

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 15 June 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.

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 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 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

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 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

ABSENT

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

THE HONOURABLE MOSES CHENG MO-CHI

THE HONOURABLE SIMON IP SIK-ON, O.B.E., J.P.

DR THE HONOURABLE PHILIP WONG YU-HONG

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

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

MR NICHOLAS NG WING-FUI, J.P.
SECRETARY FOR CONSTITUTIONAL AFFAIRS

MRS RACHEL MARY BEDFORD CARTLAND, J.P.
SECRETARY FOR RECREATION AND CULTURE

THE CLERK TO THE LEGISLATIVE COUNCIL
MR RICKY FUNG CHOI-CHEUNG

THE DEPUTY SECRETARY GENERAL
MR LAW KAM-SANG

Papers

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

Subject

Subsidiary Legislation	<i>L.N. No.</i>
Land Registration (Amendment) Regulation 1994	353/94
Merchant Shipping (Fees) (Amendment) (No. 2) Regulation 1994 (Amendment) Regulation 1994	354/94
Immigration (Anchorages and Landing Places) (Amendment) Order 1994.....	355/94
Immigration (Anchorages and Landing Places) (Amendment) (No. 2) Order 1994	356/94
Pleasure Grounds (Regional Council) (Amendment) Bylaw 1994.....	357/94
Pleasure Grounds (Regional Council) (Amendment) (No. 2) Bylaw 1994	358/94
Construction Sites (Safety) (Amendment) (No. 2) Regulation 1994 (L.N. 221 of 1994) (Commencement) Notice 1994	359/94
Employees Retraining Ordinance (Amendment of Schedule 2) (No. 7) Notice 1994	360/94

Oral Answers to Questions**Manipulation of land prices**

2. MR FRED LI asked (in Cantonese): *On 26 May 1994, there was a public land auction and a consortium of more than 10 property developers acquired two government land sites at a price below the market value. In this connection, will the Government consider formulating long-term and short-term policies (including amending existing laws or introducing new legislation) in order to prevent property developers from forming an alliance to manipulate land prices, monopolize the property market and stockpile land resources so as to*

push up the prices of private housing for sale to the general public, thereby jeopardizing the consumers' interests?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, the recently announced review of the arrangements for land disposal will be completed before the next auction at the end of July.

It is too early to say what outcome of the review will be; but its purpose is to ensure that the principle of fair and genuine competition which underpins the land auction system is unimpaired.

I do not think we should assume that the prices achieved at the recent auction were below market value. They were within the Government's expectations.

MR FRED LI (in Cantonese): *Mr President, the Government's reply is fairly brief. The review to be conducted is a response to the way a consortium of property developers overtly employed to jointly acquire land sites at the land auction on 26 May. The purpose of this review is to ensure that the principle of fair and genuine competition is unimpaired. Will the Government inform this Council specifically whether the review is brought about by its conclusion, drawn after going through the procedures of the auction, that a certain crisis has emerged and impaired those principles?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, we are certainly reviewing the auction system because of a perception in the community that at the auction referred to there might have been something amiss. The perception is such, and the reality is of course I do not wish to anticipate the outcome of the review. The auction system has of course served us well for many years, but we do recognize the need at this point to conduct our review.

MR ALBERT CHAN (in Cantonese): *Mr President, the Secretary said in the third paragraph of his main reply that the prices achieved at the auction were within the Government's expectations. However, I wish to point out that a land site put up for sale by San Miguel after 26 May was acquired by Wheelock and Co at a price much higher than that offered by the consortium of property developers. Will the Government regard the practice that more than 10 property developers joined hands at two auctions within one day as unfair and immoral? Many countries already have their own antitrust legislation, in view of such and the painful experience suffered, will the Government reconsider introducing anti-monopolization legislation to prevent the market from being controlled by consortiums?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, it is always dangerous to compare the results of two auctions, particularly in the case referred to by the Honourable Member where one took place in Fanling and the other in Sham Tseng. I would also like to make the point that there is nothing, certainly nothing illegal and nothing unusual, about groups of investors or developers forming a company or a consortium to undertake the development of some of our sites, which are of course in many cases very large and require very significant investment.

MR STEVEN POON (in Cantonese): *Mr President, the Government has recently introduced a new package of measures to curb the rise in property prices, but, property prices have always been pegged to land prices. After each land auction, analysts will go about analyzing land prices in order to adjust the property price level. Will the Administration inform this Council whether it wishes to curb the risen in land prices so as to prevent the property prices from rising to an excessively high level in the future. What is the Government's guiding principle for the policies concerning property prices, one of high land prices and high property prices, or one of low land prices, and low property prices?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, I am surprised that the Honourable Member asks me that question since I have repeatedly in this Chamber, on many occasions, confirmed that the Government does not operate a high land prices policy. Nor indeed does it operate a low land prices policy. It sells land at the full market value according to the state of the market at that time.

MR LEE WING-TAT (in Cantonese): *Mr President, the second paragraph of the Secretary's reply pointed out that the underpinning of our land auction system is the "principle of fair and genuine competition", I think this principle should be publicized and known to all. Mr EASON believes that there is nothing unusual about groups of developers forming a consortium to bid for land sites and I agree with him in this respect. However, Mr EASON did not point out that every property developer who has made a bid on that day was invited to join the consortium to create the kind of monopolization known as "cartel". Will the Government explain, if what happened on that day was as usual as Mr EASON has described, why it suddenly proposed to invite three respected members of the community to look into the matter? If there was nothing amiss, why should an investigation be conducted?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, I think I have already explained a number of times. The points perhaps which I should repeat are that there is nothing in law or in principle to prevent investors joining hands to invest in Hong Kong. I am sure that outside

the property market, it is something which is happening all the time and it is, of course, around the world, quite usual to have companies joining together to conduct investments. This is what has happened here and the reason why it happens in Hong Kong in the property sphere is because a development in terms of land costs and indeed construction costs can be quite expensive. And prices can be considerable. So in order to get the developments that we want and developments of a scale that we need to maintain production of flats at the level that we expect every year, we can expect investors to combine forces.

The reason why we are conducting the review, and I think this has been explained by myself and indeed by the Governor when he was in this Chamber last week, is to examine the arrangements we have in the light of certain perception within the community that there may have been something amiss. We are not, of course, at this stage confirming or acknowledging that something was amiss. We are responding to the community's concern.

MR FREDERICK FUNG (in Cantonese): *Mr President, according to the reports by some newspapers as well as the news reports on television, there were at first some biddings made by individual property developers, but after some discussions among themselves, some ten property developers joined together to make the biddings. Did the Government go through every detail to see if there were illicit transactions; and is the auction fully legitimate in itself?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, they were indeed, as the Honourable Member says, bidding. There was bidding in relation to both the sites which were auctioned on that day. As I understand it, after the two sites had been sold, those who were involved in the bidding and other companies decided to combine forces to undertake the development. As far as I am aware, there is nothing illegal in this and indeed the formation and disbandment of companies in relation to property development is something which is occurring all the time.

MR CHIM PUI-CHUNG (in Cantonese): *Mr President, I think the people do not care about the property developers joining forces to form a consortium to bid for any government land site. Basically, this is a normal market, the problem, in fact, lies with "genuine competition". Mr President, it was not uncommon in the past that property developers would make "private apportioning" after acquiring a piece of land, that is, they would acquire a land site at a certain price and then sell it through private bids again. Will the Government inform this Council whether this practice is legal; and if not, what measures could be introduced to stop such practice?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, I do not believe that the formation of joint ventures is illegal in Hong Kong.

Tram accidents

1. MR LAU CHIN-SHEK asked (in Cantonese): *Will the Government inform this Council of the following:*

- (a) *the numbers of traffic accidents involving trams, classified by their causes in each of the past three years; and*
- (b) *whether legislation is in place to govern the training of tram drivers and tram safety on the road, including the speed and the functioning of the braking systems of trams; if so, what the relevant statutory requirements and monitoring mechanism are?*

SECRETARY FOR TRANSPORT: Mr President, there were 130 tram accidents involving personal injury in 1991, 124 in 1992 and 126 in 1993. To put this in perspective, there were about 15 000 road traffic accidents in each of the past three years. Tram accidents therefore accounted for less than 1%.

As regards the causes of tram accidents, the police have advised that based on their investigations about 30% were due to pedestrian negligence, for example, jay walking, 8% due to driving at inappropriate speeds whilst about 10% were due to a variety of other reasons such as the non-observance of traffic regulations. It has not been possible to classify the causes of the remaining accidents because of the lack of information or evidence.

Section 38(1)(e) of the Tramway Ordinance (Cap. 107) provides for the Governor in Council to make regulations for the licensing of drivers. But no such regulations have ever been made and thus there is no legislative requirement for tram drivers to be licensed per se.

However under section 39(1)(e) of the Ordinance, Hong Kong Tramways Limited (HKT) has made rules relating to the training of tram drivers. The company provides a comprehensive eight-week training programme for its trainees, conducted by their experienced instructors who have had at least 20 years' driving experience in trams. Tram drivers are also required to pass annual re-certification tests by the company and this includes a practical driving test and a refresher course covering safety matters and customer relations.

Trams operating on the roads are subject to the provisions of the Road Traffic Ordinance (Cap. 374). Under the rules made by HKT, tram drivers are not allowed to exceed a speed limit of 25km per hour in congested areas or

when negotiating a bend. In any case, trams are not designed to go faster than 40 km per hour, which is well within statutory speed limits.

Under the Tramway Ordinance, the company is responsible for maintaining its tram cars and tracks in good condition, and conducting repairs where necessary to the satisfaction of the Director of Electrical and Mechanical Services (DEMS). The braking systems on all tram cars are checked by the company every 10 days under its preventive maintenance programme and this has to conform with the criteria laid down by DEMS. In the case of accidents, the braking systems are also checked and tested in the presence of EMSD staff. In the past three years, none of the trams inspected following accidents was found to have a defective braking system.

MR LAU CHIN-SHEK (in Cantonese): *Mr President, the total number of registered vehicles in Hong Kong in 1993 was 500 000, among which, 163 or .0003% were trams. Yet tram accidents accounted for 1% of the traffic accidents in that year. Will the Administration inform this Council of the results of comparison between trams and other modes of public transport as regards the number of vehicles and the number of accidents? Has the Administration instituted any prosecution against the Hong Kong Tramways in the past three years for the tram accidents resulted from the company's negligence? In addition, have specific safety enhancement suggestions been made to the company in the light of the causes for tram accidents that happened in the past three years?*

PRESIDENT: Have you got all parts of that question, Secretary?

SECRETARY FOR TRANSPORT: Mr President, not even one accident is satisfactory and we should always try to prevent all possible accidents. As far as I am aware, following checks by both the police and EMSD, the tramway company has not been prosecuted because the causes for the accidents are not to be blamed on the company.

Insofar as improvements are concerned, the Hong Kong Tramways has a fleet of 160 trams. In the last year, one has been modified regarding its driving equipment. The technical term is that they have introduced a "chopper" control system which is designed to provide for smoother acceleration and deceleration of trams and a more effective braking system. This particular tram has not been involved in any accident. In addition, the tramway company has introduced better lighting systems, for example, braking lights and indicator lights, and have also replaced their former gong horns by air horns.

MRS PEGGY LAM (in Cantonese): *Mr President, there are two types of trams operating in the world: the trams that run on tracks and the trackless trams. The trams in Hong Kong are those that run on tracks. They usually run slower and their tracks take up a portion of the road surface; track-replacement works, in particular, always give rise to traffic congestion. Will the Administration inform this Council whether consideration has been given to the introduction of trackless trams? If not, what are the reasons?*

PRESIDENT: Are you in a position to answer that, Secretary?

SECRETARY FOR TRANSPORT: Mr President, there are no plans to introduce trackless trams in Hong Kong. Insofar as the maintenance of tram tracks are concerned, the company does inspect the tram tracks every evening through their own inspectorate staff and where necessary these tracks are repaired and replaced.

MRS MIRIAM LAU (in Cantonese): *Mr President, the Light Rail Transit requires their drivers to have a private car driving licence and several years' driving experience; but for trams, which also run on tracks, their drivers are not required to have any driving licence or experience. Will the Secretary for Transport inform this Council as to why there are different requirement standards.*

SECRETARY FOR TRANSPORT: Mr President, I believe that the requirements for the Light Rail Transit is that a driving licence is a preference, and because there have been more applicants than the number of vacancies, they have been able to recruit drivers who have driving licences with at least two years' experience.

Insofar as the tramway company is concerned, as I have said, there is no legislative requirement for the drivers to have licences but this is not a unique situation. Indeed my research has shown that, for example, in the United Kingdom, in Japan or in Singapore, neither the tram systems nor the mass transit systems there, nor the Mass Transit Railway Corporation and the Kowloon-Canton Railway Corporation, for example, in Hong Kong have licensed drivers. I think the need for regulation must be seen in perspective and we should not regulate just for the sake of it. For example, trams are unlike cars, one cannot just hop into one and take it out on any open road. Trams, in fact, because they follow the tracks, cannot overtake other tram cars and their speed limits are pretty limited. Given the overall safety record of the tramway company, I do not think licensing is required.

MR LAU CHIN-SHEK (in Cantonese): *Mr President, the first part of the question I raised just then was not answered, that is: How do trams compare with other modes of transport as regards the number of vehicles and the number of accidents? The Secretary for Transport has just mentioned the tram services in other territories such as the United Kingdom and Singapore. May I ask the Secretary whether he has any figures which indicate the accident situations in these two countries?*

SECRETARY FOR TRANSPORT: Mr President, the figures I cited earlier in my reply indicate that tram accidents account for about 1% of the total and I think Mr LAU himself said it was three out of 100 000 injuries. I think this is a fairly low accident rate, but of course this does not mean we should be complacent and the tramway company continues to try and improve their record. I do not have comparative figures for the other territories.

MR LAU CHIN-SHEK (in Cantonese): *Mr President, I am not asking for a figure of the overall road traffic accidents. I am asking about the results of comparison between trams and other modes of public transport as regards the number of accidents and the number of vehicles.*

PRESIDENT: Do you have the answer, Secretary?

SECRETARY FOR TRANSPORT: Mr President, I have a few statistics which I can indicate. For example, if we compare this with the number of accidents involving public buses, the corresponding figures are as follows:

in 1991 there were 1 404 accidents involving buses;

in 1992 the figure was 1 489; and

in 1993, 1 456.

MRS PEGGY LAM (in Cantonese): *Mr President, just then the Secretary for Transport has not answered my question concerning the reasons for not considering the introduction of trackless trams. No tracks means no replacement or maintenance needs, traffic congestion can thus be minimized. In addition, trams did not use air horns in the past. They just gave out ringing sounds which the public, especially the elderly, were very used to. They would know a tram was approaching on hearing the ringing sounds. The ringing system has already been replaced by the air horn warning system, which has also become a source of complaint. Firstly, as the elderly are not aware that the horn warnings actually come from trams, they might sometimes fail to notice an approaching tram; Secondly, as trams start running in early morning, residents*

along the tram routes are disgusted with the horn warnings, they believe that such noise would disturb their sleep. May I ask the Secretary for Transport whether the number of tram accidents has increased or remained the same since the foot gong was replaced by the horn warning system? If the number of accidents remained the same, would the original foot gong be restored?

PRESIDENT: I think as regards trackless trams, that was not part of the original question so I will not trouble you to answer that. But could you deal with the second part of Mrs LAM's question?

SECRETARY FOR TRANSPORT: Mr President, as regards the second part, I agree with the Honourable Member that perhaps the ringing system or the foot gong is probably more pleasant to the ear and in the old days more pedestrians were used to this. But I think that it is perhaps really a question of choice. The tramway company has introduced the new air horns which are like car horns because they in fact draw more attention, and my understanding since, the introduction of the new air horn warning system, is that the number of accidents has actually fallen, albeit marginally.

Carrian case

3. MR JIMMY MCGREGOR asked: *Will the Government inform this Council of the cumulative cost to date of the series of actions taken relating to the prosecution against the former chairman of the Carrian Group of Companies, the estimated additional time required to bring the case to trial and the estimated cost of any further necessary action?*

ATTORNEY GENERAL: Mr President,

- (1) The former chairman of the Carrian Group of Companies has faced, or is currently facing, prosecution in three cases. The first of these involved alleged offences in respect of the Carrian Group of Companies. The trial of that case ended in 1987 although the proceedings were not formally concluded until May 1988. The trial of the second case, relating to Bumiputra Malaysia Finance Limited (BMFL), has now formally started under the Complex Commercial Crimes Ordinance. The third case involves allegations of corruption by senior executives in the Hong Kong branches of two overseas banks. The trial of that case is pending in the District Court and has been postponed until after the conclusion of the second case, that is "BMFL".

The total cost of the Carrion case was \$91,546,984. The total combined cost to date of the second and third cases, which are still current, is \$131,553,462. The cost of the Carrion case and of the BMFL case are in respect of all defendants and all proceedings.

- (2) As regards timing, it is expected that the trial that has recently started, in respect of BMFL, will be concluded during the course of 1995.
- (3) It is not possible to estimate the cost of any further necessary action. As I have said, the trial of one case has already formally started, and the trial of another case has been postponed until after the conclusion of the current trial. The cost of future action will depend on the course of those proceedings and it would not be proper for me to speculate in that regard.

Mr President, I would add this, that since the trial in respect of the BMFL case has started, the sub judice rule applies. I am sure that Members will appreciate and understand that I am anxious to avoid saying anything that might prejudice the integrity of that trial, or indeed any other related proceedings.

PRESIDENT: Before I take supplementaries, I shall just read Standing Order 18(g): "A question shall not reflect on the decision of a court of law or be so drafted as to be likely to prejudice a case pending in a court of law".

MR JIMMY MCGREGOR: *It seems clear to me, Mr President, that the overall cost of these cases to the Hong Kong taxpayers will not be less than \$300 million. Mr President, considering that these cases involve the murder of one man, the suicide of another, the life imprisonment of another for murder, the trial and conviction of several more, the disgrace of prominent bankers and businessmen and the alleged fraudulent misuse of very large sums of money, would the Attorney General indicate whether he is resolved to seek to complete these cases with a high degree of urgency and seek priority through the courts so that justice can be done before 1997?*

ATTORNEY GENERAL: Mr President, I am perplexed and dismayed at the reference to a murder case and to suicide and to other matters. I have described the charges that the former chairman of the Carrion Group of Companies is facing. Those do not include any of the matters to which Mr MCGREGOR has referred. I have been at pains in this case to pursue the prosecution with all expedition. It is, of course, a major and very complex commercial crime, probably one of the largest of its type anywhere in the world. It is, as I have said, extremely complex. I am as anxious as anyone that the trial which has now started should be concluded as quickly as possible. As I have indicated in my main answer, we expect the trial to be concluded some time in 1995.

MR TSO SHIU-WAI (in Cantonese): *Mr President, the trial has taken more than a decade's time and cost the Government several hundred million dollars of litigation charges. Will the Government inform this Council whether the prolonged trial and the large sums of public funds spent on litigation were brought about by the mistakes or errors it made while assessing the case at the early stage; whether it would be unfair to the community as well as the defendants in view of the time and public funds spent; and whether it was unnecessary to institute the prosecutions?*

PRESIDENT: I think there were two questions. We had better take the first one. Your second is giving me some trouble.

ATTORNEY GENERAL: Mr President, the answer is no. These were prosecutions properly brought and properly carried through. Of course, the costs are very high indeed and Members will understand the reasons why that is so. I repeat that the prosecution of the BMFL case is of an enormous size and complexity and that is reflected in the time it has taken to bring it on to trial.

PRESIDENT: Would you repeat the second part of your question, Mr TSO? You are aware that Standing Orders provide that you should not seek an opinion, but what is an opinion and what is not is very much a matter of degree. Would you put your question again please?

MR TSO SHIU-WAI (in Cantonese): *Mr President, I would like to ask the Government whether it could be regarded as fair to the defendants and the community as a whole when a large sum of public funds has been spent on litigation?*

ATTORNEY GENERAL: Mr President, when allegations of an extremely grave nature, allegations of criminality are made, as in this case, it is clearly in the public interest that those allegations should be followed through and vigorously pursued in the courts. Not only because that is necessary to uphold the rule of law, but because of the necessity to preserve Hong Kong's reputation as an international financial centre.

I have said, Mr President, many times and I will keep on saying, that you cannot put a price tag on justice because if you do so you begin to devalue the rule of law and that in the end serves nobody's interests.

MR MARVIN CHEUNG: *Mr President, would the Attorney General please advise this Council whether the two figures mentioned in his principal reply represents merely the cash paid by the Government for outside legal*

professional services or whether they include the cost of civil servants, such as members of the Attorney General's Chambers, working on these cases and if so, how are those costs of the civil servants computed?

ATTORNEY GENERAL: Mr President, the figures represent, in relation to the Carrion case, the costs disbursed, that is, payments made to counsel prosecuting for the Crown, costs paid to the defendants, the cost of the committal proceedings and the cost of the Attorney General's reference, taken in the autumn of 1987. Similarly in relation to the BMFL case, the costs cover the costs of hiring outside services. In neither case do the costs include the cost of, what I might describe as in-house government services, that is, counsel within my Chambers, time of the police, ICAC and others.

Sorry, Mr President, in deference to Mr Marvin CHEUNG, I have not quite answered the second part of his question. I think it is not possible at this stage to compute those.

DR TANG SIU-TONG (in Cantonese): *Mr President, as the Carrion case is not yet concluded after 10 years' time, could the actions taken by the Government be regarded as proper in view of the situation of the creditors and shareholders of the Carrion Group? From whom could the small shareholders concerned claim compensation for their loss?*

PRESIDENT: Are you able to answer that, Attorney General?

ATTORNEY GENERAL: Mr President, as I had hoped to make clear in my main answer, we are talking about two separate cases. The Carrion case concluded in 1987 and formally would up in May 1988. The current case is the case involving Bumiputra Malaysia Finance Limited, BMFL.

MR JIMMY MCGREGOR: *Mr President, can the Attorney General say whether he was satisfied with the results of the case against Mr Lorrain OSMAN, and whether Mr OSMAN has agreed to return to Hong Kong to give evidence in other cases?*

ATTORNEY GENERAL: Mr President, I do not think it is for me to be satisfied or otherwise as to the outcome of any particular case. It is not the role of an Attorney other than to present a case to court as a Minister of Justice. It is for the courts to decide on guilt or innocence.

As to the second part of the question, Mr President, I hope Mr McGREGOR and Members will forgive me if I do not get drawn into that. I do not want to get drawn into matters that might affect the current trial.

Container truck drivers' strikes

4. MR LEE WING-TAT asked (in Cantonese): *With respect to the container truck drivers' strikes at the Hong Kong border in recent years, will the Government inform this Council:*

- (a) whether it knows the reasons for the drivers' strikes and what those reasons are;*
- (b) whether the Government has received complaints lodged by the drivers against corruption involving Chinese customs officers at the border checkpoints; if so, how these complaints are handled;*
- (c) what channels are available at present for the drivers to reflect their difficulties and make suggestions to the Chinese authority; and*
- (d) what measures can be adopted to reduce the serious congestion and even traffic standstill at the border caused by the strikes of container truck drivers?*

SECRETARY FOR TRANSPORT: Mr President, there have been five strikes by container and goods vehicle drivers at the border since June 1992. The main reason invariably has been the slow processing time by either the Hong Kong or Shenzhen border control staff. I have tabled a summary of these five cases.

Although allegations of corruption on the Chinese side of the border have been reported in the media, no such complaints have been lodged with the Administration by drivers. However, one complaint was received by the Independent Commission Against Corruption earlier this year regarding solicitation to expedite customs clearance. I understand that no further action was taken because the complaint was anonymous.

On our side, we obtain feedback from drivers through informal contact with staff of the police, Immigration, Customs and Excise and Transport Departments. In addition, the Transport Department holds quarterly consultative meetings with representatives of the trucking industry. Matters raised with us, which relate to cross-border issues and are of mutual concern, are reflected to the Chinese authorities through our border liaison channels. Drivers can also reflect their views direct to the Chinese authorities, through the representatives of trade unions and fleet owners' associations who have contacts with the Chinese side.

I believe that the most practical way of preventing strikes and thus minimize traffic congestion or standstill, is to improve and strengthen the channels of communication with container and goods vehicle drivers so that speedy action can be taken to resolve legitimate grievances and complaints. With this in mind, following the strike last month, the present arrangements have been strengthened by the establishment of bimonthly tripartite meetings on cross-border matters amongst the drivers' representatives, Shenzhen and Hong Kong authorities.

Annex

Drivers' strikes at the border

<i>Date</i>	<i>Control point</i>	<i>Duration</i>	<i>Reasons</i>
(1) 26 June 92	Lok Ma Chau	2 hours	Complaints about frequent inspections by Hong Kong customs officers.
(2) 29 June 92	Man Kam To	3 hours	Complaints about the reduction of the number of processing channels and the slow processing rate on the Hong Kong side.
(3) 16 July 93	Man Kam To	3 hours	Complaints about the slow processing rate on the Hong Kong side.
(4) 23-24 July 93	Man Kam To,	30 hours	Allegations of Lok Ma Chau corruption and slow and Sha Tau Kok processing rate on the Chinese side.
(5) 10-11 May 94	Lok Ma Chau	27 hours	Complaints about the slow processing rate on the Chinese side.

MR LEE WING-TAT (in Cantonese): *Mr President, the Secretary said in the second paragraph of his reply that there was an allegation of corruption against the control staff on the Chinese side of the border this year but no further action was taken because the complaint was anonymous. I am disappointed to hear that*

because everyone who understands how the trade operates will know that a container truck driver dare not disclose his real name in any complaint for fear of revenge or adverse effect on his business. I would like to ask whether the Transport Branch would consider spreading the message among container truck drivers and encourage them (certainly the Secretary should not disclose the identity of the complainants) to speak to the Hong Kong Government on matters of corruption and cross-border arrangements, so that the Administration can refer the matter to the Chinese counterparts for investigation or appropriate joint actions.

SECRETARY FOR TRANSPORT: Mr President, certainly, if there are any allegations or instances of corruption on our side of the border raised against departmental staff, follow-up action will be taken. Insofar as referring allegations of corruption on the Chinese side, if we hear of these, these are taken up through normal border channels and through diplomatic channels. We certainly encourage the drivers to speak to our staff so that we can understand what the problems are, and as I have said, if these are of mutual concern we will gladly pursue these with our Chinese colleagues and counterparts. Certainly, if there are complaints and if the complainant asks to remain anonymous, we will respect this request. Our attempt and our aim is to improve cross-border flow.

MR LAU WONG-FAT (in Cantonese): *Mr President, a strike staged by container truck drivers, regardless of its reasons, would inevitably cause inconvenience to residents of the areas concerned and, if situation worsens, could even cause social disorder. Will the Administration inform this Council whether there is any law in place that prohibits drivers from parking their vehicles on the roads in any manner they like? If so, has the Administration invoked the relevant legislation to institute prosecution against those drivers who deliberately parked their vehicles on the roads in contravention of the traffic rules? If not, will the Administration consider imposing control through legislation?*

SECRETARY FOR TRANSPORT: Mr President, illegal parking is an offence under the Road Traffic Ordinance and the police do take follow-up action when a case has been established. In this particular case regarding the latest strike at the border, the police have investigated and are continuing to investigate some of the complaints. To date, no prosecution has been taken.

MR TIK CHI-YUEN (in Cantonese): *Mr President, one can see from the annex tabled that a number of strikes staged in the past were related to the slow processing rate on the Chinese side. In addition, according to our observation, before each incident took place, signs which indicated that a strike was in the making could always be observed, such as prolonged queueing time for vehicles or ample complaints lodged by drivers with the authorities concerned. Did the*

Administration notice any such signs prior to each strike? And under the existing arrangement, will the administration liaise with the Chinese side to look for ways to resolve the problem once it is aware that a strike might be forthcoming?

SECRETARY FOR TRANSPORT: Mr President, indeed, on the last two occasions in particular when the strikes lasted for more than 24 hours, there were signs that the drivers were dissatisfied with various arrangements for cross-border traffic flow, the main one being the time taken to actually go through the border. When our staff at the border — the police, the Immigration, Customs and Excise, and Transport — detect such signs, we enter into dialogue and we consult the drivers' representatives here to see what their complaints are and how these can be resolved and we do take this up immediately with our Chinese colleagues through the cross-border liaison channels. We will continue to do this and try and improve the situation.

The last strike, primarily, was caused by changes in the system. Apparently there were some teething problems on the Chinese side of the border but these have now been resolved.

REV FUNG CHI-WOOD (in Cantonese): *Mr President, amongst the five strike actions, the first three were related to the inspections conducted by our customs officials and lasted for only two to three hours. But the latest two which were directed against the slow processing work on the Chinese side lasted for 30 hours and 27 hours respectively. It seems that the problems with the Shenzhen customs are more difficult to resolve. The Secretary has said that a meeting comprising representatives of the drivers, the Shenzhen as well as the Hong Kong authorities would be conducted to resolve the problems. In what ways do such "tripartite talks" differ from the previous arrangements? Are these new arrangements really effective?*

SECRETARY FOR TRANSPORT: Mr President, the difference in the latest arrangements is that for the first time, the drivers will actually meet both the Hong Kong Government officials and the Chinese officials at formal bimonthly meetings; hitherto there were no such formal avenues for communication.

MR WONG WAI-YIN (in Cantonese): *Mr President, I understand from the timetable that five strikes happened in June 1992, July 1993 and May this year, almost one strike every 12 months. The two occasions which took place in Man Kam To, Lok Ma Chau as well as Sha Tau Kok in July last year and in Lok Ma Chau this year, in particular, lasted for more than 24 hours. The reply given by the Secretary that matters would be taken up through the cross-border liaison channels sounds all too familiar. Nevertheless, when we look back, five strikes had occurred in the last two years, which means almost a strike a year, with the*

one in Man Kam To, Lok Ma Chau and Sha Tau Kok last year that lasted for 30 hours being the most serious of all. I would like to ask the Administration what achievements have been made through liaison with the Chinese side over the past two years, particularly last year? Why did similar strike actions continue to happen? Is it that nothing has been achieved?

SECRETARY FOR TRANSPORT: Mr President, I certainly do not agree with the last observation. I think the liaison has helped and in fact various earlier problems have been resolved. I think when it comes to cross-border or indeed any arrangements which two countries or two parties have to deal with, we can only make suggestions. Where it concerns the activities or the arrangements or the conditions on the other side, it must be left to the other authorities concerned.

Having said that, of course on our part we have tried to open more border crossings. We have, for example, asked for the opening of the border at Lok Ma Chau for 24 hours and the Chinese, in principle, have been receptive to this idea and we hope that in autumn this year, this can be achieved so as to speed up traffic flow.

Dissolution of the Legislative Council

5. MISS EMILY LAU asked (in Cantonese): *As the Chinese Government has repeatedly stressed that the Legislative Council would be dissolved on 1 July 1997, will the Government inform this Council what legal, political, economic and social impact such statements have made on Hong Kong?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, the British Government is fully committed under the Joint Declaration to ensure a smooth transfer of the Government in Hong Kong in 1997. It is also the clearly expressed wish of the community that there should be a smooth transition. This is why we have put forward electoral arrangements for 1994-95 which are, in our judgement, consistent with the Joint Declaration, the Basic Law and past agreements between Britain and China, and are therefore capable of continuing after 1997. We see no reason for China to do away with these arrangements in 1997.

MISS EMILY LAU (in Cantonese): *Mr President, the Government said that it could not see any reason for China to abolish the electoral arrangements for 1994-95 in 1997. I do not understand why the Government "could not see" or could not even hear. Did the Government hear what QIAN Qichen said recently? QIAN did not say those words to the British Hong Kong Government in person, could this be the reason that caused the Government to say that it does not hear and does not see, as well as to trivialize the message sent? However, to*

many Hong Kong people, the message is by no means trivial! As such, will the Secretary inform this Council whether there is evidence to prove that the Chinese Government will not dissolve the Legislative Council in 1997? On top of that, Mr President, I hope that Government would start studying with the general public, should the Legislative Council be dissolved at this final stage of the transition period, the possible effects that might befall the social, political and economic aspects of Hong Kong. Will the Government proceed to discuss this issue with the public?

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, I have explained in my main reply why the Government sees no reasons for China to dismantle the Legislative Council in 1997, but, if they were to do so, it is not at all clear how that would be in Hong Kong's or indeed China's interests. It is the well expressed wish of the community that there should be a smooth transition. Dismantling a Legislative Council which is openly and fairly elected, can hardly be conducive to a smooth transition.

As regards Miss LAU's points about the impact of recent Chinese Government's utterances on this subject, I would like to stress that we see no evidence of any impact whatsoever, and certainly not on our economic front. A few facts may help to put this in perspective. In the past decade or so, Hong Kong's average growth rate has been some 6.5% and we are now the world's eighth largest trading economy. There has been a growing interdependence between the economies of China and Hong Kong and we are now set to account for about two-thirds of foreign investment in China, and about a quarter of China's exports go to or through Hong Kong. None of these has been affected by the disagreement with China on our constitutional development and also, the Chinese officials have said many times that they would not do anything which would hurt Hong Kong's economic interests.

MR TAM YIU-CHUNG (in Cantonese): *Mr President, the Secretary said that he saw no reasons, but I can tell him the reasons right now. China has in fact expressed quite openly that the three tiers of government will be recomposed on 1 July 1997 because China and Britain could not reach any agreement on the political reform issue; as the three-tier structure was implemented unilaterally by Britain, there can be no through train. Why does the Government keep, as was described by Miss Emily LAU, "hearing without listening and looking without seeing"? Did the Government say those things out of its own wishful thinking, or was it an attempt to mislead the public?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, I really have nothing much to add to my main reply; but it might be useful if I again just reiterate the key points and these are, we put forward our constitutional package with a view to ensuring a smooth transfer of government in 1997 and our arrangements, in our view, are in keeping with the Joint Declaration, the Basic

Law and agreements between the two governments. We just fail to see any reason why that should not be so and we fail to see why dismantling the package that we put in will be conducive to a smooth transfer of government in Hong Kong in 1997.

DR LEONG CHE-HUNG: *Since the Administration believes that there is no reason for China to do away with the current arrangement in 1997 but yet China has repeatedly indicated that the Legislative Council will be dissolved by July 1997, could the Administration inform this Council whether Britain is seeking further discussion or otherwise on this smooth transition through whatever channel; and what would Britain do should China dissolve the Legislative Council in 1997, considering the fact that both Britain and China are joint signatories to the Joint Declaration?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, we have on numerous occasions, both during and outside the 17 rounds of talks, explained to the Chinese side why our proposed arrangements for the 1995 Legislative Council are fully capable of achieving continuity after 1997. We will certainly continue to explain our case through the various established channels.

As Members are well aware, China, of course, is a signatory to the Joint Declaration which is of course an internationally binding agreement, and so I very much believe that China will have full regard to its obligations under the Joint Declaration when considering whether the Legislative Council may ride the through train, including the obligation to ensure a smooth transition and the maintenance of Hong Kong's stability and prosperity.

DR LEONG CHE-HUNG: *Mr President, I do not think my question has been answered. My question is, what would Britain do if China does dissolve Legislative Council?*

PRESIDENT: I suppose you are really asking whether this Government knows what the British Government will do.

DR LEONG CHE-HUNG: *Mr President, then could the Administration seek Britain's views on what they would do should China dissolve the Legislative Council in 1997, and inform this Council?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, if Dr LEONG were to look at my main reply he will find the answer there. I started off by saying that the British Government is fully committed under the Joint Declaration to ensure a smooth transfer of government in Hong Kong in 1997.

And I also, in answer to his question, mentioned that China is a signatory to the agreement and therefore we are certain that China will take into account its international obligations before doing anything that is contrary to the Joint Declaration.

MR YEUNG SUM (in Cantonese): *Mr President, just now the Government replied that it saw no reason why the Chinese Government would recompose the three tiers of government, it also mentioned the trend of economic growth. However, all these might be the good hope of the Hong Kong Government only. Will the Government admit categorically that if the Chinese Government deem it necessary to recompose the three tiers of government on 1 July 1997, neither the Hong Kong Government nor the British Government would be able to remedy?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: *Mr President, I must, again, repeat that I really have nothing further to add. I think in my main answer, as well as my supplementary answers to various Members, I think the picture is clear, I think the answer is obvious and I do not think I have anything more to add to my replies.*

MR CHEUNG MAN-KWONG (in Cantonese): *Mr President, the replies given by the Secretary so far are nothing but bureaucratic utterances. We should always prepare for the best as well as for the worst for any matter. As for this matter, it would really be in China's interest should the Legislative Council be dissolved, because a new "China Brand" stove could then be built. China has repeatedly said that the Legislative Council would be dissolved after 1997, but the Government still insists that it "does not see nor hear" that. Is the Government not acting like a political ostrich now? Not preparing for the worst nor taking any appropriate measures with respect to the Legislative Council after 1997, would that be the things that a pragmatic government should do?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: I think, Mr President, by now Members will be bored by my repeated answers (*Laughter*) and I sympathize with Members' boredom. Just again, two points: what are we trying to achieve with our electoral package? We want to ensure open, fair elections; we want to ensure a smooth transfer. And it is in that spirit, with that objective, that we put forward our package. We just fail to see why — and no one has pointed out to us — why that should not meet the criteria of openness, fairness and a smooth transition.

MR JAMES TIEN: *Mr President, since the Secretary has nothing to add on any of the supplementaries, I probably should not ask any more. (Laughter)*

MR HOWARD YOUNG (in Cantonese): *Mr President, will the Secretary point out clearly that as the so-called “through train” issue is something created after the signing of the Sino-British Joint Declaration, and so whether or not there be a through train would be none of the Joint Declaration’s business? Secondly, is the Administration aware that the Basic Law does provide for the establishment of a Preparatory Committee in 1996, and that one of the Committee’s duties is to decide if it is necessary to repeal the laws that do not conform with the Basic Law. Does this mean that, whether or not they could be carried through 1997, the electoral arrangements to be passed two weeks later, would have nothing to do with the Legislative Council? Then, would any interference from the Legislative Council be regarded as an attempt to usurp the Preparatory Committee’s power; and would the Chinese and British Governments be viewed as back seat drivers if they meddle in this matter?*

PRESIDENT: I think, Mr YOUNG, your question goes way beyond the original question and answer. And Members, of course, do not need reminding that the Second Reading of the bill comes up in two weeks. A lot of this is by way of anticipation. I think it is timely to move on.

