

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 6 July 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 JAMES KERR FINDLAY, O.B.E., Q.C., J.P.

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

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

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

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

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

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

THE HONOURABLE SZETO WAH

THE HONOURABLE TAM YIU-CHUNG

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

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

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

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

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

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

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

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

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

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

THE HONOURABLE PETER WONG HONG-YUEN, O.B.E., J.P.

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE VINCENT CHENG HOI-CHUEN, O.B.E., J.P.

THE HONOURABLE MOSES CHENG MO-CHI

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

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHIM PUI-CHUNG

REV THE HONOURABLE FUNG CHI-WOOD

THE HONOURABLE FREDERICK FUNG KIN-KEE

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

THE HONOURABLE MICHAEL HO MUN-KA

DR THE HONOURABLE HUANG CHEN-YA

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

DR THE HONOURABLE LAM KUI-CHUN

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

THE HONOURABLE LAU CHIN-SHEK

THE HONOURABLE EMILY LAU WAI-HING

THE HONOURABLE LEE WING-TAT

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

THE HONOURABLE FRED LI WAH-MING

THE HONOURABLE MAN SAI-CHEONG

THE HONOURABLE STEVEN POON KWOK-LIM

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

THE HONOURABLE TIK CHI-YUEN

THE HONOURABLE JAMES TO KUN-SUN

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

DR THE HONOURABLE PHILIP WONG YU-HONG

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE HOWARD YOUNG, J.P.

THE HONOURABLE ZACHARY WONG WAI-YIN

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

THE HONOURABLE CHRISTINE LOH KUNG-WAI

THE HONOURABLE ROGER LUK KOON-HOO

THE HONOURABLE ANNA WU HUNG-YUK

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

THE HONOURABLE ALFRED TSO SHIU-WAI

ABSENT

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

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

IN ATTENDANCE

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

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

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

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

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

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

MISS CHRISTINE CHOW KWAN-TAI, J.P.
SECRETARY FOR HOME AFFAIRS

MRS SHELLEY LAU LEE LAI-KUEN, J.P.
SECRETARY FOR HEALTH AND WELFARE

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

MR JOHN TELFORD, J.P.
SECRETARY FOR TRANSPORT

MR TAM WING-PONG, J.P.
SECRETARY FOR FINANCIAL SERVICES

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	L.N. No.
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Boundary and Election Commission (Electoral Procedure) (Geographical Constituencies) (Amendment) Regulation 1994.....	396/94
Film Censorship (Amendment) (No. 2) Regulation 1994.....	397/94
Insurance Companies Ordinance (Amendment of First Schedule) Regulation 1994.....	398/94
Hospital Authority Ordinance (Amendment of Schedule 2) Order 1994	399/94
Companies (Amendment) Ordinance 1994 (30 of 1994) (Commencement) (No. 2) Notice 1994.....	400/94
Corrupt and Illegal Practices (Amendment) Ordinance 1994 (54 of 1994) (Commencement) Notice 1994	401/94
Declaration of Change of Title (Commissioner for Administrative Complaints) Notice 1994	402/94
Insurance Companies (Amendment) Ordinance 1994 (25 of 1994) (Commencement) Notice 1994.....	403/94

Sessional Papers 1993-94

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| No. 94 | — | Report of the Public Accounts Committee on Report No. 22
of the Director of Audit on the Results of Value for Money
Audits June 1994 PAC Report No. 22 |
| No. 95 | — | Hong Kong Export Credit Insurance Corporation Annual
Report for 1993-94 |

- No. 96 — Pneumoconiosis Compensation Fund Board 1993 Annual Report
- No. 97 — Director of Social Welfare Incorporated Statement of Accounts for the Year Ended 31 March 1993
- No. 98 — Hospital Authority Annual Report 1992-93
- No. 99 — Statement of Accounts of the Samaritan Fund
- No.100 — Construction Industry Training Authority 1993 Annual Report
- No.101 — J.E. Joseph Trust Fund Report for the Period 1 April 1993 to 31 March 1994
- No.102 — Kadoorie Agricultural Aid Loan Fund Report for the Period 1 April 1993 to 31 March 1994
- No.103 — Sir Robert Black Trust Fund Annual Report for the Year 1 April 1993 to 31 March 1994
- No.104 — Clothing Industry Training Authority Annual Report 1993
- No.105 — Hong Kong Trade Development Council Annual Report 1993-94
- No.106 — Sir David Trench Fund for Recreation Trustee's Report 1993-94
- No.107 — School Medical Service Board Annual Report for the Year Ended 31 March 1994
- No.108 — The Statement of Accounts for the Customs and Excise Service Welfare Fund for the Year 1993-94
- No.109 — Report on the Administration of the Fire Services Welfare Fund for the Year Ended 31 March 1993
- No.110 — Sixth Annual Report of the Commissioner for Administrative Complaints

Addresses

Report of the Public Accounts Committee on Report No. 22 of the Director of Audit on the Results of Value for Money Audits June 1994 PAC Report No. 22

MR PETER WONG: Mr President, on behalf of the Public Accounts Committee, I have the honour to table the Committee's Report No. 22 today.

This report covers the conclusions reached by the Committee in considering the Director of Audit's Report No. 22 on the results of value for money audits completed between October 1993 and February 1994. The Director of Audit in his report raised a total of 10 issues. We held a public hearing to hear evidence from the witnesses concerned, and subsequently three meetings to consider the evidence taken and the further information provided by the witnesses. The conclusions reached and the recommendations made by the Committee are fully set out in the report tabled.

I would however like to take the opportunity to highlight a few issues of a general nature which are of particular concern to the Committee. First, the failure of the authorities concerned to achieve the policy objective of full cost recovery of their activities, namely the licensing of hotels, guesthouses and clubs, the vehicle examination scheme and the ticketing system operated by the Urban Council. The Committee note that although these services have been introduced for considerable periods of time, they are still operating at a deficit. We hope that the Administration would not only pay lip service to the policy objective but take more proactive action to achieve this quickly.

Another general issue concerns the inadequacies in planning as occurred in the computerization of property maintenance, the provision of an additional drop-off zone to relieve congestion at the Hong Kong International Airport and the utilization of space in the Housing Authority Headquarters Building. The problem has resulted either in the delay of implementation of the projects or in the failure to achieve the intended project objective. The Committee have been advised that the problem has now been remedied in that before upgrading a project to Category B, a feasibility study will have to be carried out to identify the scope and the requirements involved. The Administration has further assured that the need to conduct feasibility study would not affect the overall processing time and delay the implementation of public works projects.

On the subject of utilization of the Housing Authority Headquarters Building, we are also concerned that the Establishment and Finance Committee of the Housing Authority, when considering a request of the Housing Department in May 1993 for additional office space required at its headquarters, has apparently not been informed of the designed capacity of the Headquarters Building or given an explanation as to why the designed capacity could not now be realized. The Committee consider it important that the

Housing Authority should have been provided with such information. We also recommend that the Housing Authority should closely monitor the utilization of office space in the Headquarters Building particularly in respect of the space to be vacated following the removal of some facilities to other premises. We have been advised that the Director of Housing is conducting a review on the allocation and utilization of space at the Housing Authority Headquarters Building. We look forward to the outcome of the review.

I trust that the Committee's recommendations will be accepted by the Administration.

Hospital Authority Annual Report 1992-93

SECRETARY FOR HEALTH AND WELFARE: Mr President, it is my pleasure to present to this Council the Hospital Authority Annual Report covering the period from 1 April 1992 to 31 March 1993.

The reporting period covered another year of progress in the implementation of the Authority's management reforms, continual improvements in patient services, and development of partnership with the community.

By the end of 1992-93, new management reforms have been introduced in eight candidate hospitals. A total of 21 Hospital Chief Executives were appointed to spearhead these reforms with emphasis placed on participatory management, multi-disciplinary team approach and, most important of all, a patient-centred culture. "Putting the Patients First" has been the cardinal principle of this exercise and I am pleased to witness the positive response from hospital staff. This owes much to the efforts of the Hospital Authority (HA) to enhance communication with staff, to help them realize their potential contribution towards the corporate mission, and to provide them with supporting services and opportunities to participate in decision making.

Steady progress has been made in building up an information technology infrastructure for network communications, data capture and storage, patient administration, medical records management, clinical decision support, financial control and human resources management. The concept of networking and clustering has delineated a clear role for individual hospitals and developed a link among them to improve overall co-ordination. Efforts made by the HA to rationalize existing services have already resulted in less overcrowding in wards, improved hospital environment and shortened waiting time for medical treatment.

With the support of dedicated and motivated staff, we hope that the new approach in reaching out to specific target groups will encourage active participation by patients in their curative process and achieve better interface between medical and welfare service providers.

To develop a closer partnership with the community, three Regional Advisory Committees have been formed. They provide public forums for discussion on hospital services. At the district level, 28 Hospital Governing Committees also provide a direct venue for the local community to take part in service planning and management.

In order to improve the transparency and accountability of the HA, we intend to cover additional details on the financial position, actual performance and manpower provision in next year's Draft Estimates to provide a better basis for public monitoring of activities conducted by the Authority. Furthermore, considerable efforts are being put into developing a set of manpower indicators for all healthcare professionals. This will assist hospital managers in the planning and deployment of frontline staff, as well as to provide a direct linkage between resource input and clinical output.

Mr President, I congratulate Sir S Y CHUNG and the Hospital Authority Board for their leadership and vision, and all the dedicated staff for their good work. My gratitude also goes to Honourable Members of this Council, and the public for their continued support in our endeavour to provide "Quality Healthcare, Quality Hospital Services" for the people of Hong Kong.

Sixth Annual Report of the Commissioner for Administrative Complaints

CHIEF SECRETARY: Mr President, section 22 of the Commissioner for Administrative Complaints (COMAC) Ordinance requires COMAC to present an annual report on his work on or before 30 June, to the Governor who will cause his report to be laid before the Legislative Council.

I have much pleasure in presenting to the Council COMAC's Sixth Annual Report which is tabled today.

There is growing public confidence in the COMAC scheme as reflected in the gradual increase in the number of enquiries and complaints received by the office. For the 12-month period ending June 1994, COMAC's office have received 1 054 enquiries and 173 complaints. A 7% to 8% increase over the respective figures for 1992-93. The number of enquiries received is record high. We are likely to see a bigger increase in the number of enquiries and complaints received by COMAC's office in the coming year since COMAC's remit has been widened and the public can now have direct access to COMAC.

The number of substantiated and partially substantiated complaints remained fairly stable, 37 in 1993-94 as compared to 36 in 1992-93. COMAC has commented that, and I quote, "the fact that more than half of the complaints investigated so far were unsubstantiated is good evidence of the general administrative standard in Hong Kong". We welcome the statement but we are not complacent. We must remain ever vigilant against maladministration. In

this regard the very good progress we have made in publishing and implementing performance pledges provide a very good yardstick against which both clients and the servicing department can measure the standard of service. We will continue our efforts in this regard.

In response to Members' suggestion that a Government Minute should be prepared in response to COMAC's Annual Report, the Administration has considered the coverage of such a Minute. We propose that the Minute should cover the action the Government has taken or proposes to take in response to COMAC's recommendations in relation to complaints which are found to be substantiated or partially substantiated in the report. The first Government Minute will be available in three months' time.

Thank you Mr President.

Oral Answers to Questions

Hong Kong residents detained as a result of commercial disputes in China

1. DR HUANG CHEN-YA asked (in Cantonese): *Concerning detention of Hong Kong residents as a result of commercial disputes in China, will the Government inform this Council:*

- (a) whether it has any knowledge of the number of Hong Kong residents detained by the Chinese authorities in the past three years who have subsequently been released without formal charges being laid against them and of the respective duration of their detention; how many have been charged; how many of those charged have been found guilty; and for how long they had been detained before formal charges were laid against them;*
- (b) how many of the cases concerned were related to disputes between private companies and corporations; and how many involved state enterprises in China;*
- (c) what concrete steps have been taken by the Government to ensure that the detainees have legitimate access to legal advice, medical service, and correspondence and visits by family members; and*
- (d) according to the liaison which the Government has initiated with the Chinese authorities over such cases, what practical steps will be taken by the latter to avoid illegal detention as far as possible?*

SECRETARY FOR SECURITY: Mr President, in the past three years, assistance has been sought from the Government in 10 cases involving 12 Hong Kong residents who were reportedly detained as a result of commercial disputes in China. Only two cases, involving three detainees, are outstanding; all other detainees have been released. The Chinese authorities have responded to our representations in only one case; therefore, we do not have information on how many were formally charged or their length of detention before formal charges were laid against them.

We do know that most of the cases were related to state or collective enterprises. However, due to the lack of details provided by the Chinese authorities or the families, we cannot be sure of the numbers involving private companies and state enterprises.

We have made repeated requests to the Chinese authorities for clarification of the legal basis for the detentions and for access for the detainees' families, legal representatives and colleagues. All these approaches have been made in accordance with the wishes of the families. In some cases our representations have been made through the Foreign and Commonwealth Office in London and in others through the British Embassy in Peking.

We have pressed hard for clarification of the legal basis for the detentions and for assurances that they are consistent with Chinese law. I am afraid that we have not yet received a satisfactory response, even though many of the detainees have now been released.

DR HUANG CHEN-YA (in Cantonese): *Mr President, in his reply to parts (a) and (b) of my question, the Secretary is actually saying that he has no idea whatsoever and his reply to parts (c) and (d) is mere perfunctory official rhetoric. If the Administration has tried hard enough to follow the cases closely, how could it be so ignorant about them? Was the Administration not aware that they could at least approach the detainees for information upon their arrival in Hong Kong? Is the Secretary satisfied with his own performance and does he think he has performed his duties competently? How is the Administration going to make the local residents feel confident that they will not be illegally detained while conducting normal business activities in China and without any legal protection from the Hong Kong Government?*

SECRETARY FOR SECURITY: Mr President, I think I have explained why we do not have all the details which are asked for in the question. I am quite confident that we have pursued all these cases as far and as hard as we can through all available channels.

MR CHEUNG MAN-KWONG (in Cantonese): *Mr President, the Administration has admitted in its reply that there were cases of illegal detention which did not have any legal basis according to the law of China. As far as these cases of illegal detention without legal basis are concerned, has the Hong Kong Government taken any initiative to assist the detained Hong Kong residents to seek compensation from the Chinese authorities, if it were dissatisfied with the reply given by the Chinese side? If so, what are the results? If not, why not?*

SECRETARY FOR SECURITY: Mr President, I did not say anything about illegal detention. What I said was that we had not received clarification as to the basis for the detentions. No, we do not intend to approach the Chinese authorities for compensation.

MR JIMMY MCGREGOR: *Mr President, this is a matter which I think many businessmen worry about with regard to doing business in and with China and with Chinese organizations. Has the problem been taken up in the Joint Liaison Group (JLG) as a policy issue and if so, what has been the Chinese response?*

SECRETARY FOR SECURITY: Mr President, I agree that this is a matter which many businessmen worry about. We have taken it up with the Chinese authorities, as I said, in Hong Kong, in Peking and in London. We have not taken it up through the JLG. It is not a matter which relates to the transfer of sovereignty.

MR LAU CHIN-SHEK (in Cantonese): *Mr President, will the Secretary inform this Council whether the Administration has tried to approach the 12 Hong Kong residents who had been reportedly detained as a result of commercial disputes in China upon their arrival in Hong Kong so as to investigate the reasons for their detention and to inquire whether they have been given fair legal treatment? As far as the two outstanding cases involving three detainees are concerned, does the Administration know whether they have access to legal advice and medical service, and allowed communication with and visits by family members?*

SECRETARY FOR SECURITY: Mr President, yes, we will approach persons once they are released if they wish to give us those details. I think we have already done so in many cases, but I am afraid I do not have the details with me.

As regards the second part of the question, I think as I said in my main answer, we have repeatedly requested for access for lawyers, family, colleagues and for other assistance that any of the detainees may want. We have not received a reply. We simply do not have details of what assistance they have asked for or been given.

MR JAMES TO (in Cantonese): *Mr President, the Secretary said in his reply that the Chinese authorities had only responded to one of the representations. I would like to ask the Secretary, bearing in mind that Sino-British relations are now at a low ebb, if the Administration has any means which can make the Chinese Government (or governments of other countries or places) adopt a more positive attitude in responding to cases like these? Is there any way to enhance the dialogue so that the Chinese authorities will be more enthusiastic in helping the Hong Kong residents who are detained in China out of their predicament?*

SECRETARY FOR SECURITY: Mr President, I think all I can say is that the Chinese Government has generally refused to grant visits by families or legal representatives on the grounds that under Chinese law no access to a detainee can be allowed while he is still under investigation. That obviously is not the position in many or most other countries.

DR CONRAD LAM (in Cantonese): *Mr President, in the third paragraph of his reply, the Secretary said that some of the representations were made to the Chinese authorities through the Foreign and Commonwealth Office in London and some were made through the British Embassy in Peking. Does the Hong Kong Government not have any legal status to make direct representations to China? If so, who will make representation on behalf of the people of Hong Kong after 1997?*

PRESIDENT: Secretary, are you able to answer the second part?

SECRETARY FOR SECURITY: Mr President, no, it does not mean that we do not make representations in Hong Kong. What I meant to indicate in my main answer, which I think I have said before, is that in all cases involving Hong Kong residents, we do make representations in Hong Kong through the Political Adviser's Office to the New China News Agency, and in many cases these are followed up by further representations in Peking and sometimes also representations in London. I am afraid I simply cannot say how this will be dealt with after 1997 in Hong Kong. Clearly there will still be a British Consulate General in Hong Kong which will be able to take cases up, and there will still be the means of taking them up through the British Embassy in Peking and also through the Foreign and Commonwealth Office in London.

Britain's reception of Vietnamese refugees on family reunion basis

2. MR MARTIN BARROW asked: *In view of the grim and uncertain future facing the 1 800 so-called "hard-core" Vietnamese refugees languishing in Hong Kong and claims by government officials that they might be repatriated to Vietnam, will the Administration inform this Council whether:*

- (a) it will urge the British Government to take the lead in accepting these refugees by abandoning the policy of only accepting refugees on a family reunion basis; and*
- (b) it is seriously contemplating repatriating such refugees to Vietnam; and if so, what are the justifications for such a drastic move, and what implications such action will have on other refugees in Hong Kong?*

SECRETARY FOR SECURITY: Mr President, at a recent Comprehensive Plan of Action (CPA) technical meeting in Bangkok, it was agreed that the resettlement countries should re-examine the Vietnamese refugee caseload in Hong Kong. In that context, emphasis was placed on the principle of burden sharing by all the resettlement countries.

In the wake of this meeting, the Administration asked Her Majesty's Government (HMG) to consider taking some of the refugees in Hong Kong who do not have family links in the United Kingdom. In reply, we have been advised that the United Kingdom has resettled more than 2 000 refugees from Hong Kong since June 1989, and in doing so has exceeded its quota agreed at the Second International Conference on Indo-Chinese Refugees. The United Kingdom will continue to accept refugees for resettlement on a family reunion basis, but because its Vietnamese refugee resettlement programme has formally ended, it cannot accept refugees who would require reception facilities on arrival in the United Kingdom. HMG has pressed other resettlement countries to accept those Vietnamese refugees remaining in Hong Kong.

Our efforts are now directed at securing the resettlement of the remaining refugees. We have no plans to repatriate them to Vietnam. Nevertheless, this is an option which we may have to explore in the future if resettlement proves fruitless.

MR MARTIN BARROW: *Mr President, while Vietnamese migrants must accept that their future lies back in Vietnam, the position of those few classified as refugees is different. Would the Secretary not agree that the United Kingdom's lack of support for Hong Kong at this time is both disgraceful and unacceptable; and would he advise what steps he will take to persuade the United Kingdom to restart its Vietnamese refugee programme in order to take the lead in persuading other countries to do likewise?*

SECRETARY FOR SECURITY: Mr President, we will continue to press all countries, including the United Kingdom, to take the remaining Vietnamese refugee caseload from Hong Kong and certainly we will continue to press the United Kingdom to take more refugees excluding family reunion cases. I believe that that would have the beneficial effect of encouraging the other resettlement countries to take others of the refugees in Hong Kong.

MISS EMILY LAU: *Mr President, I am appalled to hear that the Government may consider repatriating refugees back to Vietnam. May I ask the Government to explain clearly to this Council if that option is being considered, on what basis is that being done? Have we in Hong Kong ever repatriated refugees back to their homeland? And does the Government have a plan to send back all the Vietnamese whether they are refugees or migrants before the transfer of sovereignty in 1997?*

SECRETARY FOR SECURITY: Mr President, the answer to the first question is yes. We have sent refugees back to Vietnam. In the last few years, at least 24 refugees have returned voluntarily from Hong Kong to Vietnam. I do not think that there is anything wrong with this. The answer to most refugee problems in most parts of the world is repatriation and while we must, of course, take steps to ensure that those repatriated have guarantees of non-persecution, I do not see anything at all wrong or unusual about resettlement in Vietnam.

PRESIDENT: Yes, not answered, Miss LAU?

MISS EMILY LAU: *Yes, Mr President. I asked the Secretary to tell us whether we have, I guess, forcibly repatriated refugees back to their home countries and the Secretary gave us the answer of 24 and he said they voluntarily returned. That would not fit into my definition of repatriating refugees. Can he please tell this Council whether the Hong Kong Government has actually forcibly repatriated refugees back to their homeland, whether it is to Vietnam, to China or to other countries?*

SECRETARY FOR SECURITY: Mr President, I do not think Miss LAU mentioned the word forcible in her initial question and I think I answered the question.

But since this is a separate question, no, we have not forcibly repatriated any Vietnamese refugees back to Vietnam.

PRESIDENT: I think we will have to leave it.

