

# OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 5 May 1993

The Council met at half-past Two o'clock

## PRESENT

THE PRESIDENT

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

THE FINANCIAL SECRETARY

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

THE ATTORNEY GENERAL

THE HONOURABLE JOHN WOOD, C.B., 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 MRS SELINA CHOW LIANG SHUK-YEE, O.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 PANG CHUN-HOI, M.B.E.

THE HONOURABLE SZETO WAH

THE HONOURABLE TAM YIU-CHUNG

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

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

THE HONOURABLE RONALD JOSEPH ARCULLI, J.P.

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

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

THE HONOURABLE ALBERT CHAN WAI-YIP

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.

THE HONOURABLE MICHAEL HO MUN-KA

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 LAU CHIN-SHEK

THE HONOURABLE EMILY LAU WAI-HING

THE HONOURABLE LEE WING-TAT

THE HONOURABLE GILBERT LEUNG KAM-HO

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

THE HONOURABLE ANNA WU HUNG-YUK

**ABSENT**

THE CHIEF SECRETARY

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

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

THE HONOURABLE FREDERICK FUNG KIN-KEE

**IN ATTENDANCE**

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

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

THE HONOURABLE JOHN CHAN CHO-CHAK, L.V.O., O.B.E., J.P.  
SECRETARY FOR EDUCATION AND MANPOWER

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

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

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

MR GORDON SIU KWING-CHUE, J.P.  
SECRETARY FOR ECONOMIC SERVICES

MR KENNETH JOSEPH WOODHOUSE, J.P.  
SECRETARY FOR SECURITY

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

THE DEPUTY CLERK TO THE LEGISLATIVE COUNCIL  
MR PATRICK CHAN NIM-TAK

**Papers**

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

*Subject*

Subsidiary Legislation	<i>L.N. No.</i>
Administrative Instructions for Regulating Admittance and Conduct of Persons (Amendment) Instructions 1993 .....	134/93
Forestry (Amendment) Regulation 1993 .....	135/93
Pension Benefits Ordinance (Established Offices) Order.....	136/93
Registrar General (Establishment) (Amendment of Second Schedule) Order 1993 .....	137/93
Solicitors' Practice (Amendment) Rules 1993 .....	138/93
Employees Retraining Ordinance (Amendment of Schedule 4) Notice 1993.....	139/93
Specification of Public Office .....	140/93
Specification of Public Office .....	141/93
Legal Practitioners (Amendment) (No. 2) Ordinance 1992 (61 of 1992) (Commencement) Notice 1993 .....	142/93
Waste Disposal Ordinance (Cap. 354) (Application) Notice 1993 .....	143/93
Waste Disposal (Chemical Waste) (General) Regulation (L.N. 20 of 1992) (Application of Section 4 and Parts III, IV, V and VI) Notice 1993 .....	144/93

## Sessional Paper 1992-93

No. 77 — The Government Minute in response to the Report of the Public Accounts Committee dated January 1993

**Oath**

Mr John WOOD took the Legislative Council Oath.

**Address****The Government Minute in response to the Report of the Public Accounts Committee dated January 1993**

FINANCIAL SECRETARY: Mr President, laid on the table today is the Government Minute responding to the 19th Report of the Public Accounts Committee on the accounts of the Hong Kong Government for the year ended 31 March 1992, and the results of value for money audits. The Minute reports the action taken, or about to be taken, by the Government upon the conclusion and recommendations contained in the report.

Mr Stephen CHEONG, the Chairman of the Public Accounts Committee, spoke in this Council on 10 February 1993 and voiced concern about the need to improve co-ordination between government departments. I should like to comment on the points he raised.

I acknowledge that there is scope for improving co-ordination between government departments in certain areas. We have taken steps to address the specific instances of lack of co-ordination highlighted in the Committee's report. Let me name three examples.

First, all stages in the provision of government, institution and community facilities in private developments are now being co-ordinated by the Government Property Agency.

Secondly, as I indicated in my Budget speech on 3 March this year, we have also taken a number of new initiatives to improve the co-ordination of public works projects. The Secretary for Works has been given overall management responsibility for implementing all projects in the Public Works Programme. He now chairs a new Public Works Progress Committee which includes all Policy Secretaries having a close involvement with public works. The Committee is also attended by the directors of the works group of departments. Its main task is to co-ordinate the Government's efforts to deliver public works projects on time and within budget.

In addition, a wide-ranging review of existing public works procedures and systems is being carried out. This will involve a detailed examination of how public works projects are planned, co-ordinated, financed and executed. The Committee's proposal that a Project Co-ordinator be appointed for projects involving more than one department will be considered in the review. And a more sophisticated computer-based information and management system will be developed to link all works departments and relevant policy branches.

We are, of course, not content with simply improving co-ordination of activity. We have now gone a step further to improve lines of communication and accountability as between government departments, on the one hand, and Policy Secretaries, on the other. The Efficiency Unit has helped branches and departments to develop structured programmes to define clearly and to cost departments' activities. In the coming months further work will be required to refine performance measures and to introduce regular programme reviews between branches and departments. These arrangements will facilitate a more proactive approach to resource management with a view to ensuring the best value for money in delivering the Government's programmes.

Mr President, the Government appreciates fully the importance of the PAC's findings and recommendations. I am confident that the measures we have taken, or are planning to take, will go a long way towards achieving this end.

### **Oral answers to questions**

#### **Underutilized hospitals**

1. MISS EMILY LAU asked (in Cantonese): *Will the Administration inform this Council whether it is aware of the number of hospitals which are under-utilized and if so, whether there are any plans to close down these hospitals so that resources can be redeployed to existing and planned hospitals in districts where there are growing demands?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, the Administration is aware of the need to review regularly the utilization of hospital facilities to ensure that resources are deployed in a way that meets the modern needs of our community and is cost-effective. Indeed, one of the key objectives of setting up the Hospital Authority is to achieve greater efficiency in the utilization of available resources.

The findings of a review completed recently by the Hospital Authority on the demand and supply of public hospital beds in Hong Kong up to the year 2000 point to the need to shift the emphasis of the present provision of public hospital services, mainly because of:

- (a) the population shift from the older urban areas of Hong Kong Island and Kowloon to the New Territories;
- (b) the ageing population, which will increase the demand for infirmary facilities; and

- (c) the development of new technology to facilitate day surgery and other ambulatory care procedures, which will reduce the need for general in-patient beds and increase the interface with primary health care.

I am aware that the Hospital Authority has plans in train to optimize operational efficiency and improve hospital services for the community. These include:

- (a) the formulation of plans to redesignate some 1 000 general beds as infirmary or psychiatric beds to meet the shortfall in these services;
- (b) the introduction of new services in the areas of acute high technology services, rehabilitation programmes and hospice care so as to provide a more diversified range of services;
- (c) the networking of hospitals to facilitate referrals; and
- (d) the upgrading of geriatric services at Kwong Wah Hospital, United Christian Hospital and Buddhist Hospital to meet new demands and to alleviate the heavy workload at Queen Elizabeth Hospital.

In addition, the Hospital Authority is looking into ways and means to meet the special needs of new towns. I assure Honourable Members that we will continue to review the utilization of hospital resources to achieve optimum efficiency in service delivery.

MISS EMILY LAU (in Cantonese): *Mr President, in her reply, the Secretary mentioned the population shift from Hong Kong Island and Kowloon to the New Territories. In the light of this, will the Secretary acknowledge that the utilization rate of hospitals on Hong Kong Island and Kowloon is not high? Moreover, will the Secretary explain to this Council how resources can possibly be deployed from Hong Kong Island and Kowloon to Tuen Mun Hospital which is opening in phases and the future North District Hospital and Nethersole Hospital, without closing some of the existing hospitals?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, the provision of hospital services is reviewed, as I said in my main reply, regularly in the light of population movements and changing community aspirations. The recent decision announced by the Government to go ahead with the construction of North District Hospital with 600 beds will go some way towards alleviating the demand for hospital beds in New Territories East, for example. Furthermore, we have undertaken to evaluate thoroughly in 1994 the need for a new hospital in Tseung Kwan O, taking into account the population growth and new town developments in the area as well as the effects of the United Christian Hospital extension and the commissioning of Pamela Youde Hospital for the



nearby areas. Meanwhile, we are also looking into the need for setting up other types of clinics like specialist clinics in areas of need.

PRESIDENT: I think I will have to go on to the next question. Dr TANG Siu-tong.

DR TANG SIU-TONG rose to ask Question No. 2 standing in his name on the Order Paper.

PRESIDENT: Sorry, Dr TANG, I have misled you. When I said next question I meant I would not give Miss Emily LAU a second supplementary and you were top on the list for the next supplementary. I am so sorry. *(Laughter)*

DR TANG SIU-TONG (in Cantonese): *Mr President, I am pleased to learn from paragraph two of the main reply that the Administration understands that "the ageing population will increase the demand for infirmary facilities". Does the Administration have any projection of the demand for care and attention beds for the next three years and how many care and attention centres will be established to meet such a demand?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, I am happy not to be spared the details of the second supplementary question. *(Laughter)* The initial targets in terms of providing infirmary beds and also care and attention homes have been very clearly laid down in the draft Estimates. "護理安老院", this is really relating to the care and attention centre, from the Social Welfare Department point of view. I think a large part of the \$2.3 billion allowed for in the Lotteries Fund is towards meeting the needs of the elderly by establishing more care and attention homes for the elderly under the SWD programme. And similarly we need to divert more resources towards infirmary beds and that is a co-ordinated strategy to help with meeting the needs of the elderly people in our community.

MR TIK CHI-YUEN (in Cantonese): *Mr President, statistics reveal that the bed/population ratio on Hong Kong Island is about five beds per 1 000 population whereas it is 1.9 in New Territories East. Although the Government is going to build more hospitals in the New Territories, may I ask, from the point of view of allocation of resources, whether there is any plan in place to bridge the present gap of uneven distribution of beds in the territory?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, when we talk about bed/population ratio, I would like to share with Members some of the very revealing statistics on bed/population ratio and Hong Kong is really doing quite well. In accordance with *The OECD Health System Facts and Trends (1993 Edition)* recently published, the bed/population ratios for some of the countries are cited: 3.2 in the United Kingdom for acute hospital beds per 1 000 population compared with our present ratio of 3.89 per 1 000 population. We are also leading in a number of areas like bed utilization. So apart from building new hospitals —for instance the North District Hospital with 600 additional beds which will take our bed/population ratio to 5.09 which is better than any of our neighbouring countries — I should imagine that there is very little need for us to look at the bed/population ratio because a number of interrelated factors interplay here, for example, apart from the distribution and size of population in question, we need to also consider accessibility and transport infrastructure. Where possible, internationally the trend is for smaller community hospitals with a range of services to interface with primary health care. In other words, the mode of delivery should allow for day hospitals, ambulatory care and community care.

MR HOWARD YOUNG: *Mr President, in subparagraph (a) of the second paragraph of the main reply, the Secretary mentions that the population shift is from the urban areas of Hong Kong Island and Kowloon to the New Territories. However, in subparagraph (d) of the third paragraph of the reply, examples are given, such as the Kwong Wah Hospital, the United Christian Hospital and the Buddhist Hospital which, I understand, are all in urban areas as opposed to the New Territories. Can the Secretary confirm whether the shift should actually be towards the New Territories and, in particular, whether the Prince of Wales Hospital in Sha Tin will be subject to upgrading, which, by my casual observation, sometimes seems stretched?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, the shift is in respect of building new hospitals to cater for needs in new areas which are not met. There are also new developments like upgrading of facilities, as Mr YOUNG rightly pointed out. Examples of upgrading in order to cope with the needs of the community *in situ*, for instance, the ageing population, are the expansion of geriatric services at Kwong Wah and various other geriatric teams to develop new modes of service for the population needs. New modes of service would include introduction of rehabilitation beds. So it is not a simple calculation of building new hospitals without upgrading existing hospitals. We are looking at various methods of upgrading the high-tech hospital services by going high-tech, which include services of MRI, which would be introduced in Hong Kong, CT scanners and various other new modes of services which will be the future core for development of Hong Kong's medical services.

PRESIDENT: Last supplementary, I am afraid. Mr Michael HO.

MR MICHAEL HO (in Cantonese): *Mr President, first of all, I have to declare my interest as a member of the Hospital Authority. We find that some of our under-utilized ex-subvented hospitals with ageing facilities have to compete with nearby newer hospitals which have adequate facilities. Will the Government identify such hospitals and have them closed? Furthermore, does the Administration meet with any resistance in particular from for example ex-subvented hospital boards when relocating hospitals or trying to close them or part of their services?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, may I also share, in response to the question, some of the statistics in respect of the overall bed occupancy rate. The Tsan Yuk Hospital had an occupancy rate of 49.5 rising to 59.5 this year. That is because some of the areas had been under renovation and Hong Kong people do not have so many babies these days. The higher overall bed occupancy rate relates to the Castle Peak Hospital where there is overutilization owing to the lack of beds there. We are revamping the Castle Peak Hospital. May I also say that utilization, underutilization or overutilization of beds is not a subject for simple interpretation. Again, I would relate to the physical numbers of the activities of hospitals. When Honourable Members looked at the Estimates for 1993-94 Head 177 Page 405, to which I will refer, it is stated with clarity that the average bed occupancy rate is about 81%. This compares very favourably with statistics held elsewhere in OECD countries. For example, acute hospital admission per 100 population in Hong Kong is 12.19 compared with 12.9 in the United Kingdom or 10.4 in the Netherlands. Again, acute hospital average length of stay is 10.7 in Hong Kong compared with 7.8 in the United Kingdom or 11.5 in the Netherlands. Utilization rate therefore is dependent on a number of factors, namely, on the management, the need of the population and the treatment required. Underutilization is not overplanning; it is not a question of leaving things undone. But I do assure Honourable Members that we are reviewing all the requirements periodically, as I said in my main reply and my answer to the first supplementary.

MR MICHAEL HO (in Cantonese): *Mr President, it seems that the second part of my question has not been answered, that is, does the Administration meet with any resistance from for example ex-subvented hospital boards when relocating hospitals or closing part of the services or revamping the hospitals for different uses?*

PRESIDENT: Has this actually arisen or is it hypothetical, Mr HO?

MR MICHAEL HO (in Cantonese): *Mr President, I am just asking for facts. May I ask if the Administration has met with any resistance when relocating hospitals or changing their modes of services?*

PRESIDENT: On the factual side, Secretary.

SECRETARY FOR HEALTH AND WELFARE: Mr President, on the factual side, this is an operational matter. It is a matter for the Hospital Authority. Under the law, the HA is operating independently of the Government on the operational side. I am glad to hear this question from Mr Michael HO, who is a member of the HA and as such he should know the answer himself.

PRESIDENT: Next question.

MR MICHAEL HO (in Cantonese): *Mr President.....*

PRESIDENT: Next question. Dr TANG Siu-tong.

### **Transfer of duties to SAR Government**

2. DR TANG SIU-TONG asked (in Cantonese): *Will the Government inform this Council:*

- (a) *apart from making arrangements to bring the electoral provisions of the legislature within the terms of the Basic Law, whether it has any plans to ensure an orderly and smooth transfer of duties from the existing Executive Authorities to the SAR Government in 1997;*
- (b) *if yes, whether a timetable would be laid down for the implementation of such plans; and whether it would be possible to have all the necessary arrangements in place by 1 July 1997; and*
- (c) *if not, what the reasons are; and when steps would be taken to plan for the transfer?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, the Government will develop plans to ensure an orderly and smooth transfer of duties in due course. Such arrangements will be put in place before or by 30 June 1997.

DR TANG SIU-TONG (in Cantonese): *Mr President, I am very disappointed by the short answer given by the Administration to this important question. As it is said that the Government will develop plans, may I have the details of such plans, particularly when it is going to select the Chief Executive of the Special Administrative Region, how the 50 or so government departments will be transferred from the present Government to the future SAR Government, how it is going to implement the localization policy within the Civil Service and retain experienced civil servants; and whether there will be a power vacuum in the executive branch of the Government before 1997 as a result of the offer of the right of abode in Britain and the leaving of civil servants?*

PRESIDENT: You have to try to ask one question instead of three, Dr TANG.

DR TANG SIU-TONG (in Cantonese): *Mr President, I would ask one question then. What are the details of the plans?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, as Members know, we have the Joint Liaison Group which is a forum for discussion between the British and Chinese sides on the whole range of issues affecting the smooth transition from British sovereignty to Chinese sovereignty. I think the answer to Dr TANG's question would have to depend on developments between now and 1997, certain elements of which — for example, which civil servants will stay behind to see to a smooth transfer — are not matters about which I can give an answer.

MR EDWARD HO: *Mr President, will the Secretary inform this Council by when the localization of principal government officials under the provisions of the Basis Law will be completed to effect a smooth transition in 1997?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, this is a question which should be addressed to my colleague, the Secretary for the Civil Service. But as far as I understand — I am not an authority on this particular issue though — by 1995 all Secretary posts will be filled by local officers.

MR SIMON IP: *Mr President, would the Secretary simply elaborate on what the major considerations are that would need to be taken into account in developing the plans that he refers to in his answer?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, the main consideration is the need for both sides to work together. We propose plans all the time. And Members know for a fact that there are, for example, air

services agreements which we have initialled with the parties concerned and which are awaiting Chinese examination. I think, as the saying goes, it takes two to tango.

MR RONALD ARCULLI: *Mr President, will the Secretary inform this Council when the Joint Liaison Group will reconvene to enable outstanding matters relating to a smooth transition of sovereignty to be resolved?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, we are ready to meet at any time and indeed we have proposed dates to the Chinese side and I hope we shall be meeting before too long.

MR CHIM PUI-CHUNG (in Cantonese): *Mr President, Hong Kong may have a "new governing body" some four years from now. In the interests of the people of Hong Kong and the civil servants, the Administration should fix a date for the two sides to discuss these future plans. May I ask if the matter has been passed on to the British Government which is the present sovereign state for them to deal with it?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, closer co-operation is definitely a direction in which we are moving. As Members know, the Joint Declaration provides that during the second half of the transition period there will be a need for closer co-operation which will therefore be intensified during that period. And matters for consideration during that period shall include the procedures to be adopted for the smooth transition to 1997. Therefore the short answer, I think, is yes.

MR HOWARD YOUNG: *Mr President, the Secretary in his reply says the Government will develop plans before or by 30 June 1997, which means that it could be widely interpreted as "there are no such plans, nothing has been thought of and they will be developed in a hurry" or it could mean that plans are more or less almost in place and are just waiting for the JLG to endorse them. Can the Secretary tell us whether the Government has in mind actual priorities as to which part or which of the plans should be developed first and therefore implemented first?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, the question is almost like how long is a piece of string. I would attempt to answer that question if the Honourable Member would cite me specific issues to be addressed.

MR HOWARD YOUNG: *Mr President, personally I have priorities like security, travel documents and, I believe many Members would agree also, the Judiciary.*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, as far as travel documents are concerned, I think that was one of the issues we first took up with the Chinese side and we have achieved results on that. I do not think there are major areas that we need to cover in that respect. As for security, I am not too sure as to what aspect of security is being referred to. I think one would need to be specific in answering such questions. But I think the fact is that we do have priorities and the ones that we have been concentrating on are trade matters which mean Hong Kong's life blood. As Members know, we have since 1986 secured Hong Kong's own separate status in the GATT and we negotiated and have achieved results in areas of international rights and obligations under treaties that would be applied to Hong Kong after 1997. Those are the areas that we have been focussing on. As to other matters, I would be happy to answer specific questions on any of them.

PRESIDENT: We have to pass on.

MR MAN SAI-CHEONG (in Cantonese): *Mr President, in relation to the work of the executive authorities referred to by Dr TANG, will the Administration inform this Council whether there are plans and timetable in place to enable those at the executive level to receive adequate training in the use of Chinese and English so as to ensure an orderly transition to the Special Administrative Region and to be in line with the spirit of the Basic Law?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, I take proficiency in the Chinese language to mean an adequate command of Putonghua and written Chinese. The Government encourages and organizes classes for senior civil servants in the use of Putonghua and there is also a refresher course for civil servants who wish to brush up on their written Chinese. As Member would probably gather from media reports, the Government has now organized courses with the Qinghua University of Peking and directorate officers from Hong Kong will attend the courses in that university on the use of Putonghua and written Chinese and also the Chinese system of government. The first of these courses will begin next July.

DR PHILIP WONG (in Cantonese): *Mr President, may I ask two questions which are more specific. First, when will the Government issue the bank notes of the Special Administrative Region? Second, does the Administration intend to bring up the issue of the Court of Final Appeal again?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, on the first part of the question, I will defer to the Financial Secretary. But maybe I will deal with the second part of the question first before I yield the floor to the Financial Secretary. On the Court of Final Appeal, the Administration is considering how best to bring the issue back to this Council. And there are a number of aspects we would need to consider and consult. We are not yet in a position to bring it to the Council.

FINANCIAL SECRETARY: Mr President, as I understand it, the question refers to new currency. Of course, the Joint Declaration provides that the Hong Kong dollar should continue to be the currency of Hong Kong after 1997. I could not quite understand the thrust of the question.

### **Foreign domestic helpers**

3. MR TAM YIU-CHUNG asked (in Cantonese): *Will the Government inform this Council:*

- (a) *of the number of overseas workers who were permitted to work in Hong Kong as domestic helpers in each of the past five years and of their country of origin; and*
- (b) *whether consideration will be given to reviewing the relevant policy and legislation on the control mechanism to prevent them from working other than as domestic helpers?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, in response to the first part of Mr TAM's question, I have tabled detailed statistics on the numbers of overseas workers permitted to work in Hong Kong as domestic helpers in the past five years.

As regards the second part of the question, all foreign domestic helpers are employed on a standard contract which stipulates that the helper may only perform domestic duties for a specified employer. Any helper found taking up unapproved employment is liable to prosecution for breaching a condition of stay under the Immigration Ordinance. Employers who unlawfully deploy foreign domestic helpers in non-domestic work are also liable to prosecution for aiding and abetting the helpers to breach their conditions of stay. In both cases the maximum penalty is a fine of \$5,000 and imprisonment for two years. As a matter of policy, employers with proven adverse records with the Immigration Department will normally be debarred from employing foreign domestic helpers in future. Similarly, foreign domestic helpers who have breached their conditions of stay may be debarred from working in Hong Kong unless there are genuine mitigating grounds.



These requirements are vigorously enforced. In addition to investigating specific reports or complaints, the Immigration Department pays surprise visits to bars, shops and restaurants where foreign domestic helpers are suspected to be illegally employed. The Department also raids vice establishments jointly with the police.

In 1992, over 1 700 cases of offences involving foreign domestic helpers were investigated. These led to 759 helpers and 48 employers being prosecuted. Foreign domestic helpers who had overstayed or taken up unapproved employment, including street hawking, were fined between \$1,000 and \$2,000 in each case. Employers were fined between \$1,000 and \$5,000 for unlawfully deploying foreign domestic helpers. The situation is reviewed from time to time to ensure that the existing policy and legislation on the control mechanism are sufficient and effective.

## Annex

## Overseas Workers permitted to Work in Hong Kong as Domestic Helpers in 1988-1992 by Country of Origin

<i>Country of origin</i>	<i>1988</i>	<i>1989</i>	<i>1990</i>	<i>1991</i>	<i>1992</i>
Philippines	41 700	52 900	63 600	75 700	89 100
Thailand	1 750	3 100	4 300	5 600	6 700
Indonesia	450	680	1 000	1 800	3 500
India	750	810	840	890	960
Sri Lanka	270	300	340	400	520
Others (for example, Nepal, Malaysia and Bangladesh)	280	210	220	210	420
Total	45 200	58 000	70 300	84 600	101 200

Note: Figures are as at the end of the calendar year concerned.

MR TAM YIU-CHUNG (in Cantonese): *Mr President, employment of foreign domestic helpers grew by 20% each year for the past five years. Will the Administration examine why the growth rate has been persistently high for the past few years? With this growth rate, will it generate social problems?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): The growth in the number of foreign domestic helpers in the past five years reflects an increasing demand for these workers in our community. Continual growth

of our economy means family income in general has increased, the result of which is higher demand for domestic helpers. As I have said in my main reply, we will review the policy and the control mechanism from time to time so as to keep pace with the demand of our community.

PRESIDENT: Do you have a second part to your question, Mr TAM?

MR TAM YIU-CHUNG (in Cantonese): *Mr President, thank you for drawing the Secretary's attention to that. The second part of my question is: with such growth rate, will that generate social problems?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, we noted that the large number of foreign domestic helpers working in Hong Kong has given rise to situations like the assembling of large numbers of these workers at certain places during holidays. This has aroused the concern of the public who demanded special arrangements for these workers such as designating certain areas for them to spend their holidays. Past experiences and observation show that apart from the above, they have not generated serious social problems.

MRS ELSIE TU: *Mr President, has consideration been given to the possibility that some domestic workers are forced to work illegally to support themselves while waiting for their cases against their employers for unlawful dismissal or for abuse or assault to go before the court, and if they are not allowed to work, how are they expected to support themselves while waiting three to six months for their case to be heard in the court?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, foreign domestic helpers are permitted to work in Hong Kong only in respect of domestic work for a specified employer. In those cases where a domestic helper has initiated a complaint or initiated a reference to the Labour Tribunal or to a court, extensions of stay are given; and in special circumstances where there are good reasons for doing so permission may be given for them to change employment. But, in general, change of employment during the tenure of a specific contract is not allowed. Of course, for a foreign domestic helper who wishes to remain in Hong Kong pending the resolution of a complaint or a court case, there are, in our experience, ways of finding temporary accommodation after termination of his/her contract through his/her personal connections, through his/her respective consulates, church and worker organizations and so forth. If a foreign domestic worker does not want to wait in Hong Kong, he or she can return to the home country in the interim and in many cases such workers can actually apply for a new contract with a new employer and come back to Hong Kong later on. Of course, in serious cases involving allegations of

criminal offence, the Government will consider paying for passages to bring them back to facilitate court proceedings.

MR EDWARD HO: *Mr President, with reference to what the Secretary said in relation to the provision of suitable venues for recreation for foreign domestic helpers during weekends, what is the Government's plan in that regard?*

PRESIDENT: I think that goes outside the main question and answer, Mr HO, although it is within a supplementary answer.

MR EDWARD HO: *Mr President, it is in relation to the original question where the aspect of social implications on Hong Kong is mentioned, or rather in a supplementary question earlier.*

PRESIDENT: That was a supplementary answer given to a supplementary question. It is strictly outside the main question and answer under Standing Orders.

MR MARTIN BARROW: *Mr President, does the Secretary agree that domestic helpers play a vital role in enabling a greater number of wives to contribute to the economy in many ways, and if so, would he confirm that he will not allow the introduction of a bureaucratic steeplechase to hinder the existing arrangements which do so much for our economy?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, I think I, for one, certainly recognize the contribution that foreign domestic helpers have made to the Hong Kong economy by freeing their employers to contribute in their own way to the economy. In administering the system for the admission of domestic helpers, the Government has, of course, always to maintain a balance between on the one hand making the arrangements as simple as possible and on the other hand making sure that we are not lax in enforcing the controls that are necessary. We shall continue to be guided by the need to maintain this balance, but I can assure the Honourable Member that as a general proposition we will keep procedures as simple as possible.

MR LAU CHIN-SHEK (in Cantonese): *Mr President, if employers of foreign domestic helpers ask them to take up unapproved work, the offence is as serious as that of employing illegal workers. There are two parts to my question. First, may I refer to the second paragraph of the main reply where it says, "As a matter of policy, employers with proven adverse records with the Immigration Department will normally be debarred from employing foreign*

*domestic helpers in future." May I ask if applications made by other family members of these employers will be approved? If so, whether this policy is self-defeating? Second, it has been mentioned in the fourth paragraph that the fines were between \$1,000 and \$5,000. Will such a penalty have any deterrent effect or whether a review is needed, and should the level of penalty be raised to bring it in line with that of employing illegal imported workers?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, as the first part of Mr LAU's question asks for operational details, I cannot provide an answer today. I will have to check with the Immigration Department and will provide an answer in writing (Annex I). As for the second part of the question, what I have mentioned in my main reply are the penalties meted out in past court cases. As the law provides that the offence attracts penalties of two years' imprisonment apart from fines, I believe that will have great deterrent effect.

MR STEPHEN CHEONG: *Mr President, from the annex to the reply given by the Secretary for Education and Manpower, one can see that there are quite a lot of domestic helpers coming from other countries. Given that trend, is it not the Administration's intention to review the bar against Chinese nationals becoming domestic helpers in Hong Kong?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, we have at present no plan to change our existing policy, but the importation of domestic helpers is a matter which is kept under regular review. On the specific question of domestic helpers from China, this will have to be looked at against the background that very large numbers of residents in China have relatives in Hong Kong, and given the close family and other connections between Hong Kong and China, the scope for abuse is something that we have to keep very much in mind, as well as the much greater difficulties of policing or ensuring that domestic helpers do not integrate very easily into society and therefore acquire perhaps residency or the right of abode after a period.

### **Executive Council Members' registrable interests**

4. MR HENRY TANG asked: *Will the Government inform this Council whether consideration will be given to requiring Members of the Executive Council, when registering their interests, to furnish information on their activities in the local investment market; and if not, what the reasons are?*

FINANCIAL SECRETARY: Mr President, there are already a number of provisions which assist Executive Council Members to avoid any conflict of interest problems and to observe the principle that the advice tendered to the

Governor is disinterested and impartial. Mr TANG mentions the register of interests. Under administrative rules approved by the Executive Council in 1991 Members are required to register investment holdings in respect of land and property of substantial value (or from which a substantial income is derived) and the names of companies in which Members, either themselves or with or on behalf of their spouses and infant children, hold in excess of 1% of the issued share capital. In addition to this information on investments, other interests also have to be registered such as remunerated directorships and employments, financial sponsorships and so on.

Apart from the registration of these declarable interests, Members also have a duty to declare an interest in any subject which is put before the Council for consideration. This interest may be exclusionary in nature (in which case Members do not participate in the Council's deliberations, are asked to withdraw from the Chamber and in certain cases do not receive the relevant papers) or may be declaratory, in which case the Member may tender advice to the Governor who will take into account the interest declared in giving weight to that Member's advice. Members' interests are monitored on a meeting by meeting basis and these procedures are scrupulously applied.

In addition to the above rules Members of the Executive Council are subject to certain legal provisions with regard to the use or disclosure of privileged information. The provisions of the Securities (Insider Dealing) Ordinance apply in relation to the use or disclosure of relevant information in terms of that Ordinance. And Members of the Executive Council are regarded as public servants for the purposes of the Prevention of Bribery Ordinance.

The purpose of the system of registration and declaration of Members' interests is to provide information on any pecuniary interest or other material benefit which a Member may receive which might be thought to influence his decisions in tendering advice to the Governor. In this context we can see the merit of keeping the scope and effectiveness of the rules relating to registration and declaration of interests under periodic review. I am therefore able to give a positive response to Mr TANG's question. We are very ready to re-examine the present rules to see whether improvements can be made. And specifically to look carefully and positively at the suggestion of introducing a system of registering and declaring transactions in local investment markets, possibly along the lines of the provisions governing disclosure of investment holdings by directors of the Securities and Futures Commission. We shall announce the outcome of this review.

MR HENRY TANG: *Mr President, the disclosure requirements outlined by the Financial Secretary suggest that the disclosure of interest by Executive Council and Legislative Council Members are similar, if not identical. In view of the fact that the Executive Council deliberates in camera while this Council does so in public, should the same disclosure rules apply to both Councils?*

FINANCIAL SECRETARY: Mr President, I am not sure that it is true that the rules are identical but perhaps the easiest way would be, if anyone wishes to check that, to compare the guidance note for Members of the Executive Council. It is a different document from the guidance which is issued to Members of the Legislative Council. As I happen to be on both, my memory is not entirely the same. But I cannot give Mr TANG a blow by blow or paragraph by paragraph comparison, but that could easily be done, the document being a public one.

MRS MIRIAM LAU: *Mr President, bearing in mind the point on disclosure of Executive Council Members' interests and in view of the fact that the Executive Council deliberates in camera as mentioned by Mr Henry TANG, can the Financial Secretary inform this Council what measures will be taken by the Administration to ensure public confidence and accountability as regards decisions taken by the Executive Council?*

FINANCIAL SECRETARY: Mr President, I think the main measure is exemplified in the question and answer which we were just dealing with. The fact is that we have rules which are very clear on the question of interest and investments and are designed to ensure that the advice given is absolutely impartial. But I have already signified — and I hope this will help retain public confidence in this whole issue — that we are very happy to review these rules further in the light of Mr TANG's suggestion.

MR RONALD ARCULLI: *Mr President, will the Financial Secretary please inform this Council how ownership by nominee companies on behalf, perhaps, of Executive Council Members — and I would like to emphasize that I am not suggesting that they do it — could be traced and registered?*

FINANCIAL SECRETARY: Mr President, I do not claim to have an instant answer to a rather technical question. But the purpose of declaring an interest is made very clear in the guidance note. Certainly it is entirely clear to Members that, however the investment is held or however the potential conflict arises, it is to be declared. But I cannot answer the particular technical question.

MISS EMILY LAU: *Mr President, the Financial Secretary said that the Executive Council Members' interests are monitored on a meeting by meeting basis. Can the Financial Secretary tell us who does the monitoring and how the monitoring is carried out?*

FINANCIAL SECRETARY: Mr President, the Clerk to the Executive Council is the person who, as a matter of routine every week or every meeting, monitors the papers in the light of the register of declared interests. That is the

prime monitoring which goes on. In addition, of course, Members themselves will normally draw to the attention of the Clerk if they have any interest in a particular topic which is coming up on the agenda.

MR PETER WONG: *Mr President, will the Financial Secretary confirm whether disclosure of dealings in index futures will be considered in the review?*

FINANCIAL SECRETARY: Mr President, I think the principal questioner only said local investment markets, but I am very happy to include the question of index futures in the review.

### **Goods vehicle parking spaces**

5. MR ANDREW WONG asked (in Cantonese): *As the shortage of parking spaces for medium and heavy goods vehicles (including articulated goods vehicles) has caused serious illegal parking problems, will the Government inform this Council of:*

- (a) *the number of medium and heavy goods vehicles registered and regularly in operation within Hong Kong;*
- (b) *the number of parking spaces designated for these vehicles and their distribution in various districts;*
- (c) *the planning standards for determining the number and location of such parking spaces; and*
- (d) *the measures it will take to ease the shortage of such parking spaces?*

SECRETARY FOR TRANSPORT: Mr President,

- (a) *The number of medium and heavy goods vehicles registered in Hong Kong and regularly in operation is about 32 200.*
- (b) *There are about 30 600 parking spaces designated for such vehicles. This figure includes onstreet parking and spaces in private and public offstreet vehicle parks. Their distribution by district is given in the table.*
- (c) *The standards for goods vehicle parking are laid down in the Hong Kong Planning Standards and Guidelines. In industrial zones, the standard is one space per 900 square metres of gross floor area or 400 square metres of site area, whichever provides the greater*

number of parking *spaces*. Half of the spaces so provided are to be set aside for loading and unloading.

- (d) To meet *the* present shortfall, we are identifying more onstreet parking in areas of need. We are also seeking conveniently located sites offstreet to be operated under short term tenancy arrangements.

In the longer term, the Freight Transport Study, which will be completed in the next few months, will identify more *comprehensive* solutions to the goods vehicle parking problem.