Political and security investigations

6. DR TANG SIU-TONG asked (in Cantonese): *Will the Government inform this Council:*
- (a) *What are the legal powers of the Government to put the political activities of certain persons under surveillance or investigation; whether such powers are in conflict with the Bill of Rights Ordinance; and which department is responsible for such work;*
 - (b) *whether the Government has put the political activities of any public figures, pro-China personages and senior government officials under surveillance or investigation in the past three years; and*
 - (c) *whether the Government has drawn up a so-called “target list” so that special attention can be paid to the activities and movements of its targets, and information about their political activities can be collected?*

SECRETARY FOR SECURITY: Mr President, the Government does not engage in political investigations. When a security threat exists, investigations are conducted to counter that threat. The police are primarily responsible for conducting such investigations, though, depending upon the nature of the threat, other departments such as the Customs and Excise or Immigration Departments, may also be involved. All investigations are carried out in accordance with the law, including the Bill of Rights Ordinance.

Details of security investigations are by their nature secret, but, as stated above, the Government does not investigate political activities. It has not drawn up any “target list” for such investigations.

DR TANG SIU-TONG (in Cantonese): *Mr President, there is a clear distinction between political surveillance and security surveillance, while political investigations can sometimes be conducted through the application of security principles. Will the Government inform this Council whether it has, in the past three years, put any public figures, pro-China personages or senior government officials under investigation on security grounds; and whether the Independent Commission Against Corruption (ICAC) has been involved?*

SECRETARY FOR SECURITY: Mr President, as I have said, details of these investigations must remain secret and I cannot answer specific questions like that.

MR ALLEN LEE (in Cantonese): *Mr President, as the Administration does not conduct political investigations, will the Secretary inform this Council under what circumstances or upon what criteria will the Administration conduct investigations?*

SECRETARY FOR SECURITY: Mr President, when I refer to security investigations or investigations into threats to security, I am talking about activities which by illegal means threaten the security of Hong Kong, and I stress the words “illegal means”. We are not under any circumstances talking about normal lawful political activities. And the police have ample powers to conduct such investigations conferred upon them by the Police Force Ordinance.

MR VINCENT CHENG: *Can the Secretary inform this Council of the definition of a security threat or what does he see as a threat to Hong Kong’s security? What is Hong Kong’s security?*

SECRETARY FOR SECURITY: Mr President, I think I have just answered that question but perhaps to give some examples, such activities could include terrorism, they could include nuclear-arms proliferation, they could include United Nations sanctions circumventions; there are many such activities.

MS ANNA WU: *Will the Government inform this Council whether surveillance of political activities of a target list of 14 groups, including “SOCO”, “The Observers” and “The Heritage Society”, in the late 1970s and early 1980s, for assessment by the Standing Committee on Pressure Groups formed by the*

Government, is considered to constitute political investigations; why such investigations were conducted; who conducted the investigations and under what legal authority?

SECRETARY FOR SECURITY: Mr President, this goes back a very, very long way, certainly well before my time. I will give a written answer to these questions. (Annex I) I have no information about these historical activities. *(Laughter)*

MS ANNA WU: *Mr President, I am surprised that this is not within the recollection of the Administration, it certainly is within mine and I am one of the names made known in the reports on "The Observers". It certainly is within my living memory.*

PRESIDENT: Secretary, do you wish to respond?

SECRETARY FOR SECURITY: Mr President, I did not say it was not within the recollection of the Administration, I said it was not within my recollection. I will search out the memory of the Administration and, as I have said, give a written answer.

MR STEVEN POON (in Cantonese): *Mr President, territory-wide concern has been aroused by the news story which claimed that the Government has been keeping under surveillance the activities of political figures and pro-China personages (including Ms Anna WU as well). The Secretary said in his main reply that the Government did not engage in any political investigation or surveillance but he did not say that the Government could not do so. In fact, the legal basis for the Government's action is the provisions under the law. Will the Government inform this Council whether it will consider abolishing the authorized legal power under which the Government could monitor or intercept private telephone conversations, so as to prevent such power from being abused or used as a tool in political confrontation?*

SECRETARY FOR SECURITY: Mr President, I believe that the questions on this were answered at length by Mr WOODHOUSE in this Council a few weeks ago. I have nothing to add to those answers.

MR CHIM PUI-CHUNG (in Cantonese): *Mr President, although the Government does not engage directly in political investigation, some local political figures are still subjected to investigations of other nature. Will the*

Secretary inform this Council whether such investigations have absolutely nothing to do with politics?

SECRETARY FOR SECURITY: Mr President, I can only refer the Member to my main answer which I think fully covers that point.

MR JAMES TO (in Cantonese): *Mr President, will the Secretary inform this Council whether the criteria for conducting the "security investigations" mentioned in his main reply would vary with time? To give an example, while Communists active in Hong Kong were once included as investigation targets decades ago owing to the unfavourable Sino-British relations, today's investigation targets, however, might be persons sent by other countries or governments to conduct activities in Hong Kong.*

PRESIDENT: I do not think I caught the actual question, Mr TO.

MR JAMES TO (in Cantonese): *Mr President, my question is whether the Government would adopt different criteria at different times. Has the Government been using, since decades ago, the same criteria to identify the circumstances under which Hong Kong's security would be threatened? Who is in a position to threaten or undermine the security of Hong Kong?*

SECRETARY FOR SECURITY: Mr President, no. I think I have said previously what I mean by security threats. These can and do sometimes include government-sponsored activities. For example, there are some governments that sponsor terrorism; there are some governments that seek to circumvent United Nations arms and other embargoes; and sometimes we do investigate those activities in Hong Kong.

MRS SELINA CHOW (in Cantonese): *Mr President, in the Secretary reply, the last sentence of paragraph one says that all investigations are carried out in accordance with the law, including the Bill of Rights Ordinance, while paragraph 2 tells us that all these security investigations are conducted in secret. As such, how can we find out whether those investigations are conducted in accordance with the law and the Bill of Rights Ordinance? As all these investigations are conducted in secret, how is the Administration going to justify these actions?*

SECRETARY FOR SECURITY: Mr President, all activities of this type must be carried out and are carried out in accordance with the law. So far as the Bill of Rights Ordinance is concerned, it provides that no one shall be subject to

arbitrary or unlawful interference with his privacy and all investigations that we carry out are lawful and are not arbitrary.

MRS SELINA CHOW (in Cantonese): *Mr President, the Secretary has not answered my question. My point is, as all these investigations are conducted in secret, who is in a position to testify to the legality of these investigations?*

SECRETARY FOR SECURITY: Mr President, I think the Administration has to be trusted to conduct such investigations. There are some things which must by their nature remain secret.

MRS ELSIE TU: *Mr President, since I can confirm that this list existed — I have seen it — and it does have the name of “The Observers” and “SOCO” — surprisingly enough, my name is not on it. (Laughter) But these activities were certainly not — I am sure Ms Anna WU was not related to terrorism or nuclear-bombs. So I wonder when the Security Branch or the Government ceased to investigate that kind of activity and what was it investigating at that time?*

SECRETARY FOR SECURITY: Mr President, as I said in answer to an earlier question, all this happened many years ago, certainly well before my time and well outside my memory. I will certainly give a written answer to those questions but I cannot answer them now. (Annex II)

Written Answers to Questions

Maternity protection

7. MR SIMON IP asked: *In view of the fact that out of the 79 complaints in 1993 of unlawful termination of employment of female workers after application for maternity leave, only one case has ended in a conviction, will the Government inform this Council as to whether it intends to propose additional measures to strengthen maternity protection and to increase fines under the maternity protection legislation?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, of the 79 complaints referred to in the question, 41 were related to dismissal of female employees allegedly because of their pregnancy. The other complaints concerned provision of maternity leave pay, sickness allowance in respect of medical check-ups and other related entitlements under the Employment Ordinance or their employment contracts.

All these complaint cases were investigated by the Labour Department. In 18 cases, the female employees had failed to serve notice of pregnancy as required by law. In six cases, the cause of dismissal was found to be unconnected with pregnancy. In eight cases, the evidence was found to be very inadequate or where there was no prosecution witness. In three cases, the employers had become insolvent. And in another three cases, the employers took prompt remedial actions and came to amicable settlement with their employees. In one case, the female employee was found not entitled to maternity pay. In another case, the employee's entitlement to maternity leave pay was uncertain and is now pending a ruling of the Labour Tribunal.

The Government takes a serious view on maternity protection. We have proposed, under the Employment (Amendment) (No. 2) Bill 1993, to make late payment of maternity leave pay an offence. The 26-week eligibility period for maternity leave and the 40-week eligibility period for maternity leave pay are also clarified under the Bill.

As to the levels of penalties under the Employment Ordinance, the Labour Department has recently completed a review, and proposes that the maximum levels of fines relating to maternity leave provisions be substantially increased. The proposals are being examined and will be introduced into the Legislative Council as early as possible.

Caesarian section operations

8. DR HUANG CHEN-YA asked (in Chinese): *In view of recent reports that the number of caesarian section operations performed overseas has exceeded actual need, will the Government inform this Council:*

- (a) *of the rate of caesarian section operations per thousand births in public hospitals; and*
- (b) *of the rate of such operations in private hospitals; if this is not available, whether there are plans to obtain the relevant information in order to monitor the situation in Hong Kong?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, the rate of caesarian section operations performed in public hospitals in Hong Kong was 143.11 per 1 000 births in 1992-93 and 141.33 per 1 000 births in 1993-94, which compare favourably with overseas countries. Similar statistical information in respect of private hospitals is not collected for the time being, but we will consider the possibility of obtaining such information from these hospitals.

Village patrol by the police

9. MR WONG WAI-YIN asked (in Chinese): *Owing to the vast rural area and the narrow village roads in the New Territories, the police has to use motor cycles to perform patrol duties in the villages. Will the Government inform this Council:*

- (a) *of the number of motor cycles currently made available for patrol duties in the rural areas of the New Territories; and*
- (b) *whether there are plans to increase the number of motor cycles for such duties; if so, when the plans will be implemented and what is the increase in the number of motor cycles; if not, what alternative measures will be taken to step up police patrol in villages?*

SECRETARY FOR SECURITY: Mr President,

- (a) There are currently 64 motorcycles used for patrol duties in rural areas of the New Territories.
- (b) The police have plans to acquire a further two motorcycles for use in the southern part of the New Territories later this year.

In addition to motorcycle patrols, mobile patrol vehicles are used in remote villages which can be accessed by road; bicycle patrols are also conducted in Yuen Long. All these are supplemented by foot patrols during weekends and public holidays, in response to the increased number of people visiting the New Territories. Members of the Field Patrol Detachment, who patrol rural areas along the border primarily to combat illegal immigration, also deal with other emergencies if necessary. The police monitor closely the crime situation in different parts of the New Territories, and deploy resources as necessary to cope with the situation.

Hospital Authority's public relations and publicity expenditure

10. MR MICHAEL HO asked (in Chinese): *Will the Government inform this Council of the establishment of the various ranks of officers in the department responsible for public relations and publicity work in the Hospital Authority, and the personal emoluments and other recurrent expenses of the department concerned in the current financial year?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, the publicity section together with the news section of the Hospital Authority Head Office is headed by a Deputy Director and staffed by two Chief Information Officers, three Senior Information Officers, one Information Officer, two Assistant

Information Officers and two Clerical Officers. Their salaries at \$4.86 million per annum are comparable to similar ranks in the Civil Service.

Separately, a total budget of \$2.5 million has been earmarked by the Hospital Authority in the current financial year for public relations and publicity work.

Harbour safety

11. MR LEE WING-TAT asked (in Chinese): *As the reclamation work being carried out in Victoria Harbour is causing the gradual narrowing of the fairway, will the Government inform this Council of:*

- (a) the number of accidents in Victoria Harbour involving vessels in the last three years (classified according to vessels registered in Hong Kong, China and other places);*
- (b) the measures adopted to ensure that inbound vessels registered outside Hong Kong will abide by Hong Kong's maritime laws and observe fairway safety; and*
- (c) the measures in place to ensure that the safety of cross-harbour ferries will not be affected while they are berthing and that their berthing will not be delayed by the reclamation vessels operating near the ferry piers at Central District?*

SECRETARY FOR ECONOMIC SERVICES: Mr President, a number of marine works are being undertaken in the harbour. None of these require narrowing of fairways. The number of accidents in Victoria Harbour over past few years is listed in the annex to this answer. The majority of the accidents are minor incidents involving only slight damage to vessels.

To ensure compliance with Hong Kong's maritime laws by foreign-registered vessels when navigating within Hong Kong waters, the Marine Department's Vessel Traffic Centre (VTC) monitors and communicates directly with these vessels. If a vessel is found not observing the regulations properly, the VTC will inform, advise and direct the vessel to adjust her movements. Non-compliance with such directions will result in prosecution.

As marine works are in progress near to ferry routes, special precautions have been adopted to ensure the safety of berthing ferries and that any delay to their schedules is minimized. These measures include:

- (a) designation and promulgating specific areas within which only marine works are allowed;

- (b) stepping up Marine Department patrols of the Central harbour by extending patrol hours and deploying additional launches. This is to ensure that vessels engaged in marine works do not anchor or operate outside the specified works areas;
- (c) requiring all floating plant, when entering or leaving the Central Reclamation works areas, to follow a north/south course to and from the Central Fairway. This is to ensure that the ferries are not obstructed by crossing traffic; and
- (d) continuous liaison between the Marine Department, marine works contractors and ferry operators so that rapid response can be initiated in the event of any unusual situations or occurrences.

Annex

The Number of accidents in Victoria Harbour
involving vessels in the last three years

No. of vessels involved in the collisions

<i>Year</i>	<i>No. of collisions</i>	<i>HK licensed/register- ed vessels</i>	<i>PRC vessels</i>	<i>Others</i>	<i>Total no. of vessels involved</i>
1991	66	72	36	24	132
1992	69	78	25	35	138
1993	104	109	51	48	208
1994 (up to 31 May 1994)	22	24	12	8	44

Staff appointment of tertiary institutions

12. MR CHEUNG MAN-KWONG asked (in Chinese): *Regarding the renewal and termination of appointment of contract and permanent staff of tertiary institutions funded by the University and Polytechnic Grants Committee, will the Government inform this Council whether it is aware of the following:*

- (a) *whether each institution has its own established procedure to explain to a staff member the reasons and details concerning the non-renewal of his contract, if the institution has no intention to renew the contract when it is due to expire soon; if so, what the procedure is and whether staff members are aware of such procedure;*

- (b) *whether there are effective and reasonable appeal channels for staff members to lodge appeal and defend themselves against the grounds given by the institution when their contracts are terminated;*
- (c) *what arrangements similar to those in (a) and (b) the institution will make if a permanent staff member is dismissed; and*
- (d) *how does the authority concerned monitor the entire procedure to ensure that there is no abuse of power and human errors, in order to prevent unfair treatment to staff members?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, the University and Polytechnic Grants Committee (UPGC)-funded institutions are autonomous statutory bodies. Under their respective ordinances, they are entitled to freedom of action, within the laws of Hong Kong, in managing their internal affairs, including the selection, renewal and termination of appointment of their own staff.

Having regard to the above, the Administration's answers to Mr CHEUNG's questions are as follows:

- (a) the Administration understands that all UPGC-funded institutions have established procedures governing the appointment, renewal, non-renewal and termination of employment contracts for contract staff. These procedures vary from one institution to another in terms of details, due to their different historical backgrounds and management practices. But they share broadly the same principles which include appraisal of individual performance, notification to individuals in case of contract renewal, non-renewal or termination, and provision for appeals by staff. A staff's terms and conditions of service are stated in the contract of employment and made known to him/her upon appointment.
- (b) appeal channels are provided for in all institutions. Appeals are usually handled by a panel or committee in order to minimize possible abuse of power by any individual;
- (c) while the detailed procedure may vary from one institution to another, similar arrangements exist in these institutions in respect of permanent staff; and
- (d) the governing bodies of the institutions are ultimately responsible for ensuring that these established procedures are applied fairly and reasonably. Disputes about contracts of employment or the circumstances surrounding the termination or non-renewal of contracts may also be brought to the courts if a concerned party chooses to do so.

Resource Centre for Gifted Children

13. MR ERIC LI asked (in Chinese): *With regard to Hong Kong's first Education Resource Centre for Gifted Children to be established in Tsuen Wan, will the Government inform this Council:*

- (a) *whether the Education Resource Centre can be completed for use this year as scheduled; if not, what are the reasons; and*
- (b) *if the Education Resource Centre for Gifted Children cannot be established at the above-mentioned location, where will the Government establish such Centre; when will it be completed and what construction cost will be incurred?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, the site at the present Tsuen Wan Government Secondary Technical School has been provisionally earmarked for the establishment of the first Resource Centre for Gifted Children. Lately, however, there have been other considerations including whether the site should be used for residential housing. A decision on the final use of the site will be made soon.

If the decision is to proceed with the Resource Centre for Gifted Children on the present site, we expect the centre to open in March 1995, following extensive conversion work at an estimated cost of \$6.8 million. On the other hand, if an alternative site is to be found, the timing for the opening of the centre and the cost involved will depend on the condition and location of the new site.

English-speaking mentally handicapped children

14. MR ERIC LI asked (in Chinese): *Will the Government inform this Council of the following:*

- (a) *the total number of English-speaking mentally handicapped persons aged fifteen and below in Hong Kong as at April 1994;*
- (b) *the number of school or training places the Government has provided for the English-speaking mentally handicapped persons aged between four and fifteen in the 1993-94 academic year, and the distribution of such persons in each grade;*
- (c) *the number of new school places the Government will provide in the 1994-95, 1995-96 and 1996-97 academic years respectively for these English-speaking mentally handicapped persons who are of school-age; and*

(d) *in the long term, what time frame the Government has planned to solve completely the problem of insufficient school places for the English-speaking mentally handicapped persons?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President,

- (a) As at April 1994, the number of English-speaking mentally handicapped children aged 15 and below is estimated to be about 147.
- (b) Special education for English-speaking mentally handicapped children of school age is provided in schools run by the English Schools Foundation (ESF) which receives subvention from the Government. There are two special units each at the primary and secondary level, with a total capacity of 84 places for children with special needs. In addition, the Jockey Club Sarah Roe School of the ESF provides places for 40 severely mentally handicapped English-speaking children. Details are as follows:

		<i>Capacity</i>	<i>Enrolment</i>	
			<i>Mentally handicapped</i>	<i>Other handicaps</i>
Special units of ESF schools	Secondary (11-18)	42	27	5
	Primary (5-10)	42	41	1
Sarah Roe School	Primary and secondary	40	29	0
Total		124	97	6

(c) and (d)

The Education Department is aware that there is a waiting list of 24 handicapped children for places in the ESF schools. Based on the number of children now attending special child development centres, the department estimates an additional demand of another 26 places in the next few years. To cope with this additional demand, the department is discussing with the ESF regarding plans for expansion, and will also be exploring with other agencies the possibility of alternative or additional provision.

Alleged indecent assault by doctors and dentists

15. MISS EMILY LAU asked (in Chinese): *In view of recent media reports on several cases concerning indecent assault of female patients by their doctors and dentists, namely a doctor of the Police Training School being charged with indecent assault of several recruit woman police constables, a doctor being alleged to have indecently assaulted a female patient who is an employee of an airline and a dentist practising in Hong Kong having previous conviction of indecent assault of his female patients in Canada, will the Government inform this Council whether:*

- (a) *it is aware of the above-mentioned cases and whether the details of those cases can be disclosed to this Council; and*
- (b) *it will suggest to the medical profession to stipulate that examination of female patients by male doctors or dentists must be carried out in the presence of female nurses?*

SECRETARY FOR HEALTH AND WELFARE: Mr President,

- (a) The first of the three cases mentioned involved a doctor who was charged in the District Court with six counts of indecent assault. The case was dismissed on 18 March 1994 after the Court found him not guilty of all charges.

The second case was considered by the Medical Council of Hong Kong, pursuant to the Medical Registration Ordinance (Cap. 161), at a disciplinary hearing held on 4 November 1993. After hearing evidence from the complainant and the accused doctor, the council was satisfied that the doctor was “guilty of improper, immoral or indecent behaviour in the course of his professional duties to his patient (that is, the complainant), and that in relation to the facts alleged he has been guilty of misconduct in a professional respect”. The council further ordered that the doctor’s name be removed from the medical register for six months, the application of which would be suspended for two years subject to the doctor not being found guilty of professional misconduct during the said period. Subsequent to the doctor’s recent decision to withdraw his appeal to the Court of Appeal, the Medical Council’s decision and disciplinary order were gazetted on 3 June 1994.

The third case was heard by the Dental Council of Hong Kong, in accordance with the Dentists Registration Ordinance (Cap 156), at its disciplinary enquiry held on 22 February and 21 April 1994. At the conclusion of the enquiry, the council was satisfied that the dentist in question was “convicted by the Supreme Court of British Columbia, Canada on 4 December 1986 of 17 charges of indecent

assault and sexual assault; and that the Court of Appeal of British Columbia, Canada had on 23 September 1987 allowed the dentist's appeal against sentence and imposed a sentence of imprisonment of two years less one day with probation for two years". The council ordered as a consequence that the dentist be allowed to practise dentistry in Hong Kong with certain restrictions.

However, having subsequently consulted the Attorney General, the secretary to the Dental Council is now seeking a judicial review of the above order of the council and an Application for Leave to Apply for Judicial Review has already been filed. It would not be appropriate to divulge any further details of the case at this stage, pending determination of this application.

- (b) The need or otherwise of a chaperon when conducting medical examinations on female patients is a matter for professional judgement depending on the patient's clinical condition. Doctors should always be fully aware that they should obtain the consent of their patients before commencing any examination. It makes good common sense for male doctors to conduct a medical examination on a female patient in the presence of a chaperon if the examination to be carried out involves any direct body contact.

It should be emphasized that both doctors and dentists are required by their codes of practice to regard the interests of their patients as their first priority. If ever they are alleged of having disregarded their professional responsibilities to patients, they may be subject to the disciplinary sanctions of the Medical and Dental Councils respectively.

School sites

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

- (a) *the total number of sites reserved at present for the Education Department to build primary, secondary and special schools, the locations and areas of these sites and how they will be used in the future;*
- (b) *how many of such sites are not occupied, the circumstances under which a decision will be made to invite tenders for building schools at such sites, and the circumstances under which a decision will be made to surrender a site;*
- (c) *the number of additional sites that the Education Department estimates will be required to build a sufficient number of school*

premises, if the arrangement of having floating classes at secondary schools is abolished; and the number of existing sites that can be made available for immediate use, so that they will no longer be left vacant;

- (d) whether the reserved sites in various districts suitable for building primary schools can be fully utilized if whole-day primary schooling is to be implemented by stages; and*
- (e) how does the Education Department identify school sites; in respect of suitable school sites, whether any difficulties have been encountered in applying for the allocation of such sites; whether the Administration will give priority to the allocation of such sites to the Education Department for building school premises?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President,

- (a) There are at present 157 reserved school sites: 105 for secondary, 50 for primary and two for special schools. They are located in various districts (details at annex) and have been reserved to enable new schools to be built in the future to meet policy targets.
- (b) A School Building Programme drawn up on the basis of student population projections and to meet approved education policies is reviewed annually. Within the resources allocated each year, new schools as recommended in the programme are built through public tender under the supervision of the relevant authority, using the appropriate sites reserved. Reserved school sites which are not needed because of demographic changes, site limitations and other physical constraints are surrendered.
- (c) The current policy is to reduce floatation through an on-going school extension programme for schools of the old design. This programme has recently been reinforced by the School Improvement Programme introduced this year. Together these two programmes would help to eliminate floating classes at Secondary I to Secondary V levels by the year 2000. The Government considers the floating of classes at Secondary VI to Secondary VII levels to be reasonable, having regard to their frequent use of special rooms for different subjects.

If floating classes at Secondary I to Secondary V levels were to be completely eliminated well ahead of the year 2000, 19 additional secondary schools would be required. Suitable sites for these schools would have to be made available from the reserved list.

- (d) It is the Government's policy to encourage primary schools to operate on a whole-day basis where possible without adversely affecting the supply of school places. There are 132 whole-day primary schools for local children including three new schools commissioned in 1993.

If whole-day schooling were to be implemented in all primary schools, it is estimated that there would be a total shortfall of 87 primary school sites in 17 districts, even if all the reserved primary school sites which are needed are used.

- (e) At an early stage of the town planning process, sites are reserved for schools and other community facilities in planning districts to meet forecast requirements. The number, size and location of school sites required are determined mainly with reference to population forecasts and approved planning standards and guidelines. So far, the Education Department has not encountered any difficulties in reserving school sites.

Annex

Reserved school sites

A) For primary schools

	<i>District</i>	<i>No. of sites</i>	<i>Area per site (m²)</i>
Hong Kong	Eastern	6	3 700-6 100
	Southern	2	4 300 and 4 800
Kowloon	Yau Ma Tei and Tsim Sha Tsui	3	5 600-6 700
	Sham Shui Po	3	6 300-6 400 (boundary of one site not yet fixed)
	Kowloon City	2	3 500-6 200
	Wong Tai Sin	1	(boundary not yet fixed)
	Kwun Tong	2	4 000 (boundary of one site not yet fixed)

	<i>District</i>	<i>No. of sites</i>	<i>Area per site (m²)</i>
New Territories	Kwai Chung and Tsing Yi	1	4 600
	Tuen Mun	2	6 200
	Yuen Long	6	4 000-6 100 (boundary of three sites not yet fixed)
	Tai Po	2	4 000 and 5000
	Sha Tin	2	6 300-7 800
	Sai Kung	7	5 000-8 000
	Island (Cheung Chau)	11	4 700-8 000
		---	50

B) *For secondary schools*

	<i>District</i>	<i>No. of sites</i>	<i>Area per site (m²)</i>
Hong Kong	Central and Western	1	5 400
	Eastern	8	5 400 and 7 200
	Southern	5	3 700-6 500 (boundary of one site not yet fixed)
Kowloon	Sham Shui Po	4	5 900-7 500
	Kowloon City	3	5 700-6 800
	Wong Tai Sin	3	5 300-7 700
	Kwun Tong	15	5 600-8 800 (boundary of eight sites not yet fixed)

	<i>District</i>	<i>No. of sites</i>	<i>Area per site (m²)</i>
New Territories	Kwai Chung and Tsing Yi	4	5 000-10 800
	Tsuen Wan	1	6 100
	Tuen Mun	9	5 500-7 000
	Yuen Long	5	5 800-7 000
	North	4	6 200-6 900
	Tai Po	3	5 800-6 900
	Sha Tin	7	6 900-9 600 (boundary of two sites not yet fixed)
	Sai Kung	21	4 300-6 900
	Island	12	5 000-11 000
	----	105	

C) For special schools

	<i>District</i>	<i>No. of sites</i>	<i>Area per site (m²)</i>
Kowloon	Kwun Tong	1	2 000
New Territories	Tai Po	1	2 950
		--	
		2	

Fiscal reserves

17. MR FREDERICK FUNG asked (in Chinese): *According to the Memorandum of Understanding Concerning the Construction of the New Airport, the Hong Kong Government will have, as its firm objective to leave not less than \$25 billion as the fiscal reserves for the use of the Hong Kong Special Administrative Region Government by 30 June 1997. Will the Government inform this Council whether the capital of Trading Funds, to be implemented before and after 1997, will be included in the reserves; if so, whether there have been discussions with the Chinese Government on the issue; if not, what are the reasons?*

SECRETARY FOR THE TREASURY: Mr President, the fiscal reserves represent the accumulated balances of the General Revenue Account, the Capital Works Reserve Fund (excluding the Suspense Account), the Loan Fund, the Capital Investment Fund and the Disaster Relief Fund, that are available to meet Government's future expenditure. Details of these are set out in the Notes on the Medium Range Forecast, published as Appendix A to the 1994 Budget speech.

Trading funds operate under accounting arrangements which are separate from the remainder of Government. The Trading Fund Ordinance provides that the Financial Secretary may, only in certain exceptional circumstances such as closure, transfer capital from Trading Funds to the General Revenue Account. Although the assets of Trading Funds remain in the ownership of the Government, their capital, as a result of these separate accounting arrangements, does not form part of the fiscal reserves. The question of discussions in this context with the Chinese Government does not therefore arise.

Report of the Working Party on Primary Health Care

18. DR CONRAD LAM asked (in Chinese): *Will the Government inform this Council of the following:*

- (a) with regard to the claim by the Government that 95 of the 102 recommendations put forth in the Report of the Working Party on Primary Health Care released in December of 1990 have already been implemented, how much resource and manpower have been deployed to implement these recommendations;*
- (b) what timetable has been set for the full implementation of the various programmes that are "yet to be introduced" or "in the process of introducing"; and*
- (c) how much more resource and manpower are required to put the rest of these recommendations into practice?*

SECRETARY FOR HEALTH AND WELFARE: Mr President,

- (a) Of the 102 recommendations of the Working Party's Report on Primary Health Care, 98 recommendations have been or are being implemented. Many of the service improvements and new initiatives are built on existing infrastructure and are undertaken progressively over a period of time. It may be relevant to note, however, that in 1994-95, \$1,316.8 million has been provided for primary health care, representing 67.9% of the approved estimate to the Department of Health for that year.

- (b) The remaining four recommendations concern the introduction of a domiciliary occupational therapy service, changes to the structure for fees and charges, the reorganization of the Department of Health and the establishment of a Primary Health Care Authority.

Instead of a Domiciliary Occupational Therapy service, we are studying the introduction of a pilot District Health Nursing Service as part of the District Health System. This service will focus primarily on disease prevention and health promotion and will be integrated with the general out-patient service. The other remaining recommendations need to be further examined in the context of the overall development of health and medical services and major policy and financial considerations.

- (c) The financial implications of implementing the remaining recommendations will be identified at the time of implementation.

Primary health care services

19. DR CONRAD LAM asked (in Chinese): *Will the Government inform this Council of:*

- (a) *the number of medical officers in the Department of Health who are currently engaged in providing primary health care services, the minimum qualifications required of them and the kinds of in-service training they need to undergo; and*
- (b) *the percentage of those with specialist qualifications in this group of medical officers and its breakdown by discipline?*

SECRETARY FOR HEALTH AND WELFARE: Mr President,

- (a) As at 1 June 1994, 297 of the 480 Medical and Health Officers in the Department of Health are engaged in providing primary health care services.

To qualify for appointment as a Medical and Health Officer, the applicant should possess a medical qualification registrable in Hong Kong in accordance with the Medical Registration Ordinance (Cap. 161).

With regard to in-service training opportunities, both local and overseas courses are available. Short courses in the form of seminars, workshops, conferences, refresher courses and clinical attachments are organized to update the officers' knowledge on subjects relevant to their practices. Long courses such as diploma

or degree courses in Family Medicine, Public Health Medicine, Occupational Medicine, Epidemiology and Applied Statistics, and so on, provide more in-depth training for the purpose of staff development.

- (b) On average, one out of 11 officers (9.09%) in this group possesses specialist qualifications. The breakdown by discipline is as follows:

<i>Discipline</i>	<i>Percentage</i>
Family Medicine (for example, general outpatient)	6.25%
Community Medicine (for example, public health, family health, health education)	15.87%

Scheme on Importation of Professionals and Managers from China

20. MR JAMES TIEN asked (in Chinese): *As Phase I of the applications under the Scheme on Importation of Professionals and Managers from China has ended, will the Government review whether sufficient publicity measures have been adopted to promote the Scheme? Furthermore, will the Government streamline the application procedures of the Scheme to make it more convenient for the industrial and commercial sectors to participate in the Scheme?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, the scheme was given ample publicity and was reported extensively by the media. As a result, over 10 000 application forms were distributed and over 2 000 applications received at the end of Phase I on 31 May 1994. The Government will continue to promote the scheme through existing channels.

The pilot scheme is an extension of the present policy for entry of overseas professionals. The Government will review the procedures of the scheme in the light of operational experience. We welcome all views and suggestions on how the scheme may be further improved.

Motions

BIRTHS AND DEATHS REGISTRATION ORDINANCE

THE SECRETARY FOR SECURITY moved the following motion:

“That with effect from 15 July 1994 the Births and Deaths Registration Ordinance be amended -

- (a) in section 9(2) by repealing "\$40" and substituting "\$80";
- (b) in section 9(3) by repealing "\$200" and substituting "\$400";
- (c) in section 13(2) by repealing "\$40" and substituting "\$80";
- (d) in section 13(3) by repealing "\$125" and substituting "\$250";
- (e) in section 22(1) by repealing "\$40" and "\$80" and substituting "\$80" and "\$160" respectively;
- (f) in section 22(2) by repealing "\$40" and substituting "\$80";
- (g) in section 22(3) by repealing "\$200" and substituting "\$400";
- (h) in section 23 by repealing "\$20" and substituting "\$40";
- (i) in section 27(c) by repealing "\$125" and substituting "\$250"."

He said: Mr President, I move the first motion standing in my name on the Order Paper. This proposes increases in the fees specified in the Births and Deaths Registration Ordinance for the registration of births and deaths and related matters.

A recent review of fees and charges collected by the Immigration Department has indicated that in various areas, the department is not recovering its costs: these are, the registration of persons, where the average shortfall is about 33%; the registration of births, deaths and marriages, where the average shortfall is about 59%; and the issue of travel documents, where the average shortfall is about 8%.

It is government policy to provide services to the public on a cost-recovery basis, unless there are good reasons for doing otherwise. We are, therefore, proposing to revise the fees in the three areas I have mentioned. Full details of all the increases taking place at this time are contained in the Annex which I have tabled for the information of Members.

The fees to be revised were last revised in June 1993. If approved, the new fees will be introduced on 15 July this year.

Mr President, I beg to move.

Annex

Summary of proposed increases in fees and charges
collected by the Immigration Department

<i>Chapter</i>	<i>Legislation section/sch edule</i>	<i>Item</i>	<i>Description of fees</i>	<i>Present rate \$</i>	<i>Proposed rate \$</i>
115	S.59 2nd Sch. (sub. leg.)	1	Seaman's Identity Book (whether of full or restricted validity)	110	135
		3	Seaman's Certificate of Nationality and Identity	110	135
		4	Renewal of a Seaman's Certificate of Nationality and Identity	20	25
		8(a)	HK Certificate of Identity (44- page)	225	270
		(b)	HK Certificate of Identity (92- page)	450	540
		9	Multiple Re-entry Permit (whether of full or restricted validity)	70	85
		10	Re-entry Permit for 1 visit	20	25
		18	Endorsement to a Travel Document for which no specific fee is provided	85	105
		19	Service charge for supplying, on application, a copy of any document, or for making or forwarding, or both, a request for recommendation to any authority of a foreign state or Commonwealth country, for consular or nationality registration or for the issue or renewal of a passport or other travel document or of a document of identity or for the grant of a visa or entry permit.	90	110
		20(a)	Document of Identity (44-page)	200	240
		(b)	Document of Identity (92-page)	400	480

<i>Chapter</i>	<i>Legislation section/sc chedule</i>	<i>Item</i>	<i>Description of fees</i>	<i>Present rate \$</i>	<i>Proposed rate \$</i>
177	S.7 Sch. 2 (sub. leg.)	3	Lost or destroyed identity card replaced under reg. 13	220	330
		4	Damaged or defaced identity card replaced under reg. 13	120	130
		5	Identity card requiring alteration replaced under reg. 14(1)(a)	220	330
		8	Certificate or a certified copy furnished under reg. 23 of ROP Ordinance	220	330
181	S.36 2nd Sch.	1	Filing and exhibition of notice of marriage	90	180
		3(a)	Search made under S.26 during any number of successive hours not exceeding 6, without the object of the search being specified	200	400
		3(b)	Search under S.26 for a specified entry whether the search is made by the applicant or by the Registrar on his behalf	40	80
		4	Certified copy of an entry given under S.26 to <u>local</u> applicant	80	160
		4	Additional charge for the certified copy of an entry given under S.26 to <u>overseas</u> applicant	20*	40*
		5	Certificate under S.26 of absence of any record to <u>local</u> applicant	200	400
		5	Additional postage charge for the certificate under S.26 of absence of any record to <u>overseas</u> applicant	20*	40*
		6	Special licence under S.11 granted by the Governor	3,200	6,400
		7(a)	Marriage at the office of the Registrar — during normal office hours	210	420

<i>Chapter</i>	<i>Legislation section/sc hedule</i>	<i>Item</i>	<i>Description of fees</i>	<i>Present rate \$</i>	<i>Proposed rate \$</i>
		7(b)	Marriage at the office of the Registrar — outside normal office hours	570	1,140
		8	Celebration by the Registrar, elsewhere than in his office, or marriage by special licence or of person in articulo mortis	1,500	3,000
		9	Celebration by the Registrar of Marriages under paragraph (b) of the provision to S.21(3), per marriage and in addition \$2,120 (to be paid proportionately by the parties being married) or \$280 per marriage, whichever is the greater	700	1,400
174	S.9(2)		Post registration of birth (after 42 days) within 12 months from the date of birth	40	80
	S.9(3)		Post registration of birth after 12 months from the date of birth	200	400
	S.13(2)		A certificate of Registration of addition or alteration of name of child	40	80
	S.13(3)		Addition or alteration of name of child after 42 days from the date of the birth	125	250
	S.22(1)		A certified copy of an entry in the register to a local applicant	40	80
	S.22(1)		A certified copy of an entry in the register to overseas applicant	80*	160*
	S.22(2)		A particular search of the births and deaths records	40	80
	S.22(3)		A general search of the births and deaths records	200	400
	S.23		A shortened form of birth certificate	20	40
	S.27(c)		Correction of an error of fact or substance in registers of births and deaths	125	250

<i>Chapter</i>	<i>Legislation section/sc hedule</i>	<i>Item</i>	<i>Description of fees</i>	<i>Present rate \$</i>	<i>Proposed rate \$</i>
180	S.5		A certificate by Registrar of Marriages given under S.5 of the Foreign Marriage Ordinance	20	40
	S.6		Governor's licence given under S.6 of the Foreign Marriage Ordinance	200	400
184	S.3(4) Sch.	5	Re-registration of birth if information not furnished within the specified time	100	200
		6(1)	A certified copy of an entry of the birth of a legitimated person	40	80
290**	S.18(3) (Adoption Ordinance)		A particular search	40	80
			A general search	200	400
			A shortened form of birth certificate	20	40
			A certified copy of any entry in the Adopted Children Register to local applicant	40	80
			A certified copy of any entry in the Adopted Children Register to overseas applicant	80*	160*

Note: * on top of charge for the same service given to local applicant plus an additional amount equal to the airmail postage at the normal rate.

