to whether all of the exhibitions include those 80% of companies, the answer is positive, because we are talking about 80% of all the exhibitions.

**MR JASPER TSANG** (in Cantonese): *Madam President, some people of the trade pointed out that in the selection of tender, applicants were only requested to provide simple information such as size and duration, and no further details were required for the tender selection. In view of this allegation, I wish to listen to the reply of the Secretary. Will he explain whether the Expo has formulated reliable and scientific procedures in the course of tender selection?*

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY** (in Cantonese): Madam President, the tender selection process is absolutely not casual at all. AWE Management has to operate in the best interest of the Expo and under prudent commercial principles. Just as in the letter AWE Management issued to all the members of HKECIA on 29 April 2004, it had clearly stated that in order to ensure quality service and maximize the utilization rate, it would consider the criteria in the course of processing Expo booking applications. I have mentioned these criteria in the main reply, which include tenancy size, duration and frequency, exhibitor recruitment and buyer promotion capability, as well as the undertaking and track record of the organizers, results of events they had held and so forth. Such information could not be come by casually. I understand that as a member of the HKECIA, AWE Management has been maintaining regular communication with all of the HKECIA's members, and AWE Management has also pledged to enhance the dialogue with the trade, so as to ensure the trade's understanding of its business and the tender selection process.

**MR CHAN KAM-LAM** (in Cantonese): *Madam President, I have some doubts about paragraphs three and four in the Secretary's main reply, because the Secretary explained that the Government had formed the IEC Investment while the private-sector consortium had formed IEC Holdings. The two companies formed a joint venture company called HKIEC. According to company registration laws in general, registration will not be allowed as the names of these companies are too similar to each other and people will easily mix them up, this is the first part of my supplementary. As to the second part, Dragages Hong Kong Ltd and Yu Ming Investments Ltd formed a private company, which was appointed as the management company by the joint venture HKIEC. In view of this intricate relationship, through what mechanism can the Government oversee the operation of the so-called new company, how can the operation of this company be monitored, and how can the profit or loss of this company be differentiated?*

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY** (in Cantonese): Madam President, perhaps you should allow me to clarify a point, for Mr CHAN has mixed up the two companies. IEC Holdings is a company formed by the Government and the AA, whilst IEC Investment is formed by the private-sector consortium. The Government owns 85% of the share of HKIEC while the private-sector consortium holds only 15% of its share.

As to the issue of supervision, HKIEC is the owner of the Expo and it has signed the Management and Operating Agreement with AWE Management. Under the Agreement, AWE Management is required to brief HKIEC on the operation of the Expo regularly. Besides, under the Agreement, the performance of AWE Management is monitored by HKIEC.

**PRESIDENT** (in Cantonese): Mr CHAN Kam-lam, has your supplementary question not been answered?

**MR CHAN KAM-LAM** (in Cantonese): *No, Madam President, I wish to raise another supplementary.*

**PRESIDENT** (in Cantonese): Well, then please wait for another turn.

**MR HENRY WU** (in Cantonese): *Madam President, with regard to the supplementary raised by Mr CHAN Kam-lam just now, I think many people will be at a loss even after listening to that, because the names of those companies are too similar to each other. Madam President, please allow me to elucidate the relevant structure and relationship, in fact, it would be fine if we substitute them with ABC. The Government and the AA formed company A, whilst three private-sector companies formed company B and company C. Subsequently, company A and company B formed company D, while company D appointed company C to carry out the management work. I think Members will have a better understanding if I put it this way. Nevertheless, my supplementary is: How can the Government ensure the management company (that is, company C) would achieve effectiveness and ensure the appointing company (that is, company D) would have the power to make decisions through good corporate governance? For example, if the management company is not performing well, since some of the directors of the appointing company (that is, company D) are appointed by the Government and they have close relationship with company C, is there any explicit stipulation in terms of good corporate governance or under the Agreement that would restrain directors who have a conflict of interest from casting a vote in the course of assessing the performance of company C, such as terminating the agreement or drawing up other terms and conditions?*



**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY** (in Cantonese): Madam President, I wish to thank Mr Henry WU for his elucidation, I think Members have a better idea now. According to clause 18.2 of the Management and Operating Agreement, AWE Management is required to formulate venue booking policy and specify the nature of the booking for the Expo's reference. I have pointed out in the main reply that HKIEC and AWE Management formulated the supervisory framework under the Management and Operating Agreement, and will supervise the operation according to the Agreement.

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

**MR HENRY WU** (in Cantonese): *Madam President, the Secretary has not answered my supplementary. What power or mechanism does the management company have, that is, company D as I have just mentioned, to revoke the relevant Agreement provided that the management company is performing poorly? I believe some sort of evaluation should have taken place. Nevertheless, since the board of directors comprises members from both sides, perhaps the management company and certain board members share a common interest, and when board members have to vote, is there any stipulation in the Agreement which prohibits the relevant board member from casting a vote?*

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY** (in Cantonese): Madam President, my opinion is that since the Government is the major shareholder, we have the simple majority on our side, and if there is anything which needs a decision from the board, then our votes should be decisive.

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

**MR HENRY WU** (in Cantonese): *Madam President, I was talking about the board of directors, not the shareholders, as only the board can supervise the day-to-day operation.*

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY** (in Cantonese): Madam President, I was also referring to members of the board of directors.

**PRESIDENT** (in Cantonese): We have spent more than 17 minutes on this question. Last supplementary question now.

**MR CHAN KAM-LAM** (in Cantonese): *Madam President, just now in his answer to Mr Henry WU, the Secretary said that the Government could cast a vote or express its views in the board. However, the Secretary explained in the last part in the fourth paragraph of the main reply that the Government and the AA have no directors on the board of AWE management. Through what channel or representative can the Government present its views in the board? Moreover, given the size of the company and the investment it makes, even though the Government owns the majority of shares, it has no director on the board, is this approach not extraordinary?*

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY** (in Cantonese): Madam President, we have no representative in the management company, but we have directors in HKIEC, that is, company D as Mr Henry WU explained. We can supervise the work of the management company through this company.

**PRESIDENT** (in Cantonese): Mr CHAN, has your supplementary question not been answered?

**MR CHAN KAM-LAM** (in Cantonese): *Madam President, the Secretary has made an indirect reply, but I feel that the Secretary should explain that to us since the Government has no representative on the board of the management company, how can it supervise and control that company? How could the relevant company be accountable to the Government, that is, the major shareholder?*

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY** (in Cantonese): Madam President, the management company is a private-sector company operating under prudent commercial principles. The management company is supervised by the joint venture HKIEC and has signed the Management and Operating Agreement with the joint venture company, and all of the targets and work to be accomplished are enumerated in the Agreement. I believe we can carry out supervision through this channel.

**PRESIDENT** (in Cantonese): Fourth question.

### **Opinion Survey on Ranking of Universities in Hong Kong**

4. **MR NG LEUNG-SING** (in Cantonese): *Madam President, it has been reported that the Public Opinion Programme of an institution funded by the University Grants Committee (UGC) has recently been commissioned by a commercial establishment to conduct an opinion survey on the ranking of universities in Hong Kong, and the survey findings have attracted much criticism from the tertiary education sector. As the UGC is responsible for monitoring the academic standards of the UGC-funded institutions, and the Secretary for Education and Manpower has said that it is in the wider interest of the community as a whole that the UGC should play a more proactive role in steering and facilitating the development of the entire higher education sector, will the Government inform this Council whether it knows if the UGC:*

- (a) has assessed if the research methodology of the survey is scientific and objective, as well as fair and reasonable to the universities concerned, and the impacts of the survey findings on the universities; if it has, of the assessment results;*
- (b) has taken measures to eliminate the possible misconceptions in the community caused by the survey, so as to foster an environment conducive to the healthy development of local universities in terms of teaching and research, as well as fair competition among them; if it has, of the relevant details; if not, the reasons for that; and*
- (c) has formulated criteria or guidelines to ensure that the opinion survey agencies or programmes of such institutions can still*

*maintain and enhance their academic research standards when conducting research studies commissioned by commercial establishments?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese):

Madam President, the main function of the UGC is to offer impartial and expert advice to the Government on the development and funding of higher education in Hong Kong, and to provide assurance to the Government and the community on the standards and cost-effectiveness of the operations and activities of the UGC-funded institutions.

However, there is a great difference between the role of the UGC to consider and monitor the development (including academic standards) of the higher education sector as a whole, and the UGC taking any position on a specific piece of commissioned work. Not only would it be quite wrong, in terms of academic freedom and institutional autonomy for the UGC to make any comment on the conduct of this survey, the UGC is also in no position to assess whether the survey methodology is scientific, objective, fair and reasonable.

Each of the UGC-funded institutions is an autonomous body with its own ordinance and governing council. They enjoy unfettered academic freedom and considerable institutional autonomy in main areas such as the control of curricula and academic standard, the selection of staff and students, as well as the internal allocation of resources. The institutions can provide for profit or otherwise advisory, consultancy, research and other related services in accordance with their respective governing legislation. The Administration and the UGC fully respect the institutional autonomy of tertiary institutions in their academic development and internal management, and will not seek to interfere with the internal affairs of individual institutions.

Nevertheless, because the institutions are largely supported by public funds and in view of the importance of higher education, the Government and the community at large have legitimate interest in the operation of the institutions to ensure that they are providing the highest possible standard of education in the most cost-effective manner. In this respect, the UGC acts as a "buffer", safeguarding the academic freedom and institutional autonomy of the institutions on the one hand, and ensuring value for money for the taxpayers on the other.

In a more positive vein, let me assure the Honourable Member that the UGC is very mindful of the need to foster an environment conducive to the development of all UGC-funded institutions as well as healthy competition and deep collaboration among them. To this end, the UGC has been closely working with the institutions to ensure that such goals can be achieved, through taking a strategic approach to our higher education system and appropriate allocation of funds. Let me explain.

To promote a healthy development of the local higher education sector, the UGC recently published a roadmap document "Hong Kong Higher Education — To Make A Difference, To Move with Times" which advocates the development of an interlocking but differentiated system where the whole higher education sector is viewed as one force in the regional and international arenas of higher education. Each institution should fulfil a unique role based on its strengths. In view of the level of international competition as well as the financial constraints that the higher education sector has to operate within, the UGC has also put in place appropriate tools, mechanisms and incentives to steer institutions towards clear role differentiation, to facilitate deep collaboration among institutions in advancement of their respective roles, and to allow excellence to emerge through fair and constructive competition.

In addition, the UGC has put in place a rigorous process to examine the Academic Development Proposals submitted by the UGC-funded institutions in the context of their funding proposals. This is to ensure that the institutions' proposals are in line with their respective roles and missions and that they respond positively to community needs.

The UGC-funded institutions have all acquired self-accrediting status and are mindful of the importance of maintaining their academic reputation. On self-financing activities, the institutions are fully aware of the need to uphold academic integrity and standard, and have their own process to ensure that.

In short, let me reassure the Honourable Member that while neither the Administration nor the UGC can comment on a specific survey conducted, it is our continuous effort to foster an environment conducive to the healthy development of the higher education institutions in Hong Kong.

**MR NG LEUNG-SING** (in Cantonese): *Madam President, let me make a brief declaration as I am a member of the governing council of one of the universities. Our relevant staff are indeed very concerned about certain responses to this sort of survey on ranking of universities. It was mentioned in the main reply that not only would it be quite wrong for the UGC to make any comment on the conduct of the survey, the UGC is also in no position to assess whether the survey methodology is scientific, objective, fair and reasonable. The Secretary also said that the institutions were largely supported by public funds and mentioned the importance of higher education. So, as the community at large are concerned about the operation of the universities and now that there is such a ranking, how can the public obtain a more impartial, scientific-based ranking survey report that provides them accurate information? If the relevant study is not monitored by the aforesaid UGC, what body or party can help the public obtain more appropriate and accurate information in this area?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): *Madam President, our understanding is that it is impossible for the UGC to make assessment on individual studies or surveys, but there are clearly different opinions in the academic community. If the outcome of a study by an academic is found not acceptable, it will be criticized by other academics. If the relevant study is not scientific, unfair or problematic, there will certainly be other academics to point out and correct the errors, and it is not necessary for the UGC to conduct investigation.*

**DR ERIC LI** (in Cantonese): *Madam President, I wish to follow up Mr NG Leung-sing's question. If what the Secretary has just said is correct, there will be much discussion but no conclusion. Obviously, to an establishment that was willing to spend such a great sum of money on a survey, the present information is definitely inadequate and unable to meet its requirements. The UGC has also been criticized by the Public Accounts Committee for its seeming lack of standards in information disseminated by it and inadequate transparency. As this sort of survey is considered by some to be very important and there is a community need for it, why does the Secretary not provide specific assistance to these organizations to facilitate their access to relevant information, such as that on how to make unbiased assessment on the strengths and weaknesses of academic institutions?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, we will not intervene in the work undertaken by academic institutions or their departments. Such are not the responsibilities of the UGC or the Government. However, we will fully monitor the overall operation of universities. As to whether the survey involved the use of public funds, our understanding is that such surveys are mostly commissioned by the private sector and undertaken by university professors, and so no public fund is spent on this at all.

**PRESIDENT** (in Cantonese): Dr Eric LI, has your supplementary question not been answered?

**DR ERIC LI** (in Cantonese): *Yes. Sorry, I think I did not make my question clear enough. I just want to say that the UGC has been criticized by the Public Accounts Committee for its failure to give adequate information or its lack of transparency. Actually, my supplementary question is: As there is such a community need, should the UGC not render assistance to provide some positive messages? I am not asking the Secretary to intervene in the survey. As there is such a need, why does the Secretary not provide some positive messages to meet the need of the community?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I believe that the UGC has its difficulties. As each institution has its own characteristics and strengths, it is very difficult to assess or compare the performance of every aspect or every department. I believe that there will be difficulties. Even if the ranking according to a survey conducted this year is ABC, it will no longer be accurate next year or several months later because of the retirement of professors or appointment of new ones. Therefore, I believe there are difficulties in this aspect.

**MR YEUNG YIU-CHUNG** (in Cantonese): *Madam President, I would also like to follow up the question of how the UGC can make universities more transparent or more open, so as to enhance public awareness of the operation and performance of universities.*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I believe the UGC will encourage the institutions to enhance their transparency, and every institution operates in accordance with the law. Therefore, each of them has its own governing council. Insofar as I am aware, there are Legislative Council Members in the governing council of every university to monitor this.

**MR NG LEUNG-SING** (in Cantonese): *Madam President, it was mentioned in the main reply that the UGC was very mindful of the need to foster an environment conducive to the development of all UGC-funded institutions as well as healthy competition and deep collaboration among them. Given this, from the Government's point of view, is this specific survey on the ranking of universities conducive to healthy competition and deep collaboration among them or causing side-effects or even counteractions?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I have pointed out explicitly that such ranking survey has little meaning, and so both the Government and UGC will not conduct it. However, if a private establishment asks an institution to conduct this kind of survey for it, it will be up to the academics and the public themselves to comment on the methodology adopted and to assess the credibility of the relevant work.

**DR ERIC LI** (in Cantonese): *Madam President, thank you for giving me an opportunity to ask another question. I understand that the commercial sector is also greatly interested in the ranking of universities and considers it very useful — especially when the commercial sector wants to recruit talents.*

*I also know that the Financial Times of Britain makes very authoritative and objective rankings, which are very useful to the commercial and academic sectors. In America, there are also similar magazines or private enterprises that provide such rankings. Why is the Government not willing to do so. If there are such rankings, and if there is a community need for them, will the Government encourage the appearance of such rankings and think that it may not necessarily be conducted by the academic sector?*



**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I understand that the *Financial Times* of Britain publishes every year the gradings of universities, but it is criticized by different universities every year. Therefore, the accuracy of such gradings is not generally agreed.

**PRESIDENT** (in Cantonese): We have spent more than 15 minutes on this question. Last supplementary question now.

**MR CHAN KAM-LAM** (in Cantonese): *Madam President, the Secretary said at the very beginning of the main reply that the UGC had been closely working with the institutions to ensure that such goals could be achieved, through taking a strategic approach to our higher education system and appropriate allocation of funds. If an institution thinks that it is relatively strong in a certain area but fails to achieve the goals of the UGC, will the Secretary really take a strategic approach in allocation of funds to cause it to succumb?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, if an institution has strength in a certain area, the UGC will definitely recognize it and will in no way force it to succumb by making use of means like allocation of funds.

**PRESIDENT** (in Cantonese): Fifth question.

### **Regarding Children Participating in Extra-curricular Cultural Performances as Employees**

5. **MISS CHAN YUEN-HAN** (in Cantonese): *Madam President, it has been reported that the Labour Department (LD) regards members of children choirs participating in extra-curricular cultural performances as artist employees subject to the Employment of Children Regulations (the Regulations), and has requested their parents to sign the "written consent for the employment of a child entertainer". In this connection, will the Government inform this Council:*

- (a) *in respect of the past three years, of the number of children performing groups in Hong Kong; among their extra-curricular cultural performances, the number of such performances which were regarded by the LD as performances by artist employees subject to the Regulations; and the number of children involved in each of the performances concerned;*
- (b) *of the reasons for regarding children's participation in extra-curricular cultural performances of a non-commercial and non-profit-making nature as being employed in the activities concerned; and*
- (c) *of the impacts of such approach on children in receiving art performance training and gaining experience through performances, as well as on their interests in participating in extra-curricular activities?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): Madam President, the Regulations, made under the Employment Ordinance, seek to regulate the employment of children to protect their safety, health and welfare, as well as to ensure that their schooling and morals are not jeopardized in the course of the employment. In order to provide children with the greatest protection, the scope of the Regulations is not limited to work with wages but also to work without wages and work of a non-profit-making nature. A child who works in a place of employment (including a venue for stage performance), whether for wages or not, shall be deemed to be employed therein.

According to the Regulations, no person shall employ children under the age of 13. For children aged between 13 and 15, stringent conditions are imposed on their working hours, working environment and permissible occupations, and so on. In support of the development of arts and the training of talents, the Commissioner for Labour may, in such cases as he thinks fit, exercise his discretion to permit children under the age of 13 to engage in arts performances, or exempt arts groups from any provisions of the Regulations. Notwithstanding, based on the primary objective of protection of children, the Commissioner may still require the relevant groups and institutions to comply with the provisions of the Regulations where appropriate.

Regarding parts (a) and (b) of the question, not all cultural performances involving children are treated as employment activities. Generally speaking, if a child participates in a performance which is a school activity or an event with no element of work or profit-making involved, such as an inter-school competition, inter-school performance, charitable activity, cultural exchange, and so on, he would not be deemed to be employed. When the LD receives an application from an arts group for employing children in an arts performance, it would decide whether the children would be deemed to be employed in accordance with the actual circumstances of each case, for example, whether the activity is profit-making, whether admission fees are charged, frequency of the performance, and whether it is a charitable fund-raising activity.

The LD has not kept separate statistics on the employment of children in cultural performances. The overall statistics on the number of cases with permission granted for employment of children in stage performances, television, movies or advertisements are as follows :

	<i>2001</i>	<i>2002</i>	<i>2003</i>	<i>2004 (January to May)</i>
Number of cases with permission granted	53	73	65	22
Number of children involved	3 460	3 459	2 736	1 808

Regarding part (c) of the question, as I have just mentioned, the spirit of enacting the Regulations is to protect the interests of children so as to ensure that they would not be harmed because of participating in performances. The Commissioner for Labour would, in appropriate circumstances, exercise his discretion to exempt or relax certain provisions of the Regulations. Therefore, the existing regulations and enforcement actions would not hinder children from receiving arts training and obtaining experience through performances. To support the development of arts and training of talents, provided that no pecuniary reward is involved and the schooling and health of the children are not affected, the LD will exercise flexibility in handling cases of children participating in cultural performances.

**MISS CHAN YUEN-HAN** (in Cantonese): *Madam President, in his reply to part (a) of the main question, the Secretary states that the scope of the Regulations is not limited to work with wages but also to work without wages and work of a non-profit-making nature. Obviously, the cases received by us are related to performances organized by the Leisure and Cultural Services Department (LCSD). Though the children's performance is of a voluntary nature, the Government requires groups commissioning children performance to take out insurance for their employment relationship with the children because the LCSD offers tickets of these shows for sale. I would like to point out that they are required to take out insurance for the employment even though they have not established an employer and employee relationship. If an accident does occur during the scheduled performances, I believe the insurance company will certainly query their employer and employee relationship, which does not actually exist. Under this circumstance, is the Government, in considering the legislation — I dare not use vulgar terms, but the legislation is somehow "anachronistic". Has the Government considered amending the legislation in respect of these "anachronistic" arrangements? Though the Government does this out of good intention, I am afraid it may turn out to be the opposite. By requiring the purchase of employment insurance despite the non-existence of an employment relationship, it is not going to work eventually. What the Government should consider is the purchase of accident insurance and third party insurance. Has the Government consider issues in these aspects?*

**PRESIDENT** (in Cantonese): Miss CHAN, you have put your supplementary question; please be seated.

**MISS CHAN YUEN-HAN** (in Cantonese): *Thank you, Madam President.*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): Madam President, I do not think I have to debate with Miss CHAN Yuen-han, for she has a point there. I think the legislation is "anachronistic" to a certain extent. Why? For the Regulations was enacted in 1979. I believe Miss CHAN Yuen-han also knows clearly that back in 1979, there were numerous factories in Hong Kong and the employment of children was a problem. In what way was it a problem? At that time, when officers of the Labour Department (LD) inspected the factories, persons in charge of the factories

would claim that those children were not employees but children of the workers, and that they were not working in the factories, or that they were not paid. That was why it is stipulated in the legislation that children would be regarded as employees even if they were not paid. Actually, the objective of the legislation is good, aiming to protect the safety and well-being of children.

However, circumstances have changed. I agree that far more extra-curricular cultural performances are held now than in those days. Many more children choirs are found today, the current number of which, I believe, must be greater than that in those days. I acknowledge that the situation has changed. I believe what we need to consider at the moment is how to handle the issue with flexibility. It is not necessary to introduce any legislative amendments, for the Commissioner for Labour can exercise his discretion in handling certain cases to ensure that the interest of children is not jeopardized. For instance, extra-curricular activities and inter-school competition supported by schools are apparently non-profit-making or free of charge. In respect of such cases, I also agree that no application would be required in future. I think after we have adapted to the present situation, we have to examine how we can handle the situation with flexibility, in order to protect the children on the one hand, and to promote art development and talents training on the other, striking a balance between both in the course.

**MS CYD HO** (in Cantonese): *Madam President, I would like to raise a question from the perspective of children protection. Despite the signing of the "agreement of employment of children artists", the children concerned are not necessarily protected, this is particularly so for those children participating in television performances which may be very frequent. Has the Secretary put in place any mechanism to monitor the daily working hours of child artists, when they can work and the maximum working hours? Are efforts made to ensure the studies and rest of those children is not affected? Should the issue be followed up by the Director of Social Welfare or the Commissioner for Labour? What mechanism is used to monitor the situation?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): Madam President, Ms Cyd HO's supplementary question spells out clearly the dilemma in which colleagues of the LD are caught. As I said earlier, we have to be flexible on the one hand, while taking into account the protection

of children on the other. As in the case cited by Ms Cyd HO, where children work for a television station or participate in the filming of movies or other art performances, how can we protect the interest of these children? In fact, they have to submit applications for this. We have put in place relevant regulations and distributed them to movie companies, production companies, television stations or schools, and they know under what circumstances should applications be made. Upon the granting of permission, we will actually set out clearly the conditions applied, and there are in fact many restrictions. For instances, children employed are not allowed to work before 7 am and after 11 pm; for more than eight hours in any day; during school hours; for any eight hours of work, not less than an hour of rest should be granted; if required to work after 7 pm, free transport should be provided for going to and from work. This indicates that many regulations are in place to protect children. Moreover, the LD also conducts inspection to check whether employers comply with the regulations. For example, location shootings of television stations or production companies will be inspected.

**MS CYD HO** (in Cantonese): *Madam President, these certainly warrant review, for it is absolutely inappropriate to allow children to work for eight hours. However, other than the Commissioner for Labour, does the Director of Social Welfare have a role to play in follow-up? For the working hours mentioned earlier will obviously affect the studies and rest of children.*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): Madam President, I believe I have stated earlier that children are not allowed to do such work during school hours. That is to say, if children are attending school, they cannot take up those jobs. Moreover, their working hours are all subject to regulation. I believe these have been unequivocally explained in the Regulations, and colleagues of the LD will follow up in this respect. As such, the involvement of the SWD seems unnecessary.

**MS LI FUNG-YING** (in Cantonese): *Madam President, children's participation in performances or charity activities takes place on either stages or at performing venues. May I ask the Secretary to explain why he said earlier that children working in a place of employment, irrespective of the nature of work, would be deemed to be employed therein? For the Secretary also said that participation*

*in charity activities, school competitions, and so on, would not be regarded as employment.*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): Madam President, I think the background against which the Regulations were enacted, as pointed out in my reply to Miss CHAN Yuen-han's supplementary question earlier, is exactly the answer. Both factories and venues for stage performance are regarded as places of employment, for we should remember that performance could be a job in itself. Therefore, even if children found at places of employment do not receive wages, we have to question whether they are attending school and whether consent of their parents have been obtained in order to protect the children. As I have said earlier, back in 1979, even if children were found in factories during inspection, they were claimed not working there or not being paid, which obviously might not be the fact. The Regulations are somehow "anachronistic", as I said. In today's context, for participation in extra-curricular activities which merely involve inter-school competitions and inter-school performances, the Commissioner may exercise his discretion, as I said, according to the Employment Ordinance to exempt those children from complying with the Regulations, obtaining parental consent or proving their attendance at school. This is what I meant by handling cases with flexibility. If we are to lay down some criteria in future, for clear-cut cases like inter-school activities mentioned by me earlier which are non-profit-making and take place only several times a year, the Commissioner may exercise discretion to exempt the parties concerned from submitting applications or proof even though the activities are held at performing venues.

**MISS CHAN YUEN-HAN** (in Cantonese): *Madam President, in his earlier reply to a supplementary question, the Secretary considered the Regulations "anachronistic", but did not consider amendment to the Regulations necessary. His replies to several Members appear contradictory. Actually, we consider the eight-hour limit stipulated in the existing part related to work with wages, which was enacted in 1979, too long; and the failure to include work without wages as the establishment of employer and employee relationship improper. I would like to tell the Secretary, at present, when non-profit-making organizations request parents to sign documents related to employment relationship, parents would query the request for their children are only performing for the organizations and the performance is offered free of charge. Numerous parents are baffled by the*

*arrangement. As the Regulations are so "anachronistic", will the Secretary consider submitting amendments to the Regulations to the Legislative Council in the coming term expeditiously to provide better protection to children now working with and without wages in respect of their cultural development?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): Madam President, at present, we deal with these issues with flexibility. However, we are very willing to listen to different views regarding this issue in the Labour Advisory Board and the Legislative Council. If the Regulations are considered "anachronistic" and warrant amendments in the light of the present situation, I will be willing to do so.

**MS CYD HO** (in Cantonese): *Madam President, even during the summer vacation when children do not have to go to school, it is absolutely an abuse to make children below 13 work until 11 pm. Will the Secretary undertake to review the Regulations from the angle of preventing child abuse, and to inform us of the relevant timetable?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): Madam President, I think I can provide some details about the standard conditions to Ms Cyd HO. In fact, children do not have to work until 11 pm. This is not what we mean. We are saying that children are not allowed to work more than eight hours in any day or during school hours. Therefore, very few cases involve the working hours mentioned by Ms Cyd HO earlier. I have a lot of information in this respect. I will not go over it now. Perhaps I may provide a copy of the information to Ms Cyd HO after the meeting (Appendix I), which sets out in detailed the standard conditions of employment. However, I have already promised Miss CHAN Yuen-han that I would be willing to conduct a study in this respect. Therefore, during the course of our study, we may at the same time study the relevant conditions and regulations.

**PRESIDENT** (in Cantonese): We have spent 16 minutes on this question. Last supplementary question now.



**MR HENRY WU** (in Cantonese): *Madam President, after listening to what the Secretary has said, I see that the prevailing problem is that exemptions have to be granted in many cases, despite the existence of the existing legislation, which I believe many organizations do not know clearly. To prevent these organizations from contravening the legislation again, will the Secretary consider issuing guidelines to the relevant organizations before amendments to the legislation are made to ensure that they act in accordance with law and children are protected?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): Madam President, I have pointed out earlier that we have already distributed the Regulations to every school and the relevant organizations, stating under what circumstances should applications be submitted according to the Regulations. Our colleagues will handle the cases flexibly taking into account the present situation and certain criteria. As I said earlier, regarding activities like inter-school competitions, inter-school performances and academic exchange staging outside school hours that are non-profit-making, clear instructions have been laid down. I believe all schools know this information, for we have provided to each school the relevant information. I think we will continue with our promotion work in this respect, and will continue distributing those documents to the relevant organizations.

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

**MR HENRY WU** (in Cantonese): *Yes, Madam President. I was referring to those outside organizations other than school organizations, such as non-governmental organizations.*

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

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Cantonese): Madam President, no.

**PRESIDENT** (in Cantonese): Sixth question.

**Emission of Pollutants from Power Plants**

6. **MR MARTIN LEE** (in Cantonese): *Madam President, it has been reported that due to an increase in coal consumption, the average amounts of gas emission for each unit of electricity generated by the CLP Power Hong Kong Limited (CLP) in both 2002 and 2003 were higher than that of 2001. The amount of sulphur dioxide emission by the CLP in 2003 almost doubled that of 2002, while the amount of nitrogen oxide emission increased by over 60%, granular material by over 40%, and that of carbon dioxide emission for each unit of electricity generated also climbed back to the level of 1996. In this connection, will the Government inform this Council:*

- (a) of the mechanism, legislation and procedures for regulating the emission of pollutants from power plants;*
- (b) whether targets have been set for restricting or reducing the amount of pollutants emitted from power plants; if so, of the target amount of emission; if not, the reasons for that; and*
- (c) of the measures that can be taken to reduce the emission of pollutants from power plants and prevent the pollution problems from getting worse?*

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

- (a) Under the Air Pollution Control Ordinance (APCO), operation of power plants requires a specified process licence issued by the Environmental Protection Department (EPD). When deciding whether to grant or refuse to grant a licence to a power plant, the APCO requires that the EPD shall:
  - (1) have regard to the capability of the applicant to provide and maintain the best practicable means for the prevention of the emission from his premises of any air pollutants;

- (2) aim to achieve and maintain any relevant air quality objective; and
- (3) have regard to whether the emission of noxious or offensive emissions would be, or be likely to be, prejudicial to health.

To ensure that every power plant meets the above three legally specified considerations, the EPD can impose any necessary requirements as terms and conditions in the specified process licence, including limits on emission of air pollutants from the power plant and monitoring requirements, and so on. A specified process licence is valid for a period of not less than two years. Upon expiration, the power plant has to apply for renewal of the licence. Violation of any terms and conditions in the licence is an offence. The licence holder is liable to a fine of \$100,000 if convicted for the first time, and a fine of \$200,000 plus imprisonment for six months for any second or subsequent offence.

The current licensing terms and conditions for power plants require the installation of an on-line system for continuous monitoring of air pollutants in the chimney flue gas. The data are transmitted directly to the EPD for auditing. The EPD staff also inspect power plants regularly to check that they are implementing adequate measures to comply with the terms and conditions of the licences.

- (b) To control the amount of pollutants emitted from power plants, the EPD has stipulated emission concentration limits of air pollutants in the specified process licences, covering sulphur dioxide, nitrogen oxides and particulates. These emission concentration limits are determined based on the best practicable means, having regard to the commissioning time of the concerned power plant and the type and design of the electricity generation units. The current power plant flue gas emission concentration limits for sulphur dioxide, nitrogen oxides and particulates are as follows:

- (1) For the eight coal-fired units of the Castle Peak Power Station, the limits are 2 100, 1 500 and 125 mg/cu m respectively.

- (2) For the six gas-fired units of the Black Point Power Station, the limits are 5, 90 and 5 mg/cu m respectively.
  - (3) For the eight coal-fired units of the Lamma Power Station, the limits are 1 910, 1 200 and 125 mg/cu m respectively for units L1 to L5; 191, 660 and 85 mg/cu m respectively for unit L6; and 200, 411 and 50 mg/cu m respectively for units L7 to L8.
- (c) During 1993 to 2002, the total emission of sulphur dioxide, nitrogen oxides and particulates from power plants in Hong Kong was reduced from 160 000 tonnes, 110 000 tonnes and 8 700 tonnes to 60 000 tonnes, 40 000 tonnes and 2 600 tonnes respectively. The respective reductions are 63%, 65% and 69%. During the same period, the total emission of carbon dioxide was reduced by 18% from 30 million tonnes to 24 million tonnes. However, due to change in electricity demand and the number of coal-fired units needed to be operated in a particular year, the total quantity of emissions from power plants may vary.

To further control the emission of air pollutants from power plants, we have not approved any new coal-fired electricity generation units since 1997. All newly built power plants have to use gas as the main fuel. It is cleaner to generate electricity by burning gaseous fuel which emits 99.6%, 94.7%, 95.2% and 52.8% less sulphur dioxide, nitrogen oxides, particulates and carbon dioxide respectively than burning coal.

Electricity generation by wind power does not emit any air pollutants and carbon dioxide. We are exploring with the two power companies the feasibility of building two commercial scale wind turbines in Hong Kong for demonstrating to the community the advantages and disadvantages of generating electricity with wind power. It will help decide the feasibility of developing a wind farm in Hong Kong and the scale.

Furthermore, to improve the air quality of the Pearl River Delta Region, the Hong Kong SAR Government and the Guangdong Provincial Government agreed in April 2004 to reduce, on a best

endeavour basis, the regional emissions of four major air pollutants, namely sulphur dioxide, nitrogen oxides, respirable particulates and volatile organic compounds by 40%, 20%, 50% (Appendix 1) and 55% respectively by 2010, using 1997 as the base year. Power plants are major local emission sources of sulphur dioxide, nitrogen oxides and respirable particulates. To help achieve the reduction targets agreed above, we are exploring cost-effective emission reduction measures, including emissions trading, with the two power companies.

**MR MARTIN LEE** (in Cantonese): *Madam President, from part (c) of the main reply, we learned that the quantity of gas emissions from power plants was related to the number of coal-fired units needed to be operated. Given the rising electricity demand in Hong Kong, the absence of a well-developed wind power system and the rising electricity demand arising from power companies' continuous sale of electricity to Guangdong Province, does the Government have any measures in place to restrict or reduce the amount of pollutants and emissions from power plants?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Madam President, I mentioned in my main reply that we have specified legal procedures. According to the restriction on specified process provided under the Air Pollution Control Ordinance, we can reduce the allowed amount of emission in the licence of the power companies. In doing so, we of course have to consider the impact on the electricity tariff. We have to identify a way of emission reduction that is both acceptable and in compliance with the cost-effective principle. We have the legal backing to require emission reduction, however, according to our requirements imposed on the power companies, it is hoped that they can explore the most cost-effective way that satisfies both sides. As such, we have been thinking of the proposal of emissions trading, with a view to improving the overall air quality in the most cost-effective manner.

As regards the question raised by Mr LEE just now, the rising electricity demand of Guangdong Province did give rise to great difficulties in our work. Apart from exhausting the electricity generation capacity of their new and old

plants, some very old and polluting plants have to be reopened. On balance, if we do not supply electricity to them, the pollution under the same sky may be more serious. Besides, it was impossible for the CLP to provide power to the Mainland by entirely burning natural gas. As far as we know, if more natural gas is used in generating electricity, despite an increase in the electricity supply, the problem of air pollution can be controlled. As we mentioned just now, by burning natural gas, the level of pollution can be reduced by a few dozens times. Nevertheless, we are aware that the reserve of natural gas presently supplied to CLP is far less than initially expected. As the natural gas supply in 2003 was unable to meet the additional demand of Guangdong Province, coal was thus also used to generate electricity.

In this regard, we are urging the CLP to explore alternative source of natural gas supply while looking into the possibility of reducing air pollution. Thus, we have adopted a two-pronged approach. Apart from requiring power companies to spend money on emission reduction by installing flue gas desulphurization system or adopting other means to reduce the sulphur content in coal, but all this will increase cost. Moreover, preferably the best fuel to use is natural gas. However, the source of natural gas is still a problem yet to be resolved. I can tell Mr LEE that we have exerted enormous efforts, but the objective of emission reduction cannot be achieved so far.

**DR LAW CHI-KWONG** (in Cantonese): *Madam President, the Secretary also pointed out in part (c) of the main reply that the target was to reduce sulphur dioxide by 40% by 2010, using 1997 as the base year. However, according to the question raised by Mr Martin LEE, the average amount of sulphur dioxide emission by the CLP in 2003 almost doubled that of 2000. May I ask the Secretary how extra efforts can be made, for instead of improving the situation is deteriorating, to achieve the target of reducing by as much as 40% in the remaining six years?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Madam President, given an increasing electricity demand, the target of 2010 is a direction agreed by both parties. We are actually discussing with the two companies on how to reduce emission, not that we are not doing any work in this respect. Just as the two ways I have referred to just now, we can

achieve this either by using natural gas or installing additional emission reduction equipment such as flue gas desulphurization system. As I have said, the installation of flue gas desulphurization system can make a difference of 10 times in the level of pollution produced.

As for the power plants in the Mainland, such as the one at Shajiao, has been installed with a series of emission reduction equipment. Their two major power plants — I cannot remember their capacity in terms of MW — have been equipped with desulphurization and low-nitrogen facilities since last year. During the site inspections conducted recently by our colleagues, we learnt that the installation work in one of the plants had been completed. We will continue with our work, so that together with an increase in the electricity demand, emission reduction can be achieved at the same time. It is something within our calculation. However, what we cannot calculate is the pace of economic growth. Emission reduction can be implemented as forecast if the economic growth can be slowed down with the macro-economic adjustment and control measures adopted. Apart from power plants, the emission reduction work for other operations, such as cement plant, has been easier. They have been working on reducing pollution caused by cement.

**PRESIDENT** (in Cantonese): This Council has spent 16 minutes on this question and five Members are still waiting to raise questions. We have already spent 16 minutes on a main question and a supplementary question raised by Members. I hope more Members will be able to raise their supplementary questions.

**MR FRED LI** (in Cantonese): *Madam President, according to the CLP's report, there was an increase of 50% in coal-fired generation in 2003, while the use of natural gas had dropped almost 40%, in which a large quantity of coal had obviously been used instead of natural gas. I believe it is the cause for the substantial increase in sulphur dioxide. The increase of electricity demand in Guangdong Province bears no direct relation with the amount of emission. Is it due to an unstable supply of natural gas to the CLP, especially with the loss of a natural gas field in the Mainland? Is the Government aware of the situation? If the supply of natural gas continues to be unstable, will the CLP use an even larger quantity of coal, thus producing more pollutants?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**

(in Cantonese): Madam President, on the supply of natural gas, I mentioned the issue just now. The supply of natural gas is indeed unstable and the Government is aware of the situation. The exploration for natural gas reserve requires a lot of assessments, and the experience back then might not have been enough. If you are interested in paying a visit, you will find out how complicated it is. The location of the tectonic plate, be it horizontal, vertical or slanted, will affect the output of natural gas. We also know that, in times where natural gas supply is inadequate, we have to resort to using coal as substitute, for instance, with the older coal-fired units at the Castle Peak Power Station. We will certainly take measures to reduce air pollutions in burning coal, but the coal-fired units at Castle Peak are not yet installed with desulphurization equipment. We are in the course of discussing on the cost implications of installing such systems and the feasibility of making wider use of natural gas in electricity generation. We are still in the stage of further consideration.

**PRESIDENT** (in Cantonese): Last supplementary question.

**DR RAYMOND HO** (in Cantonese): *Madam President, from the Secretary's information, it is learned that major air pollutants like sulphur dioxide, nitrogen oxides, respirable particulates and volatile organic compounds have reduced substantially in the past 10 years. Compared with the substantial resources injected by the power plants in Hong Kong, the resources injected by the Pearl River Delta may have been much smaller. Based on the principle of fairness, does the Secretary consider there is any chance, or no chance at all, to bring the plan of emissions trading as proposed by her into fruition.*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**

(in Cantonese): Madam President, I also hope that our air quality has indeed improved as Dr HO mentioned just now. Honestly, however, I referred only to roadside monitoring stations, that is, the pollutants generated from emissions of vehicles, the pollutants were indeed reduced at those points. As regard the ambient air, we cannot say that there has been any improvement in the air quality. As the chimneys of power plants are generally very high, the pollutants emitted



will affect the ambient air. Even if there is improvement in that the concentration of emission is lower, the amount of emission is still on the rise. We must make this point clear.

I also support the suggestion of Dr HO. Regarding emissions trading, the major consideration is not fairness, but the optimum cost-effectiveness. It will be more convenient to conduct trading in the Mainland as there is more space and the cost is lower. The cost involved in the emission reduction implemented in Shajiao was indeed a few times lower than ours. From this prospective, we hope to spare the public and consumers of shouldering too high a burden while reducing the air pollution of the sky we both share.

**PRESIDENT** (in Cantonese): Question time ends here.

## WRITTEN ANSWERS TO QUESTIONS

### **Recovering Advanced Costs from United Nations High Commissioner for Refugees**

7. **MR JAMES TO** (in Chinese): *Madam President, regarding the Administration's efforts in recovering from the United Nations High Commissioner for Refugees (UNHCR) the advanced costs incurred for the care and maintenance of asylum seekers from Vietnam, will the Government inform this Council of:*

- (a) *the number of attempts by the Government to recover the arrears as well as the channels and means by which such attempts were made over the past five years, with the details of the recovery actions taken in each instance and the amounts recovered;*
- (b) *the current amounts still owed by the UNHCR; and*
- (c) *the concrete actions the Government will continue to take in its efforts to recover the arrears?*

**SECRETARY FOR SECURITY** (in Chinese): Madam President,

- (a) Over the past five years, the Security Bureau and the Chief Executive's Office of the Government of the Hong Kong Special Administrative Region (SAR) have written on seven occasions to the UNHCR and its Sub-office in Hong Kong, urging them to appeal to the international community for donations to repay the outstanding advances to the SAR. We have also reiterated that the community at large and the Legislative Council still expected recovery of the outstanding advances from the UNHCR. Apart from correspondence, SAR officials, including the Chief Secretary for Administration, the Secretary for Constitutional Affairs, the Secretary for Security and colleagues in the Security Bureau, have made clear our stance on the outstanding advances to the UNHCR's Deputy High Commissioner, Director of Bureau for Asia and the Pacific, Regional Representative for China and Mongolia and Head of Sub-office in Hong Kong on the occasion of 10 meetings and three international conferences. The UNHCR repaid \$3.87 million in early 1998. Since then, the UNHCR has repeatedly indicated that due to budget constraint and priority to cope with other more pressing refugees and humanitarian issues, it is not optimistic that further donations earmarked for repayment of Hong Kong's outstanding advances would be received.
- (b) The amount of outstanding advances to the UNHCR stands at \$1,162 million.
- (c) The SAR will continue to urge the UNHCR through different channels to appeal to other countries for donations with a view to repaying the outstanding advances.

### **Anti-mosquito Work**

8. **DR DAVID CHU** (in Chinese): *Madam President, it has been reported that the mosquito problem has become increasingly rampant in various districts of Hong Kong recently, and there have been rising risks of mosquito-transmitted diseases such as dengue fever and Japanese encephalitis (JE). Two cases of the*

*JE were reported successively in Hong Kong in June this year. The Health, Welfare and Food Bureau has allocated \$10 million to the Food and Environmental Hygiene Department (FEHD) for carrying out anti-mosquito work in the "grey areas" where responsible government departments cannot be instantly identified, with a view to tackling the mosquito problem within a short period of time. In this connection, will the Government inform this Council:*

- (a) of the total number of such "grey areas" in Hong Kong, as well as the locations and circumstances in which they are normally identified to exist;*
- (b) whether it will specifically designate a government department to be responsible for carrying out the work relating to hygiene management in the above "grey areas";*
- (c) of the breeding situation of Culicine mosquitoes, which are the culprits for transmitting JE, in the past six months, and the measures that the authorities will take to control their high breeding rates; and*
- (d) whether it knows if the Hospital Authority (HA) has started formulating contingency measures to prevent a massive outbreak of JE; if so, of the details?*

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

(a) and (b)

We do not have a list of anti-mosquito "grey areas" and our assessment is that there are only very limited areas as such which jurisdiction or management authority have not been clearly established. In the last two weeks, the 18 Anti-mosquito Task Forces chaired by District Officers have taken swift action in co-ordinating various departments' efforts in combating the mosquito problem of these sites as a matter of priority. They will then decide the responsibility of each department in overseeing the long-term hygiene management of the areas.

- (c) The principal vector of JE, *Culex tritaeniorhynchus* breeds in water-logged abandoned fields, rice fields, marshes and water collections around cultivated fields. As potential breeding grounds are plentiful in vast areas of the New Territories, *Culex tritaeniorhynchus* could be widely found in Hong Kong. The breeding condition of this vector is very susceptible to seasonal change, hence their amount and distribution soars during rainy season. The FEHD and the Agriculture, Fisheries and Conservation Department (AFCD) have been taking targeted action on the control of the vector. The AFCD conducts regular inspections to pig farms, remind farmers to eliminate stagnant water on site and offer advice on mosquito prevention measures. For cases where mosquito-breeding problem exists, the AFCD will refer them to the FEHD for follow-up control and enforcement actions. Apart from conducting weekly inspection and anti-mosquito operations at the vicinity of pig farms, as well as areas where migratory birds gather and are close to human residences, the Department has also launched promotion and education activities to publicize the preventive measures for *Culex tritaeniorhynchus*. In addition to the elimination of mosquito breeding sites and the spraying of larvicide, the FEHD also issues warning or takes enforcement action against the responsible parties upon discovery of mosquito breeding places.

The Government is highly concerned about the drastic upsurge of recent ovitrap indices and reported the JE cases in Hong Kong. In order to contain the spread of the mosquito-borne diseases, 18 District Anti-Mosquito Task Forces have been established to co-ordinate interdepartmental anti-mosquito operations on a district level as well as to encourage greater community participation in mosquito control efforts. The Administration will also conduct serological studies on the local pig population to gather more scientific data with a view to enhancing our risk assessment capability as well as other preventive measures.

- (d) The Centre for Health Protection (CHP) is working closely with the HA, the FEHD, the AFCD and other government departments to curtail the likelihood of a large outbreak of JE in Hong Kong. In addition, the HA is handling the threat of JE by following its

Response Plan for Infectious Disease Outbreaks. For instance, the HA has initiated a six-week surveillance programme for encephalitis, which is set to run until 23 July. Under this programme, the HA would report all cases of encephalitis of unknown origin together with the relevant epidemiological information to the Central Notification Office of the CHP. In addition, in order to avoid the overloading of any particular hospital, the HA Head Office has already notified all public hospitals that in case where the number of suspected encephalitis cases in any hospital exceeds 20% of the capacity of its Intensive Care Unit, that hospital may direct any subsequent cases of suspected encephalitis to other hospitals or hospital clusters in accordance with pre-established protocol.

### **Overtime Work**

9. **MR ANDREW CHENG** (in Chinese): *Madam President, according to the findings of the General Household Survey conducted by the Census and Statistics Department in the first quarter of this year, about 740 000 of the working population in Hong Kong worked more than 60 hours a week. In this connection, will the Government inform this Council:*

- (a) *of the effects of continuous overtime work on the occupational safety, health and efficiency of employees;*
- (b) *of Hong Kong's neighbouring territories where standard working hours are prescribed by law, and the conditions that enable these territories to prescribe standard working hours but are absent in Hong Kong; and*
- (c) *whether it will consider signing the Hours of Work Convention of the International Labour Organization and prescribing standard working hours for Hong Kong, as well as making rules on overtime work compensation; if it will, whether it has set a detailed implementation timetable; if it will not, the reasons for that?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Chinese): *Madam President, according to information provided by the Census*

and Statistics Department, excluding foreign domestic helpers and unpaid family workers, there were some 580 000 employees (including self-employed persons) working 60 hours or more per week in the first quarter of this year. This was 6% less than the fourth quarter of last year. Same as that in the past four years (2000 to 2003), the median hours of work per week for the first quarter of 2004 were 48 hours.

- (a) Working continuously for a prolonged period of time may cause fatigue and affect efficiency, but much depends on whether proper rest breaks are provided during the period. Sufficient rest is important for protecting employees' health and safety. The Labour Department has been promoting the adoption of reasonable working hours and employees' occupational safety and health protection measures in various trades through the industry-based tripartite committees which comprise representatives from the Government, employers' associations and trade unions.

The Committee on Occupational Safety and Health of the Labour Advisory Board issued a Guide on Rest Breaks in July last year. The Guide reminds employers and employees of the importance of rest breaks and encourages them to work out, through consultation, rest break arrangements that are suitable for employees and can meet operational needs. The Labour Department has widely publicized the Guide through various channels and promotional activities and will continue to step up its effort in this respect.

- (b) and (c)

Standard working hours are prescribed in many of our neighboring countries. However, whether there is a need to legislate on standard working hours depends on the actual circumstances of the places concerned. In Hong Kong, the Employment Ordinance already provides for rest days, statutory holidays and paid annual leave. As for hours of work, restrictions are laid down for children and young employees under the Employment of Children Regulations and the Employment of Young Persons (Industry) Regulations.

The issue of whether statutory working hours should be prescribed has previously been debated in the Legislative Council on various occasions, but no consensus was reached. Since Hong Kong is an externally-oriented service-led economy, its labour market must continue to be flexible so as to maintain a favourable business environment. Because of the nature of their work, it is necessary for employees of many sectors to have flexible working hours. With the rapid development of information technology, the mode of work has become more diversified and liberal. To cater for the operational needs and particular characteristics of various trades and enterprises, it should be for employers and employees to determine among themselves the hours of work through consultation having regard to the actual situation, so as to strike a balance between working hours and operational needs. Imposing statutory standard working hours might prevent some employers and employees from making necessary adjustments to meet their business needs.

There has to be consensus and support from all sectors of the community, in particular from employers and employees, for statutory working hours to be imposed. We would not consider signing the International Labour Conventions concerning working hours at this stage.

### **Buggery and Gross Indecency Offences**

10. **MS AUDREY EU:** *Madam President, will the Government inform this Council:*

- (a) *in respect of each of the seven buggery offences and the four gross indecency offences under the Crimes Ordinance (Cap. 200), of the number of cases reported to the authorities and the respective numbers of persons arrested, prosecuted and convicted in the last five years;*
- (b) *of the number of the reported cases in item (a) above in which two or more men participated in the offences; and*

- (c) *of the respective numbers of the cases in item (b) above in which at least one of the participants was between 16 and 21 years old and below 16 years old?*

**SECRETARY FOR SECURITY:** Madam President, statistics relating to the overall buggery offences and gross indecency offences in 1999 to 2003 are set out in the Annex.

We do not have readily available information in respect of each of the seven buggery offences and the four gross indecency offences, the number of reported cases in which two or more men participated in the offences, or the number of reported cases in which at least one of the participants was between 16 and 21 years old and below 16 years old.

Annex

Statistics Relating to  
Buggery Offences and Gross Indecency Offences in 1999 to 2003

<i>Offences</i>	<i>Years</i>	<i>No. of cases reported to the police<sup>3</sup></i>	<i>No. of persons</i>		
			<i>Arrested</i>	<i>Prosecuted<sup>4</sup></i>	<i>Convicted<sup>4</sup></i>
Buggery <sup>1</sup>	1999	2	0	0	0
	2000	6	3	2	1
	2001	10	8	3	1
	2002	8	6	5	5
	2003	9	5	0	0
Gross indecency <sup>2</sup>	1999	8	14	5	5
	2000	9	16	10	8
	2001	4	7	4	4
	2002	2	2	0	0
	2003	1	2	2	2

Notes:

<sup>1</sup> Buggery covers offences under sections 118A to 118G of the Crimes Ordinance (Cap. 200).

<sup>2</sup> Gross indecency covers offences under sections 118H to 118K of the Crimes Ordinance (Cap. 200).

<sup>3</sup> There may be more than one offender in each case.

<sup>4</sup> Such figures exclude those people whose cases have not been concluded yet, and those who were arrested for gross indecency but subsequently prosecuted for other offences.



**Sex Workers Holding Two-way Permits**

11. **MS CYD HO** (in Chinese): *Madam President, it has been reported that the wives of two officials from the Hunan Province were mistaken for sex workers from the Mainland by police officers during their visit to Hong Kong in April this year. The police officers considered that there were reasons to believe that the two women had breached the conditions of stay and thus arrested them. In this connection, will the Government inform this Council:*

- (a) *of the legal basis for making the arrest and how the verification work was carried out subsequently;*
- (b) *of the total number of sex workers arrested by the police over the past three years; the respective numbers of local residents and two-way permit holders so arrested, and the respective numbers of them who were accompanied by lawyers when making statements in police stations; as well as the respective numbers of sex workers holding two-way permits who were repatriated immediately upon arrest and of those who were tried in courts; and*
- (c) *whether it knows, in respect of two-way permit holders repatriated to the Mainland for breach of conditions of stay, if the mainland authorities have stipulated the duration for which they have to wait before they are allowed to apply for permits to visit Hong Kong again; if they have, of the details of the provisions; and whether the Hong Kong authorities have made provisions in this respect; if so, of the details of the provisions?*

**SECRETARY FOR SECURITY** (in Chinese): Madam President,

- (a) The police arrested the persons under section 41 of the Immigration Ordinance (Cap. 115) and section 2 of the Immigration Regulations (Cap. 115A). Upon observation at the scene on that day, the police suspected that the persons concerned had breached the above

provisions, and therefore brought them to a police station for further investigation. Subsequently, after checking their background and purpose of visiting Hong Kong and searching their belongings, it was established that they had not breached their conditions of stay. They were therefore released.