Annex

### Goods Vehicle Parking Inventory

District Board area	Off-street			On-street			Combined total
	Private	Public	Total	Metered	Non- Metered	Total	
Central & West	92	535	627	23	34	57	684
Wan Chai	99	184	283	13	0	13	296
HK East	1 924	425	2 349	56	0	56	2 405
HK South	571	45	616	57	57	114	730
Hong Kong Total	2 686	1 189	3 875	149	91	240	4 115
Mong Kok	48	139	187	406	52	458	645
Sham Shui Po	980	1 224	2 204	157	328	485	2 689
Yau Ma Tei	269	265	534	157	37	194	728
Kowloon City	804	223	1 027	179	83	262	1 289
Wong Tai Sin	559	135	694	117	47	164	858
Kwun Tong	1 662	591	2 253	118	176	294	2 547
Kowloon Total	4 322	2 577	6 899	1 134	723	1 857	8 756
Tuen Mun	1 511	312	1 823	12	181	193	2 016
Yuen Long	333	484	817	59	64	123	940
Sha Tin	2 215	1 012	3 227	63	9	72	3 299
Tsuen Wan	1 341	598	1 939	64	5	69	2 008
Kwai Chung/Tsing Yi	3 130	3 823	6 953	86	0	86	7 039
North	524	518	1 042	0	36	36	1 078
Tai Po	756	221	977	23	0	23	1 000
Sai Kung	217	94	311	0	7	7	318
N.T. Total	10 027	7 062	17 089	307	302	609	17 698
Territory Total	17 035	10 828	27 863	1 590	1 116	2 706	30 569



MR ANDREW WONG (in Cantonese): *Mr President, I am very happy to have heard the admission by the Secretary of the shortfall of parking spaces. The figures he provides are very interesting. There are 32 200 goods vehicles regularly in operation, and 30 600 parking spaces designated for such vehicles. With only a shortfall of 1 600 spaces, the problem does not look very serious, but in fact a shortfall of 1 600 spaces is already a very serious problem, particularly so as paragraph (c) of the reply has indicated "half of the spaces so provided are to be set aside for loading and unloading", which means that 15 300 of the 30 600 spaces are for loading and unloading. Since it is not convenient or is even prohibited to park vehicles outside warehouses, and assuming that parking is not allowed in respect of say half of the 15 300 spaces, the figure will be 7 650, and adding 1 600 spaces referred to earlier, the total shortfall will be 9 250. Or to be more lenient in the calculation and assuming that it is not convenient or not even allowed to park vehicles in one-fourth of those spaces, that will still make 3 825, which means that the total shortfall will be 5 425 (that is 3 825 plus 1 600). How can such a serious problem be touched on so lightly in the reply? When will the Freight Transport Study commenced last October be completed? Will the Secretary indicate, before the completion of the Study, what the solutions are as mentioned in paragraph (d)? Will that be looking for STT sites everywhere, and when will such parking spaces in STT sites be made available?*

PRESIDENT: If you follow the arithmetic, Secretary. *(Laughter)*

SECRETARY FOR TRANSPORT: Mr President, I am not sure I can associate myself with the criticisms levelled in the first part of Mr WONG's supplementary question. I think the shortfall is about 2 000 spaces as provided in my main reply. Of course, the spaces do include the space for loading and unloading but this is taken care of by the Planning Standards and Guidelines and allowed for in the operation of the trade. That said, we entirely agree that the present shortfall cannot be left as it is and this is why the Freight Transport Study is now being finalized to address the longer-term solutions. In the meantime, certainly every effort is being made to meet the present shortfall. Examples are that starting this month there will be 300 additional spaces in the present container port; another 2 000 spaces will be provided under the Container Terminal No. 8 development from August 1993 onwards; yet another 2 000 spaces will be provided under the CT9 development starting from 1995; in addition 550 goods vehicle parking spaces will be available in STT sites within the next few months. So we are taking steps to meet this present problem.

MRS MIRIAM LAU: *Mr President, from the annex to the answer, it can be seen that parking spaces for goods vehicles are not evenly distributed throughout the various districts, some districts having over 3 000 parking spaces, some having less than 300. Can the Secretary inform this Council how the parking needs of goods vehicles can be taken care of in those districts which are increasingly*

*becoming business districts but which have very few parking spaces for goods vehicles, for example, Wan Chai District?*

SECRETARY FOR TRANSPORT: Mr President, the distribution depends, of course, on the availability of sites and the needs of the particular area. Clearly, it is uneven because district needs and modes of operation of the trade vary from place to place. This is precisely why we must have a longer-term study to identify the modes of operation of the trade and to address the longer-term need of making the trucking industry more efficiently utilized. That said, the Transport and Highways Departments and the Police Force are taking steps to discuss with the district boards and the trade to see how district shortfalls can be overcome and this is done on a regular, almost daily, basis.

MR EDWARD HO: *Mr President, is the Secretary aware that there is generally an overprovision of lorry parking spaces in the newer shopping complexes because they were put there under lease conditions and that in reality they have been used for private car parking because under the same lease conditions there are over strict requirements for maximum numbers of private car parking spaces?*

SECRETARY FOR TRANSPORT: Mr President, I would be very pleased to have specific examples from Mr HO and refer them to the Director of Buildings and Lands for prosecution action under the lease conditions. As regards the first part of Mr HO's question, clearly in the new developments we must provide for more lorry parking spaces under the Planning Standards. It may well be that in the short term such spaces are not taken up in full but then there is always the question of a late catching-up in demand. Yet in the planning stage, we must make full provision to meet later demand.

REV FUNG CHI-WOOD (in Cantonese): *Mr President, the Secretary has mentioned in paragraph (d) that the Administration will consider providing more on-street parking spaces. Since there are already not enough roads in Hong Kong, will an increase of on-street goods vehicle parking spaces aggravate the problem? Since off-street parking sites operated under short term tenancy arrangements are only temporary in nature, is it necessary for the Administration to consider building more off-street parking areas for goods vehicles, especially near container terminals or within industrial areas?*

SECRETARY FOR TRANSPORT: Mr President, I have just mentioned that we will be providing 4 000 spaces for CT8 and CT9 in the next few months and years. So the needs of the container industry are being taken care of. As regards onstreet sites, we must look at the needs of the industry; in some cases we may have to reallocate spaces originally provided for private cars to the

goods industry as goods vehicle parking spaces if this demand is overriding. As regards offstreet sites, our policy is to encourage the provision of offstreet sites through short term tenancies. The nature of these tenancies is, by definition, short-term and therefore maximum use should be made of the land available for temporary usage. And this is a good and flexible way of meeting the demand in the interim period pending development of the land for permanent purposes. As I said earlier on, we shall have over 500 spaces under short term tenancies provided in the next few months and the extra spaces then available should be able to meet the demand in the short term.

PRESIDENT: We will have to move on, I am afraid.

### **Students trafficking in dangerous drugs**

6. MR LEE WING-TAT asked (in Cantonese): *In relation to the problem of students participating in the delivery and trafficking of dangerous drugs, will the Government inform this Council:*

- (a) *of the number of such cases over the past three years;*
- (b) *what the police have done in collecting information and initiating prosecutions in this connection; and whether those cases are triad-related; and*
- (c) *what measures the authorities concerned, in particular the Education Department and the Social Welfare Department, have adopted or will adopt to prevent triad elements from inducing students to take part in the delivery and trafficking of dangerous drugs?*

SECRETARY FOR SECURITY: Mr President,

- (a) The number of students arrested for involvement in cases of trafficking in dangerous drugs were one in 1990, *five in 1991 and eight in 1992.*
- (b) *The police monitor the triad situation in schools using officers in District School Teams to liaise directly with the school authorities, in order to identify triad elements active in recruitment. They also rely on other intelligence sources. Prosecutions are initiated when arrests are made.*

Crime statistics are produced on an aggregated basis, by types of crime convicted and by certain socio-economic characteristics of the offenders. The Commissioner of Police has advised that it is not *practicable* to extract, within such a short time, the relevant details

from the individual files of the 14 cases involving students convicted for drug trafficking, to confirm whether they were triad-related. I will let Mr LEE have this information in writing, when it is available. (Annex II)

- (c) Students are encouraged to report any crime, including any attempts by triad elements to induce them to participate in the delivery or trafficking of dangerous drugs. A Student Crime Information Form is currently being tested on a pilot basis in secondary schools in Western District and Wong Tai Sin District. These forms are left in the school and students can pick up a copy, report any crime and post it to GPO Box 999, Hong Kong. If this pilot scheme proves successful, the Student Crime Information Forms will be introduced in all schools throughout the territory.

A Crime Report, available at all District Offices, can also be used to report drug trafficking to the Customs and Excise Department and the police. Students are assured of anonymity.

Students are also encouraged to approach School Social Workers for assistance and counselling. The School Social Workers can also provide other assistance through interviews, home visits and treatment groups. Intensive counselling will be offered to students known, or suspected, to have triad involvement, or students being induced to take part in the delivery and trafficking of dangerous drugs. Protective arrangements can be made with the consent of the students and their parents, including assisting them to report to the police, arranging for them to change schools or receive temporary residential care where necessary. If they are public housing estate tenants, arrangements can be made for transfer through the Housing Department. These measures help to prevent them from falling prey to triad influence and threats. For more serious cases, the Director of Social Welfare may apply to the Juvenile Court for a care and protection order to place them under statutory supervision.

Seminar, talks, workshops, exhibitions and other preventive education programmes are launched by the Narcotics Division and the other departments concerned, including the Education Department and the Social Welfare Department, in schools to remind students of the legal consequences of drug offences and of the resources available for seeking professional assistance to resist drugs and influence of triad elements.

A Working Group on Support to Schools to Tackle Student Triad Activities was set up last August in the Education Department to co-ordinate the work of teachers, social workers and the police in their fight against triads and triad-related activities in schools. Guidelines and training courses will be provided for Discipline

Masters in schools. The Working Group also assists in strengthening the Police District School Teams.

MR LEE WING-TAT (in Cantonese): *Mr President, referring to the reply of the Secretary, I would say that although the problem of students involved in the delivery of dangerous drugs is not appalling, its fast upward trend is indeed worrying. It is mentioned in paragraph (c) of his reply that a Student Crime Information Form is being tested on a pilot basis in schools. Did the initial response show that the scheme was a success? For example, how many completed Student Crime Information Forms did the police receive in the meantime and how many offenders were arrested as a result? And when does the Security Branch intend to introduce this scheme in all schools throughout the territory?*

SECRETARY FOR SECURITY: Mr President, the Student Crime Information Form is being tested at present in two districts and the results of that test are still ongoing. We have not yet taken a formal decision whether we will extend that more widespread. To date I am unaware of the operational success of this scheme but I will be happy to provide that information separately to Mr LEE. (Annex III) I would also, if I may, Mr President, just like to correct an impression. I do not believe that I did say that the increase in the number of cases over the past three years was not a cause for concern. I think I just reported the numbers. I think the involvement of any youngsters in either triad activities or drugs is a lamentable situation and one which is a cause for concern.

MR MOSES CHENG: *Mr President, paragraph (b) of the answer furnished by the Administration says, and I quote, "the police monitor the triad situation in schools using officers in District School Teams to liaise directly with the school authorities". Those of us who are connected with school work know very well that this may not be the most effective way for the very obvious reason that school authorities would not normally be too prepared to volunteer information. Would the Secretary advise whether the scheme entailing the direct involvement of police officers in schools has been continuing or has been dropped because of lack of manpower?*

SECRETARY FOR SECURITY: Mr President, the District School Teams are still in operation. I accept the point that uniformed officers visiting schools sometimes can be counterproductive. But from personal experience, I find that it can also be of considerable help. Students frequently find themselves in difficulties and seek the assurance of an authority figure and frequently do report to them. There are 17 such District School Teams now operating throughout the territory. The structure of each team involves a sergeant and an average of four constables. They make regular visits to schools in their

districts. The frequency of these visits obviously varies from district to district but it is probably true to say that most schools are visited at least once a month. Problem schools are visited much more frequently.

MR ERIC LI (in Cantonese): *Mr President, there is absolutely no mention of the family, particularly the role of parents of students, in the main answer given by the Administration. Is it because the Administration thinks that the parents can offer little help in this matter? If not, has the Administration considered ways of getting the parents involved?*

SECRETARY FOR SECURITY: Mr President, no, I hope their exclusion from my main answer did not imply that parents cannot play a part. Parents can play an important part. Last year, acting on the advice of the Action Committee Against Narcotics, the Narcotics Division of the Security Branch began a series of visits to schools so that they could talk to both parents and students to advise them of the dangers of becoming involved with drugs and drug trafficking. It is fair to say, Mr President, that the response has not been overwhelming but nevertheless we are still continuing to try and encourage evening sessions involving both parents and students in the school. The reason for the introduction of this project was that we observed that in places outside Hong Kong the success rate increases dramatically when both parents and their children are involved in these discussion sessions. So I agree with the questioner that there is a major role for parents.

DR PHILIP WONG: *Mr President, I am happy to note that protective arrangements can be made with the concern and involvement of parents and students. Would the Secretary inform this Council whether there have been instances where such protective arrangements fail resulting in injuries to the students?*

SECRETARY FOR SECURITY: Mr President, I am afraid I do not have the answer to that question, but I will be happy to provide an answer in writing. (Annex IV)

DR CONRAD LAM (in Cantonese): *Mr President, the Administration says in its main answer that Crime Reports are available in all district offices. My experience as a District Board member for many years tells me that very few residents would go to district offices to get these forms. Will the Administration consider distributing these forms to Mutual Aid Committees of housing estates; if not, why not?*

SECRETARY FOR SECURITY: Mr President, the answer is yes. We are considering the extension of these crime reports on a much wider basis to make them much more available to the public. The crime reports themselves have been a measure of success in our fight against drug trafficking and crimes in general. So we are actually considering more widespread use of them.

MRS SELINA CHOW (in Cantonese): *Mr President, we understand that very often when such a problem arises, the co-operation of the school, particularly that of a headmaster is very important. However, we know that headmasters and schools very often are unwilling to co-operate or do not want to disclose such problems for fear of damaging the reputation of their schools. Has the Administration, the police or the Education Department done anything to change this attitude of the schools? And on the question of confidentiality, if schools do have such problems, are there ways to dispel their worries so as to encourage reporting of such activities?*

PRESIDENT: If you could answer that, Secretary.

SECRETARY FOR SECURITY: Yes, Mr President. If I may just take the second part of the question first. The answer to that is yes. We guarantee confidentiality when we get these reports in order to protect the student and his family and the school. As regards the first part of the question, I did mention in my main reply that a working group on triad and triad-related activities in schools has been set up in the Education Department. This working group is chaired by a Senior Assistant Director of Education and comprises representatives from the Education Department, Social Welfare Department and the Royal Hong Kong Police Force. The working group's main aims are to review the manner in which discipline and guidance teachers and school social workers and the police are dealing with the triad activities or suspected student triad involvements in schools and to consider ways of supporting their work and the liaison between them. This working group therefore attempts to overcome what I think is a natural barrier that people are reluctant sometimes to come forward. They are reluctant for two reasons. First of all, because they think they might protect the students by not bringing them into contact with the authorities. This is a mistaken belief. Bringing them into contact with the authorities provides the student and his family with help and we are trying to overcome that. The second thing is that the working group attempts to advise discipline and guidance teachers in schools of the necessary technique and information to enable them to deal with students who are troubled with either a personal drug abuse problem or with being approached by triads to get involved in drug trafficking. We are trying to overcome the problem that the Honourable Member has identified.

MR JAMES TO (in Cantonese): *Mr President, it is mentioned in paragraph (b) of the Secretary's reply that officers in District School Teams will liaise directly with the school authorities, in order to identify triad elements active in recruitment in schools. If I remember correctly, the Secretary said a few months ago that there was no indication of active triad recruitment in schools. Are the two statements contradictory? May I be provided with supporting statistics to show that I have a cause for concern. Since drug trafficking is hard to prove, the number of convictions is very small. Can the Administration provide the statistics on the number of students arrested in the past three years for possession of drugs (because they may be in possession of large quantities of drugs, but the Authority may not be able bring a charge of drug trafficking against them) so as to let the public better understand the severity of the problem of students involvement in drug trafficking and drug-related matters?*

PRESIDENT: There are two questions there, Secretary. Mr TO, you have two questions.

MR JAMES TO (in Cantonese): *Mr President, the first question is very simple. May I know if the two statements are contradictory?*

SECRETARY FOR SECURITY: Mr President, I do not think that the two statements are contradictory. The answer, as I recall, was to a question several weeks ago which was about the extent of triad activity in schools. The answer, as I recall, was that there was no triad activity but that we were taking steps to combat it along the lines that I have indicated in my main reply. As regards the second part of the question, the number of young persons under the age of 21 who were prosecuted for drug offences increased from 606 in 1990 to 651 in 1991 and to 823 in 1992. Most of these offenders were prosecuted for minor drug offences which included simple possession or smoking or consumption of drug.

### **Written answers to questions**

#### **Glycol ethers**

7. DR HUANG CHEN-YA asked: *In view of a study conducted by the University of California which found that women workers exposed to a class of chemicals called glycol ethers faced a high risk of miscarriage, will the Government inform this Council:*

- (a) *where these chemicals are in use in Hong Kong; and*
- (b) *whether warning or protection has been given to women workers so exposed?*



SECRETARY FOR HEALTH AND WELFARE: Mr President, glycol ethers are commonly used in the screen printing industry in Hong Kong. They are added to ink as "retarders" to prevent drying and screen blockage.

Glycol ethers are among the 231 listed substances under the control of the Factories and Industrial Undertakings (Dangerous Substances) Regulations. These regulations require all listed substances to be suitably and clearly labelled on the containers with the particular risks involved and the safety precautions to be taken. Proprietors are required under the regulations to provide general safety information and training in the handling, use and storage of the chemicals and to supply protective equipment for workers handling these chemicals.

The Factories and Industrial Undertakings Ordinance also lays down provisions on the control of vapour at source, proper ventilation and good housekeeping measures.

The Labour Department has published two reference booklets on the use of chemicals at work and a leaflet on solvent hazards in screen printing. These booklets are widely distributed to proprietors and workers.

Factory Inspectors, Occupational Health Officers and Occupational Hygienists of the Labour Department in the course of their duties give advice to proprietors and workers, men and women alike, on chemical safety. Occupational health nurses of the department give talks on health hazards to workers, including known hazards from glycol ethers.

A survey on "solvent exposure in screen printing" was conducted by the Occupational Health Division of the Labour Department in 1986. This survey revealed that occupational exposure of workers to ethylene glycol monoethyl ether acetate was within the current threshold limit value (TLV) of five parts per million (ppm) and 27 milligrammes per cubic meter (mg/m<sup>3</sup>), as recommended by the American Conference of Governmental Industrial Hygienists.

As regards the recent study by the University of California, the Director of Health is contacting the University and will study the findings closely. Appropriate action will be taken as necessary.

### **Post offices**

8. MR ERIC LI asked (in Chinese): *Will the Government inform this Council:*
- (a) *of the existing planning criteria for establishing a branch post office; and*

- (b) *when the criteria were set and whether they will be subject to a review in the near future in the light of the recent population movements and rapid development at the district level; if not, what the reasons are?*

SECRETARY FOR ECONOMIC SERVICES: Mr President,

- (a) The principal planning guideline for the provision of post offices is laid down in Chapter 3 of the *Hong Kong Planning Standards and Guidelines*, published by the Planning Department. As a general guide, post offices are to be provided so that large groups of population in *urban* areas can have access to facilities within 0.8 km from where they reside or work. For rural areas a distance of 3.2 km applies. Other factors to be considered include population in the proposed catchment areas which should normally not be less than 30 000 persons; the nature of the terrain over which customers must travel; physical features such as busy main roads, railway lines and so on; and the existence of any particular social need or special requirement for postal services.

The criteria serve as an overall guideline, but where circumstances justify they are applied flexibly. For example, in the urban commercial areas of Central, Wan Chai and Tsim Sha Tsui, we have recognized that heavy demand from the business *community* for postal services justifies a more generous provision of facilities. The provision of post offices on the outlying islands also demonstrates this flexibility. Peng Chau and Lamma Island have post offices with catchments of *only 3 189 and 2 943 people respectively*. *For rural areas where the population is distributed more sparsely, the Post Office operates a fleet of mobile post offices to cater for demand.*

- (b) *The planning criteria for post office provision were drawn up in 1975 and have since been regularly reviewed. The latest review was completed in January 1992, and concluded that the existing planning standards, flexibly applied, serve the community well.*

Within these criteria well-established procedures exist for ensuring that shifts in population and new residential development are taken fully into account in the planning of new post offices. For example in 1992, four new post offices were opened to serve new town developments: in Sha Tin (Kwong Yuen), Tai Po (Wan Tau Tong Estate), Tsuen Wan (Bayview Garden), and Tin Shui Wai (Tin Yiu Estate). In 1993, we plan to open new post offices which will serve the Ma On Shan and Tseung Kwan O areas.

**Consultancies awarded by Environmental Protection Department**

9. MR GILBERT LEUNG asked (in Chinese): *Will the Government inform this Council:*

- (a) *what criteria are being used by the Environmental Protection Department (EPD) in determining whether the investigation, design and monitoring work of a certain project should be taken by its own staff or contracted out to a consultancy firm;*
- (b) *of the total number of such contracts that have been awarded by the EPD in the past three years; the total cost involved and the actual amount of payments made in respect of these contracts in the past three years; the titles of those projects the consultancy fees for which exceed \$5 million each; and*
- (c) *what the expenditure would have been if such projects had been taken up by the EPD staff?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President,

- (a) The criteria used by the Environmental Protection Department (EPD) in determining whether *consultants* should be employed to undertake certain work or projects are:
  - (i) *the availability of existing resources within EPD to undertake a particular project; and*
  - (ii) *the availability of expertise within EPD required for a particular project.*

Under the first criteria, a consultancy may be required to provide extra staff for a particular project or to carry out work to meet prescribed time scales and cope with fluctuating demand for resources. The second criteria, which accounts for the majority of EPD consultancies, would require consultants to provide specialist expertise, to give independent advice or to permit a multi-disciplinary approach.

- (b) The total number of consultancies awarded directly by EPD in the past three years is 40, at a total cost of \$380 million. Of this figure, \$266 million is for consultancy fees and the remainder for *investigations*. Expenditure to date on these projects is \$175 million on fees and \$87 million on investigations. Details of consultancies with fees exceeding \$5 million are at Annex.

- (c) As explained in (a), consultants are not engaged if suitable EPD staff are available to provide the same service or expertise against the same deadlines. It follows therefore that existing EPD staff could not have carried out the 40 studies over the last three years for which consultants were employed. A comparison of the cost of these consultancies with the expenditure that would have been *incurred* if the projects had been undertaken by EPD staff is not possible therefore. Clearly, more staff at greater cost would have been required and since there are limits to the number of additional staff that can be provided, delays to many of the projects would have occurred.

Annex

## List of Consultancies Exceeding \$5 million in Past Three Years

<i>Title</i>	<i>Fees (\$M)</i>
Strategic Sewage Disposal Scheme	
Strategic Sewage Disposal Scheme Modelling for Oceanic Outfall	21.4
Sewerage Master Plans	
Yuen Long and Kam Tin	12.35
North and South Kowloon	11.39
Chai Wan and Shau Kei Wan	8.10
Tuen Mun	9.65
Wan Chai East and North Point	7.30
Aberdeen, Ap Lei Chau, Pokfulam	5.95
North District	6.19
Outlying Islands	7.15
	-----
	68.08
Solid Waste Projects	
Chemical Waste Treatment Facility Phase III	14.30
Core Consultancy to Privatize Landfills	8.22
South East New Territories Landfill	22.22
North East New Territories Landfill	8.76
West New Territories Landfill	15.90
Shatin Refuse Transfer Station	5.62
Island West Transfer Station	8.91

<i>Title</i>	<i>Fees (\$M)</i>
West Kowloon Transfer Station	8.00
Yuen Long Transfer Station	6.31
North Lantau Transfer Station	5.59
Urban Landfill Restoration	7.67
Tsuen Kwan O Landfills Restoration	5.88
Integrated Sludge Disposal Strategy	5.50
	-----
	122.88
 Environmental Monitoring	
Environmental Monitoring and Audit of West Kowloon Reclamation	23.96

### **Non-ACP projects**

10. MR FRED LI asked: *With regard to the temporary financial arrangements introduced in respect of non-ACP projects for the financial year 1992-93, will the Government inform this Council of:*

- (a) *the projects for which tenders had been called in advance of Finance Committee upgrading such projects to Category A and the estimated costs of each project;*
- (b) *the projects which had been directly submitted to Finance Committee for upgrading to Category A rather than via Public Works Sub-Committee and the project sum of each; and*
- (c) *the amount paid to contractors and consultants under the "special year-end payment arrangements" based on estimation by heads of Works Departments on works due for payment by the end of March 1993?*

SECRETARY FOR THE TREASURY: Mr President, following the issue of the memorandum from the Secretary for the Treasury to departments announcing temporary financial arrangements to be introduced in respect of non-ACP projects:

- (a) no tenders have been called in advance of Finance Committee upgrading the projects to Category A;

- (b) *within recent months, only one project has been submitted directly to Finance Committee for upgrading to Category A, without previously being submitted to the Public Works Sub-Committee. This was at the last meeting of FC and dealt with the purchase of office accommodation at cost of \$1.6 billion. Such items have always been submitted directly to FC; and*
- (c) *the Government's accounts do not permit year-end payments made under the temporary arrangements to be separately and readily identified, nor are year-end payments made for completed projects. These payments are merely an acceleration of payments which have or should have fallen due by the end of the financial year, and are made on the express condition that they are adjustable against subsequent payments due to the contractors. It is roughly estimated that these year end payments amounted to some \$2 billion.*

### **Village primary schools**

11. MR WONG WAI-YIN asked (in Chinese): *Since a number of village primary schools in the New Territories have been closed in recent years, will the Government inform this Council:*

- (a) *of the current policy on village primary schools;*
- (b) *of the number of village primary schools closed during the past three years and to be closed in the next academic year; the reasons for their closure and the arrangements to enable the affected students to pursue their studies; and*
- (c) *whether consideration has been given to using such school premises for other purposes; if so, what specific plans are in place and if not, what the reasons are?*

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

- (a) The current policy on village or rural primary schools is to replace those operating less than six classes by larger schools serving a wider catchment area, wherever possible. The small schools are not considered educationally viable in terms of facilities and the ability to deliver a broad curriculum.

- (b) Twenty rural schools were closed during the three calendar years 1990 to 1992. Another five are scheduled for closure in 1993. Like those already closed, the five are all very small rural schools enrolling only a few pupils. All affected pupils have been or will be placed in other schools in the vicinity.
- (c) Upon closing a rural school, the Education Department will first consider other possible educational uses for the premises, such as special schools or teaching centres. If the Education Department has no further use for them, the building and the land will become available for allocation to other users by the District Lands Office concerned. Present uses of former rural schools include village offices, social and recreation centres for villagers, study rooms and activity centres for scouts.

### **Charging for domestic potable water**

12. MR TAM YIU-CHUNG asked (in Chinese): *As the charges for potable water supplied to domestic premises are currently calculated according to a tiered charging system, households living together in an old tenement building and sharing a common water meter are subject to higher water charges for the same amount of water consumed. Will the Government inform this Council what measures will be taken to enable such households to be fairly charged for water consumption?*

SECRETARY FOR WORKS: Mr President, the present tiered charging structure for domestic potable water is applicable on the same basis to all households (flats) in a residential building. Householders sharing a common water meter in an old tenement building are treated no differently than other registered consumers. Each such householder is entitled to a free allowance of 14 cubic metres of water, that is, the same allowance provided to individually meter households.

Where, for example, four households use different amounts of water, those sharing communal meters may actually be charged less than those using separate metering. This is because common-metered users are automatically given the whole 14 cubic metres free allowance, whereas those separately metered are given actual usage, up to a maximum of 14 cubic metres. An illustrative example is attached.

## Communal meters

**Illustration**

## 1. Communal meter (flats A-D)

	<i>Consumption Cu.m</i>	<i>Unit Charge HK\$</i>	<i>Total Consumption Cu.m</i>	<i>Charge HK\$</i>
1st	14x4	free	56	-
next	35x4	3.58	113	404.54
next	21x4	5.55	-	-
Remainder (above 280)		7.78	-	-
			<u>169</u>	<u>404.54</u>

## 2. Separate meters

	<i>Consumption Cu.m</i>	<i>Unit charge HK\$</i>	<i>Flat A</i>		<i>Flat B</i>		<i>Flat C</i>		<i>Flat D</i>		<i>Total charge</i>	
	<i>Cu.m</i>	<i>HK\$</i>	<i>Cu.m</i>	<i>HK\$</i>	<i>Cu.m</i>	<i>HK\$</i>	<i>Cu.m</i>	<i>HK\$</i>	<i>Cu.m</i>	<i>HK\$</i>	<i>Cu.m</i>	<i>HK\$</i>
1st	14	free	12	-	14	-	14	-	14	-	54	-
next	35	3.58	-	-	16	57.28	35	125.3	35	125.3	86	307.88
next	21	5.55	-	-	-	-	6	33.3	21	116.55	27	149.85
Remainder (above 70)	-	7.78	-	-	-	-	-	-	2	15.56	2	15.56
			----	----	----	-----	----	-----	----	-----	----	-----
			12	-	30	57.28	55	158.60	72	257.41	169	473.29
			==	==	==	=====	==	=====	==	=====	==	=====

**Electricity consumption**

13. MR ALBERT CHAN asked (in Chinese): *Will the Government inform this Council:*

- (a) *whether there has been any discussion with the two power companies on the introduction of concessionary charges for electricity consumption at night to encourage the installation of an ice bank storage system in commercial buildings with a view to lowering electricity demand in these buildings during daytime;*
- (b) *if so, what progress has been made in these discussions; and*



- (c) *whether consideration has been given to other proposals on lowering the demand for electricity during peak hours, if so, what the details of these proposals are and what the progress is?*

SECRETARY FOR ECONOMIC SERVICES: Mr President, the Government and the power companies are looking into possible means of reducing the daytime peak demand for electricity by shifting part of the load to the night-time off-peak hours. The installation of ice storage air-conditioning systems in commercial buildings may be one means of achieving such a reduction and the cost-effectiveness of installing and operating such systems in Hong Kong is currently being assessed.

In the meantime, other measures aimed at reducing peak demand have been implemented. For example, China Light and Power now offers concessionary off-peak tariffs to large power users and to the users of domestic storage-type water heaters. Further, under the terms of the new Scheme of Control Agreements negotiated recently between the power companies and the Government, the companies are required to propose ways of reducing the growth in demand for electricity and promoting greater energy efficiency. Discussions between the companies and the Electrical and Mechanical services Department have already commenced in order to determine which types of approach to energy conservation might be most appropriate for adoption in Hong Kong. These discussions complement the current public education campaign on energy efficiency drawn up by the Energy Efficiency Advisory Committee and ongoing public consultation over standards for energy use in buildings.

### **Container vehicle loading and unloading spaces**

14. MR ANDREW WONG asked (in Chinese): *The general shortage of spaces designated for container vehicles in Hong Kong has resulted in these vehicles parking and loading/unloading on-street, thereby affecting pedestrian safety and causing traffic congestion. Will the Government inform this Council of:*

- (a) *the number and area of loading/unloading spaces designated for container vehicles, with a breakdown by district;*
- (b) *the area normally required for each medium/heavy container vehicle for loading/unloading of goods; the number of medium/heavy container vehicles that can load/unload at any given time within the spaces designated for such vehicles in the territory; and*
- (c) *the measures it will take to resolve the problems concerning pedestrian safety and traffic congestion caused by the container vehicles' on-street loading/unloading activities?*

SECRETARY FOR TRANSPORT: Mr President,

- (a) Loading and unloading spaces for container vehicles are not normally designated on street. Such spaces are usually provided within building developments or on land allocated for the purpose by means of short term tenancies (STTs). The table at Annex shows the approximate distribution by district of goods vehicle parking spaces on STT sites, together with the total area of STT land allocated for the purpose in each district.
- (b) The area normally required for an articulated container vehicle to load or unload is about 16m by 3.5m. This excludes access and circulation space required at off-street locations.

STT sites are normally used for both goods/container vehicle parking and loading/unloading. Since the sites have this dual function, it is not possible to estimate accurately how many container vehicles are able to load or unload at any given time within the designated sites.

- (c) Container vehicle loading/unloading activities should normally be confined to off-street sites for traffic management and safety reasons. In areas where such activities occur on street, causing pedestrian safety or traffic congestion problems, no-stopping restrictions are imposed.

Parking container vehicles on footpaths is not allowed and the police will take enforcement action when this occurs. To deter such illegal parking and to safeguard pedestrians, railings or bollards may be erected on the footpaths.

Annex

Table: Goods vehicle parking space inventory  
Short term tenancy sites

<i>District</i>	<i>No. of spaces</i>	<i>Area(m<sup>2</sup>)</i>
Central and Western	202	12 000
Wan Chai	0	0
Hong Kong East	260	15 300
Hong Kong South	32	2 000
Mong Kok	0	0
Sham Shui Po	400	23 700
Yau Tsim	0	0
Kowloon City	0	0
Wong Tai sin	72	4 300

<i>District</i>	<i>No. of spaces</i>	<i>Area(m<sup>2</sup>)</i>
Kwun Tong	68	4 000
Tuen Mun	56	3 300
Yuen Long	38	2 200
Sha Tin	502	29 900
Tseun Wan	195	11 600
Kwai Chung/Tsing Yi	1 693	100 100
North	330	19 500
Tai Po	157	9 200
Sai Kung	68	4 000
Territory Total	4 073	241 100
Hong Kong Total	494	29 300
Kowloon Total	540	32 000
N.T. Total	3 039	179 800

### **Declaration of interests by Governor**

15. MISS EMILY LAU asked: *In the interest of open government and public accountability, will the Governor, as the presiding officer of the Executive Council, consider registering and declaring his interests?*

CHIEF SECRETARY: Mr President, the Governor, on a purely voluntary basis, completed a register of his declarable interests on 22 April 1993.

The Governor has no declarable interests in Hong Kong.

### **Outstanding final accounts in respect of public construction projects**

16. MR RONALD ARCULLI asked: *Will the Government inform this Council of the updated position as to how many final accounts in respect of construction projects undertaken and/or supervised by the Architectural Services Department and/or the Housing Department have not been settled at the time specified in the contracts, how long have they been delayed, the reasons for the delay and how many of them will have to be resolved by arbitration or litigation?*

SECRETARY FOR WORKS: Mr President, as at 28 April 1993, there are 103 final accounts in respect of construction projects undertaken and/or supervised by the Architectural Services Department (ASD) which have not been settled. Action on 86 of these accounts have been completed by ASD as required under the contracts. The final contract sums for these 86 accounts are now awaiting the contractors' agreement.

The delays in agreeing to the remaining 17 accounts range from one month to 17 months. The reason for the delays is largely the time needed to verify information supplied by the contractor regarding the measurement and valuation of authorized variations. Of these 17 accounts, the one relating to stage II of Queen Mary Hospital is under arbitration. Discussions are being held with contractors on the others, with the objective of settlement other than by arbitration or litigation.

The Housing Authority's construction contracts do not stipulate that the final accounts must be agreed within a specified time. However, the contracts require a copy of the priced Bills of Variations to be submitted by the Housing Authority to the contractor within the Period of Final Measurement which is normally 12 months from completion of works.

The Housing Authority has 72 final accounts in respect of building and site formation contracts currently outstanding. Of these, Housing Department has provided the contracts with priced Bills of Variations on 63 accounts. The remaining nine cases are being processed.

The delays in nine cases mentioned above range from four months to 24 months. The main reason for the delay are the need to verify information, take measurement and evaluate the variation works for the purpose of finalizing the priced Bills of Variations.

No request for arbitration or litigation has been received in respect of the 72 final accounts. It is expected that all accounts will be settled by negotiation between the Housing Authority and its contractors.

### **Indoor radon levels**

17. MR MAN SAI-CHEONG asked (in Chinese): *An academic survey has revealed that the indoor air content of radon in new buildings is higher than that in old buildings in Hong Kong and that such a phenomenon is possibly related to the use of construction materials with higher radioactive contents in Hong Kong during recent years. As members of the public may suffer from lung cancer due to inhalation of excessive radon, will the Government inform this Council of the following:*

- (a) *whether it has conducted any surveys in this respect; if so, what the results are;*
- (b) *if not, whether consideration will be given to conducting comprehensive surveys to study if construction materials contribute to the excessively high indoor air content of radon, which is hazardous to public health; and*

- (c) *if the survey result is positive, whether appropriate measures will be worked out and adopted on the principle of according priority to protection against radioactive effects in order to safeguard public health?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President,

- (a) The Government has not seen the academic survey referred to in the question. In 1988 and 1989, two small scale surveys on indoor radon levels were conducted by the Environmental Protection Department (EPD). The results showed that about 30% of the premises sampled exceeded a widely accepted international radon guideline of 200 Bq/m<sup>3</sup> (Becquerel per cubic metre). There is no significant indication that newer buildings have higher radon levels. However, in view of the small sample used in the EPD surveys, the results may not be representative of all buildings in Hong Kong.

The results of two surveys conducted by the Hong Kong Polytechnic in 1990 and 1991 showed that radon levels in sampled premises were lower than the international guideline. The results of a survey conducted by the University of Hong Kong (HKU) last year are not yet available to EPD.

Tests have also be conducted by EPD on the local granites generally used in mixing concrete for buildings. The average radioactivity level was found to be about 370 Bq/kg, which is somewhat higher than levels obtained in similar studies in Germany and Spain (about 310 Bq/kg).

- (b) The Government believes that granites are the main cause of the slightly higher radon levels found in the limited EPD surveys and tests. However, to provide more information on the subject, an extensive survey is being conducted jointly by HKU and EPD. This survey will cover some 1 500 sites in domestic, commercial, industrial and school premises. The results are expected to be ready by the end of this year.

EPD is also collaborating with the tertiary institutions to investigate the effectiveness of various radon control measures.

- (c) When the results of the latest survey and studies have been assessed, Government intends to issue an information pamphlet on measures to mitigate radon levels in buildings in Hong Kong. The pamphlet is likely to be issued to the public early next year.

