

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 16 December 1992

The Council met at half-past Two o'clock

PRESENT

THE DEPUTY PRESIDENT

THE HONOURABLE JOHN JOSEPH SWAINE, C.B.E., Q.C., J.P.

THE CHIEF SECRETARY

THE HONOURABLE SIR DAVID ROBERT FORD, K.B.E., L.V.O., J.P.

THE FINANCIAL SECRETARY

THE HONOURABLE NATHANIEL WILLIAM HAMISH MACLEOD, C.B.E., J.P.

THE ATTORNEY GENERAL

THE HONOURABLE JAMES KERR FINDLAY, O.B.E., Q.C., J.P.

THE HONOURABLE ALLEN LEE PENG-FEI, C.B.E., J.P.

THE HONOURABLE STEPHEN CHEONG KAM-CHUEN, C.B.E., J.P.

THE HONOURABLE HUI YIN-FAT, O.B.E., J.P.

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

THE HONOURABLE DAVID LI KWOK-PO, O.B.E., J.P.

THE HONOURABLE NGAI SHIU-KIT, O.B.E., J.P.

THE HONOURABLE SZETO WAH

THE HONOURABLE TAM YIU-CHUNG

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

THE HONOURABLE MARTIN GILBERT BARROW, O.B.E., J.P.

THE HONOURABLE MRS PEGGY LAM, M.B.E., J.P.

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

THE HONOURABLE LAU WAH-SUM, O.B.E., J.P.

DR THE HONOURABLE LEONG CHE-HUNG, O.B.E.

THE HONOURABLE JAMES DAVID MCGREGOR, O.B.E., I.S.O., J.P.

THE HONOURABLE MRS ELSIE TU, C.B.E.

THE HONOURABLE PETER WONG HONG-YUEN, J.P.

THE HONOURABLE VINCENT CHENG HOI-CHUEN

THE HONOURABLE MOSES CHENG MO-CHI

THE HONOURABLE MARVIN CHEUNG KIN-TUNG, J.P.

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHIM PUI-CHUNG

REV THE HONOURABLE FUNG CHI-WOOD

THE HONOURABLE TIMOTHY HA WING-HO, M.B.E., J.P.

DR THE HONOURABLE HUANG CHEN-YA

THE HONOURABLE SIMON IP SIK-ON, J.P.

DR THE HONOURABLE LAM KUI-CHUN

DR THE HONOURABLE CONRAD LAM KUI-SHING

THE HONOURABLE EMILY LAU WAI-HING

THE HONOURABLE LEE WING-TAT

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

THE HONOURABLE FRED LI WAH-MING

THE HONOURABLE MAN SAI-CHEONG

THE HONOURABLE STEVEN POON KWOK-LIM

THE HONOURABLE HENRY TANG YING-YEN, J.P.

THE HONOURABLE TIK CHI-YUEN

THE HONOURABLE JAMES TO KUN-SUN

DR THE HONOURABLE SAMUEL WONG PING-WAI, M.B.E., J.P.

DR THE HONOURABLE PHILIP WONG YU-HONG

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE HOWARD YOUNG, J.P.

THE HONOURABLE ZACHARY WONG WAI-YIN

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

THE HONOURABLE CHRISTINE LOH KUNG-WAI

THE HONOURABLE ROGER LUK KOON-HOO

ABSENT

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

THE HONOURABLE PANG CHUN-HOI, M.B.E.

THE HONOURABLE ANDREW WONG WANG-FAT, O.B.E., J.P.

THE HONOURABLE LAU WONG-FAT, O.B.E., J.P.

THE HONOURABLE RONALD JOSEPH ARCULLI, J.P.

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE FREDERICK FUNG KIN-KEE

THE HONOURABLE MICHAEL HO MUN-KA

THE HONOURABLE LAU CHIN-SHEK

THE HONOURABLE GILBERT LEUNG KAM-HO

IN ATTENDANCE

THE HONOURABLE MRS ANSON CHAN, C.B.E., J.P.
SECRETARY FOR ECONOMIC SERVICES

MR MICHAEL LEUNG MAN-KIN, C.B.E., J.P.
SECRETARY FOR TRANSPORT

MR YEUNG KAI-YIN, J.P.
SECRETARY FOR THE TREASURY

MR MICHAEL SUEN MING-YEUNG, J.P.
SECRETARY FOR HOME AFFAIRS

MR ALISTAIR PETER ASPREY, O.B.E., A.E., J.P.
SECRETARY FOR SECURITY

MRS ELIZABETH WONG CHIEN CHI-LIEN, I.S.O., J.P.
SECRETARY FOR HEALTH AND WELFARE

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

MR JAMES SO YIU-CHO, O.B.E., J.P.
SECRETARY FOR RECREATION AND CULTURE

THE HONOURABLE MICHAEL SZE CHO-CHEUNG, I.S.O., J.P.
SECRETARY FOR CONSTITUTIONAL AFFAIRS

MR ANTHONY GORDON EASON, J.P.
SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS

MISS CHRISTINE CHOW KWAN-TAI, J.P.
SECRETARY FOR EDUCATION AND MANPOWER

MR TAM WING-PONG
SECRETARY FOR MONETARY AFFAIRS

THE CLERK TO THE LEGISLATIVE COUNCIL
MR CLETUS LAU KWOK-HONG

Papers

The following papers were laid on the table pursuant to Standing Order 14(2):

Subject

Subsidiary Legislation	<i>L.N. No.</i>
Commodities Trading Ordinance (Amendment of Schedules) Order 1992	399/92
Hong Kong Airport (Restricted Areas) (Amendment) Regulation 1992	400/92
District Court Civil Procedure (Fees) (Amendment) Rules 1992.....	402/92
Rules of the Supreme Court (Amendment) (No. 2) Rules 1992.....	403/92
Women and Young Persons (Industry) (Forms) (Repeal) Notice 1992.....	404/92

Sessional Papers 1992-93

- No. 37 — Chinese Temples Fund Income and Expenditure Account with Balance Sheet and Certificate of the Director of Audit for the year ended 31 March 1992
- No. 38 — The Accounts of the Lotteries Fund 1991-92
- No. 39 — Secretary for Home Affairs Incorporated Statement of Accounts for the year ended 31 March 1992
- No. 40 — Social Work Training Fund Thirty-first Annual Report by the Trustee for the year ending on 31 March 1992
- No. 41 — Emergency Relief Fund Annual Report by the Trustee for the year ending on 31 March 1992
- No. 42 — The Open Learning Institute of Hong Kong Annual Report 1991-1992

- No. 43 — Queen Elizabeth Foundation for the Mentally Handicapped Report and Accounts 1991-92
- No. 44 — Hong Kong Council on Smoking and Health Annual Report 1991-1992
- No. 45 — Hong Kong Housing Authority Annual Accounts for the year ended 31 March 1992 and Balance Sheet as at that date
- No. 46 — Director of Social Welfare Incorporated Statement of Accounts for the financial year ended 31 March 1991

Oral answers to questions

Air quality objectives

1. MISS CHRISTINE LOH asked: *Will the Government confirm whether the Programmes for Attainment of the Air Quality Objectives released by the Environmental Protection Department in late November 1992 represent firm commitments on the part of the Administration?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy President, yes, the Government can confirm that the programmes for the attainment of Hong Kong's Air Quality Objectives represent a firm commitment by the Administration to achieve the standards specified in the Objectives.

The Administration's overall policy objective for controlling air pollution is to achieve and maintain acceptable air quality standards. These standards, which are in line with, if not more stringent than, those adopted by the United States and other developed countries, are aimed at safeguarding the health and well-being of the community. Our immediate task is to achieve compliance with a set of air quality objectives for seven major air pollutants as soon as possible. These objectives are established in accordance with section 7 of the Air Pollution Control Ordinance and are published.

To achieve these objectives, the Administration has adopted a number of measures to control the emission of air pollutants at source with some success. For example, the implementation of the Air Pollution Control (Fuel Restriction) Regulations in April 1990 reduced the sulphur dioxide levels in Hong Kong by about 40%. For some areas near industrial centres the reduction has been as great as 90%. The attainment and maintenance of Air Quality Objectives for other pollutants, particularly nitrogen dioxide and total suspended particulates, will need more work to be done. The Environmental Protection Department (EPD) is now examining possible further measures. I expect these to be

addressed in the context of the next review of the White Paper on the Environment, which will be published in the middle of next year.

MISS CHRISTINE LOH: *Mr Deputy President, could the Secretary please tell us the time frame which he has set to achieve these objectives? And secondly, in the paper presented to us, there is no mention of benzene which has carcinogenic effect; could the Secretary tell us what is being done on benzene?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy President, the objectives and their achievement are basically on an "as soon as possible" timing. The reason for this is that dealing with, if I may so put it, the second round of air pollution issues — by the second round I mean those beyond what were referred to in the White Paper specifically — involves some hard decisions for the community in terms of balancing environmental and economic issues. And we will, as I have said, be considering this second round of issues in the context of the review of the White Paper which we are commencing the report of which will be published in the middle of next year. And I am certain that amongst these the question of benzene will be included.

DR LEONG CHE-HUNG: *In the second paragraph of his answer, the Secretary is talking about compliance with a set of air quality objectives. Would the Secretary advise whether, in working out the practicalities of enforcing compliance with air pollution objectives, the Government has included the costs the air pollution itself incurs in terms of the drain on public medical services, lost working hours and decreased productivity through illnesses, and damage to Hong Kong's international reputation?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy President, these are important issues and, as I have said, in deciding on environmental objectives and the pace at which they can be achieved, there are inevitably some difficult choices of balance to be met. I do not think any community has found these easy, and I do not expect that we will either. But we will have to make them.

REV FUNG CHI-WOOD (in Cantonese): *Mr Deputy President, in his main reply, the Secretary has mentioned that the Environmental Protection Department is examining some possible measures to reduce air pollution. Do they include further measures to encourage the use of unleaded petrol?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy President, the EPD are examining various options for reducing air pollution from several of the particular pollutants that are listed in the Hong Kong Air

Quality Objectives, such as sulphur dioxide particulates and nitrogen dioxide. I would like to list some options briefly. For sulphur dioxide, although considerable success has been achieved in reducing sulphur dioxide levels in Hong Kong, to ensure that these levels are maintained and to attain the required levels in the few areas where residential buildings are located very close to industrial chimneys, we are examining the feasibility of segregating industrial and residential land, and the feasibility of more stringent controls on air emissions from industries in these few locations.

For nitrogen dioxide, the principal challenge is how to evade air pollution from motor vehicles which arises because of heavy traffic in many areas and because the bulk of our vehicle fleet is composed of diesel vehicles — they account for 65% of road usage. We are therefore considering a number of measures to further control these motor vehicle emissions, including:

- (a) A requirement to use higher quality automated petrol and diesel fuels.
- (b) More stringent emission standards for diesel vehicles larger than 2.5 tons.
- (c) How to encourage a reduced reliance on light-duty diesel vehicles.
- (d) More vehicle inspection and maintenance programmes.
- (e) Higher penalties for smoky vehicles.
- (f) A watching brief being kept on developments in the electric vehicle technology.

For additional controls to reduce particulates in the air, and apart from those that would be tackled by requiring cleaner vehicle emissions, the Administration is considering means to control dust emissions from construction activities, whether open burning of refuse should be prohibited, and how particulates from fuel burning by industry could be further reduced.

MRS PEGGY LAM (in Cantonese): *Mr Deputy President, part of my question has been asked by Rev FUNG Chi-wood. But I still have a supplementary question to ask. Will the Administration inform this Council whether it would consider phasing-out diesel vehicles on the road?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy President, I think in the measures that I have referred to in the answer to the last supplementary question, there was reference to possible measures to encourage a reduced reliance on light-duty diesel vehicles. This might well include the investigation of the possibility of phasing-out.

MR MAN SAI-CHEONG (in Cantonese): *Mr Deputy President, will Policy Secretaries, in dealing with these issues, adopt a tolerant attitude towards air polluting manufacturers or major undertakings such as the Towngas or power companies for economic reasons? Or will they step up prosecutions and tighten the standards prescribed for these concerns?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy President, these are not decisions for a Secretary; these are decisions for the community. And, as I have already said, there are difficult decisions to be made, difficult balances to be struck. And in the end, as a result of our proposal to review the White Paper and consult on that review, we will be facing a community decision, and we will be facing, I repeat, difficult decisions as regards the choice between environmental requirements and desirable aims and economic realities.

MR FRED LI (in Cantonese): *Mr Deputy President, the level of sulphur dioxide has been reduced considerably as a result of legislative control on fuels, but diesel vehicles are still a major cause of pollution, producing a lot of respirable particulates in the air. In the document submitted to the Legislative Council panel on environment, it was stated clearly that despite all means, the Administration has failed to achieve the objective of controlling the use of diesel vehicles. Could the Administration assure this Council that it would consider other options, such as encouraging taxis to use LPG (a measure adopted countrywide in Japan) so as to reduce pollution on the road?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy President, I think I can safely assure the Council that we will consider all reasonable options.

Legal aid review

2. MR SIMON IP asked: *Will the Government inform this Council why in the current review of legal aid it has not included members of the legal profession in the Government's Review Committee?*

CHIEF SECRETARY: Mr Deputy President, the Government is conducting a comprehensive review of the law, policy and practice governing the provision of legal aid services in Hong Kong. The legal profession will be involved and consulted during the review. At present, an inter-departmental working group comprising representatives drawn from the Administration Wing, Legal Aid Department, Legal Department, the Judiciary and Finance Branch is assembling the necessary facts and identifying issues and possibilities. The group hopes to complete this preliminary study in March next year. Thereafter, on the basis of

the preliminary findings of the working group, the Government would commence discussions with the legal profession and other interested public bodies. Their views will be taken into account before the recommendations of the review are finalized.

MR SIMON IP: *Mr Deputy President, with great respect to the Chief Secretary, he has not answered the question. The question was why members of the legal profession had not been included in the Government's Review Committee, and the answer merely suggests that the legal profession will be consulted in relation to this very wide ranging and comprehensive review of legal aid. Would the Chief Secretary please care to answer my original question?*

CHIEF SECRETARY: Mr Deputy President, I am sorry Mr IP does not think I have answered his question. I believed I had by explaining that what was going on at the moment was that a working group was assembling the necessary facts and identifying the issues and possibilities. We do not feel that it is necessarily appropriate to involve the legal profession in that phase of the review. I have made it very clear that once that phase is completed we will then consult the legal profession.

MR SIMON IP: *Mr Deputy President, would the Chief Secretary therefore please reassure us that when the first phase of the work has been completed, then the legal profession will be fully involved in the process of review which will continue after the first phase?*

CHIEF SECRETARY: Yes, Mr Deputy President.

MR WONG WAI-YIN (in Cantonese): *Mr Deputy President, my question only covers a narrow scope and I hope it is within the Standing Orders. As regards the progress of the review, would the Secretary inform this Council which phase the review is in?*

CHIEF SECRETARY: Mr Deputy President, the working group has studied a wide range of issues, including the financial eligibility criteria for the grant of legal aid, the appropriate levels of contribution from aided persons, the impact of the Bill of Rights on the provision of legal aid services, the need for legal advisory services, and ways of improving existing services. Amongst the issues yet to be studied by the working group are the existing legislative framework and the cost-effectiveness of the existing organizations responsible for the delivery of legal aid services.

MISS EMILY LAU: *Mr Deputy President, will the Chief Secretary inform this Council what other individuals or organizations, apart from the legal profession, will also be fully consulted?*

CHIEF SECRETARY: Mr Deputy President, it is our intention, after we have completed the discussion with the Legal Department, that we will produce a short consultative document outlining our ideas of the way forward and ideas proposed by the legal profession as well, that is to say, a combined view. We will produce a document which will be available for public discussion.

Industry and Technology Development Council review

3. MR NGAI SHIU-KIT asked (in Cantonese): *Will the Government inform this Council of the progress of the review on the role and jurisdiction of the Industry and Technology Development Council and advise whether the findings of the review will be published, and if so, when this will be done?*

SECRETARY FOR TRADE AND INDUSTRY: The Industry and Technology Development Council was established early this year as the Government's main channel of advice on the overall development of industry and technology in Hong Kong. The Council has devoted part of its energies during its first year to a review of its role.

Members had a range of views, but it is probably fair to say that there is broad agreement that the Council should become more proactive, taking on a strong leadership role and helping to co-ordinate the provision of support for industry and technology development. The Administration is now wrestling with the difficult question of how best to take this matter forward, including whether there should be a change in the funding in this important area.

The Industry and Technology Development Council's advice is not normally published. However, I would be happy to keep this Council informed of further developments in due course.

MR NGAI SHIU-KIT (in Cantonese): *Mr Deputy President, could the Administration give this Council more detailed information on: firstly, the practical problems causing the long delays in the completion of the review; secondly, whether the Industry and Technology Development Council will be reorganized or restructured in early 1993 following the stepping down of the Financial Secretary as chairman of the Council, and if yes, what the changes will be?*

SECRETARY FOR TRADE AND INDUSTRY: Mr Deputy President, the Council, known for short as the ITDC, has done a great deal of thinking on this issue and, as I indicated in my main reply, has reached agreement on some broad principles. But we still have work to do on the detailed way forward and that will take some time. We are looking at ways in which the Council could play a more active role in co-ordinating the activities of various industrial and technological support agencies, without infringing on their autonomy. One option being considered is for ITDC to be responsible for channeling funds to the industry support programme in much the same way as the University and Polytechnic Grants Committee (UPGC) does to the tertiary education institutions. This sort of review obviously includes complex financial and organizational issues and that is why the review has not yet been completed.

As regards Mr NGAI's second question, I can confirm that, come January 1993, the Financial Secretary who is the current chairman of the ITDC will indeed step down and be replaced by a non-official chairman who has yet to be appointed. Since we have not yet completed the review of the role of the ITDC, I do not think that at that stage there will be any change in the role or function of the ITDC, or indeed any reorganization. But once we have completed the review, we would then consider how the reorganization, if any, is to be carried out, and when.

DR SAMUEL WONG: *Mr Deputy President, could the Secretary for Trade and Industry inform this Council whether the current role of the ITDC covers the education and training for technologists, and if not, why not?*

SECRETARY FOR TRADE AND INDUSTRY: The word "role", Mr Deputy President, has a very wide meaning, and obviously the ITDC, in looking at its own role, will also look at the question of training. And that is one of the reasons why the Secretary for Education and Manpower is a member of the ITDC.

MR HENRY TANG: *Mr Deputy President, would the Secretary care to elaborate on two points in his main answer. In the second paragraph, the Secretary says, "whether there should be a change in the funding in this important area". What does he mean by "change in funding"? And in the last paragraph, "in due course" — when is "in due course"?*

SECRETARY FOR TRADE AND INDUSTRY: Mr Deputy President, in my reply to an earlier supplementary, I have already explained that one of the options being considered is for the ITDC to be responsible for channeling funds to the industry support programme in much the same way as the UPGC does to the tertiary education institutions, and that is one of the options covered in my reply. As regards the term "in due course", it was used because we have not

fixed a firm date for the completion of the review, but we do hope to reach agreement on the way forward as quickly as possible. And in the meantime the Council will, of course, continue with its regular programme of work.

Non-franchised bus services

4. MR WONG WAI-YIN asked (in Cantonese): *Will the Government inform this Council whether there is any control mechanism for non-franchised bus services, for example, those provided by some private and public organizations for the residents of public and private housing estates, over the level of the fees charged and the quality of services rendered?*

SECRETARY FOR TRANSPORT: Mr Deputy President, under the Road Traffic Ordinance and its subsidiary legislation, a passenger service licence is required before a non-franchised bus service can be operated. In considering an application for such a service, the Commissioner for Transport is required to take into account not only the need for the proposed service, but also such operating details as stopping points, routing, fares and frequency. These details are normally specified in the licensing conditions of the licence subsequently issued. They can only be varied with the prior approval of the Commissioner.

In the case of a non-franchised residents bus service, operating details are normally agreed between the operator and the residents concerned and included in their joint application for the service. Thus, the fares, routing and other operating details included in the licensing conditions reflect the agreement by the residents themselves or their authorized management agent.

Apart from general monitoring by the Transport Department, the residents themselves invariably monitor the fares and quality of such a service. Residents may change the operator if they are dissatisfied with either the fares or the quality of service provided. Failure to comply with the licensing conditions may also result in suspension or non-renewal of the licence.

MR WONG WAI-YIN (in Cantonese): *Mr Deputy President, it appears to me that the Secretary is trying to evade the more important issues in his reply. For instance, the third paragraph of his answer mentioned that residents can change the operator if they are dissatisfied with the fares or the quality of service. We all know that at present there are two types of bus services for residents. One is run by residents groups such as mutual aid committees and residents can therefore monitor the fares and the services provided. The other however is operated by developers or management agencies of large private housing estates such as Fairview park and Kingswood Villas. These are not residents groups. Can the Secretary inform this Council how residents can monitor the fares and services of these non-franchised residents bus services operated by developers*

or management agencies? What role does the Transport Department play in this respect?

SECRETARY FOR TRANSPORT: Mr Deputy President, as I said in my main reply, the basis for the Commissioner approving such services is normally the mutual agreement between the residents themselves and the operator. I believe that the case quoted by Mr WONG is exceptional in that, in that particular case in Yuen Long, the service has to be arranged between the management and operator because of the management retaining ownership of the access to the housing site in question. This, of course, is a matter between the residents and the owner concerned and it is not a transport issue. But in general, to reassure Members, out of the 85 services operating for residents in the territory, there are only three cases of complaint compared with over a hundred cases in the past few years, and of these only two concern fares relating to the one service at Fairview Park.

DR LAM KUI-CHUN: *Mr Deputy President, would the Secretary for Transport give us an idea of whether such non-franchised bus services effectively supplement the franchised services or merely contribute to clogging up the roads?*

SECRETARY FOR TRANSPORT: Mr Deputy President, I believe that these services are supplementary to the basic services provided by franchised bus companies and the railway companies. They are very small in number but, in general, where these are welcomed by the residents the Government's role is to support such services, provided these are agreed between the residents and the operator.

MRS MIRIAM LAU: *Mr Deputy President, I note that the Secretary in the second paragraph of his reply states that operating details of these bus services "are normally agreed between the operator and the residents concerned". I note that the word "normally" is used in contrast to the word "invariably" used in the third paragraph. Would the Secretary inform this Council what happens in the abnormal case when operating details are not so agreed?*

SECRETARY FOR TRANSPORT: Mr Deputy President, the only exceptional case, as I can recall, is the one in Yuen Long I referred to. That is exceptional because of the ownership rights of the management of that particular housing estate. Otherwise, all the services are based on agreement between the residents and the operators.

DR TANG SIU-TONG (in Cantonese): *Mr Deputy President, I would like to follow up the question on Fairview Park. Will the Administration inform this Council whether there are ways to allow residents' participation?*

SECRETARY FOR TRANSPORT: Mr Deputy President, I believe this is really a matter between the residents and the owner of that particular estate. As far as we are concerned, we will certainly do our best to ensure that the residents are consulted, and I am considering asking the Commissioner for Transport to include in the conditions of the licence a term to the effect that the operator should consult the residents. That, however, may not be a fully effective way to solve the problem because consultation does not mean that the residents will all agree; but this is the best we can do in the meantime. But I understand that the Secretary for Home Affairs is considering amendments to the law to enable owners of different bodies to incorporate and thus to make more effective use of their powers.

DR CONRAD LAM (in Cantonese): *Mr Deputy President, can the Secretary inform this Council of the role the Housing Department plays in approving non-franchised residents bus services? Does the Department have the power to veto agreements reached between the Transport Department and the residents concerned?*

SECRETARY FOR TRANSPORT: Mr Deputy President, I believe that the same principle applies to those services operating in public housing estates, which is that it is a matter between the residents and the operator. In this connection, the Housing Department must play a role in ensuring that the residents concerned are consulted and a general agreement is reached before the services are started.

MR TIK CHI-YUEN (in Cantonese): *Mr Deputy President, we understand that a lot of private housing estates are served by private roads to which public transport have no access. Will the Administration inform this Council whether closer monitoring is not contemplated because the Administration fears that doing so may curtail the services when bus operators find that they cannot make a profit, and in that circumstance no public transport would be made available to the residents?*

SECRETARY FOR TRANSPORT: Mr Deputy President, I believe this is really a matter outside transport; it is a matter between the residents and the owners of the housing estates concerned. So far as transport is concerned, I will repeat what I said, which is that we will ensure that services provided are agreed mutually between the two parties before the Commissioner grants licences for such services.

MR FRED LI (in Cantonese): *Mr Deputy President, in the third paragraph of his reply, the Secretary mentioned that there was general monitoring of non-franchised bus services by the Transport Department. Can the Secretary inform this Council what kind of monitoring he was referring to?*

SECRETARY FOR TRANSPORT: Basically, there are two ways of monitoring the services by the Transport Department. The first is by acting on complaints from the residents themselves, and the second is through random inspections. And of course the vehicles are subject to annual examination before we renew their licences. Statistics perhaps can give an indication of the kind of monitoring we have imposed on these services since 1987. In general, the number of complaint cases concerning the quality of service is rather small. For instance, in 1987 there were 14 cases only, and in 1989, 40 cases. The number has risen slightly because of the increased number of services operating between these estates — they have increased to 78 up to November this year. But in general we do not feel that the situation is unsatisfactory.

Organ transplants

5. DR HUANG CHEN-YA asked (in Cantonese): *In view of the recent death of a former policewoman LEE Mei-sze as a result of failure to secure suitable organs for heart-lung transplant and due to the substantial number of patients still awaiting organ transplants, will the Government inform this Council:*

- (a) *what plans are in place to develop amongst the general public a proper understanding of and a sense of obligation in organ donations;*
- (b) *whether legislative measures will be introduced to meet the need for a ready supply of transplant organs?*

SECRETARY FOR HEALTH AND WELFARE: Mr Deputy President, in promoting community awareness about organ donation, we have mounted this year a major publicity and public education campaign. The Department of Health, in co-operation with professional bodies, public utilities, community groups as well as other government departments, has launched a multi-media effort. It has involved no less than 10 campaigns and publicity drives. The Department's Central Health Education Unit also holds talks and provides exhibits to community organizations. At regular intervals, it operates a 24-hour hotline at Tel: 838 3232 to offer information on organ donation. Organ donation cards are distributed throughout the territory at district offices, government departments, hospitals and clinics, and during the campaign period, also through banks, department stores and supermarkets, or whenever any community group requests them. We have brought the message into homes via television, radio and personal appeals. For the first time in Hong Kong, since

Easter this year, more than 3 million donor cards have been distributed. For example, individual cards have been addressed to Housing Authority tenants and via the rating bills to private property owners.

Indeed, our past efforts are showing some positive results. For example, in 1989, for every 10 potential donors we approached, we were successful in getting only one donor. This year, we have improved the rate to one in three. But this is still not good enough.

We believe the answer lies in public education and in attitude change. We will intensify our efforts in concert with concerned groups and community organizations.

As for part (b) of the question, the Medical (Therapy, Education and Research) Ordinance already provides for the removal of a person's organs to be used for transplant after his death under prescribed circumstances. In brief, these are when a donor either consented in writing at any time or consented orally in the presence of two or more witnesses during his last illness. Alternatively, the next of kin of a deceased person may consent in writing, as long as the deceased had not indicated any previous objection to being a donor (that is, not opted-out) and his spouse, child or parents do not object to the donation.

Earlier this year, at about Easter time I introduced the Human Organ Transplant Bill to provide, *inter alia*, for organ donation by living relatives and spouse and for the setting up of a Human Organ Transplant Board. This is now being studied by an ad hoc group of this Council.

DR HUANG CHEN-YA (in Cantonese): *Mr Deputy President, we all know that there are a lot of patients awaiting organ transplants at present but the actual number of transplants is just very few. Let's look at the current situation in Hong Kong where we have over 1 500 kidney patients receiving dialysis whereas the number of patients kidney transplant was only about 50 over the past four years. The fact that there is no increase in the number of transplants shows that although the Government has done quite a lot on this, the result is still unsatisfactory and further improvement is to be made. Will the Administration inform this Council whether an Organ Transplant Consultancy Group will be set up to plan educational programmes of organ transplants, revise and consolidate relevant provisions and co-ordinate the development of organ transplants?*

SECRETARY FOR HEALTH AND WELFARE: Mr Deputy President, it is correct to say that the number of kidney patients who are receiving dialysis in public hospitals in Hong Kong is over 1 000, but not every patient receiving dialysis is suitable for receiving a transplant, and not every donation is harvested. In the Bill before this Council around Easter time there is, as I said,

a proposal for the setting up of a Human Organ Transplant Board. As for the terms of reference of that Board, I remain to be advised. But in reality, Mr Deputy President, organ donation is an act of caring and generosity; it is a gift of life. As I said in my main reply, it is essential to pave the way with publicity and public education. By signing a donation card, the party signing pledges a gift of life. To persuade others, we do not need a "Community Board"; we need every individual in the community to participate, to set a good example. We need to set a good example ourselves by signing up. As one who has a heart, I think in the right place, and a card, I think in the right pocket — which is my left pocket — I appeal to you, Honourable Members, to show a good example by pledging support, by carrying your card. The best gift to give at Christmas and New Year is the gift of life.

DR LEONG CHE-HUNG: *Mr Deputy President, in an answer to a Legislative Council question in relation to organ donation at the sitting on 30 January 1991, the Secretary for Health and Welfare had this to say, and I quote:*

"Additional measures are being considered with a view to progressing towards an opting-out scheme for organ donation in the long term."

Could the Administration reconfirm to this Council that this is still the long-term objective? If the answer is in the affirmative, will the Secretary attempt to propose a timetable and the direction she aims to take to obtain the support of the Hong Kong people towards this opting-out scheme?

SECRETARY FOR HEALTH AND WELFARE: Mr Deputy President, I confirm that it remains our objective to do what we can to promote organ donation as an activity in Hong Kong, as an act of love and generosity by individuals. As I said in my main reply, the existing Medical (Therapy, Education and Research) Ordinance already provides for a form of opting-out. Let me explain here what opting-in and opting-out is, in layman's terms. Opting-in is a positive indication, like carrying a card, pledging that one has opted to donate. Opting-out is: if one does not say no, it is implied that one has said yes. To achieve anything in Hong Kong, I believe we need to have community support, massive community attitudinal support. Our current law, it can be argued, combines the best of all systems. For example, it provides for positive indication, that is, opting-in; it allows for opting-out, as I referred to in my main reply; it also includes a provision for a required request, that is to say, the need to obtain the permission of relatives regardless of a card.

DR CONRAD LAM (in Cantonese): *Mr Deputy President, the most suitable donors of organs are those with brain death as a result of cerebral haemorrhage or cerebral trauma. But their families usually refuse to donate the organs of the deceased because they cannot accept the fact of brain death. Does the*

Administration have any specific plans to promote the understanding of brain death? If not, will the Administration consider that?

SECRETARY FOR HEALTH AND WELFARE: Mr Deputy President, as I said, we are concentrating our action on promotion and education to pave the way for better understanding by the community of the individual person's moral responsibility to show generosity and caring. In this respect, I am assuring Members of this Council that we will step up our effort in this direction.

MR HOWARD YOUNG: *Mr Deputy President, speaking as a person who — and in fact my whole family — has opted-in by signing such cards, I must admit that one does not always remember to keep it in the right pocket or wallet. Does the Government have any estimate or is there a ball-park figure as to how many of the 3 million cards distributed have been actually signed? And is it feasible to set up some sort of a system or registry where, in respect of people who have signed but do not have the card on them, there is some way of checking in case it is needed? That will probably help.*

SECRETARY FOR HEALTH AND WELFARE: *Mr Deputy President, I think the signing of a card and the promotion given by the Government in the campaign for the signing of the card has actually harvested some good results, as I said in my main reply. It is because since 1 January our Transplant Co-ordinator has approached the relatives of 51 patients for consent and in 18 cases relatives have actually consented to organ donation. And as regards the actual donations in Hong Kong, the number is unclear, but, according to the report, between last year and this year our Hong Kong Eye Bank has collected 31 corneas from one hospital alone which is equivalent to the total number of corneas collected in the preceding eight years. So, while I have not got the figures as to how many people have signed the cards distributed to them, neither do I have statistics indicating how many people are carrying their signed cards — because I know a number of Members of this Council have signed their cards with many witnesses but I do not know whether they are carrying their cards — I feel that the actual community attitude is very important. Only a small proportion of potential donors' organs will be harvested, and not all of those organs donated will be suitable for a transplant. So I think the best way forward is still one of campaigning for acceptance.*

MR MAN SAI-CHEONG (in Cantonese): *Mr Deputy President, I understand from the Administration's reply that a lot has been done on publicity and public education. Has the Administration considered taking long-term measures to educate our new generation through school channels, to educate parents through students and to publicize through textbooks and other avenues so as to commend this programme of love and caring to all?*

SECRETARY FOR HEALTH AND WELFARE: Mr Deputy President, I think it is a very good idea. In the comprehensive campaign we have conducted from February this year, we have concentrated on the community through community organizations. We have held a number of exhibitions in public housing estates, we have got television programmes, but I think the Health Education Unit in future years should also concentrate on publicity and education through school channels. I thank Mr MAN for the suggestion.

Special levy on securities transactions

6. MR CHIM PUI-CHUNG asked (in Cantonese): *Will the Government inform this Council whether it has any plan to speed up the recovery of the \$2 billion made available to rescue the Hong Kong Futures Exchange during the 1987 stock market crash, so that the special levy currently imposed on securities transactions could be withdrawn?*

SECRETARY FOR MONETARY AFFAIRS (in Cantonese): The Government has no plans to speed up the recovery of the outstanding credit facilities (the Lifeboat) extended to the then Hong Kong Futures Guarantee Corporation Limited.

However, I am pleased to inform Members that the bulk of the loan has been repaid, and that the outstanding amount would be fully repaid by early 1994, depending on the market turnovers. The Securities and Futures Commission is currently formulating legislative proposals to recommend to the Government to provide for an orderly wind-down and elimination of the Special Levy. Thus we feel that there does not appear to be a need, nor would it be appropriate, to tamper with the existing statutory structure of the special levy to artificially accelerate the loan repayments.

MR CHIM PUI-CHUNG (in Cantonese): *Mr Deputy President, the Acting Secretary has said in his reply that the bulk of the loan has been repaid; how much has actually been repaid? Secondly, as regards the special agreement reached between the Administration and a listed company, what is the position to date in relation to the recovery of the loan? Thirdly, the Administration has used the words "tamper with" in its reply; is the current levy reasonable or has it "tampered with" the established principles of Hong Kong as a financial centre?*

SECRETARY FOR MONETARY AFFAIRS (in Cantonese): Mr Deputy President, of the \$2 billion loan, \$1.37 billion has been repaid, and the outstanding amount is \$610 million.

Secondly, I believe what Mr CHIM referred to is one of the loans on which the Administration and the company concerned have not been able to reach an agreement. The amount due is \$750 million, and \$449 million has so far been repaid.

As regards the special levy, the sum was set in 1987 but the levy on each futures contract was subsequently reduced in 1990 from \$10 to \$5, having taken into account the views of the market and the two Exchanges. As we considered that the futures and securities markets were very important and inseverable parts of the financial framework, we had, in our move to rescue the market, consulted the two Exchanges on this levy rate.

In preparing the answer to Mr CHIM's question, I have consulted people in the market and the executives of the two Exchanges. They agreed and assured me that the special levy was not what concerned them most at the moment.

MR JAMES TO (in Cantonese): *Mr Deputy President, after recovering the \$2 billion made available to rescue the Futures Exchange, will the Administration consider continuing the levy so as to meet contingency needs, thereby ensuring that the market will continue to operate on a sound basis?*

SECRETARY FOR MONETARY AFFAIRS (in Cantonese): Mr Deputy President, I can assure Members that the Administration does not have any plan to continue the special levy after the \$2 billion loan is fully recovered. As regards safeguarding the market operation, we have since 1987 introduced a series of measures for improving the market operation. So we see no further need to continue the special levy for the purpose of maintaining the market operation.

DR PHILIP WONG (in Cantonese): *Mr Deputy President, when the loan was provided, it was understood that it was to be repaid by the Futures Exchange and the Hong Kong Stock Exchange on a fifty-fifty basis. For the sum of over \$1.3 billion that has been repaid, how much actually came from the Stock Exchange?*

SECRETARY FOR MONETARY AFFAIRS (in Cantonese): Mr Deputy President, I do not have the figures at hand, but I could provide Dr WONG with a written reply. (Annex I)

MR ROGER LUK (in Cantonese): *Mr Deputy President, when will the Administration expect to recover the \$2 billion in full?*

SECRETARY FOR MONETARY AFFAIRS (in Cantonese): Mr Deputy President, repayment of the \$2 billion depends very much on the market performance. On the basis of turnover of the previous year, it is hoped that the \$2 billion can be fully recovered by early 1994.

MR CHIM PUI-CHUNG (in Cantonese): *Mr Deputy President, may I refer to the reply of the Acting Secretary. We all know that the 1987 stock market crash was due to the faults of the Hong Kong Futures Exchange. So in the first place, it is very unfair to ask the stock investors to repay such an amount of loan. I would say the then Administration, and that is the existing one, made a very wrong decision at that time. So I would ask the Acting Secretary to give an elucidation on the words "tamper with" he used in his reply when he said "to tamper with the special levy", because to discontinue the special levy is what should be done and not an interfering act.*

DEPUTY PRESIDENT: I think you are being asked to explain what you mean by "tamper", Secretary.

SECRETARY FOR MONETARY AFFAIRS (in Cantonese): Mr Deputy President, the Administration has considered the affordability of the market in setting the rate for this special levy. At the outset we tried to set the levy at \$10 for each futures transaction. Trading on the Futures Exchange however was sluggish thereafter and remained so for a long period. As the Futures Exchange was considered to have a very important role to play in the financial sector, a proposal to reduce the levy was raised and accepted in 1990, as I have mentioned in my reply. In fact both the Futures Exchange and the Stock Exchange had been approached on the level of levy and they found it reasonable.

Members must bear in mind that the Futures Exchange is subject to fierce international competition. Members might have noted from newspapers that Singapore intended to introduce Hong Kong Futures and the Hang Seng Index Futures on its market. In these circumstances, an exceptionally high levy will severely weaken the competitiveness of the Hong Kong Futures Exchange, and greatly affect Hong Kong's financial sector in the long run. When I used the words "tamper with", I intended to say that the existing levy is reasonable to the two Exchanges and will not be an excessive burden on the market. I did not intend the two words to have a subversive meaning.

MR JIMMY MCGREGOR: *Mr Deputy President, could the Secretary say whether the repayments attract interest, and if not, whether there is any damage to the public revenue?*

SECRETARY FOR MONETARY AFFAIRS (in Cantonese): Mr Deputy President, all the repayments have included interests.

Written answers to questions

Hospital Authority's terms of employment for staff

7. DR LAM KUI-CHUN asked: *At the time when the Hospital Authority (HA) took over the management of public hospitals and institutions, serving hospital staff were offered an option to bridge over to the Authority's terms of employment or to remain on civil service terms or terms offered by subvented organizations. Will the Administration inform this Council:*

- (a) *of the percentage of those eligible staff who have opted for the HA's terms of employment as at 30 November 1992;*
- (b) *whether the present arrangement for HA to operate on two co-existing sets of terms of employment would incur more expenditure than to operate on just either one of them, and*
- (c) *if the answer to (b) is in the affirmative, of the additional expenditure incurred for the past 12 months and the estimated annual additional costs for the years 1993 to 1995, expressed in dollar terms and as a percentage of the total staff costs of the HA?*

SECRETARY FOR HEALTH AND WELFARE: My answers, *seriatim*, are as follows:

- (a) As at 30 November 1992, 61% of eligible staff have opted for Hospital Authority employment terms. Detailed figures are summarized at Annex.
- (b) and (c) The HA remuneration package is based on the principle of comparable cost to the employer, that is, that it should be similar in cost to civil service terms. Additional provision has been necessary to facilitate offer of HA terms to ex-subvented staff. The offer of an option to all eligible staff is considered an equitable arrangement, to safeguard their legitimate and reasonable interests.

Number of eligible staff opted for HA employment terms position
as at 30 November 1992

	<i>No. of eligible staff</i>	<i>No. of staff opted</i>
Ex-government hospitals (excluding general grades staff)	20 718	8 024 (39%)
Ex-subvented hospitals	13 062	12 541 (96%)
Total	33 780	20 565 (61%)

Foot and mouth disease

8. DR TANG SIU-TONG asked (in Chinese): *In view of the outbreak of foot and mouth disease which is rampant in farms all over the New Territories, will the Government inform this Council what measures are in hand to help pig farmers control the disease and, secondly, what effect it would have on the health of those people who have by chance consumed the meat of the infected pigs?*

SECRETARY FOR ECONOMIC SERVICES: Foot and mouth disease is endemic to Hong Kong and other places in Southeast Asia. An effective and relatively inexpensive vaccine is readily available and many pig farmers in Hong Kong have vaccinated their animals as a preventive measure. The recent outbreak of the disease was due mainly to the failure of some farmers to vaccinate their pigs.

The Agriculture and Fisheries Department is assisting in the control of the disease by maintaining contact with vaccine manufacturers and their local agents so as to ensure sufficient availability of vaccine and by sending samples of local viruses to the World Reference Laboratory for Foot and Mouth Disease for testing purposes.

As pigs are inspected for disease before they are slaughtered for human consumption, the likelihood of infected pork reaching the consumer is remote. In the very unlikely event that this did happen, consumption of the meat would have no effect on a person's health.

Industrial accident

9. MR LAU CHIN-SHEK asked (in Chinese): *With regard to the classification of industrial accident figures provided by the Labour Department, will the Government inform this Council of the following:*

- (a) whether it has examined the adequacy of the items of causes now being used for classifying industrial accidents;*
- (b) how the current classification of causes has been effective in preventing industrial accidents; and the specific examples that can be quoted in the past two years; and*
- (c) whether consideration will be given to publishing on a regular basis the number of industrial accidents by types of work?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr Deputy President, the present classification system used by the Labour Department in compiling industrial accident statistics largely follows the International Labour Organization's recommendation on the method of classification of causes of industrial accidents. The Department has reviewed the system from time to time in the light of experience and considers it to be adequate.

The classification system has enabled the Labour Department to identify any growing trend in particular types of industrial accidents and to focus enforcement and prevention work accordingly. For example, the accident statistics for the late 1980s indicated that accidents caused by machinery was a major area of concern. As a result, machinery safety was targeted for special attention during factory inspections in the past two years. The number of machinery related accidents dropped by 26.5% from 8 237 in 1990 to 6 013 in 1991. More recent accident statistics have indicated a high incidence of accidents involving "fall of persons". This will become one of the priority areas in next year's accident prevention programme, and new initiatives are being worked out.

The Labour Department publishes industrial accident statistics annually. These are broken down by causes and by industries in accordance with the classification system referred to in the first paragraph above. It would not be practicable to break down these statistics further by individual types of work or job titles given the very large variety involved.

Haemophiliacs suffering from AIDS

10. MRS PEGGY LAM asked (in Chinese): *Will the Government inform this Council:*

- (a) *of the number of haemophiliacs who have contracted AIDS from medicine contaminated by the HIV in the course of undergoing medical treatment in public hospitals, and of the number of those who died as a result;*
- (b) *whether those patients would be exempted from medicine fees for the treatment of other illnesses arising from AIDS;*
- (c) *whether the Government would grant special compensation to those haemophiliacs who have contracted AIDS from medicine contaminated by the HIV in the course of undergoing medical treatment; if so, what the details of compensation are; and if not, what the reasons are; and*
- (d) *whether haemophiliacs eligible for disability allowance would continue to receive the allowance while they are under treatment in hospital; and if not, what the reasons are?*

SECRETARY FOR HEALTH AND WELFARE: *Seriatim*, the answer to the four-part question is as follows:

- (a) Of 61 haemophiliacs who are confirmed to have been infected by HIV, nine have developed AIDS and five have died from the disease. There is no record as to whether they have contracted HIV through medical treatment at public hospitals.
- (b) All entitled persons (that is, permanent residents of Hong Kong) are charged \$33 per visit at specialist clinics and \$43 per day at public hospitals. These rates apply equally to HIV-infected haemophiliacs. The fees may be partially or fully waived for patients with financial difficulties.
- (c) Each case has to be decided on its own merits. The Government would only be legally liable to pay compensation to an individual who had contracted HIV through the transfusion of contaminated blood products if the individual was able to establish that the Government had been negligent or breached a duty of care in respect of preparing the blood products for transfusion.

The Government ensures that all blood products for transfusion are sterilized according to internationally accepted methods.

- (d) Haemophiliacs eligible for disability allowance would continue to receive the appropriate allowance while undergoing treatment in hospitals. The Higher Disability Allowance is given to those who require constant care and attention. However, those staying in public hospitals for over 29 days would receive only the Normal Disability Allowance since they are already receiving constant medical attention in hospitals which are heavily subsidized by the Government.

Disclosure of confidential documents

11. MR ERIC LI asked: *Will the Government inform this Council whether it will consider adopting the practice in other countries and disclose the top secret and confidential documents of the Executive Council, Legislative Council and consultative committees after a lapse of time, so that people may have a more thorough understanding of the background of relevant incidents and decision taken?*

CHIEF SECRETARY: Mr Deputy President, our current practice is to allow public access to unclassified records older than 30 years and to consider requests for access to other records on an individual basis. We are considering whether the current arrangement for access to unclassified records should be extended to classified documents so as to bring Hong Kong in line with practice in other places which allow public inspection of both unclassified and classified records after a fixed period of closure, ranging usually between 20 and 60 years.

Juvenile crime

12. MR JAMES TO asked (in Chinese): *Will the Government inform this Council:*

- (a) *whether there are plans to set up a special squad to deal with the increasingly serious state of juvenile crimes;*
- (b) *if so, what progress has been made;*
- (c) *if not, what measures are available to clamp down on such crimes?*

SECRETARY FOR SECURITY: Mr Deputy President, I wish to preface my reply by stating that the problem of juvenile crime is not becoming increasingly serious. Juvenile crime (that is crime by persons aged 15 and under) has decreased during the past three years.

There are no plans to set up a special squad dedicated specifically to juvenile crime. The government departments concerned are already paying close attention to the problem. The police maintain close liaison with schools; they visit schools regularly and have developed a programme of talks and other publicity in schools to encourage students to stay away from crime. The police also plan to implement on a trial basis the Student Crime Information Form Scheme to enable students to provide information on crime within schools. The setting up of police school support teams and the provision of training to teachers to identify triad influence in schools are also being considered.

The Standing Committee on Young Offenders, which reports to the Fight Crime Committee, is tasked with examining ways to prevent potential young offenders from offending. The Committee includes representatives from all departments with an interest in young offenders and adopts a multi-disciplinary approach to the problem. The Committee has commissioned a study into the social causes of juvenile crime. This major study will be completed in early 1994.

Slippage of public works projects

13. MISS EMILY LAU asked: *In view of the slippage in a number of public works projects in the last financial year which has resulted in a surplus bigger than originally expected, will the Government give this Council a breakdown of these projects and their costs, and the reasons for the slippage?*

SECRETARY FOR WORKS: Mr Deputy President, the system of monitoring public works projects is for the Directors of the works departments who are Vote Controllers and responsible for the progress and expenditure outcome of their respective projects to report to the Public Works Progress Committee (PWPC) which I chair. This monitors and seeks explanation of significant deviations from plan, and looks for actions to recover delay or reprogramme as appropriate. Since PWP has around 1 000 items in train, PWPC focuses on major projects (which represent about 20% in terms of number but 80% in terms of expenditure).

In the financial year 1991-92, there were 950 public works projects with an approved project estimate exceeding \$10 million, and in addition 152 projects were scheduled to start during the same financial year.

There were some 164 projects included in the Quarterly Reports issued to PWSC members, and monitored by the PWPC; of these projects 76 were found to be delayed by three months or more. The causes of delays were:

	%
a) Changing requirements	34
b) Additional works	14
c) Interface problems	13
d) Slow progress on contracts	11
e) Delays at start due to objections etc	9
f) Delays due to inclement weather	7
g) Others	12
	100

Details of these projects (including reasons for the delay of individual projects) were found in the Quarterly Reports issued by Works Branch to PWSC members during 1991-92 and are repeated again for ease of reference in the attachment Annex I. The estimated project cost for these 76 projects amounts to a total of \$17.7 billion, and the provision included in the 1991-92 expenditure estimates for these same projects was \$4.4 billion.

Of the 152 new projects scheduled to start in 1991-1992, 45 actually started as programmed while 38 were, in the course of the year, rescheduled, repackaged or dropped following reviews by the relevant Policy Secretaries of priorities and matching resources. This flexibility is a distinct feature of the Public Works Programme in Hong Kong, and allows the Government to take into account changing aspirations and circumstances. The remaining 69 were delayed beyond 1991-92. A list of these 69 projects is at Annex II, and reasons for slippage are:

	%
a) Land acquisition problems	12
b) Statutory objections	10
c) Site relocation	6
d) Design and physical problems	26
e) Changes in client's requirements	26
f) Administrative delays	10
g) Funding issues	10
	100

The estimated project cost for these 69 projects amounts to a total of \$30.2 billion, and the provision included in the 1991-92 expenditure estimates for these same projects was \$1.8 billion.

