

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 26 January 1994

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 MRS ANSON CHAN, C.B.E., J.P.

THE FINANCIAL SECRETARY

THE HONOURABLE SIR NATHANIEL WILLIAM HAMISH MACLEOD, K.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 HUI YIN-FAT, O.B.E., J.P.

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

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

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

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

THE HONOURABLE SZETO WAH

THE HONOURABLE TAM YIU-CHUNG

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

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

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

THE HONOURABLE RONALD JOSEPH ARCULLI, 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, O.B.E., J.P.

THE HONOURABLE MOSES CHENG MO-CHI

THE HONOURABLE MARVIN CHEUNG KIN-TUNG, O.B.E., J.P.

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 ANNA WU HUNG-YUK

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

THE HONOURABLE ALFRED TSO SHIU-WAI

IN ATTENDANCE

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

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

MR HAIDER HATIM TYEBJEE BARMA, I.S.O., J.P.
SECRETARY FOR TRANSPORT

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 LAM WOON-KWONG, J.P.
SECRETARY FOR EDUCATION AND MANPOWER

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>
Companies (Forms) (Amendment) Regulation 1994	59/94
Fixed Penalty (Criminal Proceedings) (Amendment) Regulation 1994	60/94
Road Traffic (Parking) (Amendment) Regulation 1994.....	61/94
Road Traffic (Public Service Vehicles) (Amendment) (No. 2) Regulation 1994	62/94
Road Traffic (Traffic Control) (Amendment) Regulation 1994	63/94
Business Registration (Amendment) Regulation 1994	64/94
Dangerous Goods (General) (Amendment) Regulation 1994	65/94
Dangerous Goods (Government Explosives Depots) (Amendment) Regulation 1994	66/94
Mines (Safety) (Amendment) Regulation 1994	67/94
Mining (General) (Amendment) Regulation 1994.....	68/94
Designation of Libraries (Urban Council Area) Order 1994.....	69/94
Hong Kong Academy of Medicine (Addition of Schedule) Order 1994	70/94
Public Health and Municipal Services (Public Pleasure Grounds) (Amendment of Fourth Schedule) Order 1994	71/94
Public Health and Municipal Services (Stadia) (Amendment of Twelfth Schedule) Order 1994	72/94

Public Order Curfew (Variation) Order 1994.....	73/94
Adoption (Amendment) Rules 1994	74/94
Hawker (Urban Council) (Amendment) Bylaw 1994	75/94
Pleasure Grounds (Urban Council) (Amendment) Bylaw 1994.....	76/94
Travel Industry Compensation Fund (Amount of Ex Gratia Payments and Financial Penalty) Rules (L.N. 471 of 1993) (Commencement) Notice 1994.....	77/94
Travel Industry Compensation Fund (Procedure for Ex Gratia Payments) Rules (L.N. 472 of 1993) (Commencement) Notice 1994.....	78/94

Sessional Paper 1993-94

- No. 51 — Report of changes to the approved Estimates of Expenditure approved during the second quarter of 1993-94 Public Finance Ordinance : Section 8

Miscellaneous

Technical Memorandum for Issuing Air Pollution Abatement Notices to Control Air Pollution from Stationary Polluting Processes

Oral answers to questions

Mortgage administrative fees

1. MR PANG CHUN-HOI asked (in Cantonese): *Will the Government inform this Council:*

- (a) *whether the Government will adopt measures to regulate the practice of some banks to charge mortgage applicants administrative fees which are non-refundable under any circumstances for the sake of suppressing property speculation; if not, what the reasons are; and*
- (b) *how the Government monitors banks in regard to the charging of various administrative fees, and whether guidelines and criteria will be issued?*

SECRETARY FOR FINANCIAL SERVICES: Mr President,

- (a) The Hong Kong Monetary Authority has conducted a survey which covers most of the main players in the mortgage market and this shows that application fees for mortgage loans typically vary between \$1,000 and \$2,500 for each application from individuals. Such fees are non-refundable and are mainly intended to cover the banks' handling charges. We do not think however that such charges would by themselves have a significant effect in discouraging property speculation.

The Government believes that the levy of such charges is a commercial matter for the banks and does not consider there to be a problem that merits intervention. It should be noted that not all banks charge application fees. Mortgage applicants therefore do have a choice in the matter.

- (b) As regards part (b) of the question, it is not the Government's practice to monitor banks with regard to the charging of administrative fees. This is, as I have mentioned before, normally regarded as a commercial decision by individual banks. There is, therefore, no plan to issue any guidelines in this respect.

MR PANG CHUN-HOI (in Cantonese): *Mr President, in the past, banks usually charged only \$1,000 to \$1,500 for handling each mortgage application and this was charged only after the application had been approved. But now application fees, some as high as \$2,500, are charged and they are non-refundable under whatever circumstances. The Government believes that the levy of such charges is a commercial matter for the banks and does not consider it a problem that merits intervention. If in future the banks consider that they have to further increase application fees and the increase is to such an extent that the consumers can hardly afford or that they are unjustifiably high, will the Government not take any action in such circumstances?*

SECRETARY FOR FINANCIAL SERVICES: Mr President, that does seem to be a somewhat hypothetical question but, as I have indicated, the matter of charging administrative fees does seem to us to be a commercial matter for banks. There is a cost to the bank in processing an application. That cost would have to be absorbed one way or another. The banks could either absorb it into their general costs and pass it on to the generality of their customers, or they could pass it back, as most of them do at present, to the individual customer who commissioned the service, or they could combine it with another charge, such as the interest for the actual loan, so that it would be subsumed in that way. But whatever the situation, there is a cost to the banks and it does seem to be a matter of commercial judgment as to how they reflect this and how they recover it.

DR DAVID LI: *Mr President, has the Administration undertaken any comparative study of the administrative fees charged by banks for processing mortgage applications in Hong Kong to protect banks from substantial losses due to the practice of shopping around for a mortgage, and those charged by other countries in the region, where, I understand, the administrative costs to a mortgage applicant are generally higher than that in Hong Kong?*

SECRETARY FOR FINANCIAL SERVICES: Yes, Mr President, as I mentioned in my main answer, the Monetary Authority has looked at the situation in Hong Kong and two points emerged. One is that whilst some banks felt that there would be an effect from these charges in discouraging property speculation, quite a number of banks felt that there was a different sort of speculative element, namely the type of fishing expedition to which Dr LI has just referred. That is to say, where a customer puts in several parallel applications to a number of different banks and then selects only one of them for acceptance at the end of the day. Now this puts the banks to a certain amount of work for which there is no return and it is quite understandable, therefore, that the banks would wish to deter that type of activity.

We have not undertaken any detailed international comparison and would be a little bit concerned as to how meaningful that would be, given the differences between the regulatory regimes, the mix of charges, other elements such as rents, and the fact that the general banking environment is quite different from one country to another. So such a comparison may be quite complex and perhaps not very conclusive.

MR ROGER LUK (in Cantonese): *Mr President, it is mentioned in paragraph (b) of the Secretary's reply that the banks have no plan to issue any guidelines on the charging of application fees. Will the Secretary inform this Council whether the Hong Kong Association of Banks has any guidelines on fees charged by banks for different services?*

SECRETARY FOR FINANCIAL SERVICES: Mr President, with regard to fees for mortgages, the answer is no. The Hong Kong Association of Banks has actually very few guidelines in the area of service charges generally, and they relate only to the very limited areas of certain trade finance and securities transactions, but not with regard to mortgage applications.

MR PETER WONG: *Mr President, will the Secretary inform this Council whether the banks make it very clear right at the beginning that such non-refundable fees are payable?*

SECRETARY FOR FINANCIAL SERVICES: Mr President, it is the normal practice of banks to provide all the relative information on their services and products, on request, to their customers. Some of them actually go to the extent of putting their charges up in the banking halls, and indeed, that practice is encouraged by the Administration.

DR TANG SIU-TONG (in Cantonese): *Mr President, it is mentioned in part 2 of paragraph (a) of the Secretary's reply that "not all banks charge application fees". May I have a rough figure as to the proportion of banks that charge application fees to those that do not?*

SECRETARY FOR FINANCIAL SERVICES: Mr President, there are about 33 banks in Hong Kong that account for about 94% of the mortgage lending, and the bulk of them do charge a fee of one sort or another, in the range which I mentioned, to individuals making applications. I do not have the precise figure as to the proportion but could provide it if Members so desire. (Annex I)

MR PANG CHUN-HOI (in Cantonese): *Mr President, I would like to cite an actual case for the Administration's consideration. Bank A charges \$2,500 "evaluation fees" (not application fees) for evaluation of property. However in less than 24 hours the customer is informed that his application is rejected without being given a full explanation. The customer then goes to bank B. The bank informs the customer after 48 hours that his application has been approved and that an application fee of \$1,000 is charged. As I say, bank A informs its customer in less than 24 hours that his application is rejected and charges him \$2,500 all the same. I think this is very unreasonable. As such chaotic situation does exist, why does the Administration turn a blind eye to it? Will it not ask the Commissioner of Banking to investigate into it to see if it is acceptable and whether guidelines should be given to banks in this respect?*

SECRETARY FOR FINANCIAL SERVICES: Mr President, as I have indicated, there is a cost to the bank in handling an application. It is not just the matter of preparing the necessary paperwork but there also has to be a judgment made with regard to the property and with regard to the credit worthiness of the client himself. Different banks have different rates. The range is not big and the fees themselves are quite modest. It is a matter for competition between the banks as to the different rates and how acceptable these are to the customers. If customers are aware that higher fees are charged at some banks and if they regard that as the most important element in the competitive situation, then no doubt they would choose a bank that either charges no fee or one that charges a lower fee. But basically, as I have indicated, it is a matter of choice.

Detention in China of Hong Kong residents

2. MR LAU CHIN-SHEK asked (in Cantonese): *The Complaints Division of the Office of Members of the Legislative Council has recently received complaints alleging that a number of Hong Kong residents who are deployed by their employers to work in China have been detained as "hostages" because of business conflicts between their employers and manufacturers in China. In this regard, will the Government inform this Council:*

- (a) *whether there were such cases in the past; if so, the number of such cases in the previous three years and the present position of these cases;*
- (b) *where the Government's assistance is sought in such cases, what arrangements the Government will make to assist the detained Hong Kong residents to return safely to Hong Kong at an early date; and*
- (c) *whether consideration has been given to conducting negotiations with the Chinese Government on this issue via the Sino-British Joint Liaison Group or other channels, so as to safeguard the personal safety of Hong Kong residents working in China?*

SECRETARY FOR SECURITY: Mr President,

- (a) We have received eight applications for assistance in the last three years from families of Hong Kong residents who were reportedly detained as a result of commercial disputes in China. These eight applications involved 10 persons, who are either Hong Kong businessmen or employees of Hong Kong companies doing business in China. The Government has raised all these cases with the Chinese authorities. Two of the cases are outstanding, involving four detainees who have not yet been released and returned to Hong Kong.
- (b) The Government takes seriously all reports of Hong Kong residents in distress outside the territory. Where there is reason to believe that a Hong Kong resident is being unlawfully detained in another country, we follow up with the authorities concerned. For the eight cases I have mentioned, we have made repeated requests to the Chinese authorities for clarification of the basis on which the Hong Kong individuals have been detained, for assurances that this is consistent with Chinese Law, and for access for the individuals' families, legal advisers and colleagues. All these approaches have been made in accordance with the wishes of the families.

- (c) We have well-established channels for raising cases of this kind with the Chinese authorities. Our representations have been carried out in Hong Kong through the Political Adviser's Office, and in some cases also, through the Foreign and Commonwealth Office in London and the British Embassy in Peking.

MR LAU CHIN-SHEK (in Cantonese): *Mr President, will the Secretary provide this Council with full details about the 10 detainees involved in these eight cases? Firstly, is their detention lawful or within the Chinese law? Secondly, why are they detained? Thirdly, are they unfairly treated during detention? Fourthly, why are the four persons involved in the two outstanding cases still not released?*

PRESIDENT: Have you got all four questions, Secretary?

SECRETARY FOR SECURITY: I think so, Mr President. We have not received full details of these cases from the Chinese authorities. So I am afraid I cannot say on what basis they were detained. And in the case of the four outstanding cases, I do not know the reason for their detention but we are still pursuing those cases with the Chinese authorities. From the information we have received, which sometimes has come to us after the persons detained were released, it does appear that in some cases people were detained purely as a result of a commercial dispute and that once the authorities in China were satisfied that this was a commercial dispute and not a criminal case, they were released. In other cases, it does seem that they may have been detained on suspicion of criminal activities, but as I said, we cannot be sure of the details of this.

MR MARVIN CHEUNG: *Mr President, will the Secretary please advise this Council, where it is obvious that the Government has not received appropriate and adequate responses to its requests for clarification, what further action the Government can take to safeguard the safety and rights of our citizens apart from following up through all the various channels as he listed in his reply?*

SECRETARY FOR SECURITY: Mr President, I do not think that there is anything more we can do except to follow up these cases which we will continue to do.

MISS CHRISTINE LOH: *Mr President, would the Secretary say how successful they think they have been in using these well-established channels; and if they have not been successful at all, then whether there is any chance of reviewing that process?*

SECRETARY FOR SECURITY: Mr President, it is very difficult to answer that question. We do not know what would have happened in these cases if we had not made representations. So it is, I think, impossible to give a clear answer to that. I would only say that it is our belief that the representations that have been made, in Hong Kong, in London and in Peking, have had some effect in securing the release of the people who have been released in these cases.

MR SIMON IP: *Mr President, will the Secretary please tell us what the length of time was for which these 10 detainees were detained?*

SECRETARY FOR SECURITY: Mr President, I think perhaps I had better give that answer in writing. I have got details of those cases here but it will take me some time to go through the figures and give all the details. (Annex II)

DR HUANG CHEN-YA (in Cantonese): *Mr President, can the Administration inform this Council if it had requested the British Embassy to send their staff to visit the detainees in order to understand each individual case and the reasons for their long detention? If the Administration does not know why these people were detained, then how can it possibly negotiate through diplomatic channels and prevent similar incidents from happening again?*

SECRETARY FOR SECURITY: Mr President, as I think I said in my main answer, it is primarily the purpose of our representations to try to find out the basis on which they have been detained. I cannot say that we have always succeeded in that, but that must be the first purpose of our representations. We try to find out the basis on which they are detained, to seek access for their families and their legal representatives, and to get a clear answer to satisfy ourselves that the detention is within the law.

DR HUANG CHEN-YA (in Cantonese): *Mr President, the Secretary has not answered the first part of my question, that is, whether the British Embassy had sent their staff to visit the detainees.*

SECRETARY FOR SECURITY: Mr President, certainly these cases have been reported to the British Embassy in Peking and the embassy has, in several cases, made representations in addition to the representations being made in Hong Kong. I do not know, I am afraid, whether they have visited the detainees or how many have been visited.

DR HUANG CHEN-YA (in Cantonese): *Mr President, can the Secretary make a thorough investigation into the matter? If the British Embassy's representations were merely in the form of official correspondence, then the fact may simply be that they had not given any assistance to these Hong Kong people at all. So will the Secretary confirm whether the Hong Kong Government has requested the British Embassy to send their staff to visit the detainees?*

PRESIDENT: A written answer, Secretary?

SECRETARY FOR SECURITY: Yes, Mr President, as I said, I do not know how many have been visited but I will certainly supply that in writing. (Annex III)

MR HOWARD YOUNG: *Mr President, can the Secretary inform us what factors are taken into account in deciding whether to use the channel of the Political Adviser's Office or through the Foreign and Commonwealth Office and the Embassy? Are there different criteria for different people, because the cases always seem to be the same type of commercial dispute cases?*

SECRETARY FOR SECURITY: No, Mr President, I do not think there are different criteria. We would always raise cases through the Political Adviser's Office and the New China News Agency in Hong Kong. And we would normally report these cases to Peking at the same time.

MR WONG WAI-YIN (in Cantonese): *Mr President, the Secretary says in paragraph (a) of the reply that "we have received eight applications for assistance". Did the Secretary know the number of cases in which people had not approached the Hong Kong Government for help? If not, had the Secretary taken the initiative in asking the Chinese authorities to provide the relevant figures? If not, why not?*

SECRETARY FOR SECURITY: Mr President, no. I think, by definition, if we do not know of these cases we do not have any details of them.

MR WONG WAI-YIN (in Cantonese): *Mr President, the Secretary has not answered the second part of my question. My question is: Why had the Secretary not taken the initiative in asking the Chinese authorities to provide the relevant figures?*

SECRETARY FOR SECURITY: Mr President, I do not think it would be possible to answer a question like that. We have to have details of the cases, and then take them up with the Chinese authorities. If anybody else has details of any further cases, then we would be happy to have them and to look at them. But as I say, we do not know of any other cases.

MR CHIM PUI-CHUNG (in Cantonese): *Mr President, the Secretary says in paragraph (b) of his reply that "Where there is reason to believe that a Hong Kong resident is being unlawfully detained in another country, we follow up with the authorities concerned". Referring to the eight cases mentioned earlier, are they all confirmed unlawful detention cases or cases of a different nature? If it cannot be established that they are indeed unlawful detention cases, does it say anything about what the Hong Kong Government believes, that is, what it believes to be true becomes doubtful?*

PRESIDENT: What is your question, Mr CHIM?

MR CHIM PUI-CHUNG (in Cantonese): *Mr President, the Hong Kong Government firmly believes that cases relating to unlawful detention of Hong Kong residents in other countries will be followed up. My question is: Has the Administration confirmed that all these are unlawful detention cases? If not, does it mean that what the Hong Kong Government believes to be the case may be interpreted differently under the laws of other countries?*

PRESIDENT: I am afraid that is still not a question, Mr CHIM.

MR CHIM PUI-CHUNG (in Cantonese): *Mr President, the Hong Kong Government believes that the eight cases it followed up are unlawful detention cases. May I know if they are confirmed to be so, that is, simply give a "yes" or "no" answer? My supplementary that follows would be: Will what one is assured of turn out not to be the case?*

PRESIDENT: The first question, Secretary.

SECRETARY FOR SECURITY: Mr President, I do not think my answer said that the Hong Kong residents in these eight cases had been unlawfully detained. I do not think it even said that we believe that they had been unlawfully detained. What it said is that where there is reason to believe that a Hong Kong resident is being unlawfully detained. I think, in other words, where we have a report or an allegation, either from families or colleagues, that someone appears to have been unlawfully detained, then we would seek to take it up with the

authorities concerned in order to establish the facts and find out whether the persons have been unlawfully detained. In the eight cases to which I referred in the first paragraph of my answer, I can only say that we have not had satisfactory replies.

MR JAMES TIEN: *Mr President, like the Honourable WONG Wai-yin, I am surprised that with tens of thousands of factories, either joint ventures or wholly-owned, operating in China, we have only received eight applications for assistance in the last three years. Will the Secretary please inform us whether, for example, the Industry Department could do more to make the public aware that such help by the Hong Kong Government is available to local factory owners and employees working in China?*

SECRETARY FOR SECURITY: Mr President, what I would say is that I think the recourse to the Immigration Department in these cases is quite well known amongst the general public and that is where most of the reports that we have had were received. And I think that it is well known that if someone requires assistance in cases such as these, he should make application to the Immigration Department.

I am afraid I simply do not know about the Industry Department. I can only offer to refer that to my colleague, the Secretary for Trade and Industry.

Tuen Mun midstream operation zone

3. MR ALFRED TSO asked (in Cantonese): *In view of the Government's plan to designate a mid-stream operation zone in Area 16 of Tuen Mun and the action taken to invite tenders for that purpose, will the Government inform this Council:*

- (a) in implementing the plan against strong objection from the Tuen Mun District Board, whether the Government neglects public opinion and attaches little importance to the standing of the district board;*
- (b) what measures will be in place to ensure that the busy activities of cargo handling at sea arising from the implementation of the plan will not endanger the safety and order of the typhoon shelter nearby, particularly when the shelter is fully packed with vessels during the onslaught of typhoons; and*
- (c) whether assurance can be given that any additional transport activities consequent upon the implementation of the plan will not further deteriorate the external road traffic of western New Territories?*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Mr President, let me first reassure Honourable Members that the Administration accords high priority to public opinion and to advice given by district boards. In this particular case, we have been in close touch with the Tuen Mun District Board and other sectors of the local community since the proposal to establish a temporary mid-stream backup site at Tuen Mun Area 16 was first raised in December 1992.

As Members know, we have a problem of shortage of land needed to support Hong Kong's mid-stream operation. The Port Development Board did an extensive search to identify suitable sites. After studying some eight sites, virtually every possible site in the territory, Area 16 in Tuen Mun was the only one found to be available. Since then, Government representatives have attended 11 meetings of the district board and the working group set up to consider issues related to the use of the site. We have listened carefully to members' views and we have noted all their concerns.

Now, what are the concerns that have been expressed to us? Essentially they are that temporary use of the site will generate additional traffic on already congested roads, it will create noise in the area and adversely affect safety within the typhoon shelter. But these concerns can be addressed; they can be resolved:

- (a) we shall prohibit direct land access to the site by vehicles. Cargo will only be transported by sea, keeping additional loads off the existing highway network;
- (b) we shall prohibit work at the site outside prescribed hours, so there will not be any night-time noise. We will also deploy patrolling watchmen to monitor this;
- (c) we shall insist that the operator adopts specific noise mitigation measures to the satisfaction of the Director of Environmental Protection; and
- (d) we shall step up management of the waters within the typhoon shelter to deal with the small volume of additional marine traffic.

Regarding marine traffic, we envisage that the operation of the site will generate about ten barge trips each day. This is well within acceptable limits. The barges using the site will be confined to the western fairway and western entrance to the typhoon shelter. Conflict with other vessels will then be minimized. In addition the Director of Marine will step up traffic management within the typhoon shelter by demarcating the anchorage area to separate barges and fishing vessels. This should avoid conflict both during normal weather and during typhoons.

The Administration has discussed in detail with concerned groups and district board representatives. At this point, may I pay tribute to the Honourable Members and the Tuen Mun District Board who have played such an active part on this issue. At least four Members of this Council have raised the issue with me: the Honourable LAU Wong-fat, the Honourable WONG Wai-yin, the Honourable Michael HO and the Honourable Alfred TSO. The vigour with which they, in particular, have pursued the matter reflects well on their commitment to the well-being of the community, and in a way, demonstrates how district administration works at its best. Both the Deputy Secretary for Planning, Environment and Lands and I have personally met district board representatives. The protracted consultation we have undertaken is a demonstration of our commitment to full consultation. It is a matter of record that the Administration did not begin tendering work until after the Tuen Mun District Board had voted, on 10 August 1993, not to object to the proposal. Whilst we have not been able to accede to the board's subsequent change of heart, we have been able to address the substance of its concerns.

Mr President, if the Administration could find other suitable sites in the western New Territories, we would not have looked to Tuen Mun for help. If we could find a better site in Tuen Mun for temporary use we would not have chosen Area 16. But my conscience is clear, we have had no other choices. Therefore, recognizing local concerns about the potentially adverse implications of using Area 16, the Administration will rigorously enforce the lease conditions of the site. We shall monitor and control its use so that there will be as little adverse effect on the local community as is possible.

MR ALFRED TSO (in Cantonese): *Mr President, the Secretary has explained that the mid-stream operation in Area 16 is basically cargo handling at sea, and therefore land transport is not necessary. In such circumstances, will the Administration consider using other small islands at Ning Ding Yang for container operation instead of using the land at Tuen Mun Area 16 as this can minimize the effects on the typhoon shelter and will not bring additional load to the land transport in western New Territories?*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Mr President, first of all, I would like to thank Mr Tso for his proposal. Area 16 will be let out for a period of one year to start with, and may be extended every three months thereafter. Meanwhile, the Administration will study the practicability of using other islands off western New Territories, like the Brothers Islands, Lung Kwu Chau, Pak Chau and Sha Chau, for mid-stream operation. Certainly, some alteration works have to be carried out before vessels can berth at these islands. So I think the feasibility study will take quite some time. But, we will look into it.

MR LAU WONG-FAT (in Cantonese): *Mr President, will the Administration inform this Council whether it has any plans to conduct a review after the mid-stream operation zone has been operated for a while to assess its effects on Tuen Mun district? Should the traffic conditions on Tuen Mun Highway further deteriorate, will the Administration reconsider providing a mass transit link between Tuen Mun and Tsuen Wan?*

SECRETARY FOR ECONOMIC SERVICES: Mr President, I shall try to answer the first part of the question and then, with your permission, I would defer to the Secretary for Transport on the points relating to transport.

In view of the concerns expressed, we are going to start monitoring, not after the site has been operated for a while but right from the very beginning. We would monitor it from day one and we will keep it under constant monitoring. And with your permission, Mr President, I shall defer to the Secretary for Transport with regard to the other points.

SECRETARY FOR TRANSPORT: Mr President, as far as Tuen Mun Highway is concerned, the Administration certainly appreciates that there is a great deal of congestion, and various steps are being taken to solve this problem. Very briefly, these include the construction of climbing lanes and the widening of various sections of Castle Peak Road. And, of course, when the Ting Kau Bridge is ready, this will also help ease the congestion. As regards the rail extension, this is part of the Railway Development Study, which will be completed in the next two or three months. But at this stage, indications are that a link to Tsuen Wan will be a very low priority.

MR EDWARD HO: *Mr President, the Secretary referred to the use of Area 16 of Tuen Mun as temporary. Will he please inform this Council how temporary is "temporary"? And when can a permanent midstream back-up site be available to cope with the ever-increasing and vital port activities?*

SECRETARY FOR ECONOMIC SERVICES: Mr President, our intention is to award this particular site for a period of one year to start with and then to extend, if necessary, every three months thereafter. There are currently studies on the possibility of using other areas, such as Area 38, and also, as Mr TSO has suggested just now, maybe some islands in the Pearl River Delta Estuary, as transshipment centres.

MR ALBERT CHAN (in Cantonese): *Mr President, at present the throughput of mid-stream operation is 3 million containers a year. The Secretary has said that after studying 8 sites, no suitable site of mid-stream operation can be identified. From the case of Tuen Mun Area 16, it is apparent that the Administration has*

made mistakes in planning, resulting in a host of problems that the Administration has to deal with now. In its long-term planning, especially when it comes to port development, will the Administration consider, among other things, the land required for mid-stream operation? And how will this be implemented should it be given the go-ahead?

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Mr President, according to our estimate, we need about 30 hectares of land as backup sites for mid-stream operation. After taking in Tuen Mun Area 16 which can provide about 10 hectares of land, we still need about 20 hectares of land. At present, we are considering, in the context of long-term land use, whether suitable sites can be identified along the coast (including Area 38 of Tuen Mun as I mentioned), with a view to reserving as much land as possible for backup purposes.

MISS EMILY LAU (in Cantonese): *Mr President, the Secretary said in his reply that the Tuen Mun District Board had voted on 10 August 1993 not to object to the Government's proposal but changed its mind thereafter. Will the Administration inform this Council why the district board changed its mind?*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Mr President, we know that the District Board objected subsequently because they worried about inadequate monitoring on the part of the Administration, which would see the users bringing different problems after the site had been awarded. We have conducted a lot of studies on this, and the result is that the Administration will, as I can assure Members, monitor the situation. So we believe that the above situation will not happen.

DR TANG SIU-TONG (in Cantonese): *Mr President, the Marine Department has closed the cargo handling area at Tai Lam Kok of Tuen Mun from 5 January this year and arrangements have been made for cargo ships to use Area 16 in Tuen Mun. Has the Administration in effect turned Tuen Mun Area 16 into a mid-stream operation zone before the tendering result is out?*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Mr President, this question may have to be answered with the aid of a map because the Tuen Mun Harbour has a very long coastline and Area 16 mentioned earlier only takes up a small stretch of it. We have just started the tendering exercise. Successful tenderer will be allowed to use the site for mid-stream operation. As the tender has not been awarded, nobody should have been operating there. The area referred to by Dr TANG is a stretch of land along the coast adjacent to Area 16. The Administration has approved the use of that area for cargo handling but not mid-stream operation.

MR MICHAEL HO (in Cantonese): *Mr President, just now the Secretary has referred to the views I put to him but regrettably the problem has still not been resolved. I would like to follow up paragraph 3(a) of his reply, that is, "Cargo will only be transported by sea, keeping additional loads off the existing highway network". Will the Administration inform this Council what specific measures it will take to ensure that there will be no land access to the site so that it will not bring additional traffic load?*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Mr President, there are three measures that the Administration will take. Firstly, it will be stated clearly in the lease that users may only have access to the site by vessels but not vehicles. Secondly, the site will be fenced off by barricades so that even if contractors want to switch to land transport, it will not be easy for them to do so. Thirdly, the Administration is considering, apart from barricades, a buffer zone in which trees and stones will be used to fence off the area, so as to pose another obstacle to those who go against the law.

MR PETER WONG: *Mr President, when assessing the eight possible sites, were environmental impact assessments prepared, and was the environmental impact assessment for the chosen site made available to the Tuen Mun District Board for their reference?*

SECRETARY FOR ECONOMIC SERVICES: Mr President, I confirm that we did carry out environmental impact assessment studies on each of the sites which we intend to use for this type of purpose, and we did discuss with the district boards the measures to be taken to reduce environmental disturbances to the minimum.

PRESIDENT: Not answered, Mr Peter WONG?

MR PETER WONG: *Yes, Mr President, the Secretary has not answered whether the EIA itself was made available to the district board for their reference.*

SECRETARY FOR ECONOMIC SERVICES: I will have to go back, Mr President, and check whether in fact the entire report itself was tabled. But what I have been told is that the findings — in particular those findings of fact as regards protection and reduction of disturbance to the environment — were discussed.

Fund management companies

4. MR ERIC LI asked (in Cantonese): *A well known fund management company recently disseminated and publicized some market-influencing information whilst engaging in speculative transactions of securities and index futures. Moreover, the company reversed its views on the Hong Kong stock market trends within a short period with the result that small investors were at a loss as to what course to follow, while it profited from the situation. Will the Government inform this Council how such mode of operation can be prevented under the existing regime of monetary supervision?*

SECRETARY FOR FINANCIAL SERVICES: Mr President, the Administration does not accept that the mode of operation described in the question would necessarily be wrong unless it could be shown that the company concerned had engaged in transactions in anticipation of the effects of potentially market-influencing information which it subsequently disseminated and publicized. It is part of the normal business of investment houses to conduct transactions in securities and futures. It is also not uncommon for these firms to conduct market analysis, taking into account factors such as economic fundamentals and outlook, the prevailing investment sentiment as well as the relative attractiveness of different markets from a regional or even global perspective. Equally common is that they would normally publicize their assessments and update them constantly to reflect market conditions which at times can change abruptly. I believe that Hong Kong is no different from other major financial centres in the world in these respects.

When made public, professional assessments might well have an impact on the perception of other investors, but how or indeed whether to follow such advice and assessments publicly disseminated is a matter for the judgement of the individual investor.

It is the normal practice of major investment houses to separate the research arm from the trading arms of their operations with a view to preventing the misuse of non-public information. Moreover there are provisions in the respective Codes of Conduct of the Stock Exchange of Hong Kong Limited and the Hong Kong Futures Exchange Limited which stipulate that their members shall not invest on their own account upon advance knowledge of pending transactions or any other non-public information the disclosure of which would be expected to affect prices. Similar provisions are included in the Codes of Conduct for registered persons in the financial industry being finalized by the Securities and Futures Commission. The industry has been consulted on the draft Codes which are expected to be effective on 1 February.

Failure to comply with such requirements would result in disciplinary actions by the market regulators. So far, the Securities and Futures Commission and the two exchanges, which conduct ongoing surveillance of the market, have not identified any evidence of such activities.

MR ERIC LI: *Mr President, the Government always emphasizes that Hong Kong is a level playing field in the context of business and investment. I presume that it means fairness to all large and small investors. In the main reply it seems that the Government will still allow this type of practice of highly questionable ethics. In the recent case of Morgan Stanley the Government had to launch an in-depth investigation in response to public criticisms in order to judge the innocence or guilt of the said investment house. Is it the case then that that is the Government's answer to what appears to be double standard games played by investment houses, and that it will conduct expensive investigations at the cost of taxpayers every time?*

SECRETARY FOR FINANCIAL SERVICES: Mr President, the Administration does not accept the implications of the question that has just been put forward. The case of Morgan Stanley is one that was investigated as a result of concerns expressed by market practitioners and by the media. The Securities and Futures Commission conducted a thorough investigation and found no evidence of trading patterns that would be consistent with the type of behaviour that was mentioned in the main question. And I would not wish to leave any doubt about this, which is that the Administration does not regard unethical practice as something that should be condoned or tolerated. Indeed it would be taken into account by the Securities and Futures Commission in considering the fitness and properness of persons or firms for registration. So the consequences of unethical behaviour could be very serious indeed.

DR PHILIP WONG (in Cantonese): *Mr President, a major way the financial market is monitored at present is to prohibit any transaction using information that will have specific effect on market prices. I believe that when Morgan Stanley set out to buy in large quantities of Hong Kong stocks, it was fully aware of the great impact on the Hang Seng Index. And I would say it had already taken up a significant number of Hang Seng Index Futures contracts before it "placed its bets". Was the company using non-public information when it bought in the futures contracts? If yes, was it "rigging the market"?*

SECRETARY FOR FINANCIAL SERVICES: Mr President, as I have indicated, it would be necessary to establish that there was some direct connection between trading patterns and the release of non-public information designed to influence the market. Such connection was not apparent in the case which has been referred to, quite the reverse. The Securities and Futures Commission looked very thoroughly at it and found no evidence of trading

patterns either in the Futures Exchange or in the Stock Exchange — or of global trading patterns which were also examined — that would point to any such misbehaviour.

MR ROGER LUK: *Mr President, will the Administration advise this Council whether the market regulators would verify whether the investment houses have actually carried out the investment advice themselves?*

SECRETARY FOR FINANCIAL SERVICES: Mr President, the Securities and Futures Commission and the two exchanges do conduct regular inspections of the members of the exchanges and also of registered practitioners who are not members but who are nevertheless active in the Hong Kong market. There are annual inspection programmes which aim to cover most, if not all, of the practitioners on a regular basis. Where individuals obtain the information for their assessments is a matter for their own research and the thrust of market surveillance is to seek to find misbehaviour. Now misrepresentation might well be a part of that but there has so far been no sign of that sort of misbehaviour having emerged.