**HIV-infected haemophiliacs**

18. DR CONRAD LAM asked (in Chinese): *As the Legislative Council has already approved the provision of \$350 million pledged by the Financial Secretary for assisting haemophiliacs who have been infected with HIV through the transfusion of contaminated blood products, will the Government inform this Council:*

- (a) *how and when the fund is expected to be made available to these haemophiliacs;*
- (b) *whether urgent assistance would be provided to haemophiliacs who are in urgent need of help; if so, what form of assistance would be offered; and*
- (c) *if not, what the reasons are for not providing such assistance?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, following the first meeting of the Council for the AIDS Trust Fund on 20 April, the Secretary to the Council has been in touch with prospective claimants with the assistance of their attendant doctors. As soon as claims are validated by the Council and approved, the Secretary will contact the claimants again to arrange payment in a manner convenient to the recipients. We expect the first batch of payments to be made shortly after the Council's next meeting on 17 May.

The rates of payment to eligible claimants are as follows:

(A)	For the directly infected	
(i)	Married with dependent children	HK\$1,000,000
(ii)	Married without dependent children	HK\$750,000
(iii)	Single	HK\$600,000
(B)	For an infected spouse or child of the above	HK\$300,000
(C)	For the family of a victim who has died and not eligible for any of the above	HK\$300,000

Any requests from haemophiliacs for urgent assistance will be considered.

### Visas in BDTC passports

19. MR TIMOTHY HA asked (in Chinese): *The Government has indicated its intention to introduce a phased programme to replace all the British Dependent Territories Citizen (BDTC) passports, currently held by over 3 million Hong Kong citizens with British National (Overseas) passports before 1 July 1997. When the BDTC passports are replaced, valid foreign country visas carried in the existing BDTC passports will automatically be invalidated. Will the Government inform this Council whether arrangements would be made with various consulates in Hong Kong to work out a simple and easy procedure for transferring the visas from BDTC passports to their replacement passports so as to minimize loss and inconvenience to the affected BDTC passport holders and, if such arrangements are not being contemplated, what the reasons are?*

SECRETARY FOR SECURITY: Mr President, a cross-linking service is available for holders of British Dependent Territories Citizens passports to enable them to continue to use valid visas in their old passports after renewal or after replacement by a BN(O) passport. Cross-linking is an endorsement made in the new passport, stating that the holder has previously travelled on a passport which bears a valid visa; the number and issue date of the old passport are also stated. At the same time an endorsement is made on the old passport; it states that the old passport is extended by the issue of the new or replacement passport, with the number and issue date of the new passport specified. A fee of £7.5, chargeable under the Consular Fees Act, that is about HK\$89 is at present charged for this service.

About 160 BDTCs have so far used this service to extend the use of valid visas in their old passports for entry into foreign countries, such as the United States, without any problem.

### "Hong Kong Tax Cases"

20. MR PETER WONG asked: *Will the Administration inform this Council why the next issue of the Hong Kong Tax Cases has not been published since the last issue in August 1991 and what the target date is for publishing the next issue?*

SECRETARY FOR THE TREASURY: Mr President, the present practice is for a supplement to the *Hong Kong Tax Cases* to be published when sufficient materials have been accumulated to make printing worthwhile.

Preparatory work for the publication of cases on hand is in progress. The next supplement will be available in August/September this year.

It should be noted that most of the tax cases not yet published in Hong Kong Tax Cases have already been reported in the *Hong Kong Law Reports*.

### **First Reading of Bills**

#### **LEGAL PRACTITIONERS (AMENDMENT) BILL 1993**

#### **MOTOR VEHICLES (FIRST REGISTRATION TAX) (AMENDMENT) (NO. 2) BILL 1993**

#### **PNEUMOCONIOSIS (COMPENSATION) (AMENDMENT) BILL 1993**

#### **PILOTAGE (AMENDMENT) BILL 1993**

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

### **Second Reading of Bills**

#### **LEGAL PRACTITIONERS (AMENDMENT) BILL 1993**

THE ATTORNEY GENERAL moved the Second Reading of: "A Bill to amend the Legal Practitioners Ordinance."

He said: Mr President, I move that the Legal Practitioners (Amendment) Bill 1993 be read a Second time.

The principal object of this Bill is to provide a statutory framework, in the Legal Practitioners Ordinance, for the admission and regulation of foreign lawyers and foreign law firms in Hong Kong. It would replace the present administrative arrangements that govern the entry of foreign lawyers and law firms into Hong Kong. It is clearly inappropriate that the admission and regulation of a considerable number of foreign lawyers should be dealt with purely by administrative means, in distinction to local lawyers whose admission and regulation are laid down in the Legal Practitioners Ordinance enacted by this Council.

It is the Government's policy to encourage the development of Hong Kong as a centre for the provision of legal services, so that those doing business in or through Hong Kong have access to high quality multi-jurisdictional legal advice. Foreign lawyers and law firms play an important part in that development, adding to the impressive range of legal services already available from local lawyers. There are some 29 foreign law firms and over 180 foreign lawyers now working here.



The Bill requires foreign lawyers and foreign law firms to register with the Law Society. Only foreign lawyers and foreign law firms registered with the Law Society, as well as solicitors and barristers admitted to practise in Hong Kong, will be permitted to practise foreign law. Foreign lawyers and foreign law firms will be able to form associations with local law firms, and be able to share office space, personnel and fees. This measure will benefit local and foreign firms, and the client, who can now obtain his legal services at one place. Foreign lawyers will be subject to the Law Society's rules of conduct and disciplinary powers. Under subsidiary legislation to be made under powers contained in the Bill, a foreign lawyer will not be able to practise Hong Kong law. Further, the subsidiary legislation will allow a foreign law firm, after practising in Hong Kong for at least three years, and where all of the partners in Hong Kong are admitted to practise in Hong Kong, to establish a Hong Kong practice.

Mr President, the Bill was preceded by and generally gives effect to proposals by the Law Society in its October 1991 Report on the Regulation of Foreign Lawyers and Foreign Law Firms. These proposals were the subject of consultation amongst Chambers of Commerce and foreign law firms in Hong Kong, and received a broad measure of support. There has also been consultation on the Bill in its draft form, which has received wide support.

The Bill would also enable foreign lawyers to qualify as local lawyers, thus enabling those foreign lawyers who wish to practise Hong Kong law to do so, as Hong Kong lawyers. Foreign lawyers will be able to so qualify on the basis of objective, non-discriminatory and competency based criteria. Before admission, foreign lawyers, whether from a common law or a non-common law jurisdiction, will be subject to a transfer test administered by the Law Society.

I would now like to mention a second aspect of the Bill. Mr President, there is much public disquiet at the prevalence of touting and improper commission-taking within the legal profession. These insidious and unprofessional practices attack the administration of justice and the rule of law by depriving citizens of their right to choose their own solicitor and have access to him or her, by greatly increasing the cost of legal services to the public, and by attracting undesirable elements to prey on the unsuspecting client. The Administration and the legal profession are determined to eradicate these practices. An important part in that fight is the proposal in this Bill that would empower a Law Society inspector to require a solicitor to produce all relevant documents to ensure that the Society's rules for good professional conduct have been followed. I should add that the Law Society's new Practice Rules to strengthen its power to deal with touting were gazetted last Friday.

Finally, Mr President, the Bill contains a number of minor amendments to the principal Ordinance to ensure that it is up-to-date, fulfills the needs of the profession, and assists in the efficient administration of the Law Society.

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

**MOTOR VEHICLES (FIRST REGISTRATION TAX) (AMENDMENT) (NO. 2) BILL 1993**

THE SECRETARY FOR THE TREASURY moved the Second Reading of: "A Bill to amend the Motor Vehicles (First Registration Tax) Ordinance."

He said: Mr President, I move that the Motor Vehicles (First Registration Tax) (Amendment) (No. 2) Bill 1993 be read the Second time.

*Objectives of Bill*

The Bill now before Honourable Members has four objectives. First, and most important, it seeks to protect the public revenue by preventing a significant form of tax avoidance. Secondly, the Bill will clarify, for the first time, who is liable to pay First Registration Tax (FRT) and enable the Government to enforce the law effectively. Thirdly, it will create a "level playing field" for motor vehicle distributors and so guard against the possibility of individual dealers enjoying an unfair advantage in their businesses. Finally, it will allow the public for the first time to know how much tax they are paying when they buy a vehicle and the basis on which the tax is calculated. I will deal briefly with each of these objectives in turn.

*Tax avoidance*

Under the existing Ordinance, the amount of FRT payable on a vehicle is now calculated on the basis of its cost, insurance and freight (CIF) value. The primary objective of the Bill is to close a loophole whereby motor vehicle dealers are able lawfully to under-declare the CIF value of their vehicles in order to reduce the amount of FRT payable. The Government has analysed and compared the CIF value and marked prices of several makes of car over the period 1984 to 1991. Whilst the CIF value of most models has gradually increased over this period, the CIF value of some models has remained unchanged, or increased at a much slower rate. There is thus at least *prima facie* evidence that CIF values may be under-declared. The Government has also noted the possibility of arrangements under which an overseas company can sell vehicles to a local associate at a discount. The latter can then inflate the sale price to cover the full value of the vehicles. The declared, taxable CIF value of the vehicles can thus be artificially depressed and the tax liability of the company group as a whole reduced. The present Ordinance does not allow the Government to tackle avoidance schemes of this kind.

*Enforceability*

FRT is an important instrument of both fiscal and transport policy. Our FRT system must therefore be properly enforceable and must set out clearly the various responsibilities of all parties concerned. The present Ordinance is deficient in this respect. In comparison with other tax legislation in Hong Kong, the Ordinance fails to provide the Government with adequate powers to

determine and enforce tax liability. The Commissioner for Transport, for example, is not empowered to assess a vehicle's CIF value independently. Nor is a straight-forward under-declaration of CIF value an offence under the Ordinance. The Ordinance does not even place a specific obligation on any particular person to pay the tax. The second objective of the amending Bill, therefore, is to remedy these weaknesses, in order to ensure that the Ordinance can achieve its policy objectives.

#### *A level playing field*

Because the present legislation leaves room for tax avoidance, and is deficient in its provisions to counter tax evasion, individual dealers who abuse the system can enjoy an unfair competitive advantage over the majority who abide by the spirit of the law. The third objective of the Bill, therefore, is to ensure that all dealers can operate on the same basis. By limiting the scope for avoidance and evasion, the Bill will create a level playing field amongst almost all the nearly 40 motor vehicle distributors in Hong Kong.

#### *Public transparency*

Under the present Ordinance, the purchaser of a motor vehicle has no means of ascertaining the amount of tax he has to pay or its relationship to the purchase price of the vehicle. This is clearly unreasonable. As a general rule, a taxpayer should be entitled to know the amount of tax for which he is liable and the amount of tax which he has paid. The fourth objective of the Bill is to bring the Ordinance into line with other tax legislation in Hong Kong by giving the individual the right to know the amount of tax which he is paying when he buys a new car.

#### *The new system*

In order to achieve these objectives, we first examined the possibility of retaining CIF as the basis of calculation of FRT. However, even if the Commissioner for Transport were empowered to determine the CIF value of a vehicle, it would be difficult or impossible for him to prove that the value quoted in a shipping document, for example, was invalid and that some other value should be substituted. We came quickly to the conclusion that tinkering with the existing Ordinance would be inadequate to deal with its many deficiencies and that a different approach was called for. This new approach has four main features.

#### *Registration of car distributors*

First, the Bill before Members will require any person who carries on the business of importing and distributing motor vehicles for use in Hong Kong to register with the Commissioner for Transport. This is a basic requirement to ensure that the Government is aware of the extent of the motor vehicle market

and as a means of monitoring the unauthorized sale of vehicles for use in the territory.

### *Calculation of FRT*

Secondly, a registered distributor will have to publish a list of the retail prices of all makes of motor vehicle which he is offering for sale. The FRT on each vehicle will be calculated on the basis of this published list price, and it will be an offence to sell the vehicle at a price higher than the published value. I emphasize that this in no way constitutes interference with the free market or an attempt at price control by the Government. Not only will dealers be free to sell vehicles at prices lower than the published value, if they so wish, but they will also be able to increase the price at any time, provided that they notify the Commissioner first. Publication will provide the critical information from which the Commissioner will be able to determine, as a matter of fact, the proper amount of FRT to be paid.

When a vehicle is sold, the distributor and the purchaser will sign a form setting out the published retail price and the actual purchase price of the vehicle. The purchaser will thus be formally advised of the share of the purchase price attributable to tax. The form indicating the declared value will be delivered to the Commissioner. In an exceptional case where there is no published retail price — for example, when an individual imports a designer's collection item not available for sale in ordinary markets — the Commissioner will have the power to determine the level of FRT, having regard to the retail price in the place of origin of the vehicle and other relevant factors.

### *Fair operation of the system*

To ensure that the system operates fairly, the Bill will empower the Commissioner or public officers authorized by him to search for and examine records relating to the importation and sale of motor vehicles. This is not a draconian measure. Comparable provisions are in fact essential to the effective enforcement of any tax legislation. The Bill will merely bring the FRT system into line in this respect with the provisions in, for example, the Dutiable Commodities Ordinance and the Inland Revenue Ordinance.

### *New schedule of rates*

As I have explained, Mr President, the primary purpose of the Bill is to protect the integrity of the FRT system. It is not to raise additional revenue. Since the published retail price will include not only the CIF value but also other incidental costs and the profit element, to maintain the present rates of FRT would significantly increase the cost of cars to ordinary purchasers.

We have therefore devised a new schedule of rates, based on a sliding scale of published retail prices. This schedule is designed so that the effect of the new legislation, taken as a whole, will be almost "revenue-neutral". For

models where the CIF value is now under-declared, the FRT payable under the new scheme may, of course, increase with a resultant benefit to the general revenue. The price payable by buyers of other vehicles may rise or fall marginally, depending on the pricing structure adopted by individual distributors.

While the Bill will therefore generally be "revenue-neutral", the Government will in future be able to raise or lower the rates set out in the schedule, whether for fiscal or transport policy reasons, with greater confidence that the intended effect of any such adjustment will be achieved, and that the planned amount of revenue will be collected.

### *The Bill*

I turn now, Mr President, to the provisions of the Bill itself.

Clause 3 substitutes 10 sections for the existing sections 3 and 4. The new section 3 requires importers and distributors of motor vehicles to register with the Commissioner. Having registered, under new section 4, importers are required to file returns on the importation of motor vehicles.

The proposed new section 4A requires distributors to publish a retail price list for all types and models of vehicle distributed by him. This becomes the maximum price at which motor vehicles of that make and model can be sold and is the figure on which the FRT on new motor vehicles is calculated. New section 4B requires the distributor and the person applying for first registration to declare the price paid for the purchase of the motor vehicle.

The new section 4C sets out the basis on which the tax is actually calculated, while the proposed section 4D provides the requirement for the tax to be paid. The new section 4E allows the Commissioner to authorize officers to carry out investigation and enforcement procedures under the amended Ordinance.

The new section 4F gives the Commissioner and authorized officers powers in relation to investigation of possible schemes to avoid or minimize payment of FRT. The Commissioner of Customs and Excise will be authorized to make assessments, to maintain a record of the returns on importation of vehicles and to carry out investigations. The new section 4G creates offences for breaches of the Ordinance. Offenders are liable on conviction to a fine of up to \$500,000 and imprisonment for 12 months. In respect of certain offences, a person convicted is also liable to pay double the amount of tax originally due.

Clause 4 introduces the schedule of new FRT rates, based on the class of motor vehicle and the published retail price. As I said earlier, this is to ensure that the amendments are by and large revenue-neutral in their effect.

*The practice note*

If the Bill now before Members is enacted, the Commissioner for Transport will issue a Practice Note to clarify how the Bill will operate in practice. This Note will summarize the objectives of the Bill now before Honourable Members and describe the main elements of the new system. It will set out clearly the responsibilities and procedures to be followed by vehicle distributors and purchasers, as well as the roles of both the Commissioner for Transport and the Commissioner of Customs and Excise. It will clarify how the Commissioner for Transport will use his discretion in interpreting key provisions of the law. For example, it will make clear that basic accessories such as air-conditioners and stereo systems will not be made subject to tax. A draft of this Practice Note will shortly be made available to Honourable Members.

*Concluding remarks*

In conclusion, Mr President, the Bill before Honourable Members will close a major existing tax loophole, provide a level playing field for motor vehicle dealers and thus protect both the public revenue and the consumer. Although it may result in small fluctuations in the price of some individual cars, the overall effect of the Bill will be virtually "revenue-neutral". In order to ensure that the Bill operates smoothly, a Practice Note will give guidance to vehicle distributors and members of the public on how the detailed provisions of the law will be interpreted and enforced. We have already begun a useful dialogue both with vehicle distributors, through the Motor Traders Association, and with the Consumer Council. This dialogue has proved most helpful to us in drawing up the draft Practice Note and we will continue to work with the industry and with other concerned parties to ensure that the new system of FRT works in the interests of the entire community.

Mr President, with these remarks I commend the present Bill to Honourable Members.

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

**PNEUMOCONIOSIS (COMPENSATION) (AMENDMENT) BILL 1993**

THE SECRETARY FOR EDUCATION AND MANPOWER moved the Second Reading of: "A Bill to amend the Pneumoconiosis (Compensation) Ordinance."

He said: Mr President, I move the Second Reading of the Pneumoconiosis (Compensation) (Amendment) Bill 1993.

Pneumoconiosis is a disease of the lung. Once contracted and the lung damaged, the condition is, sadly, irreversible and the health of the sufferer tends

to deteriorate continuously. It was in recognition of the plight of pneumoconiosis sufferers that the Pneumoconiosis (Compensation) Ordinance was enacted and brought into operation as from 1 January 1981. The Ordinance set up a compensation scheme for persons suffering from pneumoconiosis. The compensation scheme is based on the principle of collective responsibility on the part of those industries in which the incidence of pneumoconiosis is highest. It is therefore funded by a levy on the building and construction and the quarrying industries, and is administered by the Pneumoconiosis Compensation Fund Board. Under the Ordinance, compensation is paid either in a lump sum or by two instalments. This has been found to be inadequate because no further relief is available to the pneumoconiosis sufferers if, as is likely, their health deteriorates further.

The Bill seeks to make a number of improvements to the compensation scheme. The most significant one is to introduce a system of monthly payments payable for the lifetime of a pneumoconiotic. Assessment for compensation will be made on the basis of physical incapacity in accordance with a formula which takes into account any likely reduction in employability or loss of quality of life.

In view of the progressive nature of the disease, a pneumoconiotic may ask to be re-examined every two years. If he is found to have suffered additional incapacity, the amount of monthly payment would be increased. This applies also to pneumoconiotics who have previously received compensation under the Ordinance. It would not apply to those who, six months after the enactment of the Bill, are actively continuing proceedings in a court for damages at common law for pneumoconiosis or an appeal against an assessment of compensation under the existing Ordinance.

The Bill also provides for compensation to be given to the family members of a person who dies of pneumoconiosis. Funeral expenses would be reimbursed to any person who has incurred them for the burial or cremation of the deceased.

In addition, the new compensation scheme also provides reimbursement of expenses for the supply or use of approved medical appliances and compensation for bereavement to the family members of a pneumoconiotic who had not received any compensation prior to his death.

It is estimated that some 2 000 pneumoconiotics who were diagnosed between January 1981 and March 1993 would be able to benefit under the new scheme.

To implement the new compensation scheme, it will be necessary to increase the rate of levy charged on the building and construction and quarrying industries from 0.02% to 0.3% in 1993. I intend to move the necessary Resolution in this Council as soon as possible after the passage of the Bill. I should also give notice that a further increase in the rate of levy to 0.4% or

0.45% may well be required in 1994, depending on the actual pattern of income and expenditure.

The improved compensation scheme envisaged in the Bill will apply, in the same way as the existing Ordinance, only to pneumoconiotics diagnosed on or after 1 January 1981. The Government has, however, not forgotten those unfortunate pneumoconiotics who were diagnosed before 1981 to have contracted the disease and who were given *ex gratia* payment on a once-and-for-all basis by the Government in 1981. As the Financial Secretary announced in the recent Budget debate, the Government proposes to make a grant of \$100 million from the general revenue to provide further *ex gratia* payments to these persons at a rate of \$2,200 per month for the rest of their lives. This rate has taken into account the elements of incapacity as well as the expenses for medical treatment and appliances. It is also proposed that an amount not exceeding \$10,000 would be given to any person who has paid for the funeral expenses of a person who had died of pneumoconiosis. I intend to make a submission to the Finance Committee of this Council as soon as possible after the passage of the Bill to seek approval of the funds required for this purpose.

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

### **PILOTAGE (AMENDMENT) BILL 1993**

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

He said: Mr President, I move that the Pilotage (Amendment) Bill 1993 be read a Second time.

The purpose of the Bill is to introduce amendments to better regulate shipping and pilotage matters within Hong Kong waters.

As our port becomes more busy, management of shipping matters gains complexity. To better cope with this, membership of the Pilotage Advisory Committee needs to be adjusted to take in a broader spectrum of experience, expertise and opinion. This, the Bill provides. The work of the Committee should benefit from membership of a more varied background.

Secondly, the disciplinary procedures for pilots involve a detailed preliminary inquiry followed by examination by a board of investigation. These procedures are essential for normal cases but they are inefficient and inflexible in the case of minor complaints where there is often no need for such elaborate procedures. In addition, the sanctions imposed by a board of investigation, namely the cancellation or suspension of a pilot's licence, are inappropriate for minor offences where a warning, caution or reprimand would suffice.



The Bill provides for the establishment of a board of discipline to deal exclusively with minor offences. No formal judicial or quasi-judicial procedures will be involved, and the board may recommend a range of lesser sanctions. A provision for appeal is included. These measures should enable less serious incidents to be handled expeditiously, effectively and fairly.

Other provisions included in the Bill include:

- (a) granting to an officer conducting a preliminary inquiry certain powers, for example, powers to call for witnesses and to demand the release of relevant documents;
- (b) formalizing the current administrative arrangements whereby the Pilotage Authority may grant an extension of service beyond compulsory retirement age to a pilot for a maximum of three years, subject to satisfactory medical fitness; and
- (c) designating a "dockyard approach" area at North Lantau so that ships navigating to and from docks located there will be subject to the same exemption from compulsory pilotage as the existing dockyard approach area near Tsing Yi Island.

Mr President, the proposed amendments have been formulated in consultation with the shipping industry, the Hong Kong Pilots Association and the Pilotage Advisory Committee. All parties support the proposals.

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

## **MULTI-STOREY BUILDINGS (OWNERS INCORPORATION) (AMENDMENT) BILL 1992**

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

*Question on Second Reading proposed.*

MR ALLEN LEE: Mr President, the Bill before us aims to facilitate the formation of owners' corporations and to repeal those provisions in the existing Deeds of Mutual Covenants which are unfair to flat owners. In view of the complicated nature of the Bill and its impact on the general public the ad hoc group set up to study the Bill has spent many hours of working, scrutinizing the Bill. Altogether we have had 16 meetings and considered 22 public representations. As convenor of the group I wish to express my warm appreciation to the contributions of all the parties concerned. I would like to thank the Law Draftsman for his efficient and invaluable support in tackling the Bill.

The immediate issue that the ad hoc group has spent a lot of effort in pressing for is the setting up of a Building Management Tribunal which will adopt informal and inexpensive procedures to deal with the disputes between property managers and flat owners as well as disputes arising generally from the provisions in the Deeds of Mutual Covenants and the Building Management Ordinance. The proposal was not included in the Bill initially despite popular demand. The ad hoc group is adamant that a tribunal for building management matters is essential to the effective operation of the Bill.

In light of the Administration's advice about the complications in the setting up of a Building Management Tribunal which can only be dealt with by a separate Bill, the ad hoc group has agreed that as an interim measure the jurisdiction of the Lands Tribunal should be extended to embrace building management matters and to consider any disputes arising from the Deeds of Mutual Covenants and the Building Management Ordinance. The arrangement, I hope, will be in place by April 1994. The need for setting up a separate Building Management Tribunal should then be reviewed in the context of the effectiveness of the Lands Tribunal in dealing with building management matters. I look forward to the Secretary for Home Affairs' comments in this regard.

Unified management of some estates is another important issue discussed by the ad hoc group. The group is of the view that such estates with complex and wide-ranging common facilities should probably be under unified management. The existing definition of "building" in section 2 of the Ordinance applies to a building of two or more levels together with the land on which it is built and any land in common ownership. We recognize that in some such estates the common parts, the communal facilities and services are not in common ownership, although they are for the common use, enjoyment and benefits of all the flat owners and occupiers. When flat owners of such estates incorporate themselves they will be unable to form one owners' corporation for the whole estate. I am glad that the Administration will propose to amend the existing definition of building at the Committee stage so as to give flat owners of such estates the option to form one owners' corporation for the sake of integral estate management.

The ad hoc group also considers that a degree of control over the management of large estates is necessary. If different phases of a large estate were allowed to employ their own management companies it would have undesirable effects on the integrity of the estate and may create problems in managing communal facilities. To address this concern a new schedule, at present blank, will be added to the Bill so that the Secretary for Home Affairs can include estates in the schedule and the estates so included must be under unified management. However, an estate would not be included in the schedule if owners holding 50% or more shares in the estate object to the inclusion.

The Bill also introduces a procedure whereby flat owners may be able to terminate a manager's appointment. On the other hand, new section 34E(4) of the Bill enables the Secretary for Home Affairs to exclude a building from the application of the termination procedure. The Administration has explained that the provision is intended to deal with specific circumstances that warrant continued management of an estate by the developer or his appointed management company. The ad hoc group considers that there may be a need for exemption to be granted in some unforeseen circumstances but the flat owners should also have a say in the choice of management companies. Amendments will be made to include a provision in the Bill so that an application for exclusion under section 34E(4) shall not be granted if the owners holding 50% or more shares of the building object to the application. There is also a limit that the period of such exclusion will not be more than three years.

Apart from the above main issues the ad hoc group has also proposed some other amendments to the Bill which will be moved at the Committee stage. The ad hoc group realizes that even with the proposed amendments there may still be areas which need to be looked into. However Members are equally concerned that the Bill should be enacted as soon as possible in order to bring about the desired improvement in building management. The group has therefore urged the Administration to conduct a review following the enactment of the legislation to consider in the light of operational experience whether the Building Management Ordinance is efficient in furthering the better management and maintenance of private buildings.

Mr President, with these remarks I support the Bill subject to the amendments to be moved at the Committee stage.

MR TAM YIU-CHUNG (in Cantonese): Mr President, after a profusion of arguments, discussions and revisions, the Multi-Storey Buildings (Owners Incorporation) (Amendment) Bill is now set to go through the final stage of its legislative process to become law. Although this Bill is not perfect, I believe it will do the great majority of private property owners proud.

The present Bill represents an improvement on the existing Ordinance in that it confirms an owner's right of control over the management of his property. However, it has been very difficult to strike a balance and achieve smooth co-ordination between the owner's right of control over management of his property and the management company's enforcement powers in management matters. It is necessary for management companies to have a certain degree of autonomy in management, particularly those companies involved in complicated management problems. But how can management companies be given sufficient autonomy while not prejudicing the interests of the owners? This subject attracted much controversy throughout the drafting process of the Bill. After consultation among various parties coupled with an exercise in collating and balancing the views from these parties, the present Bill has been finalized in its present form with a clause 34(E)(4) included.

Clause 34(E)(4) provides exemption of not more than three years from termination of appointment for certain management companies, unless the companies' application for exemption is objected to by owners holding between them not less than 50% of the undivided shares in the housing estate.

This exemption arrangement is questioned by many owners' committees. The response from owners of properties in Mass Transit Railway Corporation (MTRC) housing developments has been particularly strong. They have three major worries. Firstly, technically speaking, it is almost impossible for owners' corporations of sizeable housing estates to organize owners holding 50% of undivided shares to object to the management company's application for exemption. Therefore, it is indeed practically impossible for owners to prevent an application for exemption by the management company. Secondly, during the period of exemption, owners are disabled from exercising their power of terminating the appointment and stopping all management operations of a management company even if it abuses its powers. Thirdly, the Bill has not stipulated the criteria according to which the Secretary for Home Affairs will approve an application for exemption. Nor is a set of guidelines published as to what criteria to be used. People cannot help getting worried that the Secretary may be vested with too much power to protect those management companies which have close ties with the Government. It is understandable that owners of properties in MTRC housing developments will have particularly profound worries because they, on the one hand, represent owners of large housing estates while, on the other, they also represent owners of properties managed by companies which have close ties with the Government. Given that continued and unified management is essential to large housing estates and that it is a known condition for the granting of exemption, MTRC housing developments are most likely to be exempted, having regard to the special position of the Mass Transit Railway Corporation.

The tribunal to be set up under the present Bill will help towards dispelling the first two worries of owners. But since the tribunal will not come into operation until April next year, we can only wait and see how it will exercise its functions in actual practice. At present, any discussions about its functions remain at the conceptual level. As to the third worry, it is hoped that the Government will as quickly as possible formulate and publish an impartial and objective set of criteria so as to put owners at ease.

Mr President, although the Bill has not taken full account of all the opinions of property owners, it is after all a great improvement. It may not be in the interest of most of the owners if the passage of the Bill is delayed again. Therefore, taking the opportunity of the passage of this Bill, let me say that I hope the Secretary for Home Affairs will continue to have concern for owners' worries about the Bill, with a view to studying and amending in future all provisions which are unfavourable to owners.

With these remarks, I support the Bill in its amended form.

MR EDWARD HO: Mr President, most of the people in Hong Kong live in multi-storey buildings which are owned by a multitude of owners. Therefore the passage of this Bill, which would facilitate the formation of owners' corporations to enable them to be responsible for the proper management of their own properties, is very important and it has naturally attracted immense interests from members of the public ever since a White Bill was published for public information and comment in May 1991. These interests, often diverse viewpoints from developers, property managers or individual owners, have continued unsubsidised despite the fact that the Administration has made amendments to the White Bill before it was introduced to this Council as the Bill in its present form.

The points that I will be mentioning in my speech today in fact have been raised by me in the Legislative Council ad hoc group in its meeting as long ago as August of last year. Similarly, other areas of disagreement between the ad hoc group and the Administration have surfaced since around that time. Most of these disagreements were also subjects of representations that I have personally received from members of my functional constituency. Whilst I am pleased that, after many meetings with the Administration, we have convinced the Administration that most of our proposed changes would now be incorporated in the amendments at the Committee stage, I should say that it was only possible through hard work and persistence of Members of the ad hoc group. The fact that there was a strong consensus from Members was also crucial.

In particular, I would like to raise three points:

- (i) Many housing projects in Hong Kong are of such sizes that in other countries they would be equivalent to townships. These projects have population of tens of thousands. They are usually divided into blocks of buildings or stages but they have shared community facilities and common infrastructure such as roads and drains. Under the Bill, owners can form owners' corporations to manage their own individual block of building. However, problems would occur if there is no proper consensus between owners' corporations of different blocks in the management and maintenance of the common facilities. Such problems, if occurred, would not only adversely affect the living environment of the residents, but they also would cause great nuisance to the public. This is a problem that I believe was not originally considered in the Bill and was one of the issues that I raised for discussion in the ad hoc group in August 1992.

I am glad that the Administration finally recognized this potential problem and has agreed that a new Schedule would be provided in the Bill whereby the Secretary for Home Affairs could include estates which must be under unified management in the Schedule. To preserve the right of the owners, such an estate would not be

included in the Schedule if not less than 50% of the owners' shares of the estate object to the inclusion.

- (ii) Due to the natural conflicting interests of developers, property managers and the individual owners, many representations, including those from members of my functional constituency, have urged for the setting up of an independent Building Management Tribunal to settle disputes between various parties. The Administration has resisted very strongly this request principally due to the reason of lack of resources. I and other members of the ad hoc group have found this reason unacceptable. If the Administration were to introduce legislation that regulate the activities of members of the public, it is not equitable that a tribunal cannot be set up to settle disputes informally and inexpensively, simply due to limitation of resources. I have reluctantly accepted the interim solution of extending jurisdiction of the Lands Tribunal to embrace building management matters and any other disputes arising from DMCs and the future Building Management Ordinance.

I note that the operation date of the provisions relating to the Lands Tribunal has not been specified and I urge that this date should be set as soon as possible and certainly no later than a year from now; and that the establishment of a separate Building Management Tribunal should still be the objective and that it should be reviewed in the context of the effectiveness of the Lands Tribunal in dealing with building management matters. I have noted that the Lands Tribunal, as it is, has great difficulties in coping with its present workload expeditiously. I would expect that the Administration would provide more resources to the Lands Tribunal in order for it to discharge its expanded duties efficiently and effectively.

- (iii) Whilst it is right that owners, after forming themselves into owners' corporations, would have the right to appoint their own property managers, I would strongly urge for the setting up of a licensing system for property managers or managing companies. This is important to ensure that the required standard of property management service is provided. Licences may be graded according to the size of buildings or number of flats that the managers could handle and it should not be mandatory for small buildings to employ a licensed management company.

Mr President, due to a lack of proper management and maintenance of many buildings in Hong Kong, the appearance of our fair city in many built up areas has deteriorated to our regret. A proper standard of property management is not only important to the ordinary citizen whose ownership of a flat could be his most valuable asset, but also it is of great importance to the quality of our physical environment.

With these remarks, Mr President, I support the Bill with the proposed amendments at the Committee stage.

MR RONALD ARCULLI: Mr President, firstly, I would like to declare my interest as a director and honorary legal adviser of the Real Estate Developers Association (REDA) of Hong Kong, one of the three component organizations of the functional constituency which I represent in this Council.

REDA made a submission in September 1992 to the ad hoc group set up to examine this Bill and had the opportunity of meeting with members of the ad hoc group on 14 September to explain our comments. We are disappointed that the final amendments tabled today do not address most of our concerns. However, I shall not repeat all of them now but I wish to refer to some points which we believe, if not properly addressed or handled upon implementation, could lead to adverse consequences affecting owners, estate managers and developers.

- (1) The first point concerns the period of exemption. As it is recognized that the sizeable and complex housing estates are usually constructed in phases and therefore may take many years to complete, it would have been preferable to have retained a flexible approach to the question of exemption under the proposed subsection 4 of section 34(E) rather than setting a time limit of three years. This time limit will doubtless necessitate subsequent applications in the case of large developments taking more than three years to complete. Such an approach would not have prejudiced the rights of owners to seek a termination of the exempt status under subsection 4(B) of section 34(E).
- (2) Secondly, neither the Bill in its original form nor the final amendments have specified any conditions under which a development might qualify for exemption under the new Ninth Schedule.

I would like to impress upon the Secretary for Home Affairs the importance of working out the criteria as soon as practicable and to consult the public and the relevant industries and professionals before making a decision in this respect.

- (3) Thirdly, as to the new section 34(L), it is somewhat unclear whether in the event of a dispute between a manager and some of the owners of an estate, for example, over the non-payment of management fees, the manager is entirely safeguarded in respect of his costs. After all the manager is just trying to do his duty and job for the benefit of those owners who have paid.

In conclusion, Mr President, it is indeed unfortunate that this Bill is so complex. It is difficult to balance the interests of all. I hasten to add that this is not intended as criticism of those involved in the drafting. Indeed, some of the difficulties might have been as a result of patchwork amendments from time to time over a long period. It is also a matter of regret that there are as yet no quality controls in estate management, an industry which affects all of us. There is a case for some form of registration and qualification for estate managers and this should be brought in by the industry as soon as practicable.

Mr President, subject to the above reservations, I give my qualified support.

MR LEE WING-TAT (in Cantonese): Mr President, on the whole I support the Multi-storey Buildings (Owners Incorporation) (Amendment) Bill which is tabled for this Council's endorsement today. I hope the Bill, after being endorsed, can achieve the following five aims:

- (1) to enable flat owners to repossess their entitled power and establish an owners' corporation with statutory power for deciding upon management matters of their own housing estates;
- (2) to improve management of private buildings through the amended Ordinance;
- (3) to enable developers, flat owners and estate managers to have a better idea about their own power and responsibilities;
- (4) to settle disputes that cannot be resolved between owners or between owners and estate managers through the Lands Tribunal; and
- (5) to enable flat owners to understand the importance of good building management through the Government's promotion efforts.

The present Bill, which seeks this Council's endorsement today, puts an end to the practices of developers and management companies to deprive flat owners of their power of managing their own buildings. This is an improvement on the existing Ordinance. However, the amendments to this part of the Ordinance are not flawless. The main problem lies in the fact that flat owners' power of changing their management companies is greatly curtailed in some large housing estates such as the property developments atop the Mass Transit Railway (MTR) stations, where the developers take up a large share of the ownership.

