

# OFFICIAL RECORD OF PROCEEDINGS

**Wednesday, 30 June 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 CHIEF SECRETARY**

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

**THE FINANCIAL SECRETARY**

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

**THE ATTORNEY GENERAL**

THE HONOURABLE JEREMY FELL MATHEWS, C.M.G., J.P.

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

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

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, J.P.

THE HONOURABLE MOSES CHENG MO-CHI

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHIM PUI-CHUNG

REV THE HONOURABLE FUNG CHI-WOOD

THE HONOURABLE FREDERICK FUNG KIN-KEE

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, O.B.E., J.P.

DR THE HONOURABLE LAM KUI-CHUN

DR THE HONOURABLE CONRAD LAM KUI-SHING, J.P.

THE HONOURABLE LAU CHIN-SHEK

THE HONOURABLE EMILY LAU WAI-HING

THE HONOURABLE LEE WING-TAT

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

THE HONOURABLE FRED LI WAH-MING

THE HONOURABLE MAN SAI-CHEONG

THE HONOURABLE STEVEN POON KWOK-LIM

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

THE HONOURABLE TIK CHI-YUEN

THE HONOURABLE JAMES TO KUN-SUN

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

DR THE HONOURABLE PHILIP WONG YU-HONG

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE HOWARD YOUNG, J.P.

THE HONOURABLE ZACHARY WONG WAI-YIN

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

THE HONOURABLE CHRISTINE LOH KUNG-WAI

THE HONOURABLE ROGER LUK KOON-HOO

THE HONOURABLE JAMES TIEN PEI-CHUN, O.B.E., J.P.

**ABSENT**

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

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

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

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

THE HONOURABLE ANNA WU HUNG-YUK

**IN ATTENDANCE**

MR MICHAEL LEUNG MAN-KIN, C.B.E., J.P.  
SECRETARY FOR EDUCATION AND MANPOWER

MR YEUNG KAI-KIN, C.B.E., J.P.  
SECRETARY FOR TRANSPORT

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

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

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

MR DONALD TSANG YAM-KUEN, O.B.E., J.P.  
SECRETARY FOR THE TREASURY

MR MICHAEL DAVID CARTLAND, J.P.  
SECRETARY FOR FINANCIAL SERVICES

MR PETER LAI HING-LING, J.P.  
SECRETARY FOR CONSTITUTIONAL AFFAIRS

MR CANICE MAK CHUN-FONG, J.P.  
SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS

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>
Prevention of Bribery Ordinance (Amendment of Schedule) Order 1993.....	215/93
Federation of Hong Kong Industries (Variation and Addition of Scheduled Groups) Notice 1993 .....	218/93
Federation of Hong Kong Industries Ordinance (Amendment of Fees) Resolutions .....	219/93
Specification of Public Office .....	220/93
Forests and Countryside (Amendment) Ordinance 1993 (14 of 1993) (Commencement) (No. 2) Notice 1993.....	221/93
Judicial Proceedings (Adjournment during Gale Warnings) (Amendment) Ordinance 1993 (41 of 1993) (Commencement) Notice 1993 .....	222/93
Telephone Regulation.....	223/93
Public Health and Municipal Services (Public Markets) (Designation and Amendment of Tenth Schedule) (No. 3) Order 1993.....	224/93
Shipping and Port Control (Typhoon Shelters) Regulations (Amendment of Schedule) Order 1993.....	225/93
Abattoirs (Urban Council) (Amendment) Bylaw 1993 .....	226/93
Slaughterhouses (Urban Council) (Amendment) Bylaw 1993 .....	227/93
Declaration of Markets in the Urban Council Area (Amendment) (No. 2) Declaration 1993.....	228/93

Factories and Industrial Undertakings (Noise at Work) Regulation (L.N. 239 of 1992) (Commencement) Notice 1993 .....	229/93
Companies (Forms) (Amendment) Regulation 1993.....	230/93
Companies (Amendment of Eighth Schedule) Order 1993.....	231/93
Money Lenders (Amendment) (No. 2) Regulation 1993 .....	232/93
Television (Royalty and Licence Fees) Regulation .....	233/93
Foreign Judgments (Reciprocal Enforcement) (Amendment) Order 1993.....	234/93
Limited Partnerships (Amendment of Schedule) Order 1993.....	235/93
Maintenance Orders (Reciprocal Enforcement) (Designation of Reciprocating Countries) (Amendment) Order 1993 .....	236/93
Smoking (Public Health) (Notices) (Amendment) (No. 2) Order 1992 (Amendment) Order 1993.....	237/93
Employees Retraining Ordinance (Amendment of Schedule 2) (No. 4) Notice 1993 .....	238/93
Marine Fish (Marketing) (Rate of Commission) Notice .....	239/93
Toys and Children's Products Safety Ordinance (Cap. 424) (Commencement) Notice 1993 .....	240/93

**Sessional Paper 1992-93**

No. 84 — Report of changes to the approved Estimates of Expenditure approved during the final quarter of 1992-93 Public Finance Ordinance: Section 8

**Affirmation**

Mr James TIEN Pei-chun made the Legislative Council Affirmation.

## Address

### Report of changes to the approved Estimates of Expenditure approved during the final quarter of 1992-93

#### Public Finance Ordinance: Section 8

SECRETARY FOR THE TREASURY: Mr President, in accordance with section 8(8)(b) of the Public Finance Ordinance, I table for Members' information a summary of all changes made to the approved Estimates of Expenditure for the final quarter of the financial year 1992-93.

Supplementary provision of \$6,647 million was approved. This included \$5,442 million for the implementation of the 1992 pay adjustment and \$580 million to meet increased expenditure on public assistance and special needs allowances. The supplementary provision was fully offset, either by savings under the same or other Heads of Expenditure, or by the deletion of funds under the Additional Commitments subheads.

During the period, non-recurrent commitments were increased by \$3.4 million and new non-recurrent commitments of \$594.8 million were approved.

In the same period, a net decrease of 1 025 posts was approved. This was mainly attributable to the deletion of posts as a result of civil servants having opted for service with the Hospital Authority.

Items in the summary have been approved either by Finance Committee or under delegated authority. Those approved under delegated authority have been reported to the Finance Committee in accordance with section 8(8)(a) of the Public Finance Ordinance.

## Oral answers to questions

### Corrupt and illegal practices connected with public election

1. MISS EMILY LAU asked (in Cantonese): *In view of the evidence given in the High Court in the recent election corruption case, will the Government inform this Council whether the Independent Commission Against Corruption (ICAC) has identified specific problems associated with the Legislative Council election held in the Regional Council Functional Constituency in 1991, and if so, what recommendations, if any, the ICAC has made to prevent their re-occurrence in future?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, evidence given in the High Court in the recent trial of Mr Gilbert LEUNG identified problems of vote buying and unlawful expenditure.

In consultation with me, the Commissioner Against Corruption has agreed that the Commission's Corruption Prevention Department should examine these matters. That examination is underway. The Corruption Prevention Department will also closely observe the Regional Council Functional Constituency by-election and will review Functional Constituency election procedures generally. Based on the findings of this examination, the Commissioner will make recommendations to the Government as soon as possible.

MISS EMILY LAU (in Cantonese): *Mr President, as the by-election for the Regional Council Functional Constituency will be held on the 28th next month, has the Administration considered asking the ICAC to submit the report as soon as possible before the by-election so that we may see how corruption can be prevented in such circumstances? Also, has the Administration considered debarring tainted witnesses from voting?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, on the question of examination by the ICAC Commissioner, surely one of the main observations that he will have to make will relate to the actual conduct of elections in the functional constituency and that will be a matter which he will need to look into before he can make recommendations. As regards the question of the voting rights of the so-called tainted witnesses, I can only say that a person's voting rights are specified in the law. Anybody who under the law has a right to vote can vote.

MR ALBERT CHAN (in Cantonese): *Mr President, will the Administration's review also cover whether tainted witnesses should be allowed to continue to serve as members of district board or Regional Council? Does the Administration consider that allowing tainted witnesses to continue in office with the Regional Council will affect the Council's reputation?*

PRESIDENT: Are you able to answer that, Secretary?

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Yes, Mr President. There is currently no legal basis for any action to be taken against tainted witnesses as regards their qualification for membership of councils and boards. It is a very sensitive matter to disqualify a person who has not been subject to a proper trial by the court and found guilty of having committed an offence which warrants disqualification. I think we should not be tempted to make hasty changes to our electoral legislation relating to a subject where obviously the community should be given more time to express their views.

MR CHIM PUI-CHUNG (in Cantonese): *Mr President, in 1991, there were 60 members in the Legislative Council of whom three were ex-officio members, 18 including you, Mr President, were appointed by the Governor, 18 were elected by district-based election and 21 were elected by functional constituencies. Referring to the review of the 1991 election, may I know the ratio in respect of corruption between directly elected members and those elected by functional constituencies? Has the Administration taken any steps to prevent similar incidents from happening again?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President .....

PRESIDENT: I am sorry, I have not called on you yet, Secretary. I think that question strays way beyond the main question and answer, Mr CHIM.

MR LEE WING-TAT (in Cantonese): *Mr President, in reply to Mr Albert CHAN's question a while ago, the Secretary said it would be unfair to tainted witnesses if they were debarred from continuing in public office without a proper trial by the court. In other parliaments, political parties very often would demand the resignation of tainted witnesses who have openly confessed their crimes though the court has not made any judgement against them. However, such is not the case in Hong Kong. As the two practices are entirely different, may I ask if the Administration will have a full review and public consultation on whether these tainted witnesses are still fit to hold public office?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, no doubt there are different rules and different regulations for different elected bodies in different countries. Our rules here are clear. There are no rules to prevent tainted witnesses from continuing in office with councils and boards to which they belong. We would of course be open minded and continue to listen to people's views on this matter.

MR HENRY TANG: *Mr President, if a Legislative Councillor were convicted of any crime that draws a custodial sentence of over three months, he would lose his seat on the Legislative Council immediately and, on appeal, if he were acquitted of the charge and found to be innocent, he could not regain his seat despite his innocence. How is the Administration prepared to address that problem?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, allowing a Legislative Council Member serving a sentence of imprisonment to retain his seat pending the outcome of his appeal would create considerable uncertainties which would not be in the interest of his constituents and the public. The

disqualification provisions in our electoral law ensure that such uncertainties will not arise and that does not mean a pre-judgement of any future appeal.

REV FUNG CHI-WOOD (in Cantonese): *Mr President, the Secretary said he had asked the ICAC to conduct a review on functional constituency elections. But we know that corruption exists not only in functional constituency elections but also in other elections. Would the Secretary also ask the ICAC to review other forms of elections with a view to preventing corruption?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, the examination by the ICAC Commissioner, which I referred to in my main reply, was conducted as a direct consequence of the trial in the High Court that was the subject of Miss Emily LAU's question. As regards the question of prevention of corruption in elections generally in whatever constituency, that is of course a matter covered by existing provisions of the Corrupt and Illegal Practices Ordinance and it is an Ordinance which we are in the process of reviewing.

MR CHEUNG MAN-KWONG (in Cantonese): *Mr President, I would like to ask a question on tainted witnesses from a different perspective. Can the Administration inform this Council whether it would consider requiring after a trial the resignation of tainted witnesses who are members of boards and councils as a condition of not bringing charges against them for the sake of the integrity of the boards and councils as well as public confidence?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, I believe that is a question relating to prosecution policy which I am not, I am afraid, qualified to comment on. I wonder whether my colleague, the Attorney General, would wish to make any comments on it.

ATTORNEY GENERAL: Mr President, I think it would be quite improper to link immunity given in a criminal trial with a condition relating to taking part in elections or holding public office.

MR JIMMY McGREGOR: *Mr President, will the Secretary indicate whether he believes it is morally wrong for a tainted witness to continue to serve in an elective office where honesty and integrity are expected of the incumbent?*

PRESIDENT: You are being asked to give an opinion, Secretary, but is there a policy?

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, I think government decisions and actions have to be based on government policy. Whatever my own moral views, they are not, I believe, of particular interest to this Council.

### **Memorandum of Understanding on new airport**

2. MR CHIM PUI-CHUNG asked (in Cantonese): *According to the provision of Clause G of the "Memorandum of Understanding Concerning the Construction of the New Airport in Hong Kong and Related Questions" which was signed in June 1991, the Chinese Minister of Foreign Affairs and the British Foreign Secretary will meet twice a year, while the Director of the Hong Kong and Macau Affairs Office of the State Council of China and the Governor of Hong Kong will also hold regular meetings. In this regard, will the Government inform this Council:*

- (a) *of the specific actions taken by the Chinese and British Governments over the past two years to implement the provision; and*
- (b) *whether the Administration is aware of any arrangements made in accordance with the spirit of the Memorandum of meetings to be held in future between the Chinese Minister of Foreign Affairs and the British Foreign Secretary, and between the Director of the Hong Kong and Macau Affairs Office and the Governor of Hong Kong; if so, what the details are; if no such arrangements were made what actions the Administration will take, and whether assessment will be made as to the impact of such non-fulfilment of the Memorandum on the general public?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President,

- (a) In accordance with Clause G of the Memorandum of Understanding signed on 3 September 1991, the British Foreign Secretary met the Chinese Minister of Foreign Affairs in September 1991, March 1992, and September 1992, and the Governor met the Director of the Hong Kong and Macau Affairs Office under the State Council in September 1991, January 1992, June 1992 and October 1992.
- (b) The British and the Chinese Governments have made plain that they remain committed to the Memorandum of Understanding. Arrangements for any such meetings in future will, as in the past, be made known to Hong Kong.

MR CHIM PUI-CHUNG (in Cantonese): *Mr President, we learnt from the acting Secretary's reply that the British Foreign Secretary and the Chinese Minister of Foreign Affairs had not met each other for more than 10 months and our Governor and Director LU Ping of the Hong Kong and Macau Affairs Office of the State Council had not had meetings for nine months. Does this imply that the implementation of the Memorandum of Understanding is not strictly adhered to? Given the apparent reluctance of the two sovereign states to implement the agreement and the Memorandum of Understanding they reached, how can Hong Kong people be expected to honour the Memorandum though it has a binding effect on us?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, I should first like to repeat part of my main answer which is that the British and Chinese Governments have made plain that they remain committed to the Memorandum of Understanding. When the Foreign Secretary would meet his Chinese counterpart, when the Governor might meet Director LU Ping of the Hong Kong and Macau Affairs Office of the State Council are clearly matters which have to be decided mutually. Over the last few months I believe neither side considered that the timing was particularly right for a productive meeting.

### **Piracy in South China Sea**

3. MR RONALD ARCELLI asked: *In respect of the last minute withdrawal of the Marine Department's position paper on growing incidents of piracy in the South China Sea intended for tabling at the United Nations International Maritime Organization meeting held in London in May 1993, will the Government inform this Council:*

- (a) *of the legal, political or other reasons for the withdrawal;*
- (b) *whether the decision to withdraw the paper came from the British or the Hong Kong Government;*
- (c) *whether the Administration has other plans to present the paper or any other updated reports on the same subject to the international community in the near future; and*
- (d) *how the Administration will deal with the problem of increasing use of firearms against merchant ships in the South China Sea which may involve Hong Kong ships and crew members?*

SECRETARY FOR ECONOMIC SERVICES: Mr President, the International Maritime Organization (IMO) is the specialist agency of the United Nations which has, as one of its principal objects, the improvement of safety at sea. One

of its committees, the Maritime Safety Committee, formulates safety standards for ships. In view of worldwide concerns the Committee has been tasked by the IMO to consider the matter of piracy. Accordingly "piracy and armed robbery against ships" was included on the agenda for the meeting of the Committee on 26 May.

In Hong Kong, the Marine Department's Maritime Rescue Co-ordination Centre collates reports of alleged acts of piracy for the IMO. In a paper entitled *Piracy and Armed Robbery against Ships* which was issued on 29 March to the Secretariat of the Maritime Safety Committee, the Marine Department included the date, time, and location of 27 incidents reported to the Centre during the period September 1992 to 21 March 1993. These incidents occurred across a wide area of the sea between Singapore and Japan.

Unfortunately, the paper contained some information which could be regarded as misleading. Piracy, as defined in international law, is committed by persons from on board a private vessel for private ends. Eight of the incidents listed in the paper involved the exercise of jurisdiction by official vessels. Also, between March 1993 and the date of the meeting of the Maritime Safety Committee in May, a further eight more incidents had been reported. The Hong Kong Government therefore decided on its own initiative to withdraw the paper and instead presented an oral, correct and updated report at the meeting of the Committee. The Hong Kong delegate fully briefed the Committee on the number and nature of incidents involved. He also expressed concern about the incidents of piracy, the degree of force used in some cases and the dangers involved in attempting to use firearms.

Mr President, international shipping services remain one of Hong Kong's economic life lines, the safety of ships and their crews is of great importance — to us and to many of our trading partners in the Asia Pacific Region. We shall therefore continue to take all available measures in consultation with the international community to safeguard the seaways, by reporting incidents, continuing liaison, through proper channels with our neighbours and by providing information and guidance to the shipping community.

MR RONALD ARCULLI: *Mr President, I wonder whether the Secretary for Economic Services would elaborate on the eight incidents that he has referred to as being an exercise of jurisdiction by official vessels; whether any of those incidents involved Hong Kong vessels and Chinese vessels, and if so, whether the Administration has sought clarification from the Chinese Government as to whether they were in fact official interceptions by official Chinese vessels and whether the Administration is satisfied with the replies that were given?*

SECRETARY FOR ECONOMIC SERVICES: Mr President, on the generality of the eight incidents, seven of them involved vessels from China and one involved an official vessel from Vietnam. May I, Mr President, refer this

question to my colleague, the Secretary for Security, who actually dealt with those incidents?

SECRETARY FOR SECURITY: Mr President, in all cases involving Hong Kong ships or Hong Kong personnel on ships, we make representations regarding these interceptions to the relevant authorities. We also, as my colleague has pointed out in his main reply, report such incidents to the International Maritime Organization.

MR JAMES TO (in Cantonese): *Mr President, I have had a meeting with the Deputy Secretary for Security to discuss this issue. According to the understanding that I have got from the Deputy Secretary, piracy must involve non-official vessels intercepting other vessels for private ends; without meeting this condition piracy cannot be established. So any conduct cannot be considered piracy if it involves official vessels. My question is: If the government of any particular country, say the Chinese Government or the Vietnamese Government, cannot ascertain whether particular incidents are or are not official interceptions, then how will our Administration classify these incidents? Will it treat them as piracy and report them to the International Maritime Organization, or will it settle the matter by leaving it unsettled?*

SECRETARY FOR SECURITY: Mr President, the incidents described by Mr TO are classified as interceptions. We understand that, in the case of the Chinese interceptions to which my colleague referred in his main answer, the Chinese authorities suspect the vessels involved of smuggling into China, but our definition of them is interceptions.

MR JAMES TO (in Cantonese): *Mr President, the Secretary may not have understood my question, so perhaps I will repeat once again. According to international law, interceptions involving official vessels cannot be piracy, but as regards some incidents which no government has ever confirmed to our Administration as official interceptions, will we treat them as piracy and report them accordingly to the International Maritime Organization, or will we settle them by leaving them unsettled without any reports made?*

PRESIDENT: Secretary, do you wish to have the question clarified?

SECRETARY FOR SECURITY: No, I think I have understood the question, Mr President. I shall try to answer it. Incidents involving official vessels operating in their own territorial waters are defined as interceptions. Incidents involving private vessels operating in international or other waters are defined as piracy. Both categories of incidents are reported, as my colleague has

pointed out, to the Marine Department who, in turn, report them to the International Maritime Organization. The paper referred to in the main question contained a report on both categories of incidents. And in the case of interceptions, as I replied to Mr ARCELLI, any interceptions involving Hong Kong personnel or Hong Kong vessels are taken up by the Hong Kong authorities with the Chinese authorities.

DR TANG SIU-TONG (in Cantonese): *Mr President, will the Administration inform this Council whether we have any actual plans to combat piracy in conjunction with neighbouring countries; and if so, what the role of our Administration is?*

SECRETARY FOR SECURITY: Mr President, plans to combat piracy are, as I have described already, a matter for the International Maritime Organization because, as I have said, by definition they take place outside territorial waters. However, the more general point, I think, which is of relevance in Hong Kong is that we have taken considerable steps in conjunction with the Chinese authorities to try and curb a problem of pressing concern to both sides, namely, that of smuggling. And I am pleased to report that the good co-operation with our neighbours has resulted in a reduction in the amount of smuggling taking place to and from Hong Kong.

MR ALBERT CHAN (in Cantonese): *Mr President, the Hong Kong Government's sudden withdrawal of a paper at an international meeting recently reveals that there are problems in the treatment of information concerning piracy by our government officials, particularly when the matter concerns whether the incidents involved vessels from the Chinese security authorities or pirates' vessels. Will the Administration inform this Council whether such confusion reveals that there are problems in the communication between the border security authorities of Hong Kong and that of China? If so, how will the Administration make improvements in order to avoid such situation from arising again?*

SECRETARY FOR SECURITY: Mr President, the problem is one of definition, as I have explained in my answer to Mr TO, that is to say, the different definitions of piracy and of interception. The reason for the withdrawal of the paper from the IMO, as my colleague has pointed out, was that it contained inaccuracies in the interpretation of those definitions. As regards the second part of Mr CHAN's question, I do not think there is any communication problem or difficulty between ourselves and the Chinese authorities. This was simply an internal definition problem.

MISS EMILY LAU (in Cantonese): *Mr President, as our Administration could present an oral and correct report at the IMO meeting last month, then why could it not submit a written report at the same time? Although we accept that the report made earlier in March may have been outdated and that part of its content is inaccurate, yet why could a written report not be made available as an oral report was possible? Mr President, may I ask whether it is because many of these incidents involved China and therefore were regarded as very sensitive by the Administration and so the paper had to be withdrawn?*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Mr President, I have already explained in my reply the reasons for withdrawing the paper. The main reason is that the incidents listed in the paper do not fit the theme topic of the meeting.

Moreover, the Hong Kong delegate had upon arrival discussed with other delegates of the meeting before deciding to withdraw the paper and present instead an oral report at the meeting. Such a decision was not made because of the influence of or pressure from any other parties.

MR JIMMY McGREGOR: *Mr President, in view of the need to maintain international confidence in the safety of the port of Hong Kong, will the Government indicate whether there is any evidence at all that any of the ships detained by Chinese vessels and taken into Chinese waters were actually engaged in smuggling, and would the Secretary also tell us whether a copy of the verbatim report to the IMO can be released to this Council?*

PRESIDENT: Secretary for Security, I think for the first part of that question.

SECRETARY FOR SECURITY: Mr President, as regards the first part of the question, it is our understanding that the vessels involved in these interceptions in Chinese waters were involved in smuggling activities. But because they took place outside our jurisdiction we do not have any concrete information as to whether the ships were engaged in smuggling, and any action to prove it is obviously to be taken by the authorities that took the steps to make the interception. But it is certainly our understanding that the Chinese authorities had grounds for believing that the vessels were involved in smuggling.

SECRETARY FOR ECONOMIC SERVICES: Mr President, on the question of the actual verbatim report, I shall go back and talk to the Director of Marine. And if he confirms that the release of the document will not break the rules of the Committee concerned, I shall be happy to circulate it to Members.

MR RONALD ARCELLI: *Mr President, I think neither the Secretary for Security nor the Secretary for Economic Services have actually answered my question as to whether the Administration was satisfied with the replies from the Chinese Government regarding the incidents involving either Hong Kong crew members or Hong Kong vessels.*

SECRETARY FOR SECURITY: Mr President, I apologize if I have not answered the question. On the number of incidents that I referred to, we have made representations. It so happens that none of these interceptions involved Hong Kong crew members whatsoever. There have been other incidents known as incursions which have involved Hong Kong crew members and we have once again made representations to the Chinese authorities. As a result, the number of such incursions has decreased and, even more important, the degree of violence used has decreased significantly. So I think to that extent we are satisfied with our representations.

### Divergence of views between Exco and Legco

4. MR LEE WING-TAT asked (in Cantonese): *In view of the divergence of views between the Executive Council and the Legislative Council in decisions taken in relation to issues such as policy on well-off tenants in public housing estates, central provident fund, increase in tunnel tariffs and the application scheme for British National (Overseas) passports, will the Government inform this Council:*

- (a) *whether it is aware of a lack of co-ordination and hence a communication gap between the Executive Council and the Legislative Council, and if so, how the communication channel could be strengthened; and*
- (b) *whether the Executive Council would, before taking a decision, fully consult the Legislative Council which represents public opinion and consider its views?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, as long as the Executive Council and the Legislative Council are two separate bodies and play different roles, it is not surprising that there would be occasions on which there are differences of views between them. It is wrong to infer from this that there is a lack of co-ordination between them or that a communication gap exists.

Members of the Executive Council have not lost touch with their colleagues in the Legislative Council. Indeed, as it is always the case, the opinions of the Legislative Council are widely known and well expressed through the media. Members of the two Councils also maintain contacts

through various informal channels and in informal meetings organized between Members individually or collectively.

There is now also the Governor's question time, which undoubtedly has brought even greater accountability and openness of the work of the Executive Council and the executive to the Legislative Council and the community.

In his policy address, the Governor proposed the setting up of a Government-LegCo Committee to provide a forum of communication between the executive and the Legislative Council. We would be happy to pursue the proposal further should Members feel that it would serve as an additional, useful channel of communication.

We would also be happy to consider any constructive proposals from Members of the Legislative Council.

MR LEE WING-TAT (in Cantonese): *Mr President, in the second paragraph of his reply, the Secretary says that Members of the Executive Council will know the views of their colleagues in the Legislative Council through the media and various informal channels. Although the media in Hong Kong are very well-developed, I believe there will never be enough coverage that can make known all the views of the Legislative Council Members. Moreover, "informal channels" are not proper channels. Under the existing system of the Legislative Council, there are motion debates and House committee and panel meetings where decisions are made; may I ask whether the Executive Council will take into account these views of the legislature fully when formulating its own policies? If yes, why did the Administration not mention that in its reply?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, I have indeed said that Members of the Executive Council would be aware of the opinions and views of Members of this Council through a variety of means. These include, of course, not just the media but also meetings and contacts of many kinds. As to whether the views of Members of this Council will be carefully considered in reaching decisions on government policies and proposals, I can of course confirm a very definite answer: Yes, they are very seriously listened to.

MR VINCENT CHENG: *Mr President, referring also to the second paragraph of the reply, can the Secretary inform this Council what the various informal channels are and the frequency of such informal meetings? Would he include, say, occasional chats at cocktail parties as informal channels or bumping into one another at horse race meetings?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, informal channels occur in a variety of ways. I am sure that Members of this Council have numerous chances to meet Members of the Executive Council. Such may occur in informal meetings between individual Members, or in informal meetings between groups of Members, or in the form of contacts on social and other occasions. I would have hoped, however, that should Members of this Council have any constructive suggestions as to how further communication or further improvement in communication can be made, they would seriously put them forward.

DR YEUNG SUM (in Cantonese): *Mr President, under the existing constitutional arrangements, the Executive Council is to assist the Governor in making decisions on matters of policy while the Legislative Council is to play a monitoring role. However, in some cases recently, for example, the Western Harbour Crossing, it has the endorsement of the Executive Council on how it is going to be operated; and in this connection, does the Administration think that the monitoring or examination of similar measures by the Legislative Council will create a lot of administrative problems for the Government or will even cause worries amongst investors? Will the Administration inform this Council with all frankness whether the Executive Council deliberately circumvents the check and balance between the executive and the legislature, that is, reducing the role of the Legislative Council in monitoring the Government?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, without commenting on the specific issue that was raised by the Honourable Member, that is, the question of the Western Harbour Crossing, I would simply say that, constitutionally speaking, our system is such that it falls to the executive to make proposals — legislative proposals, funding proposals, and all other kinds of proposals — to this Council; it is the responsibility of this Council to examine those proposals and it is the responsibility of this Council to question the executive on those proposals. I do not think that anyone, certainly none on the official bench here, would wish to see that system being circumvented.

MR FREDERICK FUNG (in Cantonese): *Mr President, in the fourth paragraph of his reply, the Secretary says and I quote, "In his policy address, the Governor proposed the setting up of a Government-Legco Committee to provide a forum of communication between the Executive Council and the Legislative Council". We clearly remember that this Committee was referred to in a letter from the Chief Secretary to Mrs Elsie TU, Chairman of the House Committee half a year ago in which it says: First, the Committee will be a channel of communication between the Legislative Council and the Government (not the Executive Council); second, its function is confined to discussing the items of business of the Legislative Council meetings. May I ask whether there is any inconsistency between the answer given by the Chief Secretary then and that by Secretary now. Moreover, some Members of this Council asked at that time whether all*

*the Members of the Legislative Council could meet the Administration or Members of the Executive Council regularly to discuss policy matters. Had this proposal been considered? If yes, when will it be implemented? If no, why?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, the Chief Secretary's letter that was referred to by the Honourable Member will of course go on record. I do not believe that anything I have said in my main reply contradicts what the Chief Secretary has said. Our position on the proposed Government-Legco Committee remains the same, that is to say, from our point of view it is a constructive proposal and we are certainly prepared to pursue that proposal further if Members so desire. As to the question of other formal means of meeting between the executive or the Government or the Administration — call it what you will — and Members of the Legislative Council, certainly there are already many occasions where there are direct meetings between them. I do believe Members of the Executive Council also have meetings with Members of this Council. Whether it is formal or informal meeting is a matter to be further considered.

MR HOWARD YOUNG: *Mr President, since the disbandment of OMELOCO and the separation of the Executive Council and the Legislative Council, it is certainly my distinct impression that the only time a legislator sees the face of an Executive Councillor and vice versa is when one or the other shows up on the television screen to say something. But this is not two-way communication until we have interactive cable TV. So can the Government, before we have interactive cable TV, commit itself to studying ways and means of formalizing meetings between the two Councils so that Members of the two Councils can sit down seriously to discuss business of common interest rather than rubbing shoulders at cocktail parties?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, the Government would obviously be prepared to listen to and consider seriously any constructive proposals.

CHIEF SECRETARY: Mr President, could I beg your indulgence to add one more point to the answer from my honourable colleague. Could I just remind Members of this Council that there was a very strong view in this Council that the institution of the OMELOCO should be abolished, pursued particularly strongly by one political party? It was in response to that that we in the Administration set up an independent Legislative Council and that is one of the reasons why the channels of communication are that much more difficult. Clearly, if Members would wish to resurrect some of the original meetings of the OMELOCO which used to take place and which used to provide that channel of communication, I am sure Members of the Executive Council and the Administration would look kindly upon such a proposal.

DR LEONG CHE-HUNG: *A point of clarification, Mr President?*

PRESIDENT: Mr ARCELLI first, I think, Dr LEONG.

MR RONALD ARCELLI: *Mr President, I am glad I am the last but one to ask a supplementary to this question. From the answers given by the Secretary for Constitutional Affairs, am I right in thinking that the Government — or the Administration, I should say — is actually satisfied with the current level of communication or the lack of it between the Executive Council and Members of this Council?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, in many things in life we are never satisfied with the achievements we have made. I am sure that in all things there is much room for manoeuvre.

PRESIDENT: Dr LEONG, exceptionally as a supplementary if you want .....

DR LEONG CHE-HUNG: *No, it is just a point of clarification, Mr President.*

PRESIDENT: You can clarify something then.

DR LEONG CHE-HUNG: *Thank you, Mr President. If I could take up a point the Chief Secretary has just made, the move by some Members of this Council to separate the Legislative and Executive Councils — to separate the roles of these two bodies — is in no way a means to separate the Members or a severing of communication between the two groups.*

PRESIDENT: You do not have a question, Dr LEONG?

DR LEONG CHE-HUNG: No, it was just a point of clarification, Mr President.

### **Foreign domestic helpers**

5. MRS ELSIE TU asked: *Overseas domestic workers who are abused or have their contracts unreasonably terminated may take legal action against their employers. As legal action may take time to conclude and during such period workers are not permitted to take up employment, will the Government inform*

*this Council whether accommodation and financial assistance is given to those with genuine hardship?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, it is our experience that foreign domestic helpers usually have ways of finding temporary accommodation through the consulates, church and worker organizations. Some would prefer to stay with friends. The family services centres of Social Welfare Department can arrange accommodation in one of the two shelters for battered women for female foreign domestic helpers who are genuinely ill-treated.

If a foreign domestic helper 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. In serious cases involving allegations of criminal offence, the Government will consider paying for passages to bring them back to facilitate court proceedings.

We understand that some consulates have a special labour section to look after employment matters of their nationals in Hong Kong. For instance, the Philippine Consulate operates a Centre which provides food and accommodation free of charge to Filipino workers.

MRS ELSIE TU: *Mr President, the Secretary's reply makes vague statements on assistance for foreign workers. For example in the first paragraph he says, "they usually have ways of finding temporary accommodation through the consulates, church and worker organizations, .... (or) .... in .... shelters for battered women." And in the third paragraph he says he "understand(s) that some consulates have a special labour section." This is all very vague. I actually know that frequently none of these ways are available to foreign domestic workers. So I would like to ask the Secretary if in the absence of any concrete assistance for these workers he will consider applying Article 6 of the International Covenant on Economic, Social and Cultural Rights which, and I quote, "recognizes the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts"?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, in answer to the first part of Mrs TU's question with regard to the first paragraph of my answer, the total number of places available in the two shelters is 80; with regard to the third paragraph of my answer, there are four centres operating in Hong Kong with over 100 places available. In addition, the service centres of the Social Welfare Department have not in the last three years received any requests for help from such workers. So the evidence seems to point to the fact that they can make their own arrangements to facilitate their stay in Hong Kong. On the second part of Mrs TU's question, the relevant Hong Kong law, that is,

the Employment Ordinance, applies equally to such workers as to local workers and they are entitled to full protection under our existing laws. In addition, the contract in respect of these workers provides additional protection and facilities to enable them to work and live in Hong Kong and to be returned to their country of origin after they have finished their contract, within two years.

MRS ELSIE TU: *Mr President, I do not think my question has been answered. I asked if they would be allowed to work since the International Covenant says that every person has a right to work.*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, the contract entered into by both parties makes it absolutely clear that the foreign domestic worker must return to his or her country of origin within two weeks after termination of the contract. This has been made clear when the parties enter into the contract. In addition, guidance notes have been given to all workers before they come to Hong Kong. There is no question of Hong Kong contravening any existing local laws or international covenants which allow them to work in Hong Kong under such circumstances.

### **Maternity service for non-HK permanent resident mothers**

6. MR MICHAEL HO asked (in Cantonese): *Will the Government inform this Council:*

- (a) *of the number of women who had babies in public hospitals, especially in Tuen Mun Hospital and Prince of Wales Hospital, in 1992 and the first five months of 1993; of these, how many were Chinese women who had entered Hong Kong either on Chinese two-way exit permits or illegally;*
- (b) *what effect did the provision of maternity service to this category of people have on the resources and standard of service of public hospitals; and*
- (c) *what the current policy on the provision of maternity service to non-Hong Kong residents is and whether it will be reviewed in the light of the above situation?*

SECRETARY FOR HEALTH AND WELFARE: Mr President,

- (a) The number of babies delivered in public hospitals during the whole year of 1992 and the first four months of 1993 were 46 247 and 15 062 respectively. Of those born in 1992, a total of 5 454 were delivered in Tuen Mun Hospital and 7 939 babies in Prince of Wales

Hospital. Corresponding available figures for the first four months of 1993 were 1 740 and 2 428.

According to records kept by the Hospital Authority, 529 or 9.7% of the babies delivered in Tuen Mun Hospital and 1 206 or 15.2% of those delivered in Prince of Wales Hospital in 1992 were born of women who had entered Hong Kong either on Chinese two-way exit permits or illegally. For the first four months of 1993, these figures were 254 or 14.6% and 459 or 18.9% respectively.

- (b) Provision of the services mentioned above has been made from existing resources through efficient deployment of manpower and productivity without affecting the quality of care for other patients.
- (c) Patients who do not hold a Hong Kong Identity Card or a British Passport are classified as Non-entitled Persons and charged the full costs of their medical treatment. However, two-way permit holders whose spouses are holders of Hong Kong Identity Cards and who can produce a marriage certificate issued by a competent authority are treated as Entitled Persons, while illegal immigrants under police custody are not required to pay any charges.

MR MICHAEL HO (in Cantonese): *Mr President, it is mentioned in paragraph (b) of the main reply that they have no effect on either our resources or the quality of care for patients. By adding the number of patients who came here with two-way permits and those by illegal means, they represent 17.1% of the patients in each of the two hospitals mentioned in the reply. Moreover, since these two categories of people do not have prenatal care, babies born to them usually have a high incidence of complications. How can the Administration convince this Council that the 17% additional demand for services would have no effect at all on our resources? Also there is no doubt that the number of people coming in on two-way permits will continue to increase. In the light of this trend, how is the Administration going to assess the additional resources required in the next few years, and with this rate of increase, is there any intention to raise the level of funds allocated for this purpose?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, our health and welfare services are available to those in Hong Kong who are in need of services irrespective of race, religion or ethnic backgrounds. Such is the virtue of our system and I am sure it is not the intention of this Council to alter the virtuous nature of our policy. As regards the birth rate of babies born of women who have come here either by illegal means or with two-way permits, I have looked at the statistics which indicate that not all of these babies born in Hong Kong were born in public hospitals. It is true to say that babies born in the public hospitals and the mothers who require care do eat into the resources of our

public hospitals. But as I said in my main reply, because of the efficiency and productivity of our staff such service provided would not affect the quality of care to other patients.

MR MICHAEL HO (in Cantonese): *Mr President, I would like to follow up the reply of the Secretary. She mentioned that the 17% additional demand for services had been met through efficiency and productivity of staff. Is there really so much residual manpower in public hospitals to take care of such a large proportion of patients?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, the fact is we have coped and we will cope.

MR WONG WAI-YIN (in Cantonese): *Mr President, I had raised a written question in this Council some time ago on pregnant women coming in on two-way permits to give birth to babies. The statistics then indicated that the number increased by 1 000 every year. The reply given by the Secretary for Security then was that he would take the matter up with China and urge them not to allow certain categories of pregnant women to come to Hong Kong. However, I understand that the relevant figure for the first four months this year did not come down but showed an upward trend. Does this mean that the discussion between the Hong Kong Government and the Chinese Government was of no avail?*

PRESIDENT: Was that a question, Mr WONG?

MR WONG WAI-YIN (in Cantonese): *Yes, Mr President. In answer to a question I raised in this Council last year, the Secretary for Security said he would discuss with China about the question of limiting the number of pregnant women coming in on two-way permits. But the figure for the first four months this year showed a continuous upward trend when compared with that of last year. Does this mean that the discussion between the Secretary and the Chinese authorities about limiting the number of pregnant women coming in on two-way permits was of no avail?*

PRESIDENT: Are you able to answer that, Secretary?

SECRETARY FOR SECURITY: Mr President, I shall try and answer that. I think there are two answers to that question. The first point is that those coming in under two-way permits are not controlled by us. As Members will be aware, they are controlled by the Chinese authorities. As regards the entry

of ladies who are obviously pregnant, Hong Kong, like many other jurisdictions, makes no discrimination regarding the entry of such people. However, as the Honourable Member has pointed out, we are concerned about the impact these ladies coming in will have on our own resources, and accordingly, as was pointed out by the Honourable Member, we have made representations to the Chinese authorities to seek to persuade them to take some action to reduce the number of such people coming in. As the figures indicate, the numbers are still increasing, but I am hopeful that we can continue to persuade the Chinese authorities to take this more vigorously into consideration.

DR CONRAD LAM (in Cantonese): *Mr President, in the maternity wards in Hong Kong, the number of patients admitted is dependent on the number of beds and the number of medical and nursing staff available, that is to say, they have a limit as to the number of patients they can cater for. With the existing maternity facilities of the Tuen Mun Hospital and the Prince of Wales Hospital and the present strength of medical and nursing staff there, may I know the maximum number of pregnant women they can handle each month? If the Secretary does not have the figure in hand, could she provide it to us later?*

PRESIDENT: Can you relate that question to the main answer, Dr LAM, please?