MR RONALD ARCULLI: *Mr President, will the Administration confirm that, inasmuch as Hong Kong's reputation as one of the leading financial centres of the world depends on houses like Morgan Stanley behaving themselves and observing the market rules here, the Administration is satisfied in this particular case that nothing untoward has happened?*

SECRETARY FOR FINANCIAL SERVICES: Mr President, the Administration is satisfied that in this case there has been a thorough investigation and that no evidence has come to light to suggest any misbehaviour.

MR VINCENT CHENG: *Mr President, I do not know whether it is necessary. But I just want to declare interest as a director of the Securities and Futures Commission and that I have seen the report.*

PRESIDENT: There is no question, Mr CHENG?

MR VINCENT CHENG: *No, Mr President.*

DR HUANG CHEN-YA (in Cantonese): *Mr President, it appears the Administration is telling this Council that this investment house had not used any information for insider trading. On the two occasions when information was*

disseminated, how many Hang Seng Index Futures contracts or stocks had it traded and had it bought in large quantities of stocks after pushing share prices down? We all know that monitoring this kind of insider trading is always better than investigation afterwards which requires going through all the records. Will the Administration advise this Council whether the transactions of these large investment houses will be closely monitored in future?

PRESIDENT: Secretary, two questions.

SECRETARY FOR FINANCIAL SERVICES: Perhaps, I should clarify first, Mr President, that this is not insider trading as such. Insider trading is a matter which relates to the knowledge of an individual company and is dealt with under a specific piece of legislation. What we are talking about here is a matter that was originally a matter of ethical standards and is now a matter of regulatory standards in terms of breaches of the Codes of Conduct. And, as I have already indicated several times, no evidence of such breaches came to light. But I can assure Members of this Council that the regulatory authorities both in the exchanges and the Securities and Futures Commission will be maintaining a high level of market surveillance with a view to deterring the sort of behaviour that is referred to in this question and in order to catch anyone who is engaged in it.

MR CHIM PUI-CHUNG (in Cantonese): *Mr President, the Securities and Futures Commission and the exchanges did receive in the past broker's complaints against investors (many of these complaints could be substantiated after investigations). From the Secretary's response to the case referred to by Members, it appears that the Administration also considered that there might be something not as desirable. The main problem here is the lack of evidence. So will the Administration follow up if there are similar cases in future?*

SECRETARY FOR FINANCIAL SERVICES: Mr President, the Administration keeps in close touch with the Securities and Futures Commission and follows its work very closely. And certainly we will ensure, as will the Securities and Futures Commission, that reasonable international standards of market surveillance are maintained here and that misbehaviour and market manipulation and such like are deterred and prevented as far as possible.

Laws on contempt of court

5. MR SIMON IP asked: *Will the Administration inform this Council of the reasons for its failure to propose comprehensive laws on contempt of court, notwithstanding the report of the Law Reform Commission published in 1986 recommending enactment of such laws?*

ATTORNEY GENERAL: Mr President, the Administration has considered the Law Reform Commission's Report on Contempt of Court very carefully in the light of developments since the report was published. In particular it has noted that:

- (1) the common law rules relating to contempt have continued to develop;
- (2) the law of contempt has become subject to Article 16 of the Bill of Rights, which provides for freedom of expression; and
- (3) the United Kingdom legislation that provided the basis for many of the Law Reform Commission's recommendations, that is, the Contempt of Court Act 1981, has created greater complexity and uncertainty in the law and has not been copied in any other jurisdiction.

In these circumstances the Administration doubts that codification of the law of contempt is either necessary or desirable.

MR SIMON IP: *Mr President, I should like to quote two brief passages from the Law Reform Commission's Report. "Restraints on the media are just as unacceptable if they stem from editorial fear of punishment due to the uncertainty of the law". "The law must draw the line between the need to ensure the proper administration of justice and freedom of speech. It can never be easy to know exactly where that line should be drawn but it is in the interests of neither for there to be uncertainty". Is the Attorney General suggesting that developments in the law have removed all or most uncertainties? If so, can he supply details? If not, what justification is there for the Government not taking any action to remove those uncertainties so as to promote freedom of the press?*

ATTORNEY GENERAL: Mr President, the developing common law has provided new principles relating to contempt of court. Allied to that, as I have said in my main answer, we now have in Hong Kong Article 16 of the Bill of Rights. I would suggest that those who need to know what the law of contempt is will find that the combination of the developing principles of the common law and Article 16 provide a ready basis for ascertaining whether or not conduct will or will not amount to contempt of court.

MR MAN SAI-CHEONG (in Cantonese): *Mr President, can the Attorney General explain subparagraph (2) of his reply, that is, how the law of contempt has become subject to Article 16 of the Bill of Rights, which provides for freedom of expression? If the Administration is not prepared to codify the laws applicable to Hong Kong, will reporters become fearful when covering court*

cases which will be to the detriment of press freedom and the public's right to know?

ATTORNEY GENERAL: Mr President, the effect of Article 16 of the Bill of Rights is that any restriction on the freedom of expression imposed under the law of contempt must be truly necessary to protect the administration of justice and that the requirement of necessity incorporates the principle of proportionality. That is to say, any restriction should be proportional either to the benefit to be obtained or to the mischief to be avoided. Let me go on to say that, having adopted Article 16 of the Bill of Rights, that will enable the courts to take into account the case law from the European Court of Human Rights on freedom of expression based on a similar provision in the European Convention on Human Rights.

As for guidance that journalists and others concerned with these matters could have, I should report that the Committee on the Promotion of Civic Education has in the fairly recent past arranged seminars and workshops on the rule of law, human rights and the legal system in Hong Kong and it is about to publish a report on the theory and practice of court news reporting which includes a very useful digest of Hong Kong cases on contempt of court. I am told that that report will be available to the public at City and New Territories Administration district public enquiry counters and through the Director of Information Services.

MR JAMES TO (in Cantonese): *Mr President, after years of in-depth study, the Law Reform Commission, which was appointed by the Governor, has published the Report on Contempt of Court, recommending that the Contempt of Court Act 1981 of the United Kingdom should be adopted and that relevant laws should be codified. If Mr Simon IP had not raised this question today, the Administration would not have openly informed the public how it would deal with the recommendation. Now even though Mr Simon IP did raise this question, the Administration has only spent a few minutes to respond to a question on the recommendation of the report, which the Law Reform Commission has compiled after years of hard work. Is this the proper attitude that a responsible Administration should have in responding to the proposals of the Law Reform Commission?*

ATTORNEY GENERAL: Mr President, it has been quite apparent that since the passing of the Contempt of Court Act 1981 in July 1981 — perhaps if I, with your indulgence, could come back to the effect, as I understand it, of that Act on the law of contempt — there have been considerable developments in the common law both in the United Kingdom and in other common law jurisdictions. As I have indicated in my main answer, that is a developing situation. The Contempt of Court Act 1981 did not of course codify the law of contempt. The 1981 Act was introduced by the British Government following

an adverse decision in the European Court of Human Rights, the *Sunday Times Case 1979* concerning the Thalidomide reporting. The 1981 Act, as I say, was not a code, nor did it replace the common law. And in the view of many, the coexistence of the 1981 Act alongside the common law has given rise to greater complexity rather than greater clarity and it is a view that has been widely expressed by learned commentators and others.

As for the brevity of my answer and whether by so doing I display either any disrespect to this Council or an irresponsible attitude on the part of the Administration, Mr President, it is undeniable that the common law has developed and is continuing to develop in a branch of the law which is, as it has been described, protean in its approach. And I must emphasize that unlike other jurisdictions we now have the added protection afforded by Article 16 of the Bill of Rights.

MS ANNA WU: *Mr President, uncertainty of the law can lead to possible abusive prosecution and disrespect for the law. Is there any plan to promulgate guidelines to allow the media to understand at what time publication can become contempt?*

ATTORNEY GENERAL: Mr President, with respect, as lawyers say, I do not accept the basic proposition that the law is uncertain. I accept that it is not conveniently contained in one single document but that does not thereby render the law uncertain. I have referred, in an earlier answer to a supplementary question, to the very useful publication about to be released that will afford guidance to members of the media about, among other things, the law relating to contempt, specifically on what I think is now known as the proximity rule, that is, the time within which, if I may so put it, contempt may arise. It is a very good illustration of the common law at work that has been the subject of a number of decisions recently in the 1980s, dealing with the time period within which a publication or a news broadcast may be run.

Mr President, at the risk of going on, I think one of the great strengths of the common law has been its flexibility. I do not believe that one should look askance at the way in which the common law has developed flexibly to meet changing situations. I think that is something commendable. If one attempts to freeze the law which is still in a state of development at any one time, one freezes the law and deprives it of the ability to develop in a way to meet changing circumstances.

MISS EMILY LAU: *Mr President, I want to follow up on Ms WU's point about uncertainty. Although the Attorney General does not accept Ms WU's assumption, will the Attorney General undertake to examine this problem because I am sure there are many members of the news profession who find difficulty in understanding this and uncertainty is a problem with some of them?*

Will the Attorney General undertake to look at the problem and see what he can do to help members of the news profession to understand what their responsibilities are and what the parameters are, so that they can operate freely and independently?

ATTORNEY GENERAL: Mr President, as I have already indicated, a very useful publication is shortly to come out covering, among other things, the law of contempt and containing a useful digest of Hong Kong cases on contempt. Additionally, in particular instances, I do from time to time write to editors setting out my views on contempt in relation to particular circumstances, and on occasions issuing warnings. But I think that it is well known that the media have available to them legal advice on what, I accept, are sometimes not easy questions to answer on a particular set of circumstances.

MR MARTIN LEE: *Mr President, does the Attorney General not remember that some years ago he took proceedings against a leading English language newspaper for contempt, only to withdraw at the last minute and pay a lot of costs? If the law is that certain, why did the Attorney General fumble on that occasion?*

ATTORNEY GENERAL: Mr President, I do not accept that that case was fumbled. If Mr LEE will recall that it was a matter that I answered in this Council in, I think, April 1992, that case was terminated upon the provision of undertakings which were satisfactory to me in the circumstances of that particular case.

MR PETER WONG: *Mr President, this is but one of a number of recommendations from the Law Reform Commission that has not been accepted or followed. Would it not be expedient for the Commission to review its own unrequited recommendations to see whether those recommendations are still cogent?*

ATTORNEY GENERAL: Mr President, Hong Kong has a very good track record of implementing Law Reform Commission Reports. I would say probably better than a good many other places. Of the 23 reports that have been published by the Commission, 11 have resulted in amending legislation and five more are currently moving through the legislative process. I believe that in one or two cases the recommendations do not actually involve the necessity for legislation but have resulted in changed procedures. So overall we have a good success rate as regards implementing recommendations from the Law Reform Commission.

Dog licences

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

- (a) *whether consideration will be given to strengthening enforcement action under the existing law requiring dog owners to obtain licences for their dogs; and*
- (b) *whether legislative amendments will be introduced to provide for the compulsory use of muzzle when dogs are taken out for walks?*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Mr President, the Dogs and Cats Regulations provide that no one may keep a dog over the age of five months without a licence issued by the Director of Agriculture and Fisheries. Any person contravening this requirement is liable to a fine of \$5,000 and to imprisonment for six months. An unlicensed dog is liable to seizure by the Director of Agriculture and Fisheries. Dog licences are issued free of charge as an incentive to compliance with the licensing requirement.

Although no dog licence may be issued unless the dog is tattooed as evidence of inoculation against rabies, there is currently no requirement for dogs to carry information identifying their owner. Later this year, however, we intend to introduce a requirement for all dogs to be implanted with a small microchip containing ownership data. This will strengthen considerably our ability to identify owners who allow their dogs to stray.

As regards the second part of the question, the Dogs and Cats Regulations provide that no dog may be allowed out on a public thoroughfare unless it is on the lead or otherwise under control. Any person contravening this requirement is liable to a fine of \$5,000 and to imprisonment for six months. Moreover, under the Summary Offences Ordinance, there are penalties of a fine of \$500 or imprisonment for three months for any person who keeps a dog which persistently annoys or menaces neighbours or passers-by or who allows an unmuzzled ferocious dog to go at large, or urges any dog to attack or worry any person.

Mr President, I believe that existing legislation sets out clearly the responsibilities of dog owners in regard to control of their animals in public places and that the introduction of a requirement for compulsory use of muzzles on all dogs is not warranted.

MR FREDERICK FUNG (in Cantonese): *Mr President, I would like to raise a follow-up question. Since a girl was bitten to death by a dog last month in Sheung Shui, there have been a number of press reports about people being bitten by dogs. One can easily find a lot of stray dogs running around in public*

housing estates, and they scare elderly people. I would like to ask the Secretary whether any attempts had been made in the past few years to implement the three requirements he mentioned? If yes, how many successful prosecution cases were brought against dog owners? If not, why not?

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Mr President, there are about 140 000 licensed dogs in Hong Kong. Every year the Agriculture and Fisheries Department sends its staff around to catch stray dogs. In 1993, 18 000 stray dogs were caught. As far as prosecution is concerned, 249 dog owners were prosecuted for keeping unlicensed dogs, and during the year there were 503 cases of dogs not under proper control.

MR VINCENT CHENG (in Cantonese): *Mr President, will the Secretary advise whether dog owners are responsible for the medical expenses of the victims bitten by dogs and other damage incurred?*

PRESIDENT: This is straying beyond the answer. But are you able to elucidate, Secretary?

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): *Mr President, as far as I know, there is no statutory requirement on this. But the Attorney General may agree with me that the victims naturally have a right in law to get damages.*

PRESIDENT: I think we had better move on to something more specific. Miss Christine LOH.

MISS CHRISTINE LOH: *Mr President, could the Secretary elaborate on exactly how he intends to introduce a requirement for all dogs to be implanted with a small microchip containing ownership data and whether he expects this legislature to pass laws to that effect?*

SECRETARY FOR ECONOMIC SERVICES: Mr President, the present law provides for the Director of Agriculture and Fisheries to make markings on dogs that have been through a vaccination process. Normally it is done to the ear and the markings will indicate the month and the year when that particular dog was injected with the vaccine. The same process will be done with the microchip. Instead of stabbing the ear, the intention is to plant that microchip with the data of the month, the year and the details of the owner into the soft skin of the dog.

MR RONALD ARCULLI: *Mr President, would the Secretary confirm that the microchip technology is quite safe for dogs and whether in fact the cost of introduction of this sort of rather modern technology is really a mere \$250,000 which the Administration has been prevaricating over for the last few years?*

SECRETARY FOR ECONOMIC SERVICES: First, Mr President, I would like to confirm that the implanting of microchip is now being done in quite a number of countries and is standard technology these days.

Secondly, I am afraid, Mr President, I am not sure about the amount that the Member has referred to. But the Director of Agriculture and Fisheries has informed me that he has both the means and the resources to go through with the implanting of the chip.

DR LEONG CHE-HUNG: *Mr President, will the Administration inform this Council whether there are prescribed criteria to be fulfilled, other than inoculation against rabies, before a dog is licensed? In particular, is a certificate of health needed from a certified vet? If not, will the Administration introduce such measures for the purpose of public health?*

SECRETARY FOR ECONOMIC SERVICES: Mr President, in fact there are at present no requirements for the provision of — for lack of a better term — medical certificates for dogs. But the vaccination is of course done by a vet and the vet would be able to see the condition of the animal which receives the actual injection and which goes through the implantation of the chip. Therefore, the vet would be in a position to advise owners about possible problems associated with the health of the animal.

MRS ELSIE TU: *Mr President, since most dangerous dogs are stray dogs, wild dogs or dogs that have not been registered and they are not born in hospitals to get birth certificates, how is the Government going to deal with these stray dogs, wild dogs and unregistered dogs? It seems that the dangerous ones will still be left loose. Is that not so?*

SECRETARY FOR ECONOMIC SERVICES: Mr President, as I said, last year we caught nearly 18 000 stray dogs. The Director of Agriculture and Fisheries actually makes it his task to send a dog catching team around when there are reports of stray dogs and also to send the team on routine patrol. I think the responsibility must rest with owners. Some stray dogs come about as a result of owners having bred them, not taking care of them and letting them run around in the streets. So it is the task of the Director to set his staff to go after stray dogs and to have owners go through registration and control.

MRS PEGGY LAM (in Cantonese): *Mr President, the Secretary says in the third paragraph of his reply that "no dog may be allowed out on a public thoroughfare unless it is on the lead or otherwise under control". Is the Administration aware of the fact that a lot of street sleepers and vagrants keep dogs and that these dogs are licensed? Are dog owners required to fill in their address when they apply for a licence? If so, how can the Administration issue licences to these vagrants who have no address? Furthermore, if it is not necessary to give an address, then how can the Administration enforce the law that provides that no dog may be allowed out on a public thoroughfare? Are they self-contradictory?*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Mr President, I have to go back and check if the address has to be filled in. Even if there is an address column in the form, a vagrant can put in any street name or door number, and the authority has no way to confirm the address or verify whether he lives at that address. The important thing is that the law stipulates that it is the "responsibility" of dog owners to control their dogs. Therefore no matter where dog owners live, they must observe the law if they take their dogs out in public places.

MR JAMES TO (in Cantonese): *Mr President, in the past it was common for smuggling syndicates to send their men out to see if there were duty officers from the Anti-Smuggling Task Force monitoring their activities. Now they send what they call "lookouts", which means ferocious dogs led by men to keep watch over police activities, and they will order the dogs to attack the police when necessary. Just now the Secretary has said in the third paragraph of his reply that the maximum penalty is three months' imprisonment for any person who urges a dog to attack others. Will the Secretary advise whether a review will be conducted to see if the penalty imposed under the existing law for this offence is more lenient than that imposed for, for example, assault cases?*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Mr President, I will discuss with the Customs and Excise Department and the Police Force, the two enforcement bodies, to see if the law has to be amended in the light of the circumstances referred to by Mr TO.

Written answers to questions

Vietnamese migrants

7. MR MARTIN BARROW asked: *As the number of Vietnamese migrants stranded in Hong Kong has fallen from a peak of 64 000 to under 32 000 as at 1 January 1994, will the Government inform this Council:*

- (a) *how the remaining migrants will be housed and which detention centres will be closed in 1994; and*
- (b) *what use will be made of facilities closed in 1994 or 1995?*

SECRETARY FOR SECURITY: Mr President, there are now some 27 500 Vietnamese migrants in Hong Kong. The great majority are accommodated in three detention centres: those from the south of Vietnam in the Tai A Chau and High Island Detention Centres, and those from the north of Vietnam in Whitehead. Depending on the pace of repatriation, we hope to be able to close some sections of Whitehead, and one of the centres for the southern Vietnamese towards the end of this year. The timing of the closure of the remaining centres will probably coincide with the repatriation of the last remaining Vietnamese migrants in the territory. If present arrival and departure trends are maintained, this should be achieved in early 1996.

No alternative use has yet been decided for the detention centres which may be closed in the next two years.

MTRC service improvement programme

8. MR STEVEN POON asked (in Chinese): *The Mass Transit Railway Corporation (MTRC) announced that it would spend \$8 billion to improve its services over the next seven years and the cost would be borne by its revenue from passenger fares. Will the Government inform this Council:*

- (a) *whether the MTRC has submitted a detailed financial plan for the perusal of the Government and whether the Government has agreed to the proposed improvement programme;*
- (b) *whether consideration has been given to requesting the MTRC to spend this huge sum of money on the construction of the Airport Railway instead so that the borrowing ratio of the Airport Railway may be reduced;*
- (c) *whether the spending of \$8 billion on the proposed programme by the MTRC will subsequently reduce the amount of funds available for the construction of the Airport Railway; and*
- (d) *if the cost of \$8 billion is to be borne by passengers, how the MTRC would increase its fares, for how many years the MTR passengers would be subject to such fare increases and what the extent of the fare increase will be?*

SECRETARY FOR TRANSPORT: Mr President,

- (a) The corporation is not required under its Ordinance (Cap 270) to seek financial approval from the Government for its annual budget or financial plans. Although the preparation and approval of these documents are matters for the corporation and its board, the corporation does submit its annual budget and long-term financial forecast to the Government for perusal. The proposed \$8 billion improvement programme for the existing railway system has been included in these documents and approved by the board.

(b) and (c)

The Airport Railway and the improvement programme for the existing MTR system are two entirely separate projects. One does not affect or preclude the other and there is no reason to link the financing of these projects.

The Airport Railway will be financed through injection of equity by the Government, borrowing by the corporation and profits from Airport Railway related property developments.

The expenditure of \$8 billion on the improvement programme has been fully allowed for in the corporation's financial plans for the existing MTR system. \$6 billion of the \$8 billion required for the improvement programme can be met by depreciation charges made over the years, with the remaining \$2 billion to be funded by internal reserves and borrowings. This will not affect the corporation's ability to raise funds for the Airport Railway.

- (d) It is essential for the corporation to maintain and improve its existing system so that people can continue to enjoy a safe, fast, reliable and efficient railway service. Even with this maintenance and improvement programme, the corporation expects that annual fare adjustments can continue to be in line with inflation.

External trade statistics under-reporting

9. MR ROGER LUK asked: *In view of the active smuggling activities between Hong Kong and nearby territories in recent years, will the Administration advise this Council of the extent of under-reporting in external trade statistics arising from undeclared export and re-exports from Hong Kong?*

SECRETARY FOR FINANCIAL SERVICES: Mr President, Hong Kong's external trade statistics are compiled on the basis of information reported on import/export declarations which are matched against cargo manifests to ensure

the complete coverage of goods imported and exported. Goods reported on manifests but undeclared will be identified and eventually captured in the trade statistics system.

Because smuggled goods are non-manifested, they do not appear in the trade statistics and it is not possible to estimate accurately the value of goods smuggled.

In general, all trade statistics are as accurate as they reasonably can be and every effort is made by the Administration to ensure that the accuracy is not only maintained but also improved.

Harbour management

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

- (a) *of the number of marine accidents in 1993; and*
- (b) *whether there are plans to review the establishment of the Marine Department and to update the monitoring equipment in order to strengthen harbour management?*

SECRETARY FOR ECONOMIC SERVICES: Mr President, in 1993, there were 368 maritime accidents involving vessels ranging from large ocean-going ships to small motor sampans. These accidents include collisions, groundings and capsizes of vessels. About 70% were minor in nature with no casualties.

The Marine Department constantly reviews its operational procedures, equipment and establishment to ensure that they remain sufficient and up to date in maintaining maximum safety and efficient management of the waters of Hong Kong.

To this end, the Director of Marine has obtained funding to implement the following plans, between now and 1996 to further strengthen harbour management:

- (a) the establishment of a local marine traffic control station at Ma Wan in 1995. This includes 26 new posts, a dedicated launch, radar and other communications equipment;
- (b) the establishment of a radar station at Kau Yi Chau to enhance radar surveillance of the Western Harbour and provide full radar coverage of Kwai Chung and approaches;

- (c) the purchase of three quick reaction patrol vessels. These vessels will come into service in mid-1994; and
- (d) the replacement of five obsolete and cost ineffective patrol vessels by mid 1996.

In addition, the following plans are under consideration:

- (a) the phasing out and replacement of a further 11 local patrol craft;
- (b) the extension of patrol capability in the principal fairways and anchorages; and
- (c) the establishment of further local traffic control stations at the new port developments of Container Terminals No. 9 and No. 10.

HAN Dongfang incident

11. DR CONRAD LAM asked (in Chinese): *Regarding the case of HAN Dong-fang, will the Government inform this Council:*

- (a) *whether the Chinese Government has obtained the formal consent of the British or Hong Kong Government before its expulsion of HAN Dong-fang into the territory of Hong Kong, whereupon the Hong Kong Government would be able to act in accordance with international law to accept HAN Dong-fang legally into Hong Kong;*
- (b) *if not, whether the Chinese Government has, in terms of international law encroached upon Britain's sovereignty in Hong Kong and whether the Hong Kong or British Government would take this issue up with the Chinese Government?*

SECRETARY FOR SECURITY: Mr President,

- (a) No.
- (b) No. There was no question of an encroachment of Britain's sovereignty in Hong Kong. We have already made our views on this episode clear to the Chinese authorities.

Medical fees and charges increases

12. MISS EMILY LAU asked: *Regarding the Government's decision to substantially increase medical services fees and charges from 1 February 1994,*

particularly for hospital public wards (25.6% increase) and general out-patient clinics (38% increase), will the Administration inform this Council:

- (a) why the increases are way above the annual rate of inflation;*
- (b) whether the increases will fuel inflation; and*
- (c) why the percentage of government subsidy for different services varies from as high as 76% to 97%?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, the fees and charges for public medical services are revised annually to reflect rising costs. It is a general phenomenon that medical inflation tends to exceed general inflation due to advancements in technology, use of new treatment modalities and the need to meet rising public expectations. Historically, the daily charge for hospital general wards was set at a level to reflect the catering costs whilst the fees charged by public out-patient clinics have always been based on operating cost.

This year, the fee revision for general clinics from \$21 to \$29 has taken into account a price change of 11% over the previous year and the following one-off factors:

- (a) adoption of a comprehensive new costing system covering all clinics operated by the Department of Health; and
- (b) initial reduction in throughput caused by the introduction of unit medical record system in 15 clinics to enhance patient care.

The effect on inflation of the proposed fee revision in 1993-94 is estimated by the Government Economist to be a minimal of 0.0217%.

Fees charged for medical services had their origins in the post-war years when they were set at nominal levels. These fees are adjusted annually. The current level of subsidy for hospital beds at 97% and for general out-patient clinics at 81% are thus a legacy of the past.

Sheltered workshops for the disabled

13. MR CHEUNG MAN-KWONG asked (in Chinese): *With regard to the placement of the disabled in government sheltered workshops, will the Government inform this Council:*

- (a) of the average monthly income of these people and the ways of calculating their wages;*

- (b) *of the sources of orders placed with the workshops and the percentage of government orders; the channels through which the orders are obtained; and the major products required by these orders; and*
- (c) *whether the present operation, mode of production and quality of products of the sheltered workshops will be reviewed and whether measures, such as tapping more sources of orders, will be taken to enhance the job opportunities of the disabled?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, my answer in *seriatim* is as follows.

As regards part (a) of the question, the monthly income of workers in government run and subvented sheltered workshops ranges from \$500 to \$1,800, with a monthly average of \$700 per person. These amounts include an incentive payment of \$14 per day payable to those turning up for work.

Sheltered workers' wages are on the whole calculated on the basis of piece rate set by job suppliers. Where the work production comprises several work processes, with varying degrees of complexity performed by different workers, this factor of complexity will be taken into account in the apportionment of the "piece rate" in calculating the wages.

As regards part (b) of the question, over 500 different sources of job orders were acquired by sheltered workshops in 1993. About 95% of these job orders were from the commercial and industrial sectors, with the balance from the Government. Job orders are obtained either by workshop staff who directly approach potential job order suppliers by paying visits, making telephone calls or mailing advertisement letters to them, or through referral by other job order suppliers, sheltered workshops, government departments and welfare agencies.

Job orders obtained by sheltered workshops are mostly in the form of simple processing, finishing, assembling or sub-assembling work which sheltered workshop workers are able to undertake. Major products placed by these orders include assembling light industrial products, toys, family consumable and stationery; packaging eating utensil sets for fast food restaurants and airline companies, toiletries for hotels, gift sets for supermarkets and retail shops; processing mailing packets (such as inserting documents in envelopes, sealing, pasting address labels, mailing), sewing, printing and book-binding.

As regards part (c) of the question, a review of the sheltered workshop system is being planned. The review will address issues involved in the operation and management of sheltered workshops. The aim is to make sheltered workshops more commercially oriented, to improve vocational skills of sheltered workers and to enhance their open employment opportunities.

Air quality in traffic interchanges

14. MR FRED LI asked (in Chinese): *According to the report of a survey recently conducted by the Environmental Protection Department (EPD), the air quality in five traffic interchanges in the territory falls below the acceptable standard, and the situation at the Kwun Tong-Lam Tin Interchange is even worse, with very serious noise problems in addition to air pollution. In the light of such findings, will the Government inform this Council:*

- (a) *whether the EPD had carried out environmental impact assessments at the planning stage of the Lam Tin Interchange project; if so, why such serious problems have arisen shortly after the opening of the interchange to traffic; and*
- (b) *of the short-term as well as long-term remedial measures to be taken by the EPD to improve the air quality and to reduce the noise pollution at the interchange?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President,

- (a) The Lam Tin Transport Interchange is part of the Sceneway Garden Development. An environmental impact assessment (EIA) on the Development and a separate environmental assessment study on the interchange were carried out in 1988 at the planning stage. The EIA for the Sceneway Garden Development confirmed the need for a podium deck straddling Lei Yue Mun Road to protect Sceneway Garden residents from traffic noise and this has achieved the desired effect. The EIA also indicated that a properly designed ventilating system would be needed to meet air quality requirements.

Noise levels at the interchange, although high, are similar to those at other roadside locations near busy roads. Given that the period of exposure for waiting passengers is relatively short, the levels are considered tolerable.

However, even though passengers are exposed to air pollution for short periods only, the air quality is unacceptable. This is mainly because the ventilation is inadequate or ineffective.

- (b) In the short term, improvements to air quality at this and similar facilities will be sought by the government departments responsible for the public facilities and the management companies responsible for private facilities through better operation and maintenance of the ventilation systems. The Environmental Protection Department (EPD) is consulting those concerned on the feasibility of increasing the effectiveness of existing exhaust fans. To reduce unnecessary

emissions bus drivers have also been asked to turn off their engines while waiting at these facilities.

In the long term, the ventilation systems, including ventilating fans, fresh air intakes and exhaust air ducts, may need to be upgraded to achieve acceptable air quality standards. The EPD is devising air quality standards for road tunnels and transport interchanges and has also commissioned a study to formulate the design and operational requirements for ventilation systems in such facilities. The study is expected to be completed by May 1994.

Bus interchanges

15. MR TIK CHI-YUEN asked (in Chinese): *In view of the favourable response to the provision of a bus interchange at the Shing Mun Tunnel, will the Government inform this Council whether consideration will be given to introducing similar facilities at other toll tunnels?*

SECRETARY FOR TRANSPORT: Mr President, the bus interchange at the Tsuen Wan end of the Shing Mun Tunnels has indeed proven to be a success. It has been welcomed by passengers because they can transfer to different routes at a bargain fare. It also benefits the bus company concerned because it facilitates the same level of service to passengers through the rationalization of bus routes.

The successful working of a bus interchange at a tunnel depends on a number of factors, namely:

- (a) an adequate area at the tunnel entrance for the provision of proper lay-by and the necessary waiting areas and passenger shelters;
- (b) a sufficient number of bus routes with different origins and destinations passing through the tunnel;
- (c) no free pedestrian access to the interchange to prevent "free riders"; and
- (d) a single bus operator otherwise there would be difficulties over the apportionment of fares.

Unfortunately, it is not possible or practical to provide bus interchanges at other tunnel locations because these basic criteria cannot be met.

River trade terminal project

16. DR TANG SIU-TONG asked (in Chinese): *In view of the deferral of the river trade terminal project on the eastern side of Tap Shek Kok Power Station in Castle Peak, Tuen Mun, will the Government inform this Council:*

- (a) *of the up-to-date progress of the aforementioned project;*
- (b) *when the project is expected to complete; and*
- (c) *whether there will be any appropriate transport measures to facilitate the operation of this proposed terminal?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President,

- (a) The river trade terminal project (RTT) has not been deferred. The Government received several expressions of interest in the project and two submissions in response to its invitation. The submissions and various technical issues involved are being evaluated with a view to reaching decisions on the timing of the project and the means of implementation.
- (b) Present indications are that, ideally, the first phase of the RTT should be operational by the latter part of 1997 if possible.
- (c) Improvements to the local road network to cope with additional traffic will be required. They include the widening of Lung Mun Road and the construction of a bypass along the foothills of Castle Peak. Implementation should have regard to the phasing of the RTT development.

Manpower resources engaged in industrial research and development

17. DR HUANG CHEN-YA asked (in Chinese): *Will the Government inform this Council:*

- (a) *of the manpower resources engaged in research and development of the industries in Hong Kong;*
- (b) *how such figures compare with those of our neighbouring countries; and*
- (c) *what plan is in hand to increase the manpower supply in this field?*

SECRETARY FOR TRADE AND INDUSTRY: Mr President, the Government does not required private sector companies to supply statistics on the functional breakdown of employees, and therefore cannot supply the information requested in (a). The information requested in (b) is not available to the Government. Insofar as (c) is concerned, the Government has sought to increase the supply of trained personnel who would be qualified to undertake industrial research and development work. Thus, the number of post-graduates in scientific and engineering disciplines from local tertiary institutions increased from 196 in 1989 to 395 in 1993, and is projected to rise to 973 in 1997. The number of graduates in scientific and engineering disciplines increased from 2 128 in 1989 to 3 087 in 1993, and is projected to rise to 7 465 by 1997. The increase in human resources is only one of the means used by the Government to facilitate research and development work by Hong Kong's manufacturing industries.

ICAC programme to establish tighter links with the private sector

18. MR HENRY TANG asked: *In his policy address on 6 October 1993, the Governor said that 30 officers in the Independent Commission Against Corruption will be redeployed to form a special working group to establish tighter links with the private sector. Will the Government inform this Council of details of the programme and the progress made so far?*

CHIEF SECRETARY: Mr President, a special team of 30 ICAC community relations officers was established in the Independent Commission Against Corruption (ICAC) in November 1993. The team has made initial progress on several fronts.

First, in conjunction with six major chambers of commerce, the team is actively preparing for a Conference on Business Ethics, the first of its kind in Hong Kong. This conference is tentatively scheduled for May 1994. It aims to generate support from business leaders and to formulate a set of guidelines on corporate codes of conduct for reference by the business community at large. The six co-organizing chambers are the Hong Kong General Chamber of Commerce, Chinese Manufacturers' Association of Hong Kong, Chinese General Chamber of Commerce, Federation of Hong Kong Industries, Hong Kong Chinese Enterprises Association and America Chamber of Commerce in Hong Kong. Invitations to attend the conference will soon be issued to the heads of over 300 organizations including trade associations, listed companies, large private companies, professional bodies and the trade departments of consulates.

The special team has also begun to approach companies listed on the Stock Exchange and trade associations to help them design individual codes of conduct, on a voluntary basis. The response has so far been encouraging. The team aims to have approached all 480 listed companies by the end of this year. Thereafter, it will extend its service to 2 000 large private companies and all tertiary academic institutions in Hong Kong.

In addition, earlier this month the ICAC completed field work on two surveys, targetted separately at senior business executives and the general public, to obtain a more in-depth understanding of their perceptions and views on business ethics in Hong Kong. The findings will be available in March. They will help the special team develop more long-term services for the business community.