- (b) The police arrested 5 142, 8 970 and 11 222 persons who were suspected of involving in prostitution in 2001, 2002 and 2003 respectively. Among them, the numbers of local residents arrested who were suspected of involving in prostitution were 54, 97 and 132 for 2001, 2002 and 2003 respectively.

In respect of mainland visitors, according to figures from the Immigration Department, 3 057, 6 826 and 10 863 persons were arrested in the past three years respectively for suspected involvement in prostitution. Among them, 2 080, 4 768 and 6 152 were prosecuted, while the remainder were repatriated or arranged to return to the Mainland immediately.

No separate statistics are kept by the Administration regarding whether the arrested persons were accompanied by lawyers when making their statements.

- (c) Mainland residents who wish to visit Hong Kong for sightseeing, visiting relatives and business have to apply to the Mainland Public Security Bureau, which is responsible for considering and processing such applications. Under the existing mechanism, the Immigration Department will pass to the mainland authorities particulars of those mainland visitors who were suspected of or found engaging in illegal activities (including breaching conditions of stay), so that the authorities can more strictly scrutinize subsequent applications from those persons to visit Hong Kong. The mainland authorities may consider refusing to issue visit endorsements to them for a certain period of time. We understand that the mainland authorities determine the debarring period, which

normally ranges from two to five years, on the basis of the seriousness of the cases. In addition, visitors must fulfil normal immigration requirements, including possession of valid travel documents, sufficient funds for travelling, and documents or entry permits that enable them to return to their places of domicile, before they are allowed to enter Hong Kong. Visitors will be refused permission to land if they fail to meet the above requirements, or their *bona fide* purpose of visiting Hong Kong is in doubt. Each case will be determined on its own merits.

### **Mainland Women Giving Birth in Hong Kong**

12. **DR LAW CHI-KWONG** (in Chinese): *Madam President, regarding Mainland women giving birth in Hong Kong, will the Government inform this Council:*

- (a) *of the number of mainland women who were non-entitled persons (NEPs) and gave birth in public hospitals;*
- (b) *among the women mentioned in (a), of the number of those whose spouse is a Hong Kong resident; the highest and average amounts of payment charged on them when they were discharged from hospitals; and how their length of stay in hospital compares to that of the entitled persons (EPs); and*
- (c) *of the average length of stay in hospital of the babies delivered by the women mentioned in (a), how this figure compares to that of the babies delivered by EPs; the number of babies delivered by the former whose length of stay is shorter and, among them, the number of those who subsequently were hospitalized for treatment; how the health condition of these babies with shorter length of stay compares to that of other babies,*

*since April 2003?*

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

- (a) The number of mainland women who were NEPs and gave birth in public hospitals for the period between 1 April 2003 and 30 March 2004 was 8 727.
- (b) Amongst those 8 727 women mentioned in part (a) of this reply, 2 166 of them were the spouse of a holder of a Hong Kong identity card.

The highest and average amounts of the medical charges of those women when they were discharged from hospitals were \$135,300 and \$7,985 respectively. Their average length of stay was 2.5 days, which is comparable to that of EPs who gave birth in public hospitals within the same time period at 2.4 days.

- (c) The Hospital Authority does not routinely collate information on the precise length of stay of new born babies. However, for babies born in public hospitals with similar health conditions, there is no appreciable difference between the length of stay of babies born to NEP mothers and that of babies born to EPs.

### **Safety at Swimming Pools and Bathing Beaches**

13. **MR NG LEUNG-SING** (in Chinese): *Madam President, regarding safety at swimming pools and bathing beaches, will the Government inform this Council:*

- (a) *of the respective numbers of accidents at public swimming pools, public bathing beaches and private swimming pools in each of the past three years, the respective numbers of such accidents resulting in serious injuries and deaths, as well as cases in which drowning swimmers were not saved due to the absence of lifeguards; and*
- (b) *whether it has assessed the adequacy of the existing arrangements to monitor the professional standard of lifeguards and the safety measures implemented at the swimming pools and bathing beaches*

*of various categories, and whether it has adopted corresponding improvement measures in the light of the assessment results; if so, of the assessment results and the details of the improvement measures?*

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

- (a) In the past three years and including the current year (that is, for the calendar years 2001 to 2003 and up till 31 May 2004), there are a total of 991 rescue cases and a total of 12 fatal cases in the public swimming pools and bathing beaches managed by the Leisure and Cultural Services Department (LCSD). A breakdown of these cases is at the Annex. The LCSD considers that adequate life saving service has been provided at all public swimming venues and none of these cases has been caused by deficiency in the number of lifeguards.

According to the record of the Food and Environmental Hygiene Department (FEHD), there were four accidents leading to deaths of bathers in private swimming pools in the abovementioned period. Details of the cases are listed as follows:

- On 10 January 2004, a child was suspected to have been drowned during the seasonal suspension of a private swimming pool.
- On 13 March 2004, a sick bather came out of a private swimming pool and collapsed thus knocking his head on the railing and later died.
- Two drowning accidents leading to the death of two children happened on 3 April 2004 and 16 May 2004 respectively.

The former two cases did not relate to the adequacy of life saving attendants. As the latter two cases are under investigation by the police, no comments can be made at this stage.

- (b) The LCSD reviews the qualifications of lifeguards from time to time. In meeting the latest standard of the Hong Kong Life Saving

Society (HKLSS), the LCSD's lifeguards' qualifications have been upgraded from Bronze Medallion to Pool Lifeguard Award for lifeguards at swimming pools and Beach Lifeguard Award for those working at bathing beaches since 1 January 2003. The LCSD has set up a Safety Committee on the management of aquatic venues to monitor and review the safety standards of public swimming pools and bathing beaches and to keep abreast of good practices in overseas countries. The Committee comprises representatives from the HKLSS and departmental representatives. Updated safety guidelines are issued from time to time to the venue staff for implementation. The LCSD considers that the above safety measures have been effective to enable us to provide a safe and quality service to meet the needs of members of the public.

To better protect bathers at private swimming pools and to achieve consistency in the qualification required for lifeguards working at public and private swimming pools, the FEHD plans to submit an amendment regulation to the Legislative Council in 2004-05 to amend the Swimming Pools Regulation (Cap. 132 sub. leg.) with a view to upgrading the qualification required for lifeguards for private swimming pools licensed under the Regulation.

Annex

Number of Rescue and Fatal Cases in the Public Swimming Pools  
and Bathing Beaches during the period from 2001 to 2004

(A) Rescue Cases

<i>Year</i>	<i>Public Swimming Pools (a)</i>	<i>Bathing Beaches (b)</i>	<i>(a) + (b)</i>
2001	161	151	312
2002	172	162	334
2003	96	190	286
2004*	35	24	59
Total	464	527	991

\* Up to 31 May 2004

## (B) Fatal Cases

<i>Year</i>	<i>Public Swimming Pools (a)</i>	<i>Bathing Beaches (b)</i>	<i>(a) + (b)</i>
2001	2	1	3
2002	0	0	0
2003	3	5	8
2004*	0	1	1
Total	5	7	12

\* Up to 31 May 2004

**Copyright Works Released in Electronic Form**

14. **MR SIN CHUNG-KAI** (in Chinese): *Madam President, in view of the increasing number of copyright works released in electronic form at present, will the Government inform this Council whether:*

- (a) it has formulated measures to combat illegal downloading or infringement of copyright activities, by using computer softwares similar to "Bit Torrent"; if it has, of the details of such measures and the progress of implementation; and*
- (b) it has plans to resolve the digital copyright problems with the relevant sectors and copyright holders, and establish a mechanism for the administration of digital copyright, so as to promote the development of local digital content industry; if it has, of the details?*

**SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY** (in Chinese): Madam President, the copyright legislation in Hong Kong is "technology-neutral" and the relevant provisions are applicable to copyright works stored in any medium by any means, including electronic means. Hence, works released in electronic form, including computer software, sound recordings and films, are all protected under the Copyright Ordinance. For instance, section 23(2) of the Ordinance, which deals with infringement of copyright by copying, provides that copying of a work means reproducing the work in any material form, including storing the work in any medium by electronic means. Another example is that under section 24(4), which deals

with infringement of copyright by issue of copies to the public, references to the issue of copies of a work include the issue of the original and the issue of copies in electronic form.

As regards whether the uploading and downloading of files through peer-to-peer file sharing software, such as the "Bit Torrent" software, would attract civil and/or criminal liability under the existing Copyright Ordinance, we need to study the matter. We understand that in some developed countries like the United States, the United Kingdom, Australia and Singapore, there is so far no copyright related criminal prosecution case involving peer-to-peer file sharing activities, and that the relevant civil cases have been rather controversial. Hence, before considering if there is a need to formulate special measures, we need to study the matter carefully.

As to the second part of the question, the Government has all along been in discussion with the industry and copyright owners regarding the problems relating to digital copyright works. For example, the film industry has previously indicated to the Government their concern about file sharing activities. The music industry has also raised the problem of digital copyright works and electronic rights management information in their earlier submission to the Government about copyright legislation. We will consider these views and maintain our dialogue with the industry.

Furthermore, the education sector has also suggested that a set of non-statutory guidelines should be developed for the use or making of copies of electronic works in the educational context to facilitate classroom teaching. In response to the suggestion, the Government set up a working group comprising educational organizations and relevant copyright owners, and a number of meetings were held in 2003. Unfortunately, the working group could not reach a consensus in the end regarding the contents of the guidelines.

The Government also proposed to the World Intellectual Property Organization to jointly organize a regional symposium for an in-depth discussion and exchange of views on the issues and problems relating to digital copyright works. This symposium was held in Hong Kong in mid-March 2004, and was well attended by representatives from different sectors. We will continue to listen to the views of different parties and make reference to international experiences when we deal with the problems relating to digital copyright works, including digital rights management.



**Excessive Power of Securities and Futures Commission**

15. **MR HENRY WU** (in Chinese): *Madam President, a number of practitioners in the securities and futures sector have complained to me that the Securities and Futures Commission (SFC) has been endowed with excessive power by existing legislation without proper checks and balances, which is incompatible with the principle of good corporate governance. In this connection, will the Government inform this Council:*

- (a) *whether it will review the power, as well as the checks and balances, of the SFC, including its organizational structure; if it will, of the details; if not, the reasons for that; and*
- (b) *as the authorities have indicated, in the course of discussion by the Bills Committee on Securities and Futures Bill, that they will consider changing the present situation where the SFC Chairman concurrently performs the functions of both the Chairman and the Chief Executive, with a view to severing his function as the Chief Executive, whether they will make the change; if so, of the implementation timetable; if not, the reasons for that?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Chinese): Madam President,

- (a) Since the establishment of the SFC in 1989, care has been taken to ensure that the SFC has the necessary powers to carry out its regulatory objectives effectively, and that such powers are checked by sufficient safeguards.

The Securities and Futures Ordinance (SFO), which commenced operation on 1 April 2003, sets out clearly the regulatory objectives of the SFC. Various checks and balances on the SFC's powers have been incorporated into the SFO, together with some enhanced features:

- (i) the Chief Executive appoints all directors of the SFC, the majority of whom must be non-executive. Certain key

functions<sup>Note</sup> of the SFC could only be exercised pursuant to decisions taken at meetings of the full SFC;

- (ii) the SFC must consult the public in exercising its rule-making power;
- (iii) an independent non-statutory panel, the Process Review Panel (PRP), was established by the Chief Executive to review the SFC's internal operating procedures, including those for ensuring consistency and fairness;
- (iv) an independent Securities and Futures Appeals Tribunal (SFAT), chaired by a full-time Judge, was established under the SFO, replacing the part-time Securities and Futures Appeals Panel. A wider range of the SFC's decisions are subject to review by the SFAT on the full merits of a case;
- (v) members of the public who are aggrieved by the SFC's decisions in the performance of its functions may apply for judicial review;
- (vi) complaints against the actions of the SFC or any of its staff may be lodged with the Office of The Ombudsman;
- (vii) as a public body, under the Prevention of Bribery Ordinance the SFC's practices and procedures are subject to review by the Independent Commission Against Corruption (ICAC);
- (viii) the Chief Executive approves estimates of the SFC's income and expenditure, and the Financial Secretary shall cause the approved estimates to be laid before the Legislative Council. Indeed in the past, it has been a practice for the SFC Chairman and senior management to attend the Financial Affairs Panel meetings in relation to its budget and other major initiatives;

<sup>Note</sup> Functions as specified in Part 2 of Schedule 2 of the SFO.

- (ix) the SFC is required to submit its annual report and financial statements to the Financial Secretary who shall cause a copy to be laid before the Legislative Council;
- (x) the Director of Audit may examine the records of the SFC;
- (xi) the Chief Executive may give the SFC directions regarding the performance of its duties and functions; and
- (xii) the SFC must furnish such information to the Financial Secretary as he may specify.

The Administration will review the operation of the SFO in the light of market developments and prevailing circumstances, and will continue to ensure that there are proper checks and balances on the powers of the SFC in the exercise of its regulatory objectives.

- (b) During the scrutiny of the Securities and Futures Bill at the Legislative Council, it has been suggested that the post of Chairman and Chief Executive of the SFC should be split into two. However, no conclusion was reached on the subject at the time. The Administration would take into account this suggestion in our review and maintenance of the SFO.

### **Nuisances Caused by Noise from Bus Terminals**

16. **MR ALBERT CHAN** (in Chinese): *Madam President, I have recently received many complaints that the noise from some bus terminals causes severe nuisances to the residents in the vicinity. In this connection, will the Government inform this Council:*

- (a) *of the number of such complaints relating to noise nuisances received in each of the past three years; and*
- (b) *whether it has taken measures to solve the noise problem; if so, of the details; if not, the reasons for that?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**

(in Chinese): Madam President,

- (a) In 2001, 2002 and 2003, the government departments received 31, 32 and 24 complaints respectively against noise nuisances caused by bus terminals.
- (b) These complaints were mainly concerned with noise generated by the engines or braking systems of buses moving inside and entering or leaving the terminals, thus causing nuisances to nearby residents. In response to these complaints, the Environmental Protection Department and the Transport Department would request the bus companies to adopt effective measures to reduce noise, including reminding bus drivers to pay heed to noise emitted from buses when driving in the vicinity of residential areas by observing good driving practices. Bus drivers were reminded to avoid unnecessary honking, deceleration and acceleration. Bus companies were also advised to maintain and repair their fleet regularly and monitor the noise emission levels of engines and braking systems of buses so as to keep noise emission to a minimum. After the bus companies concerned have implemented these improvement measures, the majority of the complainants do not lodge another complaint.

In addition, when identifying sites for new bus terminals, noise impact on adjacent residential premises is one of the major factors to be considered. For this purpose, relevant departments will observe the relevant provisions in the Hong Kong Planning Standards and Guidelines in determining land use and design and layout of buildings. Open-form bus terminals will be located away from noise sensitive uses (such as residential premises) as far as possible; noise tolerant buildings, such as community halls, shopping arcades and multi-storey car parks, will be used to screen off bus terminals from residential areas. Many new housing estates have already adopted better building design and layout in accordance with the above Standards and Guidelines by locating permanent bus terminals under building podiums, shopping arcades or car parks so that these noise tolerant structures can provide noise-insulating effect, thereby reducing the noise impact of the bus terminals on nearby residents.

**Disability Discrimination in Schools**

17. **DR RAYMOND HO** (in Chinese): *Madam President, it has been reported that the Equal Opportunities Commission (EOC) dealt with a total of 58 cases involving disability discrimination in the education area in the past seven years. In view of this, the EOC and the Education and Manpower Bureau (the Bureau) have jointly developed an online course to help teachers understand the Disability Discrimination Ordinance and the learning needs of disabled students. In this connection, will the Government inform this Council:*

- (a) *of the areas of discrimination involved in the above cases;*
- (b) *whether, in addition to the above measures, other measures will be formulated to ensure that disabled students will not be discriminated against by schools; and*
- (c) *whether it has plans to require all teachers to take the above course on a compulsory basis; if not, how it ensures that teachers will have certain understanding of the relevant legislation?*

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

- (a) According to the EOC, the 58 cases involved the following educational establishments:

<i>Kindergartens and Child Care Centres</i>	<i>Primary and Secondary Schools</i>	<i>Tertiary Institutions</i>	<i>Vocational Training Institutes and Others</i>	<i>Total</i>
13	25	6	14	58

Of these cases, three were related to disability harassment and the other 55 were mainly concerned with school admission, support and accommodations provided to disabled students with special learning needs, assessment, school access and facilities, and so on.

- (b) Apart from the e-learning programme "Equal Opportunities Begin at School", the EOC, the Bureau and tertiary institutions/vocational training institutes have taken other initiatives to ensure that students

with disabilities are not discriminated by schools. To enhance the understanding of the educational sector, parents and stakeholders of discrimination issues in the field of education, the EOC compiled the Disability Discrimination Ordinance Code of Practice on Education in 2001 and published a series of information leaflets on Disability and Education in 2003 setting out practical guidelines. Various promotional activities such as talks, dramas, debate are also organized to communicate the principles and values of equal opportunities to the school management, students and parents.

The Bureau has implemented a series of support measures, including the issue of circulars, publication of leaflets and production of TV and Radio Announcements of Public Interest on equal opportunities in education for schools and the general public; and the provision of assistance, guidance and assessment to students with disabilities when they apply for school admission. As regards teaching, the Bureau also provides support and guidelines indicating the accommodation that can be made by schools with respect to learning and facilities. Topics on equal opportunities have been incorporated into the professional management course for kindergarten principals and heads of child care centres, and the training course for newly appointed primary and secondary school principals. In addition, the Bureau organizes related courses, seminars and workshops for school heads and teachers every year. Furthermore, all University Grants Committee-funded institutions have their own policy on assisting and supporting disabled students. At the teacher education institutions, modules on handling student diversity and learning needs have been incorporated into relevant programmes.

As regards vocational training, the Vocational Training for the Disabled Section of the Vocational Training Council provides relevant support and proper guidance to disabled students, including special arrangements for them in their admission process and in examinations during the course of training. The Hong Kong Institute of Vocational Education and its training centres have been organizing seminars regularly to brief staff on the policy and measures on protecting and helping the disabled. In addition, the 13 training bodies offering tailor-made training programmes to the

disabled under the Employees Retraining Board all have experienced instructors and provide the suitable facilities.

- (c) While the Government does not require teachers/vocational training instructors to pursue the e-learning programme "Equal Opportunities Begin at School" on a compulsory basis, it has adopted the measures and support services mentioned above to encourage teachers/vocational training instructors to take up the course on their own initiative for familiarizing themselves with the Disability Discrimination Ordinance in order to address the needs of disabled students effectively. After completion of the course, teachers will be awarded four hours in Continuing Professional Development.

#### **Waiting Time for Follow-up Consultation for Patients of Specialist Out-patient Service at Public Hospitals**

18. **MS EMILY LAU** (in Chinese): *Madam President, regarding the waiting time for follow-up consultations for patients of specialist out-patient service at public hospitals, will the executive authorities inform this Council:*

- (a) *of the respective longest, shortest and average waiting times for follow-up consultations for patients of each specialty (such as cardiology, psychiatry and ophthalmology) at each public hospital in each of the past five years;*
- (b) *of the number of complaints received by the relevant authorities in the past three years about patients' delay in receiving treatment because of the unduly long waiting time for follow-up consultations, and the number of patients in those cases who died due to deterioration of their conditions; and*
- (c) *whether the relevant authorities have put in place measures to shorten patients' waiting time for follow-up consultations; if so, the details of such measures; if not, the reasons for that?*

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

- (a) There is no waiting time for follow-up consultations as such for patients at the specialist out-patient clinics (SOPC) of the Hospital Authority (HA). The date of follow-up consultations is set in accordance with the clinician's assessment of the need of the patients on the basis of their clinical conditions. For some acute conditions, the SOPC may request the patient to come back for a follow-up consultation as soon as the next day or a few days later. There may also be situations where the clinical conditions of a patient do not indicate a need for a follow-up consultation at all.
- (b) As indicated in part (a) of the reply, the date of follow-up consultation is set in accordance with the clinician's assessment of the need of the patients on the basis of their clinical conditions. As there is no waiting time for follow-up consultations, the HA does not have information on the number of complaints received for unduly long waiting time. In the case where a patient experiences a deterioration of his conditions, the patient may attend the Accident and Emergency Department (A&ED) for necessary medical assistance. The clinicians at the A&ED will assess the clinical conditions of the patients and determine whether the patient requires hospitalization or an earlier follow-up consultation at a SOPC. The patient may also approach the SOPC which he attended to seek to arrange an earlier date for the follow-up consultation.
- (c) The HA has taken a number of measures to improve both the efficiency and service quality of its SOPCs, which include:
  - (i) managing patients with stable multiple chronic illnesses at integrated SOPCs or general out-patient clinics with Family Medicine practice to reduce the need for these patients to attend separate follow-up consultations with different specialties;
  - (ii) reducing duplication of visits by patients who attend separate follow-up consultations in different SOPCs of the same specialty for different conditions; and
  - (iii) strengthening the care provided by other health care professionals such as nurses through outreach services and



pharmacists through explanation on drug usage and compliance.

### **Youth Engaging in Prostitution**

19. **MR LAU KONG-WAH** (in Chinese): *Madam President, regarding young people engaging in prostitution or related illegal activities, will the Government inform this Council:*

- (a) *in respect of each of the past three years,*
  - (i) *of the respective numbers of young people arrested for allegedly engaging in prostitution and related illegal activities, together with a breakdown by gender, and the age group (aged 10 and below, aged 11 to 15, aged 16 to 20 and aged 21 to 25) of those young people and the type of establishments involved in such activities;*
  - (ii) *of the respective numbers of young people prosecuted for and convicted on such offences and the penalties imposed on them; and*
  - (iii) *of the number of persons arrested for alleged manipulating or abetting young people in prostitution activities and, among them, the number of those convicted; and*
- (b) *whether there has been an upward trend in the number of young people engaging in prostitution or related illegal activities, and whether it will consider increasing the penalties for manipulating young people in prostitution activities?*

**SECRETARY FOR SECURITY** (in Chinese): Madam President,

- (a) The police do not keep separate statistics on young people who are engaged in prostitution themselves, or the establishments involved.

- (b) The recent high unemployment rates of young persons have provided some criminals an opportunity to lure young persons into pornographic activities. We are therefore very concerned at the situation of young persons engaged in such activities. The police will monitor the situation closely and take targeted actions to vigorously combat various pornographic activities that exploit children and youth.

The Crimes Ordinance (Cap. 200) stipulates a number of offences on the exploitation of others for sexual activities. These include:

- |             |   |
|-------------|---|
| Section 119 | Procurement by threats to do an unlawful sexual act                             |
| Section 129 | Trafficking in persons to or from Hong Kong (for the purpose of prostitution)   |
| Section 130 | Control over persons for purpose of unlawful sexual intercourse or prostitution |
| Section 131 | Causing prostitution  |
| Section 135 | Causing or encouraging prostitution of girl or boy under 16                     |
| Section 137 | Living on earnings of prostitution of others                                    |
| Section 139 | Keeping a vice establishment  |

The maximum penalty for "control over persons for purpose of unlawful sexual intercourse or prostitution" and "procurement by threats to do an unlawful sexual act" is imprisonment for 14 years, and that for other offences above is 10 years of imprisonment. In addition, if in individual cases the persons controlling prostitution activities are found to be committing such crimes in an organized manner, or there is evidence to convince the Court that such crimes will have serious impact on society, the police will request the Department of Justice to consider applying for an enhanced sentence in respect of the convicted persons in accordance with the Organized and Serious Crimes Ordinance (Cap. 455). At present the

Administration does not have any plan to increase the penalties of the relevant offences.

## Energy Issue

20. **MR MARTIN LEE** (in Chinese): *Madam President, regarding the issue of energy, will the Government inform this Council:*

- (a) *of the effectiveness of its Energy Efficiency Programme, the amount of energy consumption reduced through the implementation of the Programme and the percentage of the reduced amount in the total energy consumption in the past three years;*
- (b) *whether, since the expiry of the demand side management (DSM) Agreements between the authorities and the two power companies on 30 June last year, the authorities have taken the initiative to promote DSM practices in the past year, in addition to relying on the relevant power companies to continue with their promotional and planning efforts in relation to DSM; if they have, of the contents and effectiveness of their promotional efforts; if not, the reasons for that; and*
- (c) *whether it will consider taking the lead in making vigorous efforts to reduce energy consumption, such as requiring government departments to maintain the temperatures in their offices at 24 degree Celsius or above to prevent wastage of electricity due to excessively low room temperatures?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**  
(in Chinese): Madam President,

- (a) It is estimated that nearly 950 GWh of electricity was saved through the energy saving programmes implemented by the Government in the past three years (2001 to 2003). In 2001, 2002 and 2003, the amount of electricity saved represented 0.59%, 0.82% and 1.08% of the total energy consumption of Hong Kong respectively.

- (b) The Government has been actively practising demand side management at all times before the signing of the DSM Agreements, during their effective periods and after their expiry. The Government's efforts in this aspect include promoting water-cooled air conditioning systems; encouraging the use of equipment bearing Grade 1 or 2 Energy Efficiency Labels and other energy efficient products; fostering electricity saving practices (for example, adjusting the temperature setting of air-conditioning systems upward and curtailing the operating hours of air-conditioning); and advocating energy audits. In addition, we frequently organize talks on energy saving for schools and organizations and have set up the Energyland, which is an educational website, and other websites on electricity consumption management. Thanks to the positive response from the community, it is estimated that more than 400 GWh of electricity was saved last year through these measures, representing about 1.08% of the total energy consumption of Hong Kong.

Meanwhile, we are exploring jointly with the Education and Manpower Bureau the incorporation of such elements as energy efficiency and renewable energy into the primary and secondary curricula so that members of the public will recognize the importance of saving energy and develop electricity saving habits from an early age.

- (c) The Government requires all departments to save electricity without compromising the efficiency and quality of service. We organize seminars for them from time to time and have issued guidelines on energy saving such as setting the air-conditioned room temperature at 25.5 degree Celsius under normal circumstances. The Electrical and Mechanical Services Department has conducted 215 energy audits on government premises to identify opportunities for saving energy. We also require that lighting with higher energy efficiency should be used in all newly completed or renovated offices and energy efficient models should be chosen as far as possible when procuring office equipment. We estimate that these measures saved the Government a total of \$27 million in electricity expenses in 2003-04.

**PERSONAL EXPLANATIONS**

**PRESIDENT** (in Cantonese): Personal explanations. I have given leave for Dr LO Wing-lok to make personal explanations concerning the Report of the Select Committee to inquire into the handling of SARS outbreak.

In accordance with the Rules of Procedure, no debate may arise on such explanations but I may in my discretion allow short questions to be put to Dr LO Wing-lok for the purpose of elucidating them. Dr LO Wing-lok.

**DR LO WING-LOK** (in Cantonese): Madam President, I wish to offer the following apologies to the Legislative Council. The medical profession has always been concerned about the work of the Select Committee to inquire into the handling of the Severe Acute Respiratory Syndrome outbreak by the Government and the Hospital Authority established by the Legislative Council. As the representative of the profession, I have made an arrangement to issue letters by post in order to communicate and discuss the report with members of the profession as soon as possible after the publication of the report on 5 July, Monday, in the hope of keeping tabs on the views of the profession and reflecting them.

Due to an error of judgement on the time needed for mail delivery, the letters were posted at 4 pm on 2 July, Friday. As a result, some of the recipients received the letters in the morning of 3 July, Saturday. Since this incident has caused embarrassment to the Legislative Council and inconvenience to colleagues, I express my sincere apologies.

**MS EMILY LAU** (in Cantonese): Madam President, can I seek clarification from Dr LO Wing-lok?

**PRESIDENT** (in Cantonese): You have to tell me the subject on which you wish to seek clarification before I makes my decision.

**MS EMILY LAU** (in Cantonese): It has to do with what he has related, that is, can he clarify that he is fully aware of the serious impact of this action on the

work of the Select Committee and its effect on the reputation of the Legislative Council? It may be difficult to make amends. Does he realize this point?

**PRESIDENT** (in Cantonese): Ms Emily LAU, this is not seeking clarification but asking a question. You are putting a question to Dr LO Wing-lok. Dr LO Wing-lok has made a statement to offer his apologies. According to our usual practice, you can further seek clarification from him if you feel that there is something you are not clear about, but you are now raising another question.

**MS EMILY LAU** (in Cantonese): Madam President, in that case, I will seek clarification from him. He knew full well that the report would not be published until 5 July, so why were the letters posted so early? Did it occur to him that the letters would be received somewhat earlier and the matter would be made public? Can he clarify?

**PRESIDENT** (in Cantonese): Ms LAU, on this point, it is difficult for me to decide as the President. You are putting the President's savvy to test. *(Laughter)*

**MS EMILY LAU** (in Cantonese): You can just let him answer.

**PRESIDENT** (in Cantonese): Why did I say that? Dr LO Wing-lok has said that this incident happened because he erred in determining the time needed for mail delivery. Nevertheless, I will see if Dr LO Wing-lok has anything to add.

**DR LO WING-LOK** (in Cantonese): Madam President, apart from offering my apologies to Ms Emily LAU again, I have nothing to add.

**MR MICHAEL MAK** (in Cantonese): Madam President, I believe wholeheartedly in Dr LO Wing-lok's sincerity and that he did not mean to disclose what was confidential. However, I wish Dr LO Wing-lok to clarify if he, in posting the newsletters, was concerned that even if the mail did not reach

the hands of his constituents or colleagues too soon because of too speedy a delivery, this confidential matter would have been leaked if the contents had been seen by the postmen or the workers concerned who handled the mail?

**PRESIDENT** (in Cantonese): Mr Michael MAK, I get your point. In fact, Dr LO Wing-lok said in his statement of apology that it was an error in judgement. Therefore, I do not think there is any need to clarify further as he has made an error in judgement.

**PRESIDENT** (in Cantonese): Bills.

(Mr James TO raised his hand)

**PRESIDENT** (in Cantonese): Mr James TO, you should have raised your hand sooner.

**MR JAMES TO** (in Cantonese): Sorry about that. I wish Dr LO Wing-lok to clarify if it had occurred to him that there was actually no need to mention the details at all. It would only be necessary to mention when the report would be published and then establish a website linked to, say, that of the Legislative Council Secretariat. In this way, his colleagues in the profession would be able to read all the details of the report at the earliest opportunity. If his original idea was to enable his colleagues in the profession to read some of the contents at 4 pm on Monday and since our report would be uploaded onto the website, would this not be a better method? Can he please clarify if it had occurred to him that this would be a better method?

**PRESIDENT** (in Cantonese): Mr James TO, I think you are good-intentioned. You have made a suggestion and had it been implemented, perhaps it would have been a better approach. However, this is not seeking clarification but making a suggestion. As I have said to all Members, in allowing the making of this statement, I would only allow Members to seek what really amounts to clarification. I understand that Members are concerned about this matter and hope that this will not recur in future. However, Dr LO Wing-lok has done

what he should: he has offered his apologies to the Council and made a statement. Unless you really want to seek clarifications on the details of the statement, I cannot allow you to ask any further questions.

## **BILLS**

### **Second Reading of Bills**

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

**PRESIDENT** (in Cantonese): Bills. We will resume the Second Reading debate on the Town Planning (Amendment) Bill 2003.

#### **TOWN PLANNING (AMENDMENT) BILL 2003**

##### **Resumption of debate on Second Reading which was moved on 21 May 2003**

**PRESIDENT** (in Cantonese): Mr James TO, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's Report on the Bill.

**MR JAMES TO** (in Cantonese): Madam President, in my capacity as Chairman of the Bills Committee on Town Planning (Amendment) Bill 2003 (the Bills Committee), I would like to report on the deliberations of the Bills Committee.

The Town Planning (Amendment) Bill 2003 (the Bill), as the Government's stage-one amendments to the Town Planning Ordinance (TPO), seeks mainly to streamline plan-making and planning approval process, enhance public involvement, step up law enforcement, and control unauthorized developments. The Bills Committee, comprising 14 members, has held 25 meetings, met with 14 deputations and received up to 140 submissions presenting views on the Bill from various aspects.

During the early stage of the work of the Bills Committee, members noted the dissatisfaction expressed by deputations on the adoption of a phased approach to amend the TPO. A number of deputations saw it necessary to resolve



fundamental issues, such as the composition and operation of the Town Planning Board (TPB), before tackling such details as plan-making, planning applications, and so on. In this connection, the Bills Committee made an in-depth consideration and a majority of members considered that, despite the limited scope of the Bill, some of its proposals would undoubtedly improve the plan-making and planning approval process in terms of enhanced transparency. After detailed discussions, members voted to decide that the scrutiny of the Bill should continue.

(THE PRESIDENT'S DEPUTY, MS MIRIAM LAU, took the Chair)

The Bill proposes major amendments to the plan-making process by proposing to the TPB replacing the present three-stage objection consideration process by listening to the public's views for and against the draft plans in one go, as well as shortening its period for consideration from nine to six months. There has been objection from a number of deputations on the ground that the plan-making process is too tight and that there will be insufficient time for persons affected by the revision of draft plans to object. Owing to the concerns expressed by the Bills Committee and the deputations, the Government has substantially revised the content of the Bill by proposing to listen to the supportive and adverse views in two stages and retain the nine-month period for views consideration. The Bills Committee has consulted the deputations again and the views received were all supportive. For these reasons, the Bills Committee has accepted the Government's proposal to revise the plan-making process. Several proposals have also been raised to allow more opportunities for public comments. All these proposals have been accepted by the Government.

Another major area of proposals in the Bill relates to the planning approval process. To enhance public involvement, the Bill proposes that all planning applications be made available for public inspection and comments. The Bills Committee supports these ideas. Given that it is an important step for the public to be informed of planning applications, members have conducted in-depth discussions with the Government on ways to keep the public informed. A consensus has also been reached on the size and details of the notices to be posted, and the administrative measures to be taken by the Government in order to raise public awareness of planning applications.

To ensure that land owners are informed of any development applications lodged by a third party, the Bills Committee supports the proposal of the Bill that the applicant must obtain the consent of or notify the land owner. Members of the Bills Committee have also proposed to specify that the consent be obtained or notification be made within a reasonable time before an application is lodged. The Government has undertaken to consult the stakeholders after the passage of the Bill to determine the definition of reasonable time.

More than 100 New Territories organizations have raised strong objection to one of the proposals in the Bill in relation to the legal designation of managers of tso/t'ong as land owners who are liable to offences in relation to unauthorized developments. It is the view of the New Territories organizations that all law enforcement action should be targeted on tso/t'ong rather than managers of tso/t'ong, because the latter have no power to decide on the use of land held by tso/t'ong. In this connection, a proposal has been raised by New Territories organizations that the legal status of tso/t'ong under the New Territories Ordinance be reviewed. As this proposal is outside the scope of the Bill, the Government has taken the initiative to withdraw the relevant proposal after listening to all the views. However, members have been assured that the withdrawal will not affect law enforcement action that can be taken by the Planning Authority (PA) with respect to unauthorized developments on the land held by tsos/t'ong.

As regards other proposals in the Bill in relation to enhanced control on unauthorized developments, including increasing the power of the PA to investigate unauthorized developments, confining compliance with enforcement notice to discontinuance of unauthorized development, dispensing with the requirement on the prosecution to prove the existence of unauthorized development, and so on, the Bills Committee has expressed support.

Madam Deputy, I would like to point out in particular that although the Bill has initially not covered the manner in which TPB meetings should be conducted, a number of deputations have expressed concern in this respect. After detailed discussions, the Bills Committee has reached a consensus with the Government that it should be made explicitly that TPB meetings should in principle be open to the public to allow the public to observe the meetings. However, the discussion part of the meetings should continue to be conducted behind closed doors. Under certain specified circumstances, such as when sensitive information is involved, the TPB may decide that the meeting be held

behind closed doors. In the course of deliberations, members repeatedly expressed concern about the composition of the TPB and the quorum for its meetings and their hope for the Government to expeditiously review the relevant matters in its stage-two amendment exercise.

The Bills Committee has made a number of proposed improvements to the Bill, including the drafting of the Bill. The Government has accepted all the proposals and will move amendments at the Committee stage later.

Lastly, I would like to thank members and the Secretariat for their efforts in scrutinizing the Bill. In particular, I would like to thank the government officials responsible for the Bill for listening carefully and their enthusiastic response to members' suggestions in a most innovative manner.

I so submit. The Bills Committee supports the resumption of the Second Reading of the Bill and the amendments to be proposed by the Government at the Committee stage.

**MR WONG SING-CHI** (in Cantonese): Madam Deputy, it has been 65 years since the Town Planning Ordinance (TPO) was enacted in 1939. In fact, the TPO *per se* has a number of loopholes and there is much to be reviewed. A lot of valuable natural resources in Hong Kong and our environment have also been damaged because of the failure of the TPO to exercise control.

The Democratic Party has all along maintained that the TPO should be expeditiously reviewed and amended. However, the Government's phased approach to amend the TPO has made a comprehensive review impossible. A number of problems will still remain and have to be resolved later. Nevertheless, there is no cause for complain with the Government concentrating its effort on improving some less controversial provisions. We just wish to urge the Government to expeditiously carry out consultation on the stage-two and stage-three amendments and submit them to this Council for deliberations to further perfect the Ordinance.

The TPO has always been criticized for its failure to discontinue unauthorized developments and, as a result, rendering it impossible for prosecution to be taken against unauthorized cases. Many land owners or

developers have often, in the process of applying for change of land use or development and before the completion of the approval process, carried out unauthorized developments. Under the existing Ordinance, however, no action whatsoever can be taken against these developments. In other words, even when unauthorized operators have been identified, the Government can only put up with them silently and allow those unlawfully-operated car parks, barbecue sites or dumping sites to continue affecting the environment, causing disturbance to the nearby residents and creating a host of problems.

The Government's amendments to the TPO this time seek to plug the loopholes. We hope the Government can expeditiously carry out effective law enforcement, take appropriate action by exercising the power conferred by the law, and prevent the occurrence of such problems as illegal dumping in the New Territories and confusion faced by complainants not knowing which government departments they should approach to lodge complaints.

Even if this part of amendments to the relevant Ordinance is passed, many problems can still not be resolved in a specific manner. It is my hope that, in addition to improving the TPO, various government departments can make greater efforts in terms of administrative measures to immediately halt unauthorized dumping activities or unauthorized developments so that the public will not be affected anymore.

For many years, the Democratic Party has been requesting the Government to enhance the transparency of town planning and expressing its hope that the Town Planning Board (TPB) meetings be made open to the public. Of course, it would be even better for the TPB to include public opinion representatives so that public expectations for town planning can be directly reflected.

Given that the TPB exercises ultimate power over land development, which has a bearing on the interest of every citizen in the territory, the TPB may consider further opening up its meetings. Given that public interest should be a consideration of TPB members, who should be monitored by the public, there is simply no reason for them to conduct TPB meetings behind closed doors for fear of making known their own position. Members preventing the meetings from being made open to the public are indeed putting the cart before the horse.

We have encountered numerous difficulties in the process of scrutinizing the TPO Bill. Although the easiest part is now being tackled, I believe more difficulties will arise in the future. We will never give up; we will continue to actively co-operate with the Government to excel as far as possible in terms of town planning control. The decision of the TPB to change from holding all its meetings in camera to partially opening up its meetings has actually represented progress. In the course of deliberations, we found that government officials were ready to accept good advice by showing a willingness to consider the views expressed by the majority of members and make revisions. This has provided us with an excellent base for co-operation. I hope joint efforts can be made in this direction in future. The constant development of the present-day society has made it necessary for the Government to, in amending the TPO in future, encourage more public involvement so as to enhance the transparency of the TPB.

There is another very significant point I wish to make. We hope the TPB can do a good job as a gatekeeper in respect of such projects as the West Kowloon Cultural District Development Project, the Central Reclamation Project, and so on, in future. The TPB must not easily relinquish its own responsibilities to prevent the public from being let down by the town planning of these sites. Thank you, Madam Deputy.

**MR LAU WONG-FAT** (in Cantonese): Madam Deputy, in 1991, despite the strong opposition of the New Territories Heung Yee Kuk (HYK), the British Hong Kong Government passed the law forcibly, so as to extend the scope of application of the Town Planning Ordinance (TPO) to the New Territories. In order to pacify the discontentment of the rural population and the professional groups, the Governor of Hong Kong then especially set up a Special Committee on Compensation and Betterment, chaired by Mr John TODD, tasked with the duty of studying issues related to compensation for losses and charging for betterment during the comprehensive review of the TPO. The conclusion then was that compensation should be made for diminution of private land value due to planning.

However, after more than a decade while Hong Kong has already been reunited with the mother country for seven years, the Government is still procrastinating time after time, totally oblivious of the legitimate rights of land owners in the New Territories. The amendment bill proposed by the

Government last year did not mention this issue at all. It seems that this is not an issue anymore. The HYK expresses regret over this attitude of the Government.

Under the Bill, managers of tso/t'ong of the New Territories were originally treated as land owners. This reflects the lack of knowledge on the part of related departments of the rural tradition in the New Territories. Fortunately, after repeated explanations by the HYK to Members of the Legislative Council and the Government, the Administration finally accepted the views and deleted the relevant provisions. Here, I would like to thank Members of this Council and those government officials who were willing to listen to the views of the rural population. Without their efforts, I believe a large number of rural residents would have rallied outside the Legislative Council Building for demonstration today. Nevertheless, I hope that when conducting any review, considering legislative amendments or changing the *status quo* of the rural community in future, the Government should follow the good practice of the past by first consulting the statutory advisory organ of the New Territories — the HYK. This can avoid a lot of unnecessary misunderstandings and arguments.

Madam Deputy, under the Bill, if the change of land use is not approved by the TPB, the works have to be terminated while the piece of land has to be restored. The HYK considers that this provision is too harsh, as the proposal will remove the opportunity of the applicant of having his application approved during the period within which the land use has been changed. If the piece of land has to be restored mandatorily and immediately, then in case the change of land use is approved in the future, the restoration works involved will lead to wastage of resources, increase in construction waste and additional pressure on the landfills. The HYK suggests that the Administration can prescribe a grace period, and before the application is finalized, no action will be taken. For the interim, the Government can consider charging certain fees. This will be a positive approach to the development of society and the reduction of pressure on landfills.

On this issue, the Administration has explained to the Bills Committee that the Planning Authority (PA) of the Government would only take prosecution action three months after the issuance of the enforcement notice to the operator of unauthorized development. If the notice recipient is able to obtain planning permission, even though the three-month period has expired, the PA normally

will consider not proceeding with the prosecution. Although the Government has a point in the explanation superficially, the personal factors of the government officials concerned carry too much a weight in the decision. Besides, the Administration cannot guarantee that the planning application can certainly be processed within three months after the issuance of the enforcement notice. Furthermore, there is no amendment to the provisions of the Ordinance to provide for the kind of criteria that the PA should base in assuming that the notice recipient would finally obtain a planning permission and thus prosecution would not be taken. Therefore, the prescription of a grace period is a win-win and reasonable option that worths consideration.

In regard to the cost recovery arrangement for applications for "planning permission", "amendment to planning permission" and "amendment to draft plan", it is an amendment that is difficult to challenge. However, as we all know, the service cost of the Civil Service is much higher than that of the commercial sector. If we calculate the cost on this basis, the fee level is, of course, too high. Therefore, the fees to be charged by the Administration must be reasonable and acceptable to the public.

Madam Deputy, although the Bill cannot do justice to land owners in the New Territories, the consideration of promoting improvement to the work of the TPB can be understandable. With these remarks, I support the motion.

**MR ABRAHAM SHEK:** Madam Deputy, the Real Estate and Construction Constituency fully supports the principle of making our planning system more transparent, efficient and effective. However, the Constituency believes that the Town Planning (Amendment) Bill 2003 (the Bill) in its present form is unlikely to achieve its intended purposes, because the Bill is inherently limited in scope and piecemeal by nature. The Government has arbitrarily cut up the inter-related sections of the existing Town Planning Ordinance, and sought to selectively amend some of them in this initial stage. The Constituency which I represent is deeply disappointed that such an approach has been adopted in revising a legislation with such vital importance and wide impact on the community.

In the Constituency's view, in this initial stage, there are issues which are completely fundamental in nature being left out. They include the independence and composition of the Town Planning Board (TPB) and the need

to set up an independent Town Planning Board Secretariat. In particular, the practice of appointing an official to chair the TPB must be reviewed and changed. Unless and until the structure of the TPB is subject to a comprehensive review, I believe genuine improvement to the increasingly confrontational planning system is unlikely.

Madam Deputy, it is not only a matter of principle, but is also in the public's interests that the Legislative Council and the community should consider all the amendments as a whole. The Constituency which I represent has grave concern that the Legislative Council has been hurried into passing the Bill even though the Government has not even provided us with a clear commitment or specific timetable as to when it would proceed with the second stage of amendments. This action is not in Hong Kong's interests.

Still, during the subsequent scrutinizing work, the Bill's Committee has from time to time felt the inadequacies of the phased approach, and there were occasions that the Government was requested to make relevant remedies. The introduction of additional amendments relating to the opening up of the TPB meetings in the Bill is a case in point. The Government originally intended to deal with the issue in the second stage review. However, the Bills Committee feels that the transparency of the TPB's deliberation process should not be left out in an amendment stage which primarily aims to enhance transparency in the planning system. I am surprised that some of my Democratic Party's colleagues agreed to a gradual step by step approach in improving the Bill, rather than an all-out approach which they have always requested for constitutional reforms. This time, they should have done otherwise.

Madam Deputy, the Constituency which I represent also fears that the piecemeal amendments may enhance openness at the expense of the whole planning system's efficiency. The Government claims greater openness and improved efficiency are the two most important goals of the Bill. As it stands, a lot of emphasis has been placed on how to strengthen public participation in different planning stages. On the other hand, little actions have been demanded from the TPB to improve its practices and processes. In particular, the amendments relating to seeking the prior consent of landowners are too complex. They may also impose unnecessary impediments on the land development process, considering that most planning applications in Hong Kong involve multiple ownership. Indeed, given that the Bill has already guaranteed adequate and thorough public consultation at the plan-making stage, I believe the planning



applications which are submitted at a later stage in the planning process do not need to be subject to the same level of vigorous public consultation. The present amendments may unnecessarily lengthen the planning process. More importantly, I consider they are unfair to some stakeholders, notably the developers.

Madam Deputy, the Real Estate and Construction Constituency is also disappointed that the Government has rejected its repeated request to include an exemption provision under the relevant sections of planning applications. If such a provision was in place, technical and commercially sensitive information in planning applications would be exempt from public inspection. While this information is needed by the relevant government departments and the TPB in their considerations, it may not be useful to the public who has less concern about technical planning issues. Exemption arrangements under clauses 13 and 16, I believe, will adequately strike a balance between the interests of the public and those of the applicants.

Madam Deputy, despite the above cautionary comments, the Real Estate and Construction Constituency gives its full support to the Bill. I wish to thank the Secretary and his colleagues for adopting a very open attitude in listening to all the requests made by the Constituency. I look forward to the tabling of the second stage of this Bill. Thank you.

**DR TANG SIU-TONG** (in Cantonese): Madam Deputy, the Bill seeks to streamline and shorten the town planning process, enhance the transparency of the system and step up enforcement control. All these measures are essential to improving the town planning process and system.

The Bill has originally proposed to regard managers of tsos/t'ong as land owners who are liable to offences in relation to unauthorized developments. This is extremely unfair to the managers because they are merely managers or trustees of the property. They are not owners and have no decision power. Furthermore, it will be in reality difficult for the managers to inspect all land held by tsos/t'ongs. Readily accepting good advice, the Government has acceded to the opposing views raised by me and various New Territories organizations and withdrawn the proposal of regarding managers of tsos/t'ong as land owners. While I appreciate the Government's decision, I think the

efficiency of legislative work could have been raised even higher had the Government consulted the affected persons or organizations earlier when the legislation was being drafted.

Another issue I would like to discuss is related to the "compliance with enforcement notice". The Bill proposes to eliminate the enforcement weakness of the TPO by requiring land owners or occupiers to discontinue unauthorized developments for compliance with enforcement notices. While this proposal can help the authorities take actions against unauthorized developments, I hope the authorities can, in the course of enforcement, give early notice to persons being affected in relation to unauthorized developments to minimize wastage of investment as far as possible. In addition, the authorities should assist these persons in taking early measures of compliance. I also hope the authorities can, if required, exercise discretion in enforcement to take into account as far as possible the difficulties faced by the affected persons and provide operators with essential assistance and clear guidance so that they can continue to operate under the new regulations.

Lastly, I would like to urge the Government to expeditiously launch the stage-two and stage-three amendment exercises for the TPO, particularly in view of the extensive public concern for the composition of the TPB and the opening up of its meetings, and consult the public widely on the relevant amendments. In particular, I hope the Government can, during the remaining legislative process, negotiate with the relevant organizations on issues relating to the development or use of rural land being frozen or restricted in search of solutions, including the setting up of a mechanism to offer compensation to land owners so as to protect their legitimate rights and interests.

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

**MR ALBERT CHAN** (in Cantonese): Madam Deputy, a wait of 13 years is indeed extremely long in terms of a Member's career. The introduction of amendments to the TPO was already under discussion when I first joined the former Legislative Council back in 1991. A wait of 13 years has now finally borne fruit. Although the ending cannot be considered fantastic, it nonetheless represents the result of the art of compromise.

Madam Deputy, regarding the Town Planning (Amendment) Bill 2003 (the Bill), we do understand that amendments will be gradually introduced in three stages. Before this three-stage approach was tabled to this Council and formally gazetted, various sectors had been consulted. At that time, many parties and Members basically agreed with and accepted the approach of addressing the easier parts first in amending the TPO.

After the establishment of this Bills Committee to begin scrutinizing the Bill, there suddenly came a major obstacle, and resultant disturbances. Back then, some Members and a number of organizations and professionals suddenly raised the point that many proposals in the Bill were flawed and that an all-embracing approach would therefore be better than first tackling the easier parts or adopting a phased approach. It was also suggested that the Government withdraw its proposals. I felt strongly about that because it had taken me 13 years to see just a little result. If we were to start from square one, I wondered if I had to wait 13 years again. Moreover, I did not know whether I could afford another 13 years of waiting. This explained why I firmly opposed the idea and there had been heated verbal exchanges between Mr Abraham SHEK and me. In the end, thanks to support from a number of Members, the scrutiny of the Bill was eventually allowed to go on. Basically, I have a firm conviction in the Bill. As I said earlier, although the Bill has not come to a fantastic ending, a number of amendments can help protect public interest in some measure, particularly the interest of the public in general.

As the TPO often involves the right to know and issues relating to public development, the public's right to know has become very important. As mentioned by Mr James TO, Chairman of the Bills Committee, in introducing the Bill, two major areas are basically involved. The first area is related to plan making and the second related to the approval process for planning permission. Many of the complaints I received in the past were lodged by owners and members of the public in relation to plan making, probably because many of their suggestions had not been considered or taken seriously. By the time the planning applications were approved and works had commenced, they often found as if they had just awakened from a dream that a skyscraper was already under construction adjacent to their sites. Yet, there had been a complete lack of consultation and opportunities for them to express their views. The amendments to the TPO in these two aspects can thus be described as an exercise addressing the dissatisfaction felt by members of the public for years. Of course, the amendments to the TPO may not provide a complete solution to all

the problems. But still, it is hoped that the amendments can at least partially improve the past inadequacies.

Insofar as this amendment exercise is concerned, I was quite surprised to find that the TPB had eventually agreed to open its meetings. I initially thought the Government would wait until the second-stage amendment to further consider the matter. However, under public request, particularly owing to numerous disputes on the harbour issue, changes have been made by the TPB in its new term. Members appointed in the new term have appeared to be more liberal. This new phenomenon might be attributable to the appointment by "Secretary SUEN" of members with greater respect for the public's right to know to the TPB. Although future developments will depend on whether the decisions made by the new TPB members can represent public interest, the members have at least indicated a willingness to make TPB meetings open, particularly the part concerning the processing of planning applications.

However, I still find it slightly imperfect that TPB members have insisted on conducting the discussion part behind closed doors. This is slightly imperfect because the discussion session is very often the most critical. Of course, the session for listening to views is equally important because a lot of information can be disclosed during this session, and such information is very important to the public. However, individual members can make their position known only during the discussion session. If this session is not made open, how can the public know whether certain members can truly represent their interest at TPB meetings and whether they will say one thing and do another? The public is simply unable to find out. Of course, the public can still find out through other means in future, for members cannot cover it completely. Nonetheless, I still find it imperfect should the discussion part remain to be held in camera.

Generally speaking, I support the Second Reading of the Bill and the relevant amendments. I hope the Government can go ahead with the stage-two amendment (or conduct the stage-two and stage-three amendments together, I am not sure), but please do not make me wait another 13 years. I hope the Government can, in the next four years of the new-term Legislative Council, finish all the amendments to the TPO so as to resolve all the problems handed down from the pre-War period. This is because the TPO was enacted before the War. Many provisions therein are at least older than me, if not older than the Secretary. As these problems are left over by history, we must keep pace

with the times and make amendments in a holistic manner. In this connection, I hope a most fantastic ending can be seen in the near future. Thank you, Madam Deputy.