MR JAMES TO (in Cantonese): *Mr President, fortunately, the Secretary said just now that Hong Kong has never repatriated any Vietnamese refugees who might face political persecution, otherwise the matter would be very serious. May I ask the Secretary under what circumstances that repatriating refugees "is an option which we may have to explore"; and whether this practice is regarded as extremely inhumane? Should this matter be studied with the Chinese Government or considered by the future SAR Government first; or no action whatsoever, in this respect, can be taken under any circumstances?*

SECRETARY FOR SECURITY: Mr President, I think as I said in my main answer, we do not have any firm plans at the moment, so I obviously cannot announce what they are. But what I would say is that there are circumstances even recognized in the UNHCR Charter and the conventions in which refugees can be repatriated to their home country and I do not see, as I said earlier, that resettlement in Vietnam should necessarily be excluded for refugees in Hong Kong.

MR JAMES TIEN: *Mr President, I think we all have our own views on this. I am not optimistic that we will be able to secure a resettlement area for these remaining refugees and I do not support the view of repatriating them to Vietnam. If this drags on for three years, has the Hong Kong Government had any discussions with the Chinese Government that by 1997, these 1 800 refugees would be allowed to stay in Hong Kong or they would go back to Britain with the end of British rule in Hong Kong?*

SECRETARY FOR SECURITY: Mr President, no, we have had no such discussions.

MR MARTIN BARROW: *Mr President, would the Secretary confirm that the need for the United Kingdom support will be raised during the forthcoming visit of the Minister of State, Mr Alastair GOODLAD, and also by the Governor when he visits the United Kingdom at the end of the month?*

SECRETARY FOR SECURITY: Mr President, no, I cannot confirm that.

PRESIDENT: Not answered, Mr BARROW?

MR MARTIN BARROW: *Could I ask if the Secretary will arrange for these points to be raised during Mr GOODLAD's visit and the Governor's visit to the United Kingdom?*

SECRETARY FOR SECURITY: Mr President, all I can say is I note the request.

DR YEUNG SUM (in Cantonese): *Mr President, will the Secretary inform this Council whether the Administration believes that it is contrary to the International Covenant on Human Rights to repatriate political refugees to their homeland?*

SECRETARY FOR SECURITY: Mr President, no. As I have said, there are provisions in the convention relating to refugees which do permit repatriation in certain circumstances.

MR JAMES TO (in Cantonese): *Mr President, will the Secretary inform this Council whether the Administration supports the British Government to reinstate the policy of accepting the remaining Vietnamese refugees in Hong Kong on a “non-family reunion” basis? What is the Administration’s stance in this respect?*

SECRETARY FOR SECURITY: Mr President, could I ask for clarification? I did not catch the question. I do not know what we are being asked to support or not to support.

MR JAMES TO (in Cantonese): *Mr President, will the Secretary inform this Council whether the Administration will support or urge Britain to accept those Vietnamese refugees remaining in Hong Kong on “non-family reunion” basis?*

SECRETARY FOR SECURITY: Yes, Mr President, as I said earlier, we will certainly continue to press for this.

Delayed occupation of a PSPS estate

3. MR WONG WAI-YIN asked (in Cantonese): *As the occupation of Yuet Wu Villa, a Private Sector Participation Scheme (PSPS) estate, has been delayed, thus causing discontent and anxiety among the flat owners, will the Government inform this Council:*

- (a) of the reasons for the delay, whether it is related to the building structure or construction work and what improvement works have been carried out; and*

- (b) *what monitoring role the Housing Department plays in the construction of PSPS estate and how it guarantees the quality of such buildings?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, I think first of all I should question whether the use of the word “delayed” and “delay” in the question is appropriate. The answers to parts (a) and (b) of the question are as follows:

- (a) Normally the completion of a building project is followed by an inspection period during which any defects are found and made good before occupation. In most Private Sector Participation scheme (PSPS) projects the period is three to four months; but with the Yuet Wu Villa it was about six months because, with nearly 4 000 flats, it is one of the largest PSPS projects to date. The defects were minor ones commonly found in newly completed building projects. They have all been made good by the developer.
- (b) The Director of Housing appoints a private sector surveyor to monitor and oversee PSPS projects and report on progress and the developer’s performance. The surveyor also checks, on behalf of the Director, that design and construction proposals in tender submissions comply with the conditions of sale. On the basis of the surveyor’s advice, the Director of Housing will advise the Director of Lands whether the flats are complete in accordance with the conditions of sale.

Some purchasers of Yuet Wu Villa premises expressed concern over the time taken to reach completion and were worried that this might have something to do with the quality of the building works. Housing Department staff and the developer have met the purchasers and explained the situation to them. The purchasers are now generally satisfied since taking over their flats from 20 June 1994 onwards.

MR WONG WAI-YIN (in Cantonese): *Mr President, the quality of PSPS flats has all along been criticized by the public. Yuet Wu Villa is not the first estate the quality of which is questionable, many PSPS estates sold are of poor quality, including the Affluence Garden in Tuen Mun completed years ago. Although the quality of PSPS flats is undesirable, the defects liability period still remains unchanged, that is, one year. Generally speaking, it may not be possible to test adequately, in just one year, the quality of flats; in particular, problems which involve water leakage or seepage. The keys for Yuet Wu Villa flats are now being distributed. When the flats are ready for occupation after the completion of home decoration works, the rainy season has already gone. It would not be possible to check for water leakage or seepage problems then. Will the*

Secretary inform this Council whether the Administration will require the developers to extend the defects liability period from the current one year to at least three years? If not, what are the reasons?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, I think the position in respect of building projects generally is that there is a one-year maintenance period after completion during which the purchasers or those who are taking over a project have a contractual recourse as regards maintenance matters. As far as more major matters are concerned — these are usually described as latent defects, there is a much longer period during which a contractor can be held responsible or asked to rectify latent defects. So the period that the Honourable Member is suggesting of three years is, in fact, covered by a much longer period than three years, and as far as the maintenance period is concerned, I believe that in respect of PSPS projects which have been started from the beginning of this year, a longer period has been provided for in the contract.

MR TAM YIU-CHUNG (in Cantonese): *Mr President, many people purchase PSPS flats because they trust the Housing Department. However, after they have purchased the flats, many of them discover that the quality of PSPS flats is really questionable. In this respect, the Housing Department would shrug off its responsibility as the monitoring authority, especially when the flats concerned are occupied. Typical examples are the On Ling Garden and the Fu Ling Garden in Tseung Kwan O. Will the Housing Department review its monitoring role, so that the purchasers of PSPS flats could have more confidence?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, I think general condemnation of the PSPS arrangements is really not necessary. By and large, the bulk of PSPS projects are completed satisfactorily and found to be satisfactory by those who purchase them. For those who are not satisfied either during the maintenance period or the longer period for discovery of latent defects, there is recourse available to them. They are, after all, private owners of private property. Nevertheless, I am quite prepared to ask the Housing Department if there is anything they believe they can do further to improve their monitoring arrangements.

MR FREDERICK FUNG (in Cantonese): *Mr President, as the brochure of Yuet Wu Villa mentioned that occupation permits would be available six months before now, many flat owners thought that they could then move in and made a lot of arrangements. For tenants of private housing, their rented flats should have been returned to the owners six months ago, but the delay of the occupation date forced them to sign new tenancy agreements and pay higher rents. As for others, since some of them presupposed that they should start residing in Yuet Wu Villa six months before today, they already transferred*

their children to schools in Tuen Mun. However, as the flats were not available by then, they still had to live in urban districts and suffer all the troubles everyday to take their children to and from schools in Tuen Mun. Will the Government inform this Council whether it is going to compensate for the nuisance created as a result of the six-month lapse between the actual occupation date and the date declared by the Government?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, I do not think there is any question of making compensation available to the purchasers of private properties. The Yuet Wu Villa is a PSPS under which flats were sold in two phases, in December 1992 and April 1993, respectively. The sale and purchase agreement executed by the purchasers mentions that the development will be completed in January 1994, which refers to the date of the issue of the occupation permit under the Buildings Ordinance. Now there is a general misunderstanding by the purchasers, probably due to the misinterpretation by staff of the appointed solicitors firm that the flats would be handed over to them in or around January 1994. The occupation permit for Yuet Wu Villa was issued on 15 December, 1993. The Housing Department's appointed surveyor then started the flat-by-flat inspection, and remember there were 4 000 of these flats, in January 1994 to ensure that all the requirements laid down in the conditions of sale were complied with. The flats had been checked by the developer's appointed authorized person and then handed over to the surveyor for the flat-by-flat inspection. The surveyor carried out three rounds of inspections. The Housing Department also conducted several informal inspections to ensure that all the concerned parties understood what standard was required and that it was met. The surveyors completed their inspections in early May 1994, and carried out the final inspections with the Housing Department at the end of May 1994. There were some further rectification works required at that point and once everything had been completed in early June, the certificate of compliance which enables owners to occupy was issued, and as I say, the handing over of the flats began on 20 June 1994.

MR LEE WING-TAT (in Cantonese): *Mr President, I joined the Home Ownership Committee under the Housing Authority in 1989, and only two ad hoc meetings had been convened so far, both of which are concerned with the quality of PSPS flats — the Carado Garden in Sha Tin and the On Ling Garden in Tseung Kwan O. In view of such, Mr EASON was wrong when he said that the PSPS flats were generally satisfactory. PSPS is basically a response to the Long Term Housing Strategy published in 1987, that is to make full use of private developers' potential, lest they might not have enough development projects. In reality, the PSPS projects, which supply flats at the same rate as HOS projects do, could not contribute considerably to our housing supply. Bearing in mind that many problems are surfacing, will Mr EASON inform this Council whether there is any special purpose for retaining the PSPS? As PSPS flats could not contribute significantly to housing supply but, on the contrary,*

brought about confusion over the monitoring roles of the Government and the Housing Authority, why does the Government not abandon this scheme and construct only HOS flats?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, I think the Honourable Member is in a much better position to put that suggestion to the Housing Authority than I am. I believe that the PSPS still plays a useful role in our long-term housing strategy and that several thousand recipients of the benefits of PSPS schemes are added to the list every year.

MRS PEGGY LAM (in Cantonese): *Mr President, it is mentioned in paragraph (a) of the Secretary's reply that "the defects were minor ones commonly found in newly completed projects". Will the Government inform this Council what exactly are the "minor" defects and how many blocks are found to have these minor defects?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: I think, Mr President, if a great deal of detail is required on exactly what the defects were in these 4 000 flats, I am prepared to try and provide an answer to that in writing. (Annex I)

Demonstration en masse in the Victoria Harbour

4. MRS MIRIAM LAU asked (in Cantonese): *In the light of the massive demonstration by fishermen in the Victoria Harbour on 14 June 1994, will the Government inform this Council:*

(a) how it can ensure that:

(i) normal marine traffic will not be disrupted by such activities; and

(ii) the safety of others using the Harbour will not be jeopardized; and

(b) whether the Administration will consider making rules to regulate such activities?

SECRETARY FOR ECONOMIC SERVICES: Mr President, the demonstration by fishermen in the Victoria Harbour on 14 June 1994 was conducted in an orderly and responsible manner. Although the presence of such a large number of vessels at one time in the harbour had caused delay to regular traffic, the

delay was temporary, did not lead to any collision of vessels, and caused no more problems to traffic control than, say, the New Year fireworks display.

However, given the busy marine traffic in the harbour, the Administration is concerned that any parade of vessels would inevitably cause inconvenience to normal marine activities and pose risks to the movement of vessels. Against this background, the Director of Marine implemented measures to minimize disruption to normal marine traffic and ensure that the safety of others using the harbour will not be jeopardized. The measures include:

- (a) notifying in advance all port users, including ferry and other ship operators of the protest in the harbour;
- (b) deploying patrol launches together with the marine police to escort the procession of vessels; and
- (c) maintaining close monitoring and surveillance of the harbour through the Vessel Traffic Centre.

The Administration fully recognizes and upholds the right of individuals to freedom of expression, but it must be balanced against the interests of all those who use our very busy harbour. In this connection, the Administration is reviewing existing legislation to ensure that adequate provisions are in place for the proper regulation of demonstration conducted by vessels in our harbour.

MRS MIRIAM LAU (in Cantonese): *Mr President, will the Secretary inform this Council whether the Administration would, when reviewing the existing legislation, consider requiring prior approval be sought from the Marine Department before any similar demonstration in the harbour is conducted, so that advance planning of the procession route would be possible, and prior notification could also be given to the ferry company or the organizations concerned to enable them to take proper contingency measures and to guarantee that the demonstration can proceed more smoothly? In addition, will the Administration require such activities be forbidden in poor weather conditions, such as heavy fog or strong waves in order to avoid danger?*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Mr President, the new rules that the Administration is now considering to introduce actually cover the various points suggested by Mrs Miriam LAU just now. According to the existing legislation, the Director of Marine has the authority to give instructions to individual vessels operating in the harbour, as well as the authority to instruct vessels in order to avoid collision which may result in loss of lives or property. However, existing legislation allows the Director to give similar instructions to individual vessels only but not to fleets. Therefore, the Administration in the consideration of new regulations at present, has covered the issue raised by Mrs LAU a moment ago, that is, whether the legislation will vest the Director of

Marine with the power to issue general instructions to vessels in a procession as a whole, so that (regardless of the weather condition or circumstances) no activities of the procession will cause any inconvenience to other port users.

DR LAM KUI-CHUN (in Cantonese): *Mr President, will the Government inform this Council whether the present criteria for granting approval to and the measures for monitoring processions on land and at sea are different? If so, why are they different? Will the Government consider equating or standardizing the criteria and measures pertaining to these two kinds of processions?*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Mr President, I am not too familiar with the legislation governing processions on land. However, while studying this case, it seems apparent to me that the Director of Marine, unlike the Governor or the Commissioner of Police, does not possess the part of authority given under the Public Order Ordinance. Perhaps I should answer that question in writing after an analysis of the two kinds of authority. (Annex II)

MR ANDREW WONG (in Cantonese): *Mr President, just now the Secretary mentioned in his replies to the questions asked by Mrs Miriam LAU and Dr LAM Kui-chun that consideration might be given to a licensing system. Does the Secretary know that the Council is now considering an amendment to the Public Order Ordinance, so that processions on land will only need to give prior notification to the Commissioner of Police? As such, I suggest that the Government, when considering the new rules, should not overcorrect the situation by making it compulsory to apply for a licence. Will the Government take this into account?*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Mr President, perhaps Mr Andrew WONG did not hear very clearly when I made my reply just now. I have not mentioned “licensing”, I just said that those interested in participating in such processions should notify the authorities concerned.

MR TAM YIU-CHUNG (in Cantonese): *Mr President, does the Government believe that the most thorough-going method to minimize massive demonstrations by fishermen at sea is to pay more attention to and solve the problems affecting the livelihood of the fishermen, for example, the problems of dredging compensation and the importation of fishery workers?*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Mr President, to solve the problems faced by the fishermen is one of the major duties of the Government, and that includes the two points mentioned by Mr TAM. My other colleagues and I will try our best to tackle these two and all other problems faced by the fishermen.

MR EDWARD HO (in Cantonese): *Mr President, according to the press, the Marine Department, Agriculture and Fisheries Department, Marine Police and the District Office concerned had been informed of the action of the fishermen in advance. Will the Secretary inform this Council of the measures taken on that day to reduce the impact, and whether such measures were effective?*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Mr President, in the second paragraph of my reply, I have already reported to this Council some of the actions taken by the Government, such as deploying patrol launches of the Marine Department and the Police Force to control marine traffic; notifying all port users, including ferry and other ship operators, of the event; and keeping under close surveillance the harbour traffic through the Vessel Traffic Centre. It was fortunate that there was no property loss or personal injury on that day. However, since there were too many vessels in the procession, some delay was caused to the docking or departing ferries and other port users. We will consider ways to better deal with similar situations in the future, such as reserving part of the fairway for the ferries to go on with their normal operation. There are one of the practicable measures that we are now studying.

MR HOWARD YOUNG (in Cantonese): *Mr President, the Secretary stated, in the first paragraph of his reply to the question raised by Mrs Miriam LAU, that some delay was caused to regular traffic on that day. Will the Government inform this Council if there is any data indicating the seriousness of the delay caused on that day; and whether the Government has received any complaints (from the ferry company or the public) concerning the delay?*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Mr President, according to our record, 31 ferry trips had to be cancelled on 14 June, while another 30 ferry trips were delayed. Certainly some passengers were affected. However, since prior notification of the demonstration in the harbour had already been made, we reckon that some of the passengers had used other means of transport instead.

Aircraft noise control

5. MR JAMES TO asked (in Cantonese): *Under the Civil Aviation (Aircraft Noise) Ordinance (Cap. 312) section 6(1), the Director of Civil Aviation may*

by notice in the Gazette prohibit aircraft from taking off and landing at the aerodrome during any specified period for the purpose of avoiding, limiting or mitigating the effect of noise. In view of the great concern of the public over noise nuisance caused by aircraft taking off and landing at the Hong Kong (Kai Tak) Airport, will the Government inform this Council of the following:

- (a) has the Director in the past ever prohibited any aircraft of specified description from taking off and landing at the Hong Kong (Kai Tak) Airport during any specified period under section 6(1)(a) of the said Ordinance; if not, why not;*
- (b) has the Director in the past ever specified the maximum number of times aircraft of specified description may be permitted to take off or land at the Hong Kong (Kai Tak) Airport under section 6(1)(b) of the said Ordinance; if not, why not; and*
- (c) has the Director ever made any plan to reduce noise nuisance caused by aircraft taking off and landing at the Hong Kong (Kai Tak) Airport?*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Mr President, under the Civil Aviation (Aircraft Noise) Ordinance, unless aircraft operators possess a recognized noise certificate or evidence of compliance with the standards of noise emission prescribed in Chapter 2 of Annex 16 to the Convention on International Civil Aviation, the aircraft of those operators will not be allowed to land or take off at the Hong Kong International Airport.

In addition, the Civil Aviation (Aircraft Noise) (Limitation on Landing or Taking Off of Aircraft) Notice made under section 6 of the Ordinance except in certain defined circumstances, all aircraft are prohibited from landing or taking off at Kai Tak between the hours of 11.30 pm and 6.30 am. Given these broadly cast restrictions, it has not been necessary for the Department of Civil Aviation to exercise any additional powers under sections 6(1)(a) and (b) of the Ordinance to prohibit aircraft of specified description from taking off and landing at the Hong Kong International Airport, or to specify the maximum number of times aircraft of specified description may be permitted to take off or land.

With a view to cutting down further the disturbance caused by aircraft noise, the Director has, over the years, implemented a number of other measures. Honourable Members may recall that until recently, unless wind, weather or other operating conditions make it necessary, aircraft were prohibited from landing and taking off over Kowloon between 6.30 and 7.00 in the morning and between 9.00 and 11.30 at night. However, in the interests of aviation safety under which this mode of operation had to be suspended in October 1993 the previous limitation on the number of aircraft movements programmed between 9.00 and 11.30 pm has been maintained.

In addition, the Director has, with the co-operation of airlines, brought forward to before 10.30 pm all but one of the landings over Kowloon previously programmed to arrive after that time. The coming winter schedule will see all landings programmed for before 10.30 pm including the existing exception.

Mr President, I would like to assure Members that the Administration is very conscious of the nuisance which is caused by aircraft noise in the remaining period up to the closure of Kai Tak. In order to strengthen the powers available to the Director to reduce aircraft noise I very much hope that this Council will, later this afternoon, pass the Civil Aviation (Aircraft Noise) (Amendment) Bill. Enactment of the Bill will pave the way for a requirement that aircraft using our airport must meet the more stringent noise controls on aircraft noise laid down in Chapter 3 of Annex 16 of the Convention on International Civil Aviation.

In addition, a number of other measures are being studied to reduce noise disturbance. One such measure is to require aircraft operators without detriment to aviation safety to adopt landing and take-off procedures which reduce noise, to the extent that such procedures can be implemented. I can assure Members that we will continue to pursue every opportunity for reducing disturbance to residents living near the airport.

MR JAMES TO (in Cantonese): *Mr President, the Secretary's reply did not explain why the authority, instead of exercising the power vested by the legislation to restrict the maximum number of flights, only prohibited all aircraft from landing or taking off between 11.30 pm and 6.30 am, with the exception of aircraft possessing a recognized noise certificate. I would like to ask the Secretary whether he is aware that when an aircraft flies over Kowloon, even if it complies with the standards of noise emission prescribed in Chapter 2 of Annex 16 to the Convention on International Civil Aviation, the noise level can be as high as 110 dB. This figure was recorded by an observation station. 11.30 pm is a time very late at night, if the power under Sections 6(1)(a) or (b) to restrict the maximum number of flights is not exercised, it might imply that part of the legislation enacted by the Legislative Council in 1986 is not being applied, and that the then Members of the Legislative Council have been deceived?*

PRESIDENT: I am sorry, is that a question, Mr TO?

MR JAMES TO (in Cantonese): *Mr President, at a Legislative Council sitting held in 1986, the then Chief Secretary, by pointing out the importance of the Ordinance concerned in further restricting the number of aircraft taking off and landing, successfully persuaded the Members to pass the Bill. Bearing such in mind and in view of the fact that instead of applying the relevant Ordinance,*

aircraft are still allowed to take off and land late at night and give out noise at a level as high as 110 dB, will the Secretary inform this Council whether he thinks that the then Chief Secretary has deceived the Members of the Legislative Council by leading them to believe that it pays to pass the Bill?

PRESIDENT: That is unparliamentary language. Please rephrase your question.

MR JAMES TO (in Cantonese): *Mr President, I will use the word “misled” instead of “deceived”.*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Mr President, it has been the Administration's practice to measure the noise caused by aircraft over Kowloon City and Hong Kong East. Under certain circumstances, when an aircraft flies low, the noise produced would reach the level described by Mr TO just now. However, please bear in mind that what was passed in 1986 is a series of legal provisions which comprises various types of clauses. In fact, the Administration has been applying quite a number of such clauses except the two mentioned by Mr TO since 1986, and the purpose of mitigating the effect of noise has also been achieved to a certain extent.