DR CONRAD LAM (in Cantonese): *Mr President, the ratio in fact has great relevance insofar as the quality of care and the pressure on staff are concerned. If, for example, a maternity ward is intended for 100 pregnant women each month but now has to serve 120 pregnant women, this will have a great impact on the quality of care to patients and will have great pressure on staff too.*

SECRETARY FOR HEALTH AND WELFARE: Mr President, I do not have the figures available. I will certainly refer the question to the Hospital Authority for an appropriate reply.

MR JAMES TO (in Cantonese): *Mr President, referring to the reply of the Secretary for Security a while ago, I do not understand why he said Hong Kong did not show any discrimination against pregnant women coming in and that once they were here, we would not stop providing them such service. The Secretary also said just now however that they would discuss with China in the hope that they would take the initiative in limiting the number of certain categories of pregnant women coming in on two-way permits. May I ask whether asking the Chinese government not to approve so many pregnant women coming in or to try their best in discouraging them from coming is a form of discrimination? Will this be contradictory to the principle mentioned*

*in the first place by the Secretary just now, that is, discrimination does exist, but the only difference is that it should come from China, not from us?*

PRESIDENT: I think that becomes too convoluted and hypothetical, Mr TO. We are running short of time.

MR JIMMY McGREGOR: *Mr President, a matter of clarification. Could the Secretary say whether these children mentioned in paragraph (a) of her main reply — those children born in these two hospitals — would have a right to become Hong Kong citizens, that is to say, would they have the right to stay here?*

PRESIDENT: Secretary, straying a bit, do you have the answer?

SECRETARY FOR SECURITY: I have the answer. I am just trying to find it and I beg your pardon, Mr President. The answer is: yes, those children who are born here have the right to be Hong Kong permanent residents.

DR LEONG CHE-HUNG: *Mr President, the Secretary has just said very eloquently "we have coped and we will cope". By that I presume she means the Hospital Authority. For this of course we have to thank the staff. But without increasing resource provisions, are we not actually overstretaching our frontline staff and tapping their up-to-now good nature?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, in the true tradition of our hospital services in Hong Kong, we provide services of very high standard to those in need irrespective of religion, race and ethnic origin. This is a credit to our hospital staff and I hope that, in considering funding to the Hospital Authority, we will bear this in mind. May I also take today's opportunity to reiterate that immigration is a matter of immigration policy; the health policy is not impacted in any way by the babies born here. It is also believed that illegal immigrants do not normally tend to seek medical treatment in Hong Kong since this might give rise to their repatriation. But, as was raised earlier on by the Honourable Jimmy McGREGOR, babies born here are accepted as Hong Kong permanent residents through birth. Members may already be aware that there is an international trend against automatic grant of full citizenship through birth to illegal immigrants. Such a right has already been abrogated in the United Kingdom and Australia and is about to go in France. And I think I would like to refer this matter for the deliberation of the Secretary for Security in due course.

**Written answers to questions****Funding for education on environmental protection**

7. MR ERIC LI asked (in Chinese): *As it will, in the long run, be far more cost-effective to educate the public on environmental protection than to restore a polluted environment, will the Government inform this Council:*

- (a) *of the respective costs provided for public education on environmental protection in 1993-94 and 1994-95;*
- (b) *whether the above costs include government funding for non-government environmental groups to promote concepts and knowledge of environmental protection in the community; and*
- (c) *if not, what measures the Government will adopt to support these non-government environmental groups in running community educational activities on environmental protection?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President,

- (a) The Government has allocated \$1.7 million for environmental publicity campaigns and \$0.5 million for the energy efficiency publicity campaign in 1993-94. The funding allocations for 1994-95 have not yet been decided, but we expect the existing scale of both these publicity campaigns to be maintained. In addition, \$3.37 million has been allocated in 1993-94 for the first Environmental Resource Centre at the old Wan Chai Post Office. This centre is expected to open towards the end of 1993 and will be an important focus for public education on environmental issues.

The Education Department (ED) provided \$752,500 for 350 school visits to the Mai Po Nature Reserve in 1993-94. A similar sum is earmarked for 1994-95. The department, through the Sai Kung Field Studies Centre, also organizes residential and non-residential courses on ecology, pollution and conservation for Sixth Form students and secondary school teachers. \$1.7 million is being provided by ED in 1993-94 to meet the recurrent costs of this centre, with a similar allocation expected in 1994-95. Other costs relating to environmental education for students cannot be separately quantified because of the cross-curricular approach adopted by ED, whereby environmental education is integrated into a wide range of subjects.

Apart from government funding, various non-government organizations support environmental education activities. A typical example is the Environmental Campaign Committee, which raises funds from private donations and the Jockey Club. The Committee hopes to raise \$2 million in 1993-94 and \$2.2 million in 1994-95.

- (b) The Government has made no specific provision for the direct funding of non-government environmental groups although the establishment of the Environmental Campaign Committee provides a new focus for funding environmental activities in the community. Environmental projects by community and environmental organizations also receive a degree of government funding through the district boards' community involvement activities funding scheme, though the precise sum devoted to these activities cannot be quantified.
- (c) We realize that we can always do more in the field of environmental education and that a relatively reliable source of funding support is necessary for non-government organizations involved in environmental education activities, in particular the activities of the Environmental Campaign Committee. We are now reviewing the existing funding arrangements to establish a better basis of funding support for various kinds of environmental education activities initiated both by the Government and non-government bodies.

### **Labour importation scheme**

8. MR LAU CHIN-SHEK asked (in Chinese): *With regard to the Labour Importation Scheme, will the Government inform this Council of the following:*

- (a) *the numbers of foreign workers allowed to be imported, classified by trade and position, since the implementation of the scheme;*
- (b) *the number of foreign workers who left their jobs (including dismissals and voluntary resignations) before the expiry of contracts in each of the past three years; and*
- (c) *the number of labour dispute cases handled by the Labour Department in the past year involving foreign workers, classified by the causes of dispute; and the respective numbers of cases in which warnings were issued to or prosecutions taken against employers for breach of rules, as well as cases in which foreign workers who were subjected to unfair treatment were successfully placed in other jobs by the department?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President,

- (a) The numbers of foreign workers classified by industries/services who have been issued with visas since the implementation of the general importation of labour scheme are shown in the table at Annex A. It is however not possible to provide a breakdown by positions because of the large numbers of job titles involved.
- (b) In 1991 and 1992, 1 180 and 1 771 foreign workers left their jobs respectively before the expiry of their contracts. Between January and May 1993, the relevant figure is 1 365.
- (c) In 1992, the Labour Department handled 55 labour disputes and claims involving 176 foreign workers under the general labour importation scheme. These claims involved arrears of wages, wages in lieu of notice and statutory holiday pay.

During the year, a total of 103 summonses were taken out against employers of imported workers, and 406 verbal or written warnings were issued in respect of offences under the law. While there is no breakdown on the warnings, 70 summonses were heard with 51 convictions. Detailed breakdown of convicted summonses is at Annex B. Six imported workers were granted approval to change employer and all, except one, were successfully placed in employment. The remaining worker left Hong Kong without giving reasons.

#### Annex A

No. of workers allowed to be imported  
under the Labour Importation Schemes  
(As at 31.5.1993)

<i>Industry</i>	<i>Airport scheme</i>	<i>1993 scheme</i>	<i>1992 scheme</i>	<i>1990 scheme</i>	<i>1989 scheme</i>
	<i>No. of visas approved</i>				
Automobile Repairing	0	11	156	123	148
Banking and Finance	0	12	0	1	0
Catering	0	392	1 763		
Hotel	0	34	228	2 650	249
Tourism	0	0	47		

<i>Industry</i>	<i>Airport scheme</i>	<i>1993 scheme</i>	<i>1992 scheme</i>	<i>1990 scheme</i>	<i>1989 scheme</i>
	<i>No. of visas approved</i>				
Clothing	0	233	1 176	2 517	53
Handbag	0	1	0		
Construction work sites	1 418	50	369	2 074	796
Electrical	0	5	147	587	187
Electronics	0	21	329		
Footwear	0	0	0	13	0
Furniture	0	0	80	84	15
Insurance	0	0	0	0	0
Jewellery	0	1	63	48	6
Machine shop	0	188	717	699	304
Plastics	0	1	143	285	32
Printing	0	9	288	177	47
Shipbuilding and Repairing	0	8	94	161	3
Textile	0	26	299	454	11
Transport	0	58	142	255	21
Wholesale, Retail and I/E Trades	0	233	2 912	1 297	24
Others (Manufacturing)	0	94	2 481	1 422	28
Others (Non-manufacturing)	0	146			
Total	1 418	1 523 (Note 1)	11 434 (Note 2)	12 847 (Note 2)	1 924

Notes: (1) In the 1993 Scheme, 14 132 quotas were allocated. More visas will be issued when the visa applications are received.

(2) The numbers include visas issued to replacement workers.

### Breakdown of Summons Convicted in 1992

<i>Nature of offences</i>	<i>No. of summonses convicted</i>
Deduction of wages	18
Failure to grant statutory holidays	17
Payment in lieu of granting statutory holiday	10
Failure to take out insurance policy	6
Total number of summonses convicted	51
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### **First aid training**

9. DR LAM KUI-CHUN asked: *In view of some recent deaths caused by simple traumatic arterial bleeding, for example, the incident relating to the death of a border-patrol policeman, will the Administration inform this Council whether training in haemostasis is included in the training programme of the Police Force and the curriculum of schools; if so, what the contents of such training are and whether the Administration will review its effectiveness; if not, whether the Administration will plan to impart such knowledge to policemen and school children?*

SECRETARY FOR SECURITY: Mr President, police officers are given training in basic haemostasis when they join the Force. Refresher in-service training courses are also provided to officers once every three years during their career. Police officers are trained not only in haemostasis, but in the wider aspects of first-aid and emergency treatment. They are also trained in specific skills, such as wound dressing and bandaging, cardiopulmonary resuscitation and the treatment of bone fractures and heat stroke.

In the formal curriculum in schools, haemostasis is covered under first-aid in several subjects, such as Health Education at the primary level and Physical Education, Human Biology and Social Studies at the secondary level. As part of the informal curriculum, students are also encouraged to take part in extra-curricular activities provided by the Boy Scouts, the Girl Guides, the St John's Ambulance Brigade and the Hong Kong Red Cross Society where they will have the opportunity to receive practical first-aid training.

We are considering the effectiveness of our first-aid and haemostasis training for police officers in the light of the recommendations made by Mr Justice BOKHARY in his Final Report on the Lan Kwai Fong Incident on 1 January. The police are reviewing their first-aid training for serving police officers in conjunction with the Auxiliary Medical Services.

The main objective of including first-aid topics in the formal curriculum for school children is to promote a general awareness of first-aid among students; the intention is not to provide specialized training. The Education Department considers the content of the school curriculum on first-aid to be effective. The Curriculum Development Council reviews these matters on an on-going basis and will revise the relevant syllabuses if and when necessary.

### **Territory-wide medical scheme for the elderly**

10. MR WONG WAI-YIN asked (in Chinese): *At present, various concessionary medical schemes for the elderly are operated by different organizations and bodies in various districts. Will the Government inform this Council whether a co-ordinating body similar to that of the School Medical Service Scheme will be set up to implement a territory-wide medical scheme for the elderly; if so, what the specific plans are; if not, what the reasons are?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, services for the elderly at public hospitals and clinics are highly subsidized. In addition, various concessionary medical schemes have been initiated at the grassroots level by different charitable organizations to meet local needs, often with the input of district boards. So far such schemes have operated very smoothly.

The main objective of the Student Medical Service Scheme has been to provide economical medical care to students through the participation of private medical practitioners. Following abuse of the scheme and on the recommendations of the Working Party on Primary Health Care, the School Medical Service Scheme will soon be abolished and be replaced by the Student Health Service.

The present system of healthcare services for the elderly provides flexibility to meet local conditions and allows patients a wide variety of choice and works well. There is, therefore, little justification to replace the existing system by a body similar to the School Medical Service which, in any case, is being dismantled.

### **Electronically conducted financial transactions**

11. DR HUANG CHEN-YA asked (in Chinese): *In view of the increasing popularity of using electronic devices to conduct financial transactions, will the Government inform this Council what plans are in place to enhance the legal protection for users of such devices?*

SECRETARY FOR FINANCIAL SERVICES: Mr President, the increasing use of electronic devices to conduct financial transactions is an inevitable development as efficiency and cost-effectiveness are necessary for the further development of the different areas of the financial services sector in the modern world.

In general, customers of financial institutions who use electronic devices are subject to the protection afforded by the law of contract as are those who use paper systems. Also, given the diversity of financial activities and the pace with which technology develops, it is difficult to generalize on the specific measures that would be required for protecting individual groups of users.

An example of moves in this direction is the recently introduced Computer Crimes Ordinance which makes new criminal offences in respect of unauthorized access to computers. On the question of privacy, a sub-committee of the Law Reform Commission is currently examining existing laws in Hong Kong in the area. One of the matters to be considered in this exercise is the remedies that should be made available in respect of undue interference with the privacy of the individual, including intrusion (by electronic or other means) into private premises and the interception of communications, whether oral or recorded.

The Government is prepared to examine whether specific measures might be required to deal with any clearly identified problems, and would draw on experience in other countries where appropriate.

### **Safety of passenger lifts**

12. MRS MIRIAM LAU asked: *Will the Government inform this Council:*

- (a) *how many passenger lifts in Hong Kong are not equipped with over-loading warning devices;*
- (b) *how many accidents have occurred over the past three years involving such lifts and what the casualties in such accidents were; and*

- (c) *whether the Administration intends to make it compulsory for all passenger lifts in Hong Kong to be installed with over-loading warning devices, if not, the reasons therefor?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, there are about 35 700 passenger lifts in the territory. In a recent survey by the Electrical and Mechanical Services Department, 1 578 lifts, or about 5.4%, were found not equipped with overloading warning devices. All these lifts were installed before May 1969 when the requirement for the provision of overloading warning devices were included in the relevant legislation.

Over the past three years, there have been four fatal and 22 non-fatal accidents involving passenger lifts. Two of these accidents involved lifts without overloading warning devices and two people were injured. However, neither of these two cases was caused by overloading.

At present, the Administration has no intention to make it compulsory for all lifts installed before May 1969 to be equipped with overloading warning devices. All passenger lifts are required to be constructed in accordance with the latest standards applicable at the time of installation. An overloading warning device is only a precautionary warning system. Although these lifts do not have an overloading warning system, they usually have other safety devices such as fail-safe braking system, overspeed governor, arrester gear and buffers. It is therefore considered more appropriate to allow the phasing out of such lifts by natural wastage. The Administration will of course continue to advise registered lift contractors to encourage owners of pre-1969 buildings to install overloading warning devices in lifts whenever possible.

The Administration will continue to be vigilant over the safe operation of lifts. For instance, amendments to the Lifts and Escalators (Safety) Ordinance were passed by this Council three weeks ago to strengthen control over lift and escalator works. Under the new provisions, inspection and checking of lifts is required to be carried out by competent persons, and the sub-contracting or assignment of lift works to non-registered contractors is also regulated.

### **Hazardous summer jobs**

13. MR CHEUNG MAN-KWONG asked (in Chinese): *Will the Government inform this Council:*

- (a) *of the number of work-related deaths and injuries involving local secondary students who engaged in summer jobs over the past five years;*

- (b) *of the channels through which the Administration urges students not to take part in hazardous industries when looking for summer jobs; and*
- (c) *whether the Administration would step up its efforts to impart knowledge of industrial safety to secondary students; if so, what the details are?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President,

- (a) The numbers of local secondary school students who were injured while engaging in summer jobs over the past five years are as follows:

<i>1988</i>	<i>1989</i>	<i>1990</i>	<i>1991</i>	<i>1992</i>
35	29	18	7	11

The majority of these cases involved only minor injuries. No fatal cases have been recorded.

- (b) The following measures have been taken by the Labour Department and the Education Department every year to promote the awareness of safety at work among secondary school students:
  - (i) leaflets are distributed to all schools advising students not to take up hazardous summer jobs, such as working at construction sites, operating heavy machinery and lifting appliances, working at height, using chemicals or doing work involving heat treatment or use of fire. The leaflet also advises students to be careful with the use of food making machines, stoves, knives and chemical cleaning agents, and so on, if they work in the catering industry;
  - (ii) a design competition on safety at work is held to reinforce the safety awareness of students. This year, a poster design competition was held in March and the two winning posters carrying safety messages for students have been distributed to all secondary schools;
  - (iii) talks and video shows on industrial safety are being given to secondary students at their schools by Factory Inspectors of the Labour Department since May;
  - (iv) press releases are issued before the commencement of summer vacation to remind students to stay away from dangerous jobs;

- (v) the Local Employment Service of the Labour Department gives regular guidance to students seeking summer jobs and advises them in particular not to accept hazardous jobs if offered.
- (c) To further remind secondary school students not to take up hazardous jobs during the summer vacation, the Education Department has recently issued a circular to all secondary schools reminding school heads and teachers, especially careers teachers, to impress on their students the safety messages. A radio/TV announcement of public interest bearing similar messages to secondary school students has been broadcast. More press interviews and releases will be arranged. The Education Department will also organize annual seminars on safety at work for career teachers, starting from the next school year.

### **Small public housing flats**

14. MR TIK CHI-YUEN asked (in Chinese): *Will the Government inform this Council:*

- (a) *of the projected demand and supply of small public housing flats in each district in the coming five years;*
- (b) *whether single persons or two-person families living in Temporary Housing Areas will either have their rehousing dates deferred, or be rehoused in remote areas or "shared public housing flats", due to inadequate supply of small public housing flats; and*
- (c) *what plans are in place to shorten the waiting time for single persons or two-person families to move into public housing flats?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President,

- (a) The demand and supply of small public housing flats for single persons are assessed annually. After allocation for redevelopment and clearance, the balance of flats is allocated to applicants on the Waiting List. The projection based on this year's assessment for each district for the next five years (1993-94 — 1997-98) is set out at the Annex.
- (b) A clearance operation normally involves the rehousing of all eligible households in the area to be cleared. No clearance has been deferred after formal notification due to inadequate flat supply.

Recently, an accelerated clearance programme of temporary housing areas (THA) has been drawn up with a view to clearing over 80% of the existing population by 1996-97. This means their rehousing dates have been brought forward rather than deferred.

As regards the location of reception estates, eligible THA clearees living on the Hong Kong Island are normally rehoused on the Hong Kong side. Those in Kowloon are offered new flats in the extended urban area or the New Territories, but can be rehoused in urban Kowloon if they are prepared to accept casual vacancies.

It is very unlikely that one-person households affected by a THA clearance will be asked to share non-self-contained units in future.

- (c) The only way to shorten waiting time is to increase the supply of small flats. While flat supply for two-person households is expected to be adequate, the shortfall of one-person flats remains a concern. The Housing Authority has in response identified a number of possible options to increase supply, including the construction of additional annex blocks and hostel-type accommodation, provision of more sheltered housing units for the elderly, creation of planned vacancies through transfer exercises, a different flat mix, relaxation of allocation standard as well as programme adjustments. An extra 6 300 one-person units can be generated through these options over the next five years, of which about 750 to 1 000 can be allocated each year to the Waiting List.

#### Annex

#### Estimated Demand and Supply of Small Public Housing flats

<i>District</i>	<i>Estimated demand*</i> (No. of flats)	<i>Estimated supply</i>	<i>Estimated balance</i>
Hong Kong North	2 010	2 240	230
Hong Kong South	1 240	1 840	600
Kowloon East	11 420	11 610	190
Kowloon West	1 430	1 510	80
Tsuen Wan	4 890	5 440	550
Shatin	3 130	2 240	-890
Tseung Kwan O	510	3 170	2 660
Tai Po	120	530	410
Fanling	1 060	1 110	50
Tuen Mun	620	780	160
Yuen Long	940	1 620	680
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Total:	27 370	32 090	4 720
	=====	=====	=====

\* for redevelopment of rental estates, clearance of THA and squatter areas.

**Water supply to squatter areas**

15. MR ALBERT CHAN asked (in Chinese): *In view of complaints lodged recently by residents of squatter areas of the lack of water supply, will the Government inform this Council:*

- (a) *of the number of squatter areas which are still without water supply and the size of their population; and*
- (b) *whether there are plans to supply water to these squatter areas?*

SECRETARY FOR WORKS: Mr President,

- (a) There are 17 squatter areas with a total population of 958 in the urban areas and 726 squatter areas with a population of 2 717 persons in the rural areas which are without mains water supply or metered water supply.
- (b) The Government's policy is to provide metered water supply to squatter areas when applications are received if it is technically feasible and when there is no imminent plan of clearance by the Housing Department.

As it is envisaged that all urban squatters on government land will be cleared by 1996, there is thus no plan to supply water to urban squatter areas which are currently without water supply.

Regarding squatters in rural areas, in 1980, based on information from the Heung Yee Kuk, CNTA and WSD, a list of some 750 villages in the New Territories (including squatter villages) was drawn up for the purpose of implementation of a stage-by-stage project for the provision of metered water supply. In 1987, after the initial phases of works, over 500 villages were provided with metered water supply and for the remaining 175 villages which are located far away from the water distribution networks, it was considered that 114 villages could be provided with metered water supply at a reasonable cost.

A PWP item "Water Supply to Remote Villages in the New Territories" was created to implement the works for 85 of these 114 villages. The works are well under way and supply for the final village is expected to complete before the end of 1995. Water supply to the remaining 29 villages has been provided by extension of the existing or newly completed water supply networks under recurrent provision.

The actual number of villages being considered for metered water supply varies from time to time, as some new villages are added to the list while some others are deleted due to clearance in the past years. Up till now, a total of 624 villages have been provided with metered water supply.

There are still 63 villages with a total population of around 4 000 for which the works are not on the Public Works Programme, but their need for mains water supply is kept under constant review. Although the provision of water supply to these villages will not be as cost effective as other villages, the Government is still considering supplying water to 15 of these villages which are having higher priority and with a total population of about 1 500. Provided the required financial resources can be made available, works for these 15 villages is expected to start in 1995 and completed in 1997. As for the remaining 48 villages with a total population of 2 500, a programme of work will be determined later this year, after consultations with the Heung Yee Kuk.

### **Overseas/expatriate teachers**

16. MR TIMOTHY HA asked (in Chinese): *It is understood that every secondary school in Hong Kong is allowed to recruit no more than three "overseas" teachers under the Code of Aid while some specially approved schools are each entitled to employ no more than two "expatriate" teachers under the Expatriate English Language Teacher Scheme.*

*Will the Government inform this Council of:*

- (a) *the total number of secondary schools which have either employed "overseas" teachers under the relevant Code of Aid or "expatriate" teachers under the Expatriate English Language Teacher Scheme over the past three years; the percentage that these schools represent in relation to the total number of secondary schools in Hong Kong; the respective number of these two categories of teachers; the respective percentage each of these two categories of teachers represents in relation to the total number of English Language teachers in all secondary schools in Hong Kong;*
- (b) *any measures which may help improve the constantly small number of "overseas" and "expatriate" teachers in schools at this time when Hong Kong is in need of English subject teachers and better means of improving the students' standard of English; and*
- (c) *the Government's evaluation of these two ways of employing "overseas" and "expatriate" teachers?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, under the provisions of the Code of Aid, aided secondary schools of 12-23 classes may employ two teachers of English Language on "overseas" terms and schools of 24 or more classes may employ three such teachers. Under the Expatriate English Language Teacher (EELT) Scheme, some schools have been approved to employ no more than two teachers on "expatriate" terms within a quota which is annually adjusted to match the availability of funds.

The answers to Mr HA's questions are as follows:

- (a) The figures requested are provided in the table below:

	1990-91	1991-92	1992-93
Total number of secondary schools which have either employed "overseas" teachers under the Code of Aid or "expatriate" teachers under the EELT Scheme (as a percentage of the total number of secondary schools in Hong Kong)	27 (6.0%)	36 (8.2%)	40 (8.8%)
Total number of "overseas" teachers employed under the Code of Aid (as a percentage of the total number of English Language teachers in all secondary schools in Hong Kong)	11 (0.27%)	13 (0.32%)	15 (0.37%)
Total number of "expatriate" teachers employed under EELT Scheme (as a percentage of the total number of English Language teachers in all secondary schools in Hong Kong)	33 (0.81%)	41 (1.01%)	44 (1.08%)
Total number of teachers under the two categories (as a percentage of the total number of English Language teachers in all secondary schools in Hong Kong)	44 (1.08%)	54 (1.33%)	59 (1.44%)

- (b) In the light of the low utilization of the quota for "overseas" teachers, and of suggestions for improvements from schools in the EELT Scheme, the Education Department is reviewing the administrative and recruitment procedures for employing both overseas teachers under the Code of Aid, and expatriate teachers under the EELT Scheme, with a view to streamlining the procedures and making it easier for schools to employ such teachers. A circular will be issued in the coming school year to announce revised arrangements and encourage schools to recruit native-speaker teachers of English.
- (c) The Board of Education recently confirmed its support for the EELT Scheme, noting that it is making a positive contribution to raising students' standard of English. Feedback from heads of schools employing "overseas" teachers under the Code of Aid is likewise positive.

### **Noise nuisance**

17. DR CONRAD LAM asked (in Chinese): *With regard to noise control after 11.00 pm, will the Government inform this Council:*

- (a) *how many complaint cases of this kind were received by the police in the past three years;*
- (b) *how long it would generally take the police to arrive at the scene upon receipt of such a complaint; and*
- (c) *what effective measures are being taken to control nuisance caused by false alarms from vehicles and shops in the late hours of night?*

SECRETARY FOR SECURITY: Mr President, the police do not keep statistics on the number of complaints of noise nuisance by time of day. However, the Environmental Protection Department have received only two complaint cases of noise nuisance caused after 11.00 pm in the past three years.

It is not possible to find out the average time required for the police to arrive at the scene of complaint of noise nuisance; their response time will obviously depend on factors such as the location of the nuisance, the time of day the nuisance is caused, and the availability of police resources in the vicinity. The police respond to all complaints expeditiously.

Section 14A of the Summary Offences Ordinance (Cap 228) is effective in tackling false alarms from shops. It provides that any person who has control of an intruder alarm system in any premises should provide an efficient automatic device to cause all audible alarm signals to cease sounding within

15 minutes of its activation. Any person who contravenes this section will be liable to a fine of \$5,000 and imprisonment for three months. Alarm owners are generally co-operative and willing to fit such automatic devices. Since the enactment of this provision in the Summary Offences Ordinance, there has been a general decrease in the number of complaints about nuisance from alarm systems in shops.

We do not have specific legislative controls against false vehicle alarms. This is not a widespread problem in Hong Kong. Police experience suggests that, in residential areas, car owners usually arrive at the scene quickly to turn off the alarm. It has been suggested that a time limit, similar to that for alarms in shops, should be imposed on vehicle alarms. However, the police do not consider it appropriate to impose any restriction on the use of audible vehicle alarms because they represent one of the effective means of preventing car thefts, which remains a cause for concern.

### Cash payments with Renminbi

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

- (a) *whether it is lawful in Hong Kong to carry out money exchange transactions in Renminbi in places other than banks, moneychangers' counters and hotels; and*
- (b) *whether shops in Hong Kong can accept payment in Renminbi; if so, whether it will have any effect on the monetary system of Hong Kong?*

SECRETARY FOR FINANCIAL SERVICES: Mr President,

- (a) Hong Kong does not have foreign exchange control of any form, and there is no statute which seeks to regulate the exchange of foreign currency.
- (b) There is no prohibition on the use of foreign currencies in cash payments in Hong Kong. Shops in Hong Kong can accept payments in Renminbi, or any other foreign currencies, if they wish to and are happy with the exchange risks that are incurred. We do not believe that the acceptance of cash payments in Renminbi by some shops would become widespread enough to have any significant effect on the monetary system of Hong Kong.

**Land sale**

19. MR LAU WONG-FAT asked (in Chinese): *Will the Government inform this Council of the total volume of land sold and the revenue received in each of the past 10 years and, of the land sold, how much had been resumed in the New Territories, the payment for these resumptions, and the revenue received from the subsequent land sales?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, the total amount of land sold by auction or tender and the revenue received in each of the years 1983 to 1992 is set out at the Annex.

Land is resumed for a public purpose which may include a number of uses such as roads, sewage treatment plants, public housing, public hospitals, schools and so on. Land formation and servicing is necessary in most cases before it can be used for the intended purpose. A site resumed may be amalgamated with other resumed sites or government land before being allocated or disposed of. Alternatively it may be carved up with different parts being used for different purposes. It would therefore be almost impossible and definitely very resource-intensive and time-consuming to identify that part of the land resumed which has subsequently been sold and the price at which that particular part has been sold.

Annex

<i>Year (Calendar)</i>	<i>Total amount of land sold (Auction/Tender) (Ha)</i>	<i>Total premium (\$m)</i>
1983	59.1	678.7
1984	18.0	901.9
1985	24.8	3,236.9
1986	28.8	3,527.5
1987	24.8	4,338.1
1988	54.4	7,941.9
1989	33.5	12,852.0
1990	19.6	3,480.6
1991	32.2	10,577.3
1992	24.8	10,122.6

**Debt owed by UNHCR**

20. MR HENRY TANG asked: *In view of the large amount of money owed by the United Nations High Commission for Refugees (UNHCR) to the Hong Kong Government for the care and maintenance of Vietnamese migrants, will the Government inform this Council what further action will be taken to*

*press the British Government, on behalf of Hong Kong, to demand the UNHCR to repay this sum, and whether the relevant correspondence exchanged between the UNHCR and the British Government in the past year can be released to this Council?*

**SECRETARY FOR SECURITY:** Mr President, both Her Majesty's Government and the Hong Kong Government constantly remind the UNHCR of its outstanding debt to the territory. This is done largely through the regular contacts which take place between officials of the two governments and the office of the UNHCR. However, the ability of the UNHCR to repay the monies owed is dependant on donor countries.

Earlier this year, following a discussion of this matter in the Public Accounts Committee of this Council, Her Majesty's Government were instrumental in having the debt highlighted in the UNHCR 1993 Comprehensive Plan of Action (CPA) Appeal. British diplomatic missions in major donor capitals were also instructed to ask their host governments whether they would consider augmenting their 1993 contributions to the CPA to enable the UNHCR to discharge its debt to Hong Kong. The final outcome of this demarche is now awaited.

Her Majesty's Government and the Hong Kong Government will continue to remind the UNHCR and the international community of the burden imposed on the territory by the failure of the UNHCR to meet the cost of the care and maintenance of the Vietnamese migrants in the territory and to press for repayment of the outstanding debt.

It would not be appropriate for the Hong Kong Government, as a third party, to release copies of correspondence between Her Majesty's Government and the UNHCR.

## Motions

### OFFICIAL LANGUAGES ORDINANCE

THE ATTORNEY GENERAL moved the following motion:

"That the draft Official Languages (Authentic Chinese Text) (Wills Ordinance) Order, proposed to be made by the Governor in Council, be approved."

He said: Mr President, I move the first motion standing in my name on the Order Paper.

The authentic Chinese texts of the Wills Ordinance, the Employees Compensation Insurance Levy (Rate of Levy) Order, and the Employment of

Young Persons and Children at Sea Ordinance Order have been carefully examined by the Bilingual Laws Advisory Committee and the Legislative Council Subcommittee on the Authentic Chinese Texts and have their support. In accordance with subsection (4) of section 4B of the Official Languages Ordinance, draft authentication orders in respect of these texts have been prepared and are being put before this Council for approval this afternoon prior to being submitted to the Governor in Council for authentication. I now move that the first of these orders, that is, the draft Official Languages (Authentic Chinese Text) (Wills Ordinance) Order, proposed to be made by the Governor in Council, be approved.

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

## **OFFICIAL LANGUAGES ORDINANCE**

THE ATTORNEY GENERAL moved the following motion:

"That the draft Official Languages (Authentic Chinese Text) (Employees' Compensation Insurance Levy (Rate of Levy) Order) Order, proposed to be made by the Governor in Council, be approved."

He said: Mr President, I move the second motion standing in my name on the Order Paper. This seeks approval of the draft Official Languages (Authentic Chinese Text) (Employees' Compensation Insurance Levy (Rate of Levy) Order) Order, proposed to be made by the Governor in Council.

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

## **OFFICIAL LANGUAGES ORDINANCE**

THE ATTORNEY GENERAL moved the following motion:

"That the draft Official Languages (Authentic Chinese Text) (Employment of Young Persons and Children at Sea Ordinance) Order, proposed to be made by the Governor in Council, be approved."

He said: I move the third motion standing in my name on the Order Paper. This seeks approval of the draft Official Languages (Authentic Chinese Text) (Employment of Young Persons and Children at Sea Ordinance) Order proposed to be made by the Governor in Council.

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

**DRUG TRAFFICKING (RECOVERY OF PROCEEDS) ORDINANCE**

THE SECRETARY FOR SECURITY moved the following motion:

"That the Drug Trafficking (Recovery of Proceeds) (Designated Countries and Territories) (Amendment) Order 1993, made by the Governor in Council on 8 June 1993, be approved."

He said: Mr President, I move the resolution standing in my name on the Order Paper.

The Drug Trafficking (Recovery of Proceeds) Ordinance has strengthened our ability to combat domestic and international drug trafficking, by providing us with the means to trace, restrain and confiscate the proceeds of drug trafficking.

The 1991 Order, made under section 28 of the Ordinance, applies the provisions of this Ordinance, with certain modifications, to enable courts in Hong Kong to confiscate the proceeds of drug trafficking pursuant to external confiscation orders.

In the course of implementing the provisions of the 1991 Order, some ambiguities have come to light. We propose to amend the 1991 Order by clarifying the definitions of "defendant" and "realizable properties", and removing other ambiguities.

This resolution seeks this Council's approval of the Drug Trafficking (Recovery of Proceeds) (Designated Countries and Territories) (Amendment) Order 1993, made by the Governor in Council on 8 June 1993. The Amendment Order introduces technical amendments to facilitate the proper operation of the Ordinance in so far as external confiscation orders are concerned.

Mr President, I beg to move.

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

**TRADING FUNDS ORDINANCE**

THE SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS moved the following motion:

"That with effect from 1 August 1993 —

- (a) on the recommendation of the Financial Secretary, the Land Registry Trading Fund ("the trading fund") shall be established to

- manage and account for the operation of the government service of the Land Registry;
- (b) the services to be provided under the trading fund shall be those specified in Schedule 1;
- (c) the assets set out in column 2 of Schedule 2 shall, subject to any term specified opposite an asset in column 3 of that Schedule, be appropriated to the trading fund;
- (d) the net value of the assets of \$354.90 m. appropriated to the trading fund shall be shown in the Capital Investment Fund -
- (i) as to \$236.60 m., as a loan;
- (ii) as to the balance, as a contribution of trading fund capital;
- (e) the loan referred to in paragraph (d)(i) -
- (i) shall be repayable in 10 equal annual instalments of \$23.66 m. each, the first such instalment to become due on 1 August 1994;
- (ii) shall, as to any balance unpaid, bear interest at a rate equal to the average of the best lending rate quoted by the continuing members of the Committee of The Hong Kong Association of Banks, such interest to be payable annually in arrear.

## SCHEDULE 1

[para. (b)]

## SERVICES TO BE PROVIDED BY THE TRADING FUND

1. Giving advice on matters relating to registration under the Land Registration Ordinance (Cap. 128).
2. Registration of documents -
  - (a) affecting land and capable of being registered under the Land Registration Ordinance (Cap. 128);
  - (b) required under any Ordinance to be registered at the Land Registry.
3. Maintaining any book, register, index or other record of the Land Registry, whether in manual, microfilmed or computerized format.

4. Making available for inspection, or providing copies of, the records of the Land Registry.
5. Conducting on behalf of the Government and public bodies searches of Land Registry records, and compiling reports of such searches.
6. Preparing certified copies of records held by the Land Registry.
7. Providing safe custody for documents delivered to the Land Registry for that purpose.
8. Preparing and verifying memorial forms to accompany documents to be registered in the Land Registry.
9. Acting as a depository for plans deposited in the Land Registry pursuant to any Ordinance.
10. Giving advice on matters relating to registration of owners as a corporation under the Building Management Ordinance (Cap. 344).
11. Processing applications by owners of buildings for registration as a corporation under the Building Management Ordinance (Cap. 344).
12. Issuing certificates of registration of owners of buildings as a corporation under the Building Management Ordinance (Cap. 344).
13. Maintaining a register of corporations of owners of buildings under the Building Management Ordinance (Cap. 344).
14. Making available for inspection, and providing copies of, records of corporations of owners of buildings registered under the Building Management Ordinance (Cap. 344).
15. Preparing certified copies or extracts of records of corporations of owners of buildings registered under the Building Management Ordinance (Cap. 344).
16. Compiling and publishing for sale current indexes of streets, house numbers and lots in Hong Kong.
17. Providing training, giving seminars and publishing materials in respect of registration matters under the Land Registration Ordinance (Cap. 128) and the Building Management Ordinance (Cap. 344).
18. Collating and producing statistics, analyses, information and materials from Land Registry records.

19. Advising on and assisting in the introduction of an alternative system of land registration in Hong Kong.
20. Appearances by the Land Registrar or his representative as witness or amicus curiae in court proceedings.
21. Producing Land Registry records for use in court proceedings.
22. Cancelling memorials of re-entry and vesting notices and serving such memorials and notices on owners under the Crown Rights (Re-entry and Vesting Remedies) Ordinance (Cap. 126).
23. Any service that the Land Registrar may be authorized to provide under or by virtue of any Ordinance.
24. Any service incidental to or conducive to the provision of any of the services specified in this Schedule.

## SCHEDULE 2

[para. (c)]

## ASSETS

Item	Description	Terms
1.	Parts of the building known as Queensway Government Offices, namely –  (a) the 18th, 19th and 28th floors; and  (b) those parts of the 17th and 20th floors,  as shown in the document marked "Accommodation Plan of Land Registry" dated 3 June 1993 and kept by the Land Registrar.	Not to be disposed of unless the approval of the Financial Secretary has first been obtained.
2.	All furniture and equipment under the control of the Land Registrar on 1 August 1993, as set out in the document marked "Inventory of Furniture and Equipment of the Land Registry" kept by the Land Registrar.	

Item	Description	Terms
3.	Office car registered number AM 163.	
4.	Capitalized setting-up costs.	

He said: Mr President, I move the motion standing in my name on the Order Paper. Section 3(1) of the Trading Funds Ordinance provides that, the Legislative Council may, on the recommendation of the Financial Secretary, by resolution establish a trading fund. This motion seeks to establish the Land Registry Trading Fund.

As part of the reorganization of the previous Registrar General's Department, the Land Registry has become a separate department since 1 May 1993. The Financial Secretary is of the opinion that the Registry is capable of providing an efficient and effective operation that meets an appropriate standard of service and has the capacity of meeting expenses and finance liabilities out of the income generated from the fees and charges levied in accordance with the Land Registration Ordinance.

The Financial Secretary accordingly recommended on 9 June 1993 that the Land Registry Trading Fund be established to manage and account for the operation of the Land Registry under the Trading Funds Ordinance with effect from 1 August 1993.

The resolution seeks to set out the services to be provided under the Land Registry Trading Fund and appropriate to the Trading Fund the assets and liabilities on the terms specified.

The objective of establishing the Trading Fund is to improve the quality of the services provided to the customers of the Land Registry. Under the trading fund operation, payments received from customers will be credited to the Trading Fund rather than to the general revenue. The Registry will be required to meet expenditure from the Trading Fund. This arrangement will enable the Registry which provides services on a cost-recovery basis to respond to the changing needs of its fee-paying clients more promptly. Such a prompt reaction to changes in demand is inhibited by the existing systems of resource allocation under which funds are allocated at the beginning of each financial year.

Under the trading fund arrangements, the Land Registry remains as a government organization and its staff remain civil servants. At the same time, there is greater flexibility for deploying resources to meet operational needs.

The Land Registry will continue to be under the policy responsibility of the Planning, Environment and Lands Branch. Performance targets and financial targets will be set out in the annual Business Plan. The performance of the Trading Fund will be monitored closely.

Thank you, Mr President.