List of on-going projects
delayed during 1991-92

<i>Code</i>	<i>Title</i>	<i>Approved project Estimate at end 1991-92 (\$M)</i>	<i>Provision 1991-92 (\$M)</i>
2089TH	Lantau Fixed Crossing – further investigation and design	270.00	11.77
2426TH	Western Harbour Crossing feasibility study – consultants' fees and investigations	25.00	3.39
2467TH	Road link between the Northwest New Territories and West Kowloon (Route 3) - advance works for CRA1 and CRA4	90.00	43.50
2367CL	Tuen Mun port development study	24.00	Block Vote
2366CL	West Kowloon reclamation – northern area, phase I	2,490.00	955.98
3048DR	NT/NE Livestock Waste Consolidation Site A (Sha Ling)	19.57	5.47
3044LC	Detention and holding centres for illegal immigrants from Vietnam	659.56	21.57
3014LP	Police Training School (stage V)	107.88	0.11
3026MH	Queen Elizabeth Hospital, block B extension	316.00	74.06
3030MH	Pamela Youde Hospital – superstructure of staff quarters and nurse training school	459.50	221.48
3068MH	Pamela Youde Hospital – Consultants' fees	150.00	24.86
3083MH	Pamela Youde Hospital – Superstructure of Hospital complex	1,763.00	527.03

<i>Code</i>	<i>Title</i>	<i>Approved project Estimate at end 1991-92 (\$M)</i>	<i>Provision 1991-92 (\$M)</i>
3031RE	Space Museum recladding	25.00	19.49
3024TF	China passenger ferry services terminal at Tsim Sha Tsui	234.30	14.42
4046DS	Shau Kei Wan sewerage district development - screening plant	37.00	1.69
4048DS	To Kwa Wan sewerage district development - screening plant and submarine outfall	83.00	1.52
4050DS	To Kwa Wan sewerage district development - sewers from Ma Tau Chung Road and Gascoigne Road to screening plant at To Kwa Wan reclamation	54.00	19.87
4092DS	Tsuen Wan, Kwai Chung, Tsing Yi sewerage masterplan study - consultants' fees and investigations	16.00	1.10
4101DS	Strategic Sewage Disposal Scheme stage II - oceanic outfall, oceanographic surveys and modelling investigations and consultants' fees	53.00	16.34
4103DS	North West Kowloon sewerage masterplan study - consultants' fees and investigations	15.00	4.75
4111DS	Central, Western and Wan Chai West sewerage masterplan study – consultants' fees and investigations	12.00	3.16
4112DS	Yuen Long and Kam Tin sewerage masterplan study – consultants' fees and investigations	15.00	7.34
4117DS	Nutrient removal from Tolo Harbour - effluent export scheme, stage I	453.20	198.88

<i>Code</i>	<i>Title</i>	<i>Approved project Estimate at end 1991-92 (\$M)</i>	<i>Provision 1991-92 (\$M)</i>
4121DS	HK Island South sewerage improvement and sewage treatment and disposal facilities - advanced works	68.16	49.72
5077AA	Kai Tak Airport improvements – Typhoon Shelter at To Kwa Wan	130.00	56.50
5048BL	Improvement and protective works to Sai Tso Wan landfill - works	53.70	4.52
5038CD	Shing Mun River – water quality improvement	14.00	11.30
5021CL	Telegraph Bay reclamation	71.30	0.34
5167CL	Ap Lei Chau North reclamation – phase II	24.50	8.81
5199CL	Lai Chi Kok Bay reclamation, stage II - works	166.50	56.50
5008DR	Shuen Wan landfill	405.00	76.60
5017DR	Tseung Kwan O landfill – stage II, phase II	103.30	58.76
5037DR	Development of Northeast New Territories landfill – consultants' fees and investigations for works in phase I	41.40	9.75
5058DR	Northeast landfill development – site formation for Ta Kwu Ling rural centre	6.00	5.37
6079TB	Hillside escalator link between Central and Mid-levels	204.60	73.45
6069TH	Gascoigne Road and Chatham Road improvements (Jordan Road to Hung Hom interchange)	114.00	0.56

<i>Code</i>	<i>Title</i>	<i>Approved project Estimate at end 1991-92 (\$M)</i>	<i>Provision 1991-92 (\$M)</i>
6080TH	New Territories Circular Road improvements, Au Tau to Fan Kam Road – phases I to IV and VI	1,043.00	161.89
6092TH	Vehicular border link at Lok Ma Chau - consultants' fees, investigations and works	341.90	34.46
6164TH	Access to the Wan Chai reclamation - grade separated access facilities	196.80	13.56
6298TH	Tate's Cairn Tunnel approaches and Prince Edward Road interchange	708.30	146.90
6328TH	Yuen Long - Tuen Mun Eastern Corridor and Yuen Long West Link: site investigations and works	799.00	229.39
6358TH	Improvements to resumed private streets, 1987-88 programme	3.60	0.87
6361TH	Interchange at junction of Aberdeen Praya Road/ Tin Wan Praya Road and associated works	105.00	46.90
6389TH	Lam Kam Road improvement stage II, phase I - sections between Lam Kam Road Interchange and Chai Kek and between Pak Ngau Shek and Kadoorie Farm	65.00	25.99
6026TT	Second Ap Lei Chau bridge and associated works - traffic and engineering feasibility study	3.50	0.71
7025CG	Sha Tau Kok development: site formation and servicing – phase III	56.50	12.16

<i>Code</i>	<i>Title</i>	<i>Approved project Estimate at end 1991-92 (\$M)</i>	<i>Provision 1991-92 (\$M)</i>
7094CL	Tai Po development, package 7, engineering works	308.00	6.07
7266CL	Fanling development, package 6, stage I	130.00	35.61
7376TH	Ting Kok Road upgrading – stage I, phase I	146.00	42.94
7041CD	Yuen Long nullahs – environmental improvement	135.00	54.06
7327CL	Tin Shui Wai development – roads D1 (West) and L9 and formation of LRT reserve, phase I	113.50	23.11
7334CL	Tin Shui Wai development – package 4, engineering infrastructure, phase II	300.00	104.05
7338CL	Tin Shui Wai development, village flood protection phase III	15.50	10.17
7355CL	Tin Shui Wai development, package 4, engineering infrastructure for Tin Shui Wai Town Lot No. 1	34.00	19.21
7029DS	Yuen Long full sewage treatment plant	210.00	32.88
7127CL	Tseung Kwan O development, head of bay, stage I, engineering works	524.00	3.28
7187CL	Tseung Kwan O development, head of bay, stage III, engineering works	169.00	42.43
7337CL	Tseung Kwan O development, phase II, stage II, engineering works	110.00	26.06

<i>Code</i>	<i>Title</i>	<i>Approved project Estimate at end 1991-92 (\$M)</i>	<i>Provision 1991-92 (\$M)</i>
7247CL	Formation of a light rail transit reserve in the Tuen Mun – Yuen Long corridor and associated structures - stage I	418.00	2.71
7150CL	Kwai Chung North development, area 9, stage III, engineering works	120.00	38.15
7335CL	Tsing Yi development - road TY18 remainder and reclamation for the relocation of existing boatyards in north Tsing Yi	62.00	36.39
7062TH	Improvements to Kwai Chung Road South and Container Port Road	390.00	128.60
7073TH	Improvement to Kwan Mun Hau Street (Yeung UK Road to Castle Peak Road) phase I	80.00	34.70
7116TH	Intersection of Castle Peak and Kwai Chung Roads: improvements, stage II	155.00	18.02
7303TH	Improvements to Hing Fong Road (South of Kwai Foo Road)	100.00	22.60
7391TH	Completion of Texaco Road/ Tsuen Wan Bypass interchange and improvements to Texaco Road, phase I	152.00	38.56
7395TH	Realignment of Container Port Road	82.50	10.90
7228CL	Hung Hom Bay reclamation – phase II	257.00	33.45
7262CL	Territorial development strategy – urban area feasibility studies	125.00	25.03
7271CL	Hung Hom Bay reclamation, phase I - finger pier extension, seawall and ancillary works	128.00	5.86

<i>Code</i>	<i>Title</i>	<i>Approved project Estimate at end 1991-92 (\$M)</i>	<i>Provision 1991-92 (\$M)</i>
7353CL	Central and Wan Chai reclamation, package 1, phase 1 - consultants fees and site investigation	116.00	99.44
9002WF	Additional treatment works facilities for Northeastern New Territories	206.00	11.05
9127WF	Pak Kong treatment works and water transfer facilities, stage II	515.00	150.56
9133WF	Improvements to Hong Kong East trunk feed system	30.00	17.18
9144WF	Water treatment and transfer facilities at Au Tau, Yuen Long – stage II, investigation and design	380.00	2.81
9164WF	Stanley and Repulse Bay water supply - stage V	123.00	25.25
	Total	<u>17,731.57</u>	<u>4,363.92</u>

Annex II

List of new projects due to start
in 1991-92 but were delayed

<i>Code</i>	<i>Title</i>	<i>* Project Cost (\$M)</i>	<i># Provision 1991-92 (\$M)</i>
2175GG	Government facilities at the new airport	153.50	1.989
2451TH	North Lantau Expressway	5,260.00	48.726
2011WF	Future water increase from China - stage III : remaining works	171.00	46.737
2476TH	Lantau Fixed Crossing	12,149.00	226.723

<i>Code</i>	<i>Title</i>	<i>* Project Cost (\$M)</i>	<i># Provision 1991-92 (\$M)</i>
3074BF	304 Fire Services married quarters in area 22, Tseung Kwan O	148.40	25.546
3116ES	One standard secondary school in Sai Wan Ho reclamation for the Re provisioning of Henrietta	25.00	1.989
3037FS	Expansion to Cheung Sha Wan wholesale market	969.00	49.720
3019GQ	Gas safety scheme for government junior officers' quarters – remaining works	30.03	30.307
3079GQ	Refurbishment of 3 048 government junior staff quarters	15.00	0.994
3033LC	Additional departmental quarters on Lantau Island	73.00	54.941
3040LC	Additional departmental quarters in Kowloon and the New Territories, phase II - Pik Uk	73.90	15.820
3129LP	Additional accommodation for the Sai Kung police station	16.85	6.294
3159LP	New Police Headquarters complex - phase II	524.20	9.040
3180LP	Improvement of old police station	50.60	18.894
3024RB	Addition/re provisioning of cremators at Cape Collinson Crematorium	15.60	6.464
3126SC	Social welfare facilities in Yau Ma Tei six streets development	13.46	0.806
4024CD	Improvement to Shenzhen River bends at Lok Ma Chau and Liu Pok	88.00	1.989

<i>Code</i>	<i>Title</i>	<i>* Project Cost (\$M)</i>	<i># Provision 1991-92 (\$M)</i>
4051CD	Stormwater drain from Gascoigne Road to Canton Road	34.00	0.796
4055DS	Ap Lei Chau sewerage district development - pumping station	27.30	2.685
4124DS	Strategic Sewage Disposal Scheme Stage I Kowloon System – consultants' fees and investigation	112.00	9.944
4125DS	Tolo Harbour sewerage of unsewered areas	638.00	3.955
4130DS	Tsuen Wan and Kwai Tsing sewerage stage I phase I	182.00	1.921
4132DS	Port Shelter sewerage - stage I	73.20	1.356
4133DS	Sewage sludge conditioning facilities	50.00	5.191
4134DS	Northwest Kowloon sewerage – stage I phase II	72.00	1.582
5059AA	Kai Tak improvements – civil works	420.00	265.550
5045DR	Restoration of landfill sites	1,375.00	9.944
5054DR	Development of Northeast New Territories landfill - phase I	206.80	50.850
5061DR	NENT leachate treatment, phase I and village sewerage	111.40	9.944
5063DR	Development of Southeast New Territories landfill – advance works	200.00	77.405
5069DR	Outlying islands refuse transfer facilities - stage I	6.40	2.983
5070DR	Radioactive waste storage facility – consultants' fees and investigations	61.00	1.492

<i>Code</i>	<i>Title</i>	<i>* Project Cost (\$M)</i>	<i># Provision 1991-92 (\$M)</i>
6061AA	Kai Tak improvements - related road transport infrastructure works	3.60	25.312
6034TB	Footbridge and junction improvements at Pok Fu Lam Road/Pokfield Road	23.70	0.001
6197TH	Smithfield extension, Belcher's Bay link, elevated road to Kennedy Town and Central walkway extension	43.59	28.250
6403TH	Lai Chi Kok interchange improvements and reconstruction of ground level roads	52.50	5.311
6037TI	Transport interchange at Diamond Hill	47.11	5.650
7109DS	Provision of sewers and sewage treatment plants in rural areas in the New Territories	5.00	30.510
7047GK	Upgrading works for village resite and extension areas	17.90	8.249
7049BF	Lai King divisional fire station	31.84	3.706
7098BF	Standard sub-divisional fire station in Area 27, Tsing Yi	25.45	11.119
7021CG	Lo Wai Village improvement – package 21, Tsuen Wan	33.00	16.950
7257RO	District open space, Area 7, Tsuen Wan, phase 2 - site formation	123.00	31.640
7103TB	External elevated walkway/ footbridge system outside Tsuen Wan central public library and government office complex	22.00	4.520

<i>Code</i>	<i>Title</i>	<i>* Project Cost (\$M)</i>	<i># Provision 1991-92 (\$M)</i>
7220TH	Completion of Texaco Road/ Tsuen Wan Bypass Interchange and improvements to Texaco Road, remaining works	200.00	11.300
7177CL	Sha Tin New Town - remainder	11.20	5.650
7183CL	Tai Po development – remaining works	10.00	6.780
7023DS	Ma On Shan sewerage system, Stage I : remaining works	10.30	0.780
7086ES	Secondary school in Area 21, Fanling	39.00	1.130
7098MH	Prince of Wales Hospital – expansion and reprovision of facilities	22.20	1.130
7100WF	Sheung Shui/Fanling water supply - remaining works	150.70	3.277
7099MH	Fanling Hospital - expansion and improvement	3.50	2.260
7330CL	Tuen Mun New Town engineering development, stage II extension, package 29 - principal sewer from area 20 to Lung Mun Road	36.00	28.589
7043CD	Northwest New Territories development - main drainage channels for Yuen Long and Kam Tin - stage I	1,100.00	39.550
7227CL	Tin Shui Wai development, package 3, part II - village flood protection works - remainder	24.25	0.565
7234CL	Yuen Long East public housing site engineering works	177.00	13.560

<i>Code</i>	<i>Title</i>	<i>* Project Cost (\$M)</i>	<i># Provision 1991-92 (\$M)</i>
7278CL	Kau Hui development – engineering works, area 16, Yuen Long	112.98	0.791
7277CL	Tseung Kwan O development, phase II, stage III, engineering works	332.00	11.300
7037WC	Water supply to Tseung Kwan O	304.00	33.618
7267CL	Aldrich Bay Typhoon Shelter reclamation	444.00	13.560
7339CL	Land formation for supplementary public rental housing site – Ho Man Tin South	69.00	15.820
7343CL	Central and Wan Chai Reclamation - engineering works	2,735.00	339.000
7370CL	Belcher Bay Reclamation	288.00	11.300
7145ES	First secondary school Siu Sai Wan	41.20	15.820
9014WF	Additional treatment and transfer facilities at Yau Kom Tau, Tsuen Wan - remaining works	111.00	11.639
9034WF	Yuen Long water supply – remaining works	69.60	2.218
9134WF	Improvement of raw water transfer facilities from Tai Lam Chung Reservoir to Tuen Mun and Tsuen Wan	95.00	47.714
9148WF	Improvement of fresh water supply to Ap Lei Chau	32.20	5.926
9018WS	Improvement to Kwun Tong and Sau Mau Ping high level salt water supply system	12.30	4.355
	Total :	<u>30,204.76</u>	<u>1,791.427</u>

Note :

Source of information : * works departments' data

Volume III of Government Estimates for the year ending 31 March 1992

Hong Kong and China Gas Company's rate of charge increase

14. MR LAU CHIN-SHEK asked (in Chinese): *Concerning the operation of the Hong Kong and China Gas Company Limited, will the Government inform this Council of:*

- (a) *the company's rate of charge increase in each of the past five years;*
- (b) *measures now being adopted to monitor the company's quality of service and its policy in determining charges; and*
- (c) *whether the Administration has considered formulating a profit control scheme for the company or setting a limit to its profit margin and rate of charge increase?*

SECRETARY FOR ECONOMIC SERVICES: The Hong Kong and China Gas Company Limited's charge is composed of a fixed monthly service charge and a basic tariff. With effect from 1 January 1993, the fixed monthly service charge will be \$7 per month per customer and the basic tariff will range from 15.05 cents to 16.2 cents per megajoule depending on consumption. According to the company's "Notice to Customers", the rate of charge increase in the past five years was as follows:

<i>Effective date</i>	<i>Increase in fixed monthly service charge</i>	<i>Increase in basic tariff</i>	<i>Percentage Increase for the domestic customers</i>
	<i>(\$)</i>	<i>(per megajoule)</i>	<i>(%)</i>
1 January 1989	-	0.5	4.3
1 January 1990	1.0	0.5	4.6
1 January 1991	1.0	0.5	5.0
1 January 1992	1.0	1.0	7.5
1 January 1993	1.0	0.9 - 1.2	7.0

The company is registered as a gas supply company under the Gas Safety Ordinance (Cap.51). As such, it is required by the Gas Authority to maintain a level of service which ensures the safe supply of gas to consumers, the protection of the health and safety of its employees in their place of work and the satisfactory handling of any incident involving the escape of gas. The company does not operate under a franchise or scheme of control. Its policy in determining charges is not subject to monitoring by the Government.

The Government's policy is to ensure that consumers enjoy a reliable and reasonably priced supply of fuel gas. The private sector is able to provide such a supply. Only if it was evident that a monopolistic situation existed in the supply of fuel gas would the Government consider whether some form of regulation or scheme of control was necessary.

No company has a monopoly on the supply of fuel gas in Hong Kong. Although the Hong Kong and China Gas Company is the sole supplier of town gas and synthetic natural gas (SNG), liquefied petroleum gas (LPG), supplied by a number of oil companies, provides an alternative choice of fuel gas and both types have respectable market shares. There are approximately 1.78 million fuel gas customers in Hong Kong, of which about 829 000 or 47% use piped town gas or SNG, 342 000 or 19% use piped LPG and 609 000 or 34% use LPG in cylinders. The oil companies have a 53% share of the market in terms of number of customers. But in terms of sales of gas energy, the market shares of LPG on the one hand and town gas and SNG on the other are roughly in the region of 40:60.

As the market for the supply of fuel gas is competitive, the Government has no intention at present of formulating arrangements designed to limit the profit margin or control the tariff increases of the Hong Kong and China Gas Company. However, the Government will continue to monitor the situation closely.

Visits by United Kingdom parliamentarians

15. MR TAM YIU-CHUNG asked (in Chinese): *Will the Government inform this Council how many United Kingdom parliamentarians and their family members visited Hong Kong by invitation in the past three years; what was the amount of expenses incurred; whether these expenses were borne by the Administration; if so, whether consideration has been given to scaling down the invitation programme for future visits so as to minimize government expenditure in this respect?*

CHIEF SECRETARY: Mr Deputy President, under the Government's Sponsored Visitors Programme, a total of 72 United Kingdom parliamentarians accepted our invitations to visit Hong Kong in the last three years. The invitations were extended to spouses, but not to other family members. Of these

72 visitors, 25 brought their spouses. The Government spent a total of about \$2.5 million on these visits.

Before 1985-86, sponsored visitors were mostly United Kingdom parliamentarians. We have since broadened the scope of the programme to include visitors from North America, other European countries and the Asia Pacific Region. We now spend about 40% of our funds on sponsored visits by United Kingdom parliamentarians.

In addition, under a separate programme we sponsor groups of officials from China on 10-day visits to familiarize themselves with Hong Kong.

The Government is always mindful of the need to ensure that the expenditure in this area, like expenditure in other areas, is good value for money. It is important to bring United Kingdom parliamentarians and opinion formers from other countries to Hong Kong to see for themselves the latest developments so that they have a better understanding of Hong Kong.

Shipping traffic in Ma Wan Channel

16. MR HOWARD YOUNG asked: *Will the Government inform this Council:*

- (a) *of the extent of growth in the volume of shipping traffic in the Ma Wan Channel in the past five years; and*
- (b) *whether there are plans to provide adequate navigation aids to match the growth in traffic so that safety and efficiency can be maintained?*

SECRETARY FOR ECONOMIC SERVICES: Mr Deputy President, detailed statistics of shipping traffic are not routinely compiled for specific parts of Hong Kong waters. Periodic in-house surveys, however, show that there were about 2 000 ocean-going ship movements and 200 000 small craft movements through the Ma Wan Channel in 1988. The estimated figures for 1992 are 3 000 and 270 000 respectively.

Adequate aids to navigation are presently in place in the Ma Wan Channel and its approaches. They include:

- (a) appropriate lights and buoys;
- (b) a tidal current meter which provides pilots with data on real time tidal currents over its whole width and depth; and

- (c) special escort procedures to clear small craft from the Channel to allow the passage of large colliers serving Tap Shek Kok Power Station.

I might add that radar simulation equipment at the Hong Kong Polytechnic has been put to beneficial use in studies simulating the behaviour of large ships transiting the Channel.

A consultancy on port development projected that by 2006, some 17 000 ocean-going ships and 665 000 river trade and small craft will use the Ma Wan Channel. Further measures will be necessary to ensure continuing navigational safety and efficiency in the use of the Channel. These measures will be implemented in phases as traffic builds up. It is intended to implement the first phase starting in 1993-94 subject to availability of funds. This phase includes the following:

- (a) establishing an immigration anchorage off Tuen Mun so that small craft destined for west of the Channel will not need to be cleared at the Western immigration anchorage as at present;
- (b) establishing a marine traffic control station at Gemini Point and deploying a dedicated patrol launch for better control of small craft near the Channel;
- (c) commissioning a radar station at Kau Yi Chau to strengthen surveillance of the Vessel Traffic Centre over the southern approaches of the Channel.

Further measures might include improvements to the light beacons at the Channel and establishing a fairway in the Channel together with holding anchorages to be used by small craft whenever a large vessel is in transit. The implementation of these measures will depend on the traffic growth.

Civic education

17. MR PANG CHUN-HOI asked (in Chinese): *Regarding the Secretary for Home Affairs' reply dated 18 November 1992 to my question on civic education, will the Government inform this Council of the following:*

- (a) *whether the Government has, after spending \$15.91 million in 1991 on promoting voter registration and participation in elections, reviewed the effectiveness of its efforts, such as, in relation to a voter turnout rate of 39.15% for the Legislative Council direct elections; if so, what the results of the review are and whether other measures will be implemented to further promote voter registration and public participation in future elections;*

- (b) *when a review will be conducted to examine the progress and effectiveness of the school curricula targeted at cultivating a proper understanding of the political development in Hong Kong among primary and secondary school students, as mentioned in paragraph 2 of the reply; and*
- (c) *what other measures the Government will adopt to enhance the understanding of people such as the workforce and housewives who are not attending school and thus cannot obtain the necessary information and knowledge through the relevant school curricula concerning the development of representative government in Hong Kong?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr Deputy President,

- (a) Earlier this year, the Administration conducted an overall review on the various electoral arrangements in the light of the experience gained in the 1991 elections. Voter registration exercise was one of the subjects reviewed. The findings of our review had been presented to the Select Committee on Legislative Council Elections.

Based on past experience, we believe that the existing arrangements for conducting annual registration campaigns should continue. These campaigns help remind the public that registration of electors is an on-going process throughout the year, and that getting registered as electors is both their right and their civic duty. We will also continue to organize major registration drives during an election year so as to produce the necessary impact.

The three pronged approach adopted for our previous registration exercises (that is, home visits, publicity and promotional activities, and wide distribution of registration forms) has proved to be effective in improving the registration rate. As at 1992, 52.5% of eligible electors has been registered, which compares favourably with a rate of 43.9% in 1989. Among the various activities, "home visits" has proved to be the most effective. Over 60% of all completed registration forms received by the REO were collected through this channel.

With regard to the distribution of registration forms, we believe the present network is already very extensive. We have recently further widened the network by distributing registration forms with notices of interim valuation sent by the Rating and Valuation Department to newly occupied private accommodation. Moreover, the voter register is regularly cross checked with the records of vehicle driving licence holders kept by the Transport Department.

Registration forms will be sent to licence holders who are not already on the voter register.

The voter turnout rate in any particular election is dependent on a number of factors, including the number of candidates, the competitiveness among them, the adequacy of polling facilities, and so on. The Administration's objective is to provide fair and equitable electoral arrangements to enable voters to exercise their choice freely. We believe we have been able to achieve this.

- (b) The civic education content of subjects such as social studies, economic and public affairs, as well as other civic education programmes in both primary and secondary schools, are under regular review by the Curriculum Development Institute of the Education Department. As a result of this on-going review, modifications to subject contents are made from time to time to reflect up-to-date political developments in Hong Kong. Further to the Guidelines on Civic Education to schools promulgated in 1986, the Education Department will issue to teachers in early 1993 an "Action Plan for the Promotion of Civic Education in Schools" to help them design a better civic education programme to suit the needs of their own schools.

In addition, a research project is being conducted by the Education Department to examine the effectiveness of civic education programmes in developing civic awareness of pupils in primary and secondary schools. Questionnaires, surveys and case studies are being carried out in 40 secondary schools and 80 primary schools. The findings, which are expected to be available by the end of 1993, will form the basis for further improvements to the curriculum and programme for civic education in schools.

- (c) Most of the activities organized by the Committee on the Promotion of Civic Education are targetted at the general public. These include, for example, the distribution of information pamphlets through District Offices and voluntary agencies, and civic education exhibitions. The work of the Committee is supplemented by voluntary agencies and community bodies which can apply for sponsorships under the Committee's Community Participation Scheme. In 1992-93, there are four projects sponsored under the Scheme with a theme relating to democracy and political development. The target groups of these projects cover housewives and the public in general.

The Administration also launches promotion and publicity activities on a regular basis to enhance the general public's understanding of representative government. These include the broadcasting of APIs, screening of slides at cinemas, distribution of posters, and the publication of press advertisement before elections.

Kindergarten education

18. MR ALBERT CHAN asked (in Chinese): *Regarding kindergarten education, will the Government inform this Council of:*

- (a) *the measures taken by the Education Department to monitor kindergartens to ensure that the requirements concerning the age of admission and the teacher:pupil ratio are observed;*
- (b) *the actions taken by the Education Department when institutions concerned did not comply with the above requirements; and*
- (c) *other measures, apart from the teacher:pupil ratio, taken by the Department to monitor the quality of education provided by kindergartens?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr Deputy President, the answers to Mr CHAN's questions are as follows:

- (a) The relevant requirements are specified in the Education Ordinance and Regulations. District Education Officers (DEOs) and Advisory Inspectors of the Education Department (ED) pay regular inspection visits to kindergartens (KGs) to ensure that these requirements are observed.
- (b) If a KG is found to have admitted children below the minimum admission age, the Director of Education may serve a notice under the Education Ordinance directing the supervisor/principal to comply with the law. Failure to act in accordance with such a notice constitutes an offence and the supervisor and every other manager of the KG will be liable, on conviction, to a fine of \$25,000 and to imprisonment for two years. Similarly, failure to comply with the requirements on pupil:teacher ratios constitutes an offence and the penalty upon conviction is a fine of \$5,000 and imprisonment for one year.
- (c) Apart from ensuring that the stipulated teacher:pupil ratios are observed, the ED monitors the quality of education provided by KGs through the following measures:

- (i) Controls on management and premises — The Education Ordinance stipulates that heads of KGs must be Qualified Kindergarten Teachers or possess equivalent qualifications. Regular visits are made by DEOs to KGs to check on this and other requirements (for example, those concerning the safety and hygiene of the premises).
- (ii) Curriculum and teaching methods — Advisory Inspectors of the ED visit KGs regularly to advise principals and teachers on curriculum matters, teaching approaches, classroom management and organization of activities to ensure a satisfactory standard of teaching. In this connection, the Advisory Inspectorate has produced a Manual of Kindergarten Practice, a Guide to the Kindergarten Curriculum and other resource materials to assist KGs. The Inspectorate also conducts a wide range of in-service training programmes for KG teachers.
- (iii) Quality of teachers — in their annual fee increase applications, KG operators are allowed to increase the salary portion of their school fees so that they may pay their teachers the government recommended salary scales for KG teachers. The aim of this is to retain trained teachers in KGs and to encourage more untrained teachers to seek training.

Teenage drop-outs

19. MRS SELINA CHOW asked (in Chinese): *Will the Government inform this Council:*

- (a) *of the present number of teenagers in Hong Kong below the age of 15 who have dropped out from school or are unable to attend school due to other reasons; and the respective percentage of boys and girls among this group of teenagers;*
- (b) *whether there are other opportunities for learning or vocational training for these drop-outs so that they may not have to idle at home or linger about; and*
- (c) *whether there are any statistical figures to show or references which could help to assess the percentage of these drop-outs who have eventually become members of juvenile gangs?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr Deputy President, the answers to Mrs CHOW's question are as follows:

- (a) In the 1991-92 school year, the Education Department recorded 5 574 children below the age of 15 who had "dropped out" from school. Of these, 2 080 either emigrated or left Hong Kong for studies abroad; 1 181 reached the age of 15 shortly after their non-attendance was identified; and 623 were subsequently placed in an educational institution. Of the remaining 1 690 children, 392 required intensive counselling; 11 were suffering from ill health; 115 were absent from Hong Kong temporarily or were children of fishermen, 419 were at various stages of being processed by the Department; 563 were untraceable; and 190 were sent to Boys and Girls' Homes after having been convicted of an offence. Amongst the last two groups, there were 438 boys and 34 girls, or 58% and 42% respectively.

For the 1992-93 school year, the overall figure up to this time is 3 379. No further breakdown is available at this stage.

- (b) There are ample opportunities for children who have "dropped out" of school initially to continue with their education. These include enrolment in prevocational schools, practical schools, skills opportunity schools, apprenticeship training schemes and courses offered by the Vocational Training Council.
- (c) There are no direct statistics on the proportion of school drop-outs who have eventually become members of juvenile gangs. Police statistics show that, in addition to the 190 cases involving breaches of the law in (a) above, 45 children below 15 who had "dropped out" of school were arrested during the 1991-92 school year for minor theft and shop-lifting offences. These were dealt with by a Superintendent of Police under the Superintendent Discretion Scheme.

Separately, the Standing Committee on Young Offenders has recently commissioned a consultancy study on the social causes of crime amongst young offenders. It is hoped that this study will provide some more definitive figures to determine the scale of criminal behaviour amongst youngsters who have left school early.

Dog keeping in public housing estates

20. REV FUNG CHI-WOOD asked (in Chinese): *In view of the serious violation of the restriction against the keeping of dogs in public housing and Home Ownership Scheme estates under the management of the Housing Authority, will the Government inform this Council:*

- (a) *of the total number of complaints against such violation over the past two years;*
- (b) *of the total number of such violation cases handled in each of the past two years; of the number of cases in which the offenders were successfully deterred from keeping dogs in these estates; of the number of offenders punished and of the details of the punishment imposed; and*
- (c) *whether consideration has been given to modifying the terms of the tenancy agreements or taking alternative measures (such as imposing fines) so that the authorities concerned can enforce the restriction on prohibiting the keeping of dogs more effectively?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy President,

- (a) Dog-keeping is not allowed under the Housing Authority's tenancy agreement with public housing tenants and the Deed of Mutual Covenant (DMC) with HOS flat owners. There is no separate record on the number of complaints about dog-keeping but, as an indication of the extent of the problem, about 1 000 cases were detected in each of the past two years.
- (b) The breakdown of the number of cases of dog-keeping detected in the past two years is as follows:

	<i>Rental estates</i>	<i>HOS estates</i>	<i>Total</i>
1990-91	923	105	1 028
1991-92	831	116	947

Most cases were resolved with tenants' and owners' co-operation. Since 1 April this year, eight warning letters threatening court action have been issued: four to public housing tenants and four to HOS owners. So far, six of these cases have been resolved with the dogs being removed from the premises and one offender has been required to pay court costs amounting to \$6,600. The two other cases are outstanding.

- (c) The Housing Department has reviewed its powers to deal with dog-keeping which is a civil matter and not a criminal offence. The only available remedy at present is action for breach of contract, that is, under the conditions of a tenancy agreement or DMC. The Department has concluded that its powers to evict a tenant by serving a notice-to-quit and to proceed by way of a court injunction

in the case of an HOS owner are adequate. The imposition of a fine is not considered appropriate where a criminal offence is not involved. In view of the number of cases and the concern expressed by residents, the Department has stepped up publicity to discourage dog-keeping and action against offenders.

Motion

SUSPENSION OF STANDING ORDERS

THE CHIEF SECRETARY moved the following motion:

That Standing Orders 11 (Order of Business at a Sitting) and 12 (The Order Paper) be suspended to enable the Governor to address Members, and if he so wishes, invite and answer questions from Members on matters arising therefrom, at a sitting of this Council on 12 January 1993.

He said: I move the motion standing in my name in the Order Paper.

The Governor indicated in his policy address that he would like to make himself available to answer Members' questions and to discuss Government policies and proposals at least once a month when the Council is in session. He, as President of this Council, has appointed 12 January 1993 for a sitting for this purpose. To this end, Standing Orders 11 and 12 have to be suspended.

Mr Deputy President, I beg to move.

Question on the motion proposed, put and agreed to.

First Reading of Bills

INTERPRETATION AND GENERAL CLAUSES (AMENDMENT) BILL 1992

TELEPHONE (AMENDMENT) BILL 1992

TELECOMMUNICATION (AMENDMENT) BILL 1992

HONG KONG EXAMINATIONS AUTHORITY (AMENDMENT) BILL 1992

THEFT (AMENDMENT) BILL 1992

Bills read the First time and ordered to be set down for Second Reading pursuant to Standing Order 41(3).

Second Reading of Bills

INTERPRETATION AND GENERAL CLAUSES (AMENDMENT) BILL 1992

THE ATTORNEY GENERAL moved the Second Reading of: "A Bill to amend the Interpretation and General Clauses Ordinance."

He said: Mr Deputy President, I move that the Interpretation and General Clauses (Amendment) Bill 1992 be read a Second time.

The Interpretation and General Clauses Ordinance (Chapter 1) plays a vital role in Hong Kong's statute book. It contains provisions relating to the construction, application and interpretation of our laws, defines a large number of terms and expressions used in laws and in public documents, public contracts and civil and criminal proceedings. It is widely used by judges and lawyers as an essential aid in interpreting our laws.

The Ordinance was enacted in its present form in 1966. In 1987 the Law Draftsman established a committee within the Law Drafting Division to review the drafting styles and practices in relation to legislation. This committee found that a number of provisions in Chapter 1 were inconsistent with current practices or were no longer needed.

The Interpretation and General Clauses (Amendment) Bill 1992 contains the changes proposed by that committee. The provisions are of a technical nature and many of them simply remove outdated references to practices that have ceased.

In addition to the technical matters, the Bill includes an amendment to section 77 of the Ordinance. That section relates to United Kingdom enactments that are incorporated in some of our Ordinances by reference. Under section 77 as it now stands, amendments made in the United Kingdom to such enactments will, as a general rule, apply also in Hong Kong. If the Bill is passed, amendments made to such enactments on or after 1 January 1994 will not, as a general rule, apply also in Hong Kong. This is in keeping, Mr Deputy President, with our policy of localizing our laws by removing dependence on some United Kingdom laws.

The Bill has the support of the legal profession.

Bill referred to the House Committee pursuant to Standing Order 42(3A).

TELEPHONE (AMENDMENT) BILL 1992

THE SECRETARY FOR ECONOMIC SERVICES moved the Second Reading of: "A Bill to amend the Telephone Ordinance."

She said: Mr Deputy President, I move that the Telephone (Amendment) Bill 1992 be read a Second time.

As this Bill is closely related to the Telecommunication (Amendment) Bill 1992, which is also due to be read a Second time at this sitting, I will comment on them together. The purpose of the two Bills is to facilitate the implementation of two key telecommunications policy initiatives announced by me in this Council on 3 June this year during the motion debate on telecommunications policy: that is, a price-capping scheme for local telephone service charges and the introduction of fixed network competition. Both proposals received strong support in principle from a broad cross-section of the Council during the motion debate.

In order to introduce the price-capping scheme, clause 6 of the Telephone (Amendment) Bill provides for the Telecommunications Authority to specify the charges that the Hong Kong Telephone Company may levy for its services. For existing services the charges to be specified are those currently in effect. The clause also provides for the Secretary for Economic Services to make regulations governing revisions to the specified charges. The details of the price-capping scheme will be contained in the regulations made under this new provision. A draft of the proposed regulations has already been prepared in anticipation of the enactment of the Bill and copies circulated to Members for information.

It will be helpful if I briefly mention the key elements of the proposed price-capping scheme even though it is not the direct subject matter of either of the two Bills before us today. As announced in June, we have reached agreement with the Hong Kong Telephone Company on an overall price-cap for local telephone services charges to be in force for three years set at 4% below the inflation rate. This would result in such charges increasing by at least 1.5% less per annum in real terms than they have done over the previous 10 years. Members will recall that in tandem with the implementation of the price-capping scheme, an undertaking has been given that Hong Kong Telecom International will reduce charges for International Direct Dialling services by an average of 8%, and an average of 2% in each of the following two years.

Since the June announcement, we have secured the Hong Kong Telephone Company's agreement to an additional "sub-cap" mechanism which will ensure that the rebalancing of charges to remove current cross-subsidies takes place gradually and that residential telephone charges do not increase at an unreasonably rapid rate within the limit of the overall price-cap. Two sub-caps have been agreed. One would limit increases in the charges for telephone line connection to 4% or more below the inflation rate. The other would limit

increases in the residential telephone line rental charge to the rate of inflation or less. To put this into perspective, it is worth remembering that the rental charge for a residential telephone line has not increased since January 1991. Furthermore, even if the full allowance of the relevant sub-cap were used, the increase allowed in the first year of the price-capping scheme would be only \$5.5 per month, assuming a rate of inflation at around current levels. We intend to review the levels of the overall price-cap and the sub-caps in the third year of operation of the price-capping system.

One criticism that has been levied at price-capping schemes is that they create an incentive for the regulated company to cut service standards in order to boost profitability. In order to counter any such tendency, clause 4 of the Telephone (Amendment) Bill provides for the Telecommunications Authority, after consultation with the Company, to issue codes of practice specifying service standards that it must follow. The use of such codes will be of particular importance in those sectors of the market where the Hong Kong Telephone Company maintains, for the time being at least, a monopoly position.

In my speech during the motion debate on telecommunications policy in June, I pointed out that the introduction of a price-capping scheme was incompatible with the present powers of the Council to approve individual tariffs. It is a fundamental principle of price-capping that the regulated company should have a reasonable degree of freedom to adjust as it sees fit the charges for individual charges, either up or down, so long as the overall price-cap is not breached and subject to the constraints of any sub-caps. Accordingly, clause 8 of the Telephone (Amendment) Bill would repeal the existing section 26 of the Telephone Ordinance, which provides for the Company's maximum level of charges to be specified in the Schedule to the Ordinance and for this Council to approve amendments to that Schedule by resolution. In addition, clause 9 of the Bill would repeal the Schedule. In its place, clause 6 provides for services and charges to be specified by the Telecommunications Authority by notice in the Government Gazette and requires the Company to provide, free of charge, a list of its services provided under the Ordinance and their charges to anyone requesting it.

One feature of the Council's motion debate on telecommunications policy in June was the call by a number of Members for a critical review of our telecommunications regulatory machinery including the resources available to the Telecommunications Authority and its relationship with the policy branch. As Members will note, the two amendment Bills now being placed before them will vest the Telecommunications Authority with a number of important new powers arising from the introduction of price-capping and the licensing of competitive local fixed networks. This is indicative of the increasingly important role played by the Telecommunications Authority in ensuring fair play in the market place, on which investment decisions involving billions of dollars so crucially depend. The Administration has now decided that the increasing importance, scope and complexity of the work of telecommunications regulation justify the establishment of an Office of the Telecommunications

Authority within Government, but separate from the Post Office. Subject to Finance Committee approval, the Office will be a new department within Government with all the staff currently engaged in telecommunications matters in the Post Office transferred to it.

I would emphasize that this decision does not imply criticism of Postmasters General past and present who have simultaneously undertaken the duties and responsibilities of Telecommunications Authority and head of the postal service with dedication and distinction. But the rapid expansion of services in recent years and the policy of progressive liberalization on which we are embarked present new challenges. We believe that a discrete Office of the Telecommunications Authority would be the most cost effective response to these challenges. In due course, I will be bringing forward funding proposals for the creation of new posts consequent both on this change and the underlying critical need to boost the resources devoted to telecommunications regulation. I hope I may look forward to Members' sympathetic consideration of our proposals.

In recognition of the existing legal separation between the office of the Postmaster General and Telecommunications Authority and to pave the way for the separation of the appointments to these two positions, clause 14 of the Telephone (Amendment) Bill provides for all references to the "Postmaster General" in the Telephone Ordinance to be replaced by the "Authority", which clause 2 of the Bill defines as the Telecommunications Authority appointed under the Telecommunications Ordinance. This change will unify all statutory telecommunications regulatory functions under the single office of the Telecommunications Authority.

I now turn to the provisions in the two Bills which are designed to facilitate the timely and equitable introduction of fixed network competition. These cover three main areas: the allocation of telephone numbers between competing operators; the interconnection of networks; and ownership of public telecommunications service licensees.

Access to a fair allocation of numbers is a vital operational requirement for any current or prospective provider of public telecommunications services. In recognition of the fact that numbering for telecommunications purposes is a public resource, the regulatory authorities in other jurisdictions, for example in the United Kingdom and Australia, have taken up overall control of their national numbering plans. Our proposals, at this stage, are more modest. Under clause 5 of the Telephone (Amendment) Bill, we propose simply to give the Telecommunications Authority the power to give directions to the Hong Kong Telephone Company concerning the numbering plan in order, if these are deemed necessary, to ensure a fair and reasonable allocation of telephone numbers between operators. In other words, day to day management of the numbering plan would be left with the Company for the time being. But the Telecommunications Authority would have sufficient powers to ensure that this

privilege was not used in a way which might place competing operators at a disadvantage.

Regarding network interconnection, in clause 7 of each of the Bills there are provisions for the Telecommunications Authority to have the power to determine the terms and conditions under which this takes place. This power will be used to ensure that such terms and conditions are fair to both parties to an interconnection arrangement and are not anti-competitive with respect to other operators. Fulfilment of these requirements is an essential prerequisite for successful network competition. Members will wish to note that the power of determination would include interconnection between a future subscription television operator, who will be deemed to be a licensee under the Telecommunication Ordinance, and other systems for distributing television programmes, for example Satellite Master Antenna Television Systems.

The last main area of concern addressed by the Bills with respect to the smooth functioning of the competitive telecommunications market-place is cross-ownership between licensees. So long as there are no clear powers for Government to control the cross-ownership of licences issued for the provision of a particular type of competitive service, say, public paging or mobile telephone services, it is possible that one party could establish a monopoly or near-monopoly position, or cartels could emerge, through a process of licence acquisition. Clause 8 of the Telecommunication (Amendment) Bill deals with this deficiency by empowering the Governor in Council to make regulations governing the control to be exercised over a licensee under the Telecommunication Ordinance or the beneficial ownership or control of the voting shares in such a licensee. It should be emphasized that this provision would not of itself control the ownership of licensees. This would be done by the enactment of regulations under the new power. It is the regulations that would contain the details of the cross-ownership restrictions to be enforced. However, the fact that we are prepared to seek this enabling power is a clear signal of our commitment to ensuring, as far as practicable, that the individual telecommunications service sectors that have been opened up to competition remain truly competitive.

Other provisions in the two Bills that I would like to draw to Members' attention today include clauses 10 and 11 of the Telephone (Amendment) Bill and clause 7 of the Telecommunication (Amendment) Bill, which concern penalties. In the case of the Telephone (Amendment) Bill, we are providing for the updating of penalties applying to the Hong Kong Telephone Company for non-compliance with its obligations under the Telephone Ordinance. These penalties have remained unchanged since 1977. The increases proposed are large. For example, the maximum penalty for failure to provide service within a reasonable period is increased from \$100 to \$100,000. But taking into account the massive increase in the scale and scope of the Hong Kong Telephone Company's operations since 1977, we believe the new levels to be justified. They are also on a par with the penalty provisions in the Telecommunication (Amendment) Bill. These are new and are needed as a sanction for

non-compliance with the proposed power for the Telecommunications Authority to make determinations with respect to the terms and conditions of network interconnection.

Clause 3 of the Telephone (Amendment) Bill and clause 4 of the Telecommunication (Amendment) Bill clarify that compensation payable by the Hong Kong Telephone Company and licensees under the Telecommunication Ordinance respectively is limited to physical damage caused by their operations. In fact, we have been advised that this is the effect of the existing provisions of the two Ordinances concerned. The relevant amendments are nevertheless introduced for the avoidance of doubt, in order to remove the small risk that a claim for economic damages could, contrary to advice, succeed. Such claims would run counter to our pro-competitive policy as they would tend to discourage market entry by new players.

Lastly, I would like to mention clauses 5 and 6 of the Telecommunication (Amendment) Bill. Clause 5 clarifies that the meaning of "land" in Part IV and section 29 of the Telecommunication Ordinance includes the common parts of buildings. This would have the effect of putting beyond doubt that the Telecommunications Authority has the power to require that licensees under the Ordinance, including a future subscription television service provider, are given access to the internal ducting of buildings in order to provide service to their customers. Clause 6 of the Bill would allow the provision of a performance bond to be included as a condition for a licence granted under the Telecommunication Ordinance, as a means of ensuring that licensees live up to their promises.

Taken as a whole, this legislation reflects the Administration's commitment to a pro-competitive telecommunications policy. It will give the Government key powers to protect consumer interests and foster the development of the competitive market that we believe is vital to maintaining Hong Kong's position as a major regional financial, commercial and services centre. I can think of few better advertisements for attracting new players into our telecommunications market than the introduction and passage of this legislation.

With these remarks, Mr Deputy President, I commend the two Bills to the Council.

Bill referred to the House Committee pursuant to Standing Order 42(3A).

TELECOMMUNICATION (AMENDMENT) BILL 1992

THE SECRETARY FOR ECONOMIC SERVICES moved the Second Reading of: "A Bill to amend the Telecommunication Ordinance."

She said: Mr Deputy President, I move that the Telecommunication (Amendment) Bill 1992 be read a Second time.

The purpose of this Bill has already been described in my speech moving the Second Reading of the Telephone (Amendment) Bill 1992.

Bill referred to the House Committee pursuant to Standing Order 42(3A).

HONG KONG EXAMINATIONS AUTHORITY (AMENDMENT) BILL 1992

THE SECRETARY FOR EDUCATION AND MANPOWER moved the Second Reading of: "A Bill to amend the Hong Kong Examinations Authority Ordinance."

She said: Mr Deputy President, I move that the Hong Kong Examinations Authority (Amendment) Bill 1992 be read a Second time.

The Hong Kong Examinations Authority Ordinance was enacted in 1977 and was last amended in 1987. The main purposes of the present Bill are to update the membership of the Authority in the light of developments in the education sector, and to simplify the procedure for any future updating which may be necessary.

The Bill proposes to end the present arrangement under which the University of Hong Kong and the Chinese University of Hong Kong have each two representatives on the Authority, while all the other tertiary institutions have only one representative each. It also seeks to include the President of the Lingnan College as an ex-officio member, following the recent enactment of the Lingnan College Ordinance. Furthermore, in view of the progressive reduction in the number of colleges registered under the Post Secondary Colleges Ordinance, the Bill proposes to repeal the provision for the Authority to draw one of its members from the Presidents of these colleges.

The Bill also extends ex-officio membership to the Chairman of the Curriculum Development Council and the Executive Director of the Vocational Training Council, in recognition of the bearing that these organizations have upon the work of the Authority. They are now serving on the Authority in their personal capacities as members appointed by the Governor.

To simplify the procedure for future amendments to the composition of the Authority, the Bill repeals the existing provisions relating to such composition and makes corresponding provisions in a new Schedule which may be amended by the Governor in Council.

The changes proposed in the Bill are straightforward and are largely technical. They have the full support of the Authority and the agreement of the institutions.

Bill referred to the House Committee pursuant to Standing Order 42(3A).

THEFT (AMENDMENT) BILL 1992

THE SECRETARY FOR SECURITY moved the Second Reading of: "A Bill to amend the Theft Ordinance."

He said: Mr Deputy President, I move that the Theft (Amendment) Bill 1992 be read a Second time. The Bill seeks to increase the maximum penalty for the offence of taking a conveyance without authority from three years' to seven years' imprisonment.

The problem of stolen and missing vehicles has been of great concern to the community. By the end of this year, we anticipate that some 7 000 vehicles will have been reported missing during 1992 of which some 4 000 will have recovered. This represents a 10% increase on the previous year in the total number of vehicles missing, and a 10% drop in the recovery rate.

In most cases, the police have to rely on the offence of taking a conveyance without authority to charge those who take away vehicles. But the penalties imposed by the courts for this offence of taking a conveyance without authority have been low. In the past 18 months, out of some 300 persons convicted of this offence, 34 were sentenced to periods of imprisonment, none exceeding 18 months. A further 131 were fined, the highest fine imposed being \$4,000. And there has been a marked increase in the number of defendants charged with the offence who have either jumped bail or repeated the same offence a second time whilst on bail.

I believe that the present level of penalty for this offence is insufficient to deter offenders. We therefore propose to raise the maximum penalty to seven years imprisonment. This proposal reflects the wish of the general public that steps must be taken to reduce the problem of stolen and missing vehicles.

Bill referred to the House Committee pursuant to Standing Order 42(3A).

EXEMPTIONS FROM REGISTRATION AND TRANSFER OF

POWERS (MISCELLANEOUS AMENDMENTS) BILL

Resumption of debate on Second Reading which was moved on 25 November 1992

Question on the Second Reading of the Bill proposed, put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

LORD WILSON HERITAGE TRUST BILL

Resumption of debate on Second Reading which was moved on 11 November 1992

Question on the Second Reading of the Bill proposed, put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

COMPANIES (AMENDMENT) (NO. 2) BILL 1992

Resumption of debate on Second Reading which was moved on 15 July 1992

Question on Second Reading proposed.

MR LAU WAH-SUM: Mr Deputy President, the Bill before us today contains only 18 clauses. Its text is simple but its proposals are controversial.

It is so controversial that after six meetings, the Legislative Council ad hoc group set up to study the Bill, of which I am the convener, is still unable to get an unanimous view. While the majority of the members of the ad hoc group hold the strong view that the Bill should be supported subject to the Committee stage amendments which will be moved by the Secretary for Monetary Affairs later today, two members have expressed great reservation to support the Bill. My honourable colleague, Mr Martin BARROW, being one of the members who holds opposite view, has already given notice to this Council that he will move under his name Committee stage amendments to clauses 7 and 14 of the Bill.

In order to understand the controversy, some background information is necessary.

The existing section 40A of the Companies Ordinance was enacted in 1972. From that time onward, a director of a local company would be liable to prosecution if he has authorized the issue of a prospectus which contained any untrue statements. This strict liability offence, however, is not applicable to prospectuses issued by overseas companies.

The new section 342F of the Bill now proposes that this strict liability offence should be extended to cover also prospectuses issued by overseas companies.

No one has disagreed with the principle that the accuracy of the content of prospectuses should be regulated. No one has disagreed with the principle that both local and overseas companies should be subjected to the same degree of regulation. There are, however, opposite opinions regarding the standard of care that should be imposed on the directors.

Those who oppose the Bill mainly hold the arguments that:

- (a) prospectuses are long and complex documents. No director could know personally the truth of every statement in it. It is wrong in principle therefore to imprison directors for simple negligence; and
- (b) because it is relatively easy to establish an offence under the strict liability approach, over-zealous regulatory authorities would be easily tempted to bring directors to courts.

They propose that the existing section 40A and the proposed new section 342F of the Companies Ordinance should be amended to bring them in line with section 47 of the United Kingdom Financial Services Act 1986 so that a director should only suffer criminal liability if he knew that the prospectus contained an untrue statement or that he was reckless as to whether the prospectus contained an untrue statement when he authorized the issue of the prospectus.