Nursing Board education advisor

19. MR MICHAEL HO asked (in Chinese): *According to the Nurses Registration Ordinance, the Nursing Board shall have an education adviser nominated by the Director of Education and appointed by the Governor. Yet his position has long remained vacant. Will the Government inform this Council:*

- (a) of the purpose of providing an education adviser;*
- (b) of the reasons why the position has remained vacant for so long; and*
- (c) when a suitable person will next be appointed to fill the vacancy?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, the role of the education advisor appointed under section 3(6)(b) of the Nurses Registration Ordinance (Cap 164) is to give advice to the Nursing Board, when necessary, on educational qualifications for nurses trainees and teaching techniques for nurses training. He is not a member of Nursing Board constituted under section 3(2) of the Ordinance.

Since 1982, the Nursing Board has not requested the service of the education advisor. The position has therefore been left vacant following the retirement of the last education advisor in October 1984.

The Nursing Board is currently reviewing its composition. If necessary, a new education advisor will be appointed.

Assault on Hong Kong container truck drivers

20. MR JAMES TIEN asked (in Chinese): *In view of the recent assault on Hong Kong container truck drivers by some soldiers of the Chinese People's Liberation Army, giving rise to strong discontent among members of the Hong Kong transport industry and hence their intention to organize a mass drive slow in protest, will the Government inform this Council:*

- (a) how it handles this incident of assault; and*

- (b) *given the busy land freight transport between China and Hong Kong, what measures it will take, in cooperation with the Chinese authorities concerned to avoid any recurrence, so as to further safeguard members of the local freight industry who have to commute between China and Hong Kong, and to avoid any unnecessary damage to the China-Hong Kong freight industry arising from such incidents?*

SECRETARY FOR TRANSPORT: Mr President,

- (a) The Hong Kong and Shenzhen authorities have established border liaison channels which can be activated very quickly to deal with issues or incidents such as that which occurred on 2 January involving Hong Kong container truck drivers. On that occasion, such a forum facilitated discussions between the drivers' representatives and the Shenzhen authorities, which resulted in the planned slow drive protest being cancelled. Investigation of this particular incident is a matter for the Chinese authorities since it happened in Shenzhen.
- (b) Smooth cross-border traffic is vital to economic well-being on both sides of the border. We will continue to liaise with the Shenzhen authorities through the border liaison machinery to try to avoid similar incidents occurring in the future. If problems do arise on the Hong Kong side then, as in the past, the government departments concerned will confer and mediate with the freight industry and drivers' representatives with a view to solving such problems in the quickest and most practical manner possible.

Motion

BUSINESS REGISTRATION ORDINANCE

THE SECRETARY FOR THE TREASURY moved the following motion:

"That with effect from 1 March 1994 the Schedule to the Business Registration Ordinance be amended:

- (a) in item 4(a) by repealing "\$60" and substituting "\$66";
- (b) in item 4(b) by repealing "\$150" and substituting "\$165";
- (c) in item 5 by repealing "\$60" and substituting "\$66".

He said: Mr President, the Schedule to the Business Registration Ordinance (Cap 310) specifies various fees and penalties payable under the Ordinance. This Council last revised the registration fee in respect of a branch of business in March 1993. I now propose to revise it from \$60 to \$66, in line with the increases in costs.

I also propose to increase the penalties for non-payment of business registration fees and branch registration fees. These penalties were last revised last year. To preserve the deterrent effect, I propose to increase the penalty for not paying the business registration fee from \$150 to \$165, and the penalty for the non-payment of the branch registration fee from \$60 to \$66.

These increases, if approved, will take effect on 1 March 1994. I estimate that they will bring in additional revenue of more than \$1 million a year.

I thus move the resolution standing in my name in the Order Paper.

Question on the motion proposed.

MR JAMES TO (in Cantonese): Mr President, although I do not have any strong views on the fee increase this time, I have some views to share with the Secretary for the Treasury, which I hope would be taken into consideration by the Government in the future.

First, regarding the penalties for non-payment of business registration fee and non-payment of branch registration fee which will be increased to \$165 and \$66 respectively, at present, the business registration fee is \$1,000-odd, and the penalty for non-payment is \$165. However, the branch registration fee is now increased to \$66 only and the penalty for non-payment is also \$66, that is 100%. In such circumstances, is the new penalty of \$165 not commensurate with the \$1,000-odd business registration fee unpaid by the head office?

Second, I am a little doubtful about the preservation of deterrent effect as claimed by the Secretary just now. If the penalties are merely \$100-odd and \$60-odd respectively, will there be any actual deterrent effect? If the Government really wants to have such effect, I urge the Secretary to consider raising the rate of increase to a more realistic level next time when he reviews the penalties because I do not believe that the existing form of penalty or the amount of fine can really have any deterrent effect.

PRESIDENT: Secretary, do you wish to reply?

SECRETARY FOR THE TREASURY: Mr President, our policy on revision of fees of this kind is to set the fee at a level sufficient to recover the administrative costs involved. It is arguable whether such a policy should apply

equally to the setting of penalties. I have heard what Mr James TO has said and am happy to consider his suggestion in the context of the next review.

Question on the motion put and agreed to.

First Reading of Bills

PUBLIC BUS SERVICES (AMENDMENT) BILL 1994

SECURITIES (INSIDER DEALING) (AMENDMENT) BILL 1994

THE HONG KONG INSTITUTE OF EDUCATION BILL

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

Second Reading of Bills

PUBLIC BUS SERVICES (AMENDMENT) BILL 1994

THE SECRETARY FOR TRANSPORT moved the Second Reading of: "A Bill to amend the Public Bus Services Ordinance."

He said: Mr President, I move the Second Reading of the Public Bus Services (Amendment) Bill 1994.

There is constant public pressure to improve the quality of bus services. When encouragement and warnings to the bus companies fail to achieve the desired results, the imposition of financial penalties becomes necessary. The main thrust of the amending Bill is to provide legislative teeth to penalize the bus companies for non-performance.

Clause 2 of the Bill seeks to change the manner in which fines can be levied. The impact will become much greater since, apart from retaining the existing graduated scale of fines of \$10,000 for deficiencies on the first occasion, \$20,000 on the second and \$50,000 on the third and subsequent occasions, this will be multiplied by the number of routes on which deficiencies are found. Penalties will remain on record for a five-year period from the date of the imposition so as to determine what the level of fines for future offences should be.

Clause 3 seeks to exclude the financial penalties from being deemed as part of the operating expenses of a bus operator. This is essential to ensure that the operator does not pass on such penalties to bus passengers in the form of higher fares.

The opportunity is taken in this Bill to delegate the powers to make regulations pertaining to bus operations, for example, the designation of bus stops and the conduct of bus drivers, from the Governor in Council to the Secretary for Transport. Clause 4 provides for this.

Clause 5 simply adds a new section to enable the existing regulations to remain in force.

Mr President, the Legislative Council Transport Panel has been consulted on the approach now advocated and I gratefully acknowledge the full support that Members have given.

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

SECURITIES (INSIDER DEALING) (AMENDMENT) BILL 1994

THE SECRETARY FOR FINANCIAL SERVICES moved the Second Reading of: "A Bill to amend the Securities (Insider Dealing) Ordinance."

He said: Mr President, I move the Second Reading of the Securities (Insider Dealing) (Amendment) Bill 1994. The Bill seeks to eliminate an existing loophole under which insider dealing can be conducted through the trading of third-party-issued derivative products without being caught by the relevant legislation.

The Securities (Insider Dealing) Ordinance stipulates measures to penalize the dealing in listed securities on the basis of non-public price-sensitive information relating to a single listed company. The current definition of "listed securities" in effect limits the scope of the Ordinance to such things as shares, stocks, debentures of a listed corporation and certain derivative products issued by that corporation. Instruments covered by the Ordinance have to be listed on the Stock Exchange of Hong Kong Limited.

In recent years, we have seen an increasing number of derivative products in respect of locally listed securities. Many of these products are issued by a party unrelated to the corporation whose shares form the underlying securities. Some of the products are not listed on the Stock Exchange in Hong Kong. Examples of these products include derivative warrants, stock options now being planned by the Stock Exchange and American Depositary Receipts. Since these instruments are issued by a third party, they are not classified as the securities of the relevant listed corporation and thus their trading falls outside the scope of "insider dealing". The same applies where the products are not listed in Hong Kong.

The Bill being introduced amends the Ordinance so that insider dealing will cover third-party-issued derivative products in respect of listed securities in Hong Kong, whether or not these products are listed here. It involves some

technical amendments to the Ordinance which are necessary to ensure that the burgeoning derivative markets are not used to circumvent the regulatory framework. It will also help to ensure the success of the market for stock options which the Stock Exchange intends to introduce later this year, because investors in this market will know that insider dealing legislation comparable with international standards is in place.

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

THE HONG KONG INSTITUTE OF EDUCATION BILL

THE SECRETARY FOR EDUCATION AND MANPOWER moved the Second Reading of: "A Bill to establish The Hong Kong Institute of Education as a body corporate to provide teacher education and facilities for research into and the development of education, and to provide for related matters."

He said: Mr President, I move the Second Reading of the Hong Kong Institute of Education Bill.

The Bill seeks to incorporate the Hong Kong Institute of Education as an autonomous tertiary institution. The establishment of the Institute follows the recommendation in Education Commission Report No. 5. The aim is to upgrade the quality of teacher education and continuous professional development of teachers in Hong Kong. The new unitary institution will subsume the four existing Colleges of Education and the Institute of Language in Education, which are currently managed by the Education Department.

The Bill sets out the functions, powers and organization of the institute. It provides for a council to be appointed by the Governor in his capacity as the president of the institute. The council will comprise the director and deputy directors of the institute, public officers, nominees from the Academic Board, a staff representative, members of the public with experience in commerce, industry or a profession in Hong Kong, and others who are experienced in higher education in Hong Kong or elsewhere.

The Bill also provides for the appointment of an academic board to plan academic programmes, regulate student admission and confer academic awards.

As a subvented organization, the institute will be required to submit its annual estimates for government approval, to table its financial report to the Legislative Council and to subject its accounts to the scrutiny of the Director of Audit. The Bill makes provision for these.

Since its appointment in January 1993, the Provisional Governing Council of the Hong Kong Institute of Education has been making good progress. It has appointed the director for the institute and is recruiting other key administrative and academic staff. It is planning the development of a new campus in Tai Po

and is engaged in working out arrangements for integrating qualified serving staff into the new Institute. It is also on track to offering its own academic programmes by September 1994. It is therefore now timely to enact legislation to incorporate the Institute.

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

ADMINISTRATIVE APPEALS BOARD BILL

Resumption of debate on Second Reading which was moved on 31 March 1993

Question on Second Reading proposed.

MR ANDREW WONG: Mr President, the Bill in question seeks to establish an Administrative Appeals Board (AAB) as the authority to hear and determine appeals against administrative decisions. The intention behind the Bill is manifold. Among them is efficiency through relieving the Executive Council of the responsibility of determining statutory appeals against administrative decisions which are of a relatively minor nature. The key intention will, I am sure, become apparent when we examine the provisions of this new Bill.

A Bills Committee, of which I am the Chairman, was set up to study the Bill. Four meetings had been held and the Administration had participated in all of them.

The Bills Committee deliberated in great detail mainly on five areas, namely, first, the power of the Secretary to the AAB in the appointment of persons from the panel to serve as members of the board and the appointment of any deputy chairman to act as chairman during the latter's absence; two, the right of all parties to the appeal to claim privileges in respect of disclosure of information; three, AAB's power to award or recommend *ex gratia* payments to the appellant; fourth, provision for appeals against the board's award of costs, and finally, fifth, a right of further appeal on a point of law in addition to the possibility of judicial review.

Let me, Mr President, briefly go into these areas. The FIRST one concerns the power of the Secretary to the AAB. Clause 5(3)(b) empowers the Secretary to the AAB to appoint two persons from the panel to serve as members of the board for a particular appeal case. Members of the Bills Committee are of the view that the power given to the Secretary is too wide and that it should be subject to some kind of control. The Administration has accepted Members' view and I will, during Committee stage, move an amendment to add a new provision to clause 7 of the Bill to the effect that the Secretary, in the exercise of any power conferred on him under the Bill, will be required to act subject to any directions given by the Chairman and not himself.

Under clause 8(1), the Secretary may appoint any deputy chairman to act as chairman during the period when the Chairman is precluded by illness, absence from Hong Kong or any other cause from exercising his functions. Again, Members of the Committee are of the view that the power of appointment should not be vested with the Secretary. It was suggested that either the power be vested in the Governor or that a list be compiled, on the basis of seniority of the various deputy chairmen, so that a more definite means of appointment of a deputy chairman to act as the acting chairman could be established. The Administration is of the view that since the acting chairman shall perform all the statutory powers vested in the chairman and as the chairman is to be appointed by the Governor, the Governor should be given the power to appoint the acting chairman. The said clause will be appropriately amended during Committee stage.

The SECOND area where amendment to the Bill is necessary concerns the right to claim privileges. Under clause 14(1) of the Bill, only the respondent (that is, the government department or the public agency) is entitled to claim privileges in respect of disclosure of information as if the proceedings before the AAB were proceedings before a court of law. Given that the other parties to the appeal (that is, the victim himself or herself and any other person who is bound by the decision appealed against) may also be compelled to disclose information under clauses 12 and 13 of the Bill, in the interest of justice clause 14 should be amended so that the right to claim privileges is extended to cover all the parties to the appeal. An amendment will be moved during Committee stage to the effect.

The THIRD area which Members have examined in detail is the vesting of power to the AAB to award or recommend *ex gratia* payments to the successful appellant against any administrative decision, where damage has been suffered by the appellant as a result of the wrongdoing on the part of the Administration. The Administration however is of the view that the AAB, in considering an appeal against any administrative decision, is confined to confirming, varying or reversing such decision. The award of *ex gratia* compensation is highly technical, and the board may not be in a position to assess the damages. Moreover, the Administration considers that the extent of any economic loss suffered by an aggrieved party is likely to be greatly mitigated by clause 21(1)(k) which empowers the Board to make an award as to costs, and clause 4(3)(e)(iv) which enables an Ordinance to be amended to provide for the suspension of an administrative decision pending appeal. In the unlikely event where, notwithstanding the provisions in the above clauses, a person has suffered substantial loss by virtue of any wrongdoing connected with an administrative decision, the appropriate remedy in respect of compensation should lie in civil action instead.

The Administration is also of the view that it would not be appropriate for the AAB to award or recommend *ex gratia* payment on grounds that any recommendation on public expenditure must come from the executive branch of government and be approved by the legislature. The board is also not intended

to be a body established to make recommendations which would have financial implications. Moreover, the Administration is also concerned that if the board is empowered to award or recommend *ex gratia* payment, it might encourage appellants to go to the board for the wrong reason and to delay matters further.

I and other Members of the Committee then asked the Administration to consider whether the board could be empowered to refer a case to an appropriate authority to consider whether recommendation for *ex gratia* payment should be made. Having considered the request carefully, the Administration agreed to give the board a referral power under clause 21 and agreed that an amendment should be made to this clause by adding a new subclause which specifies clearly that the board may order the case in question to be referred back to the respondent, to the government department or public agency for consideration of any such matters as the board may order. Members are satisfied that the proposed wording of the subclause is broad enough to cover situations where the board can refer a case back to the original decision making body to consider the award of *ex gratia* payments. I will move the amendment during Committee stage.

The FOURTH area of Members' concern is whether there should be a provision for appeals against the board's award of costs. The Administration explained to Members that the power to award costs under clause 21(1)(k) is qualified by clause 22. This limits the circumstances where costs can be awarded against an appellant where the appellant has conducted his case in a frivolous or vexatious manner. Other parties, which will usually be the Government or public bodies, can have costs awarded against them only where it would be unjust or inequitable not to do so. The costs may also be subject to taxation. The Administration assures Members that there is no real need to provide for an appeal provision since a decision of the Board to award or refuse costs would be subject to judicial review. Members accepted the Administration's explanation.

The FIFTH area of controversy is the right of further appeal by the appellant on a point of law. Clause 24 enables the board, on the recommendation of the chairman, and before an appeal is determined, to refer any question of law arising in the appeal to the Court of Appeal for determination by way of case stated. Members suggested that the Administration should consider allowing the appellant to seek leave of court to refer a point of law to the Court of Appeal for determination even without the recommendation of the chairman. The Administration has strong reservation on the suggestion to provide a further appeal avenue on a point of law and stresses that the AAB is intended to be a general administrative appeals board with simple procedures to deal with matters before it in an expedient and inexpensive manner. The setting up of an elaborate system of referral to the court on application by the parties involved would delay the final disposal of the matter and push up the costs of the proceedings. The Administration further assures Members that the emergent rule relating to judicial review is that nearly all errors of law are reviewable. This being the case, it would be most unlikely

for a person aggrieved by a decision of the AAB involving an error of law to be left in the position of having no remedy. The creation of a right of appeal in addition to the avenue of judicial review could create problems as to which avenue is appropriate in any particular case; a person aggrieved by a decision of the board might be required to pursue an appeal on a point of law before being allowed by the courts to pursue a claim for judicial review. Given these assurances, the majority of Members accepted the Administration's reasons for not creating an additional right of appeal in respect of a point of law in addition to the possibility of judicial review. However, in order to allay fears that the chairman can arbitrarily refuse to refer a point of law to the Court of Appeal, Members and the Administration agreed to delete the words "on the recommendation of the Chairman" from clause 24 so as to confer the decision on the board as a whole rather than the chairman alone. I will move the necessary amendment during the Committee stage.

Mr President, 25 pieces of legislation in which decisions made under them are appealable to the Governor in Council are specified in the Schedule to the Bill so that these decisions would be appealable in the future to the board instead. It is the intention of the Administration to keep the operation of the board under review and to consider substituting the Governor in Council as an appellate body by the board in due course. Moreover, if the operation of the board proves to be successful, it may gradually replace some other appeal boards now in existence.

As the board will conduct its hearings in public, and the appellant will have the right to attend or be represented by counsel, the enactment of this Ordinance will allow a more open and uniform appeal procedure to be introduced in the hearing of administrative appeals by an independent appeal board. May I stress once again the key words "open", "uniform", "independent". It must now be transparent that the key intention of the Bill is to substitute appeals to the Executive Council by a transparent, fair and judicial procedure so that justice is not merely done but is seen to be done.

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

DR LAM KUI-CHUN: Mr President, the Administrative Appeals Board Bill seeks to provide an open, unified, and independent channel of appeal against government decisions on affairs affecting the public. It unloads these matters from the Executive Council so that the Council can concentrate more on policy matters for Hong Kong. The Bill deserves the support of the Legislative Council.

In anticipation of its future work, supplemental to the Honourable Andrew WONG's summary of the deliberations of the Bills Committee, I wish to highlight the following points:

- (1) For the Administrative Appeals Board to function properly, its decisions must be final. No higher authority, whether in the High Court or the Court of Appeal, must be available to overturn the board's decisions. I am glad that this is the provision within this Bill. Otherwise, as experience in the Urban Council and the Municipal Services Appeals Board shows, further appeals will be lodged higher up the ladder of authority until the final venue of appeal is reached, and all decisions of lower ranks will become a total waste of time.

In spite of the above, to ensure full justice, judicial review should be available where a procedure in hearing is perceived to run counter to natural justice. Caution is needed in this practice. Experience in the Immigration Tribunal shows that such an avenue may be abused by appellants who have everything to gain and nothing to lose by further action, and such a practice is frequently facilitated — sometimes even engineered — by the Legal Aid Department, often at great cost to the taxpayer. The Government should keep the situation under constant monitor.

- (2) Appellants should be aware that decisions of the board are alternative decisions on the issues, and neither prove nor hint that prior decisions of the Administration are necessarily wrong. Thus, decisions of the board do not entail questions of competence of the Administration or of compensation due to administrative error. For this reason, I agree with the Administration that if different decisions are reached by the Administration and the board, the board should not have the power to award compensation to the appellant for losses that may have been incurred from the Administration's decisions. If the appellant wishes to complain against the Administration, the proper channel should be COMAC. If he seeks compensation, he should approach the courts of law.
- (3) The Bill strikes at the heart of the Government's decision-making process. The board so formed must not function as an alternative centre of administrative power that makes a mockery of the competence of the Administration, and neither should the board be seen to side with the Government in any situation. Further, the board must not attempt to alter government decisions to build up a power base for itself or for a particular sector of society.

Thus, it is of utmost importance that members of the board are of impeccable integrity, of high intellectual capability, and are free from conflicts of interests. A spread of expertise to cover the wide range of departments involved will be desirable.

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

CHIEF SECRETARY: Mr President, I am most grateful to the Honourable Andrew WONG and other Members of the Bills Committee for the careful consideration given to the Bill, and for the amendments proposed.

The Bill seeks to provide for a more structured and uniform system to deal with certain administrative appeals through the establishment of an independent Administrative Appeals Board. The board will conduct hearings in public except in special circumstances. The appellant will have the right to attend and be represented at hearings. The board will be required to state in writing the reasons for its decisions. These arrangements will not only improve the transparency of the determination of appeals, but will also enhance the quality of the administration of justice. I am pleased that these underlying principles have the support of the Bills Committee. There were nonetheless some aspects of the Bill which were the subject of discussion at the Bills Committee stage. I will deal with the major points here.

Scope of the Board

Our intention is that initially the board should only deal with relatively general and simple appeals, including miscellaneous licensing and registration appeals. This will give the board time to establish itself and to build up expertise. While some Bills Committee members would like to expand the scope of the board, we believe that we should set up the appeal mechanism first, with provision for additions later on. To allow room for expansion, clause 4 of the Bill enables the Governor in Council to extend the jurisdiction of the board by order.

Secretary's power

Some Bills Committee members have expressed concern that the appointment powers of the Secretary to the board might be too wide. The proposal that the Secretary should be empowered to appoint an acting chairman during the chairman's absence and to decide which persons on the panel should be board members in any particular case was intended to ensure the smooth running of the board. However, we have accepted the views of Bills Committee members that the powers of the Secretary should be limited. Thus, we have agreed to add a general provision in clause 7 providing that the secretary shall, in exercising his function under the Ordinance, comply with any directions given by the chairman of the board. In addition, given the board chairman is to be appointed by the Governor, we agree that it would be more logical to vest the power to appoint an acting chairman in the Governor as well.

Power to recommend/award ex gratia payments

The question of whether the board should be given the power to award or recommend *ex gratia* payments to a successful appellant has also been considered carefully. As the Honourable Andrew WONG has pointed out, the Administration takes the view that any recommendation on public expenditure

should come from the Administration and be approved by the legislature. It would therefore be inappropriate for the board, whose sole purpose is to hear appeals against administrative decisions, to recommend or award *ex gratia* payments. Nonetheless, to address this point, we agree that the Board should be given the power to refer matters back to the respondent, that is, the original decision maker, for consideration. These matters could cover the question of *ex gratia* payments, if deemed appropriate by the board.

Claiming of privileges

Some Bills Committee members have pointed out that not only the respondent, but also the appellant, should be entitled to claim privileges in respect of disclosure of information. This is a valid point and we agree that clause 14 should be amended accordingly.

Referral to the Court of Appeal

It has been suggested that the board should be allowed to refer questions of law arising in the course of an appeal to the Court of Appeal on application by a party to the appeal. We believe, however, that it is undesirable to allow the Court to intervene in the appeal proceedings. Moreover, the setting up of a detailed referral mechanism is likely to delay the handling of the appeal and could lead to delaying tactics.

Further appeal avenue

The Bills Committee has also considered the proposal that a right of appeal to the Court on a point of law after the determination of an appeal should be provided. We should, however, not lose sight of the fact that the Administrative Appeals Board is intended to be a general appeals board with simple procedures to deal with matters before it expeditiously and in a cost-effective manner. Therefore we do not consider it necessary or desirable to provide a further right of appeal. The remedy of judicial review should be adequate to cater for any errors of law committed by the board.

Publicity

Subject to the passage of the Bill by this Council, the relevant branches and departments will be asked to draw potential appellants' attention to the right of appeal to the Administration Appeals Board. This information may be included in, for example, the notice of a decision given by an administrative authority.

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

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).

COMMODITIES TRADING (AMENDMENT) BILL 1993

Resumption of debate on Second Reading which was moved on 15 December 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).

SECURITIES (AMENDMENT) BILL 1993

Resumption of debate on Second Reading which was moved on 15 December 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).

Committee stage of Bills

Council went into Committee.

ADMINISTRATIVE APPEALS BOARD BILL

Clauses 1 to 3, 5, 9, 11, 16, 19, 20, 22 and 26 to 60 were agreed to.

Clauses 4, 6 to 8, 10, 12 to 15, 17, 18, 21 and 23 to 25

MR ANDREW WONG: Mr Chairman, I move that the clauses specified be amended as set out in the paper circulated to Members.

Clause 4(3)(e) is amended to make clear that the power of the Governor in Council to amend an Ordinance is confined to the circumstances listed in the

subclauses that follow which are specific to the Bill and such amendment conforms with the legislative intent.

In order to put the Secretary's power under control, clause 7 is amended to add a new subclause to the effect that the Chairman of the AAB may give such directions as he thinks fit to the Secretary with respect to the exercise of the Secretary's functions and that the Secretary shall comply with any direction so given.

Clause 8(1) is amended to vest the power to appoint a deputy chairman to act as chairman during the latter's absence on the Governor and not the Secretary.

Clause 10 is amended to add deadlines for the Secretary to serve notice of appeal on the respondent and any person, other than the appellant, who appears to the Secretary to be an affected party.

Clause 14 is amended to add a new subclause to allow the appellant as well as the respondent to have a right to claim privileges in respect of disclosure of information as if the proceedings before the AAB were proceedings before a court of law.

A new subclause under clause 21 is added to empower the board to order the case in question to be referred back to the respondent for consideration of such matters, such as the award of *ex gratia* payment, as the Board may order.

Clause 24 is amended to delete "on the recommendation of the Chairman". This will enable the board, as a whole instead of the Chairman alone, to refer any question of law arising in the appeal to the Court of Appeal for determination by way of case stated.

The other amendments, including those to the Chinese text of the Bill, are minor technical or editorial amendments for the purpose of clarifying the meaning and maintaining consistency.

Mr Chairman, I beg to move.

Proposed amendments

Clause 4

That clause 4(3)(e) be amended, by deleting "to -" and substituting "to, and only so as to -".

Clause 6

That clause 6(6) be amended, by adding "及金額" after "酬金".

Clause 7

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

"7. Secretary

- (1) There shall be a Secretary to the Board who shall be appointed by the Governor.
- (2) The Chairman may give to the Secretary such directions as he thinks fit with respect to the exercise of the Secretary's functions under this Ordinance, either generally or in any particular case; and the Secretary shall comply with any direction so given."

Clause 8

That clause 8(1) be amended, by deleting "Secretary" and substituting "Governor".

Clause 10

That clause 10 amended, by deleting the clause and substituting —

**"10. Secretary to serve notice
of appeal on respondent**

The Secretary shall serve a copy of a notice lodged with him under section 9 on -

- (a) the respondent within 14 days after a notice of appeal is so lodged, or such longer period as the Chairman, on application, may allow in any particular case; and
- (b) any person, other than the appellant, who appears to the Secretary to be a person who -
 - (i) is bound by the decision appealed against; or
 - (ii) before the decision appealed against was made, had made representations to the respondent in relation to the subject-matter of that decision,

within 28 days after a notice of appeal is so lodged, or such longer period as the Chairman, on application, may allow in any particular case."

Clause 12

That clause 12 be amended, in the Chinese text, by deleting subclause (2) and substituting —

"(2) 根據本條送達的通知具有效力，猶如通知是主席的合法命令、規定或指示一樣".

Clause 13

That clause 13 be amended, in the Chinese text, by deleting subclause (2) and substituting —

"(2) 根據本條送達的通知具有效力，猶如通知是主席的合法命令、規定或指示一樣".

Clause 14

That clause 14 be amended, by deleting the clause and substituting —

"14. Privilege against disclosure

(1) A respondent shall, for the purposes of an appeal, have the same privileges in respect of disclosure of information, particulars and documents as if the proceedings were proceedings before a court of law; and the Board may, on the application of the appellant or of any person of the description mentioned in section 11(1)(a), give directions relating to -

- (a) the disclosure to the appellant or to any such person of any information, matter or particular referred to in section 11 or 12; or
- (b) the provision or the production to the appellant or to any such person of a document or part of a document or a copy of a document or a copy of part of a document referred to in section 11 or 13; or
- (c) the inspection by the appellant or by any such person of any such document, copy or part.

(2) An appellant and any person of the description mentioned in section 11(1)(a) shall, for the purposes of an appeal, have the same privileges in respect of disclosure of information, particulars and documents as if the proceedings were proceedings before a court of law; and the Board may, on the application of any of the parties to the appeal, give directions relating to -

- (a) the disclosure to any such party of any information, matter or particular referred to in section 12; or
- (b) the provision or the production to any such party of a document or part of a document or a copy of a document or a copy of part of a document referred to in section 13; or
- (c) the inspection by any such party of any such document, copy or part.

(3) The Board shall not give directions under this section without affording the party in respect of whom the directions are to be given an opportunity to make representations to it.

(4) For the purposes of this section, the question, in any particular case -

- (a) as to whether the Board should give directions under this section; and
- (b) where the Board gives directions, as to whether those directions were properly given,

shall be a question of law."

Clause 15

That clause 15 be amended, by deleting "Secretary to issue a notice in writing under section 21(1)(c)" and substituting "Board to issue a notice in writing".

Clause 17

That clause 17(3) be amended, by deleting "any of those parties and any claim by the respondent as to privilege" and substituting "and any claim as to privilege by any of those parties".

That clause 17(4) be amended, by deleting "the respondent" and substituting "any party".

Clause 18

That clause 18 be amended, by deleting "counsel" and substituting "a barrister".

Clause 21

That clause 21 be amended, by adding —

"(3) The Board, on the determination of any appeal, may order that the case being the subject of the appeal as so determined be sent back to the respondent for the consideration by the respondent of such matter as the Board may order."

Clause 23

That clause 23 be amended, by deleting "and in the case of an equality of votes the Chairman shall have a casting as well as a deliberative vote".

Clause 24

That clause 24 be amended, by deleting "述要" wherever it appears and substituting "呈述".

That clause 24(1) be amended, by deleting ", on the recommendation of the Chairman,".

Clause 25

That clause 25(1) be amended, by adding "根" before "據的證據".

Question on the amendments proposed, put and agreed to.

Question on clauses 4, 6 to 8, 10, 12 to 15, 17, 18, 21 and 23 to 25, as amended, proposed, put and agreed to.

Schedule

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

The amendment to column 3 of the schedule is to give a brief description of the types of administrative decisions which are within the purview of the AAB so that members of the public will find in the schedule enlightening descriptions rather than baffling numbers of the relevant Ordinances.

Mr Chairman, I beg to move.

*Proposed amendment***Schedule**

That schedule be amended, by deleting the Schedule and substituting —

"SCHEDULE

[ss. 3, 4 & 22]

Item	Ordinance	Decision
1.	Apprenticeship Ordinance (Cap. 47)	A decision of the Director of Apprenticeship or any public officer in the performance or exercise of any function, duty or power under the Ordinance.
2.	Boilers and Pressure Vessels Ordinance (Cap. 56)	The revocation or suspension of an appointment as a boiler inspector, air receiver inspector or pressurized fuel container inspector under section 5A.
3.	Employment Ordinance (Cap. 57)	A decision of the Commissioner for Labour under section 53(1) to refuse to issue or renew or to revoke a licence to operate an employment agency.
4.	Factories and Industrial Undertakings Ordinance (Cap. 59)	(a) An exemption by the Commissioner for Labour under section 7(4) of an industrial undertaking from any regulation. (b) An order by the Commissioner for Labour under section 7(4), for an industrial undertaking to adopt special precautions in addition to any precautions required by any regulation.

Item	Ordinance	Decision
		<p>(c) Under section 9A -</p> <ul style="list-style-type: none"><li data-bbox="976 387 1334 611">(i) the issue by the Commissioner for Labour of a prohibition notice in respect of a notifiable workplace;<li data-bbox="976 656 1289 801">(ii) a refusal by the Commissioner for Labour to cancel a prohibition notice;<li data-bbox="976 846 1289 1070">(iii) the giving by the Commissioner for Labour of any direction upon the cancellation of a prohibition notice.
5.	Quarries (Safety) Regulations (Cap. 59 sub. leg.)	<ul style="list-style-type: none"><li data-bbox="916 1120 1334 1344">(a) A refusal by the Commissioner for Labour to approve any person as a supervisor or deputy supervisor under regulation 4(1) or 6(1).<li data-bbox="916 1388 1334 1615">(b) A withdrawal by the Commissioner for Labour of his approval of a supervisor or deputy supervisor under regulation 10(1).
6.	Factories and Industrial Undertakings (Safety Officers and Safety Supervisors) Regulations (Cap. 59 sub. leg.)	<ul style="list-style-type: none"><li data-bbox="916 1659 1334 1845">(a) A refusal by the Commissioner for Labour to register a person as a safety officer under regulation 7.<li data-bbox="916 1890 1334 2074">(b) The cancellation by the Commissioner for Labour of a person's registration as a safety officer under regulation 9.

Item	Ordinance	Decision
		(c) The suspension by the Commissioner for Labour of a person's registration as a safety officer under regulation 10.
7.	Weights and Measures Ordinance (Cap. 68)	A decision of the Commissioner, as defined in section 2, or of an authorized officer which is taken in the exercise or performance of any function under the Ordinance.
8.	Miscellaneous Licences Ordinance (Cap. 114)	The decision under section 5 of any officer authorized to issue a licence under the Ordinance as to the grant of a licence, the renewal of a licence or the revocation of a licence.
9.	Acetyllating Substances (Control) Ordinance (Cap. 145)	A decision of the Commissioner, as defined in section 2(1), under the Ordinance, relating to – (a) the issue of a licence or permit; (b) the refusal to issue a licence or permit; (c) the cancellation or suspension of a licence or permit; (d) the cancellation or variation of any condition or the specification of a new condition in a licence or permit.