Besides, in 1986 when law was being drafted, the Administration had no idea to what extent aircraft manufacturers were able to mitigate noise. Over the past eight years, the result attained by aircraft manufacturers was rather dramatic, that is why we now propose to pass Chapter 3 of Annex 16, so as to put restrictions on new types of aircraft. As long as the Administration applies the other provisions under the legislation (including the new Bill that Members are going to pass this afternoon), I think the Director of Civil Aviation should have sufficient authority to minimize the noise level. Therefore, under these circumstances, it would not be necessary for the Administration to apply the two provisions mentioned by Mr TO just now.

REV FUNG CHI-WOOD (in Cantonese): *Mr President, I think the residents on Kowloon side are the ones most seriously affected by aircraft noise, since the noise level is over 100 dB whenever an aircraft flies over the area. Although the number of flights at night has been prescribed by law, the Director of Civil Aviation could still exercise his discretion. Will the Secretary inform this Council of the actual number of flights which have flown over Kowloon each night between 9.30 pm and 11.30 pm since October 1993? Has there been any increase or decrease in number? What is the plan for the future?*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Mr President, may I provide in writing the requested information in detail. The Director of Civil Aviation has encouraged, as far as possible, all flights flying from the Kowloon direction for landing to land before 10.30 pm, so as to minimize the nuisance caused to the residents of Kowloon by flights landing after 10.30 pm. As to takeoffs, airlines are encouraged to use any time slots before 9.00 pm as far as possible, though the time slots available are limited in number. What we can do is to encourage, as far as possible, aircraft to take off and land during the peak time before 9.00 pm. (Annex III)

MR HOWARD YOUNG (in Cantonese): *Mr President, will the Secretary inform this Council, in the light of the existing plan, whether the Bill concerning aircraft control will take effect immediately after it has been enacted as legislation this afternoon; or will it become effective slowly after airline companies have dealt with those substandard aircraft?*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Mr President, it is the intention of the Administration to apply step by step the legislation to all aircraft registered in Hong Kong within the few months immediately after the legislation has been enacted. At present, most of the aircraft registered in Hong Kong have met the standard stipulated in Chapter 3, only a small number of them have yet to be replaced or to fly with a reduced load so as to mitigate noise. Therefore, it is estimated that all the aircraft registered in Hong Kong should be able to meet the requirements of this provision within a year's time. As to aircraft registered overseas that are landing and taking off in Hong Kong, it is the practice of the Hong Kong Government to follow the guidelines set by international aviation organizations and enforce the provisions in the same way as other countries.

MR MAN SAI-CHEONG (in Cantonese): *Mr President, since the practice of opposite runway operation has been abolished, the noise level above Kowloon City still stands at approximately 80 dB every night between 9 and 10 o'clock (that is, before 10.30 pm) according to a test conducted by the Environmental Protection Department (EPD). Is there any specific solution being worked out by the Civil Aviation Department (CAD) to alleviate the suffering of Kowloon City residents?*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Mr President, as I have mentioned in my reply, provided that aviation safety would not be affected or jeopardized, the Administration is still considering other measures such as altitude of incoming flights, angle of aircraft entering the sky over Kowloon as well as the climbing speed and angle of departing aircraft, hoping that the nuisance could be reduced to a certain extent.

PRESIDENT: Not answered, Mr MAN?

MR MAN SAI-CHEONG (in Cantonese): *Mr President, in the study conducted by the CAD and the EPD, apart from noise nuisance, cost-effectiveness as well as the feasibility of aviation implementation, would any consideration be given to the setting of upper limits for the different time slots for the landing and taking off of aircraft? Will the Administration inform this Council whether the study is now underway?*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Mr President, under the Director of Civil Aviation is a working group which comprises experts from various departments and the EPD. These experts will certainly contribute their best to the project. However, to set an upper limit for noise level at a certain location would involve a lot of other factors, including not only flight under normal conditions but also the effects of weather and the altitude of flying. Therefore, it might not be easy to set an upper limit for a certain location. However, a series of measures is now being examined by the CAD and the EPD.

MR LAU CHIN-SHEK (in Cantonese): *Mr President, in paragraph 4 of his reply the Secretary pointed out that there is still one arriving flight after 10.30 pm and this flight will be adjusted to arriving before 10.30 pm when winter comes. I am very dissatisfied with this arrangement. Last year I discussed this issue with the CAD and the reply was that by about April this year, this particular flight which is operated by Cathay Pacific Airways would arrive before 10.30 pm. That means residents of Kowloon City would still be exposed to noise nuisance of over 100 dB, under which people would easily be roused from sleep while infants would be scared into tears. Will the Secretary inform this Council whether the existing legislation could effectively urge Cathay Pacific Airways to arrange an earlier arrival time for that flight; whether he would continue to discuss with Cathay Pacific Airways to advance the landing time as soon as possible; and whether there is any plan to further advance the landing time from before 10.30 pm to before 10.00 pm?*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Mr President, I have mentioned in my reply that we would certainly advance as well the landing time of this particular flight to before 10.30 pm within this year, I am sure we can do this. However, Mr LAU might have noted that flight arrangement is not simply a local matter, it depends not only on the availability of time slots in Hong Kong for landing and taking off, but also on the origin of the flight as the landing and taking off time there may not be completely in our control.

As to the question of advancing the arrival time to before 10 pm, I am afraid I could not promise Mr LAU this, for we might have to cram all the landings and taking-offs into the peak hours; this could lead to other problems such as the safety problem caused by too many aircraft landing and taking off. As such, I cannot make any promise, I can only reiterate what I have just said, which is, we will try our best to do what we can.

PRESIDENT: Mr LAU, not answered?

MR LAU CHIN-SHEK (in Cantonese): *Mr President, I hope the Secretary would inform this Council clearly whether the existing legislation has sufficient authority to urge Cathay Pacific Airways to advance the landing time of that flight; whether the Administration would continue to discuss with Cathay Pacific Airways so as to advance the landing time even further, for example, to advance the landing time of the flight to before 10.30 pm in one or two months instead of waiting until winter?*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Mr President, the Administration is vested with such authority by the law, but it should be reasonable and should take into consideration other factors when exercising the authority. I do understand Mr LAU's concern and I will discuss it with the Director of Civil Aviation to see if an early arrangement could be made to achieve Mr LAU's goal.

MR JAMES TO (in Cantonese): *Mr President, just now the Secretary said that the Administration has applied every part of this Ordinance except sections 6(1)(a) and 6(1)(b). Will the Secretary inform this Council whether it is true to say that if sections 6(1)(a) and 6(1)(b) are not applied, only the problem of the maximum noise level created by each flight can be solved but not the overall noise problem caused by other quieter yet more frequent flights and that the problem cannot be solved at all if sections 6(1)(a) and 6(1)(b) are not applied to limit the number of flights?*

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Mr President, if we can lower the overall noise level created by flying aircraft, the nuisance caused to residents would generally be reduced in certain period of time and to a certain extent. The question is how much it should be lowered. I remember that last year this Council had a debate on whether the power of the legislation could be employed to specify the maximum number of landings and take-offs. Should the power of the law be employed, noise nuisance may be mitigated, but adverse effects would also be brought about, especially to the staff working at the control tower of the CAD; if the maximum number is stipulated by law instead of agreed to by both parties, these staff members

would be subject to huge pressure. Since the number of aircraft landing and taking off at the Kai Tak Airport has been increasing tremendously in recent years, staff members of the CAD have been facing enormous pressure, as such we do not wish to solve the problem by law.

Written Answers to Questions

Smoking in public places

6. DR TANG SIU-TONG asked (in Chinese): *It has been some time since the Government introduced legislation to prohibit smoking on all modes of public transport and in certain public places. Will the Government inform this Council:*

- (a) whether prosecution has been instituted against any violators of this legislation since it came into force; if so, what is the number of such cases; how many of such cases have resulted in convictions by the court and what penalties have been imposed on the convicted offenders;*
- (b) whether the staff members of public transport and of the public places concerned are authorized to take action against such offenders; if not, what course of action they should take when they encounter an offender who is in the act of violating this legislation; and*
- (c) whether the Government is aware of any difficulties in enforcing this legislation; if so, what remedial measures are in place and how it can be ensured that this legislation will achieve its intended purpose when its application is extended to cover a wider range of public places?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, under the Smoking (Public Health) Ordinance (Cap. 371), smoking has been prohibited in all public transport carriers and designated public places such as cinemas, theatres, concert halls, public lifts and amusement game centres since August 1992.

Any person who smokes or carries a lighted cigarette, cigar or pipe in a no-smoking area commits an offence and is liable on summary conviction to a fine of \$5,000. The Administration is committed to enforce the law. From August 1992 to March 1994, we have prosecuted 549 persons for smoking in statutory no-smoking areas. Of the 549 cases, 326 offenders were convicted and an average fine of HK\$500 was imposed. Statistics are attached.

Public transport operators and managers of designated no-smoking areas are responsible for enforcing compliance with the law in places under their control. Operators/managers may:

- (a) after indicating to a smoker that he is contravening the law, require him to extinguish his lighted cigarette, cigar or pipe;
- (b) where the smoker fails to extinguish his lighted cigarette, cigar or pipe, operators/managers may require him:
 - (i) to give his name and address and to produce proof of identity; and
 - (ii) to leave the no-smoking area;
- (c) where the smoker fails:
 - (i) to give his name and address and to produce proof of identity; or
 - (ii) to leave the no-smoking area,

operators/managers may remove him from the no-smoking area by the use of reasonable force if necessary and detain him and call for the assistance of a police officer to assist in the enforcement of the law.

The law provides sufficient powers for prohibition for operators/managers to enforce smoking in designated no-smoking areas. So far, members of the public have generally been co-operative and most observe the law voluntarily. Enforcement is not a major problem.

The promulgation of statutory no-smoking areas is a statement of the Government's commitment to discourage smoking in society. It also has an educative purpose to teach smokers to have consideration for others and respect the choice of the majority of the public in choosing where and when to smoke. This relies on the development of a smoke-free culture among smokers and non-smokers alike. Legislative measures alone cannot achieve this. Suitable publicity measures are essential to complement enforcement of legislation, and we are organizing a series of public education events to convey the message.

The Administration will continue to review measures to prevent or discourage smoking in public places and seek advice from the Hong Kong Council on Smoking and Health on anti-smoking publicity.

Prosecution and conviction statistics for
violation of anti-smoking in
public transport and public places

(August 1992 to March 1994)

	<i>No of prosecutions</i>	<i>No of convictions</i>
1992 (Aug-Dec)	8	0
1993 (Jan-Dec)	158	107
1994 (Jan-Mar)	383	236
Total	----- 549 ====	----- 343 ====

The average fine for an adult offender is HK\$500 whilst that for juvenile and elderly offenders is HK\$300 or conviction and discharge without fine.

Discoloration of tap water in Sha Tin

7. MISS EMILY LAU asked (in Chinese): *In view of the recent complaints by many Sha Tin residents about the discoloration of tap water, and the press reports that similar problems have been identified in other districts, will the Government inform this Council:*

- (a) *why “yellowish” tap water is found in various parts of the territory; and whether such discoloured water may cause any harm to human health;*
- (b) *how many complaints about discoloured tap water were received between May and June this year and how these complaints have been dealt with; and*
- (c) *what precautionary and remedial measures are in force to tackle this problem?*

SECRETARY FOR WORKS: Mr President,

- (a) From our investigation, the “yellowish” tap water was found to be caused by slightly high iron and manganese content in the water.

Corroded pipes in the consumers’ premises could be a source for the iron content. Normal treated water also contains small quantity of iron and manganese at acceptable levels as laid down by the

World Health Organization (WHO). Such iron and manganese may, in the course of time, deposit in the distribution system as well as the pipes within consumers' premises. The discolouration could be caused by dislodgement of such deposits, which may have been induced by changes in velocity, pressure or direction of flow of water in the water mains. As long as the levels of iron and manganese fall within acceptable limits, adverse effects to health are unlikely.

- (b) Complaints about discoloured tap water were mostly received in May. During this period a total of 1 219 complaints were received, of which 162 complaints were from the residents of Sha Tin and Ma On Shan.

Upon receipt of these complaints, the Water Supplies Department (WSD) immediately took water samples from the complainants' premises and the nearby supply system for analysis. The results of the analysis indicated that for most of the cases, the iron and manganese content in these samples were within acceptable limits. After slight running of the tap, the water at these locations turned clear and became satisfactory. In a few isolated cases of relatively high turbidity due to corrosion of the internal plumbing systems, the water quality also became acceptable after running the tap for a longer period.

- (c) With manganese concentration close to 0.1mg/l, a level far below the acceptable limit, a very pale yellow colour can be detected by some people under close examination. Although this has no adverse effect to health, in view of the public's concerns, WSD has taken measures to as far as practicable further reduce the manganese content in the final treated water.

As regards the iron content from the corroded piping in the consumers' premises, WSD is taking action to amend the Waterworks Regulations to ban the use of unlined galvanized iron pipes which are prone to rusting and corrosion. There are other types of pipe materials available for use in potable water plumbing system under the current Waterworks Regulations that are not prone to corrosion.

Crown land auction system

8. MISS EMILY LAU asked (in Chinese): *Despite the Government's assertion that the Crown land auction system is based on "the principle of fair and genuine competition", there is good reason to believe that in practice only a dozen or so major real estate developers have the financial strength to bid for the auctioned sites which, in most cases, are very large in area and involve*

enormous capital investment. Given the situation, it is doubtful whether “the principle of fair and genuine competition” mentioned by the Government does really exist. In view of this, will the Government inform this Council of the following:

- (a) the areas, prices and names of successful bidders in respect of sites sold by auction over the past two years; and*
- (b) whether consideration will be given to putting up smaller sites for auction so as to make it possible for more developers to participate in the bidding, thus truly realizing “the principle of fair and genuine competition”?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President,

- (a) A list of sites sold by public auction since April 1992 is attached which shows the location, site area, use, date of sale, premium paid and purchaser for each site. The list indicates that a good range of sites by location, size, type of use and premium amount has been sold and that the negative assumptions contained in the preamble to the question are probably not well-founded.
- (b) However, consideration can be given to the scope for putting up more small sites for auction in regard to planning and other considerations. This is among the issues being looked at by the three member panel which has been invited to review the auction system.

Land Sales Result 1992-93
(AUCTION ONLY)

<i>Lot No.</i>	<i>Location</i>	<i>User</i>	<i>Area (sq m)</i>	<i>Premium (\$ M)</i>	<i>Sale Date</i>	<i>Purchaser</i>
APIL 124	Ap Lei Chau West	I	5538	220.00	28/04/92	Tendo Limited
STTL 374	J/O On Lai & Kwan St	I	2869	175.00	28/04/92	Realty Kingdom Ltd
TPTL 115	Area 30 (Site 2)	R2	24630	930.00	28/04/92	Samover Company Ltd.
FSSTL 99	On Lok Tsuen	I	472	8.65	18/05/92	V-Day Limited
TPTL 116	Area 30 (Site 3)	R2	14540	533.00	18/05/92	Time Rank Limited
NKIL 6175	Berwick Street	R1	114	15.00	19/08/92	Sunking Development Ltd.
717-DD4	Mui Wo, Lantau	CR	741	54.00	19/08/92	Ever Champion Development Ltd.
YLTL 492	Tung Tau Industrial Area	I	3778	44.00	19/08/92	Keenford Realty Ltd.
237-D.D.331	Cheung Sha, Lantau	R4	855	4.60	18/09/92	Oriental Best Property Ltd.
TMTL 370	Kin On Street	I	2464	32.00	18/09/92	Famous Palace Properties Ltd.

<i>Lot No.</i>	<i>Location</i>	<i>User</i>	<i>Area (sq m)</i>	<i>Premium (\$ M)</i>	<i>Sale Date</i>	<i>Purchaser</i>
SIL 830	Shau Kei Wan	CR	1685	475.00	18/09/92	Zebrine Investment Ltd.
FSSTL 80	Fanling Area 29B	R3	6900	97.00	08/10/92	Madigan Co. Ltd.
STTL 251	Mei Wo Circuit	R4	884	13.60	08/10/92	Chan Suk Ping
STTL 415	On Sum St Sha Tin	I	8100	280.00	08/10/92	Topsail Estate Ltd.
NKIL 4932	35-42 Rose St	R2	1312	98.00	27/11/92	Sandsprings Ltd.
716-DD4	Mui Wo, Lantau	CR	741	45.00	27/11/92	New Grow Development Ltd.
FSSTL 149	Area 30A Sheung Shui	I	5871	109.00	15/12/92	Shell Fair Realty Ltd.
FSSTL 163	On Lok Tsuen	I	2935	39.00	15/12/92	Starise Ltd.
NKIL 6157	Shung Ling St	CR	3093	705.00	12/01/93	Bright Success Investment Ltd.
KIL 11035	Cox's road	R2	1395	360.00	12/01/93	Amazing Wave Investment
YLTL 456	Town Park Road North	R2	10500	345.00	12/01/93	Goodfaith Ltd.
KCTL 442	Tai Lin Pai Road	I	916	100.00	12/01/93	Chinabest Pacific Ltd.
NKIL 6160	Lunk Cheung Road	CR	26060	3530.00	03/02/93	Mullein/Bright Smark Ltd. & Others.
FSSTL 147	Area 30A Sheung Shui	I	12020	164.00	03/02/93	Strathgeath Investment Ltd.
NKIL 6181	Tat Chee Avenue Extension	COU	20660	2850.00	30/03/93	Benbecula Ltd.
FSSTL 148	Area 30A Sheung Shui	I	2631	65.00	30/03/93	Forever Glory Ltd.
STTL 393	Ma On Shan Town Centre	R1	6450	990.00	30/03/93	Famous Empire Properties Ltd.
LOT 4284 DD	Hung Shui Kiu	CR	1844	155.00	30/03/93	Rayhay Co. Ltd.
Total			169998	12436.85		

User

I	:	Industrial
R1	:	Residential (density zone 1)
R2	:	Residential (density zone 2)
R3	:	Residential (density zone 3)
R4	:	Residential (density zone 4)
CR	:	Commercial/Residential
COU	:	Commercial (other uses)

Land Sales Result 1993-94
(AUCTION ONLY)

<i>Lot No.</i>	<i>Location</i>	<i>User</i>	<i>Area (sq m)</i>	<i>Premium (\$ M)</i>	<i>Sale Date</i>	<i>Purchaser</i>
STTL 98	Ma Ling Path	R3	15320	505.00	22/06/93	Perfect Paradise International Ltd.
STTL 419	J/O On Sum St & On Lai St	IG	4000	385.00	22/06/93	Sea Dragon Ltd.
YLTL 489	Tung Tau Industrial Area	G	3030	46.00	22/06/93	Reddiwood Co. Ltd.
TMTL 368	Gastle Peak Road	R1	2783	266.00	09/07/93	Far Gain Ltd.
YLTL 486	Town Park Road North	R2	10320	600.00	09/07/93	Mount City Ltd.
STTL 420	J/O On Sum St & On Yiu St	IG	4200	395.00	13/10/93	Jaco Ltd.
YLTL 494	Tung Tau Industrial Area	IG	3555	50.00	13/10/93	Betterise Co. Ltd.
723-DD4	Mui Wo, Lantau	C	840	18.00	29/11/93	Hortig International (HK) Ltd.
YLTL 419	Ma Tin Road Yuen Long	R2	4350	297.00	29/11/93	Ever Lead Ltd.
Lot 661 P.C.	Peng Chau	CR	1945	82.00	15/12/93	Active Benefit Ltd.
NKIL 5924	Off Lung Ping Road	R2	43520	3940.00	15/12/93	Victory World Ltd.
1107-DD215	Tui Min Hoi, Sai Kung	IG	1681	32.00	15/12/93	Hung King Development Ltd.
APIL 125	Ap Lei Chau West	IG	5756	415.00	31/01/94	Best Liaison Ltd.
TMTL 379	Area 16, Tuen Mun, N.T.	G	3804	76.00	31/01/94	Marnay Holdings Ltd.
KIL 11044	J/O Ma Tau Wai Rd & Farm Rd	R2	7059	2260.00	01/03/94	Lead Bright Ltd.
TPTL 137	Area 7, Tai Po	R2	18490	2140.00	01/03/94	Credit World Ltd.
TMTL 263	Area 4C	R2	7877	650.00	01/03/94	Great Cheer Development Ltd.

<i>Lot No.</i>	<i>Location</i>	<i>User</i>	<i>Area (sq m)</i>	<i>Premium (\$ M)</i>	<i>Sale Date</i>	<i>Purchaser</i>
STTL 422	On Yiu Street	IG	6515	650.00	31/03/94	Marbrad Co. Ltd.
TMTL 380	Area 11, Tuen Mun	CMCP	3781	850.00	31/03/94	Enrich Investment Ltd.
IL 8868	665 King's Road	C	2661	2200.00	31/03/94	Randash Investment Ltd.
Total			151487	15857.00		
User						
R1	:	Residential (density zone 1)				
R2	:	Residential (density zone 2)				
R3	:	Residential (density zone 3)				
IG	:	Industrial/Godown				
G	:	Godown				
C	:	Commercial				
CR	:	Commercial/Residential				
GMCP	:	Commercial (Multi-storey Carpark)				

Land Sales Result 1994-95
(AUCTION HELD IN MAY/94 ONLY)

<i>Lot No.</i>	<i>Location</i>	<i>User</i>	<i>Area (sq m)</i>	<i>Premium (\$ M)</i>	<i>Sale Date</i>	<i>Purchaser</i>
FSSTL 126	Fanling N.T.	R1	20780	2040.00	26/05/94	Direct Profit Development Ltd.
YLTL 463	Fung Cheung/Fung Kam St	R1	5889	510.00	26/05/94	Moricrown Ltd.
Total			26669	2550.00		
User						
R1	:	Residential (density zone 1)				

MTRC to operate the Airport Railway

9. MR STEVEN POON asked: *Section 3(2) of the Mass Transit Railway Corporation Ordinance states that the purposes of the Mass Transit Railway Corporation (MTRC) are to construct and to operate the Mass Transit Railway. The Airport Railway is clearly not part of the Mass Transit Railway. Will the Government inform this Council:*

- (a) *whether it is necessary or appropriate to amend the MTRC Ordinance so as to enable the MTRC to construct and to operate the Airport Railway;*
- (b) *if the answer to (a) is "yes", whether there is a legal problem for the Government to inject funds into the MTRC for the Airport Railway and to ask it to construct the cross-harbour immersed tube; and if so, how would the Government resolve such a problem; and*
- (c) *if amendments to the MTRC Ordinance are necessary, when will the Government effect them?*

SECRETARY FOR TRANSPORT: Mr President, the premise on which the question is based, that the Airport Railway is not part of the Mass Transit Railway is incorrect. Indeed, legal advice has confirmed that the MTRC has the statutory power to construct and operate the new railway.