With great respect, I must say that I can hardly accept that these are sound arguments for not supporting the Bill. I must point out that:

- (a) prospectuses are the first documents that investors can get hold of to gain an insight into the business of a company proposing listing in the Stock Exchange. It is important, if not vital, that information given therein should be accurate, that the directors should be held highly responsible to ensure the accuracy and that the interests of the investing public and the integrity of Hong Kong as an international financial market should be well protected. Let us look at some self-explanatory statistics during the period from 1 January to 23 November this year : a total of 56 companies were newly listed on the Stock Exchange with market capitalizations amounting to HK\$43 billion and funds raised amounting to HK\$9 billion.
- (b) as confirmed by the Administration, no prosecution has been initiated against any directors under the existing section 40A for the past 20 years. It would be unrealistic to think that the Administration will now suddenly initiate prosecution action under

this section and the similar new section 342F simply because of the passage of the Bill.

- (c) the wording of section 47 of the United Kingdom Financial Services Act covers a much wider area than merely the issue of prospectuses and that the structure thereof is quite unsuitable for prospectuses alone. Section 47 of the United Kingdom Financial Services Act, if adopted and applied to prospectuses alone, would carry serious prosecution implications, that is, it would be very difficult, if not impossible, for the prosecution to prove beyond doubt the state of mind of the director at the time when he authorized the issue of a prospectus. In practice, prosecutions could hardly be initiated.

Mr Deputy President, despite the controversy, the ad hoc group has not lost sight on another equally important matter, that is, whether the reverse-onus provisions in the existing section 40A and the proposed new section 342F are in breach of Article 11(1) of the Hong Kong Bill of Rights Ordinance which preserves one's right to be presumed innocent until proved guilty according to the law.

I am glad to report that the ad hoc group has been fully briefed by the Administration and is convinced that the sections in question can stand the challenge of the Bill of Rights. I must point out, however, that this issue is ultimately a matter for the courts.

Mr Deputy President, during the scrutiny of the Bill, the ad hoc group has spotted that there are some discrepancies between Part II of the Companies Ordinance which applies to locally incorporated companies and Part XII which applies to companies incorporated outside Hong Kong. In response, the Administration has agreed to conduct a review with a view to removing any unnecessary distinctions. I should be grateful if the Secretary for Monetary Affairs would confirm that this will be done so that there would be a genuine level playing field between the two categories of companies at the end of the day.

Mr Deputy President, may I once again appeal to my honourable colleagues to join me and the majority of the members of the ad hoc group to give their support to the Bill.

MR MARTIN BARROW: Mr Deputy President, I would like to take this opportunity to explain why I will be moving amendments to this Bill at the Committee stage. While I accept that this is an opportunity to bring the prospectuses of overseas incorporated companies under the same treatment as local prospectuses, this has been achieved in a manner contrary to modern legislation in the United Kingdom which has moved away from strict criminal liability for negligent misstatements. The section in the United Kingdom legislation which corresponds to section 40A in the Hong Kong Companies

Ordinance has already been repealed in the case of prospectuses for listed issues. The Financial Services Act 1986 now attaches criminal liability only to statements, promises or forecasts which the maker knows to be misleading, false or deceptive or which he makes recklessly.

It is, in my view, Mr Deputy President, a complete *non sequitur* to say, as the Government has been arguing and as Mr LAU has just mentioned, that because section 47 of the United Kingdom Financial Services Act covers a wider area than simply the issue of prospectuses, the structure of that section is unsuitable for prospectuses alone. I do not understand how anyone can seriously put that argument forward. A prospectus is no different from any other form of statement, whether in writing or made orally, relating to an issue of securities. A prospectus is simply a document that contains a number of statements concerning the issuer and the issue and is not a mythical beast. It is, in my view, wrong to suggest that the approach of section 47 cannot be applied to prospectuses.

The difficulties of prosecution which the Administration referred to obviously did not deter the United Kingdom parliamentary draftsmen in preparing section 47. The Hong Kong Administration seems unwilling to undertake the same prosecution burden that the United Kingdom authorities have undertaken.

Why, Mr Deputy President, should more weight be placed on a remark by a Canadian judge than on the legislative approach adopted in the United Kingdom? There is one simple answer, which is that the Canadian judge's statement happens to suit the purposes of the Hong Kong Administration. If a section 47 approach is taken the burden on the prosecution will, of course, not be to prove negligence beyond a reasonable doubt but to prove recklessness or actual knowledge beyond a reasonable doubt. I do not understand the distinction the oft-quoted Canadian judge is making between regulatory offences and other criminal offences. What he seems to be doing is concluding that the prosecution will have an easier time if the burden placed on it is lower. This is self-evidently correct but why it should be thought appropriate to duck a difficult issue in this fashion by imposing a reverse onus requirement is not explained by the Administration.

Under section 40A the onus of proof is shifted to the accused director once the prosecution has proved that the misleading statement has been made in the prospectus and that the accused director authorized its issue, which he undoubtedly will have done. It is not necessary for the prosecution to show that the director was even aware of the untrue statement. The director must then prove either the untrue statement was immaterial - and proving a negative is always very difficult - or that he believed on reasonable grounds that the statement was true, which will be impossible if the director was not even aware of the untrue statement. Why should not the prosecution have the normal responsibility of proving beyond reasonable doubt that the accused either intended to state something false or was reckless as to whether the statement was

true or not? If the justification for creating a strict liability offence is that the accused is in a better position than anyone else to know the state of his own mind, the same might be said of any criminal offence up to and including murder.

To conclude, Mr Deputy President, in my view it is wrong in principle to imprison directors on the strict liability basis for mistakes in prospectuses. Yet under this legislation he may be liable, even if he hired the best professional advice available and relied on that advice. Why should issuers of prospectuses be singled out in this manner when such penalties are not imposed on lawyers, doctors, accountants or public servants who cause loss or damage to the public.

I hope there will be support for my amendment. Thank you.

MR PETER WONG: I concur with the Honourable LAU Wah-sum's speech on the Bill as now amended and wish to comment only on the Honourable Martin BARROW's amendment, which I do not support.

Section 40A imposes a very high degree of care on a director as to the accuracy of the facts contained in the prospectus. Whilst I do sympathize with the seemingly harsh onus that the director has to bear, we must remember that it is a purely voluntary and conscious decision of the individual director to put his name to a prospectus with the intention of attracting and convincing total strangers to put their hard earned money to acquire the security described in that prospectus.

In my long years as a professional accountant, I have found the stricture of this bit of legislation highly effective to convince every director who has put his name to a prospectus to put his nose to the grindstone, together with the professionals who do their job with due diligence. The fact that there have been no prosecutions and no outcries against inaccurate prospectuses attests to its effectiveness.

The modification, as propounded by the Honourable Martin BARROW in his amendment, would mean a lowering of that standard of care. We have heard that since it would be difficult, if not impossible, for the prosecution to prove beyond reasonable doubt the state of mind of the director at the time he signed the prospectus, the lower standard could be the thin end of the wedge and would allow anything but the highest degree of care to be taken. The integrity of our security market would be at stake.

MR JAMES TO (in Cantonese): Mr Deputy President, I absolutely concur with the arguments advanced by Mr Peter WONG a while ago. I should like to add a few arguments of my own in support of the report Mr LAU Wah-sum made on behalf of the ad hoc group.

Mr Martin BARROW has argued that it would be wrong in principle to impose a custodial sentence on a director for a misstatement in a prospectus. The basis for his argument is that the issuance of a prospectus is a complicated and drawn-out process and it would be impossible for every director to personally acquaint himself with the full contents of a prospectus to make sure if every statement therein contained is true; even if a director has hired the best professionals upon whose advice he has relied, under the amended law as presently proposed he would nevertheless be liable to be punished. I cannot help but ask: If a director cannot be sure of the truth of the information, who is there to so make sure? So in terms of responsibility, we have to ask the director to bear it.

Another argument raised by Mr BARROW is that if ever there is to be liability, it should not be strict liability. Let me say that there are a number of factors to take into account when considering whether a particular criminal offence should be made a strict liability offence. These factors include the nature of the offence and its impact on society and also the consideration that strict liability should normally apply to regulatory offences only. Of course another consideration is that the defendant must be given an opportunity to defend his case so that the reasonableness or validity of the grounds of defence can be tested. In the amendment Bill before us, the defendant will have a valid defence if he can prove that he had reasonable grounds to believe that the information contained in the prospectus was true. Would it be very difficult for a director to prove that he had reasonable grounds to believe the contents of a prospectus to be true? A prospectus, from its gestation to fruition, involves a drawn-out process of numerous meetings and discussion papers to lead eventually to a final draft. A responsible director is absolutely capable of proving how the information contained in a prospectus was put together throughout the entire gestative process and that as a result he had reasonable grounds to believe the contents of the prospectus to be true.

Addressing the question from another angle, allow me to give an example (and I do not mean to be frivolous in so giving it). According to the existing law, the proprietor of a noodle stall will incur strict liability if he sells beef balls containing nitric acid. One can imagine the necessity under which the proprietor will have to examine very single beef ball. Even though he completely trusts his suppliers to have supplied him with beef balls containing no nitric acid, he will nevertheless incur criminal liability if any of the beef balls are found to contain this offending substance.

Perhaps the example of the noodle shop proprietor may be too remote. Let me now give a less remote example. The existing Companies Ordinance requires a company to fulfill its statutory obligations such as filing a yearly return with the Companies Registry, in default of which each and every director and also the company secretary will incur criminal liability. Of course there are numerous large companies who still rely on in-house or outside professional expertise in preparing such returns. But under the existing law, each and every director will be held responsible should there be misreporting of any sort.

Another argument advanced by Mr BARROW relates to the defence available to a director. It is contended that it would be draconian, and indeed impossible, to require the director to prove that he had reasonable grounds to believe that the information contained in the prospectus was true because the director was often unaware of what statements had been included in the prospectus and therefore how could he prove that he had reasonable grounds to believe them to be true? My response to this is that if we accept Mr BARROW's amendment it would mean that we accept, as an exonerating circumstance from criminal liability, a company director's complete ignorance, or recklessness, as to whether the contents of a prospectus are true. I cannot concur with this viewpoint.

A third point concerns the question of time gap which Mr BARROW's proposed amendment gives rise to. The proposed amendment gives a valid defence to a director if he can prove that at the time he authorized the prospectus he had ensured the truth of its contents or that he had believed the contents to be true. But the amendment proposed by the Administration requires the director to ensure or believe that the contents of the prospectus are true at the time it is issued. We must remember that there is a time gap between the authorization of a prospectus by a director and the issue of the prospectus to the public. After authorization, there might be someone who amended it before issue. Therefore to the public or as far as protection of investors is concerned, the time of issue and the truth of the information contained in the finalized version of a prospectus is most material, but not the initial version of the prospectus when it was authorized internally within the company by the directors.

After collating and taking reference from the laws and precedents of many countries, Australia and Canada for instance (which are different from that of the United Kingdom), I believe that the precedents we have taken reference from are closest to the United States law. Therefore the ad hoc group has accepted the amendment proposed by the Administration, which amendment the United Democrats of Hong Kong also support.

SECRETARY FOR MONETARY AFFAIRS: Mr Deputy President, I am grateful to Mr LAU Wah-sum and members of the ad hoc group for their careful consideration of and support for this Bill together with the Securities and Futures Commission (Amendment) (No. 2) Bill 1992. I am also grateful to Mr Martin BARROW, Mr Peter WONG and Mr James TO for their support of the Bills in general.

Mr LAU has in the course of his speech described with admirable clarity a number of concerns which have been expressed by interested parties, and the ad hoc group's response to those concerns. I do not intend to be repetitive, but shall confine myself to a few outstanding matters.

The first point I wish to address is Mr LAU's reference in his speech to the dissenting views of two members of the ad hoc group on the question of the standard of care that should be imposed on directors to ensure the accuracy of prospectuses. Mr Martin BARROW has elaborated the reasons for his disagreement and outlined the amendments which he will move at the Committee stage. In essence, Mr BARROW's proposal is that a person authorizing a prospectus containing an untrue statement should only be held criminally liable if he knew the prospectus contained an untrue statement or was reckless as to whether the prospectus contained an untrue statement. I do not support this proposal for a number of reasons:

- (a) First of all, section 40A, which applies to locally incorporated companies, has been in the Companies Ordinance since 1972. I would stress that this Bill does not amend the long-standing provisions of section 40A or introduce any new, tougher, criminal sanctions for false statements in prospectuses. The effect is simply to extend existing provisions to cover prospectuses issued or distributed in Hong Kong by overseas incorporated companies.
- (b) Secondly, section 40A encourages diligence on the part of directors in ensuring that untrue statements do not appear in prospectuses by imposing criminal liability for authorizing prospectuses containing untrue statements. It has proved itself to be an important and effective deterrent against the issue of false prospectuses by companies incorporated in Hong Kong and should provide similar deterrence in respect of prospectuses of overseas companies, thus establishing a level playing field for all concerned.
- (c) The argument for changing section 40A is that it is somehow wrong in principle to criminalize negligent behaviour. As a matter of law, there is nothing repugnant in creating a criminal offence out of behaviour which is the product of negligence. Our legislation contains numerous examples. The negligent issuing of a prospectus can have such widespread and drastic consequences for the investing public that justify the imposition of criminal liability. Similar responses apply to the criticism that the section places a burden on a defendant to prove that his conduct was not negligent. Indeed such legislation is to be found in all comparable jurisdictions. The Australian and Canadian companies legislation closely resemble the section 40A approach to prospectuses which contain untrue statements. As Mr LAU has mentioned in his speech, legal advice obtained by the Administration is that there is unlikely to be any inconsistency with Bill of Rights provisions.
- (d) Moreover, the proposed amendments would seriously reduce the effectiveness of the provisions since the prosecution would, in effect, be required to prove beyond doubt the state of mind of a director at the time when he authorized the issue of a prospectus.

This would be a very difficult, if not impossible, task for those who are responsible for the enforcement of the provisions.

- (e) Furthermore, concerning the comparison made with sanctions for negligence of lawyers, doctors and others, I submit that such comparison is irrelevant. The conduct to which section 40A is directed is abuse of the privilege of incorporation, which cannot be closely compared to the negligent performance of personal professional services.

In short, I respectfully submit that should Mr BARROW's amendments to the existing section 40A and the proposed new section 342F be adopted, this Council would be doing a disservice to the investing public and taking a serious backward step against the efforts made during the past few years to strengthen the protection of investors. Damage to the reputation of the securities market in Hong Kong would most likely result.

The next point I would like to address is the request made by the ad hoc group to conduct a review on relevant sections of the Companies Ordinance in the future with a view to removing any undue discrepancies between the provisions in Part II of the Ordinance which are applicable to locally incorporated companies and those in Part XII of the same Ordinance which are applicable to companies incorporated overseas. I confirm that we will conduct such a review in consultation with the Registrar General's Department and the Securities and Futures Commission.

Last but not the least, in response to another request from the ad hoc group, I confirm that the respective roles of the Registrar General's Department, the Securities and Futures Commission and the Stock Exchange of Hong Kong as regards vetting, authorizing and registering of prospectuses will be explained in guidance notes which will be distributed to practitioners to tie in with the transfer of the prospectus vetting functions.

With these remarks, Mr Deputy President, I beg to move.

Question on the Second Reading of the Bill put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

**SECURITIES AND FUTURES COMMISSION (AMENDMENT)
(NO. 2) BILL 1992****Resumption of debate on Second Reading which was moved on 15 July 1992**

Question on Second Reading proposed.

MR LAU WAH-SUM: Mr Deputy President, the Legislative Council ad hoc group to study the Companies (Amendment) (No. 2) Bill 1992 is also charged with the responsibilities to examine the Securities and Futures Commission (Amendment) (No. 2) Bill 1992.

The group is satisfied with the provisions in the Bill.

Mr Deputy President, with these remarks, I support the motion.

SECRETARY FOR MONETARY AFFAIRS: Mr Deputy President, this Bill should be read in conjunction with the Companies (Amendment) (No. 2) Bill 1992, on which I spoke at length earlier this afternoon. I shall not be repetitive.

With these remarks, Mr Deputy President, I beg to move.

Question on the Second Reading of the Bill put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

OCCUPATIONAL RETIREMENT SCHEMES BILL**Resumption of debate on Second Reading which was moved on 29 April 1992**

Question on Second Reading proposed.

MR MARVIN CHEUNG: Mr Deputy President, the calamitous events surrounding the massive pension funds of the Robert Maxwell companies have made headlines around the world. They have alarmed the United Kingdom into an urgent review of the legal framework of retirement schemes.

For us in Hong Kong, we have cause to be doubly concerned as we do not as yet have any system in place to regulate private retirement schemes.

We have no reliable information about the size of our population which is covered by retirement schemes or the value of the funds involved. It can, however, be safely said that the figures are substantial and growing. And although we have been spared any major crisis on the Maxwell scale, there have been at least five incidents of scheme failures that have come to the notice of the Official Receiver in the past three years, with the most serious one involving \$20 million and 800 locally employed scheme members.

As these matters concern the life savings and financial security of many current and future pensioners, prudence dictates that we must put in place, as soon as we possibly can, a legal framework to underpin the operation of retirement schemes. We must ensure that retirement benefits promised to employees will be paid when they fall due.

The community has, in fact, been awaiting action for quite a while. In 1990, the Occupational Pension Schemes (Commerce, Trade and Industry and so on) Bill was published as a White Paper for public consultation. The Occupational Retirement Schemes Bill 1991 was subsequently introduced into this Council in May last year. This version of the Bill was, however, allowed to lapse on account of its complexity.

It is against this background that the 17-member Legislative Council ad hoc group, of which I am the convener, would like to recommend the present Bill to this Council.

Although this is still a complicated piece of legislation, it is, nonetheless, a simpler version than its predecessor. It has to be recognized that, owing to the very complex nature of different types of retirement schemes, the provisions dealing with the technical aspects of regulation will inevitably be complex.

The ad hoc group realized the importance of the task we were entrusted with, and the need to complete it fairly quickly. To speed up work, we set up a technical sub-group and a Chinese text sub-group to deal with the respective aspects of the Bill. We have held long and frequent meetings during the past seven months.

It is time well spent; because the final version of the Bill, with some 250 amendments to be moved at Committee stage, has embraced almost all of the changes that our ad hoc group found necessary. I must confess that even with all these changes, some may still find that further improvements to the Bill are desirable. But for a piece of legislation as complex as this one, it would hardly be realistic to aim at academic perfection.

I would like to take this opportunity to thank the team in the Administration headed by the Secretary for Monetary Affairs, Mr David NENDICK, for the very open and receptive attitude they took throughout the course of our deliberations.

I would also like to place on record the group's appreciation of the valuable opinions put forward to us by various professional bodies, trade organizations and labour groups. The 11 submissions from them have greatly assisted our work.

May I also thank all members of the ad hoc group for their contributions to the deliberation of this very complex Bill, and to the staff of the OMELCO Secretariat for the most efficient and invaluable support given to us in tackling the Bill.

I shall concentrate on a number of key issues that have been considered by the ad hoc group, which are also the main concerns raised in the submissions. I shall leave it to my honourable colleagues on the ad hoc group to elaborate on other points that would merit the special attention of this Council.

The regulatory approach

The most important issue tackled by the group was the approach that should be taken in making regulations. We endorsed the four guiding principles embodied in the Bill, namely:

- (a) separation of assets of the retirement scheme from those of the employer;
- (b) provision of sufficient funding to meet the scheme's liabilities;
- (c) independent annual audit of the accounts of the scheme; and
- (d) adequate disclosure of information to scheme members.

The question which we have asked ourselves repeatedly is whether the proposed mechanisms will be able to meet the objectives.

The Administration advised that the philosophy behind the regulatory framework contained in the Bill is based on a "hands-off" approach.

The Registrar of Occupational Retirement Schemes would rely on professionals to check and to certify that the basic principles have been complied with, both at the point of registration and at periodic intervals thereafter. With a proposed establishment of 36 staff, he is to be responsible for overseeing all the retirement schemes in Hong Kong which are estimated to number over 30 000. Accordingly, he will only be involved in maintaining the register of registered and exempted schemes and will not actively intervene in the affairs of any registered scheme unless the circumstances so require, such as when he is made aware of any alleged breaches of the legislation in relation to a scheme.

We were aware of the worries of some employers about the stringency of the statutory requirements and the burden that would place on them. There was, however, concern expressed in some submissions and amongst some members of the ad hoc group that the proposed legislation had not gone far enough in giving protection to employees.

The Administration explained that the "hands-off" approach presently proposed is necessary to avoid an enormous bureaucracy involving substantial costs which would have to be passed onto employers or employees. The registration and monitoring system, which relies on checking and certification by professionals, is adopted in other jurisdictions such as the United Kingdom and Australia.

Having examined the proposed monitoring mechanisms in the light of these explanations, the group finally concluded that, while these measures might not cater for all eventualities, they would be a reasonable and practicable first step. However, we would strongly urge the Administration to keep the situation under review, and to introduce measures to enhance employee protection in the light of practical experience gained in the operation of this new law.

Amendments will also be moved at Committee stage to increase the level of penalties for certain offences to enhance the effectiveness of the legislation.

Trusteeship requirements

A separate but related issue is that of trusteeship requirements.

The group questioned whether the requirement for an independent trustee, that is a trustee who is not an associate or employee of the employer, would be effective to ensure asset separation. The concern was that, whilst the independent trustee may fall outside the statutory definition of associated persons in the Bill, he might be totally ineffective either because he is ignorant of his obligations or incapable of discharging these obligations.

The Administration did not, however, consider it appropriate to impose any criteria on the appointment of trustees. The reasons given were:

- (a) it is difficult to rely solely on quantitative factors such as professional qualification or capital adequacy, since qualitative factors such as experience are equally important in determining whether a person or company can act as an effective trustee;
- (b) the adoption of an approval process would entail a corresponding increase in bureaucracy on the part of the Registrar, and would result in a very "hands-on" approach leading to a significant increase in cost to the schemes;

- (c) in overseas countries where there are regulations governing the operation of retirement schemes, there are no precedents whereby qualifications are imposed on who may act as a trustee; and
- (d) there would be implications for other laws where the concept of trusteeship is involved, as none of these has provided for minimum qualifications.

The Administration also pointed out that the present provisions in the Bill were already more advanced than the United Kingdom legislation in terms of requirements for independent trustees. Moreover, under the common law, trustees are bound to carry out their duties in good faith and with due care and prudence, and they are liable for their acts or omissions.

After very careful examination of the arguments for and against the concept of minimum qualification, the group reluctantly accepted the Administration's position. We recognized that even if the Administration were prepared to vet the qualifications of trustees against some suitable criteria, qualified trustees would probably demand fees which might well be disproportionate to the income of the smaller schemes.

Viewing the trusteeship requirement in the context of the overall regulatory framework, the approach being proposed appeared a sensible and practical one to adopt at this stage. We would, however, like to urge that the trusteeship provisions be reviewed in the light of developments in the United Kingdom as well as the regulatory experience locally.

We would also like to recommend that the position be reconsidered if and when a compulsory retirement scheme is to be introduced.

Domicile

I shall now turn to the question of "domicile".

The Bill proposes that, when applying for registration, the applicant should submit to the Registrar a statement from the solicitor stating, *inter alia*, whether the domicile of the scheme is Hong Kong or elsewhere. The term "domicile" is defined in the interpretation section of the Bill as the country or territory by whose system of law the scheme or trust is governed.

The group considered the need to tighten up the relevant provisions relating to "domicile" having regard to the possibility of a scheme opting for a foreign domicile in order to circumvent some aspects of the legislation.

The Administration advised that the Law Society is strongly in favour of the present definition because it allows for certainty. It assured the group that "foreign" schemes are also required to be registered to ensure that protection is afforded to the scheme members.

Notwithstanding, the group considered some degree of control over the choice of jurisdiction necessary. We suggested that the Registrar should make rules concerning the acceptability of an overseas jurisdiction for domicile purposes in order to prevent operators from domiciling their schemes in just any place of convenience. The idea was that the operator should be required to prove his connections with the place of domicile unless it was a jurisdiction on a pre-approved list issued by the Registrar. The Administration agreed to the principle of the proposal but pointed out that it could only be achieved in the longer term when the Registrar had built up the necessary regulatory experience.

The group was also concerned that the Hong Kong court could not order the winding up of off-shore domiciled schemes even when their registrations have been cancelled. To ensure protection to the Hong Kong members of such schemes, a new provision will be moved at Committee stage to the effect that for an off-shore scheme to gain registration, it must undertake to pay off its Hong Kong scheme members upon deregistration by the Registrar.

Structure of the Bill

I have already touched on the structure of the Bill and the general view of the ad hoc group on this. I should also mention that a number of professional bodies have expressed concern about the provisions in the Bill relating to rules and guidelines to be made by the Registrar and the possibility of these giving the Registrar far too broad a discretionary power.

The Administration explained that the provisions for the Registrar to prescribe procedures, issue guidelines and exercise discretion over certain matters are necessary to allow procedural matters and technical issues to be dealt with outside the principal Ordinance, thus keeping it less complex. They are also required to ensure effective implementation of the legislation which will bring about a regulatory regime that is unprecedented. When the legislation is in operation, technical issues will crop up that must be dealt with in detail and demand considerable flexibility on the part of the Registrar. The rule-making power is designed to provide him with the necessary flexibility to adopt specific measures which he deems appropriate when circumstances so require.

The group is satisfied that the procedure for the making of rules under the Bill will follow those contained in section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) covering the passage of subsidiary legislation, that is, this Council has the power to disallow or modify the rules when they are tabled. The Administration has also assured us that explanatory pamphlets will be published to facilitate easy understanding of the legislative requirements.

Mr Deputy President, there were several other substantive issues considered by the ad hoc group, such as the provisions regarding consultative

committees, which should be reported to this Council. But as I have said earlier, I shall leave them to my honourable colleagues Messrs TAM Yiu-chung, Peter WONG and Henry TANG.

Before I wind up, I would like to address just one further point that has been raised many times during the group's deliberations, that is, how the present piece of legislation relates to the proposal for a compulsory retirement scheme for workers on which the public is currently being consulted.

The Administration advised that the Occupational Retirement Schemes Bill and the compulsory retirement scheme proposal are concerned with separate but related subjects. It would be extremely important to have the regulatory framework provided for in the Bill before us in place before any compulsory retirement scheme is introduced. The two are complementary and compatible. For this reason, we urge the Administration to review the measures which are the subject of our debate today as and when the terms of any compulsory retirement scheme are finalized.

In conclusion, I would like to say that the ad hoc group is satisfied that, subject to the amendments to be moved at Committee stage, the Bill can be supported.

It would however be wrong for me to suggest that all will be fine with retirement schemes as soon as the Council says "Aye" to this Bill. We need to give time for schemes to catch up with the statutory requirements. On commencement of the legislation, a grace period of two years will be allowed for schemes to register and five years for existing schemes to achieve solvency.

It has also to be accepted that what is being proposed will not prevent an orchestrated attempt to defraud like that in the Maxwell case. Indeed, no regulatory regime, no matter how draconian, will.

What the legal framework will do, we hope, is to provide a reasonable measure of protection to the retirement benefits of employees as these are promised to them, and to minimize the opportunities for losses of benefits whether by innocent errors or by design.

The Bill before us, even with all the recommended Committee stage amendments, is by no means ideal or perfect. It is nevertheless a practical first step, and one that is long overdue.

With these remarks, Mr Deputy President, I support the Bill.

MR TAM YIU-CHUNG (in Cantonese): Mr Deputy President, I am the deputy convener of the ad hoc group setting up to study the Bill. As a representative of the Labour Functional Constituency, I am glad that I can pledge my support to the Bill. Although the majority of our working population is still not entitled to

enjoy any form of retirement protection, for employees in private sector who have already participated in retirement schemes, the imposition of legislative control over the operation of these schemes indeed brooks no delay.

As pointed out by the convener of the ad hoc group, Mr Marvin CHEUNG, the Occupational Retirement Schemes Bill is a very complicated piece of legislation. And the large number of amendments to be moved at Committee Stage can attest to the degree of complexity. It is encouraging, however, that although certain proposals in matters of principle are rather controversial and touch on different sectors' interests, every member in the ad hoc group still manages to adopt an objective and pragmatic attitude in resolving these issues, enabling the work of the groups to proceed smoothly.

I would like to take this opportunity to thank especially Mr Marvin CHEUNG, the group's convener, for his excellent leadership in guiding us to complete our arduous task of scrutiny in a systematic and efficient way. Moreover, Mr CHEUNG also contributed a lot by giving his invaluable professional advice on the technical aspects of the Bill.

Before giving my own views on the Bill, let me report, on behalf of the ad hoc group, our consideration and recommendations as to the provisions regarding consultative committees. These provisions, I am afraid, aroused the most heated controversy. Several concern groups had submitted their representations to the ad hoc group and their views on these provisions were varied. Naturally, organizations representing different sectors' interests would have entirely different views on the topic.

The Bill provides that contributory retirement schemes with more than 50 contributors may form a consultative committee when the majority of them wish to have such a committee established. The Bill also provides that the function of such a consultative committee is to advise the administrator of the registered scheme as regards the scheme. Any advice so forwarded shall be considered by, but not be binding on, the administrator.

Some business and trade organizations expressed concern over the provision of the formation of consultative committees whose function was to advise the administrator of the scheme. They were of the opinion that the operation of retirement schemes should be entirely left in the hands of professional administrators who have the required expertise. They were also worried that issues discussed by the consultative committees after their formation would exceed the scope of retirement benefits, and the committees would be turned into organizations where employees fight for other welfare. Some criticized that the provisions as regards the consultative committees' operation are not comprehensive and precise enough which may lead to confusion. On the other hand, labour groups demanded for bigger role than what imposed by the Bill to the participants of the schemes. They felt that the committees should be empowered with monitoring function and their decisions should be binding on the trustees or the schemes' administrators. Furthermore,

some pointed out that the criteria governing the setting up of consultative committees were too strict under the Bill and should be relaxed.

The ad hoc group has made careful study of these different opinions. The Administration pointed out in its response to these opinions that the consultative committees should function as a communication channel between the participants and the administrators of the schemes. And the provisions in the Bill have been such designed that different sectors' interests are well balanced.

The ad hoc group took note of the fact that a retirement scheme is of vital importance to employees no matter if they are contributors to the scheme or not. Therefore, it proposed that the regulations regarding the consultative committees should extend to the "non-contributory" schemes as well. The ad hoc group also studied the scale of local firms in the context of the staff size. The conclusion was that a sensible arrangement would be to lower the minimum number of participants in the scheme required to form a consultative committee from 50 to 20 so as to allow members of a retirement scheme more direct participation. As for small-scale firms employing less than 20 people, there was no obvious need to set up formal consultative committees. The proposal was accepted by the Administration.

On the functions of the consultative committees, the ad hoc group agreed that the proposed provisions in the Bill were appropriate. The group further considered that a more appropriate approach is for the Registrar to formulate regulations and directives as regards the detailed clauses and operation mode of consultative committees rather than stipulating them in the Bill.

Mr Deputy President, now we are in the resumption debate on the Second Reading of the Occupational Retirement Scheme Bill today. My mind goes back to the past few years when the community showed earnest concern over the issue of retirement protection and its monitoring and several incidents still make me feel deeply troubled. I still remember clearly to this day the Tung Wah Group of Hospitals incident, the LO's Mee Kwong incident, and the Millie's Group incident. The Tung Wah Group of Hospitals incident laid bare the potential hazards to employees as a result of inadequate retirement fund. The LO's Mee Kwong incident and the Millie's Group incident highlighted the fact that if no independent financial reserve was set aside by the employer for the retirement protection scheme, the employees' pension would go down the drain once the employer's business ran into financial difficulties. In view of such tragic episodes, the Occupational Retirement Schemes Bill lays down explicitly several guiding principles, including the separation of the retirement scheme's assets and the employer's assets, the employer making available sufficient fund to meet the liabilities of the retirement scheme, the professionals conducting independent audits on the scheme's accounts on a regular basis and the provision of sufficient information to participants of the scheme. The implementation of these principles will provide a certain degree of protection to existing and future compulsory retirement protection schemes. However, we should not overlook one point: existing schemes are given a grace period of five years

from the enactment of the Bill to provide sufficient funding to meet their liabilities and all existing schemes are granted a two years transitional period to become registered. This shows that it will still take a long time to put the monitoring work of retirement schemes on the track. It is earnestly hoped that within this grace period, employers should answer to their conscience and not to impose harsh retirement conditions on employees nor to evade the responsibility of shouldering their employees' pension under different pretexts.

It is expected, with the Occupational Retirement Schemes Ordinance coming into force in full swing, existing retirement schemes could have healthier operation. But the safety net it offers to the retirement schemes is not wide enough, nor making the schemes risk-free. In the context of the Bill *per se*, is the Registrar's Office capable of meeting the stated objective by exercising effective and prudential supervision over all the registered retirement schemes in view of its limited resources and manpower? The Bill provides the setting up of consultative committees to advise the administrators of the relevant retirement schemes. But what likely effects do such advices produce? Would they make the retirement fund more in compliance with the wishes of the employees? As for retirement schemes exempted from registration and enterprises where consultative committees cannot be set up, what sort of management method would be adopted to set those employees' mind at ease so that they would accept these retirement schemes? Such issues should be given more attention in the future.

Generally speaking, I welcome the Government's actualization of the monitoring of retirement schemes. However, the Government does not have much experience in this area of work. I hope that the Government will draw relevant experience from other countries and make regular reviews on its future work so as to improve our retirement schemes and their monitoring.

Mr Deputy President, with these remarks, I support the Bill.

MR PETER WONG: Mr Deputy President, I was one of the advocates for the return of the 1991 Occupational Retirement Schemes Bill to the Administration for simplification.

For a piece of legislation that will profoundly affect the interests of our workforce of 2.7 million, it is incumbent on us, as legislators, to ensure that what we enact is workable and comprehensible.

I am glad that today I can pledge my support to the resumption of the Second Reading of the Occupational Retirement Schemes Bill, the 1992 version. Although the Bill is of a similar length and contains few changes of substance to the earlier version, I am generally satisfied that the drafting has been improved, and practicabilities taken care of, leading to an easier understanding of what is undoubtedly a complex matter.

I have no doubts about the underlying principle of the Bill. Private retirement schemes is an important, and increasingly more so, aspect of our operating relationships with the workforce. Proper regulation is necessary and urgently required.

The Honourable Marvin CHEUNG and TAM Yiu-chung have already spoken on the more contentious elements of the Bill. I shall elaborate on a few points of special interest to the professions.

Taxation

Presently, retirement schemes are required to seek tax approval from the Commissioner of Inland Revenue in accordance with the Inland Revenue (Retirement Schemes) Rules made under section 87A of the Inland Revenue Ordinance. As the present Bill is silent on the taxation aspect of retirement schemes, there are concerns that it may result in double approval of the same scheme by the Commissioner of Inland Revenue and the Registrar of Occupational Retirement Schemes.

The Administration has assured the ad hoc group that we are not to be faced with such double red tapes. When the proposed legislation comes into force, registration under the Bill will be the requisite for tax benefits under the Inland Revenue Ordinance. Obviously, the extent of tax benefits can only be assessed by the Commissioner of Inland Revenue, but basically, no double approval will be required.

We are also given to understand that the necessary amendments to the Inland Revenue Ordinance will be brought before this Council at a slightly later stage. The idea is that existing "approved" schemes will retain their tax approval status for 12 months from the commencement of the Occupational Retirement Schemes Bill, but their "approved" status will lapse if they do not apply to the Registrar for registration or exemption within the period. This, of course, will be subject to the views of this Council with regard to the IRO amendments.

Provisions relating to pooled schemes

One of the major new provisions in the Bill, as compared to the previous one, are those relating to "pooled" schemes, for example, schemes covered by a master trust deed or insurance policy, with their assets pooled together for investment or administration purposes. To facilitate the small business establishments who will most likely participate in these pooling agreements, the Administration recommends a simplified registration process for such schemes. The Bill proposes that applications for the registration of individual participant schemes should only need to be accompanied by a certificate from the scheme administrator confirming that the individual scheme is part of the pool, together with a master statement from the solicitor and a master report from the auditor confirming the basic details of the schemes under application.

The ad hoc group supported the idea of a simplified registration process for "pooled" schemes, but noted that it would simply not be possible to have the master set of report or audited accounts prepared without the benefit of audited accounts of the individual participating schemes. On the basis of cost considerations for participants in pooling agreements who are mainly small-scale employers, members suggested the option that individual schemes in the pool should be required to file separate audited accounts but this may be waived, not more than two years out of three, by a positive resolution of the majority of the scheme members. The Hong Kong Society of Accountants has expressed reservations on the waiver option but the ad hoc group supported it for practical reasons. I shall be moving the relevant amendments at Committee stage.

Preferential payments on employers' insolvency

Clauses 78 and 79 of the Bill seek to amend the Bankruptcy Ordinance (Cap. 6) and Companies Ordinance (Cap. 32) to make unpaid contributions from employers in relation to retirement schemes a preferred debt in the event of liquidation of the employers. It is proposed that the preferred amount should be calculated as 100% of the unpaid contributions up to \$50,000 per employee plus 50% of any amount in excess of this \$50,000 limit. The ad hoc group considered this limit against the contrasting views expressed to us by interested organizations. We were satisfied that the benchmark figure was appropriate, and represented, by and large, a reasonable balance between the interests of the employers and the general creditors.

Provisions relating to professional reports and certifications

As a result of discussions with the ad hoc group and on further consultation with the Hong Kong Society of Accountants and the Actuarial Society, substantial technical amendments have been made to the original Bill in respect of the provisions relating to reporting and certification by the auditors and actuaries. I trust the professions will be happy with the improvements we have tried to achieve.

I wish to mention that it will be necessary to cater for those circumstances where it will be impractical or unduly onerous for the scheme administrators to reconstruct the records of schemes which have not maintained proper accounts and records since their commencement. In order not to prevent such existing schemes from applying for registration, the Administration has proposed to accept qualified reports from the auditor to the effect that he has accepted without verification representation by the relevant trustee or employer (or the administrator of the pooling scheme in the case of a participating scheme) as regards the state of affairs of the scheme at the effective date of registration of the scheme. The ad hoc group recognized that this would mean that the scheme might have to carry a qualified auditor's report until all the scheme members who joined prior to the declaration have left the scheme. While this is not an entirely satisfactory solution, the group was prepared to go along with it in the absence of a better alternative. The implications of such arrangement should

however be fully explained to the public in the Administration's future publicity efforts on this piece of legislation.

I wish to note that the International Accounting Standards Committee has just issued its Exposure Draft 47 on "Retirement Benefit Costs" for comments by 15 March 1993. This is very timely for us in Hong Kong. I would urge the Hong Kong Society of Accountants to review this proposed statement and come out with a proposal suitable for Hong Kong so that guidance can be given to employers so that they can account properly for retirement benefit costs.

These proposals call upon the solicitors to give certain certificates at the inception to confirm that the scheme complies with the law and actuaries are to give their opinions only with regard to defined benefit schemes and then only periodically. Trustees and administrators require no special qualifications to act. We, auditors, are to give annual audit certificates. The Registry who have a proposed establishment of 36 staff can do no more than file returns and react to complaints or if they pick up something in those reports. So if anything goes wrong and if the employer or trustee or administrator were to go bust, we, auditors, are the ones closest to the smoking gun. No doubt the liquidator will feel obliged to have a go at suing us in order to try and recover losses for the employees. On our part, the accounting profession is treating retirement benefits and retirement schemes as more of an opportunity than a threat. It is indeed an opportunity if we do the job well and are paid adequately so that we can carry the correct amount of professional indemnity insurance against the risk of negligence in our work. The profession will ensure that our members are properly trained to do the job and are also alert to the risks involved.

With these remarks, Mr Deputy President, I support the Bill.

MR LEE WING-TAT (in Cantonese): Mr Deputy President, the first draft of the Occupational Retirement Schemes Bill was submitted by the Administration to this Council for discussion in 1990, and in October this year the ad hoc group finally completed its study of the Bill. The Bill seeks to protect the interests of employees under the retirement protection schemes through assets separation, adequate funding, independent audit and of information disclosure. As compared to the present situation where "nobody is responsible for overseeing the operation of retirement schemes", the Bill, which monitors private retirement schemes, can be said to be an improvement. During the drafting of the Bill when the Administration still had not decided to implement a compulsory private retirement protection system, the original intention was to regulate the then existing private retirement schemes. That was why both the Administration and the business sector were worried that the rigorous regulatory regime under the Bill would undermine employers' initiatives to set up retirement schemes. Now that the Administration has decided to implement a compulsory private retirement protection system, and issued a consultation paper to solicit public opinion, this Bill will therefore become a part of the monitoring and implementing mechanisms of the compulsory private retirement

protection system. Therefore, in considering this Bill, the compulsory private retirement protection system to be introduced by the Administration soon should also be taken into account.

Mr Deputy President, Hong Kong will have a working population of some 2 million, and the majority of them will participate in private retirement schemes. As the Bill is the major instrument for protecting employees, the spirit of the Bill should be one that underlines stringency instead of laxity. However, it has been the view of the Administration that the whole regulatory system is based on a hands-off policy and the monitoring is to be performed by professionals. I cannot agree to this view, because under the compulsory private retirement protection system to be implemented on a community-wide basis, the Administration has already kept to the minimum the part it is going to play, and now it is going to adopt a hands-off policy on the Bill which serves to protect employees. What is more disappointing is that employees are even deprived of the right to manage their own assets. The funds under the retirement protection schemes, whether in the form of defined contributions or benefits, are assets belonging to the employees, who should absolutely have the right to participate in the monitoring of the schemes. However, only the formation of a consultative committee is provided for in clause 36 for the purpose of expressing views to and obtaining relevant information from employers on the matter of retirement schemes. Moreover, the consultative committee has no statutory authority. It is only a channel for communication between employees and the management staff. Since the funds are the assets of employees and their means of livelihood after their retirement, why does the Bill not confer upon the consultative committee a statutory authority to monitor the functioning of the schemes? I am disappointed on this matter. I hope that the Administration, when formulating rules and issuing guidelines on the terms of reference and the manner of functioning of the consultative committee, can consider the significance and importance of the committee as a means by which employees can monitor the operation of the retirement schemes.

The Bill has another aspect which is also not satisfactory, and that is the regulation on trusteeship. Clause 27 of the Bill lays down the following principles as regards the trustees of the registered retirement schemes: 1) the sole trustee of the trust should not be at the same time the trustee of the employer; 2) where the trust instrument provides for the appointment of two or more trustees, at least one should be a non-employer trustee. The provision above may result in, where the appointment of more than two trustees is provided for, a very unbalanced proportion between employer trustee and non-employer trustee of 5:1 or even 6:1. Therefore, a reasonable proportion between employer trustee and non-employer trustee should be provided for in the Bill. Since the direct beneficiaries of the schemes are the employees, they should be able to elect a representative to be a trustee. Therefore, I suggest that the Administration should in the future consider allowing the consultative committee to appoint through internal election a member to become a trustee. Besides, there is no provision in the Bill for the qualifications of the trustees. I think that in order to safeguard the interests of the employees, the qualifications

of the trustees should be subject to a flexible regulation. For example, after consultation with the consultative committee and with its approval, professionals can be appointed as independent trustees. Also, the consultative committee should be consulted before trustees are appointed by employers.

Mr Deputy President, I hope that some time after the implementation of the enacted Bill and when the compulsory retirement protection system is introduced, the Administration can make appropriate amendments to the Bill so as to deal with the relevant problems.

With these remarks, I support the Bill.

MR HENRY TANG: Mr Deputy President, I rise to speak in support of the Occupational Retirement Schemes Bill. The case for regulating private retirement schemes has been very convincingly made by honourable colleagues who spoke before me. The arguments are loud and clear. I shall not repeat what has already been said; suffice it for me to say that I fully support them.

But when we say that we must regulate to give employees protection, it is important that we define our objects. So what should the scope of the regulation be, and whom should we seek to protect? The Legislative Council ad hoc group and the technical sub-group set up to study the Bill, of which I am a member, have given these issues careful consideration. I shall briefly report on the deliberations.

Power to exempt

First, the scope of regulation.

This Bill has a wide coverage: all schemes which are operating in Hong Kong and all schemes towards which contributions are made in Hong Kong are covered, irrespective of their domicile. This is necessary to avoid the use of "foreign" schemes to circumvent the regulatory requirements.

To cast the net this wide may, however, present difficulties to global retirement schemes offered by multinational corporations to a small number of employees working in Hong Kong, particularly where such schemes are subject to a different regulatory regime in their place of domicile. Small local schemes with just a handful of members may also find it difficult to comply with all the regulatory requirements contained in the Bill.

The Bill proposes that the Registrar of Occupational Retirement Schemes should be given a limited power to exempt schemes from the registration requirements where:

- (a) he is satisfied that the scheme in question is registered or approved by an acceptable overseas body which performs a similar regulatory function; or
- (b) not more than 10% and not more than 50 members of a retirement scheme, whichever is the less, are Hong Kong permanent residents.

The idea that schemes regulated elsewhere should be exempt from the legislation is widely accepted, but there are criticisms that the first criterion contemplates a subjective test by the Registrar for which the outcome may be totally uncertain. This concern was shared by members of the ad hoc group. To address our concern, the Administration promised to issue guidelines on the basic criteria for an overseas authority to be qualified as performing a function similar to that of the local regulatory authority. At a later stage when the Registrar has built up the necessary regulatory experience, he would also promulgate a list of the overseas authorities which satisfy this exemption qualification for general information. May I invite the Administration to confirm this understanding.

As regards the membership threshold for exemption, the ad hoc group was satisfied that it was neither too low to render the exemption provision ineffective, nor was it too high to create a loophole.

But on this second criterion, the Law Society pointed out that the term "Hong Kong permanent resident" had a very complicated legal meaning. Some trade organizations also questioned how the employer would be expected to know and keep track of his employees' subsequent acquisition of permanent resident status. To overcome these problems, amendments will be moved at Committee stage to substitute the references of "Hong Kong permanent resident" by "Hong Kong permanent identity card holder". Employers are required under the Employment Ordinance to record details of their employees' identity cards. The revised definition should make the job easier.

On the protection to non-Hong Kong scheme members, this is the second issue which I would now turn to. Whom should we seek to protect?

A number of provisions in the Bill, notably those relating to the cancellation of registration of schemes domiciled in or outside Hong Kong, are formulated in such a way that they will have effect only on Hong Kong scheme members. For example, clauses 50 and 51 provide that only a scheme member who is a Hong Kong permanent resident or who satisfies certain residency status may apply to the Hong Kong court for judgement for any shortfall between his entitlement and the benefits he receives.

This ad hoc group did not agree. Our argument was that once a scheme had subjected itself to our local regulatory authority by registering in Hong Kong, the protections afforded under the Bill should extend to all, and not just, its Hong Kong scheme members. The overseas members of such a scheme

should also be given the opportunity to apply to the Hong Kong court for judgement if they so wish.

I am glad that the Administration have not insisted on their policy intention. A number of amendments will be moved by the Honourable Marvin CHEUNG at Committee stage to remove the restrictions of certain provisions of the Bill in relation to their applicability to non-Hong Kong scheme members. They are to be welcomed, not just by those directly affected, but on the principles of fairness and equality.

Mr Deputy President, I support the Bill subject to the Committee stage amendments.

SECRETARY FOR MONETARY AFFAIRS: Mr Deputy President, the Bill before us today seeks to regulate the operation of occupational retirement schemes voluntarily established for the benefit of employees in Hong Kong. It is the product of unusually protracted and detailed scrutiny and consultation.

I am particularly grateful to Mr Marvin CHEUNG and members of the ad hoc group for their careful consideration of the Bill. Because of its complexity, a technical sub-group was established under the chairmanship of Mr CHEUNG to scrutinize all of its clauses. The amendments to be moved at the Committee stage are the product of continuing dialogue between the Administration and the sub-group over the past few months. These amendments have, in my view, resulted in a much improved Bill.

I would also like to express sincere appreciation to the professional, trade and labour organizations for their valuable advice.

Members who have spoken this afternoon have identified the number of issues in the proposed regulatory framework which have required further consideration and clarification. I am pleased to be able to respond to them positively.

The ad hoc group has expressed particular concern over the effectiveness of a largely self-regulatory approach with minimum intervention by the Authority, as is now proposed. This approach, as Mr CHEUNG has rightly pointed out, is "a reasonable and practicable first step" in the circumstances of Hong Kong, where until now retirement schemes have not been subject to any supervision at all. Although we would not consider it appropriate to proceed overnight from this position to a closely supervised system, Members may be assured that we will keep under review the proposed regulatory arrangements while the Registrar gradually gains practical experience. We shall also be looking carefully at the United Kingdom review of the Maxwell pension schemes due to be released in the second half of 1993 to find out what lesson we could take from it.

Although the proposed framework will initially apply only to voluntarily established schemes, it will also provide a solid foundation for any future compulsory retirement protection scheme. However, we recognize that the requirements of a compulsory scheme may give rise to additions or modifications to the arrangements proposed in the Bill and so will give consideration to this in due course.

Mr Henry TANG just mentioned the ad hoc group's concern that there should be some form of legislative control over the choice of jurisdiction for the individual scheme and that there should be basic criteria whereby an overseas authority will qualify as performing functions generally analogous to those of the Registrar, thus enabling schemes within such jurisdictions to be exempted from the requirements of the Bill. We are amenable, in principle, to compiling such a list of approved foreign jurisdictions for registration purposes. Such a list, however, can only be drawn up in the light of adequate research and regulatory experience. The Registrar will in due course endeavour to set up in guidelines the criteria whereby overseas jurisdictions may qualify for generally analogous status so as to address the ad hoc group's concern that the choice of domicile for a retirement scheme should not simply be a matter of convenience.

Mr Marvin CHEUNG has earlier drawn Members' attention to the four guiding principles of the proposed regulatory framework, namely,

- asset separation;
- adequate funding;
- independent audit; and
- information disclosure.

Although these principles will result in responsibilities being imposed upon certain persons specified in the Bill, in particular upon the scheme administrator, the designated person and the employer, I can assure Members that these responsibilities will nevertheless be generally consistent with the particular expertise and authority of such persons.

Concern has also been expressed over the residency requirements of a designated person. As the administrator of an off-shore scheme may not necessarily be resident in Hong Kong, it is important that there should be at least one local contact for the Registrar to facilitate administration of the legislative requirements. It is therefore our intention that the designated person, whose main role is to provide a point of contact between the Registrar and the scheme, should be someone, normally a professional, resident in Hong Kong.

The Registrar of Occupational Retirement Schemes will be empowered to perform certain functions, principally to register or exempt particular schemes. Concern has been expressed regarding the extent of the Registrar's discretion in the exercise of these powers. We have expended much effort trying to ensure that he has sufficient discretion to enable a correct balance to be maintained between the interests of employees and employers alike.

The Bill has also been simplified so as to assist scheme operators to identify more easily the procedural steps required of them. To help ensure that the Bill is "user-friendly", explanatory notes will be issued to assist employers and other interested parties to understand their statutory duties; the application documents will be so designed as to elicit the minimum information required for registration and monitoring purposes; and guidance notes will be issued for potential applicants to synchronize with the commencement of the Bill.

Mr Deputy President, with these remarks, I recommend the Occupational Retirement Schemes Bill to this Council.

Question on the Second Reading of the Bill put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

Committee stage of Bills

Council went into Committee.