**MS EMILY LAU** (in Cantonese): Madam Deputy, I am speaking in support of the Second Reading of the Town Planning (Amendment) Bill 2003 (the Bill).

Madam Deputy, Mr Albert CHAN and I are the best partners. In fact, he has just presented a lot of the viewpoints which I had intended to raise. However, he said he had been waiting for more than a decade. Maybe I do not know so much about the history of the Bill, not as much as he does, certainly. According to the report provided by the Secretariat, I came to learn that the White Paper on the Bill was tabled in 1996, which means that it had already had a long history before 1996. However, regardless whether the discussion started in 1996 or at any other points of time, Madam Deputy, I believe all of us must have felt quite dejected because a lot of time has already been spent, and now it is said that the process will take three stages to complete, and now we are just dealing with stage one.

However, if we take a look at the city of Hong Kong, some people may say that they take pride in the town planning of Hong Kong. But I am not one of them. Madam Deputy, I do not know whether you are one of them. I cannot help feeling angry when I go to Tseung Kwan O and see the environment there. Many people, including Mrs Carrie LAM (she has probably gone to Britain now), say that the district is like a concrete jungle; it is just an eyesore. Whose fault is this? The problem is, the public has absolutely had no involvement in the development there. So, all of a sudden, wow, there we have the concrete jungle in Tseung Kwan O. Of course, many people have bought properties in the district for dwelling. But a doctor told me that the situation in the district could give rise to mental disorders and all sorts of problems. It is really ridiculous. I had asked the Secretary whether it was possible to tear down some of the buildings, so as to get some space. Of course the answer was in the negative, as the costs involved could be astronomical. Madam Deputy, in addition, we have to make arrangements for rehousing of the residents there, if this is implemented.

However, I feel that the Government should think about how it can return the town planning right to the people — Madam Deputy, again, it is an issue on

"returning the political power to the people". However, do not panic. I am not referring to the issue of seeking independence. We are just requesting the Government to return this right to the people, so that they can participate in the planning process, thereby preventing the recurrence of the Tseung Kwan O predicament or any other chaotic conditions. In other projects such as the harbour reclamation project or the West Kowloon project, and so on, the people are similarly infuriated because they feel that they do not have the chance to participate in the planning process. Now, stage one is launched, I feel that the people still do not have too much participation in the process. So I would like to ask the Secretary to give a response in this regard.

As for stages two and three — when it comes to stage three, it is inevitable for us to touch on the highly controversial proposals — they are really controversial — such as interim development control and planning control on building development. It must take much longer than 16 years. A conclusion may not be forthcoming even after 30 years. Madam Deputy, then when can we participate? The Secretary must clarify this later on. When will it be really possible for the people to participate in the planning of the entire city? When can we stop having to, just like what Dr Raymond HO said (also the concern of Madam Deputy), build roads next to buildings, and then we also have to build some very expensive but ugly noise barriers, thereby making all the three sides the losers?

Of course, some people may say that it would be very expensive too if we have to move the buildings slightly away. However, is it not also very expensive to build the noise barriers? If we put this question to the people, the answer will be very simple and straightforward, that is, move the buildings slightly backwards and leave some space for planting more trees and build less noise barriers. When can the people participate in planning? The Secretary must give us an answer to this question. Although we support the Bill, and agree that it can be done in three stages, we do not know whether we have to wait another 16 years, or 26 years. I feel that this is unfair to the people.

However, I agree with Mr Albert CHAN in his commendations of the Government. I also have to praise the Government for having acted sensibly and positively in responding to good suggestions made on certain issues. For example, on the important issue of expediting the plan-making process. In the beginning, the Government said that a consultation had already been conducted, and it was all done in one single stage. It is unexpected that all of us would say

"no way", and Madam Deputy, and "no deal", because everything is "no good". After we had really gone through the consultation, we found that everything was "no good". So the Secretary had been very positive in accepting our suggestions and offered to implement the proposal in two stages. So, it transpired, had the earlier part been done well, then it would not have to face the outcome of "no deal", or "no way". But after we said "no", the Secretary changed his attitude as well, and he also put forward the amendments, to which I agreed.

Besides, we also support another point, that is, enhancing the transparency of the approval process for planning permission, which means publicizing all applications for planning permission or review to the public. This is indeed a major advancement. We have also discussed repeatedly on how such information can be made public. We suggest, of course, such information must be published in newspapers, certainly. Banners and posters should also be put up in the neighbourhood, in much the same way as we promote mass demonstrations. I said that I could even devote the space I used for putting up banners to publicize such information; and even members of district councils were willing to devote their space for such purpose. They even showed us the relevant information in the meetings, and indicated to us the locations in the maps one after the other. This showed that we had attached great significance to this issue. In the past, when something like this happened, what we usually do would be just posting a notice which might well be blown away by strong wind or torn away by some people. No one knew what the results would be. And when the project was implemented, some people might come forward to raise objection. Therefore, this is something we must tackle. If a suggestion is put forward but not implemented, and in addition, if we agree not to put it down in black and white in order to allow the Secretary to have some flexibility, then some problems will inevitably emerge. I feel that this is very important. If the Secretary is willing to do it, he will have our support, but he must implement his proposals, and he must make the information available to the public, so that they can have sufficient time to put forward their opinions.

As for the operation of the TPB, Madam Deputy, I very much agree to the opinions just put forward by Mr Albert CHAN. We feel that it is most imperative that the TPB be made an independent body. Now with the change introduced, the Permanent Secretary shall assume the chairmanship of the TPB. But this change cannot be considered as adequate for the purpose of establishing its independent status. Therefore, we do not have to wait until stage two to

implement the change in this regard. In fact, we can deal with this first. However, the Government does not take this course of action. Instead, it opts for some quick actions. Wow, as quick as a flash, all the appointments have been announced, and the new batch of members can stay in office for another term of several years. I find this approach undesirable.

In fact, if the TPB has to become really independent, the Government should allow it to follow the example of the Legislative Council in having an independent secretariat, which should no longer be staffed by civil servants. That secretariat should be genuinely responsible to the TPB, and I hope the Secretary can implement this as soon as possible. We have actually reached a consensus on this issue. Madam Deputy, though certain issues are controversial, but not this one. I believe many people also share the view that this should be done expeditiously, so as to enable the TPB to have an independent chairman and an independent secretariat. I hope this can be implemented as soon as possible.

Besides, we must also let the people see that the members do not have any interests to protect, and that there is no collaboration between the officials and the tycoons. As such, I agree with Mr Albert CHAN's earlier suggestion of opening up the meetings. We agree to this point. On this point, I have to commend the Secretary again because not only has he agreed to open up the meetings, but he has also put this down in black and white in the Bill. This is very important. Even some of our Honourable colleagues have questioned whether this is necessary, but most members support it. And of course it is even better for us to have the support of the Secretary. However, eventually I discovered that not all meetings would be open, only the hearings conducted for the purpose of approving applications will be open to the public, whereas the deliberation part will be conducted behind closed doors. Why should such meetings be conducted behind closed doors? Madam Deputy, I believe you must have heard of the reason many times before — that is, someone says that members will be inhibited from expressing their views freely in public meetings. I can never understand the rationale of this, unless they are going to say one version in closed meetings and another in open ones. Otherwise, why can they not express their views freely?

Of course, it is important for TPB members to be able to express their views freely. But the public would very much like to know their opinions. What interests do they serve? This is not an issue as straightforward as making



an application for a certain project. It might even lead to the discovery of the record that someone has frequently enjoyed the treat of great meals provided by somebody else, or even on the pay rolls of others. Therefore, we all want to know who make these decisions. So, a mere reliance on the declaration of interests is not adequate. I hope the Secretary can think about it more carefully, and he may go back and discuss it with TPB members. In fact, many Members also feel that, apart from the restrictions in respect of commercially sensitive information (I can understand this — I can, on the contrary, find this understandable), why can we not let the public know the discussions or arguments among members? The people will hold suspicions. Madam Deputy, is there anything that members have to cover up? Are there many issues in the TPB that cannot be disclosed to the public? Are there any personal interests that need protection? Why should the people have such suspicions? I hope the Secretary can give us a response later on. Free expression of views is something we can gradually grow accustomed. Madam Deputy, do you remember the situation in the former Legislative Council in the pre-handover time? During the time in or before 1991, all meetings were held in camera. At that time, some people also found that they could not express their views freely. However, after a little while, wow, all of a sudden, everything is opened up to the public. Now, is everyone not expressing his views very freely? I feel very happy about this. Therefore, the Secretary should convey this message to the TPB.

In my view, all meetings should be open, including the deliberation part, unless it involves some commercially sensitive information with a certain time limit, and that the disclosure of such information may cause great repercussions. Such situations will also occur in some other committees, which is acceptable to me. However, if opening up the meetings will cause them embarrassment, inhibiting them from expressing views freely, then such comments which will make them feel embarrassed could be some remarks that they should never make. If they cannot make such comments when they are facing the people, such as they support certain projects or a certain developer, and so on, then actually they should not make such comments at all. However, if they thought that they could express their support for that rich man or that consortium behind closed doors, we, as people's representatives, will not agree with them in doing so. Madam Deputy, as the Secretary has already taken so many steps forward, and he is even willing to stipulate in the Bill that meetings should be opened up (the Secretary does deserve the award of a Grand Bauhinia Medal for this. He is

simply terrific), I hope he can implement this. In fact, for other meetings, we also support their opening up. So the TPB is not the only body that has to take this course of action. So, Secretary, you are really terrific. You are number one. However, you still need to take one more step, that is, you need to tell the TPB that, apart from those meetings on commercially sensitive information, all meetings have to be opened up. This is the first step.

Madam Deputy, I am not such a nice guy as Mr Albert CHAN — wait another 16 years? I hope in the next term, when we, well if we, or whoever, can make our way or their way back to the Legislative Council, we should take forward stages two and three as soon as possible. In fact, this matter has been procrastinated for many years, and I do not know why it still has to be reviewed. Is it true that nobody has ever done any work in the past? If so, the Audit Commission probably has to initiate its value for money audits again. I hope what we are doing is the first step, and that other parts of the work can be implemented as soon as possible. Such issues as opening up TPB meetings and the establishment of an independent secretariat, and so on, are actually matters that should brook no more delay. I hope the Secretary can announce even better news very soon.

I so submit.

**MR IP KWOK-HIM** (in Cantonese): Madam Deputy, the TPO was first enacted in 1939. Our town planning system has failed to keep pace with the times for no enormous changes have been introduced for years. An attempt by the Government to conduct a major operation four years ago was eventually aborted, due to the scale of the operation and time constraint. Having learnt the lesson four years ago, the Government has now submitted the amendments to the TPO to this Council in batches for deliberations to ensure that the scrutiny can be completed before the current Council rises. Now, it seems that this idea should come to fruition. The Town Planning (Amendment) Bill 2003 (the Bill), as the stage-one amendment, has involved not too many controversial changes. The most important changes include increasing the transparency of planning applications, opening up the TPB meetings, and so on. The Democratic Alliance for Betterment of Hong Kong (DAB) welcomes this approach and support the Second Reading of the Bill.

I believe consultation has become an indispensable step for all works projects, regardless of their scale. The crux of the problem is, in the course of consultation, whether the levels involved are broad enough and how adequate consultation should be defined. The current amendments to the Ordinance are moving in the direction of increasing transparency from the time when applications are submitted.

Of course, it is extremely difficult for the general public to monitor at all times whether new planning affecting them will suddenly appear and then write to the TPB to express their views. From my experience, it has been the most common phenomenon that members of the public would realize, as if they had just awakened from a dream, that there had been planning changes only shortly before the commencement of works. They were thus forced to "step forward" to express their strong opposition, accusing the Government of failing to consult the residents and take into account the enormous impact of the works on them, and so on. The amendments proposed this time precisely pinpoint this issue. It is hoped that effective consultation can be achieved through informing the residents of the relevant information through various channels.

The Government has actually collected a lot of opinions in the discussions held by the Bills Committee. I certainly greatly welcome the Government's approach because it has truly listened to the suggestions made by the public and Members, including the suggestion on informing residents of the relevant applications through two Chinese-language newspapers and one English-language newspaper; posting notices at conspicuous places on the site; and sending notices to the Owners' Corporation of the properties within 100 ft of the site. We welcome these improved measures. However, we can also see that at the district level, the usual channel through which District Council members are notified of the relevant planning applications is the Home Affairs Department, and the information acquired is sometimes incomplete. Even after listening to and accepting members' views, the Government would still behave in its usual manner. I would like to share with Members in this Chamber one of my personal experiences: An opposition resolution was passed in a formal District Council meeting after additional information on certain planning projects had been given and discussion made. As the meeting was a formal one, it was attended by government officials. At the end of the discussion, a lot of arguments had been advanced, alongside with a number of brilliant and constructive ideas. After exchanges of opinions, however, it was found that

members' efforts had been all in vain, because the only effective way was for the District Council to write a formal letter to the TPB to express its opposition before its request would be entertained. It is simply useless for the District Council to voice its opinions! Its request will simply not be entertained if extra efforts are not made.

As a public opinion representative at the district level, the District Council should be able to reflect the aspirations of the residents in the district. Now it seems that the status of District Councils has not been affirmed. As such, I have repeatedly requested the Government in the Bills Committee to include District Councils as a statutory body for consultation to enable the views of District Councils to be directly conveyed to the TPB. The Government has responded accordingly and agreed that the TPB will notify individual District Council members of town planning applications in future, together with a detailed set of information papers to enable District Council members to submit their views to the TPB within a specified period. To date, however, the Government can still not undertake to put it beyond doubt that decisions made by District Councils after discussion should be considered as formal views. As such, I still wish to request the Government to directly forward the relevant resolutions passed by District Councils to the TPB, thus making it unnecessary for District Councils to write separately to the TPB to put forward their views. I hope the Secretary can seriously consider this matter.

Madam Deputy, another notable change in the Bill is the opening up of TPB meetings to the public. During the deliberations of the Bills Committee, we heard a lot of voices requesting for opening up of meetings. I am very pleased that the Government has eventually taken on board the views of the Bills Committee. As regards the issue of opening up meetings, Ms Emily LAU has also mentioned it earlier. However, I do not concur with her in that I consider it necessary for a mechanism to be set up to allow meetings to be held behind closed doors to discuss sensitive information to make the processing of the relevant applications smoother. It is because some sensitive information of a commercial nature might be involved and disclosing it immediately to the public would be inappropriate. Actually, the Government has another trick up its sleeve. It has been undertaken that after the lifting of the time limit, the public can find out the outcome of the discussion conducted during the meeting by enquiring about the minutes of the meeting. As such, the DAB considers this arrangement reasonable and acceptable.

I very much hope that the Government can, after the formal passage of the Bill, be on guard and make adequate preparations. A continuous upsurge of public sentiment when works projects are launched will eventually delay the normal progress and reduce administrative efficiency.

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

**MR JAMES TO** (in Cantonese): Madam Deputy, I have earlier spoken in my capacity as Chairman of the Bills Committee, and now I am speaking as one of its members.

Talking about this legislation, I cannot help feeling sentimental. That is very much like what Mr Albert CHAN has said just now (he joined the former Legislative Council in the same year as I did, that is, 1991), the Ordinance was actually enacted in the '30s — Mr CHAN has mentioned this already. No Ordinance can remain largely the same without undergoing some major changes down several decades, this is really rare. It is indeed rare especially this Ordinance could be even older than Mr SUEN. In addition, the Ordinance is frequently applied, but has not been amended so far. As such, I can say that everyone has been waiting for its amendment for a very long time.

Last time, in 1998, an attempt was made to establish a precedent to amend the Ordinance. However, as too many things were crammed into the amendment, the attempt was not successful. On that occasion, I was also the Chairman of the Bills Committee. So, if nothing was passed this time, I would certainly feel that something must have gone wrong. I would probably want to kill myself. Fortunately, we have eventually worked out a proper amendment after a number of meetings. Just now, some Honourable colleagues, in particular Mr Abraham SHEK, said that, we should take a comprehensive view of this amendment to the Ordinance, and this is what his constituency thinks. Of course, I also agree that we should adopt a comprehensive view. Frankly speaking, if we want to address many tough problems all at the same time, actually we are just delaying the problems. And now the passage of this Bill will at least bring about one merit, namely, we can at least enhance our right to know, and this right to know is very important. However, can the right to

know solve all the problems? Many concern groups and everyone in the civil society must start to take an interest in planning before this could solve the problems.

Ms Emily LAU has just cited the example of closely packed buildings in Tseung Kwan O. Another example can be found at the end of Cheung Sha Wan, where there are a lot of industrial buildings — I refer to the place where there used to be a shipyard adjacent to Mei Foo. In that area, a lot of tall buildings have been constructed out of nowhere, one row after another. All the space has been sealed, so to say. However, everyone must understand that, even if the TPO was amended some years ago, would a lot of people raise objection? Or would they raise some suggestions? I do not think so. This is because both sides of the road had already been lined up with industrial buildings. Who could imagine that far end could allow the construction of buildings? And whoever could come up with that idea must have become rich. If I were the owners of those buildings, I must have become a billionaire. Now, of course they have become very rich now. Later on, if I or anyone can go and put up more buildings there, it would be our turn to become very rich because more and more buildings are being constructed there. It is a long distance away from both Mei Foo and Un Chau Street Estate, where you can find some private buildings. Therefore, in fact, if we do not have some concern groups in society, just as Mr IP Kwok-him has said, we would still be unaware of the problem.

During the past few years, I have heard some property developers say (of course not those who put up those buildings there), "It is ridiculous! How can they put up buildings at such close proximity?" Of course, I am not sure whether they said that out of jealousy. But there is no special reason for me to have such suspicion. However, several property developers have queried why buildings could be put up at such close proximity. From this, we can see that, even property developers, who are in the business of constructing buildings, find the situation ridiculous, and do not understand why buildings could be built in such a closely packed manner. So, I have thought about the case, and felt that the enactment of legislation may not necessarily solve all the problems. It will require many additional support measures before we can make the community understand that we are sincerely concerned about our town planning, even though I am not personally living in that area. The piece of land has already been utilized and those rows of buildings have blocked all the space there. Any

passers-by in that area can realize that, from whatever angle you look at it, all the view of the sky has been blocked. What can we do? Maybe, apart from saying that we must be very careful in reading those notices, we still have to develop a kind of caring culture in society.

Recently, the reclamation of the Victoria Harbour has evolved into a major controversy. As a result, many concern groups have emerged, such as the one on the use of the harbour, another comprising professionals, and so on. However, I feel that, apart from the professionals, the general public should also carry such awareness. This is very important. Otherwise, the professionals alone are simply inadequate because they also have some interests to take care of and they also have countless connections in society. Some people may suggest that professional associations should be most trustworthy. But they still have certain members serving on their respective executive committees, and among them, some may have to take care of certain persons who are influential to them, those who can affect their financial well-being, and such persons could be the property developers. So, in fact, other than the professionals, everyone in society must also show greater concern about this, so that we can take one further step forward to improve the present situation. Once the meetings are made open, more information can at least be disseminated to enable more people to voice their opinions, and it may eventually cumulate to bring about good prospects for town planning in Hong Kong.

On the other hand (I have not come to the part on stage two yet), I would like to come back to the issue just raised by Ms Emily LAU, that is, why the meetings cannot be opened up to the public. One of the major justifications is, this will make many people feel inconvenient or they will feel inhibited from expressing their views freely. When this is examined in greater detail, I find that they actually mean that: For example, some professionals have been very enthusiastic in serving the public. As they are relatively independent, and are not involved with too much vested interests, so they are appointed by the Government. However, if the meetings are open to the public, it would be most disastrous to them. If a certain developer submits an application, and if the relevant professionals oppose this application, then they will lose all their prospects in the profession — they cannot even survive, even though they have acted very courageously. Given this argument, closed meetings will enable them to act completely in accordance with their own conscience. So, when a major developer sends in an application, and if the professionals really find that

there is a problem, or the developer is making excessive demands, they may vote against the application in a meeting held behind closed doors.

I think, with such an argument, on the contrary, from the perspective of public interest, perhaps as the meeting is held behind closed doors, no one knows whether the people in the meeting have acted according to their conscience. Regarding the perspective of the Government, will it listen to opinions selectively? Or you may ask: Will certainly members play tricks? How will they normally vote? Of course, basically we have the declaration of interests. However, we all know that, many things may not necessarily be related to the major projects of a TPB member, as he can have all kinds of explicit and implicit connections and relations in society. However, if members can act according to their conscience only in closed meetings, then it will become a difficult issue nowadays. If so, I believe the public may, on the contrary, say that such members could act against their conscience or even betray our interests in closed meetings. So such acts can equally be done under such circumstances.

After analysing the situation from two different perspectives, I feel that ultimately nothing cannot be disclosed to the public, even, for instance, sensitive commercial information, as Mr IP Kwok-him said, can be made public as well. In fact, under the present laws, if sensitive commercial information is involved, it will be provided in closed meetings even if it is not for discussion. Therefore, if we are referring to sensitive commercial information, it will not constitute any problem. But what we are talking about now is: Can we not open up even the deliberation part which does not involve any sensitive commercial information at all? I feel that sooner or later such a system will collapse. It cannot possibly go on forever.

Besides, Mr Abraham SHEK has said just now that he feels that such a system requiring notification is very unfavourable to their industry, that is, it bothers them a lot. To this, I have only one response, that is, I have to ask: On a relative scale, why should we require them to give any notice? Or why should they apply for the permission? Mr Andrew WONG had repeatedly stressed in the Bills Committee that if an applicant wished to apply for planning permission for a piece of land that belonged to others, (that is, the applicant is an unrelated third party) then ultimately he must first secure the permission of that particular land owner before he could proceed with his application. Mr WONG had insisted on this for a long time, and he had mentioned this nearly once in every meeting. So whenever he came to this subject, we could not help laughing.



He would find his mind at ease after I had let him make this remark, and sometimes he might even leave the meeting after having stated this point. In doing so, he felt that he had expressed his viewpoints.

However, the situation is not quite the same now. Our present situation is, even for land which belongs to other people, you may still submit an application provided you have notified the owner. In my opinion, the present system is already very simple and straightforward. To the constituency of property developers represented by Mr Abraham SHEK, with their resources and professional practice, they can easily satisfy such a requirement. I can hardly imagine that they should say through their representative that the system is so complicated that it is unfavourable to them and problematic. On the contrary, it occurred to me that, when we were considering the issue, should we also consider whether this would cause great difficulty to some other parties, such as the environmental groups, or some non-governmental organizations because they could never match up with the developers in terms of financial strength, human resources and professionalism and so on, yet they had to follow the same system as the developers. Therefore, when we were holding the discussion, we had considered: Would it be too difficult for them or too stringent for them to follow? So, when I heard those comments by Mr Abraham SHEK, I really felt somewhat angry. I hope it was just a casual remark made by the developers because if they said that they had a strong view about this, I think the public will find it difficult to understand why they should make such a remark.

There is also another argument: Will the hasty enactment of this Bill bring about some major problems? I have also contemplated this question repeatedly. In fact, the immediate benefit is the improvement in the provision of the right to know, as well as the removal of some loopholes in law in implementation and enforcement regarding lands in the New Territories. So these are the immediate benefits. From a most pessimistic perspective, even if the chairmanship of the TPB continues to be assumed by a government official who is in control, I would still feel that we have taken a major step forward now. I believe Mr Albert CHAN will also share my view (he has already delivered his speech): Even if the progress is only made in a "piecemeal" manner, that is, even if the newly added provisions only stand for a very small part, too small to be of any significance (normally we do not allow the enactment of such small amendments), the passage of such a small part will immediately bring about a

larger benefit to society. As the benefit is immediate, so we have allowed such piecemeal amendments.

Of course, how stages two and three will progress is something beyond my prediction. In future, we may have a different Secretary, a different Chief Executive and a different Executive Council, and then the whole situation may not be the same. However, just by looking at the situation now, the officials attending the meetings of this Bills Committee (including those from both the bureau and the department) are all willing to listen carefully to the aspirations of both Members and the various organizations. As a matter of fact, they have tried their very best in considering ways of reconciling the differences of various parties, and they have also tried to satisfy some of the public aspirations. There might be contradiction among the aspirations presented by different parties, but the officials have still tried to satisfy them as far as possible and ease their worries, thereby making the implementation of the measures possible and doing a good job with the procedures. Therefore, to the team of officials headed by Miss CHOW in handling this Bill, I strongly commend their outstanding performance in the scrutiny of the Bill. If I am an ordinary member of the Bills Committee, I would definitely lavish praises on them. But as I am Chairman of the Bills Committee, I dare not praise them too excessively. I have participated in the work of many bills committees, but only on very rare occasions can we find such officials who are willing to listen to our suggestions so attentively, and try to bridge the differences between the various parties. Therefore, they deserve full credit for their good work indeed.

(THE PRESIDENT resumed the Chair)

Besides, on the issue of tso/t'ong, many Honourable Members representing the rights of the New Territories said that they had been gravely aggrieved. Of course, what the Government has tried to do is to legalize the responsibility of managers of clans, families or t'ongs. The Government said that relevant precedents had already been brought to the Court of Appeal, and they are sufficient for the purpose of dealing with the present prosecution problems. However, I think that the Government must act very carefully and should not rely on the precedents for too long. The Government must expedite the conduct of a review to identify ways of making that responsibility system into

a most impartial and reasonable system. Otherwise, once it collapses, the Government will have to use another piece of legislation to patch up such a loophole within a very short time. This will be a very difficult task. And if this does not work, it will expose a very major loophole in the overall implementation of town planning in Hong Kong. We must bear in mind that, once the system has collapsed, it will immediately become beyond remedy. As such, I hope that the Government would not rely on the above precedent and think that this situation can maintain for a very long time.

Lastly, if I have the honour of returning to the Legislative Council in the next term, that is, if I am elected again as a Member, I would be really happy, willing and interested in carrying on with the deliberations on stages two and three of the Bill, and even in assuming its chairmanship because I can see that it really requires someone who has accumulated certain experience in examining this Bill. In fact, this Bill really has to balance the interests among many different parties, and the persons concerned really have to be creative before they can think of the details and provisions of the legislation, thus enacting a law that is acceptable to all and enforceable. In fact, this is by no means easy. Therefore, I have derived great satisfaction from the deliberations on the Bill and I have also got some sense of achievement. As in the past in the course of scrutinizing many bills, not many officials were willing to listen to the opinions of others, so I hope in future, when we come to stages two and three, the Secretary, the Executive Council and the Chief Executive can listen to public opinions, so that we can all work together to produce a good Town Planning Ordinance, thereby bringing good prospects for town planning in Hong Kong.

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

(No Member indicated a wish to speak)

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Cantonese): Madam President, the Town Planning (Amendment) Bill 2003 seeks mainly to streamline and expedite the current planning procedures for housing, enhance the transparency of the town planning system and public participation in the process, and strengthen enforcement control on unauthorized developments in the rural areas in the New Territories.

First, I wish to express my gratitude to the Chairman of the Bills Committee, Mr James TO, and its members. The Bills Committee held 25 meetings, put forward many valuable opinions on the contents of the Bill and proposed amendments to improve the Bill. Thanks to the efforts of members, the Second Reading debate of the Bill can now be resumed in the Legislative Council before the end of this Session.

As mentioned by Mr James TO earlier in his report, the Bills Committee met with 14 organizations and received some 140 written submissions from the public and organizations concerned. In response to the views of the public and the Bills Committee, we will propose a number of amendments to the Bill and these amendments have the support of the Bills Committee.

In the following part of my speech, I will briefly introduce the several important proposals in the Bill and the major amendments to be proposed by the Government after listening to the views of various sectors.

Many provisions of the Bill are related to the plan-making process. For the purpose of streamlining procedures and shortening the processing time, the original proposals included standardizing the publication period of plans from three weeks and two months to one month, streamlining the process for considering objections to plans from the existing three-stage process to a one-stage process, and shortening the period of consideration of objections from nine months to six months.

However, during the deliberations on the Bill, the Bills Committee and a majority of the organizations considered that whether it be making of new plans or amendment of plans, public opinions cannot be neglected. Besides, they also considered it necessary to establish proper procedures for amendment of plans, so that the public can access all relevant information, and more importantly, the public should be given the opportunity to participate in the process. We, therefore, propose that the hearing process which consists of one stage under our original proposal be replaced by a two-stage process, so as to give the public an additional opportunity to raise objection to the amendment proposed by the Town Planning Board (TPB). Compared with the existing three-stage process, the proposed two-stage process can strike a balance between providing more opportunities for public participation and the objective of streamlining procedures. This is supported by most of the organizations and the Bills Committee.

In addition, the Bill proposes to streamline the procedures for applications for planning permission by, among other things, adopting streamlined procedures for handling applications for minor amendments. The TPB will draw up a list of minor amendments in consultation with the industry and relevant organizations before publishing the list in the Gazette.

Another key objective of the Bill is to establish a more open and transparent system. I am very pleased to note that the relevant proposals are supported by most of the organizations and the Bills Committee.

One of the proposals is to require applicants for planning permission or amendment of plan to notify or obtain the consent of the land owner before submitting their applications, so that the land owner will have an opportunity to put forward his views on the application to the TPB. Given that this is a new arrangement and to enable applicants to better understand this new requirement and how they can fulfil this statutory duty, the Planning Department will further negotiate with the organizations concerned before the formal implementation of the Bill, and will prepare a detailed guideline for reference by the relevant parties.

The Bill also proposes the publication of all planning applications by the TPB, so that the public can put forward their views, thereby enhancing the transparency of the planning system. This proposal is generally supported by members of the Bills Committee. In discussing the relevant provisions, the Bills Committee also put forward views to further enhance the effectiveness of public consultation. In response to the opinions expressed by members, we will discuss with the Home Affairs Department on the adoption of administrative measures to achieve this objective. For example, consideration will be given to deploying staff on a regular basis to inspect the notices posted at the application sites or places nearby, in order to ensure that the notices are not damaged due to weather or man-made factors, and notices will also be issued to the relevant District Councils and Area Committees or Rural Committees, so that they can help consult the views of local residents or express their views on individual planning applications.

We believe that after the enactment of the new legislation, the transparency of the planning approval process can be greatly enhanced. Members of the public, including the affected land owners, can then put forward

their views on planning applications without causing delays to the approval process. Under the new process, the vetting of applications for planning permission and amendment of plan can be completed within two months and three months respectively as stipulated in law.

Moreover, at the suggestion of the Bills Committee, we will propose to add a provision in the Bill to expressly provide that the TPB shall open up its meetings under the circumstances as prescribed in law, with a view to enhancing further the transparency of the town planning system. I will propose the relevant amendments at the Committee stage later.

The Government amended the Town Planning Ordinance in 1991 to extend the scope of planning control to rural areas in the New Territories, in order to address the problem of rapid extension of land used as container depots and for open storage. Loopholes were subsequently detected in enforcement, resulting in difficulties in prosecution against unauthorized developments by the Planning Department. The Bill proposes, among other things, to plug such loopholes, in order to improve the effectiveness and efficiency of the enforcement of planning control.

We are aware that these proposals have aroused concerns in the open storage industry, and members of the industry had also expressed their concerns to the Legislative Council. However, I must emphasize that we need to put in place in Hong Kong a set of effective governing legislation to ensure proper management of land use and hence protect the environment of the rural areas in the territory. In the meantime, we are keenly aware of a large demand of the industry for sites for open storage and container logistics. In this connection, the Planning Department will continue to discuss with the industry, in order to designate more suitable sites for open storage and container logistics to meet the demand of the industry.

Furthermore, under the original proposal of the Bill, the definition of land owner will be extended to include the manager of tso/t'ong. But during the deliberations on the Bill, many organizations in the New Territories expressed strong opposition to this proposal. Having looked into the actual operation of tso/t'ong, we consider that the concerns expressed by these organizations and such basic problems as the proposal involving the legal status of tso/t'ong and the

rights and responsibilities of the manager have transcended the scope of the Bill. Given the complexity of these issues, it is necessary for the Administration to further conduct in-depth and detailed study. We, therefore, propose to withdraw the amendment on the definition of land owner in the Bill.

Yet, I must stress that the withdrawal of this proposed amendment will not affect the enforcement actions taken by the Planning Authority against unauthorized developments. The Planning Authority will continue to handle cases of unauthorized developments in accordance with past precedents.

In view of the general principle of "user pays", we propose to impose a fee on planning applications. Knowing that many organizations have expressed concern over this fee-charging proposal, we will further consult the relevant organizations and conduct studies with the Legislative Council Panel on Planning, Lands and Works, with a view to finalizing the fee-charging proposal. Then we will submit the fee-charging proposal by way of subsidiary legislation to the Legislative Council for scrutiny.

During the deliberations on the Bill, many Members and deputations have raised issues that are outside the scope of the Bill, particularly issues about the operation and composition of the TPB. I am very glad that the Bills Committee agreed that the Government should adopt a phased approach to amend the Town Planning Ordinance. Under this approach, the Government can first handle the pressing and yet less controversial amendments, including proposals in the Bill, so that these proposals can be passed in this legislative year and take effect as soon as possible.

Meanwhile, at the request of Members, we discussed the contents of the amendments under stage two at the meeting of the Panel on Planning, Lands and Works in January this year. We plan to embark on in-depth studies and extensive consultations on the amendments under stage two after the passage of the proposed amendments under stage one.

I will propose a number of amendments which have been agreed by the Bills Committee later at the Committee stage.

After the enactment of the Bill in the Legislative Council, the town planning work and system will be more open, transparent and efficient.

I hope Members can support the Bill and the amendments to be proposed by me later.

Thank you, Madam President.

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

Council went into Committee.

### **Committee Stage**

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

### **TOWN PLANNING (AMENDMENT) BILL 2003**

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



**CLERK** (in Cantonese): Clauses 15, 23 and 25.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Clauses 1 to 14, 16 to 22, 24, 26, 27 and 28.

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Cantonese): Madam Chairman, I move the deletion of clauses 11 and 27 and amendments to the other clauses read out just now and as set out in the paper circularized to Members.

Regarding the commencement date of the Bill, since time is required for preparation and consultation, we expect that the Bill can come into operation at the end of 2004.

Clause 2 of the Bill is on the interpretation of "land owner". During the Second Reading debate, I already explained the reasons for the Government's withdrawal of the relevant amendment, so I shall make no repetition here.

After listening to the views of the Bills Committee on the powers and functions of the Standing Committees under the Town Planning Board (TPB), we have agreed to amend clause 3, vesting the Secretary of the TPB or its Standing Committees the power of deciding whether the public should be consulted again on the further information submitted in respect of applications for planning permission, amendment of plan and reviews.

In response to the Bills Committee's recommendation, we propose to add a new provision to clause 5, expressly providing that with the exception of certain parts of discussions and some special circumstances, all meetings of the TPB and its Standing Committees shall be open to the public, so as to increase their transparency.

Clauses 6 to 12 are on the plan-making process. Since I already briefed Members during the Second Reading debate on the relevant amendments, I shall make no repetition here. As for the remaining amendments to clauses 9 to 12, they are mainly consequential amendments connected with the plan-making process. In view of the opinions put forward by the Bills Committee on applications for amendment of plan, planning permission and reviews, we propose to amend clauses 13, 16, 17 and 18, requiring the applicants concerned to obtain the consent of the relevant land owners or duly notify them within a reasonable period of time before lodging their applications. Subject to the passage of the Bill, we will consult the industry and draw up detailed planning guidelines and a code of practice.

Besides, we also propose to introduce amendments to enable the TPB to handle with flexibility the further information submitted by applicants. It is proposed that if the information involves only minor or technical amendments, it will not be necessary to display such information for further public comments for three weeks.

As requested by the Bills Committee, the TPB shall as far as practicable post notices of applications for amendment of plan at conspicuous places and publicize applications in the form of newspaper advertisements.

Furthermore, in response to the views of the Bills Committee and some deputations, we propose to amend clause 19, specifying that the Planning Authority (PA) shall not exercise his power of inspection under the law unless he has reasonable grounds to suspect that there is or was unauthorized development. Likewise, the PA shall not issue a notice requiring a person to provide any information unless he has reasonable grounds to believe that the person is in possession of the information.

The amendments to clauses 20 and 21 seek mainly to specify the onus of proof of the prosecution and the defendant as well as the use of aerial photos and the information printed on them as court evidence. In fact, before drawing up a

Development Permission Area Plan, the Planning Department will conduct a survey on freezing land use to form the basis of reference for any prosecution against unauthorized developments in the future.

In response to the Bills Committee's recommendation, we propose to amend clause 14 to clarify the criteria of the fees charged for planning applications.

Lastly, the amendments to clauses 22, 24 and 26 to 28 are consequential and miscellaneous amendments.

Madam Chairman, all the amendments proposed by me are the outcome of our thorough discussions with the Bills Committee, and they also have its general support. I hope Members can support and endorse these amendments.

Thank you, Madam Chairman.

*Proposed amendments*

**Clause 1 (see Annex I)**

**Clause 2 (see Annex I)**

**Clause 3 (see Annex I)**

**Clause 4 (see Annex I)**

**Clause 5 (see Annex I)**

**Clause 6 (see Annex I)**

**Clause 7 (see Annex I)**

**Clause 8 (see Annex I)**

**Clause 9 (see Annex I)**

**Clause 10 (see Annex I)**

**Clause 11 (see Annex I)**

**Clause 12 (see Annex I)**

**Clause 13 (see Annex I)**

**Clause 14 (see Annex I)**

**Clause 16 (see Annex I)**

**Clause 17 (see Annex I)**

**Clause 18 (see Annex I)**

**Clause 19 (see Annex I)**

**Clause 20 (see Annex I)**

**Clause 21 (see Annex I)**

**Clause 22 (see Annex I)**

**Clause 24 (see Annex I)**

**Clause 26 (see Annex I)**

**Clause 27 (see Annex I)**

**Clause 28 (see Annex I)**

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

**MR JAMES TO** (in Cantonese): Madam Chairman, I just wish to talk about enforcement against unauthorized developments. In fact, we can see that the penalty is rather low. That said, it may of course involve tens of thousands of

dollars. But the penalty is entirely disproportionate to the profits that can be generated from unauthorized developments (such as container depots or warehouses). Besides, as far as I know, the Planning Department does not have abundant manpower resources for law enforcement. So, enforcement actions are taken only at long intervals and involve many procedures, such as the convening of a meeting of Assistant Directors, and so on, and the process is very stringent. We certainly appreciate their efforts in observing stringent procedures, but this will consume a considerable amount of resources.

For this reason, I proposed at meetings of the Bills Committee to increase the penalty. However, it was found that the penalty had been raised only a few years ago, with the maximum penalty being as much as hundreds of thousands of dollars, which is by no means low. Yet, the actual amount of fine imposed is very low. I, therefore, hope that the Government, in respect of some suitable cases and with sufficient preparations and sound justifications, draw up sentencing guidelines for some cases heard by the Court of Appeal, and at least increase the amount of fine. Regarding repeated offenders or serious cases, for example, if an offender aimed only to make profit and had done serious harm to the environment, he should be sentenced to short-term imprisonment. It is because if only a fine is imposed, the offender will consider this merely as paying rent, which will achieve no deterrent effect. But if short-term imprisonment can be imposed on those remorseless persons who had seriously damaged the environment, or if the Court of Appeal could be convinced to draw up such guidelines, a greater deterrent effect could be achieved.

So, I hope that the Bill can be passed, and I hope that the enforcement actions can be more tactful. Given the resource constraint, the relevant work will need more tactics and strategies and has to be carried out more effectively. The Authorities must conduct reviews to ensure that the term of imprisonment and amount of fine are commensurate with the severity of the penalty stipulated in the Ordinance and hence create the intended deterrent effect. Only with this will the enforcement of the Ordinance be meaningful. Otherwise, even though we have made much effort and even though the Planning Department has carried out a lot of work, the penalty is only a fine of a few thousand dollars or ten thousand dollars in the end and worse still, enforcement actions are taken only at very long intervals. In that case, the environment would only deteriorate to a state beyond improvement.

**MS EMILY LAU** (in Cantonese): Madam Chairman, I speak in support of the amendments proposed by the Secretary. Regarding clause 5 which is about making decisions by circulation of papers, I remember that in 1991 when I participated in the work of the Legislative Council, I heard that some papers of the Legislative Council Finance Committee were dealt with by way of circulation, and we were all shocked at learning about this. I think this practice is outdated, and I find it strange as to why this is proposed in the Bill. That said, I must still commend the Secretary, for he is willing to accept good advice. Having listened to the opposition voiced by many members, the Secretary will propose to add some provisions. With such additions, I believe some very important issues will not be endorsed purely by circulation of papers.

Madam Chairman, concerning the opening up of meetings of the Town Planning Board (TPB), I must reiterate that I very much hope that this is only the first step. We hope that this issue can be further discussed at meetings of the TPB in the near future, drawing attention to the fact that when this Bill is passed today, many members have expressed the wish that more issues can be discussed at open meetings and that issues not to be discussed openly are mainly the time-sensitive or business-sensitive issues as well as their deliberations. We hope that members of the TPB will understand that they should withhold nothing from the public and they should make clear to the public that nobody is trying to protect any interest whatsoever at its closed meetings. We hope the Secretary will convey this message to the TPB, so that greater improvements can be made after the passage of the Bill and members of the public can see these improvements in the months to come.

Mr James TO praised Miss CHOW and her colleagues earlier, and Madam Chairman, I must echo his view. I believe the Secretary must have known that he has been assisted by some very competent officials this time. They have listened to the views of Members very attentively. Although some of the provisions are very complicated and involve a cobweb of interests, the officials could still balance the interests of all sides, and the amendments proposed by them gained the support of the Bills Committee. We think that the officials have demonstrated very good performance. We very much hope to see officials like them in other Bills Committees. The Bill on education to be discussed later is entirely a different story. Here, Madam Chairman, I must commend the Secretary and his colleagues.

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

(Mr James TO raised his hand to indicate his wish to speak again)

**CHAIRMAN** (in Cantonese): Mr James TO, you may speak again.

**MR JAMES TO** (in Cantonese): My apologies, Madam Chairman. I have omitted one point. Ms Emily LAU's comments just now reminded me of the opening up of meetings. On this point, I had had a struggle at first. If we do not write down clearly in the statutes which meetings can be opened up and which must be conducted in camera, it would mean that we may rely on administrative means to deal with this. Certainly, there is no administrative means now and even though there will be, it has to be implemented in phases. Why did I have a struggle? It is because if such express provision is made in law, it will be passed by way of a Committee stage amendment this time. If I do not raise this point or if colleagues do not do so and put it on record, I am worried that some people may think that even the "deliberation" will be conducted behind closed doors. Having said that, however, this is the consensus of the majority or all in the Legislative Council.

Let me state clearly that at this stage, we are only dealing with the opening up of meetings, that is, provision is made on the opening up of meetings, and yet, according to the amendment of the Government, some meetings will still be conducted in camera. All I can say is that we accept the drafting of the provision at this stage but in principle, we do not think that the deliberation part should be conducted behind closed doors. I must put this down in record. Otherwise, the Secretary or other people may say in future that I had agreed with this. We accept this only at this stage, and I hope to clarify this point in particular.

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

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): Secretary for Housing, Planning and Lands, do you need to speak again?

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Cantonese): I would like to make a very brief response. Insofar as penalties are concerned, it is most important for adequate evidence to be produced. The other matters should naturally be left to the Court for judgement. We will also review the adequacy of the penalties imposed by the Court from time to time.

As for the issue of circulation of documents, I believe only normal procedural administrative matters will be disposed of by circulation of papers. I believe other matters will not be conducted in this way.

Lastly, Members have clearly expressed their views on opening up meetings. In this respect, the Government shares a similar view with Members. An agreement has now been reached to take the first step. As for future development, as pointed out by a number of Members, the relevant progress will be reviewed depending on the circumstances and re-examined at the second stage.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Housing, Planning and Lands 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 11 and 27, which deal with deletion, have been passed, these clauses are deleted from the Bill.

**CLERK** (in Cantonese): Clauses 1 to 10, 12, 13, 14, 16 to 22, 24, 26 and 28 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.

### **TOWN PLANNING (AMENDMENT) BILL 2003**

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

Town Planning (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 Town Planning (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): Town Planning (Amendment) Bill 2003.

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

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

### **LAND TITLES BILL**

#### **Resumption of debate on Second Reading which was moved on 18 December 2002**

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

**MISS MARGARET NG**: Madam President, in my capacity as Chairman of the Bills Committee on Land Titles Bill (the Bills Committee), I now address the Council on the major issues deliberated by the Bills Committee.

The Land Titles Bill (the Bill) seeks to replace the existing deeds registration system with a new land title registration system. Under the new system, the registration of a person as the owner of land shall vest the title of the land in him. The Title Register shall be conclusive evidence of the title to registered land and it will no longer be necessary to review the historical title deeds to establish title as at present. The new system is expected to provide greater security to property interests and simplify conveyancing.

The Bills Committee commenced its work in March 2003. Given that the introduction of a statutory land title registration system is a significant development of land law in Hong Kong and would have significant implications on members of the public and legal practitioners, the Bills Committee has invited the public and the concerned parties to give views on the Bill. The Bills Committee has examined in detail the relevant policy issues, the proposed provisions in the Bill, and the substantial amendments which will be moved by the Administration during the Committee stage. Details of the deliberations of the Bills Committee are set out in its report. I shall focus my speech on three major issues: the conversion mechanism; rectification of title by the Court; and the indemnity scheme.

On conversion mechanism, the Bill proposes gradual conversion from the present system to the new system over an indefinite period of time. Clause 12 sets out two routes through which existing properties can be converted from the present system to the new system. The first route is mandatory application for conversion upon the first assignment of any property after commencement of the Land Titles Ordinance (LTO) (if enacted). The second route is voluntary application for title registration at any time after commencement of the LTO. However, any applications through these two routes must be accompanied by a certificate of good title issued by a solicitor after examination of the owner's title to the property.

The Bills Committee notes that The Law Society of Hong Kong (the Law Society) has raised a number of fundamental concerns about the proposed conversion mechanism. The Law Society is of the view that without a mechanism for review and adjudication by a reference body under the auspices of the Land Registrar in cases of doubt, certificates of good title would place an unacceptable burden on solicitors. However, the Administration does not

consider it appropriate for the Land Registry to establish such a mechanism, as it will add to the cost and complexity of conveyancing and will be difficult to safeguard against abuse. In December 2003, the Law Society informed the Bills Committee that it has come to the conclusion that the Bill, which requires a solicitor to guarantee title by the issue of a certificate of good title, is unworkable and cannot be supported in the absence of a mechanism by which doubtful cases can be referred to the Land Registrar for review. The Law Society supports a daylight conversion mechanism which is an adaptation of the system operating in some states of Australia. The Bills Committee has then invited the Administration to examine the Law Society's proposal.

Following discussion with the Law Society, the Administration has worked out a detailed scheme for the operation of the daylight conversion mechanism. Under this mechanism, from the commencement day of the LTO, all new land will be registered under the new land title registration system and the title will be vested in the grantee as registered owner. All other land will remain under the existing Land Registration Ordinance (LRO) until the expiry of 12 years from the commencement day, that is, the 12-year incubation period. Upon the expiry of the 12-year incubation period, all unregistered land will be converted automatically to the new system except either a "caution against conversion" stands or where matters lodged for registration under the LRO have not yet completed registration. The current owner on the register kept under the LRO register would become the first owner under the Title Register under the LTO. During the 12-year incubation period, all existing or newly created unwritten equities affecting unregistered land can be protected by registration of a warning notice known as "caveat" under the LRO.

While the Bills Committee has no objection to the adoption of the daylight conversion mechanism, members consider the proposal a significant change and that it is prudent for the Administration to consult the concerned parties on the proposed change. Since the concerned parties have not raised objections in principle to the daylight conversion mechanism during consultation, the Bills Committee agrees that Committee stage amendments be drafted by the Administration to give effect to the change. The major proposed Committee stage amendments agreed by the Bills Committee and the Administration include:

- (a) the addition of a new Part 2B in the Bill to provide for the registration of new land after the commencement day of the LTO;

- (b) the addition of a new Schedule 1A to provide for the conversion of the LRO land and long-term leases from the present system to the new system upon expiry of the 12-year incubation period;
- (c) the addition of a new Schedule 3 to provide for all the consequential amendments to the LRO, including the amendments to provide for caveats and cautions against conversion; and
- (d) the deletion from Schedule 2 the amendments to the LRO related to the original gradual conversion mechanism.

To ensure safe and smooth conversion at the end of the 12-year incubation period, the Bills Committee has suggested that a legislative or administrative measure be put in place to effect a review mechanism for the implementation of the new system during the 12-year incubation period, so that any problem that may arise in the interim can be tackled in a timely manner. The Bills Committee has also suggested that a provision be added in the Bill to empower the Administration to extend when necessary the 12-year incubation period. The Administration has accepted the Bills Committee's suggestions and agreed that a mechanism to review the implementation of the new system is necessary. The Administration will move a Committee stage amendment to clause 101 to empower the Secretary for Housing, Planning and Lands to vary the 12-year incubation period by gazetting an amendment to the new Schedule 1A. This power is subject to the positive vetting of the Legislative Council.

Another major issue deliberated by the Bills Committee is the rectification of title by the Court. Given that one of the main features of the new system is to provide security of title, the Bills Committee has examined in detail the proposed provisions on the circumstances under which the Court may order rectification of title. Whilst supporting the proposal of providing the Court with the power of rectification, the Bills Committee shares the concern of a number of parties that the proposed provisions in clause 81 fail to achieve the right balance between the requirement of certainty of title and justice in a particular case. Upon review, the Administration proposes to recast clause 81:

- (a) to remove the wide discretion given to the Court under the original provisions;

- (b) to provide that subject to the new clause 81A, on an application made by a former registered owner of registered land, the Court of First Instance shall order the rectification of the Title Register to restore the title of the applicant if it is satisfied that firstly, the entry in the Title Register by or as a result of which the applicant lost his title was procured by or as a result of a void instrument or a false entry in the Title Register; secondly, the applicant was not a party to the fraud; and thirdly, the applicant did not, by his act or by lack of proper care, substantially contribute to the fraud; and
- (c) to set out clearly the circumstances under which the Court of First Instance may order the rectification of the Title Register so as to affect the title of a person who is the registered owner of registered land and who is in possession of the land and has acquired the land for valuable consideration.

The Bills Committee supports these proposed amendments.

The Bill also provides for an indemnity scheme under which indemnity may be claimed for two types of loss, that is, the loss caused by an entry in or omission from the Title Register as a result of mistakes or omissions on the part of the Land Registrar or public officers assisting the Registrar, and the loss of ownership caused by an entry in or omission from the Title Register as a result of fraud on the part of any person. While there will be no cap on indemnity for the first type of loss, the Administration proposes a cap on indemnity for the second type of loss, which is \$30 million for each case.

The proposed cap on indemnity in cases of fraud has invited criticisms about the fairness of the indemnity scheme, as owners of properties valued at over \$30 million who lost their properties as a result of fraud on the part of a third party would not be fully compensated. Noting that other jurisdictions such as England, New South Wales and Ontario do not impose a cap on indemnity, the Bills Committee has requested the Administration to provide justifications for its proposal. The Administration considers that as deliberate fraudulent acts are difficult to anticipate and prevent, there should be a suitable device to limit the potential liability that the indemnity scheme has to carry. Moreover, the interests of individuals being compensated should be balanced against the costs to property owners and purchasers at large. The proposed cap would provide protection for the great majority of property owners, as over 99% of property

transactions involve sums less than \$30 million. Persons suffering loss in excess of the limit of compensation could still recover the shortfall through further legal proceedings.

The Bills Committee notes that a number of parties have objected to the proposed cap on indemnity in cases of fraud. In particular, the Hong Kong Bar Association (the Bar) is of the view that the constitutionality of the cap on indemnity is highly doubtful under Articles 6 and 105 of the Basic Law. The Real Estate Developers Association of Hong Kong also considers that the proposed cap, insofar as it attempts to deprive an innocent owner of his property without full compensation, is contrary to Articles 6 and 105 of the Basic Law. The Bills Committee is much concerned about the constitutionality of the cap on indemnity and has carefully considered the views of the Administration, the concerned parties and the Legal Service Division of the Legislative Council Secretariat. Details of the arguments in favour of and against the proposed cap on indemnity are set out in the report of the Bills Committee. Having considered all the arguments, members of the Bills Committee remain doubtful about the constitutionality of the proposed cap on indemnity in cases of fraud. The Administration however maintains its view that the cap is fully constitutional. Members are assured by the Administration that the indemnity scheme and the level of the cap will be reviewed as experience is gained with the operation of the new land title registration system in Hong Kong.

Madam President, the Bills Committee has also deliberated on other issues and agreed on a number of proposed amendments to be moved by the Administration at the Committee stage. The Bills Committee believes that the Bill, as amended, would provide a reasonable framework for the implementation of the new land title registration system. In order to ensure the effective implementation of the new system, the Bills Committee has no objection to the Administration's proposal that the LTO be commenced two years after its enactment so as to allow sufficient time for putting in place the relevant regulations and finalizing the guidance notes for legal practitioners and members of the public. The Bills Committee has however urged the Administration to make full use of the two-year period to ensure the effective implementation of the LTO, and to honour its undertakings made in response to the request of the Bills Committee and the Law Society, as set out in paragraphs 120 and 121 of the report of the Bills Committee respectively.

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

I would like to take this opportunity to record my thanks to members of the Bills Committee and the government team for their hard work over the past 16 months, and to the concerned parties and an individual member of the public for their valuable comments on the Bill.