In the circumstances, there is no need to amend the MTRC Ordinance.

Short sales market of securities

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

- (a) *the total transaction volume recorded in the local short sales market of securities since its establishment in January this year;*
- (b) *whether there is a lack of transparency and information with regard to the activities concerning short sales of securities; and*
- (c) *what measures are in place to prevent the lack of transparency and fairness in the local short sales market of securities from damaging the market activity?*

SECRETARY FOR FINANCIAL SERVICES: Mr President,

- (a) Regulated short selling on the Stock Exchange of Hong Kong Limited (SEHK) commenced on 3 January 1994. Due to certain impediments including the absence of a viable stock borrowing and lending market, short selling activity has been low. The accumulated data on short selling as reported to the SEHK from 3 January to 14 June 1994 is as follows:

<i>Number of transactions</i>	<i>Shares sold short</i>	<i>Total value</i>
23	2 831 000	HK\$76,540,800

The Administration has introduced into the Legislative Council on 15 June 1994 two bills seeking to relax the stamp duty concession on stock borrowing and lending activities which, when enacted, will encourage the development of a stock borrowing and lending market in Hong Kong and in turn enable short selling to take place more effectively. The Second Reading debate for the two bills is scheduled to be resumed on 6 July 1994.

- (b) There is no lack of transparency or open information on the short selling of securities. The availability in the Hong Kong market of real time regulatory data regarding short selling, as well as the

routine dissemination of meaningful information on such activity to the public, are comparable to other developed international markets. The paragraphs below provide more detail on the measures in place in Hong Kong.

(c) The regulatory structure established by the SEHK and approved by the Securities and Futures Commission (SFC) prior to the introduction of short selling is largely based on the systems in other developed markets such as the United States, the United Kingdom, Japan, Canada and Australia. It was designed to address various recommendations contained in the Securities Review Committee Report issued in 1988. The salient features include:

- limiting the availability of short selling to only those securities which are highly capitalized and which have a significant public float;
- permitting only SEHK members who are registered as short sellers to execute short sale transactions;
- requiring SEHK members to file a semi-monthly return detailing all of its proprietary and customers short selling activity during the reporting period;
- requiring SEHK members to designate short sales as such;
- prohibiting SEHK members from effecting short sale into a declining market for the particular security;
- requiring customers to lodge adequate initial margin with SEHK members to cover short sales and further requiring SEHK members to mark all positions to the market daily and to make and collect subsequent margin calls on open short position due to adverse market price changes;
- requiring all short sale orders to be entered into and effected through the SEHK's Automated Order Matching and Execution System;
- requiring the SEHK regularly to publish marketwide open short interest data to the public.

This structure ensures that short selling is properly monitored, appropriate information relating thereto is adequately disseminated to the market, and the use of short selling will not precipitate severe market declines. It is comparable to the frameworks in other markets and, in certain areas, our requirements are more stringent than elsewhere, for example, section 80 of the Securities Ordinance

(Cap. 333) prohibits “naked” or “uncovered” short selling whereas this practice is common in the United States and other major markets.

Interpretation of the Royal Instructions

11. MR JAMES TIEN asked (in Chinese): *Will the Government inform this Council who has the authority to interpret the term “dispose of or charge any part of our revenue arising within the Colony” in clause XXIV(2) of the Royal Instructions, and whether there is any final authority to whom appeals on the interpretation of the Royal Instructions can be lodged?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, the Royal Instructions form part of the law of the territory. Only the courts are capable of delivering authoritative interpretations on questions of law. This principle applies as much to the Royal Instructions, and acts done under them, as to any other law in force in Hong Kong.

Contamination of seafood by mud dumping

12. MRS PEGGY LAM asked (in Chinese): *In view of recent reports that seafood from locations such as East Sha Chau has been seriously contaminated with excessive levels of bacteria and heavy metals and so on as a result of mud dumping in the vicinity, will the Government inform this Council:*

- (a) whether the seafood from such areas is safe for consumption; and*
- (b) how it can ensure that mud dumping will not lead to the contamination of seafood in those areas?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, mud dumping at East Sha Chau commenced in late December 1992 and no significant contamination trend had been detected during the first three quarters of 1993, though there were isolated incidents of high metal concentrations in marine organism tissue.

Dumping activities are controlled by licences under the Dumping at Sea Act (Overseas Territories) Order, for which the Director of Environmental Protection is the licensing authority. Strict dumping licence conditions are enforced, such as requirements for tamper-proof automatic self-monitoring devices, to ensure that disposals are safely restricted to within the confines of the pit.

A comprehensive programme of water quality, sediment quality and marine biota monitoring has been adopted. This programme embraces compliance monitoring of individual pits to enforce contract conditions on operational practice as well as a wider scale assessment of impact on the surrounding environment.

Responsibility for this monitoring lies with the site operator, the Director of Civil Engineering, who has employed independent consultants to carry out the work. The consultants produce relevant reports and the Environmental Protection Department independently audits the data to ensure compliance with standards.

Operations at the pit are supervised by staff of the Civil Engineering Department. In addition, the department is currently carrying out a thorough investigation into the integrity of the first pit cap to be laid to give assurance of the system's efficacy and performance. If the results do not give adequate confidence that the capped pits provide the necessary degree of containment, the Director of Environmental Protection will cease to issue licences giving permission to dump contaminated mud into the pits.

To monitor that food and food products for sale are hygienic, safe and fit for human consumption, the Department of Health conducts a food surveillance programme throughout Hong Kong. Seafood at wholesale and retail markets are regularly sampled for examination. In the first quarter of 1994, about 1.1% and 10% of seafood samples were found to be unsatisfactory when subjected to chemical and bacteriological analysis, respectively. The bacteriological contamination may be avoided by proper cleaning and thorough cooking before consumption. Given the dietary intake of the population, the level of heavy metal contamination is not likely to pose a hazard.

In addition, the Department of Health conducts regular health education. The public is informed of the results of the food surveillance programme through quarterly press conferences. Health messages are disseminated during these conferences and the general public are reminded throughout the year of the importance of food sanitation and hygiene.

Traffic congestion in Queen's Road East eastbound

13. MRS PEGGY LAM asked (in Chinese): *In view of the recent frequent traffic congestion of eastbound traffic in Queen's Road East, which is particularly serious during rush hours in the evening, with the result that a journey which took five minutes previously now takes half to one hour to complete, will the Government inform this Council:*

- (a) *of the reasons for the traffic congestion; and*
- (b) *whether there are any short-term and long-term measures to solve the problem?*

SECRETARY FOR TRANSPORT: Mr President, traffic in Queen's Road East eastbound is frequently congested on weekdays during the evening peak hours. The main cause is the blockage of the junction with Wong Nei Chong Road, due to the tailback of vehicles waiting to enter the up-ramp leading to the Canal Road Flyover. Most of the traffic on this ramp is headed for the Cross Harbour Tunnel (CHT).

The CHT has been operating beyond its design capacity for some time, resulting in traffic queues in its approach roads particularly during peak hours. Relief will be provided with the opening of the Western Harbour Crossing in 1997.

In the meantime, a number of measures are being taken to ease congestion in Queen's Road East, as follows:

- (a) *Inclusion of Canal Road Flyover signal junction in the Area Traffic Control System*

The traffic signal system on Canal Road Flyover allocates green times for traffic using the two approaches from Aberdeen Tunnel and the up-ramp from Morrison Hill Road. This signal system was incorporated into the Area Traffic Control System in April this year. As a result, the operator of the system can monitor the traffic situation visually with a view to balancing the vehicle flows from Queen's Road East, Wong Nei Chung Road and Aberdeen Tunnel northern exit.

- (b) *Road widening in Queen's Road East outside Tang Chi Ngong Clinic*

A road widening project was completed on 26 June, extending the exclusive lane in Queen's Road East which leads to Morrison Hill Road. This reduces the effect of the queue of CHT bound traffic on vehicles headed towards Causeway Bay.

- (c) *Proposed extension of the existing bus only lane in the approach to Canal Road Flyover*

Due to inadequate space in the existing bus lane on Canal Road Flyover, buses wishing to merge with traffic heading towards the CHT often cause obstruction to traffic heading towards North Point. This has worsened the already congested conditions on Canal Road Flyover and the up-ramp from Morrison Hill Road.

The proposed extension of the bus lane will provide more space for buses waiting to merge with tunnel bound traffic without causing obstruction. Urban Council approval for land alienation needed for the improvement work will be sought in July 1994, and the tentative completion date for this project is November 1994.

- (d) *Adjustments to lane markings at the junction of Queen's Road East and Wong Nei Chung Road*

Adjustments will be made to lane markings at this junction to suit the prevailing traffic conditions, with a view to improving the efficiency of the signal system.

These schemes will not solve the congestion problem in Queen's Road East eastbound, but they will improve traffic management and reduce queue lengths to some extent. Further traffic management schemes will be considered.

Acute labour shortage in the fishing industry

14. MR HENRY TANG asked: *In view of the acute labour shortage in the fishing industry, will the Government inform this Council of the following:*

- (a) *whether there are any plans for the importation of more Chinese fishermen to work in Hong Kong and whether any negotiation with China is taking place on this subject, if so, what the progress is;*
- (b) *what impact the above proposed arrangement would have on the present policy of importation of labour;*
- (c) *what are the implementation details in respect of wages, quota, system of management and so on; and*
- (d) *whether the proposed arrangement would be implemented on a long-term basis?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President,

- (a) The Government is liaising with Chinese authorities on the implementation of a special scheme to allow People's Republic of China fisherman deckhands to enter Hong Kong for the purpose of helping to unload the catch at fish markets. Our aim is to finalize the arrangements as soon as possible.

- (b) This scheme is meant to meet the special needs of the fishing industry. It has no effect on the General Scheme on Labour Importation.
- (c) The special scheme will allow up to 3 500 deckhands with valid travel documents to enter Hong Kong to help unload the catch. Eligible vessel operators can apply for quota from the Immigration Department. The deckhands cannot stay for more than seven days on each entry.

The deckhands are not classified as “imported labour” as the bulk of their duties are to help with fishing outside Hong Kong waters and their contracts of employment are entered into outside Hong Kong. It is not considered necessary to set a minimum wage level as their duties are largely carried outside Hong Kong.

- (d) The scheme is to meet the special needs of the fishing industry. The Administration will monitor the scheme closely and review the arrangements regularly to see whether changes would be necessary.

Positive non-intervention policy for the property market

15. DR DAVID LI asked: *Given the tightening measures aimed at stabilizing the property market, will the Government inform this Council whether the “positive non-intervention policy” is still the prime policy to maintain stability in the financial markets, particularly in the property market?*

FINANCIAL SECRETARY: Mr President, as I commented to this Council on 17 February 1993, answering a question by the Honourable NGAI Shiu-kit, the term “positive non-intervention” is used by different people to mean different things.

One thing is clear, however — it never meant “a free-for-all” or “do-nothing”. Stability in Hong Kong’s financial markets could not have been fostered through a total lack of regulation. The same holds true for the property market. Of course, the more satisfactorily a market is working, the less inclined we are to intervene.

The Secretary for Planning, Environment and Lands has put forward measures aimed at stabilizing the property market. Some of these are aimed at increasing the supply, others at reducing speculation. They include measures which are simply an adjustment of a form of regulation which has been in place for years.

The Consent Scheme, for example, which allows flats to be put on the market before they have been completed, has always been administered so as to try to balance the interests of home-buyers and property developers. The changes to it aim to shorten the time between putting flats on the market and actual occupation, and so to reduce the time available for speculative sales and re-sales to push up the cost of flats.

The most important element in the Secretary for Planning, Environment and Land's strategy to stabilize flat prices is to facilitate a simple increase in supply. That is a piece of intervention in the market with which, I think, our business community would be quite at ease.

What we have not done is to seek to introduce any measures to regulate flat prices directly: there is to be no price control.

Thus if "positive non-interventionism" means a policy of not interfering unnecessarily in the free operation of the market, and not putting red tape in the way of commercial enterprise, this is still a prime policy. But stability in the financial and property markets cannot be achieved unless investors see that commercial activities in Hong Kong are reasonably and prudently managed and regulated.

Non-emergency ambulance services

16. MR MICHAEL HO asked (in Chinese): *In the past when non-emergency ambulance services were provided by the Fire Services Department, the ambulance crew conveyed patients from door to door. Recently there have been complaints from the public that, since the Hospital Authority took over the provision of non-emergency ambulance services, the ambulance crew no longer convey patients from door to door. This has rendered many elderly people with mobility difficulties unable to receive geriatric service in day hospitals. Will the Government inform this Council:*

- (a) *whether the situation is actually so; and*
- (b) *how is the Government going to cater to the need for non-emergency ambulance services of patients who have mobility difficulties but who also require rehabilitation services of day hospitals?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, since it took over the management responsibility of non-emergency ambulance services in Hong Kong and Kowloon, the Hospital Authority has provided the same scope and level of activities offered previously by the Fire Services Department.

Currently about 475 elderly patients, including those with mobility problems, are making use of the non-emergency ambulance service each week to attend treatment at geriatric day hospitals. The Hospital Authority will monitor the situation closely and consider further improvements to the existing service as necessary.

Registration of hospitals, nursing homes and maternity homes

17. MR MICHAEL HO asked: *According to section 3(4)(c) of the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165), the Director of Health may refuse to register an applicant if he is satisfied that “there is not a proper proportion of registered nurses among the persons having the superintendence of or employed in the nursing of the patients in the hospital”. Will the Government inform this Council:*

- (a) whether there is a standard for “proper proportion of registered nurses”; if not, what factors would the Director of Health take into consideration in refusing an application for registration of a hospital, nursing home or maternity home on the ground that “there is not a proper proportion of registered nurses”; and*
- (b) how many applications for registration were rejected by the Director of Health in the past 10 years and what the reasons for refusal were?*

SECRETARY FOR HEALTH AND WELFARE: Mr President,

- (a) In determining the appropriateness of nursing levels in private hospitals, nursing homes and maternity homes, the Director of Health will take into consideration the nature and scope of the services provided, the dependency level of the patients, the case mix and the number of patients served. Private hospitals, nursing homes and maternity homes applying for registration will be advised on the optimal level of nursing staff required for providing services to an acceptable professional standard and may be required to rectify their nursing manpower levels. Only when the institution does not comply would the Director of Health consider refusing its application for registration.
- (b) No application for registration under Cap 165 has been refused by the Director of Health since assuming responsibility for the registration of private hospitals, nursing homes and maternity homes in December 1991.

Visit by Refugee Co-ordinator to Vietnamese camps

18. MISS CHRISTINE LOH asked: *Will the Administration inform this Council of:*

- (a) *the number of times in the past 12 months that the Refugee Co-ordinator has visited the Vietnamese Boat People (VBP) Detention Camps and talked directly to the VBPs; and*
- (b) *the dates of such visits, the specific camps covered in each visit, and the approximate number of VBPs he has talked to in each visit?*

SECRETARY FOR SECURITY: Mr President, the Refugee Co-ordinator has visited the detention centres on eight occasions over the last 12 months. Apart from some brief exchanges with individual detainees, he did not speak directly to the Vietnamese migrants.

The dates of the visits were as follows:

<i>Detention Centre</i>	<i>Date</i>
Whitehead	6 December 1993
	6 January 1994
	10 March 1994
	10 May 1994
Tai A Chau	7 January 1994
High Island	18 October 1993
Kai Tak	8 April 1994
Victoria Prison	8 April 1994

Vietnamese refugees to be sent back to Hong Kong

19. DR TANG SIU-TONG asked (in Chinese): *According to a report in a Chinese paper of 15 June 1994, about 1 000 Vietnamese refugees are expected to be sent back to Hong Kong upon the closing down of a Vietnamese refugee transit centre in the Philippines in late September this year. Will the Government inform this Council:*

- (a) *whether it is aware of the above press report; if so, whether it has done any lobbying work to persuade other countries to accept these refugees in order to prevent them from being sent back to Hong Kong;*
- (b) *if these refugees are to be sent back to Hong Kong, what arrangements it will make to enable the refugees to resettle in overseas countries as soon as possible; and*
- (c) *whether the incident would in any way affect the scheduled progress of the resettlement programme for Vietnamese refugees or that of the repatriation scheme for Vietnamese boat people?*

SECRETARY FOR SECURITY: Mr President, since 1990, Vietnamese asylum-seekers in Hong Kong who are granted refugee status have been transferred to a regional transit centre (RTC) in the Philippines to await resettlement.

The Administration is currently negotiating with the Philippines authorities for an extension of the use of the RTC facilities beyond 30 September this year. At this juncture, it would be premature to assume that these negotiations will be unsuccessful.

Motions

COMPANIES ORDINANCE

THE SECRETARY FOR FINANCIAL SERVICES moved the following motion:

“That the Companies (Fees and Percentages) (Amendment) (No. 2) Order 1994, made by the Chief Justice on 10 June 1994, be approved.”

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

The Companies (Fees and Percentages) (Amendment) Order 1994 was made by the Chief Justice on 10 June. It increases certain fees payable to the Registrar of Companies in relation to the inspection and photocopying of liquidators' statements sent to the Registrar under the Companies Ordinance.

It is government policy that fees should in general be set at levels sufficient to recover the full cost of providing the services. As the Companies Registry is now operating as a trading fund it is also necessary for it to be able to recover cost in order to achieve its performance targets. These fees were last reviewed in August 1993. We are proposing to increase the fees by about 10% in line with the increase in cost based on the movement of the Government

Expenditure Consumption Deflator for this year. The revised fees, if approved, will come into operation upon gazettal of the amendment Order on 8 July 1994.

Mr President, I beg to move.

Question on the motion proposed, put and agreed to.

REGISTERED TRUSTEES INCORPORATION ORDINANCE

THE SECRETARY FOR FINANCIAL SERVICES moved the following motion:

“That the Registered Trustees Incorporation Ordinance (Amendment of Second Schedule) Order 1994, made by the Secretary for the Treasury on 16 June 1994, be approved.”

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

The Registered Trustees Incorporation (Amendment of Second Schedule) Order 1994 was made by the Secretary for the Treasury on 16 June. It increases certain fees payable to the Registrar of Companies in relation to the incorporation of trustees under the Registered Trustees Incorporation Ordinance.

It is government policy that fees should in general be set at levels sufficient to recover the full cost of providing the services. This is particularly important for the Companies Registry trading fund which is required to meet financial and service level performance targets. These fees were last reviewed in August 1993. We are proposing to increase the fees by about 10% in line with the increase in cost based on the movement of the Government Expenditure Consumption Deflator. The revised fees, if approved, will come into operation when the amendment Order is gazetted on 8 July 1994.

Mr President, I beg to move.

Question on the motion proposed, put and agreed to.

TRAFFIC ACCIDENT VICTIMS (ASSISTANCE FUND) ORDINANCE

THE SECRETARY FOR HEALTH AND WELFARE moved the following:

“That, with effect from 15 July 1994, the Schedule to the Traffic Accident Victims (Assistance Fund) Ordinance be amended -

- (a) in Part I -
 - (i) in the column headed “Annual Levy in respect of a levy paid in 1994” by repealing “\$66” wherever it appears and substituting “\$84”;
 - (ii) in the column headed “Annual Levy in respect of a levy paid after 1994” by repealing “\$87” wherever it appears and substituting “\$114”;
- (b) in Part II -
 - (i) in the column headed “Annual Levy in respect of a levy paid in 1994” by repealing “\$22” wherever it appears and substituting “\$28”;
 - (ii) in the column headed “Annual Levy in respect of a levy paid after 1994” by repealing “\$29” wherever it appears and substituting “\$38”.

She said: Mr President, I rise to move the motion standing in my name in the Order Paper. Its purpose is to seek the Council’s approval for increasing the levies on vehicle and driving licences in order to make continued disbursements to traffic accident victims who need assistance under the Traffic Accident Victims (Assistance Fund) Ordinance.

The Traffic Accident Victims Assistance Scheme

The Traffic Accident Victims Assistance (TAVA) Scheme has been in operation for 15 years. It provides speedy financial assistance to traffic accident victims, or their dependent family members, regardless of the financial means of the applicant or fault in causing the accident. The Ordinance provides for the establishment of the TAVA Fund to finance the Scheme.

The income of the TAVA Fund is drawn from four sources:

- (a) levies on vehicle licences;
- (b) levies on driving licences;
- (c) contribution from General Revenue; and
- (d) refund from those applicants who received compensation from other parties in respect of the accident.

The contribution from General Revenue is intended to cover the pedestrians’ part in causing traffic accidents. It was originally set at one-third of the total cost of the TAVA Scheme. This was based on statistics provided by the police

that 30% to 35% of traffic accidents from 1973 to 1977 had been caused by pedestrian negligence. This percentage dropped to just over 20% by 1990. On this basis the level of contribution from General Revenue was reduced to one-fifth of the total cost of the Scheme in October 1992. Honourable Members may wish to note that the percentage has continued to decline, 19.6% in 1991, 17.9% in 1992 and 17.7% in 1993. However, despite this downward trend, the Administration does not intend to reduce further the current level of contribution from General Revenue.