EXEMPTIONS FROM REGISTRATION AND TRANSFER OF POWERS (MISCELLANEOUS AMENDMENTS) BILL

Clauses 1 to 20 were agreed to.

LORD WILSON HERITAGE TRUST BILL

Clauses 1, 4, 7 to 9 and 11 to 15 were agreed to.

Clauses 2, 3, 5, 6 and 10

SECRETARY FOR RECREATION AND CULTURE: Mr Chairman, I move that the clauses specified be amended as set out under my name in the paper circulated to Members.

The amendments are technical in nature. They are needed so as to reconcile the meaning of equivalent terms used in the English and Chinese text of the draft Bill and to make the Chinese terms consistent with similar terms used in the authentic Chinese text of the Interpretation and General Clauses Ordinance.

Mr Chairman, I beg to move.

*Proposed amendments***Clause 2**

That clause 2 be amended, in the definition of "Trust capital", by deleting "資金" and substituting "資本".

Clause 3

That clause 3(2) be amended, by deleting "real or personal" in both places where it appears.

Clause 5

That clause 5(3) be amended, by deleting "資金" and substituting "資本".

Clause 6

That clause 6(1)(d) be amended, by deleting "real or personal".

That clause 6(3)(c) be amended, by deleting "personal" and substituting "movable".

Clause 10

That clause 10(a) be amended, by deleting "為核數師的人或團體" and substituting "的核數師".

Question on the amendments proposed, put and agreed to.

Question on clauses 2, 3, 5, 6 and 10, as amended, proposed, put and agreed to.

COMPANIES (AMENDMENT) (NO. 2) BILL 1992

Clauses 1 to 3, 6, 8 to 11 and 15 to 18 were agreed to.

Clauses 4, 5, 12 and 13

SECRETARY FOR MONETARY AFFAIRS: Mr Chairman, I move that the clauses specified be amended as set out in the paper circulated to Members.

I do not intend to go into details of the amendments, which are largely of a technical nature.

Mr Chairman, I beg to move.

Proposed amendments

Clause 4

That clause 4 be amended —

- (a) in paragraph (b), in the proposed subsection (2)(a), by deleting "where the extract or version is in accordance with a form" and substituting "which is in accordance with such form and manner of publication as may have been".
- (b) in paragraph (c) -
 - (i) by deleting "by adding -" and substituting "in subsection (2), by adding-"; and
 - (ii) in the proposed paragraph (d), by deleting "where the publication has been authorized under subsection (2A)(b)" and substituting "which is in accordance with such form and manner of publication as may have been authorized by the Commission under subsection (2A)(b) in that particular case".
- (c) by deleting paragraph (d) and substituting -
 - "(d) by adding -
 - "(2A) The Commission may -
 - (a) by notice in the Gazette, specify the form and manner of publication of an extract from or abridged version of a prospectus, or any class of prospectuses;
 - (b) in any particular case, authorize the form and manner of publication of any extract from or abridged version of a prospectus.
 - (2B) A prospectus referred to in subsection (2A) means a prospectus relating to shares in or debentures of a company, whether incorporated in or outside Hong Kong."."

Clause 5

That clause 5 be amended —

- (a) by deleting the proposed section 38D(1) and substituting -

"(1) No prospectus shall be issued by or on behalf of a company unless the prospectus complies with the requirements of this Ordinance and, on or before the date of its publication, its registration has been authorized under this section and a copy thereof has been registered by the Registrar."

- (b) in the proposed section 38D(2)(a), by deleting "state, on the face of it," and substituting "on the face of it, state".
- (c) in the proposed section 38D(2)(b), by deleting "specify, on the face of it," and substituting "on the face of it, specify".

Clause 12

That clause 12 be amended, in the proposed section 342A(1) and (2), by deleting "section" and substituting "sections 44A(2) and".

Clause 13

That clause 13 be amended —

- (a) by deleting the proposed section 342C(1) and substituting -

"(1) No prospectus offering for subscription shares in or debentures of a company incorporated outside Hong Kong (whether the company has or has not established a place of business in Hong Kong) shall be issued, circulated or distributed in Hong Kong unless the prospectus complies with the requirements of this Ordinance and, on or before the date of its publication, circulation or distribution in Hong Kong, its registration has been authorized under this section and a copy thereof has been registered by the Registrar."

- (b) in the proposed section 342C(2)(a), by deleting "state, on the face of it," and substituting "on the face of it, state".

- (c) in the proposed section 342C(2)(b), by deleting "specify, on the face of it," and substituting "on the face of it, specify".

Question on the amendments proposed, put and agreed to.

Question on Clauses 4, 5, 12 and 13, as amended, proposed, put and agreed to.

Clause 7

MR MARTIN BARROW: Mr Chairman, I move that clause 7 be amended as set out in the paper circulated to Members.

In proposing this amendment, I would just like to make it clear that I fully support the need for a sound and sensible regulatory environment. However, I do not believe that my proposal weakens that position, nor discourages investors, nor affects Hong Kong's position as a financial centre. Furthermore, there is no evidence whatsoever that investors base their investment decisions on the level of regulation that may exist in a particular market.

Thank you.

Proposed amendment

Clause 7

That clause 7 be amended, by deleting everything after the section heading and substituting -

"Section 40A is amended -

- (a) in subsection (1), by repealing everything after "a fine," and substituting "if at the time when he authorized the issue of the prospectus he knew that the prospectus contained an untrue statement or was reckless as to whether the prospectus contained an untrue statement.";

- (b) by adding -

"(1A) In proceedings brought against any person for an offence under subsection (1) it shall be a defence for him to prove that the statement was immaterial."; and

- (c) by adding -

"(3) Subsection (1) shall not apply to the Commission or, where the relevant prospectus is authorized by the Exchange Company pursuant to a

transfer order made under section 47 of the Securities and Futures Commission Ordinance (Cap. 24), shall not apply to the Commission nor the Exchange Company.".

Question on the amendment proposed.

SECRETARY FOR MONETARY AFFAIRS: Mr Chairman, as Mr LAU Wah-sum has pointed out at the resumption of the Second Reading debate, the majority of the ad hoc group do not support Mr Martin BARROW's proposal. And as a matter of fact, the point raised by Mr BARROW has been addressed in great detail at meetings of the ad hoc group although Mr BARROW does not seem to be convinced as other Members are. For the reasons I have elaborated in the resumption of the Second Reading debate earlier this afternoon, the Administration is also strongly opposed to Mr BARROW's proposal. I shall not be repetitive.

However, I do wish to point out again that Mr BARROW's proposal has the effect of significantly lowering the standard of care currently required of directors under section 40A. Moreover, this amendment to existing section 40A, which applies to locally incorporated companies, is only the first step in the erosion of protection of investors. The next step is a similar amendment which Mr BARROW will later propose to new section 342F, which the Administration introduces to apply to companies incorporated overseas in order to impose a similar standard of care on their directors. This latter amendment will affect a very large proportion of listed companies since over 50% of listed companies are now incorporated overseas.

I would like to reiterate the Administration's view that should this amendment be adopted, this Council would be doing a disservice to the investing public. I urge Members not to support Mr BARROW's amendment.

Question on the amendment put and negatived.

Question on clause 7 put.

CHAIRMAN: This is the original clause 7.

Question on clause 7 agreed to.

Clause 14

SECRETARY FOR MONETARY AFFAIRS: Mr Chairman, I move that clause 14 be amended as set out in the paper circulated to Members.

The purpose of this amendment is to impose criminal liability not only on a person who authorized the issue of a prospectus which includes any untrue statements, but also on any person who authorized its circulation or distribution. This takes account of the fact that new section 342F applies to companies incorporated outside Hong Kong. The amended clause retains the originally proposed defence for the person to prove either that the statement was immaterial or that he had reasonable grounds to believe that it was true. This defence is the same as that provided for in the existing section 40A, which applies to locally incorporated companies, thus establishing a level playing field for all.

Mr Martin BARROW has indicated that he will move an amendment to clause 14. His amendment to section 342F is essentially the same as that he proposed earlier to section 40A. The Administration is strongly opposed to Mr BARROW's amendment for the reasons I have elaborated.

With these remarks, Mr Chairman, I beg to move.

Proposed amendment

Clause 14

That clause 14 be amended, by deleting the proposed section 342F(1) and substituting —

"(1) Where a prospectus relating to shares in or debentures of a company incorporated outside Hong Kong (whether the company has or has not established a place of business in Hong Kong) which is issued, circulated or distributed in Hong Kong after the commencement of the Companies (Amendment) (No. 2) Ordinance 1992 (of 1992) includes any untrue statements, any person who authorized the issue, circulation or distribution of the prospectus in Hong Kong shall be liable to imprisonment and a fine, unless he proves either that the statement was immaterial or that he had reasonable grounds to believe and did up to the time of the issue, circulation or distribution of the prospectus in Hong Kong believe that the statement was true."

Question on the amendment proposed.

CHAIRMAN: Mr Martin BARROW, as you know, has also given notice to move an amendment to this clause. I shall first call upon Mr BARROW to speak on the amendment proposed by the Secretary for Monetary Affairs as well as his own amendment, but shall not ask Mr BARROW to move his amendment unless the Secretary for Monetary Affairs' amendment has been negated. If the Secretary's amendment is approved that will by necessary implication mean that Mr BARROW's proposed amendment is disapproved.

MR MARTIN BARROW: Mr Chairman, as my amendment to clause 14 directly follows my proposed amendment to clause 7, which has just been defeated, there is no point delaying procedures any more.

CHAIRMAN: Thank you, Mr BARROW.

Question on the amendment, put and agreed to.

Question on clause 14, as amended, proposed, put and agreed to.

New clause 10A Fees

New clause 12A Provisions as to expert's consent, and allotment

New clause 17A Punishment of offences under this Ordinance

Clauses read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(6).

SECRETARY FOR MONETARY AFFAIRS: Mr Chairman, I move that new clauses 10A, 12A and 17A as set out in the paper circulated to Members be read the Second time.

I shall not go into details on these clauses because the amendments are of a purely technical nature.

Mr Chairman, I beg to move.

Question on the Second Reading of the clauses proposed, put and agreed to.

Clauses read the Second time.

At this point the Secretary for Monetary Affairs turned to the Bill next following and moved a motion in respect thereof.

CHAIRMAN: Secretary, I think the text at the top of page 14 of the Script is the motion you ought to be moving.

SECRETARY FOR MONETARY AFFAIRS: I beg your pardon, Mr Chairman. I move that new clause 10A, 12A and 17A be added to the Bill.

*Proposed additions***New clauses 10A, 12A and 17A**

That the Bill be amended, by adding —

"10A. Fees

Section 304(3) is repealed."

"12A. Provisions as to expert's consent, and allotment

Section 342B(1)(b) is amended by adding "(except insofar as exemption from compliance has been granted under section 342A)" after "44A".

"17A. Punishment of offences under this Ordinance

(1) The Twelfth Schedule is amended in the entry relating to section 38D(6) by repealing "(6)" and substituting "(8)".

(2) The Twelfth Schedule is amended by adding after the entry relating to section 342D -

"342F(1)	Authorizing the issue, circulation or distribution in Hong Kong of a prospectus relating to shares in or debentures of an overseas company containing an untrue statement	On indictment	\$500,000 and 3 years	-
		Summary	\$100,000 and 12 months	-".

Question on the addition of the new clauses proposed, put and agreed to.

SECURITIES AND FUTURES COMMISSION (AMENDMENT) (NO. 2) BILL 1992

Clauses 1 to 4, 6 and 7 were agreed to.

Clause 5

SECRETARY FOR MONETARY AFFAIRS: Mr Chairman, I move that clause 5 be amended as set out in the paper circulated to Members.

The amendment is purely of a technical nature and it ties in with the amendments I moved earlier to the Companies (Amendment) (No. 2) Bill 1992. I shall not be repetitive.

Mr Chairman, I beg to move.

*Proposed amendment***Clause 5**

That clause 5 be amended —

(a) by adding before subclause (1) -

"(1A) Section 28(2) is amended -

(a) in paragraph (c), by repealing the full stop and substituting a semi-colon; and

(b) by adding -

"(d) impose requirements which are different for different classes or descriptions of registered persons as specified in the rules."."

(b) by adding -

"(3) Section 28(4) is amended by adding -

"(c) On and from the commencement referred to in paragraph (a), sections 55(2A), 83(4A), 89 and 90 of the Securities Ordinance (Cap. 333) shall each be construed and have effect as if for each of the references in those sections to section 65B there were substituted a reference to financial resources rules."."

Question on the amendment proposed, put and agreed to.

Question on clause 5, as amended, proposed, put and agreed to.

New clause 6A Preservation of secrecy, etc.

Clause read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(6).

SECRETARY FOR MONETARY AFFAIRS: Mr Chairman, I move that new clause 6A as set out in the paper circulated to Members be read the Second time.

The clause makes a technical amendment to tie in with the Companies (Amendment) (No. 2) Bill 1992.

Mr Chairman, I beg to move.

Question on the Second Reading of the clause proposed, put and agreed to.

Clause read the Second time.

SECRETARY FOR MONETARY AFFAIRS: Mr Chairman, I move that new clause 6A be added to the Bill.

Proposed addition

New clause 6A

That the Bill be amended by adding —

"6A. Preservation of secrecy, and so on.

Section 59(4)(c) is amended by repealing "by the Registrar of Companies".

Question on the addition of the new clause proposed, put and agreed to.

OCCUPATIONAL RETIREMENT SCHEMES BILL

CHAIRMAN: In view of the large number of amendments proposed, I will under Standing Order 46(2) first ask each Member proposing amendments to make a single speech to cover all interdependent amendments, in order to save time and repetition of arguments. Amendments to individual clauses and schedules will be moved after all speeches have been made.

SECRETARY FOR MONETARY AFFAIRS: Mr Chairman, I move that clause 2(1) be amended as set out under my name in the paper circulated to Members.

Clause 2(1) is amended to remove ambiguity in the interpretation of certain terms. Definitions of terms, such as "insurance arrangement", "member", "occupational retirement scheme", which are fundamental to the regulatory requirements, have been amended to clarify the legislative intent. "Insurance arrangement" is amended to ensure that such arrangements are made with an authorized insurer under which the insurer is responsible for managing the scheme and its assets.

The term "member" is amended to ensure that entitlement to scheme benefits is clearly defined.

The term "occupational retirement scheme" is amended to exclude those insurance policies under which benefits are only payable upon the death or disability of the insured.

As I have mentioned earlier in my speech to resume the Second Reading debate, the "designated person", who is expected to play a significant role in providing a point of contact between the Registrar and the scheme, should be someone resident in Hong Kong. The term is now amended to refer to revised clause 16(f) and new clauses 41A and 42(3), which will make the residency requirement explicit.

As Mr Henry TANG has mentioned in the Second Reading debate, we have reviewed our reference to permanent residency. The term "Hong Kong permanent resident" is amended to "Hong Kong permanent identity card holder" to facilitate the award or withdrawal of exemption status by the Registrar under clauses 8, 11, 12 and 15. I shall deal with these in greater detail when I come to amendments to the relevant clauses.

Clause 2(1) is also amended to include a definition of the term "Appeal Board", which appears in new clauses 61A to F relating to the appeals.

Clause 2(4)(d)(i) is amended to clarify that, where a pooling agreement is governed by a trust, it should be administered by a trust company registered under, and therefore subject to, the Trustee Ordinance.

Clause 2(6), which stipulated that a person should be in Hong Kong for not less than 300 days a year to qualify as being ordinarily resident in Hong Kong, is deleted, as agreed after discussions with the ad hoc group, because it would be inappropriate to provide a specific meaning for a term commonly used in other Ordinances.

As I shall be moving a number of other amendments, all of which are interrelated, I shall take this opportunity to explain the reasons for them.

Clause 3(2) is amended to raise the level of penalties for the operation of an illegal scheme. Arising from concern by the ad hoc group over the effectiveness of the proposed regulatory approach, we propose to increase the penalties for certain offences to enhance employee protection. Instead of a flat penalty of \$100,000, as proposed in the original Bill, illegal operation of a retirement scheme will now constitute a hybrid offence, liable to either:

- (i) a fine of \$100,000 and an additional daily fine of \$5,000 on summary conviction;
or
- (ii) a fine of \$500,000 and an additional daily fine of \$10,000 and two years' imprisonment upon conviction on indictment.

The courts will decide, having regard to the circumstances of the case, what level of penalty to impose.

Clause 3(3) is amended to clarify that the only government organizations outside Hong Kong to be excluded from the regulatory framework will be those which are not operated for the purpose of gain.

A number of other clauses have been amended to set out with greater certainty our requirements for the grant of exemption or registration.

Exemption from the regulatory requirements is allowed for schemes which have only a limited number of members permanently resident in Hong Kong or which are properly supervised elsewhere. Clause 8(3)(a) is therefore amended to provide that exemption will apply only to schemes which are properly supervised by a regulatory authority overseas.

Clause 11, which provides for the Registrar to be informed annually regarding the circumstances of an exempted scheme, is amended in subclause (1)(b) to specify that information on the number of members who are Hong Kong permanent identity card holders need only be supplied for schemes in which at the time of exemption not more than 10% or 50 of the members were such card holders.

Clauses 12(1) and 13(1) are amended so that the grounds for withdrawing exemption from the requirements of the Bill are clearly related to the original criteria for granting such exemption. An additional ground for withdrawal has been incorporated where the Registrar of Occupational Retirement Schemes detects that the overseas authority regulating the scheme has ceased to perform functions generally analogous to those to be conferred on the Registrar by the Bill.

Clause 19, which relates to the registration of schemes, is amended in subclause (1) to clarify that the requirement for at least one independent trustee applies only to schemes governed by a trust.

Clause 19(2)(a) is amended to clarify that the Registrar has discretion to register not only off-shore schemes which are not governed by a trust but also those which are not regulated by an insurance arrangement either. Similarly, clause 19(3) is amended to specify that the Registrar's discretion to register schemes failing to comply with the trusteeship requirement will be confined to schemes in overseas jurisdictions where, because of the proper law of the trust governing the scheme, the requirement for at least one independent trustee cannot be complied with.

A number of clauses are amended to facilitate the administration of the Registrar's responsibilities.

Clause 8(4) is amended to empower the Registrar to seek any information he deems necessary in determining whether a scheme is eligible for exemption. Where a particular scheme has been exempted, clause 11(1)(d) now provides that the relevant employer will be required to notify the Registrar of any change of his name or address within one month of the change.

To help ensure that the Registrar is adequately informed of changes that may affect a registered scheme, clause 23 is amended to require the employer to inform the Registrar of any change in the name of the employer, designated person or administrator.

As pointed out earlier in relation to amendments in the interpretation section, we have redefined permanent residency by reference to the possession of a Hong Kong permanent identity card within the meaning of the Registration of Persons Ordinance. Clauses 8(3)(b) and (c) are amended in response to queries regarding how an employer could be expected to keep track of his employees' subsequent acquisition of permanent resident status. As employers are required under the Employment Ordinance to record details of their employees' identity cards, the reference to "Hong Kong permanent identity card holders" in clause 8 should facilitate the employer's compliance with the statutory requirements. As Mr Henry TANG has pointed out in resuming the Second Reading debate, the amendment relating to the residency of the scheme member will also enhance protection for members. Amended clause 11(1)(c) will require the employer to notify all members who are holders of an identity card within the meaning of the Registration of Persons Ordinance that an exemption certificate has been issued. Similar amendments have been made to clauses 12(2)(b), 13(2)(b).

As I have mentioned earlier, the "designated person" is expected to play a pivotal role as the contact between the Registrar and the scheme. Certain amendments therefore specify the criteria for his appointment and release. Clause 16(f) is amended to provide that the designated person should be an individual, normally the administrator, who is resident in Hong Kong or a body corporate which has a place of business here. New clause 41A seeks to ensure that all trustees appointed after registration of the scheme and ordinarily resident in Hong Kong give the undertaking required of a "designated person".

Clause 42(1)(a) is amended to cover, more comprehensively, those situations in which a designated person needs to be replaced. Clause 42(1)(b) states that the relevant employer or the administrator will be mainly responsible for arranging replacement of the designated person.

Clause 43 is amended to specify the situations in which the replacement of the designated person is necessary, for instance where the application for release is made by someone who is the only designated person of the scheme or where the terms of the relevant trust instrument require the resigning trustee to be replaced.

One of the principal requirements of the Bill is that scheme assets should be unencumbered. Arising from our discussions with the ad hoc group, we shall need to provide for certain exceptions. Clause 22(1)(b) is therefore amended to permit charges or pledges created for the purposes of securing loans necessary for meeting the liabilities of the scheme and options to acquire interest in the scheme assets granted in the normal course of business.

A number of clauses have been amended to facilitate compliance in the light of market practice and professional advice.

As originally drafted, clause 25 stipulates that a scheme must be solvent within five years from commencement of the Ordinance. However, some degree of flexibility in the funding of defined benefit schemes has been incorporated into the clause so that, where failure to achieve solvency is due to external factors other than the employer's non-compliance with the actuary's funding recommendations, the shortfall attributable to such factors may be carried forward for up to three years.

Clause 26, which required the production of an actuarial certificate confirming that all shortfalls in funds have been topped up by the end of the five-year transitional period, becomes superfluous following the amendment to clause 25 and is therefore deleted.

To ensure that the Registrar and scheme members will be notified promptly of the termination or winding up of a scheme, clause 31 is amended to specify that such notification shall be given by the relevant employer and designated person within 14 days of the termination or winding up.

As presently drafted, clause 33 of the Bill covers in some detail the requirements made of an actuary in the issue of an actuarial certificate. Since these details are somewhat technical and specific to the actuary, we now propose to remove them to the second schedule. However, to assist the actuary in the fulfilment of his statutory duties, clause 33 is amended to provide that the employer of a scheme shall allow the actuary and his assistants access to his books and records and supply him with information relevant to the actuary's duties. A penalty on summary conviction of a fine of \$10,000 is added as a sanction against non-compliance by the employer.

I now turn to those clauses which are amended or added to enhance protection for scheme members.

We propose to extend the ambit of clause 29 of the Bill, which seeks to impose restrictions upon certain types of investment of scheme assets. In the original Bill, we proposed that no loan may be made to the relevant employer of a scheme or his associate but we allowed that a maximum of 10% of the assets of a scheme may consist of restricted investments. We have subsequently extended the definition of "restricted investment" to mean not only, as stated in the Bill, any security of, or issued by, the relevant employer or his associate but also any security in the form of an option which if exercised will constitute investment in the share capital of the employer or his associate. However, we will permit unrestricted investment, by the exercise of an option, in the share capital of a body corporate other than the employer or his associate.

To provide further protection for scheme members, we have prohibited investments, made without the Registrar's permission on or after the commencement of the Ordinance, in the share capital of a non-listed company, that is, in a local or overseas company which is not listed on the Unified Exchange or an overseas exchange recognized by the Securities and Futures Commission. Instead of a time frame of three months as originally drafted, clause 29(5) is amended to provide greater flexibility for the Registrar to decide on the period, not less than one month, within which the scheme administrator must comply with the investment requirements.

New clauses 46A and 58A are introduced and clause 55 amended to enhance protection of scheme assets during deregistration and winding up of a scheme. New clause 46A enables the court, upon an application by the Registrar, to order that the assets of the scheme to be frozen. The Registrar may apply to the court as soon as he issues a proposal to cancel registration of a registered scheme. Freezing of assets will not, however, impede regular payments and payments due before the date of the court order. Existing pensions and other bona fide payments will continue. The court order will cease to have effect when it is withdrawn by the court upon an application by the Registrar or when the Appeal Board directs the Registrar to restore registration or when it is superseded by a court order winding up the scheme.

Clause 55 is amended to enable the scheme liquidator firstly to engage in legal proceedings on behalf of scheme members, notwithstanding any term of the scheme, that is, even where such terms prohibit such action; and secondly to make any appropriate arrangements with respect to any debt, claim or liability relating to the scheme's assets. New clause 58A is added to provide that, where the court orders that a scheme be wound up, the scheme liquidator may apply to the court, on behalf of any beneficiary of the scheme, naming any person concerned with the operation and management of the scheme to be the respondent in the application. The court may then determine the amount of shortfall in benefits due to the beneficiary and give judgement against the respondent for an equal amount.

While amending existing clauses or proposing new ones, we have occasionally seen the need to invest the Registrar with powers to make subsidiary rules in relation to the new or amended clauses or to clarify the legislative intent in the light of operational experience. Consequently, clause 65, which sets out the classes of rules which the Registrar may make, is expanded to include rules relating to the time period within which the scheme fund shall reach sufficiency; for the passing of resolutions by scheme members; for the formation, constitution, proceedings and dissolution of employees' consultative committees and related matters; requiring any designated person to alert the Registrar to any proposed amendment to a registered scheme; and in relation to the calculation of unpaid contributions which should have been made into the scheme's assets by a bankrupt or a company being wound-up.

Clauses 71 and 72 provide for the Registrar to disclose information to certain people under specified circumstances and, in clause 72, to the Commissioner of Inland Revenue in particular. These provisions have been simplified to exclude reference, in clause 71, to the Attorney General or the Registrar of Companies. Clause 72, which provided in some detail for the interchange of information between the Registrar and the Commissioner of Inland Revenue, has been deleted (with a consequential amendment to clause 70) and, in its place, a simple reference to the Commissioner has been included in clause 71.

Mr Chairman, for the reasons I have earlier given when introducing amendments to clause 3(2), we have also amended clauses 73(2) and (3) to impose a heavier penalty for the relevant offence. A deliberately false statement or certification made in purported compliance with the provisions of the Bill will constitute a hybrid offence, liable to either:

- (i) a fine of \$100,000 and six months' imprisonment on summary conviction; or
- (ii) a fine of \$500,000 and five years' imprisonment upon conviction on indictment.

The original clause 74 empowers the Registrar to require either an English or a Chinese version of a document submitted in compliance with the legislation, if it is written in a third language. For greater flexibility, the clause is amended to enable a person to choose which of the two languages he will use.

We propose two lesser amendments, firstly to reduce the workload of the Governor in Council by removing, in clause 64, the reference to "in Council", and secondly to clarify our intent, in clause 68, that no personal liability shall be incurred by any person in the performance of public duties under the Ordinance, that is by public officers or persons appointed by the Registrar under clause 39(2) to conduct an inquiry into a scheme. In addition, minor amendments, for instance corrections of spelling and cross-referencing, largely

in consequence of more substantial amendments proposed since the First Reading, have been made to over half the Bill's clauses.

A number of amendments have also been made to the schedules to set out more explicitly the requirements for professional certification on registration of the scheme.

The solicitor's statement in Parts 1 and 2 of Schedule 1 has been amended to cover situations where the applying scheme is neither governed by a trust nor regulated by an insurance arrangement.

As presently drafted, the objective of the auditor's statement on individual schemes in Part 1 of Schedule 1 is to confirm the solvency of the scheme and whether contributions have been made in accordance with the scheme rules or actuarial recommendations. To increase the volume of information available to the Registrar to enable him adequately to fulfill his supervisory duties, the auditor's statement in Schedule 1 is amended to require the auditor to report, also, on the extent of the shortfall between the scheme's assets and the scheme's aggregate vested liability as at the last day of the financial year.

Mr Chairman, I have earlier assured Members that the statutory duties to be performed by specified persons will be consistent with their particular expertise and authority. To facilitate the performance of duties by employers in a multi-employer group of companies where one scheme covers all employees of the group, we propose a new clause 61G. This provides for the nomination of one employer to act on behalf of the other "relevant employers" when applying for exemption or registration of the scheme, as well as in relation to the requirements for the formation of consultative committees under clause 36.

Clauses 8(2), 8(3)(b) and 16(d) are amended in consequence.

As originally drafted, provisions for appeal to the Financial Secretary are available under the Bill for any person aggrieved by a decision of the Registrar. Arising from our discussions with the ad hoc group, we consider it more appropriate that such appeals should be handled by an independent appeal panel to be established outside the Civil Service hierarchy. New clauses 61A to 61F provide that a person may appeal to the Occupational Retirement Schemes Appeal Board if he feels aggrieved by a decision of the Registrar. Such decisions may involve a refusal to register a scheme or a withdrawal of exemption status. Consequential amendments have been made to clauses 9, 13, 14, 20, 47 and 48.

New clause 61A establishes the Appeal Board, consisting of a chairman, with legal qualifications, or a deputy chairman and not fewer than two members. The constitution and powers of the Appeal Board are also set in the clause 61B. Other provisions within the clause govern the conduct of the Board.

New clauses 61C and 61E confirm that the decision of the Appeal Board is final, unless a question of law arising in the appeal is referred by the Board to the Court of Appeal resulting in amendment of the Board's decision.

New clause 61D provides for the election of an alternate chairman as well as for the privileges and immunities of all parties involved in the appeal.

New clause 61F sets out the offences for non-compliance with the appeal requirements.

With these words, Mr Chairman, this brings me at long last to the end of my speech explaining the amendments I am about to move.

MR TAM YIU-CHUNG (in Cantonese): Mr Chairman, I believe Members of this Council have to exercise some patience as there are some 250 historic proposed amendments to this Bill. I am going to propose some of these amendments, the contents of which have been set out in the paper circulated to Members. Since most of these amendments will have a direct effect on scheme members, here I would like to explain briefly the reasons for my amendments.

Clause 1(3), as drafted, provides for a transitional period of not less than 24 months for all existing schemes to become registered. It does not however specify a long-stop date by which this must be done.

The Legislative Council ad hoc group formed to study the Bill strongly felt that the legislation should be more specific about the transitional period to be allowed for registration. It is therefore proposed that the prohibitive and penalty provisions in clause 3 be brought into effect 24 months after the commencement of clause 1(3).

To cover the situation where a longer transitional period may, in the light of experience, be found necessary, a new subclause 1(4) is added to allow this Council to extend the 24-month period by resolution.

The two amendments to clauses 8(2A) and 34(1)(a) respectively proposed by me seek to enhance the protection of members participating in the retirement protection scheme.

Clauses 12(2) and 13(2) require that the Registrar's proposal and, where applicable, his decision to withdraw an exemption certificate be communicated to the scheme members concerned.

The amendment to clause 8 is meant to ensure that the scheme members will be alerted, at an early stage, of the employer's application for exemption. This is a vital piece of information to the scheme members; and surely there will be occasions where the scheme members may wish to address the employer concerned or the Registrar regarding such applications.

As regards clause 34, it is amended to provide a lower and more reasonable threshold in relation to scheme members' requests in triggering off the Registrar's power to require certain reports and certificates to be prepared in respect of a registered scheme. The original provision of the Bill requires, among other things, that such a request for the Registrar to exercise his power must be submitted in written form and signed by 50% of the scheme members. I propose that this qualifying factor be relaxed to 20% or 100 members of the scheme. The other circumstances for the Registrar to demand such reports and certificates remain unchanged.

The reasons for the amendments to clause 36 had been given by me during the Second Reading debate of the Bill. These amendments seek to relax the criteria for the formation of consultative committees.

I propose that paragraph 1(d), Part 1 and paragraph 2(e), Part 2 of Schedule 1 be amended for the following reasons:

The Schedule requires, *inter alia*, the solicitor to provide a statement confirming that "the terms of the scheme do not enable any person, without the consent of the scheme's member concerned, to alter to the member's detriment either his accrued rights under the scheme or his vested benefits". In other words, any alteration of the terms of a scheme requires the consent of all scheme members.

By amending Schedule 1 as proposed, it will allow a small degree of flexibility in the legislation so that any alteration of scheme terms that is supported by an overwhelming majority of the scheme members will not be held up by a small minority. Hence any proposal for alteration of scheme terms will be carried if it is supported by 90% or more of the scheme members.

At the same time, to protect the interests of the dissenters, additional provisions are incorporated in the Bill to allow those who do not go along with the majority decision to opt for the immediate payment of their accrued benefits. Calculation of the accrued benefits will be made in accordance with rules to be made by the Registrar on the guiding principle that these scheme members will not lose out in their benefits insofar as the terms of the scheme, before the alteration, apply.

MRS MIRIAM LAU (in Cantonese): Mr Chairman, I shall later be moving amendments to 51 clauses of the present Bill on the ground that the terminologies employed in the Chinese and English texts of the Bill are different in meaning and need correction. Let me give the reasons for some of my proposed amendments.

The four terms "rights", "powers", "obligations" and "liabilities" in clause 4 of the English text of the Bill are given in the Chinese text as "權利", "權力", "責任" and "債務". The term "liabilities" refers not only to debts (債務)

but also to legal responsibilities. "Liabilities" in section 23 of the Interpretation and General Clauses Ordinance (Cap. 1) has been translated as "責任" while "obligations" has been translated as "義務". Therefore the Chinese counterpart of these four terms should be "權利", "權力", "義務" and "責任" respectively. However, to enable this series of words to come trippingly off the tongue, I propose rearranging them in the order of "權力", "責任", "權利" and "義務".

In like manner, the term "interests" in clauses 18(1)(c) and 34(1)(b) of the Bill should be translated as "利益", not "權益".

In clause 30 of the Bill, the term "適用" qualifies the fees or charges in question, not the period in question. Therefore the clause need to be rephrased to reflect its true meaning.

In clauses 35(1) and 39(5) of the Bill, the term "possession" has a wider meaning than possession (持有) of tangible objects. As a matter of fact, in many other Ordinances the term "管有" has been adopted as the Chinese equivalent term for "possession". For the sake of consistency with other Ordinances, no exception should be made of the present Bill.

In clauses 39, 13, 61(d) and 73(1) of the Bill, the word "false" is rendered in the Chinese text as "失實". Going through other Ordinances, I have found that the word "false" in some Ordinances is translated as "失實" while in some others it is translated as "虛假". The "Misrepresentation Ordinance" referred to in the Control of Exemption Clauses Ordinance is translated as "失實陳述條例". I am of the view that the terms "失實" and "虛假" have different meanings. The former connotes an absence of truth while the latter connotes presentation of that which is not fact but fiction. In order to more accurately reflect the connotation of this English word "false" and to avoid confusion with the term "misrepresentation", I propose adopting "虛假" as the uniform Chinese equivalent term for "false".

The term "submission" in clause 41(2) and a few other clauses of the Bill refers to the document in which a party to legal proceedings indicates submission to the jurisdiction of the High Court as specified in paragraph 4 of part 3 of schedule 1. "Submission" is translated in the Bill as "圍制書". "圍" means a walled enclosure, which is usually taken to mean the scope or confines of something. In the present context, it means the scope of the High Court's jurisdiction. Therefore it would be more appropriate to adopt the term "管轄書" to mean "submission".

Mr Chairman, I so submit.

MR PETER WONG: Mr Chairman, the amendments which I am moving this afternoon are set out under my name in the paper circulated to Members. They are as follows:

Clause 19

The Bill provides that for a scheme to gain registration, it must satisfy the Registrar that the benefits will be paid to the scheme members upon termination or winding up without being paid through the employer. The intention is to prevent the scheme assets from being siphoned off by the employer.

The proposed inclusion of clause 19(1A) is to specify the employers' rights to offset *bona fide* debts against scheme benefits due to employees. This is to reflect the market practice that employers providing loans, such as housing loans, to their employees are allowed, under the terms of retirement schemes, to withhold money from the payouts to offset such debts.

Clause 21

Clause 21 sets out the requirements for the administrator of a scheme to keep proper accounts and records which include a statement of accounts and auditor's report.

The proposed amendments to this clause are mainly technical and textual ones. They seek to define more clearly the content of the auditor's report and will ensure that the certifications called for are within the auditor's capability to provide. The modifications have taken into account changes and recommendations put forth by the Hong Kong Society of Accountants.

There are however two substantive changes which I would like to draw to Members' attention.

First, the proposed inclusion of clause 21(3)(c) to explicitly provide for the auditor's right of access to the employer's books and records, as well as the right to obtain other relevant information and explanations. This is necessary to ensure the auditor's effective discharge of his duty in relation to the scheme. Similar provisions are found in the Companies Ordinance where the monitoring mechanisms are dependent on the auditors' certifications.

Secondly, the proposed amendments to clause 21(5)(c) to provide for the waiver option on annual audits relating to "pooled" scheme. I have already covered the considerations that have been given to this proposal when I spoke on the Bill earlier. I shall not repeat them.

Clause 32

The reason for amending clause 32 is the same as for clause 21(5)(c).

Clause 22

Clause 22(1)(c) provides that the assets of a registered scheme shall only be applied for the purposes of the scheme. This virtually rules out any repayment to the employer.

The proposed inclusion of clause 22(3) is to specify the employers' rights to receive excess of scheme assets where the terms of the scheme so permit. An excess can build up for a variety of reasons, including over-contributions by the employer on actuarial recommendations. Having regard to these possibilities, it seems prudent to leave it to each individual scheme to determine whether suitable repayments may be made to the employer.

Clause 58

Clause 58(3) empowers the High Court to exercise its discretion, on the winding up of a scheme, on the discharge of liabilities where there is a shortfall in scheme assets.

The amendments being proposed will establish a preferential hierarchy to facilitate the court in deciding the ranking of debts. They were recommended by the Legislative Council ad hoc group set up to study the Bill.

Some may ask whether it would be possible to move the payments to scheme members higher up the preferential hierarchy. I am afraid that the answer is no; it cannot be done without breaching the long-established principles of liquidation hierarchy. In formulating the proposed order of priority, advice has been taken from the Hong Kong Society of Accountants.

Schedule 1

And I now come to Schedule 1.

The proposed amendments to Part 1 paragraph 3 will considerably simplify the statement by the applicant seeking registration. If accepted, the applicant will only be required to confirm compliance with the trusteeship requirement provided under clause 27(2). The other requirements on the applicant originally specified under this paragraph are either academic or superfluous and are to be deleted. The deletion of subparagraphs (d) and (e) of Part 2 paragraph 1 is also proposed for the same reason.

By bringing in Part 1 paragraph 4, the applicant will be required to submit the latest audited accounts of an existing scheme upon application. No extra work is envisaged. These accounts will have been prepared by the auditor anyway in connection with the requirements under Part 1 paragraph 2 in the same schedule.

The proposed amendments to Part 3 paragraph 1 will remove the requirement for a further auditor's statement in respect of an existing defined contribution scheme seeking registration. Pertinent information regarding the solvency of the scheme is being subsumed under the auditor's statement provided under Part 1 paragraph 2. This makes it neater and tidier.

It is also proposed to amend Part 3 paragraph 4 such that certification on aspects relating to interpretation of the trust instrument should be by a solicitor qualified in the jurisdiction in which the scheme is domiciled.

As regards new clause 57A, it seeks to enhance the protection of scheme assets by nullifying any intentional preferential transactions prior to the winding up of the scheme. To avoid any unnecessary uncertainties that this may cause to the innocent parties, new clause 57B provides that *bona fide* transactions are not to be affected.

Mr Chairman, this concludes the explanation of the amendments I shall be moving later on.

MR MARVIN CHEUNG: Mr Chairman, thank you for allowing me to speak, at this juncture, on the various amendments that I am going to move. They are set out under my name in the paper circulated to Members.

Clause 2

Clause 2(7) is an anti-avoidance provision. Its objective is to prevent abuse by employers using an employment contract to cover a retirement scheme, and disguising what is genuinely a retirement benefit by calling it a gratuity.

The proposed amendments to clause 2(7)(a) seek to strengthen the effectiveness of this provision by reducing the maximum contract period not subjected to this clause, from five years to four years. Due regard has been given to prevailing market practices. The change should not affect the great majority of genuine contract-tied gratuities.

Clause 3

Mr Chairman, I shall deal first with the proposed amendments to clause 3(1)(c) and the addition of clause 3(1)(d). These are to allow schemes, whether or not they are existing schemes, to operate pending the outcome of their applications for exemption or registration. Such transitional immunity is necessary for practical reasons, and is particularly important since no time limits are provided in the Bill for an application for exemption or registration to be determined.

The other amendments to clause 3 which I am going to move are anti-avoidance provisions.

As presently drafted, an employer who promises to operate a scheme and does nothing will not be affected by the provisions. The proposed amendments to clause 3(1), subject to the time limit permitted under the proposed clause 3(1A), will plug this loophole by deeming mere promises but with no follow up action as operation of illegal schemes.

The inclusion of clause 3(4), on the other hand, is to prevent employers from circumventing the legislative requirements by arranging for the contract of employment to be effected overseas by a foreign employer, although all the employees are in fact working in Hong Kong.

Clause 5

I now come to clause 5 which I propose to delete. With the proposed amendments to clause 3(1)(c) and (d) as explained above, the provisions in this clause, namely to give transitional immunity to existing schemes or to offer encouragement for early registration, are redundant.

Clause 19

As regards the proposed amendment to clause 19(1), that is, inclusion of subclause (e), I have explained in the Second Reading debate that this is necessary to ensure that Hong Kong scheme members of overseas domiciled schemes are paid off when the registration of such scheme is cancelled.

Clause 38

Clause 38 provides that the designated person of a registered scheme is obliged to keep the consultative committee, where one exists, informed of certain aspects of the scheme, and that individual scheme members may request the same information where no consultative committee is established, at 12 months intervals.

The need to deal with individual scheme members is a very onerous requirement, considering that the kind of information specified under clause 38(2)(b) is not always readily available and may entail heavy costs to compile. For this reason, it is proposed that clause 38 be amended so that scheme members will be allowed to seek such information only by resolution with majority agreement. This will help prevent frivolous requests and abuse.

Clauses 46, 47, 49, 50, 51 and 67

Mr Chairman, the proposed amendments to clauses 46, 47, 49, 50, 51 and 67 as set out under my name in the paper circulated to Members relate to the rights of non-Hong Kong scheme members. The reasons for extending protection to them have been explained by Mr Henry TANG when he spoke on the Bill earlier.

With the removal of the references to residency status of scheme members from clauses 50 and 51, the provisions under clauses 50(4), 50(5), 50(6) and 51 will become superfluous having regard to the common law rights of the scheme beneficiaries to sue for any shortfall between entitlement and payment under a scheme. Deletion of these clauses is therefore proposed.

Clause 66

Clause 66 specifies that the Registrar is not obliged to make inquiries concerning the number and residence status of the scheme members. Again, given the changes being proposed to the other parts of the Bill relating to non-Hong Kong scheme members, deletion of this clause is recommended.

Clause 73

Turning to clause 73, the proposed amendments will provide the Registrar with explicit power to make a complaint to the disciplinary committee of the relevant professional body without the need to go through criminal proceedings. This will help ensure compliance with professional standards by members of the concerned professions and give the public greater assurance.

Clause 77

There are two subclauses to clause 77. They are proposed for deletion for different reasons.

There are concerns, particularly from the labour sector, that the provisions under clause 77(1) specifying the circumstances of dismissal may lead to a forfeiture of retirement benefits. In fact, the clause is no more than an avoidance of doubt provision. It will not by itself cause the dismissed employees to lose their employer's contributions under the scheme. I propose, therefore, to delete this clause to avoid confusion. The practical effect is that the employer's contribution in cases of dismissal will be dealt with in accordance with the terms of the scheme.

Clause 77(2) restricts the employees' right to bring action upon any breaches of the provisions in the Bill. There is concern that it may even prevent judicial reviews against the Registrar's decisions or prevent members from seeking the assistance of the court in case the Registrar chooses not to act. To enable scheme members to take civil action under the legislation, I propose to delete the clause.

Schedule 1

The proposed amendments to Schedule 1 which I shall move are consequential amendments to clause 19(1)(e).

New clause 62A

Finally the new clause 62A.

The new clause explicitly provides that the solicitors and actuaries of registered schemes should be independent of the employer, that is, not falling within the definition of clause 62(3)(b) and (c). The provisions do not however prohibit the use of in-house solicitors and actuaries by the scheme administrators. Such independence is considered necessary in view of the reliance of the regulatory system on certification by these professionals.

Honourable colleagues may have noted that in the case of auditors, they are required to be independent not just from the employer, but also from the administrator of the scheme, that is, not falling within the definition of clause 62(3)(a)-(c). This is reflected in the proposed amendments to clause 62 to be moved by the Administration.

Thank you.

MR HENRY TANG: Mr Chairman, I shall be brief. The amendments which I am going to move relate to clauses 78 and 79.

Clause 78 amends the Bankruptcy Ordinance, and clause 79 the Companies Ordinance, to make unpaid contributions from employers in relation to retirement schemes a preferred debt in the event of liquidation of the employers. The preference is subject to a limit of \$50,000 per employee plus 50% of any amount in excess of this limit.

I am concerned that, as drafted, the preference is applicable to only the employer's contributions which have fallen in arrear. It does not cater for contributions which may have been deducted from employees' salaries by the employer but not paid into the relevant employees' accounts. One may argue that such contributions should be regarded as money held on trust and, in

winding up situation, would be segregated from the total pool of assets for distribution at the start of the liquidation process. But this does not provide for certainty.

The proposed amendments to clauses 78 and 79 will explicitly provide in the preferential hierarchy an item to cover any employee contributions withheld by the employer. They were supported by the Legislative Council ad hoc group set up to study the Bill on employee protection considerations.

Clauses 6, 60 and 69 were agreed to.

Clause 1

MR TAM YIU-CHUNG: Mr Chairman, I move that clause 1 be amended as set out in the paper circulated to Members for reasons given in my speech just now.

Proposed amendment

Clause 1

That clause 1 be amended, by deleting subclauses (2) and (3) and substituting —

"(2) This Ordinance, other than section 3, shall come into operation on a day to be appointed by the Governor by notice in the Gazette.

(3) Section 3 shall come into operation on the expiry of a period of 2 years after the day appointed under subsection (2).

(4) The Legislative Council may by resolution extend the period of 2 years in subsection (3)."

Question on the amendment proposed, put and agreed to.

Question on clause 1, as amended, proposed, put and agreed to.

Amendments to individual clauses of the Occupational Retirement Schemes Bill under the respective motions moved by the Secretary for Monetary Affairs during the Committee stage of the Bill are as follows —

Clauses 2(1), 53, 54, 55, 56, 57, 58, 59, 61

By deleting "receiver" wherever it appears and substituting "liquidator".

Clause 2(1), definition of "actuary"

(a) By deleting "includes" and substituting "means".

(b) By deleting paragraph (e) and substituting -

"(e) any person who holds such qualification as the Registrar may accept as being of a standard comparable to that of a person described in paragraph (a), (b), (c) or (d);".

Clause 2(1), definition of "administrator"

By deleting the definition and substituting -

"administrator" (管理人) means -

- (a) in the case of a scheme or pooling agreement governed by a trust, the trustee concerned;
- (b) in the case of a scheme or pooling agreement which is the subject of or regulated by an insurance arrangement, the insurer concerned;
- (c) in any other case, the person who is principally responsible for the management of the scheme and its assets otherwise than as a person who is solely concerned with the investment or custody of the assets;".

Clause 2(1)

By adding -

"Appeal Board" (上訴委員會) means the

Occupational Retirement Schemes Appeal Board constituted under section 61B;".

Clause 2(1), definition of "associate"

(a) In paragraph (b) by adding ", whether directly or indirectly," after "entitled".

(b) In paragraph (d)(ii) by deleting "any company which, not being a registered trust company," and substituting "any body corporate which".

Clause 2(1), definition of "auditor"

In paragraph (b) by deleting "a qualification acceptable to the Registrar" and substituting "such qualification as the Registrar may accept as being of a standard comparable to that of a Hong Kong accountant".

Clause 2(1)

By deleting the definitions of "consular officer" and "consular post" and "head of a consular post".

Clause 2(1), definition of "declared return"

By deleting "where appropriate" and substituting "if the facts in any particular case so dictate and the rules of the scheme so permit".

Clause 2(1), definition of "defined contribution scheme"

(a) In paragraph (a) by deleting "rate guaranteed by the relevant employer" and substituting "guaranteed rate".

(b) In paragraph (b) by adding "and age" after "service".

Clause 2(1), definition of "designated person"

By deleting the definition and substituting -

"designated person" (指定人士) in relation to an occupational retirement scheme means a person who has given an undertaking referred to in section 16(f), 41A or 42(3) as regards the scheme and has not been released under section 43;"

Clause 2(1), definition of "director"

In paragraph (c) by deleting "in the case of an overseas institution, any person" and substituting -

"in the case of a body of persons which -

- (i) is incorporated or otherwise established in any manner whatsoever by or under the laws of a country or territory outside Hong Kong; or

(ii) has its principal place of business in such a country or territory,
any person".

Clause 2(1), definition of "full certificate"

By adding "paragraph 1(a) or 2(a) of Part 3 of Schedule 1 or" before "Part".

Clause 2(1), definition of "holding company"

In paragraph (b) by deleting "a body of persons incorporated or otherwise established by or under the law of any country or territory outside Hong Kong" and substituting "not a company but is a body of persons otherwise incorporated or established in Hong Kong or elsewhere".

Clause 2(1), definition of "Hong Kong permanent resident"

By deleting the definition and substituting -

"Hong Kong permanent identity card holder" (香港永久性居民身分證持有人) means a person holding a permanent identity card within the meaning of the Registration of Persons Ordinance (Cap. 177);".

Clause 2(1), definition of "insurance arrangement"

By deleting the definition and substituting -

"insurance arrangement" (保險安排) means an agreement or arrangement -

- (a) made in respect of an occupational retirement scheme with an authorized insurer under which the insurer is responsible for managing the scheme and its assets; and
- (b) which is of a class or description specified in rules made by the Registrar;".

Clause 2(1), definition of "liabilities"

By deleting the definition.

Clause 2(1), definition of "member"

By deleting the definition and substituting -

"member" (成員) includes, in relation to an occupational retirement scheme, an individual who is entitled or prospectively entitled to benefits under the scheme by virtue of -

- (a) his employment by the relevant employer (whether past or present) of the scheme; or
- (b) an agreement made between the relevant employer of the first-mentioned scheme and the relevant employer of another occupational retirement scheme of which such individual was formerly a member, whether or not such individual is a party to the agreement,

and where appropriate, "member" also includes the estate of a deceased member;"

Clause 2(1), definition of "occupational retirement scheme"

By deleting the definition and substituting -

"occupational retirement scheme" (職業退休計劃) means subject to subsection (7) any scheme, not being a contract of insurance under which benefits are payable only upon the death or disability of the insured, which -

- (a) is comprised in one or more instruments or agreements; and
- (b) has or is capable of having effect in relation to one or more descriptions or categories of employment so as to provide benefits, in the form of pensions, allowances, gratuities or other payments, payable on termination of service, death or retirement, to or in respect of persons gainfully employed (whether in Hong Kong or elsewhere) under a contract of service in any employment,

and includes, where the context admits, a proposed such scheme;"

Clause 2(1), definition of "overseas institution"

By deleting the definition.

Clause 2(1), definition of "past service liability"

(a) In paragraph (a) by adding "including any guaranteed return paid or payable pursuant to the scheme" after "such contributions".