*Question on the motion proposed.*

MR PETER WONG: Mr President, I was the Convenor of the Bills Committee that scrutinized the Trading Funds Bill which received its Third Reading on 10 March 1993. My remarks apply to both the resolutions to form the Land Registry Trading Fund and the Companies Registry Trading Fund.

The Committee was supportive of the proposals to start off these two trading funds since the existing arrangements were far too rigid and incapable of responding to fluctuations in market demand for their services. They caused great inconvenience to the professionals, the accountants and lawyers amongst others; and slowed down the rate of doing business, thus adding to the costs. Indeed, Hong Kong was being compared very unfavourably in terms of service efficiency against our competitors.

I can fairly say that all professionals who have to deal with the Land and Companies Registries are looking forward to the setting up of these trading funds so that we can obtain the services expected of an international financial centre. Together with the new freedom that a trading fund will give him, the manager will also have the responsibility to be accountable. He will have to produce the most cost-effective product for the market which is convenient to use. He will need to put in modern management information systems to enable him to manage his activities and respond to and anticipate demand. He should possess accurate and timely accounting information in order to demonstrate that fees are fairly set. Right now, such management tools are non-existent.

We are being asked elsewhere to approve legislation that will increase some charges relating to companies by 30%, based on the results of a survey indicating that we are prepared to pay more. However, the trading fund managers should not delude themselves that we are always willing to pay continually higher fees. Here, I can assure the Secretary for Planning, Environment and Lands and the departmental managers that their performance will be closely monitored by the Public Accounts Committee and other Legislative Council Panels on an ongoing basis.

Mr President, trading funds are a new phenomenon in Hong Kong. We in this legislature have yet to find the way we are to monitor and hold the fund managers to account. My concern is how each of the trading funds will remain accountable to the Government and in turn to this legislature. I would suggest something along the lines of the Securities and Futures Commission whereby

after the tabling of the funds' audited accounts and annual reports, the relevant Panel will receive a copy of the upcoming Business Plan, Budget together with Performance Pledges. Questions can then be asked and if necessary changes made. Once set on its proper course, the fund manager should then be able to get on with his job.

I have gone over the draft Corporate and Business Plans together with Framework Agreements for both trading funds. The one area that I wish to spend some time on is the financial targets for the two Registries. 10% is the prescribed return, before payment of interest and dividends, with average net fixed assets (ANFA) employed. I appreciate that the Ordinance asks for "achieving a reasonable return, as determined by the Financial Secretary, on the fixed assets employed". But the Administration has taken the target return too rigidly, using ANFA as the only yardstick.

I urge the Administration to view ANFA as but one of the yardsticks which may not be the most appropriate one for that particular service. In both funds, the office building housing the activities form the bulk of the assets and it is not a fair measure whether the real business assets, the computers, the filing and retrieval systems, are being adequately maintained and replaced by new technology. There is always the question of whether the charge to the expenditure for depreciation of land and building reflects fairly on the commercial worth of those premises, and that is vital when it comes to gauging the reality of the fees charged. Further, we have to take into consideration the capital gain when it comes to relocate the registry and dispose of the premises. I would suggest that each trading fund reworks its figures based on a market rental charge and see how that works out in terms of ANFA.

Lastly, I wish to state that I fully support the concept of incentive related payments, but this has to be fully explored in the civil service context.

Mr President, I support both motions.

MR FRED LI (in Cantonese): Mr President, since the Trading Funds Bill was passed by this Council on 10 March, trading funds have been established in the Land Registry and the Companies Registry, and my speech will cover these two funds.

Meeting Point thinks that the Administration should clarify the following points:

Firstly, in allowing the two registries to set up their trading funds, the Administration, besides having to consider whether the two registries are able to assume sole responsibility for their profits and losses, must also provide relevant data to convince the public and this Council to pass the present resolutions. What is noteworthy is that the Administration has to approve loans. Besides allocating an amount of funds to the two registries, the Administration

has also to give them some assets, which include government buildings and vehicles. However, if the two registries want to sell these assets, they only have to obtain the approval of the Financial Secretary and need not notify this Council. As to how it can be ensured that these two registries can assume sole responsibility for profits and losses, the Administration should give supporting reasons and information.

Secondly, the Finance Branch has indicated that it will sign such agreements with the two registries that will have a binding effect on them and ensure that they hold themselves accountable to the Financial Secretary. Meeting Point thinks that the Administration should disclose the content of the agreements for the reason of transparency. Besides, what is the Administration's point in setting a 10-year repayment period? What is the basis for formulating the relevant rates of return? These we do not know, nor have these been clearly indicated in the documents given to us by the authority concerned. I think that these areas need clarification.

Thirdly, in establishing a trading fund, attention should be paid to the feelings of the government staff concerned about the change of system. Meeting Point has conducted a number of surveys in some government departments, for example, the Electrical and Mechanical Services Department, which have set up Operational Services Accounts that are in effect trading funds on trial run. We have talked with the staff about this matter, and have found that they are suspicious and even resistant to this system. They are worried that problems might arise in respect of their fringe benefits and salaries after changing to the trading fund system. As a matter of fact, their worries are unnecessary, because they are still civil servants after the change of system. I think the staff do not understand what a trading fund is about and the Administration has not initiated any communication with them. So if the working efficiency of the staff decreases because of their suspicion of the trading fund system, that will be totally against the original intention of the Administration of enhancing the efficiency of government departments.

Fourthly, the Administration has also to consider the division of work and co-ordination between the department heads and the general managers, especially the fact that department heads tend to emphasize policies while cost-effectiveness is what general managers are after. Then how to resolve the conflict between these different orientations? Meeting Point thinks that the implementation of a trading fund system is beneficial to those government departments which can be run on a commercial basis and can assume sole responsibility for profits and losses, especially those that enjoy a monopoly like the Post Office. Under such kind of circumstances where profits are guaranteed, it is generally acceptable for the Companies Registry and the Land Registry to implement the trading fund system. This is the first time that a government department set up its trading fund and by way of a resolution passed by this Council. However, the papers provided by the authority concerned are piecemeal and not systematic. I hope that more information can be provided in the papers in future, such that this Council can monitor and

examine the situation. Meeting Point is supportive of this resolution, but we have to reiterate our demand that the Administration must provide more cogent information to us next time when it requests this Council to approve the setting up of a trading fund in a government department.

Mr President, I so make my submission.

**SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS:** Mr President, may I first reply to the points raised by the Honourable Peter WONG on the trading fund concept. I am grateful for his support of the motion and for his saying that all professionals are looking forward to the setting up of the trading fund. Mr WONG mentioned that the performance of the Land Registry will be closely monitored by the Public Accounts Committee and the Legislative Council panels on an ongoing basis. I will only say that we welcome this ongoing monitoring and we will give our utmost co-operation in this regard.

With respect to the other points raised by Mr WONG, I only wish to state here that we will consider carefully the comments he made, and in the future revision of the Annual Business Plan and Corporate Plan we will certainly take his points into consideration.

With regard to the points raised by the Honourable Fred LI, before answering his points, I would like to stress that we have in fact no intention of withholding any information on the operation and setting up of the trading fund. We have in fact offered to brief the Legislative Council Lands and Works Panel on all the various details connected with the trading fund. I only can repeat here that with regard to the details which Mr LI has asked for, I will be happy — and I am sure the general manager who is sitting behind me will be happy — to have a session with him if he so wishes to go through the details.

One important point Mr LI mentioned is the assets of the trading fund. Of course this is the first time that we are setting up the Land Registry and the asset is mainly the office which the Land Registry now occupies. It is very important, in our view, that its operation should not be affected by the rising and fluctuating rents in the commercial market. We have therefore considered it appropriate to sort of set aside the office as being appropriated to the Land Registry.

On Mr LI's second point about the Framework of Agreement between the Secretary and the head of department or the general manager of the trading fund, we will of course review carefully every year in formulating the Framework of Agreement the various operation targets set by the fund and the demand for public services.

As to Mr LI's point about civil servants staying with the Land Registry, of course, as I said in my earlier speech, they will remain civil servants. So they should have no worry about their terms and conditions of service. I am sure the general manager will be happy to do his utmost to explain the change of status to the civil servants working with the Land Registry.

Mr President, that is all I wish to say in answer to the points made.

*Question on the motion put and agreed to.*

## **TRADING FUNDS ORDINANCE**

THE SECRETARY FOR FINANCIAL SERVICES moved the following motion:

"That with effect from 1 August 1993 —

- (a) on the recommendation of the Financial Secretary, the Companies Registry Trading Fund ("the trading fund") shall be established to manage and account for the operation of the government service of the Companies Registry;
- (b) the services to be provided under the trading fund shall be those specified in Schedule 1;
- (c) the assets set out in column 2 of Schedule 2 shall, subject to any term specified opposite an asset in column 3 of that Schedule, be appropriated to the trading fund;
- (d) the net value of the assets of \$415.16 m. appropriated to the trading fund shall be shown in the Capital Investment Fund -
  - (i) as to \$276.70 m., as a loan;
  - (ii) as to the balance, as a contribution of trading fund capital;
- (e) the loan referred to in paragraph (d)(i) -
  - (i) shall be repayable in 10 equal annual instalments of \$27.67 m. each, the first such instalment to become due on 1 August 1994;

- (ii) shall, as to any balance unpaid, bear interest at a rate equal to the average of the best lending rate quoted by the continuing members of the Committee of The Hong Kong Association of Banks, such interest to be payable annually in arrear.

## SCHEDULE 1

[para. (b)]

### SERVICES TO BE PROVIDED BY THE TRADING FUND

1. Administering and enforcing the provisions of the Companies Ordinance (Cap. 32), including facilitating the incorporation of new companies and maintaining registers of companies and charges.
2. Administering and enforcing the provisions of the Limited Partnerships Ordinance (Cap. 37), including maintaining the register of limited partnerships.
3. Administering and enforcing the provisions of Part VIII of the Trustee Ordinance (Cap. 29), including maintaining the Register of Trust Companies.
4. Administering and enforcing the provisions of the Registered Trustees Incorporation Ordinance (Cap. 306), including maintaining the register of incorporated trustees.
5. Making available, where the Registrar of Companies is so required or permitted by law, information registered or filed with the Registrar.
6. Monitoring the adequacy of the regulatory framework embodied in any Ordinance referred to in this Schedule and in other Ordinances where the Registrar of Companies has been specified, and advising the Government on any need for change.
7. Any service that the Registrar of Companies may be authorized to provide under or by virtue of any other Ordinance.
8. Providing advice or information on any matter that lies within the expertise of the Registrar of Companies.
9. Any service incidental to or conducive to the provision of any of the services specified in this Schedule.

## SCHEDULE 2

[para. (c)]

## ASSETS

Item	Description	Terms
1.	Parts of the building known as Queensway Government Offices, namely –	Not to be disposed of unless the approval of the Financial Secretary has first been obtained.
	(a) the whole of the 13th, 14th and 15th floors;	
	(b) those parts of the 1st floor of the Low Block and the 12th, 17th and 30th floors of the High Block as shown on the document marked "Accommodation Plan of Companies Registry" dated 4 June 1993 and kept by the Registrar of Companies.	
2.	All furniture and equipment under the control of the Registrar of Companies on 1 August 1993, as set out in the document marked "Inventory of Furniture and Equipment of the Companies Registry" kept by the Registrar of Companies.	
3.	Office car registered number AM 123.	
4.	Capitalized setting-up costs.	

He said: Mr President, I move the motion standing in my name on the Order Paper. Its purpose is to establish the Companies Registry Trading Fund and to provide for the appropriation to the Fund of the assets listed in the Second Schedule to the resolution, in accordance with the provisions of the Trading Funds Ordinance.

The establishment of certain government services as trading funds is an important element in the Public Sector Reform initiative. The objective is to enable those services to respond more effectively to the needs of their users by

giving management the financial flexibility to run the services in a more commercial way.

The passing of the Trading Funds Ordinance in March of this year represented a significant step forward in providing for the Council to approve the establishment of individual trading funds upon the recommendation of the Financial Secretary.

The Companies and Land Registries became independent departments on 1 May 1993, representing the final stage of the reorganization of the Registrar General's Department. The potential for these services to be operated as trading funds was recognized in a consultancy study on the reorganization of the RGD in 1990. Since that time we have been working towards this end and I am pleased to be able to say that the preparatory work is now complete.

In recommending the establishment of the Companies Registry Trading Fund, the Financial Secretary has taken into account the services to be provided by the Registry and its ability to finance those services, its future capital expenditure and other liabilities from the revenue it receives, and has concluded that it would be viable and desirable for a trading fund to be set up.

The main services supplied by the registry relate to the provision of arrangements for the incorporation of new companies and for the registration of overseas companies, and the provision of corporate information. These and other services supplied by the registry are charged for on a cost-recovery basis. Surveys have indicated that the users of the registry's facilities, including firms of solicitors and accountants, banks and other businesses, as well as the wider public, seek quick and ready access to up-to-date information, and services that are responsive to their requirements, and they are prepared to pay for improvements to the existing standards.

Over the years, with rapid economic growth in Hong Kong, the demand for the registry's services has increased dramatically. While some productivity improvements and streamlining of procedures have taken place to try to cope with this surge in demand, the revenue generated by the registry has had to be returned to the central pool of the General Revenue Account, and the Companies Registry has had to compete with other pressing priorities for its share of those resources. The result has been a decline in both the scope and quality of services.

Under the proposed arrangements, the registry will be able to retain the revenue it generates. The management will have the flexibility to vary resource inputs to meet fluctuations in demand and will be able, for example, to invest in longer-term capital projects and productivity improvements secure in the knowledge that the availability of resources is, to a much greater extent, within their own control. Although the staff of the registry will remain as civil servants, the management will also have greater freedom to employ temporary

staff to ensure that variations in demand can be handled more expeditiously and effectively.

A necessary concomitant of this flexibility is greater accountability. In this context, a Framework Agreement setting out the relationship between the registry and the Financial Services Branch will be signed by the two parties. This will define the respective responsibilities and accountability, including a requirement for the registry to produce annual business plans, containing amongst other things, financial and service level targets. In order to ensure that these targets are met, the performance of the registry will need to be closely monitored by both the senior staff of the registry and by the Financial Services Branch, which will retain overall policy responsibility. Under section 8 of the Trading Funds Ordinance a signed annual report on the operation of the fund and the report of the Director of Audit must be tabled in this Council, ordinarily no later than 31 October each year.

As regards the initial investment in the Trading Fund, the net value of the assets vested in it, as listed in Schedule 2, will be financed by an investment from the Capital Investment Fund, one third being trading fund capital and two thirds being a loan. The Registry will be expected to repay the loan over 10 years and to pay interest at commercial rates on the outstanding balances. A dividend will be payable, in principle, on the trading fund capital. The Trading Fund will also be expected to achieve a reasonable return on average net fixed assets.

Mr President, I beg to move.

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

### **First Reading of Bills**

#### **SUPPLEMENTARY APPROPRIATION (1992-93) BILL 1993**

#### **WESTERN HARBOUR CROSSING BILL**

#### **HONG KONG PRODUCTIVITY COUNCIL (AMENDMENT) BILL 1993**

#### **SHIPPING AND PORT CONTROL (AMENDMENT) BILL 1993**

#### **INSURANCE COMPANIES (AMENDMENT) (NO. 2) BILL 1993**

#### **PROTECTION OF INVESTORS (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

### SUPPLEMENTARY APPROPRIATION (1992-93) BILL 1993

THE FINANCIAL SECRETARY moved the Second Reading of: "A Bill to approve a supplementary appropriation to the service of the financial year which ended on 31 March 1993."

He said: Mr President, I move that the Supplementary Appropriation (1992-93) Bill 1993 be read the Second time.

Section 9 of the Public Finance Ordinance states that "If at the close of account for any financial year it is found that expenditure charged to any head is in excess of the sum appropriated for that head by an Appropriation Ordinance, the excess shall be included in a Supplementary Appropriation Bill which shall be introduced into the Legislative Council as soon as practicable after the close of the financial year to which the excess expenditure relates".

The accounts for the financial year 1992-93 have been finalized by the Director of Accounting Services. The expenditure charged to 66 heads out of a total of 78 heads is in excess of the sum appropriated for those heads by the Appropriation Ordinance 1992. This is because sufficient offsetting savings could not be found within the heads concerned. In accordance with section 9 of the Public Finance Ordinance, this excess has been included in the Supplementary Appropriation (1992-93) Bill 1993 now before Members. The Bill seeks to give final legislative authority for the amount of supplementary provision approved in respect of particular heads of expenditure by the Finance Committee or under powers delegated by it.

The total net supplementary appropriation required in respect of the 66 heads of expenditure is \$7,493.1 million. This excess is largely attributable to the implementation of the 1992 pay adjustment in respect of the Civil Service and government subvented organizations (\$5,377.4 million). Other major contributing factors include additional expenditure on pension payment (\$1,219.3 million) and the increased expenditure on public assistance and special needs allowances (\$566.5 million).

The cost of the 1992 pay adjustment and pension increase had been anticipated in the 1992-93 estimates under the "Additional Commitments" subhead. Savings were also made in other subheads through continued tight control over public expenditure, and I would like to thank the Controlling Officers and others who have contributed to restraint. Because of these savings and the provision made for additional commitments, total expenditure for the year is within the sum appropriated in the Appropriation Ordinance 1992.

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

## WESTERN HARBOUR CROSSING BILL

THE SECRETARY FOR TRANSPORT moved the Second Reading of: "A Bill to grant a franchise for the construction and operation of a crossing between West Kowloon Reclamation and Sai Ying Pun; to provide for the maintenance of the works within the tunnel area, the payment of tolls to the franchise holder for the use of the tunnel by motor vehicles and the regulation of vehicular traffic in relation to such use; and for matters ancillary to and connected with those purposes."

He said: Mr President, I move that the Western Harbour Crossing Bill be read the Second time.

### *Purpose of the Bill*

The Bill now before Honourable Members provides for the award of a franchise to the Western Harbour Tunnel Company Limited to build and operate the Western Harbour Crossing. This will be a vital link between Hong Kong Island, West Kowloon, the new airport at Chek Lap Kok and the northwest New Territories when Route 3 is finally completed. It will also provide much needed relief for the two existing cross harbour tunnels, and will help meet long-term traffic demands.

### *Background*

The Western Harbour Crossing will comprise a dual three lane tunnel connecting Sai Ying Pun and the West Kowloon Reclamation, a toll plaza, an administration building and approach roads. Although only one bid for the franchise was received, as a result of tough negotiations lasting over seven months we have succeeded in securing terms that are at least comparable and in some ways better than those in earlier tunnel franchises. This is a significant achievement, since these other franchises were awarded after highly competitive tendering. In the negotiations we have also taken full account of the wishes and views expressed by those Members of this Council and the Airport Consultative Committee who had shown an interest in the project.

The tunnel will cost \$7.5 billion to build, including financing costs. Before making such a formidable investment, the proposed franchisee and his bankers require certainty that the tunnel will produce sufficient revenue to repay debts and to provide a reasonable return on investment. This is an essential prerequisite. Without such certainty there can be no franchise. In the negotiations, we agreed that the proposed franchisee be given the degree of certainty he needs but at the same time we have secured all the necessary public interest objectives. I believe we have struck an excellent deal.

### *Key issues*

Public discussion on the proposed franchise has so far focussed on three key issues: the initial toll levels, the toll adjustment formula and the level of return required by the prospective franchisee. I will deal with each of these in turn.

#### *Initial toll levels*

The initial tolls set out in the first schedule of the Bill are expressed in 1997, and not current, dollars. The tolls are set at the levels needed to service debt in the early years of tunnel operation. In that period most of the revenue will be used by the franchisee to repay loans. If the tolls were set lower, then quite simply the franchisee could be in danger of becoming insolvent.

The tolls of \$30 for a private car and \$55 for a double-decker bus are expressed in 1997 dollars. They may appear expensive and require some explanation.

By way of crude comparison, the construction cost of the Eastern Harbour Crossing was \$2 billion in money of the day and the tunnel had an opening private car toll of \$10. The Western Harbour Crossing will cost three times as much to build and the tolls must be proportionately higher if debts are to be serviced. The effect of a \$55 toll for double-decker buses will be to add about 40 cents to the passenger fare, compared with about 20 cents added for routes currently using the existing cross harbour tunnels.

When all is said and done, we must remember that there will be no compulsion to use the Western Harbour Crossing. If a motorist chooses to use the more expensive Western Harbour Crossing, it will be only because that crossing provides a more efficient passage, and not because he is compelled to use it. In future motorists will have the options of using either the Eastern Harbour Crossing or the Cross Harbour Tunnel, the tolls for which are likely to remain lower. Contrary to media speculation, a \$30 toll at the Western Harbour Crossing will not of itself trigger toll increases for the other two tunnels. This is because toll increases at those tunnels have to be justified under the terms of their respective franchises, and may be granted only if the operators are not receiving a reasonable return on their investments. Of course, the alternative to a toll increase in raising the cost of using these tunnels is to impose or increase a passage tax, but this option will be applied only for sound traffic management reasons and I am not prepared to speculate at present whether the Government would introduce such measures into this Council.

#### *Toll adjustment formula*

The toll adjustment formula is explained in Part X of the Bill. Whether toll increases occur will depend on whether net revenues reach certain prescribed levels. The formula is based on a floor and ceiling concept, with the

aim of providing the franchisee with an average return of 16.5% on shareholders' funds over the 30 year life of the franchise. Under this concept, the franchisee will receive a toll increase if net revenues are insufficient to provide a return of 15% on shareholders' capital. If the return is between 15% and 18%, the franchisee will be entitled to a toll increase every four years. If the return exceeds 18%, there will be no toll increase. The Western Harbour Crossing is expected to be a popular facility and it is by no means certain there will be a need for toll increases every four years. In addition, when net revenues reach a level which would yield a return of between 18% and 19%, the excess over 18% will be shared evenly between the Government and the franchisee. When the return exceeds 19%, the whole of the excess will accrue to the Government. All such excess revenue will be placed in a Toll Stability Fund which will be used to defer future toll increases.

Mr President, I would put it to Members that this is a new and imaginative arrangement, and a major improvement on previous tunnel franchises. For the first time, we have defined what is a reasonable return for the franchisee and have capped his profits, with the excess being used to stabilize tolls for the benefit of tunnel users. It replaces the somewhat vague formula in the existing franchises which give us no specific guidance as to what constitutes a reasonable rate of return, and no assurance to the franchisee as to his future earnings and dividends.

Let me make it clear that the proposed toll adjustment formula does not take away the powers of this Council in respect of toll adjustments. In approving the franchise, Honourable Members will be agreeing a precise formula that will govern toll adjustments throughout the franchise period.

#### *Rate of return*

Again, contrary to speculative reports, the proposed toll regime does not guarantee a rate of return to the franchisee. It merely provides him with the opportunity over the life of the franchise to earn revenues which would give him an annual average return of 16.5% on his investment. But an opportunity is no more than an opportunity. It does not guarantee the franchisee against any of the risks involved in running a business. For example, there are the penalties of delayed project completion, construction cost overruns, and possible increases in corporate profits tax, the costs of all of which will have to be absorbed by the franchisee and will not be recovered through tolls. There are also the penalties of the tolls being priced too high, because the franchisee will be operating in competition with two other harbour crossings.

The question has been asked whether 16.5% is an excessive rate of return. It is not. After taking extensive soundings, our financial advisers informed us before we invited bids for the franchise that we could expect tenderers to seek a return of between 17% and 20%. The successful tenderer for the Tate's Cairn Tunnel and Eastern Harbour Crossing franchises were looking for returns of between 14% and 16%, although their franchises were awarded after highly

competitive tendering, and at a time when investors did not feel the need for the degree of certainty they now require. For similar franchises elsewhere in the Asia Pacific region, the rates of return currently being sought to build and operate this kind of infrastructure are between 20% and 25%. The rate of return sought for the Western Harbour Crossing may appear high, but this is what the market requires, given the risks involved.

*The Bill*

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

It is modelled on the Tate's Cairn Tunnel Ordinance and the Eastern Harbour Crossing Ordinance with which Honourable Members will be familiar. The main differences are as follows:

- (a) first, the 30-year franchise period can be extended if there is proven loss of time due to government delay in handing over work sites or if the Government directs changes in construction requirements;
- (b) secondly, provisions have been added to give effect to the new toll adjustment mechanism;
- (c) thirdly, there is provision for the establishment of the Toll Stability Fund.

The object of the Bill is to grant a 30-year franchise for the construction and operation of the crossing and to provide for the rights and obligations of the franchisee. I will now describe the key provisions.

Parts I and II of the Bill contain the definitions necessary for the interpretation of the Ordinance, and enable variation in the plan of the tunnel area. They also provide for the grant of the franchisee to design, construct and operate the Western Harbour Crossing, and the use of the tunnel by the public on payment of tolls.

Part III prohibits the alienation or encumbrance of rights granted under the Bill except with the consent of the Governor in Council, or in certain defined circumstances.

Part IV specifies requirements relating to the directors of the company, including the appointment of two government directors, the powers of the Financial Secretary and the tax provisions.

Part V provides for the start of construction works and for their completion within 48 months. Part VI sets out the obligations of the company for tunnel repair and maintenance and empowers the Governor in Council to make regulations in relation to the provision of tunnel facilities, their safety and maintenance, as well as employment of personnel.

Part VII provides for determination of the tunnel opening date, rights of the public to use the tunnel on payment of tolls, control and safety of traffic, and the operation of the tunnel by the Government in an emergency. This part also gives powers to the Commissioner for Transport in determining the adequacy of tunnel facilities.

Part VIII relates to the tolls that may be charged. Part IX establishes the Toll Stability Fund and the committee to administer it. Part X requires the company to submit statements of net revenue annually and sets out the toll adjustment formula.

Part XI makes provision for the prosecution of traffic offenders. Part XII specifies the circumstances in which the tunnel company will be regarded as in default of its franchise obligations, and the remedies available to the Government. It enables the Governor in Council to revoke the franchise and affords the company the opportunity to show why the franchise should not be so revoked. Part XIII finally enables the company to appeal against a public officer's decision and to resolve disputes by mutually binding arbitrator. It also protects the Government and public officers from liability in relation to tunnel works, operation or maintenance.

### *Conclusion*

Mr President, it is regrettable that more time could not have been allowed for Honourable Members to examine this Bill. But there are very good reasons why the Bill should be enacted in the current Session. Hong Kong needs this additional harbour crossing as soon as possible. If the franchise is not awarded until the next Session, there will be a delay of several months in its completion. Moreover, the validity of the tender will expire on 31 August, and if the franchise is not awarded by then construction costs will increase. In the circumstances, I would be very grateful if Honourable Members would exercise their best endeavours to complete their examination of the Bill as soon as possible. My Transport Branch colleagues and I stand ready to discuss with the Bills Committee at any time.

By way of conclusion, I believe we have negotiated a franchise agreement that is good for Hong Kong and fair to all parties. From the tunnel users' viewpoint, the tunnel operator's returns will be capped, and surplus revenues will be put back into the project to defer toll increases, thus ensuring toll stability. The Bill provides the franchisee with the degree of certainty he, his bankers, and his shareholders need for backing such a massive investment. The franchisee will provide \$6 billion worth of essential transport infrastructure at no cost to the public purse, thereby allowing public funds to be spent instead on other vital works.

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

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

### **HONG KONG PRODUCTIVITY COUNCIL (AMENDMENT) BILL 1993**

THE SECRETARY FOR TRADE AND INDUSTRY moved the Second Reading of: "A Bill to amend the Hong Kong Productivity Council Ordinance."

He said: Mr President, I move that the Hong Kong Productivity Council (Amendment) Bill 1993 be read the Second time.

The Bill seeks to remove the requirement to establish an Executive Committee and to give the Productivity Council more flexibility in deciding its committee structure.

The Bill also seeks to increase the maximum number of members representing management, labour and professional or academic interests on the Council from 16 to 17. At the same time, the maximum number of public officials on the Council will be reduced from six to five. These changes will enable us without reducing the existing number of non-official members to appoint to the Council the Executive Director of the Vocational Training Council, who is not a public official, in place of the Director of Technical Education and Industrial Training, who as a public official was formerly a member of the Council and whose functions have largely been taken over by the Executive Director of the VTC.

Finally, the Bill seeks to incorporate a clause governing conflict of interest so that the public interest may be better safeguarded.

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

### **SHIPPING AND PORT CONTROL (AMENDMENT) BILL 1993**

THE SECRETARY FOR ECONOMIC SERVICES moved the Second Reading of: "A Bill to amend the Shipping and Port Control Ordinance."

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

The Bill amends the Shipping and Port Control Ordinance to provide for better regulation and control of vessels entering or remaining in Hong Kong waters.

At present, ocean-going ships arriving in Hong Kong are not required by law to give prior notice except in the case of damaged vessels. By tradition, most ships give us 24 hours' notice. Against the background of an ever increasing number of vessels navigating in Hong Kong waters and the possibility that a vessel carrying potentially dangerous cargo may turn up, unannounced, in our waters, we intend to make advance notification a legal requirement. The Bill provides for this.

To complement the requirement to notify, the Bill provides that the Director of Marine may refuse entry of vessels and, in respect of vessels already within Hong Kong waters, require their removal. The Director of Marine is also given powers to direct ships to leave our waters if he considers that the presence of the vessel in the harbour might prevent or seriously prejudice the use of the harbour by other vessels.

The proposed amendments in this Bill have been formulated following consultation with the shipping industry and port users, and with their agreement.

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

## **INSURANCE COMPANIES (AMENDMENT) (NO. 2) BILL 1993**

THE SECRETARY FOR FINANCIAL SERVICES moved the Second Reading of: "A Bill to amend the Insurance Companies Ordinance."

He said: Mr President, I move the Second Reading of the Insurance Companies (Amendment) (No. 2) Bill 1993.

This Bill seeks to give greater security to holders of insurance policies. An insurer authorized to carry on business in Hong Kong is not currently required to maintain assets in Hong Kong to match his Hong Kong liabilities. Although the Insurance Authority is empowered to impose such a requirement, he can only do so when the insurer's financial position is sufficiently precarious as to warrant intervention.

Once an ailing insurer's assets have been removed overseas, it is often difficult or impossible to recover them. The Authority may not become aware of problems affecting an overseas insurer's worldwide operations until it is too late to take effective action. In consequence, there is great risk that local policy holders' claims might not be met in the event of an insurer's insolvency.

This is clearly unsatisfactory. In order to provide local policy holders with greater certainty that their legitimate claims would be met in the event of an insurer's insolvency, the Bill proposes that a general insurer be required to maintain in Hong Kong, in addition to the statutory solvency margin, assets equal to no less than 80% of the liabilities arising from his Hong Kong business.

This is the same proportion as that adopted in the United Kingdom. In fact, similar requirements are a common feature of other jurisdictions.

Assets which would qualify as assets in Hong Kong are listed in the proposed Schedule Eight to the Ordinance. To facilitate compliance with the requirement and to enable the Authority to respond flexibly to changing circumstances, clause 2 of the Bill proposes that the Authority be empowered, in a particular case, to admit as Hong Kong assets, items not specified in the list. He will also be empowered to exempt an insurer, in whole or part, from the requirement where he is satisfied that circumstances render compliance impractical.

As in the United Kingdom, reinsurers will be exempted from the requirement. This is because a reinsurance contract normally extends over more than one jurisdiction; so a reinsurer would be unable to attribute particular liabilities to a particular jurisdiction.

The proposed requirement would initially apply only to general insurers. However, the Administration will be considering in due course whether and, if so, how to extend the requirement to long-term insurers.

We propose that insurers be granted a grace period of about six months from the enactment of the Bill to allow them adequate time to comply with the proposed requirement.

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

### **PROTECTION OF INVESTORS (AMENDMENT) BILL 1993**

THE SECRETARY FOR FINANCIAL SERVICES moved the Second Reading of: "A Bill to amend the Protection of Investors Ordinance."

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

This Bill updates and clarifies certain provisions of the Protection of Investors Ordinance. The amendments, which are technical in nature, are aimed at facilitating the further development of capital markets in Hong Kong while safeguarding the protection of investors.

A major review of the Ordinance was last conducted in 1989. That exercise resulted, among other things, in the introduction of exemptions and control on the issue of advertisements relating to debt market instruments. The system has now been in place for a few years and market practitioners have proposed further improvements to the arrangements. Several other issues which were left over from the last review have also been taken up in the current exercise.

The main revisions proposed are related to section 4(2) of the Ordinance which provides exemptions from prohibitions on the issue of advertisements, invitations or documents in respect of debt market instruments, such as certificates of deposit and commercial papers, under certain circumstances.

It is proposed that such exemptions be extended to debt market instruments issued by corporations which comply with a net asset requirement of \$100 million, if such instruments are guaranteed by an authorized institution under the Banking Ordinance, a multilateral agency or by specific exempted bodies. Exemptions will also be extended to those instruments issued by a wholly owned subsidiary of a listed corporation and guaranteed by the parent company concerned, if the latter meets a net asset requirement of \$100 million. These measures, if implemented, should facilitate the advertisement of debt market instruments in these circumstances which would in turn encourage market development.

In extending the net of exemptions concerning debt market instruments, it is important not to lose sight of the need to ensure sufficient protection to investors. I have already mentioned the "net asset" requirement. At present, the Ordinance adopts "paid up share capital" to measure the financial strength of corporations issuing debt market instruments. The "net asset" requirement is proposed as a replacement which should be a more accurate and useful measure of such corporations' net worth. The level of asset requirement will at the same time be raised from \$75 million to \$100 million so that only the more substantial corporate issuers will be eligible for the exemption.

As regards advertisements on debt market instruments not qualified for the exemption, the Ordinance allows an application to be made to the Securities and Futures Commission for authorization. The existing scope of this provision needs to be clarified and revised so that the Commission can more effectively protect the interests of investors.

Measures proposed include allowing the Commission to take into account the features of an instrument to be advertised in approving an application for authorization. This would enable the Commission to request the issuer making the application to make changes to the instrument before granting any authorization. In other words, the Commission will be empowered to refuse an application if it is satisfied that it would not be in the interests of the investing public to approve it.

Another important revision proposed relates to listed securities. At present, the issue of advertisements, invitations and documents in relation to securities, including debt securities and warrants, which are listed on the Stock Exchange of Hong Kong Limited is subject to the restrictions of the Protection of Investors Ordinance. However, such issues would already have complied with the Listing Rules of the Stock Exchange and hence should be exempted from being doubly vetted under the Ordinance. Accordingly, it is proposed to add a new category of exemption in the Ordinance for these listed instruments.

The Bill also encompasses some updating of the scope of the Ordinance such as the inclusion of the European Bank for Reconstruction and Development as a multilateral agency under the Ordinance. The Bank has indicated an interest to tap Hong Kong's debt market. Granting it multilateral agency status will enable it to issue debt instruments in the local market.

Apart from these more significant changes, a number of relatively minor revisions to the Ordinance are proposed. They mainly serve to spell out the scope of the Ordinance more precisely.

Some of the amendments taken up in the Bill were suggested by the Law Society and the Hong Kong Capital Markets Association. These bodies have also been consulted on the Bill as a whole and have generally supported its contents. Through such co-operation with market practitioners, the Administration hopes to improve the framework for the further development of capital markets in Hong Kong.

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

## **JUDICIAL OFFICERS (TENURE OF OFFICE) BILL**

### **Resumption of debate on Second Reading which was moved on 28 April 1993**

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

Bill read the Second time.

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

## **ROAD TUNNELS (GOVERNMENT) (AMENDMENT) BILL 1993**

### **Resumption of debate on Second Reading which was moved on 26 May 1993**

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

Bill read the Second time.

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

**CROSS-HARBOUR TUNNEL (PASSAGE TAX) (AMENDMENT) (NO. 2) BILL 1993****Resumption of debate on Second Reading which was moved on 26 May 1993**

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

Bill read the Second time.

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

**CROSS-HARBOUR TUNNEL (AMENDMENT) BILL 1993****Resumption of debate on Second Reading which was moved on 26 May 1993**

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

Bill read the Second time.

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

**EASTERN HARBOUR CROSSING (AMENDMENT) BILL 1993****Resumption of debate on Second Reading which was moved on 26 May 1993**

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

Bill read the Second time.

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

**TATE'S CAIRN TUNNEL (AMENDMENT) BILL 1993****Resumption of debate on Second Reading which was moved on 26 May 1993**

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

Bill read the Second time.

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

## **LANDLORD AND TENANT (CONSOLIDATION) (AMENDMENT) BILL 1992**

### **Resumption of debate on Second Reading which was moved on 3 June 1992**

*Question on Second Reading proposed.*

MR JAMES TO (in Cantonese): Mr President, the Landlord and Tenant (Consolidation) (Amendment) Bill 1992 proposed two major amendments, namely, the phasing out of all rent controls by the end of 1994 and the enhancement of the level of statutory compensation payable to tenants dispossessed by landlords who intend to rebuild their premises.

The Bill was first introduced to this Council on 3 June 1992. Subsequently an ad hoc group was set up to study the Bill. The ad hoc group has since held 17 meetings and received and considered 22 submissions from concerned groups and individuals. In addition, it has paid a visit to a building at Tai Kok Tsui and interviewed the tenants who would be affected if the Bill was passed.

The views of the public on the Bill were divided. Members of the ad hoc group, too, have failed to arrive at a consensus. As the ad hoc group's convener, I will now render an account of the principal issues that the group considered, as well as the mainstream opinions of its members on these issues. In addition, I will be moving at the Committee stage amendments that reflect the ad hoc group's majority opinions. However, I believe that individual members will be speaking later to offer comments on matters of concern to him/her.

To begin with, I would like to talk about the proposed new statutory rate of compensation. The existing Ordinance provides that the statutory rate of compensation shall equal twice the 1983 ratable value plus removal fees and compensation for fittings. This is an out-dated and impractical way of setting the rate of compensation. In the opinions of all sectors of the community, it should long have been adjusted. The Bill seeks to revise the rate of compensation to 1.3 times of the current ratable value. Members of the ad hoc group opined that using the "current ratable value" as the basis for calculating the rate of compensation would be simple and easy to grasp, and it would serve to reflect the latest market value of the properties. With regard to the proposal of discontinuing the payment of removal expenses and compensation for fittings, the Administration's justification for this was that it was often difficult for the landlord or the Land Tribunal to determine what the amount of such

compensation should be in individual case. The ad hoc group found the proposed amendment acceptable.

There was disagreement, however, over what multiplier was reasonable. Basically, most of the members had reservations about the "1.3 times" multiplier as provided for in the Bill. They thought that a rate of compensation based on such a multiplier would be neither sufficient nor reasonable to dispossessed tenants who have to find new accommodations in a hurry. Some concern groups demanded that the multiplier should be raised to "two times" (of the current rateable value). Some thought that it should be raised to three times plus removal expenses and compensation for fittings. Some even suggested that the compensation should equal the cost of construction. The Administration subsequently raised the multiplier from 1.3 times to 1.7 times, which would better reflect how the average amount of actual compensation had gone up since the Bill was first drafted. The Administration thinks that the proposed new rate of compensation at least doubles the existing rate and will give an affected tenant enough money to pay at least eight months' rentals for a comparable accommodation. Although some members still think that it should be higher, the majority consider the proposed new rate of compensation acceptable. Their argument is that a reasonable statutory rate of compensation should be such as will, in most cases, be practically helpful to the tenants and at the same time acceptable to the landlords. After all, the statutory rate is the minimum rate. In a specific case, the landlord and his tenant can, after negotiation, arrive at an actual rate of compensation that is higher. Meanwhile, enunciating a related policy, the Administration says that the ratable value will be revised once every three years. In addition, the Bill provides that the multiplier in question would be further revised if necessary. In this connection, I urge the Administration to pay close attention to the level of compensation and to be ready to revise it at any time to safeguard the interests of the tenants. This is necessary because, between the two parties involved, the tenant is basically the party that does not have the initiative but is in need of help.

The proposed new rate of compensation reminds us again of the issues raised by the redevelopment of privately owned buildings, including the resettlement of the affected tenants and a better procedure for the repossession of properties by developers. Mr President, as you are aware, the subject of "the redevelopment of privately owned buildings" was debated in this Council on 24 June and 1 July last year. In the wake of that debate, the Administration said that it has set up an interdepartmental working group to study the question of urban renewal. I would like to ask the Administration to expedite this study and to give serious consideration to the comments from all quarters concerning the present Bill.