Review of the TAVA Scheme

On 12 January 1994, this Council approved an increase in the levies on vehicle and driving licences by 35% with effect from 15 January 1994 and by another 30% with effect from 1 January 1995. The approved increases were lower than what were proposed to this Council. During the debate in this Council, Honourable Members asked the Administration to conduct an overall review of the TAVA Scheme.

We have since reviewed the need for the Scheme, its funding principles and operational aspects including how to reduce the administrative costs, how to improve the refund rate, and how to formulate a basis for future adjustment of levies. The review has taken into account comments made by Honourable Members. We have also explored a number of approaches for tackling the funding problem of the Scheme and presented the findings of the review to the joint meeting of the Transport and Welfare Services Panels held on 10 June 1994.

Administrative costs of the Scheme

As regards administrative costs, we have identified in our review measures to achieve savings of about \$1 million per annum or 12% of Social Welfare Department's staff cost incurred for the Scheme. The measures involved development of a computer system for the TAVA Scheme and a corresponding reduction in staffing in the Department's TAVA section. We will continue to explore other possible ways to further reduce the administrative costs.

Refund of payments

As regards refund of payments, under section 10 of the Ordinance, a TAVA beneficiary is obliged to refund the amount of assistance if compensation from other parties is awarded. To enhance the refund rate, some Members suggested on previous occasions that a beneficiary's right of claiming damages from other parties be assigned to the Government. We have looked into the suggestion in consultation with the Attorney General's Chambers. In view of the practical difficulties in obtaining co-operation from potential claimants, subrogation is not considered feasible. It would also not be cost effective because of the high administrative costs involved. According to our estimates,

the administrative costs involved would amount to some \$22 million for establishing a legal team to handle about 3 000 cases a year. This will double the existing total administrative costs of the TAVA Scheme, and it is uncertain what amount could be recovered.

But as a safeguard to the refund system and to facilitate recovery of payments, the Social Welfare Department has standing arrangements for the Legal Aid Department, the Judiciary, the Labour Department, solicitors in the private sector, employers and insurance companies to obtain information on claims paid to TAVA beneficiaries and to effect direct repayment.

Proposed contribution from insurance companies

Honourable Members also suggested that insurance companies be required to make contribution to the TAVA Fund from motor insurance premiums. We have examined this suggestion very carefully in consultation with the Commissioner for Insurance. But our conclusion is that we have reservations about its effectiveness. Insurance companies are liable for claims only if such liability is covered in the insurance policies, and if fault can be established. It would be difficult to prevent insurance companies from passing the burden to all clients through higher premiums. However, we will continue to explore other practicable ways by which the insurance industry could contribute to the Fund.

In response to the comments made by Honourable Members during the joint panel meeting, we will keep the TAVA Scheme under review and we will continue to explore all possible ways to improve the financial position of the Fund. But in the meantime, Mr President, we do need to address the problem of the Fund's imminent depletion.

At present, the rates of payment under the Scheme are adjusted in line with inflation and the average increase in wages, but the income of the TAVA Fund is not inflation-proof. Thus the expenditure of the Fund has outgrown its income over time. We consider the levies in question appropriate and legitimate sources of income to ensure that the TAVA Fund remains solvent. To maintain a balance of the income and the expenditure of the Fund in the long run, we intend to seek adjustments of levies on vehicle and driving licences in line with inflation, the average increase in wages and the projected percentage increase in TAVA payments.

To enable the Fund to continue making disbursements to traffic accident victims, I propose that the annual levy on vehicle licences be increased from \$66 to \$84 with effect from 15 July 1994 and then from \$87 to \$114 with effect from 1 January 1995. Similarly, I propose that the annual levy on driving licences be raised respectively first from \$22 to \$28 and then from \$29 to \$38

from the same effective dates. According to the latest projections of the TAVA Fund, the proposed increases will restore and maintain the Fund in a balanced state until 1997-98.

The law allows advance renewal of vehicle and driving licences four months before their expiry date. To minimize operational difficulties, the revised rates, if approved, will not apply to advance licence renewals made before the respective effective dates.

Mr President, I beg to move.

Question on the motion proposed.

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

MRS MIRIAM LAU moved the following amendment to the Secretary for Health and Welfare's motion:

“In paragraph (a), to delete everything after “in Part I” and substitute”, in the column headed “Annual Levy in respect of a levy paid in 1994” by repealing “\$66” wherever it appears and substituting “84”; and in paragraph (b), to delete everything after “in Part II” and substitute”, in the column headed “Annual Levy in respect of a levy paid in 1994” by repealing “\$22” wherever it appears and substituting “\$28”.”

MRS MIRIAM LAU (in Cantonese): Mr President, I move that the Secretary for Health and Welfare's motion be amended as set out in the Order Paper.

Last year, the Government tabled its original proposal of increasing the Traffic Accident Victims Assistance (TAVA) Fund levies on vehicle owners and motorists by 60% in 1994 and by another 60% in 1995. After the debate held in January this year in this Council, it was approved by an overwhelming majority that the levies would only be increased by 35%, or more accurately, by 37.5% in 1994, and by another 30% with effect from 1995. Now the Government comes back to us by proposing to increase the levies for the current year by a further 27% with effect from 15 July and to add a further 31% on top of the increase scheduled for early next year. The rationale as put forward by the Government is that the Fund is already on the verge of insolvency and the Fund will become inoperative if no replenishment is available. My amendment today is very simple. It aims at approving the proposed increase for 1994 only.

Mr President, I am not moving the amendment to embarrass the Government. I feel most discontented with the ossified attitude of the Government when it comes to the basis for determining the rate of contribution to the Fund and the operation mechanism of the Fund. The Government refuses to consider the objective situation and ignores all comments from the Members. To be bent on having its own way is absolutely not the hallmark of an open government.

The rationale for the Secretary for Health and Welfare to move this motion is basically the same as that presented to us half a year ago. In the debate held in January, many Members of this Council pointed out the incongruities of this government policy and requested the Government to conduct a comprehensive review. In the same debate, the Honourable Andrew WONG (he is still here today) sided with the Government by saying that the increase would not actually be a burdensome amount for car owners and motorists and that the increase of levies would obviate the need to increase the commitment from public funds and hence the expenditure on other welfare programmes would not have to be cut. I would like to take this opportunity to respond to the arguments of Mr WONG. Has Mr WONG ever thought carefully to see if it is a long-term solution to increase the levies incessantly? Information reveals that even if the motion is passed today, the Fund will be in the red again in 1997. Are we to increase the levies again in 1997 to replenish the Fund? Furthermore, the Government may have underestimated the disbursements payable out of the Fund in the coming years since, in the past three years, the expenditure of the Fund went up at an annual rate of over 23%. It is therefore puzzling for the Government to estimate that the expenditure of the Fund will rise by an annual rate of a mere 9% to 10% in the next few years. If the expenditure of the Fund increases at a rate similar to the rate in the previous year, then the Government may have to propose another levy increase well before 1997 (probably at the end of 1995 or in 1996). In fact, the entire TAVA Fund is riddled with operational and management problems and that entails a lot of unnecessary waste. I will elaborate on that point later on. In view of this, the crux of the matter, I believe, is not the rate of increase because increasing the TAVA levies alone can never root the problem out but will only subject the Fund to a vicious circle in which the motorists and the vehicle owners are not being fairly treated. I have pointed out in many previous debates that even a slightly high rate of increase is acceptable so long as the increase is reasonable and justifiable. However, if there is no justifiable ground, then we, the Councillors, should oppose even the most trivial increase. This is the approach which should be upheld by every Councillor.

The following is a recapitulation of the problems currently faced by the Fund. I use the word "recapitulation" because these problems were discussed in detail in the debate held in January.

The first problem is the inefficient operation of the Fund. Information reveals that the administrative cost necessary for the operation of the Fund accounts for about 15% of the disbursements. It is incredible that an

administrative cost to the tune of over \$10 million is required to administer an assistance fund which pays out just over \$70 million of assistance. It is said that even with the installation of a computer system, only a minute \$1 million can be saved. As an emergency assistance fund whose main function is to pay out from the fund, is it necessary to have such a giant administrative structure, or to incur so many unnecessary expenditure items, for example, the entire Fund is administered by the Social Welfare Department while the income is collected by the Transport Department? The cumbersome administrative structure is the very possible cause for waste of resources. The Government should conduct even more insightful studies with a view to minimizing the administrative expenditure and improving the efficiency of the operation of the Fund. Nevertheless, the Government turns a deaf ear to the requests and opinions made by Members and not even the slightest progress has ever been made in the operation of the Fund for more than six months.

The second problem is the exceptionally low refund rate of the Fund. The information provided by the Government indicates that the refund rate stands at about 16%. If the Government holds the view that motorists and vehicles owners should be responsible for over 80% of traffic accidents, why is the recovery rate as low as 16%? The Government points out that more than \$20 million is required if a legal team is to be set up to enquire into the refund cases and to sue for recovery. It is therefore concluded that this arrangement is not cost effective. The fund is set up to provide speedy financial assistance to traffic accident victims. It is just irrational for the Government to, on the one hand, deny the scheme as a kind of social welfare while, on the other hand, make disbursements indiscriminately without bothering to recover some from the involved parties or the insurance companies, because all vehicle owners have taken out third party insurance. The Government even intimidates us by saying that the premium will have to go up if it has to claim for recovery from the insurers. Can the Government provide evidence to prove that the insurance companies are earning more money because they are not being sued for compensation? I really have no idea as to whether the Government is protecting the interests of the public or the interests of the insurance companies! In fact, if the refund rate can be pushed up, the income derivable from this source cannot be underrated. If a major portion of the disbursements can be recovered from the insurance companies, the Fund can be maintained at a healthy state without further injection of funds or further levies on car owners and motorists. The Government's claim that an administrative cost to the tune of \$20 million will be required to recover the disbursements is open to question since it is not the case that every claim has to be brought before the court. Why can the Government not adopt a more proactive approach? As to the analysis for determining cases which are worth taking action on to claim for recovery, has the Government ever considered the possibility of seeking assistance from the Legal Aid Department?

The third problem lies in the rate of contribution to the Fund by vehicle owners and motorists. During the last debate on this issue, many Members levelled strong criticism against the Government for its unilateral and unfair

move of slashing its contribution from one-third to one-fifth, and requested the Government to review its contribution. But the Government seemed to have disregarded the opinions of Honourable Members.

Members of this Council have on a number of occasions objected to the Government's views and proposals in this respect, but it is a pity that the Government does not pay any regard to the opinions of Members but insists on its proposal of raising levies. The Government claims to have conducted a review but, in reality, the Government is only harping on the same old string it played half a year ago, with nothing new in its arguments. It is therefore very disappointing that we are not seeing any positive steps taken by the Government on this issue.

Mr President, the Liberal Party supports the operation of the Fund and does not want to see the Fund run into financial hardship, which may render the victims of traffic accidents unable to obtain compensation. Therefore we reluctantly accept the proposed increase for July 1994, so as to facilitate the continued operation of the Fund in 1994. However, we would stand adamantly by our principle and strongly request the Government to review in full and in a serious manner the basis for determining the rate of contribution to and the operation of the Fund and to remove all unfair and unreasonable elements from the scheme, so as to enhance the healthy development of the Fund. Therefore, I move to freeze the further increase proposed for 1995 for the time being, in order to press the Government into taking a more practical approach to identify the long-term solutions in the next few months. I do not expect that my amendment today will be passed because I have just heard that many Members of this Council, including those from the United Democrats of Hong Kong and the Meeting Point (except Dr the Honourable LEONG Che-hung) will change tack to support the Government. Notwithstanding this, the Liberal Party will still insist that the Government conduct a full-scale review in this regard and refrain from laying all the responsibility on vehicle owners and motorists.

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

Question on the amendment proposed.

DR LEONG CHE-HUNG: Mr President, I rise to support the amendment to the resolution as proposed by my honourable colleague, Mrs Miriam LAU.

In doing so, I am expressing my reservations on the attitude of the Administration on this scheme and the way the scheme has been handled. Furthermore, by adopting Mrs LAU's amendment we will be able to keep the scheme temporarily afloat for an adequate period of time for the Government to come up with a more workable solution.

So let me stress that in supporting Mrs LAU's amendment, I am expressing my own position and, as Mrs LAU has mentioned, not necessarily that of the Meeting Point.

Some in this Chamber, in particular Mr Andrew WONG, have argued, and no doubt will continue to argue, that the increase in levy on each motorist is a very small amount. But Mr President, it is not the actual amount, but rather the principle behind that matters. Although, Mr President, I have no statistics, but I am confident that I am speaking for the feelings of many, many motorists in Hong Kong, of whom I have to declare my interest as one.

My reasons for objecting to the proposed resolution by the Government are as follows:

Firstly, in January this year, some Members of this Council already expressed their reservations about this proposal and the Administration was requested to reconsider and to make necessary alterations. Yet, Mr President, six months down the line the proposal remains basically unchanged.

Secondly, in all the papers presented to this Council by the Government concerning the TAVA Scheme, the Administration have stressed that the income for TAVA Fund is drawn principally from three sources, namely, levies on vehicle licensing, levies on driving licences and contributions from General Revenue. Ironically, repeatedly the Government refuses to address that income should legitimately also come from another source, which is recovery from compulsory third party insurance for each motor vehicle.

The fact remains that although, for example, in 1993 the total premium collected for third party insurance was more than \$300 million, the amount claimed by TAVA applicants was just around \$5 million. It was actually most disappointing to hear the Secretary again making excuses for not taking into effect the recovery from insurance policies.

So hiding behind excuses of the fact that claiming from the insurance company would entail high legal costs and that the insurance company may retaliate by increasing the third party premium the Government is, in essence, telling the public that the Government will not or has no ability to stand up to the insurance giants who could get away with anything and at the same time holding the Government and the motorists at ransom. The only way, as it would imply, that the Government would do, would be to plough deeper into the purse of each defenceless motorist.

Mr President, this anti-Robin Hood attitude leaves a lot to be desired and makes a mockery of the principle behind the third party insurance policy. The Government must show the people of Hong Kong its care and concern through proper leadership and direction, and not just imposes a high levy on the silent majority whenever it faces a financial crisis.

With these words, I support Mrs LAU's amendment.

MRS ELSIE TU: Mr President, just a few words.

I am not a motorist so I have no interest to declare, but I was a prime mover in this scheme and the scheme was set up for the sake of those who had accidents and no fault could be shown. It is a no-fault accident scheme. I can see the scheme gradually moving towards all-fault on the motorists and therefore I am going to support the amendment because I do not think it is fair to them.

MR WONG WAI-YIN (in Cantonese): Mr President, I believe that no Hong Kong person, or no one for that matter, would like to see the occurrence of any traffic accident because someone may get injured in the traffic accident no matter who is right or who is wrong and no matter whether the vehicle owners or the pedestrians have been at fault. The injured person may be slightly or seriously hurt or he may lose his working ability or have to be hospitalized for a long period, thus making his family suffer from financial difficulties.

The greatest advantage of the Traffic Accident Victims Assistance (TAVA) Fund is the provision of immediate assistance regardless of where the fault lies so that the injured, especially those coming from the low-income families, can receive some immediate financial assistance. If the injured person is the bread winner of his family, the financial assistance will help them enormously. Therefore, the United Democrats of Hong Kong (UDHK) and the Meeting Point are definitely reluctant to see the cessation of assistance provided by the Fund for any particular reason because this will be very unfavourable to some of the injured persons, especially those from the low income stratum.

In fact, a debate on the same subject was held early this year. At that time the Government proposed double-phased increases in the levies, with a 60% rise in each phase. Since this Council considered the increases too high and unreasonable, it was agreed that the increases in the two phases should be adjusted to 35% and 30% respectively. At that time both the UDHK and Meeting Point supported this amendment because the increases originally proposed were indeed too high. In addition, we also asked the Government to conduct a comprehensive review, the findings of which have already been circulated to Members for reference. Although the UDHK and Meeting Point do not fully support some particular points in the review, we still offer our support precisely because we endorse the importance of the Fund and the

principle of its establishment and would not like to see that some families might be affected due to the delay (probably short of complete cessation of operation) in payouts from the Fund because of a lack of financial resources. For this reason, the Meeting Point and the UDHK will support the Government's proposal.

The Government has proposed a total of five options. The first, second and third options include revising the coverage of the assistance scheme, lowering the level of financial assistance provided by the scheme and requiring applicants to make income declaration. The Meeting Point and the UDHK definitely will not support these three options because the amount of financial assistance payable to the victims will be restricted and their families will be directly affected. I learned that Mrs Miraim LAU had proposed a means test when she first drew up her amendment. Yet, she did not mention this proposal in her speech today. I do not know whether the Liberal Party will insist on holding a means test. If the Liberal Party does so, the UDHK and the Meeting Point will definitely oppose it. We will not support the idea of a means test.

Why do the UDHK and the Meeting Point support the Government's motion this time? I have to stress that this is not a question of changing stance. As I said just now, we are not fully satisfied with the Government's review. On different occasions, such as at meetings held by the Transport Panel, we did talk with the officials involved about several issues of our concern, in particular on the question whether the Government will increase the contribution to the Fund from General Revenue. This is a point we can discuss further. Some colleagues have, in fact, mentioned the alleviation of drivers' and vehicle owners' burden by raising the level of government contribution from General Revenue. However, this will mean, in other words, subsidizing vehicle owners and drivers out of the taxpayers' pocket (According to statistics provided by the department concerned, the percentage of traffic accidents caused by negligence on the part of the pedestrian is declining. We have to trust the findings of the police that there has been a downward trend of traffic accidents where pedestrians are at fault). Of course, if we totally regard the Fund as a kind of welfare instead of looking at it according to an objective standard, it is feasible for the Government to contribute more to the Fund, which should, in turn, depend on whether our colleagues in this Council will support raising the level of contribution from General Revenue (taxpayer's money) to the Fund. In doing so, we are, to a certain extent, subsidizing drivers or vehicle owners.

Furthermore, the point arousing our greatest concern is the excessive administrative costs of the assistance scheme. We are glad to see that the Government has tried hard to keep the costs down but it seems that the decrease does not meet our expectation. I hope very much the Government will keep on conducting specific studies and should not rest on its oars once it has won our colleagues' support this time. I hope the Government will spend some more time on studying the feasibility of further lowering the administrative costs.

Further still, quite a number of colleagues have also shown their concern about lodging claims for compensation against insurance companies. To a certain extent, this scheme will discourage some people from lodging claims against insurance companies. There are, of course, many other objective factors which discourage these people from doing so because their premia may increase after they have lodged their claims. They will do the calculation to see whether it is worthwhile. I hope the Government will later provide a guarantee in respect of this issue. I know that the Government has all along been discussing this issue with the insurance industry but they, maybe due to insufficient time, have not yet come to any specific conclusion. For this reason, we support the original motion, hoping that the Government can be given more time. In this connection, the Government can have sufficient time to hold further discussions on insurance compensation with the insurance industry or may introduce some measures to improve performance in this area. The UDHK and Meeting Point support the proposed increase in July this year and January next year mainly for the sake of allowing the Government more time. If it be otherwise, after the present increase in levies, it will be just four to five months before November will be upon us. I am worried that another dispute will arise if the Government does not have sufficient time to discuss with the insurance industry.

I hope the Government will later give a specific guarantee in its reply that it will not procrastinate over the issue once this Council has allocated sufficient funds to the scheme because in 1997 the Government may use the same excuse again to claim that there is a lack of financial resources. This is not what we would like to see.

To lodge claims for compensation against insurance companies is a very hard task. We all know that it may take a very long time for the people concerned to recover compensation from an insurance company. We do hope that the insurance industry can sincerely co-operate with the Government by compensating the insured so that there will be an indirect increase in the operational fund of the scheme.

Mr President, I would not spend too much time speaking on the TAVA Fund. I would like to reiterate the stance of the UDHK and Meeting Point. We would not hope that the operation of the Fund would be hindered and the issue of compensation be delayed owing to other problems. In addition, we look forward to hearing the Government giving a guarantee in its reply later that a further review to make up for the deficiencies in the present review will take place as soon as possible. I hope the Government will not delay the submission of the review report until the very last moment when further adjustment of the levies will be necessary. We would like to have a detailed and comprehensive review report within one year for our examination and discussion. Only by doing so can Members put forward more views on the long-term development of the Fund and the necessity of modifying the scheme. As a result, we will enable the Fund to be operated more effectively and, unlike what happened this year, we need not hold as many as two to three debates on the TAVA Fund.

PRESIDENT: Elucidation, yes.

MRS MIRIAM LAU (in Cantonese): Will Mr WONG elucidate his point, was he saying that the amendment which I moved to the motion would create obstacles or hindrance to the Fund? I think he said “hindrance”.

PRESIDENT: It is up to you whether you elucidate, Mr WONG.

MR WONG WAI-YIN (in Cantonese): Mr President, I did not say that the Liberal Party's amendment will mean a hindrance to the Fund, but Mrs LAU's amendment will be of no significant help to the operation of the Fund. We, the Meeting Point and the UDHK, hold the view that the Fund must go on. We hope very much that more time can be given to the Government to have further negotiations with the parties concerned and strive for greater improvements.

MR ERIC LI (in Cantonese): Mr President, I rise to support the Government's original motion and hope that my colleagues will vote against Mrs Miriam LAU's proposed amendment. When the Government first introduced the proposal to this Council, I already showed my support for it. So I have not changed my stance. At that time my argument was that the major precondition should be protection for the innocent traffic accident victims and, as to where the money should come from, we could take time to talk it over. Now I still insist that this is the most important point for consideration. I believe that Members who have risen or will rise to speak on this motion today have not objected to the argument that one must protect the victims.

Mrs Miriam LAU has said that the Government is harping on the same old string after a lapse of six months. Such an argument may not be absolutely fair to the Government because it has done a great deal within these six months. It has furnished Members with many figures and put forward a number of options. I also made an appointment with the Secretary for Health and Welfare to discuss with her in detail all the options. After discussion, I found that it was not easy to change their view.