(b) By deleting everything after paragraph (b) and substituting -

"and in this definition "contributions" (供款) and "benefit entitlement" (利益享有權) include, in relation to a member who was a member of another occupational retirement scheme before joining the first-mentioned scheme, such contributions or benefit entitlement which stood to his credit under the second-mentioned scheme as were transferred in accordance with the terms of the first-mentioned scheme and stood thereunder to his credit upon his joining the first-mentioned scheme and where such transfer occurs, "membership" (成員) in relation to that member includes such period of membership in the second-mentioned scheme as is counted towards membership of the first-mentioned scheme;"

Clause 2(1), definition of "qualified certificate"

By adding "paragraph 1(b) or 2(b) of Part 3 of Schedule 1 or" before "Part".

Clause 2(1), definition of "qualifying service"

By deleting "which makes him eligible for benefits under the scheme" and substituting "by reference to which his benefits under the scheme are ascertained".

Clause 2(1), definition of "subsidiary"

In paragraph (b) by deleting "a body of persons incorporated or otherwise established by or under the law of a country or territory outside Hong Kong" and substituting "not a company but is a body of persons otherwise incorporated or established in Hong Kong or elsewhere".

Clause 2(1), definition of "vested benefit"

In paragraph (a) by deleting "to" where it first appears.

Clause 2(1), definition of "vested liability"

(a) In paragraph (b)(i) by adding "(including any amount paid or payable by reason of a guarantee given pursuant to the scheme)" after "under the scheme".

(b) By deleting everything after paragraph (b) and substituting -

"and in this definition "contributions" (供款) and "benefit entitlement" (利益享有權) include, in relation to a member who was a member of another occupational retirement scheme before joining the first-mentioned scheme, such contributions or benefit entitlement which stood to his credit under the second-mentioned scheme as were transferred in accordance with the terms of the first-mentioned scheme and stood thereunder to his credit upon his joining the first-mentioned scheme."

Clause 2(4)(c)

By deleting "scheme" and substituting "schemes".

Clause 2(4)(d)

By deleting "administered" and substituting "managed".

Clause 2(4)(d)(i)

By adding "registered" before "trust company".

Clause 2

By deleting subclause (6).

Clause 3(1)(b)

By deleting "enactment; or" and substituting "Ordinance;".

Clause 3(2)

By deleting "liable on summary conviction to a fine of \$100,000." and substituting -

"liable -

- (a) on summary conviction to a fine of \$100,000 and to an additional fine of \$5,000 for each day during which the offence continues;
- (b) on conviction upon indictment to -
 - (i) a fine of \$500,000;
 - (ii) an additional fine of \$10,000 for each day during which the offence continues; and
 - (iii) imprisonment for 2 years."

Clause 3(3)

By adding "which is not operated for the purpose of gain" after "a government".

Clause 7(1)

By adding "or exempted" after "registered".

Clause 8(2)

By deleting paragraph (c) and substituting —

"(c) accompanied by -

- (i) the prescribed fee;
- (ii) a copy of a power of attorney executed under section 61G(1) (if any); and
- (iii) such information or document as may be specified by the Registrar."

Clause 8(3)(a)

(a) By deleting "that" where it first appears and substituting "(where".

(b) By adding "an off-shore scheme) that the scheme is" before "registered".

Clause 8(3)(b)

By deleting "the less, are Hong Kong permanent residents" and substituting "less, are Hong Kong permanent identity card holders".

Clause 8(3)(c)

By deleting "the less, will be Hong Kong permanent residents" and substituting "less, will be Hong Kong permanent identity card holders".

Clause 8

By deleting subclause (4) and substituting —

"(4) Where the Registrar receives an application under subsection (1), he may require the applicant to supply to him such information or document (including a legal opinion on a matter specified by the Registrar) as he shall specify which is reasonably required to enable him to determine the application."

Clause 9(1)

By deleting "Financial Secretary" and substituting "Appeal Board".

Clause 9

By deleting subclauses (2) and (3).

Clause 11(1)

By deleting paragraph (a) and substituting —

"(a) he may be notice in writing require the relevant employer of the scheme to give to him any information or document relating to the scheme which is in the employer's possession or under his control within the period (being a period of not less than 14 days beginning on the date of the notice) specified in the notice;"

Clause 11(1)(b)(i)

- (a) By adding "(where the Registrar was satisfied in the manner described in section 8(3)(b) or (c) as regards the scheme when the exemption certificate was issued)" before "a statement".
- (b) By deleting "residents; and" and substituting "identity card holders; or".

Clause 11(1)(c)

By deleting "on the date of the certificate was a Hong Kong permanent resident" and substituting "is the holder of an identity card within the meaning of the Registration of Persons Ordinance (Cap. 177)".

Clause 11(1)(d)

By adding "name or" before "address".

Clause 11(2)

By deleting "cause" and substituting "excuse".

Clause 11(4)

By deleting "would" and substituting "could".

Clause 12(1)

- (a) By deleting "that" after "Registrar".
- (b) By deleting paragraphs (a) and (b) and substituting -
 - "(a) (where the Registrar is satisfied in the manner described in section 8(3)(a) as regards the scheme when the exemption certificate is issued) that -
 - (i) the scheme has ceased to be registered or approved as mentioned in section 8(3)(a) on whatever ground; or
 - (ii) the relevant authority has ceased to perform functions which are generally analogous to the functions conferred on the Registrar by this Ordinance;

(b) (where the Registrar is satisfied in the manner described in section 8(3)(b) or (c) as regards the scheme when the exemption certificate is issued) that more than 10% or 50 of the members of the scheme, whichever is less, are Hong Kong permanent identity card holders;"

(c) In paragraphs (c) and (d), by adding "that" before "the requirement".

Clause 12(2)(b)(i)

By deleting "a Hong Kong permanent resident on the date of the notice" and substituting "the holder of an identity card within the meaning of the Registration of Persons Ordinance (Cap. 177)".

Clause 12(2)(b)(ii)

By deleting "inform each such member of the receipt of the notice by posting an appropriate notice and make it" and substituting "display an appropriate notice of the Registrar's notice and make the latter".

Clause 12(3)

By adding "published or given by the Registrar" after "A notice".

Clause 12

By deleting subclause (4) and substituting —

"(4) The Registrar may on an application in writing in his absolute discretion -

- (a) withdraw a proposal issued under subsection (1); or
- (b) extend the period referred to in subsection (3)."

Clause 13(1)

(a) By deleting "that" after "is satisfied".

(b) By deleting paragraphs (a) and (b) and substituting -

"(a) (where the Registrar is satisfied in the manner described in section 8(3)(a) as regards the relevant occupational

retirement scheme when the exemption certificate is issued) that -

- (i) the scheme has ceased to be registered or approved as mentioned in section 8(3)(a) on whatever ground; or
 - (ii) the relevant authority has ceased to perform functions which are generally analogous to the functions conferred on the Registrar by this Ordinance;
- (b) (where the Registrar is satisfied in the manner described in section 8(3)(b) or (c) as regards the scheme when the exemption certificate is issued) that more than 10% or 50 of the members of the scheme, whichever is less, are Hong Kong permanent identity card holders;"
- (c) In paragraphs (c) and (d), by adding "that" before "the requirement".

Clause 13(2)(b)(i)

By deleting "a Hong Kong permanent resident on the date of the notice" and substituting "the holder of an identity card within the meaning of the Registration of Persons Ordinance (Cap. 177)".

Clause 13(2)(b)(ii)

By deleting "inform each such member of the receipt of the notice by posting an appropriate notice and make it" and substituting "display an appropriate notice of the Registrar's notice and make the latter".

Clause 13(3)

By adding "published or given by the Registrar" after "A notice".

Clause 13(3)(b)

By deleting "Financial Secretary" and substituting "Appeal Board".

Clause 13(3)(c)

By deleting "operation" and substituting "effect".

Clause 14(1)

By deleting "Financial Secretary" and substituting "Appeal Board".

Clause 14

By deleting subclause (2).

Clause 15 section heading

By deleting "**Operation**" and substituting "**Coming into effect**".

Clause 15(1)

By deleting "become operative" and substituting "come into effect".

Clause 15(2)

By deleting "operation of such withdrawal" and substituting "coming into effect of the withdrawal and, if so, shall give a notice in writing of the deferment of the withdrawal to the relevant employer of the scheme".

Clause 15(3)(a)

By deleting "operation" and substituting "coming into effect".

Clause 15(3)(b)

By deleting "operation" and substituting "coming into effect".

Clause 15(3)(b)(i)

By deleting "a Hong Kong permanent resident on the date of the notice" and substituting "the holder of an identity card within the meaning of the Registration of Persons Ordinance (Cap. 177)".

Clause 15(3)(b)(ii)

By deleting "inform each such member of the receipt of the notice by posting an appropriate notice and make it" and substituting "display an appropriate notice of the Registrar's notice and make the latter".

Clause 16(d)

By adding "and a copy of a power of attorney (if any) executed under section 61G(1)" after "fee".

Clause 16(f)

By deleting subparagraphs (i) to (iv) and substituting —

"(i) where the scheme -

- (A) is or proposes to become a participating scheme of a pooling agreement, by the administrator of the pooling agreement;
- (B) is not a participating scheme of a pooling agreement and is, or is proposed to be, governed by a trust, by each of the trustees or proposed trustees concerned;
- (C) is not a participating scheme of a pooling agreement and is, or is proposed to be, the subject of or regulated by an insurance arrangement, by the relevant insurer or proposed insurer,

who is (in the case of an individual) ordinarily resident in Hong Kong and is the holder of an identity card within the meaning of the Registration of Persons Ordinance (Cap. 177) or which has (in the case of a body corporate) a place of business in Hong Kong; or

- (ii) in any other case or where none of the administrator, trustees or insurer referred to in subparagraph (i)(A), (B) or (C) is a person who is ordinarily resident in Hong Kong and is the holder of an identity card within the meaning of the Registration of Persons Ordinance (Cap. 177) or body corporate having a place of business in Hong Kong, by such suitable person as the Registrar may direct,".

Clause 17(b)

- (a) By adding "to" after "section 16(e)".
- (b) By adding "reasonably" before "direct".

Clause 19(1)

By deleting paragraphs (b) and (c) and substituting —

"(b) that the requirement of section 27(2) (in the case of an existing scheme governed by a trust) has been complied with in relation to the scheme as though it was a registered scheme or (in the case of a proposed scheme which will be governed by a trust) will be complied with in relation to the scheme;"

Clause 19(1)(d)

- (a) By adding "subject to subsection (1A)," before "that the terms".
- (b) By deleting "paying" and substituting "being paid".
- (c) By deleting the comma and substituting "; and".

Clause 19(2)

By deleting paragraph (a) and substituting —

"(a) the scheme -

- (i) (in the case of an existing scheme) is not governed by a trust and is not the subject of or regulated by an insurance arrangement;
- (ii) (in the case of a proposed scheme) will not be governed by a trust and will not be the subject of or regulated by an insurance arrangement; or".

Clause 19(2)(b)

By deleting "implementation of the principle stated in" and substituting "compliance with the requirement of".

Clause 19(3)(a)

By adding "to the satisfaction of the Registrar "after "complied with".

Clause 19(3)

By deleting paragraphs (b) and (c) and substituting —

"(b) the Registrar -

- (i) is satisfied that the scheme's funding arrangements provide that the assets of the scheme are kept separate and distinct from and do not form part of the assets of the relevant employer of the scheme or the assets of the administrator of the scheme which are not vested in him in his capacity as such; or
 - (ii) is not satisfied in the manner described in subparagraph (i) but is satisfied that to keep the assets of the scheme separate and distinct from the assets of the relevant employer or the assets of the administrator of the scheme which are not vested in him in his capacity as such is not possible or reasonably practicable;
- (c) (in the case of a scheme referred to in subsection (2)(b)) the Registrar is satisfied that because of the proper law of the trust governing the scheme, compliance with the requirement of section 27(2) is not possible or reasonably practicable; and".

Clause 19(3)(d)

By deleting "principle stated in section 29(2) and the overall interests of the members of the scheme" and substituting "requirement of section 29(2) and the interests of the members of the scheme as a whole".

Clause 19

By deleting subclause (4).

Clause 20(1)

By deleting "Financial Secretary" and substituting "Appeal Board".

Clause 20

By deleting subclauses (2) and (3).

Clause 22(1)(a)

By adding ", except where the Registrar is satisfied as regards the scheme in the manner described in section 19(3)(b)(ii)," before "be kept".

Clause 22(1)(b)

By deleting everything after "encumbrance" and substituting —

"except -

- (i) the trust (if any) governing the scheme;
- (ii) any charge or pledge created for the purposes of securing loans necessary for meeting the liabilities of the scheme; and
- (iii) any option to acquire for valuable consideration any interest in the assets of the scheme granted in the normal course of business; and".

Clause 22(2)

By deleting "charge or pledge" and substituting "assignment, charge, pledge or other encumbrance".

Clause 23

By deleting the section heading and subclauses (1) and (2) and substituting —

"23. Certain changes to be notified

(1) The relevant employer of a registered scheme shall notify the Registrar of -

- (a) any change of his name or address which was previously supplied to the Registrar; or

- (b) any change of the administrator of the scheme, within 1 month of such change.

(2) The designated person of a registered scheme shall notify the Registrar of -

- (a) any change of his name or address or the name or address of the administrator of the scheme which was previously supplied to the Registrar; or
- (b) any change of the relevant employer of the scheme as the Registrar may specify in guidelines issued by him,

within 1 month of such change."

Clause 24(1)

By adding "in writing" after "consent".

Clause 24

By deleting subclause (4) and substituting —

"(4) Where a pooling agreement ceases to apply to a registered scheme, the administrator of the scheme shall within 14 days inform the Registrar in writing of such cessation."

Clause 25(1)

- (a) By deleting "The" and substituting "Subject to the provisions of this Ordinance, the".
- (b) By deleting "or 33" and substituting -

"and certifying in the manner described in paragraph 1 or 2 of Part 3 of Schedule 1 or an actuarial certificate supplied under section 33 and certifying in the manner described in Part 1 or 2 of Schedule 2".

Clause 25(3)(a)

By deleting everything after "later" and substituting —

"than -

- (i) the expiration of the period of 5 years after the commencement of section 1; or
- (ii) such shorter period as may be agreed on by the relevant employer and administrator of the scheme; or
- (iii) such longer period as the Registrar may allow in accordance with rules made for the purposes of this paragraph;".

Clause 26

By deleting the clause.

Clause 27

By deleting the section heading and substituting —

"27. Trusteeship requirement".

Clause 27(1)

In paragraph (b) of the definition of "employer trustee" by adding ", not being a registered trust company," after "an associate".

Clause 27(2)

- (a) By deleting ", it is a principle for the purposes of this Ordinance that".
- (b) By deleting "should" where it twice appears and substituting "shall".

Clause 27(3)

- (a) By deleting everything from "To implement" up to and including "trust instruments" and substituting "Where a registered scheme is a Hong Kong domiciled scheme and governed by a trust, the relevant trust instrument".
- (b) By adding "the instrument" after "as if".
- (c) By deleting "it" where it twice appears.

Clause 28

By deleting the section heading and substituting —

"28. Contravention of trusteeship requirement".

Clause 28(1)

By deleting "principle stated in section 27(2) is not implemented" and substituting "requirement of section 27(2) is not complied with".

Clause 28(1)(a)

By deleting "implementation of the principle" and substituting "compliance with the requirement".

Clause 28(2)(a)

By deleting "request" and substituting "requirement".

Clause 29

By deleting the section heading and substituting —

"29. Investment requirement".

Clause 29(1)

By deleting the definition of "restricted investment" and substituting —

"non-listed company" (非上市公司) means a company or body corporate wherever established which does not have any of its shares listed on -

- (a) the Unified Exchange established under section 27 of the Stock Exchanges Unification Ordinance (Cap. 361); or
- (b) any stock market recognized by the Securities and Futures Commission for the purposes of section 65A(2)(a)(ii) of the Securities Ordinance (Cap. 333);

"restricted investment" (受限制投資項目) means -

- (a) any security of, or issued by, the relevant employer of a registered scheme or an associate of such employer except security issued by an associate of such employer in the form of an option which if exercised will constitute investment in the share capital of a body corporate other than the relevant employer or an associate of such employer; or
- (b) any security in the form of an option which if exercised will constitute investment in the share capital of the relevant employer of a registered scheme or an associate of such employer."

Clause 29(2)

By deleting "For the purpose of this Ordinance it is a principle that" and substituting "Where an occupational retirement scheme is registered under this Ordinance".

Clause 29(2)(a)

- (a) By adding "subject to paragraph (b)," before "at any".
- (b) By deleting "a registered" and substituting "the".

Clause 29(2)

By deleting paragraph (b) and substituting —

"(b) no asset of the scheme shall consist of -

- (i) a loan to the relevant employer of the scheme or an associate of such employer; or
- (ii) any investment made on or after the commencement of this section in the share capital of a non-listed company except where such investment is made with the Registrar's permission given under subsection (3) which has not been withdrawn."

Clause 29

By deleting subclause (3) and substituting —

"(3) The Registrar may, upon an application in writing, give a permission referred to in subsection (2)(b)(ii).

(3A) A permission given under subsection (3) may be subject to such conditions (including compliance with such guide-lines or directions as may be issued by the Registrar from time to time) as the Registrar may think fit.

(3B) The Registrar may in his absolute discretion withdraw any permission given under subsection (3)."

Clause 29(4)

- (a) By deleting "principle stated in subsection (2) is being implemented" and substituting "requirement of subsection (2) is complied with".
- (b) By deleting "should" and substituting "shall".

Clause 29

By deleting subclause (5) and substituting —

"(5) Where the Registrar reasonably believes that the requirement of subsection (2) is for the time being not being complied with as regards a registered scheme, he may, having regard to the interests of the members of the scheme as a whole, by notice in writing to the administrator of the scheme require him to ensure compliance with the requirement as regards the scheme within such period as the Registrar reasonably considers necessary (being a period of not less than 1 month beginning on the date of the notice)."

Clause 29(6)

By deleting "relevant employer or".

Clause 29(7)(a)

By adding "or modify" after "withdraw".

Clause 29(7)(b)

By deleting "of 3 months".

Clause 31(1)

By deleting everything after "shall" and substituting —

"within 14 days of the commencement of the winding up or termination process give a notice in writing of that fact to the Registrar and each member of the scheme."

Clause 31(2)

By deleting "cause" and substituting "excuse".

Clause 33

By deleting the clause and substituting —

"33. Periodic certification of registered defined benefit scheme

(1) The designated person of a registered scheme which is a defined benefit scheme shall, as regards each successive period of 3 years or such shorter period as the Registrar may specify in rules made by him, from the date of the actuarial review giving rise to the most recent actuarial certificate supplied as regards the scheme to the Registrar in accordance with this Ordinance, within 6 months after the expiration of the period or such later time as the Registrar may in his absolute discretion allow, supply to the Registrar a certificate issued by an actuary which shall either be a full certificate or a qualified certificate.

(2) The full certificate or qualified certificate referred to in subsection (1) shall be prepared in accordance with Schedule 2 and shall contain such other information as the Registrar may specify in rules made under section 65(1)(fa).

(3) Where at the time when the application for the registration of an occupational retirement scheme is made, or at any time thereafter, a qualified certificate is supplied to the Registrar as regards a scheme, the following provisions shall apply -

- (a) subject to paragraph (b), subsection (1) shall operate as regards the scheme as though the reference therein to each successive period of 3 years was substituted by a reference to each period of 1 year;
- (b) the Registrar may by notice in writing require the administrator of the scheme to supply to him within the period specified in the notice (being a period of not less than 1 month beginning on the date of the notice) a report by an actuary on such matters as the Registrar may specify in the notice.

(4) Where the Registrar receives a qualified certificate as regards a registered scheme and he subsequently receives a full certificate as regards that scheme, subsection (3) shall cease to apply as regards the scheme.

(5) The relevant employer of a registered scheme shall, as soon as reasonably practicable after a written request is made of him by the actuary preparing a certificate under this section as regards the scheme -

- (a) allow the actuary and such other person as may be authorized by that actuary to have access to such books and records of the employer; and
- (b) give to the actuary such information and explanations,

as he may reasonably require for the purposes of discharging his duty in relation to the scheme.

(6) An employer who fails to comply with subsection (5) commits an offence and shall be liable on summary conviction to a fine of \$10,000."

Clause 34(5)

By adding "without reasonable excuse" after "who".

Clause 35(1)(a)

By deleting "principle stated in section 29(2) was being implemented as regards that scheme and, if it was not being implemented" and substituting "requirement

of section 29(2) was complied with as regards the scheme and, if it was not complied with".

Clause 35(1)(c)

By deleting everything after "which" and substituting "is of a class or description specified in the notice and relates to the scheme or the pooling agreement (if any) which applies to the scheme."

Clause 36

By deleting subclause (3) and substituting —

"(3) The consultative committee constituted in respect of a registered scheme shall as soon as reasonably practicable after its constitution give a notice in writing of its constitution to the administrator and relevant employer of the scheme."

Clause 37

By deleting the clause.

Clause 38(1)

By adding "as soon as reasonably practicable" after "shall".

Clause 38(2)(b)(ii)

By deleting "principle stated in section 29(2) was being implemented as regards the scheme and, if it was not being implemented" and substituting "requirement of section 29(2) was complied with as regards the scheme and, if it was not complied with".

Clause 38(5)

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

(b) By deleting "provide each member of the scheme with" and substituting "give to each member of the scheme".

Clause 38(7)

- (a) By adding "as soon as reasonably practicable" before "by notice".
- (b) By deleting "either".
- (c) By deleting everything after "member of the scheme" and substituting a full stop.

Clause 38(8)

By adding "as soon as reasonably practicable" after "furnish".

Clause 38(11)

By deleting "cause" and substituting "excuse".

Clause 39(13)

By deleting "cause" and substituting "excuse".

Clause 40

By deleting the clause.

Clause 41(2)

By deleting "4" and substituting "3".

New

By adding —

"41A. New trustee to give undertaking

Where any person -

(a) who -

- (i) (in the case of an individual) is ordinarily resident in Hong Kong and is the holder of an identity card within the meaning of the

Registration of Persons Ordinance (Cap. 177); or

(ii) (in the case of a body corporate) has a place of business in Hong Kong; and

(b) who has not given an undertaking which is in force for the time being as regards a registered scheme governed by a trust,

is appointed as a trustee of the trust, he shall within 28 days after such appointment send to the Registrar an undertaking stating that he undertakes to perform in relation to the scheme the functions imposed or conferred on a designated person by this Ordinance."

Clause 42(1)(a)

By deleting "scheme has died; or" and substituting —

"scheme -

- (i) has died;
- (ii) is incapacitated;
- (iii) cannot be contacted; or
- (iv) refuses or neglects to act as such designated person;".

Clause 42(1)

By adding —

"(aa)in case there is more than one such designated person, each of them -

- (i) has died;
- (ii) is incapacitated;
- (iii) cannot be contacted; or
- (iv) refuses or neglects to act as such designated person; or".

Clause 42(1)(b)

By adding "or refuses or neglects to act as such designated person" after "exist".

Clause 42(1)

By deleting everything after paragraph (b) and substituting —

"he may, by notice in writing given to the relevant employer or administrator of the scheme or such other person as he considers appropriate, require necessary steps to be taken within such period as is specified in the notice (being a period of not less than 1 month beginning on the date of the notice) to have the designated person replaced."

Clause 42(2)(a)

(a) By deleting "4" and substituting "3".

(b) By adding "or is incapacitated or cannot be contacted" after "died".

Clause 42(2)(b)

By adding "or is incapacitated or cannot be contacted" after "died".

Clause 42

By deleting subclause (3) and substituting —

"(3) Where the Registrar gives a notice to a person under subsection (1) as regards a registered scheme, the person shall within the period specified in the notice lodge with the Registrar an undertaking described in section 16(f) and relating to the scheme given by such person as the Registrar may consider suitable."

Clause 42(4)(a)

By deleting "4" and substituting "3".

Clause 42(5)

By deleting everything before paragraph (b) and substituting —

"(5) Where the Registrar -

- (a) receives an undertaking relating to a registered scheme under subsection (3), the person who gives the undertaking shall thenceforth become the designated person of the scheme;"

Clause 42(5)(b)

By adding "allows" before "an application".

Clause 43

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

"(1) The Registrar may on an application in writing by a person who has given an undertaking referred to in section 16(f), 41A or 42(3) release such person from the undertaking.

(2) Where a person makes an application under subsection (1) in respect of a registered scheme and -

- (a) he is for the time being the only designated person of the scheme;
or
- (b) (where the scheme is governed by a trust and the applicant has ceased or will cease acting as a trustee of the trust) the terms of the relevant trust instrument require appointment of a trustee to replace the applicant,

the Registrar shall not allow the application unless -

- (i) the application is accompanied by a new undertaking described in section 16(f) and relating to the scheme; and
- (ii) the Registrar is satisfied that the person giving the new undertaking is a suitable person to give it."

Clause 44(1)

By deleting "4" and substituting "3".

Clause 44(2)

By deleting everything before paragraph (a) and substituting —

"(2) Where a person makes an application under subsection (1) in respect of a registered scheme and he is for the time being the only person who made the submission in respect of the scheme, the Registrar shall not allow the application unless -".

Clause 44(2)(a)

By deleting "4" and substituting "3".

Clause 44(2)(b)

By deleting "an appropriate" and substituting "a suitable".

Clause 45

(a) By deleting paragraph (a).

(b) By adding -

"(ca) any requirement of section 25 is not complied with;".

(c) By adding -

"(1a) a notice has been given under section 42(1) and no undertaking was given to the Registrar in accordance with section 42(3);".

Clause 45(m)

By deleting "42(1) or (2)" and substituting "42(2)".

Clause 45(n)

By deleting "majority of the members of the scheme" and substituting "members of the scheme as a whole".

Clause 46(1)(b)(ii)

By deleting "inform each such member of the receipt of the notice by posting an appropriate notice and make it" and substituting "display an appropriate notice of the Registrar's notice and make the latter".

Clause 46(2)

By deleting "given" and substituting "published or given by the Registrar".

Clause 46

By deleting subclause (3) and substituting —

"(3) The Registrar may on an application in writing in his absolute discretion -

- (a) withdraw any proposal issued under section 45; or
- (b) extend the period referred to in subsection (2).

(3A) Where the court has made an order as regards a registered scheme under section 46A(1) and the Registrar withdraws a proposal as regards the scheme under subsection (3), he shall make an application under section 46A(3)(a) for the withdrawal of the order."

New

By adding —

"46A. Court may order freezing of assets

(1) Where the Registrar issues a proposal to cancel the registration of a registered scheme under section 45, the court may on an application by the Registrar order that -

- (a) the assets of the scheme shall not be assigned, transferred or otherwise disposed of;
- (b) no payment out of the assets of the scheme shall be made, whether to a member or otherwise,

except in accordance with the court order.

(2) Any -

- (a) asset assigned, transferred or disposed of; or
- (b) payment made out of the assets of the relevant registered scheme,

in contravention of an order made under subsection (1) shall be recoverable by such person and, after being so recovered, disposed of in such manner as the court may specify in the order.

(3) An order made under subsection (1) as regards a registered scheme shall cease to have effect -

- (a) if it is withdrawn by the court upon an application by the Registrar;
- (b) (where an appeal is made under section 48 against the cancellation of the registration of the scheme) if the Appeal Board directs the Registrar to restore the registration of the scheme under section 61B(4)(d); or
- (c) upon the making of a winding up order (if any) under section 50(2) as regards the scheme."

Clause 47(1)(b)

By adding "or objections" after "representations".

Clause 47(1)(d)

(a) By adding "or objections" before "(if any)".

(b) By deleting subparagraph (i).

(c) By adding -

"(iia) any requirement of section 25 has not been complied with;"

(d) By adding -

"(xiiia) a notice has been given under section 42(1) and no undertaking was given to the Registrar in accordance with section 42(3);"

Clause 47(1)(d)(xiii)

By deleting "42(1) or (2)" and substituting "42(2)".

Clause 47(1)(d)(xiv)

By deleting "majority of the members of the scheme" and substituting "members of the scheme as a whole".

Clause 47(2)(b)(ii)

By deleting "inform each such member of the receipt of the notice by posting an appropriate notice and make it" and substituting "display an appropriate notice of the Registrar's notice and make the latter".

Clause 47(3)

By adding "published or given by the Registrar" after "A notice".

Clause 47(3)(b)

By deleting "Financial Secretary" and substituting "Appeal Board".

Clause 47(3)(c)

By deleting "operation" and substituting "effect".

Clause 48(1)

By deleting "Financial Secretary" and substituting "Appeal Board".

Clause 48

By deleting subclauses (2) and (3).

Clause 49, section heading

By deleting "**Operation**" and substituting "**Coming into effect**".

Clause 49(1)

By deleting "become operative" and substituting "come into effect".

Clause 49(2)

By deleting "operation of the cancellation" and substituting "coming into effect of the cancellation and if so, shall give a notice in writing of deferment to the designated person and relevant employer of the scheme".

Clause 49(3)

By deleting "operation" where it twice appears and substituting "coming into effect".

Clause 49(3)(b)(ii)

By deleting "inform each such member of the receipt of the notice by posting an appropriate notice and make it" and substituting "display an appropriate notice of the Registrar's notice and make the latter".

Clause 49(4)

By adding "of" after "fine".

Clause 50(2)

By adding "it" after "considers".

Clause 52

By deleting the clause.

Clause 54

By deleting "by way of percentage or otherwise".

Clause 55(b)

By adding "(notwithstanding any term of the scheme)" before "to bring".

Clause 55

By adding —

"(ba) to make any compromise or arrangement with respect to any debt, claim or liability relating to the assets of the scheme;"

Clause 57(1)

By deleting "47(2)" and substituting "46(1)(a)".

New

By adding —

"58A. The court's power after winding up

(1) Where the court makes an order as regards an occupational retirement scheme under section 50(2), the liquidator appointed as regards the scheme may make an application to the court on behalf of any beneficiary of the scheme.

(2) In an application made under subsection (1) as regards an occupational retirement scheme, the liquidator may name the relevant employer or administrator of the scheme or any person who is concerned with the operation and management of the scheme to be the respondent in the application.

(3) On an application made under subsection (1) on behalf of a beneficiary of an occupational retirement scheme, the court may -

- (a) determine a sum which in its opinion equals the shortfall (if any) between the beneficiary's vested benefits under the scheme as at the date of the commencement of the winding up of the scheme and the amount received by him under section 58(2); and
- (b) if it is satisfied that the shortfall referred to in paragraph (a) is caused by any act or omission of any respondent in the application, give judgment against the respondent for an amount equal to the sum determined under paragraph (a)."

Clause 61(a)

- (a) By deleting "cause" and substituting "excuse".
- (b) By adding "or" at the end.

Clause 61

By deleting paragraphs (b) and (c).

New

By adding —

**"PART VIIA
APPEALS**

61A. Appeal Board

(1) Every appeal made under sections 9, 14, 20 and 48 shall be determined by the Appeal Board to be known as the Occupational Retirement Schemes Appeal Board.

(2) The Governor shall appoint a person to be the Chairman of the Appeal Board and such number of persons as he thinks fit to be the Deputy Chairmen of the Appeal Board.

(3) Subject to subsection (7), the Chairman or any Deputy Chairman shall be appointed for a term of not more than 2 years but may be reappointed.

(4) A person appointed under subsection (2) shall be a solicitor or barrister admitted under the Legal Practitioners Ordinance (Cap. 159).

(5) The Governor shall appoint a panel of persons not being public officers whom he considers suitable for appointment under section 61B as members of the Appeal Board.

(6) An appointment under subsection (2) or (5) shall be notified in the Gazette.

(7) The Chairman and any Deputy Chairman or person appointed under subsection (5) may at any time resign by notice in writing to the Governor.

(8) The Chairman and any Deputy Chairman or person appointed under subsection (5) shall be remunerated out of money provided by the Legislative Council for that purpose at a rate that the Financial Secretary may determine.

61B. Constitution and powers of Appeal Board

(1) The Appeal Board shall consist of the Chairman or a Deputy Chairman who shall preside at the hearing and such number of persons, not being fewer than 2, from the panel referred to in section 61A(5) as the Chairman may appoint to be members of the Appeal Board to hear any appeal.

(2) In relation to the hearing of appeals every question before the Appeal Board shall be determined by the opinion of the majority of the members hearing the appeal except a question of law which shall be determined by the Chairman or (where appropriate) the Deputy Chairman; in the case of an equality of votes the Chairman or Deputy Chairman shall have a casting vote.

(3) In hearing an appeal the Appeal Board may -

- (a) receive and consider any material, whether by way of oral evidence, written statements, documents or otherwise, and whether or not it would be admissible in a court of law;
- (b) by notice in writing signed by the Chairman, summon any person -
 - (i) to produce to it any document that is relevant to the appeal and is in his custody or under his control; or
 - (ii) to appear before it and to give evidence relevant to the appeal;
- (c) administer oaths and affirmations;
- (d) require evidence to be given on oath or affirmation;
- (e) make an award of such sum, if any, in respect of the costs involved in the appeal as is just and equitable in all the circumstances of the case.

(4) After hearing an appeal made in respect of an occupational retirement scheme -

- (a) under section 9, the Appeal Board may determine the appeal by confirming the Registrar's decision or directing the Registrar to issue an exemption certificate in respect of the scheme;
- (b) under section 14, the Appeal Board may determine the appeal by confirming the Registrar's decision or directing the Registrar to restore the relevant exemption certificate;
- (c) under section 20, the Appeal Board may determine the appeal by confirming the Registrar's decision or directing the Registrar to register the scheme;
- (d) under section 48, the Appeal Board may determine the appeal by confirming the Registrar's decision or directing the Registrar to restore the registration of the scheme.

61C. Appeal Board's decision is final

Subject to section 61E, the determination of an appeal by the Appeal Board or any order as to costs made by the Appeal Board shall be final.

61D. Supplementary provisions relating to appeals

(1) The procedure and practice of the Appeal Board shall, subject to this Ordinance, be determined by the Chairman.

(2) If the Chairman is precluded by illness, absence from Hong Kong or any other cause from exercising his functions, the Governor may appoint a Deputy Chairman to act as Chairman and as such to exercise all the functions of the Chairman during the period of his appointment.

(3) If a person appointed by the Chairman under section 61B(1) to hear an appeal is precluded by illness, absence from Hong Kong or any other cause from exercising his functions, the Chairman may appoint any other person from the panel referred to in section 61A(5) to act in his place.

(4) In the hearing of an appeal, the appellant and the Registrar shall be entitled to be heard either in person or through a solicitor or barrister and if the appellant is a body corporate, through any of its directors or employees or if a partnership, through any of the partners or, with the leave of the Appeal Board, through any other person.

(5) In relation to any appeal to the Appeal Board, the members of the Appeal Board, the appellant, and any witness, representative or other person appearing before the Appeal Board shall have the same privileges and immunities as they would have if the proceedings were civil proceedings before a court.

(6) Any sum awarded to the Registrar under section 61B(3)(e) shall be a debt due to the Crown and recoverable in the District Court and any sum payable by the Registrar under such an award shall be charged on the general revenue.

61E. Case may be stated for Court of Appeal

(1) The Appeal Board may refer any question of law arising in an appeal to the Court of Appeal for determination by way of case stated.

(2) On the hearing of the case, the Court of Appeal may amend the case or order it to be sent back to the Appeal Board for amendment.

(3) Where a case is stated under subsection (1), the Appeal Board shall not determine the relevant appeal before the Court of Appeal determines the relevant point of law.

61F. Offences relating to appeal

Any person who without reasonable excuse refuses or fails -

- (a) to attend and give evidence when required to do so by the Appeal Board;
- (b) to answer truthfully and completely questions put to him by the Appeal Board;
- (c) to produce any document which he is required by the Appeal Board to produce,

commits an offence and shall be liable on summary conviction to a fine of \$20,000 and to imprisonment for 6 months."

New

By adding before clause 62 —

"61G. Special provisions for schemes covering groups of companies

(1) Where an occupational retirement scheme covers 2 or more relevant employers each of which is -

- (a) the holding company; or
- (b) a subsidiary; or
- (c) another subsidiary of the holding company; or
- (d) a shareholder who is, whether directly or indirectly, entitled to exercise or control the exercise of 20% or more of the voting power at any general meeting,

of the other, each of the employers may jointly or severally by a power of attorney nominate one of the employers or any person who is the holding company of every such employer to be the representative employer for the purposes of the scheme.

(2) Where an occupational retirement scheme covers 2 or more relevant employers and all of them (except the nominated representative employer) nominate the same representative employer under subsection (1), the following provisions shall apply -

- (a) an application made as regards the scheme under section 8, 16, 24(3) or 50(1) by the representative employer shall be deemed to be an application made by each of the employers covered by the scheme;
- (b) payment of a fee payable as regards the scheme under section 10(1) or 30(1) by the representative employer shall discharge the duty of all other employers covered by the scheme to pay such fee;

- (c) an appeal made as regards the scheme under section 9, 14, 20 or 48 by the representative employer shall be deemed to be an appeal made by each of the employers covered by the scheme;
- (d) a duty under this Ordinance to give or supply notices, statements, particulars or information to a member of the scheme shall be discharged by the employer who employs the member;
- (e) a notice given as regards the scheme by the Registrar under section 12(2)(b), 13(2)(b), 15(3)(b), 34(4)(a), 39(4), 46(1)(b), 47(2)(b) or 49(3)(b) to the representative employer shall, unless otherwise stated in the notice, be deemed to have been given to every employer covered by the scheme;
- (f) the duty of a consultative committee formed by the members of the scheme to give notice or advice to the relevant employer of the scheme under section 36 shall be discharged by giving the notice or advice to the representative employer;
- (g) the duty under section 11(1)(e) shall be discharged as regards the scheme by the representative employer;
- (h) a notice required to be given as regards the scheme to the Registrar under section 31 shall be given by the representative employer;
- (i) an exemption certificate or registration certificate issued under section 8(1) or 19(5) as regards the scheme shall be issued to the representative employer."

Clause 62(2)

By deleting everything after "prepared" where it secondly appears and substituting -

"by -

- (a) a Hong Kong accountant; or

- (b) a person -
 - (i) who may lawfully practise as a professional accountant in the country or jurisdiction which is the domicile of the scheme; and
 - (ii) without prejudice to subparagraph (i), who holds such qualification as the Registrar may accept as being of a standard comparable to that of a Hong Kong accountant."

Clause 62

By deleting subclause (3) and substituting —

"(3) Any thing required to be done under this Ordinance or any statement, report or other document required to be made or prepared under this Ordinance by an auditor in respect of an occupational retirement scheme shall be done, made or prepared by an auditor who is not -

- (a) a partner, director or employee of the administrator of the scheme;
- (b) the relevant employer of the scheme;
- (c) an associate or employee of the employer; or
- (d) a person having a contract of service with an employee referred to in paragraph (a) or (c).

(4) Where a statement, report or other document which purports to be made or prepared by an auditor in respect of an occupational retirement scheme is received by the Registrar, the Registrar may require -

- (a) the person by whom the statement, report or other document purports to have been made or prepared;
- (b) the administrator of the scheme; or
- (c) the relevant employer of the scheme,

to supply to the Registrar a statement in writing, in a form specified by the Registrar, that the person is not a person referred to in subsection (3) (a), (b), (c) or (d)."

Clause 63(2)(a)

By adding "or" at the end.

Clause 63(2)

By deleting paragraph (b).

Clause 63(2)(c)

By adding "reasonably" before "considers".

Clause 64

(a) By deleting "in Council" in the section heading.

(b) By deleting "in Council".

New

By adding —

"64A. Legislative Council may substitute percentage and number

The Legislative Council may by resolution substitute the percentage or number of persons in section 8(3)(b), 8(3)(c), 12(1)(b), 13(1)(b), 29(2) or 34(1)(a)(iii)."

Clause 65(1)

By deleting paragraphs (e), (f) and (g) and substituting —

"(da) for the purposes of section 25(3) (a)(iii);

(e) for the purposes of the requirement of section 27(2);

(ea) providing for passing of resolutions referred to in section 21(5)(c) or 38(3)(b);

(f) providing for the preparation of actuarial certificates to be supplied under this Ordinance;

- (fa) for the purposes of section 33;
- (fb) providing for the formation, constitution, proceedings and dissolution of consultative committees;
- (fc) providing for other matters incidental or related to consultative committees;
- (g) requiring any designated person to give to him notice of any proposed amendment to the relevant registered scheme, being a proposed amendment which is of a class or description so specified;"

Clause 65(1)

By adding —

- "(ha) in relation to the calculation of unpaid contribution for the purpose of section 38(1)(cf) of the Bankruptcy Ordinance (Cap. 6) and section 265(1)(cf) of the Companies Ordinance (Cap. 32);"

Clause 67(2)

By deleting "foot" and substituting "the basis".

Clause 67(5)

By deleting "consular officer" and substituting "person, including the head of a consulate-general, consulate, vice-consulate or consular agency, entrusted in the capacity of a consular officer with the exercise of consular functions".

Clause 68(1)

By adding "appointed under section 39(2) or public officer" after "any person".

Clause 70(1)

By deleting ", 71 and 72" and substituting "and 71".

Clause 70(2)

By deleting "principle" where it twice appears and substituting "rule".

Clause 71(1)

(a) By deleting paragraph (b) and substituting -

"(b) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings or any investigation in Hong Kong;"

(b) By deleting paragraph (d) and substituting -

"(d) subject to subsection (1A), to the Governor, the Financial Secretary, the Secretary for Monetary Affairs or the Commissioner of Inland Revenue;

(da) relating to an off-shore scheme domiciled in a country or territory outside Hong Kong to a supervisory authority which in the Registrar's opinion -

(i) performs in that country or territory functions which are generally analogous to the functions conferred on the Registrar by this Ordinance; and

(ii) is subject to adequate secrecy provisions in that country or territory,

if the Registrar reasonably considers that such disclosure is in the interests of the members of the scheme as a whole;"

Clause 71

By adding —

"(1A) The Registrar shall not disclose any information to the Commissioner of Inland Revenue under subsection (1)(d) unless the Registrar is satisfied that the information is required by the Commissioner for the purpose of assisting him to determine a question or matter which under the Inland Revenue Ordinance (Cap. 112) is for the Commissioner to determine.".

Clause 72

By deleting the clause.

Clause 73(1)

By deleting everything after "an offence" and substituting a full stop.

Clause 73

By deleting subclause (2) and substituting —

"(2) Any person who conceals, destroys, mutilates or falsifies any document or record affecting or relating to the assets or affairs of any occupational retirement scheme with the intention of -

- (a) concealing any offence under this Ordinance; or
- (b) obstructing any public officer, person appointed under section 39(2) or liquidator appointed under section 53(1) in the performance of his functions under this Ordinance,

commits an offence.

(3) Any person who commits an offence under subsection (1) or (2) shall be liable -

- (a) on conviction upon indictment, to a fine of \$500,000 and to imprisonment for 5 years; and
- (b) on summary conviction, to a fine of \$100,000 and to imprisonment for 6 months."

Clause 74(1)

By adding "as the person may elect" at the end.

Clause 75(1)

By deleting "left at or sent by prepaid registered" wherever it appears and substituting "sent by".

Clause 76(2)

By adding "under this Ordinance" after "an offence".

Schedule 1, Part 1, paragraph 1

By deleting subparagraph (a) and substituting -

"(a) either -

- (i) that the occupational retirement scheme to which the application relates is governed by a trust; or
- (ii) that such scheme is the subject of or regulated by an insurance arrangement; or
- (iii) that such scheme is neither governed by a trust nor the subject of or regulated by an insurance arrangement;"

Schedule 1, Part 1

By deleting paragraph 2 and substituting —

"2. (Where the occupational retirement scheme to which the application relates is an existing scheme) a statement by an auditor stating, in relation to the latest financial year of the scheme (which financial year shall end on a date not more than 9 months before the date of the application for registration of the scheme) -

- (a) whether or not proper accounts and records have been kept as regards all assets, liabilities and financial transactions of the scheme;
- (b) whether or not as at the end of the financial year the assets of the scheme were subject to any assignment, charge, pledge or other encumbrance except -
 - (i) the trust (if any) governing the scheme;
 - (ii) any charge or pledge created for the purposes of securing loans necessary for meeting the liabilities of the scheme; and
 - (iii) any option to acquire for valuable consideration any interest in the assets of the scheme granted in the normal course of business; and
- (c) (i) (where the scheme is a defined contribution scheme) -

- (A) whether or not contributions have been made in accordance with the terms of the scheme; or
 - (B) the shortfall (if any) between the scheme's assets and the scheme's aggregate vested liability as at the last day of the financial year; or
- (ii) (where the scheme is a defined benefit scheme) -
- (A) whether an actuarial review has been conducted as regards the scheme as at a date within the last 3 years; and
 - (B) (where such review has been conducted) whether or not contributions have been made in accordance with the actuarial recommendations (if any) made by the actuary as regards the contributions to be made during the financial year, following the last actuarial review conducted as regards the scheme."

Schedule 1, Part 2, paragraph 1

In subparagraph (a) by adding "and" at the end.

Schedule 1, Part 2, paragraph 1

By deleting subparagraph (b).

Schedule 1, Part 2, paragraph 1(c)

(a) By deleting "principle stated in" and substituting "requirement of".

(b) By deleting "implemented" where it twice appears and substituting "complied with".

Schedule 1, Part 2, paragraph 2

By deleting subparagraph (a) and substituting —

"(a) either -

- (i) that the occupational retirement scheme to which the application relates is governed by a trust; or

- (ii) that such scheme is the subject of or regulated by an insurance arrangement;".

Schedule 1, Part 3

By deleting paragraphs 2 and 3 and substituting —

"1. Where the scheme to which the application relates is a proposed defined benefit scheme

A certificate issued by an actuary within the 2 months prior to the date of the receipt of the application which shall either be -

- (a) a full certificate certifying that -
- (i) he has given an initial actuarial valuation as regards the proposed scheme;
 - (ii) he has made recommendations to the relevant employer of the scheme on the financial implications of the scheme (specifying in particular what would, in his opinion, be the level of contributions required to cover liabilities, including contingent and prospective liabilities, under the scheme when implemented);
 - (iii) following the valuation he has received from that employer a copy of that employer's written undertaking to the proposed administrator of the scheme to contribute to the scheme's funds in accordance with the recommendations; and
 - (iv) provided the scheme is funded in accordance with his recommendations, he would expect that -
 - (A) the scheme's assets would be sufficient to meet the scheme's aggregate vested liability on the establishment of the

scheme and remain sufficient to meet such liability throughout the period of 3 years from the date of the certificate; and

- (B) on the expiration of a period, where necessary, specified in the certificate, the scheme's assets would be sufficient to meet the scheme's aggregate past service liability; or
- (b) (in the case of a proposed scheme the proposed date of establishment of which is earlier than the 5th anniversary of the commencement of section 1) a qualified certificate certifying that -
- (i) he has given an initial actuarial valuation as regards the proposed scheme;
 - (ii) he has made recommendations to the relevant employer of the scheme on the financial implications of the scheme (specifying in particular what would, in his opinion, be the level of contributions required to cover liabilities, including contingent and prospective liabilities, under the scheme when implemented);
 - (iii) following the valuation he has received from that employer a copy of that employer's written undertaking to the proposed administrator of the scheme to contribute to the scheme's funds in accordance with the recommendations; and
 - (iv) he does not expect that on the establishment of the scheme the scheme's assets would be sufficient to meet its aggregate vested liability but, providing that the scheme is funded in accordance with his recommendations, -

- (A) he would expect that, on the date on which a period specified in the certificate would expire (which period shall be specified to expire on or before the 5th anniversary of the commencement of section 1), the scheme's assets would be sufficient to meet the scheme's aggregate vested liability;
- (B) what he would expect to be the amount, if any, of the shortfall between the scheme's assets and the scheme's aggregate vested liability as at the date of the actuarial review covered by the first actuarial certificate to be supplied under section 33(1); and
- (C) on the expiration of a period, where necessary, specified in the certificate, the scheme's assets would be sufficient to meet the scheme's aggregate past service liability.

2. Where the scheme to which the application relates is an existing defined benefit scheme

A certificate issued by an actuary relating to the last actuarial review conducted as regards the scheme as at a date which shall not be more than 9 months before the date of the application for registration of the scheme, which certificate shall either be -

- (a) a full certificate certifying that -
 - (i) an actuarial review has been conducted as regards the scheme as of the date specified in the certificate;
 - (ii) in the course of the review he has had regard to the financial condition of the scheme;

- (iii) the review included a valuation of the scheme's liabilities (including contingent and prospective liabilities);
 - (iv) as at the date of the review the scheme's assets were sufficient to meet the scheme's aggregate vested liability;
 - (v) following the review he has made recommendations as regards funding of the scheme;
 - (vi) following the review he has received a copy of a written undertaking by the relevant employer of the scheme to the administrator of the scheme to contribute to the scheme's funds in accordance with those recommendations; and
 - (vii) provided the scheme is funded in accordance with those recommendations, he would expect that -
 - (A) the scheme's assets would continue to be sufficient to meet the scheme's aggregate vested liability throughout the period of 3 years from the date of the review; and
 - (B) on the expiration of a period, where necessary, specified in the certificate, the scheme's assets would be sufficient to meet the scheme's aggregate past service liability; or
- (b) a qualified certificate certifying -
- (i) that an actuarial review has been conducted as regards the scheme as of the date specified in the certificate;

-
- (ii) that in the course of the review he has had regard to the financial condition of the scheme;
 - (iii) that the review included a valuation of the scheme's liabilities (including contingent and prospective liabilities);
 - (iv) that -
 - (A) as at the date of the review the scheme's assets were not sufficient to meet the scheme's aggregate vested liability, and stating the amount of the shortfall as at such date; or
 - (B) although as at the date of the review the scheme's assets were sufficient to meet the scheme's aggregate vested liability, he would not expect that the scheme's assets would continue to be sufficient to meet the scheme's aggregate vested liability throughout the period of 3 years from the date of the review;
 - (v) that following the review he has made recommendations as regards funding of the scheme;
 - (vi) that following the review he has received a copy of a written undertaking by the relevant employer of the scheme to the administrator of the scheme to contribute to the scheme's funds in accordance with those recommendations; and
 - (vii) provided the scheme is funded in accordance with those recommendations, -

- (A) what he would expect to be the amount of the shortfall between the scheme's assets and the scheme's aggregate vested liability as at the expiry of 12 months from the date of the review;
- (B) that he would expect that, on the date on which a period specified in the certificate would expire (which period shall be specified to expire on a day which is earlier than the 5th anniversary of the commencement of section 1), the scheme's assets would be sufficient to meet the scheme's aggregate vested liability; and
- (C) that on the expiration of a period, where necessary, specified in the certificate, the scheme's assets would be sufficient to meet the scheme's aggregate past service liability."

Schedule 2

By deleting the Schedule and substituting —

"SCHEDULE 2 [ss. 2 & 33]
ACTUARIAL CERTIFICATES

PART 1
FULL CERTIFICATE

A full certificate issued by the actuary shall certify that -

- (1) An actuarial review has been conducted as regards the scheme as of the date specified in the certificate.
- (2) In the course of the review he has had regard to the financial condition of the scheme.