** The rate of the fees for these documents follows that prescribed under the Births and Deaths Registration Ordinance (Cap 174). Therefore, there is no need to introduce separate amendments to the Adoption Ordinance.

<i>Chapter</i>	<i>Legislation section/sc hedule</i>	<i>Item</i>	<i>Description of fees</i>	<i>Present rate \$</i>	<i>Proposed rate \$</i>
175	S.13 5th Sch.	1	A particular search	40	80
	Pt. I	2	A general search	200	400
		3	A correction of an error in any register book	125	250

<i>Chapter</i>	<i>Legislation section/sc hedule</i>	<i>Item</i>	<i>Description of fees</i>	<i>Present rate \$</i>	<i>Proposed rate \$</i>
		4	A certified copy of an entry in any of the register books to <u>local</u> applicant	40	80
		4	A certified copy of any entry in any of the register books to <u>overseas</u> applicant	80*	60*
176	S.13 4th Sch. Pt. I	1	A particular search	40	80
		2	A general search	200	400
		3	A correction of an error in any register books	125	250
		4	A certified copy of an entry in any of the register books to local applicant	40	80
		4	A certified copy of an entry in any of the register books to overseas applicant	80*	160*
178	S.24 of Cap. 178 and S.28 of Cap. 1, Sch., (sub. leg.)	1	Filing of application for registration of marriage	40	80
		2	Certificate of registration of marriage under S.9 of the Marriage Reform Ordinance	125	250
		3(a)	A search made under S.13 during any number of successive hours not exceeding 6, without the object of the search being specified.	200	400
		3(b)	A search for a specified entry where the search is made by the applicant or by the Registrar on his behalf under S.13	40	80
		4	Certified copy of an entry given under S.13 of the Marriage Reform Ordinance to local applicant	70	140

<i>Chapter</i>	<i>Legislation section/sc chedule</i>	<i>Item</i>	<i>Description of fees</i>	<i>Present rate \$</i>	<i>Proposed rate \$</i>
		4	Additional charge for the certified copy of an entry given under S.13 of the Marriage Reform Ordinance to overseas applicant	20*	40*
		5	Certificate under section 13 of the Marriage Reform Ordinance of the absence of any record to local applicant	200	400
		5	Additional postage charge for the certificate under Section 13 of the Marriage Reform Ordinance of the absence of any record to overseas applicant	20*	40*

Note: * on top of charge for the same service given to local applicant plus an additional amount equal to the airmail postage at the normal rate.

Explanatory notes

- (1) Fees under Cap. 115, 177 and 181 are to be approved by Secretary for the Treasury.
- (2) Fees under Cap. 175, 176 and 178 are approved by Order of the Governor.
- (3) Fees under Cap. 174, 180 and 184 need to seek Legislative Council resolution.

Subsidiary Legislation under note (1) and (2) are to be tabled at the Legislative Council on 8 June 1994. Subsidiary Legislation under note (3) are to be tabled at Legislative Council on 15 June 1994.

Question on the motion proposed, put and agreed to.

FOREIGN MARRIAGE ORDINANCE

THE SECRETARY FOR SECURITY moved the following motion:

“That with effect from 15 July 1994 the Foreign Marriage Ordinance be amended -

- (a) in section 5 by repealing “\$20” and substituting “\$40”;
- (b) in section 6 by repealing “\$200” and substituting “\$400”.

He said: Mr President, I move the second motion standing in my name on the Order Paper. It seeks to increase the fees specified in the Foreign Marriage Ordinance.

The Foreign Marriage Ordinance provides a means whereby Commonwealth citizens can give a notice of marriage in Hong Kong, even though the marriage has taken place at a British Embassy abroad. Fees are payable for the issue of a certificate by the Registrar of Marriage. The fees were last revised in June 1993 and it is now proposed to increase them from \$20 to \$40, for a certificate by the Registrar of Marriages, given under section 5, and from \$200 to \$400, for a Governor's licence, given under section 6 of this Ordinance.

Mr President, I beg to move.

Question on the motion proposed, put and agreed to.

LEGITIMACY ORDINANCE

THE SECRETARY FOR SECURITY moved the following motion:

“That with effect from 15 July 1994 the Schedule to the Legitimacy Ordinance be amended -

- (a) in paragraph 5 by repealing “\$100” and substituting “\$200”;
- (b) in paragraph 6(1) by repealing “\$40” and substituting “\$80”.”

He said: Mr President, I move the third motion in my name on the Order Paper. It seeks to increase the fees specified in the Schedule to the Legitimacy Ordinance.

The Legitimacy Ordinance provides for the re-registration of the births of legitimated persons. Fees collected relate to the re-registration of births and the issue of certified copies of entries of the birth of legitimated persons. The fees were last revised in June 1993. It is now proposed to revise the fees from \$100 to \$200, for re-registration of births, and from \$40 to \$80, for a certified copy of an entry of the birth.

Mr President, I beg to move.

Question on the motion proposed, put and agreed to.

First Reading of Bills**HONG KONG ARTS DEVELOPMENT COUNCIL BILL****STAMP DUTY (AMENDMENT) (NO. 2) BILL 1994****INLAND REVENUE (AMENDMENT) (NO. 2) BILL 1994**

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

Second Reading of Bills**HONG KONG ARTS DEVELOPMENT COUNCIL BILL**

THE SECRETARY FOR RECREATION AND CULTURE moved the Second Reading of: “A Bill to provide for the establishment and the functions of the Hong Kong Arts Development Council as a body corporate for the purpose of the development of the arts in Hong Kong.”

He said: Mr President, I move the Second Reading of the Hong Kong Arts Development Council Bill 1994.

The Hong Kong Arts Development Council Bill provides for the establishment of the council as a statutory body dedicated to the development of the arts in Hong Kong.

A working group was appointed by the Governor in October last year to draw up detailed recommendations for the future Hong Kong Arts Development Council (HKADC) including its membership guidelines, terms of reference, functions, objectives, structure, staffing and modus operandi.

Upon completion of its work, the working group prepared a progress report including detailed recommendations which was submitted to the Governor by the chairman of the working group in March this year.

The Governor accepted the recommendations in the report that the HKADC should be established initially as a non-statutory body in April 1994 and later as a statutory body by April 1995. The council was appointed in its initial non-statutory form on 15 April 1994.

The prime mission of the council is to plan, promote and support the broad development and appreciation of and participation in the arts, placing particular emphasis on the literary, performing and visual arts, with a view to improving the quality of life of the community. The detailed functions and powers of the council are set out clearly in the Bill and provide the Council with

a strong mandate on which to base its work. The Bill has been considered by the council and has the council's full support.

The format and the provisions contained in the Bill are largely standard for this kind of statutory body, but there are some to which I would like draw attention.

Clause 3 establishes the council and specifies composition of the membership. As stated in clause 3(3), the council will have 20 members of which 16 including the chairman and vice-chairman will be non-official whilst four will be ex officio. Clause 3(4) specifies which type of persons may not be appointed as non-official members.

Clauses 4 and 5 set out the functions and powers of the future statutory council. These are consistent with the existing, non-statutory council's mission statement and terms of reference.

Clause 6 allows the council to recruit its own staff.

Financial arrangements are set out in clauses 8 to 15. They include provision for the council to receive subvention from the Government through funds appropriated by the Legislative Council and also allow the council to receive income from other sources including gifts, donations, fees and returns on investments. They also allow the council to make investments and to borrow, subject to the approval of the Financial Secretary.

Clause 16 enables the Governor to give directions to the council if necessary in the public interest and consistent with the powers and functions of the council.

It is hoped that the Bill can be processed in time for enactment by April of 1995.

Mr President, I beg to move.

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

STAMP DUTY (AMENDMENT) (NO. 2) BILL 1994

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

He said: Mr President, I move the Second Reading of the Stamp Duty (Amendment) (No. 2) Bill 1994.

The Bill primarily seeks to relax the current restrictions on stamp duty relief for stock borrowing and lending activities. Submissions have been made to the Government that such restrictions were hindering the development of a stock borrowing and lending market in Hong Kong. That in turn has been discouraging short-selling activities and other market development measures such as the introduction of stock options being planned by the Stock Exchange of Hong Kong Limited.

At present, stamp duty is not payable on a stock borrowing and lending transaction under certain situations. The transaction has to be carried out by an “approved borrower” for the “sole purpose” of settling a sale of Hong Kong stock effected in the local stock exchange and the borrowed stock must be returned within 14 days. “Approved borrower” in this context refers to members of the stock exchange.

These measures were introduced in 1989 to help resolve stock settlement problems caused by temporary delay in the delivery of stock, for example, where the stock is held overseas. The measures were satisfactory for that purpose. However, the market has moved on and stock borrowing and lending activities have assumed another important function, namely, to facilitate the short-selling of securities. The Stock Exchange of Hong Kong Limited introduced regulated short-selling in January this year but the market has remained inactive. The primary reason for this inactivity rests with the current restrictions on stamp duty relief for stock borrowing and lending.

To address the problem, the Bill proposes to extend the stock return period from 14 days to 12 months or such longer period as the Commissioner of Inland Revenue may allow and to remove the “approved borrower” requirement. It also seeks to replace the “sole purpose” requirement with a number of “specified purposes” such as the borrowing of stock for settling a future sale, for on-lending to another person or for settling a sale of stock effected outside Hong Kong.

To deter non-compliance under the relaxed relief provisions, the penalty for a failure to comply with the relevant requirements under the Stamp Duty Ordinance is to be increased from \$1,000 to \$5,000.

The amendments proposed are expected to encourage the development of an active stock borrowing and lending market in Hong Kong. This will help to improve our competitiveness with other major securities markets, in particular those which have been trying to attract major players from the Hong Kong market to establish stock borrowing and lending operations in their own jurisdictions.

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

INLAND REVENUE (AMENDMENT) (NO. 2) BILL 1994

THE SECRETARY FOR FINANCIAL SERVICES moved the Second Reading of: “A Bill to amend the Inland Revenue Ordinance.”

He said: Mr President, I move the Second Reading of the Inland Revenue (Amendment) (No. 2) Bill 1994.

This Bill is related to the Stamp Duty (Amendment) (No. 2) Bill 1994, the Second Reading of which I have just moved. It seeks to introduce technical amendments to the Inland Revenue Ordinance, to clarify the profits tax treatment of a stock borrowing and lending transaction and compensatory payments arising therefrom.

In the absence of specific provisions, a stock borrowing and lending transaction would be treated as involving a transfer of title of the stock concerned and, for profits tax purposes, as a sale and purchase of stock. A profits tax liability may therefore arise and this would discourage the borrowing and lending of stock.

The Bill therefore proposes to treat a disposal and re-acquisition of securities under a stock borrowing and lending arrangement as a loan transaction in the context of the Inland Revenue Ordinance. As a result, no profit or loss will emerge for profits tax assessment. It is also proposed that a compensatory payment made by a borrower to a lender for a distribution in respect of the borrowed stock during the borrowing period will be treated as if the distribution itself has been received directly by the lender. This will avoid such payments from being subject to profits tax.

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

COMMISSIONER FOR ADMINISTRATIVE COMPLAINTS (AMENDMENT) BILL 1993**Resumption of debate on Second Reading which was moved on 21 July 1993**

Question on Second Reading proposed.

MR FRED LI (in Cantonese): Mr President, the Commissioner for Administrative Complaints (Amendment) Bill 1993 primarily serves the following purposes:

- (a) To allow members of the public to bring their complaints directly to the Commissioner for Administrative Complaints (COMAC);
- (b) To bring within the scope of COMAC's jurisdiction six statutory bodies, namely the Mass Transit Railway Corporation, the Kowloon-Canton Railway Corporation, the Securities and Futures Commission, the Housing Authority, the Regional Council and the Urban Council; and
- (c) To allow COMAC to publish reports on his inquiries.

The Bill was tabled at this Council on 21 July 1993. A Bills Committee, formed by 10 Legislative Councillors, was then set up and began its work on 29 April this year. The committee has since held three meetings. One of the meetings was with the Government. Another was with COMAC. The committee had also studied four submissions presented by the two municipal councils and met with their representatives. As Chairman of the Bills Committee, I would like to avail myself of this opportunity to thank all colleagues on the committee for their time and energy spent on the discussions. I also thank the Government and COMAC for their co-operation and the two municipal councils for their suggestions and for their assistance in the committee's scrutiny of the Bill.

Mr President, I am now providing a gist of the committee's discussions.

The representatives of the two municipal councils were opposed to the proposal to bring these councils under COMAC's jurisdiction. Their principal arguments were as follows:

- (a) The two municipal councils constitute the middle tier of the three tiers of representative government. It is unfair for them to be singled out.
- (b) The two municipal councils' work has to do primarily with policy issues which lie beyond COMAC's jurisdiction. Their executive arms (the Regional Services Department and the Urban Services Department) are already subject to COMAC's remit.
- (c) Members of the public with complaints against the two municipal councils and their boards may file them through existing channels, which are operating satisfactorily.
- (d) The majority of members of the two municipal councils are returned by elections. It is incompatible with the principle of democracy for one appointed by the Governor, namely COMAC to supervise the work of a body with elected elements.

The Government countered with the following arguments. The Government's policy is to expand COMAC's jurisdiction progressively until it covers all major statutory bodies, whose accountability will thereby be increased. The first to be affected will be those statutory bodies which provide essential services to the public. The two municipal councils have broad administrative functions and they provide essential municipal services. It will therefore be in the public's interest to bring the two municipal councils within COMAC's remit. In addition, it is necessary to ensure that the two municipal councils will take effective steps to carry out COMAC's recommendations. To achieve this purpose, it is important that not only their executive arms but also the two municipal councils themselves should be brought under COMAC's jurisdiction. The Government has confirmed that its proposal to bring the two municipal councils within the scope of COMAC's jurisdiction is intended not as a substitute for, but as an addition to, the existing complaints channels. Members of the public will be provided with an extra channel, which is supplementary to the existing ones. Though appointed by the Governor, COMAC is not part of the administrative machinery. The role of his office should be regarded as that of an independent body responsible for the prevention of maladministration on the part of the Government and public bodies. While a member of the public, if unhappy with the performance of an elected member of either municipal council, can always select not to support him when he seeks re-election, this does not provide the aggrieved party with immediate relief. In contrast, recommendations by COMAC after making an inquiry into the complaint will have such an effect.

Some committee members are satisfied with the Government's explanations. Others are deeply sceptical about whether the two municipal councils have administrative functions and whether COMAC will act effectively as an alternative complaints channel. They are of the following opinions: The two municipal councils are primarily responsible for policy making. The policies that they make are carried out by their executive arms. Since the scope of COMAC's inquiries does not cover policy matters, one wonders what useful purpose it will serve by bringing policy-making bodies under COMAC's jurisdiction. Besides, there are already enough channels in existence for handling public complaints. In view of this, plus the financial implications brought about by the Government proposal, there is no strong justification for establishing an extra channel.

In consideration of the diversity of views, the committee held that there was no need to strive for a unanimous agreement. Colleagues who wish to move amendments may do so on their own account at the Committee stage. Therefore, Mrs Elsie TU and Mr Alfred TSO intend to move amendments at the Committee stage later on to delete the Urban Council and the Regional Council from the schedules of organizations proposed to be subject to COMAC's jurisdiction.

The committee also studied whether the Legislative Council has any administrative functions and, if it does, whether the legislature should also be subject to COMAC's jurisdiction. Committee members, after some discussion, came to the view that this matter lies outside the scope of the present Bill and should not be brought up at this stage.

One member committee wanted to know whether COMAC can investigate complaints filed, not by an individual, but by a group. The Government, in response, clarified that clause 3 of the Bill defines "individual" as meaning either an individual or a body corporate. The committee was satisfied with this explanation.

The Government also confirmed that COMAC can carry out investigation only after a complaint has been made. The Government intends to clarify this point by moving an amendment at the Committee stage.

The committee looked into whether COMAC should be empowered to initiate inquiries. Some members were of the opinion that, if empowered to initiate complaints and then to make inquiries into them, COMAC will be able to provide essential relief in cases affecting the public's interest, that generally go beyond the interests of individuals. Yet the Government pointed out that this may lead to conflicts of interests, since COMAC will play a dual role of the plaintiff and the judge. Also, if the scope of COMAC's jurisdiction is extended as proposed, his limited resources will be overstretched. Mr LEE Wing-tat, a member of the committee, is not satisfied with the Government's explanation. He intends to move amendments at the Committee stage on his own account to empower COMAC to initiate inquiries.

On the question whether COMAC should make inquiry into complaints about professional judgments, the Government explained that COMAC's remit will be extended to cover inquiry into mistakes of professional judgment stemmed from maladministration. The committee was satisfied with this explanation.

Finally, the committee also looked into whether it would be necessary for this Council to set up a committee to oversee COMAC's work and to see whether his recommendations are put into practice. At present, COMAC, under the law, must give an annual work report to the Governor and submit the report to this Council for review. The Bills Committee held that the Government should be requested to answer questions arising from COMAC's report submitted to the Governor in the same way it deals with questions put to it by Members in the Public Accounts Committee. After studying the Government's response, committee members will make a decision on whether such a committee should be set up and, if so, what form it should take.

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

MR PETER WONG: Mr President, the Liberal Party supports the Commissioner for Administrative Complaints (Amendment) Bill 1993. We support the amendments to be moved by the Chief Secretary as well as those of the Honourable Mr LEE Wing-tat because we believe that the Commissioner for Administrative Complaints (COMAC) will use his powers responsibly to investigate situations when no complaints have been made directly or indirectly to him. However, we do not support the amendments proposed by the representatives of the Urban and Regional Councils Functional Constituencies for the reasons advised by the Administration. Further, I will be obliged if the Administration can give me a confirmation that the complainant can either be an individual person or an artificial person such as a limited liability corporation.

Regrettably, there have been different interpretations of the word “person”, and environmental concern organizations which have been duly incorporated under the Hong Kong Companies Ordinance have been excluded. This unclear definition has not only generated ill feelings but has also given rise to contrived forms of complaints from those who try to come under the Commissioner’s jurisdiction.

I will be obliged if the Secretary can confirm that it is now also the Commissioner’s understanding that the definition of “person” includes corporations. Lastly, can the Administration confirm that the government minute will be tabled in this Council within, say, three months of COMAC’s report on actions taken pursuant to the recommendations contained in that report? Hopefully this will obviate the creation of a replica Public Accounts Committee.

MR MICHAEL HO (in Cantonese): Mr President, I am not one of the members of the Bills Committee, because I was late in enrolling myself. Thus all along I have been participating in the meetings in the capacity of a member in attendance.

I speak because I notice the diverse range of views as regards the terms of reference and the professional judgement of the Commissioner for Administrative Complaints (COMAC) as held by the Administration, the former COMAC and some other organizations such as the Hospital Authority (HA). Thus while the Committee was deliberating the matter, I had once considered proposing some amendments which would help to clarify the question concerning professional judgement. But after deliberation, I found that the existing legislation was basically clear enough to deal with that question. Therefore I decided not to propose an amendment. Nevertheless, I still want to speak here to point out some questions which are causing me concern.

Mr President, while going through some documents in the process of studying the present Bill, I found that many professional judgement problems were involved in a number of cases, including those relating to the former Hospital Services Department, the Department of Health, the Legal Aid

Department and the existing HA. I found that all along the various government departments did not apparently have differing views as regards COMAC's investigation of the complaints concerned. It was not until 1991 when the HA took over control of the public hospitals that the HA pointed out the problem about COMAC's investigation involving professional judgement. Mr President, I would like to declare interest. I am a member of the Board of Directors of the HA. From the documents on the discussions held between the HA and COMAC in 1991 and 1992, it can be seen that their views differed widely. In March 1992, the HA, in a letter to COMAC, mentioned quite a number of items which the HA thought that COMAC should not investigate, for example, certain aspects of professional conduct, diagnosis, cause of death, examination, prescription, standard of treatment, and medical negligence, and medical professional standard including academic qualifications and experiences. In early 1992, the HA wrote to the Administration, expressing the wish to make some amendments to Schedule 2 which would clearly state that clinical diagnosis be excluded. The former COMAC expressed different views in his reply letter. He thought that if the various professional areas mentioned above were excluded, COMAC would not be able to investigate into a number of matters concerning the HA.

Mr President, I accept the present amendment to section 7(1) of the Ordinance. As regards administrative functions, it is already clearly stated that COMAC is not responsible for the investigation of professional judgement. But actually in many decisions, different levels of professional judgement will be involved to a certain extent. The existing legislation does not allow COMAC to investigate complaints about professional judgement, but COMAC is able to investigate certain administrative problems in which professional judgement is involved. Of course, during the course of investigation, it may be necessary to understand or investigate the professional judgement concerned before deciding whether maladministration is involved. These arrangements are very close to the statutory provisions related to the Health Services Commissioner for England and Wales, that is to say, the Commissioner is responsible for assessing whether the judgement is purely clinical so as to decide whether it comes within his area of investigation.

Section 2(1) of the existing Ordinance points out that some investigation action was based wholly or partly on a mistake of law or fact. This provision has already allowed COMAC to investigate whether there is any mistake of law or fact. This may involve professional judgement. Or only after an investigation can it be established whether the problem is related to professional judgement or administration. I firmly believe that if COMAC finds during investigation that it is purely professional judgement that was involved, he would not go beyond his terms of reference. Therefore, I hope that the Administration and some executive departments will not be too sensitive to this. The spirit of this legislation is to provide a channel for the public to air their grievances. I am in favour of COMAC continuing to adopt the effective way of investigation as usual, this is, to investigate all related factors in the first

instance. I hope that with the new Ordinance, COMAC can serve the Hong Kong people more effectively.

Mr President, I so submit.

MR ALFRED TSO (in Cantonese): Mr President, I support the Commissioner for Administrative Complaints (Amendment) Bill 1993 today. Nevertheless I am going to move an amendment later.

I have asked the Regional Council Secretariat to send a copy of a letter dated 6 May 1994 issued by the Chairman of the Regional Council to Members of this Council. The letter laid down the views of the Regional Council on the extension of the jurisdiction of the Commissioner for Administrative complaints (COMAC) to the Regional Council and the council's objections as well. I believe that Honourable Members have already noted from the letter the objections and attitude of the Regional Council. In short, there are four objections against the proposed inclusion of the Regional Council under COMAC's jurisdiction. Mr Fred LI has already expounded some of them. Despite this, I still would like to give Honourable Members a brief account.

Firstly, the Regional Council is a policy-making body and its duties are by no means of administrative nature. Policies formulated by the Regional Council are implemented by the Regional Services Department which, together with the Regional Council Secretariat, is already under COMAC's remit.

Secondly, most of the members of the Regional Council are elected. From April 1995 onwards, all members of the Regional Council will be returned by elections. It is not in line with the principle of democratic development if we have a Governor-appointed body vetting the work of a largely elected body. As a matter of fact, the decisions of Regional Councillors should be monitored and vetted by the public at large rather than by an executive-appointed body.

Thirdly, the Regional Council issues liquor licences through the Liquor Licensing Board but liquor licensing itself is essentially not an administrative job. All the investigation and preparatory work for an application and the follow-up and monitoring after the granting of a liquor licence are carried out by various government departments. The Liquor Licensing Board's role is basically quasi-judicial in nature. It is against Hong Kong's constitution to empower COMAC, an administrative body on the Administration's organization chart, to investigate a quasi-judicial organization's work. The independence of our judicial system must be upheld.

Fourthly, the Executive Council, though essentially playing an advisory role, is very influential in the decisions of the Government and government departments, which have enormous bearing on people's well being. Should the

Regional Council be placed under COMAC's jurisdiction, we are of the view that the Executive Council should be placed under COMAC too.

In view of the reasons mentioned above and the details as listed in the letter, I hope that Members of this Council will support the exclusion of the Regional Council from COMAC's remit. I understand that Mrs Elsie TU, who represents the Urban Council in this Council, will be moving a similar motion and taking actions accordingly later on. I hope that Members will consider our amendments and support us.

MR LEE WING-TAT (in Cantonese): Mr President, I speak to support the resumption of the Second Reading of the Commissioner for Administrative Complaints (Amendment) Bill 1993.

Mr President, since the establishment of the Office of the Commissioner for Administrative Complaints (COMAC) five years ago, it has been providing members of the public in Hong Kong with an additional effective avenue to redress their grievances and make complaints against maladministration in government departments. This Office differs from a regular government department in that it is independent of the Administration and empowered by the law to look into and identify any malpractices in a department which is the subject of a complaint. It will propose remedial measures and require the department concerned to carry them out. I have talked to the Commissioner for Administrative Complaints and his predecessor in many meetings. They held that, under the existing system, most government departments were co-operative with the Office and willing to carry out its proposed remedial measures.

Mr President, during the past five years since the establishment of the Office of the COMAC, many people and district board members have expressed the hope that the system will be more effectively and fully used by the public. One way to do so is to give the public, district board members and members of the two municipal councils the right of direct access to COMAC. I am glad to learn that this is included in the present amendment Bill. Apart from this amendment, two other amendments will be moved which include the extension of COMAC's jurisdiction to more public bodies and the publication of some of its investigation reports.

On the second point, I would like to speak at length about my own experience and I support this proposal. Among the cases I have handled or referred, what impressed me most was the case of water leakage in Kwai Yan House in Kwai Fong Estate, Kwai Chung. The Commissioner looked into the case and found that the complaints of the residents and the mutual aid committee were partly substantiated. Regrettably, at that time, the Housing Authority was outside the jurisdiction of the COMAC and so the final decision made by the Housing Authority (of which I was not a member at that time) was different from the COMAC's recommendation. The residents and the mutual aid committee had believed that COMAC was a body that can uphold social justice.

However, this goal cannot be achieved. Their conflicts with the Housing Department over the case of water leakage in Kwai Yan House in Kwai Fong Estate have continued so far. I am invited to their general meeting tonight to discuss the same matter. This incident shows that problems will arise if a policy-making body and its executive department do not come under COMAC's jurisdiction at the same time.

Mr President, I do not support the amendments to be moved by Mr Alfred TSO and, later, Mrs Elsie TU. Their amendments aim at excluding the Urban Council and the Regional Council from COMAC's jurisdiction. I do not agree to their amendments because of the following two reasons. Firstly, the Urban Council and the Regional Council do have some administrative functions. In the process of licensing, the Liquor Licensing Board, which is formed by the council members, decides how and when liquor licences will be issued. So it is not true to say that the municipal councils do not have any administrative function. If the Liquor Licensing Board is inefficient or discourteous to the applicants (not that it really is at present, to be sure), it is a matter of maladministration. Secondly, just as I have mentioned earlier, the Urban Services Department and the Regional Services Department are within the jurisdiction of COMAC. If their policy-making bodies, that is, the Urban Council and the Regional Council, are not, the "Kwai Yan House incident" will happen again. Since the Housing Department is subject to the jurisdiction of COMAC whilst the Housing Authority is not, there will be conflict in policies and the policy-making body does not have to abide by COMAC's decision. Mr President, on behalf of the Meeting Point and the United Democrats of Hong Kong, I do not support the amendments by Mrs TU and Mr TSO.

Mr President, I would like to speak on two more points. There are altogether nine recommendations in the *Fifth Annual Report of the Commissioner for Administrative Complaints*. However, only three of them have been incorporated into the present amendments and three have not been incorporated. I think this is worth discussing. One of the recommendations has to do with COMAC's power to initiate investigations into complaint cases. I will move an amendment on this subject at the Committee Stage later on. Briefly, this power will enable the Commissioner to initiate investigations into alleged maladministration in government departments. The Government does tell us at meetings that this is not fair because the Commissioner will be both the plaintiff and the judge. However, his counterparts or ombudsmen in many other countries such as Australia, Canada, New Zealand and even some provinces of Pakistan do have the power and such problem does not arise. Secondly, the power to initiate investigations is very useful especially in cases where the interests of many people are affected but there is no particular complainant. Such power is exercised, for instance, in the area of environmental protection against polluters in general. The Commissioner's report states that his functions will be greatly undermined if he does not have such power. I understand very well that the Government will not propose this amendment today. Since the Government does not propose the amendment, I will.

Another point is on the way to handle the commissioner's annual report. Of course, we know that there are two ways in handling the annual report after it is submitted to the Legislative Council. One is that we take no notice of it just as what we are doing now. The other is that we set up a select committee to look into and discuss the major cases of serious maladministration stated in the report and then conduct hearings or questioning sessions. Of course, I have not decided whether a select committee should be set up every year after the Commissioner's report is submitted to the Legislative Council. However, Members of this Council should not feel bound to oppose such a course of action. If such arrangement exists, we can exercise the power whenever there are such cases in the Commissioner's report. Nor is this a novel idea. In the House of Commons in the United Kingdom, the head of a government department which is the subject of complaint in the ombudsman's annual report must attend hearings and give replies and explanations.

Mr President, lastly, I would like to talk about the financing of the COMAC. Under existing arrangements, COMAC is financially autonomous. This is very important. If an institution is not financially autonomous, it can hardly be fully independent. The present block allocation of fund for COMAC is still mainly controlled by the executive branch. I think this should be reviewed. If the executive branch thinks that investigations conducted by COMAC are detrimental to the work of its departments, it may indirectly exert influence on the development of COMAC. Moreover, when COMAC asks for additional resources or manpower, the executive branch will only allocate some or even no resource to the COMAC. This will affect the development and independence of COMAC.

With these remarks, Mr President, I shall move an amendment at the Committee stage later on.

CHIEF SECRETARY: Mr President, I am most grateful to the Honourable Fred LI and other Members of the Bills Committee for the careful consideration given to this Bill.

The purpose of the Bill is to make changes to the COMAC redress system, following a comprehensive review of the system carried out in 1992. The main changes are to permit direct access to the Commissioner, to extend COMAC's jurisdiction to major statutory bodies, and to empower COMAC to publish anonymized investigation reports. I will discuss these three key recommendations in turn.

Direct access

At present, a person who wishes to make a complaint to the Commissioner has to be referred by a Non-official Legislative Council Member. While this system has worked well in the past, there is a strong public wish to abolish the referral system and thus to simplify the complaints procedure. In response to

this public sentiment, we propose to put in place a direct access system so that the public can take their complaints direct to the Commissioner. This will make the COMAC Office more accessible to the community. To make it clear that the complaint should be made to the Commissioner, I will move a Committee stage amendment to clause 3(a) of the Bill.

Extension of COMAC's jurisdiction to major statutory bodies

It is government policy to extend COMAC's jurisdiction gradually to major statutory bodies, having regard to the functions of the body and the extent of its dealings with the public. In anticipation of a possible increase of caseload arising from the introduction of the direct access system, and to allow time for the system to adjust to the changes proposed, we propose that priority should be given to including under COMAC's jurisdiction now those statutory bodies which provide an essential service to the community. At this stage, we propose to include six public bodies. They are the Mass Transit Railway Corporation, the Kowloon-Canton Railway Corporation, the Securities and Futures Commission, the Urban Council, the Regional Council and the Housing Authority.

All these bodies, except the municipal councils, have agreed to this proposal. Representatives of the Urban Council and the Regional Council have expressed the view that there is no justification for singling the municipal councils out from the three-tier government system and placing them under COMAC; that the two councils are primarily concerned with policy issues which fall outside COMAC's remit; that there are already existing channels for the public to take their complaints to the councils; and that as largely elected bodies, the councils are already fully accountable to the public. In this connection, the Honourable Mrs Elsie TU and the Honourable Alfred TSO will move Committee stage amendments to exclude the Urban Council and the Regional Council respectively from the proposed extension of COMAC's jurisdiction.

The Administration does not agree with the arguments put forward by the municipal councils. Now we explain why.

- (a) Firstly, unlike the Executive Council, the Legislative Council and the district boards, the municipal councils are vested by their respective ordinances with a wide range of executive functions to provide essential municipal services to the public. These activities have a direct and significant impact on the daily livelihood of the public. There is no good reason why the way in which they are carried out should be exempted from COMAC's independent monitoring.
- (b) Secondly, "policy" and "administration" are terms of art and not legal terms. There will inevitably be a grey area between them. While the primary role of the two municipal councils is to make policy, it is clear that they also have executive functions. In

deciding whether to undertake an investigation, the Commissioner will no doubt take into account the views of the municipal councils as to whether the subject matter of complaint falls within the area of policy. He will not have the power to interfere with the policy-making aspects of the two Councils. Similar arguments apply to the Government Secretariat, which is also primarily a policy making body, but which is also, has always been, within COMAC's remit.

- (c) Thirdly, the COMAC system is not meant to replace the existing complaints channels provided by the councils. It seeks to supplement and reinforce these channels by offering an independent and additional avenue for the public to redress their grievances.
- (d) Fourthly, the accountability of elected members to their constituents should not be confused with the provision of an independent redress system. Voting a member out of office can clearly not provide aggrieved individuals with the proper and immediate remedy that the COMAC system can achieve through its investigations and recommendations made to the councils.
- (e) Lastly, since the respective executive departments of the two councils, namely the Urban Services Department and the Regional Services Department, are already subject to COMAC's jurisdiction, it would only be logical to include the two parent bodies to ensure that COMAC's recommendations can be effectively pursued.

I would emphasize that there is no question of the independence of the municipal councils being compromised by putting them under COMAC's remit. Indeed, I believe that doing this will only enhance public confidence in the councils. For all these reasons, the Administration does not support the amendments to be moved by the Honourable Mrs Elsie TU and the Honourable Alfred TSO.

Publication of anonymized investigation reports

The third key change to the system is to empower COMAC to publish anonymized case reports which he considers to be of public interest. This will help promote public awareness of and confidence in the COMAC system.

We have also taken opportunity to propose some tidying-up amendments to the COMAC Ordinance so as to facilitate the smooth operation of the COMAC redress system. I will just mention the proposed amendment to section 10(1)(d) of the Ordinance, which in referring to "a person" may, as it stands, be interpreted as referring to a natural person and not a body corporate. The amendment to this section under clause 4 of the Bill is to clarify that bodies corporate are included, provided that they act through natural persons.

I am pleased that the underlying principles of the Bill, which are to make the COMAC system more accessible and accountable to the public, 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 would now like to deal with the major points that arose.

Power of COMAC to initiate investigation on his own volition

First of all, the Honourable LEE Wing-tat will move Committee stage amendments to empower the Commissioner to initiate investigations on his own volition into cases of alleged maladministration which are of major public interest. We have examined his proposal carefully, and feel that this is undesirable. The primary objective of the COMAC system is to provide an additional and independent channel for ordinary citizens to redress their grievances. The duty of the Commissioner is to respond to complaints of alleged maladministration duly lodged by citizens who consider that they have sustained injustice. It would also be difficult for COMAC in practical terms to investigate a complaint where no identifiable complainant has come forward to give evidence.

Moreover, if COMAC was able to initiate investigations on his own volition, he would in effect be the complainant and the judge at the same time. This might jeopardize the perception of his impartiality. He might also find it difficult to explain why he had decided to investigate one apparent case of maladministration but not others, and might be exposed to unwarranted pressures to investigate complaints based on hearsay, or malicious complaints made anonymously. Both these situations would be clearly undesirable. For all these reasons, the Administration does not support the Honourable LEE Wing-tat's amendments.

We have discussed the implications of the Honourable LEE Wing-tat's amendments with the Commissioner, Mr Andrew SO. He shares our reservations.

Complaints involving professional judgement

Secondly, in the discharge of his functions, COMAC is legally bound only by the provisions of the Ordinance. Section 7(1) of the COMAC Ordinance provides that COMAC can investigate "any action taken by or on behalf of a department in the exercise of its administrative functions" and the term "maladministration" is defined in section 2 of the Ordinance, which is in essence refers to "inefficient, bad or improper administration".

We believe that the provisions of the Ordinance are adequate to cover those type of cases to which the Honourable Michael HO has referred to. Indeed, according to the experience of the COMAC Office, about half of the complaint cases involving professional judgement have been accepted by COMAC for investigation on the ground that maladministration is suspected.

Establishment of Legislative Council committee

Some Members of the Bills Committee suggested the establishment of a Legislative Council committee to monitor the work of COMAC and the implementation of COMAC's recommendations. While the decision rests with the Council, we feel that the establishment of a Legislative Council committee is not necessary. The COMAC Ordinance already provides for the Commissioner to report serious irregularities or non-compliance with his recommendations by a head of department to the Governor, and for this report to be tabled in the Legislative Council. So far this has never been necessary. COMAC is also required under the Ordinance to make an annual report to the Governor, which will also be laid before the Legislative Council. This Bill, upon enactment, will allow COMAC to publish his case reports as he wishes. If Members see the need, the Council may, under Standing Order 61, appoint a select committee to consider matters arising from any of COMAC's reports. Thus a system already exists for monitoring COMAC's work and for COMAC to draw the Legislative Council's attention to any non-compliance with his recommendations. Given the adequacy of this system and the flexibility provided by it, the Administration's view is that there is no need for a specific standing Legislative Council committee.

Members have also suggested that the Administration should be requested, as in the case of the Public Accounts Committee, to produce a government minute in response to COMAC's report made to the Governor. In principle, I see no objection to this suggestion. But as COMAC's annual report contains a variety of issues, including a description of the complaint process, caseload, publicity, staff matters, statistics, and summaries, it would be helpful if Members could specify the areas which the government minute should cover. I imagine that Members' main interest lies in cases where the complaint was substantiated and where the body being complained against failed to take the recommended measures. I would suggest that this be followed up outside the context of the Bill including the Honourable Peter WONG's suggestion that the time limit should be specified for the submission of the government minute.

Conclusion

In conclusion, Mr President, I am confident that the proposals put forward by the Administration will be welcomed by the public as a positive step towards enhancing the image and effectiveness of COMAC. These proposals also underline our determination to strengthen the COMAC's redress system as an important part of an open and accountable government.

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).

ENVIRONMENT AND CONSERVATION FUND BILL

Resumption of debate on Second Reading which was moved on 18 May 1994

Question on Second Reading proposed.

MR PETER WONG: Mr President, the Liberal Party supports the Environmental and Conservation Fund Bill subject to the amendments now proposed.

Of particular interest is the addition of the word “conservation” to the full name of the fund. The Honourable Edward HO, as Chairman of the Council of the Lord Wilson Heritage Trust, rightly pointed out that as the name now stands it would include the preservation of old buildings. I concur that if any building or structure has both heritage and environmental protection nature, it may qualify for the fund. I would be pleased if the Secretary would clarify the situation.