Item	Ordinance	Decision
10.	Gambling Ordinance (Cap. 148)	The decision under section 22 of the Commissioner for Television and Entertainment Licensing as to the grant of a licence, the renewal of a licence, the imposition of conditions of a licence or the cancellation of a licence.
11.	Chinese Temples Ordinance (Cap. 153)	(a) The refusal by the Chinese Temples Committee under section 4 to grant an exemption from section 4(1). (b) The withdrawal by the Chinese Temples Committee under section 4 of an exemption granted under section 4(1).
12.	Weapons Ordinance (Cap. 217)	A decision of the Commissioner of Police under section 9(1) to order the delivery up to him or seizure of any martial arts weapon.
13.	Travel Agents Ordinance (Cap. 218)	A decision of the Registrar of Travel Agents - (a) to refuse to grant a licence under section 12(1); (b) to impose conditions on a licence under section 11(1) or 18; (c) to refuse consent to a change of ownership or control under section 18(c); (d) to suspend or revoke a licence under section 19.

Item	Ordinance	Decision
14.	Firearms and Ammunition Ordinance (Cap. 238)	(a) A decision of the Commissioner of Police refusing to grant a licence under section 30 or to renew a licence under section 32. (b) A decision of the Commissioner of Police, under section 33, cancelling a licence or varying or revoking any condition attached thereto or adding any further condition or deleting any premises from a dealer's licence at which business may be carried on. (c) The imposition of a condition of licence which is considered to be unreasonable.
15.	Massage Establishments Ordinance (Cap. 266)	A decision of the licensing authority under section 6, 7, 8 or 9.
16.	Grant Schools Provident Fund Rules (Cap. 279 sub. leg.)	A question of interpretation or application of the Rules.
17.	Subsidized Schools Provident Fund Rules (Cap. 279 sub. leg.)	A decision of the Board under the Rules.
18.	Mining Ordinance (Cap. 285)	The cancellation of an Authorized Buyer's Licence under section 41.

Item	Ordinance	Decision
19.	Mining (General) Regulations (Cap. 285 sub. Leg.)	A decision of the Commissioner of Mines under regulation 30(4A)(a) specifying the rate per tonne at which royalty shall be payable in respect of minerals and the period for which it shall be payable.
20.	Dangerous Goods Ordinance (Cap. 295)	A decision under section 9 of an officer authorized under the Ordinance to issue a licence - (a) to refuse to grant a licence; (b) to refuse to renew a licence; or (c) to revoke a licence.
21.	Dangerous Goods (General) Regulations (Cap. 295 sub. leg.)	Prohibiting or imposing conditions on the continued use of a storage tank under regulation 127.
22.	Business Registration Ordinance (Cap. 310)	An assessment of a business registration fee under section 3(4) or 9(5).
23.	Motor Vehicles (First Registration Tax) Ordinance (Cap. 330)	A decision of the Commissioner for Transport under the Ordinance.
24.	Animals (Control of Experiments) Ordinance (Cap. 340)	A refusal to issue a licence, endorsement or permit under section 7, 8, 9, 10 or 14.
25.	Chinese Permanent Cemeteries Rules (Cap. 1112 sub. leg.)	A decision of the Board of Management of the Chinese Permanent Cemeteries not to withdraw a notice in rule 12(2) regarding reversion of a subscriber lot to the Board.

Item	Ordinance	Decision
		<p>Note: The Board of Management of the Chinese Permanent Cemeteries is specified for the purposes of section 22(5) of this Ordinance.</p>

Time within which appeals are to be made

An appeal under any item mentioned in this Schedule shall be made within 28 days after receipt of notice of the decision to which the appeal relates."

Question on the amendment proposed, put and agreed to.

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

COMMODITIES TRADING (AMENDMENT) BILL 1993

Clauses 1 to 3 were agreed to.

SECURITIES (AMENDMENT) BILL 1993

Clauses 1 and 2 were agreed to.

Council then resumed.

Third Reading of Bills

THE ATTORNEY GENERAL reported that the

ADMINISTRATIVE APPEALS BOARD BILL

had passed through Committee with amendments and the

COMMODITIES TRADING (AMENDMENT) BILL 1993 and

SECURITIES (AMENDMENT) BILL 1993

had passed through Committee without amendment. He moved the Third Reading of the Bills.

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

Bills read the Third time and passed.

Members' motions

PRESIDENT: I have accepted the recommendations of the House Committee as to time limits on speeches for the motion debates and Members were informed by circular on 24 January. The mover of the motion will have 15 minutes for his speech including his reply and another five minutes to reply to proposed amendments. Other Members, including movers of amendments, 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.

MID-TERM REVIEW OF THE LONG TERM HOUSING STRATEGY

DR CONRAD LAM moved the following motion:

"That this Council urges the Housing Authority to take heed of the views expressed by this Council and the public on the Report on the Mid-Term Review of the Long Term Housing Strategy, and to formulate on the basis of the views so taken a housing policy which is able to address the housing needs of the general public in Hong Kong."

DR CONRAD LAM (in Cantonese): Mr President, I move the motion standing in my name on the Order Paper. On 6 May 1992, during a debate in this Council on the Long Term Housing Strategy, the Secretary for Planning, Environment and Lands noted that the housing policy laid down by the Government in 1986 had six basic objectives:

- (1) to ensure adequate housing at an affordable price or rent for all households;
- (2) to satisfy the growing demand for home purchase;
- (3) to ensure the timely provision of housing to meet demand;
- (4) to improve living conditions by redeveloping sub-standard older public and private housing;
- (5) to ensure the most effective use of both public and private sectors in housing production; and

- (6) to ensure the efficient use of public resources by relating housing subsidy to need.

These policy objectives were formulated many years ago. But they have not been backed up with concrete action. The results have been barely acceptable. In today's motion debate, Members from the United Democrats of Hong Kong (UDHK) will tackle the subject from various perspectives: Rev FUNG Chi-wood and I will speak on home ownership; Mr Albert CHAN will discuss the problems in the re-development of public housing estates generally; Mr CHEUNG Man-kwong will show how runaway property prices are making it difficult for people of the middle and lower social strata to buy homes; Dr HUANG Chen-ya will discuss pre-conditions for the introduction of type II public housing; Mr LEE Wing-tat will talk about land shortages and long waiting lists; and Dr YEUNG Sum will give his observations on the existing private sector oriented housing strategy and explain why it is of no use at all for solving the housing problem. I will then wrap up the UDHK's proposals.

Mr President, in moving the motion today, my purpose is to express a hope that the Housing Authority will listen to, and heed, the views expressed and then lay down a housing policy that is really able to address the housing needs of the general public. Is the existing housing strategy effective in solving the housing problem? The answer ought to be clear to us, if we care to take a look at the members of the public who are now standing outside this Council. A person who applied for public housing in urban areas during the period from 1987 to 1992 had to wait 10 to 12 years. Even an applicant for public housing in Tuen Mun or Yuen Long had to wait three to five years. The waiting time would be even woefully longer in the case of single persons.

The Housing Authority at present is unable to supply 1 000 units a year, though the applicants who have waited at least 10 years number in the tens of thousands. To a low-income applicant, it seems to be asking too much to be assigned an urban public housing unit.

Where Home Ownership Scheme (HOS) housing is concerned, the successful rate of white form applicants is 5% in the last two rounds of lottery. The Housing Authority has just changed the ratio of apportionment between green form users and white form users from 1:1 to 2:1. This means that white form applicants now stand even a slimmer chance of being drawn on the lottery. Suppose that a person submits an application to try his luck each time when a lottery is held. In terms of probability, he may have his wish answered the 15th or even the 30th time around. Given that HOS housing is put on the market three times a year, generally speaking, he may probably get his unit after applying every time for 10 consecutive years. If he is out of luck, he probably will not get his unit even after applying every time for 20 consecutive years.

There is a Chinese saying that "the worldly affairs would undergo drastic changes with the passage of a decade". Unfortunately for the low-income people

of Hong Kong, many of them, though having gone through a lot of changes during the past 10 years, are still hard pressed by high rental level in private housing. It is increasingly hard for them to be assigned public housing units or to buy HOS housing units. Meanwhile, drastic changes have taken place over the same period in the private property market with property prices doubled and redoubled. The property price is now 5.5 times what it was 10 years ago. Evidently, the present housing strategy is a failure. It has been ineffective in arresting the sharp increases in private housing prices. It has failed to meet people's needs of public housing and now those in need of public housing or HOS housing will have to wait for eight or 10 years.

The Housing Authority's present review is neither a review of the objectives of the existing housing strategy nor a review of the private sector oriented policy. It is a strategy review in name. It reinforces the existing privatization policy, by seeking to put public housing units on sale. I think that the Government is using stick and carrot tactics to advance its policy goal of encouraging home ownership among members of public. I think so for the following reasons:

- (1) The Long Term Housing Strategy of 1987 encourages home ownership but does not set any ratio. The present mid-term review of this strategy has practically given substance to what the Governor said in his 1992 policy address that the target was for nearly 60% of all households to own their homes by 1997. However, government officials have never explained why the target is for 60% of all families to own their homes by 1997. Why not, say, 50% or 70%?
- (2) Public housing has deliberately been made less attractive in order to depress the demand for public housing. The Housing Authority has stated that those sitting tenants of public housing units who decline to buy type II public housing units may be moved to vacant units in remote and less popular locations and be subjected to harsher lease terms or have to accept rent increases of some size. Such discriminatory and punitive measures against the sitting tenants evince the Government's to make them buy their homes.
- (3) Income ceilings for those who are eligible for public housing or HOS housing are set at a low level to disqualify many who need these kinds of housing so that they are not even given a chance to apply for public sector housing. As a result, the demand for private sector housing will of course rise.
- (4) The production of public housing units is bridled. People have to wait many years before they will be assigned public housing or HOS housing. This indirectly presses them to buy homes in the private property market.

- (5) The Government has taken no effective action against property speculation even though property prices have been soaring. Residential property has now become more useful as investment than as homes. This certainly fuels speculation. Members of lower and middle income groups, with inflation eating into their savings as they can only earn insignificant bank interests, have to rush to buy property as a hedge against inflation.
- (6) For the eight financial years from 1993-94 to 2000-01, the projected demand for private sector housing is 138 000 units or 17 000 units a year on average. However, under the Long Term Housing Strategy, the Government projects the annual demand for private sector housing at 35 000 units. The over-statement gives the Government an excuse to prop up property prices. The Housing Authority will also be able to resuscitate the dying Home Ownership Loan Scheme. This propping up of property prices would be carried out on a massive scale and on a long term basis as well.

Evidently, the existing housing policy is to do everything possible to depress the demand for public housing and at the same time to increase interests in home ownership. This is a disguised way to force people to buy their homes and is no real solution to people's housing problem. Such being the case, the purpose of my motion is to urge the Housing Authority to formulate a housing policy which is really able to address the housing needs of the general public, and this objective should be accorded first priority. I want to stress that the demand for places to live is not the same thing at all as the demand for home ownership. I hope that the Housing Authority will not promote home ownership exclusively.

Mr President, I have the following suggestions to make:

- (1) Through the Land Commission, discussions should be held with the Chinese side about increasing land supply.
- (2) Action should be taken against property speculation. One way is to start collecting a capital gains tax on property transaction.
- (3) The private sector oriented Long Term Housing Strategy should be replaced by a strategy with public housing and HOS housing playing a dominant role.
- (4) Transport links between Hong Kong and our neighbour should be improved. A specific study should be made on how our neighbour could support Hong Kong with its land resources.

The UDHK always think that Hong Kong's housing problem can be solved only by a huge public sector housing scheme, a scheme in which public housing and HOS housing play a dominant role. The UDHK think that, from now until

year 2001, the supply of rental public housing should exceed the supply of HOS housing. Therefore, we accept Mr Frederick FUNG's amendment.

With these remarks, I move the motion.

Question on Dr Conrad LAM's motion proposed.

PRESIDENT: Mr K K FUNG has given notice to move an amendment to the motion. His amendment has been printed in the Order Paper and circulated to Members. I propose to call on him to speak and to move his amendment now so that Members may debate the motion and the amendment together.

MR FREDERICK FUNG moved the following amendment to Dr Conrad LAM's motion:

"To delete all the words after "That this Council urges the Housing Authority" and substitute ", in formulating its recommendations in the Report on the Mid-Term Review of the Long Term Housing Strategy, to adopt the public rental housing oriented approach in the provision of public sector housing so as to solve the housing problems of the middle and lower social strata.""

Mr FREDERICK FUNG (in Cantonese): Mr President, I move that Dr Conrad LAM's motion be amended as set out in the Order Paper.

My speech will consist of two parts. Firstly, I consider that Dr LAM's motion which seeks to evaluate and formulate our future housing policy on the basis of the public's comments on the *Report on the Mid-Term Review of the Long Term Housing Strategy* is inappropriate in approach. As we all know, the Housing Authority had published a lot of consultation papers over the past years. Here are some papers for our reference. For papers of smaller size, the Housing Authority will print 100 000 copies each whereas for papers of bigger size with data, more than 10 000 copies each will be printed and made available to the public on request. But the *Report on the Mid-Term Review of the Long Term Housing Strategy* is available only in photostat copies, and not many copies are available to the public. I learnt from the Housing Department that only about 1 900 photostat copies have been made, of which 142 copies were distributed to organizations and private individuals, 627 copies to district boards and 1 167 copies to mutual aid committees. From the number of copies of report distributed, we can see that the feedback that will be obtained in future will, to a great extent, be confined to the views of certain people. While we cannot say that these people are not representative, we can at least say that there has not been a full consultation. I therefore consider that the basis of formulating policies in the light of the findings of the consultation is very weak.

On the other hand, the report has, in fact, provided a lot of data showing the current housing situation, the demand and supply for housing, and the options recommended to us by the Housing Department for the next seven years. I consider that such data and the data I got from the Census and Statistics Department have already given us a rough idea on the future supply and demand situation. I consider that it is indeed an appropriate way to make suggestions to the Housing Authority in the light of such data and situations.

Secondly, I think that Dr LAM's motion itself is a neutral one. In fact, the Housing Authority will take the Council's proposal in the light of the wording of the endorsed motion. Members' speeches will be for consideration only and will not be treated as the views of the Council. I think that if my amendment can give the Housing Authority and the Housing Department a clear picture of what the Council expects them to do in the coming years, especially in the run-up to 1997, it is more appropriate to move the amendment now in the last few days of the consultation period. Therefore, I consider that it is necessary to move this amendment to the motion so that as soon as the amendment is passed, we can give the Housing Authority a clear picture of our proposal.

Next, I would like to talk about why, in my opinion, my amendment merits your consideration, and also the ways to address housing problems in the run-up to 1997 as proposed in the report on the mid-term review, especially the ways to deploy resources. The analysis below is based on the data provided in the report on mid-term review and the data I got from the Census and Statistics Department. First of all, I would like to draw your attention to two figures used by the Housing Authority in addressing housing problems. The first figure is the number of public rental housing units required in the coming four or five years, that is up to 1997 or 1998. According to the data provided in the report (that is the number of applicants on the waiting list of public housing to be attended to and the number of persons to be rehoused due to clearance and redevelopment in relation to the future supply of housing units and vacant units), there will still be a shortfall of 16 600 housing units. The second point is that, according to our information obtained from the Census and Statistics Department (the latest information covers the third quarter of 1993), and by the Housing Authority's standard, a family of four living in a private flat of 40 sq m pays an average rental of \$6,900 a month. The median income of such families is \$13,000. In relation to their incomes, their rental expenses represent nearly half of their incomes and are therefore a very heavy burden to them. In this connection, the income ceiling for public housing applicants, that is \$11,400 per month for four-person families, may in fact be inappropriate. This means that the relevant proposals may have inhibited the demand. In other words, the actual demand for public housing may be more than 16 600 units.

There are several questions in this connection. Firstly, during a review on the waiting list in the recent year, the Housing Department trimmed down the number of applicants on the waiting list from 170 000 to 120 000. It was estimated that there were only 77 000 families really in need of public housing and they will be allocated public housing units

Secondly, I see that there are three kinds of income ceilings for the purpose of means test, that is income ceilings for people in the sandwich class, for Home Ownership Scheme (HOS) housing applicants and for applicants on the waiting list of public housing. However, of these three kinds of income ceilings, the one for applicants on the waiting list of public housing is the harshest. As we can see, the sandwich class will have up to 95% of its members subsidized but only less than one-third of the applicants on the waiting list of public housing will be allocated public housing units. Is the less than one-third proportion an appropriate figure? Now that property prices and rents are quite high, should help not be given to rehouse 50% of the applicants on the waiting list? This is the question to be addressed.

Lastly, we can see that the ratio of public housing to HOS housing was 1:2 over the past seven years, meaning that there was one public housing unit for every two HOS housing units. In absolute terms, there were 120 000 public housing units compared with 230 000 HOS housing units. However, for the next seven years, the ratio will be 1:1, that is 170 000 public housing units compared with 170 000 HOS housing units. We see that while the demand is on the increase, the supply is dwindling. What are the reasons for this?

The report proposes the provision of Type II HOS housing, that is to convert some public rental units to HOS housing units for sale. This will make the demand for public housing even more pressing. Therefore, I consider that the proposal is questionable.

In view of this, I have five proposals to put forward:

Firstly, I hope that the Housing Authority will cater mainly to the housing needs of the middle and lower social strata and stick to the public housing oriented policies in the provision of public housing.

Secondly, public rental housing should take priority over other public housing in addressing the housing problem of the middle and low income social strata.

Thirdly, the ratio of public housing to HOS housing should be changed to 2:1.

Fourthly, resources for redevelopment areas should not be used on Type II HOS housing. Only resources for HOS housing or newly allocated resources should be used on this type of HOS housing.

The buzzer sounded a continuous beep.

PRESIDENT: Mr FUNG, you have to stop.

Question on Mr Frederick FUNG's amendment proposed.

MRS SELINA CHOW (in Cantonese): Mr President, the Housing Authority in October last year completed its *Report on the Mid-Term Review of the Long Term Housing Strategy*. The report is a comprehensive re-evaluation of the housing policy. The Liberal Party supports any initiatives to meet the housing needs of the public.

We felt at first that Dr Conrad LAM's original motion was more objective, reasonable and balanced. To our surprise, Dr LAM's speech gave us the impression that he and his colleagues of the United Democrats of Hong Kong (UDHK) had switched to supporting Mr Frederick FUNG's amendment. This has now put us in some kind of a dilemma. We usually do not have many occasions for supporting the UDHK's position. Nor does the UDHK want our support. As for Mr FUNG's amendment, it does not appear to be comprehensive enough. Nor does it look at our housing problem from an overall perspective. The amendment is definitely quite one-sided. For instance, concerning the supply of public sector housing, Mr FUNG says that "to adopt the public rental housing oriented approach so as to solve the housing problem of the middle and lower social strata". He seems to suggest that members of the middle and lower income groups generally do not want, nor have financial means, to be home owners. We feel that this assumption may not be tenable. We will come back to it later. Mr FUNG said something about the consultation process. He took me by surprise, for he is a member of the Housing Authority and he in fact took part in the preparation of the report. If he found the consultation process defective, I wonder why he did not try to have it remedied within the Housing Authority. Mr FUNG just now mentioned the question of direction. He says that his amendment shows the way forward. Yet I think he is biased and his amendment shows only one way forward. He misses some of the other important things mentioned in the mid-term review report, such as land supply and the projected changes in the public sector housing development scheme. We may have found his amendment more deserving of our support if he had shown the way forward in various aspects. It cannot be denied that, in terms of evaluation of the mid-term review report, Mr FUNG's amendment is not as constructive as the original motion. His amendment, if not diametrically opposed to the thinking of our party, somewhat differs from our position.

The Liberal Party always thinks that the ultimate goal of the Government's housing policy should be to make it possible for everybody who needs a home to become a home owner. It should seek to give everybody a chance to own his home and to realize his dream of becoming a home owner. This is in fact the dream of most people. From the Government's point of view, home ownership is the best way to strengthen the sense of community belonging and the sense of responsibility on the part of members of the public. In any capitalist society where home ownership is encouraged, private property is also respected. One's sense of belonging in a community is strengthened more by one's investment in real estate, such as residential property, than by one's investment in movables, such as stocks and foreign currencies. If the residential property is one's own home, so much the better. Home ownership to be

promoted in the form of a policy is certainly conducive to the individual's loyalty to the community; it also enhances the community's prosperity and stability. I wish to stress one point. Housing problem is not confined to the middle and lower social strata. Nor is the Home Ownership Scheme (HOS) any imperial edict which middle and lower social strata must obey. HOS is in fact as much an option for them as it is also for other members of the community. Accepting it or not is up to the individual, depending on his needs and means. If it is decided at the outset that rental public housing should play the dominant role so as to solve the housing problem of the middle and lower social strata, will this not indirectly deprive them of the freedom of choice, which is within their basic right? In this connection, we think that the original motion is more balanced and allows more options to all social strata and enable members of the public to make the right choice warranted by their own circumstances.

Here, the Liberal Party urges the Housing Authority to reconsider its scheme to offer public housing units for sale and to work out some arrangements more attractive to sitting tenants. Many times in the past, the Liberal Party, acting on our own initiative, lobbied the Government and the Housing Authority to accept our suggestion to sell public housing units to sitting tenants at a price equal to the original construction cost plus interest, that is, at a price equal to 100 times the monthly rental. The proceeds from the sales can be re-invested in building more public housing units and HOS housing units for those who need them badly and for the eligible applicants on the Waiting List for years. It is hoped that more could have their dream of resettlement achieved.

We think that the Housing Authority should not abandon the public housing sales scheme simply because the sales have so far not been successful. The problem with the past sales is that too much thought was given to pricing, while the more important consideration with regard to what price level would be acceptable to prospective buyers was neglected. In fact, the success of such a sales plan hinges on commercial considerations. If the price is not attractive enough to the prospective buyers, that is, the sitting tenants who are paying low rents, or if there are harsh restrictions on resale, no deals will be made.

Last night, a Mrs LI from the Kwai Fong Estate rang me up and wanted me to make a point today to the effect that there must be rental public housing units made available for the elderly who could not afford HOS housing units. It is of course my inescapable obligation to put forward such a point. This reminds me of one thing. In a private residential building, there are rental units as well as owner-occupied units. Where a public housing estate is offered for sale, the same arrangement could be made. The Housing Authority is known to be worried about management problems. It may get the idea from the private sector and see how similar problems are overcome in private residential buildings. The Liberal Party is in process of compiling cases of successful sales of public housing in the United Kingdom. Meanwhile, our discussions with the Housing Authority will continue, until a feasible equation is found for the successful sale of public housing units.

At this point, I would like to make a passing comment on housing for the elderly. As everybody knows, this is a serious problem. There are 21 300 applicants on the Single Persons Waiting List. Just over 4 000 of them are old people. Considering that there are 790 000 old people in Hong Kong who are aged 60 or above, we have a very serious problem. We hope that different government departments, such as the Housing Department and the Social Welfare Department, will show more initiative in helping the needy elderly to move into public housing units. We also hope that facilities catering for the needs of the elderly could be made available in the public housing estates and that old people, when assigned public housing units, will be resettled in estates near where they now live.

Mr President, with these remarks, I support Dr Conrad LAM's original motion.

MR HUI YIN-FAT (in Cantonese): Mr President, the most controversial part of the *Report on the Mid-Term Review of the Long Term Housing Strategy* is one of its revised objectives, that is, the encouragement of home ownership to accomplish the undertaking made by the Governor in his 1992 policy address that the territory's home ownership rate should rise to about 60% by 1997. However, if the present rate is taken as an indicator, to meet the target, tremendous efforts must be made to achieve the spectacular increase in the home ownership rate for the coming years. Should the speculative activities in private property market not be curbed and the unoccupancy rate not be rectified, it is inevitable that the Housing Authority has to make radical changes to its existing policies so as to achieve the above-mentioned target.

Home ownership is a long cherished aspiration that Hong Kong people are working for and it is a major impetus to push our community forward. Unfortunately, prices of private property have been pushed to such a high level, thanks to speculation, that many nucleus families find them unaffordable. Even those sandwich class people who obtained home purchase loans from the Housing Society last year were unable to make the down payment and meet the renovation bill due to the spiralling property prices. The loans indeed did not make much difference. As for families who meet the income requirement and are eligible to apply for the Home Ownership Scheme (HOS) flats with white application forms, their successful rate is rather slim. They have no alternative but to wait. The amount of loan offered by the Housing Authority under the Home Purchase Loan Scheme is too small to achieve any practical purpose. As for the Sale of Flats to Sitting Tenants Scheme, it is finally shelved as its terms are not attractive enough. Still, one must not lose sight of the fact that we still have over 100 000 families on the Waiting List for public housing. They cannot afford to buy their own flats; yet they should not be deprived of their basic right of enjoying decent accommodation either.

In a nutshell, I hold that unless the target rate of home ownership is lowered, the Housing Authority has to revise its existing construction plans and

related policies. However, in view of the short supply in respect of both flats for sale and for rent, how should we decide on the allocation ratio? Being a member of the Housing Authority, I would like to seek the views of honourable colleagues in this Council and interested parties.

The mid-term review carries an important recommendation, that is, to put some newly completed harmony type public housing units on sale with Comprehensive Development Programme tenants, squatter and Temporary Housing Area clearerees and prospective Waiting List applicants due for flat allocation as major target buyers. In view of the quality of the flats, their prices and the target group of buyers, we may refer them as "alternative HOS flats".

I understand from my contact with the public housing tenants and relevant organizations that many tenants express interest in buying such flats. But the crux of the problem is whether or not the Housing Authority is willing to recover no more than the redevelopment costs and take up the responsibility of maintenance. As a matter of fact, the failure of previous Sale of Flats to Sitting Tenants Scheme was mainly due to the fact that the above-mentioned questions were still in the air. I hope that the Housing Authority will draw lessons from this blunder and seize this opportunity to provide the public with more home ownership choices. I have to stress that it must be ensured that the target group of buyers for the "alternative HOS flats" should be given the right to make their decision. In other words, should the sitting tenants decide not to buy such flats or if the prospective tenants on the Waiting List insist on rental housing, their decision should be honoured and not be reversed by any administrative rules. Otherwise, one may take it wrongly that the Housing Authority is compelling them to accept the new arrangement.

Apart from this, I propose that we may borrow the idea of the Building Cooperative Society scheme, which is a vogue in Mainland China in recent years, to help solving the housing problem of our middle-income families. Individuals or corporations may raise funds to build flats. Since such flats are not built to make profits, their prices are certainly far lower than those of the comparable housing on the property market. The Government only has to play a limited role on that front, such as to grant land at a cost which covers land formation only to the cooperative societies and serve as a guarantor so that the societies may secure low interest loans with the banks. The societies are self-owned, self-managed and self-utilized cooperative organizations. This is an added advantage in the sense that there would be higher degree of care and participation on the part of their members. The scheme has proved a success in Mainland China. If promoted in Hong Kong, I believe that the scheme will be particularly effective in suppressing property prices; at least it could relieve pressure on the Housing Authority to put public housing on sale.

Mr President, I always hold that with limited resources, it is imperative that the Housing Authority should put it high on its agenda to look after those prospective tenants on the Waiting List whose living environment calls for urgent improvement. Having said that, one must not lose sight of the fact that

the promotion of self-ownership could help stabilizing the community in the latter half of the transition period. I hope that Members of this Council and community groups may strike a balance between the two so that the Housing Authority's resources could be put to more effective and optimum use.

These are my remarks.

MR TAM YIU-CHUNG (in Cantonese): Mr President, the debate on the housing policy has so far centred around the controversy over whether the policy should be oriented by rental public housing units or by saleable units. While rental units and saleable units can respectively meet people's demands which are at different levels, they cannot reflect directly the affordability of different strata of people. In reviewing its housing policy, the Government often tends to draw an equal sign between demand and affordability. The housing policy, as a result, has been leaning more and more in the direction of offering public housing units for sale, thus charting a deviated course. Consequently, the housing policy fails to provide secure homes to the general public, and increasingly so.

It is an indisputable fact that the general public's home ownership aspiration is growing ever stronger. This reflects partly economic development has raised people's demand for quality of life. But this increased demand reflects at the same time that expenditure on housing features more strongly in people's cost of living and becomes a hidden worry for them. Let us use some figures to quantify this worry. At present, our median wage is \$7,000 a month. But a 400 sq ft flat in the urban area, with room only for two people, may fetch somewhere between \$1 million and \$2 million and rent for \$7,000 or \$8,000 a month. The cost of housing has become a suffocating burden on the average member of the public. The kind of restlessness that comes as a result of this burden is also felt by us on a day-to-day basis. This kind of feeling is most evident among the young people, particularly those who have just formed their own families or who are planning to do so and those non-home owners living in private buildings. Their aspirations for home ownership are very strong. But this troubled feeling and their aspirations for home ownership do not amount to affordability to purchase their own homes.

Therefore, the Government is greatly exaggerating people's affordability of home ownership if it equates the aspiration with affordability. If increasingly market oriented housing policy of putting more and more public housing units on sale has been set against this background of exaggerated affordability, then our housing policy will never be of help to the really needy.

In fact, the same person with a strong aspiration for home ownership may also have a pressing need for a public rental housing unit. So we cannot say that since aspiration for home ownership has risen, there must be a corresponding reduced demand for public rental housing. The two demands are not mutually exclusive. What is more, I believe that they do overlap to a very large extent.

Therefore, the Government must not draw on this argument to suppress public demand for public rental housing. Nor can it resist to achieve the Long Term Housing Strategy target of providing sufficient public rental housing units on the grounds of shortage of resources.

The Democratic Alliance for the Betterment of Hong Kong has pointed out categorically that a positive and square look should be taken at the shortage of public rental housing. We demand that the Government should make the meeting of demands for public rental housing the first and foremost objective of its housing policy.

I have no intention to dismiss the public's aspiration for home ownership as helping people own their homes is the due responsibility of the Government. But in the present trend of privatizing public services, Hong Kong's housing policy is now oriented by the operating principles of reduced cost subsidization or accelerated recovery of costs. This is why the prices of public housing units put on sale have been pegged with market prices, and the Long Term Housing Strategy leaning towards the private sector housing oriented Home Ownership Loan Scheme. This approach will rationalize further the deviated policy of suppressing the demand for public rental housing. The target of the housing policy will shift from the lower class to the lower-middle class. As a result, Hong Kong's housing policy will become more and more conservative and veer ever more away from the principle of social justice.

The *Report on the Mid-Term Review of the Long Term Housing Strategy* states that, over the next five years, there will be a shortfall of 16 600 public rental housing units — a most disappointing figure. It means that tens of thousands of applicants on the Waiting List will have to wait many more years and meanwhile bear the pressure of high rents. This is a clear illustration of the Government's misjudged housing policy. We respectfully urge the Government to conduct an overhaul of its policy rather than simply attributing the problem to resource limitations. Inadequate resources are of course a restrictive factor, but it is not the most fundamental factor. The most fundamental factor lies in the thrust of the policy, a deviated policy that fails to direct the limited resources to meeting the demands of people with the most pressing need.

Finally, I urge the Government to address the problem of resource wastage. The report points out that the overall planning of a project takes six to 10 years to complete. As a result of planning delays, one fifth of the units are not completed on schedule, resulting in tremendous waste of resources. The lack of co-ordination among government departments, I believe, is the key factor contributing towards such wastage. I hope that the Government will enhance the co-ordination among departments in order to avoid wastage of the already insufficient public funds and other resources.

With these remarks, Mr President, I support the amendment which shows a way forward.

MR EDWARD HO (in Cantonese): Mr President, since the implementation of the public housing programme in 1954, Hong Kong has become a society of economic prosperity. The results of this programme, having provided half of the population of Hong Kong with public housing, are obvious to all. Nevertheless, it is undeniable that Hong Kong is still faced with serious housing problem. To an ordinary citizen, the high price of private property represents a heavy burden of housing expenditure. To people of the lower income group, they have to endure the slow progress in the handling of applications on the Waiting List, and many of them are still living in private buildings with poor facilities and crowded living environment. For example, some are living in bedspace apartments and some have even become street sleepers. Therefore, I welcome this Mid-Term Review of the Long Term Housing Strategy which will extend to as far as 2001 that ensures the objectives under the strategy be attained.

Since the formulation of the Long Term Housing Strategy in 1987, the authority concerned has been directing its efforts at achieving the policy objective, which I think is a laudable one, of providing appropriate housing at an affordable price or rent to the people in need. But we must bear in mind that the main purpose of the public housing programme is to help those who cannot help themselves. To those who can, we should, as far as possible, provide them with the opportunities to stand on their own. For example, they can buy their own flats and vacate the public housing units for the applicants on the Waiting List.

The *Report on the Mid-Term Review of the Long Term Housing Strategy* has touched upon many issues. Mrs Selina CHOW has made an analysis on the sale of public housing units to sitting tenants and the housing problem of the elderly. Mr Ronald ARCULLI will speak on land supply, and I will concentrate on the redevelopment programme and the issue of home ownership.

Redevelopment programme

In this regard, the report proposes to slow down the progress of the redevelopment programme between 1997 and 2001. I have great reservations about this proposal, because this will defer the improvement of living environment of public housing tenants. We must not forget that one of the policy objectives of the Long Term Housing Strategy is to redevelop substandard older public housing estates with a view to improving the living environment of these estates. So if the redevelopments are deferred, a large amount of maintenance works will be required in these public housing estates. Not only will this incur an enormous expenditure but it will also cause serious nuisances to the tenants. For example, the maintenance project of Wah Lok House in Wah Fu Estate on Hong Kong Island has lasted for two long years, causing inconvenience and discontent to the tenants who, as a result, have strongly requested rehousing in other estates. This is only one example. The Housing Authority should expeditiously redevelop these public housing estates in accordance with the original plan.

Although the report has mentioned that after the redevelopment, the floor areas of the housing units will be larger with the result that the number of newly completed flats will be smaller than that before the redevelopment, the Housing Authority should not use this as an excuse to defer the redevelopment programme. In fact, the ultimate solution is that the Administration should allocate more land for building more residential flats. Moreover, the plot ratio of the existing sites should be increased so that more flats can be built on the land. Besides, as the density of public housing estates is lower than that of the Home Ownership Scheme (HOS) estates, there is room for increase to build more flats.

One of the solutions for building more flats, to which attention should be paid, is that the Administration should co-ordinate with the Housing Department with a view to expediting the procedure from planning to construction. Mr Ronald ARCULLI will speak on the points above in detail.

Home ownership

The Administration has undertaken to raise the overall home ownership percentage to around 60% by 1997. Of this figure, 19% will be accounted for by public housing and more than 40% by private housing. However, given the current high price of private property, many people will find it difficult to own a flat. It is therefore in doubt whether the objective mentioned above can be achieved as scheduled. So the proportion accounted for by public housing may have to be increased.