Under clause 34 of the Amendment Bill, permission is given to management companies to apply to the Secretary for Home Affairs for exemption so that management companies can retain the management power of the buildings in spite of the fact that it is provided in the Amendment Bill that



the exemption shall become null and void if over 50% of flat owners holding the undivided shares of the ownership raise objection. Mr President, in a meeting held by the ad hoc group to study the Bill, I queried the City and New Territories Administration (CNTA) whether it was aware of the fact that, notwithstanding the provision, it was virtually impossible for flat owners of most private estates to oppose the management company for its application for exemption if the developers concerned were holding a decisive or crucial share of the ownership. I also pointed out that flat owners might not be able to round up sufficient support of over 50% owners to apply for the dismissal of the manager. Unfortunately, the representative of CNTA told us that they had no data concerning the developers' share of ownership in all the private housing estates throughout the territory. Developers which hold a large share of an estate can employ their affiliated management companies. This is a serious problem and indeed a time bomb. Yet, the Bill fails to address this problem.

We learnt from the information which CNTA supplied to the ad hoc group set up to study the Bill the share of ownership of property developments atop the MTR stations. The Mass Transit Railway Corporation (MTRC) holds a decisive share of ownership of several housing estates. For example, the MTRC holds 76% of the ownership of Telford Garden, 74% of Luk Yeung Sun Chuen and 57% of New Kwai Fong Garden. As regards these three housing estates and other estates where the flat owners only hold a small share of the ownership, the proposed amendments still fail to enable the flat owners to dismiss the incompetent managers.

Mr President, under such circumstances, we must not leave the matter unsettled in this way. We have three proposals in this respect:

- (1) in view of the fact that it is the Secretary for Home Affairs who has the authority to grant exemption, I propose that the Secretary should not rigidly stick to the criterion of 50% ownership when he considers whether to grant exemption to the management companies of this particular type of housing estates. The Secretary should judge the matter in terms of the total ownership and set great store on whether over half of the flat owners in a property development oppose the management company or are not satisfied with its service;
- (2) since the flat owners of such housing estates are, in each and every case, unable to dismiss their managers under the proposed amendments, it is expected that there will be bound to have more disputes among the flat owners, developers and management companies than other housing estates. For this reason, I propose that CNTA should send more staff from its district offices to make frequent visits to the owners' organizations of such housing estates and, where necessary, assist the flat owners in bringing the disputes to the Lands Tribunal for settlement as well as offer them appropriate help; and

- (3) the Administration should review this part of the Ordinance half a year after its enactment. One feasible measure that offers more protection to the interests of flat owners is that the management company must obtain the consent of the developer and the flat owners who all together hold 50% of the share of the estate ownership for the renewal of its contract.

Mr President, members from the United Democrats of Hong Kong (UDHK) serving in different boards/councils have all along been concerned about the interests of flat owners in the past 10 years. We have asked for the revocation of section 2A which oppresses the flat owners so that they can have the real power to manage their own housing estates. We have organized various seminars, residents' meetings, signature campaigns and petitions. Notwithstanding that the Bill signifies a small victory of the flat owners, the Administration must review the amended Ordinance to identify its inadequacies when it is put into effect and make the necessary amendments after a period of time. The UDHK will certainly stand on the side of the flat owners and continue to strive for them the reasonable rights to manage their buildings.

These are my remarks.

MR ERIC LI (in Cantonese): Mr President, I basically agree that the Multi-storey Buildings (Owners Incorporation) (Amendment) Bill 1992 is generally welcomed by flat owners. As a matter of fact, the Bill has been dragging on for a rather long period of time and we should not keep on prevaricating. Here I must point out one thing in particular. Clause 34(E)(4) of the Bill stipulates that, in any particular estate, no less than 50% of flat owners' signatures are required if owners are to raise objection against the Administration for exempting developers and management companies from termination of appointment. To the flat owners, such an amendment is merely one that consoles them with false hopes.

It is an extremely harsh requirement for flat owners to obtain support of flat owners who have between them 50% of the share of an estate before they could raise objection against the Administration's exemption to the estate management company. Judging from practical experiences, management companies which might apply for exemption are usually those managing large housing estates with not less than several thousand flats. The flats of such large private housing estates are often used by people as investment instrument and subject to intense speculation. As a consequence, it is not uncommon for flats left vacant or being let out. And this would give rise to the following situations:

- (1) The owners may not register the transactions with the Land Registry at once after they sell their flats, nor inform the management company;

- (2) Even if the owners who have sold their flats report the transactions immediately, given the existing workload of the Land Registry, it will surely take over half a year before the Land Registry could provide updated information on the flat owners. Furthermore, the application fee for each search is \$10. In other words, if flat owners in an estate want to obtain information on the flat owners of the whole housing estate through this open channel, the cost incurred will be forbiddingly high due to the large number of flats involved. Before anything can be done, flat owners have to raise a large sum of money in advance for getting hold of the necessary information but the information obtained may not necessarily be the most updated and accurate. And the information may not be the same as that held by the management company. Under such circumstances, it is not surprising at all that the voting results would be disputable. Some owners let out their flats and make it the responsibility of the tenants to meet the management fees. They would not care at all whether the tenants enjoy the deserved management services or quality of services. I trust that they would not show a keen interest, should these owners be requested to take an active interest in choosing the management company. In view of this, the availability of vacant or let out flats would definitely affect the respondent rate of any relevant opinion poll or survey. As a result, individual owners have to spend quite a huge amount of money, only to obtain outdated and inaccurate information about all the owners in their same estates, yet which may be different from that of the management company. And they have to rely on such information to reach the other several thousands of flat owners. The 50% target is, after all, "within sight but beyond reach". To put it more cruelly, it is really a practical joke which is of more kicks than halfpence.

As a matter of fact, it is not too much to give the flat owners a little bit of freedom in choosing their management company. If the Government has the *bona fide* respect for the owners' views, it should not put forward amendments which border on fooling the flat owners. However, I believe that at the present stage, we can still make remedy to the Bill through administrative measures.

At the ad hoc group meeting, the Government has undertaken to formulate a set of guidelines laying down the basis on which the authority concerned exercises its discretion on exemption. I am of the opinion that the Administration should not entirely leave it to the flat owners to raise objections. The spirit of the guidelines should be to explain what the Government would take into account in exercising its discretion. The Government should at least take initiative to gather owners' views on their management companies. Therefore, I suggest that before the granting of exemption, an independent inquiry to find out the overall views of the owners in respect of the exemption of the management company has to be conducted, only if the Administration receives a petition bearing the signatures of 10% of the owners. It can be

conducted by the management company itself or an independent survey company commissioned by it, while staff of the district office may monitor the whole process. The cost is to be covered by the management fee. And all relevant information of the owners are to be supplied by the management company. Moreover, in view of the difficulties I have mentioned, many of the owners are unable to be contacted at all or have no comments on the choice of the management company. I feel that the Administration, when deciding on the exemption, should follow the principle of simple majority of the respondent owners rather than on the 50% required ratio of all owners, including those who abstain.

I believe that after the passage of the Bill, some management companies such as the Mass Transit Railway Corporation (MTRC) and the Taikoo Real Estates, would surely apply for the exemption at once. The maximum period of exemption is three years. I earnestly hope that the guidelines can be issued as soon as practicable, preferably before the granting of any exemption. Views on the guidelines should be sought from flat owners concerned. Before granting the second exemption three years later, a review should be carried out on the revised Ordinance to examine whether it would, in practical terms, be unfair to the flat owners. I also hope that colleagues of this Council will keep a close look on the implementation of the Ordinance and to urge the Government to make appropriate amendments if necessary. However, in order not to hinder the implementation of other proposals of the Bill, I am going to abstain from voting when amendment to section 34 is put. But I would support other proposed amendments and support the whole Bill in its amended form.

MR MAN SAI-CHEONG (in Cantonese): Mr President, the long-awaited Multi-storey Buildings (Owners Incorporation) (Amendment) Bill 1992 will eventually go through its third reading today. In fact, many local bodies and the United Democrats of Hong Kong (UDHK) have for a number of years fought for the introduction of the proposed amendments, especially the revocation of section 2A. I, as a member of UDHK and as one of those people who have been championing the flat owners' interests over the past seven years, naturally support most of the proposed amendments to the Bill. However, this does not mean that the Bill is beyond criticism. For instance, I am not satisfied with the provision in the Bill that the developer or the management company concerned may apply to the Secretary for Home Affairs for exemption so that the owners' corporation cannot terminate their service and in consequence the developer or management company could provide management service on a long-term basis.

It is proposed in the Multi-storey Buildings (Owners Incorporation) (Amendment) Bill 1992 that the owners shall be vested with the power to dismiss the management company. Yet, the developer or the management company is also permitted to apply to the Secretary for Home Affairs for exemption from the termination of their service by the owners' corporation. And only owners between them holding over 50% share of an estate can apply for the overturning of the Secretary's decision.

Apparently the provisions seem to be fair to both the owners' corporation and the management company but actually the whole discretion of the flat owners becomes, as what some local bodies put it, something within sight but beyond reach. The ownership of most of the large housing estates, especially property developments atop the Mass Transit Railway stations as mentioned by many colleagues, is usually held by companies in which the developer or management company concerned has an interest. And it seems very unlikely for flat owners in an estate to round up the support of 50% of the owners to vote down the exemption granted by the Secretary for Home Affairs. It means that the owners' corporation cannot hold full power, or in other words, virtually no real power to employ a management company on its own at all. As a result, some management companies providing just passable services can keep on managing buildings for a long time free of any restriction.

In fact, it is the Government's objective of amending the existing Ordinance, as I believe, to protect the flat owners from being bound by any unfair Deed of Mutual Covenant so as to enable the owners' corporation to supervise or monitor the operation and administration of the management company in an effective way. However, the provisions in this respect are still far from adequate and in consequence the developer or management company concerned can enjoy inordinately great protection. I oppose to this part of the Bill and hope that the Government will, immediately after the enactment of the Bill, put the Secretary for Home Affairs's exemption power under regular review to see whether there are any loopholes in the operation and consider what amendments to be made so that some concrete remedies can be put in place.

In order to successfully deal with the crux of the estate management problem in Hong Kong, I think we have to start right from the root, that is to say, requirement must be set to ensure that management company shall have the recognized professional qualification and ability in estate management. For this reason, I hope the Government could formulate as soon as possible a sound system for registration and licensing inspection. Such a system is indispensable because only by doing so can we require each management company to employ a certain proportion of staff with professional qualifications. Under the system, the authority concerned should only grant approval for registration and issuing licences to the eligible applicants after inspection. In case any malpractices or serious mistakes are found in its management, the authority may revoke the licence. This is the only way to ensure a real professional estate management and monitor management companies more effectively while safeguarding flat owners' interests.

In addition, I also support the setting up of a building management tribunal or a similar body to settle the disputes between owners' corporation and the management company. This is conducive to both solving the problems and protecting both parties' interests. Some of the disputes are simple in nature and involve only a small sum of money. Yet it would take much time to settle them. If such disputes can be handled by a building management tribunal for its fair

arbitration, it would keep the flat owners' legal costs to a minimum and they will not be placed at a disadvantage simply because they cannot afford to initiate legal proceedings. For this reason, we are looking forward to an early establishment of the tribunal.

Although it seems that the Multi-storey Buildings (Owners Incorporation) (Amendment) Bill 1992 would be endorsed without much fanfare today, we still have to wait and see whether the Government would allocate sufficient resources and have determination to enforce this piece of legislation and whether it will review the Ordinance regularly to redemdy the inadequacies.

MR TIK CHI-YUEN (in Cantonese): Mr President, though the Multi-storey Buildings (Owners Incorporation) (Amendment) Bill 1992 has undergone lengthy discussions, Meeting Point is yet of the view that the Bill is not yet perfect and there are several loopholes and issues which must be addressed.

#### *Legislative intent*

The legislative intent of the amendment Bill is to "return incorporation right to residents", which means returning the right of forming owners' corporation to flat owners, and "returning management rights" to flat owners. However, it is disappointing that this dual-return objective has not yet been fully realized in the amendment Bill. The Bill still has some loopholes, particularly in the aspect of enforcement. Meeting Point has the following comments:

#### *(1) Right of exemption*

Section 34(E) of the Bill provides that a management company or a housing development can apply to the Secretary for Home Affairs for exemption from being bound by paragraph 7 of the Seventh Schedule as regards the termination of the services of a manager, and the exemption will last for three years. The Bill does provide that if flat owners representing more than 50% undivided shares object, the Secretary for Home Affairs can reject the application of the management company. However, the Government does not specify any criterion in the Bill with regard to the granting of exemption. Moreover, it is basically impossible in sizeable housing estates to muster support from owners who hold between them 50% undivided shares. Neither does the Government make it a requirement that developers or the Government itself should be responsible for notifying flat owners. In this way, flat owners are being deprived of their right to know. Since the Bill does not state clearly the pertinent procedures, flat owners are put in an unfavourable situation.

#### *(2) Vast ratio of ownership shares*

Another problem of the Bill is how to tackle the vast ratio of ownership shares. In the paper submitted to this Council by the Government, it is mentioned that in some sizeable estates (actually several Members have quoted

this), it is impossible for flat owners to muster enough support to trigger a valid objection under the 50%-share rule. This will set a bad precedent for big developers to "go for" vast numbers of ownership shares in the future in order to procure permanent management of a building. The bill does not introduce any control in this respect.

Without addressing the aforesaid situation, the legislative intent of the Bill to safeguard the right of owners in managing the building in which their properties are located will not be completely achieved.

(3) *Settlement of management disputes*

After amendment, the Ordinance will extend the jurisdiction of the Lands Tribunal to deal with litigation related to building disputes. However, what makes one worry is that the current waiting time at the Lands Tribunal has an average of 80 days. Together with the building management disputes, the waiting time will be further prolonged. As common law says "Delay defeats equities", Meeting Point is disappointed at this.

Of course, we cannot deny that the Bill has its own merits. These include the repeal of section 2A, addition of Part VI A which enhances the overriding nature of the Bill, addition of the Seventh Schedule and other implied provisions. These amendments are welcomed by Meeting Point.

Meeting Point cherishes high expectations of the amended Ordinance, but it also detects the aforesaid loopholes, particularly with regard to "the right of exemption", which will certainly have the chance of becoming a reprint of section 2A of the original Ordinance. The Secretary for Home Affairs is granted an "imperial sword" under the amended Ordinance, which will enable him to have considerable power to exercise "discretion". At the present stage, we cannot see that when the Secretary for Home Affairs exercises this discretion, there will be any stipulated explicit guidelines or specific consultation and justification procedures.

Meeting Point does understand that the ad hoc group has spent a lot of effort in scrutinizing the Bill and has also discussed the above problems. Up to now, it has been over a year from the gestation of the Bill to its being introduced to this Council for scrutiny. As far as we understand, many concerned parties do hope that the Bill can be passed as soon as possible so that flat owners may enjoy autonomy over the building in which they are living.

As a Member of the Legislative Council, I would have wanted to support the Bill wholeheartedly. Nevertheless, the Bill has many loopholes which render flat owners unable to safeguard their rights adequately.

In the circumstances, Meeting Point is in something of a quandary and we shall abstain from voting on part of the provisions of the Bill.

As for plugging the loopholes in the Bill, my colleague Mr WONG Wai-yin will later on provide some follow-up suggestions with regard to the problem detected by Meeting Point.

MR JAMES TO (in Cantonese): Mr President, half of the population in Hong Kong are living in private buildings and large housing developments. Therefore it is very important that these properties be properly managed for the good of the environment, law and order and hygiene of Hong Kong. In fact, an improvement in these three aspects will reduce the direct and indirect expenditures of the Administration, especially those of the district offices and other relevant departments. The question of building management has long been the subject of criticism and complaint. I think the most serious and well known case is the Beacon Heights incident. This incident became a catalyst that led to a reform campaign by individual owners to fight for their rights. The amendment Bill before us today is, I think, a milestone. The flat owners' fight for their rights can generally be said to be successful, although they have yet to make more effort.

This amendment Bill seeks to revamp the system of unfair deeds of mutual covenant by repealing section 2A and other provisions that restrict the formation of owners' corporations so that flat owners will resume the right of managing their own buildings.

Today, I have heard a multiplicity of views from many of my colleagues. Being the co-convenor of the ad hoc group, I am very surprised — and I wonder whether Mr Allen LEE shares my feeling — to find that many Members, who had no opinion to offer in the ad hoc group, have made many suggestions today. If they had any suggestions, they should have raised them at the ad hoc group meetings so that the group could have worked on them together to make the provisions of the Bill even better. But they did not do so. I wonder what kind of attitude theirs is if they abstain from voting today. I must say this; it would be out of line with my character if I did not.

Regarding the question of exemption, some Members said that the Administration had not clearly laid down the relevant guidelines. I would like Members to refer to the letter from the Administration dated 11 August 1992, in which the guidelines are listed. So why are they saying there are no guidelines provided? Is it because they have not read the letter? If they think that the guidelines are not clear, they can speak out. I have read the guidelines and my comments are as follows: The Administration has said in the guidelines that in processing applications by management companies it will consider their past performance, that is, their performance in the aspect of management. In fact, it is a matter of subjective judgement for one to say if a company's past performance is good. As Mr Eric LI said, even if an independent investigation has been conducted, the result may well be that while the owners are not satisfied, the management company regards its performance to be very good. The situation will be like that of the Complaints Against Police Office, with the



complaining and the complained parties each sticking to its own version of the story. If individual owners wish to invoke the 50% share rule to overturn an application by the management company, they will find it very difficult. I am also living in a large housing estate. So I understand the difficulties involved, but I also understand the rationale behind laying down such a requirement. The fact is that even though the flat owners want to terminate the appointment of their management company, they cannot do so unless they can, according to the existing provisions, secure the agreement of owners holding 50% shares. If they cannot secure the agreement of owners holding 50% shares, and without any exemption given by the Secretary for Home Affairs, then they cannot terminate the appointment of the management company. Therefore, I think that the process of rallying the support of owners holding 50% or more shares, and the relevant planning and organizing work should be started earlier. I believe that this will require more effort from vast numbers of enthusiastic flat owners, as well as Members of this Council and social workers. Although it may not be very appropriate to insist that the criterion of 50% is unreasonable, I do hope that the Administration will not take the 50% criterion as a golden rule. If there is less than 50%, say, only 30% or 20%, or like what Mr LEE Wing-tat has just said, if all the individual flat owners together hold no more than 30% shares and among them those holding 25% approach the Administration, then in these circumstances, if the Administration still allows the management company to continue managing the property concerned, I believe that the Administration will be under great pressure.

Some people have suggested unified management, which means that what large housing estates need is one single management corporation instead of many such corporations. I find no conflict between this idea and the right of managing one's own property, because our main point is to get back the management right from the management company so that owners can make their own decision. Nevertheless, it is not necessary for housing estates comprising tens of blocks and each with tens of floors and a large number of flats to have one management corporation for each block, or one for each floor, or even one for each flat. This is not what we need. What we need is a good overall management system and the right to choose which management company to employ.

Also, some have mentioned the question of a freeze period. I think that the nine-month freeze period should be shortened, because the whole legislative process has, from the issue of the White Bill up until this moment, already taken many months. If the management companies need time to make improvements and to put things right, they should have already finished doing so. If they now want to make improvements so that things will not look too bad because there has been a change in the law, I think it is already too late for them to do so. So I think this nine-month freeze period can be accepted, though with great reluctance. As the Building Management Tribunal cannot be set up earlier, it would be a waste of time and very troublesome for the many flat owners to recourse to litigation in order to terminate the management right of their management company. Therefore, this nine-month freeze period can be useful

(useful perhaps because of a fortuitous coincidence) in the present situation where the Building Management Tribunal is not yet established. What worries me most is that some management companies would seize the opportunity of this transition period and "fish in troubled waters". In recent months, I have received many complaints that many management companies have suddenly incurred expenditures that are many times what they used to incur, or have suddenly run into deficits that have never occurred before. I hope that after this Bill has been passed (if it is passed), gazetted and duly signed by the Governor, the Administration will as soon as possible deploy more staff to the district offices to help the flat owners solve their problems, now that the Administration has a right to interfere which it did not have before. Section 40A empowers the relevant authority to monitor and investigate the situation concerned and audit the relevant accounts. I believe that after the passage of the Bill, Members of this Council, members of other boards and councils, communal organizations, or organizations in liaison with flat owners will approach the relevant authority who, I think, will then be very busy. Therefore, the Administration should allocate sufficient resources to the authority.

Meanwhile, some have questioned how these owners' corporations and management committees are to be administered and monitored in order to avoid mismanagement. Firstly, I think that section 44 has made it clear that the Administration has laid down special codes of practice and regulations to be followed by management companies whenever there is a large expenditure (like the repainting of the outer walls that costs over \$1 million); this is also a kind of monitoring. Secondly, a general meeting can be convened at the request of owners who together hold 5% shares; so the decision of convening general meetings will not rest entirely with the management committees. Thirdly, the most important factor is of course participation; there used to be no opportunity to participate because flat owners had no say under the restrictions of the management company, but now flat owners have a right to participate in the general meeting of owners and exercise their rights by way of voting, just as voters can monitor the performance of the councillors whom they voted into office.

I therefore call upon flat owners to actively take part in the management of the affairs concerning their own buildings. I would also like to give a piece of advice to management companies. There are in fact many business opportunities under the present system, since not every building has the ability to manage its own affairs. Therefore, if management companies have been performing well, they should be able to defeat their competitors and their business should be flourishing. For those with poor management who rely on using tricks and false accounts, they will of course have good reason to worry. For these reasons, I hope that management companies will put their house in order and improve the quality of their services.

Finally, I am supportive of the licensing system, because the deposit involved is at least a few million dollars. Therefore, whether or not the Bill can be passed today, a sound capital base and good professional standards will always be essential prerequisites of management companies.

MR WONG WAI-YIN (in Cantonese): Mr President, as pointed out by Mr TIK Chi-yuen just now, Meeting Point takes a positive view in respect of the spirit behind the Bill. Nevertheless, certain obvious loopholes can still be detected from the amended version. Meeting Point has submitted a written presentation to the ad hoc group earlier. To our disappointment, our views have not been given due consideration. Here Meeting Point would like to recapitulate some of our points and earnestly urge the Government to give them serious thinking so as to fully observe the spirit of the Amendment Bill.

Firstly, the question of exemption. Meeting Point is of the opinion that it is imperative for the Secretary for Home Affairs (SHA) to lay down in black and white the concrete procedures whereby managers apply for exemption from termination. And the following three criteria should be included:

- (1) The exemption application procedures should embody the spirit of "returning management rights to flat owners". Meeting Point suggests that when the manager applies for exemption, he has to obtain the support of a certain portion of the shares of the estate as a recommendation. In this way, the application would not merely be submitted from a commercial point of view. And this condition would forestall the occurrence of a situation similar to that brought about by section 2A.
- (2) Meeting Point considers that there should be a time lag of at least half a year from the receipt of application by SHA to the approval of the application. This would allow ample time for the flat owners to arrange for owners' meetings. The proposed measure would ensure that flat owners can fully express their views.
- (3) It should be clearly specified that SHA is required to be accountable to the flat owners in the vetting of the application for exemption. This is to acknowledge owners' right to know. Meeting Point is of the opinion that upon receipt of a manager's application for exemption, SHA should notify every individual flat owner in the estate of the application by means of a formal letter, rather than claiming it to have completed the consultation process by merely gazetting the application or putting up relevant notices in certain government departments. In doing so, owners would be able to take timely actions. SHA should account for his discretion by letting every individual owner have a clear picture about the way he exercises his discretion. The Secretary should explain to them why he grants the exemption and what the rationale behind the decision

is. In this way, the well-briefed flat owners may have detailed information to work on and to take appropriate actions. Meeting Point feels that, in the long run, these administrative guidelines should, at the end of the day, be enshrined in the law through proper legislative procedures so as to safeguard flat owners' interests.

Secondly, the future roles of the Lands Tribunal. Meeting Point would like to reiterate that the Government should appropriate ample resources for the Lands Tribunal so that the waiting time for hearing would not be drastically lengthened due to an increase of cases concerning building management. According to the common law, "Delays defeat equities". In view of this, Meeting Point feels that immediate consideration should be given to the appropriation of fund so that fund will be made available by 1 April next year, the latest. More resources may enable the Lands Tribunal to exercise the duties as proposed in the Bill as soon as practicable. Meeting Point holds that it is merely an interim measure to have the Lands Tribunal hearing cases of building management. This arrangement is made to serve the purpose that the Ordinance would be implemented by a law enforcement body as soon as practicable. Since the nature of building management cases is different from that of tenancy disputes, it is expected that a lot of management problems will come to the surface and lead to legal proceedings after the passage of the Bill. For this reason, it is necessary to set up an independent Building Management Tribunal in the long run.

Thirdly, on the question of developers holding a majority share of an estate. This issue involves a balance in the relationship between the developers' interests and the flat owners' interests and the right to use and manage the commercial units, domestic units and the common utilities. It is a rather complicated issue and cannot be resolved by means of a blanket approach. At the moment, it calls for different professional advice to exert collective efforts in dealing with, and monitoring, the distribution of shares in respect of different types of Deed of Mutual Covenants.

Finally, Meeting Point proposes that the Government should re-establish the Private Building Advisory Committee immediately after the enactment of the Bill so that the Committee can carry out discussions and take follow-up actions to plug the aforesaid loopholes in the law. The Committee can then examine the administrative guidelines relating to SHA's processing of exemption application and to put forward proposals as well. For this reason, Meeting Point is going to abstain from voting in respect of clauses 34 and 33A of the Bill but will support other amendments in the Bill.

Mr President, these are my remarks.

SECRETARY FOR HOME AFFAIRS: Mr President, I am most grateful to the Honourable Allen LEE and his colleagues on the ad hoc committee to study the Multi-storey Buildings (Owners Incorporation) (Amendment) Bill 1992 for their wise counsel and the time they have spent in examining the Bill.

This Bill addresses the multifarious aspects of building management which impacts on the quality of life of a significant part of our population. Its main purpose is to facilitate the creation of owners' corporations and to increase controls over management committees of owners' corporations. It demands the concerted efforts of building owners, tenants, managers and other parties to each play their own part within the framework provided by this Bill in order to enhance the standard of building management in Hong Kong.

As a result of the meticulous attention which Members of the ad hoc group have given to the scrutiny of this Bill, many amendments have been made. Some of the Committee stage amendments which will be introduced later on are complex. We would not have been able to accomplish the amendment exercise in time without the unfailing support and the hard work of the Law Draftsman.

As mentioned by a number of Honourable Members, the ad hoc group supports the extension of the scope of the Lands Tribunal to deal with building management matters as an interim measure; their long-term aim being the setting up of a building management tribunal. While I have no wish to disagree with the ad hoc group's long-term aim, it is important that we take a realistic approach. This is because we have yet to secure the necessary resource to extend the jurisdiction of the Lands Tribunal to cover building management with effect from 1 April 1994. However, Members will be pleased to note that the Judiciary has indicated that it will bid for the additional resources as appropriate to implement this proposal in the context of the 1994-95 Estimates.

If we take things a step at a time, our first priority in this regard must be to extend the jurisdiction of the Lands Tribunal by the target date, that is, 1 April next year. With that accomplished and in the light of the actual working experience which has accrued, we would then consider our way forward in the way suggested by Members.

A few Members have raised the point that some developers hold more than 50% of the share of an estate. I regret that we do not have precise figure as to how many buildings there are in this category but we believe that such numbers are relatively few. It is true that in such cases the other owners may find it difficult to dismiss the manager if the need for it arises. However it is important to note that under this Bill the owners can still incorporate themselves under the amended Ordinance and present the collective views on management of their estate to the manager. I am sure that the manager will not take this collective view of the owners lightly. Members will have noted that under section 34E(5) the Secretary for Home Affairs is required to publish in the Gazette guidelines relating to the exercise of the authority discretion under

subsection 4 as noted by the Honourable James TO. We have already prepared draft guidelines and they are being finalized and will be published in due course in the Gazette as provided for in the law. The various suggestions which have been put forward by Members this afternoon will be taken into consideration before we finalize those guidelines.

As regards the related point made by a few Honourable Members in respect of owners being kept informed of an application under this section, that is section 34E(4), by the manager of the building to exclude the application to the building of paragraph 7 of the seventh schedule, the short answer must be that the owners will have to be informed. They will indeed be notified by a suitable means under a notification scheme. We will in due course publish for general information the notification scheme in implementing this particular section. We will take into account the very useful suggestions which Honourable Members have put forward before we finalize this particular scheme.

The expression of concern over CNTA's capability to implement the provisions under the new section 40A is noted. I should make clear that this new section simply reflects the ongoing duties of our Department. These are not particularly onerous duties as the powers are only invoked for the purpose of ascertaining the manner in which a building is being managed. This is not a requirement which normally applies to buildings under proper management. However I do take the point that some companies might be tempted to take advantage of the present hiatus.

Mr President, with these remarks, I recommend to Honourable Members the Multi-storey Buildings (Owners Incorporation) (Amendment) Bill 1992 subject to the amendments to be moved at the Committee stage.

*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 Bill**

Council went into Committee.

### **MULTI-STOREY BUILDINGS (OWNERS INCORPORATION) (AMENDMENT) BILL 1992**

Clauses 4, 6 to 9, 11, 12, 14, 15, 17, 18, 20, 22 to 25, 28 to 31, 33 and 38 to 48 were agreed to.

Clauses 1 to 3, 5, 10, 13, 16, 19, 26 and 34 to 36

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

Clause 1 is amended by adding a new subclause 1(2) to provide that the Ordinance shall come into operation on a day to be appointed by the Governor by notice in the Gazette and that different days may be so appointed for different provisions. This subclause will enable those parts of the Bill relating to the Lands Tribunal to be brought into effect at a later date.

Clause 3 is amended, *inter alia*, by providing a new definition of "building". The purpose is to enable owners of a large housing estate to form one owners' corporation for the estate. This will facilitate unified management.

Clauses 16 and 19 are amended by including "avoidance of doubt" provisions to ensure that in the event of any inconsistency between the Ordinance and the terms of a deed of mutual covenant or any other agreement, the Ordinance shall prevail.

Clause 16 on section 18 stipulates, *inter alia*, that any specified holder of an office of a management committee may receive an allowance as specified in the Fourth Schedule.

Clause 19 on section 21 relates to the determination of the amounts to be contributed by the owners to funds, and provides that the new Fifth Schedule shall govern the preparation of budgets and related matters.

Clause 34 is amended to include in the First Schedule "Slopes, gradients and retaining walls including sea walls (if any) comprising or forming part of any land which is in common ownership with the building." Some owners are unaware of their responsibilities for maintaining slopes and retaining walls within their private lots. This amendment simply reflects the on-going responsibilities of the owners.

Clause 35 amends the Second Schedule on "Composition and Procedure of Management Committee." Clause 36 amends the Third Schedule on "Meetings and Procedure of Corporation." The opportunity is taken to include "avoidance of doubt" provisions in them to ensure that in the event of any inconsistency between the Ordinance and the terms of a deed of mutual covenant or any other agreement, the Schedules shall prevail.

The other amendments are largely technical refinements and consequential amendments.

Mr Chairman, I beg to move.

*Proposed amendments***Clause 1**

That clause 1 be amended —

- (a) by renumbering the clause as clause 1(1).
- (b) by adding -

"(2) This Ordinance shall come into operation on a day to be appointed by the Governor by notice in the Gazette and different days may be so appointed for different provisions."

**Clause 2**

That clause 2 be amended, by deleting "of the Multi-storey Buildings (Owners Incorporation) Ordinance (Cap. 344)".

**Clause 3**

That clause 3 be amended —

- (a) by adding -

"(ba) by repealing the definition of "building" and substituting -

""building" means -

- (a) any building which contains any number of flats comprising 2 or more levels, including basements or underground parking areas;
- (b) any land upon which that building is erected; and
- (c) any other land (if any) which -
  - (i) is in common ownership with that building or land;  
or



(ii) in relation to the appointment of a management committee under Part II or any application in respect thereof, is owned or held by any person for the common use, enjoyment and benefit (whether exclusively or otherwise) of the owners and occupiers of the flats in that building;";

(b) by adding -

"(ca) by repealing the definition of "court";

(cb) by adding after the definition of "deed of mutual covenant" -

"estate" means the buildings or groups of buildings the subject of an application under section 34E(4B);

"exempt estate" means -

(a) any estate specified in the Ninth Schedule;

(b) any estate added to that Schedule under section 34E(4B);";

(cc) in the definition of "Land Registrar" by repealing "an Assistant Land Registrar appointed under section 9 of the New Territories Ordinance" and substituting "the Authority";".

(c) in paragraph (f) by adding after the proposed definition of "tenants' representative" -

"tribunal" means the Lands Tribunal established under section 3 of the Lands Tribunal Ordinance (Cap. 17).".

**Clause 5**

That clause 5 be amended, in the proposed section 3A(6) by deleting "court" in both places where it occurs and substituting "tribunal".

**Clause 10**

That clause 10 be amended, in the proposed section 10(1) (a) by deleting "Officer" and substituting "Registrar".

**Clause 13**

That clause 13 be amended, by deleting "Officer" and substituting "Registrar".

**Clause 16**

That clause 16(2) be amended, by adding after the proposed section 18(3)—

"(4) No provision in a deed of mutual covenant or other agreement shall operate to prevent a person who is otherwise entitled to receive an allowance under this section from receiving that allowance and any such provision, including a provision purporting to substitute some lesser allowance (howsoever named) for that allowance, shall be void and of no effect."

**Clause 19**

That clause 19(1) be amended, in the proposed section 21(1A) by adding "such amount (so determined under that subsection)" after "first".

That clause 19(2) be amended, by adding after the proposed section 21(4)—

"(5) In the event of any inconsistency between this section (which shall be construed to include the Fifth Schedule) and the terms of a deed of mutual covenant or any other agreement, this section shall prevail."

**Clause 26**

That clause 26 be amended —

- (a) in the proposed section 34A -
  - (i) in subsection (1) -
    - (A) in paragraphs (a) and (b) by deleting "court" and substituting "tribunal"; and
    - (B) by deleting "Office" and substituting "Registry";
  - (ii) in subsection (2) -
    - (A) by deleting "Officer" and substituting "Registrar"; and
    - (B) in paragraph (b) by deleting "Office" and substituting "Registry"; and
  - (iii) in subsection (3) by deleting "court" and substituting "tribunal".
- (b) in the proposed section 34B, in paragraph (a) of the definition of "relevant owner" -
  - (i) by deleting "Officer" and substituting "Registrar"; and
  - (ii) by deleting "Office" and substituting "Registry".

**Clause 34**

That clause 34(c) be amended, by adding after the proposed paragraph 14 —

- "15. Slopes, gradients and retaining walls including sea walls (if any) comprising or forming part of any land which is in common ownership with the building."

**Clause 35**

That clause 35(a) be amended, in the proposed paragraph 2(1) (c) by deleting "however" and substituting "howsoever".

That clause 35(j)(v) be amended, in the proposed paragraph 10(4B) by deleting "14" and substituting "28".

That clause 35(k) be amended, by adding after the proposed paragraph 11—

"12. In the event of any inconsistency between this Schedule and the terms of a deed of mutual covenant or any other agreement, this Schedule shall prevail."

### **Clause 36**

That 36(e) be amended—

- (a) in the proposed paragraph 6(3) by deleting "14" and substituting "28".
- (b) by adding after the proposed paragraph 7 -

"8. In the event of any inconsistency between this Schedule and the terms of a deed of mutual covenant or any other agreement, this Schedule shall prevail."

*Question on the amendments proposed, put and agreed to.*

*Question on clauses 1 to 3, 5, 10, 13, 16, 19, 26 and 34 to 36, as amended, proposed, put and agreed to.*

Clauses 21, 27 and 37

MR ALLEN LEE: Mr Chairman, I move that the clauses specified be amended as set out in the paper under my name circulated to Members.

Clause 21(1) is amended so that the corporation's income and expenditure account and balance sheet should be signed by both the Chairman and the Treasurer or the Secretary of the Management Committee.

Regarding clause 27, I have already explained during the Second Reading debate of the Bill why it is considered necessary to amend section 34E concerning unified management of large estates and the Secretary for Home Affairs' powers to grant exemptions. I will concentrate on the remaining amendments.

The amendment to the proposed section 34D(1) is a purely technical amendment in view of the different commencement dates for the Ordinance.

The proposed addition of new section 34L seeks to nullify any unfair clauses in Deeds of Mutual Covenants which provided for the owners to indemnify the manager of a building in respect of any legal costs arising out of litigation between such owners and the managers.

Turning to clause 37, the proposed Fourth Schedule is amended to make it clear that the maximum allowance payable under the third column of the Fourth Schedule is in respect of each holder of office of a management committee.