There is also some controversy over the Chinese translation of the term “conservation” or “自然保育”. This is the term now used in Taiwan. Although the People’s Republic of China still uses the old version, environmental protection or “環境保育” I am of the opinion that “自然保育” will give a better idea of what conversation is all about.

Lastly, I welcome the agreement of the Administration that the chairman of the advisory committee will be a non-official and the committee will comprise four officials, four non-officials and four from the green groups. I understand that the green groups have now sorted out amongst themselves the most appropriate method to choose their four representatives so as to ensure that the green groups are fairly represented.

I am also hopeful that if the \$50,000,000 is well spent, there will be more funds down the line. This is incentive enough for all the green groups to carry on working together to achieve a faster and a better environment for Hong Kong.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, I am grateful to the Honourable Peter WONG for his remarks and I am grateful also to Members of the Bills Committee for their careful and detailed consideration of the Environment and Conservation Fund Bill.

In the course of their deliberations on the Bill, Members took up the question of the Chinese version of the word “conservation” and the number of non-official members in the Environment and Conservation Fund Committee. To address these matters, I will move amendments during the Committee stage.

Thank you, Mr President.

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

Bill read the Second time.

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

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

Resumption of debate on Second Reading which was moved on 5 May 1993

Question on Second Reading proposed.

MR ANDREW WONG: Mr President, the amendments to the Motor Vehicles (First Registration Tax) Ordinance provide for a new scheme on the administration of first registration tax (FRT) for motor vehicles. Under the Bill, all motor importers and distributors must be registered, and the amount of FRT payable is based on a published retail price required to be published beforehand by the distributors, instead of the Cost, Insurance and Freight (CIF) value of the motor vehicles.

In his speech moving the Second Reading debate of the Bill, the Secretary for the Treasury highlighted problems in the existing scheme whereby motor dealers are able to lawfully under-declare the CIF value of their vehicles in order to reduce the amount of FRT payable to the Government. While the scheme proposed in the Bill seeks to close the loophole, Members of the Bills Committee have questioned whether or not it is the best possible option. In response, the Administration pointed out that alternative ways of levying the FRT had been considered by the Administration and I come to conclusion that either there are problems in their enforceability, or they would result in inequity in tax burden between the rich and the poor. Members accepted the Administration's analysis and agreed that the scheme proposed in the Bill should be pursued, on the understanding that the Administration should review the scheme a year after the enactment of the Bill.

Members were concerned about the effect of the proposed scheme on the prices of motor vehicles. The Administration stressed that the purpose of the Bill is not to raise additional revenue. To achieve revenue neutrality, it had worked out a schedule of rates such that the effect of the Bill, when viewed globally, would be almost revenue neutral. Nevertheless, as the Administration had pointed out, the actual prices would depend very much on how the market would respond to the proposed scheme. For models of vehicles where the CIF value is now under-declared, it is possible that the distributors might push up the retail prices of vehicles because they have to pay a higher FRT under the new scheme. However, factors such as the forces of competition would have to be taken into consideration by distributors in determining their own pricing policy and the future atmosphere.

Members sought clarification from the Administration on the impact of discounts in retail prices on the proposed scheme. The Administration explained that under the scheme, there would be no incentive for distributors to offer artificial discounts by marking up the retail prices and then offering discounts, because a higher FRT will then be payable with no additional gain to the distributor. If dealers are prepared to offer genuine discounts and arrange for those vehicles to be registered as separate models, the new published retail prices will be used for calculation for the purposes of FRT.

The Bills Committee then discussed in detail with the Administration the arrangements for assessing FRT under the proposed scheme and have suggested a number of amendments to the Bill mainly for the purpose of clarifying the legislative intent. Now these suggestions have been incorporated in the amendments agreed between the Administration and the Bills Committee.

These will be moved by the Administration at the Committee stage of Bill. No doubt the Administration would continue to keep under review the effectiveness of the provisions in the light of operational experience in the future. Practice Notes will be published by the Administration to explain in detail the administrative and operational details of the proposed scheme.

Mr President, I should perhaps underscore one suggestion made by the Bills Committee which has been taken on board by the Administration. This refers to the concessions for disabled vehicle owners. At present, disabled persons are exempted from FRT in respect of private cars with a CIF value not exceeding \$60,000. Under the Bill, the tax exemption to these disabled persons is to cover private cars with a published retail price (PRP) not exceeding \$200,000, exclusive of tax. At Members' request, however, the Administration has agreed to extend the tax concession for these disabled persons such that they are not liable to pay any FRT on the first \$300,000 of the taxable value of a motor vehicle.

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

SECRETARY FOR THE TREASURY: Mr President, the Motor Vehicle (First Registration Tax) (Amendment) (No. 2) Bill 1993 seeks to improve the existing system of FRT in a number of ways.

- First, it protects the public revenue by preventing a significant form of tax avoidance;
- Second, it clarifies for the first time who is liable to pay FRT and enables the Administration to enforce the law effectively;
- Third, it creates a level playing field for the local motor vehicle distribution business; and
- Finally, it promotes transparency of our tax system by allowing the public to know how much tax they are paying for their motor vehicle and the basis on which the tax is calculated.

The Bills Committee chaired by the Honourable Andrew WONG has offered valuable advice and detailed suggestions on various aspects of the Bill. During the seven formal meetings of the Committee, we very thoroughly examined a wide range of technical concerns over the implementation of the new system. The number and depth of Committee stage amendments which I shall move later this afternoon will reflect the care and thoroughness of the deliberations in the Bills Committee.

The amendment Bill, as it now stands, is fairly complex. This complexity is to some extent inevitable given the strong desire of the Administration and the Bills Committee to close all anticipated loopholes and to set out clearly in law how the new system will operate. The Bill is now a good piece of new legislation which meets more fully the objectives we have set for this reform exercise. We are, however, conscious of a possible need for further improvements after we have seen the new scheme in full operation. The review which we have undertaken to conduct in a year's time will serve this useful purpose.

The new FRT system will require those running a business of importing and distributing motor vehicles for use in Hong Kong to register with the Customs and Excise Department. Following registration, motor traders will have to publish a list of the retail prices of all models of motor vehicles which they are offering for sale. The Commissioner for Transport will then calculate the FRT payable on a vehicle on the basis of its published retail price. Anybody who sells a motor vehicle at a price higher than its taxable value plus the value

of the tax exempt elements without first seeking the Commissioner for Transport's consent will commit an offence.

Under the proposed scheme, aspiring car owners will have a much clearer idea of the amount of FRT they will be paying for the cars of their choice. The Commissioner for Transport will also be able to determine the proper amount of FRT payable by reference to a readily available taxable basis. One of the amendments which I shall move later this afternoon will empower the Commissioner of Customs and Excise to challenge published retail prices which he considers as not reflecting the market value or which are constructed in a way to avoid tax. The need for such anti-avoidance provisions is well recognized for trade in such valuable items as motor vehicles. At the same time, we shall provide an appeal channel for distributors to ask the Administrative Appeals Board to review the Commissioner of Customs and Excise's determination. I should emphasize that it is not the Administration's intention to set retail prices — the market will continue to operate freely: but we need an effective mechanism to tackle any attempt to avoid tax.

The primary purpose of the Bill is to protect the integrity of the FRT system, not to raise additional revenue. The Commissioner for Transport has devised a schedule of FRT rates, based on a sliding scale of published retail prices. The schedule aims to achieve the effect that the new legislation, taken as a whole, is designed to be revenue-neutral. For models where importers have under-declared their values, the FRT payable under the new scheme will face a significant increase depending on the degree of under-declaration. This is a natural consequence of the rectification of a tax avoidance loophole. We expect that the prices of other models will rise or fall only marginally.

In our discussions with the Bills Committee, Members have requested the Administration to monitor the impact of the new scheme on car prices so as to find out whether the FRT rates are appropriately pitched and whether we can indeed maintain revenue neutrality in overall terms. I would like to put on record our undertaking to review the operation of the new tax system in a year's time. In giving this undertaking, Members should be fully aware that I am not binding the Administration not to raise the new FRT rates in the meantime, whether for fiscal or transport reasons, should the need arise.

In formulating the Bill, we have taken full account of the special transport needs of disabled drivers. In response to the Bills Committee's suggestion, as mentioned by the Honourable Andrew WONG, we have decided to go beyond the existing FRT concessions to disabled drivers. I shall move an amendment to achieve this.

Subject to Members' endorsement, I propose to implement the Bill in two stages. For the first stage which will commence on 1 July, the Commissioner of Customs and Excise will register all local motor vehicle importers and distributors and require them to submit returns on imported vehicles and to publish retail prices. The full scheme will come into operation on 1 August

whereupon the new schedule of FRT rates and the new formula for calculating FRT will take effect. The Committee stage amendments will cover the transitional arrangements so that we have a clear mechanism for calculating the FRT for vehicles sold before the commencement of the amendment Ordinance but registered after the new scheme is in full force.

Buyers who have already entered into contract to buy a new car for delivery after the new implementation of the new FRT system may wish to know whether they will be liable to additional FRT. For this purpose, the Commissioner for Transport has prepared a list, showing the FRT payable on the more popular models available in the market under the old and new systems. This list will be displayed in the Hong Kong Licensing Office starting from 1 July this year. It is, of course, for indication purpose only. Those who feel that the distributor may have taken the opportunity to put up prices under the pretext of a higher FRT liability under the new system may then file a complaint with the Consumer Council for further investigation.

To help the motor trade switch to the new system, the Commissioner for Transport has also prepared a Practice Note to clarify how the Bill will operate in practice. The Practice Note sets out clearly the responsibilities of motor vehicle importers and distributors, the procedures for first registration of motor vehicles as well as the respective responsibilities of the Commissioner for Transport and the Commissioner of Customs and Excise. It further clarifies how the Commissioner for Transport will use his discretion in interpreting key provisions of the law. This is in addition to the continuous dialogue we have maintained with the motor trade throughout the formulation of the amendment Bill. We will continue to liaise with them to ensure the smooth implementation of the new scheme. I should also mention that we have received valuable advice from the Consumer Council on the operation of the new system. The Bill, as amended, marks a clear step forward in the protection of consumers' rights.

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

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

Bill read the Second time.

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

Committee Stage of Bills

Council went into Committee.

COMMISSIONER FOR ADMINISTRATIVE COMPLAINTS (AMENDMENT) BILL 1993

Clauses 1, 4 to 7, 11 to 13, 15 and 16 were agreed to.

Clauses 2, 3, 8, 9 and 10

MR LEE WING-TAT: Mr Chairman, I move that the clauses specified be amended as set out in the papers circulated to Members.

I move these Committee stage amendments to the Commissioner for Administration Complaint (Amendment) Bill 1993 in order to empower the Commissioner himself to initiate the investigation of administrative action by scheduled organizations.

Before the Administration commenced a review of the COMAC Ordinance in mid-1992, the Commissioner at that time was asked for his views regarding possible improvements to the structures and powers of COMAC. After meeting several government and community organizations in Hong Kong, as well as ombudsmen from other jurisdictions, Commissioner Arthur GARCIA provided nine suggestions, only three of which were accepted by the Government and now form the basis of the COMAC Bill.

One proposal which Mr GARCIA put forward in 1992, but which was ultimately rejected by the Government, was to permit the Commissioner to initiate investigations on his own volition. He wrote in the COMAC annual report for 1992 and I quote:

“This proposal is not novel but follows precedents, for example, ombudsmen in all Australian states, New Zealand, the majority of Canadian provinces and the Republic of Pakistan.”

In all these jurisdictions the counterpart to COMAC has the power to identify and investigate maladministration without first receiving a specific protest from an identifying complainant.

Giving the Commissioner this power of self-initiated investigation is the only way to combat abuses or misuses of power, that for some reason do not need aggrieved individuals to file written complaints with COMAC. In some cases maladministration may not affect the interests of any particular individual, or people may prefer to address their complaints to COMAC anonymously rather than under their names. Individuals may also feel that it is too time consuming or cumbersome to file written comments with COMAC and it would not be surprising if these people turned out to be from the marginalized and less affluent sectors of our society.

In all these circumstances government officials may be severely abusing the powers but in the absence of written complaints addressed to COMAC, there

is nothing under current law that the Commissioner can do. Note that the COMAC Bill, if passed unamended, will not in any way rectify the situation, since direct access to COMAC still necessitates a written complaint.

There have been objections to giving the Commissioner this power because first, it will make him a judge in his own case, and second, he will find it practically too difficult to investigate any administration without an individual's complaint to focus his efforts. However, experience in other jurisdictions have proven that these criticisms are without justifications.

Given the independent status of COMAC and its office's high level of professionalism over the past five years, it is unlikely that COMAC will spend valuable time resources on frivolous investigations.

Mr President, it is clear that if we were to have an effective and efficient COMAC that is capable of correcting maladministration in the Government, he must have the power to initiate his own investigations. In the words of an ombudsman cited by Mr GARCIA in his 1993 COMAC annual report, and I quote:

“I do not see how an ombudsman can be, or call himself, an ombudsman without it. It is basic”.

Thank you, Mr Chairman.

Proposed amendments

Clause 2

That clause 2 be amended, by deleting “of the Commissioner for Administrative Complaints Ordinance (Cap. 397)”.

Clause 3

That clause 3(a) be amended, by deleting the proposed section 7(1) and substituting —

“(1) The Commissioner may investigate any action taken by or on behalf of an organization in the exercise of its administrative functions in any case where -

- (a) a complaint is made by a person who claims to have sustained injustice in consequence of maladministration in connection with that action; or

- (b) notwithstanding that no complaint has been made to him, he is of the opinion that any person may have sustained injustice in consequence of maladministration in connection with that action.”.

Clause 8

That clause 8 be amended, by deleting the proposed section 16A(1) and (2) and substituting —

“(1) After making an investigation into any action the Commissioner may, if he is of the opinion that it is in the public interest so to do, publish a report on the investigation in such manner as he thinks fit.

(2) A report published under subsection (1) shall not be prepared in such manner that the identity of -

- (a) any person aggrieved;
- (b) any complainant; or
- (c) any officer of the organization whose action is the subject of the investigation or who is otherwise involved in the investigation,

can be ascertained from the report.”.

Clause 9

That clause 9 be amended, by deleting paragraph (a) and substituting —

“(a) in subsection (1) by repealing”, the Commissioner shall inform the complainant and the Member of the Legislative Council by whom the complaint was referred,” and substituting “upon complaint, the Commissioner shall inform the complainant”.”.

Clause 10

That clause 10 be amended, by deleting paragraph (a) and substituting —

“(a) in paragraph (a) by repealing everything after “for the purpose of” and substituting “an investigation under this Ordinance, or for the purposes of section 16, 16A, 17 or 22;” and”.

Question on the amendments proposed.

CHIEF SECRETARY: Thank you, Mr Chairman. I have already explained in my speech commenting the resumption of the Second Reading debate why we feel unable to support Mr LEE Wing-tat's amendments.

In brief, we do not support the proposed amendments because we believe that they will cause operational difficulties to COMAC, jeopardize the perception of his impartiality and expose him to unwarranted pressures. It is important, in our view, that COMAC should focus his resources on investigating complaints lodged by members of the public who believe that they have suffered injustice as a result of alleged maladministration.

Question on Mr LEE Wing-tat's amendment to clauses 2, 3, 8, 9 and 10 put.

Voice vote taken.

CHIEF SECRETARY: Mr Chairman, I claim a division.

CHAIRMAN: Council will proceed to a division

CHAIRMAN: The question for the Committee is whether Mr LEE Wing-tat's proposed amendments to clauses 2, 3, 8, 9 and 10 of the Commissioner for Administrative Complaints (Amendment) Bill 1993 be approved. Will Members please proceed to vote?

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

Mr Allen LEE, Mrs Selina CHOW, Mr HUI Yin-fat, Mr Martin LEE, Mr SZETO Wah, Mr LAU Wong-fat, Mr Edward HO, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Peter WONG, 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 Steven POON, Mr Henry TANG, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr Howard YOUNG, Mr WONG Wai-yin, Dr TANG Siu-tong, Miss Christine LOH, Ms Anna WU and Mr Alfred TSO voted for the amendments.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr PANG Chun-hoi, Mr TAM Yiu-chung, Mr Andrew WONG, Mr Vincent CHENG, Mr Marvin CHEUNG and Mr Timothy HA voted against the amendments.

THE CHAIRMAN announced that there were 36 votes in favour of the amendments and nine votes against them. He therefore declared that the amendments were carried.

CHAIRMAN: As Mr LEE's amendment to clause 3 has been approved, that will by necessary implication mean that the Chief Secretary's proposed amendment to the same clause is disapproved. I will therefore not call upon the Chief Secretary to move her amendment to clause 3.

Question on clauses 2, 3, 8, 9 and 10, as amended, proposed, put and agreed to.

Clause 14

MR ALFRED TSO (in Cantonese): Mr Chairman, I move that clause 14 be amended as set out under my name in the paper circulated to Members.

Proposed amendment

Clause 14

That clause 14(b) be amended, by deleting "Regional Council."

Question on the amendment proposed.

MR ALBERT CHAN (in Cantonese): Mr Chairman, I rise to oppose the amendments moved by Mr Alfred TSO and those to be moved by Mrs Elsie TU later on. I am also a Member of the Regional Council and have been serving the Regional Council for eight years since 1986. I believe Members have already received a copy of the letter dated 6 May 1994 by Mr CHEUNG Yan-lung, chairman of the Regional Council, to Mr Fred LI, the Chairman of the Bills Committee on Commissioner for Administrative Complaints (Amendment) Bill 1993.

This letter clearly reveals that many Regional Council members themselves perhaps are relatively unsure, unclear and uncertain about the functions of the Regional Council, including the Chairman who wrote the letter. In the letter, he pointed out that the Regional Council is a policy-making body and is entirely different from the Regional Services Department which is an administrative body. In his view, it is therefore not proper to include the Regional Council under the jurisdiction of the Commissioner for Administrative Complaints (COMAC) remit. But in my own experience as a Regional Councillor for eight years, I find that the Regional Council indeed performs certain administrative functions such as liquor licensing by the Liquor Licensing Board. The Regional Council has its own Tender Subcommittee, which is responsible for the vetting and the determination of matters concerning tenders for the council's business. As for the Review Subcommittee of the Liquor

Licensing Board, it handles matters relating to licences issued by the Regional Council. If members of the public are discontented with the licensing system or are unhappy with the work of the body concerned, they may seek a review from the Review Subcommittee. Such kind of duties points up the fact that the council is very much an administrative body. For this reason, I do not find it entirely right to say that the Regional Council is no more than a policy-making body. Apart from policy-making, many of its duties are administrative in nature. Given its administrative functions, why does it refuse to be investigated and vetted by COMAC if and when necessary?

Mr CHEUNG Yan-lung, Chairman of the Regional Council, also mentioned in his letter that the council has no objection to the proposal of including the Regional Council Secretariat under the jurisdiction of COMAC. This seems to suggest that “one man may steal a horse while another may not look over a hedge”, as the saying goes. The Regional Council Secretariat serves the Regional Council. And he is of the view that COMAC may investigate any maladministration of the secretariat. Then why not allow the public to ask COMAC to carry out investigation into any alleged maladministration committed by the Regional Councillors themselves? I find some of his objections specious and unacceptable. It is also mentioned in the same letter that many Regional Councillors are elected members and therefore it is not proper for the council to be investigated by an appointed commissioner. I find such an argument particularly unacceptable. Being elected does not exempt one from being accountable to an independent body responsible for investigation into administrative complaints because the commissioner’s job is to conduct an investigation before making a final decision and recommendations with regard to administrative matters. Against this background, I find that it is an appropriate and democratic decision to subject the Regional Council and the Urban Council to COMAC’s jurisdiction.

MR MARTIN LEE (in Cantonese): Mr Chairman, I would like to ask one simple question. Suppose someone applied for a liquor licence for quite some time but his application was not approved due to maladministration; two years have lapsed but the licence is yet to be granted. Why can he not refer the case to the Commissioner for Administrative Complaints (COMAC)?

I have, another question to Members who seek to move amendments today to prevent COMAC from being granted such powers: What on earth are they afraid of?

MR FREDERICK FUNG (in Cantonese): Mr Chairman, although I am also an Urban Councillor, I support the inclusion of the Urban Council into the ambit of the Commissioner for Administrative Complaints (COMAC). Whereas matters concerning liquor licences and hawker licences have some administrative overtones, many decisions or policies, such as the latest Hong Kong Stadium issue, can hardly be defined as purely policy decisions. To a

certain extent, decisions on which groups the Hong Kong Stadium should invite for performance or on which groups' applications should be accepted can be regarded as administrative matters. However, there are indeed grey areas where a clear line between administrative and policy decision is very hard to draw with dead certainty. I think that if the two municipal councils feel they have been open and above board and have done nothing wrong, the proposal that the two Councils be included into the COMAC's ambit should not worry them. Even if there have been any mistakes, both Councils need not worry as other departments have shown easiness in this matter. I think the two municipal councils can accept the proposal of including them both into the COMAC's schedule of organizations. I therefore do not support the two amendments.

Question on Mr Alfred TSO's amendment to clause 14 put and negatived.

MRS ELSIE TU: Mr Chairman, I move that clause 14 be amended as set out under my name in the paper circulated to Members, that is, to delete Urban Council from the schedule of organizations to which the Commissioner for Administrative Complaints Ordinance is intended to apply.

There is a basic difference between the Urban Council and statutory bodies such as the Housing Authority, the Mass Transit Rail Corporation and the Kowloon-Canton Railway Corporation in that the council comprises a majority of elected members and as such they are accountable to the public. It is therefore wrong in principle to bring a mainly elected body under the scrutiny of a government-appointed body, like COMAC. The more so when the council becomes a totally elected body in April 1995.

The Urban Council is primarily a policy making body. Section 27 of the Urban Council Ordinance states, and I quote:

“The Council shall discharge its functions through the Urban Services Department which shall, under the direction of the Director of Urban Services, do all acts and things necessary for implementing the decisions of the Council or of any committee thereof to which the Council may have delegated the exercise of any of its powers under this or any other Ordinance.”

The Urban Services Department, which administers Urban Council policies is already under the jurisdiction of COMAC for investigation of complaints made to the Commissioner. It has been agreed that the Urban Council's secretariat, which is staffed by civil servants, will also be under COMAC scrutiny.

In isolated instances, such as the issuance of liquor licences and other licences where Urban Councillors themselves are actually involved in the performance of administrative acts in the name of the council, there are already

avenues for appeal, including the independent Municipal Services Appeals Board.

This Appeals Board was set up a few years ago on a decision by this Legislative Council and its purpose is to ensure that complainants shall have recourse to independent hearings by a body not associated with the original decision, and with a majority of non-council members.

During last year this Appeals Board heard 20 appeals, two of which were successful, 16 rejected and two were withdrawn by the appellants. The Appeals Board, a quasi-judicial body, is therefore more effective than COMAC because it can overrule council decisions while COMAC can only make recommendations.

Now I was dismayed this afternoon to hear that the Chief Secretary does not seem to know the nature of the municipal councillor's appeal board. The name is unfortunate. It is not an appeals board set up by the municipal councillors, as the Chief Secretary has said this afternoon. On the contrary, it was set up by the Government to replace the Governor in Council, that is the Executive Council, to hear complaints against the municipal councillors. The chairman of the board is an independent, legally trained person and the majority of members are Justices of the Peace. It is a quasi-judicial body which is totally independent and more powerful than COMAC because it can overrule decisions of the council.

To refer those complaints to COMAC would be a step backwards because it would waste the complainant's time. A decision in the complainant's favour cannot be made by COMAC. A decision by the appeals board can rule in the complainant's favour.

I am disappointed that Mr LEE Wing-tat also supports downgrading the complainants by referring them to COMAC when they can go to a quasi-judicial body for a judicial decision.

The case as quoted Mr Martin LEE could fare much better under the appeals board than under COMAC. Mr Martin LEE says "What are we afraid of?" Answer, nothing. We have nothing to hide.

Mr Chairman, in addition to this government-appointed appeals board, complaints are made through councillors by members of the public. Last year Urban Councillors dealt with 5 945 public complaints in their ward offices and a further 24 were referred to the Urban Council roster system. 9 486 complaints were also dealt with through the Urban Council hotline. None of the complaints were against the Urban Council itself but all were administrative matters over which COMAC already has jurisdiction.

Since COMAC cannot deal with policy matters, and it already has jurisdiction on complaints about administrative matters, it is difficult to envisage

any role for COMAC in respect of the Urban Council. Therefore, Mr Chairman, as a representative of the Urban Council on this council, I move that the Urban Council should be deleted from the Schedule, at clause 14(b) of the Bill. Thank you.

Proposed amendment

Clause 14

That clause 14(b) be amended, by deleting “Urban Council.”.

Question on the amendment proposed.

MR FRED LI (in Cantonese): Mr Chairman, I did not intend to speak but there is a point that I would like to elucidate. Although I have not been with the Urban Council for a very long time, I think I can say something here.

The Appeals Board of the two municipal councils is set up by the Central Government, mainly for handling appeal cases in relation to the refusal of applications for liquor licences, market stalls or hawkker licences. Concerning the problems of undue delay for two years, complex procedures, poor attitude or lack of responses, as raised by the Honourable Martin LEE, I would like to explain that the Board cannot sit to deal with the above problems because the Board is not set up to deal with the issues of delay or maladministration. The Appeals Board is set up only to deal with the appeal cases arising from the formal refusal of applications by the Urban Council or the Regional Council. This is the point that I would like to clarify. We cannot say that, with the ombudsman in place, the Appeals Board no longer needs to be there because the two are dealing with extremely different complaints and the cases they hear are of totally different nature. When establishing the office of the Commissioner for Administrative Complaints (COMAC), the Government states clearly that COMAC is not being put there to replace the existing recourses, but to provide an additional avenue for the public to lodge complaints if they are dissatisfied with the municipal services. It is established not to replace the Municipal Services Appeals Board, nor the Members' duty roster system of the Urban Council, nor the two Municipal Council's existing mechanism of addressing public complaints, but to provide an additional recourse. I give my unreserved support for Mrs Elsie TU's comments that none of the complaints received by COMAC was made against the Urban Council (at least, before the commissioning of the Hong Kong Stadium). As a result, when the officials from COMAC attended the meetings of our Bills Committee, they failed to justify the inclusion of the Urban Council under COMAC's jurisdiction in view of the fact that there is no previous case made against the Urban Council. This is quite controversial and there are some grey areas but I feel that the two Municipal Councils, as bodies which are composed of elected members, accountable to the public and vested with considerable policy-making powers,

should face up to the public and accept the establishment of an additional mechanism for the public to lodge complaints.

If an explanation is to be given on the political front by saying that the two municipal councils do not want to come under the scrutiny of COMAC, it will only give the public and the Members of this Council an impression that the two municipal councils are afraid of this arrangement. The Honourable Martin LEE asked, "What are they afraid of"? There is nothing to be afraid of and the two municipal councils should not be afraid of anything but they are merely lacking experience in this aspect. I believe that opposition by members of the two municipal councils to this amendment is a result of their lack of experience and knowledge in handling this case. I speak in the hope of clarifying how cases are being handled by the Appeals Board. As an Urban Councillor, I do not mind furnishing one more channel for COMAC to receive public complaints.

MR ALFRED TSO (in Cantonese): Mr Chairman, I originally did not wish to have too many arguments in the Legislative Council. However, Mr Fred LI has given a final explanation on behalf of Regional Councillors that we do not wish the Regional Council to be included into the COMAC schedule because of the concern for the lack of experience. I would like to elucidate here that Regional Councillors did hold in-depth discussions before coming to the view that the Regional Council should not be included into the ambit of the Commissioner for Administrative Complaints as a matter of principle. Although we do not have the support of Members of this Council, I feel that at least we should state expressly our stance to every Member of this Council as well as to the Administration.

MRS ELSIE TU: Mr Chairman, I just want to clarify. All the complaints Mr LI Wah-ming referred to are already going to COMAC because the Urban Services Department and the secretariat are under COMAC, so they are all dealt with. And again, I would repeat, that we have nothing to hide but I think that it would be a pity if we reduce the power of the complainant to have his case dealt with rapidly and judicially rather than by having a complaint which will go on for a long time and eventually it can only be given a recommendation rather than a decision.

Question on Mrs Elsie TU's amendment to clause 14 put.

Voice vote taken.

MR LEE WING-TAT: I claim a division.

CHAIRMAN: Council will proceed to a division.

CHAIRMAN: I would just remind Members that the question is whether clause 14 be amended as proposed by Mrs Elsie TU. Will Members please proceed to vote?

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

Mr PANG Chun-hoi, Mr TAM Yiu-chung, Mr LAU Wong-fat, Mrs Elsie TU, Mr Marvin CHEUNG and Mr Alfred TSO voted for the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr HUI Yin-fat, Mr Martin LEE, Mr SZETO Wah, Mr Andrew WONG, Mr Edward HO, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Jimmy MCGREGOR, Mr Peter WONG, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr CHIM Pui-chung, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Timothy HA, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Mr LAU Chin-shek, Miss Emily LAU, Mr LEE Wing-tat, Mr Eric LI, Mr Fred LI, Mr MAN Sai-cheong, Mr Steven POON, Mr Henry TANG, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr Howard YOUNG, Mr WONG Wai-yin, Dr TANG Siu-tong, Miss Christine LOH and Mr Roger LUK voted against the amendment.

THE CHAIRMAN announced that there were six votes in favour of the amendment and 40 votes against it. He therefore declared that the amendment was negatived.

Question on the original clause 14 proposed, put and agreed to.

New clause 1A	Long title amended
New clause 3A	Actions not subject to investigation
New clause 12A	Delegation of powers and duties of the Commissioner

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

MR LEE WING-TAT: Mr Chairman, I move that new clauses 1A, 3A and 12A as set out in the paper circulated to Members be read the Second time.

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

Clauses read the Second time.

MR LEE WING-TAT: Mr Chairman, I move that new clauses 1A, 3A and 12A be added to the Bill.

Proposed additions

New clause 1A

That the Bill be amended, by adding —

“1A. Long title amended

The long title to the Commissioner for Administrative Complaints Ordinance (Cap. 397) is amended by repealing “complaints concerning” and substituting “, whether upon complaint or of his own motion,”.”.

New clause 3A

That the Bill be amended, by adding —

“3A. Actions not subject to investigation

Section 8 is amended by repealing “into a complaint”.”.

New clause 12A

That the Bill be amended, by adding —

“12A. Delegation of powers and duties of the Commissioner

Section 21(1) is amended by repealing everything after “the subject of” and substituting “an investigation under section 7, shall so delegate his powers and shall not undertake personally or continue that investigation or report thereon.”.”.

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

ENVIRONMENT AND CONSERVATION FUND BILL

Clauses 1, 3 to 5 and 7

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

The amendments to clauses 1(1), 3(1), 4, 5(1) and 7(1) modify the Chinese version of the word “conservation” to reflect its meaning more accurately.

The amendment to clause 7(2)(f) increases the number of non-official members in the Environment and Conservation Fund Committee to allow for representation of a wider spectrum of interests, especially community groups in the environmental field. The amendment in clause 7(3) is a consequential change in the quorum of the committee following the increase in its membership.

Thank you, Mr Chairman.

Proposed amendments.

Clause 1

That clause 1(1) be amended, by deleting “保護自然” and substituting “自然保育”.

Clause 3

That clause 3(1) be amended, by deleting “保護自然” and substituting “自然保育”.

Clause 4

That clause 4 be amended, by deleting “保護自然” and substituting “自然保育”.

Clause 5

That clause 5(1) be amended, by deleting “保護自然” and substituting “自然保育”.

Clause 7

That clause 7 be amended —

- (a) in subclause (2)(f) by deleting “4” and substituting “8”.

(b) in subclause (3) by deleting “5” and substituting “7”.

That clause 7(1) be amended, by deleting “保護自然” and substituting “自然保育”.

Question on the amendments proposed, put and agreed to.

Question on clauses 1, 3 to 5 and 7, as amended, proposed, put and agreed to.

Clauses 2, 6, 8 and 9 were agreed to.

Long title

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Chairman, I move that the long title be amended as set out in the paper circulated to Members. The amendment modifies the Chinese version of the word “conservation”, again to reflect its meaning more accurately.

Thank you, Mr Chairman.

Proposed amendment

Long title

That long title be amended, by deleting “保護自然” and substituting “自然保育”.

Question on the amendment proposed, put and agreed to.

Question on long title, as amended, proposed, put and agreed to.

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

Clauses 1 and 5 were agreed to.

Clauses 2 to 4

SECRETARY FOR THE TREASURY: Mr Chairman, I move that clauses 2, 2(b), 3 and 4 be amended as set out in my name in the paper circulated to Members.

Under clause 2(b), I propose to improve on the definition of 10 terms and to add eight new ones to clarify the legislative intent. The terms “associated corporation” and “associated person” are now defined broadly in line with similar provisions in other tax legislation. We have also amended the definition of the term “control” in the light of the Bills Committee’s advice to ensure consistency with similar references in other legislation.

The term “new motor vehicle” now refers to a motor vehicle which has not been legally used on a road in Hong Kong except by the manufacturer or by an importer, distributor or retailer. That means a second-hand car imported into Hong Kong for the first time will be regarded as a “new motor vehicle” for the purpose of this Ordinance. The term “published retail price” may now refer to either the price of the whole vehicle or the price of its constituent elements as the context requires.

We have added a number of new definitions in the interest of clarity. The term “exempted accessories” is defined as accessories exempted from first registration tax (FRT) by regulation made by the Commissioner for Transport. The intention is that air-conditioning units, anti-theft devices and audio equipment will be exempt from FRT. The term “market value” is defined as the price that a motor vehicle would fetch in the open market between a buyer and a seller independent of each other dealing at arm’s length. The Commissioner of Customs and Excise will rely on this criterion to determine whether a published retail price is acceptable for the assessment of FRT. The definition of the term “model” has been broadened so that it also covers a specific motor vehicle which the distributor may identify by reference to a chassis number or other acceptable identifying features.

I propose that clause 3 be expanded by amending proposed sections 3A, 3B, 4A, 4B, 4C, 4D, 4E, 4F, 4G and 4H as well as by introducing new sections 4AA, 4AB and 4I.

Proposed section 3A is amended to require registered importers and distributors to notify the Commissioner of Customs and Excise of any change of the important particulars of their businesses and when they cease business. We also clarify that the requirement for registration with the Customs and Excise Department does not extend to distributors dealing with second-hand vehicles on which FRT has previously been paid.

Proposed section 3B is amended to provide for a lead time of five working days instead of seven days for registered importers to file returns to the Customs and Excise Department.

Proposed section 4A is revamped to clarify the items to be included in the published retail price and the manner of publication. As I shall explain later in this speech, the Commissioner of Customs and Excise may vary the retail price after taking into account the market value and any aggrieved parties may take the matter to the Administrative Appeals Board. The revised section 4A requires the registered distributor to publish the retail price as varied by either the Commissioner of Customs and Excise or the Administrative Appeals Board.

As an anti-avoidance measure, the provision prohibits a distributor from selling a vehicle at a price, net of any tax-exempted items, higher than that for which FRT has been paid. For any sale above that price, the Commissioner for Transport’s consent is necessary. On the suggestion of the Bills Committee, the

provision now spells out clearly that the Commissioner must give consent, unless he believes that the sale forms part of a scheme designed to avoid payment of FRT. This revised formulation will ensure that the Government is able to protect revenue without interfering unduly with the operation of the market.

The newly added section 4AA empowers the Commissioner of Customs and Excise to reject the published retail prices of both the taxable and exempted elements of a motor vehicle if they do not reflect the market value or if they are constructed in a way to avoid tax. This would provide an effective safeguard against a distributor who over-declares the retail prices of the exempted elements or under-declares the retail prices of the taxable elements for the purpose of avoiding FRT. The new section also provides a channel of appeal for the distributor to make representations to the Commissioner or to take the case to the Administrative Appeals Board. Again, to minimize disruption to normal market activities, the Commissioner for Transport may register the vehicle upon payment of FRT based on the full assessment, pending the determination of the Administrative Appeals Board. If the Board subsequently rules in favour of the distributor, the Commissioner will arrange refund of the excessive FRT he has collected.

Proposed section 4AB is added to empower the Commissioner for Transport to make regulations on the operational details of the new scheme. Among other things, he may specify the types of accessories exempted from FRT and the exempted values of such accessories for the purpose of calculating the taxable value of a motor vehicle. Upon the enactment of this Bill, the Commissioner will specify by regulation that air conditioning units, anti-theft devices and audio equipment will be exempt from FRT.

Proposed section 4B is amended to set out the information to be provided to the Commissioner for Transport on application for first registration of a motor vehicle. In particular, for a sale by a registered distributor, both the registered distributor and the vehicle purchaser are required to provide a detailed breakdown of the published retail price of the vehicle. If the registered distributor or an associated person fits an accessory to the motor vehicle within three months after first registration, both the distributor and the purchaser are required to provide details to the Commissioner and they are equally liable to pay any additional FRT.

Proposed section 4C has been substantially redrafted after discussions with the Bills Committee. It now sets out in detail those elements which are taxable for each type of motor vehicles submitted for first registration. This will enable both the distributors and the purchasers to know exactly how to calculate the taxable value of a vehicle.

We are wary of possible attempts by distributors to avoid tax by over-declaring the value of exempted accessories at the expense of the taxable elements of the vehicle. This would depress the taxable value of the motor

vehicle. There are two possible ways to tackle this means of avoidance under the Bill. The Commissioner of Customs and Excise may challenge the published retail price of such items submitted by the distributors. Alternatively, as and when the Commissioner for Transport specifies by regulation the exempted amount of such exempted accessories, the Commissioner will charge FRT on any value of such accessories in excess of the exempted amount specified by regulation.

Proposed section 4D is amended to clarify circumstances under which additional FRT is payable. In the case of locally-assembled vehicles (mainly goods vehicles), the revised provision clarifies that when non-exempted items are fitted to the chassis or cab and chassis, the registered owner will be liable to additional FRT.

Proposed section 4F deals with the Commissioner for Transport's general powers of investigation. In response to the Bills Committee's suggestion, we have amended the provision to clarify that the Commissioner may exercise certain investigative powers where he "has reason to believe" that there is evidence of an offence under the Bill. This is an improvement over the previous formulation which allows the Commissioner to invoke his investigative powers if he "suspects" that there is evidence of an offence.