- (3) The review included a valuation of the scheme's liabilities (including contingent and prospective liabilities).
- (4) As at the date of the review the scheme's assets were sufficient to meet the scheme's aggregate vested liability.
- (5) Following the review he has made recommendations as regards funding of the scheme.
- (6) Following the review he has received a copy of a written undertaking by the relevant employer of the scheme to the administrator of the scheme to contribute to the scheme's funds in accordance with those recommendations.
- (7) Provided the scheme is funded in accordance with those recommendations, he would expect that -
 - (a) the scheme's assets would continue to be sufficient to meet the scheme's aggregate vested liability throughout the period of 3 years from the date of the review; and
 - (b) on the expiration of a period, where necessary, specified in the certificate, the scheme's assets would be sufficient to meet the scheme's aggregate past service liability.

PART 2 QUALIFIED CERTIFICATE

A qualified certificate issued by the actuary shall certify -

- (1) That an actuarial review has been conducted as regards the scheme as of the date specified in the certificate.
- (2) That in the course of the review he has had regard to the financial condition of the scheme.
- (3) That the review included a valuation of the scheme's liabilities (including contingent and prospective liabilities).
- (4) That -
 - (a) as at the date of the review the scheme's assets were not sufficient to meet the scheme's aggregate vested liability and stating the amount of the shortfall as at such date ("the current shortfall" (當日不足之數)); or

- (b) although as at the date of the review the scheme's assets were sufficient to meet the scheme's aggregate vested liability, he would not expect that the scheme's assets would continue to be sufficient to meet the scheme's aggregate vested liability throughout the period of 3 years from the date of the review.
- (5) That following the review he has made recommendations as regards funding of the scheme.
- (6) That following the review he has received a copy of a written undertaking by the relevant employer of the scheme to the administrator of the scheme to contribute to the scheme's funds in accordance with those recommendations.
- (7) Provided the scheme is funded in accordance with those recommendations -
- (a) what he would expect to be the amount of the shortfall between the scheme's assets and the scheme's aggregate vested liability as at the expiry of 12 months from the date of the review ("the expected shortfall" (預計不足之數));
- (b) that he would expect that within a period being the later of the 5th anniversary of the commencement of section 1 and 3 years from the date of the review, the scheme's assets would be sufficient to meet its aggregate vested liability; and
- (c) that he would also expect that on the expiration of the period specified in subparagraph (b), or on the expiration of a period, where necessary, specified in the certificate, the scheme's assets would be sufficient to meet the scheme's aggregate past service liability.
- (8) (Where the immediately preceding certificate supplied in accordance with this Ordinance was a qualified certificate) -
- (a) that the amount of contributions recommended in the certificate to be made in the remainder of the period specified in that preceding certificate is not less than the amount of contributions recommended in that preceding certificate to be made in the same period; or
- (b) that the amount of contributions recommended in the certificate to be made in the remainder of the period specified in that preceding certificate is less than the amount of contributions recommended in that preceding certificate to be made in the same period, but he would expect that even with such lesser amount of contributions the scheme's assets would

be sufficient to meet the scheme's aggregate vested liability as at the expiry of 12 months from the date of the review.

- (9) (Where the immediately preceding certificate supplied in accordance with this Ordinance was a qualified certificate and where owing to any reason, other than the failure of the relevant employer of the scheme to contribute to the scheme's funds in accordance with the actuarial recommendations in that preceding certificate, the current shortfall as stated in the certificate exceeds the expected shortfall as stated in that preceding certificate) -
- (a) what in the actuary's opinion were the major reasons giving rise to such excess;
 - (b) that the amount of contributions recommended to be made in the certificate includes additional contributions which the actuary considers are required to cover such excess."

Clauses 2, 38, 46, 47 and 73

SECRETARY FOR MONETARY AFFAIRS: Mr Chairman, I move that the clauses specified be amended as set out under my name in the paper circulated to Members for reasons given in my earlier speech.

Proposed amendments

Clause 2

That clause 2 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Clause 38

That clause 38 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Clause 46

That clause 46 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Clause 47

That clause 47 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Clause 73

That clause 73 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Question on the amendments proposed, put and agreed to.

Clauses 2, 38, 46, 47 and 73

MRS MIRIAM LAU (in Cantonese): Mr Chairman, I move that the clauses specified be further amended as set out under my name in the paper circulated to Members for reasons given in my earlier speech.

Proposed amendments

Clause 2

That clause 2(1), be amended, in the definition of "文件", in paragraphs (b), (c) and (d) by deleting "貯存" wherever it appears and substituting "儲存".

That clause 2(1), be amended, in the definition of "證券", by deleting "貸款股額或其他股額、債據" and substituting "貸款股額或其他股額、債權證".

That clause 2(4)(a)(ii) be amended, by deleting "屬其" and substituting "構成其".

That clause 2(4)(b)(i) be amended, by deleting "該" and substituting "上述".

That clause 2(4)(b)(ii) be amended, by deleting "屬其" and substituting "構成其".

That clause 2(4)(d)(ii) be amended, by deleting "是屬於" and substituting "構成".

That clause 2(5) be amended, by deleting "接受" and substituting "接納".

Clause 38

That clause 38(8)(a) be amended, by deleting "是" and substituting "構成".

Clause 46

That clause 46(1) be amended, by deleting "作出" and substituting "發出".

Clause 47

That clause 47(1)(d) be amended, by deleting "作出" and substituting "提出".

Clause 73

That clause 73(1) be amended, by deleting "失實" where it twice appears and substituting "虛假".

Question on the amendments proposed, put and agreed to.

MR MARVIN CHEUNG: Mr Chairman, I move that the clauses specified be further amended as set out under my name in the paper circulated to Members for reasons given in my earlier speech.

*Proposed amendments***Clause 2**

That clause 2(7)(a) be amended —

- (a) by deleting "if" and substituting "by reason solely that".
- (b) by deleting "5" and substituting "4".

Clause 38

That clause 38(3) be amended, by deleting "shall".

That clause 38(3)(a) be amended, by adding "shall" before "permit".

That clause 38(3) be amended, by deleting paragraph (b) and substituting -

"(b) shall, upon a written request by a member of the scheme and production by such member of a resolution passed in accordance with rules made by the Registrar by a majority of over 50% of the members of the scheme that such request is supported by such members, furnish as soon as reasonably practicable in writing to the member the particulars referred to in subsection (2)(b)."

That clause 38(4) be amended —

- (a) By deleting ", as regards the committee or member by whom the request was made,".
- (b) By deleting "regarding the particulars specified in the earlier request".

Clause 46

That clause 46(1)(b)(i) be amended, by deleting everything after "scheme" and substituting "; or".

Clause 47

That clause 47(2)(b)(i) be amended, by deleting everything after "scheme" and substituting "; or".

Clause 73

That clause 73 be amended, by adding —

"(4) Where -

- (a) a member of a professional body is alleged to have committed an offence under subsection (1) or (2); or
- (b) it appears to the Registrar that a member of a professional body has committed any act or omission which may constitute professional misconduct relating to an occupational retirement scheme,

the Registrar may refer that matter to that professional body."

Question on the amendments proposed, put and agreed to.

Question on clause 2, 38, 46, 47 and 73, as amended, proposed, put and agreed to.

Clauses 3, 49, 50 and 67

MR MARVIN CHEUNG: Mr Chairman, I move that the clauses specified be amended as set out under my name in the paper circulated to Members for reasons given in my earlier speech.

*Proposed amendments***Clause 3**

That clause 3 be amended —

(a) by adding -

"(1A) Where an employer enters into a contract with his employee under which membership of a proposed occupational retirement scheme is provided, subsection (1) does not apply -

(a) before the expiry of 3 months after the date on which the contract is entered into; or

(b) (where an application is made in respect of the scheme under section 8(1) or 16 within 3 months after the date on which the contract is entered into) before the application has been finally disposed of."

(b) by adding -

"(4) For the purposes of subsection (1), where any person providing service on a full-time basis to a business or other organization in Hong Kong for a period of more than 4 years in such manner and subject to such degree of control that he may reasonably be regarded as an integral part of the organization is a member of an occupational retirement scheme, the proprietor of the organization shall be regarded as participating in the scheme as an employer whether or not there is a contract of employment between such persons and him."

That clause 3(1) be amended —

(a) by deleting "An" and substituting "Subject to subsection (1A), an".

(b) by adding "or enter into a contract with his employees under which membership of an occupational retirement scheme is provided" before "unless".

That clause 3(1)(c) be amended, by deleting the full stop and substituting "; or".

That clause 3(1) be amended, by adding -

"(d) an application has been made in respect of the scheme under section 8(1) or 16 and has not been finally disposed of."

Clause 49

That clause 49(3)(b)(i) be amended, by deleting everything after "scheme" and substituting "; or".

Clause 50

That clause 50 be amended, by deleting subclauses (4), (5) and (6).

Clause 67

That clause 67(1) be amended, by deleting "Subject to subsection (4), the" and substituting "The".

That clause 67 be amended, by deleting subclause (4).

Question on the amendments proposed, put and agreed to.

SECRETARY FOR MONETARY AFFAIRS: Mr Chairman, I move that the clauses specified be further amended as set out under my name in the paper circulated to Members for reasons given in my earlier speech.

Proposed amendments

Clause 3

That clause 3 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Clause 49

That clause 49 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Clause 50

That clause 50 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Clause 67

That clause 67 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Question on the amendments proposed, put and agreed to.

Question on clauses 3, 49, 50 and 67, as amended, proposed, put and agreed to.

Clauses 4, 10, 18, 30 and section heading of clause 44

MRS MIRIAM LAU (in Cantonese): Mr Chairman, I move that the clauses specified be amended as set out in the paper circulated to Members for reasons given in my earlier speech.

Proposed amendments

Clause 4

That clause 4 be amended, by deleting "權利、權力、責任及債務" and substituting "權力、責任、權利及義務".

Clause 10

That clause 10(1) be amended, by deleting "定期" and substituting "、屬於定期費用的".

Clause 18

That clause 18(1)(c) be amended, by deleting "權益" and substituting "利益".

Clause 30

That clause 30(1) be amended, by deleting "適用的期間，就該計劃向處長繳繳交定期的" and substituting "期間，就該計劃向處長繳交適當的、屬於定期費用的".

That clause 30(1)(a) be amended, by adding "之日" after "周年".

Section heading of clause 44

That the section heading of clause 44 be amended, by deleting "圍制書" and substituting "管轄書".

Question on the amendments proposed, put and agreed to.

Question on clauses 4, 10, 18, 30 and section heading of clause 44, as amended, proposed, put and agreed to.

Clauses 5, 51, 66 and 77

MR MARVIN CHEUNG: Mr Chairman, I move that the clauses specified be amended as set out in the paper circulated to Members for reasons given in my earlier speech.

Proposed amendments

Clause 5

That clause 5 be amended, by deleting the clause.

Clause 51

That clause 51 be amended, by deleting the clause.

Clause 66

That clause 66 be amended, by deleting the clause.

Clause 77

That clause 77 be amended, by deleting the clause.

Question on the amendments proposed, put and agreed to.

Question on clauses 5, 51, 66 and 77, as amended, proposed, put and agreed to.

Clauses 7, 15, 17, 24, 25, 35, 39, 41, 42, 44, 45, 61, 63, 75 and 76

SECRETARY FOR MONETARY AFFAIRS: Mr Chairman, I move that the clauses specified be amended as set out under my name in the paper circulated to Members for reasons given in my earlier speech.

Proposed amendments

Clause 7

That clause 7 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Clause 15

That clause 15 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Clause 17

That clause 17 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Clause 24

That clause 24 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Clause 25

That clause 25 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Clause 35

That clause 35 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Clause 39

That clause 39 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Clause 41

That clause 41 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Clause 42

That clause 42 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Clause 44

That clause 44 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Clause 45

That clause 45 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Clause 61

That clause 61 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Clause 63

That clause 63 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Clause 75

That clause 75 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Clause 76

That clause 76 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Question on the amendments proposed, put and agreed to.

MRS MIRIAM LAU (in Cantonese): Mr Chairman, I move that the clauses specified be further amended as set out under my name in the paper circulated to Members for reasons given in my earlier speech.

Proposed amendments

Clause 7

That clause 7(3) be amended —

- (a) by deleting "複製成爲可閱讀形式" and substituting "以可閱形式顯示或複製".
- (b) by deleting "讀" wherever it appears.

Clause 15

That clause 15(2) be amended, by deleting "的" before "發出".

Clause 17

That clause 17(a) be amended —

- (a) by adding "的" before "法律意見".
- (b) by deleting everything after "而該等資料是" and substituting "爲使他能夠就該項申請作出決定而合理地需要的；".

Clause 24

That clause 24(2) be amended, by deleting "任何條款，匯集協議須猶如" and substituting "何條款，匯集協議須當如".

Clause 25

That clause 25(4) be amended, by deleting "猶如" and substituting "當如".

Clause 35

That clause 35(1) be amended, by deleting "持有" and substituting "管有".

Clause 39

That clause 39(5) be amended, by deleting "持有" and substituting "管有".

That clause 39(5)(a) be amended, by deleting "持有" and substituting "管有".

That clause 39(5)(c) be amended —

- (a) by deleting "地方" and substituting "地點".
- (b) by adding "所" before "提出".

That clause 39(6) be amended, by deleting "均須" and substituting "須予".

That clause 39(8) be amended —

- (a) by deleting "下" after "第 73 條".
- (b) by deleting "下" after "第 36 條" and substituting "所訂".

That clause 39(9) be amended, by deleting "受或將受影響" and substituting "受影響或將會受影響".

That clause 39(10) be amended, by deleting "由政府一般收入支付" and substituting "從政府一般收入撥付".

That clause 39(11) be amended, by deleting "." where it first appears and substituting ";".

That clause 39(13) be amended —

- (a) by deleting "失實" where it first and thirdly appears and substituting "虛假的".
- (b) by deleting "失實" where it secondly appears and substituting "虛假".

Clause 41

That clause 41(2) be amended, by deleting "圍制書" where it twice appears and substituting "管轄書".

That clause 41(3) be amended, by deleting "提出撤銷" and substituting "發出撤銷".

Clause 42

That clause 42(2) be amended, by deleting "圍制書" wherever it appears and substituting "管轄書".

That clause 42(4) be amended, by deleting "圍制書" where it twice appears and substituting "管轄書".

That clause 42(5)(b) be amended, by deleting "圍制書" where it twice appears and substituting "管轄書".

That clause 42(6) be amended, by deleting "圍制書" where it twice appears and substituting "管轄書".

Clause 44

That clause 44(1) be amended —

- (a) by deleting "約束另一人" and substituting "由另一人作出".
- (b) by deleting "圍制書" wherever it appears and substituting "管轄書".

That clause 44(2) be amended, by deleting "圍制書" where it twice appears and substituting "管轄書".

That clause 44(3) be amended, by deleting "圍制" wherever it appears and substituting "管轄".

Clause 45

That clause 45 be amended, by deleting "作出建議，撤銷該計劃的註冊" and substituting "發出撤銷該計劃的註冊的建議".

Clause 61

That clause 61(d) be amended, by deleting "失實" wherever it appears and substituting "虛假".

Clause 63

That clause 63(2) be amended, by deleting "接受" and substituting "接納".

Clause 75

That clause 75(1)(c) be amended, by deleting "地方" and substituting "地點".

That clause 75(2) be amended, by deleting "地方" and substituting "地點".

Clause 76

That clause 76(1) be amended, by deleting "下的" and substituting "所訂".

Question on the amendments proposed, put and agreed to.

Question on clauses 7, 15, 17, 24, 25, 35, 39, 41, 42, 44, 45, 61, 63, 75 and 76, as amended, proposed, put and agreed to.

Clause 8 and 36

SECRETARY FOR MONETARY AFFAIRS: Mr Chairman, I move that clauses 8 and 36 be amended as set out under my name in the paper circulated to Members for reasons given in my earlier speech.

Proposed amendments

Clause 8

That clause 8 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Clause 36

That clause 36 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Question on the amendments proposed, put and agreed to.

MR TAM YIU-CHUNG: Mr Chairman, I move that clauses 8 and 36 be further amended as set out under my name in the paper circulated to Members for reasons given in my earlier speech.

Proposed amendments

Clause 8

That clause 8 be amended, by adding —

"(2A) The relevant employer of an occupational retirement scheme who makes an application under this section shall within such period as the Registrar may specify -

- (a) give a written notice of the application to each member of the scheme who is the holder of an identity card within the meaning of the Registration of Persons Ordinance (Cap. 177); or
- (b) display an appropriate notice of the application and make it available for inspection by such member,

as the Registrar may direct."

That clause 8(3) be amended —

- (a) by deleting "shall only" and substituting "may".
- (b) by adding "receives a written statement by the relevant employer that such employer has complied with subsection (2A) and" after "if he".

Clause 36

That clause 36(1) be amended, by deleting everything before "the majority" and substituting —

"(1) Where a registered scheme has more than 20 members,".

That clause 36(7) be amended, by deleting "(a) or (b)".

Question on the amendments proposed, put and agreed to.

Question on clauses 8 and 36, as amended, proposed, put and agreed to.

Clauses 9, 11 to 14, section heading of clause 15, clauses 16, 20, 23, 26 to 29, 31, 33, 37, 40, 43, 48, section heading of clause 49, clauses 52 to 57, 59, 62, 64, 65, 68, 70 to 72 and 74

SECRETARY FOR MONETARY AFFAIRS: Mr Chairman, I move that the clauses specified be amended as set out in the paper circulated to Members for reasons given in my earlier speech.

Proposed amendments

Clause 9

That clause 9 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Clauses 11 to 14

That clauses 11 to 14 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Section heading of clause 15

That section heading of clause 15 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Clause 16

That clause 16 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Clause 20

That clause 20 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Clause 23

That clause 23 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Clauses 26 to 29

That clauses 26 to 29 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Clause 31

That clause 31 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Clause 33

That clause 33 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Clause 37

That clause 37 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Clause 40

That clause 40 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Clause 43

That clause 43 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Clause 48

That clause 48 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Section heading of clause 49

That section heading of clause 49 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Clauses 52 to 57

That clauses 52 to 57 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Clause 59

That clause 59 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Clause 62

That clause 62 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Clause 64

That clause 64 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Clause 65

That clause 65 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Clause 68

That clause 68 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Clauses 70 to 72

That clauses 70 to 72 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Clause 74

That clause 74 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Question on the amendments proposed, put and agreed to.

Question on clauses 9, 11 to 14, section heading of clause 15, clauses 16, 20, 23, 26 to 29, 31, 33, 37, 40, 43, 48, section heading of clause 49, clauses 52 to 57, 59, 62, 64, 65, 68, 70 to 72 and 74, as amended, proposed, put and agreed to.

Clause 19

SECRETARY FOR MONETARY AFFAIRS: Mr Chairman, I move that clause 19 be amended as set out under my name in the paper circulated to Members for reasons given in my earlier speech.

*Proposed amendment***Clause 19**

That clause 19 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Question on the amendment proposed, put and agreed to.

MR MARVIN CHEUNG: Mr Chairman, I move that clause 19 be further amended as set out under my name in the paper circulated to Members for reasons given in my earlier speech.

*Proposed amendment***Clause 19**

That clause 19(1) be amended, by adding —

"(e) (where the scheme is or is stated to be an off-shore scheme) that the terms of the scheme provide that, in the event that -

- (i) the registration of the scheme under this Ordinance is cancelled; and
- (ii) (A) the period within which an appeal against such cancellation may be made has expired and no such appeal has been made; or
(B) an appeal is duly made against such cancellation and has been dismissed by the Appeal Board and all proceedings (if any) incidental to such appeal and dismissal have been finally disposed of,

any vested benefit which very member of the scheme who is the holder of an identity card within the meaning of the Registration of Persons Ordinance (Cap. 177) is entitled to receive or which any other person is entitled to receive in respect of such member under the terms of the scheme shall thereupon become payable as if the condition precedent (if any) of such entitlement had been satisfied,".

Question on the amendment proposed, put and agreed to.

MR PETER WONG: Mr Chairman, I move that clause 19 be further amended as set out under my name in the paper circulated to Members for reasons given in my earlier speech.

Proposed amendment

Clause 19

That clause 19 be amended, by adding —

"(1A) Where the terms of the scheme allow the administrator of the scheme to withhold any part of any payment due to be made under the terms of the scheme to a member of the scheme for the purpose of effecting repayment of a debt owed by that member to the relevant employer of the scheme upon the production of a written acknowledgment of such debt made by that member, the terms of the scheme shall not solely by this reason be regarded as not having the effect provided for in subsection (1)(d)."

Question on the amendment proposed, put and agreed to.

Question on clause 19, as amended, proposed, put and agreed to.

Clauses 21 and 32

MR PETER WONG: Mr Chairman, I move that clauses 21 and 32 be amended as set out in the paper circulated to Members for reasons given in my earlier speech.

Proposed amendments

Clause 21

That clause 21 be amended, by deleting the clause and substituting —

"21. Registered schemes' trustees etc. to keep proper accounts and records, etc.

(1) Subject to subsection (5), the administrator of a registered scheme shall keep proper accounts and records as regards all assets, liabilities and financial transactions of the scheme and as soon as reasonably practicable after each of the scheme's financial years -

- (a) cause to be prepared in relation to its financial statements as regards the scheme; and

- (b) submit such statements to an auditor for audit and require such auditor to prepare a report on the accounts.

(2) The financial statements referred to in subsection (1) prepared in relation to a registered scheme and a financial year of it shall -

- (a) show a true and fair view of the financial transactions of the scheme during the year and of the disposition, at the last day of the year, of its assets and liabilities; and
- (b) contain such other information as the Registrar may specify in guide-lines issued by him.

(3) A report prepared under subsection (1) in relation to a registered scheme and a financial year of it shall -

- (a) state whether or not in the opinion of the auditor preparing the report -
 - (i) proper accounts and records have been kept as regards all assets, liabilities and financial transactions of the scheme;
 - (ii) the financial statements prepared under subsection (1) in relation to the year show a true and fair view of the financial transactions of the scheme during the year and of the disposition, at the last day of the year, of its assets and liabilities;
- (b) state whether or not -
 - (i) (where the scheme is a defined benefit scheme) the relevant undertaking (as defined in subsection (4)) has been complied with;
 - (ii) (where the scheme is a defined contribution scheme) -
 - (A) contributions have been made in accordance with the terms of the scheme; and

(B) a shortfall between the scheme's assets and the scheme's aggregate vested liability exists, and if so stating the amount of such shortfall at the last day of the year;

(iii) as at the end of the year the assets of the scheme were subject to any assignment, charge, pledge or other encumbrance except -

(A) the trust (if any) governing the scheme;

(B) any charge or pledge created for the purposes of securing loans necessary for meeting the liabilities of the scheme; and

(C) any option to acquire for valuable consideration any interest in the assets of the scheme granted in the normal course of business;

(iv) the requirement of section 29(2) has been complied with as regards the scheme as at the last day of the year and two such other dates in the year as the auditor preparing the report may elect:

Provided that the intervening period between such dates shall not be shorter than 3 months;

(c) where -

(i) the auditor has been denied access to the employer's books and records in contravention of subsection (7); or

(ii) the auditor has not been given necessary information and explanations as required by subsection (7),

state such fact; and

(d) contain such other information as the Registrar may specify in guide-lines issued by him.

- (4) In subsection (3)(b)(i) "the relevant undertaking" (有關承諾) means -
- (a) in case 2 or more actuarial certificates have been issued as regards a particular registered scheme each of which is either a full certificate or a qualified certificate, the undertaking referred to in the most recent of those certificates;
 - (b) in case only 1 full certificate or qualified certificate has been so issued, the undertaking referred to in the certificate.
- (5) Where -
- (a) a registered scheme is a participating scheme of a pooling agreement;
 - (b) the assets of the scheme were stated to be sufficient to meet its aggregate vested liability in -
 - (i) (where the scheme is a defined contribution scheme) the auditor's statement supplied under section 16 or the last auditor's report prepared under this section; or
 - (ii) (where the scheme is a defined benefit scheme) the last actuarial certificate supplied under section 16 or 33; and
 - (c) a majority of over 50% of the members of the scheme passes in accordance with rules made by the Registrar a resolution that this subsection applies to the scheme in relation to a particular financial year of the scheme,

subsection (1)(b) shall not apply to the scheme in relation to that year.

(6) A resolution referred to in subsection (5)(c) shall not be passed in relation to more than 2 consecutive financial years of a registered scheme.

(7) For the purposes of subsection (3), the relevant employer of a registered scheme shall, as soon as reasonably practicable after a written request is made of him by the auditor of the scheme -

- (a) allow the auditor and such other person as may be authorized by that auditor, to have access to such books and records of the employer; and
- (b) give to the auditor such information and explanations,

as he may reasonably require for the purposes of discharging his duty in relation to the scheme.

(8) An employer who fails to comply with subsection (7) commits an offence and shall be liable on summary conviction to a fine of \$10,000."

Clause 32

That clause 32 be amended, by deleting the clause and substituting —

"32. Annual return

Within 6 months after the end of a registered scheme's financial year or such longer period as the Registrar may in his absolute discretion allow, the designated person of the scheme shall send to the Registrar -

- (a) an annual return for that year as regards the scheme in such form and containing such information as may be specified by the Registrar; and
- (b) either -
 - (i) (where section 21(5) applies to the scheme by virtue of a resolution passed under paragraph (c) of that section) a copy of the relevant resolution certified by the administrator of the scheme to be a true copy; or
 - (ii) (where section 21(5) does not apply to the scheme) a copy of the financial statements of the scheme for that year audited under section 21(1) and a copy of the auditor's

report containing the information referred to in section 21(3).".

Question on the amendments proposed, put and agreed to.

Question on clauses 21 and 32, as amended, proposed, put and agreed to.

Clauses 22 and 58

SECRETARY FOR MONETARY AFFAIRS: Mr Chairman, I move that clauses 22 and 58 be amended as set out under my name in the paper circulated to Members for reasons given in my earlier speech.

Proposed amendments

Clause 22

That clause 22 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Clause 58

That clause 58 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Question on the amendments proposed, put and agreed to.

MRS MIRIAM LAU (in Cantonese): Mr Chairman, I move that clauses 22 and 58 be further amended as set out under my name in the paper circulated to Members for reasons given in my earlier speech.

Proposed amendments

Clause 22

That clause 22(1)(a) be amended, by deleting "但不包括因他是管理人" and substituting "指不屬於因其管理人身分".

Clause 58

That clause 58(3) be amended, by deleting "任何" and substituting "何".

Question on the amendments proposed, put and agreed to.

MR PETER WONG: Mr Chairman, I move that clauses 22 and 58 be further amended as set out under my name in the paper circulated to Members for reasons given in my earlier speech.

Proposed amendments

Clause 22

That clause 22 be amended, by adding —

"(3) Where the net realizable value of the assets of a registered scheme exceeds the aggregate past service liability and the terms of the scheme provide for repayment of the excess or any part thereof to the relevant employer of the scheme in such circumstances, nothing in this section shall be construed as preventing such repayment."

Clause 58

That clause 58 be amended, by deleting subclause (2) and substituting —

"(2) The assets remaining after payment of the actual expenses incurred in realizing any of the assets of the scheme shall be applied in satisfaction of the following liabilities, which shall be satisfied in the following order of priority -

- (a) the remuneration of and expenses incurred by the liquidator;
- (b) liabilities to general creditors;
- (c) (unless the terms of the scheme otherwise provide) vested liabilities to the beneficiaries of the scheme as at the date on which the relevant winding up order is made; and
- (d) (unless the terms of the scheme otherwise provide) such part of the past service liabilities to the beneficiaries of the scheme (if any) which exceeds the vested liabilities thereto as at the date on which the relevant winding up order is made.

(2A)The surplus (if any) remaining after satisfaction of all liabilities mentioned in subsection (2) shall be paid to the relevant employer of the scheme unless the terms of the scheme otherwise provide."

That clause 58(1) be amended, by adding ", (2A)" after "(2)".

Question on the amendments proposed, put and agreed to.

Question on clauses 22 and 58, as amended, proposed, put and agreed to.

Clause 34

MR TAM YIU-CHUNG: Mr Chairman, I move that clause 34 be amended as set out under my name in the paper circulated to Members for reasons given in my earlier speech.

Proposed amendment

Clause 34

That clause 34(1)(a) be amended, by deleting subparagraph (iii) and substituting —

"(iii) a written request signed by not less than 20% or 100, whichever is less, of the members of the scheme; or".

Question on the amendment proposed, put and agreed to.

MRS MIRIAM LAU (in Cantonese): Mr Chairman, I move that clause 34 be further amended as set out under my name in the paper circulated to Members for reasons given in my earlier speech.

Proposed amendment

Clause 34

That clause 34(1)(b) be amended, by deleting "權益" and substituting "利益".

Question on the amendment proposed, put and agreed to.

SECRETARY FOR MONETARY AFFAIRS: Mr Chairman, I move that clause 34 be further amended as set out under my name in the paper circulated to Members for reasons given in my earlier speech.

*Proposed amendment***Clause 34**

That clause 34 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Question on the amendment proposed, put and agreed to.

Question on clause 34, as amended, proposed, put and agreed to.

Clause 78 and 79

MR HENRY TANG: Mr Chairman, I move that clauses 78 and 79 be amended as set out in the paper circulated to Members for reasons given in my earlier speech.

*Proposed amendments***Clause 78**

That clause 78 be amended, by deleting paragraph (b) and substituting —

"(b) in subsection (3) by repealing "and (ce)" and substituting ", (ce), (cf) and (cg)".

That clause 78(a) be amended —

- (a) in the proposed paragraph (cf) by deleting everything from "any amount" up to and including "so paid:" and substituting -

"any amount of unpaid contribution or any amount deemed to be unpaid contribution calculated in accordance with rules made under section 65(1)(ha) of the Occupational Retirement Schemes Ordinance (of 1992) which should have been paid by the bankrupt in accordance with the terms of an occupational retirement scheme within the meaning of that Ordinance before the commencement of the bankruptcy:"

- (b) by deleting ""; and".

- (c) by adding after the proposed paragraph (cf) -

"(cg) (without prejudice to any right or liability under a trust) any amount of salaries deducted by the bankrupt from his employees' salaries for the

purpose of making contributions in respect of such employees to the funds of an occupational retirement scheme within the meaning of the Occupational Retirement Schemes Ordinance (of 1992) which have not been paid into such funds;" and".

Clause 79

That clause 79 be amended, by deleting paragraph (b) and substituting —

"(b) in subsection (3) by repealing "and (ce)" and substituting ", (ce), (cf) and (cg)".".

That clause 79(a) be amended —

- (a) In the proposed paragraph (cf) by deleting everything from "any amount" up to and including "so paid:" and substituting -

"any amount of unpaid contribution or any amount deemed to be unpaid contribution calculated in accordance with rules made under section 65(1)(ha) of the Occupational Retirement Schemes Ordinance (of 1992) which should have been paid by the company being wound up in accordance with the terms of an occupational retirement scheme within the meaning of that Ordinance before the commencement of the winding up:".

- (b) by deleting ""; and".

- (c) by adding after the proposed paragraph (cf) -

"(cg) (without prejudice to any right or liability under a trust) any amount of salaries deducted by the company being wound up from its employees' salaries for the purpose of making contributions in respect of such employees to the funds of an occupational retirement scheme within the meaning of the Occupational Retirement Schemes Ordinance (of 1992) which have not been paid into such funds;" and".

Question on the amendments proposed, put and agreed to.

Question on clauses 78 and 79, as amended, proposed, put and agreed to.

New clause 41A. New trustee to give undertaking.

New clause 46A. Court may order freezing of assets.

New clause 58A. The court's power after winding up.

New clause 61A. Appeal Board.

New clause 61B. Constitution and powers of Appeal Board.

New clause 61C. Appeal Board's decision is final.

New clause 61D. Supplementary provisions relating to appeals.

New clause 61E. Case may be stated for Court of Appeal.

New clause 61F. Offences relating to appeal.

New clause 61G. Special provisions for schemes covering groups of companies

New clause 64A. Legislative Council may substitute percentage and number.

Clauses read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(6).

SECRETARY FOR MONETARY AFFAIRS: Mr Chairman, I move that new clauses 41A, 46A, 58A, 61A, 61B, 61C, 61D, 61E, 61F, 61G and 64A as set out in the paper circulated to Members be read the Second time for reasons given in my earlier speech.

Question on the Second Reading of the clauses proposed, put and agreed to.

Clauses read the Second time.

SECRETARY FOR MONETARY AFFAIRS: Mr Chairman, I move that new clauses 41A, 46A, 58A, 61A, 61B, 61C, 61D, 61E, 61F, 61G and 64A be added to the Bill.

Proposed additions

New Clause 41A

That the Bill be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

New Clause 46A

That the Bill be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

New Clause 58A

That the Bill be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

New Clauses 61A, 61B, 61C, 61D, 61E, 61F, 61G

That the Bill be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

New Clause 64A

That the Bill be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Question on the addition of the new clauses proposed, put and agreed to.

New clause 57A. Avoidance of preference in certain cases

New clause 57B. Saving of bona fide transactions, etc.

Clauses read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(6).

MR PETER WONG: Mr Chairman, I move that new clauses 57A and 57B as set out in the paper circulated to Members be read the Second time for reasons given in my earlier speech.

Question on the Second Reading of the clauses proposed, put and agreed to.

Clauses read the Second time.

MR PETER WONG: Mr Chairman, I move that new clauses 57A and 57B be added to the Bill.

Proposed additions

New clauses 57A and 57B

That the Bill be amended by adding —

"57A. Avoidance of preference in certain cases

Every -

- (a) transfer of asset of an occupational retirement scheme; and
- (b) encumbrance created over such asset,

in favour of any creditor with a view to giving such creditor (or any surety or guarantor for the debt due to such creditor) a preference over the other creditors shall, if the winding up of the scheme by virtue of a winding up order made under section 50(2) as regards the scheme commences within 6 months after the date of such transfer or creation, be deemed fraudulent and void as against the liquidator appointed as regards the scheme.

57B. Saving of bona fide transactions, etc.

Nothing in sections 56, 57 and 57A shall invalidate -

- (a) any payment of benefit to a member of an occupational retirement scheme under the scheme before the commencement of the winding up of the scheme; or
- (b) any bona fide contract, dealing or transaction made over any asset of the scheme for valuable consideration."

Question on the addition of the new clauses proposed, put and agreed to.

New clause 62A. Actuaries and solicitors to be independent of relevant employers.

Clause read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(6).

MR MARVIN CHEUNG: Mr Chairman, I move that new clause 62A as set out in the paper circulated to Members be read the Second time for reasons given in my earlier speech.

Question on the Second Reading of the clause proposed, put and agreed to.

Clause read the Second time.

MR MARVIN CHEUNG: Mr Chairman, I move that new clause 62A be added to the Bill.

Proposed addition

New clause 62A

That the Bill be amended by adding —

"62A. Actuaries and solicitors to be independent of relevant employers

(1) Any thing required to be done under this Ordinance or any statement, certificate, report or other document required to be made or prepared under this Ordinance by an actuary or a solicitor in respect of an occupational retirement scheme shall be done, made or prepared by an actuary or solicitor who is not -

- (a) the relevant employer of the scheme;
- (b) an associate or employee of the employer; or
- (c) a person having a contract of service with an employee referred to in paragraph (b).

(2) Where a statement, certificate, report or other document which purports to be made or prepared by an actuary or a solicitor in respect of an occupational retirement scheme is received by the Registrar, the Registrar may require -

- (a) the person by whom the statement, certificate, report or other document purports to have been made or prepared;
- (b) the administrator of the scheme; or
- (c) the relevant employer of the scheme,

to supply to the Registrar a statement in writing, in a form specified by the Registrar, that the person is not a person referred to in subsection (1)(a), (b) or (c)."

Question on the addition of the new clause proposed, put and agreed to.

Schedule 1

SECRETARY FOR MONETARY AFFAIRS: Mr Chairman, I move that schedule 1 be amended as set out under my name in the paper circulated to Members for reasons given in my earlier speech.

Proposed amendment

Schedule 1

That the Schedule be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Question on the amendment proposed, put and agreed to.

MR MARVIN CHEUNG: Mr Chairman, I move that schedule 1 be further amended as set out under my name in the paper circulated to Members for reasons given in my earlier speech.

Proposed amendment

Schedule 1

That schedule 1 be amended, in Part 1, paragraph 1, by deleting subparagraph (e) and substituting —

"(e) that the terms of the scheme have the effect provided for in section 19(1)(d) and (e)."

That schedule 1 be amended, in Part 2, paragraph 2, by deleting subparagraph (f) and substituting —

"(f) that the terms of the scheme have the effect provided for in section 19(1)(d) and (e).".

That schedule 1 be amended, in Part 3, by deleting paragraph 4 and substituting —

"3. Where the scheme to which the application relates is stated to be an off-shore scheme

- (a) A submission to the jurisdiction of the High Court in writing to the extent requisite to enable the High Court to exercise in relation to the scheme the jurisdiction conferred by section 67. The submission is to be made by or on behalf of the trustee or (in case there is no trustee) such other person and in such form as the Registrar may direct.
- (b) A statement by a solicitor stating that the terms of the scheme have the effect provided for in section 19(1)(e).".

Question on the amendment proposed, put and agreed to.

MR PETER WONG: Mr Chairman, I move that schedule 1 be further amended as set out under my name in the paper circulated to Members for reasons given in my earlier speech.

Proposed amendment

Schedule 1

That schedule 1 be amended, in Part 1, by deleting paragraph 3 and substituting —

"3. A statement by the applicant stating whether or not the requirement of section 27(2) (where the scheme is an existing scheme governed by a trust) has been complied with in relation to the scheme as if it was a registered scheme or (where the scheme is a proposed scheme which will be governed by a trust) will be complied with in relation to the scheme.

4. (Where the occupational retirement scheme to which the application relates is an existing scheme) a set of audited accounts (if any) prepared in respect of the scheme in relation to the latest financial year of the scheme (which financial year shall end on a date not more than 9 months before the date of the application for registration of the scheme).".

That schedule 1 be amended, in Part 2, by deleting paragraph 3 and substituting —

"3. (Where the occupational retirement scheme to which the application relates is an existing scheme) A statement by an auditor stating, in relation to the latest financial year of the scheme (which financial year shall end on a date not more than 9 months before the date of the application for registration of the scheme), -

- (a) whether or not proper accounts and records have been kept as regards all assets, liabilities and financial transactions of the scheme;
- (b) whether or not as at the end of the financial year the assets of the scheme were subject to any assignment, charge, pledge or other encumbrance except -
 - (i) the trust (if any) governing the scheme;
 - (ii) any charge or pledge created for the purposes of securing loans necessary for meeting the liabilities of the scheme; and
 - (iii) any option to acquire for valuable consideration any interest in the assets of the scheme granted in the normal course of business;
- (c) that the value of the assets attributable to, and the liabilities of, the scheme are readily determinable from the accounts and records kept in respect of the pooling agreement; and
- (d)(i)(where the scheme is a defined contribution scheme) -
 - (A) whether or not contributions have been made in accordance with the terms of the scheme; or
 - (B) the shortfall (if any) between the scheme's assets and the scheme's aggregate vested liability as at the last day of the financial year; or
- (ii)(where the scheme is a defined benefit scheme) -
 - (A) whether an actuarial review has been conducted as regards the scheme as at a date within the last 3 years; and

- (B) (where such review has been conducted) whether or not contributions have been made in accordance with the actuarial recommendations (if any) made by the actuary as regards the contributions to be made during the financial year, following the last actuarial review conducted as regards the scheme.

4. (Where the occupational retirement scheme to which the application relates is an existing scheme) A set of audited accounts (if any) prepared in respect of the scheme in relation to the latest financial year of the scheme (which financial year shall end on a date not more than 9 months before the date of the application for registration of the scheme).".

That schedule 1 be amended, in Part 2, paragraph 1, by deleting subparagraphs (d) and (e).

That schedule 1 be amended, in Part 3, by deleting paragraph 1.

That schedule 1 be amended, in Part 3, by deleting paragraph 5 and substituting —

"4. Where the scheme to which the application relates is stated to be an off-shore scheme governed by a trust

A statement by a person qualified to practise as a professional legal practitioner in the country or territory stated to be the domicile of the scheme whether or not the trust instrument in his opinion requires (whether expressly or in effect) that the relevant employer of the scheme or his associate cannot act as the sole trustee of the trust."

Question on the amendment proposed, put and agreed to.

MR TAM YIU-CHUNG: Mr Chairman, I move that schedule 1 be further amended as set out under my name in the paper circulated to Members for reasons given in my earlier speech.

Proposed amendment

Schedule 1

That schedule 1 be amended, in Part 1, paragraph 1, by deleting subparagraph (d) and substituting —

"(d) that the terms of the scheme -

- (i) do not enable any person, without the consent of the scheme's member concerned, to alter to the member's

detriment either his accrued rights under the scheme or his vested benefits, unless such alteration is consequential upon an amendment to the terms of the scheme consented to by not less than 90% of the members of the scheme; and

- (ii) provide that where an alteration described in sub-subparagraph (i) occurs, any vested benefit which the member concerned is entitled to receive as at the date of such alteration under the terms of the scheme as if the condition precedent (if any) of such entitlement had been satisfied shall, if he so elects, become payable to him; and".

That schedule 1 be amended, in Part 2, paragraph 2, by deleting subparagraph (e) and substituting —

"(e) that the terms of the scheme -

- (i) do not enable any person, without the consent of the scheme's member concerned, to alter to the member's detriment either his accrued rights under the scheme or his vested benefits, unless such alteration is consequential upon an amendment to the terms of the scheme consented to by not less than 90% of the members of the scheme; and
- (ii) provide that where an alteration described in sub-subparagraph (i) occurs, any vested benefit which the member concerned is entitled to receive as at the date of such alteration under the terms of the scheme as if the condition precedent (if any) of such entitlement had been satisfied shall, if he so elects, become payable to him; and".

Question on the amendment proposed, put and agreed to.

Question on schedule 1, as amended, proposed, put and agreed to.

Schedule 2

SECRETARY FOR MONETARY AFFAIRS: Mr Chairman, I move that schedule 2 be amended as set out in the paper circulated to Members for reasons given in my earlier speech.

Proposed amendment

Schedule 2

That schedule 2 be amended —

(see Secretary for Monetary Affairs' amendments *supra*)

Question on the amendment proposed, put and agreed to.

Question on schedule 2, as amended, proposed, put and agreed to.

Schedule 3

MRS MIRIAM LAU (in Cantonese): Mr Chairman, I move that schedule 3 be amended as set out in the paper circulated to Members for reasons given in my earlier speech.

Proposed amendment

Schedule 3

That schedule 3 be amended, in paragraph 5, by deleting "是" and substituting "構成".

Question on the amendment proposed, put and agreed to.

Question on schedule 3, as amended, proposed, put and agreed to.

Council then resumed.

Third Reading of Bills

THE ATTORNEY GENERAL reported that the

EXEMPTIONS FROM REGISTRATION AND TRANSFER OF POWERS (MISCELLANEOUS AMENDMENTS) BILL

had passed through Committee without amendment and the

LORD WILSON HERITAGE TRUST BILL

COMPANIES (AMENDMENT) (NO. 2) BILL 1992

SECURITIES AND FUTURES COMMISSION (AMENDMENT) (NO. 2) BILL 1992
and**OCCUPATIONAL RETIREMENT SCHEMES BILL**

had passed through Committee with amendments. He moved the Third Reading of the Bills.

Question on the Third Reading of the Bills proposed, put and agreed to.

Bills read the Third time and passed.

6.30 pm

DEPUTY PRESIDENT: I will suspend the sitting for half an hour.

7.15 pm

DEPUTY PRESIDENT: Council will resume.

Members' motions**HONG KONG ROYAL INSTRUCTIONS 1917 TO 1991**

MRS ELSIE TU moved the following motion:

"That with effect from 18 December 1992 the Standing Orders of the Legislative Council of Hong Kong be amended -

- (1) in Standing Order No. 7(2), by repealing "five" and substituting "fourteen";
- (2) in Standing Order No. 14 -
 - (a) in paragraph (4) by repealing ", but no debate may arise thereon"; and
 - (b) by adding -

"(5) No debate may arise on any address presented by a Member under paragraph (3) or (4) but the President may in his discretion allow short questions to be put to the Member making the address for the purpose of elucidating any

matter raised by the Member in the course of his address.";

- (3) in Standing Order No. 16(3) by repealing "eight" and substituting "ten";
- (4) in Standing Order No. 17(2) by repealing "four" and substituting "seven";
- (5) in Standing Order No. 21 -
 - (a) in paragraph (1) by repealing "four" and substituting "twelve"; and
 - (b) in paragraph (2)(a) by repealing "two" and substituting "five clear";
- (6) in Standing Order No. 45(2) by repealing "four" and substituting "seven"."

MRS ELSIE TU: Mr Deputy President, I move the motion standing in my name in the Order Paper.

The motion proposes a series of amendments to the Standing Orders of the Legislative Council. These amendments are initiated by Members on different occasions, deliberated thoroughly and subsequently endorsed by the then Legislative Council In-House and the House Committee respectively at the meetings on 12 June 1992 and 7 October 1992.

I would like to give a brief account of the changes to Standing Orders we are now proposing. We propose to add a provision under Standing Order 14 to allow Members to raise short questions, for the purpose of elucidation, on the address(es) made by a Member(s) in relation to a paper(s) presented to this Council.

We also propose to amend Standing Order 16(3) in order to increase from 8 to 10 the maximum number of oral questions that may be allowed at sittings where there will be no debate on a substantive motion.

In addition to the above, we also propose extension to the notice periods under Standing Orders 7, 17, 21 and 45 in respect of the days of sittings, questions and motions raised in the Council as well as amendments to motions and Bills. The purpose of extending the notice periods is to allow both Members and the Administration sufficient time to prepare for the business to be transacted by this Council. Some Members have expressed concern that the proposed extension of notice periods might cause difficulties for urgent business to be raised in this Council. The concern, I believe, can be addressed by the existing provisions of the Standing Orders which allow the Deputy President to

dispense with the notice requirement. I have no doubt that the Deputy President will continue to exercise his discretion in future, having regard to the merits of each case.

Mr Deputy President, I beg to move.

Question on the motion proposed, put and agreed to.

UNITED NATIONS CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

MISS EMILY LAU moved the following motion:

"That this Council calls on the Administration to support the extension to Hong Kong of the United Nations Convention on the Elimination of all Forms of Discrimination Against Women and to request the British Government to take the necessary action to so extend the Convention forthwith."

MISS EMILY LAU (in Cantonese): Mr Deputy President, as the sole elected feminine Member of this Council, I would like to move today, on behalf of the women of Hong Kong, that this Council calls on the Administration to support the extension to Hong Kong of the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and to request the British Government to take the necessary action to so extend the Convention forthwith. Mr Deputy President, this Convention was passed by the United Nations 13 years ago. The signatory powers now number 118, including the United Kingdom and China. Though the Government has openly acknowledged in a few occasions the existence of discrimination against women in Hong Kong, yet it has ever been reluctant to request the United Kingdom to extend CEDAW to the territory. Still less has it taken actual and positive steps to promote equality between men and women.

In June last year, this Council passed the Bill of Rights Ordinance (BRO). However, BRO provides only that public-sector institutions may not engage in discriminatory practices against women and that discriminatory laws shall be revoked. In the face of objections raised by the business community at the time, the Government refused to extend the applicability of BRO to the private sector. Consequently, women working in the private sector are still having to put up with various forms of sexual discrimination including failure to get equal pay for equal work. Mr Deputy President, according to some concerned feminist groups (who are now following our debate from the public gallery), it has been more than four years since they first proposed that the British Government be requested to extend CEDAW to Hong Kong. At the time, the Government responded that it would give thought to their proposal and even made it a point to say that the Government would act upon it shortly after the promulgation of BRO. These feminist groups have been waiting ever since. They are now

running out of patience. They came to see me the other day and asked me to move a motion in this Council as soon as possible, pressing the Government for immediate action.

Day before yesterday, Mr Deputy President, the Government said that it would move an amendment to my motion, making it clear that the Government was not in favour of the extension of CEDAW to Hong Kong, nor would it request the British Government to so extend it. The purport of the amendment was that the people of Hong Kong had to be consulted on the issue. I deeply regret Secretary for Education and Manpower Mr John CHAN's moving the amendment to my motion. I fear that the Government is merely using a delaying tactic since it does not have the slightest intention to resolve the problem. Mr Deputy President, I regret even more Mr CHAN's failure to be present at this debate. Of course, we will bid Miss Christine CHOW a warm welcome. Still, I believe that, by what it does, the Government is giving us an impression of male chauvinism: using a woman to handle other women. I also think that this is probably very unfair to Miss CHOW, to whose real thoughts we are not privy. But the male chauvinists in the Government see fit to send a woman to veto my motion. I regret this. However, Mr Deputy President, looking from a different perspective, I wish to thank the Government for moving the amendment. By doing so, the Government instantly puts the whole thing in the spotlight, thus drawing the close attention of the public and the media. Mr Deputy President, yesterday, I received a letter from more than 20 lecturers of the Hong Kong Polytechnic opposing the Government's amendment to my motion. They said that they did not understand why the Government still saw it necessary to gauge public views at this time, considering that an inter-departmental working group straddling eight government departments, chaired by Mr John CHAN, was set up in March this year to conduct detailed research and consultation on whether there was discrimination against women in the workplace and whether CEDAW needed to be extended to Hong Kong. Here, I would like to ask the Government: Has the working group's work over the past months been a waste of time? Why is fresh consultation needed after all the efforts spent on the research and consultation of the past 10 months? I fear that the Government's move will give the public the impression that it is using a delaying tactic and it does not intend to do anything to tackle the problem. Yesterday, Mr CHAN could find time to call a press conference. But today, he is suddenly busy and has to excuse himself. At the press conference, he announced the working group's findings. The group came to the view that sexual discrimination in the workplace was not a very serious problem, given the tight labour market and the high workforce mobility which made it impossible for employers to do anything discriminatory against their female workers. Mr Deputy President, we know of course that the Government brought into effect the principle of equal pay for equal work in the civil service in 1975 and is a good employer. Still, the Government has made no law to require the private sector to follow suit.

A moment ago, I was having my meal with some colleagues. They said that they found no sexual discrimination in Hong Kong. Now I would like to

ask them to look at some statistics released by the Government itself. I have some statistics on workers' wages and benefits published by the Census and Statistics Department. The March 1992 statistics on foremen, skilled workers and clerks employed in different trades are as follows: In the manufacturing sector, the median salary was \$6,990 for men and \$6,089 for women; in the import-export and hotel sector, it was \$7,850 for men and only \$5,654 for women; in the commercial sector, it was \$8,190 for men and \$7,529 for women. For all sectors, the average was \$7,310 for men and \$5,760 for women. These are the Government's own figures. I hope that the Government will explain to us why there is the discrepancy later and why we are told, despite these figures, that unequal pay for equal work is not a very serious problem.