The proposed paragraph 5(5)(a) of the Seventh Schedule is amended to provide that in case of a corporation formed before the commencement of the Building Management Ordinance, the period of notice given for the termination of a manager's appointment under paragraph 7 of the Seventh Schedule shall be a period of nine months from the commencement of the new Ordinance instead of a year. If any person has given a written undertaking or agreement to the Government to manage and be responsible for the management of a building and the corporation has appointed a new manager, that person shall not be held liable for the new manager's acts or omissions.

The proposed paragraph 7(7) of the Seventh Schedule is amended so that the corporation shall be deemed to have given such an indemnity to that person to be liable for any act or omission by the new manager.

There are two new schedules which are proposed to be added to the Bill. The Ninth Schedule, initially a blank one, will include the exempt estates and any estates so added by the Secretary for Home Affairs under section 34E(4b) of the new Ordinance.

The Tenth Schedule provides for the jurisdiction of the Lands Tribunal deal with the building management matters. The background of these amendments has already been explained by me earlier during the Second Reading debate of the Bill.

Mr Chairman, I propose to move.

#### *Proposed amendments*

#### **Clause 21**

That clause 21(1) be amended, in the proposed section 27(1) by adding "and the secretary or the treasurer" after "chairman".

**Clause 27**

That clause 27 be amended —

- (a) in the proposed section 34D(1), in the definition of "material date" by adding "of section 27" after "commencement".
- (b) in the proposed section 34E by deleting subsection (4) and substituting -

"(4) The Authority may -

- (a) subject to subsection (4A), upon application by the manager of the building or any other person having an interest in the management of the building; or
- (b) in the case of an exempt estate, upon the application of the person ("the single manager") who for the time being is, for the purpose of the deed of mutual covenant in respect of the buildings or groups of buildings comprising the estate, managing that estate,

from time to time by notice in the Gazette, exclude the application to the building, or to the buildings or groups of buildings comprising the exempt estate, as the case may be, of paragraph 7 of the Seventh Schedule for a period not exceeding 3 years and subject to such conditions (if any) as he sees fit.

(4A) The Authority shall not exclude the application to the building of paragraph 7 of the Seventh Schedule under subsection (4)(a) if the Authority receives (in aggregate) a number of notices of objection from owners of not less than 50% of the shares in respect of that building, such notices opposing the application under that subsection.

(4B) Subject to subsection (4C), the Authority may, upon application by any owner, manager, person referred to in section 3(1)(a) or (b), any other person having an interest in the management of a building or any single manager, specify by order published in the Gazette the addition of any estate to, or the deletion of any estate (being an exempt estate) from, the Ninth Schedule.

(4C) No estate may be so specified under subsection (4B) if

-

- (a) the Authority receives (in aggregate) a number of notices of objection from owners of not less than 50% of the shares in respect of the buildings or groups of buildings comprising the estate, such notices opposing the addition of that estate to, or the deletion of that estate (being an exempt estate) from, the Ninth Schedule;
- (b) the conditions (if any) imposed under subsection (4) are not met or complied with; and
- (c) in the case of the proposed addition of an estate to the Ninth Schedule, the buildings or groups of buildings comprising the estate are not being managed by a single manager."

(c) by adding after the proposed section 34K -

**"34L. Indemnity of manager in respect of legal costs, etc.**

No provision in a deed of mutual covenant or other agreement shall operate to entitle the manager of any building to be indemnified by a corporation or by the owners of the flats in that building in respect of any legal costs, charges, expenses or fees relating to any civil or criminal proceedings (whether successful or otherwise) between or in respect of that manager and that corporation or those owners and any such provision shall be void and of no effect."

**Clause 37**

That clause 37 be amended —

- (a) in the proposed Fourth Schedule by deleting "THE HOLDERS" and substituting "EACH HOLDER".
- (b) in the proposed Seventh Schedule -
  - (i) by deleting paragraph 7(5) (a) and substituting -
    - "(a) in the case of a corporation in respect of which a certificate of registration was issued under section 8 prior to the commencement of section 37 of the Multi-

storey Buildings (Owners Incorporation) (Amendment) Ordinance 1993 ( of 1993), by a notice that expires before the end of a period of 9 months from that commencement;

- (aa) in any other case, by a notice that expires before the end of a period of 1 year from the commencement of section 37 of the Multi-storey Buildings (Owners Incorporation) (Amendment) Ordinance 1993 ( of 1993);"; and

- (ii) by deleting paragraph 7(7) and substituting -

"(7) If any person has given an undertaking in writing to, or has entered into an agreement with, the Government to manage or be responsible for the management of the building, and the corporation has appointed a manager under subparagraph (6)(b), the corporation shall be deemed to have given to that person an instrument of indemnity under which the corporation shall be liable to indemnify that person in respect of any act or omission by the manager appointed under that subparagraph that may otherwise render that person liable for a breach of that undertaking or agreement.".

- (c) by adding after the proposed Eighth Schedule -

"NINTH SCHEDULE [ss. 2, 34E & 42]  
EXEMPT ESTATES

TENTH SCHEDULE [s. 45]

HEARING AND DETERMINATION  
OF SPECIFIED PROCEEDINGS  
BY TRIBUNAL

1. Proceedings relating to the interpretation and enforcement of the provisions of this Ordinance.
2. Proceedings relating to the interpretation and enforcement of the terms and provisions of a deed of mutual covenant, including such terms or provisions



impliedly incorporated into a deed of mutual covenant under Part VIA.

3. Proceedings relating to the use, occupation, enjoyment, possession or ownership of the common parts or any other part of a building in which the owners have a common interest.
4. Proceedings relating to the calculation or apportionment of -
  - (a) any sums payable or purported to be payable under a deed of mutual covenant (if any);
  - (b) the funds and contributions referred to in sections 20 and 21;
  - (c) any management expenses or charges (howsoever named);
  - (d) any other outgoings, payments, debts or liabilities due or liable under this Ordinance or in accordance with the terms and provisions of an instrument which is registered in the Land Registry including a deed of mutual covenant (if any).
5. Proceedings relating to any question of law concerning the powers and duties of -
  - (a) a corporation;
  - (b) a management committee, and of the chairman, secretary and treasurer thereof;
  - (c) a manager within the meaning of section 34D(1);
  - (d) an owners' committee within the meaning of that section;
  - (e) the tenants' representative, including such powers and duties (if any) of a financial, pecuniary or fiduciary nature.

6. Proceedings relating to any question of law concerning ownership, occupation or possession of the whole or any part of the building, including ownership of an undivided share in a building or in land on which there is a building.
7. Without prejudice to paragraph 6 and subject to section 45(3), proceedings relating to any question of law concerning the extent and applicability or otherwise of any contractual or proprietary right enjoyed by owners and occupiers or otherwise referred to in the terms and provisions of an instrument which is registered in the Land Registry including a deed of mutual covenant (if any).
8. Proceedings relating to any question of law concerning any breach or alleged breach of any covenant, term or condition specified in an instrument which is registered in the Land Registry including a deed of mutual covenant (if any).
9. Proceedings relating to the enforcement of any contractual or proprietary right referred to in paragraph 7 or any covenant, term or condition referred to in paragraph 8, as the case may be, whether by way of specific performance, injunction, declaration, damages or otherwise."

*Question on the amendments proposed, put and agreed to.*

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

Clauses 21 and 27 are amended by including "avoidance of doubt" provisions in them.

Clause 21 on section 27 relates to the accounts of an owners' corporation. The clause requires the income and expenditure account and balance sheet prepared by a management committee to be properly audited, and provides that the new Sixth Schedule shall have effect with respect to the maintenance by a management committee of proper books of account and records.

Clause 27 on section 34J provides for the right to establish an owners' corporation and conduct business.

The "avoidance of doubt" provisions are added to ensure that in the event of any inconsistency between these sections and the terms of a deed of mutual covenant, the sections shall prevail.

The amendments to clause 37 are largely technical refinements.

Mr Chairman, I beg to move.

*Proposed amendments*

**Clause 21**

That clause 21(3) be amended, by adding after the proposed section 27(4) —

"(5) In the event of any inconsistency between this section (which shall be construed to include the Sixth Schedule) and the terms of a deed of mutual covenant or any other agreement, this section shall prevail."

**Clause 27**

That clause 27 be amended, in the proposed section 34J —

(a) by deleting the heading and substituting -

**"Right to establish corporation and  
conduct business";**

(b) by renumbering it as section 34J(1); and

(c) by adding -

"(2) No provision in a deed of mutual covenant (whether such provision is of a procedural nature or otherwise) shall operate to prevent any business relating to the management of a building being conducted at any meeting by any owner or any person managing the building and any such provision shall be void and of no effect.

(3) Any provision in a deed of mutual covenant relating to a quorum at any meeting the attainment of which is in practice impossible or virtually impossible to achieve and which has the effect of preventing or frustrating the consideration at that meeting of any business relating to the management of a building by any owner or any person managing the building shall be void and of no effect.

(4) The reference to "any business relating to the management of a building" in this section shall be construed to include any such business relating to -

- (a) the appointment of a management committee under Part II; or
- (b) the termination of a manager's appointment in accordance with the Seventh Schedule."

### Clause 37

That clause 37 be amended —

- (a) in the proposed Fifth Schedule by adding "& (5)" after "21(4)" within the square brackets.
- (b) in the proposed Sixth Schedule by adding "& (5)" after "27(4)" within the square brackets.
- (c) in the proposed Seventh Schedule -
  - (i) by adding ", 34J" after "34E" within the square brackets;
  - (ii) in paragraph 1(1) by deleting "and (6)" and substituting ", (6) and (8)";
  - (iii) in paragraph 7(6) (b) by deleting ", subject to subparagraph (7),"; and
  - (iv) in paragraph 7(8) by adding at the end -

"but does not apply to any single manager referred to in that section".
- (d) in the proposed Eighth Schedule, in paragraph 13(c) (iii) by deleting "Office" and substituting "Registry".

*Question on the amendments proposed, put and agreed to.*

*Question on clauses 21, 27 and 37, as amended, proposed, put and agreed to.*

Clause 32

MR ALLEN LEE: Mr Chairman, I move that clause 32 be amended as set out in the paper circulated to Members.

Clause 32 is amended so that the Secretary for Home Affairs may amend the Ninth Schedule by order published in the Gazette. The Ninth Schedule contains the exempted estates and any estates so added by the Secretary under section 34E(4b) of the new Ordinance.

Mr Chairman, I propose to move.

*Proposed amendment*

**Clause 32**

That clause 32 be amended, in the proposed section 42 —

- (a) in subsection (1) by deleting "Schedule" and substituting "and Ninth Schedules"; and
- (b) by adding -

"(3) The Authority may, by order published in the Gazette, amend the Ninth Schedule."

*Question on the amendment proposed, put and agreed to.*

*Question on clause 32, as amended, proposed, put and agreed to.*

New clause 1A      Long title amended

New clause 49      Schedule amended

New clause 50      Annex amended

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

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that new clauses 1A, 49 and 50 as set out in the paper circulated to Members be read the Second time.

A new clause 1(A) is introduced to amend the long title of the Ordinance. The long title will now read as follows: "To facilitate the incorporation of owners of flats in buildings or groups of buildings, to provide for the

management of buildings or groups of buildings and for matters incidental thereto or connected therewith". The amendments to the long title are necessary to bring it in line with the amended Ordinance.

New clauses 49 and 50 provide consequential amendments to the Schedule to the Clubs (Safety of Premises) (Exclusion) Order, and the Annex to the Interpretation and General Clauses (Chinese Version of Short Titles) Notice.

Mr Chairman, I beg to move.

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

Clauses read the Second time.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that new clauses 1A, 49 and 50 be added to the Bill.

*Proposed additions*

#### **New clause 1A**

That the Bill be amended, by adding —

##### **"1A. Long title amended**

The long title of the Multi-storey Buildings (Owners Incorporation) Ordinance (Cap. 344) is amended -

- (a) by repealing "multi-storey" and substituting "buildings or groups of"; and
- (b) by repealing "such" and substituting "buildings or groups of".

#### **New clause 49**

That the Bill be amended, by adding —

##### **"Clubs (Safety of Premises) (Exclusion) Order**

##### **49. Schedule amended**

The Schedule to the Clubs (Safety of Premises) (Exclusion) Order (Cap. 376 sub. leg.) is amended in item 1 -

- (a) by repealing "Multi-storey Buildings (Owners Incorporation)" and substituting "Building Management"; and
- (b) in the Chinese text by repealing "多層建築物(業主法團)" and substituting "建築物管理".

### **New clause 50**

That the Bill be amended, by adding —

#### **Interpretation and General Clauses (Chinese Version of Short Titles) Notice**

#### **50. Annex amended**

The Annex to the Interpretation and General Clauses (Chinese Version of Short Titles) Notice (L.N.(C) 1 of 1992) is amended in the item relating to Chapter 344 by repealing "多層建築物(業主法團)" and "Multi-storey Buildings (Owners Incorporation)" and substituting "建築物管理" and "Building Management" respectively."

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

New clause 16A	Corporation may sell or register charges against flat in certain circumstances
New clause 30A	Powers of entry and inspection
New clause 33A	Part added
New clause 38A	Jurisdiction of the Tribunal
New clause 38B	Ordinances under which matters may be submitted to the Tribunal for determination

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

MR ALLEN LEE: Mr Chairman, I move that new clauses 16A, 30A, 33A, 38A and 38B as set out in the paper circulated to Members be read the Second time.

New clause 16A extends the corporation's powers under the existing section 19 of the Ordinance to cover certain situations under section 40. Under

the existing section 19 the corporation may sell an owner's interest in the land or register a charge against such interest in the Land Registry in certain circumstances. The ad hoc group considers that such powers should be extended to provide an effective and affordable means for the corporation to recover any costs as incurred by the management committee in its exercise of power conferred by section 40(1)(a)(2) or section 40(1)(b).

New clause 30A makes minor amendments to section 40 which are consequential to the changes outlined above.

New clause 33A adds a new part VIII by vesting jurisdiction in the Lands Tribunal in dealing with building management matters.

New clauses 38A and 38B make some consequential amendments to the jurisdiction of the Lands Tribunal under section 8 of the Lands Tribunal Ordinance (Cap. 17).

Mr Chairman, I beg to move.

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

Clauses read the Second time.

MR ALLEN LEE: Mr Chairman, I move that new clauses 16A, 30A, 33A, 38A and 38B be added to the Bill.

*Proposed additions*

#### **New clause 16A**

That the Bill be amended, by adding —

#### **"16A. Corporation may sell or register charges against flat in certain circumstances**

(1) Section 19 is amended by renumbering it as section 19(1).

(2) Section 19 is amended by adding -

"(2) The reference in subsection (1) to "fails to pay any sum which is payable under the deed of mutual covenant" shall be construed to extend to the failure by an owner to pay the costs incurred by the management committee in connection with the exercise by it of the powers conferred by section 40(1) (a) (ii) or (b).".



**New clause 30A**

That the Bill be amended, by adding —

**"30A. Powers of entry and inspection**

- (1) Section 40(1) is amended by adding "owner or" before "occupier".
- (2) Section 40(3) is amended by repealing "Any" and substituting "Notwithstanding section 19(2), any".

**New clause 33A**

That the Bill be amended, by adding —

**"33A. Part added**

The following is added -

**"PART VIII****JURISDICTION VESTED IN  
LANDS TRIBUNAL****45. Jurisdiction of tribunal in relation  
to building management**

- (1) The tribunal shall have jurisdiction to hear and determine any proceedings specified in the Tenth Schedule.
- (2) No person other than a person to whom this section applies shall be competent to commence any proceedings referred to in subsection (1).
- (3) Subject to the provisions of this Ordinance, nothing in this section or the Tenth Schedule shall be construed to vest in the tribunal jurisdiction to make any order which would, if made, have the effect of rendering void, negating or substantially varying in whole or in part any contractual or proprietary right enjoyed by any owner or occupier or otherwise referred to in the terms and provisions of an instrument which is registered in the Land Registry including a deed of mutual covenant (if any).

- (4) This section applies to the following persons, namely -
- (a) an owner;
  - (b) a person referred to in section 3(1)(a) or (b);
  - (c) a management committee;
  - (d) a corporation;
  - (e) a manager within the meaning of Part VIA;
  - (f) an owners' committee within the meaning of that Part;
  - (g) a registered mortgagee;
  - (h) an administrator;
  - (i) with leave of the tribunal, the tenants' representative;  
or
  - (j) with leave of the tribunal, any other person specified in an instrument which is registered in the Land Registry including a deed of mutual covenant (if any).

(5) In this section and the Tenth Schedule, "proprietary right" includes any such right express or implied whether specified in an easement, licence, permission or otherwise."."

### **New clause 38A, 38B**

That the Bill be amended, by adding —

#### **"Lands Tribunal Ordinance**

##### **38A. Jurisdiction of the Tribunal**

(1) Section 8(5) of the Lands Tribunal Ordinance (Cap. 17) is amended by adding "including any Ordinance specified in the Schedule" at the end.

(2) Section 8(9) is amended by repealing "District" and substituting "High".

**38B. Ordinances under which matters may be submitted to the Tribunal for determination**

The Schedule is amended by adding -

"344. Building Management Ordinance.

357. Electricity Networks (Statutory Easements) Ordinance."."

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

Schedule

MR ALLEN LEE: Mr Chairman, I move that the schedule be amended as set out in the paper circulated to Members.

The first proposed amendment is a consequential amendment related to the extension of the time limit of a management committee to apply for registration of an owners corporation with the Land Registry from 14 days to 28 days.

The remaining proposed amendments are consequential amendments relating to the extension of the jurisdiction of the Lands Tribunal.

Mr Chairman, I beg to move.

*Proposed amendment*

**Schedule**

That schedule Part 1 be amended —

- (a) in the entry relating to section 7(1) by deleting "14" in column 3 and substituting "28".
- (b) in the entry relating to section 7(3) (b) by adding "'court" (in both places where it occurs)" and "'tribunal'" in columns 2 and 3 respectively.

(c)	by adding -		
	"4(1)	"court" (in both places where it occurs)	"tribunal"
	4(2)	"court"	"tribunal"
	16(b)	"court"	"the tribunal"
	17(1)(b)	"court in which such judgment was given or order made"	"tribunal"
	21(3)(a)	"a court"	"the tribunal"
	30(3)(b)	"court"	"tribunal"
	31(1)	"court"	"tribunal"
	31(2)	"court"	"tribunal"

*Question on the amendment proposed, put and agreed to.*

*Question on schedule, as amended, proposed, put and agreed to.*

Council then resumed.

### **Third Reading of Bill**

THE ATTORNEY GENERAL reported that the

#### **MULTI-STOREY BUILDINGS (OWNERS INCORPORATION) (AMENDMENT) BILL 1992**

had passed through Committee with amendments. He moved the Third Reading of the Bill.

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

Bill read the Third time and passed.

## Members' motions

PRESIDENT: I have accepted the recommendations of the House Committee as to time limits on speeches and Members were informed by circular on 1 May. The mover of the motion will have 15 minutes for his speech including his reply. Other Members will have seven minutes for their speeches. Under Standing Order 27A, I am required to direct any Member speaking in excess of the specified time to discontinue his speech.

## LAND AND WATERBORNE TRANSPORT SYSTEMS

DR TANG SIU-TONG moved the following motion:

"That in view of the rapid growth of the Sino-Hong Kong re-export trade, this Council urges the Government to review the land and waterborne transport systems so as to improve and develop the necessary infrastructure to meet the increasing needs of the freight transport service and boost Hong Kong's re-exports."

DR TANG SIU-TONG (in Cantonese): Mr President, I move the motion standing in my name on the Order Paper.

Regarding my principal purpose in moving the motion, it is my hope that the Government and the public will see the economic and social implications of the Sino-Hong Kong re-export trade on Hong Kong. A comprehensive review of the land and waterborne transport systems may then be conducted expeditiously so as to develop the necessary infrastructure to meet the increasing needs of the freight transport services between China and Hong Kong.

Since China launched its modernization programmes in 1978, its external trade has grown sharply and so has Hong Kong's re-export trade. The latter has developed at a most amazing speed, like bamboo shoots after a spring shower. As a result, freight transport between China and Hong Kong increased substantially. Hong Kong's re-export trade grew at a 32.4% annual rate during the 1978-1987 period. This was almost double the 17.5% growth rate during the 1970-1977 period. Hong Kong's external trade last year, at over \$1,880 billion, was 22% higher than that of the same period in 1991. The increase was due mainly to an increase in re-export trade, particularly re-export trade with China. In 1992, Sino-Hong Kong re-export trade rose by 26% to \$628 billion, accounting for 33% of Hong Kong's total external trade. It is therefore clear that, with the Chinese economy acting as a powerful locomotive, Hong Kong's re-export trade has experienced a phenomenal growth.

Freight transport between China and Hong Kong takes place mainly in three modes, namely, land transport, waterborne transport and rail transport. The statistics below will show the importance of each mode:

According to statistics for 1990-1992, the annual volume of land freight was about 10 million tonnes, and that of rail freight, about 2.2 million tonnes. The volume of waterborne freight was even greater, hitting an annual average of 15 million tonnes during the three-year period from 1989 to 1991 and the figure is still on the increase. It reached 19 million tonnes in 1992, according to the statistics.

The above statistics show that land transport and waterborne transport are on a par in respect of freight transport between China and Hong Kong at the moment. Rail freight is lagging far behind. At present, the cross border traffic of lorries and container trucks is 18 000 vehicle trips a day. But the maximum daily traffic movement capacity of Tuen Mun Road is only 10 000 to 11 000 vehicle trips. Clearly, Tuen Mun Road is, and will remain, inadequate for coping with the volume of traffic. This will impede the economic development of Hong Kong as a whole.

Time and again over the past years, members of the public, particularly those living in New Territories West, have suggested and urged that the Government should, as soon as practicable, begin works on the Route 3 project and on the railway to solve the severe problem of passenger and freight transport service. Regrettably, the Transport Department tries to shirk its duties with tactful tactics and makes no headway at all. Fortunately, however, the Financial Secretary is taking a "very sympathetic" view about the urgency of infrastructure in New Territories West. In his recent budget speech, he proposed that money be appropriated for the improvement of Tuen Mun Road and \$4 billion be reserved for the construction of Route 3. Apart from that, the Western Corridor rail link is accorded high priority by the Government. These proposals contain good as well as bad news. The good news is that the Government has at last recognized the severity of the shortage of passenger and freight transport systems in New Territories West. But this good news is out-weighed by the bad news. For instance, the said infrastructure projects are proposed only as limited and partial solutions. Apparently, the approach is "to treat the head when there is a headache and to treat the foot when there is a foot-ache" which is piece-meal and palliative. What is being proposed is not a comprehensive programme. The most obvious flaw is the absence of a comprehensive and systematic study of land transport, rail transport and waterborne transport in formulating a comprehensive long-term transport policy.

Secondly, the completion dates of the said infrastructure projects are totally impractical. The construction of the country park section of Route 3 will commence in 1995 and be completed in 1998. The construction of the Western Corridor rail link is expected to begin in 1998 and be completed in 2001. In the meantime, that is, for the next five or six years, there will be no relief for the over-burdened Tuen Mun Road with its long lines of bumper-to-bumper traffic because "distant water cannot put out a nearby fire", as the saying goes. Besides, with 150 000 people gradually moving into Tin Shui Wai, the roads of New Territories West will be further over-burdened. This is like "pouring oil

on a raging fire" and "adding the last straw that breaks the camel's back". It also reveals the Government's lack of comprehensive planning.

Moreover, the proposed infrastructure projects have not taken into account development of the corresponding waterborne transport system to cope with the overall demand for freight transport. As a matter of fact, the waterborne transport system is very important and has many advantages. Hong Kong, as a natural harbour, possesses great potential in the development of the waterborne transport system. Our harbour is handling 100 million tonnes of cargo as well as 8 million containers a year. 5.1 million containers are handled at the container terminals, 2.5 million are handled at the buoys, and 400 000 are carried by river boats. Hong Kong is now the world's number one container port in terms of throughput. The construction of large scale container terminal is most urgent and brooks no delay. However, the Sino-British row is holding up the decision on the construction of Container Terminal No. 9 and that of Nos. 10 and 11 is left to the indefinite future. This is not the kind of thing that the people of Hong Kong would like to see. Barges and mid-stream operations have been used in recent years and they have made big contributions to waterborne freight transport. Regrettably, the Government, lacking in vision, has not reserved sufficient backup land for related purposes. As a result, the operation of the temporary working areas is causing traffic congestion and environmental pollution with serious adverse effects on people's living. As a good example, indignant residents of Tuen Mun have recently raised strong objections to turning Area 16 in Tuen Mun into a mid-stream operation area. It is learnt that the construction of a river trade terminal in Tuen Mun, originally scheduled to commence this year, is now postponed due to traffic congestions of Tuen Mun Road. This is like "trimming the toes to fit the shoe". Generally speaking, compared with land transport and rail transport, the development of the waterborne transport systems costs less but yields faster results. It can quickly ease the pressure on Tuen Mun Road and improve Sino-Hong Kong freight transport services.

The growth in freight transport has stimulated the demand for such facilities as container truck parking areas and container yards. One often sees container trucks parking illegally at night and container yards scattered throughout northwest New Territories in a disorderly way. This is ample evidence that the Government is not paying positive attention to the needs of the freight industry and does not provide the supporting infrastructure. It is puzzling that the Government is allowing a trade that is vital to our economy to survive or perish on its own.

Apart from that, the opening hours of the border crossings are not long enough and there are not enough vehicle channels. The Sino-Hong Kong freight transport is thus held up. The lack of large permanent vehicle holding areas for container trucks at the crossing has caused unnecessary congestion of road surfaces in northwest New Territories, resulting in six-kilometre lines of bumper-to-bumper traffic all the time.

For coping with the demand for infrastructure, caused by growing Sino-Hong Kong trade, over the next five or six years, I have the following suggestions to make:

- (1) I hope that the Government will complete Route 3 ahead of schedule to ease the present traffic congestion. Although the present Sino-British row has yet to be resolved and a decision on the project to be reached, design work should proceed immediately so that construction may commence once the Sino-British row is over.
- (2) The Government should speed up the study and development of the Sino-Hong Kong waterborne transport system so as to untie the entangled knots of land transport.
- (3) Plans for the construction of the Northwestern Railway should be speeded up to have the extension link completed and extended to Tuen Mun ahead of schedule. This will cope fully with the overall demand for transport systems.
- (4) Additional container terminals should be built to meet the needs of freight transport through our port.
- (5) Additional river trade terminals should be built to facilitate passenger and cargo transport between China and Hong Kong.
- (6) Land should be made available for the provision of container freight stations as logistic bases for container terminals.
- (7) More large scale permanent vehicle holding areas should be provided for container trucks at the crossings, particularly at the new reclamations and in New Territories North. This will ease road congestion.
- (8) Container truck parking areas should be provided to forestall container trucks parking disorderly all over the place and blocking the normal traffic.
- (9) Consideration should be given to alternative Sino-Hong Kong thoroughfare, such as the Zhuhai-Tuen Mun Bridge or a similar border crossing, to ease the traffic between China and Hong Kong.
- (10) Since Sino-Hong Kong freight transport has a bearing on Hong Kong's prosperity, the Administration should consider making a study and review of infrastructure in greater depth and inviting public comments.

Today, I hope that all my colleagues will offer their comments and help the Government formulate a more effective policy. Since the infrastructure



system in question is a complex one, the Transport Department or any other department may not be able to deal with it entirely by itself. I therefore propose that the Administration should set up an inter-departmental working group, with representatives from the Transport Department, the Port Development Board, the Marine Department and the Economic Services Branch, to carry out the review and to study and plan the whole project including land transport, waterborne transport and the infrastructure. Interested parties and experts should also be invited to join the working group. The group should work closely with relevant authorities in China to co-ordinate the land transport and waterborne transport systems on both sides of the border, so that investments in infrastructure on both sides may be more cost-effective.

"Life is full of ups and downs". This is the law of economic competition in the marketplace. If we are intoxicated with our "being the world's No. 1" and stop making progress, Hong Kong's economic advancement will slow down or even be reversed as a result of an error in government planning.

Mr President, with these remarks, I beg to move.

*Question on the motion proposed.*

MR TAM YIU-CHUNG (in Cantonese): Mr President, Hong Kong's prosperity today is closely linked with the booming economic development in China. And the rapid growth of the Sino-Hong Kong re-export trade calls for urgent improvement on the land and waterborne transport system. However, it is strange to note that although the Government attaches great importance to the development of physical infrastructure in the promotion of our economic growth and even draws upon public fund running to tens of billions of dollars to implement the mammoth Airport and Port Development Projects, it, nevertheless, fails to pay due attention to the problem of insufficient freight facilities between Hong Kong and China, an issue that warrants immediate action. It even keeps on prevaricating. This is indeed disappointing.

Take the Sino-Hong Kong waterborne transport as an example. There is still much to be done by the Government to enhance the facilities in this respect. It is true that we have excellent port facilities. Yet, the Government has not done enough in terms of port development and enhancement of safety facilities in our harbour. The safety standard is even on the decline in recent years and has now reached an alarming level which poses an obstacle to the rapid growth of the Sino-Hong Kong waterborne freight. In the case of the Ma Wan Channel, for instance, the Government is reluctant to take any improvement measures. As a matter of fact, several ship agents for small craft in China approached the Hong Kong Government as early as 1988. They pointed out that many of the vessels arriving in Hong Kong waters from the Pearl River Delta had to navigate through the Ma Wan Channel before they could be cleared at the Western Quarantine Anchorage and then returned to Tuen Mun or Tsuen Wan to unload their goods. The multiple trips made by such vessels of various sizes

are not only a waste of time but also burden the Ma Wan Channel with heavy traffic. Shipping companies have repeatedly urged the Government to set up an immigration anchorage for small crafts on the waters of Tuen Mun to relieve the traffic of the Ma Wan Channel and reduce the waterborne freight time. In his written reply to these shipping companies in November 1989, the Director of Immigration supported the idea of setting up an immigration anchorage for small crafts on the waters near Tuen Mun.

It is a pity that the Government has not paid attention to such a proposal at all. Over the past few years, Sino-Hong Kong waterborne transport was developing at a frantic pace. And many vessels of various sizes have to make their way through the Ma Wan Channel. According to the Secretary for Economic Services' reply in response to a question raised in this Council in last December, there were about 3 000 ocean-going ship movements through the Ma Wan Channel last year, or an estimated volume of 8.2 movements per day. Small craft movements through the Ma Wan Channel last year amounted to 270 000, that is an estimated volume of 739.7 movements per day. It is obvious that the traffic volume through the Ma Wan Channel is extremely busy at the moment. Nevertheless, it seems that the Government has yet to notice the clouds on the horizon as a result of such growth. One should bear in mind that the Tsing Ma Bridge is going to be constructed soon. It is almost certain that the truss of the bridge and the piers at both ends will take up much space of the Ma Wan Channel. During the construction period, many construction vessels will ply along, and anchor on, the Ma Wan Channel as well. Any lapse in traffic control and management at the Channel is very likely to lead to incidents such as ship collisions in such a busy and chaotic state.

When the Secretary for Economic Services answered our questions in this Council last year, she disclosed that the Government intended to step up surveillance of the Ma Wan Channel by establishing an immigration anchorage off Tuen Mun, setting up a marine traffic control station at Gemini Beaches and commissioning radar station at Kau Yi Chau. These are effective measures to tackle the problems. I hope that the Government will not drag its feet again. It should accept the Hong Kong Shipping Staff Association's proposal and swiftly establish an off-shore immigration anchorage for small crafts at Tuen Mun so as to reduce unnecessary traffic volume through the Ma Wan Channel to a minimum. Furthermore, additional navigation aids should be installed along the Channel to strengthen traffic control. During peak hours, large vessels and speedboats should be granted the right of way through the Channel. This would prevent accidents resulting from any rivalry between vessels in the use of the fairway.

As for land transport, I would particularly like the Government to look at the existing traffic jam at the Sino-Hong Kong freight border crossings. According to my friends of the Hong Kong-Guangdong Transportation Drivers and Employers Association, there are about 20 000 goods vehicle movements per day between Hong Kong and China via the three border crossings at Man Kam To, Lok Ma Chau and Sha Tau Kok. However, the traffic congestion

at these crossings is so serious that it takes a goods vehicle about one hour to go through Sha Tau Kok or Lok Ma Chau. It is even worse in the case of Man Kam To, with an average waiting time of three hours, dealing a heavy blow to freight transport. The Government should therefore bring about improvements to the situation of these three crossings, especially the transit facilities at the Man Kam To border crossing. Additional manpower should be deployed to handle the immigration formalities and the freight transport. It is hoped that this would ease the traffic congestion.

Furthermore, given that there are often many vehicles queueing up at the crossings, the Government should provide some sort of convenience facilities on the site such as toilets, snack kiosks and tyre-washing installations. In view of the fact that a large number of drivers will gather at these vehicle holding areas at the crossing points, if the Government erects noticeboards at the snack kiosks and displays notices on traffic regulations and information of the transportation trade, it may achieve some positive effects with regard to the general operation of the crossing points.

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

MRS MIRIAM LAU (in Cantonese): Mr President, since China introduced its open door policy, the economic relationship between China and Hong Kong has grown closer day by day. Sino-Hong Kong trade has expanded rapidly. China has become an important market for Hong Kong exports. It is also the largest market and the major source of our re-exports. As a result of economic development, there has been a sharp rise in the demand for cross border freight transport services, particularly in the areas of land and waterborne cargo transport. This has created a heavy burden on our infrastructure, especially transport facilities. Traffic congestion is common on Tuen Mun Highway. Goods vehicles have to wait a long time at Man Kam To or Sha Tau Kok before they are allowed to cross the border. Our harbour is so busy that vessels have to compete with each other for the use of its channels. Due to a shortage of parking spaces, a large number of container trucks are parked by the roadside. All these show that our existing transport facilities are insufficient to meet the increasing needs of freight traffic.

The Government intends to complete the construction of Container Terminal 9 by 1995 to cope with future development. However, when problems concerning transport network and backup areas for containers are yet to be solved, it is difficult to satisfy the needs of freight traffic simply through the construction of additional container terminals. Besides, with the row between the Chinese and the British still going on, it is uncertain whether Container Terminal 9 can be completed by 1995. In this year's Budget speech, the Financial Secretary announced that \$4 billion would be set aside for the Route 3 project, which will hopefully be completed in 1998 or 1999. The Railway Development Study published recently also unveils the Government's plan to complete the Western Corridor by 2001 so as to satisfy the needs of

cross border passenger and freight traffic. Nevertheless, these ambitious projects for transport facilities will take five to six years or even more to complete. In the meantime, how can the pressure arising from the needs of freight transport be alleviated? How will the problem of cross border traffic be tackled? The Government has not given any concrete reply to these questions. I think it fails to come up with comprehensive and detailed plans to deal with the needs of container trucks.

Freight movement between Hong Kong and China mainly depends on land transport and sea transport. The two modes of transport are of the same nature; yet surprisingly, two separate government departments are involved. Land transport falls within the ambit of the Transport Branch, while waterborne transport is within that of the Economic Services Branch. The two departments seem to lack adequate co-ordination, and the facilities provided by them are not complementary with each other. The Transport Branch has longer-term plans on land transport infrastructure. But it appears that no improvement has been made to the waterborne transport system. In fact waterborne transport has not been fully utilized. This is mainly due to inadequate basic facilities such as mid-stream operation sites, cargo handling areas, river trade terminals, entry check points, vessel mooring areas and so on. At a time when the Transport Branch is actively exploring ways and means to strengthen land transport services, the Economic Services Branch should also carry out a comprehensive review of the waterborne transport system. The review should seek to upgrade port facilities and enhance their effectiveness, thus making it possible to satisfy the needs of freight transport. At the same time, the two departments should step up their co-ordination and co-operation so that plans to improve freight transport facilities may be implemented more comprehensively and systematically. In the long run, I think the Government should consider entrusting the responsibility of formulating transport policy to one department only. Such arrangement will avoid any conflict and lack of co-ordination between different government departments.

To address the problems resulting from the growth in cross border freight traffic, I believe the Government has to:

- (1) fully open the vehicular border link at Lok Ma Chau as soon as possible and adopt measures to encourage those in the freight industry to use it;
- (2) ensure that Container Terminal 9 will be completed on schedule;
- (3) allocate land for use as backup areas where container lorries can be parked and this will avoid the obstruction and inconvenience caused by such vehicles to the traffic and road users;
- (4) promptly review the waterborne transport system in a bid to improve the facilities concerned to keep pace with the growth in the volume of waterborne freight traffic;

- (5) study in detail how different freight transport facilities can complement each other so as to meet the needs of freight transport more coherently and effectively;
- (6) expedite the construction of Route 3 and the implementation of the Western Corridor project;
- (7) actively explore and introduce effective interim measures to upgrade the road network of northwest New Territories and mitigate the traffic congestion there.