I now turn to the proposed removal of rent controls.

The Bill seeks to phase out rent controls in respect of the premises controlled by Parts I and II of the Ordinance by the end of 1994. Subsequently, the Administration proposed a more moderate and slower pace and would

extend the deadline to the end of 1996. Members of the community have entirely different views about the proposed removal of rent controls. Landlords complain that rent controls are unfair to them. They say that they are not getting reasonable returns on their investments and that they cannot afford the cost of repairs and maintenance of their properties. Some people think that rent controls should be removed because the only reasonable thing to do is to give free play to market forces. On the other hand, tenants and social organizations express concern that the decontrol of rents will cause rents to skyrocket across the board and will add further burden to tenants who already experience different degrees of financial difficulties.

During the deliberations of the proposed removal of rent controls, the ad hoc group considered the following questions with great care:

- (1) How will the proposed removal of rent controls affect the tenants? How many people will be affected? What are their financial resources and their abilities to bear the burden?
- (2) Are the rent controls, which prevent some landlords from charging rents according to market value, fair to them? Are their rates of return on investments much less than those non-controlled properties? Also, if rent controls are to be relaxed, is there no alternative to letting tenants bear the full burden? For example, will the Government consider paying rental allowances to eligible tenants to enable them to afford the higher rents as a result of removal of rent controls?
- (3) If rent controls are further relaxed, will Hong Kong's social security net be adequate to ease the increased difficulties that the poor tenants will have to face as a result?
- (4) In view of the fact that redevelopment, repossession and re-letting are already causing a steady year-to-year decrease in the number of controlled premises, can the Administration let such premises phase out naturally and not speed up the process by relaxing rent controls?
- (5) What is the point of setting forth in the Bill a draft timetable for the proposed removal of rent controls? Will this not produce the effect of preparing tenants for the eventual removal of rent controls, so that they will be ready for the day when rent controls are removed?

Members of the ad hoc group have different views about, and attach different degrees of importance to, the above questions. This precisely mirrors the community's differences of views on the proposed removal of rent controls.

The basic concern of the ad hoc group is to what extent the tenants, especially the elderly, the singletons, the sick and the public assistance recipients, would be affected. At the request of the ad hoc group, the

Government conducted a comprehensive survey on Part II controlled premises. I must thank the Administration for this. The Government used a very efficient method to complete the survey. I hope that the Administration will not put the survey's findings aside. I believe that these findings are helpful to the Administration in understanding the needs of the tenants of private residential premises and in devising a policy beneficial to them.

Based on the Government survey, the Administration points out that the average income of a family (occupying one flat) is \$11,000 or so. Only 1.4% of the families earn less than \$2,000 and the ratio of rental payment to income, on average, is in the range of between 7.3% and 23.3%. The Administration thinks that the Bill's provision limiting any increase in the minimum permitted rental to 5%, which should be affordable to the majority of the tenants, is reasonable. I believe that the Secretary for Home Affairs will cite more statistics in support of his argument when he delivers his speech.

Two concern groups have also conducted surveys of a similar kind separately. Their findings are vastly different from the Administration's findings. The ad hoc group thinks that the three surveys arrived at different findings because their objectives, points of emphasis and aims were all different. However, the ad hoc group believes that the government survey, being conducted on a larger scale, may be flawed by over-generalization. Therefore, before we consider the Administration's case, I would like to draw Members' attention to the following statistics:

- (1) According to the 1991 census, Hong Kong's median family income was about \$10,000. However, the latest government survey found that 56% of the families were earning less than this figure.
- (2) 21% of the families are made up solely of elderly members who are 60 or older. 47% of these families have a monthly income of below \$4,000. One can be sure that their earning power will decline further as their members grow older.
- (3) There are 13 000 singleton families. 35% of them have a monthly income of below \$4,000.
- (4) Take a public housing tenant family as an example, if its rental payment to income ratio exceeds 25%, we call it a "needy household" and it is eligible to apply for rental assistance. Yet, based on the government survey in question, 54% of the families occupying whole flats meet the same criterion. They can be called "needy households living in private sector housing".

Mr President, what I am trying to say is that the tenants' financial situation is not as good as the Administration has made it out to be. Definitely, many tenants are experiencing different degrees of financial difficulties. A further relaxation of rent controls will add further burden to them. Let us not

forget that, even if rent controls are not relaxed further or relaxed at a faster pace, the existing Ordinance already permits significant rental increases. For example, Part II of the Ordinance permits a 30% rental increase every two years. Therefore, there is no justification for a further raise in the minimum permitted rents, which will add to the burden of affected tenants. Let me give an example, which, I hope, will illustrate my point. Suppose that a tenant now lives in a rent-controlled flat with a market value of \$6,000 and that he is paying only 50% of the market value, that is \$3,000. The Administration's case concludes that there will be a 10% annual increase in rentals. Then, two years later, the flat's market value will be \$7,200. The landlord can then use this \$7,200 figure as his basis for setting a higher rent. The new rent will be 75% of the market rental value, that is \$5,400. This means that the rent will increase in one single step from \$3,000 to \$5,400, which will be an 80% increase and not as small an increase as we imagine. The Administration is right to say that the Government has the duty to give assistance to needy tenants. Yet what assistance is the Government giving them?

The Administration said some time ago that between 500 and 1 000 public housing units would be made available in each of the next five years to singletons now living in private sector housing, and they might apply for such units. This number of public housing units will simply not be enough to satisfy the needs of the singleton families, of which there are at least 13 000, even though some of them may not be eligible to apply. The finding of a small-scale survey conducted by the Government some time ago was that one-third of all families now living in rent-controlled premises had applied for public housing. Yet the supply of public housing units is limited, so how much longer must these applicants wait? As things now stand, the waiting period for a singleton is more than 10 years. Nor is rental allowance, a part of public assistance, of much help. For the maximum rental allowance of \$743 is simply not enough for paying the monthly rental for one room, which is \$874 at the controlled rate or \$1,200 at the market rate.

The majority of the members of the ad hoc group think that existing social security is inadequate. The Administration should make more public housing units available, particularly units for singleton and two-person families; broaden the scope of public assistance; increase the amount of allowance; and, in some cases, pay rental allowances directly to tenants in financial difficulty. Until Hong Kong provides better social security and gives assistance to needy tenants, rent controls should not be relaxed. On behalf of the ad hoc group, I will be moving amendments at the Committee stage so as to stop any action intended to relax rent controls further or to speed up the relaxation of the control.

Mr President, I would like to make it clear to the Administration that, under the present circumstances of inadequate social protection, we cannot relax rent controls in disregard of the interests of the low-income groups or act in single-minded pursuit of a so-called "policy objective". We should understand the background of rent controls. They were first introduced at a time when the

public housing scheme was not yet ripe. The Government introduced them lest the landlords should raise rentals sharply, making people homeless and undermining social stability. If the Administration wishes to remove rent controls, it must double its effort in the provision of public housing in order to cope with the needs of various social strata.

Lastly, the ad hoc group notices two procedural problems:

- (1) It has indeed taken the Administration too long to revise the Bill. The Bill was first introduced to this Council in June last year. The ad hoc group then held many meetings with the Administration. By December last year, we had arrived at a clear position. We then asked the Administration for a response. The Administration waited until 4 May this year before making clear what its exact position was. Meanwhile, many members of the community were giving various expressions to their anxiety. In particular, as a result of the delay, some tenants failed to receive higher compensation for the properties that were demolished in the meantime.
- (2) The ad hoc group agreed with many concern groups in thinking that, as the Bill consists of two distinct parts which affect the landlords and the tenants respectively, more time should be allowed for the discussion of the proposed removal of rent controls. Accordingly, the ad hoc group suggested to the Administration to deal with these two parts separately and to deal first with the issue of statutory compensation, which must be quickly revised. However, the Administration insists that the two parts form an integral whole and should be dealt with together. The ad hoc group is puzzled by this. The ad hoc group hopes that the Administration will not withdraw the entire Bill if it is partially rejected by Members.

Lastly, I would like to take this opportunity to say thanks to members of the ad hoc group for their participation over the past year and to the Secretariat for its full support.

MRS MIRIAM LAU (in Cantonese): Mr President, rent controls have been in force in Hong Kong for many years, during which the relevant law (namely, the Landlord and Tenant (Consolidation) Ordinance) was amended time and again. After the many amendments, the text of the Ordinance has become intricate and complex. In many cases, the landlords and the tenants themselves feel very perplexed. They cannot tell which parts of the Ordinance apply to them. Similar buildings may be subject to different parts of the Ordinance. It is even possible for one building to be subject to rent controls while a similar one is not. One flat in the same building, or even one room or bed space in the same flat, may be subject to rent controls while another is not. The situation is

confusing. Worse still, some principal tenants, who are protected by rent controls, take advantage of the loopholes of this policy by subletting all or parts of their flats at the prevailing market rent, thus making a profit.

This above situation is quite common and it is really unfair to the landlords. Many landlords affected by rent controls think that the Government is depriving them of their right to earn a reasonable return and they are subsidizing their tenants indefinitely. Such thoughts directly diminish landlords' interests in the repair and maintenance of their properties. The properties become dilapidated because of prolonged disrepair. The tenants then become even more resistant to rental increases. Thus, friction grows between the landlords and the tenants. Disputes are frequent.

In fact, when rent controls first came into effect in 1973, the Government already declared it was an interim measure to stop rents from rising sharply at a time when there were severe shortages of housing. During the early 1980s, the Government amended the Ordinance to narrow the gap between the controlled rents and the market rents. The Government hoped that rent controls would eventually be removed. The maximum rents for Part I controlled premises were raised from 20 times of standard rents in 1984 to 48 times in 1990. For Part II controlled premises, the ratio of minimum rents to standard rents rose by an average of five percentage points a year from 45% in 1984 to 70% in 1990.

On 17 July 1991, the Government moved a motion in this Council to extend rent controls until the end of 1994. The Secretary for Home Affairs said at that time that the Government had reviewed the control and proposals were being formulated to adjust the relevant control mechanism so as to allow the rents of Part II premises to rise to within 90% of the prevailing market rents by the end of 1994. At that time, nobody in the Legislative Council raised objections. The present Bill is merely giving form to an established policy of the Government. In fact, if the Government were to continue its pre-1990 policy of narrowing the gap by five percentage points a year, then the rents of Part II premises would equal market rents by the end of 1996. This would have the same effect as the removal of rent controls.

People who object to removal of rent controls say that the Government should not do that because some of the affected tenants are elderly people or people without the ability to work. Though their numbers are not large, they will be severely affected if rent controls are removed. I agree that the community has an obligation to protect these people, who are unable to take care of themselves. Therefore, I think that the Government should take all feasible steps to help these people by moving them into public housing as early as possible or by paying them adequate rental allowances. This will save them from distress and dismay in the wake of the removal of rent controls. It is the only solution for the problem.

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Some think that the removal of rent controls will cause the quality of life to decline for tenants. Undeniably, the tenants will be affected to a certain extent as a result of removal of rent controls. However, the removal of rent controls process will be dragged out over a number of years and the size of each year's adjustment will be moderate. Therefore, I believe that, on the whole, the impact on the tenants will not be too great. Besides, we should give thought to whether it is right to permit the happiness of the tenants to be based permanently on the hardships of small property owners. According to a government survey, 68% of the Part II controlled premises were purchased before 1973, the year when rent controls came into effect. These landlords have had to live with rent controls for 20 years. These premises should be given a chance to return to the free market.

Housing is a headache for the people of Hong Kong. Of course, the most comprehensive solution is for the Government to provide sufficient public housing to those in need. The Government has an inescapable responsibility in this respect. However, I do not think that public housing and rent controls should be mixed up to become one issue. According to a study, some tenants are ineligible for public housing because their income exceeds the upper limit, while others do not like to live in public housing. Besides, it is unfair and unreasonable to ask the landlords to bear the consequences of the under-supply of public housing and to continue letting rent controls deprive them of their right. In fact, the Government should not continue indefinitely to be generous at the landlords' expense. For tenants affected by redevelopment, the Government originally proposed a rate of compensation of 1.3 times current ratable value. Subsequently, however, it agreed to raise the rate of compensation to 1.7 times. Some people think that even 1.7 times is too low and that it should be two times or even three times. According to government figures, during the past three years, where settlements were reached out of court, the average rate of compensation for tenants affected by redevelopment was 0.97 times, 1.34 times and 1.51 times of ratable value respectively. This already far exceeded the court's award. Hence, I think that setting the statutory rate of compensation at 1.7 times of current ratable value, which is higher than the multipliers that I have just mentioned, will be fair enough. Besides, the statutory rate of compensation is after all only a base figure. When a landlord and his tenant opts for out-of-court settlement, the amount of compensation obtainable by the tenant usually exceeds this base figure.

The Bill is a proposal to balance the interests of the landlords and the tenants. By phasing out rent controls, the interests of the landlords will be looked after. On the other hand, the extension of the removal of rent controls process will be in the interest of the tenants, on whom the impact will be kept to the minimum. At the same time, the statutory rate of compensation available to the tenants affected by redevelopment will be raised to a reasonable level. The Liberal Party thinks that the proposal is fair and just to all parties concerned and therefore deserves support.

Mr President, these are my remarks. Legislative Council members from the Liberal Party support the Bill as well as the amendments proposed by the Secretary for Home Affairs at the Committee stage.

MR FREDERICK FUNG (in Cantonese): Mr President, I would like to begin by stating that the Association for Democracy and People's Livelihood, including myself, supports the amendments which will be moved by Mr James TO. Old buildings have almost become low-income families' last cheap shelter. By phasing out rent controls, the Government will only increase these families' housing expenses. In other words, because their rent payments will keep rising in tandem with market rents, the pressure on them to spend more on housing will be sustained. These families will then have to cut other expenses, and their ability to build up savings will also be reduced. What will happen in the end is that the quality of life for this sector of the community will never improve. They will live indefinitely in poor-quality, high-rent housing units.

According to Appendix E of the Legislative Council Brief, which was provided by the City and New Territories Administration to this Council on 4 May 1993, the affected households, including those living in cubicles, bed spaces and cocklofts, have a monthly income of about \$2,000 to \$5,999. Obviously, their income is even lower than Hong Kong's median income for the third quarter of 1992, which was \$6,801. Classified by income, they belong to the lower middle income group. Apart from expenses on housing, they have to pay for other daily expenses. It is really doubtful that, with their current income, they are able to make both ends meet in today's inflationary environment.

According to a recent survey by the Rating and Valuation Department, over 40% of the families living in Part II controlled premises are made up of elderly members who are 60 or older. 70% of these families have not applied for public housing. In addition, many of them are singletons or new immigrants. They have been waiting for public housing for many years. They can move into such housing units only when flats in suitable locations are available and only if they meet the qualifying requirements. At present, the one-person and two-person units provided by the Housing Department are seriously in short supply. Applicants must wait for at least seven to 10 years before they can get a housing unit. If the rent controls are relaxed, these people will have to bear heavier rental burdens. If they cannot move into public housing, their living conditions will not improve. The Government has remarked that nobody would be rendered homeless by the removal of rent controls. However, the truth behind this facade is that everybody will bear a heavier rental burden.

According to government figures, Part II controlled premises will be declining annually, following the redevelopment of old buildings, the resettlement of tenants and the death of old tenants. The number will diminish by an annual average of at least 5 000. At present, there are about 32 500 of

them which constitute 4% of the private sector domestic premises. In view of these, the following two points deserve our attention:

- (1) Considering that the number of rent-controlled premises is already declining, is it necessary for the Government to act so fast to scrap the rent control policy and deprive low-income groups of their last shelter?
- (2) As the rent-controlled premises will be phased out naturally, there will be only 10 000 or so left by 1996. It is expected that only members of Hong Kong's lowest-income group will still be living in these premises. Therefore, is there a pressing need for the Government to remove rent controls, thus accelerating the decline in the number of these premises and causing the tenants to suffer sharp rental increases?

Although the Government is prepared to extend the phasing out of controls from the end of 1994 to the end of 1996, it has not take better care of the tenants in the areas of social welfare and housing policy. As a result, there will be no change in the fact that the burden on the low-income groups will grow heavier. Nor do I see that any policy will be introduced in the next year or two to change this fact. Therefore, we have reservations about the removal of rent controls by the end of 1996.

Some people think that the existing rent controls are unfair to landlords and discourage them from committing resources to the maintenance of their properties. This is partly true. However, the removal of rent controls will bring about the kinds of sequelae that I mentioned above. Of course, I agree that "no control is the best control." But these words must be based on a foundation before they can put into effect. In other words, we must have adequate, sound social security and housing systems to protect the poor, the infirmed, the elderly and the young so that they can attain a basic living standard. Only then will we have a sound "no rent control" system. Therefore, until the Government promises more public housing, especially for one-person and two-person families, or until the Government promises to pay the affected tenants a rental allowance of more than 25%, I will not agree to the removal of rent controls. I therefore support Mr TO's proposed amendments which will be moved later on.

MR LAU CHIN-SHEK (in Cantonese): Mr President, the amendments proposed by the Bill mainly consist of two parts, namely, to phase out rent controls and to increase the statutory rate of compensation. The Administration seems to be of the opinion that, to phase out rent controls on one hand and to raise the statutory compensation for tenants on the other, it has taken care of the interests of both the landlords and the tenants. However, it is very obvious that the Bill is merely looking for a so-called "balance". It has ignored completely the real plight of the tenants in old buildings.

*The aim of market intervention is to safeguard people's livelihood*

The strongest argument of the proponents of the removal of all rent controls is that the control distorts market operations. But housing is a necessity of life and the Government over the years has been intervening in the housing market with public housing, Home Ownership Scheme housing and rent controls in the private sector. As for me, I believe that such government intervention for the protection of the livelihood of the people is absolutely necessary, especially in a place like Hong Kong where land is scarce relative to the population and where the problem of disparity between the rich and the poor is serious. In fact, the Executive Council has recently approved a proposal to provide low-interest loans to help the sandwich class in buying homes. This proposal, which smacks of "intervention in market operation," has won the support of the community as well as the support of the majority in this Council. Therefore, the free market principle is not an insuperable principle. Instead, protecting the housing right of all social strata should be the supreme guiding principle for housing policy.

I must reiterate that until the Government provides sufficient public housing to accommodate the low-income groups, rent controls should not be removed.

*Inadequacy of the proposed compensation rate*

Apart from phasing out rent controls, the Bill also seeks to raise the statutory compensation payable to tenants whose premises are repossessed by landlords for redevelopment. As you all know, I will be moving an amendment to have the statutory rate of compensation raised to "twice the current ratable value plus subsidies for removal and compensation for fittings."

The Administration proposes to raise the rate of compensation to 1.7 times of ratable value, which is close to the average rate of compensation in latest cases settled privately between the landlords and the tenants. It claims that the new rate will allow a dispossessed tenant to rent similar premises for at least eight months. Therefore, according to the Administration, the proposed rate of compensation is adequate. However, I must point out that the Administration's proposal is flawed in many areas.

Firstly, it is very difficult for a dispossessed tenant of an old building to find in the same neighbourhood a flat of similar size for a similar rent. It is because old buildings in the area either have been or are about to be demolished for redevelopment, or are being occupied by other tenants in most of the cases. As a result, these tenants have to look for an alternative accommodation that is much more expensive but may not provide larger living space. Hence, the argument put forth by the Government that the proposed rate of compensation is sufficient to rent similar accommodation for eight months is misleading.

Secondly, the amount of compensation now received by a tenant from his landlord in a private settlement is governed by the provision of the existing Ordinance, which says that the amount of compensation shall be "twice the 1983 ratable value." The amount is therefore very unfair to the tenant. Unless the Bill provides for a higher amount of compensation than the average arrived at between the landlords and the tenants in latest private settlements, it will just provide a disguise under which the amount of compensation due to a tenant continues to be kept low.

*The Land Development Corporation pays compensation equal to twice the ratable value.*

I am not "making things up" when I suggest a higher rate of compensation of twice the ratable value. The Land Development Corporation (LDC), which is fully owned by the Hong Kong Government and of which the Honourable Steven POON is the Chairman, said in a recent open letter to tenants affected by redevelopment that the LDC pays tenants compensation of between eight and 16 times the 1983 ratable value or twice the current ratable value, whichever is the higher. Honourable colleagues, the LDC, a public organization, is already paying tenants compensation of twice the current ratable value. Are we then, as Legislative Councillors representing the people, to approve a rate of compensation lower than that of the LDC?

Apart from the rate of compensation, the amendment that I will be moving seeks the retention of compensation for removal expenses and for fittings. Such compensation should be retained because it is granted in consideration of the needs of the tenants. It is different from the statutory compensation which is based on ratable value. After all, in the case of a flat occupied by many sub-tenants, each sub-tenant can receive only a very little share of the compensation.

Mr President, honourable colleagues, I would like to talk about a real case for your information.

Mr SHIU lived for 25 years as a sub-tenant in an old building. His elder brother was the principal tenant. In 1989, his wife and two children came to Hong Kong from China. Subsequently, his wife gave birth to a boy, thus increasing the family size to five.

In 1990, the landlord repossessed the flat. Mr SHIU's family had to move to another old building in Shanghai Street. They rented a room of about 100 sq ft in size with a monthly rental of \$950.

Unfortunately, this old building to which they moved was bought by a developer. Though Mr SHIU filed several appeals, he had to move out in March 1992. He received only \$10,000 in compensation.

The Social Welfare Department refused to lend him a helping hand though eviction was imminent. His family took great pains to look for another accommodation. In the end they managed to find a room. It was only 70 sq ft in size, but the monthly rental was \$3,000!

Subsequently, through the good offices of a friend, Mr SHIU found a room in the Mongkok area. The room was about 50 sq ft in size, but the monthly rental was \$1,900. When he moved in, he paid two months' rent in advance and one month's rent as deposit, that is, a total of \$5,700. Consequently, what remained of his compensation sufficed only to pay three months' rents. His wife and three children now share a bunk bed. He himself sleeps on the floor!

Mr President, what has happened to Mr SHIU and his family is in fact quite common. I hope that my story has given Members a better idea about the plight of tenants in old buildings.

Mr President, these are my remarks. Thank you!

MR MAN SAI-CHEONG (in Cantonese): Mr President, it is really inequitable that although the statutory compensation provided for in the Landlord and Tenant (Consolidation) (Amendment) Bill 1992 has been increased, it is still insufficient to cover the loss of the dispossessed tenants. Furthermore, in view of the rapid pace of redevelopment in Hong Kong to cope with the Government's Metroplan, there is acquisition of buildings by developers for redevelopment all the time. I feel that Members of this Council should give a hard look at the amendments made by the Government to the Ordinance. Have the Government's proposals taken into full consideration the price dispossessed tenants have to pay? What I find more distressing is that despite that a motion was passed on 1 July last year to urge the Government to set up a special working group to carry out a comprehensive review on matters concerning the rehousing of tenants affected by the acquisition of buildings by private developers for redevelopment purposes, the authorities concerned have failed to give the matter its due attention and to come up with any specific policy to deal with it. And there is no improvement in the plight of those middle and lower class households in private premises.

The Honourable LAU Chin-shek has already given a detailed account of the reasons for a raise in the compensation rate. I merely want to supplement three important reasons or arguments:

- (1) The Government claims that the amount of the proposed compensation would be enough for a dispossessed tenant to rent similar premises for about eight months. Mr LAU Chin-shek has already expressed reservations about this assertion. As a matter of fact, even a period of eight months is too short, given that it is not uncommon for public housing applicants on the Waiting List to wait

for at least five years and the time the dispossessed tenant has to take to adapt to new environment. The United Democrats consider that a one year adaptation period would be a more reasonable arrangement. And, in terms of compensation, it should be about two times of the current rateable value;

- (2) Rental flats in old residential buildings are mostly leased to more than one family and many retired and low-income people find their accommodation there as well. If the compensation in terms of the multiplier of 1.7 of the current rateable value of the concerned property is to be shared by several families, it is impossible for them to use their share of compensation to rent another premises. A slight increase in the multiplier for statutory compensation will give these low-income people better protection;
- (3) The dispossessed tenants have to adapt themselves to a new community environment. Adaptation to new environment is, in reality, a form of intangible cost which should be appropriately reflected in the compensation.

All these important proposed amendments are going to be put forward by Mr LAU Chin-shek. I earnestly hope that Members will support them.

MR WONG WAI-YIN (in Cantonese): Mr President, the Landlord and Tenant (Consolidation) (Amendment) Bill, which has aroused so much discussion, is eventually submitted to the Legislative Council for Third Reading today after one year's examination.

The ad hoc group studied the Bill for one year. During the year, we met many bodies and a great number of people from the lower class at the Complaints Division in Swire House under the Office of Members of the Legislative Council. They told us the dire straits they would fall into should the removal of rent controls be introduced. I believe many Members in this Council have also received their complaint letters.

Just now quite a number of Members already talked about the ad hoc group's discussions, proposals, resolution and so forth. I do not intend to repeat them in detail here but Meeting Point would like to reiterate two points of our view:

- (1) A majority of the tenants who will be affected by the forthcoming removal of rent controls are lower-class people. They are under great pressure from the surge of market rents. And the rent decontrol may place even more burden on their back. In this connection, Meeting Point would like to press home a point that an across-the-board removal of rent controls is extremely inappropriate, in view of the present shortage of public housing

units and the absence of a proper rehousing policy to address these tenants' housing problem. Removal of rent controls will force these tenants to move from a place of poor living environment to a place of poorer environment or to move to bedspace tenements or to sleep rough. We are loath to see such things happen. Furthermore, according to the Bedspace Apartments Bill, the Administration will introduce a so-called licensing scheme to tighten the control over bedspace apartments. Certainly, the caged men will be more hard pressed because many of them may be unable to find any decent accommodation and forced to sleep on the streets, following rental increase and the introduction of the control over bedspace apartments in 1995. I wonder if the Government has any concrete schedule and policy to address the housing problem of these lower class people (including the caged men and the street sleepers).

- (2) As regards the compensation rate, the Government has admitted that compensation rate reached by the parties concerned through private negotiations is generally higher than the statutory one. However, the compensation rate of the multiplier of 1.7 of the current rateable value of the property as put forward by the Government, if translated into dollar terms, is not exactly the amount of compensation actually received by tenants after being forced to move out, especially in the case where the property developer tries to reduce the compensation by instituting legal proceedings. The compensation rate of 1.7 times is unfair.

Mr President, the removal of rent controls and the forthcoming Bedspace Apartments Bill will, in fact, pose greater housing difficulties for many tenants. Yet the Government has failed to come up with a long-term policy to assist them in solving their housing problem. We, Meeting Point, have all along held the view that this problem stems from the fact that there is no government official specifically charged with the duty of co-ordinating efforts among relevant departments to address the housing problem and formulating a territory-wide housing policy. For this reason, Meeting Point reiterates here that the Government should re-establish the Housing Branch and entrust it with the task of co-ordinating territory-wide housing matters. The re-establishment of the Housing Branch should brook no delay.

The Bill before us is highly controversial. Earlier on the Government dropped the hint that it was prepared to withdraw the Bill in an attempt to force the Members to take it or leave it. We are pleased, therefore, to see that the Bill can finally be submitted to this Council for Third Reading. However, the Government and the Members still have diametrical views on some of the provisions in the Bill and they have not come to any consensus.

Today some colleagues also proposed a number of amendments and I believe the voting to be taken place later will be a tight match. I think the Government is also very concerned about whether the Bill can be passed. The

Deputy to the Governor is also present today and I do not know whether his presence has anything to do with this.

No matter what the result is, Members should not support the progressive implementation of removal of rent controls before the Government has formulated any proper rehousing policy and provided an adequate supply of housing units.

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

DR TANG SIU-TONG (in Cantonese): Mr President, more than 20 years ago, the Government used legislative means to keep rents from rising. It put provisional rent controls into force. That was understandable as housing was in short supply. Landlords had to be prevented from charging excessive rents. However, upon careful analysis, we will find that, in a community with free competition, it is really unfair to control only rents among other vehicles of investment, such as shares, financial instruments and land.

For more than 20 years, a group of landlords, under the constraints of the Ordinance, have been able to charge rents only at levels that were much below the market value. In many cases, the landlord is only a one-flat owner; he owns no other property. It is likely that some of the landlords have already retired. They have to subsist on the meagre rental income. Is this fair to them?

Clothing, food, housing and transport are the four major basic necessities of life. The shortage of housing is a serious problem which the Government should be held responsible. It should be dealt with by the Government. The landlords of these premises have already been sacrificing their normal rental incomes for more than 20 years. They have done enough to discharge their moral and legal obligations to the community. Besides, if rent controls are continued, the landlords will not have any incentive to refurbish their properties. Their rental income is inadequate and they do not have the financial resources to improve the conditions of their properties or even to carry out repairs. As time passes, their properties become dilapidated and even become dangerous buildings. When this happens, I think that it will do nobody any good. So time is opportune for relaxing rent controls.

The Landlord and Tenant (Consolidation) (Amendment) Bill provides for the phasing out of rent controls over three years. This is appropriate. Tenancy agreements now in effect will remain valid for about another two years. Therefore, tenants can go on to enjoy sub-market rents for another five years. Besides, only 45 000 families will be affected. This is not a large number. They have already enjoyed low rents for more than 20 years. Compared with tenants of non-controlled premises, they have been very lucky indeed. Besides, rent controls will not be removed at once; the tenants will have ample time to plan for the future and to find new accommodations.

MR JAMES TO: Point of clarification, Mr President.

PRESIDENT: Do you wish to yield the floor, Dr TANG? It is up to you.

DR TANG SIU-TONG (in Cantonese): I wish to continue. Housing is a social welfare benefit. The Government is responsible for solving the housing problem for families that are experiencing difficulties. We do not want to see people sleeping on the streets as a result of the removal of rent controls. As for myself, I will be very unhappy to see anybody becoming homeless because of that. The Government is responsible for taking active steps to provide rental allowances and accommodations to those tenants who have difficulties in this respect.

With great improvement in the social security system, the affected tenants should receive from the Government the basic and necessary assistance. They should not ask their unfortunate landlords to continue subsidizing their rents.

In consideration of the real social circumstances, the Bill should contain a built-in mechanism. It should provide that, in the event of volatility in the market or in the event of unreasonable rent increases, the rent control phasing-out process may be terminated, revised or repealed. The relevant Panel of the Legislative Council will of course be paying close attention to trends in the market. Any impact on the community should be kept to the minimum.

Just now, many colleagues have commented on the compensation payable to the dispossessed tenants affected by redevelopment. The Government should deal with this matter appropriately.

The Government says that there are roughly over 2 000 people living in the rent-controlled bedspace apartments. In the average case, rent payment is less than 10% of their income. The impact on these people will probably not be great initially when the process of removal of rent controls begins. Nevertheless, I urge the Government to pay special attention to the needs of these people and to monitor their situation after the removal of rent controls starts. They should be given tangible assistance if necessary.

Mr President, with these remarks, I support the removal of rent controls.

MR ANDREW WONG (in Cantonese): Mr President, first of all I should like to seek your ruling as to whether or not I should declare my interest. I do not own any residential property. I am a tenant. Under the present Bill, the part that would bear on a tenant's interest is the 1.7 multiplier for compensation. I believe this interest is common to the majority of tenants. And I do not think it needs to be declared. I should like to ask you, Mr President, to make a ruling on this later on.

The purpose of the Landlord and Tenant (Consolidation) (Amendment) Bill 1992 is two-fold. Firstly, if passed into law the Bill will mark the full realization in the near future of the Government's policy of removal of rent controls introduced in phases since 1981 (not recently introduced). Secondly, the calculation of compensation for tenants affected by redevelopment will be based on the current rateable value instead of the 1983 rateable value.

After more than a year's discussion between the Legislative Council ad hoc group and the Administration, the latter finally agreed to make concessions and was willing to substantially amend the Bill. The Bill now before us is a package of proposals which I consider acceptable and should not be taken apart to be dealt with piece by piece. Hence I cannot support the Honourable James TO's proposed amendments.

As to the Honourable LAU Chin-shek's proposal of replacing the compensation multiplier of 1.7 by 2, I find it not unjustified from the historical point of view, for the multiplier 2 had been used in the past. Nevertheless, the present Bill's proposal of calculating compensation on the basis of the current rateable value will in fact raise the amount payable by more than 200%. The compensation payable for a 600 sq ft flat, for example, is some \$32,000 according to the old formula. But if we use the new formula with a 1.7 multiplier, the amount payable will be \$85,000. Therefore I think that the 1.7 multiplier is acceptable at the present stage. But speaking for the long term, we can next consider revising it to 2.

To remove rent controls completely is an established policy of the Administration as well as a pressing need. But should one be adamant with one's own view and let the matter drag on when the Administration has already made substantial concessions in the absence of a consensus between the Administration and members of the ad hoc group after more than a year of parleying and manoeuvring?

Upon the Bill passing into law, I sincerely urge the Administration to be sympathetic to the situation of those elderly or low-income tenants whose place of work, normally speaking, must be close to their homes, and exercise flexibility in the provision of rent allowance under the public assistance scheme. Moreover, priority consideration should also be given to their application for removal to urban public housing estates close to their place of work.

Mr President, although the Bill fails to meet everyone's demand, still I support the passage of the Bill subject to the necessary Committee stage amendments to be moved by the Secretary for Home Affairs, in order to avoid any more delay.

MR LEE WING-TAT (in Cantonese): Mr President, I will speak on behalf of the United Democrats of Hong Kong (UDHK) on the Landlord and Tenant (Consolidation) (Amendment) Bill 1992. Today, the Second Reading of the Bill

is finally resumed. The Government's delaying tactics caused many evicted tenants to fail to receive reasonable compensation. The UDHK, including myself, do not approve of such delay. When the Government put forth the first draft of the Bill, which would allow a 7.5% annual upward adjustment to the minimum rents until it equalled market value and change the amount of compensation to the tenants from twice the 1983 ratable value to 1.3 times of current ratable value, the UDHK already stated that rent controls should not be removed in the next few years. Subsequently, the Government is prepared to extend the phasing out of controls to 1996, reduce the size of the annual upward adjustment to 5% and raise the statutory compensation to 1.7 times of current ratable value. Such amendments to the Bill by the Government have not changed the UDHK's views against the removal of rent controls. The UDHK thinks, when rent controls were introduced, the original intention was to protect the livelihood of the people, to free a majority of the people from worries over, and difficulties due to, interminable rent increases. Although the territory has undergone vast changes in recent years, rent controls remain meaningful and important to the low-income groups and the retirees. The majority of the tenants of the rent-controlled premises are low-income families, elderly singletons or retirees. Most of them are not eligible for public housing or have not yet been assigned a public housing unit after a long wait. We think that the relaxation of rent controls will bring much pressure to this group of people who belong to the lower strata of society. It must be realized that, in the property market, "boats ride higher as the water level rises", so to speak. As property prices go up constantly, so do rents in the market. The Government has argued time and again that the market has been stable in recent years. However, we must not forget that any rise in rents is a rise from a level that is already very high. The working class and the retirees have received very small increases in income in recent years. The workers in one or two trades have in fact seen their real wages decrease. If the rents they pay for their accommodations are brought into line with market value, I believe that many of them will be forced to spend less on food and clothing or even to sleep on the streets. Besides, the Government has been slow to deal with the problem of bedspace lodgers. A further sharp increase in rents will render many low-income people homeless. Though the rent control policy is in force, the landlords can still increase the rent by 30%. Add this to the increase for catching up with market value, you will see tremendous pressure on the tenants. Their quality of life is bound to decline.

In Hong Kong, the problem of disparity between the rich and the poor has been very serious. With the relocation of the manufacturing process to China, many workers are underemployed. To relax rent controls at such a time will undoubtedly be like adding insult to injury. The UDHK of course do not approve of such a move. The UDHK insist that rent controls should not be removed and that the 30 000 plus rent-controlled premises should be allowed to phase out naturally in the course of redevelopment. Urban renewal is now proceeding apace. 5 000 rent-controlled premises are demolished for redevelopment each year. In most cases, the landlords will receive compensation at the market value. We think that to phase out these premises

naturally will have less impact on society than the removal of rent controls. Admittedly, rent controls are unfair to small property owners. However, under the circumstances where the Government's social security system is flawed and there are acute shortages of public housing, it is advisable to retain the rent controls policy as an interim measure. It will help to maintain the stability of the territory. The UDHK agree that rent controls should be removed in the long run. However, the Government must first improve the retirement protection system, increase the amount of public assistance and provide adequate public housing to solve the living problem of the affected tenants. We think that, while the Government should not pass the buck for social protection to small property owners, it should even less rush to remove rent controls before the low-income groups are provided with adequate social protection and housing.

Mr President, the housing problem is a social problem. Due to the inadequate supply of public housing, people who are evicted because of urban renewal have to move into smaller and more expensive accommodations. For those who cannot afford high rents, they have to move to the New Territories. Applicants for public housing have to wait perpetually. Moreover, the Housing Department no longer accepts applications for public housing in the urban areas. For the earlier solution of the housing problem, the UDHK have been calling on the Government to build more public housing, especially in the urban areas, thus freeing more members of the lower social strata from the pressure of endless rises in property prices and rents.

I would like to reiterate that the UDHK are opposed to the phasing out of rent controls. The Government should enhance social protection and build more public housing for the resettlement of the lower class.

Mr President, these are my remarks.

MR MICHAEL HO (in Cantonese): Mr President, I did not originally intend to speak at the debate on the Landlord and Tenant (Consolidation) (Amendment) Bill. But I changed my mind since I would like to take this opportunity to give a brief response to the remarks made by Dr TANG Siu-tong just now. Dr TANG just mentioned in his speech that there would still be five year for the affected tenants to make the necessary preparations according to the Government's plan to achieve removal of rent controls in 1996. Dr TANG did not elucidate this point. I would like to point out that this is 1993. How can we have five more years before the coming of the year 1996? If we are going to lift rent controls rashly within such a short period, it is obvious that the tenants are bound to be adversely affected, and so is their quality of living. In view of this, I earnestly hope that Dr TANG will give a thought to this matter again and see whether he can support Mr James TO's amendments.

These are my remarks.

SECRETARY FOR HOME AFFAIRS: Mr President, since its introduction into this Council in June 1992, the Landlord and Tenant (Consolidation) (Amendment) Bill 1992 has been the subject of intense scrutiny and considerable public commentary. I would like to express my deep appreciation to the Honourable James TO and his colleagues on the ad hoc group, set up to study the Bill, for their advice and observations and the very considerable amount of time they have spent in examining its provisions.

As a result of this comprehensive examination and debate on the Bill, I shall later be moving a number of significant Committee stage amendments. I am confident that these amendments address with equity the principal concerns which have been expressed by Members of this Council, various concerned groups and also by the public.

As Honourable Members are aware, the Bill seeks to phase out rent controls which were temporarily introduced many years ago to counter the possibility of unreasonable rents being charged when the supply of accommodation was not keeping up with demand. For some years now, this imbalance has been corrected and a reasonable balance is forecast for the future. I note that the majority of the ad hoc group are agreed that rent controls are undesirable in our society and should be removed when circumstances permit. I believe that the process of decontrol can now be started without adverse social consequences and I shall later be elaborating on the basis of my conviction.

In addition, the Bill aims to replace an anomalous formula for the assessment of statutory compensation for tenants dispossessed on the redevelopment of their premises. A new formula is proposed which will permit the award of a much more generous payment.

I would like to emphasize that the Bill takes into consideration both the interests of the tenants and landlords. I believe that our society expects such an evenhanded approach.

It has been stated that, since the number of controlled premises is diminishing with redevelopment, the issue of rent controls will disappear eventually. I assure Honourable Members that such a process will take many years and in the meantime if action, as proposed in the Bill, is not commenced, the disparity between the level of controlled rents and market rents will continue to increase, making it even more difficult to achieve decontrol.

The ad hoc group requested that a survey be conducted of all Part II tenancies in order to assess the likely impact which the Bill would have on affected tenants. Part II tenancies constitute 97% of all controlled premises. In July-August last year, the Commissioner of Rating and Valuation conducted a comprehensive survey of all households affected by Part II controls. It provided accurate information on the number of affected tenants, the types of premises occupied, their incomes and the level of rents paid. Honourable Members have been provided with the summary findings of this survey.