In addition, Mr Deputy President, anybody who picks up a newspaper can see many examples of discrimination against women in the advertisements. For low-pay jobs, such as typist (I have no intention of offending those who work as typists) and secretary, the advertisements clearly state that women are preferred, while chief executive officer jobs and chief financial officer jobs are for men. I believe that all colleagues and feminist groups will see discrimination against women in this.

Mr Deputy President, in his reply to a question in June this year, the Secretary for Constitutional Affairs said that the promulgation of BRO last year was a big step in eliminating sexual discrimination. I would like to ask: After taking this big step, what has been keeping the Government from making further progress? Why has the Government not amended the existing ordinances to bring them in line with BRO?

To those colleagues who are unaware of any discrimination against women, I wish to cite the Marriage Ordinance as an illustration. According to this ordinance, if a young person, who has not reached the age of 21, wishes to get married, he or she must have the consent of the father but not the mother. Under what circumstances will the mother's consent be needed? It will be needed only where the father is deceased or mentally unsound. This is unfair to women, is it not?

Mr Deputy President, the problem concerning the female aboriginals' status in the New Territories is of course even more complex and difficult. Their inheritance right and voting right have been discussed many times. I do not wish to belabour this point. Other colleagues will perhaps raise it later. We feel that the rights of the women of the New Territories are a very serious issue. Notwithstanding the Sino-British Joint Declaration and the Basic Law's protection of the special rights of the natives of the New Territories, the matter is very controversial. Still, I would like to point out that the rights of the women of the New Territories have been trampled upon for ages. When will the day of reckoning come?

Mr Deputy President, CEDAW requires the signatory powers to make laws to eliminate discrimination against women. It also requires them to provide necessary social services, including women's activity centres and child care facilities, to enable housewives to give full play to their potential, to build their own careers and to develop their interests. Another precious thing about CEDAW is that it seeks to do away with the teaching of the stereotyped notions of male and female roles in schools and to form in the younger generation notions of true equality between the sexes. It does so by encouraging changes in teaching methods, text-books and teaching methods. Mr Deputy President, last Friday, Mr John CHAN submitted a paper to the manpower panel of this Council. The document, which was later circulated to all Legislative Councillors, points out that the extension of CEDAW to the territory will impose new and far-reaching obligations on Hong Kong, particularly for the private sector. And the Government will have to make anti-discrimination laws in respect of employment (including the requirement of equal pay for equal work), advertising, provision of goods and services and credit. Also, if CEDAW is extended to Hong Kong, the Government will have to set up offices to plan and monitor its implementation as well as an independent body to receive complaints. Furthermore, the Government will of course have to submit periodic reports on the progress made with regard to the implementation of the Convention to a committee of the United Nations. Mr Deputy President, I acknowledge that the extension of CEDAW to Hong Kong will bring difficult and complex problems. Still, should fear of the troublesome burden deter the Government from doing what should be done? Come to think of it: Is it something to be proud of that Hong Kong's prosperity is built on cheap female labour and other forms of discrimination? Many of us in Hong Kong are proud of our progressive society. Can we then tolerate it if our systems permit laws and customs that are discriminatory against women? One possible worry of the Government is that some members of the business community are opposed to the principle of equal pay for equal work and they insist on discriminating against women. I hope that they will step forward to clarify their position. We must not forget that 118 countries have signed CEDAW, including the United Kingdom and China. These countries can observe the rigorous requirements as laid down by CEDAW. Why cannot Hong Kong do so?

In moving an amendment to my motion, the Government claims that it will have to consult the people of Hong Kong. Mr Deputy President, the idea is very questionable. Let me start with the Governor's policy address. With regard to the constitutional package outlined in the policy address, the Government tells us that the people will have to be consulted but that the final decision will rest with the Legislative Council, which represents the people. Now this Council, which represents the people, is going to decide whether to endorse my motion calling on the Government to support the extension of CEDAW to Hong Kong and to request the British Government to so extend it. But the Government is now saying that it wishes to amend my motion so that public consultation can be carried out. Does this mean that this Council cannot represent the people? Another matter is that Mr John CHAN, at yesterday's press conference, spoke against this Council's request made in May 1992 to the

Government to set up a Women's Commission. Mr CHAN said that the Government would not create such a commission unless there was wide public support for it. Mr Deputy President, at a Council's House Committee meeting in May, we voted unanimously to propose to the Government to set up an advisory committee on feminine affairs, which the Government can consult on matters of policies and laws concerning women's well-being. But now the Government tells us that it will be established unless there is wide public support for it. I would like to ask the Government: How representative is the Legislative Council, really? When you need us, you say that we represent the people and that we can decide the matter. When you do not need us, or when you do not agree with our views, you use public opinion to overwhelm us. This is what you are doing, is it not?

Mr Deputy President, the motion that I am moving today concerns the basic rights of the women in Hong Kong. I believe that this Council can no longer turn a blind eye to the problems of discrimination against women. I therefore call on all colleagues to vote against the Government's amendment to my motion.

With these remarks, I beg to move.

Question on the motion proposed.

SECRETARY FOR EDUCATION AND MANPOWER: Mr Deputy President, I wish to withdraw my amendment to Miss Emily LAU's motion as set out in the Order Paper.

In suggesting the amendment, our original intention was to make clear the Administration's wish to consult the public on a subject as important as the extension to Hong Kong of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women, briefly referred to as CEDAW. On reflection we do not consider it necessary to make an issue over the principle of consultation.

Let me stress at the outset that the Administration fully subscribes to the principle of equality between men and women. We agree entirely that there should be no discrimination against either sex. We simply wish to draw the Council's attention to the wide-ranging and far-reaching implications of doing so. My basic proposition is that we should not rush into a decision to seek extension without considering these implications carefully.

The extension of CEDAW to Hong Kong will give rise to substantial new obligations. First and foremost, it would require the enactment of legislation against sex discrimination, including in particular equal pay legislation. Such legislation would have to apply to both the public and private sector. This would involve a high degree of government intervention in the conduct of relationships between private individuals across a wide range of areas. As an

indication of what this might entail, it is pertinent to note that, in signing and ratifying the Convention, the United Kingdom Government has found it necessary to enter a large number of reservations covering such diverse areas as immigration, nationality, employment, social security, taxation and the adoption and custody of children.

Secondly, legislation needs to be enforced if it is to be effective. This is not always easy in the case of sex discrimination legislation since objective evidence is likely to be difficult to adduce in many cases. For example, an employee who has lost out in a promotion exercise may complain of sex discrimination while the employer may argue that the decision has been based solely on merit. A certain amount of subjective judgement is likely to be involved on both sides, and it would be difficult to ascertain which party is at fault. The resources required to adjudicate disputes could therefore be considerable.

It might be tempting to assume that the extension of CEDAW and the enactment of legislation are the best ways to eliminate sex discrimination. This is at best debatable. For example, wage differentials are often cited by women's groups as evidence of sex discrimination. Statistics gathered in the 1991 census indicate that, in the absence of sex discrimination legislation, the ratio of women's median hourly income to men's in Hong Kong is currently about 80%. This compares favourably with the ratio of 77% attained in the United Kingdom where the Sex Discrimination Act has been in force for 17 years.

As Members are aware, an inter-departmental working group was set up within the Administration in March this year to examine the question of sex discrimination. One of the working group's specific tasks was to try to ascertain the extent to which sex discrimination is a problem in Hong Kong insofar as employment is concerned. The working group has found that, while wage and other differentials do still exist between men and women, these have narrowed significantly in recent years and the problem is not particularly serious. Indeed, given the tight labour market and high labour mobility, there is little scope for employers to adopt discriminatory employment practices unrelated to the work capacity of the employees.

Thus, while it is still true that relatively more women are engaged in clerical and secretarial jobs and as manufacturing operatives, and more men are engaged in supervisory, professional and technical jobs, the position has changed quite a bit during the last decade. For example, the percentage of women engaged as managers and administrators increased from 0.8% of the female working population in 1981 to 2.8% in 1991. The percentage of women professionals and associate professionals also increased from 6.7% to 15% over the same period. We are pleased to see these trends, and we expect them to continue as more and more women take advantage of the equal educational opportunities they enjoy and move into jobs once stereotyped as being for men only. This has happened even if CEDAW has not been extended to this territory. Conversely, the position of women in many countries which are

parties to CEDAW, and which have enacted some form of sex discrimination legislation, is not necessarily better than that in Hong Kong.

This is not to say that we see no merit in having sex discrimination legislation. But we believe that accession to an international convention and the enactment of legislation would not, by themselves, be truly effective unless the community as a whole believes in the underlying cause. The whole question of the rights and the social status of women is essentially one of the community's attitudes and convictions. Is sex discrimination widely perceived by the community as being a problem? Is it considered so serious that we must give it priority over our other problems? Is extension of CEDAW to Hong Kong necessarily the best solution? These are all questions which deserve careful consideration and wider debate.

Against this background, the Administration intends to consult the general public via a Green Paper on the need for action to ensure equal opportunities for men and women in society. We expect to issue this some time next year. The document will clearly explain the implications of extending CEDAW to Hong Kong and the nature of the obligations arising therefrom. It will seek the community's views on the perceived extent of sex discrimination in Hong Kong and the need to address this issue.

Some will perhaps interpret this proposal as a delaying tactic. I can say categorically that this is not our intention. We genuinely believe that, unless there is wide support in the community for such action, the extension of CEDAW to Hong Kong would not, by itself, bring about genuine improvements. It is, I submit, not a decision we should rush into and implement "forthwith" as called for by Miss Emily LAU's motion.

Thank you.

DEPUTY PRESIDENT: Mr LEE Wing-tat, I understand you wish to speak out of turn because of other commitments.

MR LEE WING-TAT (in Cantonese): Mr Deputy President, thank you for allowing me to speak before my turn. Six colleagues of the United Democrats of Hong Kong will be speaking on the motion today. I will focus on the equal political rights of men and women.

Mr Deputy President, I do not agree with the Chinese Government's recent stream of criticisms characterizing Mr Chris PATTEN's proposed constitutional package as a proposal guilty of "three violations." However, the Government of Hong Kong is completely and definitely guilty of "three violations" of the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Firstly, the Government's current policy is in violation of the spirit of CEDAW, which is that all signatory powers must safeguard women's equal political, economic, social and cultural rights through legislation and social policy. The United Kingdom signed CEDAW in 1986. What has Hong Kong done over these six years as a British dependent territory?

Secondly, the Government's policy is in violation of the letter of CEDAW. Let us look at the state of equality of political rights between men and women. In the New Territories, the Heung Yee Kuk is allowed to return one member to the Legislative Council and the chairmen of the rural committees are ex-officio District Board members. This is in violation of the principle that men and women should have equal political rights. This also patently violates Article 9 of CEDAW, which states, "The signatory powers should take all appropriate actions to eliminate discrimination against women in their internal political and public affairs and, specifically, should safeguard the rights of women to vote in all elections and referendums and to be elected to all elective offices, provided that these rights are equal to the rights of men."

Mr Deputy President, the third violation is committed by Mr Chris PATTEN's proposed constitutional package. The proposal seeks to maintain the Legislative Council seat for the Heung Yee Kuk and to maintain the ex-officio District Board memberships of the chairmen of rural committees. It seeks to continue a policy that is discriminatory against women and to rationalize this discriminatory policy through legislative means.

Mr Deputy President, there are now 27 rural committees in the New Territories. Their chairmen and vice-chairmen are elected by the village representatives of the respective rural communities. The village representatives, in turn, are elected by the heads of households in each rural community. According to a traditional Chinese custom, the head of a household is the oldest male member of the household. This custom is particularly prevalent in the New Territories. There, in practice, village representatives are elected by male heads of households. When does a female indigenous villager of the New Territories have a chance to be elected a village representative? She has a chance when three conditions by coincidence exist at the same time: (1) The male head of her household dies or disappears. (2) No other male member of the household exists or wants to be the head of the household. (3) The woman herself is grown-up but single and the elders in the same rural community do not object to her voting in the election of the village representative. Mr Deputy President, these three conditions rarely exist at the same time.

I have put questions to the Secretary for Home Affairs at numerous meetings to ask for the percentage of male heads of households with the right to vote in the rural communities in the New Territories and the number of male village representatives? The City and New Territories Administration has never answered my questions. I believe that women account for a very low percentage of the heads of households and village representatives. As far as I

know, none of the chairmen or vice-chairmen of the rural committees in the New Territories is a woman. The basis of the election of village representatives is not universal suffrage in the sense that every grown-up man or woman has a vote. Village representatives are just elected by grown-up male heads of households. Therefore, elections of village representatives are held on the basis of discrimination against women's political rights. Similarly, elections of chairmen and vice-chairmen of rural committees are not consistent with the principle of political equality between men and women.

Mr Deputy President, the Heung Yee Kuk Ordinance (Cap. 1097) provides that the greater part of the membership of the Heung Yee Kuk shall be made up of chairmen, vice-chairmen and members of rural committees and village representatives. Women can gain membership in the Heung Yee Kuk through becoming Justices of the Peace for the New Territories or being elected as extra members to fill special seats. This, however, has rarely happened.

Mr Deputy President, what is infuriating is that Mr Chris PATTEN's constitutional package proposal seeks to maintain the Heung Yee Kuk's seat in the Legislative Council and to maintain the ex-officio District Board memberships of the chairmen and vice-chairmen of the rural committees. This is inconsistent with the principle that the Government purports to uphold. I repeat the appeal that I made during the debate on the policy address: I hope that all women groups, all women, all groups interested in women's rights and the general public will write to Mr PATTEN or take other actions to raise objections and express their anger.

Mr Deputy President, a survey conducted by the New Women's Council shows that 80% of the women are in favour of women's participation in public affairs. Regrettably, the constraints of objective circumstances and the pressure of traditional values are limiting such participation. We must smash these anachronistic concepts. The Government's job is to do its utmost to sweep away all the obstacles standing in the way of women's participation in public and political affairs. I hope that more women will run for office in the 1994 and 1995 elections. Within this Council, I hope that there will be women (elected) other than Miss Emily LAU sitting beside us and working with us.

Mr Deputy President, with these remarks, I support the motion.

MR HUI YIN-FAT (in Cantonese): Mr Deputy President, as a veteran social worker, I know only too well that the professional spirit of social workers is opposed to any form of discrimination against a person or a group of persons by reason of that person's or group's very existence. Therefore, in a civilized community, it is the business of government to uphold the principles of social justice and equality without distinction between men and women, between the rich and the poor, between the majority and the minority, or among the followers of different religious beliefs.

However, based on my observation of social services during the many years that have passed, I think that, even if the Government does not intend that its social policies should discriminate against women, the fact is that the serious inadequacy of social services leaves many women with no choice. They cannot choose to play their preferred roles. The constraints of objective circumstances simply do not let them have the right of free choice. For example, there are serious shortfalls in the Government's creche and child care services for the middle and lower income groups and in its after-hours school children counselling scheme. Also, conventional wisdom says, "It is a man's part to go out to work; it is a woman's part to take care of things at home." Consequently, many women who prefer the role of career women are forced to give up their career ambitions. I have absolutely no intention of disparaging housewives' contributions to society. Still, the Government should, by taking actions in the areas of employment, education, remuneration, social services and family institutions, safeguard the modern women's right of free choice of the role that they want to play. Otherwise, the Government would be hard put to it to avoid suspicion of discrimination of one form or another. In fact, married women can be a big part of the working population. But they are not, for no other reason than the Government's failure to solve the problem of inadequacy of the various services mentioned above. So Hong Kong's labour market cannot fully meet the demand for human resources. If the problem is solved, the need to import foreign workers will decline and the women of Hong Kong will be able to do what they are best at doing.

In fact, the talents of modern women are abundant and varied. In politics, for example, so far from feeling that women are being discriminated against we are finding women's power predominating. The Senior Member of the Executive Council and the convener of the House Committee of this Council are both highly qualified women. Also, two of the three colleagues recently appointed by the Governor to this Council are women. Besides, our female colleagues are not only admirable orators; they are also as anxious as anybody else to make the most of speaking opportunities.

However, this does not give us cause to say that discrimination against women does not exist in Hong Kong. Traditional oriental values remain deep-seated in Hong Kong, particularly in less well-educated families. Men are the centres of everything, the heads of households. The average woman thinks in terms of playing the role of "a good wife and a good mother, helping the husband and instructing the children".

Mr Deputy President, customs and conventions constrain the roles and status of women and cause *de facto* discrimination against them. The only way to get rid of such discrimination is to better educate the general public and to heighten the social awareness of government officials at the policy-making level that discrimination against women need to be prevented. The extension to Hong Kong of the United Nations Convention on the Elimination of All Forms of Discrimination against Women would be an effective and radical solution. Therefore, with these remarks, I support the motion.

MR MARTIN LEE: Mr Deputy President, I ask for leave, under Standing Order 21, to move an amendment to the motion without notice. The reason is that I did not know, until a moment ago, that the Administration would be withdrawing its amendment. The effect of the withdrawal of the amendment is that this council cannot vote on the amendment. If the Council had negated the amendment, then the Administration cannot waste any more time by going through a consultative process. But once the Administration has withdrawn it, even if the motion is carried, they could, as has already been indicated to this Council, conduct a Green Paper consultation exercise which is going to stall for more time. So I would, with your permission, seek to amend the motion by adding the words "without going through any further consultative process" after the word "Women" in the original motion, so that, if amended, it would read:

"That this Council calls on the Administration to support the extension to Hong Kong of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women without going through any further consultative process and to request the British Government to take the necessary action to so extend the Convention forthwith".

DEPUTY PRESIDENT: Mr LEE, I am afraid I am not prepared to make an exception of the rule that proper notice be given of amendments. I think Council is aware that the question of dispensing with notice is a very serious question as I indicated on an earlier occasion. The motion, as it stands, is no worse off because of the Government withdrawing its proposed amendment, so that I do not feel there is such a cogent case for my dispensing with the requisite notice and permitting your amendment to go forward.

MR MARTIN LEE: I bow to your ruling, Mr Deputy President. May I switch to Chinese?

MR MARTIN LEE (in Cantonese): Mr Deputy President, the United Democrats of Hong Kong (UDHK) intended to oppose the Government's motion for amendment. But then that motion was withdrawn, leaving us with nothing to oppose. Still, we should not feel glad that the Government has withdrawn its motion. The Government was in fact "stalling for time". It withdrew the motion for fear that it might lose. But the Government actually may still stall.

Mr Deputy President, the Government said, euphemistically, that it wanted to consult the public on the issue of women's rights. In fact, this was just one of its many excuses. It was a "delaying tactic". In fact, the Government's approach to the issue is one marked by passivity and indifference, as was fully revealed at the 17 July 1991 adjournment debate on "raising the socio-economic status of women". The Government's contention at that time was that the women of Hong Kong were already enjoying a rather exalted social status and doing much better than the women in many other parts of the world;

therefore, it did not appear necessary for any special action to be taken to promote women's well-being and rights, or for a working group or advisory committee to be set up to study a policy on women, or for the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to be extended to Hong Kong.

Mr LAM Chi-chiu, the Secretary for Home Affairs at that time, cited the examples of several highly regarded women in Hong Kong. In doing so, his purpose, as the Honourable HUI Yin-fat has noted today, was to show that the women of Hong Kong were enjoying an exalted status. The women he cited were Mrs Anson CHAN, Secretary for Economic Services, Baroness Lydia DUNN, Senior Member of the Executive Council and several female Legislative Councillors.

In fact, the few examples cited by the Secretary for Home Affairs merely showed the seriousness of the problem instead of the opposite. If somebody had asked whether men were discriminated against in Hong Kong, would the Secretary, in answering, have limited himself to citing a few examples? Mr Deputy President, in our community, these women, whose names were mentioned, are popularly known as "strong females". In fact, this title in itself shows the existence of discrimination. That only these women are "strong females" goes to imply that the rest of the women are not "strong" but weak, does it not? Besides, nobody in our community refers to successful men as "strong males" or "super males".

The Secretary for Home Affairs at the time cited yet another absurdity to illustrate his point. He said that the general perception of husbands' cruelty to wives was a "misconception". He said that, during the two preceding years, for every four wives who were beaten by their husbands, there was one husband who suffered from his wife's cruelty, not even counting the husbands who suffered from cruelty but were too embarrassed to seek help. So he deduced that husbands' cruelty to wives was a "misconception". What he said served to show precisely that the Government always looked at the problem from men's angle, relied on fallacious defences and refused to address the crux of the issue.

Just yesterday, the Government published a news release declaring that sexual discrimination in Hong Kong was not a serious problem. The Government stated that women's median income now equalled 78% of that of men, up from 69% in 1981 and comparing favourably with other Asian countries. But, in my opinion, what the figure really shows is that the basic goal of equality of pay between men and women for equal work has not been attained. True, in recent years, more women have gained rights of independence and high positions. Still, the majority of the women can only fill unskilled positions or medium or low-pay clerical or secretarial positions. Men continue to fill the majority of professional positions such as doctors, lawyers and engineers. I think that the problems faced by women are problems having to do with the social system and the economic structure. The comparison of the median income between men and women does not prove a thing.

Even though we now have a rather enlightened Governor, yet, when the Government names the nine new functional constituencies, the social functions of housewives continue to be ignored. The Government is firm in thinking that housewives do not have the right to become a distinct functional constituency. This is in fact an insult to them. Summing up the above, I cannot but think that the Government, perhaps without realizing it, has always had a discriminatory attitude against women. I hope that, after this Council goes into recess, the male senior officials of the Government will make appointments to see psychologists. I believe that the psychologists will tell them that, though they keep denying being discriminatory against women, this is in fact their state of mind and has been so for many years.

Mr Deputy President, the Government always uses the Bill of Rights Ordinance (BRO) as an excuse for refusing to have CEDAW extended to Hong Kong. It says that BRO is enough for protecting the rights of women. However, BRO is binding only on government institutions and the public sector. It simply cannot control sexual discrimination in private institutions or the private sector. I made this point very clear in my speech at the July 1991 adjournment debate. Besides, there are scholars who think that the provisions of BRO, while addressing women's rights in the context of political and civic rights, do not fully address "social" problems such as sexual harassment and cruelty.

From the above examples, we can plainly see the Government's serious conceptual mistakes. The Government thinks that the problems of women are purely welfare problems or employment problems and can be solved by improving social welfare services or by amending labour legislation. But the UDHK think that women's problems, in substance, are problems of human rights, problems that are comprehensive and spread across a number of policy areas. Therefore, the UDHK think that CEDAW should be extended to Hong Kong and that an independent women affairs committee should be set up to put pressure on the Government to lay down a comprehensive policy on women. In their 1991 election platform, the UDHK talked about "efforts to promote equality between the sexes and to protect women so that they will not be discriminated against legally, politically, economically or socially; to protect women's rights and human dignity so that they will not be threatened by sexual harassment, violence or cruelty; to assist women in living up to their potential, in breaking down the constraints of the community's stereotypes of male and female roles and in taking an active part in social affairs." Therefore, the UDHK fully support the extension of CEDAW to Hong Kong.

Mr Deputy President, a moment ago, when I applied for permission to move an amendment, you said that the motion was no worse off without the amendment. I hope that the Government will remember, if the present motion is passed, that it should not publish any Green Paper, because a Green Paper

will be followed by a White Paper and then a lot of precious time will be wasted.

I so make my submission. The UDHK support the motion.

MR TAM YIU-CHUNG (in Cantonese): Mr Deputy President

8.00 pm

DEPUTY PRESIDENT: I am so sorry for the interruption, Mr TAM. It is now 8 o'clock and under Standing Order 8(2) the Council should adjourn.

ATTORNEY GENERAL: Mr Deputy President, with your consent, I move that Standing Order 8(2) should be suspended so as to allow the Council's business this evening to be concluded.

Question proposed, put and agreed to.

MR TAM YIU-CHUNG (in Cantonese): Men and women should enjoy equal political and economic rights and rights to education. Concerning equality of pay between men and women for equal work, as long ago as in January 1989, I raised a question in this Council, expressing the hope that the Government would implement Article 7(A) of the United Nations International Covenant on Economic, Social and Cultural Rights, which provides for the right of equality of pay between men and women for equal work. At the time, however, the Secretary for Education and Manpower thought that this was not necessary. I was greatly disappointed. Today, a Member has moved that this Council call on the Administration to support the extension to Hong Kong of the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), thus promoting equality between men and women. The issue is thus once more attracting attention. For its part, the Government is beginning to change its attitude; it will now study the issue. I hope that the Government will go with the tide and make sure that men and women enjoy equal rights in all matters.

Of course, the extension of CEDAW to Hong Kong will require the making and revision of many laws. Of course, some technical problems will be encountered. I agree that it will be all right to listen to the views of all quarters and, at the same time, it will be necessary to make the public more fully aware of the issue, so that laws may be made or revised better. This is not a delaying tactic.

With regard to the elimination of discrimination against women in the workplace, I hope that the Government will make equality of pay between men and women for equal work into law, thus protecting women's rights in the workplace. At the same time, the Government should work to eliminate the barriers raised by certain trades to exclude women, so that women may work at whatever positions they are able to fill, so that they may have increased access to employment opportunities. Of course, the Government must also take into consideration the fact that married women have to make the hard choice between going out to work and taking care of things at home, and provide them with sufficient support so that they may go out to work. For example, if there are more child care facilities, working mothers at work need not worry about accidents happening to their children at home. I think that the Government, when handling such matters, must communicate with trade unions and women groups. Policies made in this way will be more practical.

Mr Deputy President, with these remarks, I support the motion.

MRS PEGGY LAM (in Cantonese): Mr Deputy President, the United Nations passed the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on 18 December 1979. CEDAW fully and comprehensively provides that women should enjoy equal rights in, among others, political participation, economic activities, laws, health care, employment, social activities, cultural life, marriage and family relations. The Convention also requires the signatory powers to take effective steps to eliminate discrimination against women and the establishment of monitoring bodies. It has been 13 years since the passage of CEDAW. More than 100 countries have now become parties to CEDAW, including the United Kingdom, Hong Kong's present sovereign power, and China, to which Hong Kong's sovereignty will revert in 1997. Given that the United Kingdom and China have both become parties to CEDAW, I am at a great loss why Hong Kong has been dragging its feet about having it extended here.

Looking back at the past 20 or 30 years, we see that many people in Hong Kong, including myself, have been working consistently to promote equality between the sexes. The position of women in Hong Kong is now indeed much higher than it was 10 or 20 years ago. The calls for equality between sexes are very common nowadays. Regrettably, however, inequality between men and women still prevails in some cases. The situation is just as CEDAW notes when it points out: Discrimination against women remains widespread despite the various relevant documents. I note in particular CEDAW's references to customs and conventions that are discriminatory against women. I would like to talk about something mentioned a moment ago by several colleagues. It is that some laws for and customs in the New Territories very largely subscribe to the notion that men are more valuable than women. For example, only male offsprings have the right to inherit ancestral homes and homes for successors in the male line. I recall that there was this case in the New Territories several years ago involving a woman, who was the only child of her parents. After her

parents died, she was forced to move out of her ancestral home. Though the house was built by her father, she could not inherit it, for the custom made it very clear that, when the owner of a house died and if he did not have a son, the house would go to a nephew in the clan and not to his own daughter. So the woman in the particular case, facing eviction by her father's nephews in the clan, had to seek public help. Such customs, which are highly discriminatory against women, are indeed anachronistic.

We have not yet attained the goals of equal pay and equal employment opportunity, particularly not in the private sector. The Honourable Emily LAU already described this clearly a moment ago. I do not wish to belabour this point here. In workplace, women mostly hold the low-pay, low-skill positions in trades that offer few opportunities for advancement. According to statistics for the fourth quarter of 1991, 37.8% of all working men were in managerial positions, against only 5.63% of all working women. The reason is that the community has long subscribed to stereotypes of male positions and female positions. That is to say, certain jobs are considered fit for men, and other jobs are considered fit for women. Therefore, with regard to employment opportunity, particularly advancement opportunity, there is *de facto* discrimination against women.

The Convention says that the male and female behavioural patterns in social and cultural activities must be changed, so that sex-related prejudices may be eliminated. In Hong Kong, much is revealed by the small fact that there are one-third fewer women than men studying in tertiary institutions. In family planning, the responsibility for contraception rests heavily on the women. It is common in Hong Kong that man is always the head of a household, while the wife is often referred to by the discriminatory sobriquet of "yellow-faced woman" or "rice-cooking woman". I hope that today's meeting will mark the end of such references to women.

We know that a housewife has a major responsibility. She has to take care of the home and keep it very tidy; then the family will be able to prosper. An old Chinese saying has it that "Order in the house goes before order in the country. And then one can establish order in the world". Who takes care of order in the house? The wife does. A woman is often unable to go out to work because she has to take care of household chores. When they fill out travel forms, some women put down "Nil" in the section of "occupation"; others put down "Housewife". I feel that this shows how serious women are discriminated against. I feel that housewives should put down "Household Manager", for in fact they manage their homes and are indeed managers. Without wives to take care of things at home, men will not be able to leave home with peace of mind as they go out to work and make money. Also, I feel that, while we hope today that the Government will extend CEDAW to Hong Kong, as women we must do our part by making unremitting efforts to improve ourselves, by merging ourselves into the community, by keeping abreast of the times, by showing an interest in current events and by improving ourselves through continuous studies. We must become modern women not only in name but also in fact. We

must recognize our due rights. We are half of the world. We must work for true equality. If we see inequality between men and women in the community, we must raise the alarm and correct it.

Another thing is that I hope that women will never discriminate against their own sex. For instance, women must never feel that giving birth to a boy is better than giving birth to a girl. At home, mothers must treat all children equally and not favour the boys. Sons and daughters should be given equal opportunities to receive tertiary education. If the family can afford to send only one child to pursue further study, this child should be chosen by the aptitude criterion and not the child's gender.

Mr Deputy President, with these remarks, I support the original motion.

MRS MIRIAM LAU (in Cantonese): Mr Deputy President, the Bill of Rights Ordinance (BRO), passed by this Council in June 1991, provides that men and women shall enjoy equal civil and political rights. But its provisions are binding only on the Government and the public sector. There is no provision concerning citizens' rights in respect of inter-personal relations. The Government at the time thought that laws could be made on a case by case basis to protect the rights of individuals from infringement by others. The Chief Secretary at the time told this Council that the Government would also give consideration to the application of the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), among other things.

During this Council's adjournment debate on the enhancement of the socio-economic status of women in July 1991, many Councillors, including myself, thought that the Government should have CEDAW extended to Hong Kong. We also suggested that the Government should introduce legislation for the protection of the rights of women similar to the United Kingdom's Sexual Discrimination Act. The then Secretary for Home Affairs refused to respond directly to these suggestions. He said only that the issue needed careful study. He added that the women of Hong Kong did enjoy a high socio-economic status and had equal rights and opportunities under our law; so it was not necessary to take any specific action, such as the establishment of an advisory committee, to promote women's well-being. After a year's study, consideration and consultation, the inter-departmental group set up by the Government to study sexual discrimination in the workplace has still not made a decision whether to have CEDAW extended to Hong Kong. I am greatly disappointed.

Mr Deputy President, I feel that the Government has in fact been dodging the issue of women's rights. More than 100 countries, including the United Kingdom and China, have now signed CEDAW. Many of them are developed countries. Many are developing countries (far less developed than Hong Kong). Though many feminist groups in Hong Kong have been calling on the

Government to extend CEDAW here, yet the Government has been dragging its feet, citing the reason that the issue requires consideration and study. I think that the Government has no reasonable excuse for taking such a hesitant approach to the extension of CEDAW to Hong Kong, if it is telling the truth when it says that the positions of the women of Hong Kong are exalted, that women's rights and opportunities are similar to those of men. If the Government insists that its views are correct, then there is no need to fear the test of any international convention or law.

I think that, while women's status has indeed improved in recent years, things are not as satisfactory as the Government claims that they are. According to the Census and Statistics Department, female employees' salaries are generally lower than those of male employees by between 20% and 30%. The Government's inter-departmental group's own finding also shows that women's median income last year equalled only 78% of that of men. Many newspapers continue to carry advertisements of vacancies for male managers and male department heads and for female clerks and female salespersons. Many TV commercials continue to stress men's authority and portray women in subservient roles. One notorious example is the commercial about an alcoholic beverage that men may drink but not women. It appears from such mentalities behind the commercial that women are still being discriminated against in many forms in the community. The Government should take a hard look at the situation and expeditiously introduce legislation against sexual discrimination, so that women's dignity and rights may be legally protected.

Also, the ordinance for the New Territories recognizes the custom according to which ancestral land may be inherited only by male relatives among the natives of the New Territories. The rights of the women of the New Territories are totally disregarded. This is really unacceptable. Now that everybody agrees that men and women should enjoy equal rights, I wonder if we should maintain such feudal customs in our law.

CEDAW cannot by itself solve the problem concerning the rights for the women of Hong Kong. Nevertheless, it is the cornerstone for a legal system that protects the rights of women. With CEDAW extended to Hong Kong, the Government will be under obligation to make laws and take administrative measures and other actions to give women the same political, social and economic rights that men have and ensure that women have the same rights as men in the workplace and at home. With these laws and actions, women will find it easier to follow the proper legal procedures in striving for their reasonable rights. Also, the Government will be under obligation to submit a progress report to the CEDAW Committee every four years. This will enable the Committee to monitor if the Hong Kong Government is practically implementing CEDAW. I sincerely hope that the Government will stop evading the issue of women's rights any longer as the way it dealt with the human rights issue. Before the Bill of Rights Ordinance (BRO) was passed, the Government had insisted that Hong Kong's human rights record was excellent, even to be proud of. But then, after BRO was passed, it was found that many laws had to

be amended because they were incompatible with BRO. Similarly, just talking about equality between men and women as an ideal is not enough. We must make laws and implement them. CEDAW contains many measures for protecting equality between the sexes. The Government should expeditiously have it extended to Hong Kong as the basis for legislation.

Mr Deputy President, with these remarks, I support the motion.

REV FUNG CHI-WOOD (in Cantonese): Mr Deputy President, I would like to talk about the lack of equality of employment opportunities between men and women mainly on three fronts:

(1) *Discrimination in job entry*

In 1985, an academic, HO Suk-ching, made a study by scanning all job vacancy advertisements in the *South China Morning Post* for the whole year. It was found that serious occupation segregation by sex was prevalent in Hong Kong's labour market. Three points are worth noting:

Firstly, the wholesale/retail, import/export and hotel/restaurant trades were offering more jobs to women than to men. Financial institutions, multinational corporations or big enterprises were looking specifically for more men than women to recruit. This showed the existence of horizontal segregation.

Secondly, women were wanted mostly for secretarial and clerical positions. As to vacancy advertisements specifying that men were preferred, they were mostly managerial and technical positions. This showed the existence of vertical segregation.

Thirdly, even the trades that were easier for women to enter placed advertisement to recruit men for managerial positions. This was probably indicative of fewer promotion opportunities for the women in these trades.

Section 1 (b) of Article 11 of the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) states that men and women should have equal employment opportunities and rights, including same employment qualification requirements. The introduction of CEDAW would help to prevent employers from applying unreasonable screening criteria. Some countries have already made equal employment opportunity laws providing that employers may not discriminate against women in hiring. I think similar laws should be introduced to Hong Kong.

(II) *Discrimination against working women*

Firstly, inequality due to child birth:

The Government has promulgated laws providing for maternity leave and unlawful termination of service. These laws prohibit the dismissal of female employees on account of pregnancy. Still, employers can make use of loopholes and find ways to dismiss pregnant employees without good reasons. According to some labour groups, more than 10 complaints about such dismissals are filed each year. Some complainants have alleged that their employers "never fail to dismiss pregnant female workers".

Secondly, there is discrimination in pay and advancement:

The following facts are worth noting:

- (1) With regard to how jobs are distributed among the working population, there are more men than women who are managers and executives, professionals, workers in service industry, salespersons and technicians. There are more women than men who are employed as assistants to professionals, clerks and unskilled labourers. Please read *A Gist of Hong Kong's Statistics in 1991*, which was published by the Census and Statistics Department.
- (2) Men hold higher positions than women, though with similar academic qualifications.
- (3) Men are markedly better paid than women even with similar academic qualifications.
- (4) In any particular trade, men are generally better paid than women.

Let us look at the finding of a survey conducted by the Census and Statistics Department last year: Women's salaries equalled only between 77% and 82% of their male counterparts with similar academic qualifications.

Since inequality does exist, the Government should take appropriate steps to require the private sector to adhere to the principle of equal pay for equal work.

Section 1 (d) of Article 11 of CEDAW states that it should be assured that men and women receive equal pay (including benefits), equal treatment and equal rights for equal work; enjoy equal rights with regard to performance evaluation.

Section 2 (a) of Article 11 of CEDAW provides that the use of pregnancy or maternity as a cause for dismissal should be prohibited. The United Democrats of Hong Kong urge that Hong Kong adopt CEDAW as the basis on

which a law on equal employment should be made. Working women's entitlement to equal treatment should be safeguarded by law.

(III) The Government's failure to provide adequate support services to enable more women to seek employment

According to the 1991 census, 83% of the women in the 20-24 age group had jobs. The percentage fell sharply for older age groups, due to the change in marital status. Only 60% of the women in the 30-34 age group and only 56% in the 35-39 age group had jobs.

Section 2(c) of Article 11 of CEDAW states that governments should encourage the provision of necessary back-up social services and should, specifically through promoting the establishment and development of a system of child care facilities, enable parents to attend to their responsibilities in the workplace and in the community in addition to their obligations at home.

Women are valuable resources of society. We should fully utilize them. We should also support them so that those who wish to develop their potential in the workplace or in the community will not be hindered by having to take care of children and by other relevant problems.

Mr Deputy President, the people of Hong Kong have long given full support to equality between men and women. In reality, however, discrimination against women is still very much with us. We should expeditiously take legislative actions to protect women against discrimination. The extension of CEDAW to Hong Kong will be an important first step. China and the United Kingdom have already adopted CEDAW. There is no justification for Hong Kong's failure to follow suit.

With these remarks, I support the motion.

MR SIMON IP: Mr Deputy President, the Convention on the Elimination of All Forms of Discrimination Against Women is designed to ensure equality between the genders in a wide variety of areas. These include political rights, social and economic rights, civil and family rights.

The Convention is promotional and declaratory in nature. It does not impose immediately binding legal obligations but requires parties to take "all appropriate measures" to achieve the full realization of women's rights. Also, it does not establish any machinery to investigate and adjudicate on complaints of non-compliance. So in many respects it is a very moderate instrument compared with other international conventions of this kind. Yet the Government has set its face against adopting even this modest instrument for change, for the spurious reason that discrimination against women is not a serious problem in Hong Kong.

However, the facts speak for themselves. The average monthly wage for women in 1991 was only 79% of that of men. Women earn less than men in 214 types of jobs out of a total of 261, a staggering 82%. However, these figures alone do not show the full extent of sex discrimination in employment in relation to recruitment and promotion. Despite the formation of a working group to examine the problem of sex discrimination, the Government has failed to conduct a comprehensive survey to ascertain the prevalence of discriminatory practices.

There are good legal reasons for the adoption of the Convention. The International Covenant on Economic, Social and Cultural Rights, which is enshrined in both the Joint Declaration and the Basic Law, also prohibits discrimination in some of its provisions. In particular, Article 7 provides for equal pay for equal work and guarantees to women conditions of work not inferior to those enjoyed by men. However, when extending this Convention to Hong Kong, the United Kingdom Government entered a reservation to postpone the provision of equal pay in the private sector. That showed a remarkable lack of commitment to promoting sexual equality in this area.

The other legal justification for adopting the Convention is the inadequacies of the Bill of Rights in this area. Articles 1 and 22 of the Bill of Rights provide for the enjoyment of rights without discrimination of any kind. But these provisions cannot be used against discrimination in private employment because the Bill of Rights does not apply to "inter-citizen rights". As the Bill of Rights is ineffective in guarding against discrimination in the private sector, extension of the Convention to Hong Kong, underpinned by anti-discrimination legislation is all the more important.

I will now deal with some of the Government's arguments. The Government questions whether the United Kingdom can now make additional reservations in respect of Hong Kong. As the United Kingdom will remain Hong Kong's sovereign power up to 1997 it will have the power to make reservations for Hong Kong, subject to consultations with China. But do we really want to follow in the United Kingdom's footsteps and make a mass of reservations? In particular, why should there be additional reservations?

Then there is the argument that employers have to sacrifice certain remuneration principles, such as individualized pay by performance. This is completely unsubstantiated. I have not heard that in countries, where there is equal pay legislation, linkage of pay with performance - a common sense practice - is prohibited.

The next argument is that equal pay legislation is difficult to enforce. Experience in the United Kingdom suggests that enforceability of legislation depends crucially on the complexity of the law and the mechanism devised to implement it. If user-friendly agencies are in place to help the complainants, such as an Equal Opportunities Commission and informal tribunals, there should not be a problem.

The Government also argues that a tight labour market does not allow for discrimination. While it is true that during prosperous times employers might be less inclined to exclude certain people from the labour market, to say that this by itself is an argument against equality law is simply preposterous. First, what will happen in leaner times? Secondly, and most importantly, the existence of a buoyant market does not mean that discrimination will not exist. A simple example is the United States of America where a free market did not prevent racial discrimination.

It is also argued by the Government that wage differentials in Hong Kong appear no worse than those countries which have sex discrimination legislation. There are two answers.

First, the road to equality is a long and winding one. For instance, the United States of America introduced racial equality legislation nearly 30 years ago but equality still has a long way to go. This by itself is not an argument for not introducing equality legislation in the first place. Moreover, even if the wage differentials between the United Kingdom and Hong Kong are the same, it does not mean that the present rate is all that the United Kingdom equality law can ever achieve. It might well be that the differential in the United Kingdom will continue to narrow whereas Hong Kong will remain the same.

Secondly, the most important point about equality legislation, which I think the Government has completely overlooked, is this. The legislation is more than merely solutions to quantitative inequalities. They also perform a more important social function of addressing the grievances and the sense of injustice which weaker groups in the community might otherwise feel.

What is now needed is some concrete demonstration of commitment by the Government to promote equality between the sexes. This Council has already decided to set up a Women's Commission earlier this year. The adoption of the Convention will be a belated step in the same direction.

Mr Deputy President, with these words, I support the motion.

DEPUTY PRESIDENT: Order, please.

MR MAN SAI-CHEONG (in Cantonese): Mr Deputy President, the speeches today of a number of colleagues from the United Democrats of Hong Kong (UDHK) are structured in terms of subject content on the basis of a clear "division of labour". As the UDHK's spokesman on policy matters affecting women, I would like to briefly discuss the advantages and the importance of the extension of the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to Hong Kong. Following that, I will talk about what the Government can do, after CEDAW is extended to Hong Kong, to attain equality between the sexes in the local community.

CEDAW is an important guide for use by the international community to gauge the social positions of women. It is the most comprehensive international convention to date concerning the rights of women. It contains a whole set of principles and methods. It requires the state, through legislation and social policy, to safeguard the equal political, economic, social and cultural rights of women.

The Government here passed the Bill of Rights Ordinance (BRO) in 1991, incorporating the United Nations International Covenant on Civil and Political rights as part of Hong Kong's domestic law. The first chapter of BRO goes directly to the point by prohibiting discrimination against any individual. However, BRO is not enough to safeguard women's rights fully. BRO deals only with political and civic rights. The discrimination that women suffer from is not limited to the scope of political and civic rights. Discrimination also exists in employment and in education. It exists in the fact that employers do not treat male and female employees equally. BRO simply cannot handle these problems. Even more regrettably, to this day, Hong Kong has not set up an organization similar to the Human Rights Commission, an organization to study and deal with cases in which women are deprived of their civic rights. Therefore, existing law does not sufficiently protect women against discrimination. As to the future, the Basic Law provides clearly that sexual discrimination shall be prohibited. But this provision does not spell out the exact meaning of the principle of equality between the sexes. Nor does it say how much of this principle will be safeguarded or how. So the Basic Law will not provide women with sufficient protection either. Therefore, Hong Kong indeed must have CEDAW extended to and applicable here. All existing laws should then be reviewed and, where found to be in conflict with CEDAW, amended. Also, new laws will have to be made to require equality of pay between men and women for equal work and to strengthen women's rights. In addition, Hong Kong should lay down a whole set of policies for women on the basis of CEDAW and gradually mitigate the problems that women face in different areas.

Mr Deputy President, the Government has an inescapable responsibility for attaining equality between the sexes in the community. The modern women's contributions to society and the economy are not inferior to those of men. The Government should consider legislation to require equality of pay between men and women for equal work and to prevent women from being exploited and discriminated against by their employers. Also, women's social role needs to be made more effective. The Government should provide women with more community service opportunities so that they may make contributions to the community. Young people have youth centres. The elderly have centres for the aged. Women, too, should have women's centres, which will then enable them to expand their social contacts and to take part in group activities. Women are a great voluntary social service force; they are not to be belittled. The Government may take the first helpful step without having to allocated too much resources. All that will be needed is to make available to women the community halls that are now greatly under-used, or to let women have the afternoon slack-time

use of youth centres. Women will then have places where they can visit and gather regularly. This is all that needs to be done. Why does the Government not jump at the chance?

Women have all along been discriminated against in the workplace and in community service. In everyday life, women face many kinds of harassment, the worst of which is sexual harassment. According to studies by Hong Kong's women groups, more than 80% of women have experienced sexual harassment. Also, cruelty to wives and rapes are on an upward trend. We may ask what good the extension of an international convention to Hong Kong will do for the solution of the various problems. True, to have CEDAW extended to Hong Kong will merely be a beginning. But it is a very important first step. It would represent the Hong Kong community's respect for women, and the direction of equality and co-operation between the sexes in which Hong Kong is headed. Most importantly, we should find out Hong Kong's cultural shortcomings. For example, there are the erotic magazines that depict women as sex toys and publications that graphically describe sex assaults and acts of sadism. An ad hoc group of the Legislative Council last year already studied the problem of erotic magazines. I do not propose to go into this problem today. But I would like to draw attention to the mentalities behind the erotic magazines. "Male chauvinism" provides a big enough market for the depraved erotic magazines. This is enough to make the masculine gender stop and think. Therefore, extending CEDAW to Hong Kong is just a starting point. In order to eliminate discrimination against, and disrespect for, women, we of the masculine gender must ask ourselves some hard questions. Also, I feel that the Government and members of the public should actively encourage literary and art works that promote concepts of sexual equality. Attention should be paid to textbooks, to publications, to motion pictures, to TV shows and to advertisements which create stereotypes that distort the image of women. Attention to these problems cannot brook one moment's delay. The Government should show strength and resolve concerning the implementation of CEDAW. Then, Hong Kong people will stop being sexually discriminatory.

With these remarks, I support the Honourable Emily LAU's motion.

MR HENRY TANG: Mr Deputy President, the business sector is in full support of equal pay for equal work regardless of sex, creed or religion. We believe that rewards, promotions and opportunities should be extended to employees based on merits and performance. I am sure this concept has not been given as much recognition, nor is as widely practised in the world, as in Hong Kong from the number of women holding important posts in many of Hong Kong's institutions. In this Council itself, we have several very capable female colleagues whose contributions to the Council, and to Hong Kong as a whole, are given due recognition and equal standing as well as equal pay. And there are many others like them in the professional and business arena, whose contributions to Hong Kong's prosperity and growth have not been overlooked

but instead been given very high accolade, which, I must add, they very much deserve.

Having said all this, I believe that there is still room for improvement and the Convention on the Elimination of All Forms of Discrimination Against Women is another step forward in securing more rights for women in areas where it is lacking. The spirit of the Convention is highly commendable.

In considering the extension of the Convention to Hong Kong the structure and recommendations of the Convention should be carefully studied as I have found that the Convention is rather wide and general in scope, leaving most of the enactment and implementation of anti-discriminatory legislation to signatory states. It is also, to my understanding, that the United Kingdom Government has found it necessary to enter a large number of reservations on matters ranging from immigration, nationality, taxation, social security, employment, all the way to the adoption and custodianship of children. Hong Kong should therefore also need to consider the nature of such reservations, *inter alia* from Hong Kong's perspective, if the Convention were to be applied. We should also need to consider whether the United Kingdom can now make additional reservations on behalf of Hong Kong after such a long lapse since the United Kingdom itself ratified the Convention in 1986 and also to consider whether consultations and checks for consistency with the Basic Law should be made since the obligation adopted will extend beyond 1997.

I also would like to make a few points on the implication of the Convention that it is likely to have on Hong Kong's employment scenario if it were adopted whole-scale without giving due consideration to Hong Kong's situation. Introduced legislation such as those recommended by, say, Article 11 1(d) of the Convention on the right to equal remuneration benefits and to equal treatment in respect of work of equal value as well as equality of treatment in the evaluation of the quality of work may mean undue government intervention. Stringent legislation could also create rigidities in the employment mechanism and undermine Hong Kong's *laissez faire* principle of leaving market correction to natural market forces.

Up until now, Hong Kong has always been able to maintain a comparative edge over our competitors due to the well known and much lauded flexibility of our workforce in working hand and hand with their employers to overcome the challenges of economic changes. To stifle that relationship with over-legislation is not only unwise but surely suicidal.

In practice anti-discrimination legislation may be difficult to enforce since allegation of any form of discrimination is most likely to be laced with some elements of subjective bias rather than based solely on objective standards and at any rate objective standards on perception are rather difficult to ascertain.

Furthermore, there did not seem to be any evidence to suggest that discrimination in employment is a serious or widespread problem in Hong Kong, and indeed given the tight labour situation here, which is a low employment rate and a high turnover of workers, there is not much room left for employers to adopt discriminatory employment practices if they want to retain their workers. I am sure that discriminating employers will no doubt find that they will be shunned and would naturally have difficulties in recruiting good calibre employees.

Hong Kong has a unique cultural background. We are a melting pot where diehard tradition is welded together with new ideologies and many of our traditional practices still survive to this day. Some, I regret to say, are highly discriminatory against women. Antiquated inheritance rules, such as the male lineal succession, should be changed by way of legislation regardless of the Convention. Hong Kong's move towards more equality for men and women should be a voluntary progress in the light of Hong Kong's growing prosperity and openness.

Mr Deputy President, I fully support that there should not be any discrimination against women; neither should there be discrimination against men for that matter. There should be equal pay for equal work for men and women and equal benefits for both sexes. In other words we should all be treated equally, no more and no less.

MR JAMES TO (in Cantonese): Mr Deputy President, discrimination against women is a rather widespread phenomenon in Hong Kong. With regard to employment, women's jobs are often limited to clerical and low-pay types. Women in important positions are often referred to as "strong females". In this cause-effect circle, women compete with men on unequal terms and do not have equal rights in education and society. Also, existing law contains all kinds of provisions that are discriminatory against women. Most notably, according to the New Territories Ordinance, the right of inheritance of ancestral property among the indigenous villagers of the New Territories is, in line with tradition, still the right of the male lineal descendant. At the same time, only male adults have the right to inherit ancestral houses and own houses under the village small house policy. Women play no part. Another law that is clearly discriminatory against women is the family and marriage law. As was mentioned a moment ago, the Marriage Ordinance provides that a person under 21 who wants to get married needs to have the written consent of the father. The mother can substitute for the father only where the latter is deceased or mentally unsound.