I welcome the policy of encouraging more people to own their home, because if more people in the territory can own their home and lead a happy life, our society will be more stable. However, before providing more HOS flats, the Housing Authority should not reduce the resources for public rental housing, because it will only reduce the opportunities for the lower income group and people who cannot afford HOS flats to obtain public housing, and this will be against the purpose of helping the people in need. The resources for public housing are just like a pie. Now that there are many more people who want to share this pie, if the pie is not big enough and a large piece of it has to be portioned out and given to those who already have something to eat (though they may not have eaten enough), then those who are hungry will have virtually nothing left for them.

For the same reason, although the proposal of enhancing the attractiveness of the Home Purchase Loan Scheme for public housing tenants to buy private property is also worthy of support, the scheme is not a thorough solution to the problem. The thorough solution is to increase flat production to meet the demand.

Mr President, those who are responsible for formulating long-term policies or strategies should be far-sighted and allow the policies to have some scope for flexibility in order to suit our fast changing society. The

Administration has to seriously consider increasing land supply and resources for infrastructural developments. The Housing Authority should also consider co-operating with private developers by way of, for example, purchase of private land, application for land exchange or change of land use, and private sector participation in infrastructural construction. Only by so doing can resources from different parties be fully utilized to attain the objectives under the Long Term Housing Strategy.

Mr President, with these remarks, I support Dr Conrad LAM's motion.

MR RONALD ARCULLI: Mr President, the Council is here today to ensure that a housing policy which would meet the needs of the public is implemented by the Housing Authority as its Long Term Housing Strategy. One of the mainstays of such a strategy should be achieving the right balance between public rental housing and home ownership. The Mid-term Review of the Long Term Housing Strategy has identified some problems but one is left wondering whether some of them can ever be solved. Even if they cannot, perhaps lessons can be learnt to avoid repetition.

Mr President, the Honourable Edward HO and the Honourable Selina CHOW have discussed some problems highlighted in the mid-term review. On my part I would, on behalf of the Liberal Party, like to deal with several other matters as we in the Liberal Party see them. The first critical issue affecting the production of flats is land supply. Whilst the actual shortage of land is one of the major factors affecting flat production, other factors are also affecting the supply of land. The lengthy period required for site clearance or to prepare sites for construction do need to be cut down substantially. The recommendation for a critical review to examine why the Housing Authority's lead time is longer than the private sector's is an obvious step but what is needed is a clear objective for those undertaking such review if there is to be real improvement. One of the ways to achieve this is to set pre-determined target dates, not just estimates which are allowed to slip, if a real improvement is to be made for the completion of layout plans and resumption which can take up to 12 and 32 months respectively. Furthermore, other government departments responsible for providing the infrastructure to undeveloped sites should be given similar target perhaps with financial penalties to ensure rapid development of the sites. Mr President, the private sector has to fulfill building covenants on sites purchased from the Government; an extension of this concept to public housing will be no bad thing.

I do not want to leave this issue of land supply without commenting on the mid-term review's intention of increasing density on existing sites to increase flat production without additional land. That densities can be increased in selected cases without unduly sacrificing environmental considerations is, I believe, achievable. Increasing densities must be given very serious consideration not just on existing sites but also on new sites. Updating archaic building laws to allow flexible design will also contribute to increased efficiency

with little or no cost to the environment. We can ill afford to underutilize such a scarce resource as land in Hong Kong. Mr President, to underline this point, if a site is to have a plot ratio of 5 and is increased to 6, we will have flat production increased by some 20%.

What I have mentioned so far will only minimize the shortfall. Ultimately, it is the amount of land released by the Government to the Housing Authority which will determine the number of flats that will be produced. I understand that the projected shortfall is now over 21 000 flats for the next six years but can be far greater if clearance on some sites is delayed further. The shortfall of 21 000 flats can only be resolved with the additional 32 hectares of land for flat production. With one move, the Government could put the public housing flat production back on track.

Whilst the public sector is falling behind the demand of the public for affordable housing, the private sector is the alternative source for housing. Members of the Lands and Works Panel and Housing Panel heard yesterday from representatives of the Real Estate Developers Association (REDA) about their concern that private sector flat production from April 1996 onwards is likely to be much less than it has been over the past few years due to difficulties of site assembly and planning process. If REDA's assessment is correct, the trend is a worrying one and will not help the question of affordability under the present housing loan schemes offered by the Government to assist those who desire to become home owners.

The Home Purchase Loan Scheme assists those whose income is less than \$20,000 per month to become home owners. With mortgage loans set at a ceiling of 70%, a prospective home buyer could only afford a \$1 million flat assuming he will use his own savings to cover the additional \$100,000 for the down payment and related expenses. Is this feasible for someone who is making less than \$20,000 per month? With escalating residential flat prices for the past two years, are the terms sufficient? Obviously those who are in this income bracket do not believe the Home Purchase Loan Scheme offers enough financial assistance to purchase a home. This is reflected by the take up of the quota for the Home Purchase Loan Scheme. As of 19 January, this year only 566 slots have been taken up out of a possible 1 000. With this quota ending March this year, possibly another 400 slots will remain unused. I am not sure that the Housing Authority acknowledges this state of affairs because the mid-term review believes that the quota will be fully subscribed. Indeed, it is refreshing to learn that the review calls for an increase in the loan amount as well as the monthly subsidy. As for the quota I would like to point out that it has been reducing over the last three years so that despite increases in the amount of the loan from \$130,000 to \$200,000, the total commitment has come down from \$455 million to \$200 million. One cannot help but ask what the Housing Authority thought it was doing. As regards the split of quota between Green and White Forms applicants from the current 1:1 to 2:1, I am not sure that this is equitable because the needs of the White Form applicants are just as great. I appreciate the thinking behind it but perhaps another way to do is to

grant Green Form holders an additional loan but with interest charged. The rationale behind this approach would be to encourage recovery of public rental housing which is a stated objective of the review. Mr President, Table 10 in the mid-term review report tells enough of the story as regards the recipients' perceived value of subsidy. On this basis is there any doubt that the loan amount should be increased to \$500,000? Is there not also a case for extending the repayment period and/or having a grace period to make the package more attractive? Mr President, the Home Purchase Loan Scheme needs to be updated and made more attractive if it is to play a real role in the promotion of home ownership.

To conclude, Mr President, the Liberal Party believes in home ownership and for this reason and those given by Mrs Selina CHOW we support the original motion and not the amendment.

MRS PEGGY LAM (in Cantonese): Mr President, half of Hong Kong's population are living in or waiting for housing units provided by the Housing Authority. Any change in the Housing Authority's policy is likely to cause very extensive repercussions.

The Housing Authority's *Report on the Mid-Term Review of the Long Term Housing Strategy* has similarly drawn a lot of adverse comments. Most of these comments are directed against the proposals for adjusting rehousing priorities and increasing home ownership.

One of the objectives of the Government's housing strategy is to raise the proportion of home-owners to 60% of the population by 1997, with 15% of them accounted for by public sector housing. However, the scheme of selling public rental housing units to sitting tenants has run into problems, thus affecting the number of home owners. Accordingly, in the mid-term review, the Development Committee made some other recommendations to the Housing Authority on how the target ratio of home ownership might be attained.

The committee suggested that the demand for public rental housing (PRH) should be channelled to home ownership with units to be sold under "Type II Home Ownership Scheme (HOS)." I find it unfair to applicants on the Waiting List if half of the rental units to be completed after 1994 are converted to PRH/sales units.

The report argued that rental units will thus be available to the truly needy. This is but sophism. If the number of newly completed rental units is halved, the only beneficiary will be the Housing Authority, for it will increase its income.

Moreover, the priority potential buyers of these Type II HOS flats are people affected by redevelopment and clearance operations who are eligible for public housing and about to be allocated rental units. But how do you persuade

them to pay a large sum of money to buy units which they can occupy as tenants? The Housing Authority should not overestimate their affordability, in particular families affected by redevelopment projects. I think that it will be absolutely unfair if unpopular vacant rental units are allocated to people who do not want to buy Type II HOS flats. Given that they are fully eligible for public rental housing units, they must not be discriminated against just because they insist on being rehoused in rental units.

Therefore, the introduction of Type II HOS flats is the ostrich approach, making a mistake much in the same way of the previous failure of the scheme to sell public rental housing units to sitting tenants. In the end, it will also prove unpopular.

Besides, Type II HOS will benefit only those low-income families which may use the white application form. If the prospective public housing tenants do not want to buy such flats, will the Government then sell them to somebody else, people who are neither applicants on the Waiting List nor persons affected by clearance operations or redevelopment projects? If the answer is yes, the Housing Authority will appear to be neglecting the people with the most pressing need.

In fact, the report also indicated clearly that the current prices of HOS flats are beyond the reach of families in the income range which barely exceeds the income ceiling for public housing but falls short of the qualifying income for HOS. Evidently, there is problem with the pricing of HOS flats. In principle, while the Housing Authority can justify itself for building an alternative type of HOS housing for these people, it is also unwise to look after the needs of these meat of the sandwich class by setting aside some rental units which are still in serious shortage.

In the next five years, Hong Kong will still have a shortfall of 16 600 public rental housing units. This shortfall can partly be met by construction of additional units and renovating old ones. I support stepping up the enforcement of tenancy agreement to force public housing tenants who have abused their units to move out. Though the number of units repossessed in this manner may be small, it is still the right way to go. In fact, there are units which are old enough to be redeveloped but which have never been occupied by their registered tenants. These registered tenants merely pay the rents every month and ask their neighbours to take care of the units for them. If the Housing Department can enforce the tenancy agreement seriously, such waste of resources will not have happened.

The Housing Authority should indeed give serious consideration to asking the genuine well-off public housing tenants to move out, so that the units vacated can be allocated to the more needy. I suggest once more that every public housing tenant should be required to pass a stringent means test after a certain number of years, so that only the truly eligible should be allowed to continue to enjoy subsidized housing. Of course, there will surely be administrative

difficulties in implementing this proposal. However, in order that the principle of allocating suitably the limited resources be followed and that the obligation to look after the interest of the community as a whole, the authority concerned must study the feasibility and merits of this proposal.

Mr President, the Housing Authority should listen to and heed the views of all sectors of the community, draw on their collective wisdom, take practical steps to solve the public's housing problem, closely monitor the progress of public housing projects, solve the problem of land supply and let the public realize their dreams of living in secure homes as soon as possible. It must work especially hard to implement the housing scheme for the elderly.

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

MRS ELSIE TU: Mr President, I always feel a little sorry when we are called upon to choose between a motion and an amendment if the subject under debate is one on which we are all mainly in agreement.

It gives the impression to the public that we are divided on issues on which in fact there is general consensus, and could shift the focus of attention from the issue to the argument. Prior agreement on the wording would avoid argument and put the interests of the public before those of parties.

Having said that, I must admit that Mr Frederick FUNG's amendment is one after my own heart because it adds the admonition to the Housing Authority "to adopt the public rental housing oriented approach so as to solve the problems of the middle and lower social strata".

The Housing Authority's report, page 9, quite rightly says: "Public housing was originally intended for the lower income groups in genuine need of subsidized accommodation." But the Housing Authority has moved far far away from that original purpose. I have been trying for years, without success, to get that message through in the hope that the Housing Authority would get back on track. Those within the income limits and in desperate need of public housing cannot understand why their needs are being neglected, while some very wealthy tenants continue to occupy subsidized housing.

When I say "wealthy", I am not suggesting that those who earn double the income limits for public housing are wealthy, as the Housing Authority's double-rent policy argues. Double the income limit totalling \$19,000 a month for a three-person family or \$22,800 a month for a four-person family does not, in my estimation, constitute wealth. With that kind of income a family could not afford to rent a decent flat or take out a mortgage to buy one.

So what do I mean by "wealthy tenants"? By wealthy tenants I mean those who own property and should not be occupying publicly subsidized housing. By wealthy I mean those who could well afford to buy a flat, but who hang on to

their subsidized public housing because they know that the Housing Authority will favour them with new and better flats in the urban estates when the old estates are demolished. They do not mind paying double rent to get this undeserved bonus at the expense of the taxpayer, and at the expense of poorer families on the Waiting List.

Yes, we need to get back on track and offer our subsidized housing to those genuinely in need of housing. To help to achieve this I have one or two suggestions to make to the Housing Authority.

My first proposal is connected with the management of public housing estates. I would hazard a guess that there are tens of thousands of flats either standing empty or being illegally occupied. These flats could be re-entered and allocated to families in genuine need on the Waiting List. Many public housing tenants have bought their own flats and left their public flats vacant so that they may return when they know their block is to be demolished and they can then claim new and better flats in the urban estates. Many public housing flats are being illegally rented out or illegally occupied by the friends and relatives of the householders, who have either emigrated or moved into their own property. Many other vacant flats are used as storage space.

I suggest that all managers should get up from their office seats and check the malpractices taking place in the estates they are paid to manage, so that flats may be reclaimed and allocated to those who have waited long on the Waiting List. Some managers may already be doing this, but obviously many are not.

Another method of getting back to the policy of housing those genuinely in need of housing is to make some changes in the policy when offering new and better flats to sitting tenants. Instead of offering flats in far distant estates to Waiting List applicants, within income limits that make long distance travelling to work impossible, the Housing Authority should make a policy of using far distant estates to rehouse their tenants if they are far above the income limit when their estate flats are demolished. In cases where sitting tenants are owners of property, they should not be offered rehousing when their estates are demolished. The present policy is an incentive to tenants to remain stagnant, as page 10 of the report admits.

It is high time for us to return to the original scheme to rehouse families in genuine need of housing. And who is more in need of housing than those families earning less than \$20,000 a month, those who are even worse off than the sandwich class? I believe that the time has come to stop building flats for sale, but to build for those who cannot even rent a decent room in a private tenement, and those who live in cages because they cannot afford anything better. In an affluent society like Hong Kong it is shameful that so many families are paying thousands of dollars a month for an airless room, and that elderly people are paying hundreds of dollars for a cage.

So while I agree with the original motion, I would like to emphasize the more positive amendment by Mr Frederick FUNG, that we should adopt the public rental housing oriented approach so as to solve the problem of the middle and lower social strata. Unless we do so, housing need will become an increasing source of unrest in our community.

Mr President, I support the motion and the amendment.

MR ALBERT CHAN (in Cantonese): Mr President, the improvements and achievements in the development of public housing in Hong Kong from the low-cost cost housing in 1953 to the present "harmonious" type of public housing are evident to all. The people of Hong Kong can feel proud of these when they look around at other countries in Southeast Asia. However, there are still many problems in the whole housing policy, particularly in the operation of the Housing Department. The redevelopment of public housing estates is a more complex and difficult problem among the many problems faced by the Housing Authority. This problem is one of the key points addressed by the present *Report on the Mid-Term Review of the Long Term Housing Strategy*. In the context of re-development programmes of public housing estates the findings of the review will have significant effects on the overall redevelopment programme. In 1987, the Housing Authority decided to carry out an overall redevelopment of old public housing estates on the following grounds: Firstly, the maintenance costs of old estates were three times those of new estates but even after repairs, the environment of old estates was still poorer. Secondly, large low-cost housing estates were not to stay for ever. Thirdly, there was a great need to redevelop most of the older estates to provide good living environment and to balance the development of the various type of housing estates. These are the rationales for the 1987 decision.

In the present review, when touching on the overall redevelopment after 1997 and 1998, the Housing Authority only says that it will study the individual programmes on a case by case basis, and that old estates which have been vacated will not necessarily be demolished at once. Instead, they will be refurbished as an additional source of housing supply for the Housing Authority. Mr President, the Housing Authority's new redevelopment policy has obviously superseded the redevelopment policy in 1987. The present proposal can be said to be a big retrogression in public housing policy. Given the scarcity of land in Hong Kong, refurbishment of old public housing estates will not only result in the relevant housing unit being laid idle for a long time (for maintenance purpose) but also increase the maintenance cost.

The Housing Authority had reached a conclusion in 1987 on the maintenance costs of old public housing estates. However, it made no mention of the rationales behind the 1987 conclusion. Are there any mistakes in the data and rationales on which the Housing Authority's position and policy in 1987 were based? The Housing Authority should give an explanation for this.

I think that when implementing the redevelopment programme, the Housing Authority should follow two principles: Firstly, the Housing Authority should be responsible for the redevelopment of all the public housing estates covered by the Five-Year Redevelopment Programme. In other words, all public housing units covered by the Five-Year Redevelopment Plan should be wholly redeveloped to replace the old units with new ones. Secondly, public housing estates with dilapidated buildings or poor environment should also be redeveloped completely.

In addition, Mr President, I am of the view that in reviewing the Long Term Housing Strategy and considering the overall allocation and redeployment of resources, the Housing Authority should consider and examine realistically the needs of all strata, particularly the needs of the lower stratum because people with lower income and less means (especially those living in public housing estates) are generally less adaptable to changes. They will face more difficulties and greater impacts. Therefore, in carrying out re-development programmes, the action departments (especially their staff working in the districts) and the Housing Authority should be sympathetic to the worries of the people affected and should not treat them as a figure or a unit but regard them as human beings with flesh and blood as well as feelings. I hope that members and staff of the Housing Authority will show more respect and less bureaucratic oppression in addressing problems.

Mr President, to some of the elderly people who have been living for 20 or 30 years in estates to be redeveloped, redevelopment is a decision and process which have great impact on them because they have been accustomed to an aged community. Every tree and blade of grass there are dear to them. To them, redevelopment means evacuation, separation or even uprootal. In such circumstances, they have more sorrow than joy. I consider that during the course of redevelopment, the Housing Authority should make public the relevant policy and data on redevelopment, and furnish the residents with all the information. All such information must be detailed. For instance, those who are entering the 36-month roll-over period should be advised clearly of the location of the estate where they will be rehoused, the type of buildings in it, the number of housing units, the rent, the traffic conditions and community facilities available because this is the community in which they will live.

Moreover, in dealing with redevelopment problems, staff of the Housing Authority should establish a close and intimate relationship with the residents affected by redevelopment. At present, the most serious problem in redevelopment areas is that organizations formed by residents affected by redevelopment are often in confrontation with the Housing Department and the Housing Authority. Such confrontations will lead to more worries among the residents. Lack of communication coupled with conveyance of wrong messages make them more prone to worries and panic. This is not only unreasonable to the residents but also contradictory to the original purpose of re-development, which is to improve the living environment of residents.

Lastly, Mr President, I think that the aim of re-development is to give a residents the chance to lead a new life. It should also give them a good living environment. All redevelopment policies must be in line with this principle.

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

MR CHEUNG MAN-KWONG (in Cantonese): Mr President, everybody has a dream. For the people of Hong Kong, the most cherished dream is to own a home. Today's debate is supposed to focus on the Long Term Housing Strategy. Yet I find the housing strategy a misnomer. It covers only the development of housing under the Housing Authority. It does not deal with two other very important social strata: the sandwich class, and the caged men and the street sleepers. I would prefer to talk about the Long Term Housing Strategy from a broader perspective. One must not forget that the sandwich class and the poor at the bottom of society are also victims of high land prices and high property prices, no less than those living in public housing or Home Ownership Scheme (HOS) housing.

As the representative of the teaching profession, it behoves me to say a few words for the sandwich class. I notice that, since the Government first agreed to build HOS housing for the sandwich class, there have been very few beneficiaries, but property prices have skyrocketed in the meantime. Here, I strongly urge the Government to allocate extra land resources for the construction of more HOS housing for the sandwich class. Pre-completion flats of HOS housing should be sold as early as possible to those in need of them. At least 20 000 units of HOS housing should be completed before 1997 if the Government is determined to forestall property developers from cornering the market. Most importantly, the selling price of HOS housing should not be linked to the market price. Otherwise, we will see a vicious circle, in which members of the middle class will always be led by the nose by rising property prices and become lifelong slaves to home ownership.

The community should not overlook the needs of the caged men who have dedicated their prime years to the development of Hong Kong. I am very glad to learn that the Secretary for Home Affairs, in an attempt to end the plight of the caged men, who now number 3 200, has recently agreed to resettle half of them, that is, 1 600 of them. But we must continue to be concerned about the remaining 1 600. They may pay twice the present rent if and when their "cages" are improved. Some of them may be forced to sleep rough again. This, I think, is not what the Government would like to see. At any rate, the Government must keep a close look at the developments. Mr President, it is miserable to have to be caged men; it is more miserable to be unable to afford even a "cage". As we know, the first priority of the Long Term Housing Strategy is to ensure that everybody has a place to live. It is only its second objective to improve people's living conditions so that they would live happily

and with dignity. Therefore, the Government should not forget the caged men or the large group of street sleepers.

Mr President, thanks to the high land prices and high property prices, it is not an exaggeration to say that everybody in Hong Kong is now like working for property developers. Now, even on the fringe of the city, in places like Sai Kung and Tseung Kwan O, it costs \$1.8 million to buy a five-year-old flat of 400 sq ft. The down payment, at 30% of the price, is \$540,000, an amount which is more than three years' salaries of the a university graduate who has secured a teaching job. In other words, if he works for three years and saves every dollar he earns without spending a cent on food or anything else, and if property prices do not rise further, he will save just enough money for the down payment. But we all know that this is impossible. The university graduate, if he knows the secret of the immortals, may perhaps survive without eating or drinking. But not even the immortals themselves can stop property prices from soaring.

Mr President, the figures speak for themselves. Property prices rose by 250% from the beginning of 1990 to the third quarter of 1993. They rose by 14.3% during just the six months from the first quarter of 1993 to the third quarter of 1993. This was more than three times the inflation rate for the same period. I must point out that the Government's non-intervention policy has fuelled property speculation. It has led to an outrageous situation where there are people who are homeless while many flats are left vacant. Behind this situation are stories of sorrow and sweat.

Those who are lucky enough to own a HOS flat must spend the lion's share of their income on mortgage payments. To buy their tiny homes, they have to toil to pay off a mortgage loan for over 20 years. Even less fortunate are those who are not eligible for HOS housing. They may have to pay high rents for private flats and find it harder and harder to buy a home. I am afraid that they would never own a home. Mr President, is the Long Term Housing Strategy as put forth by the Government a long-term strategy of meeting the housing needs of the lower and middle strata or a long-term strategy for helping property developers to corner the market? It is really beyond me.

There is statistical evidence to show that, a year ago, the four major property developers in Hong Kong had enough land reserves to build 35 housing estates with each of the size of one Laguna City. However, they hoarded their land resources until prices went up further. The Rating and Valuation Department estimated that 32 000 new flats would be available in 1992. But only 26 000 flats were completed that year or 80% of the estimated supply. In 1993, about 27 500 new flats were put on the market, or 70% of the estimated supply. Clearly, the market is manipulated and monopolized; prices go up when the developers suppress the supply. And the poor lowly citizens are at the mercy of the developers.

Evidently, the existing housing policy allows property developers to put off sales, to withhold sales and even to renege on sales contracts by refunding deposits. They can then ask higher prices. Such a situation is intolerable and must be changed. If the Government wants to disprove allegations of collusion between officials and developers, it must break the developers' monopoly by substantially increasing the supply of public housing, HOS housing and HOS housing for the sandwich class. It must delink HOS housing's selling price and the market price. It must give real help to the middle and lower social strata to realize their biggest lifelong dream: to own a snug and comfortable home.

Mr President, these are my remarks.

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

REV FUNG CHI-WOOD (in Cantonese): Madam deputy,

(1) The withdrawal of the scheme to sell public rental housing units to sitting tenants reflects that the Government's purpose has been to accumulate wealth in promoting home ownership

The Type II Home Ownership Scheme (HOS) is the most notable among various proposals in the *Report on the Mid-Term Review of the Long Term Housing Strategy*. Some think that this scheme is the sale of public housing units scheme in disguise. Actually, the two are quite different. And perhaps their difference explains why the Executive Council decided last year to shelve the sale of public housing units scheme.

Firstly, the sale of public housing units scheme in the end used replacement costs as its pricing criterion, departing from the principle that has ordinarily been insisted upon by the Government, that is, prices must be pegged with prevalent market prices. Adding to this the fact that units which are several years old are in a much poorer condition than one would expect and cannot command a high market price, the Government therefore decided to put the scheme on hold. It is hence evident that the Government's purpose has been to reap satisfactory revenue from such sales. If the Government is to clear itself of this suspicion, it must now offer really "good deals" to the low income groups by giving up its policy of pegging the prices with prevalent market prices.

The second reason why the scheme was withdrawn is the Government's fear of consumers' collective strength. When public housing tenants unite for collective bargaining or driving down prices by way of collective purchase, the Government would find it difficult to maintain its advantage and bidding would not start at a high price as it might have wished. But prospective buyers for the Type II HOS flats supposedly come from different sectors. Since they do not have the advantage of collective bargaining, they will be at the Housing

Authority's mercy. The United Democrats of Hong Kong demands that one of the prerequisites for the sale of public housing units scheme and the Type II HOS must be that pricing must be based on construction costs.

The third reason for the withdrawal of the sale of public housing units scheme was the defeat of the Government's ploy to shirk its management responsibility. The *Report on the Mid-Term Review of the Long Term Housing Strategy* pointed out that one of the reasons for increasing the ratio of home ownership in public sector housing is to reduce the Housing Authority's commitment to estate management. In light of the fact that a public housing estate under the scheme would have a mix of owner-occupied units and rental units, the Housing Department would have to make an even greater effort to balance the conflicting interests of owners and tenants. As a result, it would be better to abandon the public housing sale scheme.

(2) *Increased home ownership must be coupled with greater participation by owners in property management*

While the Housing Authority would wish to privatize the management of HOS estates as far as possible, residents in these estates would not let go of the Housing Department. This is not because the Housing Department does a good management job, rather a private property management company may do it even worse and raise management fees sharply. Devoid of any means of monitoring, small owners will find little protection for their rights and interests. On the contrary, while the Housing Department may also do a poor management job, at least it cannot hide behind the excuse of commercial decision. Being a department of the Government, it cannot walk away from its responsibility to the community.

Therefore, in promoting home ownership, the Housing Authority must in fact formulate many other policies to dovetail, for example, increasing the degree of participation in management by owners of HOS estate and enhancing their monitoring of the Housing Department and the private property management company. Then, they will have real "autonomy" and not be at the mercy of the Housing Department and the private property management company.

(3) *Home ownership should not be promoted at the expense of suppressed demand for public housing*

In increasing the ratio of home ownership, the Housing Authority must not only give owners real power to manage their properties, but also not to cut back on the construction of public rental housing units. From 1994-95 to 1997-98, the annual completion of new rental units will average at only 18 800, that is, just over 50 units a day. Of this completion rate, the supply of public rental housing units in the urban areas will lag far behind demand. There will be a shortfall of at least 16 100 units over the next five years.

Since late 1990, the Housing Authority has stopped accepting new applications for urban public housing units. At that time, there were already over 70 000 applicants on the Waiting List waiting for urban public housing. However, only a very small number of them can be allocated urban public housing units eventually. I believe that the policy of not letting applicants choose urban public housing will last until at least 1997. The mid-term review Report also acknowledged that the shortage of public housing units in good locations shows that the demand for public rental housing had to be suppressed.

(4) Underestimated suppressed demand for public housing

The portfolio of the Long Term Housing Strategy deals with the supply and demand of housing, of which the determination of demand is a key area. However, the debate on the strategy has not dealt with the question of who are eligible to apply for public housing or HOS housing. I believe that many people who really need these kinds of housing are disqualified by the unreasonable income limits. Therefore, the exact shortfall over the next five years is far more than the 16 600 units forecast by the mid-term review report.

The income limit now for a singleton to apply for public housing is \$4,600 a month, far below the \$7,300 median wage for the manufacturing sector as in March 1993. For a family of four, the income limit is \$11,400 a month, hardly enough to support a family of four. Evidently, the income ceilings have been set too low, shutting the door on many people in need of public housing.

Such unreasonable income limits reflect that there are problems with the way in which they are set. I would like to make a further point. For example, under the existing policy, the rental expense component of the qualifying income limit is calculated in accordance with the weighted average between old rents and new rents — rents lower than those which will be specified in a new tenancy agreement. But a new family will have to pay new tenancy rents while the rental expense component of its income limit is calculated on the basis of a figure lower than the new tenancy rents. As a result, many people who need public housing are found to have exceeded the income limit, thus rendered ineligible to apply for public housing.

The UDHK suggest that the income limit for application for public housing should be raised sharply by 60%. At the same time, a large number of additional public housing and HOS flats should be built. The price of all types of HOS flats should not be linked to market prices, but rather calculated on basis of the construction costs.

With these remarks, I support the motion and the amendment.

DR HUANG CHEN-YA (in Cantonese): Madam deputy, the Housing Authority's *Report on the Mid-Term Review of the Long Term Housing Strategy* has proposed to convert more newly completed public rental units into Home Ownership Scheme units. Such units are called Type II Home Ownership Scheme flats and their prices are different from the ordinary HOS/PSPS flats.

Rich or poor, Hong Kong people generally wish to own their homes. In the past few decades, buying properties has been a very good way for the public to protect their savings against inflation. Therefore, the United Democrats of Hong Kong (UDHK) believes that the sitting tenants who buy public housing units are doing so as a long-term plan. Owning one's home is helpful to ensuring social stability and positively instils a sense of belonging to the territory. However, the demand for housing is enormous in Hong Kong, and many people still have to pay high rents or live in places of poor conditions. Therefore, the UDHK will not support the HOS Type II Scheme unless its purpose is purely to encourage sitting tenants who are previously in need of public housing to buy Type II HOS flats, thus fulfilling their home ownership aspiration. To meet this requirement, the scheme must satisfy the following three main criteria:

1. *Families not buying Type II HOS flats must not be discriminated against*

The tenants who insist on living in public rental units should not be penalized in terms of the place of relocation, tenancy restrictions and rate of rent increase to the effect that these tenants will not be forced in a way to buy the Type II HOS flats.

2. *The interests of families eligible for allocation of public rental housing must not be jeopardized*

The waiting time of applicants on the Waiting List should not be lengthened. Furthermore, the right of applicants on the Waiting List and sitting tenants affected by redevelopment and clearance operation in choosing newly completed flats, and their right to be rehoused in nearby area should not be affected.

In order that "the interests of families eligible for allocation of public rental housing must not be jeopardized", the following requirements must be met:

- (1) all prospective buyers of Type II HOS flats must be prospective public housing tenants, applicants on the Waiting List or people affected by clearance operation or redevelopment programme who are due to be allocated public rental units. In other words, Type II HOS flats should definitely not be sold to HOS white form applicants;

- (2) there should be clear and strict definition of what is meant by "due to be allocated public rental units" for if there are too many people within this category, poor applicants on the Waiting List will have to wait an even longer time before they are allocated public rental housing;
- (3) the supply of Type II HOS flats should not exceed the demand for these flats, otherwise either wastage of resources will arise or the interests of prospective public housing tenants will be affected. In order to avoid excessive supply of Type II HOS flats, the home purchase intentions of those who are qualified to buy Type II HOS flats have to be clearly ascertained. If the Housing Department finds out by survey that only 5 000 households intend to buy Type II HOS flats, then the Housing Authority can only sell not more than 5 000 units which were originally built for rental purpose.

3. *The pricing of Type II HOS flats should be based on a non-profit making principle*

The UDHK are against pegging the prices of Type II HOS flats with prevalent market prices because HOS flats are not commodities so their prices should not be compared to those of private flats. Moreover, Type II HOS flats must not be used to make profits or to rig the market.

The UDHK consider that the price of Type II HOS flats should be fixed according to the following formula: Total cost x coefficient of the unit specific value in district + interest.

Madam deputy, Mrs Selina CHOW has said that the Liberal Party is very willing to support the UDHK today, and I am very happy to hear that Mr Edward HO is willing to support Dr YEUNG Sum and me in assisting the tenants in Wah Lok House of the Wah Fu Estate who have been subjected to nuisances caused by maintenance work conducted continually in the last three years to strive for relocation. The experience of the Wah Lok House tenants is indeed typical of the tenants in many public housing estates. They are all victims of the Housing Department's bureaucracy. I hope that the Housing Authority can seriously examine the management and service quality of the Housing Department so that public housing tenants can have a better living environment.

With these remarks, I support the motion.

MR LEE WING-TAT (in Cantonese): Madam deputy, it was stated in the Long Term Housing Strategy (LTHS) announced in April 1987 that the demand for public housing by applicants on the Waiting List would on the whole be met before 1997. However, the new demand for public rental units coming mainly from newly formed families will surface from 1996 onward. It is therefore

most obvious that the LTHS target cannot be attained. Or it would probably be a failure. What is even more disappointing is that the problem has not emerged suddenly out of the blue. It was identified a few years ago. The United Democrats of Hong Kong requested the Administration years ago to increase land allocation and build more public rental housing units to meet the demand. Unfortunately, the Administration and the Housing Authority at that time dared not face the reality. The Administration argued that it had already provided sufficient land, while the Development Committee of the Housing Authority explained that it had been monitoring the implementation of the Administration's housing policy. However, these may one by one turn into broken promises.

When the LTHS was announced in April 1987, there were 170 000 households on the Waiting List. In 1993, the number remained at 170 000. It reflects that the problem has been deteriorating. In fact, from 1987 until now, the annual number of Waiting List households allocated public rental housing has been less than 14 000. Furthermore, the Waiting List has been growing yearly by over 10 000 households. As a result, the queue of applicants becomes longer and longer and the families in need of public housing have to wait longer and longer.

Subsequent to the Housing Department's recent review of the General Waiting List, the list has been reduced from the original some 170 000 applicants to 70 000. This is but just a game of figures. For example, the Housing Department considered that as there were 23 000 applications made by residents in Temporary Housing Areas and squatters of whom about 85% would not be allocated with public housing in the next three to four years, so their applications should not be included in the Waiting List. But no matter how these people are categorized, the Housing Authority and the Housing Department will still have to provide public housing to them. As the Administration has promised in 1987 that the Waiting List demand for public housing will be met in the year 1996-97, I think the Housing Authority has to keep this promise and cannot procrastinate any further.

The root to the problems of under supply of public housing and spiralling private property prices can be traced indeed to the insufficient land supply. In the final analysis, the culprit is the Administration for it has the responsibility to provide sufficient land for housing construction. However, whenever asked to provide land, the Administration's usual response was either that there was no land available or that the land would be allocated to the Housing Authority later. In fact, it is a dereliction of duty on the part of the Planning, Environment and Lands Branch if the Administration cannot provide the land in time, thus the Housing Authority cannot start the construction work on schedule. A recent review conducted by the Housing Authority revealed that the problem of insufficient land supply will further deteriorate. Together with the delay caused by land resumption and clearance operations, it will further aggravate the shortfall of public housing supply by more than 16 000 units. And the situation seems to be worsening still.