There is a certain reason in the comment made by Mrs Miriam LAU just now but she did not put forward other feasible solutions. Furthermore, I think the figures she cited may not be enough. We, of course, hope that the Government will cut down its expenditure and we agree that the administrative costs are too high. However, I think this should be a long-term job to be given to the Director of Audit. I believe today's debate has already aroused the attention of the Director of Audit.

The most controversial point in this debate is where the money should come from. At present the Government depends on vehicle owners, drivers and

taxpayers for the financial support. Members may have diverse opinions on the proportion of contributions. However, just now Mrs Miriam LAU raised the question as to whether insurance companies should make some contributions. Of course, it may be easy for insurance companies to look on with folded arms. My understanding is that the compensation normally involves merely a small sum of money but, in case a lawyer has to be hired to institute legal proceedings or a considerable number of administrative staff are needed to handle the case, the administrative costs required may far exceed the compensation recovered from the insurance company.

In addition, it seems that many Members did not mention one issue, that is, insurance companies are commercial firms. After all, one will pay for whatever one is given. If we ask insurance companies to shoulder some costs, it may eventually lead to a rise in insurance premiums. Who should pay the premiums? Vehicle owners or drivers? We have apparently taken a 360-degree turn back to where we started but the one to shoulder the cost remains unchanged.

My argument six months ago is the same as my argument today. I still hope that we should regard protection for the innocent accident victims as the major precondition.

I support the Government's original motion.

MR ANDREW WONG (in Cantonese): Mr President, I did not intend to speak today. However, I am honoured that my name has been mentioned together with the United Democrats of Hong Kong, and thus naturally I have to make a brief response.

Same as Mr Eric LI, I have not changed my stand. In fact, if I find that I am wrong after review, then it is not wrong to change stand. However, after review, I find that I am not in the wrong. It is not my argument that the sum concerned is trivial. My argument is actually against the overall arrangement. I think that the Fund should not be regarded as a kind of welfare, but as the pedestrians' responsibility. Thus it should not be contributed to out of general revenue. I always agree with that arrangement. At present, most income of the Fund comes from vehicle owners the motorists, which I think is generally correct. If there is not a better approach, I think it should continue.

When the question first arose, I already asked Members not to argue during the Transport Panel meeting. In the January debate this year, once again I asked Members not to waste time arguing over that issue. But eventually, the Government was required to conduct a review. And now, Mr WONG Wai-yin is even asking for another review. If the amendment of Mrs Miriam LAU is endorsed, then in addition to reviews in January and July this year, we will have yet another review in January next year. Have we got a lot of time to waste?

Let me once again remind Members. The existing levy is \$66. Even if the levy is increased to \$114 by January 1995, it will only be \$48. At present, the cheapest car parking fee is \$8 per hour. Thus one can only park a vehicle for six hours with \$48. \$48 is only enough for watching a movie or a soccer match. I have with me here my driving licence of which the three-year period of validity will expire on 30 July. I could have renewed my licence four months before the expiry date, but I did not do so. I will renew the licence when the expiry date is drawing near. I hope that Members will not waste so much time. It is a good thing seriously reviewing the overall policy. But if the review has been completed by the Government, then in the absence of better recommendations from Members, it would indeed be unnecessary to review the matter once again thus wasting our time every six months. I deem it totally not worthwhile.

Mr President, I support the original motion of the Government. I express my support not because I belong to the "Government Party". Similarly, I oppose the amendment moved by Mrs Miriam LAU not because I am against the Liberal Party.

SECRETARY FOR HEALTH AND WELFARE: Mr President, I do appreciate the comments and suggestions offered by Honourable Members in this debate and would like to make a further response. It appears that some of the comments made just now have not taken into account the points which I have just highlighted in my earlier speech, nor my undertaking to keep the Scheme under review. The Honourable WONG Wai-yin's suggestions in this regard would be helpful towards that end. If the amendment to my motion now proposed by the Honourable Mrs Miriam LAU were carried, I would have to, as the Honourable Andrew WONG pointed out, come before this Council again in but a few months' time for the same purpose, because without the proposed increase in levies in January 1995, the TAVA Fund could only last until next February/March.

Contribution from General Revenue

It has been argued that the Government should make a greater contribution to the TAVA Fund and that it is unfair to ask vehicle owners and drivers to pay higher levies on their licences. We have considered this point very carefully in our review.

When the TAVA Scheme was set up in 1979, it was considered that as the presence of vehicles gave rise to traffic accidents in the first place, vehicle owners and their drivers should bear the brunt of the cost of the Scheme through levies on vehicle and driving licences. However, it was also accepted that pedestrians were responsible in some cases and that the Scheme had a welfare element. Thus a contribution from General Revenue to reflect the percentage of traffic accidents caused by pedestrian negligence was also considered appropriate. As I mentioned earlier, the contribution was originally

set at one-third of the total cost of the Scheme. It was based on statistics provided by the police that 30% to 35% of traffic accidents from 1973 to 1977 had been caused by pedestrian negligence. The review conducted in January 1992 showed that the percentage of traffic accidents caused by pedestrian negligence had by 1990 dropped to just over 20%. It was on this basis that the contribution was reduced to one-fifth of the total cost of the Scheme.

Revision of levies

Since the TAVA Fund was first set up in 1979, the levies have only been revised three times. The annual levies for vehicle and driving licences were first set respectively at \$75 and \$25 in 1979 and were reduced to \$30 and \$10 in 1982, thanks to the then healthy financial position of the Fund. The annual levies were increased to \$48 and \$16 in 1991 and then to \$66 and \$22 in January 1994.

For some 15 years of its operation, the TAVA Scheme has provided much needed relief to traffic accident victims and their families. The amount that vehicle owners and drivers have to pay for this Scheme is considered small and manageable.

In any case, the levies proposed in my motion amount to only an additional \$18 and \$6 a year for this year and a further \$27 and \$9 a year for next year. It is really quite a small contribution to make to help comfort those suffering from the trauma of traffic accidents, especially those from low-income families.

The proposed increases provide a viable and practical solution to the funding problem of the TAVA Scheme. They will maintain the TAVA Fund in a balanced state until 1997-98 before further adjustment of levies is required. Meanwhile, as I undertook just now, we will continue to keep the Scheme under review and to explore all possible ways to improve the financial position of the Fund, to reduce the administrative cost, and to vigorously consider how in practical ways the insurance industry could contribute to the Fund.

Mr President, it is my public duty to seek appropriate funding from appropriate and legitimate sources for the continued operation of a good scheme, and TAVA is a good scheme. I look forward to Honourable Members' support.

Thank you, Mr President.

Question on the amendment put.

Voice vote taken.

MRS MIRIAM LAU: I claim a division.

PRESIDENT: Council will proceed to a division.

DR CONRAD LAM (in Cantonese): Mr President, I would like to declare interest before the voting. I am a salaried director of a motor vehicle insurance company. Therefore, I will abstain from voting.

MR ANDREW WONG: Mr President, I do not think Dr Conrad LAM needs to abstain from voting. Would you rule if that is direct pecuniary interest? If he wishes to abstain, that is his choice.

PRESIDENT: Strictly, I do not think your directorship amounts to a direct pecuniary interest, so you are not obliged to abstain, Dr Conrad LAM. It is entirely up to you.

PRESIDENT: Will Members please proceed to vote.

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

Mr Edward HO, Mr Ronald ARCULLI, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Dr LEONG Che-hung, Mrs Elsie TU, Mr Peter WONG, Mr Moses CHENG, Dr LAM Kui-chun, Mr Steven POON, Mr Henry TANG, Mr Howard YOUNG, Mr James TIEN and Mr Alfred TSO voted for the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr PANG Chun-hoi, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Andrew WONG, Mr Martin BARROW, Mr Jimmy McGREGOR, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Timothy HA, Mr Michael HO, Dr HUANG Chen-ya, Mr Simon IP, Mr LAU Chin-shek, Miss Emily LAU, Mr LEE Wing-tat, Mr Eric LI, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr Samuel WONG, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Mr Roger LUK and Ms Anna WU voted against the amendment.

Dr Conrad LAM and Dr Philip WONG abstained.

THE PRESIDENT announced that there were 15 votes in favour of the amendment and 31 votes against it. He therefore declared that the amendment was negatived.

Question on the original motion put.

Voice vote taken.

MRS MIRIAM LAU: Mr President, I claim a division.

PRESIDENT: Council will proceed to a division.

PRESIDENT: Would Members please proceed to vote?

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

The Chief Secretary, the Attorney General, the Financial Secretary, Mr PANG Chun-hoi, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Andrew WONG, Mr Martin BARROW, Mrs Peggy LAM, Mr Jimmy MCGREGOR, Mrs Elsie TU, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Timothy HA, Mr Michael HO, Dr HUANG Chen-ya, Mr Simon IP, Mr LAU Chin-shek, Miss Emily LAU, Mr LEE Wing-tat, Mr Eric LI, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr Samuel WONG, Dr Philip WONG, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Mr Roger LUK and Ms Anna WU voted for the motion.

Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr LAU Wah-sum, Dr LEONG Che-hung, Mr Peter WONG, Mr Moses CHENG, Dr LAM Kui-chun, Dr Conrad LAM, Mr Steven POON, Mr Henry TANG, Mr Howard YOUNG, Mr James TIEN and Mr Alfred TSO abstained.

THE PRESIDENT announced that there were 34 votes in favour of the motion and no vote against it. He therefore declared that the motion was carried.

First Reading of Bills

WILLS (AMENDMENT) BILL 1994

INTESTATES' ESTATES (AMENDMENT) BILL 1994

INHERITANCE (PROVISION FOR FAMILY AND DEPENDANTS) BILL

CARRIAGE OF GOODS BY SEA BILL

SEWAGE SERVICES BILL

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

Second Reading of Bills**WILLS (AMENDMENT) BILL 1994**

THE SECRETARY FOR HOME AFFAIRS moved the Second Reading of: “A Bill to amend the Wills Ordinance.”

She said: Mr President, I move that the Wills (Amendment) Bill 1994 be read a Second time.

This Bill is the first of three related Bills I am introducing into this Council today. The others are the Intestates' Estates (Amendment) Bill 1994 and the Inheritance (Provision for Family and Dependents) Bill. Taken together, these three Bills amount to the first comprehensive overhaul of Hong Kong's law of inheritance in over 20 years. They seek to bring the law in this area up to date and remove legal anomalies that have emerged over the years. The three Bills are based on recommendations of the Law Reform Commission in its Report on the Law of Wills, Intestate Succession and Provision for Deceased Persons' Families and Dependents. The recommendations of the Law Reform Commission are based on a thorough examination of the principal Ordinances concerned and wide-ranging consultation with interested parties.

The main aim of the Wills (Amendment) Bill 1994 is to relax the formalities for making wills and to give the court new powers to validate, interpret and rectify wills. It also provides for the relevant part of the International Convention on Wills to be incorporated into the Wills Ordinance to enable wills made in accordance with the Convention to be executed and have validity in Hong Kong.

Clause 3 of the Bill repeals and replaces sections 3 to 6 of the principal Ordinance. It provides that a married person may validly make and revoke a will even though he or she has not attained full age. It also relaxes the current formalities required for the valid execution of a will and provides for the court to have a general dispensing power to admit to probate a will that expresses the testamentary intentions of the deceased, even though it is not executed in accordance with the required formalities.

Clause 5 repeals and replaces sections 13 to 15 of the principal Ordinance. The new section 14 relaxes current stringent provisions on the revocation of a will by a subsequent marriage.

Clause 9 adds five new sections to the principal Ordinance. The new sections provide the court with new powers to correct a will that fails to carry out the testator's intentions because of either a clerical error or a failure to understand his or her instructions, and to admit extrinsic evidence to facilitate the interpretation of a will.

Clause 10 adds two subsections to section 30 of the principal Ordinance. They provide for the validity of wills made before the commencement of this Bill to be unaffected and, subject to this, for the amendments introduced by this Bill to apply only to wills of testators that die after its commencement.

Clause 11 creates a new Schedule to the Wills Ordinance containing the Annex to the Convention on International Wills, which provides for a uniform law on the form of an international will.

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

INTESTATES' ESTATES (AMENDMENT) BILL 1994

THE SECRETARY FOR HOME AFFAIRS moved the Second Reading of: "A Bill to amend the Intestates' Estates Ordinance."

She said: Mr President, I move that the Intestates' Estates (Amendment) Bill 1994 be read a Second time.

As I indicated in moving the Second Reading of the Wills (Amendment) Bill 1994, this Bill is based on recommendations of the Law Reform Commission on reform of the law of inheritance in Hong Kong.

The Intestates' Estates Ordinance provides for the distribution of the estate of an intestate, that is, someone who dies without a will or whose will deals with only part of his or her estate. The assumption behind the Ordinance is that people who die intestate would wish their estate to be inherited by their close relatives, with preference given to their surviving spouse and children, if any.

The main effect of the Bill is to improve the inheritance position of a surviving spouse.

Clause 2 of the Bill repeals two discriminatory provisions of the principal Ordinance. These are that a child of a female includes a child of a valid marriage to which her last husband and another female were parties and that references to a brother or a sister of a person mean a brother or sister who is a child of the same father as that person.

Clause 3 amends section 4 of the principal Ordinance. The amendments provide for the surviving spouse of an intestate to receive the couple's personal

possessions automatically. They also provide that where there are surviving children, a surviving spouse will be entitled to a statutory legacy of \$500,000, instead of \$50,000 as at present, plus half of any remaining estate. The children will receive the other half as at present. Where there are no surviving children, but there are other surviving relatives, the entitlement of the surviving spouse is set at \$1 million, instead of the current figure of \$200,000, plus half of any remaining estate. These amounts were last amended in 1983 and have been considerably eroded by inflation.

Clause 5 repeals and replaces sections 6 and 7 of the principal Ordinance. The new section 7 gives the surviving spouse of an intestate the right to acquire the matrimonial home. The manner in which a surviving spouse may purchase the matrimonial home is covered by clause 11.

Clause 7 adds a new section 8A to the principal Ordinance. This provides that where a surviving spouse or any other person acquires under a foreign law of intestacy any interest in the intestate's estate, the interest shall be taken into account when determining the shares of the estate that the persons should receive.

Clause 8 repeals section 11 of the principal Ordinance, which provides for the principal Ordinance not to apply to land in the New Territories that has not been exempted from Part II of the New Territories Ordinance. This section has been rendered redundant with the enactment of the New Territories Land (Exemption) Ordinance 1994. For the same reason, clause 13 provides for the repeal of sections 75(1)(a) and 75(3) of the Probate and Administration Ordinance.

Clause 9 repeals and replaces section 13 of the principal Ordinance. The new section provides for a presumption that the female partner of a legally entered union of concubinage has, during the lifetime of the male partner, been so accepted and recognized by his family.

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

INHERITANCE (PROVISION FOR FAMILY AND DEPENDANTS) BILL

THE SECRETARY FOR HOME AFFAIRS moved the Second Reading of: "A Bill to make provision for empowering the court to make orders for the making out of the estate of a deceased person of provision for certain members of that person's family and dependants of that person, and for connected matters."

She said: Mr President, I move that the Inheritance (Provision for Family and Dependants) Bill be read a Second time.

This is the last of the three Bills I am introducing into this Council today to effect a general reform of the law of inheritance based on recommendations of the Law Reform Commission. The other two Bills are amending legislation. The Inheritance (Provision for Family and Dependants) Bill is a stand alone Bill to replace the Deceased's Family Maintenance Ordinance. Like the Ordinance it seeks to replace, the Bill provides for the court to order reasonable financial provision from the estate of a deceased for certain classes of person on application. In effect, it provides a safety net for deserving persons who may have been overlooked in a will or have not been properly catered for under the law of intestacy.

The main effects of the Bill are to widen the scope of persons eligible to apply for financial provision from a deceased's estate and to give the court greater power to facilitate the making of such financial provision.

Clause 3 of the Bill defines the scope of persons eligible to apply to the court for financial provision from a deceased's estate. The main change compared with the Deceased's Family Maintenance Ordinance is the inclusion of a new class of persons who were dependent, either wholly or partially, on the deceased immediately prior to his or her death.

Clause 4 lists the types of order that a court may make in favour of an applicant, including certain new types of order, such as the transfer to the applicant of properties comprised in the estate.

Clause 5 sets out the matters to which the court is to have regard in exercising its powers under clause 4. These include the financial needs of an applicant under the Ordinance and any beneficiary of the estate, and the size and nature of the net estate. In relation to an applicant from the new category of eligible persons who were dependent on the deceased, the court is required to have regard to the extent to which and the basis upon which the deceased assumed responsibility for the maintenance of the applicant. The court is also required to take into account the closeness of the relationship between such an applicant and the deceased.

Clause 6 provides that applications for financial provision from a deceased's estate shall not, except with the permission of the court, be made later than six months after the date of the grant of the probate or letters of administration in respect of the deceased's estate.

Clauses 12 to 15 are anti-avoidance provisions. They give the court certain powers to override financial arrangements by the deceased intended to defeat applications under this Bill.

Clauses 16 to 20 give the court powers to deal with financial arrangements in cases of divorce, annulment of marriage or judicial separation where an applicant under the Ordinance is the surviving spouse or former spouse of the deceased.

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

CARRIAGE OF GOODS BY SEA BILL

THE SECRETARY FOR ECONOMIC SERVICES moved the Second Reading of: “A Bill to regulate liability in respect of the carriage of goods by sea.”

He said: Mr President, I move that the Carriage of Goods by Sea Bill be read a Second time.

The purpose of the Bill is to implement in Hong Kong the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, also known as the Brussels Convention. This Convention sets out the conditions applicable to contracts for the carriage of goods by sea.

The Brussels Convention is now implemented in Hong Kong by applying the relevant United Kingdom legislation to Hong Kong. It is, however, necessary to enact local legislation to replace the United Kingdom enactments so that their legal effect will continue after 1997. This systematic localization of merchant shipping legislation has been underway for some years and has involved the enactment of primary and subsidiary legislation addressing such issues as marine pollution, shipping safety and the establishment of the Hong Kong shipping register.

The Bill before Members replicates the provisions of the United Kingdom legislation, with modifications only where necessary to conform to the circumstances of Hong Kong. It also includes provisions clarifying liability for loss due to unseaworthiness and the convertibility of units of account into Hong Kong dollars.

Mr President, the continued application to Hong Kong of the Brussels Convention will ensure that contracts relating to the carriage of goods by sea are governed by rules drawn up in accordance with international standards. The Bill, which ensures continuity of existing shipping practices and provides legal certainty for the shipping industry, will help enhance Hong Kong's position as a trading and shipping centre.

Thank you, Mr President.

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

SEWAGE SERVICES BILL

THE SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS moved the Second Reading of: “A Bill to provide for the imposition of sewage charges and trade effluent surcharges and other related matters.”

He said: Mr President, I move the Second Reading of the Sewage Services Bill. The purpose of the Bill is to enable the introduction of a charging scheme to recover the operating costs of sewage services.

The seriousness of water pollution is a constantly recurring theme of public discussion in Hong Kong and once again a highly topical one now. Given the size of the problem, we have proposed a major new sewage services programme to deal with the two million cubic metres of wastewater which is presently discharged, most of it untreated, into the harbour every day. Members will recall that I set out the details of this programme and the sewage charging scheme during the motion debate in this Council on 1 December 1993.

Even for a carefully designed programme such as ours, new sewerage does not come cheap. In the coming four years, more than \$12 billion will be spent on sewerage projects, including \$8 billion on the principal sewage collection and treatment system which will curtail harbour pollution by 70%. It is appropriate that users of these essential services contribute something to the cost of the system, as residents in most modern cities do.

Members will recall that, during public consultations on the proposed sewage charges last year, there was encouraging support from the community and in this Council for the principle of charging. Moreover, and to keep charges at a modest level, the Government has made a commitment to meet the capital costs in full. Sewage charges are therefore intended to recover only the operating costs of the services and will, as a result, be modest by any reckoning.

The charging scheme proposed under the Sewage Services Bill seeks to reflect the polluter pays principle. Clause 3 of the Bill provides for the imposition of sewage charges on consumers whose premises are connected to public sewers. To enable an equitable distribution of service costs among users, we propose two charging elements — a fixed charge and a variable charge. The fixed charge is to recover the cost of the operation and maintenance of the sewerage system. It will be determined by the consumer's category and water meter size. The variable charge, which is to recover the sewage treatment cost, will be based on water consumption.

Clause 3 of the Bill also proposes to exempt low-user households — those who use 13 cubic metres of water or less in a four-month billing period — from sewage charges as under the present water tariff. About 17% of households will benefit from this exemption.

To keep the administrative costs of the proposed charging scheme down, under clause 3 of the Bill sewage charges will be incorporated in the water bills issued by the Director of Water Supplies. The existing billing system and consumer service unit for water services will be expanded for this purpose.

Clause 4 of the Bill provides for the imposition of a trade effluent surcharge. The surcharge will reflect the additional cost of providing treatment for the more polluting trade effluents. It is a common feature of similar charging schemes elsewhere and industry has agreed in principle to such a surcharge.

If a sewage charge is not paid within a period specified in the payment notice, the Director of Water Supplies may, under clause 3 of the Bill, impose a penalty on the unpaid charges as if it were a charge under the Waterworks Ordinance. For an unpaid trade effluent surcharge, under clause 6 of the Bill, a penalty may be levied in accordance with the regulations to be made under the Ordinance. If the charges remain unpaid, the Director of Water Supplies may, at the request of the Drainage Authority, cut off water supply under clauses 3 and 4 of the Bill.

A sewage service user is required to notify the Drainage Authority of any change in the use of the premises for the purpose of calculating the sewage charge or the trade effluent surcharge. Failure to do so will be an offence and subject to a fine of \$100,000 under clauses 3 and 4 of the Bill. Clause 7 of the Bill proposes that any unpaid charges as a result of information withheld or false statements submitted by a user may be recovered as a debt due to the Government.