Proposed section 4G stipulates the new offences created under the new scheme. We have made a number of consequential amendments to this section in line with the proposed Committee stage amendments to other parts of the Bill.

Proposed section 4I is a new section which seeks to protect the confidentiality of information, especially commercial information, which the Commissioner of Customs and Excise and the Commissioner for Transport obtain in the course of duty under this Ordinance. It is modelled on similar provisions in the Inland Revenue Ordinance.

In a few minutes, I shall be moving the addition of new clauses to the Bill. Mr Chairman, I beg to move.

Proposed amendments

Clause 2

That clause 2 be amended —

- (a) in paragraph (a), by deleting "and" at the end.
- (b) by adding -

“(aa)by repealing the definition of “tax”;

That clause 2(b) be amended —

(a) by deleting the proposed definition of “associated person” and substituting -

““associated corporation”, in relation to a person, means -

- (a) a corporation over which the person has control;
- (b) if the person is a corporation -
 - (i) a corporation which has control over the person; or
 - (ii) a corporation which is under the same control as is the first-mentioned person;

“associated person” includes -

- (a) where the registered person is a natural person -
 - (i) a relative of the registered person;
 - (ii) a partner of the registered person and a relative of that partner;
 - (iii) a partnership in which the registered person is a partner;
 - (iv) a corporation controlled by the registered person, by a partner of the registered person or by a partnership in which the registered person is a partner;
 - (v) a director or principal officer of a corporation referred to in subparagraph (iv);
- (b) where the registered person is a corporation -

- (i) an associated corporation;
 - (ii) a person who controls the corporation and where the person is a natural person, a relative of the person;
 - (iii) a partner of a person who controls the corporation and, where the person is a natural person, a relative of the person;
 - (iv) a director or principal officer of the corporation or an associated corporation and a relative of the director or principal officer;
 - (v) a partner of the corporation and, where the partner is a natural person, a relative of the partner;
- (c) where the registered person is a partnership -
- (i) a partner of the partnership and, where the partner is a natural person, a relative of the partner;
 - (ii) a corporation controlled by the partnership, a partner in the partnership or where a partner is a natural person, a relative of the partner;
 - (iii) a corporation of which a partner is a director or principal officer;
 - (iv) a director or principal officer of a corporation referred to in subparagraph (iii);

“control” for the purposes of the definition of “associated corporation” means having a controlling interest in a corporation by way of -

- (a) a shareholding of more than 50% including an interest by way of trust; or

- (b) having the right to appoint a majority of the directors of the corporation;”.
- (b) in the proposed definition of “declared value”, by deleting “section 4B(1)(c)” and substituting “section 4B(1)”.
- (c) in the proposed definition of “first registration tax”, by adding “or “tax”” before “means”.
- (d) in the proposed definition of “new motor vehicle” -
- (i) by adding “in Hong Kong” after “road”;
- (ii) by deleting “, his agent”.
- (e) in the proposed definition of “person applying for first registration”, by deleting paragraphs (a) and (b) and substituting -
- “(a) the purchaser of a motor vehicle; or
- (b) the importer of a motor vehicle where he is not a registered importer, and who applies for the first registration of the motor vehicle;”.
- (f) in the proposed definition of “published retail price”, by adding after “motor vehicle” -
- “or any part of the published retail price relating to a part of the motor vehicle”.
- (g) in the proposed definition of “registered distributor”, by deleting “section 3(2)” and substituting “section 3A(2)”.
- (h) in the proposed definition of “registered importer”, by deleting “section 3(1)” and substituting “section 3A(1)”.
- (i) by adding -
- ““exempted accessories” means accessories exempted from first registration tax by regulation made by the Commissioner;
- “locally assembled vehicle” means a motor vehicle that is a goods vehicle, bus, light bus or special purpose vehicle assembled in Hong Kong by

adding specified additions to an imported chassis or to an imported cab and chassis;

“market value” means the price that a motor vehicle would fetch in the open market between a buyer and a seller independent of each other, dealing at arm’s length;

“model” includes a specific motor vehicle identified by the distributor, by reference to a chassis number or other identifying feature acceptable to the Commissioner, that may be otherwise the same as other motor vehicles;

“registered person” means a person who is registered as an importer or distributor under this Ordinance;

“relative” means the spouse, parent, child, brother or sister of the relevant person and, in determining the relationship, an adopted person is regarded as the child of both the natural parents and the adoptive parents and a step child is the child of both the natural parents and any step parent;

“specified additions” means additions of a class or type, as the Commissioner specifies by regulation, that are added to the chassis or cab and chassis to form a locally assembled vehicle;

“transfer of additions” means the transfer of additions that come within classes or types of specified additions from the chassis or cab and chassis of one locally assembled vehicle to another chassis or cab and chassis to form another locally assembled vehicle;”.

Clause 3

That clause 3 be amended —

- (a) by deleting “Sections 3 and 4 are repealed and the following substituted -” and substituting -

“(1) Sections 3 and 4 are repealed.

(2) The following are added -”.

(b) by renumbering the proposed sections 3 and 4 as sections 3A and 3B respectively.

(c) in the proposed section 3A, by adding -

“(6) Subsections (2) and (4) do not apply where the first registration tax is paid on the motor vehicles being distributed before the distributor buys or otherwise acquires an interest in the motor vehicles.

(7) If a registered importer or a registered distributor -

(a) changes the place at which he carries on business;

(b) adds to or deletes the makes of motor vehicles he deals with; or

(c) ceases to carry on business,

he shall give notice of the change or cessation within 14 days of the change or cessation to the Commissioner.”.

(d) in the proposed section 3B(1) -

(i) by deleting “7 days” and substituting “5 working days”;

(ii) by deleting “or offering for sale”.

(e) in the proposed section 3B(2)(c), by deleting “an importer or distributor” and substituting “the importer”.

(f) in the proposed section 4A -

(i) in subsection (1) -

(A) by adding “for use in Hong Kong” before “or distributing”;

(B) by adding “for use in Hong Kong” before “, publish”;

(C) by adding “, in such manner as the Commissioner requires,” after “in writing”;

(D) by deleting “list of the make and” and substituting “of each”;

(E) by deleting everything after “him” and substituting -

“containing -

- (a) the retail price of the model of the motor vehicle including the manufacturer’s warranty (but excluding the first registration tax payable) with a description of what is included in the retail price;
- (b) the retail price of optional accessories (other than exempted accessories) that are offered in addition to the standard motor vehicle, if any;
- (c) the retail price of warranties other than a manufacturer’s warranty that are offered in addition to the standard motor vehicle, if any; and
- (d) the retail price of exempted accessories offered for the model, if any.”.

(ii) by adding -

“(1A) A registered distributor shall publish the retail price of the motor vehicle as assessed by the Commissioner, or if varied by the Administrative Appeals Board, as so varied, under section 4AA as the published retail price of the motor vehicle.

(1B) The retail price of a motor vehicle assessed by the Commissioner, or if varied by the Administrative Appeals Board, as so varied, is taken as the published retail price of the motor vehicle.”;

(iii) in subsection (3) -

(A) by adding “other than a locally assembled vehicle” after “new motor vehicle”;

(B) by deleting “published retail price of the motor vehicle” and substituting

-

“taxable value of the motor vehicle calculated under section 4C(2)(a) (i) and (ii) plus the value of any warranty (other than a manufacturer’s warranty) included in the price of the motor vehicle and the value of any exempted accessories fitted to the motor vehicle”;

(iv) by adding -

“(3A) A person shall not, without first obtaining the consent of the Commissioner, sell a new locally assembled vehicle at a price greater than the aggregate of -

- (a) the taxable value calculated under section 4C(2)(b)(i) and (ii);
- (b) the value of any warranty (other than a manufacturer’s warranty) included in the price of the motor vehicle;
- (c) the value of any exempted accessories fitted to the motor vehicle; and
- (d) the value of specified additions to the chassis or cab and chassis.”;

(v) in subsection (4) -

(A) by adding “or a locally assembled vehicle” after “new motor vehicle”;

(B) by deleting “published retail price of the same year and model of the motor vehicle plus the first registration tax” and substituting -

“taxable value calculated under section 4C(2)(a)(i) and (ii), the value of any unexpired portion of a warranty (other than a manufacturer’s warranty) included in the price of the motor vehicle and the value of any exempted accessories fitted to the motor vehicle and the first registration tax paid or”;

(vi) by adding -

“(4A) A person shall not, without first obtaining the consent of the Commissioner, sell a locally assembled vehicle (which is not a new motor vehicle) at a price greater than the aggregate of -

- (a) the taxable value calculated under section 4C(2)(b)(i) and (ii);
- (b) the value of any unexpired portion of a warranty (other than a manufacturer’s warranty) included in the price of the motor vehicle;
- (c) the value of any exempted accessories fitted to the motor vehicle;
- (d) the value of specified additions to the chassis or cab and chassis; and
- (e) the first registration tax paid or payable on the motor vehicle.

(4B) For the purposes of subsections (3), (3A), (4) and (4A), “value of any exempted accessories” means the published retail price of the accessories published under this section.

(4C) For the purposes of subsections (3) and (3A), “value of any warranty (other than a manufacturer’s warranty)” means the published retail price of the warranty published under this section.

(4D) For the purposes of subsections (4) and (4A), “value of any unexpired portion of a warranty (other than a manufacturer’s warranty)” means the value calculated on the basis of the published retail price of the warranty published under this section.”;

(vii) by repealing subsection (5) and substituting -

“(5) The Commissioner shall not refuse to consent to a sale under subsection (3), (3A), (4) or (4A) unless he is satisfied that the transaction is part of a scheme that avoids payment of first registration tax.”;

(viii) in subsection (6) -

- (A) by deleting “(3) or (4)” and substituting “(3), (3A), (4) or (4A)”;
- (B) by adding “or the person applying for first registration” after “owner”;
- (C) by deleting “the difference between the figure on which the original first registration tax for the motor vehicle was calculated and the” and substituting “any”;

(ix) by adding -

“(8) Subsections (4) and (4A) do not apply to a motor vehicle -

- (a) sold under a written agreement with a non-refundable deposit paid; or
- (b) registered,

before the commencement of this section.”.

(g) by adding -

**“4AA. Commissioner may assess
published retail price in certain
circumstances**

(1) Where the Commissioner is of the opinion that -

- (a) a published retail price of the taxable or the exempted elements of a motor vehicle does not reflect the market value of that element of the motor vehicle; or
- (b) the values of the taxable and the exempted elements of the motor vehicle are constructed in a way to avoid the payment of first registration tax,

the Commissioner may reject the published retail price for the motor vehicle and may assess a retail price that would reflect the market value of the taxable and exempted elements of the motor vehicle.

(2) The Commissioner shall give the registered distributor notice of his refusal to accept the published retail price immediately on his reaching his opinion.

(3) The Commissioner shall, after considering the representations of the registered distributor, give the registered distributor notice of the retail price that he considers reflects the market value of the taxable and exempted elements of the motor vehicle, within 14 days of giving notice under subsection (2) or receipt of any representations from the registered distributor.

(4) The Commissioner shall give reasons for -

- (a) his rejection of a published retail price; and
- (b) his assessment of the retail price under this section,

to the registered distributor at the time of giving notice under subsection (3).

(5) The Commissioner may register a motor vehicle where the full assessment of first registration tax is in dispute under this section if the tax is paid in full as assessed pending the outcome of an appeal to the Administrative Appeals Board.

(6) If the Administrative Appeals Board finds that the registered distributor or a purchaser has paid first registration tax in excess of that properly assessable, the Commissioner shall refund the excess of tax as soon as practicable after the decision of the Administrative Appeals Board is published.

**4AB. Commissioner may regulate
exempt value**

The Commissioner may by regulation -

- (a) specify the classes or types of additions to the chassis or cab and chassis of locally assembled vehicles that will be taxable under this Ordinance and specify the amounts at which they will be valued for the purpose of calculating the taxable value of locally assembled vehicles;
- (b) specify classes or types of accessories that are exempted accessories and set the maximum exempted value of the accessories for the purpose of assessing first registration tax and, without limiting the foregoing, the Commissioner may set the maximum exempted value as a percentage of the published retail price of the motor vehicle or some other standard specified by the Commissioner;
- (c) prescribe the conditions under which previously taxed chassis, cabs and chassis and additions to the chassis or cabs and chassis of locally assembled vehicles are excluded from first registration tax on the transfer of additions.”.”.

(h) by adding before the proposed section 4B -

“(3) The following are added -”.

(i) in the proposed section 4B -

(i) in the heading, by deleting “4B.” and substituting ““4B.”;

(ii) in subsection (1), by deleting everything after “stating” and substituting -

“the date and place of purchase of the motor vehicle and -

(a) for a motor vehicle sold by a registered distributor -

- (i) the published retail price of the motor vehicle, if applicable;
 - (ii) the published retail price of an optional accessory fitted or to be fitted to the motor vehicle within 3 months after the date of first registration by the registered distributor or an associated person, if any;
 - (iii) the published retail price of any warranty, other than a manufacturer's warranty, attaching to the sale of the motor vehicle; and
 - (iv) details of an exempted accessory fitted to the motor vehicle;
- (b) for a motor vehicle that is not sold by a registered distributor, the full price paid by the person applying for first registration for the purchase of the motor vehicle, including -
- (i) the cost of all materials and work necessary to put the vehicle into the state necessary to meet first registration requirements; and
 - (ii) the value of accessories (including exempted accessories) included in the purchase of the motor vehicle.”;
- (iii) by deleting subsection (2) and substituting -

“(2) The registered owner and a registered distributor shall, if the registered distributor or an associated person fits an accessory to a motor vehicle within 3 months after the first registration of the motor vehicle, not later than 5 working days after the fitting of the accessory, make and deliver a declaration setting out details of the accessory together with payment of the additional first registration tax attributable to the value of the accessory and any additional first registration tax attributable to the increase in total value of the motor vehicle with the accessory fitted.”;

(iv) by adding -

“(4) In this section “fits an accessory” includes commencing to fit an accessory.”.

(j) in the proposed section 4C -

(i) in subsection (1), by deleting “either” and substituting “other”;

(ii) by deleting subsection (2) and substituting -

“(2) The Commissioner shall calculate the taxable value of a motor vehicle as follows -

(a) for a new motor vehicle (other than a locally assembled vehicle), where there is a published retail price, the taxable value shall be the aggregate of -

(i) the published retail price of the motor vehicle including any manufacturer’s warranty;

(ii) the published retail price of any optional accessories fitted or to be fitted to the vehicle within 3 months after first registration; and

(iii) where the value of exempted accessories exceeds the maximum exempted value that the Commissioner sets by regulation, the excess value of the accessories;

(b) for a new motor vehicle which is a locally assembled vehicle, the taxable value shall be the aggregate of -

- (i) the published retail price of the chassis or cab and chassis, including any manufacturer's warranty;
- (ii) the published retail price of any optional accessories fitted or to be fitted to the vehicle within 3 months after first registration;
- (iii) where the value of exempted accessories exceeds the maximum exempted value that the Commissioner sets by regulation, the excess value of the accessories; and
- (iv) the value of the specified additions to the chassis or cab and chassis as the Commissioner sets by regulation,

except where it is shown to the satisfaction of the Commissioner that the additions to the motor vehicle were previously taxed and that the prescribed conditions for the transfer of additions are complied with, the value of the additions shall be excluded for the purpose of calculating the taxable value of the motor vehicle;

- (c) for a new motor vehicle imported into Hong Kong, where there is no published retail price, the taxable value shall be -

- (i) the declared value under section 4B less any deduction for the value, as determined by the Commissioner, of the exempted accessories; or

- (ii) where the Commissioner is not satisfied that the declared value under section 4B reflects the market value of the motor vehicle, including the incidental freight and insurance, such other value as the Commissioner may determine having regard to the age of the motor vehicle, the retail price in the place of origin of the motor vehicle, including the cost of all materials and work necessary to put the vehicle into the state necessary to meet first registration requirements less any deduction for the value, as determined by the Commissioner, of exempted accessories;

- (d) for a motor vehicle which has been legally used on a road in Hong Kong other than by the manufacturer or by an importer, distributor or retailer or under a movement permit prior to first registration, being a vehicle which has become liable to first registration tax for the first time or additional first registration tax -

-
- (i) the taxable value calculated under paragraph (a), (b) or (c), as the case may be, less depreciation at the prescribed rate, for the period from the date when the motor vehicle ceased to be a new motor vehicle until the date on which the motor vehicle became liable to first registration tax or additional first registration tax, excluding a part of a month of less than 15 days but counting a part of a month of 15 days or more as a whole month; or
 - (ii) where the taxable value cannot be ascertained under paragraph (a), (b) or (c), such other value as the Commissioner may determine as the market value of the motor vehicle less any deduction for the value, as determined by the Commissioner, of the exempted accessories.”;
 - (iii) by deleting subsection (3).
- (k) in the proposed section 4D -
- (i) in subsection (1)(a), by adding “or registered importer” after “distributor”;
 - (ii) in subsection (1)(b), by adding before “the person” -

“where the motor vehicle is imported other than by a registered importer,”.

(iii) in subsection (3) -

(A) by deleting “transferor” and substituting “transferee”;

(b) by deleting “section 4C(2)(c)” and substituting “section 4C(2)(d)”;

(iv) by deleting subsection (4) and substituting -

“(4) If -

(a) the class of a motor vehicle is changed by reason of a change of use;

(b) the status of the registered owner of a motor vehicle is changed to remove an exemption; or

(c) the class of additions to the chassis or cab and chassis of a locally assembled vehicle is changed,

the registered owner of the motor vehicle, as from the date on which the change of class or status takes place, is liable to pay and shall immediately pay first registration tax calculated under section 4C(2)(d) less any first registration tax previously paid.”;

(v) in the proposed subsection (5) -

(A) by adding”, (ba), (bb)” after “(b)”;

(B) by deleting “event.” and substituting “event.”.”.

(l) by adding before the proposed section 4E -

“(4) The following are added -”.

(m) in the proposed section 4E, in the heading, by deleting “4E.” and substituting ““4E.”.

(n) in the proposed section 4F -

(i) in subsection (1), by deleting “suspects” and substituting “has reason to believe”;

- (ii) in subsections (1)(d) and (2)(c), by deleting “suspected of having” and substituting “believed to have”;
 - (iii) in subsection (3), by deleting “for suspecting” and substituting “to believe”;
 - (iv) in subsection (3)(b), by deleting “which is likely to be removed from the premises or destroyed”;
 - (v) in subsection (3)(c) and (iii), by deleting “suspected of having” and substituting “believed to have”;
 - (vi) in subsection (4)(b), by deleting “Ordinance.” and substituting “Ordinance.”.
- (o) by adding before the proposed section 4G -
- “(5) The following are added -”.
- (p) in the proposed section 4G, in the heading, by deleting “4G.” and substituting ““4G.”.
- (q) in the proposed section 4G(1) -
- (i) by adding -

“(ba)being a registered owner of a locally assembled vehicle, fails to pay, immediately on change of additions to the chassis or cab and chassis, additional first registration tax payable;
 - (bb) being a registered owner to whom section 4D(4) (b) applies, fails immediately to pay any first registration tax for which he is liable;”;
- (ii) in paragraph (c) -
- (A) by adding”, registered owner” after “distributor”;
 - (B) by adding “required within the time” after “particulars”;
 - (C) by adding “or (2)” after “section 4B(1)”;
- (iii) by deleting paragraph (d) and substituting -

“(d) sells a new motor vehicle (other than a locally assembled vehicle) at a price higher than the amount permitted under section 4A(3) without first obtaining the consent of the Commissioner;

(da) sells a new locally assembled vehicle at a price higher than the amount permitted under section 4A(3A) without first obtaining the consent of the Commissioner;”;

(iv) by deleting paragraph (e) and substituting -

“(e) sells a motor vehicle which is not a new motor vehicle or a locally assembled vehicle at a price higher than the amount permitted under section 4A(4) without first obtaining the consent of the Commissioner;

(ea) sells a locally assembled vehicle (which is not a new motor vehicle) at a price higher than the amount permitted under section 4A(4A) without first obtaining the consent of the Commissioner;”;

(v) in paragraph (f) -

(A) by deleting “section 4(1)” and substituting “section 3B(1)”;

(B) by adding “and not less than 5 working days before delivering that motor vehicle” after “Hong Kong”;

(vi) in paragraph (g), by deleting “section 4(1)” and substituting “section 3B(1)”;

(vii) in paragraph (h) -

(A) by deleting “section 3(1)” and substituting “section 3A(1)”;

(B) by deleting “section 3(3)” and substituting “section 3A(3)”;

(viii) in paragraph (i) -

(A) by deleting “section 3(2)” and substituting “section 3A(2)”;

(B) by deleting “section 3(4)” and substituting “section 3A(4)”;

(ix) by adding -

“(ja)being a registered distributor, fails to publish in writing a retail price as required under section 4A(1A);”.

(r) in the proposed section 4H(a) and (b), by deleting “annual”.

(s) by adding -

“4I. Official secrecy

(1) A person who is employed in carrying out or assisting persons in carrying out the provisions of this Ordinance -

(a) shall preserve secrecy in all matters relating to the affairs of a person that may come to his knowledge in the performance of a duty under this Ordinance; and

(b) shall not communicate any matter relating to the affairs of a person that may come to his knowledge in the performance of a duty under this Ordinance, other than in the performance of a duty under this Ordinance.

(2) The Commissioner or an authorized person is not required -

(a) to produce a return, document or assessment; or

(b) to divulge information coming to his notice in the performance of his duties under this Ordinance,

to a court or in proceedings before a magistrate or other tribunal except as may be necessary to carry out the provisions of this Ordinance.

(3) The Commissioner may disclose information, returns, documents and assessments -

- (a) to the Financial Secretary;
- (b) relevant to a prosecution or other legal proceedings taken in relation to activities of a person in making a declaration, filing a return or obtaining an assessment under this Ordinance, to the Attorney General;
- (c) to the Director of Audit or an officer of his department authorized to have access under this section as is necessary for the Director to carry out his official duties.

(4) Nothing in this section shall prevent the Commissioner from making public a published retail price under section 4A(7).

(5) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$50,000.”.

Clause 4

The proposed Schedule is amended -

- (a) in item 1, by deleting “published retail price” wherever it appears and substituting “taxable value”;
- (b) in item 8(b), by deleting “published retail price” wherever it appears and substituting “taxable value”.

Question on the amendments proposed, put and agreed to.

Question on clauses 2 to 4, as amended, proposed, put and agreed to.

New clause 3A Tax not payable in respect of
certain motor vehicles

New clause 3B Refund of tax in certain cases

New clause 6 Transitional

New clause 7 Transitional

New clause 8 Transitional arrangement for
publishing retail price

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

SECRETARY FOR THE TREASURY: Mr Chairman, I move that the new clauses 3A, 3B, 6, 7 and 8 as set out in my name in the paper circulated to Members be read the Second time.

The new clause 3A seeks to achieve two objectives. First, it empowers the Governor to remit, in whole or in part, FRT payable where he considers fit. Second, it enhances the FRT exemption for disabled drivers. At present, disabled drivers are exempt from FRT in respect of private cars with a CIF value not exceeding \$60,000, as well as motor cycles and motor tricycles of any value. Under the new system, FRT is calculated on the published retail price of a motor vehicle according to a new schedule of rates. In order to preserve the current tax concession, the Bill originally proposed to grant FRT exemption to disabled drivers in respect of a private car with a net of tax published retail price not exceeding \$200,000.

On the Bills Committee's suggestion, we propose to be more generous — a disabled driver will enjoy FRT exemption on the first \$300,000 of the taxable value of a private car for which he applies for first registration. Any amount in excess of this figure will be subject to FRT at the rate applicable to the full taxable value of the vehicle. This will effectively remove all the restrictions on the choice of vehicles for disabled motorists.

The new clause 3B enables the Governor to refund, in whole or in part, FRT paid if there is merit in doing so. Similar provisions appear in other tax legislation.

Finally, I turn to the transitional provisions. Proposed clauses 6 and 7 cater for cars sold before 1 July 1994, or the first-stage implementation of the Bill, but registered after the new system comes into full operation on 1 August 1994. There is no legal requirement for the distributor to publish a retail price when he offers such vehicles for sale. Thus, when the vehicle is submitted for first registration on or after 1 August, there will be no ready mechanism for calculating its taxable value. The transitional arrangements seek to close this lacuna.

Clause 6 reflects the outcome of our discussion with the Motor Traders Association and the Bills Committee. We envisage that as soon as the new system comes into operation, distributors will publish the retail prices of the models which they offer for sale. In the great majority of cases, it will be possible to identify a published retail price for a model which is either identical or similar to the one sold before 1 July 1994. To avoid the need to devise some

unduly cumbersome procedures, both the motor traders and ourselves agree that we can rely on the available published retail prices to calculate the FRT on those vehicles sold now but registered after 1 August 1994.

Clause 7 covers those vehicles for which the Commissioner for Transport cannot identify a suitable published retail price for the purpose of assessing FRT. In these cases, the distributors and the purchasers will have to declare the tax-inclusive price for the motor vehicle and details of any exempted accessories agreed to be fitted to the vehicle. The Commissioner will also ask the distributor to declare the CIF value of the vehicle so that he can calculate the FRT payable under the old system. The FRT thus calculated, together with the deemed values of exempted accessories fitted to the vehicle, will be deducted from the declared tax-inclusive price to arrive at a taxable value on which the Commissioner will assess FRT in accordance with the new system.

For clauses 6 and 7 to apply, the distributor will have to satisfy the Commissioner for Transport that the contract is made before the first-stage implementation of the new system on 1 July and that it is concluded in good faith. Furthermore, the distributor will have to deposit the relevant papers with the Commissioner before 1 August when the new system comes into full operation. These requirements seek to guard against possible abuses by distributors and purchasers through back-dating the contracts or making false contracts for the purpose of avoiding FRT.

The new clause 8 seeks to cover cases which cannot be dealt with by clauses 6 and 7, for example, where the distributors fail to lodge the relevant papers with the Commissioner for Transport before 1 August. We consider it reasonable to require the distributors in these circumstances to produce retail prices in respect of these vehicles in accordance with section 4A of the Bill. The Commissioner will then calculate the taxable value and the FRT payable in accordance with the new arrangements.

Mr Chairman, I beg to move.

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

Clauses read the Second time.

SECRETARY FOR THE TREASURY: Mr Chairman, I move that new clauses 3A, 3B, 6 to 8 be added to the Bill.

*Proposed additions***New clause 3A and 3B**

That the Bill be amended, by adding —

“3A. Tax not payable in respect of certain motor vehicles

(1) Section 5 is amended -

(a) by repealing subsection (2);

(b) by adding -

“(5) The Governor may remit in whole or in part first registration tax payable.

(6) A disabled person is not liable to pay first registration tax on the first \$300,000 of the taxable value of a motor vehicle for which the disabled person is applying for first registration.

(7) If a disabled person claims the exemption under subsection (6) and the taxable value of the vehicle is in excess of \$300,000, the Commissioner shall assess first registration tax on the balance of the taxable amount at the rate applicable to the full taxable value without the exemption deducted.

(8) A disabled person is not entitled to register a motor vehicle subject to the exemption under this section if he has registered a motor vehicle subject to the exemption or without payment of tax within the previous 5 years unless the Commissioner, in his absolute discretion, is satisfied that there are special circumstances.”.

3B. Refund of tax in certain cases

Section 6 is amended by adding -

“(3) The Governor may refund in whole or in part first registration tax paid.”.

New clauses 6, 7 and 8

That the Bill be amended, by adding —

“6. Transitional

Where a distributor, before the registration of a vehicle to which section 7 of this Ordinance would otherwise apply, publishes in accordance with section 4A(1) of the Motor Vehicles (First Registration Tax) Ordinance (Cap. 330), in the case of -

- (a) a motor vehicle other than a locally assembled vehicle, a retail price list for the same or a comparable make and model as the vehicle being registered; or
- (b) a locally assembled vehicle, a retail price list for the same or a comparable make and model of the chassis or cab and chassis as the vehicle being registered,

the Motor Vehicles (First Registration Tax) Ordinance (Cap. 330) applies to the payment of first registration tax and section 7 of this Ordinance does not apply.

7. Transitional

- (1) Subject to section 6 of this Ordinance, where -
 - (a) before section 4A(1) of the Motor Vehicles (First Registration Tax) Ordinance (Cap. 330) comes into operation a distributor sold a new motor vehicle for delivery of the motor vehicle at a time in the future by agreement in writing with a non-refundable deposit paid;
 - (b) the distributor satisfies the Commissioner that the agreement was made in good faith;
 - (c) the distributor deposits with the Commissioner a copy of the agreement, a signed statement by the purchaser

confirming that the agreement complies with this subsection and such other evidence as the Commissioner may require to verify that the agreement was made in good faith;

- (d) the distributor deposits the papers referred to in paragraph (c) with the Commissioner before section 4D of that Ordinance comes into operation,

the taxable value shall, where the vehicle is registered after section 4D of that Ordinance comes into operation, be calculated in accordance with this section.

(2) The distributor and the purchaser of the motor vehicle shall each sign a declaration, in the form approved by the Commissioner, stating -

- (a) the date and place of the purchase of the motor vehicle;
- (b) the price agreed to be paid for the motor vehicle including the price paid for the manufacturer's warranty, the value of accessories fitted or agreed to be fitted to the motor vehicle within 3 months of the date of first registration and the cost of all materials and work necessary to put the motor vehicle into the state necessary to meet first registration requirements;
- (c) the exempted accessories fitted to the motor vehicle.

(3) The distributor shall sign a declaration in the form approved by the Commissioner stating -

- (a) the landed value of the motor vehicle; and
- (b) for a locally assembled vehicle, the landed value of the chassis, cab and chassis and the value of the additions fitted to the vehicle on first registration.

(4) The taxable value of a motor vehicle to which this section applies is calculated under the following formula -

$$t.v. = d.p. - (v.e.a. + f.r.t. + w.a.v.)$$

where -

“t.v.” means the taxable value;

“d.p.” means the price declared under subsection (2)(b);

“v.e.a.” means the approved value of exempted accessories that the Commissioner is satisfied are fitted to the motor vehicle assessed as

-

(a) for air-conditioners \$13,000;

(b) for anti-theft devices \$4,000;

(c) for audio equipment \$4,000;

“f.r.t” means the amount that would have represented the first registration tax calculated under the Motor Vehicles (First Registration Tax) Ordinance (Cap. 330) before the commencement of section 3A(1) of that Ordinance on the value declared as the value of the motor vehicle under subsection (3) (a) or (b);

“w.a.v.” means the approved value of an additional warranty other than a manufacturer’s warranty included in the price assessed as \$5,000.

(5) If the Commissioner is not satisfied that the value declared under subsection (2) (b) or (3) reflects the market value of the taxable elements of the motor vehicle, the taxable value shall be the value as the Commissioner may determine.

(6) Before the Commissioner first registers a motor vehicle to which this section applies, the registered distributor or the registerer importer who is selling the motor vehicle shall pay the first registration tax calculated on the taxable value by the Commissioner under this section.

(7) For the purposes of subsection (4) -

“anti-theft device” means a device permanently fitted to a motor vehicle and of which the Commissioner is satisfied is designed to deter people from taking the motor vehicle without lawful authority.

(8) A person who -

(a) makes a statement; or

(b) supplies false or misleading information,

with the intent to deceive the Commissioner under this section commits an offence and is liable on summary conviction to imprisonment for 2 years and a fine of \$500,000.

8. Transitional arrangement for publishing retail price

(1) A distributor shall publish in accordance with section 4A(1) of the Motor Vehicles (First Registration Tax) Ordinance (Cap. 330) a retail price for a motor vehicle -

- (a) to which sections 6 and 7 do not apply;
- (b) sold before he is registered as a distributor; and
- (c) presented for first registration after section 4D of the Motor Vehicles (First Registration Tax) Ordinance (Cap. 330) comes into operation.

(2) First registration tax is payable on a motor vehicle that has its retail price published under subsection (1) in accordance with the Motor Vehicles (First Registration Tax) Ordinance (Cap. 330).”.

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

Council then resumed.

Third Reading of Bills

THE ATTORNEY GENERAL reported that the

COMMISSIONER FOR ADMINISTRATIVE COMPLAINTS (AMENDMENT) BILL 1993

ENVIRONMENT AND CONSERVATION FUND BILL and

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

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

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

Bills read the Third time and passed.

MEMBERS' MOTIONS

PRESIDENT: I have accepted the recommendations of the House Committee as to time limits on speeches for the motion debates this afternoon and Members were informed by circular on 7 June. The movers of the motions will have 15 minutes for their speeches including their replies and another five minutes to reply to proposed amendments. Other Members, including the 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.

TOWN PLANNING FOR NEW TOWNS

DR TANG SIU-TONG moved the following motion:

“That in anticipation of a significant increase in Government’s allocation of land for residential development in new towns to alleviate the pressure of housing demands and to suppress spiralling property prices, this Council urges the Government to work out and to implement all-embracing town planning programmes when developing the districts concerned, so as to avoid the recurrence of problems arising from previous mistakes in the planning of external transport links, community facilities, job opportunities and other essential facilities.”

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

Today’s motion is entirely about livelihood. Earlier, to increase the supply of housing, the Government decided to approve additional land grants in the new towns. To the north of Tin Shui Wai, 200 hectares from the land reserve will be made available for development. This is a decision that the Government made in all good intention albeit with some cost to itself. But those now living in the new towns are horrified at the news. They have suffered enough from past planning mistakes, which, in the form of lack of co-ordination, have led to chaotic conditions in external transport links, to the inadequacy of community facilities and to difficulties in the employment and other livelihood areas. Nor is the infrastructure in the new towns being built fast enough to cope with the massive influx of people.

Then, for no known reason, the Government has failed to learn a lesson from its past mistakes. The same mistakes have been made again and again in the development of the new towns. As a result, the same kinds of community problems have appeared in one new town after another. The Government cannot escape blame for this. What I want to note is that the Government has made countless planning mistakes in the development of new towns over the past 20 years.

First of all, let us look at the transport problem. Everybody already has had his earful about the congested state of Tuen Mun Highway and Castle Peak Road. The traffic snarl in Kwai Chung a few days ago caused widespread complaints. Tin Shui Wai's external transport links are woefully inadequate. Not even a remote date has been set for the construction of the Northwest New Territories Railway. The 700 000 people living in western New Territories are dejected. Last week, at a press conference on measures for curbing runaway property prices, the Secretary for Planning, Environment and Lands displayed a proposed plan on local transport trunk lines in areas or districts where major housing developments are to take place. Route 3, the Northwest New Territories Railway, MTR's Tseung Kwan O extension and Route 16, which links Ma On Shan to Tai Wai and to the urban areas, were all marked on the plan. Regrettably, there is no clue as to when and how all these projects will proceed except in the case of Route 3. I believe that if the Government does not carry out all of the projects, then Tin Shui Wai, Ma On Shan and Tseung Kwan O will face traffic congestion problems similar to that now faced by Tuen Mun. There was already an occasion on which people living in Tsing Yi had to walk to Kwai Chung on foot. There is hardly any guarantee that the same will not happen to all of the three new towns.

Let us now look at the environmental problem. Tsuen Wan and Kwai Chung are our oldest new towns. In their case, the most obvious planning mistake was mixed residential and industrial development. Factory buildings and residential buildings are just one street apart. Residents are exposed to noise and exhaust gas all year long. In August last year, the Environmental Protection Department found in an air pollution test that there were 350 micrograms of suspended particulates per cu m of air in Kwai Chung, which was 23% higher than the acceptable maximum. It is thus evident the serious degree of air pollution in Kwai Chung.

Secondly, dangerous goods warehouses and places of offensive trades should be far away from residential areas. But 180 000 people living on Tsing Yi Island are close neighbours with oil depots. They live in suspense and the mental stress on them is enormous.

Instead of learning a lesson from past mistakes, the Government is actually planning to set up Hong Kong's largest dangerous goods warehouse at Area 137 in Tseung Kwan O. This is really a big threat to the people of Siu Sai Wan only 1.5 km away and to the industrial and residential areas within a 3.5-km radius.

A park in Kwai Tsing Road in Kwai Chung is surrounded by a crematorium, an incinerator, a container yard and factories. Nobody will visit this park when it is completed.

The cement plant next to Tsui Yee Garden on Tsing Yi Island, the container yard in Area 16 in Tuen Mun, the refuse transit station at Ho Ping San

Chuen in Hung Shui Kiu and the central incinerator in Area 38 in Tuen Mun are all there thanks to planning mistakes.

Let us look now at health care services. As everybody knows, the ideal situation is 5.5 hospital beds per thousand population. The Government has not yet attained this ideal. According to the Hong Kong Annual Report, Hong Kong had 27 038 hospital beds in 1993. That averaged out to be about 4.6 hospital beds per thousand population. But what about the new towns? In 1993, the new towns had 9 442 hospital beds. That averaged out to be 3.6 hospital beds per thousand population. This is 21.7% below the territorial average.

Another fact that needs to be noted is the absence of hospitals in some local communities. The Haven of Hope Hospital in Sai Kung and the Fan Ling Hospital in Fan Ling are hospitals in name only. They are not acute hospitals for practical purposes. The people of Sai Kung and Fan Ling have to rely on the support of hospitals elsewhere. Moving a patient from one area to a hospital in another area is feasible if the patient is not seriously ill and if there is no traffic problem *en route*. Otherwise, he may die during transit. Some years ago, we had a case where Pok Oi Hospital could not save a traffic accident victim because his arrival was delayed by traffic jams on Tuen Mun Highway. That was a very tragic case.

The people of Tsing Yi, Tseung Kwan O and Ma On Shan have made a strong bid for local hospitals. Regrettably, the Government has responded with great indifference. It has taken us 10 years to fight for Nethersole Hospital in Tai Po and for a Northern Hospital. Only now are these hospitals taking shape. If this experience is any guide, it appears that the demands of the people of Tsing Yi, Tseung Kwan O and Ma On Shan will not be met before the end of this century.

The Government never owns up to planning mistakes. When beginning the development of new towns, it did not accurately assess the need for health care facilities there. Nor has it acted since to provide enough health care facilities in the new towns. This is unfair to the inhabitants of the new towns.

As to school places, there was a shortage of them in Tuen Mun several years ago, when schools had to use containers for classrooms. I believe that this is still fresh in Members' memory. Yet the Government has not learnt a lesson. History is being repeated in other local communities. The latest case in point is the estimated shortage of 800 Secondary One school places in the coming school year in Tai Po and North District. Many students living in these local communities have to go to school in far-away places. I hope that such things will never happen again to any new town.