Another problem is that the land allocated by the Administration to the Housing Authority is not formed land, which means that the Authority has to spend time and money on site formation. It is very irresponsible of the Administration to do so. The Administration has to provide land to the Housing Authority on schedule. But on top of this, the land so provided must feature roads and the necessary infrastructure, rather than a piece of barren land. Can we accept that the Administration can in the future allocate land to the Housing Authority by just marking on the map a mountain or a boundary of the sea and ask the Authority to remove the mountain or reclaim the piece of land from the sea? The number of private flats completed in 1992 and 1993 fell short of the supply estimated by Mr EASON with only 26 000 in 1992 and 27 500 in 1993. They are substantially lower than the annual production of 35 000 flats predicted by Mr EASON. The property sector has forecast that the progress of redevelopment of private buildings will not be satisfactory in the coming year. In other words, the supply of private flats will shrink even further and speculation in the property market may become more heated.

Moreover, the Administration's insufficient supply of land in the urban area will deprive the tenants affected by clearance operations of their right to be relocated in their original districts. If the Administration builds public housing estates in distant rural areas without proper planning, the tenants will as a result be reluctant to move into these newly developed areas, then it will be difficult to find an ultimate solution to the housing problem.

Finally, I have to point out that the usual six to 10 years' time required for the overall planning of a works project is really too long. The authority concerned takes 37 to 44 months to complete the internal procedures required before the signing of contracts. Does it not reflect sectarianism and red tape among departments? In his policy address of 1992, the Governor proposed to build HOS flats for the sandwich class. Now the authority concerned has found a suitable site and the construction work is expected to complete with the flats available for sale by mid-1996. Hence, it is evident that if the departments concerned can really collaborate, four years are enough to complete the planning of an entire construction project. So how come it should take as long as six to 10 years? The UDHK therefore suggest that the Administration must provide as soon as possible sufficient land to the Housing Authority, especially land in the urban areas, and the land so provided must be formed land. Moreover, the relevant government departments should also seriously review and improve their planning process with a view to attaining higher efficiency.

With these remarks, I support the original motion and the amendment.

MR FRED LI (in Cantonese): Madam deputy, it has been six years since the Long Term Housing Strategy was implemented in 1987. But the housing problem is still very serious. Applications for public housing now are subject to far more stringent restrictions. For example, an applicant cannot choose public housing estates in the urban areas. His only choice is those located in the

New Territories. But the New Territories in this context does not include areas such as Sha Tin, Tsuen Wan, Tseung Kwan O and Ma On Shan. It refers rather to Tin Shui Wai and Tuen Mun. The waiting time for public housing estates situated in Tai Po and Fan Ling is also very long. Moreover, there is also very strict requirement on the eligibility of the applicants in terms of the length of residence in Hong Kong. Anyone who has lived in Hong Kong for less than seven years is ineligible to apply for public housing. But the situation was quite different in the past when an applicant did not have to live in Hong Kong for seven years before he could submit an application and the requirement applied only when his application was put under examination. Applicants must also conform to more stringent requirements on income limit. After all, it has now become more difficult than in the past to apply for public housing. And the Administration uses these requirements to suppress people's demand for public housing.

Paragraph 2.8 of the mid-term review report points out that we have at least a total shortfall of 16 600 rental flats in the next five years. Paragraph 2.14 of the report states yet in clearer terms that, "Given the huge stock of rental flats we should try to contain the current stock size but this will only be possible if we can dampen rental demand and improve the mobility of our sitting tenants." Therefore, the *Report on the Mid-Term Review of the Long Term Housing Strategy* aims wholly at how to play a zero-sum game. It is the intention of the Administration, I am afraid, to formulate some measures which will reduce the public's demand for rental public housing, such as encouraging residents affected by redevelopment to purchase Type II Home Ownership Scheme (HOS) flats, imposing tighter tenancy control on sitting tenants and disallowing continued occupation of public housing flats by tenants who are property owners, in order to release some rental units. The Housing Authority's stance is that the cake could not be bigger and now the question is how to dole it out. The Honourable Frederick FUNG's amendment precisely aims at achieving this. In this motion debate today, I wish to bring out two points which the mid-term review report has missed out.

In calculating the demands for public housing, the Housing Department covered only low-income households in private residential units, squatter area and Temporary Housing Area (THA) residents waiting for re-accommodation and applicants on the Waiting List. Why are people presently living in old public housing estates which are scheduled to be redeveloped five years later and those living in estates of 10 to 20 years old not included in the forecast demand? I raise this point specifically because these people are living in rather crowded flats and they have already lodged applications with the Housing Department for allocation of additional units or transfer to larger flats (my office has received a lot of such cases). In fact they have fulfilled the overcrowdedness criteria laid down by the Housing Department, that is, an average living space of less than 5.5 sq m per head. Very often a family of five or six members has to squeeze into a 200 sq ft unit. This is common in Sau Mau Ping, Lam Tin or some other older estates. But their applications are always rejected.

On the other hand, there are many vacant units in these estates with some of them having been left vacant for a year or two. These units were originally earmarked for squatters or THA residents affected by redevelopment and clearance. But they disliked these old units and declined to move in, thus wasting the resources. The irony is that while the Housing Department has to spend money renovating these units with no chance of getting the rental income, tenants stuffed in small units are not allocated with these units. Has the department noticed this situation?

The living environment of sitting tenants in public housing estates is no better than that of people living in old buildings. I hope that the Housing Department will include these public housing tenants in its recalculating of people's demand for public housing, because these estates will not be redeveloped in the near future or indeed will be redeveloped years later. How can we turn a deaf ear to their vociferous demand?

Recently, I attended the residents' assemblies in Lam Tin Estate and Kowloon Bay THA. Apprehension was expressed that the proposed HOS Type II flats might curtail their right to rental public housing. I wish to reflect their worries here.

A public housing tenant must surely have not much financial means if he lives in the estate for more than two decades and does not move out. He belongs to the low-income group. I think the Administration must be doing its sums wrong if it expects such tenants to buy the HOS Type II flats.

Madam deputy, in view of continued strong demand for rental public housing, Meeting Point supports the Honourable Frederick FUNG's amendment. The Honourable WONG Wai-yin will explain later on the reasons for his withdrawn amendment to Mr FUNG's amendment motion and put forward Meeting Point's general views about the mid-term review report.

Madam deputy, I so submit.

DR YEUNG SUM (in Cantonese) Madam deputy, the Housing Authority's review of the Long Term Housing Strategy is sort of a case of "loud thunder but small raindrops." Since the Long Term Housing Strategy has been implemented for several years, it has brought about many problems. We thought at first that the review would come up with new and better solutions to the housing problem. But it turns out that the entire exercise is essentially no more than a reaffirmation of the policy position of the strategy. What little changes it has proposed are technical considerations only, such as earmarking for sale some of the new-type public rental housing units as Type II Home Ownership Scheme (HOS) flats, and increasing the amount of loans to successful applicants under the Home Purchase Loan Scheme. I am opposed to such kind of a review which reaffirms the fundamental policy position.

Years ago when the Housing Authority reviewed and discussed the Long Term Housing Strategy, consideration was given to three policy options: a public rental housing oriented approach, an HOS oriented approach and a private sector housing oriented approach. If any of these approaches was adopted, more units of that type of housing would be supplied. Having discussed the options from many angles, the Housing Authority decided to adopt the private sector oriented approach. Such a policy direction would obviously encourage market participation and operation by private sector developers, to be supported by public sector housing, including HOS and public rental housing.

Madam deputy, the situation of Hong Kong's housing problem has been deteriorating obviously since the Housing Authority implemented the private sector oriented policy. It may have been caused by many factors but, in my opinion, the particular policy is certainly one of them. Firstly, there are at present 150 000 applicants on the Waiting List for allocation of public rental housing units. The Housing Authority said recently that after actual screening, there are only 70 000-plus qualified applicants. But, basically speaking, the number on the Waiting List exceeds 100 000. It will be many years before an applicant on the Waiting List can be allocated a unit. In its recent scrutiny of a bill concerning "bedspace" apartments, this Council found that more than 3 000 people were living in such very crowded units. All of these lodgers are low income singletons. While the Government intends to ameliorate the fire hazards of such apartments, it faces at the same time the problem of rehousing the singletons. Basically, the present supply of singleton public rental housing units can hardly satisfy the demand.

As regards private sector housing, rents and high property prices are putting a crushing burden on most sandwich class and middle-income families. The Honourable CHEUNG Man-kwong amply illustrated this a moment ago. To meet rent or mortgage payments, many of these families have to cut back on food and clothing. Even so, they are barely able to meet these very high payments.

Madam deputy, the current rents and prices of private property are so very high that they are simply beyond the affordability of most members of the public. This may be due to flat hoarding and monopolization of the property market. One can imagine how members of the public are grumbling. This is a time bomb in the community of Hong Kong. It may go off any time. For the sake of the stable development of the community, I think the Government must co-ordinate the strength of its various arms to ameliorate this serious social problem. Effective solutions may be: (1) increasing land supply, (2) building more public sector housing including public rental housing and HOS flats, and (3) discouraging and curtailing property speculation in the private sector by making it more costly for speculators.

In view of the above, I have three suggestions to make:

(1) The Housing Authority should change the policy thrust of the Long Term Housing Strategy by abandoning the private sector oriented approach and replace it with a public housing and HOS housing oriented approach. Such a new policy direction will enable the Housing Authority to build more HOS flats and public rental housing units. People on the Waiting List for public rental housing will then be allocated units sooner. It will also make it easier for aspiring home owners to buy HOS flats, increase the turnover rate of public rental housing units, improve the living environment in public housing estates and increase the Housing Authority's revenue. An increased supply of HOS flats will have a certain degree of cooling effect on the prices of private properties.

(2) Inter-departmental co-ordination within the Government should be strengthened to increase land supply. The Government should also hold discussion with the Chinese side about increasing land supply in Hong Kong. According to the *Memoir of XU Jiatusun*, some Hong Kong property developers once asked China to restrict the supply of land in Hong Kong lest the property market be adversely affected. This is really regrettable. It is really very disgusting that somebody should try to benefit himself regardless of the public's housing difficulties. If there should be such a secret understanding between China and Hong Kong's property developers, we would probably have a case of collusion between Chinese officials and Hong Kong businessman. I hope that it is a rumour rather than the truth.

(3) The Government should introduce a capital gains tax. This tax should be waived only for those who bought the property for self-occupation or for transfer to close relatives for self-occupation. If it is proven that the property is bought and resold for profit, then the profit, if any, should be taxed. The tax rate should be commensurate with the length of possession, that is, the higher the rate the shorter length of possession, or the lower the rate the longer length of possession. Basically, we discourage property speculation which transfers wealth from the hard working majority of the public, who need homes, to a minority group. Property speculators make huge profits but pay taxes which are just a trickle compared with the salary taxes paid by the hard working public. I fail to understand so far why people have to pay tax on earnings from work but no capital gains tax on huge profits from property speculation. This is utterly unfair. To keep the tax system fair and property prices low, the Government should give serious consideration to the suggestion of introducing a capital gains tax.

Lastly, I suggest that the Housing Authority should build more public rental housing units for singletons and for an increasing number of old people to cater for their housing need. The Housing Authority should build more multi-purpose public rental housing, so that hostels for the elderly, care and attention homes and nursing homes may be situated in the same area or even on different floors of the same public housing block. Community care is the guideline for the policy on old people. Old people need housing and care. I

believe that old people in need of care will benefit from the Housing Authority's decisive action.

Madam deputy, with a reserve of over \$30 billion, I believe the Housing Authority has the necessary resources for carrying out the above suggestions. What it lacks is the political and administrative determination. I sincerely hope that the Government and the Housing Authority will give serious consideration to the suggestions that I have made.

With these remarks, I support the Honourable Frederick FUNG's amendment and Dr Conrad LAM's motion.

THE PRESIDENT resumed the Chair.

MR WONG WAI-YIN (in Cantonese): Mr President, in his policy address of 1992, the Governor, Mr Chris PATTEN, said that 60% of all families in Hong Kong should own their homes by 1997. This policy objective became the guiding principle for the Housing Authority in its review of the Long Term Housing Strategy. However, Meeting Point must point out that the *Report on the Mid-Term Review of the Long Term Housing Strategy*, just completed by the Housing Authority, is purely a progress report. It is of little help to solving Hong Kong's overall housing problem. Since the quantity of housing construction by the Housing Authority will drop in the next several years, thus failing to meet the substantial demand, the review therefore offers just a "tinkering" proposal to remedy such a situation, so that the waiting time for public housing will not be lengthened as a result of the mistakes made by the Government and the Housing Authority.

In the report on the mid-term review, the Housing Authority indicated that there would be a total shortfall of 16 600 units over the next five years. This shortfall is attributable mainly to the Government's failure to provide sufficient land for development. The report also mentioned other causes of slippage in housing construction projects in addition to insufficient land supply, such as poor co-ordination and poor timing of site development with other projects like road development, planning programme and infrastructural development. The Government of course bears an inescapable responsibility for these problems. The Government has now realized the seriousness of the problem and re-created a Deputy Secretary for Planning, Environment and Lands with special responsibility for housing policy. This is expected to improve the provision of land for development. However, Meeting Point thinks that a faster way to increase land supply is for the Government to provide land originally earmarked for sale by auction to the Housing Authority. Hence the Housing Authority's quantity of housing construction can then return to a satisfactory level.

In fact, the Housing Authority has to bear part of the responsibility for the land supply and development planning problems because it should have discovered them long ago. Yet, as far as we could see, all that the Housing Authority did about the problems in the last several years was no more than taking a brief note of them, without any positive action to resolve them. Meeting Point finds it irresponsible. It is only now, when the problems have become so serious, that the Housing Authority offers a "tinkering" proposal to try to find units that can be allocated to applicants in the next few years. But this proposal will slow down the progress of environmental improvement in some public housing estates, or even lengthening the waiting time for applicants already on the Waiting List. It is very unfair for members of the public to bear the consequences of mistakes made by the Government and the Housing Authority.

In order to make up for the shortfall of 16 600 units for allocation to Waiting List applicants during the next five years, the Housing Authority is proposing to postpone the redevelopment of some public housing estates. It is intended to reduce the demand for rehousing units. The Housing Authority is also proposing that consideration should be given to increasing the building density in urban public housing estates, so that more units may be constructed on the same sites. These two proposals will directly slow down the progress of environmental improvement in public housing estates.

Meeting Point agrees that, in order to increase the turnover rate of public housing units, measures should be taken to step up repossession of unoccupied units, sublet units and units used for non-domestic purposes. However, Meeting Point has reservations about the suggestion to evict public housing tenants who own properties. Such an eviction will be unfair because owners of motor cars, stocks or overseas property are not subject to the same requirement.

As to the proposal of introducing Type II Home Ownership Scheme (HOS) flats for sale, Meeting Point supports in principle the diversification of public sector housing to give the public a wider selection. However, Meeting Point must reiterate that it supports the proposal on Type II HOS housing only on the condition that the overall supply of public sector housing is increased without any decrease in the supply of public rental housing units. In fact, if the overall supply of public sector housing does not rise, the Waiting List can hardly be shortened.

Mr President, Meeting Point's overall evaluation of the Housing Authority's Report on the Mid-Term Review of the Long Term Housing Strategy is: As the first comprehensive review of the Long Term Housing Strategy since its implementation by Housing Authority in 1987, the review has revealed some operational and co-ordination problems on the part of the Government and the Housing Authority. But the review is straitjacketed by the wrong housing policy made several years ago, namely, the private sector housing oriented policy. Under this guiding principle, the Housing Authority has acted only as a policy executive, powerless to review the formulation of the

territory-wide housing strategy. Time has now come for the Long Term Housing Strategy to be reviewed, and this is undoubtedly the Government's job. Mr Frederick FUNG's amendment does not call for an increase in the overall supply of public sector housing. Therefore, until I was regrettably ruled out of order by you, Mr President, I had intended to move a further amendment to the effect that "that this Council urges the Government to formulate a public sector housing oriented Long Term Housing Strategy and to allocate more land for the purpose of increasing the overall supply of public sector housing." Though Mr FUNG's amendment does not call for an increase in the overall supply of public sector housing, Meeting Point still supports it because it sets out a rental units oriented principle for public sector housing. Therefore, all four Members from Meeting Point will vote for Mr FUNG's amendment.

DR TANG SIU-TONG (in Cantonese): Mr President, the Housing Authority recently completed a mid-term review of the Long Term Housing Strategy and came up with many proposals, including proposals to encourage home ownership, to slow down re-development projects and to speed up the re-settlement of squatters and Temporary Housing Areas residents. The Housing Authority on one hand says that it wants to promote home ownership; on the other hand, it discloses that the supply of public housing units will decline sharply in the coming years. Judging from this two-pronged statement, the Housing Authority clearly intends to gradually drop its major objective which is to use public sector housing to solve the housing problem of the middle and lower social strata, and will start to operate on a profit-making basis.

When announcing the 13-year Long Term Housing Strategy in 1987, the Housing Authority said that it would clear by 1997-98 the backlog on the Waiting List for public housing. Applicants on the Waiting List in 1988 numbered 144 000. By the end of 1993, the number, instead of decreasing, had gone up to 165 000. Evidently, it is not possible to achieve the 1987 goal, which was to clear the backlog by 1998, given that the demand for public housing has increased, while the production of public housing has declined in relative terms. The problem of course cannot be solved. The Housing Authority has all along blamed the shortfall of public housing on the Government's failure to make enough land available. I think that the Housing Authority is telling only half of the truth when it says to the effect that most of the land allocated by the Government is in remote areas or even areas not backed up with adequate road systems or other physical infrastructure, with the result that the land received by the Housing Authority cannot be put to immediate use. The other half of the truth, which the Housing Authority does not tell, is that it has chosen not to build public housing but Home Ownership Scheme (HOS) housing for sale on urban or suburban land. Most of the large-scale public housing estates built during the past four or five years are located in the New Territories, such as Leung King Estate, Tin King Estate and Kin Sang Estate in Tuen Mun; housing estates in Tin Shui Wai, Yuen Long; housing estates in Tseung Kwan O, Sai Kung; housing estates in Ma On Shan, Sha Tin; and Tai Wo Estate and Wan Tau Tong Estate in Tai Po. Public housing estates

are now seldomly constructed in urban areas. In contrast, HOS housing estates are not only found in the new towns but also found in large numbers in the urban areas including Kwun Tong, Wong Chuk Hang, Chai Wan, Sham Shui Po, Shau Ki Wan, Wong Tai Sin and Stanley. Judging from location, one can see clearly that the Housing Authority's public housing policy is that more HOS housing should be built at the expense of public housing.

Since the HOS was first launched, the selling price of the flats under the scheme has gone up steadily. Leaving the remote past aside, let us look at how the selling price of HOS housing has changed over the past three years. The average price of a unit of HOS housing in phase 13A, offered for sale in April 1991, was \$598,000. The average price of a unit of HOS housing in phase 15A, offered for sale in April 1993, was \$907,000. The average price of a unit of HOS housing in phase 15C, offered for sale in December 1993, was \$1,095,000. We know that in developing HOS housing, the Government aims at helping lowly citizens who cannot afford private housing to own homes. Therefore, in setting the selling price, the Government counts construction cost only but not the land premium. But the Housing Authority played a trick by linking the selling price of HOS housing to the market price. As the price of private housing went up, so did that of HOS housing. Over the past 10 years, HOS housing has made hundreds of millions of dollars in profit for the Housing Authority. HOS housing has become a source of profit to the Housing Authority. This is clearly a departure from the original purpose of HOS housing.

The Housing Authority has now proposed to offer cheaper housing units under the Type II Home Ownership Scheme. The proposal is indeed acceptable. Regrettably, however, the scheme is worked out on the condition that there would be a slowing down of the re-development of type III to VI urban public housing. In other words, Type II HOS housing will be built at the expense of public housing. This is definitely not a reasonable arrangement. It reverses the right order of priorities. Also, it shows that the Housing Authority is so bent on achieving the target of a higher ratio of home ownership that it has decided to develop HOS housing on public housing re-development sites while assigning public housing units in remote areas to applicants on the Waiting List. This is unfair indeed.

The average annual output of public housing for the period from 1991 to 1994 is 23 000 units. According to figures from the Housing Authority, the output will decline gradually from 1995 onwards. And only 17 800 units will be completed in each of 1997 and 1998. I believe that a higher number of HOS housing units and Type II HOS housing units constitutes the main reason for the decline in the output of public housing. While a suitable number of HOS housing units should be built, land for the construction of public housing should never be converted to make way for the development of HOS housing. Public housing has a history of 40 years. There are now 640 000 public housing units and 16 000 new public housing units are completed each year. HOS housing has a history of 10 years. There are now 160 000 HOS housing units and the

number of new HOS housing units completed each year is also 16 000, as in the case of public housing units. In my opinion, the ratio of new public housing units to new HOS housing units should not be 1:1. The proportion of new public housing units should be higher. It is totally unacceptable if the production of new HOS housing units is to outpace that of new public housing units in the years to come. In any case, a public sector housing policy should be a public housing oriented policy with HOS housing playing second fiddle. Only this will effectively address the overall housing needs of the community.

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

MR ROGER LUK: Mr President, the Long Term Housing Strategy promulgated by the Government in 1987 has four major policy objectives. They are to provide adequate housing at an affordable price or rent to all households, to achieve efficient and equitable use of resources by ensuring that benefits in terms of subsidy are related to need, to promote home ownership and mobility of sitting tenants, and to redevelop substandard older public housing estates. These policy objectives are translated into several mission statements including the attainment of an overall home ownership rate close to 60% by 1997.

This Long Term Housing Strategy should not be viewed in isolation but in the context of the residential housing market as a whole. In the Motion of Thanks debate on the Governor's policy address last October, I depicted the residential housing market in a simple demand/supply framework. As it is pertinent to the motion in question, let me briefly recap what was said.

Housing demand is a matter of affordability and thus relates to household income. It is a spectrum ranging from shelters for the under-privileged to elegant houses for the high net worth individuals. In between, there are self-contained living quarters of different quality and amenities for households of different income levels.

On the supply side, housing is provided by both the public and private sectors with an overlapping interface. It is a spectrum ranging from welfare for the underprivileged provided by the Government to commodity for the affordable provided by private developers. In between, there are subsidized public housing (for the low income and middle income households) and private housing (for the middle income and high income households), overlapped to the extent of the home ownership scheme (HOS) and the "sandwich class housing" targetted at the middle income group.

Hong Kong's public housing programmes are remarkable achievements by any standard. We have created an impressive supply of decent, affordable public housing over the last four decades for over 40% of the population. We have travelled a long way from resettling squatters to subsidizing home ownership. What should be our way forward?

Given the recent development of the residential property market, what really matters is not the future approach to the provision of public housing but the role of public housing *vis-a-vis* private housing in meeting the housing demand and home ownership aspiration of the people.

I share the concerns of the Honourable Frederick FUNG and many other colleagues on the way forward on public housing. However, it must be recognized that public housing today is much more than social welfare for the underprivileged. It is in fact a subsidized "commodity" for the low income and middle income households. Thus, any government assistance should only be linked to need and affordability as a matter of principle.

If it is a policy objective to assist beneficiaries to improve their livelihood, public housing is victim of its own success. As public housing tenants pay an average of only 8% of their income on rental compared with an average of one-third for counterparts in private housing, they have become better-off over time. In turn, this has generated an increasing demand for better quality accommodation.

Unfortunately, there is little incentive for upward mobility in public housing owing to, *inter alia*, life-time tenancy. After all, public rental housing virtually offers a homogeneous accommodation to meet the target demand. It is therefore no surprise to find that 13% of public housing dwellers also own private housing with probably one-third of them even owning more than one property and an initiative to sell public housing units to tenants at heavily subsidized prices has not been well responded to.

The situation today is that the more better-offs continue to enjoy subsidized public rental housing, the less better-offs continue to press for better living conditions and the underprivileged continue to wait in the queue. This is, of course, unsatisfactory. In the circumstance, the rental oriented approach is flawed and it would only make a complex situation even more complicated. Moreover, the arguments in its favour are also flawed as the fundamental question is not inadequacy of supply but immobility of beneficiaries. The long-term strategy to encourage home ownership is just a recognition of the people's aspiration.

Admittedly, home ownership outside HOS is becoming out of reach to salary earners. As I analyzed in my previous speech, the latest round of price surge has been local depending on accessibility and quality driven depending on facilities and amenities. As such, the current market imbalances are fundamentally mismatches in location and quality. The recent price spiral is thus complex asset price inflation arising from these mismatches, aggravated by negative real interest rates and speculative demand.

Mr President, public housing has an important part to play in meeting the increasing demand for quality housing and home ownership aspirations of the population. The right way forward is to reposition its role *vis-a-vis* private

housing in this respect. The mid-term review is an opportunity for us to seriously reconsider this particular question. It would be unfortunate if we revert to the rental oriented approach.

The proposed amendment does have a direction but it leads to nowhere. With these remarks, Mr President, I cannot support it.

PRESIDENT: Dr Conrad LAM, do you wish to speak to the proposed amendment? You have five minutes if you wish to do so.

DR CONRAD LAM (in Cantonese): Mr President, I should like to thank Members for their enthusiasm in speaking on the subject, thus meeting the objective of my motion today. I would also like to thank the Liberal Party for supporting the United Democate of Hong Kong (UDHK). Summing up the speeches made by Members today, many of them are similar to the 10 points made by the UDHK in respect of the current review. These 10 points are as follows:

- (1) The scope of the review must include the Long Term Housing Strategy objectives and the "private sector oriented" strategy. The UDHK proposes to replace the existing strategy with the "public housing and Home Ownership Scheme (HOS) oriented mode", based principally on the supply of public rental housing.
- (2) The targets of the consultation exercise concerning the Long Term Housing Strategy should not be confined to the various tiers of representative government. Instead, public opinion should be sought sufficiently actively and appropriately.
- (3) The Housing Authority's surplus should be used to build a considerable number of additional rental and HOS flats, with the latter to be sold at cost recovery prices in order to contain the spiralling property prices.
- (4) The Housing Authority's role in the redevelopment of private housing should be reviewed with a view to attempting to increase the resources to satisfy the housing demands by bedspace lodgers, elderly people, singletons and two-person families.
- (5) We oppose the Home Purchase Loan Scheme which stimulates the property market. The home purchase facilities provided by the Housing Authority should not be designed for the wrong purposes of accumulating wealth or suppressing public housing demands.

- (6) We oppose the allocation ratio of 1:1 between the HOS green form applicants and white form applicants. The ratio should be changed to 2:1.
- (7) The Type II Home Ownership Scheme should not jeopardize the interests of potential public housing tenants and residents of the redevelopment areas. Nor should they be discriminated against for refusing to purchase Type II HOS flats.
- (8) The tenancy agreement of those public housing tenants who have violated the tenancy agreement by abusing their flats, for example, letting them or using them for commercial purposes, should be annulled. However, as regards those public housing tenants who own properties, since they have not violated the tenancy agreement or the Housing Authority's policy, the Authority must examine their case in detail and handle it flexibly according to the merits of individual cases before deciding on any policy.
- (9) Each and every part of the Comprehensive Redevelopment Programme should be reviewed more thoroughly. The Housing Authority should not postpone the demolition of dilapidated public housing blocks with structural problems and without self-contained facilities on the pretext that so doing will slow down the redevelopment progress.
- (10) We demand the Government to provide more land, particularly urban land, to the Housing Authority. The Government should also provide more formed sites to the Housing Authority as soon as possible, and make more commitment to the overall public housing programme.

I so submit.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, today's motion debate provides the Housing Authority with an additional opportunity to hear Members' views — and, through them, community views — on the Mid-term Review of the Long Term Housing Strategy. I am grateful to Dr the Honourable Conrad LAM for proposing the motion and to other Members for expressing their views.

My own remarks today are not intended to pre-empt the outcome of the review or to respond in detail to all of the points raised here today but to offer some interim clarification and reassurance. The Housing Authority itself has indicated that the various proposals broached in the review report will be

discussed further by its various committees over the next few months with public views, including those expressed by Members today, being taken into account. The Housing Authority will then re-examine the proposals in June 1994.

In conducting the review, the Housing Authority has done a great deal to invite comments from as wide a range of sources as possible. The Chairman of the Housing Authority and senior Housing Department staff have been very active in this regard. For example, the report has been discussed at meetings of the Housing Panel of this Council, with many district boards, major political organizations and housing interest and community groups. Rental housing and home ownership Mutual Aid Committees and academics whose field of research includes housing have also been provided with copies of the report.

I have no doubt therefore that the Housing Authority is earnest in its intention to canvass views widely and I am equally sure that it will take proper account of views offered. It will not have escaped Members' notice that the Chairman of the Housing Authority has been present throughout this debate.

The main purpose of the mid-term review is to make an assessment of whether the Long Term Housing Strategy targets can be met as planned or whether new initiatives are needed to enable the Housing Authority to achieve its targets. Public discussion so far has focused on a number of issues, and I will deal with some of them briefly today.

First, on the question of the Rental/Home Ownership Scheme balance, with our society becoming more affluent, it is a natural development that some members of the community, who cannot afford private property prices, want to buy their own homes with some assistance from the Government rather than continuing to pay rent indefinitely.

The Long Term Housing Strategy is thus based on the premise that while there may always be a demand for low-cost housing at affordable rent, rising aspirations for home ownership from households living in public and private housing need to be met. Where we should draw the line between the two is the underlying question governing the rental and sales mix in public housing production up to the year 2001.

Public housing production targets are subject to revision and the last four reviews (1989-1992) saw an increase in production targets by 77 000 flats. So this is a moving target. The split between rental and sales production was revised from 45:55 in the 1991 review to 50:50 in 1992 to take account of changes in both the household affordability and preference. In the remaining eight years of the Strategy period (1993-94 to 2000-01), the public sector is committed to producing 331 000 flats, with 170 000 being rental and 162 000 for sales.

The Mid-Term Review of the Long Term Housing Strategy suggests that the housing demands of those who can afford it should be met through the home ownership sector, thereby releasing more existing resources to meet the public rental demand from households which cannot afford home ownership, like families with income lower than the Waiting List Limits, and the elderly and singletons.

There has been a rising demand for assisted home ownership in recent years. The Home Ownership Scheme (HOS) sale exercises in 1991-92 and 1992-93 recorded an oversubscription rate of 11. The last three sale phases in 1993-94 were also largely oversubscribed by 11, 16 and 18 times respectively, with an oversubscription rate of five to nine in respect of the Green Form applicants. I am sure most Members would not like to see the home ownership hopes of these people dashed by a shift away from HOS production.

As ever, there is the question of land. Let me repeat what I said in a speech in this Chamber last October. The Government will continue to produce and allocate land to meet clearly identified additional demand just as it has done in the past. And in the past year as a result of the target moving, we have identified an additional 50 hectares for the public housing programme. Identified public housing production shortfall now up to the year 2000-01 is currently forecast at 14 400 flats out of the target of 430 000 flats. Reviews of the programming and processes will very likely eliminate the shortfall entirely but not a degree of bunching of supply over the years.

Another concern is the possibility that part of the Authority's Comprehensive Redevelopment Programme for old public housing blocks will be rescheduled. The position on this is quite clear: the Housing Authority will press ahead with its five-year Comprehensive Redevelopment Programme already announced with only limited adjustment. The proposal being considered is that housing blocks providing self-contained units and in sound structural condition should, after refurbishment, be retained for a few more years after the existing tenants have been rehoused. By providing extra housing resources on a temporary basis, these blocks could help meet the demand for small urban rehousing units in the short term.

There is also a misconception that tenants affected by redevelopment will somehow be "forced" to buy Type II Home Ownership Scheme flats or be discriminated against when being offered rental housing. The actual situation is that some tenants who are keen to buy HOS flats are unable to do so because there is no HOS supply in their district at the time they are relocated. The Type II HOS proposal is, therefore, intended to provide an additional avenue for these and other families. Furthermore, even if the Type II HOS Scheme is implemented, the Housing Authority will ensure that the priorities for those on the waiting list are not adversely affected.

One of the proposals in the report concerns public rental tenants who own private property. There is a body of opinion that those who can afford to buy

private property should not continue to occupy rental flats while there are still so many people on the housing waiting list. This is a complex issue on which the Housing Authority has yet to take a view. I am sure it will welcome comments however. Related to this is the problem of underutilization of public rental flats which is a waste of valuable resources. In the last couple of months, public support for tougher enforcement has been expressed. And the comments of the Honourable Mrs Peggy LAM and Mrs Elsie TU along these lines are to be welcomed. I have no doubt that the Housing Authority will follow up.

As far as what I have previously termed the mythology of concepts like the private sector led housing strategy is concerned, I should like to say that in our annual assessment of housing supply and demand, the contribution of the private sector is recognized, but it is not a crucial factor in deciding the quantum of public sector supply. Since our benchmark for determining the eligibility net is affordability, whether the Long Term Housing Strategy should be described as public sector led or private sector led is purely an academic and theoretical argument.

Briefly on the current state of play on the sandwich class housing, so far more than 80% of the 2 000 "balloted applicants" have been interviewed and more than 300 successful applicants have been issued with certificates to buy private housing units of their own choice. More applicants will be benefitted in the process, and it is ongoing and the second phase of the Interim Scheme will be launched in April.

The Main Sandwich Class Housing Scheme will comprise of 10 000 flats for sale at a concessionary and affordable price. And the first flats for sale will come on stream in 1995. The question of selling these flats in advance is being considered.

I should also like briefly to refer to the private sector and particularly the private sector redevelopment supply. I think the point that I would like to make is this: that if housing demand is to be met, there is no gain in seeking to load the demand for that supply onto the Housing Authority. The private sector will, in the foreseeable future — possibly I would hazard the indefinite future — be a crucial part of the housing supply system in Hong Kong. To my mind, the essence of ensuring adequate supply through private and public sectors is supply, supply, supply. And that any efforts which are made to control, restrict or provide disincentive to the private sector will in fact be counterproductive to the aim of full housing supply which all of us want to see.

Mr President, because the Administration is fully in sympathy with the motion, the Official Members will have no difficulty in supporting it. As regards the proposed amendment, in the Administration's view what is essential is that the Housing Authority, in reviewing the Long Term Housing Strategy and considering whether any adjustments should be made, should maintain a sensible balance between its efforts to provide an adequate supply of rental housing and its response to demand and aspirations for affordable home

ownership. Because the proposed amendment appears to discount this need for balance, the Official Members will abstain on it.

Thank you.

Question on Mr Frederick FUNG's amendment put.

Voice vote taken.