Finally, may I put on record my appreciation for the excellent assistance and support of the Clerk and Legal Adviser of the Bills Committee.

Thank you, Madam President.

Madam President, I would like to speak now in my personal capacity.

It is impossible to exaggerate the importance of the step we are about to take. This Bill, when enacted, will change completely the way landed property is held, purchased and sold. It will do away with the old familiar system which has existed in Hong Kong for over 150 years. Title deeds will have very little meaning under the new system. Conveyancing lawyers will no longer have to go through the same requisition of title at every transaction of the property which is time-consuming and full of pitfalls. The whole system of registration of title deeds will be phased out. All is to be replaced by a simple system of title registration. The expectation of the Government is that title will be more secure, and property transactions will be faster, simpler and cheaper.

However, it has to be said that the new system is untested in Hong Kong's circumstances, and we have to be very alert to possible pitfalls, and the possibility of being caught by surprise, of unforeseen problems. We are here dealing with the one most important asset of the ordinary family in Hong Kong: their home and their property, and hence their sense of security. We are not only dealing with conveyancing practice for solicitors. Tens of thousands of families and individuals will be affected. Landed property is also a major item of investment. Hong Kong's economy is at stake. In the preparation period that we have following the enactment of the Bill, extensive efforts have to be made by the Government in conjunction with all sectors of society to ensure that people understand this change, and know how to properly protect their interests under the new system.



Two practical elements determine fundamentally the shape of this new title registration system. They make it inevitable that our system will be hybrid, and perfect neither in legal concept nor in practice. One is that the Government refused to guarantee title. Under the United Kingdom system of registered land, title is guaranteed by the Government. The only certification the solicitor has to provide is that he had taken all the steps to investigate title conscientiously and professionally. It is for the Land Registrar to decide, on the basis of that certification, whether he needs to carry out further investigation on his own before registration. By contrast, under the system proposed in the original bill, title is to be guaranteed by the solicitor by means of a "certificate of good title". This would put upon solicitors a responsibility they cannot possibly shoulder. Neither can their professional indemnity bear such a gigantic potential liability. Further, the Government refuses to provide any mechanism of adjudication where doubts arise as to title. The Law Society told us that they could not support the Bill as it stood, and this is only to be expected.

The second element is that the Government insisted on capping the indemnity payable to a property owner who has lost the title to his property as a result of fraud. This raises immediately the constitutional question of appropriation without full compensation. The Bar is strongly of the opinion that Articles 6 and 105 of the Basic Law are contravened. The Government's argument to the contrary is, in the Bar's view and mind, unconvincing. But constitutional challenge aside, how can it be right or fair, to compensate a property owner who has lost his title to a property worth \$100 million with only \$30 million? How is a property owner to protect his property from fraud? Why should the new system put him to trouble he never had before? No other title registration system in the world caps its compensation. The cap is utterly contrary to the idea of guarantee of title.

However, the Government has made it plain to the Bills Committee that these two elements are irremovable. So any title registration system must work round them. As a result, "daylight conversion" became the only viable solution, because "midnight conversion", conceived early in the long history of this Bill, is no longer an option. This avoids the need for guarantee of title at the point of conversion from the old system to the new, by making conversion simply a matter of operation of law.

Likewise, as a compromise, rectification of title is widened to mandate the Courts to rectify and restore title to a former owner where the title was

transferred by forgery. This shifts the balance more towards protection for the owner, thus reducing the pressure on indemnity, but the price which has to be paid is the integrity of the title register: it becomes less secure and less final because it can be reopened by rectification. However necessary in our circumstances, this modification of the system makes the new system more of a "half-way house".

I have said that the new title registration system is "hybrid". This is because even if the proposed system is completely implemented, it will still retain an appreciable measure of deed registration. Some documents have to be retained for the purpose of future disputes about forgery. Hong Kong's unique ubiquitous deeds of mutual covenant (DMC) for multi-storey buildings is not dealt with by extracting those rights from the DMC and registering these alone. The DMC itself has to be registered.

There are those who believe that if the Government cannot afford a true title registration system, then it should not have one. I believe, along with other members of the Bills Committee, that Hong Kong has to make a change and modernize, even if all we can have realistically is a kind of "poor man's title registration system". If we reject this Bill, we may never be able to make the change. If the Bill is enacted, then may be one day the system will be able to perfect itself. For example, I am quite confident that the first person who is affected by the cap on indemnity will take the matter to Court. The Court will then settle for us whether the cap is unconstitutional. If it is, then it will be struck out.

I would like to emphasize that the change to the new system will affect the community profoundly: some rights and interests will be more secure, but others might become more vulnerable unless people affected know how to protect them by using the new mechanism, and are alert enough to take steps to protect them. In the end, there may be a social price to pay.

I have in mind particularly the unwritten equity of one member of the family against another. Under the new system, except for what is known as an "overriding interest", any interest in the property which can be registered under the law but is not registered, is lost once the property is sold to a *bona fide* purchaser for value. What is a wife or husband, father or mother and child, to do to safeguard their interests? For example, the husband who has been paying the mortgage though the property is in the wife's name, is he supposed to register

his interests before the new system comes into operation? How is he to know? The last thing we want is to put members of the public into greater disadvantage under the new system, or make families feel that they now have to be more guarded towards one another.

But this problem is not a good reason for rejecting the Bill or delaying the change, for the interests of these members of the family is most vulnerable even under the present system, even though sometimes they are lucky enough to get the Court's intervention before it is too late. The kind of problem we are looking at is likely to arise whatever the transition mechanism. We just have to face it and look for solutions elsewhere. One solution is to pass legislation to protect a spouse's equity, as in the United Kingdom, and the Government should explore that and consult this Council at the earliest opportunity.

Madam President, it is clear to all stakeholders that the enactment of the Bill only opens the gates to a new system, it is not yet the complete system itself. The foundation, the framework, the shape, the powers and the limitations are clearly delineated, thanks to the hard work of all concerned, but more hard work lies ahead to fill out the details in the rules and regulations, the guidelines and practice directions, so that everyone knows just exactly how the future style conveyancing will be for the practitioner and for his client; the lawyer will be able to advise and his client able to understand when it is right to register a caution, a consent caution, a non-consent caution; when to challenge one; what is the effect of a prohibition or a restriction; when is there an overriding interest; what should he do about stamp duty or estate duty, and before all that, should he already be contemplating a caveat, or even a caution against conversion, or will a *lis pendens* be enough to do the job?

I confess myself cautiously optimistic. My optimism, Madam President, is not founded just on the work that we have managed to accomplish, but my growing confidence that the profession and the community, the Land Registrar and his enthusiastic colleagues, will rise to the occasion because so much is at stake.

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

**MR ABRAHAM SHEK:** Madam President, the Real Estate Developers Association, the sector which I represent, gives its support to the enactment of

the Land Titles Bill (the Bill), despite its inadequacies. The Bill seeks to replace the existing deeds registration system with a new land title registration system which will offer greater security to the title and simplify conveyancing procedures. Since the current deeds registration system provides no guarantee of title, the uncertainty puts purchasers at risk, causes confusion among the general public and reduces the commercial potential of properties. The new land title registration system will at least give registered owners some sense of protection. As a safeguard against the loss of any rights which may occur in fraud or error, an indemnity scheme will be implemented to protect the innocent parties. This new system will also give the community a greater degree of confidence in property ownership. However, I and the sector which I represent have grave concerns about two main features of the land title registration system, namely, clauses 81 and 81A (rectification of title) and clause 82 (the indemnity scheme).

Clause 81(3) provides that as a condition for the rectification of a Title Register, an innocent owner deprived of his title by fraud, a void instrument or a false entry must still show that he did not have "knowledge of the fraud", and that he also did not "by his act or lack of proper care, substantially contribute to the fraud." Such a provision implies that mere knowledge to fraud or a void instrument, as opposed to contribution or participation, will deprive the right of a former registered owner to apply for rectification. The provision imposes a positive duty on the part of the former registered owner to prevent fraud. Furthermore, an innocent owner can still lose his property by "his act or by lack of proper care", even though he might not have been a party to and did not cause the fraud. This loophole puts a registered person's title at a greater risk than the existing law.

As for the proposal to impose a limitation period of 12 years for the rectification of a Title Register by the Court (new clause 81A), there are two instances where the Limitation Ordinance "may" be extended or postponed — section 22 (extension in case of disability) and section 26 (postponement in case of fraud, concealment or mistake). However, I doubt these may be the only two rationale for extension or limitation waiver. There are other instances where the 12-year limitation period should not apply. For example, under section 20(1), no period of limitation prescribed under the Ordinance shall apply to an action by a beneficiary under a trust, being an action in respect of any fraud or fraudulent breach of trust or recovery of trust property from a trustee. Why should an owner be barred from making an application for the restoration of his

title to the Title Register in circumstances other than those covered by sections 22 and 26 of the Limitation Ordinance?

It is my hope that the Administration will undertake to ensure that:

- (i) the intention of clauses 81 and 81A will not be less protective for a former owner than the existing law;
- (ii) if clauses 81 and 81A pass into law with amendment due to the pressure of time, the Administration will review these clauses to address legitimate concerns as to whether the legislative intent of the amendments has been achieved; and
- (iii) and if their intention has not been achieved, the Administration will take steps, before the Bill comes into effect, to amend clauses 81 and 81A to achieve the legislative intent.

As for the proposed indemnity cap of \$30 million, it is neither fair nor just to penalize owners of higher value properties. In my view, there should be no cap on indemnity to ensure that anyone suffering any loss under the land title registration system will be properly compensated, corresponding to the real value of the property. In fact, the proposed cap, insofar as it attempts to deprive an innocent owner of his property without full compensation, is contrary to Articles 6 and 105 of the Basic Law. The Administration may argue otherwise, but the community remains doubtful about the constitutionality of the cap on indemnity. For this reason alone, the land title registration system will have failed to achieve certainty. At the same time, it will damage the confidence of both local and overseas investors when they realize that the title to any Hong Kong property purchased may not be fully protected by a limited indemnity. In my opinion, if Hong Kong wishes to have a first world title registration system for land, it must accept first world responsibilities and protect all landowners. Hong Kong's attraction to overseas investors will diminish if the proposed indemnity cap is adopted, when no similar cap exists for the first world countries.

I have no objection to the adoption of the daylight conversion mechanism which brings existing properties on the deeds registration system to the Title Register upon the expiry of the 12-year incubation period. The arrangement will give sufficient time for the Administration to review the legitimate concerns

of title rectification (clauses 81 and 81A), the indemnity scheme (clause 82) and make amendments before the land title registration system enters into genuine operation. It also provides adequate time for the Administration to finalize the regulations and guidance notes for legal practitioners and members of the public. In so doing, I sincerely hope that Hong Kong will then have an efficient land title registration system for instilling confidence in both local and overseas investors.

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

**MR LAU WONG-FAT** (in Cantonese): Madam President, conveyancing is so frequent in Hong Kong that it ranks top in the world. With continuous social and economic development, changes should be made to the deeds registration system which has been in use for decades in order to cope with the needs of modern society.

The amended land title registration system should comprise two principles, which are viability and fairness. The New Territories Heung Yee Kuk (HYK) objects in principle to the idea of providing indemnity in fraudulent cases as it will create a heavy financial burden on the Government which will eventually be shifted onto the taxpayers. However, if we really wish to implement an indemnity scheme, protection should be provided to all title owners. The Bill currently proposes a cap on indemnity in cases of fraud. In view of its unfairness, the HYK still preserves its opposition position.

Regarding the adoption of the midnight conversion mechanism as originally proposed in the Bill, the HYK has all along opposed it because the mechanism may create chaos, in particular, to land owners in the New Territories. Since many of them live overseas, they cannot be informed of the change if it is to be implemented within a short period of time. It would be very unfair to them if they suffer losses as a result. We appreciate the Administration's willingness to give ready ears to wise counsel and replace it with the daylight conversion mechanism so that the title owners can have a 12-year incubation period. However, I hope the Government's overseas offices can actively publicize the changes to title owners living overseas in order to enable the smooth change to the system.

According to the Government's proposal 10 years ago, it was insisted that any original owner who was deprived of the ownership of his property even as a

result of fraud could not restore his title. However, the HYK has never stopped making its utmost effort to convince the Administration of its viewpoint. Recently, the Government has put things right, accepting the HYK's proposal that titles of such owners can be restored. This reasonable approach demonstrates that the Government is gradually improving its administration.

Madam President, despite the unfairness in the Bill, there are elements enabling it to keep abreast of the modern social and economic development. Therefore, I support the Bill albeit with reservations.

**DR TANG SIU-TONG** (in Cantonese): Madam President, the Bill seeks to establish a new land title and interest registration system so as to enhance the protection for interests in property and simplify the procedures of conveyancing. We consider that the new system will have a positive effect on the long-term development of the property market in Hong Kong. Of course, it is absolutely a complicated and difficult task to establish a new system to replace an old one which has been adopted for a long time. It is particularly so since land titles involve large sums of money and are fundamental to the operation of the capitalist society of Hong Kong. In general, I recognize that the Government has absorbed the views of various professional bodies and sectors in an open and pragmatic manner. I would like to emphasize that as the Bill will make structural changes to the existing title system, the Government, after enactment of the Bill, should continue to maintain close liaison with various organizations and formulate necessary relevant regulations. Besides, it should make regular reviews and improvements to the Bill.

A major controversial issue concerning the Bill is how to convert the existing deeds registration system to the new title registration system. It is proposed in the Bill that a gradual conversion system be implemented under which the existing properties will be converted to the new system. However, The Law Society of Hong Kong (the Law Society) is of the view that the relevant arrangement will place an unacceptable burden on solicitors, in particular, the issue of certificates of good title. Following discussion with the Law Society, the Administration will move Committee stage amendments to the Bill to the effect that the daylight conversion will replace the originally proposed gradual conversion system. This is a major change to the original Bill. I welcome the Government's willingness to amend the original Bill and conduct consultations on the new amendments in an open manner. Given that the Bill will commence

operation in two years' time after passage, I urge the Government to make good use of this two-year period to make necessary preparations in order to ensure the smooth implementation of the Ordinance.

Another controversial issue concerning the Bill is about indemnity. It is originally conceived that the target of the indemnity scheme is the original title owners. If fraud is involved in the transaction of a property, the innocent purchaser for value will be entitled to the ownership of the property while the innocent original owner can only claim for indemnity with a cap of \$30 million. I think the arrangement is extremely unfair to the title owners, especially those of New Territories land because some of them are living abroad or have moved away from the rural areas, and their properties are located in remote places. It is really difficult for them to take care of properties under their name from time to time and this will enable the lawless elements to take advantage more easily. In case their titles are infringed by fraud, they can apply to Court for retrieval of property under the old system. After the launch of the new system, however, they can only obtain indemnity. I have to point out that the original owners do not want to sell their family or ancestral properties. Neither can the indemnity compensate their loss because it is not a question about the \$30-million compensation. Rather, it is a question about their ancestral properties. I appreciate that the Administration has accepted my views, as well as those of other members, organizations in the New Territories and other professional bodies. Amendment is then made so that the target of the indemnity scheme is the new purchasers, thus enabling the original title owners to preserve their rights and opportunities to claim back their titles.

According to the latest version of the Bill, a purchaser who has suffered loss due to fraud can claim indemnity. Compared with the protection offered by the Land Registration Ordinance, this is a big improvement. However, the Bills Committee and the professional bodies do not quite agree to the indemnity cap for fraudulent cases proposed by the Government. As a matter of fact, in other common law jurisdictions such as the United Kingdom, Australia and Canada, there is no cap on indemnity. In principle, it is unfair to owners of properties valued at over \$30 million if the ceiling of indemnity is \$30 million. Even though transactions of properties valued at over \$30 million account for less than 1% of the total transactions, and both buyers and sellers will be particularly cautious because of the huge sums involved, I hope the Government will review the indemnity cap so that it can comply with the principle of fairness and provide more protection to conveyancing.



Finally, in view of the far-reaching impact of the title registration system, we hope the Government will conduct extensive consultations when formulating the subsidiary legislation and keep reviewing the Ordinance before its commencement. In particular, it should communicate with lawyers so that the legislation can be made to better adapt to Hong Kong's environment. Of course, the Government should also step up publicity so that people are aware of such major changes.

Madam President, I so submit.

**MS MIRIAM LAU** (in Cantonese): Madam President, the current land registration system of Hong Kong which is based on deeds registration has had a history of over a hundred years. This system certainly has some merits, which are all familiar to Hong Kong people and professionals. However, the changes over time and the long years of development have also exposed some weaknesses and loopholes of the system. Following years of consultation and studies, the authorities have introduced this Bill, which seeks to reform the land registration system of Hong Kong, replacing deeds registration by title registration and giving land titles to registered owners. I wish to take this opportunity to discuss how the Liberal Party looks at the proposed change to the land registration system.

The authorities have in fact been studying the conversion of the existing land registration system to a new one for many years. Back in 1994, they already tabled a Land Titles Bill, proposing the adoption of "midnight conversion", whereby the deed registers under the old system will be automatically converted to title registers under the new system right on the commencement date of the new system, meaning an instant establishment of title to property. As far as the establishment of title to property is concerned, this proposal is indeed the most straightforward option, for it can instantly remove all uncertainties of title. But the point is that some existing land interests are not necessarily registered, so "midnight conversion" may lead to the loss of such interests, which may be unfair to the owners of these rights. This Bill roused a lot of controversies in 1994 and 1995 and eventually lapsed as the scrutiny work could not be completed before the end of the Legislative Council Session in July 1995.

What is proposed in the Land Titles Bill this time around is a "gradual conversion" mechanism instead of the "midnight conversion" proposed in the past. When the Bill comes into operation, the owner of a property must apply for conversion on the first sale of the property after the implementation of the Bill, or if there is no property sale, the owner can submit a voluntary application for title registration. But according to the original proposal of the authorities, an application for title registration, whether mandatory or voluntary, must be accompanied by a certificate of good title issued by a solicitor. This requirement gave rise to huge controversies in the Bills Committee during the scrutiny of the Bill. The existing practice of property conveyancing is based on the checking of registered deeds, a process that covers all the deeds transactions in the previous 15 years to ascertain their full compliance with requirements and the integrity of all documentation. Transaction can only proceed if there are no problems. But in the case of some relatively antiquated buildings, such as those on Hong Kong Island, there were usually many transactions, involving an especially great number of deeds, say several dozen or even as many as a hundred, so there are bound to be some minor defects or imperfections. These defects may be the failure to colour some plans due to oversight, or the loss of a Power of Attorney, or inconsistent signatures. At present, these problems are usually resolved through the mechanism of "vendor and purchaser summons", whereby the Court will determine whether a title is good. Sometimes, the Court may rule that transaction can proceed despite defects in title. In that eventuality, the title is called a "marketable title".

Alternatively, if the problem is just a minor one and the purchaser insists on buying the property, his solicitor will request him to sign an indemnity agreement, in which the purchaser is required to acknowledge his awareness of the defect and his willingness to accept it, so that transaction may proceed. But under the new system proposed by the authorities, a solicitor is required to issue a certificate of good title, which is utterly inconceivable to the legal profession indeed. Newly completed buildings may not have any problems, but defects in deeds are common with second-hand properties. When there are defects in title, will any solicitors be bold enough to issue a certificate of good title and bear all these risks? And, do not forget that these risks may well be permanent.

At present, once the purchaser has signed an indemnity agreement, the solicitor can shift the risks to another solicitor handling the next transaction in connection with the property. Once the next solicitor takes over, the one before him will be safely out of the way. But in the case of a certificate of good title, a

solicitor may not be able to extricate himself from the risks for the rest of his life. Even if some solicitors are bold enough to take the risks, can they really bear the costs of the Indemnity Fund, given that they are already caught in dire straits? All this is very worrying. I believe most solicitors do feel that it is already beyond their ability to pay the indemnity premiums. I am sure they will definitely be unable to bear the burden if they are made to bear the responsibility of issuing certificates of good title.

The Bill's proposed practice of requiring solicitors to guarantee good title is not found anywhere in the world. The idea of the authorities actually comes from the registration system in the United Kingdom. But just as pointed out by Miss Margaret NG, in the United Kingdom, good title is guaranteed by the Government, and the Land Registrar there will review and make adjudication in case of doubt. The Law Society did request that a similar adjudication body be set up under the Land Registrar, but the Government flatly turned down the request on the ground that this would increase the costs and complexity of conveyancing. I thus cannot help asking, "The Government is itself unwilling to shoulder the responsibility, so why does it seek to impose the burden on lawyers?" Another point is that if a lawyer refuses to issue a certificate of good title, the Land Registration Ordinance will continue to apply, meaning that the property concerned will be retained in the deeds registration system. This will certainly divide titles into "good" and "bad". In the case of "good" titles, title registration will be possible, but a property without the guarantee of a certificate of good title will not be included under the title registration system, that is, will not be converted, and must remain in the deeds registration system. The latter kind of properties will be regarded as inferior properties. Such a classification of properties will do no good to the development of the property market, nor is it conducive to public interest. It is also most unfair to small owners.

The authorities consulted the various sectors on conversion, including the Law Society. The Law Society had maintained reservations about the requirement on the issuing of certificates of good title. In the end, the Law Society proposed "daylight conversion" to replace "midnight conversion". An "incubation period" of 12 years was proposed as a transitional arrangement, and upon expiry of this period, properties under the existing system would be converted to the title registration system. Around February this year, the Government accepted the proposal of the Law Society in principle, and follow-up actions were then taken. Under "daylight conversion", a lawyer is not required to issue any certificate of good title, and unregistered interests in land are protected by a "caveat" and a "caution against conversion". The

persons concerned can also have as long as 12 years to instigate appropriate legal proceedings to protect their interests.

The Liberal Party is generally agreeable to "daylight conversion". However, this approach will substantially alter the original arrangements proposed in the Bill. The Government thus needs to move a large number of Committee stage amendments, but all these amendments were not submitted to the Bills Committee until mid-May, which is why time was indeed running very short. Since the new mechanism is a complete change from the existing system, it will produce profound and far-reaching impacts on all Hong Kong people. Some people purchase a flat only once in their life, and they may have to use up all their savings for that. Therefore, if the new mechanism cannot function smoothly and properly, it will adversely affect the general public, and this is something the Liberal Party does not wish to see. The Liberal Party is very concerned that the amended Bill must be proper and practicable in all respects. The details of implementation should also be implemented through the making of regulations. But due to the time constraint, this has not been possible. In addition, the Bill is indeed very complex, and this is compounded by the submission of amendments on "daylight conversion" at the last minute. Therefore, although the Bills Committee has exerted its utmost to complete its work and there appears to be no major problems with the clauses, we cannot be sure whether there is still any omission despite all the care and attention, because "daylight conversion" is a new arrangement, something which involves many complicated legal principles.

Since there is still at least two years to go before the Bill's commencement date as proposed by the Government, I urge the Government to make good use of the interim to review with the legal profession all the provisions of the legislation and to proceed carefully with the formulation of implementation details. If necessary, another amendment bill should be submitted to perfect the legislation and to avoid affecting the people's property rights because of any minor problems. The Administration has undertaken to take actions in this direction. On this basis, the Liberal Party will support the Second Reading of the Bill and the Committee stage amendments to be proposed by the Government.

Madam President, I so submit.

**MS AUDREY EU** (in Cantonese): Madam President, the media's attention has focused on the Education (Amendment) Bill 2002 which is about school-base management, during the resumption of the Second Reading debate on bills in these few days. However, the Land Titles Bill under discussion today is also very important. It can be considered as beginning a new epoch. Major changes will be made to the existing land registration system following the commencement of the Ordinance, in the sense that a deeds registration system will be converted to a title registration system. So, with far-reaching and wide-ranging impact, this will affect the rights and interests of all property owners and other stakeholders in Hong Kong and should be a matter of public concern.

Madam President, under the existing system or the deeds registration system I have just mentioned, only title deeds are recognized, meaning that the registration of deeds will determine the priority of rights and interests. Even though registration has been made by a person, it does not mean that he is the legal owner of the property. Under equity law in Hong Kong, even though a person is not the registered owner, he may be entitled to the interests in a property or land. For instance, in a situation where a couple residing in a flat which may be in the husband's name, the husband is responsible for paying the mortgage while the wife is responsible for paying the household expenses, the Court may, in accordance with equity or other situations, rule that the wife is entitled to the interests in the property. On the other hand, even though a person is not the registered owner, he may still be subject to many other restrictions such as leases, easements, covenants, rights of way because these various unregistered interests are recognized by the prevailing law. Furthermore, on purchasing a property, even if you have no knowledge of these so-called unwritten or unregistered equities, you are deemed by law to have constructive notice and therefore subject to some unregistered interests.

However, after modification of the system, the purchaser, under the new title registration system, has to make registration in the Land Registry in order to ensure that he has the title and become the right legal owner of the property. The registration is regarded as the best evidence of his title. Other stakeholders, or the so-called holders of unwritten equity, are also required to register, lest they may lose their interests under the new legislation in future. Under the new system, the title of a property will become clearer, thus reducing disputes. From the perspective of lawyers, it may be good news because they will no longer have to check the voluminous outdated title deeds, apart from the reduced

number of lawsuits against them on the ground of dereliction of duty or professional negligence. So, it is indeed an improvement in this aspect.

However, Madam President, the new system will have substantial effect on the existing property owners and stakeholders. Take the couple I have just mentioned as an example. They are residing in the same property which is in the husband's name only. If the law is to be amended, they should discuss how the interests of the property be shared when their relations are good. Otherwise, if they break up, the party who has not registered his/her interest will suffer loss and it is too late to regret then. Besides, as some Honourable colleagues have mentioned, some owners may lose their titles due to others' fraudulent acts and the maximum indemnity they will get is only \$30 million under the Land Titles Ordinance. In other words, if the title of your property is transferred to others by fraud, the maximum compensation you will get from the fund is only \$30 million even though you make a claim.

Earlier in the debate, some Honourable colleagues have mentioned that the Bar Association and the Real Estate Developers Association oppose the Bill on the ground that it may contravene Articles 6 and 105 of the Basic Law which are related to the protection of the right of private ownership of property and lawful deprivation of properties respectively. However, Madam President, there are two sides of a coin. If there is a fraud, there are always two victims. Of course, the one who suffers the loss under the prevailing law is the purchaser because the purchaser will not have the title of the property but the original owner has even though money has been paid to the fraud. However, after the Ordinance has been amended, the new buyer will no longer be the victim because the title registration system can offer protection. Rather, the original owner will become the victim. So, although it has been our concern that the owner will be in a disadvantageous position because the maximum compensation is \$30 million, I have to point out that the protection for the purchaser will be enhanced after the enactment of the new legislation provided that the title is registered after the purchase. The property will then belong to him. Having said that, the Government should explain the risks involved to all the owners, particularly owners of properties valued over \$30 million.

Madam President, I would like to express my gratitude to many people, including our legal adviser and Mr Kim SALKELD, the Land Registrar, as well as his colleagues. I have a lot of sympathy for him because he had to face many lawyers, including our legal adviser, when attending meetings of the Bills

Committee on Land Titles Bill. He had to answer very difficult questions of law put to him with great patience in order to explain the complicated legal issues to lawyers like us who did not quite understand these ordinances. I appreciate his diligence and tolerance. At the later stage of our work, Madam President, even the lawyer from the Department of Justice responsible for the drafting resigned and outside help had to be sought so that our work could be continued. So we can imagine how heavy the work pressure Mr SALKELD had to face during the last month of the scrutiny work. Yet, he remained to be very gentle and patient in dealing with the meetings. So I appreciate him very much.

Ms Miriam LAU and Miss Margaret NG have mentioned earlier that substantial amendments to the Bill were made at a very late stage. We have done our best and hope the Bill will be passed in this Session. But we cannot say that it is entirely problem-free, even though we have exerted our best. So, the Government's proposal that the Bill shall take effect two years after its enactment in order to review and make amendments to it during this two-year period is very important. I also agree that a two-year transitional period is needed. It is an appropriate measure to allow all the existing properties to be converted from the present system to the new system within 12 years. We hope the Government, during a transitional period of two years plus another 12 years, will exert its utmost to explain the legislation clearly to the legal profession, the real estate agents, the owners and the general public. In fact, this will have substantial effect on the existing owners and the stakeholders who may need to take various steps, or even seek legal advice, in an attempt to protect themselves. During this process, the Government's assistance is absolutely essential.

Madam President, with the understanding that the Government has pledged to do its best in the conversion to the land title registration system in the next two years and the subsequent 12 years, we support the Second Reading of the Bill. Thank you, Madam President.

**MR TAM YIU-CHUNG** (in Cantonese): Madam President, the Land Titles Bill seeks to streamline the existing registration system for property interests. It is proposed that a clearer title registration system be introduced to replace the deeds registration system which has been in use for many years. Following the introduction of the new system, it will no longer be necessary to verify property interests by searching the past tile register and title deeds. Therefore, one can

indeed say that the new system will be useful in better protecting property interests and streamlining property conveyancing.

One of the main subjects of the Bill is conversion. At the very beginning, the Bill proposed to adopt gradual conversion instead of automatic or midnight conversion. The Democratic Alliance for Betterment of Hong Kong (DAB) is of the view that gradual conversion will lead to a number of serious problems. First, some properties which cannot be registered under the new system for one reason or another, such as those with title defects or those for which no solicitor is willing to issue a certificate of good title, will be reduced in value, thus leading to the distinction between class "A" properties and class "B" properties in the market. For this reason, a new system like this will not only fail to achieve the aim of protecting property rights but also result in unnecessary market fluctuations. If such a policy leads to the emergence of large numbers of victims whose property interests are injured, it will do harm, instead of any good, to social stability.

The second point is that, with gradual conversion, solicitors may have to bear extra criminal liability. But the Government has so far failed to put forward any definite guidelines on the issue of certificates of good title. This may hinder the issue of certificates of good title and increase the costs of property conveyancing. Under the existing system, it is still possible to complete a transaction if a solicitor is granted exemption from certain liabilities by his client. However, under the new gradual conversion system, even if exemption is consented by a client a solicitor must still bear criminal liabilities. What is more, besides the fees for issuing a certificate of good title, a client may also have to pay other additional fees for hiring surveyors to check whether there are any illegal structures and ascertain the land boundary. Therefore, gradual conversion will produce the objective effect of reducing the flexibility of property conveyancing.

The third problem is that gradual conversion will lead to many unnecessary title litigations, thus upsetting market stability. Under the original provisions of the Bill, with the exception of government leases granted after the commencement of the Bill, all titles registered under the old system will also require the issue of a certificate of good title. In other words, all property titles will have to undergo a large-scale inspection. But one must bear in mind that the old deeds registration system is fraught with defects, and the new title registration system is meant to improve and reform the old system instead of



carrying out any large-scale purges. For this reason, to society at large, the new system can never be regarded as any progress if it really leads to waves of litigation.

Regarding the problems caused by gradual conversion, besides raising them for discussions at the meetings of the Bills Committee, the DAB has also discussed with the relevant government departments several times. However, they have so far failed to put forward any effective solutions. Therefore, the DAB has accepted the proposal of The Law Society of Hong Kong on the adoption of daylight conversion, so as to enable the Bill to genuinely achieve the aims of protecting property rights and streamlining conveyancing procedures. The Government has eventually agreed to move Committee stage amendments to implement daylight conversion. The DAB supports this pragmatic move of the Government.

Another contentious issue connected with the Bill is the indemnity scheme. The indemnity scheme is protection of the last resort available to title owners under the new system. If a title owner loses his title due to fraud or any error or omission of the Land Registry, he may obtain indemnity up to a maximum of \$30 million under the indemnity scheme. The DAB has proposed to the Government to amend the relevant provisions, so that owners whose properties have been sold through impersonation can recover their properties, while the purchasers can apply for indemnity. The Government has eventually agreed to move Committee stage amendments on the inclusion of new provisions to protect the interests of title owners. Under the new provisions, if a person uses any void instrument in an attempt to dispose of the property owned by another person, the legal status of the latter person as the property owner shall not be affected. In other words, a rightful property owner who has been deprived of his property through impersonation shall be able to restore his title to property. The DAB welcomes this amendment.

Madam President, many changes were indeed made to the Bill during the scrutiny period. However, since all these amendments were drawn up within a very short period of time, the Government is still unable to allay the anxieties of the DAB in respect of certain provisions. Since the new registration system aims to provide genuine help to people by streamlining property conveyancing and reducing disputes, the Government should still need to make the following improvements.

First, in the case of saleable HOS flats, small houses and TPS flats, the Government should consider the idea of requiring an entry in the Title Register to the effect that the sale of these properties shall require the payment of regrant premiums, so as to enable prospective purchasers to understand clearly that the land owners concerned must pay regrant premiums to the Government. The Government is of the view that property agents and solicitors should be responsible for reminding purchasers, but if they fail to do so, then even though a purchaser may subsequently take actions to recover his losses, he will first have to suffer anyway. Since the aim of the Bill is to facilitate conveyancing, why does the Government not take this further step, so that searches of the Title Register can give ordinary members of the public all the required information?

Second, under the Bill, all registered lands are subject to overriding interests. However, overriding interests are not mandated as entries in the Title Register. This will cause losses to prospective purchasers, so such a lack of clarity should be reduced. One example is adverse possession, one of the many overriding interests. The Government is of the view that the purchaser can become aware of this by conducting property inspection. Although the existing practice is just the same, the DAB is of the view that there is still every reason to establish a mechanism for registration of interest by adverse possession, so that it can be clearly indicated in the Title Register. If such a mechanism is not established, then in case neither the solicitor nor the property agent is aware of this overriding interest, how can the purchaser, who does not have sufficient knowledge of law, spot any problem simply by conducting property inspection? If the Government does not adopt this proposal, the protection of the purchaser's interests will remain just the same as that he enjoys under the old system. There will not be any improvement at all.

Third, clause 44 of the Bill is about provisions on the vendor and the purchaser, covering, among other things, the documents to be provided by the former to the latter. The Government explains that the expression "subject to any stipulation to the contrary" contained in clause 44(1)(a) actually refers to the stipulations of the agreement between the vendor and the purchaser. We are however of the view that the wording of this expression is open to question, for the term "stipulation" may be wrongly interpreted as a requirement of the Bill, that is, a statutory requirement. We hope that the Government can further amend the provision concerned, so as to clarify its meaning.

Madam President, when it comes to the Committee stage amendments on the Bill, I must say that the Legislative Council has had to scrutinize the Bill in rather great haste. Although the Committee stage amendments are supported in principle by the relevant professional bodies, especially The Law Society of Hong Kong and the Hong Kong Bar Association, the DAB still hopes that in the two years before the commencement of the Bill, the Government can still seek to perfect the whole mechanism by examining the Ordinance in detail to see if there are any loopholes, because the new system is a revolutionary change. Besides, in regard to publicity and the operation of the industries concerned, since the new registration system will have enormous impact on the purchase and sale of properties in future, the Government must co-operate fully with the Law Society in drawing up clear guidelines. In addition, publicity must be enhanced to make the ordinary public know what the change is all about. That way, they will be able to protect their own interests instead of being rendered so helpless and desperate at the expiry of the 12-year incubation period.

With these remarks, I support the Second Reading of the Bill and the Committee stage amendments. Thank you, Madam President.

**MR WONG SING-CHI** (in Cantonese): Madam President, it is the second time that the Land Titles Bill (the Bill) is submitted to the Legislative Council for scrutiny. The Bill was first tabled before the Legislative Council 10 years ago, but it was eventually withdrawn as the then Government saw a need for substantial amendments. Since then, the Democratic Party has been requesting the Government to re-submit the Bill to the Legislative Council as soon as possible. As pointed out in our political platform in 2000, we do urge the Government to establish a new system of title registration to protect the interests of property owners and people buying and selling properties.

The new title registration system to be established by the Government will specify clearly that a person registered as the owner of land shall have title to property under the law, and the new system will also streamline the procedures of property conveyancing. All this will offer greater protection to property interests. However, since the Bill will affect all property owners in Hong Kong, the Government should draw up the relevant Regulations at the soonest possible time within two years following the enactment of the Bill. And, it should also provide more information to the industries concerned and the general public.

Moreover, the Bill does not seek to tackle the problem of unclear land boundaries. This is actually a long-standing problem, which is compounded by the lack of any effective mechanism to handle disputes arising from missing or non-recognizable deeds. As a result, disputes over land boundaries have never stopped, and even the future development of land has also been hindered. The Government should therefore address this problem squarely.

The problem of unclear land boundaries mentioned just now is especially serious in the New Territories. For over a hundred years, there have not been any systematic surveys on land boundaries in the New Territories, and demarcation district plans are also not detailed enough. We thus raised our concern in the Bills Committee, urging the Lands Department to hold active discussions with the Heung Yee Kuk and other parties, so as to work out solutions to these problems.

Doubtless, if the Administration continues to ignore these problems, the situation will deteriorate, making it more difficult to define land boundaries in the future. For this reason, the Government must set up a sound mechanism as soon as possible so as to pre-empt unnecessary disputes. I so submit. Thank you, Madam President.

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

(No Member indicated a wish to speak)

**SECRETARY FOR HOUSING, PLANNING AND LANDS:** Madam President, I would like to begin by paying tribute to all those whose unfailing efforts and contributions have brought to fruition the resumption of Second Reading of the Land Titles Bill (the Bill) in the Legislative Council today. In particular, I wish to thank the Chairman of the Bills Committee, the Honourable Margaret NG for her leadership and resolve in the scrutiny of the Bill. My appreciation also goes to members of the Bills Committee who have dealt with matters of great legal complexity and significant economic importance in the 39 Bills Committee meetings over the past 15 months.

I would also like to thank the Law Society, the Bar Association, the Consumer Council, the Hong Kong Institute of Surveyors, the Heung Yee Kuk, the Real Estate Developers Association (REDA), the Hong Kong Association of Banks and other interested parties who have given their time and advice to help bring the benefits of title registration to Hong Kong.

The Bill was gazetted in December 2002 after years of consultation — this being the second bill on title registration introduced into the Legislative Council. The fact that major changes to the Bill have since been proposed, considered and agreed is a reflection of the importance attached to this legislation. It also signifies the difficulties and the genuine desire in striking an acceptable balance among a wide variety of interests. Whilst the discussions of the Bills Committee have not caught much of the public's attention so far, the enactment of the Bill should be highly welcomed by the community, as title registration will give greater security to property interests and simplify conveyancing procedures.

Madam President, I will now turn to the major proposals in the Bill.

One of the challenging issues which we have grappled with is the problem of "conversion", that is, how to transfer 2.5 million properties from the existing deeds register onto the Title Register without cutting off existing rights unfairly, without incurring great public expense in re-examining title, without adversely affecting the operation of the property market and without imposing new liabilities on solicitors. The Bill gazetted in 2002 proposed a gradual conversion mechanism, under which existing properties can be brought under the title registration system voluntarily at any time or upon sale. As deliberations progressed in the Bills Committee, this mechanism was found to have insuperable difficulties arising mainly from the liability which solicitors would face in the issuance of certificates of good title.

A new scheme of "daylight conversion" has since been developed and has won the acceptance of the parties concerned as a reasonable way forward. Under this approach, a number of measures which have been tried and tested in other jurisdictions have been melded together with our own proposals to create a conversion mechanism which addresses our own unique situation. The daylight conversion mechanism has the following main features.

First, at the commencement of the Land Titles Ordinance (the Ordinance) (if enacted), all new land will come immediately under the title registration

system. I want to emphasize that by "new land", we mean more than just previously undeveloped land let out by auction or tender. With few exceptions, all land covered by a new government lease issued after a surrender will be "new land" within the meaning of the Ordinance. The exceptions are simply where a new lease amounts to no more than a variation of the period, terms or area covered by the old lease.

Second, after the commencement of the Ordinance, all land under an existing government lease and all properties on that land will remain under the deeds registration system laid down in the Land Registration Ordinance (LRO) for a designated period. In the Bill, this period is given as 12 years. Twelve years is generally considered to be a sufficiently long period within which to give notice of the impending change to all owners or claimants of interests in land. Various parties have proposed that there should be a mechanism to vary the length of the period should experience after the initial operation of the Ordinance indicate the need either to reduce or to extend the period. We have accepted the Bills Committee's recommendation, and clause 101 now provides the power to amend the schedule in which the period is specified.

Third, major amendments to the LRO are now proposed to the Bill to introduce two new mechanisms whereby persons who can claim interests in property can have those interests protected against the risk of their loss on conversion to the title registration system.

The first mechanism is a "caveat". This will provide a simple way for a claimant to an interest created by a matter which is currently not capable of being registered under the LRO to give notice of his claim. This notice will be preserved on the conversion of the property, appearing as a "non-consent caution" on the Title Register.

The second mechanism is "caution against conversion". This is a tool which any claimant to the title to a property can use if he wants his claim to be settled before the property is converted to the title registration system. As long as such a caution is in place, conversion is prevented. Given its powerful effect, the "caution" will be valid for only 12 months, provided that the Court may extend its validity by no more than another 12 months. If the claimant has not commenced legal action to determine his claim within the period of validity, the "caution" will lapse and the property will be converted. Conversely, if the claimant has commenced the necessary legal action, conversion of the property

will be deferred until the action has been settled. The Title Register will reflect the state of ownership and interests in the property determined by the outcome of the court action.

Fourth, the compulsory applications for conversion on sale and the opportunity to apply for voluntary conversion allowed under the gradual conversion mechanism are removed. This is necessary in order to dispense with the cost and risks associated with certificates of good title or the costs and time involved, were the Land Registry to undertake investigation of title on behalf of applicants.

Under the daylight conversion mechanism, a person who can claim an interest in a property is given ample time and means to protect that interest. Once a purchaser for value has acquired the property after conversion, however, he gains the certainty that as registered owner, his title is guaranteed. This means that all persons dealing with the property after conversion can rely on the Title Register, bringing greater certainty and simplicity to the conveyancing process.

The changes to the conversion mechanism entail major amendments to the Bill. I will later be moving Committee stage amendments to:

- (i) delete various clauses or parts thereof which relate to the "gradual" conversion mechanism;
- (ii) introduce a new Part 2B to deal with registration of new land;
- (iii) introduce a new Schedule 1A to deal with the conversion of existing land; and
- (iv) introduce a new Schedule 3 on amendments to the LRO.

The whole purpose of the Title Register is to give certainty. As a safeguard against fraud and to correct unintended errors, there are provisions to rectify the Register. The Bill also puts in place indemnity arrangements to protect innocent parties who suffer a loss due to an error or omission in the Register. The main issues which have been raised on the provisions on rectification and indemnity include:

- (i) the applicability of a cap on the indemnity in cases of fraud;
- (ii) the extent of the Court's discretion; and
- (iii) the position of the Solicitors' Professional Insurance Fund.

To ensure public confidence in the title registration system, a self-financing Indemnity Fund will be established, drawing recurrent contributions from a levy on registration. The Land Registry Trading Fund will also stand behind the Indemnity Fund in respect of any loss due to error or omission of the Land Registry. In order to keep the levy rates at an affordable and predictable level for all parties, the Administration has maintained that there must be a cap on the liability of the Indemnity Fund in fraud cases. This will be set initially at \$30 million per case. Currently, over 99% of property transactions fall below the value of the cap and will therefore be fully covered by the indemnity arrangement. Subject to the Finance Committee's approval, we propose to arrange a standby government loan facility of \$150 million for the Indemnity Fund to meet claims before a reserve is built up.

I would like to respond to the view that the cap on indemnity in fraud cases is unconstitutional. As the Honourable Margaret NG has noted in her speech, this issue has been discussed extensively. The Administration's position has been clearly set out. Our legal advisers have confirmed with us that the new scheme does not amount to deprivation of property, and the cap is therefore fully consistent with the Basic Law. The need to call on the Indemnity Fund only arises in cases where, as a result of fraud, there are two innocent parties claiming the same property. Under existing law, one will get the property, the other will be left with nothing unless he is able to trace and recover assets from the fraudster. Under the Bill, the innocent party left without property will be eligible to claim for an indemnity. This gives innocent parties greater protection.

Some parties have questioned the acceptability of the proposed cap as a matter of principle. Having carefully considered the matter, the Administration remains of the view that the cap complies with legal obligations. In examining the implications of the cap, however, we have noted that there were circumstances under the original proposals which, in certain types of fraud cases, an innocent owner can be placed in a worse position than under the existing law. We have undertaken that in such cases, an innocent owner should be given the



same protection as under the existing law. I will shortly introduce a Committee stage amendment to clause 81(3) of the Bill to that effect.

I will also introduce Committee stage amendments to amend other parts of clause 81 to narrow down the discretion of the Courts, so as to give owners and purchasers greater certainty on how claims will be treated by the Courts when there are innocent parties involved. This is in response to the Bills Committee members' requests, arising from representations by the Law Society and the Bar Association.

I note that the REDA continues to have some concerns as to whether the amendments to clauses 81 and 81A achieve the intended effect. It is an area where very careful balance is needed to ensure that affected parties are neither disadvantaged nor given undue advantage. While we believe that the amendments we are proposing have achieved the required balance, we will continue to discuss this matter with the REDA and other parties to address any remaining doubts. I will note that the reservations over clause 81A raised by the Honourable Abraham SHEK have been addressed in the Committee stage amendment I will propose to this clause later.

As a result of the powers given to the Indemnity Fund to recover losses against parties who were responsible for such losses, particular concerns have been raised regarding possible double claims against the solicitors' professional insurance schemes. I will be moving Committee stage amendments to delete clause 82(5) and to amend clause 86 to remove any such grounds for concern. I understand that the Law Society may consider making further amendments to the rules governing their professional insurance schemes.

I will also move other Committee stage amendments to amend the rectification and indemnity provisions arising from changes to the conversion mechanism and to clarify certain matters, in particular the operation of the Indemnity Fund.

The Bills Committee has made a wide range of helpful suggestions to improve the Bill. The Law Draftsman has done a remarkable job in carrying out an extensive overhaul of the whole Bill to simplify the language and ensure consistency between the remaining provisions and the new clauses. I will be moving a substantial number of Committee stage amendments to give effect to these drafting changes.

Over the past few months, a lot of work has gone into revising the Bill to reflect the changes I have just highlighted. Much has been achieved and I am grateful that there is now strong support for the passage of the Bill.

I appreciate that much further preparatory work and education are needed before registration is brought into effect. I can assure Members that this will be done diligently. The Registrar and his staff have already begun to arrange for this work to be done in partnership with all professional bodies concerned.

Finally, Madam President, I would like to thank again the Chairman and members of the Bills Committee for all their good work and perseverance. Although it is not common practice to pay public tribute to the hard work put in by our civil service colleagues, I do feel that this is one of those rare occasions which calls for such recognition of the contribution of the government team led by the Land Registrar. The introduction of title registration is a landmark development of land law in Hong Kong. With the enactment of the Bill, Hong Kong will be well placed to gain the benefits of a title registration system under which persons dealing in property enjoy a level of certainty, security and efficiency in their transactions which matches the highest standards available elsewhere in the world. Title registration will be conducive to making Hong Kong a better place to own a home and to do business.

I hope Members will support the Bill and the Committee stage amendments which I will propose later on.

Thank you, Madam President.

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

(Members raised their hands, but Mr Andrew WONG did not raise his hand)

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

(No hands raised, but Mr Andrew WONG still did not raise his hand)

**PRESIDENT** (in Cantonese): Mr Andrew WONG, are you meditating or you do not want to cast your vote?

(Mr Andrew WONG still made no response)

**PRESIDENT** (in Cantonese): Mr Andrew WONG, Mr Andrew WONG, maybe you need a rest; you may excuse yourself for a while.

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

**CLERK** (in Cantonese): Land Titles Bill.

Council went into Committee.

### **Committee Stage**

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

### **LAND TITLES BILL**

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

**CLERK** (in Cantonese): Clauses 1, 9, 37, 40, 55, 56, 75 and 85.

**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 to 8 and 10 to 20, heading before clause 21, clauses 21 to 25, heading before clause 26, clauses 26, 27 and 28, heading before clause 29, clauses 29 to 36, 38, 39, 41 to 54, 57 to 74 and 76 to 79, heading before clause 80, clauses 80 to 84, 86 and 87, heading before clause 88, and clauses 88 to 102.

**SECRETARY FOR HOUSING, PLANNING AND LANDS:** Madam Chairman, I move the deletion of clauses 4, 10 to 13, 18, 25, 30, 52, 60, 68 and 88, and the amendments to the other clauses and the headings read out just now.

Clauses 12 and 13 are no longer needed under the daylight conversion mechanism, the other clauses deleted are the result of being relocated or merged with other clauses as part of the reorganization of the Bill.

The amended clauses carry the following major changes. First, in respect of the daylight conversion mechanism, some definitions in clauses 2 and 3(1) have been revised.

Second, clause 14 dealing with the effect of the first registration is deleted but replaced by clauses dealing with new land in a new Part 2B, and dealing with Land Registration Ordinance land in the new Schedule 1A. Clause 21 which sets out the effects of subsequent registration has been revised at the Bills Committee members' suggestion to give a clearer statement of the benefit of registration.

Third, clause 51 has been revised to ensure that the effect of existing legislation with respect to deeds of mutual covenant will not be altered.

Fourth, clauses 74 and 77 are amended to specify the circumstances in which the Court may order inhibitions, and the criteria the Registrar must follow in making restrictions.

Fifth, clauses 80 to 84, 86 and 87 are mainly concerned with modifications to the rectification and indemnity provisions which I have explained earlier.

Sixth, clause 92 is amended so as to allow the Director of Lands to make determination of boundaries of lots held under block government leases. Clause 92(3) is also revised to allow the Director of Lands to carry out the work if agreed by the owners. This clause applies only to land brought under the title registration system.

The remaining amended clauses relate to reorganization of the Bill and drafting changes.

Madam Chairman, these amendments have been agreed with the Bills Committee.

*Proposed amendments*

**Clause 2 (see Annex II)**

**Clause 3 (see Annex II)**

**Clause 4 (see Annex II)**

**Clause 5 (see Annex II)**

**Clause 6 (see Annex II)**

**Clause 7 (see Annex II)**

**Clause 8 (see Annex II)**

**Clause 10 (see Annex II)**

**Clause 11 (see Annex II)**

**Clause 12 (see Annex II)**

**Clause 13 (see Annex II)**

**Clause 14 (see Annex II)**

**Clause 15 (see Annex II)**

**Clause 16 (see Annex II)**

**Clause 17 (see Annex II)**

**Clause 18 (see Annex II)**

**Clause 19 (see Annex II)**

**Clause 20 (see Annex II)**

**Heading before clause 21 (see Annex II)**

**Clause 21 (see Annex II)**

**Clause 22 (see Annex II)**

**Clause 23 (see Annex II)**

**Clause 24 (see Annex II)**

**Clause 25 (see Annex II)**

**Heading before clause 26 (see Annex II)**

**Clause 26 (see Annex II)**

**Clause 27 (see Annex II)**

**Clause 28 (see Annex II)**

**Heading before clause 29 (see Annex II)**

**Clause 29 (see Annex II)**

**Clause 30 (see Annex II)**

**Clause 31 (see Annex II)**

**Clause 32 (see Annex II)**

**Clause 33 (see Annex II)**

**Clause 34 (see Annex II)**

**Clause 35 (see Annex II)**

**Clause 36 (see Annex II)**

**Clause 38 (see Annex II)**

**Clause 39 (see Annex II)**

**Clause 41 (see Annex II)**

**Clause 42 (see Annex II)**

**Clause 43 (see Annex II)**

**Clause 44 (see Annex II)**

**Clause 45 (see Annex II)**

**Clause 46 (see Annex II)**

**Clause 47 (see Annex II)**

**Clause 48 (see Annex II)**

**Clause 49 (see Annex II)**

**Clause 50 (see Annex II)**

**Clause 51 (see Annex II)**

**Clause 52 (see Annex II)**

**Clause 53 (see Annex II)**

**Clause 54 (see Annex II)**

**Clause 57 (see Annex II)**

**Clause 58 (see Annex II)**

**Clause 59 (see Annex II)**

**Clause 60 (see Annex II)**

**Clause 61 (see Annex II)**

**Clause 62 (see Annex II)**

**Clause 63 (see Annex II)**

**Clause 64 (see Annex II)**

**Clause 65 (see Annex II)**

**Clause 66 (see Annex II)**

**Clause 67 (see Annex II)**

**Clause 68 (see Annex II)**

**Clause 69 (see Annex II)**

**Clause 70 (see Annex II)**

**Clause 71 (see Annex II)**

**Clause 72 (see Annex II)**



**Clause 73 (see Annex II)**

**Clause 74 (see Annex II)**

**Clause 76 (see Annex II)**

**Clause 77 (see Annex II)**

**Clause 78 (see Annex II)**

**Clause 79 (see Annex II)**

**Heading before clause 80 (see Annex II)**

**Clause 80 (see Annex II)**

**Clause 81 (see Annex II)**

**Clause 82 (see Annex II)**

**Clause 83 (see Annex II)**

**Clause 84 (see Annex II)**

**Clause 86 (see Annex II)**

**Clause 87 (see Annex II)**

**Heading before clause 88 (see Annex II)**

**Clause 88 (see Annex II)**

**Clause 89 (see Annex II)**

**Clause 90 (see Annex II)**

**Clause 91 (see Annex II)**

**Clause 92 (see Annex II)**

**Clause 93 (see Annex II)**

**Clause 94 (see Annex II)**

**Clause 95 (see Annex II)**

**Clause 96 (see Annex II)**

**Clause 97 (see Annex II)**

**Clause 98 (see Annex II)**

**Clause 99 (see Annex II)**

**Clause 100 (see Annex II)**

**Clause 101 (see Annex II)**

**Clause 102 (see Annex II)**

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

**MISS MARGARET NG:** Madam Chairman, I support all the amendments. These have been thoroughly discussed in the Bills Committee. I wish to take the first opportunity to correct something I have said in my speech during the Second Reading. I have inadvertently referred to the existing land system as having existed in Hong Kong for over 150 years. Of course, the system was introduced in the beginning of the 20th century, so it should be over 100 years. Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): Does any other 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 Housing, Planning and Lands 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 4, 10 to 13, 18, 25, 30, 52, 60, 68 and 88, which deal with deletion, have been passed, these clauses are deleted from the Bill.