Clause 9 of the Bill empowers the Drainage Authority to adjust a sewage charge or trade effluent surcharge. A service user may apply to the Drainage Authority for a review of any factor which may affect the charging level. Such factors may include an error in the water consumption or meter size record or a change in the user category, the strength of trade effluent or the volume of discharge used in determining the charge. Under clauses 14 and 15 of the Bill, a service user who is dissatisfied with the decision of the Drainage Authority may appeal to the Administrative Appeals Board.

To verify the information provided by a service user and to measure the volume of discharge or collect samples of trade effluent, the Drainage Authority may enter premises and install equipment. Clause 10 of the Bill provides that anyone who tampers with equipment installed by the Drainage Authority will be liable to a fine of \$10,000.

Clause 12 of the Bill enables the Governor in Council to make regulations to prescribe the charging rates and to establish the detailed arrangements for the charging scheme. A Technical Memorandum may be issued under clause 13 of the Bill to set out the procedures and methods for obtaining samples and other matters relating to the testing and analysis of trade effluent.

Mr President, the Bill aims to establish a public charging scheme to help recover the operating costs of sewage services. With wider public acceptance of the polluter pays principle, it should also help increase the environmental

awareness of the public. I commend the Bill to Members for their favourable consideration.

Thank you, Mr President.

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

CRIMINAL PROCEDURE (AMENDMENT) BILL 1994

Resumption of debate on Second Reading which was moved on 4 May 1994

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

Bill read the Second time.

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

MINOR EMPLOYMENT CLAIMS ADJUDICATION BOARD BILL

Resumption of debate on Second Reading which was moved on 9 March 1994

Question on Second Reading proposed.

MR TAM YIU-CHUNG (in Cantonese): Mr President, statistics show that the Labour Tribunal has a backlog of nearly 3 000 cases, and it will take nine months on the average for a case listed to be heard to come before the Tribunal. This has caused resentment among the labour sector. The Government's proposal for the Minor Employment Claims Adjudication Board to be set up is meant to alleviate the pressure on the Labour Tribunal by taking claims below \$5,000 away from the Tribunal for adjudication before a different forum. This will shorten the waiting time for the hearing of the claims. I am in support of this in principle. However, I am somewhat worried that the Adjudication Board might not be truly able to improve protection for the employees if the Government does not improve the mode of operation of the Labour Tribunal and the Adjudication Board.

Mr President, both myself and the trade unions have come across numerous complaints against unscrupulous employers who did not comply with the requirements of the Employment Ordinance. These employers, availing themselves of the loophole brought about by a huge backlog of cases and long listing delays, challenged the employees to institute claims. In doing so, a vicious circle of producing a bigger and bigger backlog of cases has thus been

generated. Even when the Labour Tribunal awards judgement to the employee a year or so after the case was listed, it does not mean that the employee can actually receive the sum claimed. This is because the Labour Tribunal has done its job after the judgement. It will not follow up on whether the employee has received the amount claimed. The result is that many unscrupulous employers delay payment deliberately, and that is unfair to employees who have been successful in their claims.

Also, under the existing Employment Ordinance, the Labour Department is responsible for prosecuting employers who do not abide by the law. However, the Labour Department has not been keen on this. Moreover, the average fine for each summons is very small; in 1992 the average was \$819; in 1993 it even dropped to \$776, almost a 5% fall. Such fines are totally unable to deter people. Therefore, I think that in order to really improve protection for employees, the Labour Department must act more positively and step up prosecution action against employers who are clearly in breach of the Employment Ordinance. Otherwise, even with the setting up of the Minor Employment Claims Adjudication Board the problem cannot be completely solved. It would only be wasting taxpayers' money.

Besides, under the Ordinance, the Adjudication Board can only deal with claims of not more than \$5,000. I think that the median wage of Hong Kong workers is \$7,000 already. Therefore, the upper limit for claims should be adjusted to \$7,000 or above.

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

MR LAU CHIN-SHEK (in Cantonese): Mr President, during the past few years, the efficiency of the Labour Tribunal which is responsible for the arbitration of labour disputes has been declining. Most of the cases to come before the tribunal experience a delay of nearly a year and a half before they are dealt with. This is unacceptable.

The establishment of the Minor Employment Claims Adjudication Board will certainly help to lighten the workload of the Labour Tribunal, and will also help the affected workers. It is a highly recommendable proposal worthy of unreserved support. Of course, it remains to be seen whether the Adjudication Board will live up to the expectations of the workers.

Whilst I support the Bill, I also propose, in respect to the operation mode of the Adjudication Board, three points for the Administration's implementation.

First, the aim of the Adjudication Board should be similar to that of the Labour Tribunal when it was set up, which is to arbitrate labour disputes in a way that is "fast, inexpensive and simple". Therefore, strict criteria should be set for the Adjudication Board to hear contested cases as soon as possible. The

current criterion of having cases dealt with within 60 days should be shortened, for example, to within one month. This is vital to workers who are owed their wages.

Second, the Adjudication Board should establish its image as an impartial arbiter so that both employers and workers will recognize and accept the verdicts of the Board. In fact, as the proposed Adjudication Board is to be set up under the Labour Department, and at the same time the Labour Department is also responsible for the mediation of labour disputes, this may render the independence and impartiality of the Adjudication Board questionable. And this will affect the confidence of workers in the verdicts.

Third, the Bill is not clear enough in respect of the provisions on the representation of workers by trade unions in attending before the Adjudication Board. Disputes may arise therefrom in the future. The provisions only give the right to the employees to apply for representation by trade unions. But it is only limited to the making of an application, and it would be up to the adjudicator to give approval. There is no provision as to how the adjudicator shall exercise his discretion to approve. Therefore, I propose that this should be amended as soon as possible along with amendment to similar provisions relating to the Labour Tribunal in order to establish representation by trade unions. I urge the Administration to monitor closely the operation of the Adjudication Board and conduct a review six months to one year after the establishment of the Adjudication Board, in order to improve on the operation of the Adjudication Board and to make the system even better.

In fact, the most effective way to solve the problem of backlog cases before the Labour Tribunal would be to increase the number of temporary presiding officers to clear the backlog within a specified period.

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

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, I am grateful to Members for their support of this Bill. I am also grateful to the two Members who have just spoken on this Bill.

The purpose of establishing the Minor Employment Claims Adjudication Board is to help relieve the heavy backlog and caseload of the Labour Tribunal, and in doing so to shorten the time for adjudication and expedite the conclusion of these cases. We agree with Mr LAU Chin-shek that the adjudication of these case should be done in a “fast, inexpensive and simple” way. We also agree that a review should be conducted some time after the Adjudication Board has come into operation, and see whether any further improvement can be made. We shall try our best to uphold the just and impartial image of the Adjudication Board.

As to whether the ceiling of \$5,000, as mentioned by Mr TAM Yiu-chung, is too low or not, we can undertake to review the ceiling from time to time. We shall make adjustments to this ceiling accordingly should the operation prove that there is the need to do so.

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).

SUPREME COURT (AMENDMENT) BILL 1994

Resumption of debate on Second Reading which was moved on 30 March 1994

Question on Second Reading proposed.

MR ANDREW WONG: Mr President, the Supreme Court (Amendment) Bill 1994 seeks to amend the principal Ordinance to provide for the appointment and qualification of recorders of the High Court, that is, High Court judges who would be part-time but appointed on a regular basis, with a view to alleviating the problem of long waiting time for hearing of cases in the High Court.

Over the past few years, the waiting time for the hearing of cases in the High Court has increased considerably. In 1993, the average waiting times for criminal and civil cases were 210 and 218 days respectively. To assist in reducing the court waiting time in the High Court, and to encourage members of the local Bar to apply for appointment to the Bench, the Chief Justice has, from time to time, selected experienced barristers, normally Queen's Counsel, for appointment as deputy judges (temporary judges) of the High Court for periods ranging from a few weeks to a year. However, this ad hoc arrangement has not proved very effective in attracting members of the local Bar to apply to join the Bench. Moreover, as most senior barristers are unable to commit themselves to judicial work for more than a few weeks, the ad hoc nature of the appointments has made it difficult for the Chief Justice to plan in a systematic way for the establishment of an additional court.

In an effort to make more extensive use of the expertise available in the private sector, the Hong Kong Bar Association put forward a proposal to establish a formal system of recordership, along the lines of the scheme currently operating in the United Kingdom, whereby barristers in private practice are appointed as part-time judges (recorders) to sit regularly in the High Court. This proposal was referred by the Chief Justice to a working group which was entrusted with the duty to consider the proposal. After carefully examining the proposal, the working group endorsed the Bar

Association's proposal and put forward certain recommendations concerning the qualifications, terms and method of appointment of recorders. The Supreme Court (Amendment) Bill 1994 seeks to incorporate the recommendations of the working group in recognizing in law a recordership system in the High Court.

A Bills Committee of which I was elected Chairman was set up to study the Bill. The Bills Committee held three meetings with the Administration and met with representatives of the Hong Kong Bar Association and the Law Society of Hong Kong.

The Bar Association welcomes the earliest possible start to the scheme given that it was first mooted in 1991 as a method of encouraging practitioners at the Bar to join the Bench and as a means of addressing the backlog of High Court cases. The Association also considers that there will be sufficient senior barristers who are willing to accept immediate appointment to the High Court Bench. Many who are not prepared to commit themselves to a permanent appointment are nonetheless prepared to sacrifice four to six weeks a year to sit as recorders.

The Law Society supports the "recordership" scheme in principle but is of the view that there is no valid reason why a solicitor who is employed by the Government is deemed to be eligible for appointment whilst a solicitor in private practice who has 10 years in litigation and practice as advocate in courts is not. The Law Society feels that the discrimination against experienced private practitioners is an artificial constraint which Hong Kong can ill afford to perpetuate. The Law Society also points out that there are nearly 3 000 solicitors in private practice and the number increases by approximately 250 per annum. However, under the provisions of section 9 of the Supreme Court Ordinance, none of them is eligible for appointment as a High Court judge or, under the Bill, as a recorder.

The Administration is of the view that the Law Society's proposal to make solicitors eligible for appointment as recorders of the High Court should be considered in the context of the Law Society's broader proposal on solicitors' eligibility for appointment to the High Court. This broader proposal is being considered by the Attorney General's Chambers in the context of the Bar Association's and the Law Society's submissions on the future of the two branches of the legal profession. As the matter has significant implications for the legal and judicial systems, the Attorney General intends to issue a public consultation paper later this year. The paper will address, among other things, the role of each branch of the profession which will definitely have implications on the question of eligibility for appointment to the High Court.

As recorders will perform the same duties as High Court judges, the Administration considers it logical for their qualifications for appointment to be the same as for permanent appointment to the High Court. The qualifications of Judges of the High Court are prescribed in section 9 of the Supreme Court Ordinance and no amendment thereto is proposed in the Bill.

The Bar Association shares the views of the Administration that the Bill should be passed in its present form so that the recordership scheme can get under way. The Association feels strongly that any proposal for reform of the provisions of section 9 of the Supreme Court Ordinance concerning eligibility of other persons for High Court appointments who are not currently within section 9 should be separately considered in the context of amendment of section 9 generally and after all consultation with the Judiciary, with the Bar and with members of the public. The issue is a contentious one and views of all concerned parties should be taken into consideration. Moreover, amendment of section 9 will be necessary as, in its present form, it cannot survive the transfer of sovereignty to the People's Republic of China in 1997 and is clearly inappropriate for the Hong Kong Special Administrative Region. The question of such amendments should not be considered or dealt with in a piece-meal fashion.

Members of the Bills Committee had split views as to whether the Bill should be allowed to resume its Second Reading debate today without any amendment, or to be deferred until the beginning of the next Legislative Council Session in October 1994 in order to allow more time for all parties to consider the desirability of amending clause 5, the part to which we can propose amendment, by adding a new section 6AA to enable a person who has at least 10 years' practice as an advocate or solicitor to be eligible for appointment as a recorder. This would be a separate exercise, not a consideration of eligibility for appointment to the High Court as permanent judges.

The Bills Committee finally agreed that if the Administration could give an undertaking to initiate action to review, in consultation with the two branches of the legal profession, the appointment qualifications for recorders within the next three months with a view to giving a recommendation for the consideration of the Panel on the Administration of Justice and Legal Services in October 1994, the Bills Committee would support the passage of the Bill in its present form. The Administration agreed with the proposal of the Bills Committee and my understanding is that the Attorney General will confirm such an undertaking later when he speaks.

The Bills Committee also agrees to the moving of amendments by the Administration relating to the deletion of clauses bearing reference to the qualification of Registrar, deputy registrar and assistant registrars of the Supreme Court and the appointment of temporary deputy registrars. The Administration considers that these provisions, which are not directly related to the appointment of recorders, should more appropriately be considered in a separate amendment exercise which will take into account the Judiciary's current review of the duties of the Registrar and his supporting team upon the transfer of their administrative duties to the newly created Judiciary Administrator's office.

Mr President, this Bill, once enacted, will enable the early launching of the recordership scheme. Though the scheme will be tried out only on a modest scale initially, the eventual expansion of the scheme may in the long run contribute to reducing the waiting time for hearing cases in the High Court.

Mr President, with these remarks, I commend the Supreme Court (Amendment) Bill 1994 to Honourable Members.

MR SIMON IP: Mr President, this Bill seeks to provide for a system of recordership in the High Court with a view to alleviating the problem of congested waiting lists. It will not be a panacea for all the Judiciary's ills; it is but a small element in a much larger package of reforms which the Judiciary will have to introduce to promote greater efficiency and user friendliness.

The Bills Committee invited submissions from both branches of the profession. The Law Society put forward forcefully and persuasively the case that solicitors should be eligible to be appointed recorders. It argued that eligibility of solicitors in government service for appointment to the High Court Bench under section 9 of the Supreme Court Ordinance discriminates against solicitors of equal standing in private practice who are not so eligible. There is no valid reason why a solicitor who is employed by the Government is deemed to be eligible for appointment while a solicitor in private practice of similar experience and expertise is not. The discrimination against experienced private practitioners is an artificial constraint which Hong Kong can ill afford to perpetuate, especially when strengthening the Judiciary through the appointment of the best local legal talent should be a top priority.

One of the reasons given in the past for opposing solicitors even being considered for appointment to the High Court Bench was that there has been no opportunity for them to be observed in the High Court as advocates. The appointment of a solicitor as a recorder would enable an assessment to be made of the solicitor's abilities as a High Court judge which is much more relevant than his talents as an advocate. The quality of legal analysis and the ability to listen and to summarize a case concisely and cogently are of far greater importance.

In England and Wales, solicitors have been eligible for appointment as recorders for many years and indeed many of the posts of recorder are held by solicitors. The law there has been amended to enable solicitors to be directly appointed from the profession to the High Court Bench and already one solicitor has been appointed.

The Law Society does not suggest that every solicitor is suitable for appointment as a recorder. It is, however, a shortsighted policy to prohibit the Judicial Service Commission from considering solicitors in private practice no matter how suitable they might be. To do so is contrary to the interests of the

public in building a broadly based, local, independent and competent Judiciary which is the cornerstone essential to maintaining the rule of law.

The Bar Association opposed the Law Society's argument on the well-trodden ground that solicitors have no experience of advocacy in the High Court and it has questioned the impartiality of solicitors as recorders. I am personally not persuaded by these arguments. However, I do not want to stand in the way of a three-way consultation between the Government, the Bar and the Law Society which the Government has promised to initiate immediately and to conclude within three months with recommendations on the way forward. The Government undertakes to revert to Legislative Council by October this year. Depending on the conclusions reached by the Government, I shall reserve the right to introduce a Private Member's Bill, if necessary, to give effect to solicitors' eligibility for appointment to the High Court Bench. I have withdrawn my amendment to the Bill against the Government's undertaking so as to facilitate the consultation.

With these words, Mr President, I support the Bill.

ATTORNEY GENERAL: Mr President, I rise mainly to confirm the undertaking spoken by Mr Andrew WONG and Mr Simon IP, but may I say at the outset that we are grateful to Mr Andrew WONG and the members of his committee for the thorough and expeditious consideration of this Bill that enables it to proceed in this Session. If I may, Mr President, then proceed to deal with the undertaking that has been mentioned, and that is, the Law Society's proposal in respect of solicitors' eligibility for appointment to the Supreme Court will be considered by the Attorney's Department in the context of the wider review of legal services. Other issues will be considered in the course of that. The Attorney's intention now is to publish a consultation paper on this and other issues later in the year. Mr Simon IP however expressed his concern about the delay that this might take on this broad review and the Bills Committee requested that the Attorney should give immediate consideration to that matter of the professional qualification of recorders.

In response to that request, Mr President, the Administration has confirmed that it will actively discuss the qualifications with the Bar Association and the Law Society in the next few months. The Administration will report its views on that issue to this Council's Panel on Administration of Justice and Legal Services in October.

Mr President, if I may turn to two other more minor points. The Bill includes provisions relating to the qualifications of the Registrar of the Supreme Court, his deputies and assistants, and to the appointment of temporary deputy registrars. As the duties of the Registrar and his deputies and assistants are currently being reviewed, the Judiciary has asked that these provisions be removed from the Bill at this time. And I will be proposing Committee stage amendments to this effect.

I will also at that stage be proposing an amendment consequential to the enactment today of the Minor Employment Claims Adjudication Board Ordinance. The amendment reflects the addition to the Oaths and Declarations Ordinance of a reference to the Adjudication Officer of the new board.

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).

ATTORNEY GENERAL: Mr President, the purpose of this short Bill is to add a “proviso” to section 119(1)(d) of the Magistrates Ordinance. The effect of that would be that an appeal from a magistrate’s decision could be dismissed, even though the point raised on the appeal was decided in favour of the convicted person, if the appeal judge considered that no miscarriage of justice had actually occurred. Appeal judges would no longer be obliged to allow an appeal on the basis of a technical error by the magistrate that did not affect the justice of the conviction.

When the Attorney General introduced this Bill into the Legislative Council, he explained that the proposed amendment was recommended by the Court of Appeal in a decision in 1988, and would give appeal judges a power that they had in fact exercised for many years before then. The Attorney General also explained that the Bar Association and Law Society had expressed concern about the proposed proviso. Those concerns are now shared by some Members of this Council.

The principal concern, as I understand it, is that a magistrate’s record of the proceedings before him may be insufficient for an appeal judge to identify potential miscarriages of justice when considering the use of the proposed proviso. The Judiciary itself does not believe that this concern is justified. Indeed, since the Bill was introduced, at least three High Court judges have, in the course of allowing appeals from magistrates’ decisions, called for the introduction of such a proviso. Moreover, if in a rare case a record of proceedings were incomplete, there would be no question of the proviso being applied.

Although the Administration does not accept the criticism of the records of magistrates cases, there is no doubt that the keeping of such records would be greatly assisted by the introduction of computerized court recording. A pilot scheme involving such a system will be introduced in the District Court in the very near future. If this proves successful, and the resources are available, the system will be extended to the magistracy.

In view of the strong reservations that some Members have about this Bill, and in view of the proposed improvements in respect of court record keeping, I am withdrawing the Bill for the time being. However, if and when computerized court recording is extended to the magistracy, the Administration will consider reviving the proposed proviso.

PRESIDENT: In effect the Attorney General is withdrawing the Magistrates (Amendment) (No. 2) Bill 1992 and he is entitled to do that under the practice in the House of Commons which we would adopt here so long as the order is not read, hence the title of the Bill was not read before I called on the Attorney General.

LEGAL PRACTITIONERS (AMENDMENT) BILL 1993

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

Question on Second Reading proposed.

MR PETER WONG: Mr President, the Legal Practitioners (Amendment) Bill 1993 marks an important stage in the development of Hong Kong's legal services. One of the main objects of this Bill is to put in place a scheme for the admission and regulation of foreign lawyers and foreign law firms in Hong Kong. Under such a scheme, the Law Society would be able to regulate the professional conduct, ethics and discipline of foreign lawyers practising in Hong Kong. On the other hand, foreign lawyers and foreign law firms are provided with clear criteria, which are backed by statutes, for the establishment and regulation of their practices here. They will also be able to form associations with local law firms and to share office facilities, staff and fees with them. The regulatory scheme seeks to enable clients, most of whom are international businessmen doing business in and through Hong Kong, to have access to high quality multi-jurisdictional legal advice. This Bill also enables foreign lawyers, subject to an examination, to qualify as Hong Kong solicitors.

In considering the Bill, the Bills Committee formed to study it has noted that a number of the details of the regulatory scheme will be provided in the form of subsidiary legislation to the principal Ordinance after the passing of the Bill. In view of the importance of these details which are in fact part and parcel of the whole regulatory scheme, the Bills Committee considered it essential to confirm the details of the subsidiary legislation before the Bill is passed.

Upon the Bills Committee's request, the Administration provided in late 1993 three sets of draft Rules relevant to the registration and practice of foreign lawyers and to the admission of qualified foreign lawyers to become Hong Kong solicitors.

The foreign lawyers group headed by the Chairman of the Legal Committee of the American Chamber of Commerce has made a number of representations to the Bills Committee on the provisions proposed in the Bill as well as the draft Rules. They expressed reservations on a number of issues such as the participation of foreign lawyers in the administration of the regulatory scheme, the definition of practice of Hong Kong law, the ratio between foreign lawyers and Hong Kong solicitors in associated firms, conditions for foreign law firms to employ Hong Kong solicitors to advise on foreign law, and conditions for practising Hong Kong law in the name of an overseas law firm.

As these issues are all related to the business and practice directions of a professional body, Members of the Bills Committee held the view that they should be resolved as far as possible between the parties concerned. Consequently, a series of three-way meetings have been held among the Administration, the Law Society and the foreign lawyers group from December 1993 to May 1994 to consider these issues. The Bills Committee has also been kept informed of the progress. I am happy to say that, through the efforts of the parties concerned including at the final stages that of the Attorney General himself, these issues have all been satisfactorily resolved. The Administration will move certain Committee stage amendments to implement the agreements reached. The three sets of draft Rules have also been revised, finalized and agreed by the parties concerned. They will be submitted to this Council for approval after the enactment of the Bill.