Mr President, the Government began the development of new towns in the 1970s. Now, the combined population of the eight new towns has reached 2.6 million, accounting for 43% of the total population of Hong Kong. During the 20-year course of development of the new towns, the Government did not do

any proper planning or carry out any policy laid down during the planning process. As a result, the inadequacy of transport services and community facilities has become a problem common to all of the new towns.

In moving my motion, my purpose is to express the hope that the Government will learn a lesson from experience and make better and fuller preparations when new towns are developed in the coming years. It should pay special attention to the infrastructure and to transport services. When a policy is laid down, it must be carried out.

Hong Kong's town planning is based on population distribution. New towns are generally located near the border and far away from the urban areas. The usual planning standards may not be appropriate to their peculiar circumstances. So there must be flexibility in the application of these standards. In addition, consideration should be given to the new towns' geographical conditions and their need for external transport links. Adequate community facilities must also be provided and livelihood needs must be satisfied. A new town is demographically different from a developed area in terms of the population age profile. Therefore, the development of a new town should proceed even-handedly to cater for all age groups and for their different circumstances. Consideration should also be given to the time factor to ensure that the completion of facilities is timed to cope with population growth.

The Government has ample resources. One hears that agreement is near on the new airport financial package. In its own estimate, the Government will probably have a reserve of over \$100 billion in 1997. The Government does have the financial resources to satisfy the livelihood needs of the people.

In moving my motion, my second purpose is to express the hope that Members will talk freely about the difficulties now being experienced by those living in the new towns. I expect the Government to adopt a serious approach, collate and analyze our suggestions and carry out practical improvement plans which will prevent past mistakes from being made again.

Before moving my motion, I contacted over 200 members of the nine district boards of the New Territories. Their districts have been the most affected by new town development. Their response was very enthusiastic. Here I thank them. I also expect the Government to act expeditiously to carry out practical improvement plans. These district board members made many valuable suggestions when they were consulted by the Planning Department.

But they noted that none of their suggestions was carried out. They were very disappointed.

Mr President, with these remarks, I move the motion. I will speak later in response to the rival motions.

Question on the motion proposed.

PRESIDENT: Miss Christine LOH and Mr WONG Wai-yin have given notice to move amendments to this motion. As Members were informed by circular on 9 June, under Standing Order 25(4) I shall ask Miss Christine LOH to speak first, to be followed by Mr WONG Wai-yin; but no amendments are to be moved at this stage. Members may then express their views on the main motion as well as on each of the two amendments listed in the Order Paper.

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

MISS CHRISTINE LOH: Madam Deputy, Dr TANG's motion rightly highlights the need for good planning in the development of new towns. Like the rest of us, he does not want resources to be wasted because of poor location, design and co-ordination. I am seeking to amend Dr TANG's motion not because I disagree with his sentiments, but I want to try and clarify his motion. It is too simplistic, I believe, to just call for "perfect town planning".

How is Hong Kong going to get better town planning? We are not going to get it if nothing changes. That much is obvious. Dr TANG's motion assumes that the existing planning process is capable of self-correction. I do not believe that sort of miracle is possible without an awful lot of effort. Hong Kong is only going to get better planning if the entire planning process is overhauled. Let me try to explain why.

The planning process of new towns is a closed and secretive process where there is hardly any public consultation and political accountability. The siting and development of new towns is decided by a handful of government planners with no statutory control guiding the process. New towns are developed based primarily on their perceived priorities and value judgement.

This has resulted in planning mistakes. Dr TANG provided a long catalogue of them.

Since there is no statutory obligation to consult the public about the location and design of new towns, the public is both excluded from commenting on the priorities of development, and denied access to planning information and decision-making. There is also no independent body to review the Government's decisions and consider public objections.

The Government sees nothing wrong with this. This is the way things have always been. The Government's review of the Town Planning Ordinance sought to justify the lack of accountability by stating that planning is and I quote "currently an entirely administrative process Territorial and sub-regional plans may raise issues of widespread public interest, but they do not confer or restrict development rights. Thus there is no need to bring them within a statutory framework".

Madam Deputy, you see why I do not believe the system will self-correct. If new towns are going to meet the needs of the community for better housing, better access to various facilities and a better living environment, then it is reasonable that the public should be invited to identify issues of concern even at the early stages of drawing-up plans. This is the only way for the planning process to be improved.

And, it is for this very reason that the British and American planning processes institutionalized public consultation and open hearings to gather community concerns even before development plans are drawn up. Their laws also provide access to planning information so that interested parties can participate knowledgeably in the consultation process.

I believe Hong Kong must also institutionalize public participation in its planning process. Some people may question whether this is appropriate for the development of new towns. They may say that this is more appropriate for urban redevelopment. But this is where I think they are wrong. They assume no one wants to comment on issues which may not directly and immediately concern them. This may be the case in decades past, but this is not the Hong Kong of today. For starters, environmental groups will be interested to comment on development, as will community groups concerned with the provision of education, recreation, medical, transport and other facilities. Their views are going to be useful to the Government.

If we are going to institutionalize public consultation in the planning process, adequate funding will need to be allocated. I have asked a number of government planners whether they would welcome this suggestion. Their answer was a resounding yes but they pointed out that, right now, there are no resources allocated for doing so. It is for this reason that I support the Honourable WONG Wai-yin's amendment.

If the Government continues to insist that planning must remain "an entirely administrative process" then it will not be very enthusiastic about involving the public, or to allocate resources for doing so. Perhaps some officials might even think public consultation will get into the way of an effective and efficient executive-led government. If anyone should harbour this sort of view, I suggest that they also try to see the benefits of involving the public.

Government planners are likely to better identify concerns with the help of the public so that problems can be corrected at the early stages of planning. The public might even offer some good practical ideas. I ask that our administrative officers give serious thought to what is meant by an executive-led government. It certainly cannot mean domination by the executive. I remind them that it is in the name of the public which they carry out their responsibilities, and it is in the name of the public again which they serve.

MR WONG WAI-YIN (in Cantonese): Madam Deputy, today's motion was originally to be moved in this Council on 25 May. At the time, Dr TANG Siu-tong's motion did not contain the words "and to implement". These words were not added until later. Before that, I had been prepared to move an amendment. However, Dr TANG then had a sore eye and withdrew his motion. That same day, Dr TANG went to far-away Beijing to see "Dr" JIANG Zemin. When he came back, his sore eye had healed. So he is moving his motion today, and with the words "and to implement" added. In my opinion, the addition of these words is helpful to his otherwise vacuous motion. Yet, after the Meeting Point has discussed the matter with the United Democrats of Hong Kong, we still find the motion vacuous. So I am still moving my amendment today.

The Government has been criticized before by many Members on many different occasions for its mistakes in the planning of the new towns. When planning the new towns, the Government put a special emphasis on "self-sufficiency". The idea was that, after a person moved to live in a new town, he would work or go to school there. Regrettably, as Dr TANG noted just now, external transport links and school places have totally failed to meet the needs of the inhabitants of the new towns after development was complete. They have totally failed to meet the needs of the growing population of the new towns. As a result, many people and school children still have to be transported to and from the new towns. Transport services have become even more inadequate as road congestion has worsened.

Therefore, the amendment that I am moving will address the key problems in the past planning for the new towns. My amendment consists of three parts.

(1) I urge the Government to work out all-embracing town planning programmes and to allocate sufficient resources before the completion of each stage of development (it does not matter how many stages there may be) of these new towns. The word "before" is very important. Though Dr TANG has added the words "and to implement" to his motion, these words are susceptible to a wide range of different interpretations. When should implementation take place? A year from now? 10 years? Timing may make a difference where the development of new towns is concerned.

Dr TANG said that facilities in the new towns did not meet the communities' needs. I totally agree. In the new towns, transport services, school places, health care services and social welfare services are all inadequate compared with the needs of the growing population. So the first point of my amendment is that the Government should work out these programmes and allocate the resources before the completion of the development of the new towns. This is better than to work out additional programmes when they are judged to be necessary in the course of development. After an additional programme is judged to be necessary and worked out, it may take several more years before the additional resources are allocated. Meanwhile, those living in

the new towns will continue to suffer, for perhaps up to 10 years. We feel that this is unfair.

(2) The Government should allocate sufficient resources. This is very important. No matter how good a new town development plan may be (for instance, the new airport plan, the “rose garden” plan and the Metroplan), if the resources are not allocated to enable it to be carried out step by step, there will not be sufficient support facilities or services for the new towns. This, too, will be unfair to those who are going to live in these new towns.

Route 3 is a case in a point. This project was first put on the drawing board in 1976. In 1989, it was said that the project would be undertaken. But to this day we have not seen a project commencement date. Clearly, this is due to insufficient resources. Another case in point is MTR’s Tseung Kwan O extension project. This project ought to be undertaken right now. But it will not be until Tseung Kwan O’s population reaches the 250 000 mark that the project will proceed. We can already anticipate that this mark will be reached in a few years from now. Why do we not undertake the project now so that it may be ready when more people move into Tseung Kwan O and boost its population to 250 000? Therefore, in our opinion, sufficient resources are very important. The Government now caps its annual spending increase on works projects at 5%, which is the annual economic growth rate. In our opinion, this cap is hindering many works projects.

(3) Deficiencies in planning and co-ordination. I have with me here a stack of documents. They are about slippage in works projects during the past years. Here are some figures. In the years 1991-92 and 1992-93, the Secretary for Works, in answering questions from Miss Emily LAU and Mr Albert CHAN respectively about slippage in works projects, disclosed that slippage occurred in 76 out of the 164 projects in 1991-92 and in 64 out of the 192 projects in 1992-93. Many of the slippages related to new town projects. The Secretary for Works has now established a works progress committee to check progress in works. But, in our opinion, the reason why works projects have not been completed on schedule is inadequate planning and co-ordination, which is my third point.

Madam Deputy, finally, I would like to clarify one point. This morning, some newspapers reported that Dr TANG and I are opposed to each other’s motions. These reports are incorrect. I feel that Dr TANG’s motion will be too vacuous if Miss Christine LOH’s amendment and mine are rejected. Still, in such an event, the Meeting Point and UDHK will support Dr TANG’s motion. I hope that, for his part, Dr TANG will support my amendment, which will make his motion more meaningful in practical terms. Dr TANG says that I am playing a words game. But he should realize that wording is important. I hope that Dr TANG will not oppose my amendment. He should stop thinking in terms of challenging two major parties. He should stop thinking that any motion of his, if adopted, will mean scoring marks. That kind of mentality is no good.

MR EDWARD HO (in Cantonese): Madam Deputy, the fact that the subject of town planning has been debated so many times in this Council, particularly about which in the New Territories, is an indication of the growing importance of that part of the territory in meeting the needs of Hong Kong's future growth. The pace of our economic growth and hence our urbanization in the last few decades has been staggering, but even more so over the last 10 years due in no small part to the economic growth of southern China. It is a fact so well known that I do not intend to expand further. Today, I am going to comment on six major areas in town planning.

(1) Rate of growth

Dr TANG has just given us an account of the various problems faced by the new towns today. Some of these problems (such as those occurring in Tsuen Wan, and Tsing Yi) are consequences of poor planning in the past. But the problems we experience in the new towns today have been a result of a mismatch of provision of the appropriate scale of infrastructure with the growth of the new towns. The rate of our economic growth and hence the consequential demands on our infrastructure have not been sufficiently appreciated by the Administration. It must also be recognized that whereas Hong Kong has completed a number of major infrastructure projects in the last few decades, they have always come at the last possible moment, when situations have become intolerable. This is usually explained away as prudent financial management by the Administration. But conversely, we may just as well interpret it as a lack of vision in planning.

(2) An insular place

The Administration has always regarded Hong Kong as an insular place in planning terms. Hong Kong's close relationship with China was only recognized and discussed for the first time in the consultative document Territorial Development Strategy Study, released at the end of last year.

(3) Economic changes

The economic changes of Hong Kong have essentially been a structural transformation of the economy. As we all know, much of Hong Kong's manufacturing industries have moved across the border to southern China or even further north. As a result, the number of factories is diminishing in the new towns. Housing estates have been erected on sites previously occupied by factories as it is much more lucrative to their owners. From an essentially manufacturing centre, Hong Kong has become more of a service-oriented entrepot. Most of the working population in the new towns are no longer blue-collar workers. People in the new towns have to travel long distance to the urban areas for work each day, spending longer and longer hours on the road where passenger vehicles compete for road surface with container trucks, hence the aggravating traffic jams.

(4) *Growing aspirations*

With the exception of Tsuen Wan and Kwun Tong, most of the new towns' population are very young. They have growing aspirations not only for a better living environment, but also for recreational, community and institutional facilities essential for an improved quality of life. Therefore, they often feel dissatisfied with the present inadequacy of facilities.

(5) *Planning for change*

In Hong Kong, as well as in other parts of the world, planning must take account of constant and rapid changes in the future. What started out as an excellent town plan could well be just another castle in the air were it not regularly upgraded to cater for change. It must have flexibility and sensitivity built in for upgrading to cope with changes.

(6) *Anticipating growth*

The ability to anticipate growth is the key to success in planning. This is exactly the responsibility of the Administration. All government departments are required to play their professional roles and to effect co-ordination among themselves. There must be a series of "triggering points" for the planning of individual items so that provision of amenities would fall in place at the right time to meet the demands.

Madam Deputy, I support Dr TANG's motion as well as the amendments to be moved by the Honourable Christine LOH and the Honourable WONG Wai-yin. They all urge the Administration to address with due importance the problems faced by the new towns presently, with a view to improving its town planning so as to avoid many an ideal town plan turning into just another war game on the board.

With these remarks, Madam Deputy, I support the motion and the amendments.

MR TIK CHI-YUEN (in Cantonese): Madam Deputy, I am an elected Member from Tai Po and New Territories North. We hope that in developing Tai Po and the North District, which will come under the description of "second generation" new towns, the Administration can take account of the problems faced by the "first generation" new towns (such as Tuen Mun) and make improvements in planning the new development. Unfortunately, how far has Tai Po and the North District been developed throughout the decade? The difficulties and problems which the "first generation" new towns encountered have repeated themselves in Tai Po and the North District. In planning the development of new towns, the Government has two objectives:

First, balanced development; and

Secondly, self-containment.

Unfortunately, from what we have seen in the new towns, the attempt to achieve these two objectives has turned out to be a total fiasco. This is so for two reasons:

First, in most cases when the Government initiated the development of new towns, there was population first and facilities came only afterwards. The growth of population and the provision of facilities in new towns failed to match up. Therefore, residents who first moved in were confronted by many problems arising from inadequate community facilities.

Secondly, the Government failed to work in line with the development objectives of new towns and many policies on the planning of community facilities also failed to work correspondingly. I would like to state specifically the reasons behind the Government's failure in the two aspects aforesaid by highlighting three areas, namely school places, family services and transport links.

First of all, the education problem. The past decade saw the emergence of the problem of inadequate primary and secondary places in Tai Po and the North District. We foresee that the problem will not necessarily be solved by 1997. In planning the allocation of primary school places, the Government will have regard to the territory-wide ratio of the right age group in considering the demand for such places in the new towns. In other words, if 10% of the population in Hong Kong requires primary school education, the Administration will perceive that 10% of the population in the new towns requires primary school places when planning the development of new towns. The Government fails to recognize the fact that more than half of the new town families are made up of young people so that the number of children of the right age group for primary education is relatively large when compared to that of the whole territory. Therefore, the problem of insufficient places has arisen from the Government's misplanning of the development of the respective new towns. In the event, the covered playground in school premises is being reconstructed to become additional classrooms. A school which runs 24 classes originally is to increase its number of classes to 30, with the number of students raised to 45 in each class. Desks and chairs have to be borrowed from classrooms nearby to conduct lessons for students. Apparently the Government has not taken into consideration the characteristics of new towns in formulating the plan concerned.

With regard to the problem of secondary places, we also find it fairly disturbing. In planning the allocation of secondary places in the new towns, the Government also calculates on the basis of the total number of places throughout the whole of Hong Kong. In other words, the Government's policy is that it would be alright as long as there are sufficient places for students throughout the territory. This policy is apparently contrary to the principle of self-containment in the new towns. We hope that students are able to secure a place

in their respective districts. However, the Government's explanation is that since there are excessive places in other districts, students can go to other schools because secondary places are calculated on a territory-wide basis. Eventually, while the Government's policy is originally intended to reduce the number of students per school, schools in Tai Po and the North District nevertheless have to increase the number of places. A school originally running six classes of Form I has to run 10 such classes in order to make up for the underprovision of places. This is indeed an absurd phenomenon.

Our initial estimation is that for the past decade, an average of 300 to 400 students yearly were required to attend schools located outside the district. We have also seen thousands of students who are wearied of commuting to their schools outside the district. As a result, students are unable to concentrate on their studies and their chances of participating in extra-curricular activities are lessened. Besides, parents are worried and the time they spend with their children becomes relatively less.

Secondly, the family services problem. Most of the families living in new towns are nuclear families, mainly with young parents. As a matter of fact, what these families need are preventive services and services that facilitate development of the family so that such families can grow in a healthy way. And this, in turn, will prevent problems from happening. Unfortunately, the existing family services merely focus on two extremes. One is of a remedial nature, which means that only when a family has problems will services for treatment and remedial purposes be provided. The other kind refers to some general activities that brighten up somewhat the otherwise humdrum regularities of life, such as getting together to have fun for a day. Be happy and that is it. At the moment, no preventive or developmental services are provided. Under such circumstances, we notice that many families in the new towns are faced with problems and difficulties. Figures pertaining to single-parent families and juvenile delinquency in the new towns are on the rise every year. This evidently shows that such kind of services are insufficient in the new towns.

Thirdly, external transport services. Every morning when we switch on the radio, traffic congestions at Lion Rock Tunnel, Tate's Cairn Tunnel and Tuen Mun Road are invariably being reported. These problems do not come up only this year. They have long existed for years and we do not see the possibility of such problems being solved in the next couple of years. Why do these problems arise? It is evident that the Government has not considered seriously the population growth while planning the development of new towns, thus leaving out the development of corresponding infrastructural facilities. It is only after problems have emerged that the Government begins working on the solution. But can the construction of roads become the solution in a year or two? We have to wait for a fairly long time before we can see the completion of the Route 3 project. That means in these few years, residents in Tuen Mun and the northwest New Territories still have to put up with the ordeal of traffic congestions.

Madam Deputy, apparently, wrong government policies and underprovision of resources have brought about the problems in the new towns causing many people to suffer. This is indeed unfortunate. But it is even more unfortunate that this problem seems to have recurred in other new towns. We foresee that serious problems in such aspects as school places, family services and external transport links are due to arise in Tseung Kwan O and Tin Shui Wai in the future.

THE PRESIDENT resumed the Chair.

MR LAU WONG-FAT (in Cantonese): Mr President, as far as I can remember, this Council has already debated on several occasions the development and town planning in the New Territories in the past few years. Members have shouted themselves hoarse in urging the Government to improve the physical infrastructures in new towns, particularly in respect of their external transport links.

The lack of any co-ordinated and comprehensive planning on the part of the Government can be traced back to the early stage of new town development. The crux of the problem lies in the fact that the Government was so eager for quick achievement that it actually put the cart before the horse, so to speak, in its new town development. A large bulk of population was moved to the new towns before a well thought-out planning was in place and some major infrastructural projects were completed. This has naturally given enormous troubles to the residents who have moved into the new towns. In fact, the Government's blunder in this respect has already subjected millions of the local residents to terrible ordeal and spawned many social problems. The residents, tormented throughout the years, still have not seen the end of the problems which are still very much with them. While the situation in some new towns has slightly been improved, the residents in some other new towns are still in dire misery.

“To learn from the overturned cart ahead” and “to mend the fold after a sheep is lost” are simple adages. Yet the Hong Kong Government, judging from its development of the new towns, is not an administration which is good at drawing lesson from past mistakes.

The residents in New Territories East and northeast New Territories, including new towns in areas like Sha Tin, Tai Po and Fanling, have long been victims of traffic gridlock. In the past, people dreaded taking the Lion Rock Tunnel because serious traffic jam was daily occurrence there. Indeed, it was not until the Tate's Cairn Tunnel was open to traffic some time ago could the situation be improved.

Mr President, in view of such blunders, it is clear that the Government has not learned from its past mistakes. People living in the rapidly developing New Territories West and northwest New Territories are in the same predicament. It looks very likely that the external transport links of Tuen Mun and Yuen Long will certainly be far worse off than those of other new towns developed in early days. In fact, the Tuen Mun Road has already reached saturation point. Meanwhile it will take at least several years for Route 3 to be completed and open to traffic. It is therefore envisaged that the local residents will be faced with worsening traffic problems in the coming years. Route 3, after all, is only going to ease the bumper to bumper traffic. The final solution lies in a mass transit railway system. Yet, when will such a plan come into a reality? When will such a system be commissioned?

The Government must take urgent actions to improve links between New Territories West and northwest New Territories because any delay will merely add to the agony of the local residents. For this reason, the Government should expeditiously decide on a timetable to launch the northwest railway project and reconsider the idea of building a rail link between Tuen Mun and Tsuen Wan.

In fact, there is a relatively adequate supply of residential premises in Tuen Mun and Yuen Long districts. People living in the urban areas are reluctant to move to these districts simply on account of the transport problems, resulting in a high vacancy rate of residential premises in those districts.

The Government now has plans to allocate substantial amount of land in the new towns for residential development so as to meet the public's housing demand and dampen the soaring property prices. The intention is good. Still, the Government must learn from its past mistakes and be careful in its new town planning. If it fails to do so, the Government will find it difficult to achieve its original aims and will merely frighten off more people who may otherwise consider moving into the new towns.

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

MR TAM YIU-CHUNG (in Cantonese): Mr President, with the continued growth in our growing population, it has been the Administration's policy ever since the 1970s to develop new towns. However, owing to the under-estimation of new town development, the lack of proper co-ordination between government departments in building these new towns, and the Administration's inability to satisfy the requirements of resources allocation arising from new town developments, problems in the areas of transport, social facilities, employment opportunities and so on have often occurred in these new towns, resulting in many justified complaints from the residents there. Now is the time for the Administration to conduct a review.

The problem of transport is believed to be the most serious problem to plague new town development. The Administration has very often under-estimated the new towns' demand for external transport services, considering that their internal development is enough to meet the residents' requirements in finding employment. But the fact turns out to be that most of the new town residents have to work in the urban areas, creating an enormous pressure on the transport system. And they often have to endure the inconvenience of traffic congestion on the way to their places of work. Let us take New Territories West as an example. Until the end of April this year, there was not one single bus route in the entire New Territories West that directly connected East Kowloon. Every day, many commuters in Tin Shui Wai and Yuen Long had to travel via the Tuen Mun Road to the Mass Transit Railway station in Tsuen Wan to take the MTR to Kwun Tong or Lam Tin. But owing to the very severe traffic congestion on the Tuen Mun Road, those who had to commute to Kowloon East had to spend a great deal of time on travelling.

The New Territories West branch of the Democratic Alliance for the Betterment of Hong Kong (DABHK) had conducted a survey in this regard, and found that many residents had to spend nearly two hours to commute to Kowloon East. If the authority concerned could operate some new bus routes that ran from Tin Shui Wai to Kowloon East via Yuen Long and the Tolo Highway, the situation would greatly improve. Despite the Administration's promise to consider operating such bus routes, it had been slow in taking concrete action. In this connection, the New Territories West branch of DABHK launched towards the end of April this year a signature campaign requesting the operating of direct bus routes to Kowloon East. In just a few days' time, more than 3 000 residents signed their support. Finally on 26 April this year, the Kowloon Motor Bus Company operated on a trial run basis a bus route that ran from Tin Shui Wai to Lam Tin via Tolo Highway. But what is ridiculous about this bus route is that it runs only once a day, and therefore the bus will already be full when it starts from the Tin Shui Wai station. Many residents simply cannot board it. Even if the bus travelled via Yuen Long, there would not be any space available for more passengers. DABHK has requested the district board concerned to review the situation, hoping that a satisfactory solution can soon be found.

There are also many problems concerning the external traffic of Tin Shui Wai and the planning of social facilities in that district. First, on its road network, the external traffic of the district of Tin Shui Wai depends mainly on Tin Yiu Road. Should that road be blocked because of any serious traffic accident or natural calamity, most of the external traffic of the district will be brought to a standstill.

Concerning social facilities, there is only one government clinic in the entire district of Tin Shui Wai. Besides, the clinic is not conveniently located and is only providing daytime services. If residents in the district need urgent medical attention during the night, they will have to go to Yuen Long or Tuen Mun.

The Administration's standards in new town planning are also in real need of review. It has often emphasized that the population of a district must reach a certain number before it will consider increasing some public facilities in that district. However, it is very often the case that the residents have to patiently wait for the completion of the construction work concerned, since the Administration will not start the construction of the facilities until the population already reaches a certain number. Should there be any hiccups in the Administration's allocation of resources, the construction work may even be further delayed. To take the example of Tseung Kwan O, the Administration has made it clear that it will not consider constructing an MTR extension to Tseung Kwai O until the population of that district exceeds 250 000, though the residents there have been voicing vigorously their demand for such an extension. Granted that the population of Tseung Kwan O really reaches, as the Administration forecasts, 200 000 in around the year 2000, before which construction work will not commence, it will probably take another few years before the extension can be completed. So the residents of Tseung Kwan O will still have to wait for many more years.

Again on the pretext of insufficient population, the Administration has refused to build a hospital in Tseung Kwan O, leaving the residents there no choice but to go to the United Christian Hospital in Kwun Tong for medical services. What connects Tseung Kwan O and Kwun Tong is the narrow Po Lam Road. So if someone needs to go to a hospital and the Po Lam Road is blocked due to a traffic accident happening there, medical treatment may be delayed. Therefore, I urge the Administration to expeditiously review its town planning criteria and be more forward-looking in formulating the schedule for the construction of public facilities.

Finally, I have to point out that although the Administration has conducted overall studies on different kinds of public policies, it has not paid enough attention to the needs of individual districts, especially the needs arising from the various particular situations of new towns. It should therefore consult the residents of new towns to understand their views and requirements concerning district development, conduct in-depth studies into the particular situations of individual districts, satisfy the needs of every district and refine the planning and construction processes for new towns.

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

MRS MIRIAM LAU (in Cantonese): Mr President, there have been several occasions on which issues of planning for new towns were debated in this Council. Nevertheless, Members still put forward this matter for debate today, which shows that Members have found the answers provided by the Administration on previous occasions not entirely satisfactory and that there is still a gap between what members of the public demand and what the Administration can actually do or is willing to do.

The ever increasing population of Hong Kong has created enormous pressure on the facilities and resources available in the urban areas. And since urban redevelopment is slow, developing suitable lands in the New Territories into new towns seems to be the most expeditious and effective way to reduce the urban population density. However, in order to ensure success for this strategy, such new towns have to have some attractions. Be it community facilities, recreational facilities, internal and external transport arrangements, job opportunities, education and other important facilities, there must be suitable co-ordination and integration to enable the new community to proceed with balanced development in these facilities to cater for the needs of the local population with its particular demographic profile.

The objective of the Administration is to have self-sufficient new towns so that residents are able to work there for the development of new towns without relying on urban resources. This has also been the Administration's objective in planning. However, the experience of quite a few new towns shows that the wishful thinking of the Administration failed to realize. The Administration's planning mistakes have brought on the sufferings of many new town residents; examples are: people have to travel a long way to work in the urban areas, schoolchildren are having cross-district schooling, transport facilities are being seriously underprovided, and traffic jams persist year after year. The Administration should of course take action to remedy the planning mistakes in the past. Such action should include expanding the road network and improving transport facilities. However, it is more important for the Administration to take reference from past examples when developing other new towns, in order not to make the same mistakes again. What the Administration should do with the existing new towns is to solve the problems in hand before seeking further development. It is not right to push ahead with development too hastily as doing so would only aggravate the situation.

I understand that the Administration may carry out further development of the lands near Tin Shui Wai, which is one of the reasons that triggered Dr TANG Siu-tong's present motion debate. I can understand the worry of Dr TANG, which is that the Tuen Mun Highway has already been overloaded even if there is no further development of the Tin Shui Wai area. Whereas the Administration has made a number of improvements to the roads of northwest New Territories, the effect these improvements have on alleviating traffic congestion of the districts concerned is rather limited. Neither has there been any great help in terms of improvements to external transport links to urban areas.

It has been our expectation that Route 3 - Country Park Section and the Northwest New Territories Railway be constructed soon to solve the traffic problem of northwest New Territories. However, it is on such important projects that the Administration appears to be stalling. It was years ago when the Administration first decided to build Route 3 - Country Park Section, but the contract will not be awarded until the end of this year. And works will be completed by 1998 at the earliest. Furthermore, the Northwest New Territories

Railway would be completed after 2000. Given that development of northwest New Territories is ongoing during that period, it is beyond one's imagination how the existing facilities are able to withstand the pressure brought on by the development. I am not saying that I do not want the Administration to develop new towns as that is the general trend of the city development of Hong Kong. It is something we should not hold up. However, the Administration should bring forward the construction of the infrastructure which new towns require in order to be in keeping with the demand for development. It is my hope that further development of northwest New Territories will be in keeping with the completion of Route 3. It is also my hope that the Northwest New Territories Railway project will be implemented soon and be extended to Tuen Mun as well in order to meet Tuen Mun's external traffic demand and to be in keeping with the development along Tuen Mun and Yuen Long.

Transport infrastructure is of utmost importance to the development of every new town. The Administration has stressed that there is an overall plan for each new town or newly developed region to ensure the provision of proper transport facilities to cater for the needs of residents. Mr Michael LEUNG, the former Secretary for Transport, had said that the Administration would ensure that basic transport facilities provided to new towns would be able to keep up with the speed of development of new towns. The crux lies in "keeping up with", which means that the Administration would only provide matching transport facilities when the town or region concerned has attained a certain degree of development and with a population reaching a certain level. Consequently, people who have moved into that region often have to suffer for quite some time from the inadequacy of transport facilities. When the population there has become larger and the facilities have then been improved, the increased population will mean that residents will have to suffer yet again from the inadequacy of transport facilities, which will last until the next phase. It is unfair to people who first moved into the new towns.

In terms of planning strategy, exactly what should come first? Should it be for people to move into the newly developed region first, or should there be facilities in place first? This is something quite controversial. In some countries all the facilities (including road networks and public transport services) are provided before people are to move in. However, there might be criticism that this is not practical and a waste of resources. I am not insisting that people should move in only after all the facilities are in perfect order. I am asking that the Administration should have a good knowledge of the actual state of development these new towns are in; it should listen more to the residents, have a better understanding of their demands and accurately forecast the region's speed of development by reference to which the necessary facilities are to be provided in advance. In other words, provision of facilities should be ahead of regional development, not behind.

Let us take Tsueng Kwan O as an example. In the early days when the Administration was planning for Tsueng Kwan O, provision of land has been made for the Mass Transit Railway (MTR) extension, and people moving in

were under the impression that MTR services would soon be available. The Second Comprehensive Transport Study of 1989 specified that when the population of Tsueng Kwan O reached 150 000, it would be sufficient to sustain the operation of an MTR extension. The population of Tsueng Kwan O is now 130 000, which is very close to 150 000. However, the Administration just lifted the population level warranting railway provision to 250 000; and the extension would come into being by the year 2001 at the soonest, which is unfair to the population of over 100 000 already living in Tsueng Kwan O. In fact, lands for development in Tsueng Kwan O are plenty. In order to make such lands available for use as soon as possible, the Administration should speed up the infrastructural works and bring forward the project for the MTR extension. Only by so doing can the development of Tsueng Kwan O be speeded up, thus releasing more lands to relieve the tight supply on the Hong Kong property market.

Thank you, Mr President.

MR ALBERT CHAN (in Cantonese): Mr President, the development of new towns gives an opportunity to those waiting to move into public housing to have a better living environment. It gives an opportunity to those waiting to buy homes. It also helps to reduce the population density in the urban areas. It is to be encouraged. However, because of planning mistakes and insufficient resources, those who move to live in the new towns must pay a heavy price for doing so. Social problems in the new towns are becoming increasingly serious. We hope that the Government will learn a lesson from experience and do something to make it less painful for people to move into new towns from now on.

Tuen Mun is a new town. Planning for it was based on a principle of so-called self-sufficiency. This is a deceptive concept. It has turned out to be a failure in practice. Take employment opportunities for instance. The planning officials assumed that industry and commerce would be developed in the new town and that this would dovetail with the new town's working population profile. They therefore assumed that those living in the new town would be able to find employment locally. In practice, these assumptions have turned out again and again to be false. The case here is one of failure in planning.

In planning the new towns' mass transit systems and external transport links, the Government kept using false assumptions. Those now living in the new towns do not have enough transport services when they want to travel out of the new towns. The roads linking the new towns have become traffic bottlenecks. This has not only caused economic loss but also given rise to domestic problems in the new towns, problems of a financial nature or a family relationship nature. Some families have broken up.

The 1991 census figures indicate a low employment rate among the women living in the new towns. The average employment rate of women in the 30-34 age group in Tuen Mun, Yuen Long and Tai Po was about 46%, about 10 percentage points lower compared with the rate for the entire territory. Where they work is far away from where they live. Transport services are inadequate. Those women who have to take care of things at home are really hindered from going out to work. If the wife in a family does not go out to work, there will be stress in domestic life as the husband's financial burden becomes heavier. He may have to take up several part-time jobs. He will be out working for a longer time each day. He will not have much time to enjoy domestic bliss or teach his children. Where both parents have to go out to work, the children will feel even more neglected.

At home, family relationships are weakened. Meanwhile, a family living in a new town tends to become estranged from the families of the husband's and the wife's parents. In other words, this family becomes estranged from their most important nexus of social resources. It is therefore easy for a domestic crisis to develop. If there is an accident to one member of the family, the rest of the family will feel isolated and helpless. I worked as a family social worker for four years in Tuen Mun. I witnessed and experienced many of the problems personally. I hope that the Government will have regard to the matter when planning the development of future new towns.

Mr President, there is another aspect. The new town planning mistakes also extend to health care services and school places. In Tai Po and North District, a shortage of school places is anticipated for the next school year. There will be a shortage of several hundred Secondary I school places. The hospitals for these two districts will not be completed soon and, even when completed, their services and equipment will be far inadequate compared with the needs of the local population.

Of course, planning mistakes do not explain everything. Even the best plan will do no real good if the Government does not allocate sufficient resources. In the early 1980s, when there were uncertainties about Hong Kong's future, the Government tightly controlled spending on the infrastructure. In recent years, when attention was finally paid to the infrastructure, it was focused on infrastructure projects serving economic purposes. As for infrastructure projects for improving the quality of life, plans were made for them but no resources were allocated. Suggestions were offered but no commitments made.

The Government must understand that, after a person moves into a new town, he faces many unfamiliar things and must adjust to them. The Government must look not only at reports on demographic changes. It must also realize that a community is made up of people. In the course of development of a community, the livelihood needs of those living there must be satisfied. A person who moves into a new town should not have to suffer

damage to family relationships and physical and mental health because of this. The Government has a responsibility in this area and must not run away from it.

The United Democrats of Hong Kong urges the Government to review its past mistakes in the planning and development of new towns. It must improve its planning work and allocate sufficient resources when similar circumstances occur in the future. It must give special consideration to livelihood matters. We hope that the Government's so-called philosophy of flexible financial management is not built on the lost happiness of those living in the new towns. Practically speaking, we can anticipate further increases in the populations of northwest New Territories and Tseung Kwan O. The Government must make an early commitment to the construction of the northwest New Territories Railway and MTR's Tseung Kwan O extension. These should provide sound mass transit systems which will prevent transport problems from causing further social and economic damage.

Mr President, I so submit.

MR HENRY TANG (in Cantonese): Mr President, today I will speak on the problem of education in the development of new towns. Although the Government has been developing new towns for some time, the facilities provided in new towns often cannot cope with the rise in their population. According to statistics supplied by the Education Department, some areas will face a serious shortage of primary and secondary school places in the next few years, and many of these areas are new towns.

Take the newly developed Tseung Kwan O as an example. Sai Kung, to which Tseung Kwan O belongs, faces a particularly serious shortage of primary school places. For the school year of 1994-95, Sai Kung will face a shortage of 150 classes of school places, this is, about 5 000 places, 80% of which arises from Tseung Kwan O. Imagine that some 4 000 primary school pupils have to commute from one area to another to attend school every morning. Not only that it will aggravate the traffic condition of the area, but it will also be very hard on these pupils who are still very young.

In fact, pupils living in new towns will have particular difficulties in commuting to schools which are located in another area. As the basic transport facilities in some new towns have not been developed, pupils have to get up at five or six o'clock in the morning and take two or three kinds of transport to get to school. Is it worthwhile to spend so much time and effort on transport every day? Very often, pupils cannot even attend extra-curricular activities because of transportation problems. I believe this situation is something which the Education Department would not like to see.

Implementation of whole-day schooling would also be delayed in primary schools where there is a shortage of school places because these schools have to continue with bisessionalism in order to compensate for the lack of places. The position of the Liberal Party is very clear. We hope that development plans can be carried out at a faster rate so that whole-day schooling in primary schools can be fully implemented as soon as possible. I understand that in new towns where the population is growing rapidly, it is difficult to satisfy the needs for facilities within a short period of time. However, the Planning Department can estimate in advance the population growth rate in each area according to the development of the area in order to minimize the impact of lack of school places. I believe the problem can easily be solved if the Education Department can apply earlier for the allocation of land.

I think the Government should plan for the number of schools in new towns according to the needs of the area and abandon the territory-wide principle of allocation of school places. In this way, the needs of new towns can be better catered for.

Consideration has to be given to the future needs of new towns as well. Schools in new towns should be flexibly planned in their use so as to suit the changing needs for secondary and primary schools which may arise from the change of age pattern of pupils over time. As there is more room for development in new towns, newly-built schools will be more spacious than schools which are located in developed areas. Pupils studying in newly-built schools will have more space to move about and they will enjoy a generally better school environment.