The survey confirmed that there were some 32 500 Part II controlled units housing about 45 500 households with a total population of around 137 000 persons. part I controls apply to some 900 pre-war premises occupied by an estimated 5 600 persons. Together controlled premises constitute about 4% of private sector domestic units in Hong Kong.

Since the introduction of the Bill, concern has been focused on the provisions which relate to rent decontrol. Worries have been expressed whether the new rents resulting from the proposed permitted upward adjustments would be affordable, particularly by the less privileged tenants. I understand these worries.

I have tabled amendments which will lower the originally proposed annual adjustments for Part II premises from 7.5 percentage points of the prevailing market rent to five. These proposals are in line with the annual adjustments which have been effected by resolution of this Council up to 1991. These adjustments have been absorbed without adverse effects. Parallel and similar adjustments are proposed for the few Part I controlled premises. I am also proposing to extend the phasing out of controls from 31 December 1994 to 31 December 1996. I accept that this extension is occasioned to some extent by the delay in the enactment of the Bill but it does allow for a more relaxed approach to annual increments. More importantly it provides a longer period for the Government to monitor the effects of the proposed changes.

Understandably, attention has been tended to focus on the less privileged occupants of the controlled bedspace apartments. These number just over 2 000. Last year's survey confirmed that many were in fact paying market level rents. It established that the average rent for such accommodation was \$279 per month with 86% of occupants paying less than \$400 per month. On average these tenants were paying 7.3% of their incomes on rent. If the tabled amendments are passed, on average no additional increases will be payable in the first year of the decontrol process and bedspace occupants will face an additional average increase of about \$17 per month in year two. I am confident that the proposed permitted increases will not have undue adverse social consequences on this category of tenants.

The possible effects on rent decontrol have been discussed with colleagues in the Social Welfare Department. For tenants facing financial hardship as a result of decontrol, I am satisfied that there will be adequate assistance under our social security system to offset any adverse financial impact. I am advised that a new scheme, the Comprehensive Social Security Assistance Scheme, will be introduced with effect from 1 July 1993, that is to say tomorrow. The new Scheme will provide real increases in the levels of benefits. For instance the current maximum rent allowance of \$743 a month for a single person will be increased to \$1,118 per month.

I am assured that in general for needy tenants facing genuine hardship as a result of rent decontrol, the existing means test should not give rise to any

undue obstacle to their access to assistance. In addition there is an annual special public housing quota for referrals from the Social Welfare Department on compassionate grounds and homes for the aged as well as temporary urban hostels for the elderly and also singleton hostels established by the Government for other single tenants in need of such accommodation. There is clearly adequate capacity to deal with any cases of real hardship brought about by rent decontrol.

I shall ensure that all tenants of controlled premises are made aware of the proposed new provisions contained in the Bill. They will be advised of their rights and how to contact appropriate Rent Officers for information. They will also be advised to contact the relevant Social Security Field Unit and Family Services Centre of the Social Welfare Department if they experience hardship and feel that they need assistance. Despite these precautionary measures, I am confident that, if the Bill as amended is passed, there will be no significant adverse social consequences.

Honourable Members are aware that landlords of controlled premises have for many years been unable to charge market rents. The current average rents are no more than 56.5% and 62.7% of the prevailing market rates for Part I and Part II premises respectively. About 75% of Part II landlords purchased their properties before controls were introduced. Almost half are single premises owners and for many, rentals are a vital part of their incomes. It also goes without saying that landlords who are unable to charge market rents will be reluctant to commit resources to the maintenance and refurbishment of their properties.

Under the revised proposals many tenants will continue to enjoy sub-market rents for a further four to five years. After the phasing out of controls, affected tenants will continue to enjoy security of tenure provided they pay market rents.

As regards statutory compensation, the Government acknowledges that the original multiplier in the Bill of 1.3 of the current rateable value of the concerned property merits revision. Tabled is an amendment to raise this multiplier to 1.7 which compares favourably with an average of 1.5 currently payable under consent orders. The new rate will allow a dispossessed tenant to rent similar premises for about eight months.

It is relevant to note at this juncture that over the past three years rates of private domestic premises have increased at an average rate of about 9.1% per annum. This increase compares very favourably with the average increase over a 10-year period from 1983 to 1992 which averaged out to be about 7.9%. The supply of accommodation coming on stream appears to be adequate and there are no grounds for presuming that rental will rise at an increasing rate. Before closing my general remarks, I would remind Honourable Members that the current amendments provide for a simple mechanism which would enable the levels of annual increases, their date of introduction and the multiplier for

statutory compensation to be readily adjusted by a resolution of this Council. Finally I would add that the Bill has been deliberately designed to take account of the interests of both the affected tenants and their landlords. It provides benefits to both.

Mr President, with these remarks, I recommend to Honourable Members the Landlord and Tenant (Consolidation) (Amendment) Bill 1992 subject to the amendments to be moved at the Committee stage.

PRESIDENT: Before I put the question, for the guidance of Members — in view of the concerns expressed by some Members — Standing Order 65 provides that a Member shall not speak or vote on a Bill in which he has a direct personal pecuniary interest without disclosing the nature of that interest. Standing Order 65 further provides for a Member to vote on a matter of state or public policy. If Members are concerned as to whether they ought to declare an interest, it would be my view that if that interest was simply one of a landlord or tenant of premises covered by the Bill, that is not an interest that ought to be declared.

*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).*

## **TRAVEL AGENTS (AMENDMENT) BILL 1992**

### **Resumption of debate on Second Reading which was moved on 14 October 1992**

*Question on Second Reading proposed.*

MR ROGER LUK: Mr President, the existing system of regulation for the outbound travel industry was introduced in the 1980s following repeated cases of failure and absconding of agents. It includes a licensing system by the Government and a self-regulatory scheme of the enlarged Travel Industry Council (TIC).

The main feature of the self-regulatory scheme is a Travel Industry Council Reserve Fund (Reserve Fund), financed by a levy on outbound package tours. Outbound travellers may claim compensation from the Reserve Fund if the tours they have paid for do not materialize.

A review of this self-regulatory scheme by the Administration was completed in 1991. After extensive discussions with the travel industry and

consultations with the Advisory Committee on Travel Agents and the Consumer Council, a reform package was later agreed upon.

Salient features of the reform package include reconstituting the Reserve Fund into an independent statutory compensation fund and to establish a statutory management body to administer the fund. The contribution of levies to the new compensation fund and to TIC by travel agents is formalized. Moreover, both TIC and the new compensation fund will be subject to appropriate supervision and audit.

The Travel Agents (Amendment) Bill 1992 is to formalize the new arrangements under the existing Travel Agents Ordinance by the establishment of the Travel Industry Compensation Fund (Compensation Fund) and the Travel Industry Compensation Fund Management Board (Management Board). Furthermore, the Bill formalizes the nature of the payment from the Compensation Fund as *ex gratia*.

During the course of the deliberation of the draft legislation, the Bills Committee held meetings with representatives from the Hong Kong Association for Tourists' Rights and the TIC. Three issues of concern were extensively discussed. Strictly speaking, however, they are outside the ambit of the provisions of the Bill itself.

The first issue is the rate of the *ex gratia* compensation. The Hong Kong Association for Tourists' Rights held the strong view that the compensation should be in full 100%. However, both the Administration and the industry disagreed. The TIC considered that 75% would be the appropriate level.

Under new section 32G(2), the Management Board is empowered to, after consultation with the Financial Secretary, make rules specifying the maximum amount or rate payable as *ex gratia* payment in respect of an outbound traveller. Views expressed by different interest groups would therefore be referred to the future Management Board for its consideration. I shall not repeat their arguments here. It is noteworthy that on the recommendation of the Advisory Committee on Travel Agents, the payment rate under the existing Reserve Fund has been increased from 70% to 80% since September 1992.

The second issue is the claim procedure. The causes of concern are the procedures and time limit for claimants to apply for compensation and the time taken to process such applications. Under new section 32G(1), it is the Management Board which makes the rules on this matter. The Administration has indicated that it would recommend to the future Management Board to accept applications made within two years from the date when the claimants first sustained loss, and the Management Board would have discretion to entertain an application out of time. The Administration would also recommend to the future Management Board to make *ex gratia* payments to straightforward applications within 90 days from submission.

As liquidation takes time, a revised procedure has already been adopted by the Reserve Fund since 1990 to expedite the processing of claims. Claimants would assign to the Reserve Fund their rights to dividends payable by the Official Receiver in respect of their proof of debt against the *ex gratia* payments. If there is subsequently any excess of dividend over the *ex gratia* payment, the difference would be paid to the claimant. The Administration would recommend to the future Management Board to adopt a similar procedure.

The third issue is the extension of the scope of *ex gratia* compensation to cover cases other than those arising from default of travel agents. It has been suggested to establish a travel industry compensation tribunal for such purpose. However, there are existing channels for aggrieved outbound travellers to seek redress. For instance, they may seek compensation at the Small Claims Tribunal, may lodge complaints to the TIC or may refer the case to the Consumer Council for assistance. In this light, the case for establishing a dedicated compensation tribunal is hardly justified.

Mr President, the Bill before us is an important step forward in the regulation of the outbound travel industry to give better protection to consumers. This Council will still have an opportunity to further look at the controversial issue of the *ex gratia* payment rate when the Rules of the future Management Board are tabled for approval.

With these remarks, Mr President, I recommend the Travel Agents (Amendment) Bill 1992 to Honourable Members.

MR LEE WING-TAT (in Cantonese): Mr President, although the Travel Agents (Amendment) Bill 1992, which is before this Council for endorsement today, does not cover compensation matters (those matters will be dealt with by another piece of regulation), I believe compensation matters, the service of travel agencies and the protection of travellers' rights and interests are, after all, of major concern to both the consumers and the community.

Mr President, the United Democrats of Hong Kong (UDHK) have all along supported the view that a travel agency should give its clients a 100% compensation in the event of winding up. Whenever consumers join a tour, they not only pay the travel agency in advance but also leave their trip in the hands of the travel agency. For this reason, the closure of a travel agency is not merely a question of whether one can get back the money. It is also the question of who should compensate the consumers for their ruined vacation and the money they spent on buying travelling gears for the trip into the bargain. In this connection, a 100% pecuniary compensation should be the barest minimum.

Mr President, an overwhelming majority of travel agencies in operation in Hong Kong have already joined the Hong Kong Travel Industry Council. When consumers join a tour organized by a travel agency which is a member of

the Travel Industry Council, they would naturally think that their interests will be well protected. Still, some travel agencies which are members of the Travel Industry Council also occasion complaints from consumers and such cases have not decreased even after the establishment of the Travel Industry Council. I hope that the Travel Industry Council could conduct an appropriate review and monitor its members closely. I also hope that the Travel Industry Council could face the criticisms made by concern groups and Legislative Councillors in a more open-minded and enlightened manner.

Mr President, the Government and the Travel Industry Council oppose the increase of the compensation to 100% for fear of the scenario that consumers may be less than wary in choosing the right travel agencies. The UDHK think that this argument is invalid. I would like to ask how the consumers could at present come to know the quality of different travel agencies. If there is, in fact, no way to do so, I do not see any correlation between the 80% or 100% compensation and the choice of a good travel agency. At any rate, as an overwhelming majority of travel agencies are members of the Travel Industry Council, is it fair to the consumers if the Council fails to perform its responsibility to monitor its members but apply pressure on the consumers by way of reducing the compensation so that the latter have to remain vigilant when choosing travel agencies? I hope the Government would fully consider the views of the consumers who patronize travel agencies when it submits the Travel Agents Regulations to this Council later.

These are my remarks.

MR ERIC LI: Mr President, at the inception meeting of the Travel Industry Council Reserve Fund (TICRF) in late 1988 I was elected as Treasurer and Chairman of the Finance and Management Committee. I had no idea then that it would take me some five years down a long and difficult road of reform.

The existing self-regulatory regime was put together in great haste under the shadow of a confidence crisis. Given the task to actually run it, it did not take me long to discover the many anomalies of the scheme. My early task was to devise a rational package in the form of a management contract, negotiate the same with the Travel Industry Council (TIC), and put the package in place. The existing management contract, which is still binding, has served a useful purpose as a stop-gap measure in an awkward situation.

I thought of resigning from the TICRF in July 1989 after completing this initial task. Before leaving, I wrote to the Trade and Industry Branch and put my thoughts of the scheme to pen. In a letter I urged the Government to conduct a comprehensive review. In brief, I strongly believe that the parent and subsidiary company relationship of TIC and TICRF must be severed. TICRF should be managed as an independent statutory body capable of its own legal existence and operation to demand, collect, police and enforce levy from a licensed membership.

I also stated that the level of operating costs for the whole scheme and the extent of industry readiness and co-operation to self-regulate are major considerations in public policy. In actual event, the Government immediately undertook to embark on a full review and had persuaded me to stay on as an alternate director to advise TICRF.

My involvement in TICRF took a further surprising turn since joining this Council. I was elected as the Council's representative to TICRF and to serve actively once again as Vice Chairman. It is therefore with enormous satisfaction for me to finally see the Bill through this Council.

The new package has indeed provided most answers to my earlier criticisms. The controversial rules to be made by the Management Board, outlined by the Honourable Roger LUK, will be discussed by us soon. Having put in a few good years to make this scheme work, I feel at least qualified to warn colleagues against sweeping criticisms based solely on political merits. It is easy to please, but hard to satisfy.

TIC has been given the onerous task to self-regulate and it is incumbent upon us to give them support. If the legislature chooses instead to ignore their views and to impose blunt regulations on them, we will risk losing their valuable co-operation. The public could easily end up with a far more expensive, but less effective scheme.

I would also like to vouch for the good public record of TIC in recent years. For a start, the existing fragile arrangement could not have worked so well to protect the travelling public at minimum cost without the goodwill and experienced guidance. The Council has also maintained steadfast determination, far-sighted objectives and a nerve of steel to keep their peers in line with good behaviour. TIC has done their fair share admirably and I urge Members to continue to support their self-regulatory efforts in the forthcoming deliberations.

With these remarks, Mr President, I commend the Bill to Members.

MR HOWARD YOUNG (in Cantonese): Mr President, I should like to speak in my capacity as a member of the Bills Committee scrutinizing the Travel Agents (Amendment) Bill as well as the tourism functional constituency representative in this Council. I wish to be able to offer to members of the public a fair and balanced view of the impact of the Amendment Bill on the travel industry and the public.

I wish to make the point that the Amendment Bill covers a wide range of issues, including many proposed reforms and new measures affecting the travel industry. Indeed, the issue of compensation in the event of closure forms only part of the Bill. If Members have taken the trouble of studying the other issues covered, they will surely find that the Bill is very instrumental in improving on

the existing self-regulatory mechanism within the industry. For example, the reforms will result in the separation of the Travel Industry Council and the Travel Industry Council Reserve Fund. The two will then operate independently and enjoy greater flexibility in dealing with their own affairs, with a more clearly defined working relationship with each other. The Bill also creates new powers whereby the Registrar of Travel Agents will be able to step up his co-operation with the Travel Industry Council in an effort to monitor the operation of travel agents' ticketing offices and forestall any irregularity. All of these are part of a whole package of reform which has been reached between the travel industry and the Government after many rounds of deliberations. The fact that they are incorporated into the Amendment Bill denotes that the travel industry is very eager indeed to achieve a self-regulatory mechanism which is as proper and perfect as possible so that the image of travel agents will be enhanced in the eyes of the public.

I have grave reservations regarding the point made during the course of the deliberations of the Bill and just now by some committee members, that the rate of the *ex gratia* compensation should be raised to 100%. What I cannot accept in particular is the view of the United Democrats which has just been expressed by Mr LEE Wing-tat, that a 100% compensation is the barest minimum. I was thinking if a 100% compensation is still considered to be the barest minimum of compensation, then are we suggesting that a more acceptable rate of compensation should be in the region of 110% or 120%?

MR LEE WING-TAT (in Cantonese): Point of elucidation.

PRESIDENT: It is up to you whether you concede the floor, Mr YOUNG.

MR HOWARD YOUNG: Perhaps after I finish, if there is time left, I will be glad to.

PRESIDENT: You can raise a point of elucidation after Mr YOUNG finishes, Mr LEE.

MR HOWARD YOUNG (in Cantonese): The way I look at the issue of compensation is like this. If we accept that the rate of compensation should be 100% or 120%, then chances are that some people may choose to patronize a travel agency which is on the brink of collapse in order to collect a 120% compensation for the cost of a lost trip. After all, that is a more favourable return than anything one can expect to achieve through speculating in stocks. A 100% compensation will effectively mean that consumers will become less than wary in terms of choosing the service of travel agency. It is very likely that travel agencies will, as a result, engage in a vicious cut-throat competition in

order to entice more customers. The reality is very clear. There are people, particularly students and middle income families who have relatively little experience in choosing travel service, and who are prone to go for a travel agency which offers the most competitive prices. The negative impact which a 100% compensation will produce is that the long-standing self-regulatory mechanism in the industry will become completely paralysed. Over the past few years, the travel industry has been working very hard to improve its professional standard. The days of "sudden closure" and fly-by-night travel agencies are, I believe, gone for ever. I am loath to see that the efforts and achievements made over the years by travel agencies, the Travel Industry Council and the Government going down the drain.

To foster self-regulation by the travel industry is the shared responsibility of the Government, the travel industry itself, and members of the public. It is incumbent on the Government to come up with the appropriate legislation which will lay down the operational guidelines. For the travel industry, it should practise self-regulation to weed out its black sheep. And no less importantly, on the part of members of the public, they should choose as wary customers the service of a good travel agency and avoid being ripped off. It is only through concerted efforts that the small number of undesirable elements operating in the industry will be eliminated. It is only through such tripartite efforts that there can be real control of travel agencies and protection of consumer rights.

I am sure that the travel industry has set a very good example for other industries in Hong Kong in terms of maintaining a self-regulatory system for itself and setting up a fund with the proceeds from stamp duty for the protection of the rights and interests of consumers. Indeed, there is even a view in the community that in practical terms it is to a certain degree safer to leave one's money with a travel agency than putting it in one's bank account. The travel agency offers better protection because the bank has no similar fund to fall back on in the event of closure. Indeed, there was a case recently involving customers not being able to claim their deposits in the bank which had wound up. Over \$100 million has been accumulated in the travel compensation fund over the years; it can be said that the fund offers very secure protection to consumers. I understand that the spending on the levy accounts for a significant part of the operation cost of a travel agency. It is not uncommon for a large travel agency to pay an amount of stamp duty per year which is almost equivalent to its annual profits. I have no intention of going into a debate on whether the levy should be borne by the consumer or the travel agency. At any rate, the setting up of a compensation fund *per se* is already proof that the travel industry is sincere about being subject to monitoring and about practising self-regulation.

It is not easy at all to practise self-regulation. Mr President, I am not a member of the Travel Industry Council. Actually, when I was running for the tourism functional seat on the Legislative Council two years ago, my chief contender was the Chairman of the Travel Industry Council. The truth is that the Travel Industry Council has a worthwhile but rather thankless job to do.

All the executive members and the Chairman of the Travel Industry Council have to spend a lot of their own time (time spent for which they will receive no remuneration whatsoever) in order to regulate the industry. Indeed, the Travel Industry Council is not only responsible for enforcing a code of practice among the travel agencies; it is also responsible for facilitating communication between the industry and members of the public, so that a balance can be struck between their different interests. Admittedly, there may be times when this cannot be done and it is bound to offend either one side or the other. It is vitally important that sufficient resources have to be made available for the Travel Industry Council so that it could function properly. In this regard, it is very reasonable for part of the levy to be set aside to meet the administrative cost of the Travel Industry Council. The achievement of the Council is for all to see in that over the past five years there has not been a single complaint of rip-off or winding up against the travel agencies.

Everyone has been talking about the protection of consumer rights in today's debate. The conclusion which I have drawn from the discussion is that it is far more important for us to have a good self-regulatory system in place than for us to aim for a 100% compensation provision. The efforts made by the travel industry so far have been directed at the elimination altogether of any possibility of the occurrence of mishap which may call for compensation. Similarly, I tend to think that the legislation should be as much comprehensive as it should be reasonable, that it should not be so draconian as to make it impossible for the industry to survive or otherwise suffocate its enterprising spirit. Attempts should be made to ensure that consumers are able to enjoy the service which they need. Travel agencies should be aware that the profit margin is in fact rather low in the travel industry and that there are practitioners who actually take the view that the only way to survive is to operate on precariously thin profit margins. The only way to improve the professional standard of travel agencies is to make sure that they have a good economic environment to operate in, that they are able to engage in fair competition and secure a reasonable return for their effort, and not least, that vicious, cut-throat competition is averted. It is only in this way that the consumer is able to enjoy quality service and real protection.

I was for a while the manager of a travel agency 13 years ago. Given the fact that a regulatory system for the travel industry was not yet well developed at the time, 10 years ago, many colleagues of mine in the travel industry, particularly the managers and staff working in the medium to small sized travel agencies, were quite reluctant to give their business cards to people of other trades. The public had some grave misunderstanding of the business of travel agencies; and some people actually thought that the travel industry was involved in some shadowy business. However, ever since the industry sought to reform itself vigorously, and ever since the Travel Industry Council was set up as a self-regulatory body, great strides have been made in the way of improving the regulatory framework, the training of travel agents and the improvement of service generally. With computerization of the travel industry moving into full gear, professional standard has also seen some improvement. The past image of

the industry as one in which there were as many good travel agents as there were bad ones is now gone for ever. The travel agencies figure very importantly in the economic life of Hong Kong. They have been able to make their achievement today, thanks to the support of all travel agents, who should also be very proud of what they have achieved. Their achievement is in fact good enough for other industries to emulate, including the one which will be the subject of our discussion later on today.

Lastly, I should like to respond to the question raised just now about what channels of complaint are open to consumers who have found the service provided not up to what had been advertised. That does not fall within the scope of our discussion today, but it was a question raised by some legislators. Incidentally, the Travel Industry Council also happens to have a way of dealing with service not matching what has been promised. This is handled by a fund set up by the travel agencies themselves. The body which is responsible for the management of the fund has, under it, an arbitration committee and its members are not entirely made up of industry representatives either. Professionals not involved in the travel industry are also members of that arbitration committee. I believe that the public may wish to know whether there are other ways of seeking redress against travel agencies with regard to cases which are not related to such agencies' sudden closure. The answer to this is yes. I think that we must endorse this improved travel agency ordinance and assist the healthy development of the travel industry. In so doing we shall be able to safeguard the interests of our consumers.

Mr President, I support the Bill before this Council. I will be happy to make any elucidation if there is such request.

PRESIDENT: Mr LEE, please raise your point.

MR LEE WING-TAT (in Cantonese): Mr President, thank you for giving me a second chance to speak. In my speech, I have said that 100% *ex gratia* compensation in the minimum rate because when consumers.....

PRESIDENT: Mr LEE, I thought you wanted Mr YOUNG to elucidate something he had said. Is that your intention?

MR LEE WING-TAT (in Cantonese): Yes, Mr President. I have to make a brief introduction before I raise my point.

I mentioned in my speech that 100% is a very low rate because when consumers join an outbound tour organized by a travel agent, they need to pay the money, take leave and make preparations. Let me quote a simple case. Mr WONG Wai-yin told me privately that he joined a tour organized by one of

Hong Kong's four leading travel agencies and intended to make it his honeymoon trip. But the tour was cancelled and they could not spend their honeymoon overseas. He and his wife finally went to an outlying island. I would like Mr Howard YOUNG to clarify one point. As consumers can hardly distinguish between the good and the bad agencies under the present system, then since the great majority of travel agents are members of the Travel Industry Council (TIC) and I do not think consumers would deliberately choose agencies which are likely to close down, what makes Mr YOUNG think that they are knowledgeable enough to distinguish between the good and the bad, to distinguish which one is going to close down and which one will not? How can the 80% and 100% rate be a guide for them to distinguish between a good and a bad travel agent? Take the example I quoted just now, even one of the four largest agencies makes our Honourable WONG Wai-yan cancel his honeymoon trip. How about that?

PRESIDENT: Is that something which you can elucidate, Mr YOUNG?

MR HOWARD YOUNG (in Cantonese): Mr President, as I understand it, Mr LEE would like me to clarify two points. He mentioned 100% and considered it as the minimum rate. Since 101% is higher than 100%, I feel that he is asking for more than 100% compensation.

The second point is on travel agencies. Since the majority of travel agencies are members of the Travel Industry Council (TIC), how to distinguish those which are properly managed and those which are not? My response is that all those organizing travel tours legally in Hong Kong are mostly members of the TIC. In fact, all of them should be its members. So far as I know, in recent years, the only tours not organized by TIC members are those by some Councillors and the quality is, of course, something I dare not guarantee.

SECRETARY FOR TRADE AND INDUSTRY: Mr President, I am grateful to the Honourable Roger LUK and other Members of the Bills Committee for their helpful examination of, and support for, the Bill. I would also like to thank those Honourable Members who have spoken today for their words of wisdom, even if I do not agree with a few of their comments.

The enactment of this Bill will consolidate efforts made in recent years to improve the regulation of the outbound travel industry, including especially efforts made by the Travel Industry Council and the Registrar of Travel Agents. The Bill's enactment will allow full implementation of the regulatory reform package agreed last summer with the parties concerned. Some of the reforms have already been implemented through administrative measures. These include increasing the rate of *ex gratia* compensation to outbound travellers from 70% to 80% of the package tour fares paid, and reducing the levy payable by travel agents from 1% to 0.5% of outbound package tour fares.

In the next few months we will prepare for the commencement of the Ordinance. The Governor will appoint an independent Management Board for the Travel Industry Compensation Fund which will take over the assets and liabilities of the Travel Industry Council Reserve Fund. The Board will make rules governing the disbursement of *ex gratia* compensation to outbound travellers upon the default of travel agents. These rules will form subsidiary legislation and will be laid before Members in the usual way. One such rule will be to specify the rate of compensation, expressed as a percentage of outbound package tour fares paid by travellers.

We intend to recommend to the Board that the present compensation rate of 80% be maintained. I have noted the Honourable LEE Wing-tat's statement that the UDHK's position is that compensation should be 100%. The Honourable Howard YOUNG has explained in detail why it is undesirable to provide 100% compensation. I agree with most of what Mr YOUNG said, but to save time, I will not repeat it. I will only say that it is important for us to look at this matter as an integral part of the reform package agreed with concerned parties after extensive negotiation and a great deal of consultation. That package seeks to strike a balance between, on the one hand, providing reasonable protection to outbound travellers and, on the other, securing an independent and reliable source of finance which would enable the Travel Industry Council to operate and continue to develop a durable self-regulatory scheme. I believe we have found the right balance.

Mr President, we have discussed with the Bills Committee the need for an additional channel to address complaints by outbound travellers and concluded that the existing arrangements are adequate. We have also had useful discussions on the scope of leviable outbound travel services and are grateful to Members of the Bills Committee for their valuable suggestions regarding how the definition of such services could be clarified. As a result of Members' suggestions, I shall move a number of amendments later on to improve the definition. We have also discussed the need to provide an effective mechanism to ensure payment and collection of the levies. We will recommend to the Management Board of the Fund a set of measures to put this mechanism into effect.

We hope to be able to complete implementation of the reform package at the beginning of the next Session of this Council and are aiming at tabling the necessary subsidiary legislation for Members' approval at that time. I can assure Members that, having done so, we will continue to keep this subject under review with a view to identifying areas for further improvement, thus further enhancing the protection of outbound travellers.

Thank you, Mr President.

*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).*

## **INLAND REVENUE (AMENDMENT) (NO. 2) BILL 1993**

### **Resumption of debate on Second Reading which was moved on 21 April 1993**

*Question on Second Reading proposed.*

MR MOSES CHENG: Mr President, the Bill introduces a system of Composite Tax Returns, whereby an individual taxpayer is only required to complete a single return for the reporting of income from employment, property and business. A Bills Committee formed to study the Bill held discussions with the Administration and considered the submissions received.

As the Financial Secretary has stressed time and again, the system of Composite Tax Returns will affect neither the rates of tax nor the amounts payable. It is intended to simplify procedures for taxpayers and allow a re-deployment of resources within the Administration. Members therefore support the Bill in principle, but have made some suggestions on the associated arrangements and the drafting aspect of the Bill. I wish to take this opportunity to thank my colleagues and the concern groups for their valuable contributions, and the Administration for the very efficient response.

The proposal in the Bill that has attracted the most concern is on the application period for provisional salaries tax and profits tax holdover claims. Under the Bill, the minimum application period is extended from 14 days to 28 days before the payment due date. According to the Administration, this is to allow more time for processing of applications, and standardize the holdover application period for all taxes levied under the Inland Revenue Ordinance.

Members have discussed with the Administration the reservation that the proposed extension may reduce the time available for taxpayers to make holdover claims. The Administration informed Members that in practice, many of the taxpayers should have received their demand notes with payment due date well in excess of 42 days. In the light of concerns expressed, the Administration has issued instructions that a minimum notice of 42 days should be given from the date of issue of assessment for those taxpayers who have filed their returns by the lodgement due date, and that copies of the demand notes to the tax representatives should be sent out as soon as possible.

Members consider that there should be a statutory minimum period after the issue of notice of assessment for application of holdover claims. It was therefore suggested that the deadline for lodging a holdover application should

be 28 days before the due date for payment, or 14 days after the issue of the assessment, whichever is the later. The Administration has accepted the suggestion, and amendment will be introduced at the Committee stage for relevant provisions in respect of the salaries tax, profits tax, and property tax.

The Administration has also been asked to consider whether the Commissioner of Inland Revenue should be allowed discretion to accept late applications. The idea is not supported by the Administration for the sake of simplicity, certainty and effective management. The Administration has assured Members that there is no indication that the lack of discretion is a problem, and that it is prepared to be flexible with regard to the supporting accounts in connection with the applications, with each case to be viewed on its own merits and facts.

Another area that the Administration has been invited to examine concerns the proposed new proviso at section 43(2B). The Administration has clarified that the section in question covers situations where the couples have elected to be personally assessed, and the proviso only applies to additional assessments. The husband and wife will, together, pay no more tax than under the existing system. The only difference is that the one who received the additional income will pay all of the attributable tax. This will save the spouse the inconvenience of having to settle a demand note for a small amount of additional tax. Members have received confirmation that the legislation already ensures that the tax rates applicable to a married couple will not differ with the enactment of the proviso.

On the proposed section 64(1A), the Administration has agreed to Members' request to introduce amendment to clarify the legislative intent.

With these remarks, Mr President, and subject to the amendments to be moved by the Administration at the Committee stage, I support the Bill.

**SECRETARY FOR THE TREASURY:** Mr President, the Bill now before Members for the Second time will pave the way for the introduction of the system of Composite Tax Returns, with effect from 1 April 1994. Under the new system, a single return will cover all taxes levied under the Inland Revenue Ordinance.

The Composite Tax Returns system will affect neither rates of tax nor amounts due. Its purpose is to make life easier for the taxpayer and to allow the Inland Revenue Department to redeploy additional resources to combat tax avoidance and evasion.

Since its introduction into this Council, this Bill has benefitted considerably from the advice and suggestions of the Bills Committee chaired by the Honourable Moses CHENG. The Committee held two formal meetings as well as several informal discussions with the Government, and received

representations from interested parties. As a result of these discussions, a number of technical details concerning the practical application of the new provisions by the Commissioner of Inland Revenue were clarified. In addition, a number of amendments to the Bill itself, which I shall be moving later this afternoon, were agreed. I would like to place on record my appreciation for the work done by the Committee and its Convenor.

The Honourable Moses CHENG has already clearly informed Members of the main points of discussion by the Committee and I do not wish to repeat them.

Mr President, I commend this Bill to the Council, subject to the amendments I shall move shortly.

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

Bill read the Second time.

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

### **Committee stage of Bills**

Council went into Committee.

### **JUDICIAL OFFICERS (TENURE OF OFFICE) BILL**

Clauses 1 to 12 were agreed to.

### **ROAD TUNNELS (GOVERNMENT) (AMENDMENT) BILL 1993**

Clauses 1 to 3 were agreed to.

### **CROSS-HARBOUR TUNNEL (PASSAGE TAX) (AMENDMENT) (NO. 2) BILL 1993**

Clauses 1 to 7 were agreed to.

### **CROSS-HARBOUR TUNNEL (AMENDMENT) BILL 1993**

Clauses 1 to 3 were agreed to.

**EASTERN HARBOUR CROSSING (AMENDMENT) BILL 1993**

Clauses 1 and 2 were agreed to.

**TATE'S CAIRN TUNNEL (AMENDMENT) BILL 1993**

Clauses 1 and 2 were agreed to.

**LANDLORD AND TENANT (CONSOLIDATION) (AMENDMENT) BILL 1992**

Clauses 3, 10, 14, 16, 17, 19, 20, 22, 24, 26 to 28 and 30 to 32 were agreed to.

Clauses 1 and 25

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that clauses 1 and 25 be amended as set out under my name in the paper circulated to Members.

Clause 1 is amended by deleting subclause (2). The drafting of the Bill commenced in 1991 when it was proposed that it should come into operation on 1 July 1992. The deletion of this subclause will permit the Bill to come into operation upon its enactment.

Clause 25 is amended by deleting subclause (1) and substituting a new subclause. The new subclause extends the expiry date of Part II controls which are stipulated to expire at midnight on 31 December 1994 to 31 December 1996.

Mr Chairman, I beg to move.

*Proposed amendments*

**Clause 1**

That clause 1 be amended, by deleting subclause (2).

**Clause 25**

That clause 25 be amended, by deleting subclause (1) and substituting —

"(1) Section 74B(1) is amended -

(a) by repealing "section 52(4)" and substituting "subsections (3), (4) and (5)";

- (b) by repealing "1994" and substituting "1996".".

*Question on the amendments proposed.*

MR JAMES TO (in Cantonese): Mr Chairman, the ad hoc group supports the proposed amendments to clause 25 put forward by the Secretary for Home Affairs, whereby the expiry date of Part II controls be extended from the end of 1994 to the end of 1996. The majority of the ad hoc group members opposing removal of rent controls also hope that the expiry date can be further extended in due course before the expiry of the period of validity.

I think the Government must clarify one point which, I think, it has misled the public. Recently at a press briefing on Monday a government spokesman said, "We would reduce the level of permitted annual adjustments to the minimum rent from 7.5 percentage points to five." This adjustment rate will be valid in the years 1993, 1994, 1995 and 1996 because the increase is going to be only 5% for each of these years. But in fact the increase will be 10% for the half-year period from 1 July 1996 to 31 December 1996 (up to the complete removal of rent controls). I hope the Government would note that its assertion with regard to the 5% adjustment is misleading and I regret about it. At any rate, most members of the ad hoc group support the extension of the expiry date for rent controls from 1994 to 1996.

*Question on the amendments put and agreed to.*

*Question on clauses 1 and 25, as amended, proposed, put and agreed to.*

Clauses 7, 18 and 23

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that the clauses specified be amended as set out under my name in the paper circulated to Members. I wish to draw Members' attention to the fact that clauses 2, 4, 5, 6, 8, 9, 11 to 13 and 15 are interdependent upon or relate to the clauses specified for amendment.

Clause 7 provides for the amendment of section 10 of the Ordinance to introduce a gradated programme for the phasing out of Part I rent controls over a three-year period. The new amendment which introduces a substitute clause 7(1) reduces the level of permitted annual adjustments to the minimum rent to 10 percentage points of the prevailing market rent and effectively extends Part I controls from 1994 to 1996.

Clause 18 which introduces an expiry date for Part I controls is amended by substituting "1994" with "1996" thereby extending the proposed expiry date for Part I controls until 31 December 1996.

Clause 23 on section 58 of the Ordinance provides for the gradated phasing out of Part II controls over a three-year period. The clause is amended by adjusting the proposed proviso to section 58(2) to reduce the level of permitted annual adjustments to the minimum rent from 7.5 percentage points of the prevailing market rent to five and extending Part II controls from 1994 to 1996.

In an effort to maintain a degree of clarity in a complicated process, I propose to touch briefly on the clauses of the original Bill which are interdependent and relate to the amended clauses which I have just introduced.

Clause 2 provides at subclause (2) for a revised definition of "prevailing market rent" which specifically accords with the proposed provisions relating to permitted increases in Part I controls stipulated in clause 7 as amended.

Clause 4 seeks to repeal section 9 of the Ordinance which becomes irrelevant on the introduction of the provisions stipulated under amended clause 7.

Clause 5 seeks to substitute section 9A of the Ordinance and allow for circumstances in which rents may exceed the prevailing market rent consideration of which is introduced by amended clause 7.

Clause 6 seeks to introduce a new section 9B providing for alterations to rents by agreement which relates to a proviso in amended clause 7.

Clause 8 constitutes a purely technical amendment consequential to the proposed deletion of subclauses under clause 7.

Clause 9 provides for the introduction of new sections for applications to the Commissioner of Rating and Valuation for certificates of increase in rent and related procedures. These provisions form an integral part of the adjustments introduced by amended clause 7.

Clause 11 seeks to amend section 15 of the Ordinance by repealing certain offence provisions which have been rendered obsolete by the introduction of clause 6.

Clauses 12, 13 and 15 are entirely consequential amendments to clause 11.

Mr Chairman, I beg to move.

*Proposed amendments***Clause 7**

That clause 7(1) be amended —

- (a) in the proposed section 10(1), by deleting paragraphs (a), (b) and (c) and substituting -
  - "(a) in respect of any period before 1 July 1994, an amount equal to 55 times the standard rent of the premises or 60% of the prevailing market rent of the premises, whichever is the greater;
  - (b) in respect of any period after 30 June 1994 and before 1 July 1995, an amount equal to 65 times the standard rent of the premises or 70% of the prevailing market rent of the premises, whichever is the greater;
  - (c) in respect of any period after 30 June 1995 and before 1 July 1996, an amount equal to 75 times the standard rent of the premises or 80% of the prevailing market rent of the premises, whichever is the greater;
  - (d) in respect of any period after 30 June 1996, an amount equal to 85 times the standard rent of the premises or 90% of the prevailing market rent of the premises, whichever is the greater.".
- (b) in the proposed section 10(1A), by deleting "(a), (b) or (c)" and substituting "(a), (b), (c) or (d)".

**Clause 18**

That clause 18 be amended, in the proposed section 48(1), by deleting "1994" and substituting "1996".

**Clause 23**

That clause 23(1) be amended, in the proposed proviso to section 58(2), by deleting everything under the 2 headings and substituting —

"Before 1 July 1994	75
After 30 June 1994 and before 1 July 1995	80

After 30 June 1995 and before 1 July 1996	85
After 30 June 1996	90".

CHAIRMAN: The question is: That clauses 7, 18 and 23 be amended as proposed by the Secretary for Home Affairs. Mr James TO has also given notice to move amendments to these clauses. I shall first call upon Mr James TO to speak on the amendments proposed by the Secretary for Home Affairs as well as his own amendments, but shall not ask Mr TO to move his amendments unless the Secretary's amendments have been negatived. If the Secretary's amendments are approved that will by necessary implication mean that Mr TO's proposed amendments are disapproved.

MR JAMES TO (in Cantonese): Mr Chairman, as what I have detailed in my earlier speech, some members of the ad hoc group, having weighed the interests of all the parties concerned, felt that our first and foremost concern should be the well-being of the low-income people living in controlled premises. They are going to face hardship due to the forthcoming removal of rent controls and inadequate social security. Although the Secretary for Home Affairs proposed a gradated programme for the phasing out of rent controls and had the period extended, we still consider it far from satisfactory. We are therefore not going to support clauses 7, 18 and 23 of the Bill and the proposed amendments moved by the Secretary for Home Affairs just now. If Members concur with the overriding view of the ad hoc group, that is to say, opposing the removal of rent controls, they should vote against the amendments proposed by the Secretary. Later on, I shall move amendments to certain provisions in the Bill in order to retain the existing rent control mechanism.