The President said he thought the "Ayes" had it.

MR RONALD ARCULLI: Mr President, I claim a division.

PRESIDENT: Council will proceed to a division.

PRESIDENT: Would Members now please proceed to vote?

PRESIDENT: Do Members have any queries? If not, the results will be displayed.

Mr HUI Yin-fat, Mr Martin LEE, Mr PANG Chun-hoi, Mr SZETO Wah, Mr TAM Yiu-chung, 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, Miss Emily LAU, 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, Miss Christine LOH and Mr Alfred TSO voted for the amendment.

Mr Allen LEE, Mrs Selina CHOW, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr CHIM Pui-chung, Mr Timothy HA, Mr Simon IP, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Mr Howard YOUNG and Mr Roger LUK voted against the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary and Mrs Peggy LAM abstained.

THE PRESIDENT announced that there were 27 votes in favour of the amendment and 22 votes against it. He therefore declared that Mr Frederick FUNG's amendment was approved.

PRESIDENT: Dr Conrad LAM, do you wish to reply generally? Out of your 15 minutes, you have 4 minutes 30 seconds left if you wish to reply.

DR CONRAD LAM (in Cantonese): Mr President, Mrs Elsie TU has just expressed her views on the amendment moved by Mr Frederick FUNG. I share the same views with her and also have echoes to make.

Since Mr FUNG's amended motion is in line with the United Democrats' housing policy, we are in support of his amendment. The speeches of Members today show that we have consensus in many aspects. I earnestly hope that the Government would respond to Members' consensus speedily, so that the general public of Hong Kong can live and work well.

Thank you, Mr President.

Question on Dr Conrad LAM's motion as amended by Mr Frederick FUNG's amendment put and agreed to.

POWERS OF INDEPENDENT COMMISSION AGAINST CORRUPTION

MISS CHRISTINE LOH moved the following motion:

"That this Council urges the Government to carry out a full review of the powers of the Independent Commission Against Corruption and to ensure that there is proper public accountability, taking into consideration any changes in social circumstances which have taken place in Hong Kong since its establishment."

MISS CHRISTINE LOH: Mr President, I move the motion standing in my name in the Order Paper.

The Government and people of Hong Kong have for the past 20 years placed their trust in the vigilance of the Independent Commission Against Corruption (ICAC) in order to keep corruption at bay. The ICAC has proved itself over that time to be impartial and efficient. It has used its exceptional powers with diligence and restraint. It has earned the widespread respect and approval of the law-abiding public. According to the ICAC Commissioner, Mr de SPEVILLE, when the public was asked in 1990 if the powers of the ICAC were excessive, only 2.5% replied that they were.

My impression is that if the question was asked again today, public opinion would once again give its overwhelming support to strong powers for the ICAC. The Hong Kong public places a very high priority on the fight against corruption. It understands that the agency, in the front line of that fight, must have the powers it needs to act quickly and decisively.

The Commissioner posed this question last week: "Will the ICAC be able to operate with the same degree of impartiality and effectiveness beyond 1997?" Mr de SPEVILLE thought that the ICAC could, but only given that it will have the necessary powers to remain effective, and equally important, given that there will be "a sound system of accountability for the use of those powers." And, above all, he said that the ICAC would need to continue to have the backing of this community.

Nobody wants to make the ICAC less effective. Nobody wants to make the ICAC's job more difficult. That must be our starting point. The ICAC needs our support. Even more than support, it needs active co-operation.

Everybody in Hong Kong, including businesses, banks, education, the media, government departments and, not least, this Council, should be looking for ways to end corruption where it already exists, and to prevent corruption where it might begin. We cannot hammer home the message too hard or too often.

If we tolerate corruption, we are giving criminals a free ride on the back of our own hard work. The price of an honest society is eternal vigilance.

We should note, however, that when the ICAC was established 20 years ago, graft was especially prevalent in the public sector. The Commissioner was purposely made accountable directly to the Governor. As Mr de SPEVILLE said yesterday, he takes orders from no one else.

Times have changed. Much of the ICAC's work today deals with corruption in the private sector. And we are concerned that corruption is resurging in the public sector. We also have a more democratic legislature. So it is not surprising that legislators are asking for more transparent accountability from the ICAC.

Democratic oversight

It cannot be our duty, and should not be our intention, to impede in any way the work of the ICAC. It is our duty, however, to ensure that the work of the ICAC is subject to some adequate form of democratic oversight and accountability. We do not wish to run the risk of having an ICAC licensed to pursue a narrow version of justice. The dilemma is to find the mechanisms which will enable that oversight to be exercised in ways which are effective but not obstructive.

To a large degree, of course, the work of the ICAC is subject to the oversight of the courts. The relevant Ordinances provide for the intervention of a magistrate, or the right of appeal to a magistrate, at key points in an investigation. If and when the Attorney General decides in favour of a prosecution, it is for the courts alone to weigh the evidence, to bring in a verdict and, where necessary, pass sentence.

But in some respects, and particularly during the early stages of an investigation, the ICAC has a variety of exceptional powers which can be exercised at the discretion of its Commissioner alone. They include powers which the Government has never seen fit to grant to the police for investigating other types of crime, however serious.

These exceptional powers include: the power to obtain information, to restrict disposal of property, to obtain privileged information from legal advisers, to seize travel documents, to arrest and detain, to search and seize evidence, to take a suspect's identifying particulars, to shift the burden of proof, to question and obtain records of Crown servants and to dismiss ICAC staff without giving reasons. Very soon, the ICAC will also take over the vetting work of the Special Branch.

These are exceptional powers to tackle, perhaps an exceptional problem; but it is here that the issue of oversight is most acute.

The law

The primary check on the ICAC's powers is the law: particularly the ICAC Ordinance, the Prevention of Bribery Ordinance, and, more recently, the Corrupt and Illegal Practices Ordinance. In reviewing the powers of the ICAC, the review should ask the fundamental question of whether the exceptional powers vested in the ICAC have to be justified on the basis that corruption offences are more serious or more prevalent than other offences.

An answer might be that a corrupt society is an inefficient society. It is a society which rewards dishonesty and which penalizes those who keep to the rules, thereby weakening the moral fabric of society as a whole.

The argument might also be enlarged to include the proposition that corruption offences are, by their very nature, more difficult to unearth and investigate than almost any other type of offence, since the parties to a corruption offence usually have a common interest in keeping it confidential.

The ICAC Ordinance and the Prevention of Bribery Ordinance were, of course, drawn up many years before the enacting of the Bill of Rights. They have since become subordinate to that Bill.

Initially, derogations were permitted from the Bill of Rights in order to allow Hong Kong's legal system to adjust over a period of time.

But such measures were only meant to be temporary and that time has passed. Now, as a matter of general principle, derogations and departures from the Bill of Rights cannot, and should not be entertained, whether in favour of the ICAC or anyone else. The Government amended those sections of the Prevention of Bribery and the ICAC Ordinances in 1992, which were patently inconsistent with the Bill of Rights. This Council had expressed then that there might be other areas requiring further study. I expect many Councillors will express the same sentiment today.

I suggest, therefore, that our aim in any review of the powers and accountability of the ICAC should be this: we should ensure that the ICAC possesses the maximum of powers needed to perform its task — provided always that those powers are compatible with the provisions of the Bill of Rights.

The Commissioner said yesterday that the ICAC's ongoing internal review on Bill of Rights issues has not seen a great deal of movement because there have not been many court cases. Mr President, the ICAC investigates many cases which do not get to court but, during the process of investigation, the Commissioner wields enormous powers. I fail to see the logic why the ICAC's ongoing internal review on civil rights issues should be dependent on the result of court cases alone. Is this not a rather "lukewarm response" to the obligations which arise from the Bill of Rights? Mr President, let us ask the Administration to show more commitment and demonstrate it more vigorously.

Perhaps I can make an example. Section 14 of the Prevention of Bribery Ordinance empowers the Commissioner to require information from anyone about his or her personal assets, even if he or she is not a suspect to an investigation "if the Commissioner believes that such information may assist in the investigation or proceedings" relating to another person.

In order to comply with Article 14 of the Bill of Rights, which guarantees to the individual protection against arbitrary interference with his or her privacy, family, home or correspondence, should the Commissioner continue to be the sole arbiter to decide whether a person, not a suspect, should be required to divulge personal information, or should the arbiter be an independent judicial authority, such as a magistrate or a judge?

Further, sections 21, 24 and 25 contain provisions which, in effect, shift the burden of proof from the prosecution to the accused. A review should take a view on whether the shift contravenes the presumption of innocence in Article 11 of the Bill of Rights. It has already been argued by members of the legal fraternity that the Court of Appeal decision in *R v SIN Yau-ming* requires that these sections be reviewed.

Watchdog bodies

The second check upon the ICAC is the presence of the principal watchdog bodies appointed by the Government: namely, the Advisory Committee on Corruption, the Operations Review Committee and the ICAC Complaints Committee.

In principle, the structure is a logical one. In practice, much depends upon the frequency with which the committees meet, the amount of information made available to them, the timeliness of that information, and the willingness of the ICAC to respond to their comments or recommendations.

The statutory terms of reference fixed for the committees can tell us very little about their activities, because in many respects confidentiality is as important to their work as it is to the ICAC itself.

For that reason, I hope the Government will be willing to consider suggestions for reviewing and tightening up the committee system. But it is difficult for me to make informed recommendations at this debate on subjects about which very little useful information is actually publicly available.

A review committee

The motion, as amended, would seek the establishment of a "broad-based committee" to review the "public accountability" of the ICAC. In principle, I support the motion as amended.

We have heard through the press that the Chief Secretary intends to reply by announcing plans to establish a review body to examine the ICAC. That is most encouraging. But how many reviews are we going to have now? Mrs CHAN assured this Council on 2 December that the Administration was reviewing the powers of the ICAC in terms of its power of dismissal. The Advisory Committee has also announced plans for review. Perhaps Mrs CHAN can further reassure us today that there will not be too many overlapping committees.

If there is to be a review, I would like it to be a full review. Further, I would like to be reassured by Mrs CHAN today that such a body would have access to all the information which it needed in order to arrive at an exhaustive view of the ICAC and its workings.

In particular, I believe it would be necessary for the review body to examine the recent minutes of the Advisory Committee on Corruption, the Operations Review Committee and the Complaints Committee; and to conduct

full and frank interviews with members of these committees and with officers of the ICAC.

Obviously, sensitive data would have to be reviewed in confidence and may not be disclosed in a final published report. But with that reservation, the review body should aim as far as possible to work in public rather than in private, to solicit evidence and opinions from members of the public, and to publish as full a report as possible at the conclusion of its review. I would like an assurance from Mrs CHAN on this point as well in her reply.

It would be important to ensure that the review body commanded absolute confidence; and that it could bring to bear on its deliberations sophisticated and authoritative knowledge of the law and of criminal procedure. For that reason, I suggest that it might be appropriate to appoint a judge as its chairman.

I would also like the review body to consider whether greater accountability could be achieved if the appointment of the ICAC Commissioner in future could be confirmed by this Council.

Mr de SPEVILLE said that "independence, integrity and transparency are the ingredients needed to win the confidence of the public". I agree with him. The review body should operate under these principles as well.

Dismissal

Finally, I would like to address the summary dismissal of Mr Alex TSUI; a dismissal which, while not referred to in the motion before us, has undoubtedly helped to crystallize the view that it is time to take a fresh look at the ICAC and its powers.

The law provides for the ICAC Commissioner to order a summary dismissal without giving any reason, even to the dismissed employee. This power may sometimes be essential for the security of ICAC operations and for the preserving of operational secrecy.

At the same time, we are right to be troubled by the unusually severe nature of this sanction; and by the theoretical possibility, however small, of a mistake being made without any clear possibility of redress.

My first suggestion is relatively simple: that the statutory terms of reference of the Operational Review Committee be expanded to include review of summary dismissals — where possible, before the dismissal takes effect.

My second suggestion is more far-reaching, and would require legislation. It is that the ICAC staff suffering summary dismissal should be given the reason or reasons for his or her dismissal, and he or she should retain full rights to seek redress against the ICAC through a court or tribunal. But this right should not be exercisable until one year has elapsed after the dismissal, so as to avoid

the possibility that legal proceedings might violate the confidentiality of ongoing ICAC investigations. If a court or tribunal then found the dismissal to have been unjustified, it could also order the ICAC to reinstate and/or compensate.

Mr President, with that, I support the amendment.

Question on Miss Christine LOH's motion proposed.

PRESIDENT: Mrs Selina CHOW has given notice to move an amendment to the motion. Her amendment has been printed in the Order Paper and circulated to Members. I propose to call on her to speak and to move her amendment now so that Members may debate the motion and the amendment together.

MRS SELINA CHOW moved the following amendment to Miss Christine LOH's motion:

"To add the words "to form a broad-based committee" after "That this Council urges the Government"."

MRS SELINA CHOW (in Cantonese): Mr President, I move amendment to the wording of Miss Christine LOH's motion, as set out under my name in the paper circulated to Members.

In November last year, the Independent Commission Against Corruption (ICAC) invoked section 8 (2) of the ICAC Ordinance, which states, "The Commissioner may, if he is satisfied that it is in the interest of the Commission, terminate the appointment of an officer without assigning any reason therefor."

By invoking this provision, the ICAC abruptly terminated the appointment of Alex TSUI, then the Deputy Director of Operations. Members of the public, as well as colleagues in this Council, burst into an uproar. Amidst the public outcry, Commissioner, Mr de SPEVILLE, demonstrated his "art of silence". Again and again, he kept his mouth shut by chanting his incantation of the words "in the public's interest" which enabled him successfully to keep the public or this Council's security panel in the dark about that incident. As a result, the public began to speculate wildly. The incident then became shrouded in mystery. The security panel of this council, at its meeting on the 10 January, urged the Commissioner to conduct a review of the ordinance. True to form, he refused to give a direct answer. He just said that the Ordinance remained necessary. The dismissal of ALEX TSUI aroused much public concern mainly because it put a question into spotlight that had so far escaped people's notice: Is the ICAC too powerful? When the ICAC was first established, the Governor then conferred on it and its Commissioner enormous powers which were certainly meant to enable the ICAC to rid corrupt government officials. It is admittedly that, ever since it was established 20 years ago in 1974, the ICAC has been projecting a positive image. It has put an end to the prevalence of

corruption in the community. It has dedicated itself to fighting corruption and promoting a clean government. It has made a good impression on the general public. But I am afraid there are not many, among colleagues in this Council and among members of the public, who know or indeed can tell what the ICAC really does or how it operates. It is evident that the ICAC's internal operations are highly secretive and lacking in transparency.

Times have changed. Hong Kong's social circumstances are now totally different from what they were back in the 1970s when the ICAC was established. With the improvement in living standards and a better educated community, most people now find corrupt practices unacceptable and are opposed to the notion that the end can justify the means. The ICAC's special powers are therefore regarded as anachronistic. From the outset, the ICAC was no ordinary statutory body as it is directly accountable to the Governor and is not under supervision by any government office. In fact, the ICAC has been operating a kingdom unto itself. The law provides that only the Governor has the powers to mind the business of the ICAC. Strange enough, the ICAC has had its enormous powers for 20 years without being called into question. The dismissal of Alex TSUI finally awoke members of the public and colleagues in this Council to the need to do something quickly about this problem left over from the past.

Under the circumstances, a full review of the powers of the ICAC is absolutely necessary. As Liberal Party's security policy spokesperson and the chairperson of this council's security affairs panel, I have all the more reason to urge the Government to conduct this review expeditiously and thoroughly, but not perfunctorily. Still less should it alter any recommendations of the review not to its liking, nor make decorative improvements only. This is unacceptable.

Now I come to the matter of my proposing to add the words "to form a broad-based committee" to the motion. As to the basic principle and spirit of this amendment, it is my expectation that people in private sector with different social backgrounds will participate in the committee so that it will look at the problems from different perspectives. It will provide the needed checks and balances on the ICAC's powers, make the ICAC's operations more transparent and eliminate the possibility of the Commissioner's having dictatorial powers. A broad-based committee's recommendations will surely be more credible and objective. But an important point should be borne in mind, that is, the committee, not being a parliament, should not be politicized. Members of the committee should, on the strength of their different backgrounds and experiences, adopt an even-handed approach to, and become deeply involved with, the committee's work. They should make real contributions to, and assume real responsibilities for, the committee. It behoves of the committee to listen to the different views of all quarters, including the views of the Council's security affairs panel, and find out how the ICAC operates and how effective it is. The committee should come up with recommendations for reforming the ICAC so that, even as its powers are put under suitable controls and monitoring, the ICAC will remain as effective as it has been over the years. Of course, in

the final analysis, whether the committee is as credible as it should be will depend on its members' standing in the eyes of the public and on their acceptance by the community.

Mr President, with these remarks, I move the amendment.

Question on Mrs Selina CHOW's amendment proposed.

PRESIDENT: I understand that two Members have commitments elsewhere. So I will call them out of turn. Mr Simon IP.

MR SIMON IP: Mr President, in his November 1973 speech at the Motion of Thanks debate, the Colonial Secretary, Mr Denys ROBERTS, as he then was, acknowledged the concerns of many civil servants over the pending Independent Commission Against Corruption Bill. He had this to say:

"Quite rightly they are concerned to ensure that while corrupt officers are vigorously pursued and swiftly removed from the public service, the honest officer, who is very much in the majority in the public service, will be properly protected against any possible victimization or injustice."

He went on to express the hope that a satisfactory formula might be reached which would be acceptable to serving officers but would help the Government to get rid of corrupt officers with a reasonable degree of speed and certainty.

Maintaining a balance between the need for special powers and the rights of public servants and citizens has been a delicate task. Since the passage of the Bill of Rights, we have elevated this task to the highest of priorities.

In 1992, the Legislative Council conducted a review of the ICAC and Prevention of Bribery Ordinances in view of the Bill of Rights. I served as convener of the ad hoc group that recommended that certain powers of the ICAC be reconsidered to protect the rights of persons under investigation.

We knew then, as we know now, that the review we were conducting could never be exhaustive. Protecting civil rights is a never-ending process which requires much vigilance from those who stand in a position to check and balance the powers of the Government.

The ad hoc group entertained some 13 public submissions regarding the amendment Bills that were passed in May 1992. In close consultation with the ICAC, we weighed these suggestions against the needs of the Commission. The ICAC's position was to seek legislative amendment only to those parts of the Ordinances which were patently in conflict with the Bill of Rights and to await

the decision of the courts on less certain provisions. Not surprisingly, the ICAC jealously guarded its powers and refused to entertain further changes at that stage. It did, however, undertake to keep the Ordinances under review and brief the ad hoc group periodically.

Recent events have prompted a timely resumption of this ongoing review. Questions have arisen, as we know, over section 8(2) of the ICAC Ordinance, but this is not the only area of concern.

On the question of section 8(2) of the Ordinance, while it may have been expedient and indeed desirable for the Commissioner to have the power to hire and fire at will without assigning any reasons when the ICAC was a fledgling force, that is no longer valid now that the force is at full operational strength. I do not advocate that the ICAC should be under any greater obligations than an ordinary employer who wishes to terminate the services of an employee. But where it comes to summary dismissal for cause, fairness and natural justice require that at least the employee should be told the reasons. The law should be amended accordingly. Public accountability must be balanced against public interest. The public's right to know should only be restricted if non-disclosure can be justified by reason of public interest immunity. That is a judgment which the Commissioner is entitled to make, but it should be subject to scrutiny by an impartial authority.

Among the provisions of the Prevention of Bribery Ordinance are provisions on the presumption of guilt and the compulsion of defendants to give evidence. These powers must be periodically reviewed to determine whether they continue to impose costs on individual citizens that are proportional to the benefits to society. Liberty is too precious to be curbed, without question, on the basis of assumptions that are now 20 years old.

As the Law Society stated in its submission to the ad hoc group, if the ICAC is "to retain any distinctive additional powers they have to be justified on the basis that corruption offences are more serious or more prevalent than other offences. Given the historical basis for the introduction of the powers, they have to be justified in the presentday context." If all future Commissioners of the ICAC had the qualities of the ancient judge BAO Tsing Tin, we would rest assured that the broad powers would always be exercised wisely and fairly. In the wrong hands, however, they can become potent weapons of oppression and harassment.

Just as importantly, the current rise in corruption both in the public and private sectors must be placed on the scales in striking a balance we can all live with. Perhaps many of us have begun to forget or are too young to remember how it was before the ICAC, when corruption was rampant in the public service. We might look at some of our neighbours to stir our memory. Corruption poses a real threat to the fabric of our society and to the way we live and do business. Before China's market reforms, the so-called "quick-buck syndrome" was the urge to make money as fast as possible in case the

opportunity will be lost after 1997. Now, burgeoning trade with and in China has produced the assumption that corruption will become an inevitable way of life after 1997 and that opportunities that present themselves now ought not to be missed. Consequently, the ICAC's ability to tackle cross-border and other forms of corruption effectively must be maintained as we approach 1997.

In conclusion, I support a review of the powers of the ICAC to ensure that it operates with a higher degree of accountability, a higher degree of transparency and greater judicial supervision while retaining maximum operational effectiveness.

I support the motion and the amendment.

DR HUANG CHEN-YA (in Cantonese): Mr President, corruption has been plaguing China's economy and its people's livelihood like a vampire for thousands of years. Nowadays, corruption is still very much a widespread scourge in China. With the increasingly closer economic link between China and Hong Kong, corruption may again rear its ugly head in Hong Kong. We, in respect of fighting corruption, must never lower our guard and treat it lightly. We should be determined to keep up our effort in conducting investigations into, and stamping out, corruption. We must also see to it that the Independent Commission Against Corruption (ICAC) be vested with sufficient powers to perform its duties so that it will be able to, in a sense like stabbing a vampire with a sharp sword, nail corruption to death. Yet, the ICAC is not functioning in an immutable society.

Hong Kong is a rapidly changing society. It has undergone myriad social, political and economic changes. Since the ICAC's establishment 20 years ago, Hong Kong has gone through enormous changes. At the same time, the fact that electronic technology is employed in increasingly complicated international financial transactions has made the ICAC's investigations very difficult. Cross-border corruption cases are both complicated and sensitive. Recently a case under investigation which ended up with nothing definite serves as a very good example. In addition, laws in Hong Kong and China are different. It is imperative that regulations must be drawn up to facilitate co-operation between China and Hong Kong in the fight against corruption. In respect of these changes, the Government must carry out a review to see whether any corresponding amendments should be made to the legislation governing the powers of the ICAC so that it can perform its duties more effectively in the coming 20 years. Yet, in the meantime we must also strike a prudent balance to ensure that the ICAC would, on the one hand, be given appropriately sufficient powers to act as a graft fighter and, on the other hand, would not possess excessive powers which are unnecessary and not job related, thus opening the doors to abuse of powers. "Power tends to corrupt and absolute power corrupts absolutely". This is true at all times. Mr E HOOVER, the former chief of the United States' Federal Bureau of Investigation (FBI), arrogated all powers to himself when he was in office. He mounted political blackmails against key

government figures and persecuted civil right campaigners. HOOVER had engaged in all kinds of unlawful activities for decades. Hong Kong should really learn a lesson from this. For this reason, the one and only way to build an open and free society where civil rights are upheld is to provide government departments with just the powers they need to conduct their business, no more and no less, so that there will not be security police agencies such as the "East Yard" and "West Yard", which wielded their powers to terrorize innocent people during the Ming Dynasty in China.

Recently the Government disclosed through some mass media that it would carry out a comprehensive review of the ICAC's powers. We do support such a decision.

We believe that this review is of prime importance. To make it a success, sufficient input of public opinion must be sought in the process. Furthermore, the Government should also take into account professional views such as the legal profession and the accounting sector as well as views expressed by concern groups on human rights so that it can make careful consideration and strike a right balance among different opinions.

In order to ensure that public opinion would be fully considered, we hope that the membership of the review committee would consist of elected Members of the Legislative Council or Members nominated by the Legislative Council. There are reports that the Government would not consider appointing any Member affiliated with any political party. I cannot accept this. We believe that political party background or not has nothing to do with the review. What matters is that those appointed to the review committee can fully and effectively represent public opinion and enjoy public credibility. For this reason, I would regard the Government pursues an ostrich policy which is both unfair and antiquated if it excludes elected Members with political party background.

As for the scope of the review, the prime task of the review committee is naturally to study the changes in corruption practices and their characteristics, especially the implications of the gradually closer economic link between China and Hong Kong. In its review of the ICAC's real powers, the committee must have a profound study of the necessity of various kinds of powers now exercised by the ICAC, bearing in mind particularly whether the explicit purposes for which the powers are designated will be contravened and whether there are sufficient procedure-related monitoring and so forth. Two years ago when this Council examined the Independent Commission Against Corruption (Amendment) Bill and the Prevention of Bribery (Amendment) Bill, quite a number of Members put forward a lot of queries and were of the view that a considerable number of provisions were outdated and might not be in line with the provisions of the Bill of Rights Ordinance. We hope that the committee will take this opportunity to take Members' views into careful consideration.

In addition, no matter what the ICAC's powers are, an effective monitoring system with public participation is necessary. Only by doing so can we monitor the ICAC on an institutional and regular basis.

Mr President, a good government has no magic secret. A good government is one which ensures its law enforcement bodies could exercise their powers effectively to achieve their corresponding policy targets, and at the same time, they are subject to proper checks and balances.

Mr President, I hope that the ICAC will have teeth, so to speak, to guard Hong Kong against corruption in the years to come but also that it will not become a mad dog which may bite its master to death.

With these remarks, I support the motion.

MR HUI YIN-FAT (in Cantonese): Mr President, when the Independent Commission Against Corruption (ICAC) was established in 1974, it won wide support and even high expectations from the public. The Government was determined to clamp down on corruption activities in both the private and public sectors. Under the circumstances, this Council conferred an independent status and great investigation powers on the ICAC through legislation, in the hope that the ICAC's efficiency in terms of investigation and internal operation can be enhanced. In view of the state of affairs at that time and the full support and trust of the former Governor, Lord MacLEHOSE, I think it was appropriate to confer unique status on the ICAC.

In fact, thanks to its 20 years' efforts, the ICAC has not only successfully established a credible image in our people's mind but also accomplished brilliant feats in its fight against corruption. The public now still dwell upon the cracking of some headline-grabbing serious corruption cases. Indeed, the ICAC has not let us down.

Yet, time has changed. In 1997 the sovereignty over Hong Kong will be reverted to China. One is, therefore, prone to have some reservations about whether current arrangements should be retained so that the ICAC will enjoy the supreme status of being solely accountable to the Chief Executive of the Hong Kong Special Administrative Region. Furthermore, Hong Kong's political system is in the gradual process of democratization; Hong Kong people's political awareness has been heightened and they are politically wish to monitor the Government. For these reasons, the ICAC should, to a certain extent, be accountable to the public through this Council.

Meanwhile, recently the ICAC summarily dismissed a deputy director and a scandal broke out in it involving a female officer being sexually harassed by her superior. The ICAC Commissioner failed to give an account of both incidents and even refused to disclose the findings of its internal investigation. This has not only undermined the ICAC's credibility but also called into

question whether the ICAC Commissioner is vested with excessive powers as well as the integrity of ICAC staff.

For these reasons, I support a full review of the powers of the ICAC and its Commissioner in order to make them more accountable to the public. Since the ICAC's powers were conferred by this Council, I consider it only too reasonable for this Council to have a part in the review and that it is also a proper arrangement to establish a broad-based review committee whose membership should include this Council's representatives.

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

MR MARTIN LEE (in Cantonese): Mr. President, the Independent Commission Against Corruption (ICAC) has been in existence for nearly 20 years. During these 20 years, corruption was gradually brought under control, making Hong Kong more stable and more prosperous. Nowadays, under the new political, economic and social circumstances, the ICAC's roles and powers should be reviewed in light of our more democratic and open society.

During the 1960s and the 1970s, syndicated corruption was rampant in the Police Force as well as in the other government departments. The ICAC in those days indeed must have had sweeping powers if it was to fight corruption effectively. Now the problem is that the scope of the ICAC's powers has not shrunken even as corruption has gradually been under control. The ICAC's powers should be limited to fighting corruption. Yet I know from personal experience that the ICAC often involves itself in matters that have nothing to do with corruption, particularly commercial crime.

I remember the words of a friend of mine who was conversant with the colonial judicial system. He made the following observations at the time of the establishment of the ICAC, "Today, the Government has created this creature to do good to the community, to the applause of the public. Mind you this creature will grow bigger with each passing day until a day comes when it gets out of control."

Mr President, his words have become more and more prophetic over the past 20 years. The Alex Tsui incident shows what lies at the heart of the problem: Under the existing law, the ICAC is vested with relatively absolute power and it is not accountable to the public. The ICAC Ordinance provides that the Commissioner shall be accountable only to the Governor and that the ICAC shall be independent of the political and administrative structures. So far, the Governors, being accountable to the elected British Parliament, have not abused their powers. But one wonders, to whom will the future Chief Executives of the Special Administrative Region be accountable after 1997? As a matter of fact, even a benevolent ruler, if given dictatorial power, is likely to abuse it.

Mr President, during the past 20 years, the ICAC exercised its special powers prudently. It was successful in combating corruption and in promoting a clean government in our community. It closed the chapter in the history of Hong Kong when one had to pay bribes to get things done. It is true that members of the public have never ceased to praise the efficiency of the ICAC's staff and its internal discipline.

However, now that the ICAC has been successful in fighting corruption and promoting a clean government, does it still need its special powers, given the changed social circumstances of the 1990s and even of the 21st century? The ICAC is now empowered to issue its own search warrants. While the police have to apply to the court for search warrants and arrest warrants, this is not necessary for the ICAC. Certainly, we should clamp down on corruption as it puts social justice in jeopardy. But then the police, too, have a heavy responsibility to fight serious crimes. The Government really cannot convince the public that organized crimes involving triad societies and robbery with the use of heavy weapons are not crimes as serious as corruption. Besides, social justice implies respect for suspects' human rights. The Government must expeditiously conduct a review to find out if, under the present circumstances, the ICAC is still justified to be vested with powers more sweeping than that of the Organized Crime and Triad Bureau of the police and if the ICAC's powers are not breaching human rights. While there are five advisory committees under the ICAC, their terms of reference are limited to the making of recommendations. Their members are all appointed by the Governor. They, like the Commissioner of the ICAC himself, are accountable only to the Governor. Is such a monitoring system effective for preventing the abuse of powers? Should the ICAC increase the transparency of its operations? Should the public be told the reasons why the ICAC terminated Alex TSUI's appointment?

Mr President, despite the public outcry, the Government is not about to review the ICAC's existing powers. Instead, it intends to broaden the scope of the ICAC's powers by way of transferring all of the personnel vetting work of the Special Branch of the police to the ICAC. It is debatable whether the ICAC has the powers to do such vetting under the existing law. Even if it has the powers, the vetting should be limited to corruption related activities. It should not cover an individual's political activities. I think that the ICAC does not have the power to investigate an individual to determine if he is a member of the Kuomintang or a member of the Communist Party, or if he is an ex-member of Hong Kong Observers. Hong Kong Observers was at one time a thorn in the Government's side. Now, however, two of its ex-members have been appointed Members of the Legislative Council by the Governor, and some have been appointed by the Chinese Government as members of the Preliminary Working Committee of the Preparatory Committee for the Hong Kong Special Administrative Region or as Advisors on Hong Kong Affairs. Mr President, I urge the Government to clarify if the ICAC's vetting work is confined to civil servants. The ICAC Ordinance does not empower the Commissioner of the ICAC to do things that have nothing to do with the fight against corruption. If

the Government really wants the ICAC to become extensively involved in personnel vetting work, then it must amend the ICAC Ordinance accordingly.

However, pending the completion of the proposed review of the ICAC's existing powers, I urge the Government not to broaden the scope of its operation. The ICAC is a highly efficient public machine with sweeping powers but without public accountability. Such a body is most useful to any government for the suppression of dissidents. If we do not want the ICAC to become a secret police or an apparatus for political persecution after 1997, we must expeditiously bring its powers under review.

Mr President, government officials have on many occasions stressed the importance of the ICAC's credibility. Honourable colleagues and the general public of course concur with this basic idea. However, government officials often forget one thing that is more important, which is that credibility is built on, and maintained by, public accountability. Credibility cannot be sustained simply by wielding special powers, still less by absolute powers.

Mr President, with these remarks, the United Democrats of Hong Kong support the motion as well as Mrs Selina CHOW's amendment.

MR JIMMY MCGREGOR: Mr President, I see no justification for detailed examination, whether private or public, whether by the Government or by a committee of well meaning citizens, of the Independent Commission Against Corruption (ICAC) and its present powers.

I believe that, in this Council, I must be one of the very few Councillors who was a government servant during the 1950s to the 1970s, during a period when Hong Kong's many problems were exacerbated by endemic corruption within the Government. Over a period of more than 20 years, I was directly involved in a wide range of anti-corruption work, together with many other colleagues in the then Commerce and Industry Department which included the Customs Department. I remember very well the cases we had to deal with and the seriousness of many of them. I remember the cynical but understandable public perception that all government officials were corrupt or corruptible. Corruption had a deadly effect on relationships between the public and private sectors and even affected the attitude of other governments and their agencies towards Hong Kong. We had the will to act against corruption and we took many actions against corrupt persons and to break down corrupt systems. I was proud of my own personal record of anti-corruption work; yet I knew that the Government could not overcome this terrible malady unless there was a completely new set of rules. These came after Peter GODBER and Alistair BLAIR-KERR. Those of us who had been involved in the long struggle against endemic corruption rejoiced. There is at least one other Councillor who, like me, was involved in the fight against corruption over several decades.

The ICAC were given the powers and the leadership necessary to bring this evil under control. Hong Kong owes a great debt to Jack CATER and his small army of dedicated untouchables who, in a few years, changed the situation on the ground, reduced syndicated corruption very substantially, put fear into the minds of the corrupt, caused many to flee abroad, and enlisted enthusiastic public support for the first time in living memory for the concept of a clean and honest government.

The results of their work have been dramatic. Hong Kong has been able to hold its head high on the international scene. Foreign governments have recognized the enormous change that has taken place, allowing them to trust Hong Kong and its Administration in terms of international trade treaties, textile and other trade controls and in the exchange of information and co-operation in the fight against international crime. In this process the government departments that had the most to be ashamed about were given a new opportunity to put the past behind them and to carry out their duties efficiently and honestly. They have responded very well to the challenge.