Mr President, with these remarks, I support both the original and the amended motions.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, I spoke in this Council on 18 May about land supply and again last Wednesday about a package of measures to increase housing and land supply, and I think on that occasion I also referred to the intention to seek to speed up infrastructural projects which are related to the land supply and housing production projects that we have in mind. Members, also I think, will remember that recently they have heard in some details about the rail development study results, and the intention of the Administration to accelerate the Route 3 project. I am grateful to the Honourable Dr TANG for proposing this debate which gives me the opportunity to remind Members of the Government's long-established arrangements for new town development. I would like to suggest, if I may, that we might pursue some of the particular problems to which Members have referred this evening, for example, some of the references to transport, to schools, and to the Hong Kong Planning Standards and Guidelines, in the respective panels where we could have some rather more in-depth exchanges. More detailed information can be given and some of the Members' misconception perhaps could be corrected.

We should clearly not be complacent about our achievements in the massive new towns development programme over the past 20 years or so. No enterprise on this scale or carried out at this pace can be entirely free of problems, particularly as regards the precise matching of infrastructure and facilities to the population profile which has been changing throughout the period. The important thing many Members have said is that we learn all the lessons possible from the experience and apply them intelligently in future.

New town development

The Government first launched the new town programme in the 1970s as a response to the need for new developable land and adequate housing. Members may recall that at the beginning of the 1970s, Hong Kong faced a problem that threatened to overwhelm it: the population of our small territory was growing at an alarming rate. In 1970 the population stood at 4.1 million and reached 4.4 million by 1975. Housing was in short supply. The population was concentrated where it always had been, that is, in the urban areas on either side of the harbour. The Government's primary objective was therefore to open up the sparsely populated areas in the New Territories north of the Kowloon hills and develop them into new cities with sufficient housing, adequate physical and social infrastructure, and enough employment opportunities to serve the new population.

We have, as I have said, some 20 years of experience in new town development. The process is, as might be expected, not a simple one.

First — Planning: When drawing up the master plan for a new town, factors such as housing mix, population level, employment opportunities, transportation needs, provision of infrastructure and community facilities need to be carefully assessed and considered. The Government has adopted the guiding principles of trying to balance development and to achieve self-containment when planning the provision of community facilities, such as schools, clinics and so on as well as open space and recreation facilities. All these are provided in accordance with the Hong Kong Planning Standards and Guidelines. The master plan is subject to public consultation procedures including reference from time to time to the district board as regards particular facilities.

Second — Development Programme: A development programme is drawn up and monitored by the Project Manager who co-ordinates implementation and makes regular reports to the district board. Every effort is made to ensure that each town is developed in a balanced manner at each phase of population build-up to meet the needs and aspirations of the community.

Plans and development programmes are of course subject to regular review. Successful implementation of the new town programme is also a result of the efforts of both the public and private sectors; the Government sets the scene through the provision of sites and supporting facilities and the private

sector is enabled to build private housing and to provide employment opportunities across a full range.

An overview

Now to an overview of the scale of our achievements to date. The population of Hong Kong is now about 6 million. Today, 2.5 million of us live in the eight new towns which also provide over 710 000 job opportunities. About 8 800 hectares of land have been formed in the new towns, roughly equal to 170% of the total old urban areas. Sixty-six kilometres of river channels and 280 kilometres of main drains have been built to drain all that land. The sewage from these immense developments is conveyed by over 230 kilometres of trunk sewers to treatment plants.

New towns have been built to high standards. Over 400 schools, 13 hospitals with over 8 400 beds, a large number of clinics and facilities for the aged, the young and the other groups who need special support have been provided. There are 47 post offices catering for postal needs and over 100 markets supplying daily necessities. Over 750 km of roads link the new towns to the urban area and each other. Commuters also have alternative means of transport including the Mass Transit Railway, the Light Rail, the Kowloon-Canton Railway, buses, ferries and taxis.

With careful planning and landscaping, the scenic assets and greenery in the new towns have generally been maintained and improved, along with some of the historic locations and civic heritage. There are 360 hectares of parks and open spaces, green belts, active afforestation and planting, numerous sports complexes, recreation and cultural centres. Over 5 million trees have been planted, averaging two trees for every new town resident.

The New Town Programme still has something to run upon completion in 10 to 15 years' time. The new towns will have an overall population of up to 3.5 million. The "first generation" new towns (Tsuen Wan, Sha Tin and Tuen Mun) are nearing completion. The "second generation" ones (Tai Po, Yuen Long and Sheung Shui/Fanling) will be largely completed by the end of the 1990s. Tseung Kwan O and Tin Shui Wai are making good progress and Tung Chung is at its beginning.

May I emphasize that the Government is by no means complacent about these achievements. We agree that there have been both birth pains and mismatches in some respects over time. However, the majority have not been due to inadequate planning or lack of consultation, or insufficient co-ordination. For example, some new towns had at times insufficient school places. However, for the "third generation" new towns, measures have been taken, to ensure adequate primary school places are provided. Many new towns residents continue to commute to the older urban areas to work because of personal preferences or insufficient local job opportunities of the right types or because of structural changes occurring in the economy. The traffic problems in

northwest New Territories are also closely linked to the rapid growth of cross-border traffic and expansion of the port which are the result of the unforeseen and unforecastable rapidity and extent of the economic development of the Pearl River Delta and beyond.

Our approach

We have learnt from experience and we must always be prepared to do so. We have to recognize that Hong Kong is so small, and compact, and its people mobile and versatile. Developments in southern China, and in the Pearl River Delta in particular, also have a great impact on Hong Kong. They are however outside our control. Our urban and new town development planning will therefore need to be flexible. The Government is fully aware of the concerns of the residents of the northwest New Territories for improved external links. Our objective is to ensure that the provision of infrastructure, especially transport links between the new towns and the urban area is adequate.

In the current exercise of increasing the land supply, much of the land to be made available for development is land from the land bank in the new towns. It is therefore largely a matter of accelerating the timing of its development. Where new developments are to be added to what is already planned in these new towns, special studies will be conducted to examine their impact and acceptability in the context of the master plan, as well as the need for corresponding increases in the provision of infrastructure and other community facilities.

Mr President, the motion urges the Government to do what it has done with considerable success in the past and what continues to attract considerable positive attention around the world. While we should be ready to change and improve where appropriate therefore, I do not think we need belittle ourselves or our achievements or underate our expertise therefore. We will provide and deploy resources to implement comprehensive development both in the new towns and other developable areas to meet the needs and aspirations of the community. We will also continue to refine our programmes in consultation with the public, through district board, statutory planning and other mechanisms. Thank you, Mr President.

PRESIDENT: Miss Christine LOH 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 move her amendment now.

MISS CHRISTINE LOH moved the following amendment to Dr TANG Siu-tong's motion:

“To replace the words “work out and to implement all-embracing” by the following:

“undertake immediate public consultation in order to ascertain what residents see as the most significant factors contributing to the enhancement of their own neighbourhood and to incorporate those findings into”.”

MISS CHRISTINE LOH: Mr President, I move that Dr TANG Siu-tong's motion be amended as set out in the Order Paper.

Question on Miss Christine LOH's amendment proposed.

PRESIDENT: Dr TANG Siu-tong, do you wish to speak? I would just remind you that you have a total of five minutes to address the two amendments, but you may speak to Miss Christine LOH's amendment at this stage.

DR TANG SIU-TONG (in Cantonese): Mr President, Miss Christine LOH's amendment mainly asks for public consultation. Public opinion is no doubt the base for democracy and I do agree that public consultation is necessary. Unfortunately, before the new towns were developed, the sites were but a piece of Crown land without any people at all. How could we have consultation then? Perhaps we could take a macro view by consulting people from different walks of life and the district boards. In fact, those who have participated in the town planning process in Hong Kong should understand that the procedures and steps for town planning have to undergo at least “three ups and three downs”. A statutory layout plan will be formulated only after wide consultation.

The major flaw of our new town development is not the lack of consultation but the six points raised by Mr Edward HO just now — inadequate foresight, inability to learn from past experience and failure to implement the policies already laid down.

Miss LOH was brought up overseas. So she does not quite clearly understand the actual environment of Hong Kong. Nor does she have any personal participation in the consultation process of the New Town Programme. Having stayed in another country, how many people can still remember one's own country? Nevertheless, Miss LOH need not worry. I certainly do agree that consultation is necessary. So I shall not vote against her amendment. Actually, her amendment will not impair the spirit of my original motion.

Question on Miss Christine LOH's amendment put and agreed to.

PRESIDENT: Mr WONG Wai-yin, as Miss Christine LOH's amendment has been agreed, your amendment cannot proceed in its present form. Would you like to seek leave to alter the terms of your amendment?

MR WONG WAI-YIN: Yes.

PRESIDENT: Indeed in anticipation the Secretariat has prepared a revised text, I believe, of your proposed revision, Mr WONG, and this will now be circulated. For the information of Members, the revision seeks to reconcile Mr WONG Wai-yin's amendment with the amended version of Dr TANG's motion as amended by Miss Christine LOH. Members ought of course to read the revised version and if any Member considers that time is required to consider Mr WONG Wai-yin's revision, I will suspend the sitting for a few minutes.

MR WONG WAI-YIN moved the following amendment to Dr TANG Siu-tong's motion as amended by Miss Christine LOH's amendment:

“To delete “when developing the districts concerned” and to substitute “as well as to allocate sufficient resources for implementation before the completion of these new towns” after “developing the districts concerned”; to delete “arising from previous mistakes in the planning of” and to substitute “concerning”; to insert “school places” after “external transport links”; and to add “, experienced by new towns due to deficiencies in planning and coordinantion as well as insufficient resources in the past” after “essential facilities”.”

MR WONG WAI-YIN (in Cantonese): Mr President, with your permission, I would like to amend the wording of my amendment to make the motion read as follows: “That in anticipation of a significant increase in Government's allocation of land for residential development in new towns to alleviate the pressure of housing demands and to suppress spiralling property prices, this Council urges the Government to undertake immediate public consultation in order to ascertain what residents see as the most significant factors contributing to the enhancement of their own neighbourhood and to incorporate those findings into town planning programmes as well as to allocate sufficient resources for implementation before the completion of these new towns, so as to avoid the recurrence of problems concerning external transport links, school places, community facilities, job opportunities and other essential facilities experienced by new towns due to deficiencies in planning and co-ordination as well as insufficient resources in the past.”

Question on Mr WONG Wai-yin's amendment proposed.

PRESIDENT: Dr TANG Siu-tong, do you wish to speak? You have three minutes 26 seconds.

DR TANG SIU-TONG (in Cantonese): Mr President, there is a saying, “Advice from others may help one to overcome one’s shortcomings”. I had anticipated that today’s amendment motion would add to the substance of the original motion so that it would shine with flying colours. Unfortunately it went against my wish, and what I have got is a meaningless game of words.

Just now Mr WONG Wai-yin said that I withdrew my last motion because of an eye complaint. In fact, I have a medical certificate for it, the date of which is the 5th of last month. The doctor said that I needed a rest of three weeks, which was why I did not return to work until the 28th. I find this “playing up” and politicizing stunt most regrettable.

Mr WONG has sought to delete the most important phrase of my original motion, which is “to implement all-embracing town planning programmes”, and to substitute it with “and to allocate sufficient resources”. Mr WONG might not have grasped the meaning of “to implement”. Indeed, to implement town planning programmes also includes allocating sufficient resources. On the contrary, allocating sufficient resources does not necessarily mean that the programmes are being implemented. Just now Mr WONG mentioned that the Public Works Subcommittee had approved a lot of project items and allocated sufficient resources, but they could not be utilized. And that is to say, having resources allocated does not necessarily enable the programmes to be implemented. Allocation of resources is merely a procedural matter. It is only through implementation that good results can be achieved, otherwise, it would be to no avail just having resources allocated. It is estimated that by 1997 the Administration would be in possession of a bountiful surplus and therefore, funding should not be a problem. Besides, allocation of resources for the development of new towns does not come under the restrictions that apply to regular public works projects. So the crux of the matter lies in whether the Administration would really implement programmes relating to the essential needs of the people.

There is another point in the amendment that I find puzzling, and that is the insertion in the motion of the words “school places”.

The community facilities and essential facilities mentioned in the original motion in fact include the building of schools. Is Mr WONG saying that education is not an essential need?

The one thing I find myself at a total loss to understand is the proposed substitution of “existing” new towns with new towns “in the past”. What on earth are “new towns in the past”? Is it Tung Chung before 1898? Or Yuen Long of 1930 (Yuen Long was resited from Yuen Long Kau Hui to Yuen Long San Hui)? There they are before us, the eight new towns and the mistakes in planning are distinct and clear. Is it possible that one cannot see them? What a shame that people sometimes make a poor imitation of the real thing! In *The Book of Changes*, we have: “The dragon lying low has its power covered up and concealed.” I would like to share this piece of advice with Mr WONG.

Just now Mr WONG urged me not to vote against his amendment motion. In fact, I would have hoped not to vote against his amendment motion. The question is: in what way will it affect my original motion should his amendment motion be adopted? In fact, the spirit of the original motion is still there. What has been changed is just a matter of wording. The so-called game of words, though useful, may become not so useful sometimes

The digital timer showed 0330

President: You have to stop, I am afraid, Dr TANG. Sorry, you have to stop.

Question on Mr WONG Wai-yin's amendment put.

Voice vote taken.

MR WONG WAI-YIN: I claim a division.

PRESIDENT: Council will proceed to a division.

PRESIDENT: Will Members please proceed to vote?

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

Mr Allen LEE, Mrs Selina CHOW, Mr HUI Yin-fat, Mr Martin LEE, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Edward HO, Mrs Miriam LAU, Mr LAU Wah-sum, Dr LEONG Che-hung, Mrs Elsie TU, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr LAM Kui-chun, Dr Conrad LAM, Mr LAU Chin-shek, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr Henry TANG, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr Howard YOUNG, Mr WONG Wai-yin, Miss Christine LOH, Mr Roger LUK, Mr James TIEN and Mr Alfred TSO voted for the amendment.

Mrs Peggy LAM, Mr Timothy HA and Dr TANG Siu-tong voted against the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary and Mr Eric LI abstained.

THE PRESIDENT announced that there were 33 votes in favour of the amendment and three votes against it. He therefore declared that the amendment was carried.

PRESIDENT: Dr TANG Siu-tong, do you wish to reply generally? Out of your original 15 minutes, you have five minutes 47 seconds.

DR TANG SIU-TONG (in Cantonese): Mr President, I would like to thank Members for their many precious opinions on my motion. Just now, speaking from an architect's point of view, Mr Edward HO put forward six points. I think the Government should study carefully and pursue his proposals. Mr TIK Chi-yuen gave many valuable views on the problems of insufficient facilities and school places in New Territories North. These problems about which he, as an elected Member, has first-hand information have been brought to his attention by members of the public who lodged their complaints with him. Mr LAD Wong-fat spoke of problems in New Territories West. Mr Yiu-chung made some valuable comments on the traffic problems in the New Territories which has caused inconvenience to local residents particularly in the morning rush. Mr Henry TANG put forth many splendid ideas on education. Mrs Miriam LAU and Mr Albert CHAN spoke a lot about the shortcomings in the design of new towns.

The Government's reply is very disappointing. The Secretary for Planning, Environment and Lands may actually have had his speech shortened to a couple of minutes. It does not serve any purpose at all to spend so long covering the same old grounds. The Government has not given an answer to the points we have raised and failed to inform us what it will do and how things will be implemented. All the Government has said is what it has done and what achievements it has made. We are not happy with such reply. Let me conclude by quoting an old saying which goes like this: "Should men realize the mistakes their forefathers had committed but fail to learn the lesson, their descendants will certainly grieve for their inaction".

Question on Dr TANG Siu-tong's motion, as amended by Miss Christine LOH and Mr WONG Wai-yin, put and agreed to.

DRUG ABUSE BY ADOLESCENTS

MR FRED LI moved the following motion:

"That in view of the seriousness of the problem of drug abuse by adolescents at present, this Council urges the Government:

- (a) to review and amend as soon as possible the existing legislation, in order to plug the loopholes in the legislation or in its enforcement, and impose heavier penalties, so as to prevent the aggravation of the problem of illegal sale of controlled drugs; and
- (b) to set up an inter-departmental working group to formulate long-term strategies for solving the problem of drug abuse by adolescents.”

MR FRED LI (in Cantonese): Mr President, anti-drug posters say, “Drugs destroy lives and drugs kill without shedding blood.” I believe that we are all familiar with these posters. Regrettably, many adolescents each year continue to lose their lives because of drugs or drug abuse. The situation appears to have gotten worse in recent years. Nearly once every week, we read in the newspapers reports about an adolescent who died from drug abuse. One is anguished by such reports.

During the past month, the Meeting Point and the United Democrats of Hong Kong held a series of joint activities with the theme of “Save our children; get them away from drugs”. In signature campaigns all over the territory, we collected the signatures of nearly 40 000 citizens. Yesterday, we held a motorcade promotional activity. Today, I am moving this motion debate in the Legislative Council. In all of this, we have but one purpose, which is to express the hope that the Government will address the problem of drug abuse by adolescents and act quickly to save our children and keep them away from drugs. Thus, the younger generation will not become the lost generation.

The soft drugs abused by adolescents now total more than 10 kinds. Soft drugs with names like “The Cross” (Flunitrazepam), “Smurf” (Triazolam) “Hilarious” (Mogadon), “Little House” (Lendormin), and “Green Peas” (Librium) are among the more “popular” ones in the market place. Even cough syrups are used by adolescents as “pleasurable things” that can make them feel “high”.

In 1992, the Government legislated to place 32 often-abused psychotropic drugs under tight control by making them subject to the Dangerous Drugs Ordinance. At present, 237 pharmacies sell dangerous drugs under the supervision of registered pharmacists. Under existing law, if a person wants to buy a dangerous drug, he must have a prescription made out by a registered doctor or dentist. The law also requires each registered pharmacist to make entries of sales of dangerous drugs in a “dangerous drugs register” and to submit a monthly return to the Health Department on dangerous drugs sales and inventories. Drugstores without registered pharmacists are strictly prohibited from selling any dangerous drug.

It would appear that existing law already provides for the tight control of the sale of dangerous drugs by drugstores and pharmacies. Why then do we still find that it is very easy for adolescents to buy “pills” in quantity from “street dealers” in game centres, billiard halls, Karaoke lounges, ordinary lounges and even parks? Where do the “street dealers” get their stuff from?

I have gotten in touch with the Association of Licensed Pharmacists, the Medical Association, the General Association of Drugstores and the Health Department about this question. I have found out more about the problem of drug abuse by adolescents. The various bodies have provided a lot of valuable facts and professional opinions for my use in the present motion debate.

Actually, I am deeply convinced that the vast majority of the pharmacists, drugstore owners and doctors abide by the law and their high standards of professional ethics. However, if there are but a few black sheep among them, they will do enough harm to thousands of adolescents by illegally and unethically engaging in the massive sale of dangerous drugs for gain.

Existing law provides for the tight control of the sale of dangerous drugs by pharmacists and drugstores. But there are 237 pharmacies and over 2 000 drug stores in Hong Kong. The soft drugs that are abused by adolescents are numerous and varied. The Health Department now has only 11 inspectors for inspecting all of Hong Kong’s pharmacies, drugstores and clinics. How can they do an adequate job? Statistical evidence shows that each pharmacy is inspected just once a year. Such inspections simply cannot be effective. Because of staff shortage, only a handful of cases — an average of between 50 and 60 cases a year — are prosecuted.

What about the supervision of private doctors? Under existing law, each doctor is required to make entries of dangerous drugs uses in both the “day book” and the “separate book” and to keep a “dangerous drugs register”. However, unlike pharmacists, doctors are not required to submit monthly returns to the Health Department on dangerous drugs sales and inventories. The Health Department is now woefully under-staffed. Its inspectors are already exhausted by their inspections of pharmacies and drugstores. To ask them also to inspect the dangerous drugs records of Hong Kong’s more than 6 000 doctors will make their workload simply unbearable. Therefore, the Health Department rarely examines the records of doctors on its own; it acts only on complaint.

This is undoubtedly a loophole in existing law. Some unethical doctors make use of this loophole. They retail soft drugs to adolescents directly or sell them to lawless elements by wholesale for gain. Later on, Mr TIK Chi-yuen from the Meeting Point will be speaking on drug abuse by adolescents in the new towns. I myself have obtained from the Health Department some statistical information concerning the distribution of dangerous drugs in Hong Kong. The information shows that, in 1993, a total of over 36 million pills of psychotropic drugs classified as dangerous drugs were lawfully supplied to Hong Kong’s market by local and foreign pharmaceutical plants. 76% of them were supplied

to private doctors. The shares supplied to pharmacies and public hospitals and clinics were 12% and 13% respectively. More interestingly, nine of Hong Kong's "top 10" bulk buyers of dangerous drugs are doctors. The No. 1 buyer is a doctor and he annually buys 856 000 pills of dangerous drugs category. Let us assume that he is a mental doctor and that his clinic is always busy. Still, it is incredible that he should prescribe 2 000 pills a day on average for his patients.

Let us suppose that the police use an *agent provocateur* successfully and arrest an unethical doctor who sells dangerous drugs unlawfully. Still, in many cases, because of the loophole in law, he has to be set free for insufficient evidence. Therefore, I think that the Government should quickly plug this loophole by requiring each doctor, like each pharmacist, to submit his "dangerous drugs register" for examination once a month. I am deeply convinced that the vast majority of our doctors have the interests of their patients at heart and that they will be glad to take the time to keep their records so as to make it easier for the Government to bring a handful of unethical doctors to book.

Of course, we cannot ignore the possibility of lawless elements smuggling dangerous drugs massively into the territory. Therefore, the Police Force, the Customs and Excise Department and the Health Department must work together and do their best to fight drug trafficking and to stop "pills" from being smuggled into the territory.

Nowadays, adolescents not only take pills but also drink cough syrups in order to feel high. Therefore, we think that the Government should quickly amend the law to list any cough syrup containing codeine as Part I poison. This is because codeine can make people feel "high".

We cannot deny that many dangerous drugs are psychotropic drugs with high therapeutic value. Cough syrups containing codeine are especially good for coughs. Excessive control will cause inconvenience to members of the public and give unnecessary trouble to lawful pharmacists, drugstore owners and doctors. But drug abuse by adolescents has reached appalling proportions. We cannot bear to see more adolescents die from drug abuse.

Therefore, I am making a seven-point suggestion.

- (1) Strictly require registered doctors and dentists to keep records of sales of dangerous drugs

The Government should amend the law and strictly require doctors and dentists, like pharmacists, to keep detailed records of sales of dangerous drugs and submit monthly returns to the Health Department.

- (2) Consider legislation to ban the sale of dangerous drugs to persons below the age of 18

The investigation findings of the Narcotics Division, published last year, show that nearly 40% of the students interviewed responded that the drugs they took came from drugstores. Therefore, we suggest that the Government should consider legislation to prohibit any person, including any pharmacist, doctor or dentist, to sell any dangerous drug to a person who is below the age of 18. If a doctor, for medical reasons, must prescribe a dangerous drug for a patient below the age of 18, the patient's parent must be present when the drug is prescribed. The parent must also accompany the patient to a pharmacy where the prescription is filled. Offenders will be prosecuted. This will make it more difficult for adolescents to buy dangerous drugs in pharmacies. I would like to mention in passing that the law prohibits people below the age of 18 to watch Category III movies. By the same token, people below the age of 18 should have no right to buy certain drugs.

- (3) List all cough syrups containing codeine as Part I poison

The Government should amend the law and list all cough syrups containing codeine as Part I poison. This will make it difficult for adolescents to buy cough syrups even with a codeine content of under 0.1%. They are then less likely to abuse cough syrups with harmful effects on health.

- (4) Stiffen penalties for deterrent purposes

At present, offenders are invariably given a fine, which is only a few thousand dollars. This has no deterrent effect on the retailer at all. We suggest that penalties should be stiffened for all offenders, particularly for repeat offenders, for deterrent purposes.

- (5) Set up a hot line for complaints against law-breaking retailers

The Health Department now has a hotline for members of the public who seek advice. There is no hotline for complaints against law-breaking pharmacies and doctors. Therefore, the authorities should set up a hotline for complaints. This will make it easier for members of the public to complain to the Health Department against law-breakers.

- (6) Set up an inter-departmental working group to study a long-term strategy for dealing with drug abuse by adolescents

The Government should set up a special working group composed of officials of the Health Department, the Social Welfare Department and the Education Department. This group should study a long-term policy for solving adolescents' drug abuse problem.

(7) Set up a counselling and treatment centre

At present, only some voluntary groups are providing detoxification and counselling services to adolescents who abuse drugs. The Government should set up a counselling and treatment centre for adolescents to do what is necessary in light of the present situation.

I hope very much that the Government will give careful consideration to the above suggestions and move quickly to review and amend existing law so as to plug the loopholes in legislation and enforcement and to stiffen penalties to prevent the situation in the illegal sale of dangerous drugs from getting worse.

The future belongs to the adolescents of today. They will be the future pillars of society. Honourable Members, if we do not want to see "pillars turn into rotten timber", now is the time for us to do something about saving our children and keep them far away from drugs!

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

Question on the motion proposed.

MR HUI YIN-FAT (in Cantonese): Mr President, the tendency of adolescents relying on various psychotropic drugs to seek relief is indeed worsening. According to the 33rd report by the Central Registry of Drug Abuse (CRDA), in 1993, the number of first time reported abusers was 40% more than that in 1992 and the scale of increase in respect of young drug abusers aged under 21 even exceeded 50%. It is alarming that the age of young drug abusers has come down to as low as 11. We should also bear in mind that the figures kept by the CRDA has been conservative all the time. Even with the newly introduced report method, one can merely take the figures to be no more than a bit closer to reality.

According to outreaching social workers who have close relations with young people at risk, adolescents have been resorting to chemicals for seeking spiritual relief or mental excitement. They do it in many different ways and each according to his or her own taste. The most commonly abused drugs are no less than 10, such as heroin, triazolam, cross (flunitrazepam), barbiturates, mixing cough medicine with coke and even bad habits like the sniffing of thinner and gasoline for lighters. Although the price of no. 4 heroin, a highly pure drug, is expensive comparatively speaking, the consumers can have it diluted by themselves and mix it with various psychotropic drugs for syringe

injections. This is the most economical and effective way to take drugs, but the degree of danger is naturally higher. In view of this, the detrimental effects of traditional hard drugs and new soft drugs are fundamentally the same.

Although the efficiency of psychotropic drugs varies, the effects they produce are just the same. Therefore, one can easily substitute another. From this perspective, it seems that the combat against drugs and the prohibition of sale may not be the most effective means to eradicate the problem at its source.

I have not the slightest intention to belittle the anti-narcotics work. As a matter of fact, the achievements of the police and the Customs and Excise Department in the seizure of drugs are evident to all. However, in view of Hong Kong's geographical location, it is difficult to eradicate the problem even if we put in more manpower and material resources. Moreover, heroin can easily be substituted by other chemicals. Although we have stringent legislative control over the retail sales of psychotropic drugs, registered pharmacies become the easy source of psychotropic drugs for the adolescents because such sales yield high profits and the penalties imposed by the court are lenient.

To resolve a problem, we should of course prescribe the right remedy. If the present supply reduction approach cannot achieve its desirable results due to various physical factors, should the Government and relevant authorities still keep on doing this kind of work? I am of the view that it may be more practical to try the demand reduction approach. There are two major aspects, namely community education and treatment and rehabilitation services.

If we look at how the adolescents start abusing psychotropic drugs, we may see that most of them first become addicted to the drugs under the state of boredom, anxiety or emotional unrest. Some of them are driven by curiosity or tempted by friends or the "big brothers" of the triad groups. In view of this, the Administration should start from the community, the family and the schools. Apart from the reinforcement of community education to make the adolescents fully realize the detrimental effects or even irreparable damage that drugs and chemicals may have on the body and mind if they resort to them for relief, we should also enhance the provision of treatment and counselling services. Such kind of services can promote the healthy growth of the adolescents in terms of their psychotropic development and inter-personal relationships by keeping them comfortable at heart, by re-establishing peer-group and community relationships so that they may be kept away from the drugs. This is especially important in helping those adolescents who are determined to give up the bad habit of drug addiction.

Mr President, plugging the legal loopholes and the formulation of long-term strategies are undoubtedly effective means to resolve the problem. But it takes a very long time to achieve the purpose. As a result, the enhancement of education and the strengthening of counselling and rehabilitation services is a matter of extreme urgency. Now is the time to see whether the Government has

the determination to do more for our next generation and to make a significant investment in securing a stable community in the future.

With these remarks, I support the motion.

MR CHEUNG MAN-KWONG (in Cantonese): Mr President, in recent years, there has been a surge in the number of adolescents abusing drugs. In 1991, there were more than 1 400 drug abuse cases involving adolescents under the age of 21, but the figure rose to nearly 2 000 in 1992 and then climbed to 3 000 in 1993. That represents a 55% increase over 1992 and a 200% increase over the figure in 1991. The rate of increase in some areas is much more staggering. Of course, the figure does not give us the full picture; it only represents the tip of the iceberg. Somewhere in the newly-developed areas, the situation is so serious that syringes are found strewn all over the place while drug addiction is rife. We are fighting an uphill battle against a new tide of drug attack.

However, the Administration said in public that the situation was not very serious. It implies that the authorities may keep dragging their feet and let the situation worsen, until more and more adolescents become real drug addicts.

We read from newspapers that reporters were able to purchase controlled drugs in pharmacies and drug stores. However, the Administration replied that the pharmacies and drug stores were being adequately monitored and the reporters were only “too lucky” to be able to purchase the drugs which the average citizens would have no way to gain access to. The Administration’s response seems to suggest that reporters are not ordinary members of the general public.

We hear from professionals that more stringent control over private medical practitioners is not necessary because doctors are professionals and are subject to disciplinary proceedings in case they did wrong. By keeping a watchful eye over the code of practice of medical practitioners, the conduct of disciplinary hearings seems to be a panacea for the prevention of problems, while professionalism and authority are sacrosanct.

Mr President, yesterday’s press reports revealed that, in 1993, private medical practitioners topped the list of purchasers of a type of dangerous psychotropic drug which may be used as a kind of narcotics. Their combined purchases represented 75% of the total volume of purchase by Hong Kong, far exceeding not only the pharmacies, share of the market but also the hospitals. The medical practitioner topmost on the purchasers’ list had bought a total of 856 000 tablets. Taking one year for the purpose of calculation, a total of 2 345 tablets were dispensed each day, accounting for a quarter of the total sales figure. Mr President, I am not making use of this incident to accuse anyone. I just hope that the Government can address the issue by taking some down-to-earth actions. The Government spokesman says that what we can do is to follow the advice furnished by the professionals. That means we need not do anything,

otherwise the measures may impede the operation of the medical profession. This passive approach has made our efforts in combating the spread of narcotics feeble and ineffectual. That will be no difference from standing with folded arms and letting the situation worsen.

Mr President, professionalism of course has to be respected and protected; however, there are always black sheep in a profession. These undesirable elements will, for the sake of gaining windfall profits, seek to hide their corrupt nature behind the shield of professionalism. Therefore, the point in question is how we can protect our young people without interfering with the normal operation of the profession. The real professionals should weed out the black sheep instead of safeguarding the interests of these out-and-out villains who poison our young people in the name of professionalism.

Last year, the Government instituted only 50-odd prosecutions against the offending pharmacies, drugstores and doctors. This minimal number of prosecutions is really disappointing. However, even for this limited number of prosecutions, the sentences imposed by the courts are so light that they cannot adequately reflect the seriousness of engaging in illegal sale of controlled drugs, thereby producing no deterrent effects on the unscrupulous traders and doctors. Last year, the maximum penalty was a fine of only \$5,000 while the minimum fine was just \$1,000 and nobody was imprisoned for this offence. This is a far cry from the maximum fine of \$30,000 and one year's imprisonment as laid down in the relevant legislation. The legislation not only cannot produce deterrent effects but is actually conniving at the crimes by encouraging the offenders to include the fines into their operating costs. It goes against the original intention of enacting the legislation. Mr President, nowadays we can no longer find another LIN Zexu, the hero in the Qing Dynasty who burned away the opium. What we want is the rule of law, to be upheld by, among others, law enforcement officers who are prepared to strike a heavy blow at narcotics and also a judicial system which will impose stringent penalties, in order to crack down on all sorts of drug traffickers, including the unscrupulous traders and doctors.

Mr President, our experience tells us that the tactics of drug traffickers and the favourite drugs of youngsters are subject to constant variation; therefore we cannot target at a particular type of drug. For instance, the abuse of cough syrup by youngsters was commonplace in 1992 but the figure dropped by 20% in 1993. This reflects that when the Government targets at a certain kind of drug, the youngsters will immediately switch to another type. In the same period, the number of abuse cases involving heroin increased by 101%. The figure has spelt out the seriousness of the problem. According to the counsellors of drug addicts, the price of heroin has dropped from the previous \$100 per gram to \$80 per gram. That means a young person only needs to contribute a share of \$20 to \$30 to satisfy his desire for drugs. The more frightening fact is the abundant supply of controlled drugs which are marked with lower prices to make it more easily accessible. The situation is shocking.

Mr President, drug abuse is the end only; the real causes are the problems confronting the adolescents, including school dropout, youth gangs, delinquency, triad societies and so on. The combined effects of these problems lead the youngsters onto a self-destruction road of becoming drug addicts. We may use the upper and lower reaches of a river as an analogy to explain the situation. When we are rescuing those at the lower reaches, more and more people are flowing down from the upper reaches. We have to go up to the upper reaches to see what exactly is happening up there. The upper reaches are our educational system and family ties. When these systems no longer play their traditional roles and the youngsters become the losers in schools and the abandoned ones in the families, narcotics seize the opportunity to tempt the youngsters. Therefore, we have to embark on a revolution at the upper reaches. Let our students and children feel that we love and care for them. Let them be filled with strength to strive upwards rather than to degenerate, thereby eradicating all chances and desire to get addicted to drugs. We should not rely solely on arrests and raids to solve the problem.

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

DR LAM KUI-CHUN (in Cantonese): Mr President, first of all, I would like to declare interests. I am the chairman of the Committee on Drug Abuse under the Hong Kong Council of Social Service.

Life being so humdrum, monotonous and boring, human beings try to free themselves from it, seek enjoyment or stimuli by means of chemicals. This has been happening since time immemorial. Example are: people of the hilly country of South America take raw tobacco while the village people of South East Asian countries chew betel nut. Such habits have passed from generation to generation for at least thousands of years.

The issue brought forth by this motion is the illegal sale of drugs by drugstores, that is to say, the problem of “pills-taking”, a course whereby adolescents seek to free themselves, to enjoy or to find stimuli so as to sooth their humdrum, monotonous and bored mind. Frankly, there are a variety of ways by which the young people of Hong Kong can seek to have a momentary satisfaction through the use of chemicals. Apart from “pills-taking”, those who have money take cocaine; the westernized ones take herbal cannabis or even “ice”; those who are out of money sniff thinner. The latest version is called “stamp-sucking”. The range of abuses being so diverse, the relevant organizations in the world no longer threat “pills-taking” as a unique problem; even the terminology has been changed to “drug abuse” to highlight its wider concept. If we focus on banning the sale of drugs but ignore the fundamental causes, even if the banning could be done overnight, another form of letting off steam would take the place of “pills” right away the next day, and it would continue to develop and deteriorate.

Let me reiterate this: the fundamental cause of drug abuse is the transformation of the adolescent mind. Out of adolescent curiosity or being egged on by friends, young people can make use of any chemical available as a form of drug abuse. Such is what is known as “to take whatever is available, and to have something else if not available”.

Therefore, the right cure is not to ban the drugs concerned, but to reduce the users’ craving for these drugs, which means educating the young people to love themselves and face their psychological stresses positively in order to develop their personal integrity in a healthy manner. This also means providing adequate recreational and sports facilities and heightening younger people’s interest in life in order to resist the temptation of drugs.

As to part (b) of the motion, which is to urge the Administration to set up an inter-departmental working group to solve the problem of drug abuse by adolescents, in fact we already have the Action Committee Against Narcotics (ACAN) in the Government, which is composed of, among others, staff of the Security Branch and Department of Health. In a way, ACAN is working hard, but unfortunately its work leaves much to be desired in four main areas:

- (1) All the time, ACAN’s attention has been focused mainly on “hard” drugs. It adopts a lukewarm approach towards the abuse of other drugs, and it hangs onto the job without letting others do it, and sets no clear work direction so far. However, in order to keep to the point of the motion and having regard to the co-ordination between the use of resources and policy and to the fact that drugs and drug abuse are similar and related problems, I do not think it is proper to set up, in addition to ACAN, an inter-departmental working group to deal with the problem of drug abuse by adolescents; on the contrary, I urge the Administration to extend the terms of reference of ACAN and by suitable combination of manpower and rearrangement of work priorities to deal with drugs and drug abuse as one amalgamated issue.
- (2) The powers and manpower deployment of ACAN are inappropriate. When it was reorganized the year before last, the Administration left out those full-time addiction treatment workers and staff of departments concerned; these people had been in the work for all the time. The Administration instead introduced three politicians, and then had another sub-committee set up under the Narcotics Division. This sub-committee is a powerless body and despite that its members are mostly addiction treatment workers of non-governmental organizations, the chairman is a governmental official; the agenda of the sub-committee is determined by this official, which places under his sole control the collective voice of non-governmental organization workers who work full-time to reduce the dependence on drugs of addicts. It is not known to outside people whether or not the collective voice could reach

ACAN and, given that it could, whether it would be ignored or rejected by other government officials or politicians. No wonder the people concerned are highly skeptical about the way of handling matters by the reorganized ACAN.

- (3) Whilst the work of ACAN is diversified, it is subject to the constraints which the Narcotics Division's work attitude imposes. Basically ACAN focuses on reducing drugs supply and its work direction is similar to that urged for under part (a) of this motion, with the result that there is a lack of comprehensiveness in its work.
- (4) ACAN does not place emphasis on rehabilitation and merely stresses addiction treatment. Actually, psychological addiction to drugs is more difficult to give up than physical addiction as far as drug abuse by adolescents is concerned. If there is no counselling on the psychological and behavioral problems after treatment, the ex-addicts would relapse into their old habit after a certain period of time.

Mr President, I think this motion should have addressed squarely the crux of the problem rather than addressing itself to some stopgap measures. However, since the intention of the motion is commendable, and as the Liberal Party agrees with the general direction of this motion, we therefore support the motion.

MR TIK CHI-YUEN (in Cantonese): Mr President, after having had a debate on new town planning and the allocation of resources to new towns, I would now turn to the youth problems in the new towns.