Another point I would like to amplify is that if the Government has the *bona fide* intention to reduce the adjustment to the minimum permitted rent from 7.5% to 5%, then along this line of thinking, the proposed date for a complete removal of rent controls should not be 31 December 1996. Let me elaborate my point here. According to the Government's proposal, by 1 July 1996 the adjustment to the minimum permitted rent shall be 90% and rent controls shall be removed completely by the end of December 1996. In other words, there would be an adjustment of 10% within that half-year period. However, if we follow the same logic of the Government in terms of the proposed 5% adjustment, it should be 90% on 1 July 1996, 95% on 1 July 1997 and a complete removal by 1 July 1998, that is, 100%. It is hoped that the Government will take this opportunity to explain to Members of this Council the logic behind such arrangement.

CHAIRMAN: Members may now express their views on the amendments proposed by Mr TO as well as the Secretary for Home Affairs. Does any Member wish to speak?

*Question on Secretary for Home Affairs' proposed amendments put.*

*Voice vote taken.*

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members now please proceed to vote?

CHAIRMAN: We seem to be one short. Has every Member pushed his button?

CHAIRMAN: Are there any queries? If not, the results will be displayed.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr Andrew WONG, Mr Edward HO, Mr Ronald ARCUILLI, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr CHIM Pui-chung, Mr Timothy HA, Mr Simon IP, Dr LAM Kui-chun, Mr Eric LI, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Miss Christine LOH, Mr Roger LUK and Mr James TIEN voted for the amendments.

Mr Martin LEE, Mr SZETO Wah, Dr LEONG Che-hung, Mrs Elsie TU, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Mr LAU Chin-shek, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum and Mr WONG Wai-yin voted against the amendments.

Mr PANG Chun-hoi abstained.

THE CHAIRMAN announced that there were 26 votes in favour of the amendments and 19 votes against them. He therefore declared that the amendments proposed by the Secretary for Home Affairs were agreed.

CHAIRMAN: The Committee has now agreed that clauses 7, 18 and 23 be amended as proposed by the Secretary for Home Affairs; in other words, the Committee has taken a decision on these clauses, and I will not call Mr James TO to move his amendments.

*Question on clauses 7, 18 and 23, as amended, proposed, put and agreed to.*

Clauses 2, 4 to 6, 8, 9, 11 to 13 and 15

CHAIRMAN: Mr James TO has given notice to move amendments to these clauses. As these are amendments consequential to his proposed amendments to clauses 7, 18 and 23 and are inconsistent with the amendments proposed by the Secretary for Home Affairs already agreed by the Committee, I will not call Mr TO to move these amendments.

*Clauses 2, 4 to 6, 8, 9, 11 to 13 and 15, were agreed to.*

Clauses 21 and 29(1)

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that clauses 21 and 29 be amended as set out under my name in the paper circulated to Members.

Clause 21 seeks to introduce a new formula for the assessment by the Lands Tribunal of compensation for award to tenants dispossessed of their premises on rebuilding. The new formula also resolves the dilemma facing Tribunal Judges who are obliged to make arbitrary and subjective assessments of likely removal and loss of fittings costs which are invariably difficult to substantiate. Assessment of compensation is made prior to vacating the premises. The Bill in subclause 21(1) proposed for statutory compensation a multiplier of 1.3 times the current rateable value. Subclause 21(1) is amended to increase the multiplier to 1.7 times the current rateable value of the affected premises.

Clause 29 at subclause (1) is likewise amended by increasing the multiplier from 1.3 to 1.7.

Mr Chairman, I beg to move.

*Proposed amendments*

### **Clause 21**

That clause 21(1) be amended, in the proposed section 53A(4)(a), by deleting "1.3" and substituting "1.7".

**Clause 29(1)**

That clause 29 be amended —

- (a) in subclause (1), in the proposed section 119F(4)(a), by deleting "1.3" and substituting "1.7".

CHAIRMAN: The question is: That clauses 21 and 29(1) be amended as proposed by the Secretary for Home Affairs. Mr LAU Chin-shek has also given notice to move amendments to these clauses. I shall first call upon Mr LAU to speak on the amendments proposed by the Secretary for Home Affairs as well as his own amendments, but shall not ask Mr LAU to move his amendments unless the Secretary's amendments have been negatived. If the Secretary's amendments are approved that will by necessary implication mean that Mr LAU's proposed amendments are disapproved.

MR LAU CHIN-SHEK (in Cantonese): Mr Chairman, I move that the clauses specified be amended as set out under my name in the paper circulated to Members.

As I said earlier during the Second Reading debate, my amendment seeks to raise the statutory compensation to be awarded to tenants dispossessed of their premises on redevelopment by the landlords to two times the current rateable value of the premises, plus removal and loss of fittings costs. Some of the Members who have just spoken and the Secretary for Home Affairs take issue with my amendment, but I still sincerely hope that they will reconsider it.

I believe that the difference between the compensation multiplier of 1.7 and that of 2 is not significant to the landlords who invest in the redevelopment of their premises. But to the tenants who have to move out due to the redevelopment, the difference is very obvious, especially where it will be very difficult for most of these tenants to find alternative accommodation of equally low rent. The rent that they will have to pay for their new accommodation will surely be much higher than that for their vacated accommodation. As regards removal and loss of fittings costs, these can be determined according to the statutory provisions and with due regard to the individual circumstances of the tenants. In fact, it is not difficult to determine the amount of these costs. But if the award of removal and loss of fittings costs is cancelled, that will obviously be a serious blow to the lower income tenants, and even more so to the tenants of sublet units.

I would now like to tell Members a true story. It is about a Madam CHAN who lived in a rented cubicle of 70 sq ft at a monthly rent of \$900 in the old area of Mong Kok. Recently, Madam CHAN had to move out because of the redevelopment of the building she was living in. Although she found another unit equally of 70 sq ft in the same district, the monthly rent was \$1,600. If the

multiplier of 1.7 proposed by the Administration was used, the compensation payable to Madam CHAN would only be \$7,500. However, her new unit required advance payment of two months rent, a deposit of one month's rent and a commission equivalent to one month's rent, which amounted to a total of \$6,400, and still not including the \$1,000-odd in removal and fittings costs. As a result, the compensation was all used up in the removal and Madam CHAN had from then on to pay a monthly rent of \$1,600. If Madam CHAN was to be awarded, according to the amendment motion, a compensation equivalent to two times the rateable value plus \$1,000-odd in removal and fittings costs, she would obtain a total of \$10,000. The difference between the two would be very obvious.

I believe that Honourable Members are aware that the demand for compensation by the many concern groups and tenants in the old buildings is three times the current rateable value, which is even higher than my proposed rate. Personally, I am supportive of such a demand. But my amendment only asks for two times, because I want to strike a balance between the proposals of different parties. I hope that Members will consider it carefully and support my amendment. Thank you.

CHAIRMAN: Members may now express their views on the amendments proposed by the Secretary for Home Affairs as well as Mr LAU. Does any Member wish to speak?

MR FREDERICK FUNG (in Cantonese): Mr Chairman, I feel that in the matter of compensation payable by the landlord to the tenant affected by repossession of property for redevelopment, consideration should be given to two aspects:

- (1) The repossession of property ownership by the landlord is in fact a kind of investment. In the light of prevailing property prices, this kind of investment is to a certain extent almost certainly a secure investment, that is to say, the landlord will benefit after repossessing the property.
- (2) The affected tenant will have to face two problems. Firstly, the rent for a new flat will definitely be higher than the old one. Secondly, the removal will oblige him/her to take leave of absence from work which will cause loss of income and bonus, not to mention having to leave the living environment he/she is accustomed to.

Overall, I believe the most important thing is that we can perceive repossession of premises for the purpose of redevelopment as a move on the landlord's part to obtain more benefit. And according to the law the tenant must move out when the landlord demolishes the building. Under such circumstances, I feel that there need to be some minimum protection. Under

the Landlord and Tenant (Consolidation) (Amendment) Bill 1992, the Administration is proposing (the same has also been mentioned at ad hoc group meetings) to set the compensation multiplier at 1.7 with the intention of enabling a dispossessed tenant to rent similar premises for about eight months. However, this compensation does not include removal fees, advance payment of rent, deposit or agent's commission. The 1.7 multiplier is therefore an unreasonable rate. I think that the multiplier for the minimum compensation payable should be raised to 2, plus removal allowances. I therefore support Mr LAU Chinshek's proposed amendment which seeks to raise the compensation payable from 1.7 times to 2 times the rateable value.

MR JAMES TO (in Cantonese): Mr Chairman, I have mentioned earlier that the majority of members on the ad hoc group find the amendments proposed by the Secretary for Home Affairs acceptable. They also hope that the Secretary will review the rate of compensation regularly to ascertain if it is still appropriate.

DR YEUNG SUM (in Cantonese): Just now the Honourable James TO attempted to introduce an amendment to remove rent controls, but only to be negated. Now I hope Members will give consideration to the following. Basically speaking, rent controls will probably be removed and indeed they will be. At the same time, rent increases by the landlord will normally vary according to the prevailing market value. Therefore the landlord will have secured a benefit in this regard. So relatively speaking, I believe some dispossessed tenants will also benefit if the rate of compensation is raised from 1.7 to 2 on repossession of their premises by the landlord. Could Members then give consideration to the compensation aspect, now that the amendment in respect of rent controls has been negated? I hope that Members will abstain even if they do not support Mr LAU Chinshek's motion. Thank you.

MR MOSES CHENG (in Cantonese): Mr Chairman, I rise to merely bring up one point that in a fair society like ours one may either make profits or lose money when he does business. It is not as what some Members said that all businessmen engaged in the demolition of buildings for redevelopment will definitely make profits. I hope Members would be kind enough to tell me where such kind of surefire business can be found. I believe many people are willing to do such business. To my mind, the demolition of buildings for redevelopment is an integral part of social development and developers' role also fulfils certain social functions. After all, I hope Members should note that there is no surefire business and that means businessmen have to take risk. I just wish to raise this point. Thank you, Mr Chairman.

MR CHEUNG MAN-KWONG (in Cantonese): Mr Chairman, thank you for allowing me to speak. I believe that in doing business, one may make profits or lose money. but to the tenants affected by redevelopment, they are definitely the losers because they are going to pay higher rents and the cost of removal is going to be enormous. In view of this, I hope that Members will consider Dr YEUNG Sum's proposal and support Mr LAU Chin-shek's amendments.

*Question on Secretary for Home Affairs' proposed amendments put.*

*Voice vote taken.*

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members now please proceed to vote?

CHAIRMAN: Are there any queries? If not, the results will now be displayed.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr Andrew WONG, Mr Edward HO, Mr Ronald ARCELLI, Mr Martin BARROW, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Timothy HA, Mr Simon IP, Dr LAM Kui-chun, Mr Eric LI, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Mr Roger LUK and Mr James TIEN voted for the amendments.

Mr Martin LEE, Mr SZETO Wah, Dr LEONG Che-hung, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Mr LAU Chin-shek, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Dr TANG Siu-tong and Miss Christine LOH voted against the amendments.

Mr PANG Chun-hoi abstained.

THE CHAIRMAN announced that there were 24 votes in favour of the amendments and 22 votes against them. He therefore declared that the amendments proposed by the Secretary for Home Affairs were agreed.

CHAIRMAN: The Committee has now agreed that clauses 21 and 29(1) be amended as proposed by the Secretary for Home Affairs; in other words, the Committee has taken a decision on clauses 21 and 29(1), and I will not call Mr LAU to move his amendments.

*Question on clauses 21 and 29(1), as amended, proposed, put and agreed to.*

Clauses 29(2) and (3)

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that subclauses (2) and (3) of clause 29 be amended as set out under my name in the paper circulated to Members.

The amendments are to correct a technical error in the drafting of the original Bill to provide for differences in procedures for recovering premises under Parts II and IV of the Ordinance. Under Part IV, the landlord must wait for an application by a tenant for the grant of a new tenancy before he may submit his opposition to such a renewal to the Tribunal. The amendment is basically a technical issue.

Mr Chairman, I beg to move.

*Proposed amendments*

**Clauses 29(2) and (3)**

That clauses 29(2) and (3) be amended —

- (b) in subclause (2), in paragraph (a) of the proposed definition of "rateable value", by deleting "application for an order for possession on the ground mentioned in section 119E(1)(c)" and substituting -

"landlord's submission to the Tribunal of his opposition to the grant of a new tenancy on the ground mentioned in section 119E(1)(c) pursuant to an application made under section 117(1)".

- (c) in subclause (3), in the proposed section 119F(4)(f), by deleting "application" where it secondly occurs and substituting "landlord's submission of his opposition".

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

*Question on clauses 29(2) and (3), as amended, proposed, put and agreed to.*

**TRAVEL AGENTS (AMENDMENT) BILL 1992**

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

Clauses 5 and 8

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

New section 32A(2) under clause 5 of the Bill seeks to define the scope of leviable outbound travel services. In essence, we intend to cover all outbound package tours organized by licensed travel agents which are prearranged combinations of at least two of the following three components: namely, transport, accommodation, and other tourist service not ancillary to transport or accommodation and accounting for a substantial part of the package and which are sold at an inclusive price. The amendment to new section 32A(2) seeks to bring this out clearly.

The other amendments aim to improve the legal language and to reflect those existing industry practices which facilitate levy collection and implementation of the new compensation fund scheme, or are consequential to recent changes in related legislation.

Mr Chairman, I beg to move.

*Proposed amendments***Clause 5**

That clause 5 be amended —

(a) in the proposed section 32A(1) -

(i) by adding -

""authorized collector" means -

(a) the Travel Industry Council; or

(b) such other person,

as the case may be, authorized for the time being under section 32F(2) (b);";

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

""outbound fare" in relation to a package means an amount paid on account of the relevant inclusive price referred to in subsection (2)(c) (whether such payment amounts to the whole or a part of such price);

"outbound travel service" means an outbound travel service within the meaning of subsection (2);

"outbound traveller" means a person who has paid, in a single payment or separate payments, an outbound fare to a travel agent, in connection with or in anticipation of the travel agent obtaining for him an outbound travel service or a person on whose behalf such a payment is made;

"package" means a combination of any 2 or all (as the case may be) of the services or arrangements specified in subsection (2)(b);".

(b) in the proposed section 32A by deleting subsection (2) and substituting -

"(2) A service is an outbound travel service if -

(a) it is provided or obtained by a travel agent for the public;

(b) it is comprised of any 2 or all of the following -

(i) carriage, by means of a conveyance, on a journey which is to commence in Hong Kong and which thereafter is to take place mainly outside Hong Kong;

(ii) accommodation at a place outside Hong Kong;

(iii) arrangements for an activity (not ancillary to a service referred to in subparagraph (i) or (ii) and which is to take place outside Hong Kong and which, where included in the package, constitutes a substantial part of it;

(c) it is a package which is available only at an inclusive price; and

(d) the services or arrangements constituting the package have been determined in advance of being made available to the public.

(3) For the avoidance of doubt the following is declared -

(a) for the purposes of this Part a person is not a travel agent if his licence is for the time being suspended;

(b) where an outbound fare is paid to a person who at the time the payment is made, is a travel agent, the payment shall not be regarded as not having been made only by reason of a subsequent revocation or suspension of the licence of that travel agent.".

(c) in the proposed section 32E by adding -

"(4) The Board may, in its absolute discretion, refund the whole or part of any monies received by it under section 32H(3)(b) and any such refund may be made to the authorized collector from whom the money was received or to the travel agent from whom such authorized collector received the money.".

(d) in the proposed section 32G(2)(c) by adding "or failure to make due payment" after "payment".

(e) in the proposed section 32H by deleting subsection (6) and substituting -

"(6) In this Part any reference to a levy being payable or a requirement that a levy shall be paid shall be construed as including the payment of the levy in advance.".

(f) in the proposed section 32L -

(i) in subsection (1) by deleting "Where" and substituting "Subject to subsections (4) and (5), where";

(ii) by adding -

"(4) Subsection (1) does not apply to reserves of the Travel Industry Council which existed immediately before the commencement of the Travel Agents (Amendment) Ordinance 1992 ( of 1992).

(5) The Financial Secretary may, either generally or as regards a particular financial year, notify the Travel Industry Council in writing that such reserves of the Travel Industry Council as specified by him (and which he may specify generally or with reference to a particular case, class or description) shall be excluded from the application of subsection (1), and any such reserves shall be so excluded.".

(g) in the proposed section 32R -

- (i) in the section heading by deleting "from existing reserve funds" and substituting "and liabilities";
- (ii) by adding before subsection (1) -

"(1A) On the commencement of the Travel Agents (Amendment) Ordinance 1992 ( of 1992) (in this section and section 32S referred to as "the amending Ordinance"), all assets and liabilities of the Company existing immediately before such commencement shall be transferred to and vested in the Board.";

(iii) in subsection (1) by deleting everything before paragraph (a) and substituting -

"(1) Without affecting the generality of subsection (1A), on the commencement of the amending Ordinance -".

(iv) in subsection (4) by adding after "accordingly" -

"and, without affecting the generality of the foregoing, any right of the Company as regards the repayment of the whole or part of any debt or the payment of interest, which was so in force, and chose in action relating to any such right shall, by virtue of this subsection, be transferred to and vested in the Board".

## Clause 8

That clause 8 be amended, by deleting "63." and substituting "69.".

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

*Question on clauses 5 and 8, as amended, proposed, put and agreed to.*

**INLAND REVENUE (AMENDMENT) (NO. 2) BILL 1993**

Clauses 1 to 6, 10 and 11 were agreed to.

Clauses 7 to 9

SECRETARY FOR THE TREASURY: Mr Chairman, I move that clauses 7, 8 and 9(b) be amended as set out in my name in the paper circulated to Members.

The amendments proposed to clauses 7 and 8 provide that the latest date for lodging an application to have provisional salaries and profits tax held over will be 28 days prior to the payment due date or 14 days after the issue of the payment notice, whichever is the later.

Clauses 9(b) is amended to reflect more clearly the requirement for the reporting by individual taxpayers of their property, business and salaries income.

Mr Chairman, I beg to move.

*Proposed amendments*

**Clause 7**

That clause 7 be amended, by deleting the clause and substituting —

**"7. Holding over of payment of  
provisional salaries tax**

Section 63E(1) is repealed and the following substituted -

"(1) Where in relation to any year of assessment a person is liable to pay provisional salaries tax, he may, by notice in writing lodged with the Commissioner not later than -

- (a) 28 days before the day by which the provisional salaries tax is to be paid; or
- (b) 14 days after the date of the notice for payment of provisional salaries tax under section 63C(6),

whichever is the later, apply to the Commissioner on any of the grounds specified in subsection (2) to have the payment of the whole or part of such tax held over until he is required to pay salaries tax for that year of assessment or, in the case of

an application on the ground set out in subsection (2)(d), until -

- (i) the determination of the objection or settlement thereof under section 64(3); or
- (ii) he is required to pay salaries tax for that year of assessment,

whichever is the sooner."".

## Clause 8

That clause 8 be amended, by deleting the clause and substituting —

### **"8. Holding over of payment of provisional profits tax**

Section 63J(1) is repealed and the following substituted -

"(1) Where in relation to any year of assessment a person is liable to pay provisional profits tax, he may, by notice in writing lodged with the Commissioner not later than -

- (a) 28 days before the day by which the provisional profits tax is to be paid; or
- (b) 14 days after the date of the notice for payment of provisional profits tax under section 63H(7),

whichever is the later, apply to the Commissioner on any of the grounds specified in subsection (2) to have the payment of the whole or part of such tax held over until he is required to pay profits tax for that year of assessment or, in the case of an application on the ground set out in subsection (2)(e), until -

- (i) the determination of the objection or settlement thereof under section 64(3); or
- (ii) he is required to pay profits tax for that year of assessment,

whichever is the sooner."".

**Clause 9**

That clause 9(b) be amended, in the proposed section 64(1A), by deleting "who has more than one source of income, property or profits chargeable to tax is assessed under section 59(2)(b) or section 60(1) in circumstances that, if the person had no other such" and substituting -

"chargeable to tax is assessed under section 59(2)(b) or 60(1) in circumstances that, if the person had no other".

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

*Question on clauses 7 to 9, as amended, proposed, put and agreed to.*

New clause 8A      Holding over of payment of  
provisional property tax

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

SECRETARY FOR THE TREASURY: I move that new clause 8A set out in the paper circulated to Members be read the Second time.

This new clause simply aligns the property tax holdover provisions with those applying to salaries and profits tax.

Mr Chairman, I beg to move.

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

Clause read the Second time.

SECRETARY FOR THE TREASURY: Mr Chairman, I move that new clause 8A be added to the Bill.

*Proposed addition*

**New clause 8A**

That the Bill be amended, by adding —

**"8A. Holding over of payment of  
provisional property tax**

Section 630(1) is repealed and the following substituted -

"(1) Where in relation to any year of assessment a person is liable to pay provisional property tax, he may, by notice in writing lodged with the Commissioner not later than -

- (a) 28 days before the day by which the provisional property tax is to be paid; or
- (b) 14 days after the date of the notice for payment of provisional property tax under section 63M(6),

whichever is the later, apply to the Commissioner on any of the grounds specified in subsection (2) to have the payment of the whole or part of such tax held over until he is required to pay property tax for that year of assessment or, in the case of an application on the ground set out in subsection (2)(d), until -

- (i) the determination of the objection or settlement thereof under section 64(3); or
- (ii) he is required to pay property tax for that year of assessment,

whichever is the sooner."."

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

Council then resumed.

### **Third Reading of Bills**

PRESIDENT: Council will now resume. Bills: Third Reading. Yes, Mr James TO?

MR JAMES TO (in Cantonese): Mr President, can the Landlord and Tenant (Consolidation) (Amendment) Bill 1992 be taken separately from the other Bills for Third Reading because the UDHK members are going to abstain on that Bill?

PRESIDENT: Yes, I will take the vote separately on that Bill, Mr TO.

THE ATTORNEY GENERAL reported that the

**JUDICIAL OFFICERS (TENURE OF OFFICE) BILL**

**ROAD TUNNELS (GOVERNMENT) (AMENDMENT) BILL 1993**

**CROSS-HARBOUR TUNNEL (PASSAGE TAX) (AMENDMENT) (NO. 2) BILL 1993**

**CROSS-HARBOUR TUNNEL (AMENDMENT) BILL 1993**

**EASTERN HARBOUR CROSSING (AMENDMENT) BILL 1993** and

**TATE'S CAIRN TUNNEL (AMENDMENT) BILL 1993**

had passed through Committee without amendment and the

**LANDLORD AND TENANT (CONSOLIDATION) (AMENDMENT) BILL 1992**

**TRAVEL AGENTS (AMENDMENT) BILL 1992** and

**INLAND REVENUE (AMENDMENT) (NO. 2) BILL 1993**

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

PRESIDENT: I will take the LANDLORD AND TENANT (CONSOLIDATION) (AMENDMENT) BILL 1992 separately from the other eight Bills. The question is that the following eight Bills be read the Third time and do pass:

**JUDICIAL OFFICERS (TENURE OF OFFICE) BILL**

**ROAD TUNNELS (GOVERNMENT) (AMENDMENT) BILL 1993**

**CROSS-HARBOUR TUNNEL (PASSAGE TAX) (AMENDMENT) (NO. 2) BILL 1993**

**CROSS-HARBOUR TUNNEL (AMENDMENT) BILL 1993**

**EASTERN HARBOUR CROSSING (AMENDMENT) BILL 1993**

**TATE'S CAIRN TUNNEL (AMENDMENT) BILL 1993**

TRAVEL AGENTS (AMENDMENT) BILL 1992 and  
INLAND REVENUE (AMENDMENT) (NO. 2) BILL 1993

*Question on the Third Reading of the eight Bills put and agreed to.*

Bills read the Third time and passed.

PRESIDENT: The question is that the following Bill be read the Third time and do pass:

LANDLORD AND TENANT (CONSOLIDATION) (AMENDMENT) BILL 1992

PRESIDENT: Yes, Mr TO?

MR JAMES TO: Mr President, can I speak?

PRESIDENT: I do not think you have a right to speak.....

MR JAMES TO: Or should I claim a division to show that the UDHK members will abstain? I only wish to say now that all the UDHK legislators will abstain from voting on the motion for the Third Reading of the present Bill.

PRESIDENT: Yes, I think that would certainly go on Hansard, Mr TO.

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

Bill read the Third time and passed.

**Member's motion**

PRESIDENT: I have accepted the recommendations of the House Committee as to time limits on speeches and Members were informed by circular on 28 June. 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.

## LICENSING OF REAL ESTATE AGENTS

MR ALBERT CHAN moved the following motion:

"That this Council urges the Government to introduce legislation to regulate the operation of real estate agents through a licensing system as soon as possible, so that the quality of service and the conduct of the real estate agents will be effectively monitored under the licensing system and the legitimate rights of consumers may be duly protected."

MR ALBERT CHAN (in Cantonese): Mr President, I move the motion standing in my name on the order paper.

Over the years the problem which has caused the people of Hong Kong the most anxiety is indisputably the housing problem. It is the wish of each and every one of us to have a home which we can call our own. Indeed, as one goes about looking for suitable property, one will most probably seek the assistance of a real estate agent. The common hope is that with the savings of half a lifetime one will eventually be able to secure a decent home. It is indeed unfortunate that, due to a lack of legislative control, the consumer usually ends up as the loser since there is no effective channel through which he or she can obtain redress or lodge his or her complaint. When the property market flourishes, the prices of flats will skyrocket. And there will be an influx of real estate agents into the market to take advantage of the situation. Many of them will even go so far as to resort to fraudulent means to cheat consumers of their money, making them suffer economic loss. Complaints against unscrupulous real estate agents reached a peak as a result of the escalating property prices and the frenzied speculative activities in 1991. The Consumer Council received a total of 248 complaints in that year. In 1992 when the Government tightened the mortgage rate, the speculative activities were curtailed and the prices of flats stabilized consequently. The number of complaints in question was still upwards of 100. Meanwhile, the Independent Commission Against Corruption received 80 reports of corruption involving real estate agents in 1991. The number of such reports was 56 in 1992. Apparently, the number of complaints received varied according to ups and downs of the property market. With the property market looking up again this year, one is quite justifiably concerned that the black sheep among the real estate agents would seize the opportunity again to exploit the situation.

In the adjournment debate of this Council held on 6 May 1992 on the issue of the quality of real estate agents, Members who spoke were invariably in favour of using legislative means to monitor them. Indeed, the Secretary for Planning, Environment and Lands said on the occasion that "the Administration has also reached an understanding with the two associations that the introduction of some form of regulation of estate agents through licensing should be pursued". The Administration fell short of giving a definite promise of setting up such a licensing system. Still, it would put in hand the study and give the idea some thought. However, a whole year has elapsed and today we have yet to

see any progress made by the Government in this respect. What is more disappointing, at a Housing Panel meeting held in May this year, the Deputy Secretary for Planning, Environment and Lands actually expressed scepticism over the effectiveness and urgency of introducing a licensing system for real estate agents. The ground for his scepticism was that there had been a decline in the number of complaints received by the Consumer Council in 1992. And he also thought that self-regulation would already suffice. The Government is going for the ostrich policy by its very denial of the existence of this longstanding problem on the basis of fluctuating statistics of complaints received. In any case, the backpedalling on the part of the Government as exemplified by its attitude and practice is very disappointing indeed.

To the man in the street, home buying is an important business. It is not at all surprising that one will spend all of one's savings on the purchase. It is not something which the public are prepared to tolerate if their savings set aside for such purpose are somehow eroded or unjustifiably misused by unscrupulous agents. In order to give appropriate protection to the legitimate rights of the consumer, we believe that the best way is for us to put in place a licensing system. As a matter of fact, the licensing system is a common means adopted by the United Kingdom, the United States, Australia and many developed countries in Europe to monitor real estate agents. The system has not hindered the development of the trade; it has actually proved to be instrumental in the maintenance and the promotion of the standard of the trade as a whole. Indeed, many of our neighbours in Asia are already in the process of adopting such a licensing system for their real estate agents. Japan, Singapore and Taiwan are just some of the countries moving in this direction. It can be seen hence that a licensing system has a very important role to play in terms of the development of the property market. We do not wish to see the Government continuing to stall on, and hang fire over, this issue. That is why the United Democrats have decided to move this motion to urge the Government to expeditiously introduce a licensing system to control the real estate agents.

With regard to the compelling reasons for setting up a licensing system, I would like to share the following thoughts with Honourable Members.

1. Given the fact that residential flats are very expensive, the real estate agent stands to collect a very handsome commission from each and every transaction. It is out of this temptation of high return that some real estate agents will even resort to illegal means to make a killing. Indeed, there are not infrequent reported cases of fraud involving large sums of money in property transaction. The introduction of a licensing system will provide the greatest deterrence and serve as the best way to eliminate the temptation to cheat, which some real estate agents may find hard to resist. A licensing system will act as an deterrent and result in greater fairness.

2. Self-regulation alone is not a reliable alternative which we can safely fall back on. For one thing, both the Hong Kong Real Estate Agencies Association and the Society of Hong Kong Real Estate Agents have a combined membership of no more than 30% of all practising real estate agents currently in the trade. It is hard to guarantee that all real estate agents, including those who are not members of either the Association or the Society, will abide by the rules of self-regulation, even if we assume that the two associations will regulate the practice of their own members and make sure that they play by the rules. In the absence of a council or association which represents all real estate agents, and in the absence of appropriate regulatory legislation, any appeal for practitioners to regulate themselves is nothing more than wishful thinking. Indeed, even when a house rule is apparently breached by a member, there is no way the two associations are able to mete out appropriate punishment to the offender. Even in the event of expulsion, the culprit is still able to operate as a firm without any grave impact on its business.
3. A licensing system is capable of ensuring the professional standard of the entire trade and forestall the scenario of the consumer being made to suffer unnecessary loss at the hands of those real estate agents who are not well versed in legal and financial matters. On the positive side, a licensing system has the advantage of deterring the black sheep among the real estate agents from resorting to malpractice while safeguarding professional standards. This will of course boost the confidence of home buyers in real estate agents. With the enhancement of the public image of the trade as a whole, both the consumer and the real estate agent will stand to gain.

With regard to the manner of licensing, the United Democrats have the following views.

The licensing system should not be introduced in order to limit the number of practitioners, nor should it aim at posing obstacles in the way of new practitioners. The setting up of a licensing system is in order to guarantee that real estate agents meet certain minimum standards of quality and to effectively and fairly penalize dishonest practitioners and those who contravene the regulations.

With regard to the licensing system *per se*, we have the following views.

1. The licensing system is essentially designed for the purpose of licensing all qualified practitioners and all practising real estate agents should therefore be made to sit on an examination in order to make sure that all practitioners have the basic knowledge about the property market, law and finance and the service which they provide is up to the required standard. In the meantime, the

Government may also consider the issue of licences to real estate agencies such that only those firms which meet the required standards will be able to register as real estate agencies. It is only through the regulation of the real estate agents and real estate agencies that the entire trade will be able to acquire a professional image for itself.

2. The Government may also design standard contracts such as a standard provisional sale and purchase agreement as well as a standard formal contract so as to forestall the addition of clauses into such contracts by real estate agents, which will jeopardize the interest of the clients.
3. The Government should prescribe the provision, during the transaction, of information relating to, for example, net floor area, key facilities, management fee, restrictions which apply to use of premises, age of building and so forth. In the case of overseas property, the information which should be provided may include, for example, the expiry date of lease and documentary evidence relating to the land grant. The licensee will have to bear legal responsibilities if it is established that he or she has the intention to either misrepresent the information or deny the information to the client. It should also be made explicit in the relevant ordinance that real estate agents should not force their clients to use the service of any particular lawyer or banking institution and that any attempt to do so will be penalized accordingly.
4. The Government should also set up a compensation fund. This is in order that appropriate compensation can be given to the consumers who have been made to suffer as a result of real estate agents' bankruptcy, mismanagement or fraud. This will ensure that the consumer is protected during the process of transaction and that he or she will not be made to suffer unduly as a result of the malpractice of unscrupulous real estate agents.
5. It should also be made explicit in the relevant ordinance how real estate agents are to handle the money deposited by their clients. For example, legislation should be in place to require that money deposited by the clients should be put into a trust account so that the consumers will not be made to suffer undue loss.
6. A real estate agents monitoring authority should be set up and charged with the responsibility of dealing with, and investigating, all issues relating to the breach of regulations and complaints received. It should also be empowered to recommend appropriate penalties for offenders, or more directly still, decide on what penalties to impose. In addition to monitoring, it should also assume a role in upgrading the professional standard of real estate

agents and work in conjunction with the tertiary institutions in terms of designing appropriate courses towards this end. The monitoring authority should include in its membership professionals of the trade, representatives of the Consumer Council and of the Independent Commission Against Corruption, legal experts and elected legislators.

With regard to implementation, we have two recommendations.

1. We recommend that the Government should first of all set up a working group to assist in the study of the ways in which a licensing system can be set up for real estate agents and to collect public opinion. The working group should also assist the Government in terms of the drafting of the relevant bills for public consultation. The working group should be chaired by a government official and its membership should be made up of representatives from within the industry as well as representatives of the Consumer Council and the Independent Commission Against Corruption, legal experts and elected legislators.
2. Given that the setting up of a licensing system is going to take time, and that the monitoring of the real estate agents is a matter in need of urgent action, we would therefore recommend that the Government should first of all require that all practising real estate agents and their sales representatives should be registered and indeed the availability of such relevant statistical information will be conducive to the implementation of the new regulations. In the event of a serious breach of regulation or immoral practice by any firm or individual, the Government may disclose the registered name of the offender, de-register the particularly serious offenders, and even render them ineligible to apply for a formal licence in future. This will create a measure of deterrence. When the licensing system comes into effect, the Government can go a step further and make it a requirement that all registered operators should within a given period of time apply for and secure a formal licence so they may be allowed to continue to operate.

Lastly, we would like to see the Government finalize the drafting of the relevant piece of legislation within a year's time so the draft bill will go before the Legislative Council in the next legislative year and the licensing system will be introduced at an earlier date.

Mr President, buying a flat is the most important affair for most families. It is no mean feat at all to be able at last to save enough money to afford to buy a flat to live in, particularly when the property prices remain to be exorbitantly high. The home buyers should be entitled to legal protection so that they will not be ripped off by unscrupulous real estate agents. Whereas this issue has been the subject of discussion brought up time and again in the Housing Panel of

the Legislative Council, the two above mentioned estate agency associations, the Consumer Council, the Independent Commission Against Corruption and the various political parties are quite unanimously in favour of the setting up of a licensing system for the real estate agents. Indeed, we can see from overseas countries and our neighbours there have been success stories of licensing. The Government should no longer drag their feet over this issue. We urge the Government to immediately go about drafting the necessary legislation in response to the popular demand of the community.

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

*Question on the motion proposed.*

MRS SELINA CHOW: Mr President, most families in Hong Kong aspire to become property owners. The long queues outside building sites of new flats that have just come on the market bear witness to that. The pages of advertisements on properties in the daily papers act as further proof of that. The fast escalating prices of old and new units alike reflect the cast iron fact that this is a seller's market.

Over the years the estate agents have blossomed and mushroomed into a high street business, infiltrating into every corner of every district. The thriving market's need for service of the go-between not only brings about willing providers of all shapes and sizes, background and training — or the lack of them — to act as agents. The money available in the sale and purchase of properties has become tempting to the middleman, many of whom have been the subject of complaints and criticism.

I would like to concentrate on the role that the Government and this Council should play in the light of prevalent undesirable and substandard services that exist in the marketplace. It is no longer news that the Consumer Council and the ICAC have rated the estate agents as a problematic area. However, the Government has stubbornly stuck to the position that it is a matter for the trade and self-regulation should be encouraged.

As an initial approach, I would have no objection. But when this has proven over the years not to have worked, it is up to the Government to take further action and this it must do. In so doing, it does not mean that the Government is intruding into the free market. It must ensure that rules and discipline must apply so that the right of the consumer can be fairly safeguarded.

To start with, the Government must recognize the need for minimum acceptable professional, technical and ethical standards to be set so as to ascertain that the service provided is worthy of the fees charged. For this purpose, there is a distinct place for a licensing system to be introduced through legislation and operated primarily by the trade. I believe my colleague, the

Honourable Edward HO, will elaborate on this; so I shall not dwell on it. But lofty as it is, moves to upgrade the standard of practice will take time.

What demands urgent attention is the vigorous stamping out of rampant malpractice. To begin with, the Government must publicize the channels open to the public when dishonest conduct is suspected of agents and educate the community on where the law stands on corrupt practices such as what renders commission illegal.

It is quite amazing that against a total of 180 000 of sales and purchase agreements of residential flats in 1991 there were only 80 reports of corrupt practices by estate agents and in 1992 with 140 000 sales only 56 such reports were lodged. Since 1990 only 37 agents were charged and only 20 were convicted. Bearing in mind how widespread such practices are, an unacceptable number of culprits are getting away with it. This simply will not do. The Government must do much more to bring guilty parties to justice.

Then there is the considerable abuse of the preliminary agreement for sale and purchase which is usually signed under the pressure of time and without proper legal advice. Problems that arise from such abuse and inconsistencies in court rulings can only be eliminated by the standardization of information in a model preliminary agreement required by law.

It is common knowledge that delinquent solicitors have breached practice rules which bar them from paying commission for referral of conveyancing business. I for one am most keen to know what the profession is going to do to rid itself of the bad name brought upon it by its black sheep. Unfortunately the Honourable Member representing the legal profession is not here now, but I would try and get a positive response from him.

Another common complaint is the misleading information provided by agents. The Government should give serious consideration to the adoption of the United Kingdom's Property Misdescriptions Act 1991 which prohibits the making of false or misleading statements about property matters by estate agencies and binds employers, as well as employees of the agencies, who might have a part in the making of such statements.

I await a positive response from the Administration.

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

MR EDWARD HO: Madam deputy, whilst most of the rest of the world is undergoing an economic recession, what is happening in the Hong Kong real estate market surely must be unique, to say the least. The Hong Kong public seems to have an unquenchable appetite for the purchase of real estate properties. When properties go on sale, people used to line up just to get an

opportunity to buy a flat. It is now replaced by a lottery system and getting the right to buy is like winning a lottery. In fact I have heard that someone, who was lucky enough to obtain the right to buy in a real estate sale a few weeks ago, was able to immediately get a profit of \$1 million just by selling his winning chip.

The appetite for properties in the secondary market is equally large as many people were not able to buy from the firsthand market. Most of the transactions in the secondary market were dealt with by very small real estate agents. There are about 2 760 registered companies with real estate brokerage as their primary business. Only 227 of them employ 10 or more staff. Most of the others are family-orientated with few professional qualifications. They operate out of very small premises, sometimes underneath a staircase, or even without a fixed business address and simply using a pager. They are totally unregulated. They do not have to have any basic knowledge of property transaction laws and regulations. I am not surprised if some of them probably do not even know how to read a set of building plans.

There have been many actual cases of malpractices, some of which are criminal. There are agents who do not disclose key information such as age and size of the property or illegal alterations to the client. Some exaggerate the size of property or underestimate the age in order to make the sale. There are also cases of malpractices involving improper handling of clients' money and such criminal malpractices as sales by deception through "confirmor" sales.

Also, there are increasingly more and more sales in Hong Kong of properties outside the territory. Exact information of these properties have to depend on the integrity of the developer or the estate agent, who are totally unregulated.

Properties in Hong Kong are of such huge costs that people may have used most of their financial resources, sometimes their total savings, in the purchase of properties. It must be a major concern that there is absolutely no protection for them. I and a number of our colleagues in this Council have expressed this concern to the Administration time and again in many of our Legislative Council panel meetings. Members have been disappointed at the lack of positive response from the Administration on a problem that is clearly of vital public interest. The Administration has maintained that they would first want to try self-regulation by the trade associations. The Administration has not committed on a programme of preparation for the licensing system that will give the necessary protection to the purchasers.

I do not agree that self-regulation is going to be able to solve the problem. As I understand it, there are two trade associations formed recently and of course there are the Hong Kong Institute of Surveyors (HKIS) and the Royal Institution of Chartered Surveyors (RICS) (Hong Kong Branch). I do not question the ability of these organizations to self-regulate their members. Indeed, the HKIS and the RICS (Hong Kong Branch) are very well-established

professional institutions which are also involved in the operation of the Surveyors Registration Board. The point is that real estate agents are not required to join any of the organizations described and indeed most of them would not be qualified to be admitted as members of the two professional institutions. Thus, self-regulation would leave most of the real estate agents out of the net, and the unsuspecting public would still not be protected. A licensing system is the only way to ensure an adequate standard of service, competency and integrity of the real estate agents in order to give protection to the public.