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

REV FUNG CHI-WOOD (in Cantonese): Mr President, I believe we all agree that to achieve sound economic developments, an economy has to be supported by good transport network and facilities because they are complementary to each other. And economic and trade development would be hampered if the authorities concerned fail to do anything until the transport network and facilities are beyond their designed capacity and it is only then efforts are made to identify the remedies. It is indeed too slow and passive a reaction. Hong Kong's transport planning has been done in such a reactive manner. For instance, the Government will only consider the construction of additional road networks when the congestion on certain roads has reached an explosive stage. The Lion Rock Tunnel and the Tsing Yi South Bridge, which were plagued with traffic problems in the past as well as Tuen Mun Highway and Castle Peak Road, which suffer from the same problems now, are some good examples. The reactive approach has cost much of the public's precious time. And the loss in time has also led to an additional increase in the freight transport cost.

Hong Kong has the best port and port facilities in the world. Yet the co-ordination in road transport is so poorly done that the parking and traffic congestion problems in Kwai Tsing and Tsuen Wan have become very serious. It has also resulted in heavy traffic jam on Tuen Mun Highway every day. This is mainly stemmed from the Government's failure in making accurate estimates with regard to the growth rate of Sino-Hong Kong trade in recent years. Another factor is that our road facilities cannot cope with the needs arising from the development in new towns. Meanwhile, with a great number of production lines moving across the border, most of the finished goods have to be exported through Hong Kong. And there is also a 30% to 40% increase in the number of imported cargo to China via Hong Kong every year. For this reason, apart from improving the road network, it is definitely necessary for the Government to strengthen the roles played by rail link and sea link in Sino-Hong Kong freight transport so as to avoid the overburdening of our roads.

At present goods vehicles which shuttle between China and Hong Kong mainly use the crossings at Man Kam To and Lok Ma Chau. Vehicles can reach Ma Kam To via Tai Po Road and Tolo Highway. Where the Kowloon-bound

traffic is concerned, congestion at the bottleneck areas has been relieved upon the completion of the Shing Mun Tunnels and the Tate's Cairn Tunnel. For this reason, roads linking up Man Kam To can generally accommodate the flow of goods vehicles but the capacity of this check point has already reached saturation. However, the new Lok Ma Chau check point has not been fully used owing to the poor road links between New Territories West and the urban area. People in Hong Kong are well aware of the congestion problems on Tuen Mun Highway and Castle Peak Road. Heavy goods vehicles now account for 30% of the rush-hour traffic volume on Tuen Mun Highway and the figure would rise to 50% during non-rush hours at day time. I am of the view that an early completion of Route 3 would relieve the flow of goods vehicles between New Territories West and China because we cannot depend solely on Tuen Mun Highway as the main artery connecting Lok Ma Chau with the container terminal. The fact is that traffic jam on the highway will lead to a waste of time on the part of the commuters and the whole route will become paralysed in the event of serious traffic accidents. In this connection, Route 3 should be completed in 1997 ahead of schedule and the construction of new climbing lanes on Tuen Mun Highway has also to be completed by 1997 if traffic needs are actually to be met. And any delay will afflict tremendous loss in both time and money.

It is also a daily common scene to see long queues of vehicles and traffic jam around the other three road check points and the situation is even more serious as the closing time of the check points draws close. In order to prevent the queueing vehicles from blocking other passenger vehicles in the area, I support the construction of large container truck transit terminals around the check points. The setting up of such terminals will also be conducive to the more orderly and efficient completion of transit formalities. In the past, there have been quite a number of occasions when we saw drivers of cross-border vehicles go on strike. These strikes highlight the inadequate communication between the Chinese and Hong Kong customs authorities and the Governments on one side and the truck drivers on the other. And the authorities concerned will only tackle the problem hastily when it pops up. As it is the wish of both Governments to see an increase in trade between the two places, the departments concerned in both places should make the best efforts to facilitate the flow of goods vehicles crossing the border. For instance, the customs authorities on both sides of the border may try to extend the opening hours of the check points and open the check points at an earlier time. This arrangement could prevent goods vehicles from crossing the border all during the rush hours, which will cause unnecessary congestion.

Finally, the United Democrats of Hong Kong hope that the Government could expeditiously address heavy goods vehicles' parking problem. It is common knowledge that there are not enough parking spaces in Hong Kong. And if heavy goods vehicles are parked illegally along the roadside or in the makeshift car parks in the northwest New Territories, the roads will be obstructed and this will also pose potential risk. Furthermore, for drivers who park their container trucks at New Territories West, they have to drive the

empty vehicles along Tuen Mun Highway to the container terminals, thus adding to the burden of Tuen Mun Highway. We hope that the Government will construct some large new car parks for container trucks in the vicinity of the container terminals in the coming two to three years to cope with the growth in freight transport.

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

DR HUANG CHEN-YA (in Cantonese): Mr President, the sea and land traffic congestions of Hong Kong are, in the final analysis, due to the original designs of the infrastructural facilities and road networks which are based on Hong Kong's internal requirements. The designs did not take into account the rapid developments of China since she opened up and introduced reforms, the close economic ties between China and Hong Kong, nor Hong Kong's becoming a transshipment centre of Mainland China. As a result, Hong Kong's existing transport networks cannot cope with the volume of freight and passenger movements.

On the other hand, the freight circulation system includes freight storage, dismantling and assembly, customs clearance and communications in freight storage and transportation, while transportation is only part of the system. Just like what the wording of today's motion spells out, the Government only focuses on the part on transportation. Consequently, there is a lack of co-ordination in the whole freight circulation system of Hong Kong. The insufficiency of land for storing, collecting and distributing goods, in particular, leads to wasteful use of roads and sea channels.

Since China becomes more open and introduces reforms, Guangdong province has been taking the lead in the development of the whole country. The Pearl River Delta, in particular, is the "dragon head" which drives Guangdong towards rapid growth. After the opening of China, its average annual growth rate has been ranging from 14% to 16%. Among the products manufactured in the Pearl River Delta, nearly half of the processing materials have to be sent to the Pearl River Delta from Hong Kong. The products also have to go through Hong Kong for exportation to other places. Moreover, China's tertiary industries are very backward; so most of the activities of the whole of southern China have to depend on the industrial services provided by Hong Kong. Guangdong alone, 89% of its exports passes through Hong Kong.

97% of the Pearl River Delta's containers has to be handled by Hong Kong. Taking 1990 as an example, the Hong Kong port handled 5.1 million standard containers, 1.8 million to 2.3 million of which are estimated to be containers transshipping to the Mainland. From this, we can see the important role played by Hong Kong in the freight transportation of the Pearl River Delta.

What is important is that these containers rely heavily on the highways for entry into Hong Kong. As a result, the volume of traffic on Hong Kong's road network has increased so much that it can no longer cope.

Moreover, in the past few years, the number of containers moved by river borne transport skyrocketed. In 1991-92, the number of containers increased by nearly four times, thus putting a lot of strain on Hong Kong's lighter services, mid-stream operations and the river trade terminals.

Of course, according to the experience of development in the Mainland, the most economical, convenient and quick form of transportation is transportation by railway if one has to depend on land transport. However, Hong Kong's railway terminal in Hunghom, which is situated well inside the urban area, was originally designed to cater mainly for passenger transport. Moreover, there is no back-up area at the terminal for the handling of containers. At the same time, freight transportation using the Kowloon-Canton Railway has reached the saturation level. On the other hand, since the construction of the Pearl River Delta railway progresses very slowly, enterprises financed by the "three kinds of investments" along the route have given up using the railway. Instead, they use lorries to transport raw materials and products between Hong Kong and factories in the Mainland. Hence, the volume of traffic on the highways increases tremendously and that leads to a vicious cycle.

The traffic in the northwestern part of the territory of Hong Kong is now very congested and the road network there is overloaded. What will it be like in the future? Looking ahead to the next few years, the economy of southern China will still be moving forward at a fast pace. It is expected that the Beijing-Kowloon Railway will come into operation by the end of 1995. As works on the railway network of the northwest New Territories has not commenced, in the near future pressure on the highways cannot be relieved and so, far from mitigating the pressure on the highways, it will emerge that more goods will move southwards as a result.

As for highways, the Guangdong-Shenzhen-Zhuhai Expressway will become operational next year. Several highways traversing within Guangdong Province and the Beijing-Guangzhou Highway will be constructed. The building of these transport networks will not only extend the economic growth of Guangdong to areas outside the Pearl River Delta, but will also enable the merchandise originating from the Changjiang river basin to find its way to Hong Kong for exportation. Consequently, the burden on Hong Kong's land transport system and port will definitely increase. Although there are plans to build a port in Nansha for the collection and distribution of goods and then deploy larger vessels to transport the containers to Hong Kong in order to alleviate some of the pressure on the roads, this would also increase the activities of vessels in Hong Kong waters and the demand for pier facilities.



Therefore, I propose that the authorities should co-operate closely with China, while the construction of the new airport and port is under way, in catering as much as possible to the development needs of southern China so that there can be a fully integrated approach in the consideration of the operations of waterborne, highway and railway transport systems. Particularly in terms of freight movements, before works on the railway for the airport starts, Hong Kong should take the opportunity to seriously consider the real through train so as to allow China's containers to enter Hong Kong's new port directly by railway and lessen the burden on highway transportation.

The direct container transportation line that runs from Hunghom, Kowloon to the Dalong Station in Guangzhou became operational last year. The Beijing-Jiujiang-Kowloon Railway or the Beijing-Guangzhou Railway, which are now under construction will both have their terminals in Kowloon. To meet the demand for future development, the Government should do the following:

- (1) As soon as possible, link the airport freight transportation extension line with the port at North Lantau and the Kwai Chung container terminals and then all the way to Shenzhen, so that goods from northern China can reach Hong Kong ports directly via Beijing-Jiujiang-Kowloon Railway or Beijing-Guangzhou Railway for exportation.
- (2) Once the construction of the highway between Zhuhai and Tuen Mun has been completed, use the Tuen Mun river trade terminal as a place for collecting and distributing goods, that is, using waterborne transport to reach the ports directly instead of taking the Tuen Mun Highway.
- (3) While developing the port in North Lantau, the Government should use the existing space in Lantau as a storage centre for containers and upgrade the main roads that the container trucks pass through. Storing containers in the New Territories will cause unnecessary traffic flow on the highway and damage to the environment.
- (4) Improve mid-stream operations, containers terminals, the New Territories road networks and the port at the border. Other Members from the United Democrats of Hong Kong will elaborate on this.

With these remarks, I support the motion.

MR TIK CHI-YUEN (in Cantonese): Mr President, the rapid development of Sino-Hong Kong transport in recent years has brought about considerable economic benefits for Hong Kong, but at the same time has also created a number of livelihood problems. In the past two years, residents of north New Territories have persistently been troubled by the problems caused by

Sino-Hong Kong transport. These problems include: serious illegal parking in the district, traffic congestion caused by lining-up of trucks, agricultural land converted into container depot, environmental and safety problems and so on. The primary cause of these problems is that the Government has failed to assess correctly the development of Sino-Hong Kong transport, and has underestimated the pace of development. Besides, neither has the Government formulated any policies in immediate response to the problems that have arisen. The existing policy really does not match with the actual development at all.

Mr President, in this debate I shall concentrate on the problems arising from the container trucks and reflect the opinions of Meeting Point. We think that these are not isolated problems that the container trucking industry is being faced with. The Administration ought to have determination and be far-sighted in mitigating the relevant problems. In examining these problems, the following three target areas should concurrently be addressed:

1. to solve traffic congestion, particularly in northwest New Territories;
2. to dovetail with the airport and port development; and
3. to cope with the traffic demand from rapidly increasing Sino-Hong Kong transport.

On the basis of the analysis, Meeting Point has the following proposals to make so as to relieve and solve the problems:

1. Review the existing policy

The 1990 White Paper on Transport Policy should be reviewed afresh, for example, in such aspects as logistical support for transport and the appropriate proportion of land required for this; and the re-examination of the need to build multi-storey container depots.

2. Improve parking for container trucks

Meeting Point is of the view that, in the long term, the proportion and size of land available for logistical and parking services in the vicinity of a container terminal must be increased. As an interim measure, the Administration can identify some border areas which have low potential for development, such as the uninhabited borrow area, as sites for container depots and set up supply depots near crossing points. In the short term, temporary parking lots for container trucks can be set up in different locations of various industrial areas and new towns.

3. Implement various programmes

It will be quite satisfactory if the Government can implement the proposals in the 1990 White Paper on Transport Policy and the works programmes laid down over the years. Moreover, to cope with future development, there is also a need to build some new road networks.

4. Examine the possibility of a fourth port

The existing three ports for Sino-Hong Kong transport are near saturation. We think that a new port is needed and we suggest that the Government should liaise with the Chinese authorities actively to study this proposal, and then introduce it to this Council for examination.

Mr President, the developed state of Sino-Hong Kong transport has brought about economic growth for Hong Kong, but behind this prosperity, much trouble is being caused to many residents. The Government is responsible for actively and expeditiously solving the above problems. So we support the motion before Council.

MR MICHAEL HO (in Cantonese): Mr President, as a member of the United Democrats of Hong Kong Western New Territories Branch, I will concentrate on the impact on the western New Territories. This motion is about requesting the Administration to review waterborne and land transport systems in order to meet the demand for freight services and promote the re-export trade of Hong Kong.

I think that the scope of the review should not be confined to internal waterborne and land transport systems of Hong Kong. I agree to one of the objectives which is to promote the re-export trade, but I do not agree that it is the only objective, since we should take account of the internal demand of Hong Kong and at the same time the impact the developments of our neighbouring regions will have on us.

As we all know, the economy of China is developing at a fast pace and Hong Kong, situated at the southern gateway of China, is deeply influenced by the reform of China. So pressure on Hong Kong will build especially at a time when the heartland of China, the costal provinces and cities, and the southern regions have vied with one another to set up a link with Hong Kong for the purpose of using our advanced facilities and more refined systems to develop their economies. We have to accelerate the renewal and development of the various infrastructural and transport facilities in Hong Kong in order to meet the demand of this rapid growth. Such kind of pressure is of course beneficial and positive. The increase in re-export will bring great benefits, but in order to cope with the increasing transport burden, the western New Territories must at the same time develop its transport networks.

According to the consultative document *Railway Development Study* published recently by the Transport Branch, freight transport growth has been regarded as one of the important criteria in the consideration of railway development. The assessment criteria set out in the paper have clearly indicated that the railway development scheme will be very effective in reinforcing Hong Kong's strategic position as a major port and a trading and commercial centre within the region. Given the increasing close economic relations between China and Hong Kong, it is more and more necessary for both sides to maintain a close liaison, instead of acting unilaterally, in the planning of Hong Kong's waterborne and land transport systems. Taking the recent announcement by the Zhuhai Municipality of the construction of a bridge spanning the Ning Ding Sea and connecting Tuen Mun in the western New Territories of Hong Kong as an example, it is a strange thing that happened in the absence of a co-ordinating mechanism. We are not denying the value of a bridge connecting Zhuhai and Tuen Mun. Such a bridge can at least help the economic development of the western part of the Pearl River Delta and the myriad of municipalities with Zhuhai as their centre. What we cannot agree to is that the Zhuhai Municipal Administration unilaterally announced this bridge project without any prior indepth discussion with Hong Kong. In fact, this bridge will generate a heavy traffic burden on Hong Kong. For this reason, we expect that the roads within the Tuen Mun District, which are nearing saturation capacity, will become more congested.

Last week, some Tuen Mun District Board members of the UDHK visited Zhuhai. The information that they gathered is that the bridge project will be submitted to the State Council in two months, and the authority concerned will approach the Hong Kong Government after approval has been granted by the State Council. But after the approval, will any change be still possible? Will Hong Kong be pressurized into accepting the project? We hope that the Chinese and Hong Kong authorities can set up a standing mechanism for dialogue on this project so as to strengthen mutual communication and co-ordination, especially on the aspects of transport system and infrastructural facilities.

One more example of the lack of co-ordination. Towards the end of February, the working group on the Beijing-Kowloon Railway under the State Council decided to move up the completion date of the Beijing-Kowloon Railway from the original 1997 to 1995, but our project of the Western Corridor will not be completed until 2011. It can therefore be seen that the transport networks of the two places simply cannot co-ordinate with each other.

The Zhuhai municipal authorities hope that the Zhuhai-Hong Kong Bridge can be put into use in 1997, but the road widening work of the Tuen Mun Highway will not be completed until 1997 and the completion date of Route 3 is still unknown. It can therefore be seen that if China and Hong Kong cannot co-ordinate as soon as possible on the waterborne and land transport systems, the traffic between China and Hong Kong in the middle and towards the end of the 1990s will become a mess, and the traffic in the western New Territories will be particularly impacted upon. In order to have co-ordination with the

neighbouring regions, we hope that the Administration can in the meantime conduct a systematic and comprehensive study as soon as possible.

I so make my submission.

DR SAMUEL WONG (in Cantonese): Mr President, since Mainland China adopted an open policy in 1979, China and Hong Kong, particularly Pearl River Delta and Hong Kong, have developed close economic ties and that has become an irreversible trend. With a lot of Hong Kong factories and production facilities moving north, the China and Hong Kong border has all but disappeared, from an economic point of view. In other words, Hong Kong is no longer an independent economic entity. Any planning from a macroscopic viewpoint should consider Hong Kong as part of southern China and should take that as the starting point of the planning process. However, such a fact does not appear to have been given due recognition in the Hong Kong infrastructural planning and transportation system studies.

At present, the planning departments of China and Hong Kong each do things in their own way. Contacts concerning the transport issues of the two places are limited to those made by the Border Liaison Group. The terms of reference of this Group are, however, only restricted to issues regarding border access. At present, there is absolutely no communication or co-ordination as regards the dovetailing of the traffic and transport systems as well as the infrastructures between the two places. I would like to illustrate this with the following examples:

- (1) Regarding land transport, the first phase of the Guangzhou-Shenzhen-Zhuhai Expressway linking Guangzhou, Shenzhen and Zhuhai is expected to be operational around the latter half of this year. As this expressway will be linked to Lok Ma Chau, it will definitely increase the pressure on the road network of the northwest New Territories after the expressway has come into operation. Since the Tuen Mun Highway has already reached saturation level, when the Guangzhou-Shenzhen-Zhuhai Expressway has become fully operational, how can the road network of the northwest New Territories cope with such an extra burden? Do the authorities have any contingency measures? So far, the outsiders know nothing about this. People just cannot help wondering if China and Hong Kong had discussed or liaised with each other when the construction of the expressway was at its planning stage.
- (2) The municipal authorities of Zhuhai recently indicated that they have the intention of building a bridge spanning the sea which links Zhuhai with Black Point, Tuen Mun. The plan will be submitted to the State Council of China for approval soon. However, the Zhuhai authorities still have not discussed with the Hong Kong authorities the dovetailing of the bridge with the Hong Kong transport system.

This again shows that there is no co-ordination on road planning between the two places.

- (3) As for waterborne transport, since the river ports of the Pearl River Delta now lack the facilities for handling containers, in recent years, more and more bulk cargoes from China are put into crates only after they have arrived in Hong Kong by water and then they are transhipped to their destinations. Since the amount of freight involved in the river trade has been on the increase steadily, the Ma Wan Channel is seriously congested. To solve the problem, the Government is prepared to build a river trade terminal in Area 38, Tuen Mun. However, the problem is that building the Tuen Mun river trade terminal will only shift the congestion problem from the Ma Wan Channel to the Tuen Mun Highway and that will not actually help solve the problem. In fact, the most effective way of solving the problem is to identify suitable sites in the Pearl River Delta for the setting up of inland freight handling ports, so that after putting the bulk cargoes into crates, they would be sent via the railway network to the Kwai Chung container terminals for handling. Nevertheless, that will require the close co-operation between the planning departments of China and Hong Kong which will be difficult to come by, given the absence of liaison and co-ordination between both sides at present.

Mr President, I support reviewing Hong Kong's land and waterborne transport systems to keep in step with the rapid development of the Sino-Hong Kong entrepot trade. However, in order to get to the root of the problem, that is, the lack of co-ordination as regards the transport and infrastructural planning between China and Hong Kong, I think that the Government should establish close ties with the planning departments of China, particularly the Guangdong authorities, as soon as possible. In this way, both sides can complement each other on the working level, instead of each doing things in their own way.

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

THE PRESIDENT'S DEPUTY, MRS ELSIE TU, took the Chair.

MR WONG WAI-YIN (in Cantonese): Madam deputy, Hong Kong's transport problem arises not only from freight traffic pressure and the demands of the territory's entrepot trade, but also from the overall inability of its internal and cross border transport systems to cope with demand. At the same time, this is not solely a problem relating to freight traffic, but to passenger traffic also.

On 25 November last year, with the unanimous support of colleagues of this Council, my motion urging the Government to improve as soon as possible

the transport network of northwest New Territories was carried. Six months have passed since. Is it not the time we looked back on the proposals put forth by me then to see whether or not there has been progress and improvement as far as this problem is concerned?

I put forth then a five-point proposal with a three-fold objective: firstly, to ease traffic congestion in northwest New Territories; secondly, to dovetail with the territory-wide shift of the transport hub following the construction of the new airport and the westward shift of port and harbour facilities; and thirdly, to relieve heavy pressures on the transport network as a result of rapid growth in China-Hong Kong freight and passenger traffic. The last problem has been a result of the Administration's long-standing underestimation of the economic development of southern China (the Pearl River Delta in particular). The three-fold objective is essentially in line with the subject for debate today.

The five-point proposal in fact included more than 10 specific measures. A short-term improvement is to increase the frequency of ferry services between Tuen Mun and the urban areas and ease the traffic congestion along Tuen Mun Highway. A medium-term measure is to widen the full stretch of Castle Peak Road (Tuen Mun to Tsuen Wan Section). And the long-term solution lies in the immediate construction of Route 3 (Country Park Section) and a mass transit railway system to connect northwest New Territories with the urban areas. While it is true that Yuen Long needs a rail link with the urban areas desperately, Tuen Mun has the same need, too. A circular railway network connecting Tuen Mun, Yuen Long and the urban areas will on the one hand ameliorate the problem of internal passenger transport, and on the other hand achieve the three-fold objective mentioned above, in particular that of meeting the demands of China-Hong Kong freight and passenger traffic.

Just now, Mr TIK Chi-yuen of Meeting Point has commented on the question of cross-border transport. Here I would simply emphasize three aspects in which we must double our efforts.

Firstly, China-Hong Kong waterborne transport. With the ever increasing volume of China-Hong Kong waterborne transport, demand for mid-stream operations has been on the rise correspondingly. Recently, as a result of the planned construction of Container Terminal 9, the Government proposed to relocate the affected mid-stream operations to Area 16 in Tuen Mun. But the proposal was immediately met with strong opposition from residents and district board members of New Territories West. The principal reason offered by them is their worry that traffic congestion on Tuen Mun Highway will be further aggravated. Besides, the Government is also planning to build river trade terminals in Area 38 of Tuen Mun. Although these proposals are beneficial to economic development, I believe residents of Tuen Mun will continue to suffer the hardships of traffic congestion in the absence of a comprehensive government assessment of, and associated measures to meet, the transport needs of northwest New Territories. If the Government fails to come up with a comprehensive package to ameliorate the transport

problem of northwest New Territories, in particular the traffic congestion within Tuen Mun and on Tuen Mun Highway, the residents will continue to oppose the relocation of mid-stream operations to Area 16.

Secondly, a second China-Hong Kong railway. We are pleased to learn of the recent publication of the Railway Development Study Report by the Government. While the report has put the western corridor for top priority consideration, unfortunately the project will not be completed until 2001. Should there be any slippage, the completion date for the second China-Hong Kong railway would become a cause for worry. In fact, the freight and passenger traffic of the Hunghom-Shenzhen (that is Lo Wu) railway is at present somewhat saturated. At this morning's meeting of the Legislative Council Transport Panel, discussions were held on the serious passenger congestion at Lo Wu control point on 3 April. Therefore, there is a very pressing need to build a second railway between China and Hong Kong. I hope the relevant authorities of the Government will put into effect as quickly as possible the construction of this railway in order to ease the present freight and passenger congestion on the only railway between China and Hong Kong.

Thirdly, road links between China and Hong Kong. I should like to point out that we should be prepared to open a fourth crossing in addition to the existing three crossings at Sha Tau Kok, Man Kam To and Lok Ma Chau, for the capacity of the Sha Tau Kok and Man Kam To crossings is near saturation while Lok Ma Chau already reached 40% of its capacity at the end of 1992. Calculating by an annual increase in throughput of about 5 000 vehicles, that is, an increase of about 25%, the Lok Ma Chau crossing will be saturated in 1994-95. It is therefore time we examined the possibility of opening a fourth crossing. Meeting Point is of the view that the location of the fourth border crossing must be based on rational, realistic and comprehensive considerations with respect to planning, economics and the people's livelihood. The most appropriate location must be dictated by the overall development need and distribution of China-Hong Kong freight and passenger traffic. Once a location is decided, the Government must ensure that there will be sufficient dovetailing arrangements for transport systems and logistical support within the district in question, lest the mistake of North District should be repeated.

Meeting Point has come to the view that with the ever increasing transport activities between Hong Kong and the ribbon extending from the Pearl River Delta to Guangzhou, and even to Fujian and Jiangsu and Zhejiang, southern China has become an important base and support for economic development. Therefore, Meeting Point suggests that the Hong Kong Government must as soon as possible start co-operating with China in transport planning. A China-Hong Kong group should be set up with special responsibility for transport construction and co-operation in terms of policy, planning and resources. Such kind of co-operation can brook no further delay.

With these remarks, Madam deputy, the four Members from Meeting Point support the motion.



MR ALBERT CHAN (in Cantonese): Madam deputy, Hong Kong is the tenth largest trade and economic entity in the world. Our seaborne freight trade value amounted to \$988 billion in 1992 alone. And 90% of our trade are conducted through our port. According to government estimation, our port services and the related activities provide employment for about 300 000 people in Hong Kong, or approximately 20% of the workforce in the commercial sector. The gross trading value represents 15% of our gross domestic product (GDP).

Hong Kong's container throughput experienced a growth of nearly 30% in 1992. And the momentum behind the spectacular growth mainly comes from mid-stream operation and river trade vessel operation. Hefty increase in the throughput of mid-stream operation and river trade vessels clearly demonstrates the increasing proportion of our re-export trade with China in our economy. The goods involved are overwhelmingly low market goods or bulk cargo. Generally speaking, it is not economically viable to be shipped in the expensive mode of containerization.

It is a pity, however, that the Government has all along neglected the contribution made by mid-stream operation to our freight industry. As a matter of fact, mid-stream operators are practically providing supplementary services which fill up the existing deficiency in container terminals. They are really a logistic mainstay of container freight. Mid-stream operation usually employs small crafts to carry cargo. These small crafts ply across our harbour frequently and they cannot afford the high costs of container terminals. Crafts engaged in mid-stream operation can carry out their operations at both sides of the vessels in anchorage. As soon as the vessels anchor at the buoy or lay at anchor, these crafts may start loading and unloading immediately. Such an operation process can shorten the time which the vessels are required to stay in Hong Kong. The operation is very flexible and efficient.

Hong Kong does not have a comprehensive policy on mid-stream operation at the moment. And mid-stream operation has all along been regarded as a non-essential service. In these few years, the Government has been carrying out large-scale reclamation projects and port construction works in the harbour, gradually reducing the waterfront working area of mid-stream operation. Most of the working areas are at present granted in the form of short term tenancy. Since the term of lease is very short, mid-stream operators usually do not have much incentive to make huge investment in the temporary working areas. As a consequence, the sites in question are not fully utilized.

Meanwhile, the short term tenancy often leads to other problems in the context of planning, that is, the lack of co-ordination between the planning of our waters and the utilization of land. Since the working areas are of a temporary nature, the Government is not going to spend money in the construction of efficient land and waterborne transport systems. As a matter of fact, the existing working areas pose serious environmental and transport problems to residents living nearby. It is indeed very unfair to them. This

explains why Tuen Mun residents recently voice strong opposition to the setting up of mid-stream operation areas in Area 16.

In view of this, I feel that the Government should in real earnest formulate a set of comprehensive policies on mid-stream operation, to enable operators in the trade to set their eyes on long-term development. The Government may also do something about the land and waterborne transport to synchronize with the development of the working areas. I am sure this will successfully tackle many of the existing problems arising out of planning.

Furthermore, with a gradual growth in the number of mid-stream operators, crafts plying the waters will increase in number accordingly. It is obvious that our port is getting more and more busy nowadays. Many Members mentioned just now that the Ma Wan Channel is already very congested and many of the vessels in operation are not under proper control. Confusions and accidents are likely to occur. Recently, several collisions took place on the local waters. The Tsing Yi South Bridge has been jolted by large barges for quite a few times. Although there were no casualties, the accidents incurred economic losses of various degrees. Meanwhile the chaotic seaborne traffic has been a headache for residents in Tsuen Wan, Kwai Chung and Tsing Yi over the past few years. The Government should earnestly examine the existing safety facilities for sea transport. It is indeed incumbent on the Government to ensure the public to have safe sea transport.

As a related issue, at a time when Sino-Hong Kong freight is growing by the day, interception of freight vessels by unidentified persons and ships around Hong Kong waters has taken place time and again recently. It is imperative that the Government steps up its patrol within Hong Kong waters to forestall inward or outward bound freight vessels being harassed. Meanwhile, the Government should put more efforts in boosting the co-operation with our neighbouring countries in the vicinity of Hong Kong waters so as to safeguard a safe passage for vessels in local waters.

Madam deputy, with these remarks, I support the motion.

MR LEE WING-TAT (in Cantonese): Madam deputy, Hong Kong had to start as an entrepot in the initial stage of its economic development. Now it has become a trading centre in Southeast Asia. It has the best container terminals and handles the largest number of containers in the world. Following the rapid economic development of China, Hong Kong has resumed its important role as an entrepot. While we are proud of our world record in container handling, we cannot help but worry whether our internal transport network can cope with the monumental increase in the number of containers each year.

According to the information provided by the Government, the number of containers handled by us increases at an annual rate of around 6.5%. The number will be doubled by the end of the 1990s and further doubled by 2011.

It is also revealed that starting from 1986, the ratio of cross border freight traffic by road increased from 21% in 1988 to 44% in 1991. On the contrary, there was a decline in the ratio of freight transport by rail. These figures are quite worrying. If freight transport between Hong Kong and China continues to rely heavily on the road network, the number of container trucks we have in Hong Kong may double by 2000, given the fact that each container truck can carry only one container. It is impossible to catch up with the increase in the number of container trucks no matter how much we accelerate road construction in the New Territories. Such being the case, strategies about cross border freight traffic should allow rail and waterborne transport to play a more important part. Relying too much on the road system in the transportation of cargo will not only worsen the problem of pollution, but will also affect residents of new towns in using the roads for travelling to and from the urban areas.

The Railway Development Study which was completed recently recommends that a heavy rail line from Kwai Chung via Tin Shui Wai to Lok Ma Chau should be built by 2001. The rail line will provide cross border passenger and freight services and link the urban areas with new towns in northwest New Territories. We agree that the rail line should be built expeditiously, for it can reduce the reliance on road transit. It will also solve the problem of our cross border railway reaching saturation capacity soon. The advantage of railway transport is that it separates passenger traffic from freight traffic, thus avoiding the situation of buses and goods vehicles competing for the use of road space, as is the case with Tuen Mun Highway. There is also less chance of accidents happening. Such mode of transportation should be encouraged. Regrettably, as announced by the Kowloon-Canton Railway Corporation Annual Report 1992, cross border rail freight traffic declined by 11% from 1991. This reflects that rail freight transport is less competitive than other modes of freight transport. So if the new rail line can directly carry 1 million containers to the container port each year, it will greatly enhance the role of the railway system in freight transport. Since the number of containers handled by us increases at a much quicker pace than the extension of the road network, construction of a second cross border rail line is a matter of burning urgency. We propose that the completion date of the Western Corridor should be moved forward to 1999.

Apart from the above, another reason why the Western Corridor should be completed earlier is that the residents of Tuen Mun and Yuen Long have long created an unbearable pressure on the roads leading to the urban areas. At the end of the 1990s, Tuen Mun will have a population of over 500 000. Although Route 3 will be ready by that time, it will not benefit the residents of Tuen Mun directly. It is unreasonable for a community with a population of 500 000 to have no mass transit system, with Tuen Mun Highway serving as the only link with the urban areas. Therefore, we strongly demand that the Western Corridor should pass through the town centre of Tuen Mun. This will save its residents the trouble of having to make detours on their way to and from the urban areas. As regards the question of competition between the Western

Corridor and the Light Rail Transit (LRT), the two have entirely different markets. If the Western Corridor offers only season tickets for direct journeys to and from the urban areas, commuters travelling within the area will be separated from those travelling to and from the urban areas. Besides, since the volume of its passenger traffic is close to saturation, the LRT will be incapable of providing feeder service to support the Western Corridor. With no extension to Tuen Mun town centre, the Western Corridor will be much less attractive to the large number of Tuen Mun residents. The Government and the Kowloon-Canton Railway Corporation should consider this important point. They should implement the project for the construction of the rail line as early as possible so that the congenital defect of the transport system of northwest New Territories can be cured and cross border freight transport can be further developed.

Madam deputy, I would also like to talk about the safety of freight transport by sea. The dramatic growth in cross border freight throughput has led to an increase in the volume of sea traffic. The number of marine accidents has also gone up sharply. I hope the authority concerned will carry out a fresh review and come up with more stringent and effective marine safety legislation. They should step up sea patrol in order to reduce the number of marine accidents. The day before yesterday, there was an accident in which Tsing Yi South Bridge was hit by a ship. This was the third accident of the same nature over the past 10 months. I suggest that the Marine Department should deploy its vessels on round-the-clock patrol duties in that area to ensure that safety of sea traffic. I understand that under the existing legislation, the Director of Marine does not have the power to bar vessels with masts in excess of a specified height from entering the portion of Rambler Channel between Tsing Yi North and South Bridges. I suggest that the relevant legislation should be promptly amended to designate the aforesaid area as a restricted zone. Since vessels with excessively high masts will then be prohibited from entering the area, a recurrence of the same accident can be avoided.

Madam deputy, with these remarks, I support the motion.

MR HOWARD YOUNG (in Cantonese): Madam deputy, I believe that we are no stranger to today's subject for debate because both the Government and Members of this Council have studied, reported or debated on the question of land and waterborne transport. For example, the Port and Airport Development Strategy Studies published by the Government earlier as well as the debate on the traffic of New Territories West by this Council several months ago both touched on the subject of land and waterborne transport systems. However, the Government's development plans are often products with a macroeconomic focus whereas Members consult the views of the public and reflect them to the Government so as to request for improvement. I feel that the role of Members is like picking up where the Government has left off in regard to the "big items". Any discussion of land and waterborne transport systems and the entrepot trade between China and Hong Kong would naturally

call particular attention to the role played by container freight transportation. Container traffic apart, I am also very concerned about mid-stream operations.

We all know for a fact that trading activities between China and Hong Kong have become more and more frequent and the entrepot trade between China and Hong Kong, in particular, has even increased at an astonishing rate. Moreover, if we look to the future, the entrepot trade which is currently concentrated in southern China, will keep moving north and stretching to the hinterland. The incessant increase in the total amount of freight means that there will be even more activities in the ports in the future. Hence, it requires a longer-term strategy to cope with the developments as well as more resources for building basic port facilities. Future port developments will definitely focus on the building of new container terminals but it is expected that the loading and unloading of goods through mid-stream operations will continue to play an important role. In 1992 alone, one fourth of the containers handled by the Hong Kong port were dealt with by mid-stream operations. At present, there are a total of 76 buoys inside our port and lighters are used to load and unload goods onto and from the vessels which are berthed mid-stream. It is expected that mid-stream operations will play an even more important role in the future course of development. As I have said just now, Hong Kong's entrepot trade comes mainly from areas along the Pearl River of China. The trade has to depend on lighters or medium to small size vessels. Laden with goods, such vessels travel to Hong Kong via the Pearl River and have to unload goods at the sea front. Then lighters will be used to transfer the goods again. From this, we can see that mid-stream operations will certainly remain brisk. With the increase in the number of containers, more land along the sea front will be required.

However, according to my knowledge, land along the sea front for the loading and unloading of goods has not increased but has actually decreased. The leases of many places that were rented to container and shipping companies for loading and unloading of goods have been terminated because the Government will build Route 3 and the Tsing Yi Bridge soon.

One of the solutions to this problem is to build a river trade terminal to handle transshipment cargoes carried by vessels which arrive in Hong Kong from China. The Government also has the intention of building a river trade terminal in Tuen Mun. This plan is much welcome because vessels do not have to enter the container terminal via the Ma Wan Channel and can unload directly in Tuen Mun. It can also alleviate the congestion and safety problems caused by frequent use of the Ma Wan Channel by vessels at present. However, the Government has not yet implemented the proposals of these planning studies and development reports after a long time has lapsed and this has aroused objection from Tuen Mun residents. I consider that the Government should as soon as possible build a river trade terminal and set up customs facilities in Tuen Mun. Or else, it will seriously obstruct the development of Hong Kong's freight movement and entrepot trade.