**CLERK** (in Cantonese): Clauses 2, 3, 5 to 8, 14 to 17, 19 and 20, heading before clause 21, clauses 21 to 24, heading before clause 26, clauses 26, 27 and 28, heading before clause 29, clauses 29, 31 to 36, 38, 39, 41 to 51, 53, 54, 57, 58, 59, 61 to 67, 69 to 74 and 76 to 79, heading before clause 80, clauses 80 to 84, 86 and 87, heading before clause 88, and clauses 89 to 102 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.

<b>CLERK</b> (in Cantonese):	New clause 5A	Applications register
	New clause 5B	Supporting documents
	New clause 5C	Form of registers
	New clause 6A	Registrar may apply to Court for directions
	New heading before clause 14	PART 2A REGISTRATION PROCEDURES AND CONNECTED MATTERS
	New clause 16A	Entry in Title Register constitutes notice to all persons
	New heading before new clause 20A	PART 2B REGISTRATION OF TITLE TO LAND AND CONNECTED MATTERS
	New clause 20A	Interpretation of Part 2B
	New clause 20B	Registration of title to new land
	New clause 20C	Date of first registration of new land
	New clause 20D	Effect of first registration of new land

New clause 20E	Registration of LRO land
New clause 61A	Transmission
New clause 69A	Protection of person dealing with trustees
New clause 81A	Time for bringing proceedings under section 81
New heading before clause 82	PART 9A INDEMNITY
New clause 87A	Land Titles Indemnity Fund.

**SECRETARY FOR HOUSING, PLANNING AND LANDS:** Madam Chairman, I move that the new headings and new clauses read out just now be read the Second time.

The new clauses 20A to 20E are the new provisions to deal with the registration of land under the daylight conversion mechanism. The new clause 81A sets out how the Limitation Ordinance will apply to actions for rectification, while the new clause 87A provides for the establishment of an Indemnity Fund. The other new clauses are the result of merging or relocating existing clauses as part of the reorganization of the Bill. All these new clauses have been endorsed by the Bills Committee.

**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 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 5A, 5B, 5C and 6A, new heading before clause 14, new clause 16A, new heading before new clause 20A, new clauses 20A, 20B, 20C, 20D, 20E, 61A, 69A and 81A, new heading before clause 82, and new clause 87A.

**SECRETARY FOR HOUSING, PLANNING AND LANDS:** Madam Chairman, I move that the new headings and new clauses read out just now be added to the Bill.

*Proposed additions*

**New clause 5A (see Annex II)**

**New clause 5B (see Annex II)**

**New clause 5C (see Annex II)**

**New clause 6A (see Annex II)**

**New heading before clause 14 (see Annex II)**

**New clause 16A (see Annex II)**

**New heading before new clause 20A (see Annex II)**

**New clause 20A (see Annex II)**

**New clause 20B (see Annex II)**

**New clause 20C (see Annex II)**

**New clause 20D (see Annex II)**

**New clause 20E (see Annex II)**

**New clause 61A (see Annex II)**

**New clause 69A (see Annex II)**

**New clause 81A (see Annex II)**

**New heading before clause 82 (see Annex II)**

**New clause 87A (see Annex II)**

**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 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 1 and 2.

**SECRETARY FOR HOUSING, PLANNING AND LANDS:** Madam Chairman, I move the amendments to Schedules 1 and 2 as set out in the paper circularized to Members.

Schedule 1 is amended as a result of the reorganization of the clauses in the Bill. Schedule 2 is amended for a number of reasons. Sections 71 to 74 which deal with amendments to the Land Registration Ordinance (LRO) under the gradual conversion mechanism are deleted. Revisions to the LRO are now dealt with under Schedule 3. Sections 91 and 92 are amended to disapply sections 16 and 17 of the Conveyancing and Property Ordinance to land registered under the Land Titles Ordinance (if enacted), as the effect of these two provisions have already been provided in the prospective Land Titles Ordinance.

Changes to other sections arise from agreement with the Bills Committee to draw a more precise difference between registration of instruments under the LRO and the registration of interests in land under the prospective Land Titles Ordinance when reference has to be made to the two Ordinances.

*Proposed amendments*

**Schedule 1 (see Annex II)**

**Schedule 2 (see Annex II)**

**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 Housing, Planning and Lands 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 2 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): New Schedule 1A      Provisions for Conversion of  
Land Registration Ordinance  
Land and Long Term Leases  
From Land Registration  
System to Land Title System

New Schedule 3      Consequential Amendments  
to Land Registration  
Ordinance.

**SECRETARY FOR HOUSING, PLANNING AND LANDS:** Madam Chairman, I move that new Schedules 1A and 3 be read the Second time. These two Schedules are added to the Bill as a consequence of the daylight conversion mechanism.

Schedule 1A provides the transitional mechanism setting out how land for which instruments are now registered under the Land Registration Ordinance (LRO), which we call LRO land, is to become land to which title is registered under the prospective Land Titles Ordinance (LTO), to be called registered land.

Subject only to the entry of a "caution against conversion" or any outstanding instrument already presented for registration under the LRO, all LRO land will become registered land at the end of 12 years after the commencement of the prospective LTO. The main aim is to ensure a seamless conversion which does not require any owner to make special application or incur additional expense, and which will preserve existing rights.

Schedule 3 amends the LRO to create the new instruments of "caveats" and "cautions against conversion" which I have outlined earlier.

Madam Chairman, these new Schedules are supported by the Bills Committee.

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That new Schedules 1A and 3 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.

**CHAIRMAN** (in Cantonese): New Schedules 1A and 3.

**SECRETARY FOR HOUSING, PLANNING AND LANDS:** Madam Chairman, I move that new Schedules 1A and 3 be added to the Bill.

*Proposed additions*

**New Schedule 1A (see Annex II)**

**New Schedule 3 (see Annex II)**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That new Schedules 1A and 3 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.

**CHAIRMAN** (in Cantonese): Council now resumes.

Council then resumed.

### **Third Reading of Bills**

**PRESIDENT** (in Cantonese): Bill: Third Reading.

### **LAND TITLES BILL**

**SECRETARY FOR HOUSING, PLANNING AND LANDS:** Madam President, the

Land Titles 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 Land Titles 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): Land Titles Bill.

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

**PRESIDENT** (in Cantonese): We now resume the Second Reading debate on the Education (Amendment) Bill 2002.

### **EDUCATION (AMENDMENT) BILL 2002**

#### **Resumption of debate on Second Reading which was moved on 4 December 2002**

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

**MS CYD HO** (in Cantonese): Madam President, I now report on the main deliberations of the Bills Committee on Education (Amendment) Bill 2002 (the Bills Committee) in my capacity as Chairman of the Bills Committee.

The Education (Amendment) Bill 2002 (the Bill) aims to introduce the school-based management (SBM) governance framework to all aided schools, so as to provide schools with enhanced flexibility and autonomy in managing their own operation and resources according to the needs of their students. The spirit of SBM is to increase the transparency and accountability in the use of public funds and school operations by providing for common participation. The Bill also requires schools to set up incorporated management committees (IMCs) and to include major stakeholders such as parents and teachers in the IMCs. A school sponsoring body (SSB) may appoint 60% of the members of an IMC.

The Bills Committee held a total of 39 meetings and listened to views from many deputations and individuals. The largest SSB in Hong Kong voiced opposition to the mandatory incorporation of SMCs while there were also SSBs and parent-teacher associations which lent their strong support to the Bill.

The Bills Committee presented its views on many aspects of the Bill and the Administration has accepted most of the suggestions and scores of amendments have been made. I would like to discuss briefly the most important items.

Clause 1(2) of the Bill provides that the Amendment Ordinance shall come into operation on a day to be specified by the Secretary for Education and Manpower by notice in the Gazette. The Administration originally proposed that the Amendment Ordinance shall come into operation on 1 December 2004. In response to members' suggestion, the Administration has agreed that the Amendment Ordinance shall commence on 1 January 2005.

After the promulgation of the Ordinance, there would be a transitional period of five years. The proposed section 40BJ of the Bill provides that the sponsoring body of an operating school which is an aided school shall submit a draft constitution for the purpose of the establishment of an IMC. The submission shall be made before 1 January 2009, which is within four years from the commencement date.

Mr CHEUNG Man-kwong was of the view that the Administration should review the implementation of the Bill three years after its commencement. The Secretary for Education and Manpower has pointed out that the Administration will review the provisions of the Bill from time to time during the transitional period. Hence it would not be necessary to wait three years after the commencement date before carrying out the review. If problems are found in implementation, the Government will propose amendments to improve the relevant provisions and to extend the transitional period if necessary.

The Administration, Mr CHEUNG Man-kwong and I myself have proposed Committee stage amendments respectively on section 40BJ. A common goal of these amendments is to extend the deadline for submission of the draft constitutions if necessary. Later on at the Committee stage, the Secretary for Education and Manpower, Mr CHEUNG Man-kwong and I would make a detailed explanation on the contents and effects of the amendments respectively.

The proposed section 40BR(d) provides that the Government may terminate the sponsoring agreement of an aided school if an IMC is not established as required.

Members have expressed grave concern about how the Government will enforce the above section if a large number of schools fail to establish an IMC. They have therefore urged the Administration to consider the impact and consequences of such enforcement and to review the provision.

On review, the Administration has agreed to delete the relevant paragraph. The amended section 40BR provides that the Permanent Secretary (PSEM) may appoint one or more persons to be the manager of a school which fails to establish an IMC and to cancel the registration of any manager.

Some members have expressed concern that the provision would in effect allow the Government to take over the operation of the school until an IMC is established. The Administration has explained that the Government will persuade schools to establish an IMC and will not take action under section 40BR unless persuasion and all other efforts fail to achieve the objective.

Some SSBs have expressed concern as to whether an IMC school could retain the post of supervisor, who mainly serves as a channel of communication between the IMC and the Education and Manpower Bureau. In view of the similarity of the role of the supervisor as stipulated in section 39 of the Education Ordinance and the proposed role for the IMC chairperson, members have proposed to designate the chairperson of the IMC as the supervisor. The Administration has accepted the proposal and will move amendments to replace all references to "the chairperson of IMC" in the Bill with "the supervisor".

As for the selection of the school principal, members have suggested that provision should be made to empower the SSB to nominate a candidate to be the principal, subject to the endorsement of the IMC. The Administration has accepted the proposal and will propose an amendment to section 57A to specify that both the SSB and the IMC may nominate candidates to the principal selection committee. The candidates have to go through the proper selection process conducted by the committee. The IMC would then nominate the selected candidate to the PSEM for approval.

On the powers of the PSEM, the proposed section 40CC provides that the PSEM may give directions to the IMC of any school for the purpose of ensuring that the school is managed satisfactorily and the education of the pupils of the school is promoted in a proper manner.

Having regard to the fact that the PSEM may give directions to the IMC of any school for the purpose of ensuring that the school is operated satisfactorily or the education of the pupils of the school is promoted in a proper manner under existing section 82(1), members have questioned the need for a similar provision under proposed section 40CC. On review, the Administration has agreed to delete proposed section 40CC.

Members have requested the Administration to review the power of PSEM to cancel the registration of a manager and consider whether additional restrictions should be imposed on the exercise of such power.

The Administration has pointed out that in exercising the power under section 31(1), the PSEM must act reasonably and on justifiable grounds. The manager will be asked to make representation before his registration is cancelled. Moreover, the manager can lodge an appeal to the Appeal Board under section 61 against the decision of the PSEM and a further appeal can be made to the Chief Executive in Council. The same appeal mechanism applies to the new grounds for cancellation of registration of managers provided in the Bill. Since the PSEM's decision is subject to appeal, the Administration does not consider it necessary to impose additional restrictions. Some members have questioned whether appeals against the decision of the Appeal Board should be made to a Court instead of the Chief Executive in Council.

On offences and penalties, members have requested the Administration to clarify the burden and standard of proof in proceedings against a manager of an IMC school under section 18A, section 87 and regulation 101 of the Education Regulations.

The Administration has pointed out that there are quite a number of provisions that impose criminal liability on the ground of "consent or connivance". To allay members' worries, the Administration will amend the abovementioned provisions so that a manager can only be charged with the relevant offence if the contravention in question has been committed by the IMC with the consent and connivance of the manager.

Members have also requested the Administration to review the offences and penalties under section 87 and regulation 101 to determine if they should continue to be applicable on IMC and non-IMC schools. Members have also made various suggestions to repeal or amend certain existing regulations,



including non-compliance with those provisions relating to administrative functions should not be regarded as criminal offences.

On review, the Administration has accepted most of the suggestions made by members. The Administration has proposed amendments to section 87 and regulation 101, as well as the relevant regulations under the Education Regulations.

On legal support services for schools, members are concerned whether legal services will be provided to schools to help them draw up the IMC constitution and establish IMCs. The Administration has informed members that after the enactment of the Bill, it will invite legal professionals to provide schools with voluntary web-based services to help them set up IMCs. These services include the provision of a sample IMC constitution and solutions to common problems encountered for reference of schools and SSBs. At the same time, the Administration will encourage SSBs to invite legal professionals who have a keen interest in education to join IMCs. The Administration will also explore the provision of other voluntary legal services, such as forming of a legal professional support network to provide professional advice to schools through the Internet.

On the review of the Education Ordinance and Education Regulations, members have pointed out that some of the requirements in the Education Ordinance and Education Regulations are outdated and should be reviewed. The Bills Committee suggested to the Administration that a comprehensive review of the Education Ordinance and the Education Regulations be carried out in the next Session.

Lastly, on the constitutionality of the Bill, as some SSBs have stated that they plan to initiate proceedings against the Government for contravention of Article 141 of the Basic Law if the Bill is enacted, members have requested the Administration to seek legal advice on the subject and provide the same in writing to members on whether the Bill will contravene Article 141 of the Basic Law.

Article 141 para 3 of the Basic Law provides that religious organizations may, according to previous practice, continue to run seminaries and other schools, hospitals and welfare institutions and to provide other social services.

The Administration has provided two written responses on this subject. The Administration has pointed out that the Bill, which aims to provide for SBM, ensures participatory decision-making and enhances the transparency of school management and public accountability, is an improvement to the education system and is justified under Article 136 para 1 of the Basic Law. Continuity of the policy permitting religious organizations to run schools according to Article 141 para 3 of the Basic Law is subject to the SAR Government's constitutional autonomy to develop Hong Kong's education system and policies over time, impacting on all schools that are subject to the Education and Manpower Bureau's regulation according to law. Therefore, when read together with Article 136 of the Basic Law, the Bill is considered to be consistent with Article 141 para 3 of the Basic Law.

The Administration also points out that if an SSB initiates proceedings on the ground that the Bill is in contravention of Article 141 of the Basic Law, the Court when handling the relationship between Article 136 and Article 141 para 3 of the Basic Law, in particular when assessing whether the SBM framework is consistent with "policies on the development and improvement of education" as referred to in Article 136, will give due consideration to the views of the executive authorities in formulating such policies and to those of the legislature in enacting the relevant legislation. This is consistent with the doctrine of margin of discretion/appreciation. In other words, the Court will draw reference from the contents and decisions reached in the Second Reading debate in the Legislative Council today when it is to judge on proceedings initiated as a result of the implementation of the new education policy.

Madam President, the following are my personal views of the Bill.

First of all, I really would like to thank colleagues of the Secretariat, as well as the Legal Adviser and members of the Bills Committee. We have held a total of 39 meetings for more than 110 hours. We have had two rounds of consultation and each session lasted more than four hours or more. Many deputations have come here to voice their opinions. This Bill has aroused great controversies especially from religious organizations and other SSBs. They have displayed very strong reactions. Some of them even likened the incident to an Article 23 incident in the education sector. Madam President, I am Chairman of the Bills Committee, but now I am speaking in my personal capacity. I must point out that I will not look at this Bill from the perspective of SSBs with all their concerns. I would like to discuss the Bill as a piece of legislation *per se*.

So I must make it clear once again what the policy intents of this Bill are according to what the authorities have told us. When the authorities were promoting this Bill, they said that they wished to implement SBM and participatory governance. They also said that protection would be given to parents in IMCs and that they would be given proper immunity from legal liabilities. So they would be given some protection and everyone would rest assured and they could take part in an IMC with peace of mind. So these are the two objectives mentioned. Madam President, I will now speak on what I think of the Bill in terms of these two objectives.

Participatory governance is a good thing and it is something to which we all agree. I concur with the Secretary when he says that since we strive for a democratic political system, there are no grounds on which we can oppose participatory governance. However, when I look at this Bill, I find that some of the provisions serve to take powers away from the SSBs and enable parents, teachers, alumni and members of the public to participate in school management. But the system is far from being sound. At the early stages of deliberations on the Bill, we found that the procedures for nomination and election, as well as those for the cancellation of registration of managers are all very confusing and they are not consistent with the spirit of democracy. For example, an alumni association has to be recognized by the SSB before it can nominate their members to serve as alumni managers. We cannot help but ask, "Why is there no one person, one vote for each seat? Why can people not vote by producing their former student identity cards? Why do they have to be recognized by the school or SSB before they can be given the right to vote?" The same problem was found with respect to representatives from parents. We have a question and that is: If in a school there are more than one parent associations, one is recognized and the other is not, then what should be done? Would the SSB be given an opportunity to appoint a parent association which may have only three members and a parent will be chosen from that small circle and become a manager?

Madam President, with respect to these irregularities, we have managed to weed out most of them during the deliberations on the Bill. Things therefore have become a lot better. Therefore, we welcome those 50-odd amendments proposed by the Government. Having said that, there are still many very fundamental issues that remain not solved. For example, in an amendment which we will propose later, it is about the democratically elected managers of a school. They can be refused registration as managers of a school by the PSEM

based on a subjective criterion of being a "fit and proper" person or otherwise for the office. We have an example and that is Mr FUNG Ka-keung. He is a candidate for alumni manager and he has the full support of his fellow alumni to take part in SBM. But he has run into some difficulties in his application for registration as a school manager because he was once sued for having taken part in an unapproved meeting. Now Mr FUNG is still not registered. The alumni association of that school is aware of this incident but it still distributes leaflets saying that Mr FUNG has the full support of the alumni association. So it is precisely because of the existence of this very subjective "fit and proper" criterion that the PSEM holds when he decides whether to approve the application by someone to register as a school manager, that has led to a consequence that someone who is democratically elected cannot represent his group and take part in SBM. How can we say that is democratic?

The next point, Madam President, is on the protection in law. When the Government was promoting this Bill initially, it said that once that Bill was passed, a statutory framework would be in place and people who take part would be granted immunity from legal liabilities. When we asked for more details, we found out that the immunity was confined to civil liabilities, including defamation. There was no immunity from criminal liabilities. We found out that criminal liabilities were not confined to acts such as murder and arson. Madam President, there are lots of offences which are regarded as criminal in nature. Making a photocopy of a newspaper or a book may contravene the Copyright Ordinance. If a pregnant employee is dismissed, that may contravene the Family Status Discrimination Ordinance. If a female employee is dismissed, then it is likely to be a breach of the Sex Discrimination Ordinance. Things like labour disputes, unreasonable dismissal, and so on, may incur criminal liabilities and no immunity can be granted.

After discussions, the Government agreed to give more funding to the schools so that they could take out additional insurance coverage on legal liabilities. Schools can therefore have money to engage in a lawsuit if they are involved in one. All these loopholes were discovered during the deliberations and we are glad that the Government is willing to make remedy. We hear from the SSBs about what will happen when this piece of legislation is not in place. If an SSB is involved in a civil or criminal offence and it is sued, then the entire SSB will be held accountable. Under the prevailing situation, school managers may not be legally liable. When it comes to a criminal offence, the person who commits it will be individually liable and the SSB will not be liable in his place.

The SSB will have insurance coverage to meet the legal costs. All these can be done without passing the Bill.

On the question of legal support, we have been asking the Government whether or not there will be any legal support. Earlier on, as I spoke in my capacity as Chairman of the Bills Committee, I said that there was no formal framework in place. All would depend on a team of volunteers put together by the Department of Justice and support is given through the Internet. But Madam President, we can see the great confusions when owners' incorporations run into problems in building management and even when the Home Affairs Department sends its staff to help, more often than not, the problems will remain not solved. Many Members sitting here, especially those returned through direct elections, must have had headaches when they come across disputes encountered by owners' incorporations. We are very worried that, given the complexity of this Bill, if the Government does not have the resources to set up a support centre, so that the SSBs and IMCs can have enough support in terms of legal advice, then there would be many disputes and in the end it would only lead to great grievances. As the matching facilities are not yet complete, so why do we have to pass the Bill in such great haste? This is the reason for me not agreeing to the immediate passage of the Bill.

Madam President, a much greater reason is related to the objectives of law. Laws are meant to give protection to people so that their personal safety is not put at risk, that their properties are protected, and that persons who commit offences are deterred and punished. Another function of law is to restrain the powers of a government and prevent these powers from becoming excessive to the extent that they will encroach upon the rights of the general public. We will not enact laws to require people to do good deeds. We cannot legislate to make people do a good deed every day. That is only something found in the code for boy scouts, not in law. But the Government is telling us that participatory governance is such a marvelous thing and many organizations will not put this into practice if we do not legislate. So we got to legislate on this.

However, Madam President, as I have said in the report, section 40BR will penalize schools which do not set up an IMC, that is, those schools which do not set up an IMC after the amendments proposed by the Government are passed and when the deadline published in the Gazette has expired. The PSEM has the power to cancel the registration of the existing school managers, appoint new managers and take control of the operation of the school. So a school is taken

over simply because of no other reason than having failed to set up an IMC. I cannot help but ask: Why is the school penalized not because of its management problems, or because it has inflicted corporal punishment on a pupil or that there is corruption or embezzlement? If there is nothing wrong with school management, should a school get this kind of punishment simply because it does not have an IMC? So, Madam President, I will propose an amendment later on to suggest deleting this provision and also to provide a legal framework after the passage of this Bill so that those schools which want to set up an IMC can have something to go by and that those teachers, parents and alumni who take part in IMCs will be given some protection in law. I am absolutely against the idea that when a school does not have any problems in management, it is nevertheless penalized because it does not want to set up an IMC.

Madam President, this policy is not consistent either, for when aided schools are forced to set up IMCs, schools under the direct subsidy scheme (DSS) are not subject to such regulation. A greater absurdity is that during the deliberations on the Bill, the Government did not show any consistency itself. In one meeting a member asked why DSS schools did not need to be regulated. The representative from the Government said right away that they would think about it. Then in the following meeting because some members objected to the idea, the Government changed its mind again. Things are still uncertain with respect to this provision now, that is, if a DSS school has chosen to set up an IMC, can it change its mind afterwards? So with respect to this provision, the Government has been wavering all the time. We would ask, "If setting up an IMC is so good, why DSS schools do not need to set up IMCs?" The same argument goes: If we agree to make laws to require people to do one good deed every day, why is it that one group of people are required to do so while another group are not? No wonder the SSBs have a lot of doubts and some even view these legislative proposals from the Secretary as a plot.

Madam President, in the 39 meetings that we have held, the Secretary only attended our meeting for one hour and 40 minutes. It was only after he had criticized the Bills Committee for delays eight times that he came to our meeting once. In that meeting, of course members asked the Secretary why he had criticized the Bills Committee. Subsequently, the Secretary did not join our discussions on the provisions of the Bill, to my enormous regret. Before the meeting today, the Secretary was still saying that we were shouting democratic slogans and claiming that we belong to the democratic camp but we opposed SBM and participatory governance. But we have never had a chance to tell him

direct in the Bills Committee how undemocratic this Bill is, for it is full of powers for the PSEM and that some powers which are outdated and meant to impose political censorship still exist. If this Bill is passed, it is true that a few school managers can be returned by election, but that election will take place in a bird cage. The bird cage is forged by the huge powers of the PSEM who can meddle with school management at any time in the name of the so-called participatory governance. Madam President, this is really something I can never lend my support to.

As for the argument that the inclusion of other people as school managers in the IMC will oversee the use of public money, we have asked the Government how many times that this power has been invoked. Only six times. And it is because of these six schools that all the schools are mandatorily required to set up IMCs or else they will be penalized under section 40BR. Madam President, I do not agree to the passage of this Bill, but I would support its Second Reading, so that all Members can debate on the amendments they have proposed.

Thank you, Madam President.

## **SUSPENSION OF MEETING**

**PRESIDENT** (in Cantonese): It is now eight minutes to Ten o'clock in the evening. I consider that the meeting should be suspended at this juncture and continued at nine o'clock tomorrow morning.

*Suspended accordingly at eight minutes to Ten o'clock.*

**Annex I**

## TOWN PLANNING (AMENDMENT) BILL 2003

**COMMITTEE STAGE**Amendments to be moved by the Secretary for Housing,  
Planning and Lands

<u>Clause</u>	<u>Amendment Proposed</u>
1	<p>(a) In the heading, by adding "<b>and commencement</b>" after "<b>Short title</b>".</p> <p>(b) By renumbering the clause as clause 1(1).</p> <p>(c) By adding -</p> <p style="padding-left: 40px;">"(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Housing, Planning and Lands by notice published in the Gazette.".</p>
2	By deleting paragraph (a).
3	<p>(a) By deleting paragraph (a) and substituting -</p> <p style="padding-left: 40px;">"(a) in subsection (5) -</p> <p style="padding-left: 80px;">(i) in paragraph (a) -</p> <p style="padding-left: 120px;">(A) by repealing "16" and substituting "8, 12A, 16, 16A";</p> <p style="padding-left: 120px;">(B) by repealing "and" at the end;</p> <p style="padding-left: 80px;">(ii) in paragraph (b) -</p>



- (A) by repealing "an  
application for";
- (B) by repealing subparagraph  
(i) and substituting -
  - "(i) an application  
made under  
section 16A(2);  
and";
- (C) in subparagraph (ii) -
  - (I) by adding "an  
application for"  
before  
"permission  
for";
  - (II) by repealing the  
full stop and  
substituting "  
and";
- (iii) by adding -
  - "(c) under  
sections  
12A(12) and  
(13A),  
16(2I) and  
(2K) and

17(2G) and  
(2I) to the  
secretary  
of the  
Board,

and, for the avoidance of  
doubt, the provisions of  
this Ordinance shall, with  
necessary modifications,  
be construed and have  
application  
accordingly."."

(b) By deleting paragraph (b).

4 By deleting "and 17" and substituting ", 6E, 6F,  
6G, 6H, 6I and 6J, and, for the avoidance of doubt,  
the provisions of this Ordinance shall, with  
necessary modifications, be construed and have  
application accordingly".

5 In the heading, by deleting "**Section**" and  
substituting "**Sections**".

5 By deleting "is added" and substituting "are  
added".

5

In the proposed section 2B -

- (a) in subsection (1), by adding ", unless the holding of a meeting for the purpose is required either by any express provision of this Ordinance or by necessary implication from any provision of this Ordinance" after "Hong Kong";
- (b) in subsection (2), by deleting "A" and substituting "Subject to subsections (3) and (4), upon the circulation of papers under subsection (1), a";
- (c) by adding -
  - "(3) Any member of the Board or of a committee appointed under section 2(3) or 2A may require any business which is being transacted by the circulation of papers under subsection (1) to be transacted at a meeting of the Board or of the committee, as the case may be, by giving a notice in writing to the chairman of the Board or of the committee, as the case may be, within the period specified in the

papers.

(4) Where, in respect of any business being transacted by the circulation of papers, a notice is given under subsection (3) to the chairman of the Board or of a committee appointed under section 2(3) or 2A, any resolution approved in writing under subsection (2) in respect of the business shall be void.

(5) For the avoidance of doubt, a reference to circulation of papers in this section includes circulation of information by electronic means, and the reference to the papers in this section shall be construed accordingly."

5

By adding –

**"2C. Meetings of Board and of committees**

(1) Subject to subsection (2), all meetings of the Board or of any committee appointed under section 2(3) or 2A shall be open to the public.

(2) Subsection (1) does not apply to -

- (a) in the case of any meeting held under or for the purposes of section 6D, 6H, 12A, 16, 16A or 17, such part or parts of the meeting that are held for deliberation by the Board or the committee, as the case may be, for making any decision under section 6D(8), 6H(8) (whether with or without application of section 6H(9)), 12A(21), 16(3), 16A(7) or 17(6), after hearing any person who, not being a member of the Board or the committee, as the case may be, is entitled or allowed to be heard or otherwise has an opportunity of making representations or providing information at the meeting; and
- (b) in the case of any other meeting, the meeting or any part or parts of the meeting if

in the opinion of the Board or the committee, as the case may be, it is likely that -

- (i) the application of subsection (1) to such meeting or such part or parts of the meeting, as the case may be, would not be in the public interest;
- (ii) the application of subsection (1) to such meeting or such part or parts of the meeting, as the case may be, would result in premature release of information that would prejudice the position of the Board, the Government, the Chief Executive or the Chief Executive in

Council or, in the case of a meeting of the committee, the committee in carrying out its or his functions under this Ordinance;

- (iii) the application of subsection (1) to such meeting or such part or parts of the meeting, as the case may be, would result in a disclosure of information in breach of any duty of confidentiality owed to any person by the Board or the Government or, in the case of a meeting of the committee, the committee, or owed to the Government by the Board or, in the case

of a meeting of the  
committee, the  
committee, by virtue  
of any law or any  
requirement under any  
law, or in  
contravention of any  
prohibition by any  
order of a magistrate  
or a court or by any  
law or any  
requirement under any  
law;

- (iv) the application of  
subsection (1) to  
such meeting or such  
part or parts of the  
meeting, as the case  
may be, would result  
in a disclosure of  
information in  
respect of which a  
claim to legal  
professional  
privilege could be



- maintained in law; or
- (v) any matter transacted at such meeting or such part or parts of the meeting, as the case may be, would be relevant to the institution or conduct of any legal proceedings.

(3) Subject to the provisions of this Ordinance, the Board or any committee appointed under section 2(3) or 2A may determine its practice and procedure at its meeting."

6 By deleting everything after "repealing" and substituting "'a local newspaper" and substituting "2 daily Chinese language local newspapers and 1 daily English language local newspaper".

7 In the proposed section 6 -

- (a) in subsection (1), by deleting "1 month" and substituting "2 months";
- (b) in subsection (2)(a)(ii), by adding

"nature of and" before "reasons";

(c) in subsection (3) -

(i) in paragraph (a) -

(A) by deleting "1 month" and  
substituting "2 months";

(B) by adding ", it shall be  
treated as not having been  
made" after "(1)";

(ii) by deleting everything after  
"(2)" and substituting ", it  
may be treated as not having  
been made.";

(d) in subsection (4) -

(i) by deleting "1 month" and  
substituting "2 months";

(ii) by deleting "the  
representations have been  
considered at a meeting under  
section 6D(1)" and substituting  
"the Chief Executive in Council  
has made a decision in respect  
of the draft plan in question  
under section 9";

(e) by deleting subsection (5) and  
substituting -

"(5) In respect of any representations which are available for public inspection under subsection (4), the Board shall cause a notice that complies with subsection (6) to be published in 2 daily Chinese language local newspapers and 1 daily English language local newspaper once a week during the first 3 weeks of the period during which the representations are so available for public inspection.";

- (f) in subsection (6)(a), by adding "and" at the end;
- (g) in subsection (6)(b), by deleting "; and" and substituting a full stop;
- (h) by deleting subsection (6)(c).

8

(a) In the proposed section 6A(3) -

- (i) in paragraph (a), by adding ", it shall be treated as not having been made" after "(1)";
- (ii) by deleting everything after "(2)" and substituting ", it may be

treated as not having been made."

(b) In the proposed section 6A(4), by deleting "the comments have been considered at a meeting under section 6D(1)" and substituting "the Chief Executive in Council has made a decision in respect of the draft plan in question under section 9".

(c) By deleting the proposed sections 6B and 6C.

(d) In the proposed section 6D -

(i) in subsection (1), by deleting everything after "after" and substituting "the expiration of the period of 3 weeks referred to in section 6A(1).";

(ii) in subsection (6), by deleting everything before paragraph (a) and substituting -

"(6) The Board may direct that all or some of the representations made in respect of the draft plan in question under section 6(1) shall be considered at the same meeting, whereupon such representations, as well as any comment made in

respect of any of such

representations -";

- (iii) in subsection (8), by deleting
- "consider and take a view as to whether it will propose amendments to the draft plan to which the representation and the comment (if any) relate" and substituting
- "decide whether or not to propose amendments to the draft plan in question".

(e) By adding -

**"6E. Proposed amendments under section 6D(8) to be made available for public inspection**

(1) Where the Board proposes any amendments under section 6D(8), the Board shall, as soon as reasonably practicable after the amendments are proposed, make the proposed amendments available for public inspection at reasonable hours, and shall continue to do so until the Chief Executive in Council has made a decision in respect of the draft plan in question under section 9.

(2) In respect of any proposed

amendments which are available for public inspection under subsection (1), the Board shall cause a notice that complies with subsection (3) to be published in 2 daily Chinese language local newspapers and 1 daily English language local newspaper once a week during the first 3 weeks of the period during which the proposed amendments are so available for public inspection.

(3) A notice referred to in subsection (2) shall -

- (a) specify the place and hours at which the proposed amendments to which the notice relates are available for public inspection under subsection (1); and
- (b) indicate that further representations may be made to the Board in respect of the proposed amendments under section 6F(1) and specify the

place and hours at which  
any further  
representations so made  
will be available for  
public inspection under  
section 6F(4).

**6F. Further representations  
in respect of proposed  
amendments**

(1) Where the Board proposes any amendments under section 6D(8), within the first 3 weeks of the period during which the proposed amendments are available for public inspection under section 6E(1), any person, other than that who has made any representation or comment after consideration of which the proposed amendments are proposed under section 6D(8), may make further representation to the Board in respect of the proposed amendments.

(2) A further representation referred to in subsection (1) shall -

(a) indicate -

(i) the proposed

amendments to  
which the  
further  
representation  
relates;

- (ii) whether the  
further  
representation  
is made in  
support of, or  
in opposition  
to, the proposed  
amendments; and
- (iii) the reasons for  
the further  
representation;  
and

- (b) be made in such manner as  
the Board requires.

(3) Where a further representation  
referred to in subsection (1) -

- (a) is made to the Board after  
the expiration of the  
period of 3 weeks referred  
to in subsection (1), it



shall be treated as not

having been made; or

- (b) does not comply with any of the requirements specified in or made under subsection (2), it may be treated as not having been made.

(4) The Board shall, as soon as reasonably practicable after the expiration of the period of 3 weeks referred to in subsection (1), make all further representations made to it under that subsection available for public inspection at reasonable hours, and shall continue to do so until the Chief Executive in Council has made a decision in respect of the draft plan in question under section 9.

**6G. Withdrawal of representations, etc.**

(1) Any person who makes any representation under section 6(1), or makes any comment in respect of any such representation under section 6A(1), may

by notice in writing to the Board withdraw the representation or comment, as the case may be, at any time before the representation or comment, as the case may be, has been considered at a meeting under section 6D(1).

(2) Any person who makes any further representation under section 6F(1) may by notice in writing to the Board withdraw the further representation at any time before the further representation has been considered at a meeting under section 6H(1).

(3) Where any representation, comment or further representation is withdrawn under subsection (1) or (2) -

- (a) the representation, comment or further representation, as the case may be, shall thereafter be treated as not having been made; and
- (b) in the case of the withdrawal of any representation, any

comment made under section  
6A(1) in respect of the  
representation shall  
thereafter be treated as  
not having been made.

**6H. Consideration of further  
representations in respect  
of proposed amendments**

(1) Where any further  
representation is made under section  
6F(1), the Board shall hold a meeting to  
consider the further representation as  
soon as reasonably practicable after the  
expiration of the period of 3 weeks  
referred to in that section.

(2) The Board shall, in respect of  
any meeting to be held under subsection  
(1), give reasonable notice of  
particulars of the meeting (including the  
date, time and place of the meeting) to -

- (a) the person who made the  
further representation to  
which the meeting relates  
under section 6F(1); and
- (b) the person who made any

representation or comment  
after consideration of  
which the proposed  
amendments in question are  
proposed under section  
6D(8).

(3) At a meeting held under  
subsection (1) -

- (a) the person who made the  
further representation to  
which the meeting relates  
under section 6F(1); and
- (b) the person who made any  
representation or comment  
after consideration of  
which the proposed  
amendments in question are  
proposed under section  
6D(8),

are entitled to attend and to be heard,  
either in person or by an authorized  
representative.

(4) If, at a meeting held under  
subsection (1), any of the persons  
entitled to attend and to be heard at the

meeting under subsection (3) fails to attend, either in person or by an authorized representative, the Board may -

- (a) proceed with the meeting in his absence; or
- (b) adjourn the meeting to such date as it considers appropriate.

(5) Without prejudice to subsection (4), where the Board is satisfied that there are reasonable grounds to do so, it may adjourn any meeting held or to be held under subsection (1) to such date as it considers appropriate.

(6) The Board may direct that all further representations made in respect of the proposed amendments in question under section 6F(1) shall be considered at the same meeting, whereupon such further representations -

- (a) shall be considered at the same meeting; and
- (b) may be considered by the Board either individually

or collectively as it may determine.

(7) Where -

(a) any meeting is adjourned under subsection (4) or (5); or

(b) the Board makes a direction under subsection (6),

the provisions of this section also apply, with necessary modifications, to the meeting so adjourned or the meeting held in accordance with the direction, as the case may be, save to the extent that the Board otherwise directs.

(8) Upon consideration of any further representation at a meeting under subsection (1), the Board shall decide whether or not to amend the draft plan in question, either by the proposed amendments in question, or by the proposed amendments as further varied in such manner as it considers appropriate.

(9) Where, in respect of any proposed amendments proposed under

section 6D(8), any further representation is made under section 6F(1) but no such further representation indicates under section 6F(2)(a)(ii) that it is made in opposition to the proposed amendments -

(a) subsections (3) and (4) shall not have application to any meeting to be held under subsection (1) in respect of any such further representation, and the other provisions of this section shall, with necessary modifications, be construed and have application accordingly; and

(b) subsection (8) shall be construed as requiring the Board, upon consideration of any such further representation, to amend the draft plan in question by the proposed

amendments.

**6I. Cases where there are no further representations in respect of proposed amendments**

Where, in respect of any proposed amendments proposed under section 6D(8), no further representation is made under section 6F(1) within the period of 3 weeks referred to in that section, the Board shall, as soon as reasonably practicable after the expiration of the period, amend the draft plan in question by the proposed amendments.

**6J. Effect of amendments under section 6H or 6I**

(1) Where the Board amends a draft plan under section 6H(8) (whether with or without application of section 6H(9)) or 6I, the draft plan shall thereafter be read as including the amendments, and, for the avoidance of doubt, any reference to the draft plan (however described) in this or any other Ordinance shall, unless the context otherwise requires, be



construed accordingly.

(2) Where any draft plan is read as including any amendments under subsection (1), the Board shall, as soon as reasonably practicable thereafter, make the amendments available for public inspection at reasonable hours, and shall continue to do so until the Chief Executive in Council has made a decision in respect of the draft plan under section 9."

- 9(a) By deleting "6B, 6C and 6D" and substituting "6D, 6E, 6F, 6G, 6H, 6I and 6J".
- 9(b) (a) In subparagraph (i), by deleting "1 month" and substituting "2 months".
- (b) In the Chinese text, by deleting subparagraph (ii) and substituting -
- "(ii) 廢除 "twice" 而代以 "once";".
- (c) By adding -
- "(iia) by repealing "a local newspaper" and substituting "2 daily Chinese language local newspapers and 1 daily English language local

newspaper";".

9(c)

(a) In the proposed section 7(4) -

(i) by deleting everything before  
paragraph (b) and substituting -

"(4) Where the Board makes  
any amendments to a draft plan  
under subsection (1) -

(a) subject to  
paragraph (b),  
sections 6, 6A,  
6D, 6E, 6F, 6G,  
6H, 6I and 6J  
shall apply,  
with necessary  
modifications,  
to and in  
relation to the  
amendments as  
they apply to  
and in relation  
to a draft plan  
exhibited under  
section 5; and";

(ii) in paragraph (b), by deleting "(2),

- (3), (4), (5) and (6), 6A, 6B, 6C  
and 6D" and substituting ", 6A, 6D,  
6E, 6F, 6G, 6H, 6I and 6J";
- (iii) by adding before paragraph (b) (i) -
- "(ia) the reference to "the  
period of 2 months during  
which a draft plan is  
exhibited under section 5"  
in section 6(1) were a  
reference to the period of  
2 months during which the  
amendments are exhibited  
under subsection (2);";
- (iv) in paragraph (b) (i), by deleting
- "(2) (a) were a reference to the  
amendment in question" and  
substituting "(1) and (2) (a) were a  
reference to any of the amendments";
- (v) by deleting paragraph (b) (ii) and  
substituting -
- "(ii) the reference to "the  
representations made in  
respect of the draft plan  
in question under section  
6(1)" in section 6D(6)

were a reference to the representations made in respect of any of the amendments under section 6(1) (as having application in the manner described in this subsection);";

(vi) in paragraph (b) (iii) -

(A) by deleting "to which the representation and the comment (if any) relate" and substituting "in question";

(B) by deleting "amendment in question." and substituting "amendments to which the representation in question and the comment in question (if any) relate";

(vii) in paragraph (b), by adding -

"(iv) each of the references to "draft plan in question" in sections 6H(8) and (9) (b) and 6I, the first and second references to

"draft plan" in section 6J(1) and the first reference to "draft plan" in section 6J(2) were a reference to the part or parts of the draft plan to which section 6D(8) (as having application in the manner described in this subsection) has application; and

- (v) each of the references to "draft plan in question" in sections 6(4), 6A(4), 6E(1) and 6F(4), the third reference to "draft plan" in section 6J(1) and the second reference to "draft plan" in section 6J(2) remained a reference to the draft plan."

- (b) In the proposed section 7(5), by deleting "(2), (3), (4), (5) and (6), 6A, 6B, 6C and 6D" and substituting ", 6A, 6D, 6E, 6F, 6G, 6H, 6I and 6J".

- 9(d) In the proposed section 7(6), by deleting "Where" and substituting "Subject as otherwise provided in this Ordinance, where".
- 10(a) By deleting the proposed section 8(1A)(a) and (b) and substituting -
- "(a) a schedule of the representations (if any) made under section 6(1) in respect of the draft plan (whether with or without any amendments made under this Ordinance) or any of the amendments made under section 7 to the draft plan (whether with or without any amendments made under this Ordinance), and the comments (if any) made under section 6A(1) in respect of any of such representations;
  - (b) a schedule of the further representations (if any) made under section 6F(1) in respect of any proposed amendments to the draft plan (whether with or without any amendments made under this Ordinance); and
  - (c) a schedule of the amendments (if any)

made by the Board under this Ordinance to the draft plan (whether with or without any amendments made under this Ordinance)".

- 10(b) (a) In subparagraph (iii) (B), by deleting "1 month"; and substituting "2 months".
- (b) By deleting subparagraphs (iv), (v) and (vi).
- 11 By deleting the clause.
- 12 By deleting paragraphs (a) and (b).
- 12(c) (a) By deleting subparagraph (i).
- (b) In subparagraph (iv) -
- (i) by deleting "is under subsection" and substituting "(1) (b) (ii)";
  - (ii) in the proposed section 12(3), by deleting "(1A) (b)";
  - (iii) in the proposed section 12(3) (a), by deleting "6B, 6C, 6D" and substituting "6D, 6E, 6F, 6G, 6H, 6I, 6J";
  - (iv) in the proposed section 12(3) (b) -
    - (A) by deleting "6B, 6C, 6D" and

substituting "6D, 6E, 6F, 6G,  
6H, 6I, 6J";

(B) by deleting subparagraph (ii)  
and substituting -

"(ii) the reference to "the  
representations made  
in respect of the  
draft plan in  
question under  
section 6(1)" in  
section 6D(6) were a  
reference to the  
representations made  
in respect of any of  
the amendments under  
section 6(1) (as  
having application in  
the manner described  
in this  
subsection);";

(C) in subparagraph (iii) -

(I) by deleting "plan to  
which the  
representation and  
the comment (if any)



relate" and

substituting "plan in  
question";

- (II) by deleting "and the  
comment (if any)  
relate." and  
substituting "in  
question and the  
comment in question  
(if any) relate;  
and";

- (D) by adding -

"(iv) each of the references  
to "draft plan in  
question" in sections  
6H(8) and (9)(b) and  
6I, the first and  
second references to  
"draft plan" in section  
6J(1) and the first  
reference to "draft  
plan" in section 6J(2)  
were a reference to the  
part or parts of the  
plan to which section

6D(8) (as having  
application in the  
manner described in  
this subsection) has  
application.".

12(d) In the proposed section 12(3A), by deleting "6B,  
6C, 6D" and substituting "6D, 6E, 6F, 6G, 6H, 6I,  
6J".

13 In the proposed section 12A -

(a) in subsection (1) -

(i) by deleting "who wishes the  
Board to consider" and  
substituting "may apply to the  
Board for consideration of";

(ii) by deleting "may apply to the  
Board for that purpose";

(b) by deleting subsection (3)(a) and  
substituting -

"(a) set out -

(i) whether the applicant  
considers he has  
within a reasonable  
period before the

application is made -

- (A) obtained the consent in writing of each person (other than himself) who is a current land owner in respect of the application, or notified such person in writing of the application; or
- (B) taken such reasonable steps as the Board requires in order to obtain the consent of such person in respect of the application, or to give notification to

such person in  
respect of the  
application; and

- (ii) particulars of such  
consent or  
notification or such  
steps, as the case  
may be;"

- (c) in subsection (4), by deleting "At any  
time after" and substituting "Where";

- (d) in subsection (5) (b) -

- (i) by adding "within a reasonable  
period before the application  
is made" after "has";

- (ii) by deleting subparagraphs (i)  
and (ii) and substituting -

- "(i) obtained the consent  
in writing of each  
person (other than  
the applicant) who is  
a current land owner  
in respect of the  
application, or  
notified such person  
in writing of the

application; or

- (ii) taken such reasonable steps as the Board requires in order to obtain the consent of such person in respect of the application, or to give notification to such person in respect of the application.";

- (e) by deleting subsection (7) and substituting -

"(7) In respect of any application referred to in subsection (6), the Board -

- (a) shall cause a notice that complies with subsection (8) to be posted in a prominent position on or near the land to which the application relates, or on any premises or

structure on the  
land, at the  
beginning of the  
period during which  
the application is  
available for public  
inspection under  
subsection (6); or

- (b) shall cause a notice  
that complies with  
subsection (8) to be  
published in 2 daily  
Chinese language  
local newspapers and  
1 daily English  
language local  
newspaper once a week  
during the first 3  
weeks of the period  
referred to in  
paragraph (a).";

(f) in subsection (8) –

- (i) by adding "(a) or (b)" after  
"(7)";
- (ii) in paragraph (b), by adding

"and specify the place and hours at which any comments so made will be available for public inspection under subsection (11A)" before the full stop;

(g) in subsection (11) -

- (i) in paragraph (a), by adding ", it shall be treated as not having been made" after "(9)";
- (ii) by deleting everything after "(10)" and substituting ", it may be treated as not having been made.";

(h) by adding -

"(11A) The Board shall, as soon as reasonably practicable after the expiration of the period of 3 weeks referred to in subsection (9), make all comments made to it under that subsection available for public inspection at reasonable hours, and shall continue to do so until the application in question has been considered at a meeting under

subsection (14).";

(i) in subsection (13) -

(i) in paragraph (b) -

(A) by deleting "subsections  
(6), (7), (8), (9), (10)  
and (11)" and substituting  
"subsection (6)";

(B) by deleting "they apply"  
and substituting "it  
applies";

(ii) in paragraph (c), by adding  
before "for" -

"subject to any exemption  
under subsection (13A) -

(i) subsections (7),  
(8), (9), (10),  
(11) and (11A)  
shall further  
apply, with  
necessary  
modifications,  
to and in  
relation to the  
further  
information as



they apply to  
and in relation  
to the  
application; and

(ii)";

(j) by adding -

"(13A) Where the Board is  
satisfied that there are reasonable  
grounds to do so, it may exempt any  
further information accepted by it  
for the purposes of an application  
under subsection (12) from  
subsection (13) (c).";

(k) in subsection (22) -

(i) in paragraphs (a), (b)(iii) and  
(c)(ii), by adding "in Council"  
after "Chief Executive";

(ii) in paragraphs (a), (b) and (c),  
by deleting "12(1A)(b)"  
wherever it appears and  
substituting "12(1)(b)(ii)";

(l) in subsection (23) -

(i) in the definition of "current  
land owner", by deleting  
everything after "means" and

substituting "any person whose name is registered in the Land Registry as that of an owner of the land to which the application relates, as at the commencement of such period before the application is made as is specified by the Board by notice published in the Gazette;"

- (ii) in the definition of "referred approved plan", by deleting "12(1A)(b)" and substituting "12(1)(b)(ii)";
- (iii) in the definition of "relevant approved plan" -
  - (A) by adding "(b) or" before "(c)";
  - (B) by deleting "12(1A)(b)" and substituting "12(1)(b)(ii)";
- (iv) in the definition of "relevant draft plan", by deleting "12(1A)(b)" and substituting "12(1)(b)(ii)".

- 14(c)                   (a) In the proposed section 14(3) -
- (i) by adding "for the purposes of section 12A(3)(c), 16(2)(c) or 16A(3)(b)" after "subsection (2)";
  - (ii) in paragraph (a), by deleting everything after "be incurred," and substituting "whether by the Board or by the Government, in relation generally to the processing of applications made under section 12A(1), 16(1) or 16A(2), as the case may be; and";
  - (iii) in paragraph (b), by deleting "providing the matter, service or facility" and substituting "the processing of any particular application".
- (b) By adding -
- "(4A) The Secretary for Financial Services and the Treasury, and any public officer authorized by the Secretary in that behalf, may in any particular case waive or reduce any fees prescribed under subsection (2) as the Secretary or the

public officer, as the case may be, thinks fit."

- (c) In the proposed section 14(5), by adding ", and for the purposes of subsection (3)(a), any expenditure incurred, or likely to be incurred, whether by the Board or by the Government, in relation to the processing of any application made by any such Government department under section 12A(1), 16(1) or 16A(2), as the case may be, shall be disregarded" after "(Cap. 430)".

16(a) By deleting the proposed section 16(2)(a) and substituting -

"(a) set out -

- (i) whether the applicant considers he has within a reasonable period before the application is made -

- (A) obtained the consent in writing of each person (other than himself) who is a current land owner in respect of the application, or notified such person in

writing of the application;

or

(B) taken such reasonable steps as the Board requires in order to obtain the consent of such person in respect of the application, or to give notification to such person in respect of the application; and

(ii) particulars of such consent or notification or such steps, as the case may be;".

16(b) (a) In the proposed section 16(2A), by deleting "At any time after" and substituting "Where".

(b) In the proposed section 16(2B) (b) -

(i) by adding "within a reasonable period before the application is made" after "has";

(ii) by deleting subparagraphs (i) and (ii) and substituting -

"(i) obtained the consent in writing of each person (other than the applicant)

who is a current land owner  
in respect of the  
application, or notified  
such person in writing of  
the application; or

- (ii) taken such reasonable steps  
as the Board requires in  
order to obtain the consent  
of such person in respect  
of the application, or to  
give notification to such  
person in respect of the  
application."

(c) In the proposed section 16(2C), by adding "at a  
meeting" after "considered".

(d) By deleting the proposed section 16(2D) and  
substituting -

"(2D) In respect of any application  
referred to in subsection (2C), the  
Board -

- (a) shall cause a notice that  
complies with subsection  
(2E) to be posted in a  
prominent position on or

near the land to which the application relates, or on any premises or structure on the land, at the beginning of the period during which the application is available for public inspection under subsection (2C); or

- (b) shall cause a notice that complies with subsection (2E) to be published in 2 daily Chinese language local newspapers and 1 daily English language local newspaper once a week during the first 3 weeks of the period referred to in paragraph (a).".

(e) In the proposed section 16(2E) -

- (i) by adding "(a) or (b)" after "(2D)";
- (ii) in paragraph (b), by adding "and specify the place and hours at which any comments so made will be available for public inspection under

subsection (2HA)" before the full stop.

(f) In the proposed section 16(2H) -

(i) in paragraph (a), by adding ", it shall be treated as not having been made" after "(2F)";

(ii) by deleting everything after "(2G)" and substituting ", it may be treated as not having been made.".

(g) By adding -

"(2HA) The Board shall, as soon as reasonably practicable after the expiration of the period of 3 weeks referred to in subsection (2F), make all comments made to it under that subsection available for public inspection at reasonable hours, and shall continue to do so until the application in question has been considered at a meeting under subsection (3).".

(h) In the proposed section 16(2I)(a), by adding "at a meeting" after "Board of the application".