We have just observed that the Government's miscalculations in new town planning have caused a lot of problems to the residents, including family problems which will usually lead to youth problems. In the past, the young people with problems always congregated in the districts, forming gangs and creating troubles and even yelling and racketing in the neighbourhood. They seem to have quieted down over the years, but they are not staying away because they have turned over a new leaf. They are only turning to soft drugs and are taking cough syrup together. Syringes, which are left behind by the youngsters after injecting drugs, can be easily found in the more remote planters in the districts.

Earlier on, I talked with a school social worker over the problem of drug abuse among adolescents. He said that it was very common to find in schools young people abusing drugs. The figures just quoted by some Members have also reflected that the problem is worsening.

In fact, these figures are only reflecting the tip of the iceberg while the reality is even more alarming. However, when the government official makes his response later, he will probably repeat the gobbledegook that the Government has done a lot of work and the problem is in fact not that serious.

The trend indicates that taking soft drugs and consuming cough syrup can no longer satisfy the need of the adolescents, and some are actually switching to No. 4 heroin. This trend is all the more distressing. Our discussion with some groups reveals that the origin of the problem is threefold:

Firstly, law enforcement is inadequate. Some Members have mentioned that a total of 2 866 inspections were made to the pharmacies in 1993. Taking into account that a total of over 3 000 pharmacies are operating in Hong Kong, an average of one inspection per year is performed to every pharmacy. How can this kind of law enforcement action achieve any deterrent effects?

It is noted that between January and June 1993, the Government has conducted a total of 884 test purchases at pharmacies, but only 46 out of these 884 test purchases succeeded in procuring controlled drugs. The figure is really puzzling since some social workers and young people can easily gain access to these controlled drugs at the pharmacies in the districts. We ourselves also succeed in purchasing the drugs. It is really perplexing to find that the figure obtained by the Government through the conduct of “test purchases” deviates so much from the reality.

Secondly, the penalty is not severe enough. The Honourable CHEUNG Man-kwong has just mentioned that the existing maximum penalty is a fine of \$30,000 and one year’s imprisonment. However, the fines imposed on the offenders in the previous cases were only in the region of \$1,000 to \$3,000. This level of penalty can hardly serve a deterring purpose. The pharmacies have already incorporated the fines into their operating costs, and these are rather trivial costs.

Thirdly, counselling services are insufficient. Counselling Centre “PS33” has only a total of three social workers. How can they cope with the large number of young drug abusers in the territory? Some teachers and parents acknowledge in our discussion that they are not knowledgeable about drugs and do not know much about drug abuse among adolescents. Their lack of knowledge over the handling of these problems, coupled with the severe shortage of school social workers as well as the fact that the drug abuse problem does not come high on their priority list, has led to the young people not being given adequate counselling services. In view of this, I believe the strengthening of primary services is essential and the families and the schools should play their respective roles. The existing family services and the support from schools cannot tackle the problem at all. The Government must improve its support services in these two aspects.

Last but not least, I would like to highlight the importance of co-operation between families and schools. The problems faced by the young people cannot be effectively solved due to a lack of communication between schools and families. I hope that the Government can further promote the co-operation between families and schools, so that the problems of the young people can be solved through concerted efforts.

With these remarks, I support the Honourable Fred LI's motion.

MR FREDERICK FUNG (in Cantonese): Mr President, as there seems to be a worsening trend in pharmacies illegally selling dangerous drugs and adolescents abusing drugs, we cannot but address ourselves squarely to this problem.

According to the existing legislation, the part one poison under the Pharmacy and Poisons Ordinance, antibiotics and dangerous drugs are listed as controlled drugs and they can only be sold with a doctor's prescription. Of the controlled drugs, some are meant for the treatment of rheumatism, asthma, and, for tranquillizing and weight losing purposes. It is very likely that patent medicine, which the public consider "common", are in fact controlled drugs.

I would like to speak about the loopholes in the legislation first. The continued worsening of the illegal sales of drugs well depicts that loopholes in existing legislation have yet to be plugged. For instance, offenders are normally fined or given lenient sentences by the Judiciary and seldom is the maximum penalty imposed. The year 1993 saw 58 cases of prosecutions in which offenders were only required to pay a fine ranging from \$1,000 to \$5,000. How is it possible that this can have a deterrent effect on offenders? Although the Government raised the maximum penalty to \$30,000 and 12 months' imprisonment in 1993, rarely does the court impose the maximum penalty and thus the illegal sales of drugs have not been brought under control on account of such measure.

Besides, there are deficiencies in the enforcement of law — there is a severe shortage of inspectors of the Department of Health responsible for inspecting pharmacies. Currently, there are only 11 Pharmacy Inspectors conducting inspections on over 2 800 retail drugstores in the territory. Although the Secretary for Security, Mr Alistair AUSPREY, has said that the number of inspectors would be increased to 14 and additional casual workers would be employed, there is still an acute shortage in manpower and there is a long way from their being able to conduct inspections effectively on the more than 2 000 pharmacies all over the territory.

In addition, the Ordinance fails to give a clear definition of dangerous drugs. For example, concerning some drugs which are meant to treat rheumatism, asthma, allergy and so on, they are considered by the general public and pharmacies to be very common and therefore selling them to the public is no big deal.

With regard to the above, I would like to suggest four points as follows:

(1) In order to generate the deterrent effect, the Judiciary should impose a heavy penalty on offenders, who can even be named or banned from conducting business for a certain period.

(2) The Department of Health should considerably strengthen its manpower and increase the frequency of conducting inspections on pharmacies.

(3) The Government should enhance education and publicity making the public aware of the danger of purchasing patent medicine.

(4) To enhance the binding power by means of legislation. It is because simply relying on the professional code of practice does not yield adequate guarantee. Take drug labelling as an example. The Government should make use of the relevant legislation to guarantee that all drugs being sold are labelled. Although the Government is going to put the *Professional Code and Conduct for the Guidance of Registered Medical Practitioners* into force on 1 January 1995, the effect will be far less thorough than the enforcement of the legislation.

According to the information from the Action Committee Against Narcotics, there was a 50% increase in cases of adolescents abusing drugs in 1993 when compared to the year 1992. Besides, from the relevant submissions received by the Central Registry of Drug Abuse, figures relating to persons under 21 are: 1 405 in 1991, 1 958 in 1992 and 3 028 in 1993. The kind of drugs which adolescents mostly abuse are soft drugs mainly.

The Action Committee Against Narcotics has already integrated the “anti-drug education” into the school curriculum. The Education Department is also drafting a guideline to advise schools on how to handle cases of students abusing drugs. However, to solve this problem completely requires a long-term comprehensive strategy. I, therefore, support the suggestion being put forth in the motion as to the setting up of an inter-departmental working group to formulate a comprehensive plan in order to prevent the problem of adolescents abusing drugs from worsening.

With these remarks, I support the motion.

DR LEONG CHE-HUNG: Mr President, I speak on behalf of the functional constituency that I represent. I am to claim my interest as a private medical practitioner and also a member of ACAN. The alarming incidence of drug abuses amongst adolescents has been well highlighted. All I want to say is that last year alone there was some 34% increase.

The two drugs that are mainly abused are:

- (i) heroin or the hard drugs,
- (ii) psychotropic drugs or the soft drugs.

The spirit of the motion today is to have a second look at the control of abuse of the soft drugs, especially amongst our adolescents.

Drug abuse problem becomes a political battle

It is obvious from statistics our adolescents are poisoned by drugs. To tackle this problem requires the conjoint effort of all concerned. It therefore comes as a dismay in the last few weeks that the problem of drug abuse has moved away from the spirit of how to control it, but rather it has taken a political undertone. It has become a battleground for the war of words between the owners of drug houses, pharmacists and medical practitioners each accusing the other as the possible source of drug abuse. Needless to say, political groups have also thrown down their gauntlets.

Mr President, let us all bury our hatchets and examine the possible fallacies of law and other controlling machinery that surrounds the different personnels that are involved in the supply of drug.

Weeding out the black sheep amongst doctors

Firstly the doctor. Unlike what the political groups and pharmaceutical bodies have been saying, medical practitioners are required by law to fill in exactly the same form as pharmacists when it comes to the procurement and supply of “dangerous drugs”.

I do hope that the Secretary for Security when he replies can confirm that.

What has been overlooked is that it is extremely difficult to differentiate by law what is bona fide medical treatment and what is drug trafficking in the case of the medical practitioners. The “black sheep” of my profession are therefore using the name of treating patient in vain, instead they are in essence peddling in drugs. Moves must therefore be made to have this corrected.

The Honourable Fred LI and CHEUNG Man-kwong have highlighted the high volume of soft drugs that private practitioners have procured. I thank them for the details. It is obviously very significant, but yet do not forget that private practitioners look after some 70% of the population that require primary health care.

I will be the first, Mr President, to call upon the Government to impose the heaviest penalty on these “undesirable elements” of my profession who abuse the spirit of medical treatment. They have to be totally weeded out. I am sure I have the wholehearted support of the medical and dental professions.

As a start, the Hong Kong Medical Association will propose to the Medical Council to ensure unaccountable supply of drugs become a professional misconduct punishable by professional discipline.

The Hong Kong Medical Association has also set up a hotline whereby the public can phone in to report cases of abuse of selling of drugs both in the case of drug houses and also doctors' clinics.

Pharmacies need to clean their own house

On the other hand, Mr President, it would amount to burying our heads in the sand to say that illegal sales of drugs of any category across the counter do not exist in a rather disturbing way. Facts speak for themselves. Reporters of reputable newspapers have confirmed that they have been able to obtain many types of drugs, including anaesthetic agents from drug houses without doctor's prescription. Even the Honourable Fred LI has just mentioned that survey of the adolescents interviewed shows that they obtain most of the time drugs from drug houses themselves.

The Hong Kong General Chamber of Pharmacy has recently put up an open statement in newspapers accusing doctors as the main culprits in peddling soft drugs. Let these people realize that by ignoring the need for cleaning their own house, and sidestepping the issue in blaming the law of siding in favour of doctors is making a mockery of the law.

Let these people also realize that putting a stop to drug abuse is everybody's business. Who knows one day, anyone of us may face the agony of our own children, our own relatives fallen prey to drugs.

In the presence of apparent denial of self discipline, and it is important that the status of the law must be upheld, I call for the heaviest penalties for drug house owners selling scheduled drugs illegally without a doctor's prescription. The Judiciary of course must be made to realize the serious nature that drug abuses may bring.

Fallacies in system victimizing pharmacists

In relation to illegal sales of drug across the counter, let the pharmacist professional bodies realize that such dealing does not invariably imply impropriety of their profession. Instead it shows yet another fallacy of the system which oftentimes victimizes the pharmacists through no fault of their own.

For whilst the business owner is often the licence-holder of the drug house, the pharmacist employed is the person who has to be accountable for the trade. He supplies the drug on prescription. He fills in records for “dangerous drugs” and he is supposed to be the one who holds the key to gain access to these drugs.

Oftentimes however, the business owners would be selling drugs illegally without their pharmacists’ knowledge, say at “convenient time” when the pharmacists are off duty. Oftentimes drug house owners would be illegally buying in drugs to be sold without records. “If you want to keep your job, you will have to bury your head in the sand”, one pharmacist was quoted to lament. This irregularity needs to have a good look at and somehow corrected in good time.

It is high time, too, that the pharmacist profession should look into the need of their own professional council and establishing their own code of practice. It would be up to them to decide whether they are satisfied with the current arrangement.

ACAN needs more teeth and wider representation

Mr President, the motion also calls for the establishment of an inter-departmental working body.

Yet, we have in front of us ACAN whose terms of reference amongst others is “to advise the Governor on measures necessary to eradicate drug abuses from the community”. I would therefore instead call for the expansion of membership of ACAN to include ex officio members from all the departments concerned and to give this committee more teeth to monitor the drug combating action of the different departments.

Control of “hard drug” also requires second look

Mr President, much has been said of control of “psychotropic drugs”. Let us not forget that statistics have actually shown that heroin, the hard drug, is also a problem.

Hong Kong must not rest on the laurel of our methadone clinics. After all methadone is but a poor substitute for heroin. Our measly figures of detoxification and our very high re-addiction rate is nothing to be proud of. The Government must change its “culture” to narcotics and to ensure that the name ACAN really represents what its name implies. We have to save our future generation and make it drug free.

8.00 pm

PRESIDENT: It is now eight o'clock and under Standing Order 8(2) the Council should adjourn.

ATTORNEY GENERAL: Mr President, with your consent, I move that Standing Order 8(2) should be suspended so as to allow the Council's business this evening to be concluded.

Question proposed, put and agreed to.

DR TANG SIU-TONG (in Cantonese): Mr President, according to statistics of the Central Registry of Drug Abuse, the number of young drug abusers aged under 21 has rapidly increased by 55% from 1 958 in 1992 to 3 028 last year. In New Territories West, the number has increased from 381 in 1992 to 630 last year, representing a rise of 60%, that is, five percentage points higher than the territory-wide increase. As the young drug abusers will surely not register with the Registry on their own initiative, so the figures above can only reflect a facet of the situation. The true figures will definitely be more astounding.

The problem of drug abuse by youngsters has not emerged suddenly out of the blue. There has been in fact a considerable period of time between its beginning to its gradual deterioration, only that the Administration has not paid enough attention to the problem when it first emerged, resulting in a continual deterioration of the problem. In Tuen Mun, for example, it was found nine years ago that many youngsters in that district were abusing soft drugs and cough syrups. These young drug abusers often loitered and even stirred up troubles in Yan Oi Square of Tuen Mun town centre, Sam Shing Estate and the areas near Butterfly Beach. In this regard, the social workers of the district and community affairs leaders warned the authorities concerned and requested the Administration to address the problem squarely and prevent its deterioration. However, the authorities concerned failed to keep a vigil on the problem and dealt with it casually. As a result, the problem has kept on worsening. Recently, veteran outreaching social workers responsible for counselling problem youngsters in the district pointed out that the problem of dangerous drugs abuse by Tuen Mun youngsters has become very acute. Abusing cough syrups, "pills" and solvents are only "kid stuffs". In order to quench their thirst for drugs, some youngsters who are long-time drug abusers with a strong degree of reliance have resorted to taking different kinds of dangerous drugs all at one time, while some of them have even turned to heroin. Abusing these drugs cocktail style will not only deepen the addiction, but may also be fatal because of overdose. On 20 March this year, a youngster who had taken an excessive amount of soft drugs plunged to his death from his home in Tuen Mun Town Square. Although cases of this kind are not many, they reflect that the problem is getting out of proportion.

There are now over 2 600 licensed pharmacies and drugstores in Hong Kong. However, virtually anyone can buy controlled soft drugs in these drugstores. The Health Department currently has only 11 officers specifically responsible for inspecting drugstores, which is obviously insufficient for the job. In early March this year, a newspaper sent a reporter to conduct a “test purchase” at some drugstores. Without any doctor’s prescription, the reporter could successfully buy 23 kinds of controlled dangerous drugs from these stores. This has indeed reflected the serious insufficiency in monitoring work. No wonder the number of young drug abusers has kept increasing in recent years.

Drug abuse by youngsters is in fact not an isolated problem. It involves many different factors. We cannot solve the problem simply by legislating for control and increasing the penalty on drugstores illegally selling dangerous drugs. Such measures will only cover up but not really solve the problem for good as they will give rise to more underground triad-controlled transactions. I have time and again pointed out the fundamental causes behind drug abuse by young delinquents. They include the policy of nine-year free education which has produced a large number of drop-outs, social trends which changed the values of youngsters, insufficient community education, provocation by family problems, insufficient number of social workers performing counselling duties, temptations from the triads and so on. To effectively prevent the problem from further deteriorating, there must be a complete package of detailed plans and co-ordinated efforts by the various parties concerned. Regrettably, the Administration’s efforts have all along been rigid and perfunctory, relying solely upon the Narcotics Division’s education programme conducted in schools. How can such actions really solve the problem?

I think that in addition to stepping up the control and monitoring of drugstores that do not abide by the relevant laws, the Administration should also implement the following measures:

- (1) to vigorously promote family education with additional attention given to problem families in order to prevent youngsters lacking parental care from being lured and going astray;
- (2) to review the existing education system with a view to stop producing a large number of drop-outs, to improve the teacher-to-student ratio, and to increase the number of school social workers so that teachers and social workers will have more time to take care of the students;
- (3) to increase social service and outreaching social work teams to expand community education and counselling services to individual districts in need of such services;

- (4) the police must thoroughly investigate why drug abuse is particularly serious in some districts to see if triad activities are involved; and if so, increase the police strength there to fight these crimes;
- (5) to encourage district organizations to organize or to organize on the Administration's own initiative more positive education activities in the districts for the participation by youngsters and their families. These activities will not only instil correct concepts into the minds of youngsters but will also be helpful to their growth and the promotion of harmonious family relations.

If the Administration does not wish our youngsters to sink into depravity, it should seriously address this problem now and stop stalling with official jargons and saying that the problem is not so serious. The Administration should put words into deeds and take actions immediately because that is the only correct attitude for solving the problem.

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

MR JAMES TO (in Cantonese): Mr President, just now several Members have presented numerous data and solutions to the problem. I would just like to add a few points here.

I am a member of the Action Committee Against Narcotics. It was more than once that I used the word "crisis" to describe the gravity of the problem which, covering a wide spectrum, cannot be resolved by one or two departments alone. With regard to today's motion, I think the following points are worth considering:

First of all, a number of Members said earlier that pharmacies selling controlled drugs are mostly only required to pay a fine of \$1,000 to \$5,000. This is because our judges, especially the magistrates, fail to realize the magnitude of the damage done by drugs to adolescents. The law provides that the maximum penalty for these offences is imprisonment for three years. However, sentences are usually lenient on mitigating grounds as such crimes are always regarded as "technical offences" by the judges. If the judges do realize the seriousness of the problem as well as the need to crack down on offenders through the imposition of penalty and if they do increase the punishment in question, I believe we can achieve a deterrent effect to a certain extent. Moreover, the Legal Department should also lodge an appeal in respect of cases where sentences imposed are relatively lenient, and guidelines should be laid down for the judges when passing sentence. If the offenders are severely punished by the judiciary, I believe that no matter how high the profits, these pharmacies would never risk defying the law.

Secondly, the Department of Health, the Police Force and the Customs and Excise Department should join hands in a concerted effort to deal with this problem. The Administration has all along stressed that the problem is not that serious, and that the success rate of “test purchase” conducted by designated staff is extremely low. However, certain newspaper reporters did manage to purchase controlled drugs from the pharmacies without too much difficulty. Why is this so? The Government really needs to conduct a review in this regard. Did the staff conducting the “test purchase” give themselves away so that the pharmacies did not fall for the ruse?

There is a new trend recently and this is that drug traffickers are getting younger. They take with them large numbers of drugs and pills and sell them in schools or in games centres. Even if they do get caught, they would only be given a very light sentence by the court. I hope the Administration will review the situation. I find that the Narcotics Bureau has greater interest in certain drug trafficking activities of a larger scale; for example every time large quantities of heroin and cannabis are seized, press conferences are held. However, with regard to cases of drug abuse by students, only “cases of special interest” would be investigated. Is it because of inadequate resources on the part of the police? I hope the police and the Department of Health will continue to mount “joint operations” to deal with the problem of the sale of soft drugs. I say so because the number of “joint operation” conducted by the two departments has fallen from 39 in 1992 to 26 in 1993.

Mr Fred LI said just now that adolescents aged under 18 should not be allowed to buy controlled drugs. I support the proposal because in future adolescents aged under 18 will also be prohibited from purchasing cigarettes. As for the suggestion of tackling the problem from a social and educational angle, I support it entirely.

DR HUANG CHEN-YA (in Cantonese): Mr President, many colleagues have spoken on the question of control. However, I would like to point out that a lot of resources have to be deployed to effect control, and the mere control of drug abuse has proven to be a failure in many parts of the world. Drug abuse is a social problem. Adolescents are susceptible to the influence of their peers. If their sub-culture is one of senseless pursuit of excitement and pleasures, naturally they would have a tendency to abuse drugs. In fact, it is most important to have long-term plans to help our young people set proper goals in their lives. Pedantic as it may seem, any plan which is designed to solve adolescents’ problems must deal with the moral standards and culture of our society. As these long-term plans can only be achieved over a long period of time, we have to pay attention to controls in the short run as well.

In fact, there are laws in Hong Kong which control pharmacies and, under the law, many drugs can only be obtained on prescription. However, as many Members have already said, the legislation concerned is not effectively implemented at all. Many restricted drugs, for example, antibiotics, antipyretics

and drugs for rheumatics which have dangerous side effects, can easily be purchased from many pharmacies. Is there any reason why the situation will be any different for drugs like “Cross” (Flunitrazepam), “Smurf” (Midazolam and Triazolam) and cough syrup? Last Saturday, after canvassing on the street for half a day, I have already obtained 5 000 signatories’ support for today’s motion. At that time, the people told me that at a certain pharmacy which is located close to the place where they signed, any adolescent can buy cough syrup which contains codeine at only \$20 per bottle. I really do not understand why the public knows about the problem, the press knows about it and yet the Administration alone has repeatedly denied that there is a problem and thinks that there is sufficient control over pharmacies. Have the public and the press made a mistake? Has the Administration alone understood the situation correctly while everyone else has got it wrong? Or, is the Administration alone asleep while everyone else is awake? In fact, the law is there and yet not enforced; regulations are there and yet ignored. I hope that the Administration will step up checks on the sales record of controlled drugs in pharmacies and deal with those which illegally sell medicine and drugs according to the law.

It is heart-breaking for me to admit that there are black sheep in the medical profession who would not refuse anyone’s request for controlled dangerous drugs. Last year, a new piece of legislation was passed which requires medical practitioners to keep proper records of the quantity of controlled dangerous drugs sold. The Administration can, likewise, deal with those medical practitioners who have acted in contravention of medical ethics according to the law.

There are a considerable number of medical practitioners who prescribe tranquillizers and sleeping pills in excessive amounts to patients. The diagnosis of neurasthenia has very often been abused too. Actually, using drugs to cope with tension is merely a temporary solution rather than a permanent cure. It is by no means the most proper cure. Unfortunately, there are some medical practitioners who are too anxious to obtain instant gains and hence dispense these drugs indiscriminately. Since many patients want to get away from their problems and escape from reality by means of a few pills, these drugs have become commonly used and abused. The doctor whom Mr Fred LI has mentioned, for example, dispenses more than 2 000 pills a day. If we do some calculations, we will understand that this amount can easily be reached, for example, if each of 30 patients obtains a one-month prescription of drugs in a day. In a busy clinic, it is indeed very difficult to prove that a medical practitioner has contravened the law. Hence, the few black sheep which improperly sell drugs to adolescents can safely hide themselves in the background of general abuse. I think if the people of Hong Kong can change their habit of abuse of tranquillizers, those unscrupulous doctors can be identified. As I have said in the beginning, if we do not change the social culture and the attitude of the people; if we let adults use drugs to get rid of their personal problems and let adolescents use drugs for excitement and pleasures, we are merely looking at two sides of the same coin without solving

the problem. If we merely control the sale of drugs to adolescents aged below 18, we are merely raising the age of drug abusers without solving the problem.

With these remarks, I support the motion.

MR MICHAEL HO (in Cantonese): Mr President, I would like to speak in response to the speech made by Dr the Honourable LEONG Che-hung earlier. I represent the Medical and Health Care Functional Constituency as well as the pharmacists. I am not trying to say, on behalf of the pharmacists, that medical practitioners may have played a part in churning out controlled drugs onto the market. It also goes against my wish to see the pharmacists accusing the doctors, or the doctors pointing a finger of blame at the pharmacists or the drugstores. Nor do I wish to give the public a wrong impression that a particular trade should bear the brunt of the responsibility. The major culprit for the prevalence of narcotics is of course the drug traffickers.

Dr the Honourable LEONG Che-hung proposed that the professional body of pharmacists should formulate its own code of practice. Of course, as a profession, it must observe a code of practice and as a member of my profession, I believe that a code of practice will indeed be helpful. However, we are all human. When there are benefits to reap, people may not be able to resist the temptation and may betray their own personal morals. Therefore, in our debate today, I do not wish to see different trades accusing one another. Nor do I wish to give the public a wrong impression that medical practitioners and pharmacists are two major sources of dangerous drugs.

I would also like to respond to Dr the Honourable TANG Sui-tong's earlier comments. He quoted newspapers as reporting that their reporters could easily purchase 23 types of drugs which should not be made available over the counter without a doctor's prescription. This is a fact. But I must point out that the drugs in question are poisons, not dangerous drugs. Poisons basically will not be abused because they cannot make people feel "high". These medicines are usually used to cure heart diseases, rheumatism, and so on. Nevertheless, we do not wish to see that the public can buy these poisons easily. But surely we hope to see improvements in law enforcement.

It is reported that over the years, the pattern of drug abuse has shifted from soft drugs to heroin. These drugs are readily available to youngsters at soccer pitches or amusement games centres. I hope that the Administration, the Customs and Excise Department and the police can step up enforcement actions in this respect.

All the above measures are in fact comparatively passive approaches. The pro-active approach is to enhance the provision of primary social services. During the past few years, the Government has been trying to drive home messages on the harmful effects of drug abuse. The Honourable Fred LI has mentioned some slogans that we have been using, such as "drugs kill without

bloodshed". As we can see, these slogans have achieved little effect. I hope that the Administration can disseminate messages on the harmful effects of drug abuse through various channels, such as schools and the Department of Health, so that youngsters may be made aware of the harms that drug abuse can do to their bodies. Regarding the provision of social services, I hope that the Administration can strengthen family and youth services, thus preventing youngsters from wandering off the right track.

Mr President, I so submit.

SECRETARY FOR SECURITY: Mr President, drug abuse is a problem which has social, economic, medical and psychological implications. The Government adopts a multi-faceted approach to combat this problem, aimed at reducing both the supply of and demand for drugs. Vigorous law enforcement action is taken to reduce the supply of illicit drugs. Measures to reduce the demand for drugs include preventive education and publicity, and treatment and rehabilitation programmes.

Before I describe what the Government has been doing to address the problem of drug abuse among young people, I would first like to outline the extent of the problem. In 1993, just over 3 000 young drug abusers aged under 21 were reported to the Central Registry of Drug Abuse. This number is about one-third of one percent of the population aged between 11 and 20. So, by and large, our youth stays away from illicit drugs. However, we are not complacent about this. On the contrary, we are concerned about the increasing trend in the number of young people reported to the Registry. The number of first time reported young drug abusers rose by 50% from 1992 to 1993.

Over three-quarters of young drug abusers take heroin. The majority of the others abuse cannabis, or cough medicine. Few abuse other prescribed medicines, which does not mean that we do or should ignore the problem.

As regards existing legislation and controls on drugs, the illegal supply of dangerous drugs is a felony and is already subject to heavy penalties under our legislation. The Dangerous Drugs Ordinance stipulates strict controls on the supply of dangerous drugs. Medical practitioners and authorized sellers of poisons, more commonly known as pharmacies, have to comply with strict requirements governing the procurement and supply of dangerous drugs. Medical practitioners may supply a dangerous drug in bona fide consultations. Those supplying or prescribing dangerous drugs are required by law to maintain complete records of purchase and supply. Pharmacies may supply dangerous drugs by prescription only under the direct supervision of a registered pharmacist. They are required to maintain a register of the drugs supplied. Forensic pharmacists of the Department of Health regularly inspect pharmacies and audit their stock of dangerous drugs against records of procurement and supply.

Similarly, the Pharmacy and Poisons Ordinance provides for control over the supply of pharmaceutical products. The retail sale of poisons and drugs by authorized and listed sellers is regulated by the Pharmacy and Poisons Board. Drugs are classified into different categories under the Ordinance for the purpose of retail sale and different levels of control apply to them.

In general, the existing legislation provides adequate control over drugs. The legislation is kept under regular review to ensure that it is up-to-date and effective. Amendments are made as and when necessary, for example:

- (a) psychotropic substances of the benzodiazepine group were scheduled as dangerous drugs in 1992 in order to achieve the strictest form of control over them;
- (b) stricter controls on the sale of cough medicine containing more than 0.1% of codeine were introduced in January last year to bring its sale under the direct personal responsibility of pharmacists. As a result, the abuse of cough medicine has reduced; and
- (c) further controls on the importation of codeine syrup are proposed in the Dangerous Drugs (Amendment) Bill introduced into this Council last month to bring cough preparations with a concentration of codeine of not less than 0.5% under proper licensing control of the Department of Health. We hope that this will significantly reduce the abuse of cough medicine.

We do not see the need to bring forward general amending legislation to tighten or extend existing controls. Nevertheless, when loopholes are identified we will take action to close them, as in the past.

As regards law enforcement efforts, large seizures by the police and Customs and Excise of illicit drugs were achieved in 1993: 270 kg of heroin, 43 kg of opium, 547 kg of herbal cannabis, and substantial quantities of various narcotics, analgesics and tranquillizers were seized.

The Pharmacy and Poisons Board, supported by the Pharmaceutical Division of the Department of Health, takes a pro-active approach to control the sale of illegal drugs. The Department of Health has plans to strengthen progressively its law enforcement activities. Plans are in hand to increase the frequency of test purchases and inspections of drug retail premises. The number of pharmacy inspectors will be increased and additional casual workers will be employed. The frequency of inspections will be further enhanced by more effective staff deployment and re-prioritization of activities in the Pharmaceutical Division of the Department of Health. There are also plans to establish a special task force to assist in the prosecution of offending drug retailers.

The existing penalties provided for in the legislation are considered, by and large, appropriate. Revision of the level of penalties has been sought where warranted. For example, the maximum penalties for the offence of unlawful possession of dangerous drugs were increased in 1992 from \$10,000 to \$1 million and imprisonment for seven years.

The maximum penalties under the Pharmacy and Poisons Ordinance were revised upwards in 1992 to a fine of \$30,000 and imprisonment for 12 months. Our statistics show that this has not resulted in any proportionate increase in the penalties imposed on offending medicine retailers. This does concern us and we are prepared to ask the Attorney General to seek a review of sentence where appropriate. In addition, the Pharmacy and Poisons Board has recently recommended that the maximum penalty should be further revised to \$100,000 and 12 months' imprisonment. This recommendation is being pursued by the Health and Welfare Branch.

As regards the proposal to establish an inter-departmental working group, the Action Committee Against Narcotics (ACAN) is a non-statutory body which advises the Government on all anti-narcotics policy matters and strategy. It monitors drug abuse trends, examines drug abuse problems and advises on ways to address these problems. Membership of ACAN and its subcommittees comprises persons experienced in the fields of social work, education, medicine and community service as well as relevant government departments such as the Department of Health, Social Welfare Department and Education Department.

Under the overall strategy to reduce supply, by vigorous law enforcement, and to limit demand, by preventive education and publicity, and treatment and rehabilitation programmes, ACAN has given particular emphasis to addressing the increasing trend in drug abuse among adolescents. ACAN's preventive education publicity programmes seek to prevent drug abuse among young people who are most vulnerable and at risk. On the treatment and rehabilitation of young abusers, ACAN has supported the establishment of a counselling centre for psychotropic substance abusers; and more recently a pilot project for a treatment centre specifically to cater for the needs of young abusers.

We believe that no campaign can hope to succeed without the backing of the community as a whole. A co-ordinated and comprehensive preventive education and publicity programme, with considerable community participation, forms an essential part of our demand reduction efforts. The four main types of activities are school talks and seminars, community involvement projects and promotions, education and publicity through the mass media, and the production of materials for education and publicity.

Drug education is integrated into the school curriculum. Teachers are advised not only to provide information on substance abuse and its effects, but also to give emphasis to the development of healthy and positive attitudes and the learning of life skills, such as the handling of peer pressure. These messages are reinforced in regular school talks by the Narcotics Division in all secondary schools and to Primary Six students.

Education about drugs is an on-going process, and the involvement of both the schools and parents is necessary. Seminars are organized for parents, teachers and social workers to keep them better informed, so that they will be able to handle the problem of drug abuse and help steer young people away from drugs.

Young people are one of the principal targets of ACAN's community involvement programme. The Youth Volunteer Group comprises enthusiastic young people who are involved in training and encouraging other young people to take a more active and direct participation in anti-drugs efforts. A Community Against Drugs Scheme funds projects by students, youth groups and the community to promote anti-drug activities. Community campaigns are organized at the district level and play an important role in informing the public about the dangers of drug abuse and enlisting community support.

Our publicity places special emphasis on youngsters, and the role of parents in steering their children away from drugs. Posters, leaflets and Announcements of Public Interest are produced. A comprehensive Drug Education Teaching Kit for school use was produced at the end of 1991. In 1993, our Drug Abuse Telephone Enquiry Service was automated to provide information on the harmful effects of common substances of abuse, and to give advice on counselling and treatment.

Turning to treatment and rehabilitation, drug addiction is seen as a medical and social problem and addicts are treated as patients. Young abusers can join the voluntary out-patient methadone programme provided by the Department of Health, or the voluntary in-patient treatment programme run by the Society for the Aid and Rehabilitation of Drug Abusers (SARDA). In response to the emergence of psychotropic substance abuse, a counselling centre known as PS33 was set up by the Hong Kong Christian Service and a large proportion of its clients are young abusers. A pilot project for a treatment centre specifically for young people has the support of ACAN and planning is underway.

Besides ACAN, the Working Group on Services for Youth at Risk, set up under the Co-ordinating Committee for the Welfare of Children and Youth at Risk was formed in July 1993. The Working Group provides a forum for government departments and multi-disciplinary professionals to examine current youth problems, identify service gaps and recommend ways of addressing the needs of young people, particularly those at risk. Among the

areas of examination, the Working Group has recently started to look at the illicit use of drugs among young people.

With the existence of ACAN and the other multi-disciplinary groups to address the issue of drug abuse by young people, we do not see the need for an additional inter-departmental working group to duplicate their efforts.

Mr President, I am glad that this Council has had the opportunity to debate this important subject. I am grateful for Members' suggestions about improvements we should make in our approach to tackling the problem of drug abuse by young people. We shall certainly consider and pursue these suggestions.

I agree with the thrust and intent of the motion: drug abuse by young people is a tragedy which we must seek to prevent, and we must constantly seek and pursue new initiatives in order to do so. But we do not agree that there is a need for wholesale amendment to our existing laws, nor for wholesale replacement of our existing machinery for policy and strategy formulation, and co-ordination of the overall anti-narcotics programmes. We already have comprehensive legislation to tackle this problem, and an effective co-ordinating body in ACAN. Certainly we should not be complacent, and we accept the need constantly to give effect to new initiatives to tackle this problem, and to plug loopholes when they come to light. This we have done and will continue to do. We should do so by building on and improving our present strategies, legislation and administrative structures, not by demolishing and seeking to rebuild them.

Thank you, Mr President.

PRESIDENT: Mr Fred LI, do you wish to reply? You have three minutes four seconds out of your original 15 minutes.

MR FRED LI (in Cantonese): Mr President, I have nothing further to add because legislators who are members of the Action Committee Against Narcotics (ACAN) or members of the Hong Kong Council of Social Service have already provided us with a lot of invaluable advice.

The Secretary for Security's reply is very disappointing. He repeatedly stressed that ACAN has already done a lot and that it is not necessary to make amendments to the existing legislation. I doubt very much if he has listened carefully to Members' views at all. It seems that he is turning a deaf ear to our critical remarks and is simply reading out a prepared speech.

Colleagues have pointed out just now that ACAN has a narrow scope of remit. As a matter of fact, ACAN's roles may have been restricted by its own name. Let me illustrate my point by quoting an example. The Correctional

Services Department was formerly called the Prison Department. “Correctional Services” carries much broader implications, including both the notions of “punishment” and “correction”. By the same token, ACAN should not only aim at cracking down on drug abuses but also at promoting educational programmes to steer adolescents away from drugs.

The Secretary has not stated the Government’s position in his speech just now. We should surely be very surprised if he is against the motion. I believe that the Government has realized the seriousness of drug abuse among young people at present. By moving this motion today, I do not intend to ask the Government shift the job to any particular party. I think even an inter-departmental working group will not necessarily be able to solve all the problems. I only hope that all parties concerned will give the issue some serious thought and join hands to put an end to the problems.

Lastly, I would like to thank Members speaking in support of my motion.

Question on the motion put and agreed to.

Private Bill

First Reading of Bill

FEDERATION OF HONG KONG INDUSTRIES (AMENDMENT) BILL 1994

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

Second Reading of Bill

FEDERATION OF HONG KONG INDUSTRIES (AMENDMENT) BILL 1994

MR JAMES TIEN moved the Second Reading of: “A Bill to amend the Federation of Hong Kong Industries Ordinance.”

MR JAMES TIEN: Mr President, I move the Second Reading of the Federation of Hong Kong Industries (Amendment) Bill 1994.

Since its foundation in 1960, the Federation of Hong Kong Industries has supported the needs and promoted the interests of manufacturing industry in Hong Kong, pursuant to the objectives laid down in the Federation of Hong Kong Industries Ordinance. Although amendments were previously made, it has been apparent for some time that a review of this legislation was required. Many changes have occurred within Hong Kong’s industrial sector in recent

years: as manufacturers have moved away from labour-intensive production methods and gone increasingly upmarket, involving areas of marketing, design, packaging and so on, it has been necessary to broaden the definition of manufacturing.

Many changes in the amendment bill also relate to general housekeeping matters of the federation. These include such things as the change of the logo, the term of office of the general committee and the procedure for revising membership fees.

Mr President, I beg to move.

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

Adjournment and Next Sitting

PRESIDENT: In accordance with Standing Orders I now adjourn the Council until 2.30 pm on Wednesday, 22 June 1994.

Adjourned accordingly at seventeen minutes to Nine o'clock.

Note: The short titles of the Bills/motions listed in the Hansard, with the exception of the Hong Kong Arts Development Council Bill, Environment and Conservation Fund 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 Security to Ms Anna WU's supplementary question to Question 6**

The Standing Committee on Pressure Groups (SCOPG) was established in 1977 under the chairmanship of the then Home Affairs and Information Services Branch to report to and advise the Government on social and political trends and developments in Hong Kong. Part of its brief was to assess the aims and intentions of a variety of groups, including those mentioned by Ms WU. SCOPG was disbanded in 1982.

A number of government departments, including the Home Affairs Department, Government Information Services and the police, contributed information and assessments to SCOPG. This information was obtained lawfully. These were a part of the Government's efforts to monitor and assess public opinion and aspirations. They were not political investigations

Annex II**Written answer by the Secretary for Security to Mrs Elsie TU's supplementary question to Question 6**

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