Apart from the lack of land for mid-stream operations and for the unloading of goods at the seafront, there is also an acute shortage of land for storing containers and parking the container trucks. If one wants to cook a good pot of rice, besides having water, rice and a rice cooker, one need to put these three things in places near to one another. It is very difficult to imagine a housewife putting the rice, rice cooker and water in different rooms (except when I cook rice for my wife). However, the container freight transportation of Hong Kong is just like this at present. A driver takes a truck from Place A, obtains an empty container from Place B and then loads or unloads the goods in Place C where the container terminal is. It is a circuitous way of going about it and the problems thus created, for example, illegal parking, traffic congestion as well as the time and human resources wasted, are intolerable. I think that in promoting Hong Kong's entrepot trade, we need to address the provision of sufficient and appropriate land for storing containers and parking trucks.

In his reply to a Member's question today, the Secretary for Transport has admitted that there are 32 200 medium and heavy goods vehicles registered in Hong Kong but there are only 30 600 parking spaces for such vehicles. From this, we can visualize the extent of the problem.

The Financial Secretary has promised to construct Route 3 and has said that he will invite private developers to build it. I hope that the Government can consider putting in hand now the construction of the Ting Kau Bridge and the section that links Tuen Mun Highway. Funds should first be advanced from the Capital Works Fund to finance this project. While the construction work is underway, the Government should discuss with the private developers. The above facilities should then be handed over to private developers for operation through tendering procedures. In this way, congestions along the roads of Tuen Mun and Tsuen Wan can be eased earlier.

To maintain Hong Kong's status as a major entrepot, it is essential to have a good land and waterborne transport network which has the potentials for further development. At the same time, the relevant infrastructure and related services at the sea front are also indispensable. I support today's motion by urging the Government to put in hand the various infrastructural works including the customs facilities in Tuen Mun as soon as possible.

Madam deputy, I support the motion.

SECRETARY FOR ECONOMIC SERVICES: Madam deputy, I welcome this debate. I thank Dr TANG for the motion and I am grateful to Members for their views and suggestions.

In the next few minutes I shall describe the role played by our port in our import, export and re-export activities and in the process I shall be commenting on some of the points raised by Members and then I will take a look to the

future. I shall then hand over to my colleague, the Secretary for Transport, who will reply on points related to land transport issues.

As Members have pointed out, trade is Hong Kong's life-line and import, export and re-export are vital segments of that life-line. Traditionally, Hong Kong's port has handled the major share of our import, export and re-export activities. In 1992 our port handled 100 million tonnes of cargo. This compares to 12 million handled by our road border transport, the railway, 2 million and the airport, 1 million.

Of the 100 million tonnes handled through our port, about half were shipped in containers. The rest was what we call bulk cargo, for example, oil or coal.

The 50 million tonnes of containerized cargo was handled either at our existing seven container terminals, which together handled about 30 million tonnes or through mid-stream buoys or anchorages which handled together about 20 million tonnes.

About 35 million tonnes of the total port throughput were re-exports or transshipment cargoes and this particular sector of our import and export activity grew at a rate of some 20% over the past 10 years.

Our plans for developing our port were announced in 1989 as part of the Port and Airport Development Studies. The studies produced a strategic framework within which port facilities could be developed to cope with forecast demand into the next century. The improvements proposed included those for container terminals, mid-stream facilities and river trade terminals.

Following that, in 1990 the Government set up the Port Development Board to keep the port development strategic plan under review and to advise the Government as to what type of facilities will be needed to cope with the demands of trade, and when these facilities should come on stream.

In 1991 the Port Development Board undertook a comprehensive forecast of the likely cargo growth through our port. The Board intends to review its forecasts once every two years. On the Board there are experts from many different fields and in fact some of the experts are currently involved in trade with China. The Board also in its work liaise closely with its counterparts in China. So in the coming forecasts and reviews I would like to assure Members that we will be able to take into account the demand, not only from the growth of activities within Hong Kong but with all our neighbours.

Also, on the Board, attending different subcommittee or committee meetings of the Board are representatives of different government departments and branches. The Economic Services Branch provides secretarial support for the Board but in fact all relevant government departments take part directly in the deliberation and work of the Board.

Looking to the future, the Board's view is that we shall need to bring the first berth of Container Terminal No. 8 on stream later this year. At the present trend rate of growth in container traffic through the terminals, 14%, a further terminal should become available in mid-1995 and another by early 1997. Beyond that we expect to have to provide up to 13 additional container berths on Lantau by the year 2011.

As I have said earlier, not all our port traffic will go directly through the container terminals. A large proportion of our waterborne trade is handled through, as Members have pointed out, mid-stream operations and at different public or private cargo handling areas located around Hong Kong, Kowloon and the New Territories.

We fully recognize the contribution of the mid-stream operators and all those who work with them and the Board takes an active interest in how to improve facilities, not only for container terminal operators but also for the different operators who operate mid-stream or through land based facilities.

To prevent congestion in our harbour approaches as trade expands we plan to develop the river trade terminal at Tuen Mun. The aim of this terminal is to consolidate cargo moving from the Pearl River Delta and facilitate its onward passage to the container terminals. It is envisaged that there will be a dedicated system of feeder barges which will provide linkage between the river trade terminal and the container terminals. This will help reduce the volume of traffic mentioned by Members along the Ma Wan channel.

Expressions of interest in the terminal were invited some time ago and are presently being assessed. We hope that the first phase should be operational by 1997.

Referring again to operation of facilities in the West New Territories, we are also currently studying the implications of providing an immigration anchorage around the Tuen Mun area.

Turning again to river trade terminal facilities, in the longer term we envisage that a similar facility will be needed on the northern shore of Lantau and we expect that it would come into operation once sufficient demand has built up.

As Members have pointed out, there is currently a shortage of backup land with waterfront to support mid-stream operations. We require a systematic approach with land being provided under long-term tenure. To this end, the Planning Department is carrying out an in-house study, based on different throughput scenarios, to arrive at a clearer conclusion as to the way forward. We expect the results of this study to be made available some time later this year.



Suitable waterfront sites to support mid-stream container handling are not easy to find. Our policy is to provide permanent sites and phase out temporary ones. This will take some time to achieve.

In the meantime, we are continuing to rely on temporary sites. We fully recognize that this is unsatisfactory and we note the objections from local residents to some of the sites being studied. But as regards Area 16 no final decision on the use of this site has yet been taken. We are awaiting the outcome of calls for expression of interest and we are studying the traffic and environmental implications of using that site.

I would like to turn to the use of our port and the different water channels on our port. I fully appreciate Members' concern about the need to regulate the movement of ships within different parts of our harbour and to ensure that ship movement is maintained at a very safe and orderly manner.

I note Members' concern about the incident two days ago. That incident is now being investigated. I would not wish to make reference to the particular case. But I would like to assure Members that the Director of Marine is now taking all necessary measures to ensure that those who use the Rambler Channel, which is a very busy channel, are aware of the dangers and of the facilities that are built across the channel. He is studying all sorts of means which can be put up, physical means, mechanical means or even electronic means, which could alert operators of trucks, barges, tow boats and so on to the height limit of the existing bridge.

We are also looking at how the laws may need to be amended to ensure maximum safety for those who use that channel and all the other busy channels in our harbour.

Madam deputy, looking to the future again, our port is one of the most successful in the world. It generates benefit to our economy beyond our own shoreline. It is a remarkable example of partnership between the private sector and the public sector and we intend to keep it that way.

To meet our needs in the 1990s and in the next century we shall keep under constant review the nature, scale and timing of the port facilities and of the waterborne transport system. This review will be done by all parties involved, the Port Development Board, the government departments, the operators in the different companies in the private sector and in consultation with our trading partners.

Thank you. I shall now hand over to my colleague, the Secretary for Transport.

THE PRESIDENT resumed the Chair.

SECRETARY FOR TRANSPORT: Mr President, I am grateful to Members for their wide ranging and helpful comments on the movement of freight by water and land. I would now like to address the land transport aspects.

*Port facilities and land transport planning*

I should first like to stress, once again, that there is very close co-ordination within the Administration in the planning and improvement of all sea and land transport systems. Clearly, even a massive investment programme in port facilities will not be able to serve Hong Kong's economic development and our fast growing trade with China unless we also have the means to move freight across the border and within Hong Kong.

We therefore take great care to co-ordinate future port development and land transport planning through the strategic land-use and transport planning process. Similarly, the traffic and transport implications of all port development proposals are carefully studied to ensure that our transport road systems can cope.

I fully share Members' concern on the lack of back up areas. Such a lack of back up areas for the existing container port has long hindered storage and movement of freight. It has also added pressure on our road system. These problems will be eased with the addition of 88 ha in new back up areas upon completion of CT-8 and CT-9. For the Lantau Port, such problems will no longer exist from the beginning with 10 ha of back up land provided from each new container berth.

*Border crossings by road*

In recent years, we have seen a phenomenal growth in the volume of freight moving across the border by road. This is increasing by an average of 18% a year, from 5.4 million tonnes in 1987 to about 12.2 million tonnes in 1992.

Total cross border traffic by road has increased from an average of 9 000 vehicle trips a day in 1987 to some 18 000 trips in 1992. As Members know, this demand is met by the three crossings at Man Kam To, Sha Tau Kok and Lok Ma Chau. The capacity of the existing points is determined by the processing capacities of the Immigration and Customs Control Points on both sides of the border as well as the opening hours. The opening hours of the crossing points have been gradually extended in recent years to meet increasing demand.

However, we should note that demand is not evenly spread throughout the day. On the Hong Kong side, congestion occurs in the morning with vehicles queuing up before the crossings open. This is particularly acute at Man Kam To where the queue of traffic can extend back to the New Territories Circular Road. As an interim measure, we intend to double the capacity of the Man Kam To vehicle holding area to 220 vehicles. We will also be considering with the Chinese authorities further extensions to opening hours and increasing the number of vehicle channels in operation at Lok Ma Chau.

#### *Route 3 country park section*

To reach the border, goods vehicles have at present the choice of two major road corridors, the east and the west. A third will be added upon the construction of the Route 3 Country Park Section including the Ting Kau Bridge. As Members are aware, we are giving this project top priority. Expressions of interest have just been received from the private sector in building this road under a franchise arrangement. The response has been very encouraging. We are now studying the proposals before making decisions on the tendering arrangements as soon as possible. Members may rest assured that we will spare no effort in ensuring its early construction and completion.

#### *Other road projects*

Nor are we sparing any effort in improving our existing road network. Before the completion of Route 3, cross border traffic can make use of the newly improved New Territories Circular Road to either the eastern or western road corridors. In the west, a substantial road building programme is underway. The Tuen Mun-Yuen Long Eastern Corridor will open in July, followed by the Yuen Long Southern Bypass by the middle of next year. We are also spending, as Members know, \$1 billion on four climbing lanes on Tuen Mun Road. In the east, we will commission a feasibility study for Route 16 later this year. This will provide an additional link between the Container Port and Sha Tin.

#### *Rail facilities*

We cannot, of course, rely exclusively on the improvement of the road network for the movement of freight. As with waterborne transport, improvements to rail freight facilities will help relieve pressure on the road system.

In recent years, the volume of freight moved by rail has dropped by about 3% a year, from 2.3 million tonnes in 1987 to 1.9 million tonnes in 1992. This trend reflects a shift in demand to road transport, partly constrained by the operating capacity of the existing freight rail yards.

At present, the KCR handles an average of 220 freight wagons a day from China. This is well within the capacity of the Freight Marshalling Yard at Lo Wu, but uncomfortably close to the handling limits of the five freight yards, which together can handle about 265 wagons a day. To help increase the KCRC's freight handling capability, 5 hectares of land on the Hung Hom Bay Reclamation will be granted to the Corporation for expansion of its main freight terminal. This will increase the terminal capacity by 140 wagons a day.

This is just an interim measure. To serve fully Hong Kong's position as an entrepot and port for China requires a more far-sighted approach to our freight rail planning. At present, less than 2% of rail freight is containerized, some being carried by a new shuttle service between Hung Hom and Da Long to the north of Guangzhou. This limited service, however, points the way to the considerable benefits to be gained from a new freight rail line to the border.

#### *Railway development study — port rail line*

The Railway Development Study has recommended that Hong Kong should develop a Port Rail Line as part of our overall freight transportation strategy. This is to be completed by 2001 on an alignment running from Lo Wu, via the northwest New Territories, to the container port at Kwai Chung. Such a service could carry up to 4 000 containers a day. In the longer term, the line could also incorporate a link to the Lantau Port.

As Members know, the findings of the Study are now the subject of public consultation. Much interest has been shown in the Port Rail Line, and the Western Corridor. I welcome Members' support this afternoon for this proposal. In this context, I should also like to stress that the study has also fully taken into account rail developments in China, in particular southern China. We will keep in touch with the relevant authorities to ensure that our infrastructural developments can keep pace with and benefit each other.

#### *Concluding remarks*

In conclusion, in a properly integrated freight transport strategy, we must also consider the needs of the freight transport industry, the problems it has to face and the measures to improve efficiency. To this end, the Freight Transport Study will look into the existing movement of goods both within the territory and across the border and assess likely trends in the next 20 years. The Study will recommend a strategy for road, rail and waterborne transport systems best suited to the economy of Hong Kong. Its findings will be available later this year and should point the way towards a more integrated approach in dealing with all freight movements. Thank you.

PRESIDENT: Dr TANG, do you wish to reply? You have 5 minutes 5 seconds.

DR TANG SIU-TONG (in Cantonese): Mr President, first I would like to thank my colleagues for supporting the motion. I think all who have spoken do agree that the Government has not taken into account the recent rapid development of the Pearl River Delta and the increase of Sino-Hong Kong trade. It is much to my regret that the Government has underestimated the real situation.

It may be true, as Dr Samuel WONG just now pointed out, that there is a lack of co-ordination between China and Hong Kong. The reply of the Secretary for Economic Services only gave us a beautiful description of the future. He was not aware of the problems which would be faced by Hong Kong in the coming five to six years. Neither had he taken note of our request in today's debate, which was to set up a co-ordinating group to co-ordinate land and waterborne transport development. Mrs Miriam LAU also expressed support for this proposal. As regards the Secretary for Transport, he also brought us a beautiful dream. However, the existing services cannot really meet our daily needs.

I would like to thank Mr TAM Yiu-chung, Mrs Miriam LAU, Dr Samuel WONG and Mr LEE Wing-tat. They agree with my view that there is a need for developing waterborne transport and there is also room for development. If we can develop waterborne transport, the inadequacies of land transport will at least be alleviated. I would also like to thank Rev FUNG Chi-wood, Mrs Miriam LAU and Mr Albert CHAN for proposing that the completion of Route 3 be advanced to an earlier date. In fact, if Route 3 can be completed earlier, it will certainly relieve the pressure on Tuen Mun Highway, and will temporarily cater to the needs generated by Sino-Hong Kong trade in the next five to six years.

As regards problems like the demand for container depots, border crossings and so on, they have not been addressed by the Government in its reply this afternoon. I hope after this debate, the Government will earnestly consider our proposals to strengthen and improve various measures. I also look forward to the setting up of a co-ordinating group by the Government, comprising representatives from the Transport Branch, Economic Services Branch, Port Development Board and Marine Department, who will make a joint effort to examine the problems in the hope of eventually solving all the land and waterborne traffic problems between China and Hong Kong and improving Sino-Hong Kong trade.

Thank you.

*Question on the motion put and agreed to.*

**THE LAW REFORM COMMISSION REPORT ON ARREST**

MRS SELINA CHOW moved the following motion:

"That this Council urges the Government to consider all views expressed by this Council and the community on the Law Reform Commission Report on Arrest so that when policy decisions are taken on it, they will on the one hand be compatible with the Bill of Rights, and on the other ensure effective police power, especially in the area of crime prevention, is maintained to uphold law and order."

MRS SELINA CHOW (in Cantonese): Mr President, I move the motion standing in my name on the Order Paper.

Hong Kong is a community where a spade is called a spade. If something is not quite right, we the people of Hong Kong will seek improvement. If a thing works well and is working, we will not try to change it for the sake of changing it. Mr President, as to my purpose in moving the motion today, I hope that this Council and the public will focus attention on, and make a study of, the pros of cons of introducing United Kingdom's Police and Criminal Evidence Act (PACE) to Hong Kong as recommended by the Law Reform Commission (LRC) Report on Arrest. I also hope that they will focus attention on, and make a study of, what factors the Government should take into consideration in the consultation process and in the formulation of policy.

First of all, we should realize that PACE is intended to strike a satisfactory balance between police powers of crime prevention, search and arrest, and the rights of the suspects. I believe that nobody will oppose such a principle, especially in a community where the Western concept of the rule of law prevails. Since we subscribe to the concept that a person is presumed to be innocent unless proved guilty in a fair trial, we naturally also subscribe to the principle that the rights of the suspects should be safeguarded. The crux of the question is: To what extent should the law enforcement agencies, the Legal Department and the judiciary observe this principle before we regard them as meeting its requirements? What price and cost is society going to pay? Is society willing to pay? Will practice differ from theory? Will the loss outweigh the gain? I am not a lawyer, therefore I can only look at the LRC's recommendations from a layman and an ordinary citizen's point of view.

The recommendations which deal with the police power to stop and check or to stop and search in public places will have the greatest impact on the public. It is my understanding that, if these recommendations are adopted, the things that the police must consider and the procedures that they must follow will be much more complicated than they are now. To begin with, the police officer should have reasonable grounds for suspecting that the suspect has committed, is committing or is about to commit an arrestable offence or that the suspect is in possession of stolen goods or unlawful articles. Then, before exercising his power of search, the police officer must identify himself, cite the pertinent

section of the law and state his grounds for the search. Thirdly, where the police officer has carried out a search, he shall make a record of it in writing, stating the object of the search, the grounds, the date, the time and the place, whether anything was found and whether any injury to a person has resulted from the operation.

The police power to set up road blocks will also be restricted. To begin with, the authorization to set up a road block will be given only if there are reasonable grounds for believing that the offence is an arrestable offence. In other words, the preventive or deterrent stopping and checking of vehicles will not be allowed. Secondly, the authorization should be made by a Chief Inspector. Thirdly, a written record will have to be kept in respect of all vehicles stopped and checked. Fourthly, every person stopped and checked is entitled to a written statement of the reason for the road check if he asks for it within 12 months. In addition, there will be restrictions on the police powers of arrest, entry, search and detention. A detailed written record will have to be kept afterwards of each exercise of such powers. As a result, a great deal more police manpower and material resources are expended but efficiency declines sharply. From experience in the United Kingdom, it now takes two police officers four to six hours to make an arrest whereas it formerly took one police officer two hours to do the same. The LRC Report also endorses PACE's provisions for designated police stations, custody officers of at least the rank of sergeant and review officers, to ensure that periodic reviews are carried out to decide whether or not the detainee should remain in custody.

In sum, the purpose of PACE is to safeguard the human rights of suspects. PACE was based on the recommendations of a special commission set up in 1977. It was introduced in 1984 and came into force in 1986. Well, what are the results so far? The other month, the British Broadcasting Corporation (BBC) produced a documentary that provided an in-depth review of the practical effects of PACE. It was found that, under PACE, the emphasis of police work had shifted from operational duties to paper work and that harm had been done to the police's state of mind and morale because police officers wishing to take action to prevent or deter crimes faced too many impediments and inhibitions. As manpower resources were finite, the burden of paper work had led to less police officers on the beat. This made the public extremely unhappy. Besides, the huge piles of case document gave the prosecution and the court extra workload. As there were too many documentary records, technical errors were common and they were frequently exploited by defence lawyers, who were able to win acquittals on technicalities. As a result, the crime rate went up while the number of arrests went down.

LRC studied PACE and then put forth its recommendations. In making these recommendations, has it taken into consideration the difficulties and adverse effects that had surfaced in the United Kingdom? During its deliberations, has it consulted the law enforcement agencies? Has it tried to get a understanding of the realities in Hong Kong? Within the Police Force, have the front-line officers (rank and file) been consulted extensively on the

recommendations? Also, has the LRC assessed the public's expectations from the Police Force in the area of crime prevention and deterrence? I think that the public should be widely consulted before the United Kingdom's PACE is to be introduced to Hong Kong. In moving my motion, I feel that the authorities concerned failed to take active steps to open up channels for consultation. For instance, the LRC Report was not effectively publicized. There was not strategy, no plan and no schedule for a publicity campaign. No initiative whatsoever was taken to arouse the public's interest in discussing and learning about the Report. The Report, published six months ago, has not drawn the close attention of the community. Discussions have been confined to circles within the legal profession and among top-level police officers. Actually, the Report has far-reaching repercussions closely linked to our everyday lives. It must under no circumstances be regarded as a technical paper. Policy-makers should listen to the comments of all quarters before making the final decision.

I hold that the first step for safeguarding citizen's rights is to act expeditiously to draft a code of practice based on those parts of the Police General Orders that involve the public. Public consultation should be held, and comments invited to revise the draft. In this way, the code of practice will be more acceptable to the public, giving the police a more legitimate and equitable framework to exercise their powers. Coming up with such a code is a positive and effective approach. Other than that, the Report recommends the expeditious revision of the provisions pertaining to entry into private premises to conduct searches, particularly the provision that inter parties applications shall be made before a judge in the case of "excluded material". Such a recommendation is absolutely reasonable. There should also be clear restrictions and controls on the police power to enter private premises to make arrests. This will safeguard citizens' right of privacy.

Mr President, when debating the Bill of Rights Bill, Members of this Council made it clear that there should be a satisfactory balance between the safeguarding of human rights and the maintenance of law and order. This would ensure that we may live safely and work happily. Neither the international covenant on human rights nor Hong Kong's Bill of Rights Ordinance is based on the notion that human rights are absolute. In the overall interests of the community, in accordance with the wishes of the community as a whole and for the protection of personal safety, there must be a right balance between human rights and statutory rights. I hope that the Government will see clearly the public's desire for law and order and refrain from setting up too many obstacles to the exercise of powers essential to the effective prevention of crimes. Such obstacles would cause Hong Kong to eat the bitter fruit that the United Kingdom is eating for having gone too far in making a change.

*Question on the motion proposed.*



MR MARTIN LEE (in Cantonese): Mr President, under the principle of rule of law, the Hong Kong Government must not possess capricious or arbitrary powers. The Government can only govern the community through the exercise of powers vested in it by legislation and by case law. This is the only way to safeguard the personal freedom of the people.

Very regrettably, in common law jurisdictions, both law enforcers and the people feel that the power of arrest is too diffuse and is not well-defined. Professor S H BAILEY said critically, "Nobody is happy with the relevant law. It is really too complicated and it is a hodge-podge of obsolete statutes and case law." The Law Reform Commission of New South Wales, Australia, noted in a 1990 report, "Common law does not give the police a practical chance to pursue its investigations to completion..... Nor does it set acceptable limits on police powers ..... It does not offer real protection to the rights of those in police custody."

In Hong Kong, where there is a common law tradition, we have also lived with the same problems. This has been a grave concern of the legal profession for many years.

With this in mind, the United Democrats of Hong Kong (UDHK) agrees with the Law Reform Commission (LRC) recommendation to have the United Kingdom's Police and Criminal Evidence Act 1984 (PACE) introduced to Hong Kong. We think that PACE will help to correct the above-mentioned drawbacks of the law. On one hand, it will gather up the too diffuse powers now in the hands of law enforcers; it will standardize the powers and procedures of the various disciplined services; it will make the power of arrest more specific and more uniform. On the other hand and more importantly, PACE will provide a specific, clear and legally effective piece of legislation for the protection of the basic rights of persons taken into custody.

In Hong Kong, a citizen's right to personal freedom when he is arrested or taken into custody is recognized in the Bill of Rights Ordinance enacted by this Council in 1991. The Letters Patent has also been revised accordingly to ensure that legislation in the future will not come into conflict with the provisions of the International Covenant on Civil and Political Rights. This is an important milestone in Hong Kong's legal history. When this Council passes new legislation, it must see to it that the objective of complying with the Letters Patent and with the Bill of Rights Ordinance is achieved, thus safeguarding people's rights. This point is beyond doubt.

However, such legislation will merely protect people's most basic human rights. We think that, since Hong Kong is an advanced society, the rights of its citizens should justifiably be more fully protected. During the deliberations of the relevant subcommittee under LRC, the representatives of the Police Force supported all of the recommendations in the LRC Report. Thus, there is no need for us to worry that the adoption of the Report's recommendations will adversely affect police morale or police efficiency in the line of duty.

At this point, I would like to note solemnly a significant translation error in the Chinese-language version of the Honourable Selina CHOW's motion. (She did not provide the translation herself.) The English-language version talks about government policy decisions "compatible with the Bill of Rights". These words mean "consistent with the Bill of Rights" or "not in conflict with the Bill of Rights". However, in the Chinese-language version, it states that government policy decisions be "in tune with" the Bill of Rights, meaning that there is room for accommodation, room for compromise. The translation seems to suggest that when a government policy decision is in conflict with the Bill of Rights, the consideration given to human rights may be less than what it should be. I am afraid that that will mean a mark-down on people's rights under the Bill of Rights Ordinance. I think that human rights are the most basic rights of every citizen. They are the bottom line, not negotiable. If you keep human rights in tune with something else, let them become accommodative, or compromise them, that will not be acceptable to a civilized society.

Mr President, we think that the LRC Report is not flawless. I will talk about the power of stop and search. Paragraph 3.27 of the Report recommends the preservation of Section 17C(2) of the Immigration Ordinance, which empowers police officers and immigration officers to stop people for identity card checks, even under circumstances where no reasonable suspicion exists. The original intention of the section is to make it possible for the officers to find out if a person is an illegal immigrant. But police officers often abuse this power by using it to find out if a person is on the wanted list.

Besides, the checks are discriminatory. Foreigners in Hong Kong are never checked for identity cards. Persons dressed in Western-style suits are not checked, nor are persons wearing gold-rimmed glasses and looking like scholars. The most harassed are probably members of the lowermost social strata and good-looking young ladies. I once heard a radio programme in which a female caller complained that she had been several times stopped by police officers for identity card checks. The police officers did not tell her the reason for the checks. They merely asked for her phone number and home address. She felt very embarrassed and angry.

Mr President, a time-honoured principle of common law is that a law enforcer must consider the objective facts and may use his power only where he thinks that he has "reasonable suspicion". This principle prevents power abuse. However, given that the section of the law cited above does not require there to be reasonable suspicion, it effectively gives law enforcers the power to stop and check people at whim. It is therefore extremely unreasonable. On this point, I am fully in agreement with the minority opinion in the LRC subcommittee. Very regrettably, however, that opinion has not been written into the final report.

I repeat that the principle of "reasonable suspicion" must be upheld by law. The United Kingdom's Royal Commission on Criminal Procedure has noted solemnly, "Safeguards must be in place to protect the public from

capricious and discriminatory searches... The application of the principle of reasonable suspicion must be closely monitored."

We should also take this opportunity to correct loopholes in existing legislation pertaining to law enforcement so that we may keep our legal system and our safeguards for citizens' rights abreast with the times.

For the reasons stated above, UDHK does not accept the wording of the Chinese-language version of the motion. However, we know that the President will in the end read only the English-language version before putting the motion to the vote. Therefore, UDHK finds that it can support the motion.

MR RONALD ARCULLI: Mr President, from the list of speakers on this motion, it would seem that the lawyers within this Council are the primary participants in this debate. Granted that the matter involves a fair bit of legal points, I hope we will have a broad range of views so that members of the public will not be caught in a legalistic whirlpool.

Mr President, the Law Reform Commission Report on Arrest is a highly technical document and indeed the result of much work and thought by both the subcommittee and finally the Commission. If I may say so, it would have been most helpful if a short and succinct bilingual summary, easily digestible by the public could have been released at the same time so that members of the public and interested institutions and organizations could participate in the process.

Mr President, I propose to speak only on one topic in this report, namely, the powers of stop and search. This topic can broadly be described under three heads. First, the ID check; secondly, stop and search; thirdly, road checks.

Firstly, ID checks allow any police officer or immigration officer or immigration assistant or any properly authorized person to require any of us to produce our ID cards if asked. This apparently enables the officer to check the identity of the person plus information or non-information about that person. I say non information because if you have no criminal record or record of violence, no warrant against you and you are not missing, then there is no information on you. Should such an ID check be objectionable?

It seems that the objection to the ID check could be two fold. First, it might violate Article 14 of the Bill of Rights and, secondly, the extent to which the information is given.

The Commission recommends that the areas of information exclude information on criminal record and whether the person is reported missing. It may be easier to explain the exclusion of information of criminal record but how do you explain to parents who have reported a missing teenage child that this information is irrelevant?

Road checks are quite similar to ID checks except that there are three types of road checks. First, where no suspicion is required; second, where reasonable suspicion is required; and third, random road checks. Again, reference is made to freedom of movement, which is guaranteed under the Bill of Rights.

As regards stop and search proper, the existing powers are set out in different Ordinances including the Police Force Ordinance where a stop and search can be initiated if a person acts in a suspicious manner, and instances where there has to be reasonable suspicion.

In its deliberations the Commission paid a lot of attention to a law in England called the Police and Criminal Evidence Act, otherwise called PACE. Mr President, quite a lot has been written about PACE, some good, but certainly from the reports I have had, mostly bad.

It will not be the first time that my colleagues hear the phrase, "a Hong Kong solution". Indeed at a meeting this morning of the Boundary and Election Commission Bills Committee, we were rightly reminded by the Law Draftsman that we should not blindly follow laws enacted elsewhere. We must clearly take into account public opinion and expectation when we deal with this law and order issue.

In this context, I am quite sure that for good and practical reasons each of us are asked for proof of identity, whether by way of security in a housing estate or even driving your own car, entering or leaving a housing estate or car park.

Indeed, in reference to my honourable friend, Mr LEE's comments on who gets asked for ID or who gets stopped, I certainly have been stopped going out of a car park driving my own car, asked not by a police officer but by a car park attendant, to prove my identity and they recorded the ID card number as I left, together with the number of my car.

Mr President, indeed, from the very moment of the birth of a baby, identity is crucial as his or her footprints are always taken. I would have thought that we as a community will want to ensure, as best we can, that our streets and our homes are safe for our families and our children.

It is therefore in this context that I ask my honourable colleagues not to jump to solutions where the cure might be worse than the disease.

Mr President, it behoves all of us in this council to improve the law where there is abuse, but not to do so because other countries do so, as each community has their own peculiarities. In our search for a balanced solution we must not forget the sole purpose of the exercise which, simply put, is to serve and protect our community.

In this regard, before changes are made, I urge the Administration to issue a consultative paper so that the public and all interested parties, including the whole spectrum of our law enforcement agencies, can be given the opportunity of expressing their views and their expectations as to how this Council and the Administration can tackle this rather delicate and important task.

With these observations, Mr President, I support the motion.

MRS MIRIAM LAU: Mr President, as a member of the Law Reform Commission, I am proud to see the diligent work of the Commission, exemplified in this report, acting as a catalyst of positive progress in Hong Kong. The principled objectives sought by the Commission are not only worthy of our attention, many are necessary as safeguards of individual rights and freedoms. At this dynamic and fluid point of Hong Kong's history, codes and procedures which will ensure compliance with the Bill of Rights represent a natural progression for our society. Yet "freedom" is never absolute and does not exist in a vacuum. Civil liberties must be considered in the light of pragmatic considerations and conditions that surround Hong Kong's security. This report should therefore be judged against the background of our changing situation and it is useful to view these recommendations as an initial basis for discussion rather than the last word on potential reforms.

Most of the proposed changes have varying degrees of impact on our local law enforcement agencies and require significant and comprehensive modifications of current practices. These agencies, universally characterized by their effectiveness in making our home one of the safest in the world, should understand and have a role to play in the evaluation and gradual implementation of the proposed reforms. It is not the case in Hong Kong that we are trying to make right what the police are doing wrong. Rather, we are attempting to improve a system that already works well by all comparisons. The Philips Report, which led to the enactment of the Police and Criminal Evidence Act in the United Kingdom, upon which the Commission's present proposals for reform are based, proposed that any new law governing police powers should meet the standards of fairness, openness and workability. Since our goal is fine tuning the delicate balance between preserving maximum public security and enhancing individual rights, and not a drastic coarse adjustment of the criminal justice system, it is essential to examine the Report's underlying goals of fairness, openness and workability with the co-operation of the law enforcement agencies which will bring these proposals to life.

It is reasonable to expect that the proposals contained in this Report will be subject to modification before enactment of any legislation, when current circumstances, new technology and innovative input will offer increased performance potential in achieving the twin objectives of liberty and responsibility. I believe the Commission's role as a catalyst of improvement will best be served by weighing "principle" and "practice" on the same scale.

What is clear at the outset is that the implementation of any proposed changes, whether in their current form or amended, must come with a comprehensive commitment of new resources to support it. Many of these recommendations are of such a level of detail that they will require comparable detail in training. Not only will this necessitate the design and publication of materials and courses for new trainees of the forces, but they will also involve significant retraining efforts of seasoned veterans. Common wisdom tells us that teaching "old dogs new tricks" is difficult at best, and to undertake such a task for the entire police force will require unprecedented training efforts. We must be prepared to make a substantial investment of hours and allow sufficient lead time to carry out this training which will be the crucial cornerstone of successful implementation.

Perhaps more importantly is the need for additional manpower in our police force if the proposals are to be implemented. We have, for some time, expressed grave concern over the difficulties encountered in police recruitment. With efforts now being made to try to improve efficiency, the police establishment is not projected to grow in the foreseeable future. If we take the *status quo* and simply superimpose the proposed reforms upon it, the dramatic need for personnel will immediately be evident. With substantially more records to be kept, more procedures to be adopted, more reviews to be carried out, more authorizations to be made, there must be many more police officers to do the work. And that assumes that the dynamism of our changing and growing society, let alone the potential for fluctuation in the local crime rate, does not already demand a natural growth in our police force. But where do we get all these officers? All these factors must be carefully and fully considered and built into our commitment from the beginning. Even before this Report was published the public had been calling for a greater presence of uniformed officers on the streets. Without addressing the clarity of the current needs, it is clear that implementing the reforms at a time when police manpower is already insufficient could only result in worsening the ratio of "street" to "desk" officers and run against the public will. If we discount or ignore the overwhelming popular sentiment to heighten enforcement of law and order in our quest for improvement and compliance with essential rights, I believe that, in the long run, will be counterproductive to Hong Kong's ultimate aims.

The people of Hong Kong have no more tolerance for an acquitted criminal walking free on the streets than they do for a wrongful arrest. While both of these scenarios may be caused by human or technical errors, the latter mistake can be redressed while the former can do little more than cause a deterioration of public security and a diminished confidence in public order. Such delicate dilemmas cannot be lightly dismissed and demand prudence in the pace we push forward. At the end of the day, when discussions and public consultations are complete, implementation of the reforms must be gradual and carefully phased in, commensurate with our ability to deliver on existing resources.

Mr President, I believe that we have the responsibility to refine our codes, practices and laws to ensure reasonable protection of individual liberties. I also believe that this can be done without undermining our law enforcement agencies, especially the brave officers who literally put their lives on the line for us every day. But to achieve the appropriate amount of reform, we must be as committed to the pragmatic needs of these agencies as we are to principles espoused in the Report. One without the other is simply insufficient to effectively accomplish either. I am pleased to be part of the Commission delivering this comprehensive catalyst of change, and I look forward to serious efforts of co-operation and consensus to develop the checks and balances that will not only maximize our security and safety but also safeguard the rights of Hong Kong citizens.

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

PRESIDENT: It is now eight o'clock and under Standing Order 8(2) this Council should now adjourn.

ATTORNEY GENERAL: Mr 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 MOSES CHENG: Mr President, when I first read the report of the Law Reform Commission last year, I was impressed by the loftiness of its goals and the virtues it espoused in the name of individual liberties. As a solicitor, I have learned over the years that the most noble of notions in print often lead to disarray and confusion in practice. My concern for this report is that its worthy objectives not be sacrificed unnecessarily for some of its problematic recommendations. The fact that the report heavily relies on the United Kingdom model of the Police and Criminal Evidence Act (PACE) begs us to consider several questions, and even more importantly, the experience, results and lessons learned since PACE was enacted in 1984.