(i) In the proposed section 16(2J) -

(i) in paragraph (b) -



- (A) by deleting "subsections (2C), (2D), (2E), (2F), (2G) and (2H)" and substituting "subsection (2C)";
- (B) by deleting "they apply" and substituting "it applies";
- (ii) in paragraph (c), by adding before "for" -
  - "subject to any exemption under subsection (2K) -
    - (i) subsections (2D), (2E), (2F), (2G), (2H) and (2HA) shall further apply, with necessary modifications, to and in relation to the further information as they apply to and in relation to the application; and
    - (ii)".

- (j) By adding -

"(2K) Where the Board is satisfied that there are reasonable grounds to do

so, it may exempt any further information accepted by it for the purposes of an application under subsection (2I) from subsection (2J) (c).".

16 By adding -

"(ba) in subsection (3), by repealing "in the absence of the applicant" and substituting "at a meeting";".

16(c) In the proposed section 16(3A), by adding "at a meeting" after "an application".

16(e) In the proposed section 16(8), by deleting everything after "means" and substituting "any person whose name is registered in the Land Registry as that of an owner of the land to which the application relates, as at the commencement of such period before the application is made as is specified by the Board by notice published in the Gazette.".

17 In the proposed section 16A -

(a) by deleting subsection (1) and substituting -

"(1) Where any permission is granted under section 16, the permission may, apart from being read as it is, be read as having effect subject to any amendments which are Class A amendments.";

- (b) in subsection (2), by deleting everything after "may" and substituting "apply to the Board for acceptance of any amendments which are Class B amendments in relation to the permission for the purposes of this section.";
- (c) by deleting subsections (5) and (6);
- (d) in subsection (7), by deleting "in the absence of the applicant";
- (e) by deleting subsection (9) and substituting -

"(9) Where the Board has under subsection (7) accepted any application or applications in respect of any permission granted under section 16, the permission may, apart from being read as it is, be read as having effect subject to the amendments which are the subject of -

(a) where only one such application has been accepted, the application; or

(b) where two or more such applications have been accepted, any one of the applications.";

(f) by deleting subsection (11) and substituting -

"(11) Notwithstanding anything in this section, in construing any reference in this section to a permission granted under section 16 (however described), any amendments taking effect in relation to the permission under this section shall be disregarded.".

18(b) (a) By deleting the proposed section 17(2B) and substituting -

"(2B) In respect of any application referred to in subsection (2A), the Board -

(a) shall cause a notice that

complies with subsection (2C) to be posted in a prominent position on or near the land to which the application relates, or on any premises or structure on the land, at the beginning of the period during which the application is available for public inspection under subsection (2A); or

- (b) shall cause a notice that complies with subsection (2C) to be published in 2 daily Chinese language local newspapers and 1 daily English language local newspaper once a week during the first 3 weeks of the period referred to in paragraph (a).".

- (b) In the proposed section 17(2C) -

- (i) by adding "(a) or (b)" after "(2B)";
- (ii) in paragraph (b), by adding "and

specify the place and hours at which any comments so made will be available for public inspection under subsection (2FA)" before the full stop.

(c) In the proposed section 17(2F) -

- (i) in paragraph (a), by adding ", it shall be treated as not having been made" after "(2D)";
- (ii) by deleting everything after "(2E)" and substituting ", it may be treated as not having been made."

(d) By adding -

"(2FA) The Board shall, as soon as reasonably practicable after the expiration of the period of 3 weeks referred to in subsection (2D), make all comments made to it under that subsection available for public inspection at reasonable hours, and shall continue to do so until the decision in question has been reviewed under this section."

(e) In the proposed section 17(2H) -

- (i) in paragraph (b) -
  - (A) by deleting "subsections (2A),

- (2B), (2C), (2D), (2E) and (2F)"
- and substituting "subsection
- (2A)";
- (B) by deleting "they apply" and
- substituting "it applies";
- (ii) in paragraph (c) -
- (A) by adding before "for" -
- "subject to any exemption
- under subsection (2I) -
- (i) where the
- application is an
- application for a
- review of the
- Board's decision
- under section 16,
- subsections (2B),
- (2C), (2D), (2E),
- (2F) and (2FA)
- shall further
- apply, with
- necessary
- modifications, to
- and in relation
- to the further
- information as

they apply to and  
in relation to  
the application;  
and

(ii)";

(B) by deleting "(i) the" and  
substituting "(A) the";

(C) by deleting "(ii) anything done  
under that subsection" and  
substituting "(B) anything done  
under subsection (2)".

(f) By adding -

"(2I) Where the Board is satisfied  
that there are reasonable grounds to do  
so, it may exempt any further information  
accepted by it for the purposes of an  
application under subsection (2G) from  
subsection (2H) (c)".

19(a)

(a) By adding before subparagraph (i) -

"(ia) by adding ", and enter land and any  
premises on it through which access  
is needed for the purposes of" after  
"purposes of";".

(b) In subparagraph (i), in the proposed section



22(1)(aa) -

(i) by deleting "has been" and  
substituting "was";

(ii) by deleting "以".

(c) In the Chinese text, by deleting subparagraph  
(ii) and substituting -

"(ii) 廢除(a)段而代以 -

"(a) 貼上第23條所指的通知書；"；".

(d) In subparagraph (iii), by deleting "已" and  
substituting "曾".

19

(a) By adding -

"(aa) in subsection (2), by repealing  
everything before "the Authority" and  
substituting -

"(2) Notwithstanding  
subsection (1) -

(a) the Authority  
shall not  
exercise any  
power under  
subsection (1)  
for the purposes  
of ascertaining

any matter under  
subsection  
(1)(aa) unless  
the Authority has  
reasonable  
grounds to  
suspect that  
there is or was  
unauthorized  
development and  
it is necessary  
to enter the land  
or premises in  
question, or to  
have access  
through the land  
or premises in  
question, as the  
case may be, in  
order to enable  
the Authority to  
ascertain the  
matter; and

(b) ";".

(b) By deleting paragraph (b) and substituting -

"(b) in subsection (3), by repealing "has been unauthorized development and it is necessary to enter the land or premises in order to ascertain whether there is or has been" and substituting "was unauthorized development and it is necessary to enter any land or premises, or to have access through any land or premises, in order to enable the Authority to ascertain whether there is or was unauthorized development or any matters that in the opinion of the Authority constitute or constituted an";".

19(c) (a) By deleting the proposed section 22(7) and substituting -

"(7) For the purposes of exercising any power or performing any duty under or for the purposes of section 20, 21 or 23, or determining whether there is or was any contravention of any of the provisions of section 20, 21 or 23, where the Authority has reasonable grounds to believe that any

person has any relevant information, the Authority may by notice in writing served on the person require him to provide the relevant information to the Authority, within the period specified in the notice."

(b) By adding -

"(9) In subsection (7), "relevant information" (有關資料) means information reasonably required by the Authority for the purposes of -

(a) ascertaining whether there is or was unauthorized development or any matters that in the opinion of the Authority constitute or constituted an unauthorized development;

(b) identifying any person -

(i) who undertakes or continues, or undertook or continued, any development; or

(ii) on whom a notice

may be served  
under section  
23(1)".

20 In the Chinese text, by deleting paragraph (a)(i)  
and substituting -

"(i) 廢除“凡現”而代以“凡監督認為”；”.

20(b)(i) By deleting "現".

20 By deleting paragraph (e) and substituting -

"(e) in subsection (4), by repealing  
"unauthorized development referred to in  
subsection (3) is or was" and substituting  
"relevant matters referred to in  
subsection (3) were";".

20(k) In the proposed section 23(8A)(b), by deleting  
"where" and substituting "if".

20 By deleting paragraph (1) and substituting -

"(1) in subsection (9) -

(i) by adding -

"(aa) the unauthorized  
development which

existed according to  
the opinion of the  
Authority in fact was  
not a development;"

- (ii) in paragraph (b), by repealing  
"the development" and  
substituting "the unauthorized  
development which existed  
according to the opinion of the  
Authority in fact";
- (iii) in paragraph (c), by repealing  
"the development is" and  
substituting "the unauthorized  
development which existed  
according to the opinion of the  
Authority in fact is";
- (iv) in paragraph (d), by repealing  
"permission for the development  
was" and substituting "the  
unauthorized development which  
existed according to the opinion  
of the Authority in fact was a  
development for which permission  
had been";".

- 20 (m) By deleting the proposed section 23(9A) (a) and (b) and substituting -
- "(a) the unauthorized development which existed according to the opinion of the Authority in fact was a development or was an unauthorized development; or
  - (b) the relevant matters which constituted such unauthorized development according to the opinion of the Authority in fact constituted such unauthorized development."
- 20 (n) (a) In the proposed section 23(11) -
- (i) in paragraph (a), by deleting "photograph of land" where it twice appears and substituting "document";
  - (ii) by deleting "現" where it twice appears;
  - (iii) by deleting "已" and substituting "曾".
- (b) In the proposed section 23(12), by deleting "the unauthorized development" and substituting "such unauthorized development".

- (a) by deleting "photograph of land, or any copy of a photograph of land" and substituting "document incorporating an image of an aerial photograph of land, or any copy of such document";
- (b) by deleting "person employed in the Lands Department" and substituting "public officer authorized by the Director of Lands in that behalf".

22

- (a) In the heading, by deleting "**Section**" and substituting "**Sections**".
- (b) By deleting "is added" and substituting "are added".
- (c) By adding -

**"26A. Board to supply copies of documents or materials**

Where any document or material is available for public inspection under section 6(4), 6A(4), 6E(1), 6F(4), 6J(2), 12A(6) or (11A), 16(2C) or (2HA) or 17(2A) or (2FA), the Board shall supply a copy of the document or material to any person on payment of such fee as the Board may determine."

- (d) In the proposed section 27 -



- (i) in subsection (1), by deleting "7, 8, 9(a), (b) and (c), 10 and 11" and substituting "6, 7, 8, 9(a), (b) and (c) and 10";
- (ii) in subsection (2), by deleting "(b),";
- (iii) in subsection (6)(a) -
  - (A) by deleting "any plan which has been exhibited, or";
  - (B) by deleting ", under section 5 of" and substituting "under section 5 of";
  - (C) by deleting "a plan which has been exhibited, or";
  - (D) by deleting ", under section 5, as the case may be" and substituting "under section 5";
- (iv) in subsection (6)(b), by adding "and" at the end;
- (v) by deleting subsection (6)(c) and (d).

- 26                   (a) By adding before paragraph (a) -
- "(aa) by repealing "the Board shall,  
whether or not the works are shown on  
any draft plan under that  
Ordinance";".
- (b) By deleting paragraph (a) and substituting -
- "(a) in paragraph (a) -
- (i) by adding "the Board shall,  
whether or not the works are  
shown on any draft plan  
under that Ordinance,"  
before "exhibit";
- (ii) by repealing the semicolon  
at the end and substituting  
", and the provisions of  
that Ordinance shall apply  
accordingly; and";".

27                   By deleting the clause.

28                   By deleting the clause and substituting -

**"28. Development schemes**

Section 25(8) of the Urban Renewal  
Authority Ordinance (Cap. 563) is amended -

- (a) by repealing "section 6 or 7 of the Town Planning Ordinance (Cap. 131) and such amendment includes" and substituting "the Town Planning Ordinance (Cap. 131), whether under section 6H(8) (whether with or without application of section 6H(9) of that Ordinance) or 6I of that Ordinance or section 7 of that Ordinance, and the amendments include";
- (b) by repealing "a notice is first given under section 6(7) of that Ordinance or the date when the amendment is" and substituting "the proposed amendments in question are first made available for public inspection under section 6E(1) of that Ordinance or the date when the amendments are".".

**Annex II**

## LAND TITLES BILL

**COMMITTEE STAGE**Amendments to be moved by the Secretary for  
Housing, Planning and Lands

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>(a) In subclause (1) -</p> <p>(i) by deleting the definition of "appeal";</p> <p>(ii) by deleting the definition of "applications record" and substituting -</p> <p>"applications register"</p> <p>(申請註冊紀錄) means the applications register kept under section 5A;"</p> <p>(iii) by deleting the definition of "block Government lease";</p> <p>(iv) by deleting the definition of "caution";</p> <p>(v) by deleting the definition of "charge" and substituting -</p>

""charge" (押記) means -

- (a) a legal charge  
within the meaning  
of section 2 of the  
Conveyancing and  
Property Ordinance  
(Cap. 219); or
- (b) a mortgage of an  
equitable interest  
over land but  
excluding any  
mortgage of an  
interest which is  
only capable of  
being protected by a  
consent caution or  
non-consent  
caution;"
- (vi) in the definition of "charging  
order", by deleting "a court" and  
substituting "any court of  
competent jurisdiction";

- (vii) by deleting the definition of  
"commencement day";
- (viii) in the definition of "company", by  
deleting "Hong Kong;" and  
substituting -
  - "Hong Kong,  
and includes an unregistered  
company within the meaning of  
Part X of the Companies  
Ordinance (Cap. 32);";
- (ix) by deleting the definition of "date  
of first registration" and  
substituting -
  - "date of first registration"  
(首次註冊日期) means -
    - (a) in relation to  
registered land, the  
date determined in  
accordance with  
section 20C of this  
Ordinance or section  
3 of Schedule 1A,  
whichever is

- applicable; and
- (b) in relation to a registered long term lease, the date determined in accordance with section 47(5) of this Ordinance or section 6 of Schedule 1A, whichever is applicable;";
- (x) by deleting the definition of "dealing" and substituting -
- "dealing" (交易) means a disposition or transmission;";
- (xi) in the definition of "entry", by deleting "Register, and" and substituting "Register; and";
- (xii) by deleting the definition of "first registration";

(xiii) in the definition of "image" or  
"image record", by deleting  
""image" (影像) or";

(xiv) by deleting the definition of  
"instrument" and substituting -  
""instrument" (文書) includes -

(a) a deed, conveyance,  
judgment, decree,  
order or other  
document which is -

(i) required to  
support, or is  
capable of  
supporting, an  
application for  
registration;  
or

(ii) specified in  
any other  
enactment as a  
document which  
shall or may  
support an



application for  
registration  
under this  
Ordinance (or  
words to the  
like effect);  
and

(b) a memorial which  
supports a current  
entry in the Title  
Register,

but does not include a will  
except a will which is the  
subject of a memorial referred  
to in paragraph (b);";

(xv) by deleting the definition of  
"land" and substituting -

"land" (土地) includes -

(a) land covered by  
water; and

(b) a thing attached to  
land or permanently  
fastened to a thing  
attached to land,

but does not include an  
interest in or over land other  
than -

(c) an undivided share  
in land; and

(d) such an interest  
vested in a person  
by virtue of the  
operation of section  
20D, 21(1) or 22(1)  
of this Ordinance or  
section 4 or 7 of  
Schedule 1A;"

(xvi) by deleting the definition of "land  
title record";

(xvii) in the definition of "lease", by  
adding "and a tenancy" after "a  
lease";

(xviii) by deleting the definition of  
"lessee" and substituting -

"lessee" (承租人) means -

- (a) in relation to a  
registered long term  
lease, the person  
named in the Title  
Register as the  
lessee of the lease;  
and
  - (b) in relation to any  
other lease, the  
lessee of the  
lease;"
- (xix) in the definition of "lis pendens",  
by deleting paragraph (a) and  
substituting -
  - "(a) any action or proceeding  
pending in any court or  
tribunal that relates to  
land or any interest in  
or charge on land; or"
- (xx) in the definition of "long term  
lease" -
  - (A) by deleting "bona fide";
  - (B) by deleting paragraph (a) and  
substituting -

"(a) granted by -

(i) subject to  
subparagraph

(ii), the owner  
of registered  
land;

(ii) if the lease  
was granted  
before the land  
became  
registered land  
under this  
Ordinance, the  
owner of the  
land at the  
time of the  
grant,

of the right to  
exclusive possession  
of the land for a  
term of not less  
than 21 years;"

(xxi) by deleting the definition of "long  
term lease register";

- (xxii) in the definition of "non-consent caution", by deleting "(4),";
- (xxiii) by deleting the definition of "old schedule lot";
- (xxiv) by deleting the definition of "owner" and substituting -  
"owner" (擁有人) means -

- (a) in relation to registered land, the person (including, in respect of registered land to which Part II of the New Territories Ordinance (Cap. 97) applies, any clan, family or t'ong) named in the Title Register as -

- (i) the owner, lessee or holder (or words to the like effect) of

a Government

lease of the

land; or

(ii) the owner or

holder (or

words to the

like effect) of

an undivided

share in the

land; and

(b) in relation to a registered

charge, the person named in

the Title Register as the

person in whose favour the

charge is made;"

(xxv) by deleting the definition of

"ownership register";

(xxvi) by deleting the definition of

"professional indemnity insurer";

(xxvii) by deleting the definition of

"register" and substituting -

"register" (註冊), when used as a verb, means to make, remove, alter or add to an entry in the Title Register, but does not include to make, remove, alter or add to an entry in the Title Register to the extent that the entry denotes, in the case of the presentation of an application for the registration of a matter, that registration is pending or withheld in respect of the matter; and

"registered" (註冊),

"unregistered" (未經註冊) and

"registration" (註冊) shall be construed accordingly;"

(xxviii) in the definition of "registered charge", by adding "under section 35" after "lease";

(xxix) by deleting the definition of

"registered land" and

substituting -

"registered land" (註冊土地) means -

(a) land -

(i) held under a

Government

lease; and

(ii) the title to

which is

registered

under section

20B; and

(b) land deemed to be

registered land

under section 2 of

Schedule 1A;"

(xxx) by deleting the definition of

"registered long term lease" and

substituting -

"registered long term lease"

(註冊長期租契) means -



- (a) a long term lease  
registered under  
section 47; and
- (b) a lease deemed to  
be a registered  
long term lease  
under section 5 of  
Schedule 1A;";
- (xxxi) in the definition of "remove", by  
adding "to" before "delete";
- (xxxii) by deleting the definition of  
"title number";
- (xxxiii) by deleting the definition of  
"Title Register" and substituting -  
"**"Title Register"** (業權註冊紀錄) means  
the Title Register kept under  
section 5;";
- (xxxiv) by deleting the definition of  
"transmission" and substituting -  
"**"transmission"** (傳轉) means the  
passing of the title to  
registered land, a registered  
charge or a registered long  
term lease from one person to

another person under an order  
of a court of competent  
jurisdiction, under an  
enactment or by operation of  
law;"

(xxxv) in the definition of "valuable  
consideration", by deleting the  
semicolon and substituting a full  
stop;

(xxxvi) by deleting the definition of  
"working day";

(xxxvii) by adding -

"appointed day" (指定日期) means the  
day appointed under section  
1(2) for the commencement of  
section 20B;

"Court" (法庭) means the Court of  
First Instance;

"Land Registry" (土地註冊處) means  
the Land Registry of the  
Government of the Hong Kong  
Special Administrative Region  
which is administered by the  
Registrar;

"Land Titles Indemnity Fund"

(土地業權彌償基金) means the indemnity fund established pursuant to section 87A;

"mortgage" (按揭) means a security over land for securing money or money's worth;

"regulations" (《規例》) means regulations made under this Ordinance;

"unregistrable interest"

(不可註冊權益) has the meaning assigned to it by section 1A(1) of the Land Registration Ordinance (Cap. 128);".

(b) By deleting subclause (2)(a), (b), (c), (d) and (e) and substituting -

"(a) the title to land becomes registered under this Ordinance by virtue of an entry being made in the Title Register specifying a person as being the owner of that land, and references in this Ordinance to registered land shall

be construed accordingly; and

- (b) any reference in any other enactment to "register in the Land Registry" or "registered in the Land Registry", or words to the like effect, shall be construed to mean register or registered under the Land Registration Ordinance (Cap. 128) or this Ordinance, as the case may require."

3

- (a) By deleting subclause (1) and substituting -
- "(1) Subject to Part 2B and Schedule 1A, this Ordinance applies to land held under a Government lease."
- (b) In subclause (2), by deleting "another" and substituting "any other".
- (c) By deleting subclause (3) and substituting -
- "(3) Where an instrument supporting an application for registration of a transfer under this Ordinance is void under the provisions of any other enactment governing the validity of a transfer, then the provisions of that

enactment shall, in relation to the land to which the transfer relates, prevail over the provisions of this Ordinance."

(d) In subclause (4)(a), by deleting "定權益或衡平法" and substituting "律上或衡平法上的".

4 By deleting the clause.

5 By deleting the clause and substituting -

**"5. The Title Register**

(1) The Registrar shall keep in the Land Registry a register to be known as the Title Register.

(2) There shall be entered in the Title Register such matters as are or may be required to be entered therein under this Ordinance or any other enactment including, but not limited to -

(a) particulars of the land the title to which is registered under this Ordinance, including -

- (i) its title number (which may include letters or alphanumeric symbols or characters);
  - (ii) the lot number of the land;
  - (iii) the undivided shares, if any, in the land;
  - (iv) the location or address, if any, of the land;
  - (v) the date of commencement of the term of the Government lease and its expiry date;
  - (vi) the name of the owner or owners of the land; and
  - (vii) the capacity in which the owner or owners hold the land, whether as sole owner, tenants in common, joint tenants, trustee or otherwise;
- (b) particulars of each long term lease registered under this Ordinance, including -
- (i) its title number (which may include letters or alphanumeric symbols or characters);

- (ii) the lot number of the land;
- (iii) the undivided shares, if any,  
in the land;
- (iv) the location or address, if  
any, of the land;
- (v) the term of the lease;
- (vi) the name of the lessee or  
lessees of the lease; and
- (vii) the capacity in which the  
lessee or lessees hold the  
lease, whether as sole lessee,  
tenants in common, joint  
tenants, trustee or otherwise;
- (c) particulars of each charge registered  
under this Ordinance, including -
  - (i) its application number (which  
may include letters or  
alphanumeric symbols or  
characters); and
  - (ii) the name of the chargor;
- (d) particulars of all instruments which  
support a current entry in the Title  
Register;

- (e) the date of registration of each of the instruments referred to in paragraph (d);
- (f) particulars of any pending application for the registration of any matter under this Ordinance; and
- (g) such other matters as the Registrar is of the opinion should be contained in the Title Register."

New

By adding -

**"5A. Applications register**

(1) The Registrar shall keep in the Land Registry a register to be known as the applications register, which shall contain a record of all pending applications for the registration of any matter under this Ordinance.

(2) The applications register shall contain such particulars as are required by the regulations to be contained therein.



**5B. Supporting documents**

(1) The Registrar shall keep in the Land Registry, or make and keep in the Land Registry a microfilm, image record or other record (including an image record of a microfilm) of, the following documents -

- (a) any memorial which supports a current entry in the Title Register;
- (b) the documents, if any, accompanying a memorial referred to in paragraph (a);
- (c) any application for the registration of a matter where -
  - (i) the matter has been registered; and
  - (ii) the application supports a current entry in the Title Register;
- (d) the documents, if any, accompanying an application referred to in paragraph (c).

(2) Where a microfilm, image record or other record of a document is made under subsection (1), the Registrar may -

- (a) destroy or otherwise dispose of the document from which the record was made; or
- (b) return that document to the person by whom, or on whose behalf, it was delivered to the Land Registry.

(3) Where a microfilm, image record or other record is made of a document under subsection (1), the microfilm, image record or other record, as the case may be, shall be treated for all purposes as the original document.

#### **5C. Form of registers**

The Title Register and the applications register may be kept in such form as the Registrar considers appropriate, including in a form other than a documentary form."

6

(a) In subclause (1) -

(i) in paragraph (a), by deleting "the Land Registry in accordance with the provisions of";

(ii) by adding -

"(aa) subject to the regulations, be responsible for the general management and administration of the Land Titles Indemnity Fund;"

(iii) in the Chinese text, by deleting paragraph (b) and substituting -

"(b) 對遵守本條例條文作出監管；  
及";

(iv) in paragraph (c), by deleting "as are imposed" and substituting "and exercise such other powers as are imposed or conferred".

(b) In subclause (2) -

- (i) by adding "and exercise of his powers," before "and in particular";
- (ii) in paragraph (c), by deleting everything after "程序" and substituting "、法律程序文件、資料或解釋，並可爲此目的而爲該人監誓或監理該聲明;"
- (iii) in paragraph (d) -
  - (A) by deleting "any registration" and substituting "the registration of a matter";
  - (B) in subparagraph (iv), by deleting "a matter" and substituting "the matter";
- (iv) in paragraph (e), by deleting the semicolon and substituting "; and";
- (v) in paragraph (f), by deleting "; and" and substituting a full stop;
- (vi) by deleting paragraph (g).

- (c) In subclause (3), by deleting "in accordance with section 94".

New

By adding -

**"6A. Registrar may apply to Court for directions**

If any question of law arises in respect of the performance or exercise of any functions or powers imposed or conferred on the Registrar by or under this Ordinance, the Registrar may apply to the Court for directions."

7

In the heading, by adding "**functions and**" before "**powers**".

8

- (a) In subclause (2), by deleting "9" and substituting "9A".

- (b) In subclause (3) -

- (i) by deleting paragraph (a) and substituting -

"(a) the Registrar (including a delegate of the Registrar under section 7); and";

(ii) in paragraph (b), by adding "(or  
any such delegate)" after  
"Registrar".

10 By deleting the clause.

11 By deleting the clause.

12 By deleting the clause.

13 By deleting the clause.

New By adding immediately before clause 14 -

"PART 2A

REGISTRATION PROCEDURES AND CONNECTED  
MATTERS".

14 By deleting the clause and substituting -

**"14. Matters capable of  
being registered**

No matter shall be capable of being  
registered in the Title Register unless -

- (a) the registration of the matter is expressly provided for in this Ordinance or any other enactment (by whatever words used);
- (b) where paragraph (a) is not applicable, the matter is a dealing in registered land, a registered charge or a registered long term lease;
- (c) where neither paragraph (a) nor (b) is applicable, the matter is an order of any court or tribunal -
  - (i) affecting registered land, a registered charge or a registered long term lease; and
  - (ii) issued or made for the purpose of enforcing a judgment; and

(d) in any other case, the matter affects registered land, a registered charge or a registered long term lease and the Registrar permits it to be registered."

15

By deleting the clause and substituting -

**"15. Applications for registration**

(1) Except as otherwise expressly provided in this Ordinance, no matter shall be registered in the Title Register unless the matter is the subject of an application presented to the Registrar for the registration of that matter, and this requirement applies -

- (a) whether or not any express reference is made in this Ordinance to that matter; or
- (b) if an express reference is made in this Ordinance to the registration of that matter, whether or not that reference is accompanied by an express



reference to such an  
application.

(2) Each application for the  
registration of any matter shall be verified  
in such manner as is required by the  
regulations."

16 By deleting the clause and substituting -

**"16. Manner of registration**

(1) Except as otherwise expressly  
provided in this Ordinance, the registration  
of any matter in the Title Register shall be  
effected by the Registrar in the following  
manner -

- (a) by making, or adding to, an  
entry in the Title Register;
- (b) by removing or altering an  
entry in the Title Register; or
- (c) by any combination of the acts  
mentioned in paragraphs (a) and  
(b).

(2) The registration of a matter in the  
Title Register is effected when that matter is  
registered by virtue of the making, the

addition to, or the removal or alteration of, an entry in the Title Register which refers to that matter, the application for registration of that matter or any document accompanying that application, or any combination thereof, and references in this Ordinance to the registration of any matter (howsoever expressed) shall be construed accordingly."

New

By adding -

**"16A. Entry in Title Register  
constitutes notice to  
all persons**

All persons are deemed to have notice of every entry in the Title Register."

17

(a) By deleting "an entry" and substituting "any entry".

(b) By deleting "in his opinion".

18

By deleting the clause.

19

(a) In subclause (1), by deleting "(and notwithstanding that it is a land title record)" and substituting "referred to in the

Title Register, or a plan or microfilm, image record or other record of a plan kept in the Land Registry under section 5B,".

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

"(2) For the avoidance of doubt, it is hereby declared that the fact that a plan is referred to in the Title Register, or the fact that a plan or microfilm, image record or other record of a plan is kept in the Land Registry under section 5B, shall not constitute a warranty, or a guarantee, as to the accuracy of the plan.".

20

- (a) In subclause (1), by deleting everything after "may" and substituting "effect the combination by making the appropriate entries in the Title Register to create a single title for the combined parcels of registered land.".
- (b) In subclause (2), by adding ", in the circumstances prescribed by the regulations," after "Registrar shall".
- (c) In subclause (3), by deleting everything

after "by" and substituting "making the appropriate entries in the Title Register to create a single title for each parcel of land into which the registered land is to be divided."

- (d) In subclause (4), by deleting everything after "that application" and substituting ", by making the appropriate entries in the Title Register to create a single title for each parcel of land into which the registered land is to be divided."

- (e) By deleting subclause (5).

- (f) By deleting subclause (6)(a), (b), (c) and (d) and substituting -

"(a) an occupation permit may be issued under section 21 of the Buildings Ordinance (Cap. 123) on or after the appointed day;

(b) a temporary occupation permit may be issued under section 21 of the Buildings Ordinance (Cap. 123) on or after the appointed day in respect of the whole or any part of the building;

- (c) a certificate of exemption has been issued under the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121) before the appointed day but the building has not been completed before that day; or
- (d) a certificate of exemption under the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121) may be issued on or after the appointed day."

New

By adding -

"PART 2B

REGISTRATION OF TITLE TO LAND  
AND CONNECTED MATTERS

**20A. Interpretation of Part 2B**

In this Part -

"LRO land" (《土註條例》土地) has the meaning assigned to it by section 1 of Schedule 1A;

"new land" (新土地) means land granted under a Government lease or an agreement for a Government lease on or after the appointed day but does not include -

- (a) land granted under a short term tenancy; or
- (b) land which was the subject of a Government lease or agreement for a Government lease in effect immediately before the appointed day and which is the subject of an instrument executed on or after the appointed day whereby -

- (i) the term of the Government lease or agreement for a Government lease has been extended;

- (ii) the area of the  
land has been  
extended; or
- (iii) the provisions of  
the Government  
lease or agreement  
for a Government  
lease have  
otherwise been  
varied;

"short term tenancy" (短期租約) means a lease expressed to be granted for a term of not more than 7 years; and in calculating that period for the purpose of this definition there shall be excluded any extension or renewal of the lease that has occurred, or may occur, by virtue of the exercise of any right.

**20B. Registration of title to  
new land**

On the presentation of an application  
by the Director of Lands, the Registrar  
shall register the title to new land by -

- (a) making an entry in the Title  
Register to the effect that the  
Government lessee is the owner of  
the land; and
- (b) entering such other particulars in  
the Title Register relating to the  
land as the Registrar considers  
appropriate.

**20C. Date of first registration  
of new land**

The date of first registration of new  
land to which the title is registered under  
section 20B shall be the day on which the  
Registrar makes the entries in the Title  
Register referred to in that section.



**20D. Effect of first registration  
of new land**

On the date of first registration of new land, the registration of any person as the owner of the land shall vest in that person the same legal estate or equitable interest and rights as would be vested in that person if the land were transferred to him and he was registered as the owner of land under section 21.

**20E. Registration of LRO land**

LRO land shall become registered land as provided in Schedule 1A."

Part 3            In the heading, by deleting ", ETC." and substituting "AND CONNECTED MATTERS".

- 21            (a) In the heading, by adding "**of transfer of land**" after "**registration**".
- (b) By deleting subclause (1) and substituting -

"(1) Subject to sections 23 and 81, the registration of a person as the owner upon a transfer of land shall vest in the person who is registered as the owner of the land the legal estate or equitable interest and rights described in subsection (1A), free from all other interests and claims except as specified in subsection (2).

(1A) (a) Where paragraph (a)(i) of the definition of "owner" in section 2(1) is applicable and the land is held under a Government lease or an agreement for a Government lease in respect of which a Government lease is deemed to have been issued under section 14 of the Conveyancing and Property Ordinance (Cap. 219), there shall vest

in the person who is  
registered as the  
owner -

- (i) the legal estate in  
the land held under  
the Government lease  
or the agreement for  
the Government lease  
(but excluding any  
case where the  
person does not hold  
the full unexpired  
term of the lease of  
the land); and
- (ii) all rights attaching  
to the land which  
may be exercised by  
virtue of that legal  
estate.

- (b) Where paragraph (a) (i) of  
the definition of "owner"  
in section 2(1) is  
applicable and the land  
is held under an

agreement for a  
Government lease in  
respect of which any  
condition precedent has  
not been complied with or  
has not been deemed to  
have been complied with  
under section 14 of the  
Conveyancing and Property  
Ordinance (Cap. 219),  
there shall vest in the  
person who is registered  
as the owner -

- (i) the equitable  
interest in the land  
held under that  
agreement (but  
excluding any case  
where the person  
does not hold the  
full unexpired term  
of the agreement for  
lease); and

(ii) all rights attaching  
to the land which  
may be exercised by  
virtue of that  
equitable interest.

(c) Where paragraph (a)(ii)  
of the definition of  
"owner" in section 2(1)  
is applicable and the  
land is held under a  
Government lease or an  
agreement for a  
Government lease in  
respect of which a  
Government lease is  
deemed to have been  
issued under section 14  
of the Conveyancing and  
Property Ordinance (Cap.  
219), there shall vest in  
the person who is  
registered as the owner -

- (i) the legal estate of the undivided share in the land (but excluding any case where the person does not hold the full unexpired term of the lease of the land); and
  - (ii) all rights attaching to the land which may be exercised by virtue of that legal estate.
- (d) Where paragraph (a)(ii) of the definition of "owner" in section 2(1) is applicable and the land is held under an agreement for a Government lease in respect of which any condition precedent has not been complied with or

has not been deemed to have been complied with under section 14 of the Conveyancing and Property Ordinance (Cap. 219), there shall vest in the person who is registered as the owner -

- (i) the equitable interest of the undivided share in the land (but excluding any case where the person does not hold the full unexpired term of the lease of the land); and
- (ii) all rights attaching to the land which may be exercised by virtue of that equitable interest."

(c) In subclause (2) -

(i) by deleting "operation of subsection (1) in respect of land shall not affect" and substituting "person who is registered as the owner shall hold his legal estate or equitable interest and rights subject to";

(ii) in paragraph (a), by deleting "該" and substituting "有關".

(d) In subclause (3), by adding "registered" before "land".

22

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

"(1) Subject to subsections (2) and (4) and sections 23 and 81, immediately upon registration of a person as the lessee of a registered long term lease, there shall vest in the person, free from all other interests and claims -

(a) the interest in the lease; and



- (b) all rights attaching to  
the land which may be  
exercised by virtue of  
that interest.

(2) The person who is registered  
as the lessee shall hold his interest  
and rights subject to -

- (a) any covenants,  
exceptions, reservations,  
stipulations, provisos or  
declarations contained in  
the Government lease of  
the land or the long term  
lease;
- (b) any registered matter  
affecting the land; and
- (c) any overriding interest  
affecting the land."

(b) By deleting subclause (3).

(c) In subclause (4), by adding "registered"  
before "long".

- (a) In subclause (2)(d), by deleting "14(2)(d) or  
22(2)(d)" and substituting "4(2) or 7(2) of

Schedule 1A".

(b) By adding -

"(3) Subsection (2) shall not  
operate to limit, restrict, or qualify  
the operation of any other provisions of  
this Ordinance.".

24

(a) In subclause (1) -

- (i) by deleting "Registered" and  
substituting "All registered";
- (ii) by deleting paragraph (d) and  
substituting -

"(d) any easements or rights  
(whether existing before,  
on or after the appointed  
day) which are implied by  
law on the disposition or  
transmission of the land  
and which are not  
expressly granted or  
reserved in any  
instrument;"

- (iii) in paragraph (e), by deleting  
"commencement of this section" and

substituting "appointed day";  
(iv) by deleting paragraph (f) and  
substituting -

"(f) any rights (whether of  
the Government or any  
other person) under the  
Government lease under  
which the land is held;

(fa) any rights, under an  
enactment, -

(i) of resumption,  
closure, entry,  
search, inspection,  
investigation, user,  
repair, alteration,  
removal, demolition,  
marking, naming or  
planning of  
buildings or  
development,  
redevelopment or  
reinstatement of  
land;

- (ii) to extinguish  
rights or to create  
easements or other  
rights;
- (iii) relating to costs,  
standards or  
specifications of  
any building, street  
or engineering  
works; or
- (iv) affecting land or  
any interest in  
land,  
  
and any notices, orders  
and certificates  
relating to any such  
rights;";
- (v) by deleting paragraph (g) and  
substituting -  
  
"(g) any first charge under  
section 18(1) of the  
Estate Duty Ordinance  
(Cap. 111), but only if -

- (i) the instrument which  
gave rise to the  
charge was  
registered under the  
Land Registration  
Ordinance (Cap. 128)  
before the date of  
first registration  
of the land;
  - (ii) not more than 3  
years have elapsed  
since the date of  
that instrument; and
  - (iii) the charge has not  
been registered  
under section 18(2)  
of the Estate Duty  
Ordinance (Cap.  
111);
  - (ga) any first charge under  
section 67 of the Stamp  
Duty Ordinance (Cap.  
117);".
- (b) In subclause (3), by deleting "(1)(f)(ii)"

and substituting "(1)(fa)".

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

"(4) The Court may order -

(a) the registration of an  
overriding interest in such  
manner as it thinks fit and  
specified in the order; or

(b) the removal or alteration of  
an entry in the Title Register  
referring to an overriding  
interest.".

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

"(5) The Registrar shall give  
effect to an order made under subsection  
(4) in accordance with the provisions of  
the order.".

25 By deleting the clause.

Part 4 In the heading, by deleting "AND SEARCHES" and  
substituting ", SEARCHES AND EVIDENCE".

26 (a) In subclause (2), by adding "which is" after  
"lease".

- (b) In subclause (5), by deleting "If" and substituting "Except in the circumstances permitted under the regulations, if".
- (c) In subclause (6) (b), by adding "subject to subsection (7)," before "shall".
- (d) By deleting subclause (7) and substituting -  
"(7) A new title certificate may be issued, in accordance with the regulations, in place of a title certificate which has been lost or destroyed or which for any other reason needs to be replaced.".
- (e) In subclause (8), by adding "registered long term" before "lease".

27

- (a) In subclause (1) -
  - (i) in paragraph (b), by deleting "regulations made under section 100" and substituting "the regulations";
  - (ii) by deleting "5(2) to be kept and maintained" and substituting "5, 5A or 5B to be kept".

(b) In subclause (2) -

(i) by deleting paragraph (a) and  
substituting -

"(a) have made available any  
thing referred to in  
section 5, 5A or 5B in a  
manner not expressly  
permitted under the  
regulations (or, where  
more than one manner is  
so permitted, in any one  
such manner as the  
Registrar decides);";

(ii) in paragraph (b), by deleting  
"referred to in that subsection".

28

(a) In subclause (1)(a) -

(i) by deleting subparagraphs (ii) and  
(iii) and substituting -

"(ii) the applications register  
(including any part  
thereof);



- (iii) any document, or any  
microfilm, image record  
or other record of a  
document, kept in the  
Land Registry under  
section 5B (including any  
part thereof);";
- (ii) in subparagraph (iv), by deleting  
"prescribed" and substituting  
"specified";
- (iii) by deleting subparagraphs (v) and  
(vi) and substituting -
  - "(v) any other document  
(including any part  
thereof) -
    - (A) which is filed or  
deposited in the  
Land Registry under  
the provisions of  
this Ordinance or  
any other enactment;  
or

(B) which otherwise  
belongs to the Land  
Registry; or

(vi) any endorsement on the  
Title Register, the  
applications register or  
any document, record or  
form referred to in  
subparagraph (iii), (iv)  
or (v); and".

(b) In subclause (3), by deleting "paragraph  
(a)(i), (ii), (iii), (iv), (v) or (vi) of  
subsection (1)" and substituting "subsection  
(1)(a)".

Part 5            In the heading, by adding "AND CONNECTED MATTERS"  
after "DISPOSITIONS".

29            (a) By deleting the heading and substituting  
              **"Dispositions and instruments"**.

(b) In subclause (1) -

(i) by deleting "No" and substituting  
      "Subject to subsection (2), no";

(ii) by deleting "in or over land" and substituting "in or over registered land";

(iii) by adding "under this Ordinance" after "is registered".

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

"(2) Nothing in this section shall be construed as preventing an interest in or over registered land or a registered long term lease which is not registered under this Ordinance from taking effect in equity if the interest is -

(a) capable of registration under this Ordinance; or

(b) protected by an entry in the Title Register.".

30 By deleting the clause.

31 (a) In subclause (1), by deleting "matter" and substituting "dealing".

- (b) In subclause (2), by deleting "matter" wherever it appears and substituting "dealing".

32

- (a) In subclause (1) -
  - (i) by deleting "through that person's wilful default" and substituting "without reasonable excuse";
  - (ii) by deleting "matter" and substituting "dealing".
- (b) In subclause (2), by deleting "the subject of a notice" and substituting "in relation to which a notice has been issued".

33

- (a) In subclause (1), by deleting "(3), (4), (5) and (6) and sections 24(6) and 71(1)(b)" and substituting "(3), (7), (8) and (9) and section 9 of Schedule 1A".
- (b) By deleting subclauses (4), (5) and (6).
- (c) By deleting subclause (7) and substituting -
  - "(7) It is hereby declared that
  - where -

- (a) a consent caution ("first consent caution") referred to in section 70(2) has been registered in respect of a dealing;
- (b) the provisional agreement for sale and purchase or agreement for sale and purchase to which the first consent caution relates is stamped or endorsed under the Stamp Duty Ordinance (Cap. 117); and
- (c) another consent caution ("second consent caution"), accompanied by that stamped or endorsed provisional agreement for sale and purchase or agreement for sale and purchase, as the case may be, is registered in respect of that dealing

not later than 30 days  
after the registration of  
the first consent  
caution,

then the second consent caution shall  
enjoy the same priority as the first  
consent caution, as if it had been  
registered on the same date as the first  
consent caution.

(8) If a consent caution is  
registered in relation to an interest  
under a provisional agreement for sale  
and purchase or an agreement for sale  
and purchase, then, upon the  
registration of the dealing to which the  
consent caution relates, the priority of  
all matters registered after that  
consent caution is registered shall be  
postponed as against that dealing.

(9) A charging order or non-  
consent caution which is duly registered  
shall have priority from the  
commencement of the day following the  
date of its registration."

34

(a) In the heading, by adding ", **etc.**" after  
"**pendens**".

(b) By deleting subclause (1) and substituting -  
"(1) Subject to subsections (2),  
(3) and (4) -

(a) the registration of a  
charging order shall  
cease to have effect  
immediately upon the  
expiration of 5 years  
from the date of  
registration of the order  
but the order may be re-  
registered from time to  
time and, if so re-  
registered, the re-  
registration of the order  
shall have effect for  
another 5 years from the  
date of re-registration;  
and

- (b) if the re-registration of a charging order is made before the expiration of a current period of registration or re-registration of the order, then the order shall retain its original priority."
- (c) In subclause (3), by adding "of competent jurisdiction" after "court".
- (d) In subclause (4), by adding "of competent jurisdiction" after "court".
- (e) By deleting subclause (5) and substituting -
  - "(5) Without prejudice to the generality of any other provisions of this Ordinance under which the registration of a judgment, order or lis pendens may be removed or withdrawn, subsections (1) and (2) shall, with all necessary modifications, apply to a judgment, order or lis pendens as they apply to a charging order.



(6) A charging order, judgment or order shall be registered in the manner prescribed by the regulations."

35 By deleting subclause (3) and substituting -

"(3) For the avoidance of doubt, it is hereby declared that -

(a) a registered charge shall not operate as a transfer of the registered land or the registered long term lease which is subject to the charge but shall have effect as a security only; and

(b) where the registered charge is a mortgage effected by a legal charge within the meaning of section 2 of the Conveyancing and Property Ordinance (Cap. 219), the registration of the charge under this Ordinance shall not affect the operation of section 44(2) of that Ordinance."

36 By deleting "land or the lessee of a registered long term lease" and substituting "land, or the lessee of a registered long term lease, which is".

38 (a) In paragraph (a), by adding "在" after "删除".

(b) By deleting paragraph (b) and substituting -  
"(b) in the case of a partial discharge, the alteration of the entry in the Title Register referring to the charge or its removal or substitution by a new entry, as the case may require."

39 (a) By deleting "Notwithstanding section 38, on" and substituting "On".

(b) In paragraph (c), by deleting "("partial payment")".

(c) In paragraph (d), by deleting "("partial fulfilment")".

(d) By deleting paragraphs (e) and (f) and substituting -

"(e) in the case of paragraph (a) or  
(b), remove the entry in the Title  
Register referring to the charge;  
(f) in the case of paragraph (c) or  
(d), alter the entry in the Title  
Register referring to the charge or  
remove the entry or substitute a  
new entry, as the case may  
require.".

41(1)(b) By deleting "chargee" and substituting "owner".

42 By deleting the heading and substituting "**Division  
of land, etc.**".

43 (a) In the heading, by deleting "**Covenants**" and  
substituting "**Implied covenants**".

(b) By renumbering the clause as clause 43(1).

(c) By adding -

"(2) Where a covenant implied  
under section 35 of the Conveyancing and  
Property Ordinance (Cap. 219) is to be  
excluded, varied or extended in a  
transfer of registered land or a

registered charge, express reference shall be made to the covenant so excluded, varied or extended in the instrument supporting the transfer or registered charge.

(3) Where a transfer or charge is supported by an instrument mentioned in subsection (2), then the registration of the transfer or charge shall of itself effect the registration of the covenant implied under section 35 of the Conveyancing and Property Ordinance (Cap. 219) as varied or extended by the transfer or charge."

44

(a) In subclause (1) -

(i) by deleting ", other than a lessee or chargee";

(ii) in paragraph (a), by deleting everything after subparagraph (i) and substituting -

"(ii) a copy of any instrument referred to in any such entry;

- (iii) a copy of any plan referred to in any such entry or instrument; and
  - (iv) such other documents as may be prescribed by the regulations, so far as any such entries, instrument, plan or documents respectively affect the land or lease (except registered incumbrances which are to be discharged at or prior to completion of the sale);";
  - (iii) in paragraph (b), by deleting "of" after "knowledge".
- (b) In subclause (2) -
- (i) by deleting "assignment effecting a first registration of land under section 12(1)(a) on or after the commencement day" and substituting "transfer on or after the date of first registration of land";

(ii) in paragraph (b), by deleting  
"first registration of the land"  
and substituting "registration of  
the transfer".

(c) By deleting subclause (3) and substituting -  
"(3) Notwithstanding any  
stipulation to the contrary, on a sale  
of registered land or a registered long  
term lease, a purchaser shall only be  
entitled to require from the vendor the  
matters required to be provided by the  
vendor to the purchaser under this  
section."

45 By adding "transferor or" before "transferee."

46 (a) In the heading, by adding "**other than long  
term leases**" after "**Leases**".

(b) By deleting subclause (2) and substituting -  
"(2) In this section, "lease" (租契)  
does not include -

- (a) a lease which is an overriding interest;
- (b) a lease of any land which is not registered land;  
or
- (c) a long term lease."

47

(a) In subclause (1) -

- (i) by deleting "in the specified form";
- (ii) by deleting "尋" and substituting "要".

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

"(3) The Registrar may register a long term lease which is the subject of an application under subsection (1) if the Registrar is satisfied that the application complies with the provisions of this Ordinance applicable to it.

(4) The Registrar shall register a long term lease which is the subject of an application under subsection (1) by -

(a) making an entry in the Title Register specifying that the applicant is the lessee of the long term lease; and

(b) entering such other particulars in the Title Register relating to the lease as the Registrar considers appropriate.

(5) The date of first registration of a long term lease registered under this section shall be the date on which the application for registration of the lease was delivered to the Land Registry."

48

By deleting the clause and substituting -

**"48. Termination of leases**

Where a registered lease is terminated (whether by surrender, forfeiture, re-entry or otherwise), the Registrar shall remove the entry in the Title Register referring to the lease on the presentation of an application



to the Registrar therefor together with -

(a) the instrument, if any,  
providing for the termination;  
or

(b) such other evidence as  
satisfies the Registrar that  
the lease has been  
terminated.".

49 (a) In subclause (1)(c), by deleting "benefitted"  
and substituting "benefited".

(b) In subclause (2), by deleting "benefitted"  
and substituting "benefited".

50(1) By deleting everything after "burdened" where it  
first appears and substituting "and the registered  
land or the registered long term lease benefited  
by the covenant.".

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

"(b) entering particulars of the deed in  
the Title Register.".

(b) By adding -

"(1A) The registration of any alteration or addition to a registered deed of mutual covenant shall be effected by -

- (a) adding to or altering the entry in the Title Register referring to the deed; or
- (b) removing that entry and substituting a new entry in relation to the deed."

(c) In subclause (2) -

- (i) by adding ", including any registered alterations or additions," after "covenant";
- (ii) by deleting "from the Title Register the entry" and substituting "the entry in the Title Register".

(d) By adding -

"(2A) The registration of a deed of mutual covenant under this section shall also effect the registration of any

easement, right or covenant provided for in the deed which affects the registered land or registered long term lease concerned."

- (e) In subclause (3), by deleting the definitions of "deed of mutual covenant" and "registered deed of mutual covenant" and substituting -

"deed of mutual covenant" (公契)

includes a document which defines the rights, interests and obligations of owners among themselves;

"owner" (業主) has the meaning assigned to it by section 2 of the Building Management Ordinance (Cap. 344)."

- (f) In subclause (4), by deleting everything after "declared that" and substituting  
", except to the extent provided by this Ordinance, nothing in this section shall prejudice the operation of sections 39, 40 and 41 of the Conveyancing and Property Ordinance (Cap. 219)."

52 By deleting the clause.

53 (a) In subclause (1)(b), by deleting "除業" and substituting "除在業".

(b) In subclause (2) -

(i) in paragraph (b) -

(A) in subparagraph (i), by deleting "; or" and substituting a semicolon;

(B) in subparagraph (ii), by deleting the comma and substituting "; or";

(C) by adding -

"(iii) the easement or covenant has otherwise ceased to have effect,";

(ii) by deleting "除業" and substituting "除在業".

54 (a) In paragraph (b), by deleting "benefitted" and substituting "benefited".

(b) By deleting "尋" and substituting "要".

- 57                   (a) In the heading, by adding "**etc.**" after  
                      "**succession**".
- (b) In paragraph (b), by deleting "or".
- (c) In paragraph (c), by deleting the full stop  
                         at the end and substituting "; or".
- (d) By adding -
- "(d) the operation of section 15 or 18  
                                 of the New Territories Ordinance  
                                 (Cap. 97)".
- 58(1)               By deleting ", or the date of registration of the  
                     long term lease under 47 or 48," and substituting  
                     "of the land or lease".
- 59                   By deleting the clause and substituting -
- "59. Stamping**
- (1) Without prejudice to the operation  
                                 of section 15(3) of the Stamp Duty Ordinance  
                                 (Cap. 117), no instrument required by law to  
                                 be stamped shall be accepted for registration  
                                 of any matter unless the instrument is  
                                 stamped in accordance with the requirements  
                                 of that Ordinance.

(2) Subject to section 70(2) and without prejudice to the operation of section 15(3) of the Stamp Duty Ordinance (Cap. 117), where an application for the registration of a consent caution, a non-consent caution, an inhibition or a restriction for the purpose of protecting an interest in registered land, a registered charge or a registered long term lease is supported by an instrument required by law to be stamped, the registration shall not be proceeded with unless the instrument is stamped in accordance with the requirements of the Stamp Duty Ordinance (Cap. 117).".

60 By deleting the clause.

61 By deleting the clause and substituting -

**"61. Minors**

(1) Nothing in this section enables a minor who is the owner of registered land or a registered charge, or the lessee of a registered long term lease, to deal with the land, charge or lease or with an interest in the land, charge or lease.

(2) Where a disposition by a minor of registered land, a registered charge or a registered long term lease has been registered and -

(a) the person to whom the disposition is made acted in good faith and for valuable consideration; and

(b) the fact that the minor was a minor was not disclosed to that person at any time before the registration of the disposition,

that disposition shall not be set aside only on the ground that the disposition was made by a minor.

(3) For the avoidance of doubt, it is hereby declared that where the owner of registered land or a registered charge, or the lessee of a registered long term lease, is a minor and that fact is disclosed to the Registrar in any application for registration made by him, then the name of that minor shall be entered in the Title Register with

the addition after the minor's English name of the words "a minor" and with the addition after his Chinese name of the words "未成年人".

New

By adding in Part 7 -

**"61A. Transmission**

(1) Without prejudice to the operation of sections 62, 63, 64, 65, 66 and 67, where a person becomes entitled to registered land, a registered charge or a registered long term lease under an order of a court of competent jurisdiction, under an enactment or by operation of law (including in the capacity of trustee), the Registrar shall, on the presentation to him by the person of such evidence as the Registrar requires, register the person so entitled -

- (a) as the owner, or as the owner in the capacity of trustee, of the land or charge; or



(b) as the lessee, or as the  
lessee in the capacity of  
trustee, of the lease,  
as the case may require.

(2) The registration of a person under subsection (1) as the owner, or as the owner in the capacity of trustee, of registered land shall be treated as only confirming that the person has the same legal estate or equitable interest and rights as would have been vested in that person if the land had been transferred to him and he had been registered as the owner of the land under section 21.

(3) The registration of a person under subsection (1) as the lessee, or as the lessee in the capacity of trustee, of a registered long term lease shall be treated as only confirming that the person has the same interest and rights as would have been vested in that person if he had been registered as the lessee of the lease under section 22."