Once the required legislation is in place for a licensing system, then the actual operation of the system can be entrusted to a well-established professional institution so that there needs to be minimal involvement by the Government, similar to the way that the Surveyors Registration Board is presently run by the HKIS. The qualification of a registered real estate agent needs not be as stringent as that possessed by a professional surveyor; but in order to acquire the right level of qualification, training courses should be provided to practising and potential estate agents. There would have to be a phasing-in period so that practising estate agents would not lose their livelihood and would be given the opportunity to acquire the basic knowledge which is required for obtaining a licence.

Madam deputy, real estate agents are regulated in many parts of the world such as Australia, the United States and Canada. In those countries, real estate transactions have never reached such a feverish height as experienced in Hong Kong. Unit prices of properties in those countries are generally much lower than those in Hong Kong. Clearly the regulation of estate agents in Hong Kong is a matter of considerable public interest. I therefore urge the Government to put in place a licensing system for real estate agents as soon as possible after a phasing-in period for training.

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

MR RONALD ARCELLI: Madam deputy, at the end of this debate my honourable colleagues will have dealt with a whole range of issues. The topic is not a new one, as I raised it in this Council several years ago. As a representative of the Real Estate and Construction Constituency I welcome the opportunity to take part in this debate.

Most of us tend to overlook the plain fact that buying a property is probably the biggest investment the great majority of us ever make, particularly when it is our home. That there are malpractices in the marketplace is beyond dispute. Although there is no universal view on the extent nor the seriousness of such malpractices, we should, however, be concerned with not just stamping out malpractice. Our concern must be to introduce a system that works fairly and effectively. We must also not forget that a few rotten apples do not make the whole barrel rotten. There are many good and responsible estate agents in Hong Kong, with some belonging to professional bodies whilst others may not.

Madam deputy, against this background I should like to comment on several points.

The motion calls for the introduction of legislation to regulate the operation of real estate agents. These few words cover two important points. One calls for legislation to regulate and the second is how to define the phrase "real estate agents". It may well be impossible to avoid legislation, but even with legislation there are several ways that real estate agents can be regulated. It does not necessarily mean that the Government should be the governing authority or that such a role should be delegated to an organization like the Securities and Futures Commission. It could take the form of an association or federation of different associations set up and recognized by legislation. It could also take the form of, say, the Hong Kong Tourist Association which operates like what we sometimes refer to as the good housekeeping seal of approval for our tourism business. The public can have not just the comfort that a responsible organization is behind its members but that such an organization is there to protect the interests of its customers. Indeed this could take care of initial and transitional concerns and difficulties.

As regards definition of real estate agents, having read the short report prepared by the Consumer Council, I confess I find the definition suggested somewhat wide and sweeping. The Consumer Council chose the definition set out in the Estate Agents Act 1980 from Victoria, Australia. We have been told on numerous occasions that we must not blindly follow statutes enacted elsewhere because circumstances may well be quite different. I have no doubt that as a general rule that is sound advice. Clearly we need to examine the definition very carefully so as not to catch the architect, the lawyer or bankers as the definition from Victoria, Australia would.

Madam deputy, I do not believe that it would be feasible or fair to expect Members of this Council to set out their views exhaustively today. What we need is to press the Government to set up a working group comprising of the relevant expertise and various interest groups. The working group should be given a time within which to report so as to give the Government a clear steer.

PRESIDENT'S DEPUTY: I understand you wish to speak now, Dr TANG, because you have to leave early.

DR TANG SIU-TONG (in Cantonese): Madam deputy, to most members of the public, purchase of a home is one of the landmark events in their lives. They have to exhaust their savings and even incur a mortgage debt of over \$1 million — the repayment of which will last for 10 to 20 years — just to have a dwelling place of their own, to improve their living environment and to realize the dream of buying their own homes where they can live happily.

In Hong Kong, property transactions, especially those in the secondary real estate market, depend mainly on the services of the real estate agents as an intermediary. Therefore, these agents play a very important role in the real estate transactions. Furthermore, as most of the general public know little about the general requirements of and the complex legal procedures involved in the purchase of properties, the real estate agents have virtually become their "blind man's stick". The honesty or otherwise of these agents will have a direct bearing on whether the interests of the home buyers as consumers can be protected. Madam deputy, I believe that most of the real estate agents in Hong Kong are honest, but the saying that "there is a black sheep in every fold" seems to be universally true. Currently when there is no monitoring in this respect, many unscrupulous businessmen who hang out their shingle as real estate agents are in fact making money by dishonest means, thus spoiling the good name of and crushing the public's confidence in this trade. In many developed countries and even in Guangzhou, real estate agents have already been under government monitoring. There is no reason why Hong Kong should lag behind in this respect. A licensing system which can exert a monitoring effect on these agents is therefore necessary.

Many colleagues have already listed the demerits of not introducing a licensing system, and I agree with their views. I would like to concentrate only on the areas which call for attention when such a licensing system is introduced.

Firstly, the Administration has to conduct a detailed study to determine the status of the prospective licensees. Should we issue a licence personally to the agents or to the agencies? If the licences are issued on a personal basis, then the resignations of the licensed agents will affect the legality of the agencies they have been working in. But if the licences are issued on a corporate basis, it is feared that a monopolistic situation will emerge. As I understand it, the system of Guangzhou lays down that every agent must obtain a licence, and every real estate agency must have three licensed agents before it can obtain a licence. Such an arrangement may or may not be suitable to Hong Kong, but I believe that it can serve as a basis for our study.

Secondly, the Administration has to formulate carefully the licensing criteria. Neither over-regulation nor under-regulation will be appropriate. Last year the Consumer Council proposed a set of licensing criteria which requires that an applicant must have attained a certain level of education, undertaken a training course which includes subjects on accounting, finance and law, in particular trust and land laws, and passed a relevant examination before a licence be awarded to him. I think the Administration can consider adopting this proposal.

The number of licences is another matter that calls for attention. I do not agree that there should be a ceiling because an upper limit in the number of licences will easily give rise to monopoly by some agencies. Besides, I do not agree that the licences be transferable because that will make such licences become peculiar commodities like the taxi licences.

Fourthly, in introducing a licensing system, the Administration should legislate to the effect that agencies in breach of the licensing rules will be punished.

Fifthly, an independent organization should be set up to monitor the functioning of the real estate agents and handle complaints concerning property transaction.

Sixthly, a fund similar to the travel industry compensation fund should be set up to compensate the aggrieved buyers where necessary.

Seventhly, if the Administration decides to introduce a licensing system to monitor the real estate agents, it should consult the trade extensively about the relevant arrangements in order to formulate a foolproof monitoring system.

Madam deputy, there was an adjournment debate in May last year on the professional qualifications and ethical standards of estate agents. As a result of that, the ad hoc group concerned has never ceased following up on the matter. This shows that Members of this Council are actively concerned about the problem. I hope that the Administration has the same sincerity and respond positively to today's motion.

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

MR JIMMY McGREGOR: Madam deputy, with the enormous amount of business done in real estate in Hong Kong and given the very wide range of real estate services represented, it is not surprising that there should be calls from time to time for better regulation and supervision of real estate agents and developers. Hong Kong has seen the fastest growth in real estate development anywhere in the world for the past three decades. We have moved from a situation of government funded rented accommodation which today provides homes for around half of our total population to a much more evenly divided real estate building programme as between the public and private sectors. Even in the public sector, the Government has taken decisive steps to introduce and expand the concept of home ownership. In a rapidly expanding economy such as ours, home ownership is a legitimate and realizable concept. Thus the private sector will be more and more involved in the construction and sale of real estate.

In the area of industrial and commercial buildings, the private sector has always dominated. Again we have experienced one of the fastest growth rates in the world.

Our real estate, taken as a whole, must be considered with pride. We have a fine city. It is also, however, an expensive one and a city whose real estate is subject to tremendous pressure on prices and rentals caused by never ending demand. There is no indication that this situation will change in the

short and medium terms. Indeed, if a satisfactory conclusion can be negotiated with China on our political future then there will be an explosion of further interest in our infrastructural, commercial and domestic housing development. Hong Kong will remain the principal hub of economic growth for the entire South China area. We are a major contributor to the Chinese economy already. As a result, Chinese investment is already pouring into Hong Kong, much of it directed towards our real estate.

Councillors no doubt will agree with this relatively rosy picture despite some reservations. However, there are constraints in terms of land supply and there is therefore a continuing danger of escalating prices, serious speculation and temptation within the real estate industry to resort to sharp practice and unethical methods of advertising and selling real estate. When such practices occur, it is the end user, the consumer, who has to foot the bill.

The argument on behalf of the consumer is based on the need for proper protection against rampant speculation and unethical practice. The Government is seen clearly as the final arbiter and it is the Government which must act in the best interests of all the parties concerned. The Government, on the other hand, has always followed a policy of the least possible intervention in the marketplace, the least possible regulation of industries whose growth and vitality are essential to Hong Kong's overall economic success. This policy has been very successful although, as I have remarked before in this Chamber, market forces do not always work perfectly.

That is certainly the case with the real estate industry where speculation and malpractice have from time to time seriously disrupted fair and reasonable trading. We have all seen the results of such speculation and the inevitable appearance of the triads and other criminal elements. My sympathies and my support lie entirely with the consumers.

When considering this motion, I have had the advantage of advice from the Hong Kong Coalition of Service Industries (CSI), an organization which the Hong Kong General Chamber of Commerce was instrumental in setting up and which represents the co-ordinated thinking and views of all Hong Kong's major service industries.

The CSI takes the view that the Government's successful policy of non-intervention in a market system is generally correct and that most industries, if given the right conditions and encouragement, can regulate their own affairs and take account of ethical, legal and moral standards in doing so. Many Hong Kong industries do so, some do so with direct support from the Government to the extent and cost necessary. The coalition is therefore reluctant to support in principle the proposal to license real estate agents but clearly recognizes that the industry may be unable to prevent malpractices without some form of regulation. They take the view that the operation of estate agencies involves an element of professional service and is not simply a commercial service. As is the case with insurance agents, the introduction of a

regulatory framework which relies on self-regulation with statutory support would seem to the CSI to be an appropriate next step. The insurance agents scheme took four years of detailed discussion and planning; so there is a great deal of material on record should the real estate agencies and their institutions, including the Society of Real Estate Agents, be brought into discussion with the Government.

In regard to the wording of the motion, I am in support of the contention that real estate agents should be licensed and subject to established ethical and technical standards. I am sure that the Government, before taking this step, will approach the Hong Kong Coalition of Service Industries and other interested organizations, including the Society of Real Estate Agents, to obtain their co-operation and advice.

Madam, I support the motion.

MR FREDERICK FUNG (in Cantonese): Madam deputy, the government attitude towards the issue of whether or not a licensing system should be introduced to regulate real estate agents has always been one of ambivalence. The reason for this is that the Government takes the view that there is no need for a licensing system at all because self-regulation by the real estate agents themselves is all it takes to put things right. The Government has made a point of providing some statistics in support of its attitude. It has made the point that the number of complaints received by the Consumer Council has actually dropped from 248 in 1991 to 118 in 1992 and that the number of complaints received by the Independent Commission Against Corruption has likewise dropped from 80 in 1991 to 50 in 1992. The Association for Democracy and People's Livelihood and I believe that the Government is using the plea to the real estate agents to regulate themselves as an excuse for evading what should be its own responsibilities.

At present there are in fact a great many problems associated with the practice of real estate agents and there are millions of dollars involved in the transactions which they handle, not to mention the sizeable sums of commission which they receive in these transactions. Given the temptation of money and the very high return which malpractice yields, I am concerned that the consumer will be placed in a very vulnerable position if the Government actually fails to apply some extra pressure in introducing regulation. The fact is that the consumer has probably only one opportunity in his or her lifetime to buy property and indeed in so far as the knowledge of property transaction is concerned, the real estate agent is usually the party who is the more knowledgeable than the man in the street. There is no question of the consumer being able to tell whether the advice given to him or her by the real estate agent is correct or not. This is particularly so when there is huge fluctuation in the prices of property. The consumer does not have the same kind of access, as the real estate agent does, to information about what really goes on in the property market. It is under these circumstances that easy opportunities will arise where

real estate agents, who flout the law, will be able to rip off their clients. The consumer will very often end up being cheated of his or her savings of a lifetime. There was a particularly large number of complaints received in 1991, precisely because it was a particularly prosperous year for the real estate market and information circulating in the market tended to be the most volatile.

Both the Association for Democracy and People's Livelihood and I take the view that property prices are often pushed up and effectively manipulated by some developers and speculators but the end user, the man in the street, is ironically the one who has to live with the consequences. In the whole process of property transaction the role played by the real estate agent is one of a middleman. But I understand that there are some law-flouting real estate agents who will resort to all sorts of tricks to take advantage of the situation. For example, in some transactions, the real estate agent will get people along to play the role of a prospective buyer but whose job is to force down the price by bringing pressure to bear on the seller. At the same time the agent will push up the price so that he or she will be able to rip off both the end buyer and the seller. Real estate agents will also engage in speculative activities. For example, they will resort to the hoarding of some of the flats marked for internal subscription, flats which are better situated and command better views. These flats will then be sold later on at higher than original prices. The real estate agent and the developer may have a certain collaborating relationship with each other. I think that the Government should, in putting together a licensing system for real estate agents, take measures to regulate such kind of relationship.

In so far as the time required to put in place a licensing system is concerned, I think that the sooner such a licensing system can be introduced, the better. The fall in the number of complaints received in 1992 should not, I believe, be taken to be an excuse for delaying the introduction of the licensing system. For the fall in the number of complaints received is probably not so much the result of self-regulation by real estate agents as a reflection on the relative stability of property prices in 1992 compared with the situation in 1991, and that the market did not experience in 1992 the huge fluctuations of the earlier years.

I think that the licensing system should be targeted at the individuals as well as companies. In so far as individual real estate agents are concerned, the Government can make it mandatory for them to study certain courses in order to make sure that they will be able to meet the professional standard required before they are issued with a licence to practise. This is a way to establish professional standard for the trade. Real estate agencies should also be required to engage agents who are professionally qualified. Agents who breach the regulations should be disqualified at once. In so far as the agencies are concerned, the Government should also make it a requirement that only those agencies which have a given amount of capital are allowed to operate. The capital is to serve as proof that the agency concerned has the financial backing required for its public credibility. Agencies should only play the role of a

middleman. Any agency discovered to be involved in speculative activities will have its licence to operate revoked at once. Both the Association for Democracy and People's Livelihood and I are of the same opinion that this is the minimum a licensing system should guarantee in terms of regulation. Given that the real user will very likely have spent his or her lifetime savings on a property transaction, I think it is totally unacceptable that members of the public generally should be made to suffer because some real estate agents are effectively allowed to rip the buyer off by despicable means, taking advantage of the latter's lack of understanding of the property market.

With these remarks, I support the motion.

MR SIMON IP: Madam deputy, a year ago, this Council urged the Administration to introduce legislative control of estate agents. Before that, the Consumer Council produced a *Report on the Regulation of Estate Agents*, proposing the enactment of legislation leading to a licensing system. So far, the Government has done nothing.

The Government revealed in last year's debate that it had reached an understanding with the two estate agency associations that the introduction of some form of regulation of estate agents through licensing should be pursued. However, last month we heard the Government say that licensing is not a matter of urgency, and that it would not impose statutory controls unless necessary.

I see no reason why the setting up of a licensing system should not be pursued with urgency. Although the number of complaints received by the Consumer Council has dropped from 248 in 1991 to 118 in 1992, and those received by the ICAC has dropped from 80 to 56 during the same period, it must be recognized that 1992 was a year in which the property market was slow with the number of transactions falling by some 22%. With clear signs that the property market is now turning around, complaint figures can be expected to rise.

Further, we will never know how many victims of unscrupulous estate agents have suffered in silence and have not bothered to make a complaint because of the lack of an effective complaints mechanism.

Many estate agents are without any qualifications and their activities are wholly unregulated by legislation or codes of conduct. To set up an estate agency business, an agent requires no more capital than that required to buy a mobile telephone and advertising space in a newspaper. If anything goes wrong, the agent can disappear without trace.

Unscrupulous estate agents tarnish the image of the whole industry. The unethical and sometimes fraudulent practices they pursue are well known and I will not repeat them. The two estate agency associations have reacted by introducing rules for the self-regulation of their members. This is to be

welcomed as a right step forward. However, the weakness of self-regulation by the two associations is that there is no effective sanction against those who do not abide by the rules. Moreover, the majority of estate agents have not joined either association. For them, there is neither statutory nor moral obligation to deliver their services according to the rules of professional ethics made by the associations. They will continue with dubious practices with impunity while their more professional counterparts impose rules upon themselves which restrict their competitiveness. Therefore, self-regulation in the estate agency business achieves very little. What is needed is the introduction of legislation to:

- provide for the licensing of estate agents;
- set minimum standards to be observed by estate agents;
- provide sanctions against dishonest or unethical practices;
- offer redress to consumers;
- mandate a standard form of non legally binding Provisional Agreement for Sale and Purchase setting out basic terms and conditions;
- specify conditions under which clients' money is to be handled; and
- establish an independent body to monitor the practices of the industry.

Licensing should be a precondition to practise as an estate agent. To obtain a licence, an agent should demonstrate a suitable level of knowledge of estate agency law and practice and be judged by a licensing body as a fit and proper person.

The licensing body should be vested with the power and responsibility to regulate and monitor the actions of its members and to discipline those who fall below accepted standards of ethical conduct, by suspending or revoking their licences.

A compensation fund should be set up by the industry from its own resources to compensate clients against defaulting agents who cannot satisfy claims against them.

Madam deputy, the purchase of a home is often the most important and financially onerous transaction which our ordinary citizens undertake during their life time. Genuine home buyers sacrifice many other amenities of life to purchase a home they can call their own. They must be protected against exploitation and dishonest conduct in the real estate marketplace, especially

when there exists in it a strong unscrupulous and speculative element. The Government has been slow to act. It must do so now without delay.

With these words, I support the motion.

MR LEE WING-TAT (in Cantonese): Madam deputy, the housing problems faced by the sandwich class in Hong Kong are not only due to the continuing high cost of owning or renting a flat to live in, and incidentally, the last two months have seen another escalating trend of flat prices. The high cost of housing is further compounded by the fact that, in the process of buying a flat in the private property market, the buyer is faced with a lot of difficulties and has to be on the alert against traps of all sorts. In Hong Kong, most of the private property transactions are conducted through the real estate agents. The fact is that most of the real estate agents are currently operating without an adequate degree of self-regulation, and that the size of operation and professional expertise tend to vary significantly from one real estate agency to the next. In so far as the size of operation is concerned, one can see operating in Hong Kong internationally renowned real estate agencies as well as agencies which are no more than one-desk firms set up on one side of the staircase. It is estimated that there are at least several thousand firms engaging in the business of handling real estate transactions. However, most of these firms are not members of the two existing associations of real estate agents. In this connection, even if members of these two associations are able to practise self-regulation, there is no guarantee that the rights and interests of the consumers will be protected. Complaints about consumers being ripped off in the process of buying a flat are commonplace; malpractices range from overcharged commission to provision of incorrect information and service below professional standard. Even the standard flat inspection form (which is a contractual document) designed by the two real estate associations is equally disadvantageous to the consumer. It is very likely that due to inadequate legal protection the consumer will nevertheless incur financial loss as he or she puts his/her savings of a lifetime into the purchase of a home flat. There are examples involving the purchase of a flat .....

8.00 pm

PRESIDENT'S DEPUTY: I am sorry to interrupt you, Mr LEE. It is now eight o'clock and under Standing Order 8(2) the Council should now adjourn.

ATTORNEY GENERAL: Madam deputy, 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.*

PRESIDENT'S DEPUTY: Please continue, Mr LEE.

MR LEE WING-TAT (in Cantonese): Thank you, Madam deputy. The consumer spends the savings of a lifetime to purchase a flat to live in. However, due to the lack of legal protection, he has to suffer financial loss nevertheless. There are examples of a flat owner who discovers all sorts of problems with the flat after he or she has made the purchase and these problems are likely to remain and plague the owner for a very long time.

Madam deputy, as a convenor of the Legislative Council Housing Panel, I can inform Members here that over the past two years, we have held numerous discussions on this issue. It is the unanimous view of the Panel that the introduction of a licensing system is the best way to protect the rights and interests of the consumer. Indeed, this view was reflected to the Government by the Consumer Council many years ago. It is unfortunate that the Government has failed to pay any heed. I believe that a licensing system has the three following advantages.

- (1) A licensing system will promote self-regulation among practitioners. The two real estate agents associations will be encouraged to monitor the operation of their members more closely.
- (2) The black sheep within the ranks of real estate agents will be eliminated through the introduction of a licensing system. The result will be an improvement to the overall reputation of the profession as a whole.
- (3) The introduction of a licensing system will guarantee that the consumer will be able to obtain a service which is up to professional standard.

As a matter of fact, even if the Government accepts our proposal and introduces a licensing system, it is going to take time to have the required legislation in place and, in this regard, the licensing system will not have any damaging effect on those agencies which abide by the law in their operations. On the contrary, companies will be able to have enough time in the interval to improve their services in terms of meeting the legal requirements. It goes without saying that it is imperative that the Government should work in conjunction with the tertiary institutions in terms of offering suitable courses to enable practitioners who do not possess the required professional qualifications at this point in time to have the opportunity of improving their professional standards.

At the Legislative Council Housing Panel meeting held in May, the Deputy Secretary for Planning, Environment and Lands, Mr Canice MAK, still refused to accept the unanimous recommendation reached by panel members. The

Government is still talking in terms of hoping that the industry will practise self-regulation. Indeed, this line of argument has been used over the years and, quite frankly, I am getting rather tired of it and so are members of the public. The argument used by the Government goes like this. The number of complaints against real estate agents in the past year has declined. But that is not an argument which stands to reason. The fact is that real estate transactions have fallen significantly last year, as compared to the preceding year, wherein lies the reason for the modest decline of complaints. Furthermore, given the large sums of money involved in property transactions, an annual rate of 100 to 200 complaints provides already enough justification for the introduction of a licensing system.

Mr Albert CHAN and I met with two representatives of real estate agents just a couple of days ago. They were unanimously in favour of a licensing system. Meanwhile, according to an internal survey conducted by the Hong Kong Real Estate Agencies Association, 65% of their members were in favour of the introduction of a licensing system. But the Government has remained steadfastly opposed to the idea. I cannot think of any reason why, except maybe the Government does not intend to take up the responsibility which goes with licensing.

Before a licensing system is introduced, I think that, in addition to self-regulation by real estate agents, consideration should be given by the Consumer Council to making public the names of agencies which have repeatedly cheated consumers by illegal means. This is in order that the industry as a whole will practise more rigorous self-regulation and exercise greater vigilance.

With these remarks, I support the motion in the name of Mr Albert CHAN.

THE PRESIDENT resumed the Chair.

MR MAN SAI-CHEONG (in Cantonese): Mr President, Members of this Council are already aware of the many problems resulting from the lack of monitoring of real estate agents. At an adjournment debate held in May 1992 proposed by myself, most Members were in favour of drawing up legislation to regulate the industry and, indeed, the introduction of a licensing system was considered to be the most effective way to deal with the situation. It is unfortunate that after the debate the idea of a licensing system was only discussed by the Legislative Council Housing Panel subsequently but has not been pursued by the Government since. The Government has recently even seen fit to use the declining number of complaints as an excuse for saying that the need for licensing no longer exists.

The consumer is in a very disadvantageous position indeed in the absence of any legal protection. After a consumer has been ripped off by unscrupulous

real estate agents, there is nothing he or she can do about it except maybe to blame himself or herself for lack of judgement. There is no question of the consumer getting any form of compensation. The unscrupulous agent who is intent on cheating a client who does not have the general knowledge of law and property transaction is usually able to do it and get away with it very easily. Meanwhile, the client is quite defenceless against the almost impossible odds. The consumer who buys an ordinary item of consumer goods is able to obtain the basic and accurate information of what he or she is buying, thanks to the protection of the Ordinance governing product labelling. With such information, one can decide for oneself whether or not to make the purchase. However, the consumer who purchases a flat through the real estate agent is not likewise protected by law in terms of getting accurate information about his or her purchase. There is no way the consumer can return the product even though it may be found to be a far cry from what has been promised. The ironic fact is that the consumer is literally entitled to greater legal protection in a purchase costing no more than \$20 than in the purchase of a flat costing \$2 million. It is not unusual for the real estate agent to provide misleading information or otherwise withhold information about a certain flat in order that the flats will be sold off as expeditiously as possible. And there are not a few home buyers who end up buying flats which are not what they have been promised but who nevertheless can do nothing about the situation.

The Government should not just turn a blind eye to this problem. It should introduce appropriate legislation as soon as possible and make it mandatory for the real estate agent to provide the consumer with sufficient and accurate information, through the introduction of a licensing system. The real estate agency or the individual real estate agent should be liable to provide reasonable compensation to the consumer who has suffered financial loss as a result of being provided with wrong or otherwise misleading information. The basic and accurate information which should be provided to the consumer includes, for example, net floor area, key equipment, age of building, restrictions on use of premises, management fee, designated common areas, existence of illegal structures, common facilities and so on.

Quite apart from misleading information which will result in the client suffering a loss, the ways in which individual real estate agents handle deposits and commissions are often problematic. For example, there are real estate agents who will not turn over the deposit to the seller until very late or who fail to take good care of the deposit. There are also real estate agents who charge their commission long before the conclusion of the transaction and there are even cases in which commission has already been deducted at the time when the buyer backs off. If we can have legislation in place which specifically prescribes that the real estate agent has to put the client's deposit in a trustee account and that commission is only chargeable at a given point of time in the transaction, then this will certainly not only reduce the chance of dispute but also better protect the rights and interests of the consumer. In March this year, there were a number of real estate agents charged with conspiracy to cheat their client(s) of the differential between buying price and selling price, by means of

the "confirmor" trick. Indeed, this malpractice was extremely commonplace. Since it was not easily detected by the victim, chances are that there have been far more victims than the reported figures of complaints will lead us to believe. It is not a malpractice which the Government could afford to overlook. In order to make sure that the integrity of the profession is maintained, it is not enough just to rely on self-regulation. The most effective and feasible way to achieve this goal is to introduce a licensing system for all real estate agents.

Meanwhile, the personal misconduct of some real estate agents may not necessarily have anything to do with the real estate agencies to which they belong. In this regard, the licensing system has the basic function of requiring all practitioners in the industry to be holders of licences which will, in addition to testifying to their professional standard, have the advantage of preventing individuals from passing the blame of their personal misdeeds on to the agencies. It goes without saying that if it is proven that the misdeed has in fact been committed with the sanction of the agency, then the whole case will be handled quite differently. Meanwhile, the quality of real estate agencies is also a matter which should be subject to monitoring. In this regard, quite apart from the individual practitioners who should be issued with licences, the real estate agencies should also be issued with corporate licences.

Mr President, according to the information released by the Consumer Council, there has been an increasing trend of complaints involving real estate transactions in mainland China. Whereas the number recorded for the first five months at 18 for the whole of last year, the number recorded for the first five months of this year already exceeds 21. Most of the complainants alleged that they were not provided with accurate information by the middle men in Hong Kong. Admittedly, given the increasing involvement of Hong Kong people in the transactions of real estate in China, it is not altogether surprising that the number of complaints should escalate. However, the least we can do is to make sure that the trend is not allowed to deteriorate. Buyers of mainland China real estate offered for sale in Hong Kong are faced with the following problems to a more or lesser extent. First of all, the real estate in question is often offered for sale in Hong Kong without formal documentation being secured beforehand to the effect that permission is granted for sale outside China. Secondly, the building quality is often poor and the building materials inferior; sloppy workmanship and use of cheap substitutes for specified materials are not unheard of. Thirdly, the building may not have water and power supply and transport link may be inadequate. Fourthly, the sale is already on in Hong Kong even though no building has been erected on the empty construction site. Fifthly, the building area, the net floor area and the ancillary facilities are exaggerated or otherwise untruthfully represented. Sixthly, after the buyer has paid the price of purchase, the developer suddenly invents a whole range of other extremely expensive charges. The buyer ends up suffering grave financial loss. Admittedly, there is no way Hong Kong can monitor the operation of mainland developers. However, the least we can do is to have the effective legislation in place to require that the real estate agents provide accurate information. If we have a licensing system in place, then we can make it a

licensing condition that all agents involved in the sale of overseas and mainland China real estate have the responsibility of verifying the truthfulness of information provided about the piece of real estate to whom they have been entrusted to sell. This is in order to protect the consumer against any misrepresentation, exaggeration or withheld information which should cause loss to the consumer.

Mr President, given the high property prices in Hong Kong, we have the responsibility to make sure that these consumers have access to accurate product information. This is a fundamental consumer's right of members of the public. We demand that the Government should go about drafting the relevant legislation at once in order to safeguard the rights and interests of consumers.

With these remarks, I support the motion.

MR JAMES TO (in Cantonese): Mr President, I am in favour of regulating the activities of real estate agents through the introduction of a licensing system and improving their professional standard through the creation of a new mechanism. Today, I would like to focus on just one area. I will talk about why there is a need for improvement of the professional standard of real estate agents. The obvious reason is that I can see that most of the property transactions are conducted through the real estate agents. When the buyer and the seller are able to reach agreement on the price and the buyer is satisfied with the condition of the flat basically, then the two parties will sign a provisional purchase and sale agreement. Whereas the signatory may have a feeling that it is after all a "provisional" purchase and sale agreement, and that the terms which it contains may be further negotiated and changed, the document is in fact already an "enforceable" contract which is legally binding. Put in another way, whereas both the seller and the buyer may have the impression that the terms are still negotiable and subject to change when they attend the office of the solicitor, the fact is that such change is in most cases already too late by the time they complete the formalities with the lawyer. I will elucidate with some examples in a moment. But let me say for the time being that in this regard I tend to think that real estate agents should be equipped with the fundamental knowledge about law, building structure, home financing, as well as some basic knowledge of conveyancing.

The examples which I am going to provide will bear out the seriousness of the impact to which many sellers and buyers involved in property transactions are liable to be subject. Let us consider the following scenario. Mr A wants to buy a home. He finds the flat agreeable and pays the deposit, not knowing that his monthly income is below the limit which the bank sets for repaying the mortgage loan. (The bank will not accept the use of some 60% to 70% of one's monthly income for the repayment of loan.) The bank therefore suggests to him: Why not include your brother's name in the contract of assignment? However, under the Stamp Duty Ordinance, the inclusion of the brother's name will effectively mean that Mr A will have to pay more stamp

duty, by an extra 50%. Whereas he may genuinely believe that the inclusion of his brother's name is no more than just adding in another name, what he does not realize is the fact that in doing so he is effectively transferring 50% of the ownership rights and interests to his brother. In so far as the bank is concerned, it is quite willing to grant a mortgage because the two brothers have a combined income which now meets the repayment requirement. If I may return to the subject of inclusion of names of other individuals in the assignment contract. The inclusion of the name of one's son, mother, or wife will not entail an increased stamp duty. However, the inclusion of one's brother is a different story altogether. By the same token, even in terms of deletion of names, one may be under the impression that such deletion can wait until the signing of the formal contract of assignment. However, the fact is that deletion at that stage will entail an extra 50% stamp duty. Whereas not too many laymen are aware of this fact, the real estate agents likewise may not be well acquainted with the new provisions of the Stamp Duty Ordinance either. Consequently, there is no way the average real estate agent is able to give proper guidance to his client in this respect.

Secondly, there are people who think that the purchase of property in the name of a limited company will bring with it certain tax concessions. However, they are not aware of the fact that if the company is no more than a "shell" company, then chances are that the bank may not grant concession in terms of interest differential. Put in another way, the buyer buying in the name of a limited company may not get any discount or a more favoured interest rate after all. Indeed, when he wishes to switch back to his personal name for the purpose of mortgage, then even though the limited company in question is 100% owned by himself, the law still says that the switch back to the personal name of a shareholder entails another payment of stamp duty, which could be to the tune of \$100,000.

Thirdly, problems may also arise as a result of the real estate agent's lack of certain basic knowledge. It is likely that he or she will become negligent in his or her eagerness to finalize the transaction. There are cases in which the party who claims to be the seller is not able to produce any documentary proof of ownership other than the possession of a set of keys for entry to the property. This may happen when the seller is in fact the caretaker of the property whose owner is abroad on a holiday for a week or two and the property is only in his or her care temporarily. The unscrupulous caretaker will take advantage of his or her position and actually put the flat up for sale. Prospective buyers will be led to inspect the flat and if the conditions are agreeable then an agreement will be signed at the office of the real estate agency, which sometimes involves the payment of a deposit of tens of thousands of dollars. If the real estate agent neither conducts the necessary investigation nor demands basic documentary proof from the seller, unscrupulous elements will be able to succeed in their scam.

Fourthly, the question arises as to whether it is sufficient for the buyer just to forgo the deposit if he or she should decide, after entering into a

provisional sale and purchase agreement, not to buy the property after all. Or put in another way, suppose the seller breaches the agreement and backs out of the sale, is it quite enough for him or her to refund twice the amount of the deposit. To be completely honest, there are real estate agents who are not too sure about the relevant regulations, although I am by no means suggesting that all of them are ill-equipped with this sort of knowledge. Suffice it to say, however, that it is very important that we should seek to improve the quality of service. Meanwhile, some of the jargons commonly used in the sale of uncompleted flats, like "halfway guaranteed repayment" and "guaranteed repayment" may be defined in much too general terms in the provisional sale and purchase agreement. ("Guaranteed repayment" refers to an undertaking to repay all of the mortgage loan originally secured; "halfway guaranteed repayment" refers to an undertaking by the buyer to repay the mortgage loan right up to the point of occupation.) The lack of a precise definition means that disputes are likely to arise between buyer and seller while they are completing the transaction at the solicitor's office. Both the buying and selling parties will be anxious and upset about the extent of their rights and responsibilities. Meanwhile, there are real estate agents who, not having the relevant knowledge or in the absence of any regulation, will even talk the buyer into believing that the property being bought can actually be used to secure a favourable mortgage loan. However, when the buyer fails to secure the required mortgage loan, the transaction will not go through and the buyer will actually end up being sued for breach of contract.

I would also like Members to consider this one last scenario. For example, in so far as the sale of uncompleted flats are concerned, there is usually a clause in the agreement which specifies that the transaction is to be completed within 14 days of the completion of building. However, it is likely that by the time this sort of flat is sold to the end buyer, it has already changed hands three to four times. If that is indeed the case, then the following questions will arise. Firstly, the mortgage arrangement will become problematic. Secondly, there is the question of whether the originally agreed 14-day limit should still apply. The reason is that whereas the developer may have set the completion deadline for 14 days for the first buyer, when the flat eventually passes on to the third and fourth buyer, only one or two days will remain for the completion of the transaction. The end buyer will have a major problem arranging for mortgage and going through with the transaction procedure.

I have described the many scenarios above because they are real life examples. I think they will provide justification for the assertion that if there is no government regulation of the real estate agents to ensure a basic quality of service, then the whole business of buying a home will be fraught with grave problems from the moment we enter into the provisional sale and purchase agreement.

With these remarks, I support the motion.

MR WONG WAI-YIN (in Cantonese): Mr President, this Council had an adjournment debate on the professional qualifications and conduct of real estate agents on 6 May 1992. Most of the Members who spoke that day supported the proposed control of real estate agents through a licensing system to ensure that the quality of their services are up to an approved level and in turn to safeguard consumers' rights and interests. Yet the number of public complaints against real estate agents has been increasing after the lapse of more than one year, the question pertaining to the licensing of real estate agents is again on the agenda today. Meeting Point would reiterate here our position on the support for the licensing system. With the introduction of a licensing system, we think the real estate agents can benefit in three ways as follows:

Firstly, those engaged in the real estate industry will acquire a better knowledge of the nitty-gritty of property transactions through some basic training;

Secondly, punitive measures such as disqualification and suspension may be put in place to regulate estate agents; and

Thirdly, the public can bring their complaints to the official licensing authority which should be the formal channel to receive complaints and this will strengthen the public's monitoring power.

These are some of the advantages. Yet it is undeniable that the public always have a great demand of estate agents' services. Furthermore, the current booming property market and hectic transactions will lead to more disputes since the standard of services of some estate agents may slip as they try to cope with the brisk business. Under such circumstances, the licensing system seems to be a very good solution. However, when the licensing system is put into practice, we have to note two points:

First, the public will certainly have to pay higher service charges in view of the restriction on the number of people joining the trade and a demand for estate agents with higher quality;

Second, the licensing of estate agents alone cannot fully safeguard the rights and interests of consumers and we can only provide greater protection by adopting the following supporting measures which include:

- (1) corresponding legislation on property transaction;
- (2) the trade's self-regulation; and
- (3) public education, especially basic education on property transaction such as the relevant law.

Meeting Point thinks that the licensing of real estate agents is a move forward but it is only the first step to protect consumers. If the Government

does not expeditiously legislate on the procedures of property transaction and strengthen public education, the licensing system may be manipulated by the trade and the public have to pay more service charge but may not necessarily receive more protection in return.

Meeting Point understands that it takes time for the Administration to prepare the licensing system but we feel extremely dissatisfied with the fact that the Administration has all along been hanging fire over the strong requests from various parties. We also understand that the Government has apparently yet to commence any preparation for the licensing system. In this connection, we feel seriously doubtful of the Government's sincerity.

Finally, we are also very pleased to see that certain real estate agents have organized among themselves some trade associations for the purpose of self monitoring within the trade and they have made the necessary preparations and expressed their opinions in support of the licensing system. In addition, if the licensing system is set up in future, we hope that the Government could enhance the transparency of the licensing job such as the requirement of estate agents' professional standard and measures to ensure fair trade and to improve property transaction services so that public monitoring could be achieved.

Mr President, with these remarks, all the four Members from Meeting Point support the motion.

PRESIDENT: Secretary for Planning, Environment and Lands. Sorry, Mr YOUNG, have you spoken?

MR HOWARD YOUNG: I just arrived in time. I barely had time to catch my breath.

PRESIDENT: You do wish to speak, Mr YOUNG?

MR HOWARD YOUNG (in Cantonese): Mr President, I am very much in favour of government regulation of the business of real estate agents, which is in keeping with the principle of protecting the interests of consumers. I have recently heard of not a few disputes involving real estate agents on the one hand and their clients on the other. I consider that members of the public will become the greatest losers if we allow these disputes to go on happening. Indeed, the existence of some unscrupulous practitioners will also impair the integrity and the public credibility of the real estate agency industry as a whole. In this regard, whether we choose to look at it from the point of view of the man in the street or to safeguard the long-term interests of the industry, it is absolutely necessary that we have to have some form of regulation.

In so far as the management of service quality is concerned, the example set by the travel industry may be worth emulating. The travel industry currently operates within a framework of government legislation and a licensing system. All travel agencies, once they are issued with a licence to operate, will have to reveal their licence number in their advertisements. Meanwhile, the industry also takes it upon itself to set up a body to enforce self-regulation (which is an issue which we have debated earlier today). This is in order to ensure that all travel agencies abide by the professional code of conduct and are able to co-operate with the registrar at the Registry of Travel Agents in terms of putting a stop to irregular practice. One advantage of this arrangement is that the self-regulating body is made up of professionals from within the industry. Since the latter are familiar with the operation of the industry, they are able to respond more efficiently in terms of enforcing self-regulation. Meanwhile, they are also able to act as a buffer and reduce the possibility of any head-on collision between the Government and the industry. They can facilitate communication and contribute to the formulation of legislation which is acceptable to both the Government and the industry and which also serves the interests of the public. With the industry taking the initiative to regulate itself, its professional image in the eyes of the public will be that much more enhanced. Why am I saying that the self-regulation of the travel industry provides an example for emulation? As I was saying in my speech earlier this afternoon, whereas a person who was working in the tourist industry 10 years ago would be too shy to present his business card to outsiders, for fear that he might be taken for engaging in some shadowy business, now all tourist agencies invariably feature their licence numbers in their advertisements and indeed many colleagues of mine in the travel industry even make a point of printing their certificate numbers on their business cards, which they are only too eager to pass around. It is apparent that the reputation of the industry has improved with the regulation and so has its professional standard. There is a lot of training going on in the industry which aims to improve quality and enhance the public credibility of the industry. Whereas in bygone days people working in a tourist agency might have given an impression of not being very reliable or engaging in some shadowy business, nowadays they are able to walk tall and proud and enjoy a professional status recognized by the community.