The ICAC and the powers given to it have been largely responsible for the metamorphosis that has taken place during the past 20 years in Hong Kong. We have a government of which we can be proud, one which seeks out corruption fearlessly and is not hesitant or afraid of taking action when corruption is discovered. The ICAC itself is open to examination and advice from its principal committees composed largely of public spirited figures. It is also subject to public consideration of its record of success or failure. Public support depends entirely on performance.

Like many other Councillors, I have served for some years on ICAC support committee managed, in my case if I remember correctly, by Helen YU and other dedicated staff members.

The ICAC has done a wonderful job for Hong Kong. That is undeniable. Why on earth are we now asking that its powers be brought under critical examination? Corruption is on the rise again, fuelled by cross-border crime and endemic corruption in China. The ICAC is trying hard to cope with these added pressures. So how do we go about showing our confidence in the ICAC and helping them in the fight against corruption? We attempt to bring the organization under public examination. Why? Because the ICAC Commissioner fires a senior staff member? Lots of employees are fired in the private and public sectors without much fuss and with little sympathy. Why so much fuss over this one?

Is it because we are getting close to election time and need public punch bags so that we can garner public support and electoral support for our civic consciousness? I fear this may be part of the equation and I personally will have none of it. The ICAC should be allowed to get on with its essential work in the public interest free of carping and misplaced criticism.

If the Government feels so threatened by the pressure brought upon it by this Council, and incidentally no other organization, that it has had to leak its intention to carry out a review, and make its results public, so be it. I do not think it is necessary and I believe the general public have confidence in the ICAC and support it fully. So do I. I therefore disagree with both motions.

MR CHEUNG MAN-KWONG (in Cantonese): Mr President, in this day and age when democracy, openness and human rights are advocated, it is only natural that the public should ask the Government for a greater degree of transparency, and that government departments should be accountable to the Legislative Council and to the public. But the Independent Commission Against Corruption (ICAC), despite being a government department, is still operating like a closed black box. It is vested with special powers and accountable only to the Governor but above the six million population. This is intolerable.

Of course, the problem is one left over from the past. Twenty years ago, Governor MacLEHOSE set up the ICAC to fight huge syndicates of corruption within the civil service and the Police Force. Under the exceptional circumstances at that time, special powers were vested in the ICAC to facilitate its operations. Today, however, in the era of democracy, such special powers are clearly anachronistic. As 1997 draws near, we have seen rampant cross-border corruption between China and Hong Kong and the public are deeply worried that the ICAC may abuse its special powers.

Some provisions of the ICAC Ordinance are obsolete and some powers conferred on the ICAC must be removed or appropriately amended.

Take the Alex TSUI case which has ignited heated media debate recently as an example — this incident has indeed dealt a heavy blow to the ICAC's good name. True, under the law, Mr de SPEVILLE, the Commissioner can, if he deems it to be in the interest of the ICAC, fire any employee of the ICAC without having to give any reason or having to be accountable to the public. What he did gave a field day to rumours and unconfirmed stories. The public, simply unable to judge who is telling the truth, would be sceptical about the ICAC. Therefore, what has undermined the ICAC's reputation is the obsolete ICAC Ordinance and the lack of transparency of the ICAC's operations. The ICAC is like a kingdom unto itself. It is a commission shrouded in mystery.

The Commissioner has enormous power over the appointment and dismissal of the ICAC's staff and over disciplinary action against them. He is accountable only to the Governor himself. Clearly, there is not any mechanism to check and balance it. Therefore, I suggest that, with the provision that the ICAC's ability to fight corruption and promote a clean government will not be affected, an appeal channel should be made available to the ICAC's employees who are fired. The Government may set up a committee composed of high court judges and people with professional knowledge. This committee should be charged with the special responsibility for reviewing the ICAC's appointment,

dismissal and disciplinary action procedures and for hearing employees' appeals. The committee must be independent and must have public credibility. If an employee wins his appeal, the decision against him must be overruled. He should be reinstated and assigned to a different job or paid a cash compensation.

The ICAC's operations are now overseen by five advisory committees. But the ICAC provides all the day-to-day and administrative services for these advisory committees. In the Alex TSUI case, Mr de SPEVILLE, the Commissioner, told this Council's Security Affairs Panel that it was only after the dismissal did he make a report and give the explanations to the advisory committees. Evidently, the advisory committees play only a marginal role in providing checks and balances and give belated advice, if any. The advisory committees are indeed showy but with no real substance. They are only decorative bodies and cannot have any effective monitoring.

Recently, the Government decided to turn over the vetting of civil servants from the Special Branch to the ICAC. This caused some public panic. The reason is simple. The ICAC has enormous powers but its operations are far from transparent and the public cannot hold the ICAC accountable. The public are evidently worried that the Government may turn the ICAC from a purely anti-corruption department into a political vetting body directly subordinate to the Governor. Some ICAC staff will become modern-day palace guards, who may legitimately violate human rights with their special powers conferred on them by law. Worse still, the public have not been consulted about the ICAC's taking over the powers of the Special Branch. This is another black box operation. The public and this Council have every reason to ask the Government to make public the functions of, and the relations between, the Special Branch and the ICAC, so as to remove their worries. The public further requests that the ICAC should confine itself to fighting corruption and should not involve itself with political vetting. There should not be any change in the ICAC's role.

Mr President, the way to enhance the ICAC's public credibility is not the making of TV shows or movies to project an image of some upright corruption fighters. The right way is to conduct an early review of the ICAC's powers and of the ICAC Ordinance, so as to enable the ICAC to operate under a healthy system. Therefore, I support Mrs Selina CHOW's amendment, which calls for the setting up of a broad-based committee to review the ICAC's powers and functions. This committee should include directly elected legislators so that it may be accountable to the public.

It is never too late to mend. Our criticisms and suggestions today will never change our full recognition of the ICAC's anti-corruption efforts over the past 20 years. Nor will they ever affect our confidence in, or respect for, the ICAC staff. We hope that the ICAC will move one more step forward on the strength of its successes of the past 20 years.

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

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

MR CHIM PUI-CHUNG (in Cantonese): Madam deputy, local legislation's enactment and amendment must be subject to the examination and endorsement of Members of the Legislative Council. In this connection, the powers of the Independent Commission Against Corruption (ICAC) Ordinance were basically conferred by the Legislative Council. Should any flaws be identified, I will not oppose to the holding of a review to rectify them. However, we are absolutely wrong to lay all the responsibilities on the ICAC's door. This is paralleled by the case of the Government's approval of setting the maximum profit return of the Kowloon Motor Bus Company Limited (KMB) at 16% of the company's net assets value because when KMB proposed a fare increase, it was regarded as improper. The rationale is the same. After all, I think the strong public reaction to recent events took even the ICAC itself by surprise. It is obvious that our community, our citizens and Members of the Legislative Council have been more politically mature.

I am not one of those who, in the eyes of Mr Jimmy McGREGOR, need to canvass for votes and therefore my viewpoint and stand are comparatively neutral. At any rate, what has shocked me the most in this incident is Governor PATTEN's response. He came to Hong Kong on 9 July 1992 to assume the governorship and has been here for merely one year and nine months. Is he conversant with the ICAC Ordinance? I doubt it. However, when the ICAC Commissioner made an announcement *vis-a-vis* the incident, Mr PATTEN immediately stated in London that he threw his weight behind the Commissioner. I personally think that this case should be looked at from three perspectives. Firstly, it is about the powers of the ICAC Ordinance and this is the subject of our motion debate today. We should keep abreast with the social development and realize that the Ordinance was made more than 20 years ago against the social background at that time. Secondly, as for the sex harassment incident, the police have already refused to take up the case because of insufficient evidence. We should thus treat it as a separate issue. Thirdly, I think the powers of the ICAC Commissioner, no matter how great they are, were conferred by law. He is just exercising his legitimate powers. There is no case to claim that he is overstepping his powers. Furthermore, each of the ICAC staff has to sign an agreement before taking up his job. It states that the ICAC is not necessarily required to give any reasons for summary dismissal. Their agreements are just like the contracts signed by many artistes in full knowledge that they would only get the pay of \$200 per day. From the legal point of view, we cannot query the validity of the agreements.

Madam deputy, just now several Members mentioned the issue of transferring the Special Branch's duties to the ICAC. I would like to call upon the ICAC not to accept this arrangement. The duties are, after all, going to be performed by one department. It would be better for the police to assume them. In fact, to take on more duties would only mean more criticisms. Why should the ICAC take over such unthankful duties? The ICAC's main task is to

carry out corruption investigations while the task of the police's Special Branch is to furnish the ICAC with records showing civil servants' integrity. The duties of these two bodies are basically different. I think we should take this opportunity to conduct an appropriate review.

Madam deputy, the general public are in awe of the ICAC. Anyone who is invited by the ICAC to assist in their investigation (facetiously described as being invited to "have a cup of coffee") will be stigmatized forever once he has "drunk the coffee". For this reason, I would like to propose that the ICAC should, in the course of the review, consider the idea of issuing certificates to clear the names of those who prove to be innocent. I understand that even though these people feel annoyed after being invited to "have a cup of coffee", they feel too shameful to lodge any complaint. For this reason, the scope of the review should extend to cover this issue.

Madam deputy, in its review of the powers of the ICAC, the Government should also look at the Crown Lands Resumption Ordinance because there are provisions in this Ordinance relating to the right of private ownership of property which may contravene Articles 6, 29 and 105 of the Basic Law. Section 50 of the Securities Ordinance should also be subject to review. These two Ordinances, like the ICAC Ordinance, show neither respect to human rights nor private ownership right. I hope the Administration will review all the aforesaid Ordinances.

Madam deputy, these are my remarks.

MR FREDERICK FUNG (in Cantonese): Madam deputy, the Independent Commission Against Corruption's (ICAC) recent in-house incidents have sparked public concern for whether the ICAC enjoys excessive powers and whether there are any loopholes in the ICAC Ordinance. Thanks to historical factors, the ICAC has all along possessed prerogatives to fight serious syndicated corruption. Its powers and advanced facilities may probably dwarf some espionage agencies in western countries. However, the community today is vastly different from that in the 1970s. Times have changed and Hong Kong people in general have perceived that corruption is a crime. With these in mind, the Association for Democracy and People's Livelihood (ADPL), including myself, thinks that the Government should review the existing ICAC Ordinance to determine whether the ICAC should retain the powers it now exercises.

According to the ICAC Ordinance, the Commissioner shall be solely accountable to the Governor. Section 8 of the provision provides that officers of different ranks in the ICAC are appointed by the Commissioner and that the terms and conditions of employment of officers shall be subject to the approval of the Governor. I think this Ordinance is open to question. The recent dismissal of Mr Alex TSUI is a good example. Under the Ordinance, the Commissioner may, if he is satisfied that it is in the interests of the Commission, terminate the appointment of an officer without assigning any reason therefor.

This manifests that the ICAC is not subject to the monitoring of the Legislative Council and the public. It has been well appreciated by the public that the ICAC's investigations are both sensitive and highly confidential. Yet, the Legislative Council's monitoring or the public monitoring will not necessarily lead to leakage of the ICAC's confidential information. The Police Force also frequently deals with some extremely sensitive and confidential cases but it has to be accountable to the legislature. The appointment of judges, who are responsible for maintaining judicial justice, is also vetted by an independent committee. Similarly, the ICAC, which seeks to uphold public interest, should also be monitored in an appropriate and reasonable manner. Although the public may not suspect the Governor or the Commissioner of committing corruption now, the Ordinance in its present form does not provide any safeguard that the Governor, the Chief Executive or the Commissioner will not be involved in any corruption activities in future and makes it difficult for the public to play any monitoring role. For this reason, I think the Commissioner's powers to appoint and dismiss staff in future should be appropriately monitored.

Apart from the loopholes in section 8, the Ordinance also provides that the Commissioner may without warrant arrest a person if he reasonably suspects that such person is guilty of an offence relating to corruption and bribery. It behoves the Government to review the relevant provisions and see whether it contravenes the Bill of Rights Ordinance which has been enacted some time ago (such as Article 16 which protects the public's right to have access to information). According to section 14 of the ICAC Ordinance, the Commissioner shall in each financial year forward to the Governor, for his approval, estimates of the expenditure of the Commission. Under the current constitutional arrangements, public expenditure has to be approved by the Legislative Council. Yet there is no provision in the Ordinance requiring the ICAC's estimates to go through the same procedure. In other words, the Legislative Council has no power whatsoever to scrutinize the ICAC's estimates. The ADPL, including myself, thinks that the Government should consider conferring upon the Legislative Council the power to examine the ICAC's estimates.

The ICAC's secretive working style has practically kept the public at arm's length. The public know very little about the ICAC's operation. Meanwhile, within the ICAC, the Commissioner is the one who makes all the final decision. All in all, the transparency of the ICAC is insufficient. Its establishment as well as the procedures of appointment and promotion of staff are independent of the Civil Service establishment. This is virtually not in the taxpayers' interest

8.00 pm

PRESIDENT'S DEPUTY: I am sorry to interrupt you, Mr FUNG. It is now eight o'clock and under Standing Order 8(2) the Council should 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.

MR FREDERICK FUNG (in Cantonese): It is unfair to the staff as they are denied of any internal redress system whereby they could voice their views or grievances on the ground of maintaining confidentiality. In the long run, this will do the ICAC no good. Here I once again urge the Government to review the ICAC's powers and establish an ad hoc committee consisting of elected Members of the Legislative Council for the purpose of studying in detail any possible areas to be amended in the ICAC Ordinance and ensuring that sufficient internal channels for redress are made available and there is adequate and appropriate public accountability.

With these remarks, I support Mrs Selina CHOW's amendment.

MR JAMES TO (in Cantonese): Madam deputy, the Independent Commission Against Corruption (ICAC) was established at a time when corruption was a serious problem. Syndicated corruption in those days was a way of life in the community, particularly in the law enforcement agencies. The situation was very grave at the time; in fact, it was the law enforcement agencies themselves, such as the Police Force, which had to be dealt with. For that reason, law was enacted to give the ICAC extensive and sweeping powers ever conferred on any other law enforcement agency. Furthermore, law defined corruption in terms that were unusually harsh from the suspect's point of view and made many harsh presumptions against the suspect. These years the ICAC has achieved highly visible results in fighting corruption. It seems that the public have found a powerful ICAC rather acceptable. They also hold it in high esteem. But now, 20 years later, social circumstances have changed in many ways. We must consider these changes. In the following, I will endeavour to set forth some arguments for and against increasing or reducing the ICAC's powers.

Firstly, syndicated corruption has declined enormously. Most of the officials now implicated are junior staff. From this, I conclude that corruption has been brought under control to a significant degree.

Secondly, the general public have now recognized the importance of a clean government; more and more members of the public are courageous enough to support the fight against corruption by furnishing signed complaints. The public's co-operation has made ICAC's work easier.

Thirdly, the ICAC has succeeded in uprooting anything inducive to corruption in government departments and systems. For instance, a lot of bad publicity has been given to corruption in the former anti-corruption team of the police, in the civil service and in the business community. Codes of practice and standards of ethics have been laid down in many respects. This has been quite effective for the prevention of corruption over the past 20 years.

Fourthly, the ICAC's staff have high integrity. The days when "soldiers are fewer in number than bandits" are gone. Practice has made perfection in the application of investigative methods. The ICAC has become a very efficient professional disciplinary force in fighting corruption.

Fifthly, the social circumstances have changed. The public want more monitoring and greater transparency.

But there are other factors which, I think, should also be taken into consideration.

Firstly, economic ties between China and Hong Kong have become increasingly closer. Sometimes, Hong Kong businessmen must come to terms with dubious commercial practices. More and more people from China are working in China-owned institutions in Hong Kong. This China factor has opened many windows of opportunity for corruption in Hong Kong. There is a possibility that corruption as a form of culture is also spreading in Hong Kong.

Secondly, better and more personalized communication facilities, such as mobile telephones, have brought about changes. Financial instruments are becoming more complex, making money laundering and asset transfers more difficult to trace. An example is bearer instruments, which do not show the names of owners.

In addition, entry regulations have been simplified; it is now easier for people to enter Hong Kong from China. Yet, there is no co-operation in fighting corruption or extradition agreement between China and Hong Kong. Consequently, corruption is becoming a more complex problem. The *modus operandi* also has changed and now it appears that more corruption is taking place in the business community.

Furthermore, the question of 1997 is upsetting the public and the civil service alike as they are concerned about the future. This would foster a "quick buck" mentality in the sense that people would make fast money and emigrate aboard.

What role the ICAC should play during the transition period, too, is a necessary consideration. The ICAC is now accountable only to the Governor. Its supervisory and advisory committees are appointed by the Governor. None among their 80 members is an elected legislator. Another thing is that the future Chief Executive of the Special Administrative Region (SAR) will not be

popularly elected. The ICAC, with such extensive powers as it now has, if accountable only to the Chief Executive of SAR, will very probably become an instrument of totalitarian or dictatorial rule or used against the Chief Executive's commercial or political rivals. It may also become an intelligence or special service body with political surveillance and vetting functions. Meanwhile the Government recently turned over some of the work of the Special Branch to the ICAC. People are worried if the nature of the ICAC's work has changed. Furthermore, I wish to raise a question for the record here. I think that section 12 of the ICAC Ordinance precludes the ICAC from taking over the work in question. I hope that the Commissioner of the ICAC and the Legal Department will study this question carefully. Recently, during an interview by BBC, the "MI5 Spy Queen" said bluntly that British intelligence bodies were doing a lot of intelligence work in Hong Kong, collecting commercial intelligence in particular. Given that MI5 has clout to have its way in Hong Kong, I suspect, with good reasons, that a huge organization like the ICAC may help it in extensive collection of commercial intelligence because it is not subject to external checks and balances, by which I mean the court and other kinds of institutional powers. Besides, the ICAC has recently undergone a reorganization. Its operations branch is now separate from its intelligence branch, with the latter now headed by a former military intelligence collection officer. This, too, gives the public cause for concern.

Regarding the ICAC's powers, we must consider the nature of the crimes investigated by the ICAC to see whether the ICAC must have special and sweeping powers in terms of investigation and procedural matters, compared with the other law enforcement agencies. For instance, section 17 of the Prevention of Bribery Ordinance provides that the ICAC does not have to apply to the court for a search warrant if it wants to search a premise. In contrast, the police may have to apply to the court for a search warrant if it wants to enter a premise and arrest, say, a narcotic suspect or a murder suspect. Without such a warrant, the police, if they fear that a suspect may flee, may watch the exits of the premise where he stays and arrest him as he leaves. Why is the Commissioner of the ICAC given special powers to search? Is it because, in many of the cases handled by the ICAC, every minute counts as the suspect may flee in the batting of an eye? Section 13 provides that the ICAC may force the suspect to disclose information about his assets. But the Government is hesitant to vest the police with similar powers under the Organized and Serious Crimes Bill now being reviewed by this council. Instead, if the police want to force a suspect to disclose such information, the Attorney General's assistance to make an application to the court must be sought. The fact is that the police cannot do what the ICAC is permitted to do. Another thing is that section 14 provides that a third party, who is not the object of investigation, must answer many questions and disclose information about his assets. Section 13 provides that the ICAC may seize a suspect's travel documents before he is formally charged. Section 14a provides that the ICAC may freeze a suspect's assets without a court order. Much of the ICAC's work is indeed quite similar to the work of the Commercial Crime Bureau (CCB) of the police, though the ICAC may claim the otherwise and may wish to enlighten us, but the ICAC has such extensive

powers, which the CCB does not have. Are these powers really necessary? We must give serious thought to the question.

Finally, I wish to say that I support Mrs Selina CHOW's amendment.

MR WONG WAI-YIN (in Cantonese): Madam deputy, let me start by stating the position of Meeting Point in respect of the present motion debate. Meeting Point supports a full review on the powers of the Independent Commission Against Corruption (ICAC), so as to ensure that its powers still meet its operational need and that it conforms to the principle of public accountability in the exercise of its powers.

Before the 1970s corruption was rampant in Hong Kong, especially in government bodies. The then Governor Sir Murray established the ICAC in 1974, and made law to vest the Commissioner of ICAC with special powers, requiring him to account to the Governor only. Given the seriousness of corruption problems at the time, it was perhaps necessary that the Commissioner should be given exceptional powers in law enforcement and investigation. Since its inception, the ICAC has indeed made a lot of achievements in stamping out corruption and promoting the concept of a clean government, and has won the great confidence of the public. On the other hand, however, there have been public criticisms from time to time that the powers of the ICAC are too great. Such powers, if not properly exercised, would easily lead to infringement of the public's civil rights.

Hong Kong had undergone profound social changes over the past 20 years. During the course of political transition in the run-up to 1997, members of the public have increasingly great awareness of and aspiration for democracy, freedom, civil rights and human rights. On one hand, we should affirm the ICAC's performance because a fair and corruption free social environment is of great importance to the safeguard of democracy, freedom and justice and is the basis of Hong Kong people's confidence in their future. On the other hand, we also have to make sure that the ICAC's high credibility will not be undermined for any reason because this is not only a matter of effective law enforcement but also a matter of system. Some people think that to conduct a review on the ICAC's powers, to step up the monitoring of the ICAC's law enforcement work or to request for enhancement of the ICAC's accountability will undermine its efforts against corruption and affect the morale of its staff. Meeting Point considers that this is a somewhat undue worry. On the contrary, Meeting Point opines that enhancing the ICAC's accountability will only further reinforce the community's confidence in it and will conversely be conducive to its law enforcement work.

Madam deputy, Meeting Point opines that, in reviewing the ICAC's powers considerations should go along these two main lines: firstly, to prevent the ICAC from abusing its powers; secondly, to enhance the ICAC's accountability institutionally.

As regards the prevention of power abuse, Meeting Point advocates a comprehensive review of the existing provisions of the ICAC Ordinance and the Prevention of Bribery Ordinance, so as to make sure that they meet the need of our present social circumstances, especially the standards for protection of human rights. While it is important to enforce law and fight crime, human rights and freedom are even more important. We oppose disregarding the basic personal freedom and rights of the persons involved in a case just for the sake of facilitating law enforcement and prosecution. Legal provision should not only safeguard the law and order and interests of the community as a whole but also achieve the purpose of promoting the protection of individuals. Neither of these, especially the latter, is dispensable.

As regards the enhancement of accountability, Meeting Point opposes the present practice of requiring the Commissioner of ICAC to account to the Governor only. The Alex TSUI incident has caused greater concern to us. In the absence of access to information, how can Hong Kong people rely on the Commissioner of ICAC, who is constitutionally not accountable to the public, and his sole superior, the Governor, who is also not accountable to the public, and trust that they will act on their conscience and justice? In the absence of any institutional guarantee, what material differences are there between the present system and the system of "rule of man"?

Madam deputy, when the Governor Mr PATTEN assumed office in July 1992, he undertook to realize the accountability to this Council. It is also clearly provided in the Sino-British Joint Declaration and the Basic Law that the executive body must be accountable to the legislative body. Meeting Point considers that to enhance the accountability of the ICAC, we must first enhance its accountability to this Council as part of the executive body. Therefore, Meeting Point suggests that while being directly accountable to the Governor, the Commissioner of ICAC should also be subject to the oversight of the Council. Accordingly, the existing committees monitoring the ICAC should become a functional part of the Council rather than remaining as a subsidiary body under the executive arm of the Government. We agree that it is not the role of this Council to interfere with the work of the ICAC in the investigation of individual cases, prosecution or law enforcement. This Council should concern itself with whether the ICAC's overall performance conforms to the principles of fairness, impartiality and non-abuse of power. Meeting Point thinks that there should be a normal mechanism for the legislature to monitor the ICAC to avoid frequent invocation of the Legislative Council (Power and Privileges) Ordinance, which would cause unnecessary tension and sense of crisis.

Lastly, Meeting Point has to stress that we advocate the review not because of lack of confidence in the ICAC, but for the purpose of enhancing the ICAC's public acceptability and credibility.

Madam deputy, these are my remarks. All four Councillors from Meeting Point support the amendment.

DR TANG SIU-TONG (in Cantonese): Madam deputy, ever since the Independent Commission Against Corruption (ICAC) was established, it has been clamping down on both small fries and big shots. It has been very successful in its fight against corruption in the public and private sectors, making Hong Kong a clean society. Hong Kong indeed owes its prosperity and stability today to the ICAC. In the mind of the general public, the ICAC has established an image of the legendary Judge PAO and won people's trust to bring their complaints to it. The recent incidents in the ICAC, though they have not undermined its public credibility or tarnished its image, have prompted the public to give the ICAC's role a rethink. The ICAC has been established for 20 years and now it is time to review, among others, its operation and powers as well as the monitoring mechanism.

The ICAC was established single-handedly by the former Governor, Lord MacLEHOSE, 20 years ago mainly for the purpose of combating corruption in the Police Force and other government departments. Given the special circumstances and the need to facilitate investigations at that time, the Government conferred on the ICAC some special powers to perform its duties, including the authority to search in premises without a search warrant, to tap telephone calls and so forth. In today's social context when the promotion of human rights is all the rage, these special powers have already constituted a serious breach of the Bill of Rights. We should carry out a thorough study to see whether the ICAC should be allowed to retain the powers. In terms of the Bill of Rights and the right of privacy, the aforesaid special powers have to be repealed.

Over these 20 years, the ICAC's targets have undergone some fundamental changes. The ICAC received in the past four years a total of 5 872 complaints involving the private sector and public bodies while there are only 4 500 complaints involving government departments. The ICAC regarded civil servants as its main target when it was established but today the private sector is also targetted. In view of the changes in social structure and social needs, the broadening of the scope of the ICAC's duties is understandable. However, the ICAC's recent takeover of some of the duties of the Special Branch has given rise to considerable public anxieties.

The duties of the Special Branch are extremely sensitive. What is the nature of the duties taken up by the ICAC? Are they connected with political vetting? If they are really related to political activities, is it suitable for these duties to be performed by a body established for the purpose of fighting corruption? Will the ICAC become a *de facto* Special Branch? These are the doubts and worries of the public. The Government should make further clarification and provide the public with a proper explanation.

Since the ICAC is accountable solely to the Governor, its internal establishment, recruitment of staff and termination of employment are entirely independent of the Civil Service. Its internal management is entirely put into the hands of the top echelon of the ICAC. It functions as a centralized authority

under a patriarchal system and smacks of rule of man. The Government has established five consultative committees to monitor the work of the ICAC. Yet these committees work so secretively that there is no transparency at all. It is difficult for the public to judge whether the consultative committees are given sufficient monitoring powers to check and balance the ICAC so that there will not be any abuse of powers. Lord ACTON said, "Power tends to corrupt and absolute power corrupts absolutely." In order to help the ICAC to resist from the temptation of corruption, we must make the necessary arrangements to regulate its powers, duties and internal operation and to install proper monitoring mechanism. Only by doing so can the public interest be served. I support Mrs Selina CHOW's proposed amendment to form an independent committee to review the powers of the ICAC to ensure that there is proper public accountability; this will certainly enhance the public credibility of the review findings.

With these remarks, I support the amendment.

THE PRESIDENT resumed the Chair.

PRESIDENT: Miss Christine LOH, do you wish to speak to the proposed amendment for which you have five minutes?

MISS CHRISTINE LOH: Mr President, Mr McGREGOR gave us a very useful summary of the history of the Independent Commission Against Corruption (ICAC). He reminded us that it is through its fearless efforts that Hong Kong has attained a clean reputation both locally and internationally. This is no small achievement. However, I do believe that it would be useful to carry out a full review at this time. Not because we have lost confidence in the ICAC but because periodic reviews could ensure that public institutions continue to perform at the highest standards.

Yes, I agree with Mr McGREGOR that public support depends on results, but not at any price. The Bill of Rights has imposed new standards on all of government. The Administration as well as this Council have an obligation to comply with those higher civil rights standards. I would like the ICAC and the Administration to demonstrate unswerving political commitment to firmly root the Bill of Rights in the workings of crime detection and investigation. This Council must also play its part.

Many Members have expressed concern about the Special Branch's existing political vetting role and the ICAC's future responsibility in this respect. The Administration has given us many assurances over the past few weeks but obviously, to date, they have not been sufficient.

I do not have a particular view about whether elected legislators must be part of any review body, but I would like to emphasize that a review body should be able to deal with complicated issues of law and criminal procedures. A chairman with undisputable credentials is therefore essential.

I only wish to repeat that the price for a clean society is eternal vigilance. We all have to play our role and therefore I agree with the amendment proposed by the Honourable Mrs Selina CHOW and now I look forward to the response from the Chief Secretary who will hopefully tell us exactly what this full review will be all about.

CHIEF SECRETARY: Mr President, I am grateful to the Honourable Christine LOH for raising this important issue and to all those Members who spoke during this debate.

When the Independent Commission Against Corruption (ICAC) was established 20 years ago, Hong Kong was very different from what it is today. In the 1960s and early 1970s, law and order was widely believed to be under threat. Hong Kong had for some time been suffering from syndicated and systemic corruption so pervasive that it threatened to undermine the Administration's ability to govern the territory. The community was in danger of becoming resigned to corruption.

Today things are very different. Our community demands and expects clean government. Far from being resigned to corruption, it now shows a high degree of intolerance of corruption. Syndicated corruption as it previously existed has gone from the public sector. In the private sector, especially in the financial sector, the machinery is in place to promote fair and competitive markets free from corruption.

This state of affairs has been achieved because the community, through this legislature, has been prepared to give the ICAC the powers it needs to stamp out corruption, and has supported the ICAC in the exercise of those powers. Less than two years ago these powers were measured against the newly enacted Bill of Rights Ordinance and some amendments were made to ensure that they complied with that Ordinance. Their continued compliance with that Ordinance remains the subject of review by a subcommittee of this Council, chaired by the Honourable Simon IP.

But measuring the powers of the ICAC by the standards of the Bill of Rights Ordinance alone is not enough. We must, as the motion suggests, take into account the social conditions that exist in 1994. Hong Kong has changed greatly since 1974. People expect more of their government. They expect to play more of a part in it, and they expect to know more about what the Government is doing. The Administration has to spend much more of its time explaining its actions and justifying its proposals, in this Council and elsewhere. The ICAC is not immune from this change. The community needs to be

convinced that its extensive powers are still justified, and that they are not open to abuse.

But if Hong Kong has changed, the nature of the crime of corruption has not. It remains the most difficult of crimes to discover, investigate and prosecute. It is as damaging to the health of society as it ever was. And, sadly, although we have managed to reduce corruption, we have not eliminated it altogether. Indeed, 1993 saw a record number of corruption reports to the ICAC, with substantial increases in both the public and the private sectors. The figures for the first three weeks of 1994 show no abatement of that rise. Our community is deeply worried that corruption could once again take hold in Hong Kong.

The fight against this evil must go on if we are to maintain our quality of life, and if we are to maintain our hard-won reputation for bringing corruption firmly under control and for being a place where business can be done, and funds can be invested, in an environment free of endemic corruption. Success in this fight can only come if the community and the Commission work together. As the Commissioner himself keeps saying, the active support of the community is essential. That support must be based on the community's understanding of the current problems of corruption and its endorsement of the powers that are needed to deal with them. Those powers were granted 20 years ago. The Commissioner has said publicly that 20 years on seems a good time to take another look at them. I agree.

The Administration therefore intends, with the Commissioner's full support, to establish a review committee, under the chairmanship of a prominent member of the community, to conduct a full and wide-ranging review of the powers of the ICAC and of its present system of accountability to the community. The Administration will consider in the course of the next few weeks the size and composition of the review committee, its terms of reference and its method of proceeding. In this context, I can assure the Honourable Christine LOH that the review committee will have full access to all relevant information and that its report will be made public. The Honourable Christine LOH also referred to the intention of the Advisory Committee on Corruption to examine the Commission's present system of accountability and the Commissioner's power of dismissal under section 8(2) of the ICAC Ordinance. In the light of our intention to establish a separate review committee to carry out an in-depth review of the powers of the ICAC, I am sure that the Commissioner would wish to discuss with the chairman and members of the Advisory Committee on Corruption whether they should now proceed with their more narrowly focussed review. Obviously, we would wish to avoid a proliferation of reviews and duplication of work.

As the ICAC enters its third decade, it is timely that the community should review and reaffirm its mandate. I believe that this process will strengthen the bonds of mutual understanding and co-operation between the

community and the Commission, and thus reinforce Hong Kong's ability to carry on the fight against corruption.

Mr President, the Administration supports both the original motion and the amended motion.

Question on Mrs Selina CHOW's amendment put and agreed to.

PRESIDENT: Miss LOH, do you wish to reply? Out of your original 15 minutes you now have 39 seconds, I fear.

MISS CHRISTINE LOH: Mr President, I have nothing further to add.

Question on Miss Christine LOH's motion as amended by Mrs Selina CHOW's amendment put and agreed to.

Adjournment and next sitting

PRESIDENT: In accordance with Standing Orders I now adjourn the Council until 2.30 pm on Wednesday 2 February 1994.

Adjourned accordingly at half past Eight o'clock.

Note: The short titles of the Bills/motions listed in the Hansard, with the exception of the Securities (Insider Dealing) (Amendment) Bill 1994, The Hong Kong Institute of Education Bill and Administrative Appeals Board Bill, have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.

WRITTEN ANSWERS**Annex I****Written answer by the Secretary for Financial Services to Dr TANG Siu-tong's supplementary question to Question 1**

As I stated in my main reply on 26 January, the Hong Kong Monetary Authority has recently conducted a survey which covered most of the main players in the mortgage market. The surveyed banks account for about 55% of the outstanding mortgage lending. Whilst the majority of the surveyed banks do charge application fees for mortgage loans, over 40% do not. I must add that due to sampling, the figure only reflects the situation in respect of the leading players in the mortgage market and may not be representative of the banking sector as a whole.

Annex II**Written answer by the Secretary for Security to Mr Simon IP's supplementary question to Question 2**

According to our records, the duration of detention varied from about 10 days to about three years; most were detained for a matter of months.

Annex III**Written answer by the Secretary for Security to Dr HUANG Chen-ya's supplementary question to Question 2**

In the cases discussed on 26 January, assistance was given by the Hong Kong Government as far as possible and, in some cases, by the British Embassy in Peking. For example, after consultation with the families concerned, we made repeated requests to the Chinese authorities for access to the detainees by their families and their legal representatives. However, the Chinese Government refused to grant visits to the families or their representatives on the grounds that, under Chinese law, no access to a detainee can be allowed when he is still under investigation. We cannot insist upon visits by British Embassy officials because these detainees travel to China on Home Visit Permits issued by the Chinese authorities and are regarded as Chinese nationals under Chinese law. However, the British Embassy does assist us in making representations on behalf of detainees and their families.