62

- (a) In subclause (1), by deleting everything after "Title Register" and substituting a full stop.
- (b) By deleting subclause (2) and substituting -
  - "(2) The Registrar shall not remove the name of a deceased from the Title Register under subsection (1) until he is satisfied that -
    - (a) estate duty is not payable under the Estate Duty Ordinance (Cap. 111) on the deceased's interest in registered land or the registered long term lease concerned; or
    - (b) where such estate duty is payable on such interest -
      - (i) the estate duty has been paid in accordance with the provisions of that Ordinance; or

- (ii) the payment of the  
estate duty has been  
secured to the  
satisfaction of the  
Commissioner under  
section 15 of the  
Estate Duty  
Ordinance (Cap.  
111)".

63

- (a) In subclause (1) -

- (i) by deleting "a lessee of lessees  
holding as tenants in common" and  
substituting "one of 2 or more  
lessees holding as tenants in  
common of";
- (ii) by deleting "by transmission".

- (b) In subclause (2) -

- (i) by deleting "a lessee of lessees  
holding as tenants in common" and  
substituting "one of 2 or more  
lessees holding as tenants in  
common of";
- (ii) by deleting "by transmission".

- (c) In subclause (3), by deleting "by transmission".

64 By deleting "by transmission".

- 65 (a) In the heading, by adding "**and dealing by personal representative**" after "**death**".

- (b) In subclause (1) -

- (i) by deleting paragraph (a) and substituting -

"(a) be subject to any  
interests to which the  
land, charge or lease is  
subject at the time of  
registration of the  
personal representative  
as the owner or lessee,  
as the case may be; and";

- (ii) in paragraph (b), by deleting "be deemed to have been registered as the owner of the land or charge, or as the lessee of the lease, with" and substituting "have".

(c) By deleting subclause (2).

66

(a) In subclause (1) -

(i) by deleting "of First Instance";

(ii) by deleting "by transmission".

(b) In subclause (2)(a)(ii), by deleting everything after "interests" and substituting "subject to which the bankrupt or deceased owner of the land or charge or lessee of the lease held the land, charge or lease immediately prior to his bankruptcy or death;".

67(4)(b)

By deleting everything after "interests" and substituting "subject to which the company held the land, charge or lease immediately prior to the order made under section 198 of the Companies Ordinance (Cap. 32) by virtue of which the land, charge or lease was vested in the liquidator.".

68 By deleting the clause.

69 (a) By deleting the heading and substituting  
"Trusts".

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

"(1) A person who, in the capacity  
of trustee (other than as a personal  
representative or trustee in  
bankruptcy) -

(a) acquires registered land,  
a registered charge or a  
registered long term  
lease;

(b) holds a registered  
charge;

(c) holds a long term lease;  
or

(d) becomes the lessee of a  
Government lease issued  
on or after the appointed  
day,

may be described by that capacity in the relevant instrument, and, if so described, shall be registered with the addition of the words "as trustee" and "作為受託人", but the Registrar shall not enter particulars of the trust concerned in the Title Register."

(c) By adding -

"(2A) For the avoidance of doubt, it is hereby declared that subsections (1) and (2) shall not prevent the making of an entry of a consent caution, non-consent caution, inhibition or restriction in the Title Register by reason only of the fact that the entry contains particulars of a trust."

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

"(3) A person who, in the capacity of trustee, is registered under this section as the owner of registered land or a registered charge, or as the lessee of a registered long term lease -

(a) shall be subject to any  
interests to which the

land, charge or lease is  
subject at the time of  
registration of the person  
as the owner or lessee, as  
the case may be; and

- (b) without prejudice to  
paragraph (a), for the  
purposes of any dealing in  
the land, charge or lease,  
shall have all the rights  
conferred under this  
Ordinance or any other  
enactment on the owner of  
registered land or a  
registered charge, or the  
lessee of a registered  
long term lease, as the  
case may be, who has  
acquired the land, charge  
or lease for valuable  
consideration."



New

By adding in Part 7 -

**"69A. Protection of person dealing  
with trustees**

Where a person, in the capacity of trustee, is registered as the owner of registered land or a registered charge, or as the lessee of a registered long term lease, he shall, in dealing with the land, charge or lease, be deemed to be the owner of that land or charge or lessee of that lease, and no disposition that amounts to a breach of trust by the trustee to a bona fide purchaser for valuable consideration shall be defeasible by reason only of the fact of that breach."

70

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

"(1) A person who intends to effect a dealing in registered land, a registered charge or a registered long term lease may present to the Registrar an application for the registration of a consent caution in respect of the dealing if he has obtained the consent of the relevant person specified in subsection (1A).

(1A) For the purposes of  
subsection (1), the relevant person is -

- (a) the owner of the  
registered land or  
registered charge, or the  
lessee of the registered  
long term lease, as the  
case may be; or
- (b) the cautioner under a  
registered consent  
caution with whom any  
person intends to enter  
into a dealing in respect  
of an interest that the  
cautioner claims under  
that registered consent  
caution."

(b) By deleting subclauses (2) and (3) and  
substituting -

"(2) Where an instrument which is  
a provisional agreement for sale and  
purchase or an agreement for sale and  
purchase in respect of registered land  
or a registered long term lease has been

or will be presented for stamping or endorsement under the Stamp Duty Ordinance (Cap. 117), then a consent caution in respect of that dealing may be registered if the application for the registration of the consent caution is accompanied by a statutory declaration by the purchaser under the dealing to the effect that the instrument has been or will be so presented.

(3) A person who -

- (a) claims any interest, whether contractual or otherwise, in registered land or a registered charge, or a registered long term lease; or
- (b) has presented a winding-up petition against the owner of registered land or a registered charge, or the lessee of a registered long term lease,

may present to the Registrar an application for the registration of a non-consent caution in respect of the claim or petition, as the case may be (and whether or not that person is the owner of that land or the lessee of that lease).".

(c) In subclause (4)(b), by deleting "made where" and substituting "made and".

(d) In subclause (5) -

(i) by deleting "in registered land or a registered long term lease which is not for valuable consideration" and substituting "by a natural person of registered land or a registered long term lease by way of gift inter vivos";

(ii) by deleting "該宗" and substituting "該項".

(e) By deleting subclause (6) and substituting -

"(6) Notwithstanding subsection (3), for the purposes of subsection (5), an application for the registration of a transfer referred to in subsection (5)

shall be accompanied by an application for the registration of a non-consent caution referred to in subsection (5) made by the same person who makes the application for registration of the transfer."

- (f) In the Chinese text, by deleting subclause (7) and substituting –

"(7) 就已註冊的第(6)款提述的非同意警告書而言，在業權註冊紀錄上須記入《遺產稅條例》(第111章)所指的署長為註冊該警告書的人，而本條例的其他條文(包括第72條)須據此解釋。"

- (g) In subclause (8), by adding "consent caution or non-consent" before "caution".

- (h) In subclause (9), by adding "consent caution or non-consent" before "caution".

- (i) By deleting subclause (10) and substituting –

"(10) The Registrar may refuse to register a consent caution or non-consent caution the purpose of which he considers can be effected by an entry in the Title Register other than an entry referring to the caution."

(j) In subclause (11), by adding "consent caution or non-consent" before "caution".

(k) By deleting subclause (13).

71

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

"(1) Where a consent caution has been registered in respect of registered land, a registered charge or a registered long term lease, the consent caution shall not of itself prohibit the registration of matters in the Title Register affecting the land, charge or lease.".

(b) By adding -

"(2A) For the avoidance of doubt, it is hereby declared that the registration of a consent caution shall not -

(a) of itself affect the validity or otherwise of the interest which is the subject of the consent caution; or

(b) without prejudice to the generality of paragraph (a), constitute a warranty, or a guarantee, as to the validity of the interest which is the subject of the consent caution."

(c) In subclause (3) -

- (i) in paragraph (a), by deleting everything after "otherwise" and substituting "of the winding-up petition or claim which is the subject of the non-consent caution; or";
- (ii) in paragraph (b), by deleting everything after "validity of the" and substituting "winding-up petition or claim."

72

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

"(1) A consent caution or non-consent caution may be withdrawn on the presentation to the Registrar by the

cautioner of an application for the withdrawal of the caution.

(1A) A consent caution or non-consent caution may be removed on the presentation to the Registrar of an application for its removal -

- (a) in any case, by a person who has obtained an order of the Court for its removal;
- (b) in the case of a consent caution, by the owner of the registered land or the registered charge, or the lessee of the registered long term lease, affected by the caution, but only if the Registrar is satisfied that the cautioner has agreed to its removal; or
- (c) in the case of a non-consent caution, by the owner of the registered



land or the registered charge, or the lessee of the registered long term lease, affected by the caution, but only if the Registrar -

(i) is satisfied that the owner or lessee has provided a copy of the application to the cautioner not less than 14 days before the presentation of the application to the Registrar; and

(ii) is satisfied -

(A) that the caution was wrongfully registered;

(B) that the ground on which the caution was

registered no

longer exists;

or

(C) that the

cautioner

consents to the

removal of the

caution."

(b) In subclause (2), by deleting

"(1) (b) (iii) (B)" and substituting

"(1A) (c) (ii)".

(c) In subclause (3), by deleting "caution under

subsection (1) (b) (ii) or (iii)" and

substituting "consent caution or non-consent

caution under subsection (1A) (b) or (c)".

(d) By deleting subclauses (4) and (5) and

substituting -

"(4) A person with an interest in  
registered land, a registered charge or  
a registered long term lease affected by  
a consent caution or non-consent caution  
may apply by originating summons to the  
Court for the removal of the caution,  
and the Court may make such order on the

originating summons and as to costs as to the Court appears just."

(e) In subclause (6), by adding "consent caution or non-consent" before "caution -".

(f) By deleting subclause (7) and substituting -  
"(7) The Registrar shall give effect to an order made under subsection (1A)(a) or (4) in accordance with the provisions of the order."

73

By deleting the clause and substituting -

**"73. Wrongful cautions**

(1) A person who applies to register a consent caution or non-consent caution without reasonable cause shall be liable, in an action for damages at the suit of -

- (a) the owner of the registered land or registered charge concerned;
- (b) the lessee of the registered long term lease concerned; or
- (c) any other person who has an interest in the land, charge or lease,

to pay compensation to the owner, lessee or other person for any damage sustained thereby, in such amount as to the Court appears just.

(2) A cautioner under a registered consent caution or non-consent caution who fails, without reasonable excuse, to apply to the Registrar for the withdrawal of the caution within a reasonable period of time after the ground on which it was registered ceases to exist, shall be liable, in an action for damages at the suit of a person referred to in subsection (1)(a), (b) or (c), to pay compensation to that person for any damage sustained thereby, in such amount as to the Court appears just."

74

(a) In the heading, by deleting "**of First Instance**".

(b) In subclause (1) -

(i) by deleting everything before  
paragraph (a) and substituting -

"(1) The Court may, if it appears to the Court that it is necessary or desirable to do so for the purpose of protecting an interest or claim in relation to registered land, a registered charge or a registered long term lease, make an order inhibiting the registration of any dealing in the land, charge or lease, on such terms and conditions as it thinks fit -";

(ii) by deleting "註冊土地、註冊押記或註冊長期" and substituting "該土地、押記或".

(c) In subclause (2), by deleting "of First Instance".

76

(a) By adding "from the Title Register" after "removed".

(b) In paragraph (d), by deleting "of First Instance".

77

(a) By deleting subclause (1)(a), (b) and (c) and substituting -

"(a) after an application for an order under this section being presented to him by an interested person;

(b) after -

(i) directing such inquiries to be made and notices to be served as he thinks fit; and

(ii) giving such persons as appear to the Registrar from the Title Register may be affected by the order an opportunity of being heard; and

(c) after being satisfied that the powers of the owner of the registered land or the registered charge, or of the lessee of the registered long term lease, to deal in the land, charge or lease should be restricted to -

- (i) prevent invalidity or  
unlawfulness in relation  
to dealing in the land,  
charge or lease; or
- (ii) protect an interest or  
claim in relation to the  
land, charge or lease,".

(b) By adding -

"(5) In this section, "interested person" (利害關係人), in relation to registered land, a registered charge or a registered long term lease, means a person -

- (a) who is the owner of the  
land or charge or the  
lessee of the lease;
  - (b) who is entitled to be  
registered as the owner  
of the land or charge or  
the lessee of the lease;
- or

(c) who falls within a class  
of persons prescribed by  
the regulations for the  
purposes of this  
section."

78 By deleting subclause (2) and substituting -

"(2) Subject to section 24(2), while a  
restriction remains registered, no dealing in  
the registered land, registered charge or  
registered long term lease concerned which is  
inconsistent with the restriction shall be  
registered except -

- (a) with the consent of the  
Registrar; or
- (b) by order of the Court."

79 (a) In subclause (1) -

- (i) in paragraph (a), by deleting "尋"  
and substituting "要";
- (ii) in paragraph (b), by deleting "in  
accordance with section 94";



(iii) by deleting "vary" and substituting  
"alter".

(b) In subclause (2) -

(i) by deleting "of First Instance"  
where it twice appears;

(ii) by deleting "other order" and  
substituting "other orders".

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

"(3) The Registrar shall give  
effect to an order made under subsection  
(2) in accordance with the provisions of  
the order.".

Part 9 In the heading, by deleting "AND INDEMNITY".

80 (a) In subclause (1) -

(i) by deleting "in or omission from"  
and substituting "or omission in";

(ii) by deleting paragraph (a) and  
substituting -

"(a) on his own volition, if  
the rectification will  
not materially affect the  
interest of the owner of

registered land or a  
registered charge, or the  
lessee of a registered  
long term lease;

(aa) on application presented  
to him by any person, if  
the applicant proves to  
the satisfaction of the  
Registrar that the error  
or omission is of a  
clerical nature only and  
that the rectification  
will not materially  
affect the interest of  
the owner of registered  
land or a registered  
charge, or the lessee of  
a registered long term  
lease; or";

(iii) in paragraph (b), by adding a comma  
after "case".

(b) By adding -

"(3) Where -

(a) pursuant to section 61(3), the name of a minor is entered in the Title Register as the owner of registered land or a registered charge, or as the lessee of a registered long term lease; and

(b) the owner or lessee, as the case may be, attains full age,

then the owner or lessee, as the case may be, may make an application to the Registrar to remove the words in the Title Register which describe him as a minor.

(4) On receipt of an application under subsection (3), the Registrar shall, if he is satisfied that the owner or lessee concerned has attained full age, remove the words in the Title Register which describe him as a

minor.".

81

By deleting the clause and substituting -

**"81. Rectification by Court**

(1) Subject to subsections (2) and (3) and section 81A, the Court may, on application by any person, order the rectification of the Title Register by directing that an entry therein relating to registered land or a registered long term lease be removed or altered, or that an entry relating to registered land or a registered long term lease which has been omitted from the Title Register be entered therein, if the Court is satisfied that the entry was obtained, made or omitted, as the case may be, by or as a result of -

(a) the fraud, mistake or omission of any person; or

(b) a void or voidable instrument.

(2) No order may be made under subsection (1) so as to affect the title of a person who is the registered owner of registered land or the registered lessee of a

registered long term lease, and who is in possession of the land and has acquired the land or lease for valuable consideration, unless the Court is satisfied -

- (a) that the name of such person was entered in the Title Register as the owner or lessee, as the case may be, by or directly as a result of the fraud, mistake or omission in question or the void or voidable instrument in question, as the case may be; and

- (b) that -

- (i) in the case of fraud, the person -

- (A) was a party to the fraud;

- (B) had knowledge of the fraud at the time his name was so entered in the Title Register; or

(C) had, by his act or  
by lack of proper  
care, substantially  
contributed to the  
fraud;

(ii) in the case of a mistake  
or omission, the person -

(A) caused the mistake  
or omission;

(B) had knowledge of the  
mistake or omission  
at the time his name  
was so entered in  
the Title Register;  
or

(C) had, by his act or  
by lack of proper  
care, substantially  
contributed to the  
mistake or omission;  
or

(iii) in the case of a void or  
voidable instrument, the  
person -

- (A) caused the  
instrument to be  
void or voidable, as  
the case may be;
- (B) had knowledge that  
the instrument was  
void or voidable, as  
the case may be, at  
the time his name  
was so entered in  
the Title Register;  
or
- (C) had, by his act or  
by lack of proper  
care, substantially  
contributed to  
making the  
instrument void or  
voidable, as the  
case may be.

(3) Subject to section 81A, on an  
application made under subsection (1) by a  
former registered owner of registered land or  
a former registered lessee of a registered

long term lease to restore his title to the land or lease on the ground that he lost his title by or as a result of fraud, the Court shall order the rectification of the Title Register to so restore the title of the applicant (and irrespective of whoever is currently the registered owner or registered lessee of the land or lease concerned), if the Court is satisfied that -

- (a) the entry in the Title Register by or as result of which the applicant lost his title was procured, whether in whole or in part, by or as a result of -
  - (i) a void instrument; or
  - (ii) a false entry in the Title Register;
- (b) the applicant was not a party to the fraud; and
- (c) the applicant did not, by his act or by lack of proper care, substantially contribute to the fraud.



(4) An order may be made under subsection (1) or (3) whether or not the entry in the Title Register in question was obtained, made or omitted, as the case may be, before, on or after the date of first registration of the registered land or registered long term lease concerned.

(5) The Registrar shall give effect to an order made under subsection (1) or (3) in accordance with the provisions of the order.

(6) This section is without prejudice to the operation of section 3(4)(c).

(7) The Court may make such order as to the costs of proceedings under this section as to the Court appears just.

(8) Any costs of proceedings awarded against the Registrar in any proceedings under this section shall be paid out of the Land Titles Indemnity Fund.

(9) For the purpose of subsection (2), a person who is in receipt of rents or profits, or who has the right to receive rents or profits, in respect of the registered land or registered long term lease

concerned shall be treated as being in possession of the land."

New

By adding -

**"81A. Time for bringing proceedings under section 81**

(1) Subject to subsection (2), no application for the rectification of the Title Register may be made under section 81 after the end of the period of 12 years from the date on which the entry in the Title Register in question was obtained, made or omitted, as the case may be.

(2) The Limitation Ordinance (Cap. 347) shall apply, with necessary modifications, to an application for the rectification of the Title Register under section 81."

New

By adding immediately before clause 82 -

"PART 9A  
INDEMNITY"

82

(a) In subclause (1) -

- (i) by deleting "(2), (4)(b) and (c) and (5)" and substituting "(2) and (4)(b) and (c)";
- (ii) by deleting "or omission from" and substituting ", or an entry omitted from,".

(b) In subclause (4) -

- (i) in paragraph (a), by deleting "in respect of the registered land" and substituting "of the registered land or registered long term lease";
- (ii) in paragraph (b) -
  - (A) in subparagraph (i), by deleting "in respect" where it first appears;
  - (B) in subparagraph (ii), by deleting "registration of the lease as a long term lease in respect" and substituting "first registration";

(iii) by deleting paragraph (c) and  
substituting -

"(c) no indemnity shall be  
payable under subsection  
(1) in respect of any  
fraud, mistake or  
omission -

(i) subject to  
subparagraph (ii),  
which occurred  
before the date of  
first registration  
of the registered  
land concerned and  
is discovered  
(whether in  
proceedings before  
any court or  
otherwise) on or  
after that date; or

(ii) which occurred  
before the date of  
first registration  
of the registered

long term lease  
concerned and is  
discovered (whether  
in proceedings  
before any court or  
otherwise) on or  
after that date;

- (d) no indemnity shall be payable under subsection (1) in respect of any fraud, mistake or omission in relation to land which is not registered land (including any lease to which the land is subject), and whether or not the fraud, mistake or omission occurred before, on or after the appointed day."

- (c) By deleting subclause (5).

(d) In subclause (6), by deleting "(2), (4)(b) and (c) and (5)" and substituting "(2) and (4)(b) and (c)".

83

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

"(a) in the case of any such entry  
obtained, made or omitted by or as  
the result of fraud on the part of  
any person -

(i) the value of the interest  
in the registered land or  
registered long term  
lease concerned on the  
date on which such entry  
was obtained, made or  
omitted; or

(ii) the amount from time to  
time determined under  
subsection (3) for the  
purposes of this  
subsection as such amount  
is in force immediately  
before the discovery of

the fraud,

whichever is the lesser;

- (b) in any other case, the value of the interest in the registered land or registered long term lease concerned on the date on which the mistake or omission concerned was made."

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

"(2) Where 2 or more persons have ceased to be the owners of registered land or the lessees of a registered long term lease in consequence of -

- (a) an order being made under section 81(1) or (3) for the rectification of the Title Register on the ground of fraud; or

- (b) a fraud referred to in section 82(1),

and, in consequence of that cesser, those persons are entitled to be paid an indemnity under section 82(1), then the total of the indemnity shall not exceed

the amount referred to in subsection  
(1)(a).".

- 84
- (a) In subclause (2), by deleting "of First Instance" where it twice appears.
  - (b) In subclause (3), by deleting "of First Instance".
  - (c) In subclause (4), by deleting "of First Instance under" and substituting "under Part 9 or".

86 By deleting the clause and substituting -

**"86. Recovery of indemnity paid**

(1) Where an indemnity is paid for a loss, the Government shall be entitled to recover the amount paid from any persons who have caused or substantially contributed to the loss by their fraud, in proportion to their respective contributions to the loss.

(2) The Government shall be entitled to enforce any express or implied covenant or other right which the person who is indemnified would have been entitled to enforce in relation to the matter in respect



of which indemnity has been paid.

(3) For the avoidance of doubt, it is hereby declared that subsections (1) and (2) shall not operate to prevent a person to whom an indemnity has been paid from taking any legal proceedings or enforcing any right to recover any amount of damages that, by virtue of the operation of section 83(1)(a), he has not been able to recover from the Land Titles Indemnity Fund."

87

(a) By deleting paragraph (a)(ii) and substituting -

"(ii) shown in the Title Register, on any Government lease or on any plan, or on any microfilm, image record or other record of any plan, kept in the Land Registry under section 5B;"

(b) By deleting paragraph (b)(ii) and substituting -

"(ii) shown in the Title Register, on any Government lease or on any plan, or on any microfilm, image record or

other record of any plan, kept in  
the Land Registry under section 5B;  
and".

New

By adding in Part 9A -

**"87A. Land Titles Indemnity  
Fund**

(1) An indemnity fund, to be known as  
the Land Titles Indemnity Fund, shall be  
established for the purposes of this Part in  
accordance with the regulations.

(2) The amount of any indemnity awarded  
under section 84(1) or (2)(b) shall be paid  
out of the Land Titles Indemnity Fund."

Part 10

In the heading, by adding "AND RULES" after  
"APPEALS".

88

By deleting the clause.

89

- (a) In subclause (1), by deleting "of First  
Instance" where it twice appears.
- (b) In subclause (2)(a), by deleting "of First  
Instance".

(c) In subclause (3) -

(i) in paragraph (c), by deleting "of First Instance";

(ii) by deleting "發言" where it twice appears and substituting "陳詞".

(d) In subclause (4), by deleting "of First Instance".

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

"(5) The Registrar shall give effect to an order made under subsection (4), in so far as it relates to him, in accordance with the provisions of the order.".

90 By adding "under section 89" after "An appeal".

91 By deleting the clause and substituting -

**"91. Appeal rules, etc.**

The Chief Justice may make rules for regulating appeals under section 89, and applications made under this Ordinance to the Court, and for the fees to be paid in respect of such appeals and applications.".

92

- (a) In subclause (1)(b), by deleting "尋" and substituting "要".
- (b) In subclause (2) -
  - (i) in paragraph (a), by adding "or" after the semicolon;
  - (ii) by deleting paragraph (b);
  - (iii) in paragraph (c), by adding "a case" before "where".
- (c) In subclause (3) -
  - (i) by adding "which is" after "a lot";
  - (ii) by deleting "by" after "subsection (1)";
  - (iii) in paragraph (a), by adding "by" before "causing";
  - (iv) in paragraph (b), by adding "by" before "deciding";
  - (v) in paragraph (c), by adding "by" before "causing";
  - (vi) by deleting paragraph (d) and substituting -

"(d) if there is no existing plan or the existing plan is not acceptable -

(i) by advising the owner of the lot to appoint an authorized land surveyor to conduct a land boundary survey of the lot in accordance with the code of practice approved under the Land Survey Ordinance (Cap. 473) and to deliver the resultant land boundary plan ("new plan") certified by the authorized land surveyor and accompanied by the relevant fee to the Director of Lands;

or

(ii) if the Director of Lands decides to do so and with the consent of the owner of the lot and upon payment of the relevant fee, by conducting a land boundary survey of the lot and preparing the resultant land boundary plan ("new plan");";

(vii) in paragraph (e), by adding "by" before "deciding";

(viii) in paragraph (f) -

(A) by deleting ", then," and substituting "and";

(B) by adding "by" before "causing".

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

"(4) The Director of Lands shall not make a determination of the boundaries of a lot under this section if the existing plan or new plan changes the boundaries or area or measurement of that lot as shown -

(a) on a land boundary plan, or a microfilm, image record or other record of a land boundary plan, kept in the Land Registry under section 5B; or

(b) on any Government lease.".

93(a) By deleting "尋" and substituting "要".

94 By adding -

"(4) In this section, "working day" (工作日) means any day other than a public holiday or a black rainstorm warning day or gale warning day within the meaning of section 71 of the Interpretation and General

Clauses Ordinance (Cap. 1).".

95

(a) In the heading, by deleting "**of First Instance**".

(b) In subclause (1) -

(i) by deleting "petition or" where it  
twice appears;

(ii) by deleting "of First Instance"  
wherever it appears;

(iii) by deleting "覺得是" and  
substituting "覺得屬".

(c) By adding -

"(1A) No proceedings may be  
commenced under this section in respect  
of any matter for which proceedings may  
be commenced under section 81.".

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

"(2) The Registrar shall give effect  
to an order made under subsection (1) in  
accordance with the provisions of the  
order.".



96

(a) In subclause (1) -

- (i) in paragraphs (a), (b) and (c), by deleting "尋" and substituting "要";
- (ii) in paragraph (d), by deleting "2(2)(c)" and substituting "15(2)";
- (iii) in paragraph (e), by adding "record" after "image";
- (iv) by deleting paragraph (g);
- (v) by deleting paragraph (h)(ii), (iii), (iv) and (v) and substituting -
  - "(ii) the applications register;
  - (iii) any document, or any microfilm, image record or other record of a document, kept in the Land Registry under section 5B;
  - (iv) any endorsement on any thing referred to in subparagraph (i), (ii) or

- (iii); or
  - (v) any copy, print or extract of or from any thing referred to in subparagraph (i), (ii) or (iii) or of or from any endorsement on any such thing; or";
  - (vi) by deleting paragraph (i)(ii) and (iii) and substituting -
    - "(ii) any endorsement on any such thing;
    - (iii) any copy, print or extract of or from any such thing or of or from any endorsement on any such thing."
- (b) In subclause (2), by deleting "(g),".
- (c) In subclause (4), by deleting "\$1,000" and substituting "\$500".
- (d) In subclause (6), by deleting "\$1,000" and substituting "\$500".
- (e) In subclause (7) -

- (i) in the definition of "application for the registration of any matter", by deleting "(尋" and substituting "(要";
  - (ii) in the definition of "daily penalty", by deleting "after conviction therefor".
  
- 97(5)(d)
  - (a) By deleting "registered long term lease" and substituting "a registered long term lease is".
  - (b) By adding "and" before "is also".
  - (c) By deleting "尋" and substituting "要".
  
- 98
  - (a) In the heading, by deleting "**levy**" and substituting "**levies**".
  - (b) In subclause (1) -
    - (i) by deleting "fees and levy" and substituting "the fees";
    - (ii) by deleting paragraph (a) and substituting -

- "(a) any application for the  
registration of any  
matter (whether made  
pursuant to this  
Ordinance or any other  
enactment);";
- (iii) in paragraph (b), by deleting  
"2(2)(c)" and substituting "15(2)";
- (iv) by deleting paragraph (d) and  
substituting -
- "(d) the registration of any  
matter (whether pursuant  
to this Ordinance or any  
other enactment);";
- (v) in paragraph (g), by deleting "尋"  
and substituting "要".
- (vi) by deleting paragraph (h) and  
substituting -
- "(h) the provision (including  
inspection) of any thing  
(including any  
information) required to  
be or which may be kept

in the Land Registry  
(whether under section 5,  
5A or 5B or otherwise),  
or of a copy, print or  
extract of or from any  
such thing or of or from  
a microfilm, image record  
or other record of any  
such thing;"

(vii) by deleting paragraph (k).

(c) In subclause (2) -

(i) by deleting "or levy" where it  
twice appears;

(ii) by deleting "or levies".

(d) By adding -

"(2A) The Financial Secretary may  
by regulation prescribe the levies to be  
paid to the Registrar in respect of the  
registration of any matter (whether  
pursuant to this Ordinance or any other  
enactment)".

(e) In subclause (3) -

(i) by deleting "(2)" and substituting  
"(2A)";

- (ii) by deleting "subsection (1)" and substituting "that subsection".

99(1) By deleting "unpaid fee or levy or part of a fee or levy" and substituting "fact that the fee or levy or part of the fee or levy has not been paid".

- 100(1)
- (a) By deleting paragraphs (b), (c), (d), (e), (f), (g) and (h) and substituting -
    - "(b) the manner of verification of an application for the registration of any matter;
    - (c) the size, form and colouring of plans attached to or endorsed on an instrument accompanying an application for registration of any matter;
    - (d) the size and form of, and the particulars to be contained in, instruments accompanying applications for registration of any matter;

- (e) the manner in which an application for the registration of any matter is made and the procedures to be followed for the presentation of the application;
  - (f) the numbering of applications for the registration of any matter;
  - (g) the particulars to be entered in the Title Register and the applications register;
  - (h) without prejudice to the generality of paragraph (g), the manner in which the names of persons are to be entered in the Title Register and the applications register;".
- (b) By deleting paragraph (i).
- (c) By deleting paragraphs (j) and (k) and substituting -
- "(j) the circumstances and the procedures for rectification of the Title Register;
  - (k) the scrutiny of applications for the registration of any matter;".
- (d) By deleting paragraph (n) and substituting -

"(n) the circumstances in which an application for the registration of any matter, which is accompanied by an instrument which is stamped under section 13(2) of the Stamp Duty Ordinance (Cap. 117), shall be required to be accompanied by an application for the registration of a charge in respect of any stamp duty payable or to be payable on the instrument (including any stamp duty and penalty payable under section 13(7)(b), or additional stamp duty payable under section 13(10), of that Ordinance on that instrument);".

(e) In paragraph (o), by deleting "尋" and substituting "要".

(f) By adding -

"(oa) without prejudice to the generality of the grounds mentioned in paragraph (o), the circumstances in which the Registrar shall under



- section 20(2) refuse to proceed with the registration of any matter relating to an undivided share with an exclusive right to use and occupy a part of a building;
- (ob) the documents to be provided by a vendor under section 44(1)(a)(iv);
- (oc) the documents relating to title to be retained by the Land Registry where there is a dealing in registered land or a registered long term lease, and the period for which they are to be retained;
- (od) the classes of person who fall within paragraph (c) of the definition of "interested person" in section 77(5);".
- (g) By deleting paragraph (p) and substituting -
- "(p) the date on which the first registration of any matter, which is not expressly provided for in this Ordinance, shall take effect;".

- (h) In paragraph (q), by deleting "尋" and substituting "要".
- (i) By deleting paragraph (u) and substituting -
  - "(u) the manner of registration, withdrawal or removal of a consent caution or non-consent caution and the form of consent under a consent caution;
  - (ua) the manner of registration or removal of a charging order, judgment or order;".
- (j) In paragraph (v), by deleting "and" and substituting "or".
- (k) In paragraph (w), by adding "making an application for an order under section 77(1) and for the" before "registration".
- (l) By deleting paragraph (x) and substituting -
  - "(x) the manner of making an application for a title certificate, for the cancellation of a title certificate and for the replacement of a title certificate;
  - (xa) the circumstances in which a title

certificate need not be returned  
for cancellation under section  
26(5);".

(m) In paragraph (y), by deleting "存檔的程序及"  
and substituting "提交和存檔的程序及提交".

(n) In paragraph (za), by deleting "5(2)" and  
substituting "5, 5A or 5B".

(o) In paragraph (zb), by deleting "5(2)" and  
substituting "5, 5A or 5B".

(p) In paragraph (zc), by deleting "and  
maintained".

(q) By deleting paragraphs (zh) and (zi) and  
substituting -

"(zh) the funding, management,  
investment, and the keeping of  
accounts of, and the processing of  
claims in respect of, the Land  
Titles Indemnity Fund;

(zi) the power of the Registrar -

(i) to borrow moneys for the  
purposes of the Land  
Titles Indemnity Fund;  
and

(ii) to manage and invest the  
moneys of the Land Titles  
Indemnity Fund;".

(r) By deleting paragraph (zj).

(s) By deleting paragraph (zk) and substituting -  
"(zk) payments into and out of the Land  
Titles Indemnity Fund;".

101 By deleting the clause and substituting -

**"101. Amendment of Schedules  
1A and 1**

(1) The Secretary may, with the  
approval of the Legislative Council, by  
notice published in the Gazette, amend  
Schedule 1A.

(2) The Secretary may, by notice  
published in the Gazette, amend Schedule 1."

102 (a) By adding -

"(1A) The Land Registration  
Ordinance (Cap. 128) is amended as set  
out in Schedule 3."

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

"(2) The Secretary may, with the

approval of the Legislative Council, by notice published in the Gazette, amended Schedule 2 or 3."

New

By adding -

"SCHEDULE 1A [ss. 2, 3, 20A,  
20E, 23, 33  
& 101]

PROVISIONS FOR CONVERSION OF LRO LAND  
AND LONG TERM LEASES FROM LAND  
REGISTRATION SYSTEM TO  
LAND TITLE SYSTEM

PART 1

PRELIMINARY

1. **Interpretation**

In this Schedule -

"caution against conversion" (抗轉換警告書) has the

meaning assigned to it by section 1A(1) of the  
Land Registration Ordinance (Cap. 128);

"caveat" (知會備忘) has the meaning assigned to it by  
section 1A(1) of the Land Registration  
Ordinance (Cap. 128);

"long term lease" (長期租契) has the same meaning as in section 2(1) of this Ordinance except that it does not include a lease of both registered land and LRO land;

"LRO land" (《土註條例》土地) means land -

- (a) which is the subject of a Government lease for which a register has been kept under the Land Registration Ordinance (Cap. 128); and
- (b) which is not registered land within the meaning of section 2(1) of this Ordinance.

## PART 2

### CONVERSION OF LRO LAND

#### 2. **When LRO land becomes registered land**

(1) Subject to the provisions of this section, on the commencement of the 12th anniversary of the appointed day, all LRO land shall be deemed to be registered land, and all the provisions of this Ordinance shall apply to the

land accordingly.

(2) Subject to subsection (3), subsection

(1) shall not apply to any LRO land –

(a) in respect of which an instrument  
has been delivered for registration  
under the Land Registration  
Ordinance (Cap. 128) but has not  
been registered under that  
Ordinance before the commencement  
of the 12th anniversary of the  
appointed day; or

(b) which is subject to a caution  
against conversion which is  
registered under the Land  
Registration Ordinance (Cap. 128).

(3) LRO land referred to in subsection (1)  
shall be deemed to be registered land on –

(a) the date on which the instrument  
referred to in subsection (2)(a) is  
registered under the Land  
Registration Ordinance (Cap. 128);  
or

- (b) the date on which the land ceases to be subject to a caution against conversion which is registered under the Land Registration Ordinance (Cap. 128),

whichever is the later, and all the provisions of this Ordinance shall apply to the land accordingly.

### **3. Date of first registration**

The date of first registration of LRO land shall be -

- (a) in the case of land which falls within section 2(1), the 12th anniversary of the appointed day; and
- (b) in the case of land which falls within section 2(2), the date determined under section 2(3).

### **4. Effect of deeming**

(1) On the date of first registration of LRO land, there shall vest in the owner of the land the same legal estate or equitable interest and rights as would have been vested in him if



the land had been transferred to him and he had been registered as the owner of land under section 21 of this Ordinance.

(2) Subject to subsection (3), the deeming of LRO land to be registered land under section 2 shall not affect the validity or enforceability of any interest –

- (a) existing immediately before the date of first registration of the LRO land;
- (b) affecting the LRO land;
- (c) which was not registered under the Land Registration Ordinance (Cap. 128) (and whether or not it was capable of registration under that Ordinance); and
- (d) which was, immediately before the date of first registration, enforceable against the LRO land.

(3) An interest mentioned in subsection (2) in relation to LRO land deemed to be registered land shall not be enforceable against the land after the sale of the land to a purchaser for valuable consideration after the date of first

registration of the land under this Ordinance.

### PART 3

#### CONVERSION OF LONG TERM LEASES

**5. When long term lease becomes registered long term lease**

Where, on the date of first registration of any LRO land, the land is subject to a long term lease registered under the Land Registration Ordinance (Cap. 128), then on that date the long term lease shall be deemed to be a registered long term lease, and all the provisions of this Ordinance shall apply to the lease accordingly.

**6. Date of first registration**

The date of first registration of a long term lease is the date on which the lease was deemed to be a registered long term lease under section 5.

**7. Effect of deeming**

(1) On the date of first registration of a long term lease, there shall vest in the lessee of the lease the same interest and rights as would have been vested in him if he had been registered

as the lessee of the lease under section 22 of this Ordinance.

(2) Subject to subsection (3), the deeming of a long term lease to be a registered long term lease under section 5 shall not affect the validity or enforceability of any interest -

- (a) existing immediately before the date of first registration of the long term lease under this Ordinance;
- (b) affecting the land;
- (c) which was not registered under the Land Registration Ordinance (Cap. 128) (and whether or not it was capable of registration under that Ordinance); and
- (d) which was, immediately before the date of first registration of the long term lease under this Ordinance, enforceable against the land.

(3) An interest mentioned in subsection (2) in relation to land shall not be enforceable against the land after the sale of the land to a purchaser for valuable consideration after the date of first registration of the long term lease under this Ordinance.

#### PART 4

#### MISCELLANEOUS

8. **Registers kept under Land  
Registration Ordinance**

On the date of first registration of LRO land for which a register has been kept under the Land Registration Ordinance (Cap. 128), the register shall, subject to the regulations, be deemed to form part of the Title Register, and all the provisions of this Ordinance shall apply to the register accordingly.

9. **Transitional provisions in respect  
of Title Register, etc.**

Subject to the regulations, where a register has been kept under the Land Registration Ordinance (Cap. 128) in relation to LRO land,

then, on and after the date of first registration of the land under section 3, the priority of all interests in the Title Register -

(a) existing immediately before the date of first registration; and

(b) in respect of which a memorial of an instrument within the meaning of the Land Registration Regulations (Cap. 128 sub. leg. A) has been registered under the Land

Registration Ordinance (Cap. 128),

shall be determined in accordance with the provisions of the Land Registration Ordinance (Cap. 128), and the provisions of this Ordinance shall be construed accordingly.

**10. Transitional provision in respect of registered caveat**

Where immediately before the date of first registration of LRO land under this Ordinance there was a caveat registered against the land under the Land Registration Ordinance (Cap. 128), then, commencing on the date of first registration of the land under this Ordinance -

- (a) the caveat shall be deemed to be a non-consent caution;
- (b) notwithstanding section 33(1) of this Ordinance, the priority of the interest claimed in the deemed non-consent caution shall be determined in accordance with the law in force immediately before the date of first registration of the land concerned and applicable to the priority among such interests; and
- (c) all the provisions of this Ordinance (including sections 72 and 73) shall apply to the deemed non-consent caution accordingly."

- Schedule 1
- (a) By adding "6A," after "6(1) (a),".
  - (b) By deleting ", 88".

Schedule 2,  
section 2

By deleting paragraph (b) and substituting -

"(b) by adding -

"(6) In the case of a charging order registered under the Land Titles Ordinance ( of 2004), if an order under subsection (4) discharging the charging order is made, the Land Registrar shall, on the presentation to him of an application for the purpose accompanied by an office copy of the order, remove from the Title Register kept under that Ordinance the entry referring to the order."."

Schedule 2,  
section 3

By deleting the section and substituting -

"3. **Special rules as to the sale of immovable property**

Order 47, rule 7(4)(b) of the Rules of the High Court (Cap. 4 sub. leg. A) is repealed and the following substituted -

"(b) In the case of immovable property which is registered under the Land

Titles Ordinance ( of 2004), such certificate shall be liable to the same stamp duty as an assignment of the same property and, when duly stamped, may support an application for registration under that Ordinance of the purchaser as the owner of the property.

- (c) In the case of any other immovable property, such certificate shall be liable to the same stamp duty as an assignment of the same property and, when duly stamped, shall be taken and deemed to be a valid transfer of such right, title and interest and may be registered under the Land Registration Ordinance (Cap. 128).".".

Schedule 2,  
section 4

By deleting the section and substituting -

**"4. Discharge, etc., of charging order**

Order 50, rule 7(2) is amended by  
repealing "the lot number of the land and



the memorial number of any relevant charge registered against the land." and substituting -

"-

- (a) the lot number of the land; and
- (b) the memorial number of any relevant charge registered against the land under the Land Registration Ordinance (Cap. 128) or the application number of any relevant charge registered against the land under the Land Titles Ordinance ( of 2004), as the case may be."."

Schedule 2,  
section 5

By deleting the section and substituting -

"5. **Registration of petition under  
Land Registration Ordinance  
or Land Titles Ordinance**

Rule 53 of the Bankruptcy Rules (Cap. 6

sub. leg. A) is amended by repealing "a memorial of the petition in the Land Registry against any property registered therein" and substituting "the petition under the Land Registration Ordinance (Cap. 128), or register a non-consent caution under the Land Titles Ordinance ( of 2004) relating to the petition, against any property which is registered under that Ordinance".

Schedule 2,  
section 6

By deleting the section and substituting -

**"6. Registration of petition under  
Land Registration Ordinance  
or Land Titles Ordinance  
against partner**

Rule 54 is amended by repealing "in either of the cases mentioned in rule 133 or 135 register a memorial of the petition in the Land Registry against any property registered" and substituting ", in either of the cases mentioned in rule 133 or 135, register the petition under the Land Registration Ordinance (Cap. 128), or register a non-consent caution under the Land Titles Ordinance ( of 2004) relating to the petition, against any property which

is registered under that Ordinance".

Schedule 2,  
section 7

By deleting the section and substituting -

**"7. Registration of bankruptcy order  
under Land Registration  
Ordinance or Land Titles  
Ordinance**

Rule 73 is amended by repealing "a memorial of such bankruptcy order in the Land Registry against any property registered therein" and substituting "the order under the Land Registration Ordinance (Cap. 128), or register a non-consent caution under the Land Titles Ordinance ( of 2004) relating to the order, against any property which is registered under that Ordinance".

Schedule 2,  
section 8

By deleting the section and substituting -

**"8. Registration of bankruptcy order  
under Land Registration  
Ordinance or Land Titles  
Ordinance against partner**

Rule 74 is amended by repealing "a memorial thereof in the Land Registry against any property registered" and substituting "the order under the Land

Registration Ordinance (Cap. 128), or register a non-consent caution under the Land Titles Ordinance ( of 2004) relating to the order, against any property which is registered under that Ordinance".

Schedule 2,  
section 10

By deleting the section and substituting -

"10. **Forms**

The Schedule to the Bankruptcy (Forms) Rules (Cap. 6 sub. leg. B) is amended -

- (a) in Form 67, by repealing "vacated upon the application of the debtor under the Land Registration Ordinance (*Chapter 128*)" and substituting "vacated or removed upon the application of the debtor under the Land Registration Ordinance (*Chapter 128*) or the Land Titles Ordinance ( of 2004), as the case may require";

(b) in Forms 128 and 129, by  
repealing "in the Land  
Registry" and substituting  
"under the Land Registration  
Ordinance (*Chapter 128*) or the  
Land Titles Ordinance ( of  
2004)".

Schedule 2,      By adding a comma after "( of 2002)".  
section 15(b)

Schedule 2,      By deleting the section and substituting -  
section 17

**"17. Interpretation**

Section 2 of the Government Leases  
Ordinance (Cap. 40) is amended, in the  
definition of "section", by repealing "in  
the Land Registry" and substituting "under  
the Land Registration Ordinance (Cap. 128),  
or which is registered under the Land Titles  
Ordinance ( of 2004) or which supports a  
current entry in the Title Register kept  
under that Ordinance,".

Schedule 2,  
section 19

By deleting the section and substituting -

"19. **New Government rent to be  
noted or entered in  
register**

Section 10 is amended -

(a) by repealing subsection (1)(b) and  
substituting -

"(b) the Land Registrar shall  
cause the amount of the  
new Government rent  
payable in respect of the  
lot or section -

(i) to be noted in  
the register of  
such lot or  
section kept  
under the Land  
Registration  
Ordinance (Cap.  
128); or

(ii) if the lot or  
section is  
registered  
under the Land  
Titles

Ordinance  
( of 2004),  
to be entered  
in the Title  
Register kept  
under that  
Ordinance.";

(b) by repealing subsection (2)(b) and  
substituting -

"(b) the Land Registrar shall  
cause -

(i) the amount of  
the new  
Government rent  
noted in the  
register of  
such lot or  
section kept  
under the Land  
Registration  
Ordinance (Cap.  
128), or  
entered in the  
Title Register

kept under the

Land Titles

Ordinance

( of 2004),

to be deleted;

and

(ii) the increased

new Government

rent to be

noted or

entered

therein."."

Schedule 2,  
section 20

By deleting the section and substituting -

**"20. Correction of clerical or  
arithmetical errors**

Section 11(2) is amended by repealing  
"in the Land Registry" and substituting  
"under the Land Registration Ordinance (Cap.  
128) or entered in the Title Register kept  
under the Land Titles Ordinance ( of  
2004), as the case may require"."



Schedule 2,  
section 21

By deleting the section and substituting -

**"21. Section substituted**

Section 12 is repealed and the  
following substituted -

**"12. Evidence of renewal**

The amount of the new Government  
rent payable in respect of a lot or  
section for the time being shown in the  
register kept under the Land  
Registration Ordinance (Cap. 128), or  
entered in the Title Register kept under  
the Land Titles Ordinance (      of 2004),  
as the case may be, shall be conclusive  
evidence of the grant of the new  
Government lease of the lot or section  
and of the new Government rent  
thereof."."

Schedule 2,  
section 23

By deleting paragraph (b) and substituting -

"(b) by adding -

"(aa) any charge registered under  
the Land Titles Ordinance  
(      of 2004);

(ab) any equitable mortgage which  
is the subject of a consent  
caution or non-consent  
caution registered under the  
Land Titles Ordinance ( of  
2004);".".

Schedule 2,  
section 24

By deleting the section and substituting -

**"24. Section substituted**

Section 16 is repealed and the  
following substituted -

**"16. Government lease plan**

(1) If a plan of a lot held under  
a renewable Government lease -

(a) is not annexed to the  
counterpart of the  
Government lease kept  
under the Land  
Registration Ordinance  
(Cap. 128), or if the  
plan annexed thereto is,  
in the opinion of the  
Director, inaccurate or  
inadequate to establish

the location, position,  
or dimensions of the lot;  
or

- (b) if the lot is registered  
under the Land Titles  
Ordinance (      of 2004),  
is not referred to in the  
Title Register kept under  
that Ordinance, or if the  
plan is referred to in  
the Title Register, is,  
in the opinion of the  
Director, inaccurate or  
inadequate to establish  
the location, position,  
or dimensions of the lot,

the Director may cause the lot to be  
surveyed and a plan thereof prepared.

(2) If a plan of a section of a  
lot held under a renewable Government  
lease -

- (a) is not registered under  
the Land Registration  
Ordinance (Cap. 128), or

if the plan is so  
registered is, in the  
opinion of the Director,  
inaccurate or inadequate  
to establish the  
location, position, or  
dimensions of the  
section; or

- (b) if the lot is registered  
under the Land Titles  
Ordinance (      of 2004),  
is not referred to in the  
Title Register kept under  
that Ordinance, or if the  
plan is referred to in  
the Title Register, is,  
in the opinion of the  
Director, inaccurate or  
inadequate to establish  
the location, position,  
or dimensions of the  
section,

the Director may cause the section to be  
surveyed and a plan thereof

prepared."."

Schedule 2,  
section 25

By deleting the section and substituting -

**"25. Plan as approved or amended to be  
delivered to Land Registry**

Section 22(a) and (b) is repealed and  
the following substituted -

"(a) in the case of a lot -

- (i) cause the plan to be  
annexed to the  
counterpart of the  
renewable Government  
lease of the lot kept  
under the Land  
Registration Ordinance  
(Cap. 128) and cause the  
previous plan, if any,  
to be cancelled; or
- (ii) if the lot is registered  
under the Land Titles  
Ordinance ( of 2004),  
cause the plan to be  
entered in the Title  
Register kept under that  
Ordinance and cause any

entry relating to the  
previous plan, if any,  
to be removed from the  
Title Register;

(b) in the case of a section of a  
lot -

- (i) cause the plan to be  
registered under the  
Land Registration  
Ordinance (Cap. 128) in  
respect of the section  
of the lot to which the  
renewable Government  
lease relates, and cause  
the previous plan, if  
any, to be cancelled; or
- (ii) if the lot is registered  
under the Land Titles  
Ordinance ( of 2004),  
cause the plan to be  
entered in the Title  
Register kept under that  
Ordinance and cause any  
entry relating to the

previous plan, if any,  
to be removed from the  
Title Register."."

Schedule 2,  
section 31

By deleting the section and substituting -

**"31. Registration of manager  
of "t'ong", etc.**

Section 15 of the New Territories  
Ordinance (Cap. 97) is amended by repealing  
the last sentence and substituting "Such re-  
entry, in the case of any such lease, shall  
be effected by the registration under the  
Land Registration Ordinance (Cap. 128), of  
an instrument of re-entry presented to the  
Land Registrar by the Secretary for Home  
Affairs or, if the lease is registered under  
the Land Titles Ordinance ( of 2004), by  
the making of an entry relating to such an  
instrument in the Title Register kept under  
that Ordinance."."

Schedule 2,  
section 37

By deleting the section and substituting -

**"37. Attachment**

Section 6(7) of the Tramway Ordinance  
(Cap. 107) is repealed and the following

substituted -

"(7) For the purpose of this section, "owner" (擁有人) means the person who is registered under the Land Registration Ordinance (Cap. 128) or the Land Titles Ordinance ( of 2004) as the owner or holder of the land on which the house or building in question is built and any -

- (a) mortgagee thereof who is registered as such under the Land Registration Ordinance (Cap. 128); or
- (b) chargee thereof who is registered as such under the Land Titles Ordinance ( of 2004).".".

Schedule 2,  
section 38

By deleting the section and substituting -

**"38. Charge of estate duty on property**

Section 18 of the Estate Duty Ordinance (Cap. 111) is amended -



- (a) by repealing subsection (2) and substituting -

"(2) Notice of any charge on any leasehold property constituted by subsection (1) which is to be registered under the Land Registration Ordinance (Cap. 128) may be given by the Commissioner registering a memorial under that Ordinance against the property affected thereby, which memorial -

- (a) shall be signed by the Commissioner; and

- (b) shall specify -

- (i) the subsection under which the charge is constituted;

- (ii) the name, description, and date of death of the deceased in respect of whose estate the claim to estate duty arises; and

(iii) particulars of the  
property charged.";

(b) by adding -

"(2A) Notice of any charge on any  
leasehold property constituted by  
subsection (1) which is to be registered  
under the Land Titles Ordinance ( of  
2004) may be given by the Commissioner  
registering a non-consent caution under  
that Ordinance against the property  
affected thereby, which non-consent  
caution -

(a) shall state that the  
property is subject to a  
first charge under that  
subsection; and

(b) shall be supported by an  
application signed by the  
Commissioner specifying -  
(i) the subsection under  
which the charge is  
constituted;

(ii) the name,  
description and date  
of death of the  
deceased in respect  
of whose estate the  
claim to estate duty  
arises; and

(iii) particulars of the  
property charged.";

(c) by repealing subsection (3) and  
substituting -

"(3) A notice in writing of any  
charge under subsection (1) or (2) may  
be registered under the Land  
Registration Ordinance (Cap. 128) as an  
instrument affecting land.".

Schedule 2,  
section 39

By deleting the section and substituting -

**"39. Joint owners and co-owners**

Section 56A(1) of the Inland Revenue  
Ordinance (Cap. 112) is amended by repealing  
everything after "appearing from" and  
substituting -

"-

- (a) any deed, conveyance,  
judgment or other  
instrument in writing  
registered under the  
Land Registration  
Ordinance (Cap. 128); or
- (b) the Title Register kept  
under the Land Titles  
Ordinance (      of 2004),

to be such an owner shall be answerable  
for doing all such acts, matters and  
things as would be required to be done  
under the provisions of this Ordinance  
by a sole owner."."

Schedule 2,  
section 40

- (a) In the proposed section 2A(b), by deleting  
"定土地權益或衡平法" and substituting "律上或衡平  
法上的".
- (b) In the proposed section 2A(e), by deleting  
"尋" and substituting "要".