But in so far as the real estate agencies are concerned, it is paramount that the Government should establish a good working relationship and develop mutual trust with the industry if a proper self-regulatory system is to be established. I understand that there are at least three to four business associations within the industry and indeed it is not always the case that a real estate agent must necessarily be a member of any one of these. I think the Government may as well refer to the way in which the Travel Industry Council was set up in the past. Encouragement should be given to the real estate agents to set up an association which resembles the Travel Industry Council which will cross the boundary lines of the various existing associations. In so doing the industry as whole will have a formal channel for conducting dialogue with the Government. It can also be made mandatory for all real estate agencies, just like the travel agencies, to eventually become members of an industry council.

before they can be issued with a licence to operate. Indeed, there are real estate associations which have already taken the initiative in supporting the introduction of a licensing system by the Government. This is an indication that the real estate agents are themselves determined to put their house in order. However, an enormous amount of work is involved in, and tremendous resources have to be committed to, the introduction of a licensing system. It is only appropriate that the Government should play a major role in this effort. In the process of drawing up the regulatory legislation and operation guidelines, it goes without saying that the Government should seek wide co-operation with the industry representatives in order that unscrupulous elements will be eliminated and professional standard improved at the same time without causing damage to the normal development of the industry.

The real estate agent plays the instrumental role of a middle man in the property transaction for members of the public. The sums involved are enormous and not infrequently they represent the hard earned savings of a life time. In this regard, it is only reasonable and fair that the buyer will expect and demand that the real estate agents should be honest and work with professional ethics. This actually brings us back to a point which I was making about the travel industry just a moment ago. With a unified code of practice for all travel agencies, there is a degree of transparency. Every one knows what should be done and what should not be done. This is also something the real estate agents would do well to study, particularly in terms of devising the clauses in a preliminary sale and purchase agreement. It is up to the real estate agents to introduce training courses for practitioners in an effort to improve their public credibility.

Mr President, given that the Government has a successful record of enforcing self-regulation in other industries leading to the improvement of service and professional standard, I would consider that that experience may be useful in terms of serving as an example for real estate agencies to model on.

I support the motion.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President,

*Introduction*

I am grateful for Members' views this afternoon. There is no denying that estate agents do play an important role in facilitating property transactions. It is understandable that the public expects estate agents to be competent, honest and to work with professional ethics. It is perhaps only in defining such concepts as professional competency and ethics, and hence the perception of the extent of the problem and the solution required, where there may be a difference of opinions.

### *Present position*

At the outset, it would be useful if we could examine the present system to see what the inadequacies are and what improvements should be introduced, when and how.

Let us first look at the market structure of our real estate agency industry. According to the records of the Census and Statistics Department, there were, over 4 700 establishments in the real estate brokerage and agency category in the first quarter of 1992. They employed over 15 000 people. As the figures indicate, most of these establishments are fairly small companies. Anecdotal evidence indicates that while the larger firms tend to have surveying and valuation professionals on their staff, the smaller companies are often run by people with no particular qualifications in the property field. Indications are that more property transactions are handled by estate agents without formal qualifications in the field than by those with them. This, I would suggest, is not necessarily a cause for concern. If it is perfectly all right for the vendor and the purchaser to come to an agreement on a property transaction without the help of an agent, there does not seem to be *prima facie* evidence that an estate agent must be qualified as, say, a professional surveyor to be competent.

This brings me to the role of estate agents. Strictly speaking an agent should act for one principal only. In practice, the primary function of most estate agents in Hong Kong is more akin to that of intermediaries who bring together vendors and prospective purchasers, lessors and prospective tenants. These agents mediate between the two principal parties in price negotiations. Where an agreement is reached, an agent prepares the provisional agreement for sale and purchase, which provides his claim for commission. Some commentators are uncomfortable with the split loyalty on the part of the agent under this arrangement. Others have however pointed out that this arrangement helps the expeditious conclusion of property transactions. The freedom on the part of both the vendor and the purchaser to engage the services of multiple agents with minimal charges has also been quoted as an advantage of the existing system.

The lack of a formal regulatory regime specifically targeted at estate agents is sometimes erroneously taken to mean that estate agents are not subject to any control at all. Some form of control however does exist. Under the common law, for example, an estate agent has a duty to exercise care and skill, to disclose any conflict of interest and not to make secret profits or bribes. The law of misrepresentation also enables a principal to claim remedies where he can show that the agent has induced him to enter into a contract by making untrue statements of fact. A principal is entitled to claim damages and/or to rescind the contract. In addition, estate agent activities are actionable under various Ordinances such as the Prevention of Bribery Ordinance, the Theft Ordinance and the Legal Practitioners Ordinance where fraud or corruption is involved.

Apart from common law and statutory controls, trade associations of real estate agents and agencies have been formed with the objectives of promoting professionalism among their members. The Administration has for some time been exchanging views with two territory-wide estate agency associations, namely the Hong Kong Real Estate Agencies Association and the Society of Hong Kong Real Estate Agents, since their establishment in late 1991 and early 1992 respectively. We understand that the associations have organized, in co-operation with the educational institutions, training courses for their members. They have also been preparing standard documents such as tenancy agreements and provisional agreements for sale and purchase, drawing up codes of conduct and setting up public complaints procedures. All these developments aim to promote self-regulation, increase transparency of the trade and enhance public confidence. The overall direction is a positive one which should be encouraged.

Neither should we play down the importance of consumer vigilance. In 1992, the number of complaints lodged with the Consumer Council stood at 118 as compared with 248 in 1991. This reduction in number of complaints is much larger than the reduction of the number of transactions which went down from 180 000 in 1991 to 139 000 in 1992. These numbers are quoted not because of any complacency with the present state of affairs but to illustrate that consumer awareness and consumer education do play an important part in property transactions. Also, this is not to say that the figures involved are insignificant. Especially to a small *bona fide* home purchaser, as many Members pointed out, the money at stake could be considerable. But I hope that these hard facts can provide us with a perspective to assess the situation. Conclusions drawn on the basis of an alarmist view could be as inappropriate as a totally complacent and do-nothing approach.

#### *Need for additional controls*

Mr President, I am not trying to suggest that the current system is without room for improvement. Although remedies are available under the common law for a purchaser or a vendor against a defaulting estate agent, we do accept that it is costly and time-consuming to take civil action. We also recognize that the two estate agency associations are relatively new establishments. Their membership, at a total of over 430, accounts for only 10% of the estate agents in the trade. Although a first step has already been taken by the two associations to promote self-regulation, they are not in a position to systematically regulate the trade as a whole. The associations have themselves acknowledged this.

Many Members have pointed out that self-regulation cannot be the sole answer to address the public's concern. I agree. We are therefore looking into the possibility of introducing a regulatory framework with legislative backing. The real questions are what this framework should be, how it should be implemented and policed and when it is feasible to introduce the new system. There are many relevant considerations.

*Possible forms of control*

We have noted earlier on that the trade is dominated by operators who do not necessarily have academic/professional qualifications in the property field. A clear message from practising estate agents is that the trade should be allowed time to attain the required qualifications before any "licensing", whatsoever that will involve, is introduced. Naturally, no one wants to be driven out of business. This is quite legitimate as well since most estate agents have performed an honest and useful role in facilitating property transactions. We need to steer a careful course, and should not confuse the need to ensure an acceptable standard of competence with pushing for increased professionalism just for its own sake. If we pursued the latter course too vigorously too fast, it would be the consumer who would suffer from the resulting limited supply of qualified personnel.

The next question is what kind of control is required. For example, who should be the licensing authority? What should be the licensing requirements? Who should be allowed to apply for a licence? Corporations or individuals? What would constitute estate agency work and hence render a person an estate agent? These questions are not semantic but they are intended to point to the many aspects to which we should devote our careful attention before deciding on the desired regulatory system. Many valuable suggestions have been put forward today by Members and I am grateful to all these suggestions, and they will certainly be taken into consideration. Any licensing system will have to suit the particular circumstances of Hong Kong.

As we have already briefed Members of the Housing Panel of this Council, we are looking into the merits of a positive licensing system vis-a-vis a negative one. Under a positive licensing system, all estate agents have to have a licence in order to practise. Under a negative one, anyone may practise as an estate agent provided that he follows the regulations prescribing the obligations for estate agents. He will be disqualified from further practising only when he breaches the provisions. Since a negative system does not require the issue of licences as such, it would be simpler to administer and the resource implications are likely to be smaller.

We will continue to consult interested parties on the details so that we may draw up the shape of a possible regulatory system. These include a clear definition of the level of professional competence, the role of an estate agent (for example, whether he may act as an intermediary between seller and buyer or whether he can represent only one party's interests), the likely effects on the commission charging system and so on. Since legislation is almost certainly required, resources will have to be made available for administration and enforcement. Any bid for such resources will either have to compete with others for priority or financed by a charge on the licensees. The suggestion put forward by Members of the working party to formulate further ideas is in my view a welcomed one.

As all this will take time, it would be useful if, in the meantime, practising estate agents could promote self-regulation and improve their service, thus paving the way for a possible licensing system in future.

*Conclusion*

Mr President, the Administration's stance in the regulation of real estate agents is not very different from the views expressed by Members this afternoon. We agree that some form of regulation of real estate agents backed up by legislation is required. Further discussions and consideration are certainly required. But these should not detract the principle that additional regulation of estate agent practices is desirable. The Administration therefore supports the motion.

Thank you, Mr President.

PRESIDENT: Mr Albert CHAN, do you wish to reply? You have 3 minutes 56 seconds.

MR ALBERT CHAN (in Cantonese): Mr President, first I would like to thank Members for supporting the motion. Basically, their speeches have many points in common. Members are very concerned about the existing services of estate agents as the lack of regulation has caused many problems. Besides, many Members are in support of the introduction of a licensing system to control estate agencies.

Though the Government has expressed its support for the motion just now and has highlighted some questions for our consideration, the sincerity of the Government is questionable. The Administration claimed to accept and support the idea of setting up a study group. Yet, how to implement it and what is the time schedule? I do not see any concrete plan for it. Just now the Administration has also mentioned that the feasibility (of a regulatory system) depends on the availability of resources which have to compete with others for priority. I think Members have already made clear in their speeches this afternoon the seriousness of the problem. I also think that it is a time bomb. If it is not handled properly, there will be widespread discontent among the people with the problem posed by property transaction. This will certainly affect the stability and prosperity of the territory. Hong Kong is a metropolis. Any flaws in the property transaction procedure may become an international laughing stock. This will leave an unfavourable impression on overseas investors who intend to invest in Hong Kong markets, especially the property market. Therefore I would like to urge the Government again not to adopt any delaying tactics. Nor should it take an equivocal attitude. The Administration has expressed verbal support only without taking any concrete action. I believe that such an attitude cannot be accepted by Members nor the general public of Hong Kong.

I have in hand the "Rules and Regulations" of property transaction in British Columbia, Canada. These regulations were drawn up in 1919. However, there are not any ordinances or regulations in this aspect in Hong Kong even in 1993. We are indeed lagging far behind. I hope the Government will not keep us waiting till the year 2019 before we can have a set of regulations and a successful licensing system to monitor the services of estate agencies/agents in Hong Kong.

I would like to thank Members again for supporting the motion. I also hope that the Government would really show its sincerity so that the people of Hong Kong will not suffer any loss as a result of delay on the part of the Government. Thank you.

*Question on the motion put and agreed to.*

### **Adjournment**

ATTORNEY GENERAL: Mr President, I move that this Council do now adjourn.

PRESIDENT: Mr Eric LI has given notice to raise a matter for reply by the Government. Members have been advised by the House Committee that Members, including the proposer of the adjournment debate, will have five minutes for their speeches. This is for Members themselves to observe. The total time available for Members to speak remains at 45 minutes.

### **Sale of confiscated cigarettes**

8.49 pm

MR ERIC LI (in Cantonese): Mr President, I think that the anti-smoking voice is loud and clear in this Council. The question of smoking has been debated by Members of this Council on various occasions. For example, we debated last year the Smoking (Public Health) (Amendment) Bill, as well as the question of banning smoking in the Legislative Council Building. Smoking was covered in the discussions of the Health and Welfare Panel and indeed, Panel Convenor Dr LEONG Che-hung has also initiated a signature campaign in this connection. I am sure that there is no need for us to hold a formal motion debate on this issue. It is abundantly clear already that this Council supports the anti-smoking drive and opposes the sale of confiscated cigarettes. This Council regrets, however, that the Government should still insist on the sale of the cigarettes which it has confiscated.

The main argument used by the Government in justifying the sale by auction of the confiscated cigarettes is that it is not against the law to sell cigarettes and that it is only in the public interest that the confiscated goods should be fully utilized to boost the government coffers. At first blush, that which the bank accepts as legal tender can be freely used as money, whatever its source. If that sort of argument really stands to reason, then perhaps we should make a point of putting the confiscated cigarettes on sale in Hong Kong openly and publicly, which I would assume would surely bring in more revenue for the Government. Alternatively, the confiscated cigarettes can be turned over to the Correctional Services Department for distribution to our prison inmates. This will save the Government Supplies Department the trouble of having to sell the confiscated cigarettes on the one hand while having to use public funds to buy cigarettes for the prison population on the other. It is apparent that the Government has no wish to do that. In order not to attract public criticism, the Government has seen fit to sell the confiscated cigarettes abroad in a stealthy manner. But the question is: will Hong Kong people feel any the less conscience stricken for it? As many Members have already stated quite publicly, this is just a case of double moral standards.

The issue has in fact been debated at the meetings of the Health and Welfare Panel of this Council and the position of the Government is that the fiscal policy should be rational instead of being entangled in moral and other subjective social concepts. However, in his Budget for 1991-92, the Financial Secretary, who incidentally is the boss of the Secretary for the Treasury, proposed to increase the tax on tobacco on the ground of protecting public health. Is the policy to increase tobacco tax not rational after all? While the Government seeks to increase tobacco tax, it also seeks to boost its coffers by the sale of confiscated cigarettes at the same time. The Government is applying two different sets of standards to the statutory bodies under its control. For example, the City and New Territories Administration categorically does not allow the district boards to accept sponsorships by tobacco companies. This sort of ambivalence actually reminds one of the popular Chinese saying which goes, "Whereas their lordships have full licence to burn as they please, the common people are not even allowed to light their lamps." If the Government puts revenue above all other considerations, in the belief that this is the way to protect the public interest, then perhaps the next step it should take is to force the district boards to go after whatever financial sponsorship that is up for grabs. The Government has said that it does not have any external anti-smoking policy and is now using that as its pretext. However, the very lack of an external anti-smoking policy actually reflects the fact that our anti-smoking policy is not quite complete, and that it should be appropriately complemented at once.

Hong Kong is a member of the World Health Organization (WHO). We have always been actively participating in, and making appeals on behalf of, the global anti-smoking effort. It is up to us as a member of the international community to live up to our responsibilities and obligations. In this regard, the Government should, in deciding on what to do with the confiscated cigarettes,

strictly adhere to our international obligations, in much the same spirit with which we have been dealing with the problem of Vietnamese refugees in Hong Kong. I have the impression that the government policy regarding smoking is presented to the public with widely different arguments. When the Government seeks to increase the tobacco tax, the argument of protecting public health is invoked as a policy justification. When the Government seeks to augment its coffers through the sale of confiscated cigarettes, the revenue argument is invoked instead as a justification. On the question of international obligation, it seems that the Government has again two vastly different ways of representing it to members of the public. While the Government is all to eager to offer asylum to the Vietnamese refugees, it does not seem to give a damn about the well-being of other people in the pursuance of its internal policy to promote public health. In so far as public education is concerned, the Government takes the view that the sale by auction in Hong Kong of confiscated cigarettes will not affect the effort to educate the public about the harmful effects of smoking. This notwithstanding, the Government makes a point of forbidding the statutory bodies under its jurisdiction, on the ground of prejudicing the public education effort, to accept donations by tobacco companies. One is prone to ask in this regard whether it is the revenue consideration or the need to protect public health which is the more important principle underlying the anti-smoking policy of our Government, whether or not we have to live up to our international obligations, or whether indeed equivocation is after all the best policy in terms of protecting the public interest. Not only is this an example of double standards, or, as the Chinese character for "government official" so amply illustrates, an instance of the official speaking with two mouths, that is, interpreting as he sees fit to suit his purpose, it is also brazen equivocation which reminds us of the brightly coloured mask of the clown — you never know whether the mask is worn by a good guy or bad. It is said that Hong Kong is perfectly capable of making the decision for itself whether or not to sell the confiscated cigarettes and that one should not make the fine distinction between internal and external policy. I have never in my over 10 years of public service experience ever heard anything quite like that kind of statement. I would like the Government to clarify whether its so-called "external policy" is in fact no more than an excuse *ex post facto* rather than part of its established policy. If it is part of its established policy, I would like to know when it was formulated, and what are the circumstances in which it will be invoked. I think that what the Government is putting on sale is not only the confiscated cigarettes, but also the dignity of Hong Kong people. I think that it is not a matter about which we can afford to sit idly by doing nothing. I hope that Members will give the Hong Kong Government to understand in no uncertain terms that the dignity of Hong Kong people is not for sale.

Mr President, I so submit.

MR ANDREW WONG (in Cantonese): Mr President, it would seem, in this debate on the sale of confiscated cigarettes, that there is a need for me to declare my interest. But having said that, when I come to think of it, I am not the sort

who will buy the confiscated cigarettes. Indeed, as indicated by the findings of a survey conducted in 1990, 30% of the male population in Hong Kong who were above 20 years of age were smokers. In that regard, the issue which we are debating today is basically a matter of public interest. It is a matter in which I have an interest along with many other people; it is not solely a matter which concerns my interest personally. It is for this reason that I consider the question of declaring an interest does not arise.

Given that it is against the law to smuggle cigarettes into Hong Kong, it goes without saying that all cigarettes seized in anti-smuggling raids should be confiscated. The problem which we are looking at is whether the putting on sale by auction of the confiscated cigarettes is the appropriate thing to do. I understand that some honourable colleagues — and may I in this connection mention in particular Mr Eric LI, who used to be and probably still is a member of the Council on Smoking and Health — who are not smokers themselves or who may happen to be members of anti-smoking bodies take the view that it is not at all in keeping with the longstanding policy of the Government of not encouraging smoking among Hong Kong people — or that it is arguably immoral — for the Government to actually involve itself in the effort to sell cigarettes which are not conducive, if not harmful altogether, to public health. An analogy has even been drawn with the burning of confiscated opium by Commissioner LIN Zexu of the late Qing Dynasty. I must hasten to add, of course, that the opium was not in fact burned, and that it was mixed with lime instead, to make sure that it was completely destroyed and could not be reused. I hope that honourable colleagues will look at the issue objectively. For example, if we are not talking about cigarettes, if we are instead talking about confiscated videocassette recorders and television sets, will anyone object then to the sale of these confiscated electrical appliances? If Members object to the sale of smuggled goods which have been seized, then the objection should not only be limited to cigarettes, but should instead include other goods as well. If Members are in favour of the sale of the confiscated smuggled goods, then why are they not in favour of the sale of confiscated cigarettes? Are cigarettes really as harmful as opium? Of course, one may want to say that the smoking of cigarettes is not only injurious to the smoker's health, but also to the health of others. If that is indeed the case, then perhaps we should really think about banning cigarettes altogether, for their impact on public health is even worse than opium and heroin. If we are serious about our objection to the sale of confiscated cigarettes, then it would seem that we should first of all list cigarettes as contraband, or move towards the banning of the public sale of cigarettes. From a legal point of view, as long as the Government does not seek to impose an all-out ban on the sale and smoking of cigarettes, which is to say as long as the Government does not seek to completely outlaw smoking in Hong Kong, then there is no ground at all for us to object to the sale of confiscated cigarettes, nor do we indeed have grounds to object to the sale of any other confiscated legitimate goods which can be legally consumed in Hong Kong and elsewhere in the world.

As a matter of fact, I have my own objection to the way in which the Government has arranged to sell the confiscated cigarettes. But the Government has not classified cigarettes as contraband or poison; so it has not sought to ban it. I cannot really see the rationale behind the ruling that the confiscated cigarettes should only be sold abroad, once they have been auctioned off. Why, for example, can the cigarettes not be sold in Hong Kong, after the tobacco tax has been duly paid and the health warning accordingly attached? For one thing, the Government does not seem to have ruled that no confiscated videocassette recorder may be sold and used in Hong Kong after it has been auctioned off. Why is a separate standard used for cigarettes?

I am in favour of the sale of confiscated cigarettes, not because I am a smoker. I have reached my judgement after carefully considering the legalistic aspect and logic of the issue. I need hardly mention that proceeds of the sale will be used for the promotion of social welfare and other services. There is no reason for us to further restrict the sources of revenue at a time of stringency.

Mr Eric LI raised just now the issue of the distribution of cigarettes to prison inmates in Hong Kong. It seems that the authorities concerned have ceased the practice of handing out cigarettes to prison inmates; so there is no question of the confiscated cigarettes being given to them. When the issue of increasing tobacco tax for the fiscal year 1991-92 was debated, I am sure that the Council on Smoking and Health was giving its strongest support to the increase. In that regard, it would seem that the Council on Smoking and Health is after all the first advocate of double standards.

Mr President, I so submit.

DR LEONG CHE-HUNG: Mr President, as a health care worker, nothing is more important than the promotion of health and nothing should deter us from such a crusade. The battle against smoking is an undisputed example.

Let me from the onset stress that the pleasure of smoking is limited, the negative social effect is immeasurable and the effect on health is inevitable disastrous; not to say it drains one's purse and denigrates the already polluted environment — I stand therefore strongly against it and call on the Government to do likewise in all ways possible and I do hope that for his own sake, my honourable friend, Mr Andrew WONG, who has left could be converted.

Yes, attempts are being made by the Government to curb smoking. To wit, cigarettes without health care warnings are banned and confiscated.

The Government has through its wisdom created an independent body, the Council on Smoking and Health (COSH), to sustain and rev up the drive to prevent smoking.

And the Secretary for Health and Welfare has in this very Chamber spoken so eloquently against smoking and produced such an impact by exhibiting a picture of lungs filled with detestable cigarette butts.

Yet, paradoxically the incidence of smoking amongst the young and the fair sex is on the rise. Statistics in 1990 showed that one out of three teenagers had already a first taste of the satanic habit before they reached the age of 16.

Mr President, why is this the case? What has actually gone wrong? To me the reasons are obvious: How sincere is the Government in its policy to wipe out this unhealthy habit? Let me put up a few examples to show otherwise:

Firstly, the funding for COSH is inadequate.

Secondly, there is an unwillingness of the Government to formulate laws on banning the sale of cigarettes to minors.

Thirdly, there is a lack of enforcement determination as shown by the measly number of prosecution against smoking in smoke free areas for the last 10 years. And by this it does not mean that the members of a smoking colony are also law abiding citizens.

Fourthly, in 1991, the Financial Secretary proposed a 200% increase in tax for cigarettes and cigars, arguing that smoking was hazardous to health, only to give in and cut tax increase by half under the excuse that it would stimulate inflation.

Of course, the pinnacle of hypocrisy is a topic of what we are discussing and debating today. Here I have to thank the Honourable Eric LI for agreeing to propose this debate under his name on my behalf.

For hiding behind the skirt

- firstly, the Government said it is their policy to auction all confiscated products that are not illegal;
- secondly, the Hong Kong Government has no external policy on anti-smoking and therefore no international health commitment; and
- thirdly, that such auction adds to our general revenue —

the Government went against all odds and objections from most people of Hong Kong and the condemnation of most of the members of the Health Panel of this Council and proceeded on with the auction of some 5 million cigarettes, jubilant of the fact that it has added a measly sum of \$300,000 to the public purse.

Yes, there is nothing illegal about such a move.

But can this Government of ours face the people of Hong Kong with hand on heart by saying that Hong Kong is not involved in any international movement to curb smoking whilst our own Government's health policy branch and our own Department of Health are heavily and actively involved in the World Health Organization's motivation on the progressive banning of smoking?

Can our Government in all sincerity commend to the public of Hong Kong that "只要我活，那理得你死"?

What is worse, Mr President, is that if such substandard morality of this Government and its unbendable policy is not altered, further government auctions of confiscated cigarettes will continue to proceed, slapping on full frontally an element of shame onto the face of the people of Hong Kong.

Such unbecoming attitude of our Government must be curbed and curb it must without delay! The people of Hong Kong should never be a party to this "double standard" farce.

What then should we do with these confiscated goods?

It is high time that the story of LIN Zexu and his conflagration of opium be repeated, only this time with the help of the "Hong Kong British" Government. These cigarettes should be burnt as they are just as hazardous to health.

Such a burning will no doubt show the determination of the Government in its drive for a more healthy living.

Let our Government climb down from the tower of hypocrisy and raise the heads of Hong Kong people to shine against this bonfire. The bonfire of dignity.

MR JIMMY McGREGOR: Mr President, I have only a few words to say on this matter.

It makes little sense to me for a government, committed to a policy which obtains very large tax revenues on tobacco products and which regulates the tobacco industry in Hong Kong with the obvious intention that the industry shall contribute to employment and therefore to the economy, to decide not to sell confiscated cigarettes. Why not? The product is clearly acceptable within the community and we have over 700 000 smokers to prove it. The Government makes no effort to ban the product although it does conduct campaigns to discourage smoking by young people.

There seems to be a double standard in Hong Kong about tobacco products. If tobacco is as dangerous as many institutions say, and if the Government believes that that is so, supported by the medical profession and even those doctors who specialize in other things, then surely tobacco should be banned altogether. If, on the other hand, tobacco products are not considered by the Government and/or the medical profession to be life threatening, then there should be no problem with the Government selling confiscated cigarettes.

I suspect that this Council also has a double standard. If we really believe that tobacco products are dangerous and life threatening then we should seek to ban the product. If we do not, then confiscated cigarettes can be sold.

Until we clear our own thoughts on this medical and moral issue, I see no reason to stop the Government selling confiscated cigarettes. Any money gained should be used for a deserving charity, or perhaps to buy a few decent cigarettes for Mr Andrew WONG.  
*(Laughter)*

REV FUNG CHI-WOOD (in Cantonese): Mr President, on 29 January last year this Council passed the Smoking (Public Health) (Amendment) Bill 1991 to further control smoking in public places and implement some measures to encourage the public to smoke less. At a meeting of the ad hoc group scrutinizing the Bill, I suggested that the sale of cigarettes to teenagers under 18 be prohibited. The official response was that enforcement would be difficult and some other problems would arise. I also suggested that non-smoking areas be earmarked in eating establishments. The then official concerned responded by saying that this could be introduced later on.

Since a public consultation exercise was conducted by the Government from August to October last year on the question of whether or not sale of cigarettes to people under 18 be prohibited, the Government should therefore submit the relevant Bill to this Council as soon as possible, in order to further protect the health of non-smokers and encourage smokers to cut back on smoking, or even to quit smoking for good.

The Government has been warning the public against the health hazards of smoking. On the one hand it has been encouraging smokers to refrain from smoking in order not to harm their own health, but on the other a yet more important task for us is to protect non-smokers against the hazards of passive smoking.

Coincidentally, a piece of subsidiary legislation in respect of cigarettes advertisements, that is, Smoking (Public Health) (Notices) (Amendment) (No. 2) Order 1992 (Amendment) Order 1993, was submitted to this Council by the Government today. This subsidiary legislation seeks to amend the working of the health warning on cigarette packets to read "HK GOVERNMENT HEALTH WARNING, SMOKING HARMS YOURSELF AND OTHERS". Please note that it "harms yourself and others". The Government is hence reminding that

public that smoking harms not only one's health, but also that of the passive smokers.

The present auction sale of confiscated cigarettes indeed runs counter to the Government's anti-smoking policy. I hope that this will not be repeated again. Although we have not put a total ban on cigarettes, given that the Government has assumed the position that smoking is hazardous to health and harms oneself and others, we then cannot put on public auction articles which are hazardous to health. It is because the selling of confiscated cigarettes will carry a wrong message to the public. I hope the Government will listen to the advice of Members of this Council and refrain from auctioning the confiscated cigarettes.

I so submit.

MR FREDERICK FUNG (in Cantonese): Mr President, the Administration has rejected the recommendation of the Legislative Council Health Services Panel and is adamantly going ahead with the sale of confiscated cigarettes. What problem has this state of affairs reflected?

Panel members and the general public consider this government sale of confiscated cigarettes an employment of double standards, an act of sheer hypocrisy. However, the Administration has stressed repeatedly that the anti-smoking campaign has been pursued only in Hong Kong and the auction sale of confiscated cigarettes does not contravene any international agreement, for cigarettes have never been considered a contraband in Hong Kong or overseas. But smoking is at present prohibited at public places in Hong Kong. In fact, tobacco traders' sponsorship offers for activities organized by the Urban Council every year are turned down by the Council despite active lobbying. These colossal sums are in fact income spurned by the authorities. Even the Correctional Services Department has long decided to abolish the practice of giving away cigarettes free to inmates for the sake of the latter's health. All these measures indicate to or advise the public and their next generation of the hazards of smoking. They are meant to build up a non-smoking culture through quiet assimilation of concepts and values.

But the public is gravely puzzled at the Administration's decision. Is the authorities' encouragement of the anti-smoking campaign sincere or pretentious? The auction of the confiscated cigarettes will yield a return in fact of some \$300,000 only — a very minimal percentage of the annual revenue going into government coffers. Does the Administration's refusal to accept the panel's recommendation and allowing the sale of these cigarettes overseas imply a "mind your own business" attitude on the part of the Administration? Or does the decision reflect only the philosophy of government of the Administration — that is to say, money comes first — which it uses to measure social justice and moral values? Is the Administration using the anti-smoking campaign as an

instrument to increase tobacco duties substantially on the excuse of looking after the health of Hong Kong people, in order to increase its revenue?

The Hong Kong Association for Democracy and People's Livelihood and I think that the Administration, faced with these accusations, should relinquish its hard-bound style, consider instead the points mentioned above and the views of my other colleagues, understand the negative impact the cigarette sale will have on the anti-smoking campaign, and correct as soon as possible some erroneous policies. We would not wish to see the Administration think only in terms of increasing revenue continuously. We hope to see it build a just society that cares. Nor would we wish to see the Administration offer only lip service or just allocate some funds to organizing several large-scale campaigns and movements and then claim that it has tried its best to realize this ideal. I can say that nothing will ever come to fruition just through imagining or fantasizing.

I so submit.

DR LAM KUI-CHUN (in Cantonese): Mr President, the way confiscated goods are to be disposed of depends on whether the goods are harmful or not to the community. This is in fact a common international practice that ordinary harmless goods are to be disposed of by public auction to boost public coffers whereas harmful goods are to be disposed of in special ways, for example, opium will have to be destroyed.

In the case of cigarettes, they are certainly not completely harmless but are by no means poisonous. Then, are they to be classified as harmful goods or otherwise? At the moment, different communities are adopting different definitions. And at any rate, there are surely people arguing for or against the definitions. The Government's policy of disposing of confiscated cigarettes should be in line with its view that smoking is hazardous to health so that government departments will have a consistent position and policy. The Hong Kong Government, in its publicity campaign, unequivocally portrays cigarettes as something which is hazardous to health. This year about \$3.8 million are set aside to discourage the public from smoking and the year before last, the Government proposed a 200% increase in duties on tobacco in a bid to discourage cigarette consumption. Furthermore, several Bills have been passed over the past few years to establish more non-smoking areas in the urban districts. Recently, even the public bodies are not allowed to take tobacco companies' commercial sponsorship. The message of "smoking is hazardous to health" is thus put across in a resolute and distinct way. If this position is anything to go by, the confiscated cigarettes should naturally be treated like dangerous drugs such as heroin and be destroyed. Last year, the Taiwan Government adopted such an approach. The Hong Kong Government, however, on the one hand states that smoking is hazardous to health, but on the other, disposes of the confiscated cigarettes by public auction just like ordinary harmless goods. Such a policy of disposal by auction seems to suggest that cigarettes are harmless. And that is totally in contradiction with its long-standing

standing position on smoking. I am afraid that such an erratic position on the part of the Government may evoke two possible adverse reactions by the public: firstly, although the Government keeps on proclaiming that smoking is hazardous to health, yet in its heart it may not be a true believer in the gravity of the hazard. To wit, the Government is playing a double game. This hypocrisy would only bewilder the public. Secondly, the Government may realize the hazards of smoking but still incline to think that "if there is easy money, why not take it". The public would not respect such an unscrupulous government.

Mr President, the Liberal Party would like to know, of these two views about the Government, which turns out to the way the public looks at the Government.

These are my remarks.

DR CONRAD LAM (in Cantonese): Mr President, it is a common knowledge that smoking is hazardous to health. In the past, the Government's anti-smoking efforts to encourage the public to give up smoking included the establishment of the Council on Smoking and Health which is responsible for carrying out extensive publicity campaigns and educational activities on anti-smoking. The Government's efforts have in fact achieved some success. As regards the consultation paper on anti-smoking issued by the Government in September 1992, the Health and Welfare Branch received over 600 representations, a majority of which supported the view that the Government should step up its anti-smoking measures. This bears witness to the fact that the general public basically appreciate the harmful effects of smoking and, at the same time, support the Government's anti-smoking policy. I would like to commend the departments concerned for their hard work.

Yet, though its efforts are commendable, we found the Government make a blunder in its disposal of confiscated cigarettes. The Government fails to maintain a consistent anti-smoking policy. This is indeed a setback to the Government's lead in the anti-smoking campaign.

The proceeds from the auction of confiscated cigarettes pale in comparison of the Government's total revenue. And the amount spent on the anti-smoking campaign always is well in excess of proceeds from the auction of seized smuggled cigarettes. This has exposed the lack of co-ordination of policies among different departments and the fact that they are pursuing different courses of action. Worse still, it gives one the impression that the policy makers in the Finance Branch have, for the sake of boosting the public coffers, violated some paramount principles. To put it bluntly, they try to generate more revenue by hook or by crook.

Officials of the Financial Services Branch have repeatedly said that there is nothing wrong with the sale of confiscated cigarettes by the Government. Their major argument is that it is not illegal to export and sell cigarettes in Hong Kong and those who buy such confiscated cigarettes at auction are going to export them. It is also argued that the Government's anti-smoking policy is merely devised for Hong Kong residents and Hong Kong has no international obligation to discourage smoking in other countries.

I take exception to the Government's argument. Firstly, it is generally accepted by Governments all over the world that smoking is hazardous to health. For their own people's health, advanced countries in the West have gradually tightened their anti-smoking laws. And, as a result, tobacco companies are trying hard to develop the Asian market. Asian countries are more backward in terms of economic development and a considerable number of Asian people still do not realize the harmful effects of smoking. For this reason, Asia has become the dumping field of the international tobacco industry. The Hong Kong Government has, on the one hand, followed an anti-smoking policy in Hong Kong and, on the other hand, put confiscated cigarettes on sale. Such a selfish deed will seriously undermine the image of the Hong Kong Government and raise doubts in public's mind about its sincerity in pursuing the anti-smoking policy. I would like to point out that a measure not in breach of the law is not necessarily one that we should do. Why the Taiwan Government can destroy confiscated cigarettes and Hong Kong cannot do likewise?

Anti-smoking these days has become an issue of worldwide concern. Last year the Government sought public views on anti-smoking matters. During the consultation, it received representations from several dozens of anti-cancer and medical associations in Europe, the United States and Canada. The United Democrats of Hong Kong hope that the Government could set a good example as a leading force for the local anti-smoking campaign and for its support of the international anti-smoking efforts by destroying the confiscated cigarettes. We also propose that heavier punishment should be imposed on tobacco smugglers.

These are my remarks.

9.19 pm

SECRETARY FOR THE TREASURY: Mr President, let me say at the outset that I fully share the concern of the Honourable Eric LI and other Members who have spoken in his support this evening over the potential dangers of smoking and the need for the Government to maintain an adequate policy on health education generally. I am a strong supporter of the work of organizations such as the Council on Smoking and Health. I believe that Hong Kong residents should be left in no doubt about the risks associated with this addictive habit.

There is however no escaping from the following facts:

- cigarettes, like alcohol, are a legal product which may damage health, but which, as the Honourable Andrew WONG has pointed out, individuals have the right to consume if they wish; and
- Hong Kong is the centre of a major and legal cigarette industry, exporting nearly 100 billion cigarettes a year.

For as long as this remains the case, Mr President, the Government cannot evade its responsibility to obtain the best possible return for the public coffers when confiscated cigarettes (or any other legal products) become available for sale, and we have no plan to make a ban of cigarette part of our policy. It is for this reason that we have decided to maintain our long established policy of disposing of such products by public auction or tender.

Dr C H LEONG, Dr K C LAM, Rev FUNG and others have suggested that, in selling confiscated cigarettes, the Government is acting in a way that is both hypocritical and inconsistent with its health policy. I cannot agree. Our health policy is directed at discouraging smoking amongst the Hong Kong population. It does not and should not try to influence the policies pursued by overseas countries, which may be stricter or even less strict than our own. What, after all, would Members think if a neighbouring country tried to dictate its health policy on Hong Kong? This is not a pretext. Our policy of not selling confiscated cigarettes locally, but only for export, reconciles the need to obtain a fair price for the disposal of unwanted public property with the need to adhere to our internal policy of insisting that locally sold cigarettes carry a Hong Kong Government health warning.

I cannot therefore support the change in policy, suggested for example by Dr C H LEONG and Dr K C LAM, to one of destroying confiscated cigarettes. Outside observers who saw us publicly destroying cigarettes might well ask whether we were not hypocritical in doing so when the trade is legal, gives work to significant numbers of employees, and gains significant revenue for the Government. We must remember that cigarettes are not banned in Hong Kong — nor in any other significant country or territory. As Mr Jimmy McGREGOR has said, the manufacturing and export of cigarettes is an important Hong Kong industry which is also perfectly legal. The recent auction, referred to by Mr Eric LI, Mr K K FUNG and other Honourable Members, of 500 cases of confiscated cigarettes contrasts to the legitimate export from Hong Kong of more than 9 million cases of cigarettes a year.

Mr Eric LI and others have suggested that the sale of cigarettes by auction for overseas markets will in some way "tarnish" the Government's image. It is hard to see how this can be so. We have received no complaints or representations from countries or organizations overseas in respect of our established practice of cigarette disposal. Not only this. By auctioning or otherwise selling confiscated cigarettes, we are simply following common

international practice. Similar procedures are followed not only in newly industrialized countries such as South Korea, Thailand and Singapore but also in developed countries such as the United States and Australia.

Finally, there has been criticism of the Government because the price achieved for cigarettes sold at auction is significantly lower than the market price. This is of course true if you are comparing it with the price of cigarettes sold locally, which includes a substantial element of duty. Sale by tender or auction does, however, ensure that the highest predictable price is realized for the public revenue. The pricing policy adopted by the buyer is, of course, not a matter which we either could or would seek to control.

In conclusion, Mr President, while respecting fully the clearly sincere views of those Honourable Members who oppose the recent auction of cigarettes by the Government, I see no reason to depart from our long-established policy of disposing of confiscated cigarettes and other legal products in a way that yields the best return to the public revenue. And I cannot accept a link between our internal policy of educating the Hong Kong public about the hazards associated with smoking and our following common international practice by disposing of confiscated legal goods overseas.

Thank you, Mr President.

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

### **Next sitting**

PRESIDENT: In accordance with Standing Orders I now adjourn the Council until 2.30 pm on Wednesday 7 July 1993.

*Adjourned accordingly at twenty-five minutes past Nine o'clock.*

*Note:* The short titles of the Bills/motions listed in the Hansard, with the exception of the Official Languages Ordinance, Drug Trafficking (Recovery of Proceeds) Ordinance, Trading Funds Ordinance, Supplementary Appropriation (1992-93) Bill 1993, Western Harbour Crossing Bill and the Judicial Officers (Tenure of Office) Bill, have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.