To deal with these laws, to deal with social roles that violate equality and mutual respect between the sexes and to deal with other kinds of anachronism in society, the authorities must extend the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to Hong Kong and amend existing laws to bring them in line with CEDAW. Regrettably, though the United Kingdom became a party to CEDAW in 1986,

nothing has been done to this day to have CEDAW extended to Hong Kong. At the time, the United Kingdom said that it was difficult to extend CEDAW to Hong Kong forthwith because its provisions were too complex. Three years later, in October 1989, in paragraph 26 of its third periodic report required under the International Convention on Civil and Political Rights, the Government here told the United Nations Human Rights Committee that the matter of extending CEDAW to Hong Kong was "under consideration". Another three years later, in March 1991, the Government told the United Nations that the matter was still "under consideration". The Government has already spent almost seven years on considering the matter but this still has not been enough. Why? Why has no decision been made to this day? Why does the Government say that, if the present motion is passed, consultation and study will still be needed?

I recently received a background paper *Impact of the Extension of CEDAW to Hong Kong* from the Government. One paragraph in this paper says, "Hong Kong's Bill of Rights Ordinance (BRO), which was enacted in June 1991 and which contains provisions prohibiting discrimination against women in the public sector, is very helpful to the implementation of the provisions of CEDAW." I believe that this is a reference to Articles 1 and 22 of BRO. True, Article 1 of BRO prohibits discrimination against any individual. But this is not sufficient to safeguard the rights of women. BRO deals only with political and civic rights, while the discrimination that women suffer from is not confined to the scope of these rights. In fact, obstacles to equal rights for women are often in the social scope and the scope of private matters, such as cruelty to wives, sexual assaults, stereotyped role and unequal house-keeping burden. It is obvious that BRO framework cannot protect women against problems of this nature. Also, BRO is binding only on the Government and the public sector. Violations of human rights among private individuals are not within BRO's purview. This renders BRO ineffectual for the protection of women. As for Article 22 of BRO, it provides that everybody is equal under the law. The Employment Ordinance now allows 10 weeks of maternity leave for women, made up of four weeks before and six weeks after child birth. But men have no such leave. Of course, we realize that women need physiological and psychological adjustment and rest before and after child birth. Still, taking the family as an integral unit, it should be said that husbands play very important roles and that, consequently, the responsibility does not rest on wives alone. If the woman's role at home is stereotyped, this will worsen the prejudices inspired by those customs according to which "a man's part is outside the home; a woman's part is inside the home". Therefore, I ask the Government to undertake a special review of this law, having regard to my point, to allow extra leave for husbands as well, thus enabling them to share in house-keeping responsibilities when wives are giving birth.

There is one other point. After reading the background paper recently given by the Government to the Legislative Council's Manpower Panel, I feel even more strongly that the Government should have CEDAW extended to Hong Kong. Paragraph 5 of the background paper says that the extension of

CEDAW to Hong Kong will require the Government to take several major actions. One example is the elimination of discrimination among private individuals and in the private sector. In particular, if Hong Kong is to implement CEDAW practically, it will be almost certainly necessary to make anti-discrimination laws in the areas of employment (including pay), advertising, provision of goods and services and granting of credit. I would like to respond on this. Evidently, the Government has given careful consideration to the matter and is aware that discrimination is rather widespread and that anti-discrimination laws will need to be made to deal with the problems. But this precisely proves my point, which is that we need CEDAW.

There is yet another point. The Government says that, if CEDAW is extended to Hong Kong, the authorities will have to submit a report every four years to a United Nations committee. The Government will also have to set up a body in overall charge of the implementation of CEDAW and for monitoring the impact of government policies on women. After reading these two points, I feel that submitting reports to the United Nations is really nothing unusual, since the issue has to do with human rights. After all, the Government has been submitting reports required under the human rights convention and each time it said that things were under consideration. I really feel that the extension of CEDAW to Hong Kong will strengthen the Government's resolve to implement the provisions of CEDAW and to set up a body to enforce them effectively.

One further point is that the background paper says that implementation of CEDAW would mean extra international rights and obligations and would necessitate negotiation with China if these rights and obligations were to continue beyond 1997. I believe that the Government need not worry about this. There have been precedents of successful negotiations with China, including treaties on extradition. Moreover, China is also a signatory to CEDAW. Therefore there is no cause for worry.

There is one final point. The Government's background paper also says that additional resources will be needed by the judiciary if some independent committees are set up to handle complaints about discrimination against women. My view on this is as follows: I believe that, in the case of BRO for instance, many people in the community actually want a human rights commission or independent committee to be set up to monitor the implementation of the Ordinance. This, then, is all the more reason that an independent committee should be set up to monitor the implementation of CEDAW. For the reasons stated above, I support the Honourable Emily LAU's motion.

DR YEUNG SUM (in Cantonese): Mr Deputy President, the Legislative Councillors of the United Democrats of Hong Kong (UDHK) have already made various comments on Miss Emily LAU's motion. I would like to talk about the social welfare aspect of the issue.

Mr Deputy President, we can tell a community's attitudes from little things. Last Sunday, Legislative Councillors held a get-together with reporters. I lost a table tennis match to a female reporter and all my students found out about it. What happened was that all major newspapers reported the event prominently. I believe that, if I had lost the match to a male reporter, they would not have made such a fuss of this sort of thing. A male Legislative Councillor lost a table tennis match to a female reporter turns out to be a newsworthy event. We can tell from this how Hong Kong looks at equality between the sexes.

The Government seems to feel that discrimination against women is not a serious problem in Hong Kong. An inter-departmental group on sexual discrimination in employment remarks that this kind of discrimination does not exist in Hong Kong. While there are disparities between the types of jobs and the amounts of salaries of men and women, the group says that the problem is one of individual capabilities. Thus the problem of sexual discrimination in employment does not exist. Mr Deputy President, as revealed by the results of social studies, I find that sexual discrimination indeed exists in Hong Kong and that women are treated unfairly in many aspects.

According to a joint study conducted by the Hong Kong Young Women's Christian Association and the City Polytechnic of Hong Kong in 1986 on the change of roles of men and women in Hong Kong during the 20th century, the women of Hong Kong had a low opinion of themselves. They lacked self-confidence and tended to look down on themselves. The Centre of Social Studies of the Chinese University of Hong Kong conducted a study on mental patients in 1976. It found that women are easily disturbed emotionally. According to a survey conducted in 1984 by the Hong Kong Young Women's Christian Association on the daily life of full time housewives, it revealed that most housewives were unhappy with their lives, considering them to be dull and monotonous. They felt they could not keep pace with society. Finally, a study by the Shue Yan College in 1982 on the domestic function of working wives showed that married women were under great stress as they had to shoulder most of the domestic and child-rearing responsibilities. Mr Deputy President, due to time constraint, it is impossible for me to cite more findings of relevant social studies. However, on the basis of the findings of the above-mentioned studies, you can see that the women of Hong Kong are under very heavy social stresses. I believe that these stresses are closely related to the community's discrimination against women.

In Hong Kong, the community's discrimination against women can in fact be seen in families, social organizations, schools, the economy and politics. However, Mr Deputy President, I will focus on the aspect of social welfare. The social welfare policy of Hong Kong is that a family will be counted as an important social unit in the provision of welfare services. The Government even worries that too much social welfare will undercut the role of domestic welfare. Such a worry is of course unsupported by theories or studies. Women's role in domestic well-being is described by the saying: "A man's role

is to go out to work while a woman's role is to take of the things at home." This is the traditional culture, the conventional wisdom accepted by the community. The women of Hong Kong, above all, are regarded as persons whose main job is to take care of the members of the family. They are basically charged with the entire burden of looking after the elderly, the young and the disabled in the family. Women face much difficulties in looking after the people in their families. In a study that I conducted with my colleagues in the Department of Social Work of the University of Hong Kong, we found that women faced many problems in looking after their family members. Their social activities, mental and physical health, economic activities, income, as well as their careers, were all seriously affected. As you all can see, the women of Hong Kong have given up many personal rights and advancement opportunities in order to stay at home to look after their families. Meanwhile, the support that they receive from the community is in fact very marginal. This is due mainly to the fact that Hong Kong's social welfare services are basically designed on the assumption that women will look after the people in their own families. Women are seen as wives and mothers. They are not treated as individuals. Their personal needs and rights are disregarded. In other words, under the present social welfare policy, women are to discharge their traditional obligation of looking after people in the family and their rights are disregarded. In view of this, I would like to make some proposals for improvement.

Firstly, in the welfare policy area, proper regard should be paid to women's needs and rights. Women should be treated as individuals, and not the dependents of families or of men in the provision of social services.

Secondly, women should be provided with more support and services, so that they will be more independent. For instance, child care service, community care service and elderly care service should be increased to reduce the workload of women as persons taking care of things at home.

Also, women's economic independence should be increased, for example, through adult education and vocational training. We should give sufficient support to women with special needs, such as wives who are victims of domestic violence and mothers who are single parents.

Thirdly, social policies should be co-ordinated within an overall framework. In schools, students should be imbued with the concept of sexual equality. Politically, women should be given equal opportunities to participate. Economically, women should be protected from exploitation in their jobs and careers.

Mr Deputy President, Hong Kong has already enacted the Bill of Rights Ordinance. However, the Government is still evading the issue of equality between the sexes. The UDHK deeply regret this. Just now, Mr Simon IP commented on the Government's refusal to promote and implement the policy of sexual equality. I have one point to add to his comment. The Government thinks that legislation means government intervention and it will affect

competition in the market place. But I would like to remind the Government that, in proposing the compulsory retirement scheme as it did recently, the Government also exerts its influence. Nearly 40% of our population live in public housing. This, too, is a form of government intervention. So was Government's implementation of the nine-years free education in 1978. Therefore, the Government should do whatever needs to be done, if the public thinks that it is for the good for all. There should be equality between the sexes. The UDHK support Miss Emily LAU's motion to have the United Nations Convention on the Elimination of All Forms of Discrimination Against Women extended to Hong Kong.

Mr Deputy President, with these remarks, all 13 Legislative Councillors of the UDHK fully support Miss Emily LAU's motion.

MR WONG WAI-YIN (in Cantonese): Mr Deputy President, I was very glad to learn a moment ago that the Government had withdrawn its motion for amendment. I hope that the Government did so not because it was afraid that it might have the support of only three votes, or because the three Secretaries could not wait until such time to vote, considering that this motion debate was unexpectedly held up until this late hour. Rather, I hope that all official Members of this Council will vote in favour of the Honourable Emily LAU's motion. On the other hand, I am disappointed and concerned by the absence of Mr John CHAN. I am disappointed because he apparently does not have the courage to face the women still following the debate in the gallery, who have already waited several hours. I am concerned because I pray for him that he is not in trouble with his wife for moving the amendment.

As the Government has withdrawn its motion for amendment, I have only half of my speech left to give. However, I wish to raise one point, to explain why Meeting Point is opposed to the Government's amendment. Meeting Point thinks that a Legislative Councillor should be respected for moving a motion debate on a social issue and inviting colleagues to join in, thus drawing the public's attention and making the Council perform its function as a body where matters of public concerns would be debated. Meeting Point thinks that the Government's ground for moving the amendment that the original motion, if passed without amendment, will cause problems of implementation is unsound. In fact, the Government, if it wishes to express its views, can say it in its reply or on other occasions. It also can make its position known by having the three official Members in this Council vote against the motion. The Government does not like the original motion to be passed. So it moved an amendment to change the substance of the motion. While this is permitted under the Standing Orders, Meeting Point thinks that such an action by the Government has gone beyond the expression of the official opinion. The Government has made a judgment as to what motions should or should not be debated by Legislative Councillors, and has then intervened. Meeting Point regrets this action.

Mr Deputy President, the Government seems to have two concerns over the extension of the international convention to Hong Kong. Firstly, the signing of the international convention and its extension to the territory is a question involving post-1997 arrangements, and this must be discussed with China. Meeting Point thinks that this is a totally fallacious excuse. Meeting Point always thinks that the Government should not assume that all policies will end at 1997. And major matters straddling 1997 can of course be brought up for discussion with China through proper channels. The issue here is the extension to Hong Kong of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Both China and the United Kingdom are parties to CEDAW. The United Kingdom's extending CEDAW to Hong Kong before 1997 will not create a problem for convergence beyond 1997. Also, the Government says that CEDAW contains very complex provisions, so its extension to Hong Kong by the United Kingdom will have serious consequences, since the Government will then have to take steps to eliminate all forms of discrimination against women, including sexual discrimination in the private sector.

On the other hand, the Government thinks that the position of women in Hong Kong today is quite satisfactory, and there is no need for special action to be taken to promote equality between the sexes. Meeting Point thinks otherwise. Firstly, we hold that a better human rights record is an important indication of a more civilized society. All United Nations conventions on human rights are international commitments to act jointly to safeguard and improve human rights. They deserve support. All international conventions give their signatory powers some leeway in that they can implement the provisions step by step in accordance with local circumstances. CEDAW, if extended to Hong Kong, will be the same. Therefore, the problems of implementation are no more than technical problems. They should not cite this as the reason for refusing to make commitments to the principle and objective of equality between the sexes.

Since both China and the United Kingdom are parties to CEDAW, Meeting Point cannot see why Hong Kong does not have to work for equality between the two sexes.

Furthermore, in real life, we do indeed see many instances of inequality between the sexes and the unnecessary social pressure on both sexes because of their stereotyped roles. The most conspicuous example of discrimination against women is the ordinance for the New Territories, according to which the indigenous villagers of the New Territories enjoy the traditional right of inheritance but this right does not extend to women. The Marriage Ordinance provides another example. It says that if a person under the age of 21 wishes to get married, he or she must have the consent of the father before he or she can receive the marriage certificate, and that the mother can sign the written consent only if the father is deceased or mentally unsound. Such ordinances, which make men the heads of households and which reinforce the notion that men are better than women, must be amended forthwith.

There is one more matter. The Government is not making changes in public policies in line with women's changing status and role. For instance, more women are working, but back-up services for family are woefully inadequate. Many women have to quit their jobs in order to bear and raise children. When they return to work after a period of absence, society does not provide them with re-training opportunities. Here is another example. Half of the women in our population are housewives. Their livelihood in old age will receive no protection from the provident fund scheme that is now under consultation.

It goes without saying that the problems of inequality between, and stereotyped roles of, the two sexes cannot be ameliorated overnight because they stem not only from some of our laws and public policies but also deep-rooted cultural values. The extension of CEDAW to Hong Kong will be just the first step towards equality between the two sexes. Specifically, Meeting Point is in favour of expeditiously setting up a committee on women's affairs with representatives from all parties concerned to study and make recommendations with regard to policy on women's situation and on the various problems they face. It should also see to it that CEDAW is implemented and the objective of equality between the sexes is attained.

Mr Deputy President, I so submit. The four Legislative Councillors of Meeting Point, namely, the Honourable Fred LI, the Honourable TIK Chi-yuen, Dr the Honourable LEONG Che-hung and myself, will support the Honourable Emily LAU's motion.

MISS CHRISTINE LOH: Mr Deputy President, it is not the intention of the United Nations Convention on the Elimination of All Forms of Discrimination against Women to grant special privileges to women. Rather, the Convention signals that discrimination against women need no longer be accepted without comment or protest. And it provides authority and coherence for constructive efforts throughout society to reduce and eliminate such discrimination wherever it occurs.

It is essential for us to recognize that, in the long run, discrimination is something by which we are all diminished — those who discriminate, as well as those who are discriminated against. The fairest, the most efficient, the most productive society can only be one which allows all men and women to participate on equal terms and with equal freedom.

This Convention will serve as a much-needed frame of reference, both legal and moral, for the development of policies enabling women to participate more fully in our society, and recognize the importance of their economic role.

In developing such policies, we will be addressing very basic and very sensitive issues. Where prejudice exists, we must seek to eliminate it. A better quality of life for women does not mean a worse quality of life for men. By

reducing discrimination against women, we increase the dignity, the freedom and the potential for happiness of all society, men and women alike.

The family

In the discussion of the role of women in society, expressions of concern are frequently heard from those people who believe that family life requires women to assume a primary role in the home, and a subordinate role elsewhere. This out-dated view regrettably still pervades the Social Welfare Department.

These concerns may be honestly felt, but they are not reasonable. The stability of the family and the stability of society are closely linked. But it is not true that the stability of the family depends upon the subordination of women.

On the contrary, by reducing discrimination against women, by introducing presumptions of equality and balance into relationships and into families, household and family life is reinforced and thereby enriched.

The Government can help here. Not by interfering in the delicate chemistry of the family, but by ensuring that laws, administrative practices and social services recognize not only the responsibilities of women, but also their rights and their special needs as citizens, as workers and as mothers.

Equal pay

Our educational system functions without discrimination between the sexes. We must ensure that the same spirit of equality prevails more readily in the workplace.

The concept of equal pay is no more than natural justice. Although there have been progressive improvements over the years, official statistics continue to show a clear disparity between the pay and benefits achieved by men and women in many fields of employment. It is insufficient for the Government to simply say the problem, in its opinion, is not serious enough to merit redress.

Since this is an anomaly that employers have not addressed fully, the duty of correcting it lies with the Government; yet the Government's main contention is that it is too difficult an issue to deal with and therefore they do not recommend the adoption of the Convention.

Legislation requiring equal pay for equal work and forbidding discrimination in most forms of employment on grounds of sex alone is commonplace around the world. I cannot accept that its introduction to Hong Kong would represent an excessive or an unreasonable burden on employers, on the government machinery or on the judicial system. It would, on the other hand, enjoy widespread public support as an indication of our progress towards a more just and fair society.

Further proposals

In addition to legislating for equal pay, I would like to see the Government place a higher priority at all levels on its provision of services and resources of particular relevance to women.

An obvious example is greater priority being given to the provision of low cost child care centres which are vital to working mothers, indeed working parents. Where private child care centres operate, they must be regulated with a rigour sufficient to ensure the very highest moral and professional standards.

I would also like to see institutions established as a permanent focus for research, and for recommendations on women's issues. Within this Council, I propose that we start the ball rolling by establishing an in-house committee on women's issues. More broadly, I endorse suggestions for the creation of a Women's Commission to monitor and to lobby for women's issues in the community.

Finally, I would like to see Hong Kong represented at the Fourth United Nations World Conference on Women in 1995 — and, I would hope that by then Hong Kong will have some significant progress to report.

Conclusion

Mr Deputy President, I would not have supported the Government's amendment to the Honourable Emily LAU's motion. We cannot allow arguments on technicalities to cloud important issues of principle. Miss LAU's motion does not preclude consultation.

Furthermore, I object to the misuse of information by the Education and Manpower Branch. The Branch suggests that the extension of the Convention to Hong Kong would entail an excessive new layer of bureaucracy. In a background note to this Council, the Branch lists several British institutions that arbitrate on labour issues, such as the Equal Opportunities Commission and industrial tribunals. It seeks to create an impression that those institutions were established because of the adoption of the Convention. Those bodies were set up in order to address discrimination of all kinds, including racial and sexual discrimination, and they were established long before Britain ratified the Convention.

Another attempt to mislead was the Government's claim that the Bill of Rights Ordinance had gone a considerable way towards meeting the requirement. The Government, no doubt, was aware that the Bill of Rights Ordinance does not apply to employment in the private sector.

The Universal Declaration of Human Rights affirms that all human beings are born "free and equal in dignity and in rights". The Convention on the Elimination of All Forms of Discrimination against Women does no more than

seek to uphold the most basic of human rights in the context of the workplace and the context of the home. It is a simple and noble objective.

Mr Deputy President, I support the motion.

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr Deputy President, today's debate is a welcome opportunity for the Administration to hear views of Honourable Members on the complex issue of women's rights. Although the Administration has had a regular dialogue with some women's groups on the question of discrimination against women, we have yet to hear much from other sectors of the community on this very important issue. I hope this debate, whatever the outcome, will assist in raising public awareness on this issue and result in the emergence of a wider spectrum of public opinion.

As regards the Administration's views, let me start by repeating what my colleague, the Secretary for Education and Manpower, has said at the beginning of this debate, which is that the Administration subscribes to the principle of equality of the sexes. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is but one of the means of achieving this. The Administration, however, has serious doubts as to whether it is the best or the most effective instrument in achieving the objective of elimination of all forms of discrimination against women.

As the Secretary for Education and Manpower has explained, in some detail, the extension of CEDAW would require the enactment of legislation against sex discrimination applicable to both the public and private sectors. Such legislation would have to cover a wide range of areas as CEDAW itself stipulates standards in a wide range of areas, almost all aspects of life. It would involve a high degree of government intervention in the operation of the labour market and give rise to rigidities in employment practices.

Members are aware that it has always been the Government's policy to exercise minimum intervention in the labour market and that this has worked well for Hong Kong as a whole. The Government would hesitate, without wide consultation, to depart from the non-interventionist policy and take the major step of introducing anti-discrimination or equal pay legislation affecting the private sector.

Mr Deputy President, we would ask ourselves whether the extension of CEDAW, given its far-reaching and wide implications, is practical and desirable at this stage. Is sex discrimination a serious problem in Hong Kong? Is CEDAW the only way, or an effective one at that, to improving the lot of women in society? We have no clear cut answers to these questions yet.

The working group, chaired by the Secretary for Education and Manpower, has found no evidence to suggest that sex discrimination in employment is a serious or widespread problem. It is also questionable whether

the status of women in some other countries, which are parties to CEDAW, is higher than that of women in Hong Kong.

Before we have sorted out the above problems and are able to conclude that there are overall practical benefits to be gained from the extension of CEDAW to Hong Kong, it would not be responsible for the Government to recommend that CEDAW be extended forthwith.

Elimination of discrimination in itself is a good thing and it is difficult for anybody not to support it. However, support for elimination of discrimination against women is not the same thing as acceding to CEDAW. We would like to ascertain wide public views on the whole question of status of women in society and would like to include different sectors and interest groups in the community in our consultation. We therefore recommend that a Green Paper exercise should be undertaken on the issues which include, but are wider than, the question of extension of CEDAW to Hong Kong.

Before I conclude, I would like to respond to some of the points made by Members. The question of the so-called discriminatory practices in the area of succession and electoral rights applicable to the New Territories is not an issue in our consideration of whether CEDAW should be extended to Hong Kong. To the extent that they are based on law, they fall under the remit of the Bill of Rights Ordinance. This is, of course, not to say that they are incompatible with the Bill of Rights. Indeed the administration has explained on previous occasions in this Council that we did not believe so. It is simply that they are not issues affecting our consideration of CEDAW question.

Mr Deputy President, it should be obvious from what my colleague, the Secretary for Education and Manpower, and I said that the administration doubts the wisdom of extending CEDAW to Hong Kong forthwith. The Administration is therefore not able to support the Honourable Emily LAU's motion. But as we have repeatedly said, we do not take issue with the principle of equality between women and men. However, lest that there should be any misunderstanding about my sympathies arising from the Honourable Martin LEE's remarks, I wish to make clear that I certainly sympathize with the well-meaning objectives of those who advocate extension of CEDAW to Hong Kong.

Mr Deputy President, we do not therefore wish to take a position which might be construed as the Administration opposing the elimination of all forms of discrimination against women. The ex-officio Members will therefore abstain from voting.

DEPUTY PRESIDENT: Miss Emily LAU. Order, please, order.

MISS EMILY LAU (in Cantonese): Mr Deputy President, because I have only two minutes, I will quickly respond to some points. Firstly, I wish to thank colleagues in this Council for supporting my motion. However, I wish to remind all colleagues, particularly those representing political parties, that all of us the women of Hong Kong know that your parties did not field any female candidate in the 1991 direct elections. I find this deeply regrettable. I hope that you will make major improvements to this record in the 1994-1995 elections.

I regret even more the remarks made by the Government. Mr Deputy President, Members who spoke in this debate have already made our views very clear. Yet the Government still says that it does not see why the problems of discrimination are considered to be so serious. I believe that Members must find such response very disappointing. Nevertheless, we hope that the Government will see the light soon and then act swiftly to have the Convention extended to Hong Kong.

The Government says that some of the countries that are parties to the Convention probably have worse records than Hong Kong's concerning the elimination of discrimination against women. I feel that this is not a valid argument, not the kind of argument that we find convincing. Whatever the others do, right or wrong, does not mean that we do not have to have the Convention extended here. I believe that the two matters are totally unrelated. There are people who knowingly violate the law. There are indeed such people in a place near Hong Kong. What can we do about it? Are we to stop making laws because of that? I am shocked by the Government's argument. Now the Government insists on publishing a green paper first. I believe that many Members have already said that there is no need for that. But there is nothing we can do about it if the Government insists on going its own way. Still, I hope that the Government will hurry up and it will not take one or two years to publish a green paper before spending another year to put together a white paper. With such foot dragging, we will soon be in the year 1997 and find that there is no more need for us to do anything then

Mr Deputy President, I believe that colleagues in this Council have today, in a voice that is exceptionally strong and united, told the Government and the people of Hong Kong what a serious problem discrimination against women is, and urged that this problem be solved. I hope that the Government will drag its feet no more; it has already dragged its feet for many years. I hope that the Government will compile the green paper and the white paper expeditiously. I hope that the authorities will act swiftly, for it takes time to have the Convention extended to Hong Kong. I hope that the Government will give us its word that it will do the work of so extending the Convention within six months. Thank you, Mr Deputy President.

Question on Miss Emily LAU's motion put and agreed to.

Adjournment

CHIEF SECRETARY: Mr Deputy President, I move that this Council do now adjourn.

DEPUTY PRESIDENT: Mr TIK Chi-yuen has given notice to raise a matter for reply by the Government. The House Committee has recommended that each Member's speech be limited to five minutes. Conventionally, the principal speaker may take longer. At the end of 45 minutes, however, I will call upon the Secretary for Education and Manpower to reply.

The objective of school education

9.20 pm

MR TIK CHI-YUEN (in Cantonese): Mr Deputy President, Meeting Point has all along held that the formulation of school education aims is a very important task. It is because we all know that no matter what we do, we should have definite aims before we can lay down a concrete plan of work. Without any aims, we would move ahead blindly with no sense of direction. Education is no exception. Meeting Point thinks that a set of basic education aims encompasses a three-fold function:

1. To set a direction for education development

With a set of definite aims, educators can identify a direction. If they, in a concerted effort, follow the same direction, they would not adopt different approaches and waste resources.

2. As a generally accepted consensus by the community

A set of aims which is generally endorsed and accepted would help the government officials, schools principals, teachers, parents and students to push forward local education and its development on a common basis. It also promotes the public's involvement and participation.

3. As criteria to assess the performance of education

With the establishment of these aims, a set of assessment criteria can thus be developed. It would give the public and educators a clear picture of the performance of each school. And this would, to a certain extent, help us to carry out the relevant reviews and make improvement.

Apart from these, Meeting Point feels that a set of sound education aims should adhere to the following five principles:

1. It should be all embracing, taking into consideration individual needs, social needs and the impartation of knowledge;
2. It should be widely accepted among members of the public;
3. It can be put into practice realistically so that schools can commit themselves to it;
4. It encourages and promotes the participation of the parents and the public;
5. The Government should demonstrate a definite commitment to it.

Mr Deputy President, in view of our stated aspirations and the above-mentioned principles of education aims Meeting Point has the following comments to make on the consultation paper *School Education in Hong Kong: A Statement of Aims*.

1. On the whole, Meeting Point considers that the consultation paper is put together in a rather advanced and liberal manner, capable of presenting some rather comprehensive aims of school education. Basically, the aims it proposes successfully move away from the solely academic-oriented approach in the past. They begin to take into account also the individual and social needs. Besides, Meeting Point welcomes the Government's move to gather opinions from parents, educators and the public in the form of a consultation paper. It serves as a good example of public participation in practical terms which will facilitate the acceptability to the public of the education aims to be established in the future.

2. The proposed school education aims are myopic and do not look beyond 1997.

Hong Kong will revert to its motherland four years or so later. Hong Kong people will automatically become Chinese citizens. The most important education aim to a nation is to foster among its people national sentiments and a sense of belonging to the country. But this consultation document miserably overlooked this point. Meeting Point insists that Hong Kong should uphold democracy after the sovereignty's return to China in 1997 and that the principle of "Hong Kong people ruling Hong Kong with a high degree of autonomy" be put into practice. Therefore, Meeting Point proposes to include the study of our motherland and the study of national education in a rational and critical way in our aims of school education.

3. The paper fails to highlight the importance of democratic education and puts disproportionate stress on the knowledge hand-down approach in civic education.

The consultation paper lays disproportionate stress on the impartation of knowledge in the area of civic education and fails to attach due importance to practising democracy. We feel that teaching of relevant subjects in classroom and practising democracy in students' school life are of equal importance. Furthermore, it is necessary to include democratic education as an aim of school education so as to nurture students to become the real masters of the future society.

4. Unduly stress on civic duties and overlook civic rights

The paper on aims of school education is too vague in its wordings in certain sections. For example, what does "a responsible citizen" refer to under aim 12? How should we define "responsible"? Does it mean that to abide by the law is responsible? If so, what about defying laws which are in contrary to the principle of justice? Is it a responsible act to do so by a responsible citizen? Do citizens enjoy the civic right to defy orders? It is a serious omission to stress civic duties whilst neglecting civic rights.

Furthermore, the paper only mentions that we should foster students' "willingness to participate in the political process which underpins Hong Kong's system of government" when it elaborates on this particular aim. It seems that the paper also fails to pay attention to the fostering of students' independent and critical thinking.

5. Undue emphasis on the impartation of knowledge but neglect affective education

According to American educationist Professor BLOOM's classification, education aims can be classified into cognitive aspect, affective aspect and psycho-motor aspect. This paper on school education aims lays too much stress on cognitive aspect. Important aims in the affective aspect such as emotion education, the concept on oneself, personal development and so on are not discussed at all in the paper.

6. Omission of some important issues

In modern society, environmental protection, consumers' rights, utilization of leisure time and participation in community activities are becoming more and more important. I see no reason why these are excluded from the aims of school education.

Mr Deputy President, whether or not the consultation paper on *School Education in Hong Kong: A Statement of Aims* can develop into a set of sound education aims depends on two prerequisites: one is the public's participation

vis-a-vis the paper's proposals and the second is the Government's undertaking. It is not only the Government's responsibility but also a responsibility shared by the community as a whole.

Mr Deputy President, these are my remarks. Thank you.

MR SZETO WAH (in Cantonese): Mr Deputy President, the Chinese saying "To shoot an arrow with a target" is often used to describe the practical way and realistic style of work. It involves a correct and clear objective, together with practical measures and actions to achieve it, in other words to "implement it." To handle things in such a way is, of course, commendable. But there are three prerequisite conditions before we can do this, namely:

- (1) to have "a target" — there must be a correct and clear objective;
- (2) to have "arrows" — we must have measures in place and put them into effect; and
- (3) "to shoot" — we must have the will and determination to implement the measures.

These three conditions are indispensable; the absence of any one of them will render the work unsuccessful, or even lead to failure. To shoot an arrow without a target, or shooting arrows indiscriminately, is a waste of energy and resources. It may even end up shooting the wrong target. Having a target but without arrows means having a correct and clear objective but without any measures or actions to achieve it. Such an objective is but a castle in the air. It is all done for show and is used to deceive people. Having both a target and an arrow but without shooting it means the lack of will and determination to carry it into effect. The planned measures and actions become merely empty talks. Not only has the target not been achieved, but it has turned into a show and people are easily fooled by it.

Having read the consultation paper on "*School Education in Hong Kong: A Statement of Aims*" issued by the Education Commission, and speaking from my personal experience of working in this field in Hong Kong for more than 40 years, I dare not cherish any hope in this document. It is mentioned in the "Introduction" that several targets had been set for certain aspects of the primary and secondary education in a number of papers which were published in the 1970s and 1980s. Nearly 20 years have elapsed, what practical measures or concrete actions have been taken to attain these targets? How many people still remember that there have been such targets? What happened in the past is totally disappointing. Though the aims are discussed in detail in the paper, they are open to question. Not much information has been provided insofar as the means and measures to realize these aims are concerned. They are touched lightly in the chapter "The Aims in Use", covering less than one-tenth of the whole article. There is no trace of the authorities' will and determination to

realize these aims. Hence we can describe the paper as something with "neither arrows nor the act of shooting". Since there is no intention to shoot, arrows will not be available. The objectives set out in the paper are just like "setting sun", which are just for our appreciation rather than for achievement.

Mr Deputy President, these are my remarks.

MR CHEUNG MAN-KWONG (in Cantonese): Mr Deputy President, time does not allow me to deliver a lengthy speech so I should keep it brief. School education aims involve a multitude of things and the core of the matter is: What sort of era are we in? What sort of people are we going to nurture?

It is undeniable that we have been living in a colonial era. One of the most important objectives for colonial education is to make its people dismiss from their thoughts their motherland, forget their bonds of consanguinity, history and culture so that they would not see the need to put up resistance. In this connection, what the colonial education aims to nurture are people only with worldly knowledge or indeed economic men.

From this point of view, one may note that the 15 education aims put forward by the Government in the consultation paper tally exactly with the colonial objectives. Five of the aims concern primary and secondary school places, four on learning skills, four on personal and ethical qualities, and the development of students' potential. The remaining two aims, one is on economic development and the other on social and civic awareness. Judging from such an extremely disproportion, one can conclude that the focal point of existing education aims in Hong Kong is merely to impart to students only worldly knowledge to work for the economic prosperity, as what I have said just now.

Insofar as the past education aims are concerned, even the so-called civic education is targeted at maintaining social stability through political socialization as stated in the Guidelines on Civic Education in Schools. They do not seek to inculcate democratic ideas in the younger generation and let them take a long hard look of, and subsequently initiate improvements and reforms on, the existing system through democratic participation so that they would hold sway in the running of the territory and map out the future directions of our society. It is because when they have such ideas and try to have a hand in the government, it would shake the ruling foundations of a colonial or dictatorship government.

Insofar as the past education aims are concerned, we lose our own language and go so far as to discriminate against our own language. We forget our motherland and look at it as a strange neighbouring country. Even our history can only be found in the pages of textbooks on world history. And Chinese history has been an optional subject. It may be said that the past education aims make us and our next generations get lost in time, have no idea

about our history and make us forget our country or nation. Admittedly, we should not lose sight of the fact that Hong Kong is an international metropolitan and we should not lose our international vision despite the return of sovereignty. Knowledge knows no boundary and so does thinking. Future education aims must do away with the tints of colonialism and at the same time strike a right balance between national identification and international vision.

Mr Deputy President, in five years' time British colonial rule will be over and Hong Kong will revert to China as a Special Administrative Region. In view of the future political changes, our education aims must undergo corresponding changes during the remaining years in the transitional period so that we may adapt to a new era full of challenges and nurture a new generation for the future. In this connection, it is necessary to incorporate the following into the existing education aims: to acquire knowledge and develop independent thinking, to love one's country whilst in the pursuit of democracy, and to be equipped with state-of-the-art skills and have international vision. However, these aims apart, we still need necessary curriculum; with curriculum, we still need zealous teachers; with teachers, we still need resources and institutions to fully actualize our formulated education aims. Only when all these elements are in place, the whole thing would not become empty talk nor a fruitless debate. Even more important is that the community should regard education as our hope. May this hope get on the through train and survive beyond 1997.

Mr Deputy President, these are my remarks.

MR ERIC LI (in Cantonese): Mr Deputy President, I have already made substantive proposals concerning the consultative paper *School Education in Hong Kong: A Statement of Aims* during meetings of the Commission on Youth, the Board of Education and Eastern District Board. So I had intended not to speak today. But when the present subject was first proposed for debate, only four Members put their names down to speak. I felt that it was not fair because such an important document should have deserved more attention. Therefore, I will make a short speech and try my best to support the debate on this meaningful topic.

On 26 February this year, this Council had a motion debate on the draft Charter for Youth, and the motion was carried urging the Government to adopt the principles enunciated by the draft Charter for Youth and to systematically review its existing legislation, policies and educational programmes affecting youth development so as to ensure that they are comprehensive in meeting those aims. I have made a detailed comparison between the educational objectives of schools in Hong Kong and the objectives set out in the part on education in the draft Charter for Youth. I found that the educational objectives mentioned in the consultative paper basically conform with the fundamental spirit of the Charter for Youth, or to use the popular way of expression, there is "convergence" between the two. In the stand of the Commission on Youth, I sincerely welcome this consultative paper, which reaffirms the relevant

objectives. It is mentioned in the introduction of the paper that there have been many other papers laying down various objectives, but it continues to say that there is still a need for a set of comprehensive objectives to be provided to educators as a basic framework for planning, implementing and assessing educational activities in schools. This statement gives me the two following notions:

First, educators in general already have very substantive working objectives on different levels; so the overall objectives are to enable them to see the whole picture instead of individual parts. Whether these objectives, which seem remote from an implementation point of view, could be really effective would depend on the degree of importance those responsible for formulating and implementing the policies would attach to such macro objectives. Similar papers before the present one only talked about objectives without outlining the method of attaining them. Therefore, we hope that the Education Commission will in the next step make a systematic examination and combine the various splinter or piecemeal educational objectives into a really systematic policy of education so as to achieve the overall objectives.

Secondly, that educators are already well familiar with their own work is beyond question, but the main target of the paper should be the users of the educational services, namely the parents, the employers and even the students themselves. The paper can make them understand through its simple language that the educational objectives would help co-operation between the two sides. If there is a consensus between the teachers and the users of the educational services on the objectives of education, it can avoid different standards of teaching being applied in school and at home, and students can therefore benefit because of the co-ordination between schools and families and their own understanding of the objectives of education. Unfortunately, in the current atmosphere of political dispute, this paper has failed to arouse extensive discussion among the public. Nevertheless, I believe that there is still a chance of remedy. With the progress of society, the public will have a higher expectation of society. For example, we may now be satisfied with the objective of providing nine-year free education, but in the near future, we may think that every young person should be entitled to at least 11 years of free education, and that is the completion of full secondary education.

Four weeks ago, in answering a question in this Council, the Chief Secretary mentioned the idea of a users' committee. This paper *School Education in Hong Kong: A Statement of Aims* which is now being released has been written without the extensive participation of the users of educational services. Nevertheless, I hope that this paper can be more actively recommended to parents, students and employers, and be reviewed regularly. Moreover the objectives laid down in the paper should not be constrained by the factor of time. They should be kept abreast with the progress of society and should provide a stimulant effect such that the education provided in every school can be improved continuously.

Mr Deputy President, with these remarks, I commend this important consultative paper *School Education in Hong Kong: A Statement of Aims* to this Council.

MR HENRY TANG (in Cantonese): Mr Deputy President, today I should like to focus on discussing the part about learning skills in the consultation paper. As pointed out in the paper, schools should encourage and help students think logically, independently and creatively; to make rational decisions; to solve problems; and to cope with stress and change. I cannot but agree with and support this argument.

Education in Hong Kong has been criticized by many for being a system of force-feeding of knowledge, of learning by rote, of heavy homework, and of great stress being brought to bear on students. As a result students cannot truly understand what they have learned. However, I have some reservations as to whether force-feeding of knowledge is wholly without merit. I believe such an education mode is not entirely devoid of merit. At least the Hong Kong students in general have a reasonable command of basic knowledge. Even compared with students in developed western countries, the performance of many Hong Kong students excels international standard and a great number of them are so good that they rank among the best in their classes and are awarded places in well-renowned schools in Europe and America. Hong Kong can rightly feel proud of them.

Being a rapidly developing industrial and commercial society, we should not be complacent with the *status quo* even though we are endowed with abundant expertise of the highest order. Moreover, in less than five years Hong Kong will revert to China. By then we shall have to face a brand new concept, the unique social mode of "one country, two systems". To ensure the successful operation of this mode or system, we need to actively train and educate the next generation now, to foster among them the common objective of serving the Special Administrative Region (SAR) so that they will become the core group in the future management of the SAR. Such a need has become more urgent than at any other stage or time. Hong Kong students have always been hardworking and industrious, but regrettably, their power of independent thinking and analysis has not been fully developed. Many people say that apart from enabling the students to further pursue knowledge and receive training, the university is also a place for the students to cultivate the capacity for thinking and for analysis of facts and situations as well as the underlying logic. I am of the view that this should actually begin with the secondary or even primary stage of education rather than wait until one enters the university. Presentday society has become more complex than it was 10 years ago. For someone who is devoted solely to the pursuit of knowledge, he is sometimes at a loss to cope with the stress brought about by social changes or by the circumstances to which he is subject. Besides the ability to achieve success in examinations and careers, we expect our young people to be able to think in an agile manner, to be profound, to be wise and to be brave in meeting the

challenge from various quarters of society as well as interpersonal relationships. Many parents think that once they have sent their children to school, the responsibility of educating them falls entirely on the school and the Government, and that they need no longer worry. I think this is absolutely wrong. It is the obligation of parents to care about how their children are doing in school, to understand and help their children in the growth of body and mind, as well as in their psychological development. As a matter of fact, the parents, the schools and the Government are exercising both a direct and indirect influence on the physical and psychological development of the next generation. None of the three parties concerned should or can evade responsibility.

Mr Deputy President, I so submit.

MR JAMES TO (in Cantonese): In the latter half of the transitional period, the overall social climate in Hong Kong is undergoing drastic changes. Hong Kong will no longer be a British colony and its sovereignty is going to revert to China as a Special Administrative Region where the principles of "one country, two systems", "a high degree of autonomy" and "Hong Kong people ruling Hong Kong" will be put into practice. Given such fundamental changes, the aims of our education must, apart from imparting knowledge to the students, be geared to enable them to face up to the real situation.

An Honourable Member mentioned just now the importance of nationalistic education and civic awareness. And Mr CHEUNG Man-kwong talked about democracy. Now I would like to go a bit further by highlighting the spirit of rule of law within the scope of civic awareness. I think all Honourable Members will agree that the rule of law is essential for the upholding of justice and equality in society and indispensable for the genuine protection of the citizenry's rights and interests. It is going to play a vital role in ensuring the territory a high degree of autonomy when Hong Kong is to be run by Hong Kong people. However, no detailed guidelines are put forward for such an important issue in the consultation paper: *School Education in Hong Kong: a Statement of Aims*.

In fact, on 13 May 1992, I put a written question to the Administration about the inclusion of the subject of law in the curriculum of secondary schools and, in response, the Secretary for Education and Manpower said: "Secondary education is intended to be general in nature. To include law as an independent and examination subject would introduce an element of specialist knowledge which is not considered to be appropriate; the present secondary school curriculum is already full. New subjects can only be added by taking out existing ones". As regards the Secretary's answer, I think the Administration is too conservative and narrow-minded in its formulating of the aims of education by just concentrating its efforts on technical training and neglecting the function of modern education policy to serve as an impetus in the process of socialization.

Furthermore, I did not intend to impose a law subject on a degree level on the secondary students by proposing to include it in the secondary school curriculum. I only meant it as a general subject, presented in plain language, and the teaching materials would be suitable for secondary students. Meanwhile, I also found in the consultation paper a bizarre paragraph obviously written for reinforcing colonialism in our education system. I am referring to paragraph 12 which is on social, political and civic awareness. It states that developing social, political and civic awareness among young people is a task which schools share with other agencies and political awareness involves only an understanding of Hong Kong's circumstances, and a willingness to participate in the political process which underpins Hong Kong's system of government. Such an amazing view and such a "brilliant" statement look indeed very absurd to me.

Finally, at the moment when Hong Kong is on the threshold of a new era, I look forward to seeing our students to be trained as a group of youngsters with a sense of social responsibility and a feeling of belongingness. The aims of education should not be geared to a continuation of colonial education but the provision of an education environment in which students' all-round development would be well taken care of. We should not produce "spoon-led" students any more but well-educated citizens with vision and high aspirations.

MR HOWARD YOUNG (in Cantonese): Mr Deputy President, I would like to raise just one point, that is, the Basic Law should be included in our school curriculum.

Even the United States of America, which is described as the most democratic and liberal country, requires its students to study its constitution, sing the national anthem and, every now and then, recite the Pledges of Allegiance. Immigrants who wish to obtain American citizenship have to prove that they are familiar with the constitution of the United States. It is said that sometimes these immigrants may be required to sit for an examination.

The Basic Law will be Hong Kong's mini-constitution in future. Most people in the territory can become permanent residents without having to submit any application. And the majority of Hong Kong people will also be Chinese nationals in due course. It is therefore essential to gain a good understanding of the Basic Law. Recently there was much controversy over the wording, spirit and interpretation of the Basic Law. Controversy also surrounded issues on how to converge with the Basic Law in order to achieve a smooth transition and how the Basic Law should be implemented. I believe if the public and the students were able to have a better understanding of the Basic Law through education, we would have less argument and more consensus.

MR WONG WAI-YIN (in Cantonese): Mr Deputy President, the Education Commission's consultation paper *School Education in Hong Kong: A Statement of Aims* emphasized that it "will provide all educators concerned with Hong Kong schools — including teachers, principals and school managers; teacher educators; and curriculum planners — with a useful framework for planning, conducting and evaluating their activities". It shows that the paper stressed the importance of the aims of education and the profound implications these aims have on the provision of education by our schools. The Education Commission emphasized that the statement of aims "is not just a subjective 'wish list' of educational ideals; nor a set of dogmatic assertions issued from on high. Instead, we have tried to formulate a reasoned set of aims based on explicit principles". However, disappointingly, the entire paper lacks apparent reasons save some broad concepts upon which the paper is based and these concepts are also the assumptions upon which the recommendations of all five Education Commission reports published so far were based. Actually, as early as 1982, the Llewellyn Report had already pointed out clearly that "education in Hong Kong is predominantly a highly utilitarian means to economic and vocational ends". In other words, school education is a means to achieve a certain social need and the sole aim of studying in school is to get a well-paid job. This kind of educational policy which is geared to industrial, commercial and economic interests was also reflected in the Education Commission Report No. 4.

Notwithstanding the Government's emphasis on industrial and commercial interests, the industrial, commercial and financial sector is not satisfied with the products which our education system produces. They complain that modern education is unable to satisfy their needs. They need people who are more flexible, more independent and who have a wider range of knowledge to serve them and to work for them. This new kind of need is fully reflected in the consultation paper which is entirely enveloped by the ghostly ideology of utilitarianism. This apart, the paper failed to gather and consider the aims of schools elsewhere, nor did it formulate a set of secondary aims. Moreover, though the aims got an order of priorities, they were not organized and could not therefore make up the component parts of an entity. The most disappointing thing is that the entire paper lacked a means to measure the extent the aims stated have been accomplished. Given that the fourth underlying principle set out in the paper stated explicitly that the paper "should not specify how those aims are to be achieved", we cannot expect the paper to define the relationship between the aims of school education and the programmes of school activities. In respect of evaluation, apart from the 12 questions in the final chapter to evaluate the extent the aims are achieved, it failed to come up with measures to examine how effective the programmes of activities in school education have contributed to the accomplishment of the aims of school education.

Mr Deputy President, I so submit.

9.51 pm

SECRETARY FOR EDUCATION AND MANPOWER: Mr Deputy President,

Introduction

Today's debate has made an important contribution to the public consultation exercise on the Education Commission's draft Statement of Aims for school education. I have taken careful note of their views and will convey them to the Commission. The Commission will take full account of these views, as well as those received from the education and other sectors of the community during the consultation exercise, which has now been extended until the end of this month. The Commission will then recommend a final version of the Aims for adoption as a government policy document.

What is it

The draft Statement of Aims sets out what the public sector school system is expected to accomplish. Although there have been statements of policy aims in past White Papers on education, these covered specific levels and subjects and therefore lacked completeness and cohesion. For the first time, we are drawing up a comprehensive and integrated set of aims for our school education. We will be producing similar statements for other sectors of our education system later.

What does the Statement try to do

Education as delivered through schools is a complex process. It involves teachers, principals, parents, pupils and school managers, each group pursuing its respective roles and responsibilities. To do a proper job of that, they should know, and be involved in setting, the expected outcome of the educational process. The draft Statement seeks to do exactly that. It also answers the call in the Education Commission's Report No. 4 for the Government to lay down and keep under review the basic aims of education at the strategic level.

Why now

Now is a good time to set coherent and comprehensive aims for schools. First, we have met the basic aims of providing school places for the young population. We can therefore discuss the full meaning of schooling more realistically and confidently. Secondly, we have already embarked on a series of policy initiatives to improve the quality of education including a new mechanism for setting and developing the curriculum, more and better teachers, more meaningful assessment of learning and more realistic use of the teaching medium. Having clear aims will facilitate their implementation. Thirdly, schools are being encouraged to assume more responsibility for effective delivery of a sound education. All concerned will need to be clear about what they are involved in.

Preliminary comments on some observations

Many people, including the Members who have spoken in this debate, have expressed their views on the draft Statement of Aims. I am grateful for their contributions. As the document is still in the consultation mode, it is inappropriate for me to give detailed specific answers at this stage. But I would like to make two general points.

First, the draft Statement is intended to be concise, all embracing and relatively timeless, in order that the community can easily understand and identify with it. It may not therefore contain the degree of specificity that some may prefer to see. The brevity or even the absence of specific mention in the document does not, however, mean that a concept or an issue is excluded. We have not, for instance, overlooked the importance of developing our students' understanding of Hong Kong's post-1997 status: this is covered in aim 12 — social, political and civic awareness.

Secondly, the proposed aims are statements of the expected outcome and not proposals for implementation in themselves. The task of mapping out how to get to the desired outcome will have to be assumed by people in the field with the Government backing them up with policies and resources. One example of this is the work already done by the Curriculum Development Council to produce a far more detailed set of curriculum aims for specific levels of schooling to guide teachers and curriculum planners. Thus the absence of any mention of detailed implementation plans is not a weakness of the draft document.

What next

The public consultation period on the draft Statement of Aims runs until the end of December. I hope that educators and other interested individuals and groups will let us have their views by then. Once all public comments have been analysed, the Commission will revise the document where necessary. The Government will then consider adopting the Statement as a formal policy document.

Thank you.

Question on the adjournment proposed, put and agreed to.

Next sitting

DEPUTY PRESIDENT: It remains for me to wish Members a merry Christmas and a happy New Year. In accordance with Standing Orders I now adjourn the Council until 2.30 pm on Tuesday 12 January 1993.

Adjourned accordingly at one minute to Ten o'clock.

Note: The short titles of the Bills/motions listed in the Hansard, with the exception of the Interpretation and General Clauses (Amendment) Bill 1992, Lord Wilson Heritage Trust Bill, Securities and Futures Commission (Amendment) (No.2) Bill 1992 and Occupational Retirement Schemes Bill, have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.

WRITTEN ANSWER**Annex I****Written answer by the Secretary for Monetary Affairs to Dr Philip WONG's supplementary question to Question 6**

The relevant figures as at the end of the last quarter (30 September 1992) are as follows:

	<i>Million</i> \$
As of 30 September 1992	
Recoveries from defaulters	661
Special levies received from –	
Stock Exchange of Hong Kong	1,029
Hong Kong Futures Exchange	49
Interest income on levies/deposits	<u>15</u>
Total	1,754