Schedule 2,  
section 41

By deleting the section and substituting -  
  
"41. **Non-admissibility etc. of  
instruments not duly  
stamped**

Section 15(3) is amended -

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

(b) by adding -

"(aa) a matter under the  
Land Titles  
Ordinance ( of  
2004) if the  
instrument  
supporting the  
registration of the  
matter is -

(i) stamped under  
section 5(1)  
or 13(2); or

(ii) an agreement  
for sale that  
either  
contains a  
statement to  
the effect  
that it  
relates to  
non-

residential  
property  
within the  
meaning of  
section 29A(1)  
or is endorsed  
under section  
29C(13) (a);  
or";

(c) by adding "或事項" after "下文  
書".

Schedule 2,  
section 42

By deleting the proposed section 67(3) and  
substituting -

"(3) The charge under subsection (2) in  
respect of registered land shall expire on -

(a) the 1st anniversary of the  
date of first registration of  
the land;

(b) the date on which the  
instrument is stamped under  
section 13 with a stamp  
denoting that it is not  
chargeable with stamp duty; or

(c) the date on which the  
instrument is stamped with a  
stamp denoting that it is duly  
stamped,  
whichever is the earlier."

Schedule 2,  
section 49

(a) By deleting paragraph (a)(iii) and  
substituting -

"(iii) in paragraph (a), by repealing  
"such Land Registry register" and  
substituting "the Land Registry  
register kept under the Land  
Registration Ordinance (Cap. 128)  
or the Title Register kept under  
the Land Titles Ordinance ( of  
2004)";".

(b) By deleting paragraph (c) and substituting -

"(c) by adding -

"(11) Where the  
certificate is registered  
under the Land Titles  
Ordinance ( of 2004), upon  
the recovery of any sum under  
this section, the Building

Authority shall cause the appropriate entries to be made in the Title Register kept under that Ordinance to effect a discharge or partial discharge of the charge mentioned in subsection (9), as the case may require."."

Schedule 2,  
section 51

By deleting the section and substituting -

**"51. Section substituted**

Section 4A is repealed and the following substituted -

**"4A. Purchase by agreement**

(1) Where an order has been made for the resumption of any land under section 3, the Authority may, before the land reverts to the Government under section 5 -

- (a) agree with the owner on the purchase of the land; and
- (b) agree with any person -



(i) having an  
estate or  
interest in  
such land  
under an  
instrument  
registered  
under the Land  
Registration  
Ordinance  
(Cap. 128); or

(ii) having an  
estate or  
interest in  
such land  
which is  
registered  
under the Land  
Titles  
Ordinance  
( of 2004),

on the purchase of any  
such estate or interest  
therein.

(2) Any such agreement relating to land in respect of which an order under section 3 is made on or after the commencement of the Crown Lands Resumption (Amendment) Ordinance 1984 (5 of 1984) may provide for the payment by the Authority to the owner or such person of any costs or remuneration reasonably incurred or paid by him in employing persons to act in a professional capacity in connection with the purchase."."

Schedule 2,  
section 52

By deleting the section and substituting -

**"52. Compensation**

Section 6(1)(a) is repealed and the following substituted -

"(a) make an offer of compensation in respect of the resumption of the land in writing to -

- (i) the former owner; and
- (ii) any person having,  
immediately before  
reversion -

(A) an estate or  
interest in such  
land under an  
instrument  
registered under  
the Land  
Registration  
Ordinance (Cap.  
128); or

(B) an estate or  
interest in such  
land which is  
registered under  
the Land Titles  
Ordinance ( of  
2004); or".".

Schedule 2,  
section 53

By deleting the section and substituting -

**"53. Interpretation**

Section 2 of the Government Rent and  
Premium (Apportionment) Ordinance (Cap. 125)  
is amended -

(a) in the definition of  
"existing building", by  
repealing paragraph (c) and  
substituting -

"(c) in respect of  
which -

(i) in the case of  
a lot or  
section which  
is registered  
under the Land  
Titles  
Ordinance  
( of 2004),  
the Title  
Register kept  
under that  
Ordinance  
contains no  
current entry  
providing for  
a basis of  
apportionment  
of the

principal  
Government  
rent reserved  
under the new  
Government  
lease or of  
the annual  
instalment of  
premium  
payable in  
respect of  
that relevant  
interest; or  
(ii) in the case of  
any other lot  
or section, no  
instrument  
containing a  
basis of  
apportionment  
of the  
principal  
Government  
rent reserved

under the new  
Government  
lease or of  
the annual  
instalment of  
premium  
payable in  
respect of  
that relevant  
interest has  
been  
registered  
under the Land  
Registration  
Ordinance  
(Cap. 128);";

- (b) in the definition of "owner",  
by repealing paragraphs (a)  
and (b) and substituting -

"(a) the person whose  
name is registered  
under the Land  
Registration  
Ordinance (Cap.

128) or the Land  
Titles Ordinance  
( of 2004) as  
that of the owner  
or one of the  
owners of the  
section or relevant  
interest, as the  
case may be; and

- (b) a mortgagee under a  
mortgage which is  
registered under  
the Land  
Registration  
Ordinance (Cap.  
128) or an owner of  
a charge which is  
registered under  
the Land Titles  
Ordinance ( of  
2004);";

- (c) in the definition of "relevant  
interest", by repealing "under  
the terms of an instrument

registered in the Land  
Registry to exclusive  
possession of premises in that  
building;" and substituting -

"to exclusive possession  
of premises in that  
building under the terms  
of an instrument -

(a) which is  
registered  
under the Land  
Registration  
Ordinance (Cap.  
128); or

(b) which is  
registered  
under the Land  
Titles  
Ordinance  
( of 2004) or  
which supports  
a current entry  
in the Title  
Register kept



under that

Ordinance;";

- (d) by repealing the definition  
of "section" and  
substituting -

"section" (分段) means any

portion or division of a  
lot which has been  
assigned, alienated or  
retained for the whole  
of the term or interest  
created by the  
Government lease of the  
lot by or under an  
instrument -

- (a) which is  
registered  
under the Land  
Registration  
Ordinance  
(Cap. 128); or

- (b) which is  
registered  
under the Land

Titles  
Ordinance  
(     of 2004)  
or which  
supports a  
current entry  
in the Title  
Register kept  
under that  
Ordinance."."

Schedule 2,  
section 54

By deleting the section and substituting -

**"54. Apportionment of Government rent**

Section 6(1)(b) is amended by repealing  
"which is registered in the Land Registry;  
or" and substituting -

"-

- (i) which is registered under the  
Land Registration Ordinance  
(Cap. 128); or
- (ii) which is registered under the  
Land Titles Ordinance (     of  
2004) or which supports a  
current entry in the Title

Register kept under that  
Ordinance; or".

Schedule 2,  
section 55

By deleting the section and substituting -

**"55. Apportionment of premium on section**

Section 7(1)(a) is amended by repealing  
"which is registered in the Land Registry;  
or" and substituting -

"-

- (i) which is registered under the  
Land Registration Ordinance  
(Cap. 128); or
- (ii) which is registered under the  
Land Titles Ordinance ( of  
2004) or which supports a  
current entry in the Title  
Register kept under that  
Ordinance; or".

Schedule 2,  
section 56

By deleting the section and substituting -

**"56. Area of lot or section**

Section 10(1) is amended by repealing  
everything after "contained in" and  
substituting -

"—

(a) a Government lease or  
other instrument —

(i) which is  
registered  
under the Land  
Registration  
Ordinance (Cap.  
128); or

(ii) which is  
registered  
under the Land  
Titles  
Ordinance  
( of 2004)  
or which  
supports a  
current entry  
in the Title  
Register kept  
under that  
Ordinance; or

(b) any plan annexed to or  
endorsed on any such  
Government lease or  
instrument."."

Schedule 2,  
section 57

By deleting the section and substituting -

**"57. Cases in which Government rent  
or premium to be treated as  
apportioned in registered  
instrument**

Section 11(a) and (b) is amended by  
repealing "in the Land Registry" and  
substituting "under the Land Registration  
Ordinance (Cap. 128), or which is registered  
under the Land Titles Ordinance ( of 2004)  
or which supports a current entry in the  
Title Register kept under that  
Ordinance,"."

Schedule 2,  
section 58

By deleting the section and substituting -

**"58. Apportionment of Government rent  
on relevant interest**

Section 13(1)(a) is amended by  
repealing "which is registered in the Land  
Registry; or" and substituting -

"\_

- (i) which is registered under the  
Land Registration Ordinance  
(Cap. 128); or
- (ii) which is registered under the  
Land Titles Ordinance ( of  
2004) or which supports a  
current entry in the Title  
Register kept under that  
Ordinance; or".

Schedule 2,  
section 59

By deleting the section and substituting -

**"59. Apportionment of premium on  
relevant interest**

Section 14(1)(a) is amended by  
repealing "which is registered in the Land  
Registry; or" and substituting -

"-

- (i) which is registered under the  
Land Registration Ordinance  
(Cap. 128); or
- (ii) which is registered under the  
Land Titles Ordinance ( of  
2004) or which supports a  
current entry in the Title  
Register kept under that

Ordinance; or".".

Schedule 2,  
section 61

By deleting the section and substituting -

**"61. Covenants between owners not  
to be affected**

Section 25 is amended by repealing  
"which is registered in the Land Registry,  
but" and substituting -

"\_

- (a) which is registered  
under the Land  
Registration Ordinance  
(Cap. 128); or
- (b) which is registered  
under the Land Titles  
Ordinance ( of 2004)  
or which supports a  
current entry in the  
Title Register kept  
under that Ordinance,

but".".

Schedule 2,  
section 62

By deleting the section and substituting -

**"62. Interpretation**

Section 2 of the Government Rights (Re-

entry and Vesting Remedies) Ordinance (Cap. 126) is amended -

(a) in the definition of "former owner", by repealing everything after "immediately before" and substituting -  
"-

(a) in the case of  
a lot or  
relevant  
interest which  
is registered  
under the Land  
Titles  
Ordinance  
( of 2004),  
the time of  
registration  
under that  
Ordinance of an  
application  
supported by an  
instrument of  
re-entry or a



vesting notice,  
as the case may  
be;

- (b) in the case of  
any other lot  
or relevant  
interest, the  
time of  
registration  
under the Land  
Registration  
Ordinance (Cap.  
128) of an  
instrument of  
re-entry or a  
vesting notice,  
as the case may  
be;"

- (b) in the definition of "owner" -

- (i) in paragraph (a), by  
repealing "in the  
Land Registry" and  
substituting "under  
the Land

Registration

Ordinance (Cap. 128)

or the Land Titles

Ordinance (      of

2004)";

(ii) in paragraph (b), by

repealing "in the

Land Registry" and

substituting "under

the Land

Registration

Ordinance (Cap. 128)

or an owner of a

charge which is

registered under the

Land Titles

Ordinance (      of

2004)";

(c) in the definition of "relevant

interest", by repealing

everything after "entitled"

and substituting -

"to exclusive possession  
of premises in that  
building under the terms  
of an instrument -

(a) which is  
registered  
under the Land  
Registration  
Ordinance (Cap.  
128); or

(b) which is  
registered  
under the Land  
Titles  
Ordinance  
( of 2004) or  
which supports  
a current entry  
in the Title  
Register kept  
under that  
Ordinance;"

(d) in the definition of "vesting notice", by repealing "registered in the Land Registry under section 7." and substituting -

"issued under section 7 -

(a) which is  
registered  
under the Land  
Registration  
Ordinance  
(Cap.128); or

(b) which supports  
an application  
for  
registration  
relating to  
the vesting  
notice under  
the Land  
Titles  
Ordinance  
( of  
2004)."."

Schedule 2,  
section 63

By deleting the section and substituting -

**"63. Instrument of re-entry**

Section 4 is amended -

(a) in subsection (1) -

(i) by repealing "a memorial of an  
instrument of re-entry" and  
substituting "an instrument of re-  
entry may be issued";

(ii) by repealing "may be registered in  
the Land Registry." and  
substituting -

"and -

(a) if such an  
instrument relates  
to lands or  
tenements registered  
under the Land  
Titles Ordinance  
( of 2004), it may  
be made the subject  
of an application  
for registration  
under that

Ordinance; and

(b) if such an instrument relates to other lands or tenements, it may be registered under the Land Registration Ordinance (Cap. 128).";

(b) in subsection (2), by repealing "on the registration of such a memorial" and substituting "upon the making of an entry relating to such an instrument in the Title Register kept under the Land Titles Ordinance ( of 2004), or the registration of such an instrument under the Land Registration Ordinance (Cap. 128)".

Schedule 2,  
section 64

By deleting the section and substituting -

**"64. Section substituted**

Section 5 is repealed and the following substituted -

**"5. Notice of registration  
of instrument of  
re-entry**

Notice of the making of an entry  
in the Title Register kept under the  
Land Titles Ordinance ( of 2004)  
relating to, or the registration under  
the Land Registration Ordinance (Cap.  
128) of, an instrument of re-entry by  
the Government shall be published in  
the Gazette."."

Schedule 2,  
section 65

By deleting the section and substituting -

**"65. Power to vest relevant interest  
in The Financial Secretary  
Incorporated**

Section 7 is amended -

(a) in subsection (1), by repealing  
everything after paragraph (b) and  
substituting -

"a vesting notice may be issued,  
under the hand of any public  
officer authorized by the Chief  
Executive to sign such  
instruments, and -

(c) if the relevant interest is registered under the Land Titles Ordinance ( of 2004), such vesting notice may be made the subject of an application for registration under that Ordinance; and

(d) if the relevant interest is not registered under the Land Titles Ordinance ( of 2004), such vesting notice may be registered under the Land Registration Ordinance (Cap. 128).";



(b) in subsection (1A), by repealing everything after "Government Leases Ordinance (Cap. 40)" and substituting -

"a vesting notice may be issued, under the hand of any public officer authorized by the Chief Executive to sign such instruments, and -

(a) if the relevant interest of which the tenement to which the demand relates forms a part is registered under the Land Titles Ordinance ( of 2004), such vesting notice may be made the subject of an application for registration under that Ordinance; and

(b) if the relevant interest of which the tenement to which the demand relates forms a part is not registered under the Land Titles Ordinance ( of 2004), such vesting notice may be registered under the Land Registration Ordinance (Cap. 128).";

(c) in subsection (2) -

(i) by repealing everything before paragraph (a) and substituting -

"(2) Immediately upon the making of an entry relating to a vesting notice in the Title Register kept under the Land Titles Ordinance ( of

2004), or the registration of  
a vesting notice under the  
Land Registration Ordinance  
(Cap. 128) -";

(ii) in paragraph (b), by repealing  
"registered in the Land Registry"  
and substituting "supporting a  
current entry in the Title  
Register kept under the Land  
Titles Ordinance ( of 2004), or  
registered under the Land  
Registration Ordinance (Cap.  
128),";

(iii) in paragraph (i), by repealing "in  
the Land Registry" and  
substituting "under the Land  
Titles Ordinance ( of 2004) or the  
Land Registration Ordinance (Cap.  
128)";

(iv) in paragraph (iv), by repealing  
"registered in the Land Registry"  
and substituting "supporting a  
current entry in the Title  
Register kept under the Land

Titles Ordinance ( of 2004), or  
not registered under the Land  
Registration Ordinance (Cap.  
128)";

- (d) in subsection (3), by repealing  
"registered in the Land Registry under  
subsection (1) or (1A)" and  
substituting "which, under subsection  
(1) or (1A), is made the subject of an  
application for registration under the  
Land Titles Ordinance ( of 2004), or  
is registered under the Land  
Registration Ordinance (Cap. 128)".

Schedule 2,  
section 66

By deleting the section and substituting -

**"66. Right to apply for relief against  
re-entry or vesting**

Section 8 is amended -

- (a) in subsection (1), by  
repealing "where a memorial of  
re-entry has been registered  
under section 4 in the Land  
Registry" and substituting  
"where, under section 4, an  
entry relating to an

instrument of re-entry has  
been made in the Title  
Register kept under the Land  
Titles Ordinance ( of 2004),  
or an instrument of re-entry  
has been registered under the  
Land Registration Ordinance  
(Cap. 128)";

- (b) in subsection (2), by  
repealing "where a vesting  
notice has been registered  
under section 7 in the Land  
Registry" and substituting  
"where, under section 7, an  
entry relating to a vesting  
notice has been made in the  
Title Register kept under the  
Land Titles Ordinance ( of  
2004), or a vesting notice has  
been registered under the Land  
Registration Ordinance (Cap.  
128)";

- (c) in subsection (3), by  
repealing "from the

registration of the memorial  
of re-entry or vesting notice"  
and substituting "from the  
date of the making of the  
entry in the Title Register  
kept under the Land Titles  
Ordinance ( of 2004)  
relating to the instrument of  
re-entry or vesting notice, or  
the date of registration of  
the instrument of re-entry or  
vesting notice under the Land  
Registration Ordinance (Cap.  
128)".

Schedule 2,  
section 69(b)

(a) In subparagraph (i), by deleting "所有" and  
substituting "首次及第二次出現的".

(b) By deleting subparagraph (ii) and  
substituting -

"(ii) by repealing "it had never been  
registered" and substituting "no  
entry had been made in respect of  
it in the Title Register kept  
under the Land Titles Ordinance

( of 2004), or as if it had never been registered under the Land Registration Ordinance (Cap. 128), as the case may be";".

Schedule 2,  
section 70

By deleting paragraph (b) and substituting -

"(b) in subsection (2) -

(i) by repealing "the same had never been made or registered" and substituting "no entry had been made in respect of it in the Title Register kept under the Land Titles Ordinance ( of 2004), or as if it had never been registered under the Land Registration Ordinance (Cap. 128), as the case may be,";

(ii) by repealing "no vesting notice had been registered at the Land Registry" and substituting "no entry had been so made or no vesting notice had been so registered,

as the case may be".

Schedule 2      By deleting the subheading "**Land Registration Ordinance**" before section 71.

Schedule 2      By deleting section 71.

Schedule 2      By deleting section 72.

Schedule 2      By deleting section 73.

Schedule 2      By deleting section 74.

Schedule 2,  
section 76      (a)   In paragraph (a)(iii), by deleting "land  
                     register" and substituting "register".  
                     (b)   By deleting paragraph (b) and substituting -  
                     "(b) in subsection (10), by repealing  
                     everything after "this section"  
                     and substituting -  
                     "in respect of which a  
                     certificate has been issued  
                     under the provisions of  
                     subsection (1), the public  
                     officer concerned shall -



(a) if the  
certificate  
has been  
registered  
under the Land  
Registration  
Ordinance  
(Cap. 128),  
register under  
that Ordinance  
an appropriate  
instrument of  
satisfaction  
against the  
certificate;  
or

(b) if the  
certificate  
has been  
registered  
under the Land  
Titles  
Ordinance  
(            of

2004), cause  
the  
appropriate  
entries to be  
made in the  
Title Register  
kept under  
that Ordinance  
to effect a  
discharge or  
partial  
discharge of  
the charge  
mentioned in  
subsection  
(9), as the  
case may  
require."."

Schedule 2,  
section 77

By deleting the section and substituting –

**"77. Interpretation**

Section 3 of the Public Cleansing and  
Prevention of Nuisances Regulation (Cap. 132  
sub. leg. BK) is amended, in the definition

of "common parts", by repealing "in an instrument registered in the Land Registry as being for the exclusive use, occupation or enjoyment of an owner or occupier;" and substituting -

"as being for the exclusive use, occupation or enjoyment of an owner or occupier in an instrument -

- (a) which is registered under the Land Registration Ordinance (Cap. 128); or
- (b) which is registered under the Land Titles Ordinance ( of 2004) or which supports a current entry in the Title Register kept under that Ordinance;".

Schedule 2,  
section 78(a)

In the proposed definition of "Land Registry register", by deleting "land register" and substituting "register".

Schedule 2,  
section 79

By deleting the section and substituting -

**"79. Burdens and covenants**

Section 7 is amended -

(a) in subsection (1), by repealing  
"registered in the Land Registry"  
and substituting "referred to in  
subsection (4)";

(b) by adding -

"(4) For the purpose of  
subsection (1), the  
instrument referred to in  
that subsection is an  
instrument -

(a) which is  
registered  
under the Land  
Registration  
Ordinance  
(Cap. 128); or

(b) which is  
registered  
under the Land  
Titles  
Ordinance

( of 2004)  
or which  
supports a  
current entry  
in the Title  
Register kept  
under that  
Ordinance."."

Schedule 2,  
section 80

By deleting the section and substituting -

**"80. Interpretation**

Section 2 of the New Territories  
(Renewable Government Leases) Ordinance  
(Cap. 152) is amended, in the definition of  
"section", by repealing "in the Land  
Registry and also means" and substituting  
"under the Land Registration Ordinance (Cap.  
128), or which is registered under the Land  
Titles Ordinance ( of 2004) or which  
supports a current entry in the Title  
Register kept under that Ordinance, and"."

Schedule 2,  
section 81

By deleting the section and substituting -

**"81. New Government leases deemed  
to be granted on  
1st July 1973**

Section 4(4) is amended -

(a) in paragraph (a), by  
repealing "in the Land  
Registry" and substituting  
"under the Land Registration  
Ordinance (Cap. 128)";

(b) by adding -

"(aa) any charge  
registered under the  
Land Titles  
Ordinance ( of  
2004);

(ab) any equitable  
mortgage which is  
the subject of a  
consent caution or  
non-consent caution  
registered under the  
Land Titles  
Ordinance ( of  
2004);".

Schedule 2      By deleting the subheading "**Solicitors (General) Costs Rules**" before section 83.

Schedule 2      By deleting section 83.

Schedule 2      By deleting section 87.

Schedule 2,  
section 88      By adding "of the Conveyancing and Property Ordinance (Cap. 219)" after "13".

Schedule 2,  
section 89      By deleting the section and substituting -

**"89. Conversion of equitable interest  
to legal estate where right  
to Government lease**

Section 14(3) is amended -

(a) in paragraphs (a) and (b), by  
repealing "in the Land  
Registry";

(b) by repealing paragraph (c) and  
substituting -

"(c) upon the entry made  
by the Land  
Registrar in the  
register kept under

the Land  
Registration  
Ordinance (Cap.  
128), or in the  
Title Register kept  
under the Land  
Titles Ordinance  
(     of 2004), of a  
note to the effect  
that those  
conditions have been  
complied with."."

Schedule 2,  
section 91

By deleting the section and substituting -

"91. **What an assignment is deemed  
to include**

Section 16 is amended by adding -

"(3) This section shall not  
apply to land which is registered  
land within the meaning of the Land  
Titles Ordinance (     of 2004)."."



Schedule 2,  
section 92

By deleting the section and substituting -

**"92. Assignment passes whole  
estate**

Section 17 is amended -

(a) by renumbering it as section  
17(1);

(b) by adding -

"(2) This section shall  
not apply to land which is  
registered land within the  
meaning of the Land Titles  
Ordinance ( of 2004).".

Schedule 2,  
section 93

By deleting the section and substituting -

**"93. Standard forms**

Section 37 is amended -

(a) by renumbering it as section  
37(1);

(b) by adding -

"(2) This section  
shall not apply to land  
which is registered land  
within the meaning of the  
Land Titles Ordinance  
( of 2004).".

Schedule 2,  
section 94

By deleting the section and substituting -

**"94. Enforcement of covenants**

Section 41 is amended -

(a) in subsection (3), by adding

"and the Land Titles Ordinance

( of 2004)" after

"subsection (5)";

(b) by adding -

"(9A) A covenant

registered or deemed to

be registered in the

Title Register kept under

the Land Titles Ordinance

( of 2004) against the

land affected by the

covenant shall bind the

successors in title of

the covenantor and the

persons deriving title

under or through him or

them whether or not they

had notice of the

covenant."."

Schedule 2,  
section  
95(a)(ii)      By deleting "land register" and substituting  
"register".

Schedule 2,  
section 98      By deleting the section and substituting -  
"98.    **Covenants and Conditions which  
         may be incorporated  
         by reference**

The Second Schedule is amended, in Part  
A, in clause 10, by repealing "in the Land  
Registry, to register at the Land Registry"  
and substituting "under the Land  
Registration Ordinance (Cap. 128), to  
register under that Ordinance".

Schedule 2,  
section 99      By deleting "or under the Land Titles Ordinance  
(            of 2002) by Application No."

Schedule 2,  
section 100      In the proposed definition of "Land Registry  
registers", by deleting "land register" and  
substituting "register".

Schedule 2,  
section 103      By deleting "land register" and substituting  
"register".

Schedule 2,  
section 104

By deleting "land register" and substituting  
"register".

Schedule 2,  
section 105

By deleting paragraph (a) and substituting -  
    "(a) in the definition of "common parts", by  
        repealing "in an instrument registered  
        in the Land Registry as being for the  
        exclusive use, occupation or enjoyment  
        of an owner;" and substituting -  
        "as being for the exclusive use,  
        occupation or enjoyment of an owner  
        in an instrument -  
            (a) which is registered under  
                the Land Registration  
                Ordinance (Cap. 128); or  
            (b) which is registered under  
                the Land Titles Ordinance  
                (     of 2004) or which  
                supports a current entry  
                in the Title Register  
                kept under that  
                Ordinance;"

Schedule 2,  
section 106

By deleting the section and substituting -

**"106. Orders by Chief Executive  
in Council relating to  
heights of buildings**

Section 3(3) of the Hong Kong Airport  
(Control of Obstructions) Ordinance (Cap.  
301) is repealed and the following  
substituted -

"(3) An order under subsection  
(1)(c) shall be served upon the owner  
of the premises affected, and -

- (a) if the land affected is  
registered under the  
Land Registration  
Ordinance (Cap. 128),  
the order may be  
registered under that  
Ordinance against the  
land affected by  
delivering to the Land  
Registrar a memorial  
thereof signed by the  
Clerk to the Executive  
Council and containing  
the full terms of the

order; or

- (b) if the land affected is registered under the Land Titles Ordinance ( of 2004), the order may be registered under that Ordinance against the land affected by delivering a copy thereof to the Land Registrar containing a declaration signed by the Clerk to the Executive Council to the effect that it is a true and correct copy of the order,

and upon receipt of such memorial or copy, the Land Registrar shall register it in the register kept under the Land Registration Ordinance (Cap. 128) or in the Title Register kept under the Land Titles Ordinance ( of 2004), as the case may require."."

Schedule 2,  
section 108

By deleting "land register" and substituting  
"register".

Schedule 2,  
section 110

By deleting paragraph (b) and substituting -  
"(b) by adding -

"(6) If an order under  
subsection (4) discharging a  
charging order registered under  
the Land Titles Ordinance  
(            of 2004) is made, the  
Land Registrar shall, on the  
presentation to him of an  
application for the purpose  
accompanied by an office copy of  
the order, remove from the Title  
Register kept under that Ordinance  
the entry referring to the  
order."."

Schedule 2,  
section 111

By deleting the section and substituting -

**"111. Special rules as to the sale of  
immovable property**

Order 47, rule 7(4)(b) of the Rules of  
the District Court (Cap. 336 sub. leg. H) is

repealed and the following substituted -

"(b) In the case of immovable property which is registered under the Land Titles Ordinance ( of 2004), such certificate shall be liable to the same stamp duty as an assignment of the same property and, when duly stamped, may support an application for registration under that Ordinance of the purchaser as the owner of the property.

(c) In the case of any other immovable property, such certificate shall be liable to the same stamp duty as an assignment of the same property and, when duly stamped, shall be taken and deemed to be a valid transfer of such right, title and interest and may be registered under the Land Registration Ordinance (Cap. 128).".".



Schedule 2,  
section 112

By deleting the section and substituting -

**"112. Discharge, etc., of  
charging order**

Order 50, rule 7(2) is amended by  
repealing "the lot number of the land and  
the memorial number of any relevant charge  
registered against the land." and  
substituting -

"-

- (a) the lot number of the  
land; and
- (b) the memorial number of  
any relevant charge  
registered against the  
land under the Land  
Registration Ordinance  
(Cap. 128) or the  
application number of  
any relevant charge  
registered against the  
land under the Land  
Titles Ordinance ( of  
2004), as the case may  
be."."

Schedule 2,  
section 114

By deleting "land register" and substituting  
"register".

Schedule 2,  
section 115

By deleting "land register" and substituting  
"register".

Schedule 2,  
section 116

By deleting "land register" and substituting  
"register".

Schedule 2,  
section 119

(a) By deleting paragraph (a) and substituting -

"(a) in the definition of "common  
parts", in paragraph (a), by  
repealing "in an instrument  
registered in the Land Registry as  
being for the exclusive use,  
occupation or enjoyment of an  
owner; and" and substituting -

"as being for the exclusive  
use, occupation or enjoyment  
of an owner in an  
instrument -

(i) which is registered  
under the Land  
Registration

Ordinance (Cap.

128); or

- (ii) which is registered under the Land Titles Ordinance ( of 2004) or which supports a current entry in the Title Register kept under that Ordinance; and";".

- (b) In paragraph (d), by deleting "land register" and substituting "register".

Schedule 2,  
section 120

- (a) By deleting "land register" and substituting "register".
- (b) By deleting "may require" and substituting "may be".

Schedule 2,  
section 123

By deleting the section and substituting -  
**"123. Jurisdiction of tribunal  
in relation to building  
management**

Section 45 is amended -

(a) in subsection (3), by repealing  
"which is registered in the Land  
Registry including a deed of  
mutual covenant (if any)." and  
substituting -

" , including a deed of mutual  
covenant (if any) -

(a) which is  
registered  
under the Land  
Registration  
Ordinance  
(Cap. 128); or

(b) which is  
registered  
under the Land  
Titles  
Ordinance  
( of 2004)  
or which  
supports a  
current entry  
in the Title  
Register kept

under that

Ordinance.";

- (b) in subsection (4)(j), by repealing  
"which is registered in the Land  
Registry including a deed of  
mutual covenant (if any)." and  
substituting -

", including a deed of mutual  
covenant (if any) -

- (i) which is registered  
under the Land  
Registration  
Ordinance (Cap.  
128); or

- (ii) which is registered  
under the Land  
Titles Ordinance  
( of 2004) or  
which supports a  
current entry in  
the Title Register  
kept under that  
Ordinance."."

Schedule 2,  
section 124

By deleting the section and substituting -

**"124. Meetings and procedure  
of corporation**

The Third Schedule is amended -

(a) in paragraph 3(5)(a), by  
repealing "the provisions of  
any instrument registered in  
the Land Registry and subject  
to sub-paragraph (6)" and  
substituting "sub-paragraph  
(6) and subject to the  
provisions of any instrument  
referred to in sub-paragraph  
(9)";

(b) by adding -

"(9) For the purpose of  
sub-paragraph (5)(a), the  
instrument referred to in  
that sub-paragraph is an  
instrument -

(a) which is  
registered  
under the Land  
Registration  
Ordinance

(Cap. 128); or

- (b) which is  
registered  
under the Land  
Titles  
Ordinance  
(      of 2004)  
or which  
supports a  
current entry  
in the Title  
Register kept  
under that  
Ordinance."."

Schedule 2,  
section 125

- (a) By deleting "land register" and substituting  
"register".  
(b) By deleting "may require" and substituting  
"may be".

Schedule 2,  
section 126

By deleting the section and substituting -

**"126. Interpretation**

Section 2 of the Electricity Networks  
(Statutory Easements) Ordinance (Cap. 357)

is amended, in the definition of "owner" -

- (a) in paragraph (a), by repealing  
"in the Land Registry" and  
substituting "under the Land  
Registration Ordinance (Cap.  
128) or the Land Titles  
Ordinance ( of 2004)";
- (b) in paragraph (b), by repealing  
"registered in the Land  
Registry;" and substituting -  
"-

- (i) which is  
registered  
under the Land  
Registration  
Ordinance  
(Cap. 128); or
- (ii) which is  
registered  
under the Land  
Titles  
Ordinance  
( of 2004)  
or which



supports a  
current entry  
in the Title  
Register kept  
under that  
Ordinance;".".

Schedule 2,  
section 131

By deleting the section and substituting -

**"131. Recovery of costs**

Section 40B of the Water Pollution  
Control Ordinance (Cap. 358) is amended -

(a) in subsection (9), by adding  
"or the Land Titles Ordinance  
( of 2004)" after "Land  
Registration Ordinance (Cap.  
128)";

(b) in subsection (10), by  
repealing everything after  
"shall" and substituting -  
"

(a) if a copy of  
the  
certificate  
has been

registered  
under the Land  
Registration  
Ordinance  
(Cap. 128)  
against land  
or premises  
pursuant to  
subsection  
(9), register  
under that  
Ordinance a  
certificate of  
satisfaction  
against the  
land or  
premises; or  
(b) if a copy of  
the  
certificate  
has been  
registered  
under the Land  
Titles

Ordinance  
(      of 2004)  
against land  
or premises  
pursuant to  
subsection  
(9), cause the  
appropriate  
entries to be  
made in the  
Title Register  
kept under  
that Ordinance  
to effect a  
discharge of  
the legal  
charge  
mentioned in  
that  
subsection."."

Schedule 2,  
section 134

By deleting "land register" and substituting  
"register".

Schedule 2,  
section 135

By deleting "land register" and substituting  
"register".

Schedule 2,  
section 136

By deleting "land register" and substituting  
"register".

Schedule 2,  
section 140

By deleting the section and substituting -

**"140. Publication of plans**

Section 4 is amended -

(a) in subsection (2)(d), by  
repealing "registered in the  
Land Registry" and  
substituting "referred to in  
subsection (3)";

(b) by adding -

"(3) For the purpose of  
subsection (2)(d), the  
instrument referred to in  
that subsection is an  
instrument -

- (a) which is  
registered  
under the Land  
Registration  
Ordinance  
(Cap. 128); or
- (b) which is  
registered  
under the Land  
Titles  
Ordinance  
( of 2004)  
or which  
supports a  
current entry  
in the Title  
Register kept  
under that  
Ordinance."."

Schedule 2,  
section 141

By deleting the section and substituting -

**"141. Objections**

Section 5 is amended -

(a) in subsection (1), by  
repealing "registered in the  
Land Registry" and  
substituting "referred to in  
subsection (5)";

(b) by adding -

"(5) For the purpose of  
subsection (1), the  
instrument referred to that  
subsection is an instrument -

(a) which is  
registered  
under the Land  
Registration  
Ordinance  
(Cap. 128); or

(b) which is  
registered  
under the Land  
Titles  
Ordinance  
( of 2004)  
or which  
supports a

current entry  
in the Title  
Register kept  
under that  
Ordinance."."

Schedule 2,  
section 145

By deleting "land register" and substituting  
"register".

Schedule 2,  
section 146

By deleting "land register" and substituting  
"register".

Schedule 2,  
section 147

By deleting paragraphs (a) and (b) and  
substituting -

"(a) in subsection (2), by repealing "in the  
Land Registry" and substituting "under  
the Land Registration Ordinance (Cap.  
128) or the Land Titles Ordinance  
( of 2004), as the case may  
require,";

(b) in subsection (8), by repealing "in the  
Land Registry" and substituting "under  
the Land Registration Ordinance (Cap.  
128) or the Land Titles Ordinance

( of 2004), as the case may  
require,";

(c) in subsection (9), by repealing "登記"  
and substituting "註冊";

(d) in subsection (10), by repealing  
everything after "shall" and  
substituting -

"\_

(a) if the certificate  
has been registered  
under the Land  
Registration  
Ordinance (Cap.  
128), register  
under that  
Ordinance an  
appropriate  
memorial of  
satisfaction  
against the charge  
mentioned in  
subsection (8); or



(b) if the certificate  
has been registered  
under the Land  
Titles Ordinance  
( of 2004), cause  
the appropriate  
entries to be made  
in the Title  
Register kept under  
that Ordinance to  
effect a discharge  
of the charge  
mentioned in  
subsection (8).".".

Schedule 2,  
section 151

By deleting the section and substituting -

**"151. Land boundary plans  
for subdivisions**

Section 30 is amended by adding -

"(11) This section shall not apply  
to land which is registered land within  
the meaning of the Land Titles  
Ordinance ( of 2004).".".

Schedule 2,  
section 152

(a) In the proposed section 30A(11), by deleting

"尋" and substituting "要".

(b) By deleting the proposed section 30A(12) and substituting -

"(12) This section shall apply to land which is registered land within the meaning of the Land Titles Ordinance ( of 2004).".

Schedule 2,  
section 154

By deleting paragraph (b) and substituting -

"(b) in subsection (10), by repealing everything after "shall" and substituting -

"-

(a) if a copy of the certificate has been registered under the Land Registration Ordinance (Cap. 128) against land or premises pursuant to subsection (9), register under that

Ordinance a  
certificate of  
satisfaction  
against the land or  
premises; or  
(b) if a copy of the  
certificate has  
been registered  
under the Land  
Titles Ordinance  
(      of 2004)  
against land or  
premises pursuant  
to subsection (9),  
cause the  
appropriate entries  
to be made in the  
Title Register kept  
under that  
Ordinance to effect  
a discharge of the  
legal charge  
mentioned in that  
subsection."."

New

By adding after the subheading "**Government Rent (Assessment and Collection) Ordinance**" -

**"154A. Interpretation**

Section 2 of the Government Rent (Assessment and Collection) Ordinance (Cap. 515) is amended, in the definition of "section", by repealing "registered in the Land Registry;" and substituting -

"-

- (a) which is registered under the Land Registration Ordinance (Cap. 128); or
- (b) which is registered under the Land Titles Ordinance ( of 2004) or which supports a current entry in the Title Register kept under that Ordinance;".

Schedule 2,  
section 155

By deleting the section and substituting -

**"155. Exemption from liability to pay Government rent**

Section 4(13)(a) is amended by repealing everything after "entitled" and substituting -

"to the exclusive possession of any part  
of any building erected on the lot or  
of any part of the lot under the terms  
of an instrument -

(i) which is registered under the  
Land Registration Ordinance  
(Cap. 128); or

(ii) which is registered under the  
Land Titles Ordinance  
( of 2004) or which  
supports a current entry in  
the Title Register kept under  
that Ordinance."."

Schedule 2,  
section 156

By deleting the section and substituting -

"156. **Deed of mutual covenant overridden**

Section 38(4) is amended -

(a) in the definition of "common  
parts", by repealing "in an  
instrument registered in the  
Land registry as being for  
the exclusive use, occupation  
or enjoyment of an owner;"  
and substituting -

"as being for the exclusive  
use, occupation or enjoyment  
of an owner in an  
instrument -

(a) which is registered  
under the Land  
Registration  
Ordinance (Cap.  
128); or

(b) which is registered  
under the Land  
Titles Ordinance  
( of 2004) or  
which supports a  
current entry in  
the Title Register  
kept under that  
Ordinance;"

(b) in the definition of "deed of  
mutual covenant", in  
paragraph (b), by repealing  
"in the Land Registry" and  
substituting "under the Land  
Registration Ordinance (Cap.

128) or the Land Titles

Ordinance (    of 2004)".".

Schedule 2,  
section 158

By deleting "land register" and substituting  
"register".

Schedule 2,  
section 159

By deleting "land register" and substituting  
"register".

Schedule 2,  
section 160

By deleting "land register" and substituting  
"register".

Schedule 2,  
section 167

By deleting paragraph (b) and substituting -  
    "(b) by repealing "land register" and  
        substituting "register kept under the  
        Land Registration Ordinance (Cap. 128)  
        or the Title Register kept under the  
        Land Titles Ordinance (        of 2004),  
        as the case may require,".".

New

By adding -

"SCHEDULE 3

[s. 102]

CONSEQUENTIAL AMENDMENTS TO  
LAND REGISTRATION ORDINANCE

1. **Interpretation**

Section 1A of the Land Registration Ordinance  
(Cap. 128) is amended -

(a) by renumbering it as section 1A(1);

(b) in subsection (1) -

(i) in the definition of "register  
card", by repealing the full stop  
at the end and substituting a  
semicolon;

(ii) by adding -

"caution against conversion"

(抗轉換警告書) means a document

in the specified form -

(a) giving notice of a  
claim to title to  
land or a beneficial  
interest in the  
land; and



- (b) specifying that  
title or interest  
and that land;

"caveat" (知會備忘) means a document  
in the specified form -

- (a) giving notice of a  
claim to an  
unregistrable  
interest in land;  
and
- (b) specifying that  
interest and that  
land;

"registered caution against  
conversion" (註冊抗轉換警告書)  
means a caution against  
conversion registered under  
this Ordinance;

"registered caveat" (註冊知會備忘)  
means a caveat registered  
under this Ordinance;

"specified" (指明), in relation to  
a form, means specified under  
section 27A;

"unregistrable interest" (不可註冊權益) means any interest or  
equity in or affecting land  
which -

(a) has been created by  
operation of law;  
and

(b) but for the  
enactment of section  
21A, would not be  
registrable under  
this Ordinance.";

(c) by adding -

"(2) Unless the context  
otherwise requires, any reference  
in any other enactment to a thing  
being noted in or shown in a  
register kept under this Ordinance,  
or to the register of a lot or  
section kept under this Ordinance,  
shall be construed as a reference

to the relevant records of the Land Registry kept under this Ordinance, by whatever name called."

2. **Section added**

The following is added immediately after section 1A -

**"1B. Application**

This Ordinance does not apply to new land or registered land within the meaning of the Land Titles Ordinance ( of 2004).".

3. **Establishment of Land Registry for registration of instruments affecting land**

Section 2 is amended by adding -

"(1A) A caveat and a caution against conversion shall be regarded as an instrument in writing capable of registration under this Ordinance."

4. **Section substituted**

Section 17 is repealed and the following substituted -

**"17. Registration and re-registration of judgment, order or lis pendens**

(1) Subject to subsection (2) -

- (a) the registration of a relevant order shall cease to have effect immediately upon the expiration of 5 years from the date of registration of the order but the order may be re-registered from time to time and, if so re-registered, the re-registration of the order shall have effect for another 5 years from the date of re-registration; and
- (b) if the re-registration of a relevant order is made before the expiration of a current period of registration or re-registration of the order, then the order shall retain its original priority.

(2) For the avoidance of doubt, it is hereby declared that the operation of this section shall not prejudice the generality of

any other provisions of this Ordinance under which the registration of a relevant order may be removed or withdrawn.

(3) In this section, "relevant order" (有關命令) means a judgment, order or lis pendens."

**5. Sections added**

The following are added immediately after section 21 -

**"CAVEATS**

**21A. Registration of caveat to protect unregistrable interest**

A person who claims an unregistrable interest in land may make an application in the specified form to the Land Registrar to register a caveat against the land.

**21B. Effect of registration of caveat**

(1) The registration of a caveat against land shall constitute notice of the claim which is the subject of the caveat to all persons.

(2) For the avoidance of doubt, it is hereby declared that the registration of a caveat shall not -

- (a) of itself affect the validity or otherwise of the claim which is the subject of the caveat;
- (b) of itself create or validate any rights or interests, or adversely affect any rights or interests, of the caveator; or
- (c) without prejudice to the generality of paragraph (a), constitute a warranty, or a guarantee, as to the validity of the claim.

(3) The registration of a caveat does not prejudice the priority of the claim which is the subject of the caveat.

**21C. Relationship between caveat and registered instrument**

The question of whether a registered instrument is subject to an unregistrable interest claimed under a caveat shall be

determined in accordance with the law in force at the time when the transaction which is the subject of the registered instrument was effected.

**21D. Priority among unregistrable interests relating to the same land**

The priority of all unregistrable interests relating to the same land, and whether or not any such interest is the subject of a registered caveat, shall be determined in accordance with the law applicable to the priority among such interests.

**21E. Withdrawal and removal of caveats**

(1) A caveat may be withdrawn on the presentation to the Land Registrar by the caveator of an application in the specified form for the withdrawal of the caveat.

(2) A caveat may be removed on the presentation to the Land Registrar of an application in the specified form for the removal of the caveat -

- (a) in any case, by a person who has obtained an order of the Court of First Instance for its removal;
- (b) by the owner of the land affected by the caveat but only if the Land Registrar -
  - (i) is satisfied that the owner has provided a copy of the application to the caveator not less than 14 days before the presentation of the application to the Land Registrar; and
  - (ii) is satisfied -
    - (A) that the caveat was wrongfully registered;
    - (B) that the ground on which the caveat was registered no longer exists; or
    - (C) that the caveator



consents to the  
removal of the  
caveat.

(3) The Land Registrar may require the owner of land presenting an application for the removal of a caveat under subsection (2)(b) to support the application by such evidence as the Land Registrar requires.

(4) A person with an interest in land affected by the caveat may apply by originating summons to the Court of First Instance for the removal of the caveat and the Court of First Instance may make such order on the originating summons and as to costs as to the Court of First Instance appears just.

(5) On the withdrawal or removal of a caveat -

- (a) the Land Registrar shall cause an entry to be made in the register kept under this Ordinance in respect of the land against which the caveat was registered, giving notice

of the withdrawal or removal  
of the caveat; and

- (b) any liability of the caveator  
previously incurred under  
section 21F shall not be  
affected by the entry made  
under paragraph (a).

**21F. Wrongful caveats**

(1) A person who applies to the Land  
Registrar to register a caveat without  
reasonable cause shall be liable, in an  
action for damages at the suit of -

- (a) the owner of land concerned;  
or

- (b) any other person who has an  
interest in the land,

to pay compensation to the owner or other  
person for any damage sustained thereby, in  
such amount as to the Court of First Instance  
appears just.

(2) A caveator under a registered caveat who fails, without reasonable excuse, to apply to the Land Registrar for the withdrawal of the caveat within a reasonable period of time after the ground on which it was registered ceases to exist, shall be liable, in an action for damages at the suit of a person referred to in subsection (1)(a) or (b), to pay compensation to that person for any damage sustained thereby, in such amount as to the Court of First Instance appears just.

#### CAUTIONS AGAINST CONVERSION

##### **21G. Registration of caution against conversion**

(1) Subject to subsection (2), a person who claims to have any title to land, or a beneficial interest in any land, may make an application in the specified form to the Land Registrar to register a caution against conversion against the land.

(2) No application may be made under subsection (1) on or after the 12th anniversary of the appointed day as defined by section 2(1) of the Land Titles Ordinance ( of 2004).

**21H. Effect of registration of caution against conversion**

(1) Land against which a registered caution against conversion subsists shall not become registered land under the Land Titles Ordinance ( of 2004).

(2) The registration of a caution against conversion against land shall constitute notice of the claim which is the subject of the caution against conversion to all persons.

(3) For the avoidance of doubt, it is hereby declared that the registration of a caution against conversion shall not -

- (a) of itself affect the validity or otherwise of the claim which is the subject of the caution against conversion;

- (b) of itself create or validate  
any rights or interests, or  
adversely affect any rights or  
interests, of the cautioner;  
or
- (c) without prejudice to the  
generality of paragraph (a),  
constitute a warranty, or a  
guarantee, as to the validity  
of the claim.

(4) The registration of a caution against conversion does not prejudice the priority of the claim which is the subject of the caution against conversion.

**21I. Relationship between caution  
against conversion and  
registered instrument**

The question of whether a registered instrument is subject to an interest claimed under a caution against conversion shall be determined in accordance with the law in force at the time when the transaction which is the subject of the registered instrument was effected.

**21J. Validity of registration of  
caution against conversion**

(1) Subject to subsections (2), (3), (4), (5) and (6) and section 21K, the registration of a caution against conversion shall expire immediately upon the commencement of the 1st anniversary of its date of registration.

(2) Subject to subsection (3), the cautioner under a registered caution against conversion may from time to time apply by originating summons to the Court of First Instance for the extension of the validity of registration of the caution against conversion and the Court of First Instance may make such order on the originating summons and as to costs as to the Court of First Instance appears just.

(3) An application for time extension under subsection (2) must be made -

- (a) before the expiration of the validity of registration of a registered caution against conversion; or

(b) if the application is made within an extension granted under that subsection, before the expiration of such extension.

(4) Subject to subsection (5), the Court of First Instance shall not grant any extension of time under subsection (2) which would extend the validity of the registration of a caution against conversion beyond the date of the 2nd anniversary of the caution against conversion's first date of registration.

(5) The Court of First Instance may, if it is satisfied that exceptional circumstances exist, grant an extension of time under subsection (2) notwithstanding that the applicant has not complied with subsection (3) or that the extension would extend the validity of registration of the caution against conversion beyond the date referred to in subsection (4).

(6) Where before the expiration of the validity of the registration of a caution

against conversion under this section, a lis pendens relating to the claim which is the subject of the caution against conversion has been registered by the cautioner against land against which the caution against conversion is registered, then, subject to section 21K, the validity of the registration of the caution against conversion shall not expire under this section until the registration of the lis pendens has been vacated or discharged.

- (7) The Land Registrar shall not -
  - (a) register more than one caution against conversion in respect of the same claim made by the same person; or
  - (b) again register a caution against conversion the registration of which -
    - (i) has previously expired;
    - or



- (ii) has been withdrawn or removed under section 21K.

**21K. Withdrawal and removal of caution against conversion**

(1) A caution against conversion may be withdrawn on the presentation to the Land Registrar by the cautioner of an application in the specified form for the withdrawal of the caution.

(2) A caution against conversion may be removed on the presentation to the Land Registrar of an application in the specified form for the removal of the caution -

- (a) in any case, by a person who has obtained an order of the Court of First Instance for its removal;

- (b) by the owner of the land affected by the caution but only if the Land Registrar -

(i) is satisfied that the owner has provided a copy of the application to the cautioner not less than 14 days before the presentation of the application to the Land Registrar; and

(ii) is satisfied -

(A) that the caution was wrongfully registered;

(B) that the ground on which the caution was registered no longer exists; or

(C) that the cautioner consents to the removal of the caution.

(3) The Land Registrar may require the owner of land presenting an application for the removal of a caution against conversion under subsection (2)(b) to support the

application by such evidence as the Land Registrar requires.

(4) A person with an interest in land affected by the caution against conversion may apply by originating summons to the Court of First Instance for the removal of the caution against conversion and the Court of First Instance may make such order on the originating summons and as to costs as to the Court of First Instance appears just.

(5) On the withdrawal or removal of a caution against conversion -

- (a) the Land Registrar shall cause an entry to be made in the register kept under this Ordinance in respect of the land against which the caution against conversion was registered, giving notice of the withdrawal or removal of the caution against conversion; and

- (b) any liability of the cautioner previously incurred under section 21L shall not be affected by the entry made under paragraph (a).

**21L. Wrongful caution against conversion**

(1) A person who applies to the Land Registrar to register a caution against conversion without reasonable cause shall be liable, in an action for damages at the suit of -

- (a) the owner of land concerned;  
or

- (b) any other person who has an interest in the land,

to pay compensation to the owner or other person for any damage sustained thereby, in such amount as to the Court of First Instance appears just.

(2) A cautioner under a registered caution against conversion who fails, without reasonable excuse, to apply to the Land Registrar for the withdrawal of the caution

against conversion within a reasonable period of time after the ground on which it was registered ceases to exist, shall be liable, in an action for damages at the suit of a person referred to in subsection (1)(a) or (b), to pay compensation to that person for any damage sustained thereby, in such amount as to the Court of First Instance appears just."

6. **Section added**

The following is added -

**"27A. Power of Land Registrar  
to specify forms**

(1) Subject to subsection (2), the Land Registrar may specify the form of any document required under this Ordinance to be in the specified form.

(2) A form specified under this section shall be -

- (a) completed in accordance with such directions and instructions as are specified in the form;
- (b) accompanied by such documents

(including instruments,  
certificates, duplicates of  
the form and statutory  
declarations) as are specified  
in the form; and

- (c) if the completed form is  
required to be provided to the  
Land Registrar or any other  
person, so provided in the  
manner, if any, specified in  
the form.

(3) For the avoidance of doubt, it is  
hereby declared that the Land Registrar's  
power under subsection (1) may be exercised  
in such a way as to -

- (a) include in the specified form  
of any document referred to in  
that subsection a statutory  
declaration -

- (i) to be made by the person  
completing the form; and

- (ii) as to whether the  
particulars contained in  
the form are true and  
correct to the best of  
that person's knowledge  
and belief;
- (b) specify 2 or more forms of any  
document referred to in that  
subsection, whether as  
alternatives, or to provide  
for particular circumstances  
or particular cases, as the  
Land Registrar thinks fit."."

**Appendix 1**

**The Secretary for the Environment, Transport and Works requested the following post-meeting amendment to Question 6**

**Line 4, first paragraph, page 69 of the Confirmed version**

To amend "to reduce ..... by 40%, 20%, 50% and 55%" as "to reduce ..... by 40%, 20%, 55% and 55%" (Translation)

(please refer to line 3, first paragraph, page 8089 of this translated version)



**Appendix I****WRITTEN ANSWER****Written answer by the Secretary for Economic Development and Labour to Ms Cyd HO's supplementary question to Question 5**

The document on "Standard conditions imposed upon the grant of permission to employ child entertainers" is provided for Members' reference.

Standard conditions imposed  
upon the grant of permission to employ child entertainers

- (1) No child shall be employed
  - during school hours;
  - before 7 am or after 11 pm;
  - for a period of employment more than 8 hours on any day;
  - for working more than 4 hours on school day during the school term;
  - for more than 4 days in a week and during school term for more than 3 days from Monday to Saturday;
  - during the 12 hours immediately following the ending of his work on any day; and
  - to work continuously for more than 5 hours without a break of not less than 1 hour for a meal or rest and, in the case of a child under the age of 6, without an additional rest period of not less than half an hour within the said spell of 5 hours.
- (2) Free transport should be provided to take each child employee home if he is required to work after 7 pm.

**WRITTEN ANSWER** — *Continued*

- (3) No child shall be engaged in any act that is dangerous to his life, health or morals.
- (4) The organising institution should provide the following documents:
- a written consent to the employment from the child's parent; and
  - a valid school attendance certificate or evidence of completion of Form III in respect of the child.