To be honest, I am uneasy, in general, over the idea that Hong Kong's progress and problem-solving, on any issue, should still be reliant on the wholesale import of foreign legislation. Needless to say, such a method risks being irresponsibly deficient of local characteristics. Furthermore, if part of the original objectives were aimed at enabling greater effectiveness, we must consider that Hong Kong has one of the lowest crime rates amongst the world's great metropolitan areas. Today, the rate of crime in Hong Kong is approximately one ninth of the soaring rate in London. Most statistics demonstrate a rise in the United Kingdom crime rate since the implementation of PACE and a whole new market for lawyers seizing on technical procedures

to exponentially expand the litigation load of the courts. Consequently, while crime is up in the United Kingdom, criminal prosecutions are reported to be falling, as questions of technical procedure and record-keeping begin to eclipse questions of justice determined by guilt or innocence. The lessons of a demoralized police force and disenchanted public, after less than a decade, and the danger of even greater deterioration in confidence, should be studied in detail. Our low rate of crime and high level of confidence are the envy of much of the civilized world, and we must take care not to "throw out the baby with the bath water" when we seek alteration to effective traditions of law and order.

I concur with the Commission's call to enhance the safeguards of individual liberties and all members of our society should be guaranteed, but I am fully not convinced that adopting, or even adapting, a foreign model from Britain or America best addresses our unique circumstances. The western affinity for the proliferation of legal procedures has burdened the courts, police, and the public, building bureaucracy and often obscuring truth and justice. I am reminded of the common sense, that is "if it isn't broke, don't fix it" because despite our laudable goals to continue both improvement and progress, Hong Kong's admirable record of law and order is far from broken.

Most problematic, to my mind, is the concept of a rigid, inflexible, and narrow range of operating procedure that hinders "the man on the beat" from using his common sense and commitment to police codes to act with immediacy in a crisis situation. Had we enacted the essentially British model already, one must question how many complaints or suits of unlawful arrest might have arisen out of police efforts to react to the New Year's tragedy in Lan Kwai Fong as they sought to secure public order. How many repeat offenders would be released or set free to roam our streets, because a single document failed to meet proposed guidelines? How many young officers would hesitate, or even fail to make an arrest, because the abundance of new procedures forces them to contemplate the personal consequences of human error? In my judgment, even if the answer is only one, then it is one too many. The probability of these and other adverse reactions, already in evidence in Britain, also being imported as a result of these recommendations in their current form is unacceptably high.

Notwithstanding these observations of the obvious, we can selectively extract from the report those concepts that contribute to a more healthy and effective balance between enhanced individual rights and a safer society. To strike that balance we must continue the co-operation and confidence shared by the public and the police, and avoid measures that polarize them. For example, rather than debating, deliberating, and detailing new legislation that comprehensively documents questioning procedures, we should consider investing in technical modernization to simply record or videotape interrogations, and achieve the same ends with greater simplicity and less bureaucracy.



Much has evolved and changed for the better in the five years since the Commission's subcommittee began its work, and it is necessary to operate in the current context, rather than some hypothetical realm of what our rights mean in the abstract period. Therefore, Mr President, I urge the Government to hold early and comprehensive public consultations on a code of practices that entails the reality of the Hong Kong environment. I hope that by adding this extra step in the process, we can scrutinize each recommendation, with the benefit of hindsight on the British experience, and a concentration on foresight for our own future.

We can and should enhance individual liberties as citizens interface with the criminal justice system, but it need not be at the cost of social stability or increases in crime. Hong Kong people want fairness and just treatment and they also value feeling safe to walk the streets without fear. Since these features of our society are not, at present, mutually exclusive, let us work hard to see that any improvements we undertake do not take us down that destructive path. The balance we seek is one that assures our social stability into the next century of growth. If we more evenly distribute the lofty and innovative thinking of the report between the means and objectives, I feel certain that balance is within our reach.

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

MR SIMON IP: Mr President, the Police and Criminal Evidence Act 1984 is an important piece of legislation that has overhauled the criminal justice system of England. It is the end-product of an elaborate and comprehensive review of police powers spanning well over 10 years. In the seven years that it has been in force, it is generally considered to have struck the appropriate balance between adequate police powers and protection of suspects' rights.

Many people in Hong Kong criticize the introduction of this legislation. They claim that the new procedures and safeguards are costly and bureaucratic impediments to police operations and that any attempt to modify or rationalize police powers is tantamount to a reduction in their effectiveness.

It is all too tempting to think that in introducing proposals for change, especially against the background of the Bill of Rights, we are only looking after the rights of the criminals. But that is far too simplistic a view to be true.

A society governed by the rule of law must contain adequate safeguards against abuse or over-zealous use of state power for a fundamental reason. They exist to prevent the executive from becoming too powerful and capable of encroaching upon the rights and liberties of our citizens without proper justification.

I shall now briefly examine three important areas of police powers which I believe can be much improved by the adoption of PACE.

*Firstly, power of stop, search and arrest*

The present powers of the police are too wide and vague in many respects. First, the power of summary arrest covers all imprisonable offences. This would include many trivial and minor offences such as spitting and littering. Secondly, the police can stop, search and detain someone simply because that person is acting suspiciously, even if he is not suspected of having committed any offence. Thirdly, there is no requirement that an arrested suspect be informed of the grounds for his arrest. This is incompatible with Article 5(2) of the Bill of Rights which provides that anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and the charges against him.

The arrest provisions in PACE rectify some of these problems by having a stricter regime as to the circumstances in which an arrest can be effected, and also requiring that suspects be informed of the grounds for his arrest.

*Secondly, search of private premises*

At present, under section 50(7) of the Police Force Ordinance, a magistrate may issue a search warrant if it is reasonably suspected that there is something of value to the investigation of any offence in a premises. This power can be exercised even if the subject is suspected of an extremely trivial offence, or that the evidential value of the materials searched for is minimal.

In contrast, PACE has a more elaborate structure of procedures for searching private premises. Warrants must only be issued in respect of serious arrestable offences and there must be reasonable grounds to believe that the materials on the premises are likely to be of substantial value to the investigation. Conditions need to be satisfied before the granting of the warrants, for example, that it is not practicable to communicate with any person entitled to grant entry to the premises, or that the purpose of the search would be frustrated unless there is immediate access to the evidence and so on.

Under PACE, there is also protection for legally privileged materials and other sensitive materials classified as "excluded materials" or "special procedure materials". A judicial hearing would be held to determine whether the police can gain access to these materials. This would be an improvement on the loosely-worded provisions we now have in Hong Kong.

*Thirdly, the power of detention*

One final area of importance is the procedures and safeguards during detention. This is one of the most unsatisfactory areas as there are minimal provisions for this in our legislation. Regulations for treatment of suspects in custody is mainly provided by the Police General Orders and the Judges' Rules. The former is only a set of internal administrative directions which are "restricted" and are not even available to the public. The Judges' Rules are

primarily concerned with the admission of evidence and are not a general code on the treatment of suspects during detention.

One of the few provisions on detention is section 52(1) of the Police Force Ordinance, which provides that where a person is apprehended and detained in custody, he shall be brought before a magistrate as soon as practicable. No time limit is specified. It is generally accepted that such a provision is far too vague to constitute a sufficient safeguard for suspects during detention.

In contrast, PACE provides time limits for detention without charge. There is a 24-hour limit subject to extension to 36 hours. Further extensions can only be granted by a magistrate if he believes that there are reasonable justifications for doing so.

Most importantly, PACE introduces a scheme to regulate the questioning and treatment of suspects in detention. Several important rights, such as the right to legal advice, were enshrined and strengthened. The Act also creates the post of Custody Officers in police stations whose general duty is to ensure that all detainees are treated in accordance with the Act.

In conclusion, nobody would doubt the importance of the police having adequate powers in their fight against crime. In the run-up to 1997, the maintaining of law and order is of top priority in Hong Kong. At the same time, however, we must not lose sight of other concerns. The protection of civil liberties is one such concern. I believe the adoption of PACE would strike the right balance between these two often competing interests.

Mr President, with these words, I support the motion.

MR FRED LI (in Cantonese): Mr President, the Law Reform Commission in its Report on Arrest has made a comprehensive analysis of the power of arrest and made a number of reform proposals. Meeting Point welcomes the report.

However, how can human rights and police powers be sufficiently safeguarded? Meeting Point thinks that they must be safeguarded under the important principle of "due process". I will give an explanation of "due process", while another member of Meeting Point Mr WONG Wai-yin will comment on how to implement "due process" in the context of police powers and human rights and on some particular parts of the report by the Commission.

In our society, there has long since been a widely held view that police powers and human rights are always in conflict and that what is being sought is but a point of balance between the two — a negative approach, so to speak. This view will only give rise to misunderstanding on the part of the public and a conflict between police powers and human rights. Our view is quite the opposite. We think that the development of society is such that our objective

now should be to find common ground and strike a balance on the basis of mutual promotion and reciprocal checks and balances. This is a positive balance the attainment of which will require the adoption of "due process" as an important principle.

To attain "due process", attention must be paid to the following nine points:

- (1) There must be a set of procedures for the enforcement of the relevant laws. These statutory procedures are not to be internal codes of practice, and should be put through a legislative process to enable the public to have ready access to and understanding of them. The procedures must also be reasonable.
- (2) The procedures must be pre-defined, which means that the relevant Ordinance must set out in great detail the steps to be taken under the procedures in order to minimize the use of discretionary power.
- (3) There should be extensive consultation before the formulation of the procedures so that whoever involved (be they law enforcers or members of the public) will find the procedures acceptable even if they should swap roles.
- (4) After the procedures have been formulated, there should be extensive publicity so that the public can fully understand these procedures to the extent of there being a "social consensus" on them.
- (5) After the procedures have been passed, they must be fully implemented. Every step taken under the procedures must have a legal basis and a prescribed track to follow.
- (6) During the carrying out of the procedures, the law enforcers and the members of public concerned should have the safeguard in the form of the presence of a pre-arranged witness so as to avoid abuse by either side.
- (7) Record must be kept of how the procedures are being gone through and it must be ensured that there is no chance of evidence being fabricated or a signature being obtained through coercion. Both sides should have a copy of the record.
- (8) A violation of the procedures should in itself be a criminal offence.
- (9) There should be a mechanism to monitor the implementation of the procedures, so that complaints can be lodged by those who feel themselves aggrieved, especially the public. The most ideal scenario would be to set up an independent monitoring organization, for

example, an independent office to handle complaints against the police.

Meeting Point thinks that the aforesaid broad principles of "due process" can guard against abuse by law enforcers or the public.

Meeting Point welcomes very much the effort shown in the Law Reform Commission Report on Arrest to attain "due process". But has the Commission provided sufficient procedural restrictions in this regard? Is it appropriate for the Report to refer solely to English law on the question of arrest? Another member of Meeting Point Mr WONG Wai-yin will speak on these aspects.

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

MR MAN SAI-CHEONG (in Cantonese): Mr President, according to Leon BRITTAN, the former Home Secretary of the United Kingdom, the purpose of the Police and Criminal Evidence Act (PACE) was "to promote a modernization programme concerning criminal investigation laws and to carry out a reform that is long overdue". The principal objective of PACE is to equip law enforcers properly for the effective, just and responsible enforcement of law. At the same time, PACE also looks after the basic rights of persons who are under arrest. Therefore, PACE is intended to apply to all law enforcers, not the police alone.

An analysis will show that PACE uses three tools or means to specify the powers of law enforcers. Firstly, procedures and time frames are specified. Secondly, records are required to be kept properly. Thirdly, various kinds of codes of practice are formulated. Using these three tools, PACE lays down objective standards for operational procedures and lets law enforcers and citizens know what the former's powers and the latter's rights are. In this way, the laws governing criminal investigations can live up to the principle of rule of law, whereby law enforcers are properly empowered under clearly defined legislation to enforce the law. This is why the United Democrats of Hong Kong (UDHK) thinks that PACE should be introduced to Hong Kong expeditiously. PACE will help to ameliorate the present unsatisfactory situation, where the power of arrest is vague, hard to monitor properly and rather mystifying.

While accepting the Law Reform Commission (LRC) Report, we think that it has some flaws with regard to some of its recommendations. And more thorough public debates on them are warranted. The Honourable Martin LEE has already made some in-depth comments on the matter of stopping people for identity card checks. I intend to discuss two other points. One is the police power of "stop and search proper". Where a police officer suspects that a person has committed an offence or is in possession of stolen goods or offensive weapons, the Report recommends that the officer may, after stopping this person, use his beat radio to check the records so as to find out, among other things, if the person being stopped and checked has a previous conviction

record. We think that this is not necessary. The exercise of the power to stop a person already presupposes a reasonable suspicion, which is why the power is exercised. Whether the person has a previous conviction record is not useful information that serves a reasonable purpose to the police. Besides, his having a previous conviction record does not constitute a cause of reasonable suspicion. Worse still, this power, if it is to be kept, will adversely affect persons who have been rehabilitated. When they are stopped by the police, they will probably be subjected to unwarranted harassment if their previous conviction records become known. This is the typical "black sheep theory". It is unfair to law-abiding citizens.

My second point is the definition of an arrestable offence. The gravity of an offence in this category is determined mainly on the basis of the maximum penalty that the offence carries in terms of the length of the prison sentence. The police is given greater power for dealing with such offences. The LRC Report recommends the introduction of such a category of offence to Hong Kong. But, for the sake of "consistency and clarity", it recommends that an arrestable offence in Hong Kong be defined as one carrying a maximum penalty of at least one year's imprisonment, while in the United Kingdom, it is at least five years. We feel that this is a very great problem with far-reaching repercussions. We also feel that the LRC Report fails to provide ample justification for the particular recommendation. We suggest that the Government should study and discuss the issue in greater depth.

In sum, I hope that the Government will expeditiously introduce draft legislation and hold extensive consultation on it so that the relevant laws in Hong Kong may be modernized and brought in line with the underlying principles of PACE.

Mr President, with these remarks, I support the English-language version of the Honourable Selina CHOW's motion.

MR JAMES TO (in Cantonese): Mr President, a moment ago, I was very worried that seven minutes might not be enough for fully making my points. Fortunately, Mr Simon IP, who made some specific points of the Police and Criminal Evidence Act (PACE), has made most of the legal arguments that I wanted to make. I wish to say that I am in full agreement with his arguments. As for Mrs Selina CHOW's speech, it was both vivid and persuasive. And I feel that I will be lacking in the spirit of debate unless I make a response to her remarks. So I venture to respond to some of the arguments that she has just made.

First of all, I felt that Mrs Selina CHOW or, rather, many Members from the Liberal Party just now made a number of negative comments or expressed reservations. Their point is that we should not blindly introduce the United Kingdom's law to Hong Kong. They held, in particular, that Hong Kong's existing system has been in place for a long time and it is working. In fact,

what they did was telling one side of the story to support the reservations that they had about introducing PACE to Hong Kong. By the same token, I can cite 10 positive cases to show why we need to introduce PACE to Hong Kong. I am very glad to hear that Legislative Councillors from the Liberal Party endorse PACE in principle. I agree that we should not blindly follow the examples of other countries and introduce their laws to Hong Kong but must look at their effectiveness.

I want to respond here to some of the arguments made a moment ago by Mrs Selina CHOW and other Members from the Liberal Party. Mrs Selina CHOW said a moment ago that, if PACE was introduced to Hong Kong, then police officers would be able to search a person only on reasonable suspicion of an arrestable offence. I feel that Mr Simon IP has already responded to that point. Can a person be searched on suspicion of a petty offence? Will a police officer put someone who committed some misdemeanour under arrest? I believe that it is very clear where the line should be drawn. This particular police power is meant to deal with serious crimes. Well then, let us take a look. The Law Reform Commission (LRC) thinks that an arrestable offence should be one carrying a maximum penalty of 12 months' imprisonment or longer, that is, it should be a serious crime. In the United Kingdom, a serious offence is one carrying a maximum penalty of five years' imprisonment. To be sure, we have to take our time gathering and considering information and making a study to find out what offences carry a maximum penalty of one-to-five-year imprisonment. We must study the law books chapter by chapter, section by section. At the same time, we must consider the conditions in Hong Kong. Then we can decide if an offence carrying a maximum penalty of one year's imprisonment should be classified as an arrestable offence, if such an offence provides a justification for the exercise of the power of arrest and the power of search. This is something that we should look into.

Secondly, an issue was made of the requirement for a law enforcer, when searching or arresting a person on reasonable suspicion, to state his reason for doing so. In fact, common law, which we practise in Hong Kong, already requires law enforcers to state the reasons for their actions. The only difference is that the introduction of PACE will turn an unwritten law into a written law and give further protection to the rights of suspects.

Here is another point. Mrs CHOW raised the issue of road blocks. If PACE is introduced, road blocks can be set up only if they are meant to deal with arrestable offences. (The LRC Report recommends that in Hong Kong, if an offence carries a maximum penalty of one year's imprisonment, it is an arrestable offence. In the United Kingdom, an arrestable offence is one carrying a maximum penalty of five years' imprisonment.) It is argued that this restriction will make it impossible for law enforcers to set up preventive and deterrent road blocks. I have reservations about this argument. Why? Let us look at the issue from a different angle. When there is no report of serious crime, is it necessary to set up road blocks all over the place? Is it necessary to take a chance and see what the catching will be for one night? Perhaps a suspect

or two can be caught. Is such "fishing expedition" necessary? I feel that it will be an abuse of police power, a waste of police power. In many cases, road blocks are now set up simply because the police alleges that the public has been fearful of late about increase in crimes, without anything concrete to act on, without any clue, without any intelligence information. I doubt that a few road blocks, a few trips made by police vehicles or a few flashes of the blue domelight are effective as a crime deterrent. I have reservations about the effectiveness of setting up road blocks to stop and search vehicles.

Mrs CHOW also said that the introduction of PACE in the United Kingdom has led to declining efficiency despite additional police officers so that it now takes two police officers four to six hours to do the work that it has previously taken one police officer two hours to do. Indeed, we must make a detailed study of the effects of the PACE on the United Kingdom. Of course, we must also make a comparative study of police efficiency in Hong Kong and in the United Kingdom. To be honest, based on my own understanding and study, the efficiency of the Police Force in Hong Kong is quite high. There are naturally flaws in an otherwise perfect situation. In fact, much of the paper work does not necessarily have to be done by police officers. For instance, I have seen some senior inspectors and female police sergeants who work as secretaries to high-level police officers. They are asked to do some secretarial work or process some documents in response to law firms' request for information. I feel that this is a waste of manpower. The work can probably be done by an EOI under the supervision of a senior officer. In other words, an EOI can replace an inspector or a sergeant who is engaged in secretarial duties. The female police officers freed in this manner may then be deployed to other posts which require them to deal with offences against women and children. This will put personnel to more efficient use. So I feel that the question of efficiency is a superficial issue and may not a real issue.

Will more supervision add to paper work and red tape? This is something that we should look at. Just as Mr Moses CHENG noted a moment ago, we should not totally reject the United Kingdom's PACE simply because of our abhorrence of paper work. Nor should we look at PACE in a terrified state of mind. I feel that there is a big problem with such a state of mind. Much of the paper work can be done by clerical staff instead. Of course, this will have to be in keeping with the police force's so-called maximum effort to turn over paper work to clerical staff.

Lastly, I would like to point out that Members' perspectives on the issues are influenced by their backgrounds. I am no exception. Some of the distinguished Members will note that when police officers see them, they will salute, bow and smile. Other Members, who are in touch with the grass-roots, go to meet many people and receive many complaints. They find many cases of abuse of police power. I have witnessed some incidents in which police officers abuse their power. I feel that, because Members' backgrounds are different, so are their political and social philosophies.



I will support Mrs Selina CHOW's motion. But I hope that the Government will study the issues sincerely and then act accordingly. Lastly, there is one point that I must make for my own peace of mind. One Chinese version of the cautioning statement read by the police says, "You are not obliged to say anything unless you wish to do." The wording is in obsolete Chinese and does not positively inform a suspect of his rights. It should be changed to say, "You have a right to ....."

*The buzzer sounded a continuous beep.*

PRESIDENT: Mr TO, you must stop.

MR JAMES TO (in Cantonese): Mr President, I so submit. I hope that the Government will make a study and come up with a proper version of the cautioning statement read by the police.

MR WONG WAI-YIN (in Cantonese): Mr President, Meeting Point thinks that "due process" is the overriding principle and that we must pay attention to a proper balance between police powers and human rights under this principle. In connection with the rights of a person who is arrested, Article 5 of the Hong Kong Bill of Rights Ordinance provides as follows for liberty and security of person:

- (1) Every one has the right to liberty and security of person. No one shall be subject to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
- (2) Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

The Bill of Rights Ordinance sets forth the basic principles relating to arrest and detention. But the Ordinance only provides for human rights. The basic principles reflect due process. In fact, a proper balance between police powers and human rights is necessary. The Law Reform Commission (LRC) Report on Arrest makes the strongest case possible for due process. Meeting Point welcomes it for this reason. Meeting Point thinks that due process can find expression in seven ways as follows:

- (1) The police must have adequate and reasonable powers as the basis for law enforcement.

- (2) When exercising their powers, the police must have a reasonable cause. They must not exercise the powers arbitrarily.
- (3) Except in an emergency, the law enforcer must inform the member of the public concerned of the reason for exercising his powers, the legal basis for exercise of powers and the legal action to be taken. On the other hand, the member of the public has the right to ask to see the police officer's identification paper and take down his name and number. Where this procedure is not completed in an emergency, the police must complete it as soon as possible afterwards.
- (4) After each action, the police must prepare a record of it and provide a copy to the arrested person.
- (5) The powers exercisable by the police and the rights and interests of the public should be reflected and enshrined in the law. Whoever breaches this law should be prosecuted.
- (6) A member of the public victimized by a law enforcer's unreasonable exercise of powers should have adequate and independent channels available to him to lodge a complaint.
- (7) Through education, training and publicity campaigns, both the public and the police are to be made aware of the importance of human rights and police powers.

The LRC Report is just a beginning. Borrowing from the United Kingdom's Police and Criminal Evidence Act (PACE), the report makes many procedural recommendations. A drawback of this otherwise good report is that its recommendations include some of the flawed provisions of PACE. Firstly, in regard to the power to stop a member of the public for an identity card check, Meeting Point's law group made a proposal in December last year to separate the power of checking for identity cards to catch illegal immigrants from the power of checking for identity cards in stop and search cases and to put restrictions on the kinds of information that might be obtained during identity card checks. Meeting Point further suggested that "reasonable suspicion" should be required as an additional ground for the checks. This would prevent abuse of the power of checking for identity cards. The subcommittee under LRC originally intended to make similar recommendations. Unfortunately, this mainstream opinion of the subcommittee was deleted from the LRC Report. Meeting Point thinks that the Government should give new thought to this proposal and lay down a stricter procedure for identity card checks.

Secondly, the police should not only consider LRC's recommendations relating to the power of stop and search but also take the initiative to inform the public of its right to ask for copies of records kept.

Thirdly, Meeting Point welcomes LRC's recommendation for adoption of section 67 of PACE relating to internal codes of practice. However, in the United Kingdom, breach of section 67 is not an offence. This is all right for the United Kingdom because it has a relatively independent complaints-against-police mechanism and the courts there have the power to refuse to consider, or the power to reject, evidence obtained in violation of the internal codes of practice. This power of the courts is based on section 82(3) of PACE. Therefore, Meeting Point thinks that, if section 67 is recommended for adoption, then section 82(3) should be recommended simultaneously. Section 67 by itself does not have teeth.

Mr President, despite its abovementioned flaws, the LRC Report on the whole deserves support.

With these remarks, I, for Meeting Point, support the motion.

MISS CHRISTINE LOH: Mr President, I am a member of the Law Reform Commission, although I am not speaking on behalf of the Commission.

In December 1988, the Commission appointed a subcommittee to consider the present law and to make proposals for possible reform. The subcommittee included members from the judiciary, the legal profession, the Attorney General's office and the police force.

The subcommittee held a total of 44 meetings and made its proposals to the Commission in March last year. In some cases, the subcommittee's views were divided. The Commission itself held five meetings to consider the proposals before agreeing on the final report in July last year.

The English Police and Criminal Evidence Act 1984, or PACE, provided a good base for the Commission to work from. The Act represents the first legislative attempt to enact a comprehensive code of police powers and practices in relation to the investigation of crime.

Other common law jurisdictions have also been examining legislative and procedural reforms in order to make the conduct of criminal investigation better meet the needs of modern society. It is, therefore, timely for Hong Kong to do the same.

The proposed reform in the Report on Arrest are intended to provide an open and fair system of criminal investigation. It aims to strike a proper balance between law and order, and the liberty of the individual.

On the one hand, the police will have a clear, detailed and comprehensive set of rules of procedures under which to operate, and on the other hand, the rules aim to protect the fraught position of persons in police custody.

Striking that proper balance is not easy. The Law Reform Commission's report represents a considered attempt to do so. It appears that the police are only partially happy with it. They are concerned that the job of the police could be made more difficult by the proposed criminal procedures.

I understand that the Government has an internal committee reviewing the Commission's recommendations. No doubt the police will make their views known within that committee. I have some sympathy for some of the police's concerns, and less for others.

Due to the lack of time, I wish to only pick two subjects.

#### *Arrestable offence*

The definition of "arrestable offence" is crucial to the proposed reform. The Commission recommends that it means an offence for which the sentence to imprisonment exceeds 12 months.

It has recently been brought to my attention that this definition will, for example, allow a policeman to arrest someone whom he witnessed breaking the windscreen of a parked car, but not someone who has just hit another person.

Offences such as common assault, fighting in a public place, possession of a simulated bomb, road racing, and impersonating certain public officers, are some of the crimes which apparently fall outside of the stated definition of "arrestable offence."

These are anomalies. They should be addressed during the policy-making and legislative stages of our law making process.

#### *Keeping proper records*

An area in which I have less sympathy with the police is that of record keeping. The Commission's proposals require policemen to keep meticulous records in a range of situations. It requires a higher standard than the one being practised at present.

The police see this requirement as bureaucratic, resulting in a paper mountain without necessarily improving crime detection and investigation. The increased paper work, they argue, would keep police officers in the stations and not out on the beat where they should be.

The requirement to keep proper records in a more systematic way is part of an open system of government we all want. It is also the best way to balance police powers with procedural safeguards. It will also help police officers to be more responsible in the execution of their duties, by making them more directly and individually accountable for their day-to-day work.

This Council recently agreed to grant substantial funding to the police to upgrade their computer and technical support system, in order to, as their representatives so eloquently argued, allow police officers to keep better records in a more efficient manner.

The fact that the police may have to spend more time to teach officers how to keep proper records, if the Commission's proposals are accepted, is not an argument for it being too troublesome to do so.

However, I am prepared to allow for police concerns that technical procedures might create more loopholes which could be used as the basis of invalidating an entire case. I believe these fears can be allayed by devising a user-friendly system which would provide accurate records for the purposes of the courts, which uses English as its primary language still. The police, must, however, also ensure that officers understand and respect the new system, and that they use it properly.

### *Politics*

A final point is whether section 113 of PACE should apply to Hong Kong. The Commission thought that it "appears unnecessary to introduce a provision such as section 113 governing the way in which military police in Hong Kong should conduct investigations" because the United Kingdom's armed forces in Hong Kong are subject to United Kingdom legislation.

What happens after 1997 is a sensitive political issue. After 1997, the People's Liberation Army will take over the work of the United Kingdom's armed forces. How should the PLA conduct investigations?

Article 14 of the Basic Law states that:

"in addition to abiding by national laws,  
members of the garrison shall abide by  
the laws of the Hong Kong Special  
Administrative Region."

This should be taken to mean that Hong Kong shall have the right to introduce provisions relating to the conduct of the Chinese military police after 1997. The British and Hong Kong Governments should begin to address this issue soon.

### *Conclusion*

Mr President, I believe the Commission's proposals provide a useful base for policy formulation and legislative guidance. The aim is to increase public confidence in the integrity of police practices and the criminal justice system. I, therefore, support the report as well as the motion.

SECRETARY FOR SECURITY: Mr President, I am grateful to Honourable Members for the opportunity offered by this debate to listen to their thoughtful and constructive views on the Law Reform Commission Report on Arrest. I am happy to confirm that they will be fully considered when a policy decision is taken on the Report.

The task assigned to the Law Reform Commission four years ago was daunting; it was asked to examine the then existing law and practice governing the powers and duties of the police, other public officers and private citizens, relating to stop and search, arrest and detention. It was specifically asked to consider whether provisions in the United Kingdom Police and Criminal Evidence Act 1984, known as PACE, should be adopted in Hong Kong. The Report is a very detailed and comprehensive document containing over 60 recommendations, and we are grateful to the members of the Commission for their hard work.

PACE defines the limits of police powers in the United Kingdom and sets out procedural requirements to avoid the abuse of these powers. The Law Reform Commission proposes the adoption of a substantial number of the provisions in PACE, including those on road checks and detention, suitably modified to suit Hong Kong's circumstances.

The recommendations of the Law Reform Commission apply not only to the police, but to other law enforcement agencies as well. Following publication of the Report, we sought initial comments from the disciplined services affected by the recommendations; their preliminary view is that the recommendations may have a profound effect on the effectiveness of law enforcement; they will certainly require legislation and they may give rise to substantial financial implications. We concluded, therefore, that careful, detailed consideration was required.

Mr President, I hope that Honourable Members will not misunderstand if, even at this early stage, I sound a note of warning and echo some of the remarks made this evening. PACE has not been a panacea in the United Kingdom; the legal profession, senior police officers and some members of the judiciary there have publicly voiced their reservations. There are also differences in the social ills perceived in the United Kingdom prior to 1984, when PACE was introduced, and those in Hong Kong today. PACE was introduced in the United Kingdom at a time when the police forces there were far from homogeneous, and there was increasing crime and racial tension in the country. There were also doubts about the way in which the police were handling some investigations. A number of high profile cases, which had resulted in the imprisonment of people, had seriously called into question police powers. These factors are not present in Hong Kong which, unlike the United Kingdom, has enjoyed a comparatively low crime rate for many years and free from racial tension.

Unlike Hong Kong, the United Kingdom does not have a domestic Bill of Rights and this made it even more important for the laws there to set out clear limits on police powers and the safeguards against abuse. On the other hand, we do have a Bill of Rights in Hong Kong which, amongst other things, does set limits on police powers and provide safeguards against abuse.

There are differences in the circumstances which applied in the United Kingdom prior to 1984 and those which exist in Hong Kong now. Therefore, we must be cautious in our approach to the Law Reform Commission's Report.

Nevertheless, we believe that there is much in PACE, which has been identified by the Commission as being of benefit to Hong Kong. We will need to study carefully the 60 recommendations in the Report in greater detail before we can make specific proposals. We have, therefore, set up an interdepartmental working group, chaired by myself, with senior representatives from the disciplined services and the Attorney General's Chambers.

The working group has already started work. The issues to be discussed are complex, but we have agreed that this must be a matter of priority. At this stage, I cannot predict how long our deliberations will take, but I hope that, once we have been working for a little time, the scale of the task will become clearer and I will then be able to forecast completion.

We have, however, agreed that several principles should govern our examination of the Report. First, we must ensure that any proposals we make on its recommendations will not hinder the effectiveness of the disciplined services in maintaining law and order. I am referring here not only to the power to investigate crimes which have been committed, but also to the power to prevent crimes from happening, such as the power to stop and search a person and to set road blocks.

Second, any of our proposals should be compatible with the Bill of Rights Ordinance. We need to steer a careful balance between the need for effective law enforcement and protection of individual rights.

Third, the views expressed by Members of this Council and the public should be taken into consideration. Disciplined services' powers are by their very nature controversial and affect people's lives. It is important that in formulating our proposals on the Report's recommendations, full consideration should be given to public opinion. We intend to seek views and we are now considering how best this should be done. The views expressed by Honourable Members will be taken carefully into consideration in this regard.

Mr President, the ability of the disciplined services to maintain law and order is the basis of our stability. We must ensure that their powers are necessary and adequate and, at the same time, consistent with the Bill of Rights. The Law Reform Commission Report has provided a number of specific

recommendations which we must now carefully review. I hope that the outcome of our deliberations will be appropriate to meet Hong Kong's circumstances and will enjoy the support of the community.

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

PRESIDENT: Mrs Selina CHOW, you have 4 minutes 43 seconds.

MRS SELINA CHOW (in Cantonese): Mr President, I must begin by thanking the many colleagues who have actively participated in the debate. There are some points to which I would like to give a response. I am very much in agreement with Mr Fred LI's view that police powers and citizen rights are actually not in conflict with each other. Though we often hear people say that they are antithetical, that is really not the case. Actually, the public wants effective law enforcement including effective prevention or deterrence of crime. This makes a human right of the right to protection and safety. Therefore, we cannot say that giving the police suitable powers is necessarily at the expense of human rights.

Admittedly, the exercise of police powers sometimes inconveniences the public. I believe that when our honourable colleagues board a plane, their hand-carried baggage will be inspected. They may demand to know if it is necessary to do so, or wonder why they must go through the trouble of being subject to a body check by a piece of equipment. Some may even consider this a violation of human rights. But what is done is done for the safety of all and so is acceptable to us. The sole determining factor is the interests of the public, the interests of all, the safety of all.

Judging from the speeches of many colleagues, it appears that they were indulging a bit in wishful thinking. They seem to think that, if we make a move, then things will happen the way we want them to happen. In practice, however, things may not happen that way at all. The effects of PACE on the United Kingdom precisely prove this point. Here are the facts. The authorities in the United Kingdom laid down certain procedures. The police was required to follow them. The purpose was to protect certain people's rights. But then what happened? It turned out that the police did not follow all the procedures meticulously. They found the procedures hard to follow. They could not make up their minds whether the procedures should be followed, even before, during or after the exercise of the police powers. They simply stopped exercising the police powers and so deprived the public of protection. I hope that everybody will take a square look at this point.

Mr James TO mentioned the issue of road blocks and doubted that the situation would be as serious as I described it. And he thought otherwise. I have put the question to lawyers and to the police. I also believe that those Members in this Council who have had their cars stolen, including Dr Philip



WONG and Mr Steven POON, as well as Mr Martin LEE, who has lodged complaints about the matter, will agree that deterrent and preventive road blocks should be set up where reasonable. Yet both lawyers and the police tell me that, if the new rule comes into force, it will become impossible to set up deterrent and preventive road blocks that are in use now, since such general-purpose road blocks, which have nothing to do with any "arrestable offence", will be banned. Mr James TO also said that the police had the obligation to do this and that. I wonder how many front-line policemen he has asked and whether he has talked to them. Perhaps he is just guessing that they should do this and that. I have heard the police say that they know from experience that such things will totally impede their action.

What, then, is the most important question? I feel that it is most important for us to take a square look at the lessons we draw from the United Kingdom's experience. And we must learn from these lessons. I am very glad to hear the Secretary for Security say that he will definitely take a square look at our comments and I am looking forward to seeing his working group put forth some recommendations, while holding extensive public consultation so that law and order and the stability of our entire community could be maintained.

*Question on the motion put and agreed to.*

### **Adjournment and next sitting**

PRESIDENT: In accordance with Standing Orders I now adjourn the Council until 2.30 pm on Wednesday 12 May 1993.

*Adjourned accordingly at six minutes to Nine o'clock.*

*Note:* The short titles of the Bills listed in the Hansard have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.

**WRITTEN ANSWERS****Annex I****Written answer by the Secretary for Education and Manpower to Mr LAU Chin-shek's supplementary question to Question 3**

The Immigration Department holds the view that it is not appropriate to require the employer of a foreign domestic helper to provide in his application the names, addresses and other relevant information of his family for the purpose of debarring all other members from employing foreign domestic helpers in future in the event of adverse record of any one of them. It stands to reason that an employer who is at fault should be held responsible individually, and other members of the family should not be penalized. However, if the employer concerned is found to have employed a foreign domestic helper or foreign domestic helpers under another person's name, he will of course be prosecuted by the Immigration Department and will receive due punishment under the law.

**Annex II****Following-up answer by the Secretary for Security to Question 6 asked by Mr LEE Wing-tat**

Of the 14 cases involving student drug traffickers, one was definitely triad-related and two others may have been, although this cannot be confirmed.

**Annex III****Written answer by the Secretary for Security to Mr LEE Wing-tat's supplementary question to Question 6**

Since the launching, on 15 February 1993, of the pilot scheme on the Student Crime Information Form, 36 completed CIFs have been received. Thirty-three of the CIFs were classified as possibly pursuable and were duly referred to the appropriate police formation for investigation. Eighteen of these 33 cases are presently being investigated. No further action is contemplated in respect of the remaining 15, as the information contained therein has been found to be inaccurate or too vague to enable investigation to continue. No arrests have been effected to date.

**WRITTEN ANSWERS** — *Continued*

It is too early to assess the operational success of the new Student CIF. An evaluation report will be prepared by the Commissioner of Police in August after the conclusion of the pilot scheme.

**Annex IV****Written answer by the Secretary for Security to Dr Philip WONG's supplementary question to Question 6**

The Director of Social Welfare advises that there have been no instances where the protective arrangements have failed resulting in injuries to students.