I would now turn to another major aspect of the Bill. This provides the Law Society with additional powers of investigation to verify compliance by solicitors, foreign lawyers, and their employees with the relevant legislative provisions or any practice direction issued by the Law Society.

Under the existing section 8A of the Ordinance, the Law Society may examine documents of a solicitor if he is considered by the Law Society Council to be “unfit to practise”. This power is rather restrictive. The present proposal in the Bill relaxes the criteria and will enable inspectors appointed by the Law Society to conduct both proactive and reactive investigations, and to inspect documents in the possession of its members and their employees. Failure to comply with such production orders will subject the persons concerned to the disciplinary action of the Law Society. The proposal aims to assist the Law Society to investigate allegations of malpractices including activities of touting and commission-taking among its members.

In the scrutiny of these provisions, the Bills Committee offered certain suggestions on the drafting of the relevant clauses. The purpose is to specify more clearly the conditions and circumstances in the use of the power. The Administration has agreed to Members’ suggestion and will introduce amendments to the proposed section 8AA at the Committee stage.

The Hong Kong Bar Association has made representation to the Bills Committee on these proposed provisions. The Bar Association does not consider the provisions adequate in tackling the problem of touting and commission-taking in criminal cases nor to eradicate the activities of those “submarines” who are not legally trained persons and not employed by any firm of solicitors. They operate in such a way that they usually roam around courts or police stations and when legal services are required by a lay client, they would surface to tout for business. They act as go-between of the client and a barrister and sometimes the name of a solicitor firm may be used. No legal service will be rendered to the client by these “submarines”. When the barrister renders his service, these “submarines” will collect the fees from the client, pay the barrister and usually provide a rebate to the solicitor firm whose name has been used. Since they are not employees of solicitors and operate independently, the Bar feels that the proposed powers for the Law Society inspectors will be ineffective to deal with these touting activities.

To enable the inspectorate system to be effective, the Bar Association proposed that inspectors should be empowered to do spot-checks in courts and police stations and to check the identity of and question the “submarines”. The proposal has the support of the Administration and the Law Society. They consider that such powers which target principally the activities of the “submarines” who are not employees of solicitors would complement the existing measures and those currently being considered by the Law Society to deal with malpractices of touting and commission-taking. Further amendments will be introduced by the Administration to the proposed section 8AA to effect this proposal.

In connection with the above, the Administration will further propose, through a Committee stage amendment to the Bill, to make it an offence for a person wilfully pretending to be an employee of a solicitor and barrister. Upon conviction, the maximum fine is \$500,000. It aims to strengthen the deterrent effect of the proposed inspectorate system.

The Administration has confirmed to the Bills Committee that it has received repeated assurances from the Bar Association of its full co-operation with the Law Society’s inspectors in their investigation work. The Administration would meet regularly with the parties concerned, including the Independent Commission Against Corruption, to monitor the situation. The proposed inspectorate system will be reviewed by the Administration after 12 months of its operation to evaluate its effectiveness and to consider whether other measures, such as criminalizing the activities of touting and commission-taking, should be considered.

Whilst certain Members of the Bills Committee may still have some doubts on the effectiveness of the proposed measures in the investigation of touting activities, it is the majority view of the Bills Committee that these attempts should be supported. Furthermore, Members recognized the need to provide the Law Society with adequate powers to investigate other allegations of

malpractices among its members besides touting. As for the latter problem, the Legislative Council Panel on Administration of Justice and Legal Services will follow up with the Administration on its review of the inspectorate system in a year's time.

Last but not least, I would like to take this opportunity to thank all of those who have submitted their views to the Bills Committee, either on the regulatory scheme for foreign lawyers or the inspectors' powers. I am particularly thankful to the President and other representatives of the Law Society who have attended most of the meetings of the Bills Committee and provided much useful information to Members in their consideration of the Bill.

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

MISS EMILY LAU (in Cantonese): Mr President, I speak in support of the Legal Practitioners (Amendment) Bill 1993. As the Honourable Peter WONG said just now, a major objective of the Bill is to empower the Law Society to appoint inspectors who will, on their own initiative or in case of need, take action to examine the documents retained by lawyers, lawyer trainees and employees of law firms with a view to assisting the Law Society in the investigation of allegations pertaining to malpractices by law firms. Those who refuse to produce the documents to the inspectors are liable to be disciplined by the Council of the Law Society.

Mr President, the inspectorate system that the Bill proposes seeks to combat the practices by certain people in the legal profession of recommending legal services to people who are in the dark about the legal system by means of touting, referring business and collecting commission. That is, the so-called "clerk/adviser system".

Just now Mr Peter WONG quoted the Bar Association as calling such people "submarines", who may be clerks or translators of law firms or even former police officers. They hang around at police stations, courts and reception centres. On noticing that certain people or the defendants are not legally represented, they approach these people to solicit business by claiming that they can refer solicitors and barristers to these people, from whom they subsequently collect commission. The price they charge is very often higher than the legal fees that a client is actually required to pay.

Mr President, the problem posed by "clerks/advisers" has in fact been existing in the legal system of Hong Kong for years mainly because English is used in the courts of Hong Kong and most of the barristers and solicitors, being expatriates, do not speak Chinese. Besides, as many suspects do not know much about the legal system, they have not the faintest idea about where to turn to for a lawyer. Neither are they able to communicate with these foreign lawyers.

Very often, therefore, they have to hire a lawyer through an interpreter or a third party. That was how the system first came into existence.

The Government and the legal profession are well aware of such problem. The immediate victims, of course, are those members of the general public who are ignorant of the legal system. I am greatly astounded to find that the Government seems to have turned a blind eye to this unfair and unacceptable phenomenon. Over the years, the Government has not attempted to work out a real solution. On the one hand, the Government takes great pride in saying that Hong Kong is a place where the rule of law prevails. But over the years, the Government just sits idly by while members of the public who look for legal services keep coming across this basic problem. How ironic it is indeed!

Mr President, of course, the Government is not the sole party to be held responsible. The legal profession also owes the community an explanation in this regard. Why do they appear to be at a loss in dealing with such a basic problem? Are they going to tell us that “to make money” is of utmost importance and that they can simply pass over everything else?

Mr President, the legal profession enjoys a supreme status in the society of Hong Kong. The general view is that as regards problems relating to their professionalism, we should respect their autonomy and the problems are apt to be solved by means of self-discipline in the profession. The performance of the legal profession in handling the problem of “clerk/adviser” is nevertheless very disappointing indeed.

For the past 10 years, the Independent Commission Against Corruption (ICAC) has studied the problem of toutting and commission-taking by “clerks/advisers”. It is found that some “clerks/advisers” even collect commission from lawyers and some go so far as to forge the signature of lawyers in a bid to solicit business and collect charges, which, at times, are five times what is actually chargeable.

Mr President, the Government informed the Bills Committee in July last year that they originally intended to invoke the Prevention of Bribery Ordinance in order to criminalize such behaviour. The Law Society, however, raised objection thinking that the legal profession would be singled out and consequently be given special treatment. Let us then look at other professions. Which one of them has the problem of toutting and commission-taking? Is there such problem among doctors, engineers and accountants? I, therefore, consider criminalization absolutely necessary. Unfortunately, the Government and the Attorney General were successfully persuaded by the Law Society and agreed to give the profession a second chance. Hence the proposal to appoint inspectors in an attempt to solve this very knotty problem, which has remained unsolved over the years.

In fact, the Law Society did not object to the criminalization of such practices from the outset. In January 1989, the then President of the Law Society, who is the Honourable Simon IP, said at the opening of the legal year that the Council of the Law Society had resolved to criminalize commission-taking whereby those responsible for law enforcement would be in a position to combat such practices by using the power vested in them. He added that legislation would be all set in a few months. While these words still ring in our ears, today, which is five and a half year later, the Law Society goes so far as to eat its words. What has actually happened in the interim?

Mr President, I am not convinced that the inspectorate system as proposed in the Bill can effectively eradicate touting and commission-taking by “clerks/advisers”. On the contrary, we may be sending out a wrong message to the community that we have found the solution. How can the several inspectors appointed by the Law Society possibly conduct investigation into the many cases of touting for business at courts, magistracies, police stations and detention cells?

Just now Mr Peter WONG made reference to the stance adopted by the Bar Association, which I think is not that clear-cut. This proposal may not necessarily have their full support. Should the inspectorate system fail to win the support of barristers, I believe that its implementation would be rendered even more difficult. For that reason, I insist that the Government should consider criminalizing such practices as soon as possible.

In July 1992, the Law Society and the Bar Association submitted a report on this issue. One of the then members, Mr Anthony ROGERS, QC (who is at present a Judge of the High Court) held views distinct from others that the problem could be solved only through criminalization. He also pointed out that those who are entrusted with the investigation should be empowered to investigate persons other than those in the law firms because the payer might not necessarily be the lawyers. Therefore, investigation ought to be conducted in all quarters. He also stated that such investigative powers should not be conferred on persons employed by the legal profession. I cannot agree with Mr ROGERS more.

Mr President, it is also proposed in the Bill that impersonation of a clerk of a law firm constitutes a criminal offence. My view is that this proposal completely fails to address the core of the problem. The combat is targeted on those who tout for business and collect commission, not the ones who impersonate a clerk of a law firm. To criminalize impersonation of a clerk of a law firm with a view to tackling touting and commission-taking will be completely futile.

Mr President, I first wanted to move an amendment to the Bill but I was not supported by other Members of the Bills Committee. I hope that the Government will listen carefully to our views and keep its promise by conducting in good earnest a comprehensive review on the issue within one year

and thereafter advise Members whether it is really unnecessary to criminalize such practices. Should it be deemed necessary, the Government should immediately proceed to draft the legislation so that this problem, which has been plaguing Hong Kong for years, can eventually be resolved.

MR SIMON IP: Mr President, as the Chairman of the Bills Committee has described, this Bill deals with two issues: first, the regulation of the practice of law in Hong Kong by foreign lawyers and the way in which foreign lawyers may, through a process of accreditation and examination, become qualified to practise as solicitors; and second, the power to be conferred on the Council of the Law Society to appoint inspectors to ensure compliance with the Legal Practitioners Ordinance and regulations to enhance self-regulation of the profession in the interests of the public.

In relation to the first issue, the passage of this Bill is the culmination of six years of debate which at times was highly controversial.

It was in 1988, during my term as President of the Law Society, that the Government made two proposals in relation to foreign lawyers. The first was that a statutory scheme to regulate the admission and legal practice of foreign lawyers in Hong Kong should replace the informal arrangements operated by means of undertakings and immigration control. The second was that foreign lawyers should be permitted to employ or take into partnership Hong Kong solicitors and thereby practise Hong Kong law. At that time, the Law Society supported the first proposal but strenuously rejected the second. While welcoming foreign lawyers to practise foreign law in Hong Kong, which they had been doing since the early 1970s, the Law Society could not accept that foreign lawyers could in effect carry on the practice of Hong Kong law without the necessary Hong Kong qualifications. This would have revolutionized the profession and would have had serious implications for other professions. Consequently, other professional bodies also opposed the Government's proposal. This led to the Government issuing a consultation document to the public in 1989. In July 1990, the Law Society was informed that the Government would not press further its view that foreign law firms should be permitted to employ or take into partnership Hong Kong solicitors.

During the consultation, the Law Society made proposals to the Government aimed at promoting Hong Kong as an international centre of legal services in order to satisfy the needs of the international business community while at the same time preserving the integrity of the local legal profession.

In putting forward those proposals, the Law Society took account of the matters being negotiated in the Uruguay Round of the General Agreement on Tariffs and Trade and predicted an eventual successful outcome which would have resulted in multi-lateral agreement on trade in services, including legal services. As we know, those negotiations were indeed concluded successfully earlier this year.

The Law Society's proposals provided for a statutory system containing several elements:

1. the practice of law in Hong Kong by foreign lawyers and foreign law firms;
2. the employment of foreign lawyers by Hong Kong law firms;
3. the employment of Hong Kong solicitors by foreign lawyers and foreign law firms;
4. the basis upon which Hong Kong law firms and foreign law firms may form associations with each other;
5. the basis upon which foreign law firms may become eligible to practise Hong Kong law; and
6. the accreditation of foreign qualified lawyers to become Hong Kong qualified solicitors.

These proposals were subject to a wide and thorough consultation within the legal profession which included foreign law firms in Hong Kong and also with the relevant foreign chambers of commerce. Views expressed by them were taken into account in formulating a final proposal which was put to and eventually accepted by the Government.

During the scrutiny of this Bill, many meetings were held with representatives of the foreign lawyers, the Administration and the Law Society to iron out the remaining points of contention. Subject to the amendments to be moved, the Bill represents an acceptable framework for the regulation of the practice of law by foreign lawyers in Hong Kong. This result has been made possible by the co-operation of all parties concerned and the forward looking attitude of the Law Society to promote multi-jurisdictional practice while maintaining the highest professional standards for the benefit of the community. A special committee will be set up by the Law Society, with foreign lawyers' participation, to monitor the system and to deal with operational problems that may arise.

I now turn to the powers of the Council of the Law Society to appoint inspectors. The hallmark of a profession is the power of self-regulation. Like other professions, the legal profession imposes on itself rules and regulations over and above the ordinary laws of the territory in order to maintain high professional standards. For some years, the Council of the Law Society has considered that its powers of investigation into the activities of some dubious members of the profession were inadequate. Action could only be taken pursuant to complaints supported by sufficient evidence. The Council, except in some extreme cases, was unable to initiate investigative or disciplinary action in respect of breaches of professional rules of conduct including touting and illegal

commission payments to unqualified persons. This led at one stage, during my presidency of the Law Society to the Council, deciding to criminalize illegal payment of commission to unqualified persons. After further consultation with the Bar and the Attorney General, it was finally decided to make a further attempt to tackle these problems through increased powers of self-regulation rather than through criminalization. The Bill as drafted and to be amended will provide fairly extensive powers to the Council of the Law Society to take proactive measures to combat breaches of professional rules. It must be remembered that these powers are not merely to tackle illegal payment of commissions but to ensure compliance with a host of rules and regulations under the Ordinance and its subsidiary legislation. Although their effectiveness can only be assessed after they have been in operation for some time, there is little doubt that they represent a major step forward for the better regulation of the profession.

Mr President, in every area of human endeavour, there are those who fall below the standard of behaviour expected of them by their peers. The legal profession is no exception. By seeking these greater powers, the Law Society has shown its determination as a responsible governing body of a noble profession to deal with those few who by their acts and conducts tarnish the high reputation of the profession.

With these words, I support the Second Reading of the Bill and the amendments to be moved by the Attorney General during Committee stage.

MR JAMES TO (in Cantonese): Mr President, I speak in support of the Second Reading of the Bill. This Bill is divided into two parts. First, it deals with the regulation of the practice of law in Hong Kong by foreign lawyers. I shall not elaborate on this. I only wish to discuss the question of conferment of power on the Law Society to appoint inspectors to step up the monitoring of the profession. This inspectorate system will help step up the monitoring of solicitors' firms and legal practitioners. We welcome this idea. But the inspectorate system may fail to solve the problems arising from a number of special cases, for example, the taking of commission as earlier mentioned, or more serious cases such as solicitors being controlled by law clerks, or triad elements or former police officers acting as "submarines" to find lawyers for triad elements. I think we need ultimately to criminalize such acts of touting for business.

If such acts should be criminalized, the cases would then be investigated by law enforcement departments. I really cannot see how it would be more effective to have the Law Society investigate such cases rather than law enforcement departments.

There is one point I wish to make. If we want the public to know about the operation of the whole legal system, we must popularize legal education so as to make the public understand how to engage solicitors' firms to handle cases,

how to liaise with lawyers, the difference between a solicitor and a barrister and the calculation of legal fees and so on. I think the Government should beef up the publicity and education work in this respect. The Government can join hands with organizations like the Law Society or the Committee on the Promotion of Civic Education in launching some promotion activities. I have learnt that the Law Society organizes the Law Week annually with a view to promising education in this respect. I hope that the Government can subsidize some district organizations, such as community centres, in organizing courses in general legal knowledge so that members of the public can learn about the operation of the whole legal system.

The Government should also step up publicity on legal assistance scheme, such as the legal aid service provided by the Legal Aid Department, the legal advice service and the Duty Lawyer Scheme at the magistracies provided by the Law Society. If the Government can publicize these schemes to enable the general public, especially the lower class people, to know how to seek legal service and contact lawyers without the referral by a third party, then touting will decrease as a matter of course.

Mr President, the United Democrats of Hong Kong and the Meeting Point support the Second Reading of the Bill.

MR MARTIN BARROW: Mr President, I rise to give my support to this Bill, particularly as related to the role of international lawyers, although I personally do not believe that the amendment goes nearly far enough in opening up the legal profession to international participation. Indeed I regard it as a pity that the Administration backed off from their original proposal of 1988.

The amendment is, anyway, long overdue and it is disappointing that the local legal practitioners should for so long have resisted change. I recall when I first joined this Council in 1988, one of the first visitors on a lobbying mission to my office was the then President of the Law Society seeking my support to oppose an opening of the profession as suggested by the Government. I opposed the line taken at that time and have done ever since. It has only been the pressure of the Bills Committee and the help of Mr Peter Wong which brought the various parties together to reach the compromise which we are looking at today.

Mr President, Hong Kong is a unique international commercial centre and will continue to be post 1997. The question of reciprocity is no reason for maintaining a closed shop. Hong Kong is a unique environment which needs to be uniquely open. I hope the Administration will eventually pursue a further opening of the legal profession to international participation. Thank you.

ATTORNEY GENERAL: Mr President, Mr Peter WONG has succinctly, ably and very effectively explained the effect and purpose of this Bill, and there is no

need for me to bore Members by repeating what he has said and what other Members have said as to what the Bill seeks to achieve. I must express our thanks to Mr Peter WONG and to other Members of the Bills Committee for their careful consideration of the Bill. This matter has been going on, as Members have pointed out, for a very long time, and it has required a great deal of patience and hard work to eventually bring the parties to some kind of agreement.

Mr President, I think it would be sufficient if I could give at this stage, perhaps a convenient stage, some details of the amendments that I will move at the Committee stage, which have already been outlined by some Members.

Mr President, at present the certificate of admission of a solicitor and the certificate of admission of a barrister must be signed by the Chief Justice. It is considered that these certificates could be signed more expeditiously if other judges of the Supreme Court could sign them. The Law Society and the Bar Association have been consulted, and they support this arrangement. I will therefore be proposing an amendment to clause 5 and a new clause 30A to provide for this.

I will also propose amendments to clause 12, which relates to the Solicitors Disciplinary Tribunal Panel. One amendment will increase the number of lay persons on the Panel from 10 to 30, in order to cater for any possible increase in its workload once foreign lawyers are brought within the Ordinance. The increase in the number of lay persons on the Panel will help to reduce the frequency with which they may be called upon to perform their duties. The other amendment is to provide that the Deputy Tribunal Convenor may act in the place of the Tribunal Convenor if the latter is unable to perform his duties due to illness, absence from Hong Kong or any other cause.

I will propose an amendment to clause 36 to make it clear that the foreign lawyers' regulatory scheme does not apply to academics or foreign lawyers who are employed as in-house lawyers. A further amendment will provide that a foreign lawyer is exempted from the requirement to register with the Law Society if he does not offer his services for more than three continuous months, or 90 days, in any 12-month period.

Mr President, we have heard from Miss Emily LAU in particular about the inspectors who will perform functions under the Bill. There will be a proposal to introduce these inspectors.

There have been expressions of concern and not only today in this Council about the effectiveness of these measures that will be taken to combat the problems of touting and commission-taking. As Miss Emily LAU has said, the Administration has undertaken to keep this inspectorate system closely monitored for its effectiveness, and it will be evaluated again in 12 months' time after its implementation. This evaluation will be carried out with the assistance of the two branches of the legal profession and the Independent Commission

Against Corruption. If the measures are not effective, Miss Emily LAU may well be right, the Administration will consider introducing criminal sanctions. We are resolved to tackle the problem of touts, one way or another. As Mr Martin BARROW has indicated, the problem in the area of foreign lawyers has been around for almost as long as the problem with touts, and the Administration has always been concerned about it. But it of course needs the co-operation of the profession to deal with it.

The investigative powers of the Law Society inspectors were found during the course of discussions on the Bill to be in need of some refinements. As a result, I shall be proposing, at the Committee stage, to amend clause 10, to substitute a new section 8AA to the principal Ordinance, in addition to a new clause 21B. The purposes for which the inspectors' powers can be exercised are set out in the proposed new section 8AA(1).

Under the new proposed section 8AA(2)(b), an inspector is empowered to require any solicitor or foreign lawyer, or the employee of a solicitor or foreign lawyer, to produce for his inspection any document in his possession and to copy or seize any such document. Such an investigative power is of course pro-active and is exercisable upon a direction of the Law Society Council.

The proposed new section 8AA(2)(a) has been added as a result of the determined views of the Administration, the Law Society and the Bar to deal with "touts" and "submarines". The section empowers a Law Society inspector to carry out random checks to uncover "touts" and "submarines" with a view to driving them out of business. The Bar Association has given an assurance that co-operation and assistance will be given to the Law Society inspectors if enquiries reveal that barristers or their employees are involved.

The proposed new clause 32B will amend section 46 of the principal Ordinance, which makes it an offence for an unqualified person to pretend to be a solicitor. The amendment will make it an offence for any person to pretend to be an employee of a solicitor, a barrister or foreign lawyer. This will add some teeth to the inspectors' powers under the proposed section 8AA(2)(a) and will act as a deterrent to existing and potential "touts".

As I have said earlier, the measures proposed here may or may not be the answer, but the profession wishes us to attempt this way first. If it fails, then other ways will have to be found.

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).

PRESIDENT: The Magistrates (Amendment) (No. 2) Bill 1992 was withdrawn. The Magistrates (Amendment) Bill 1993 remains on the Order Paper. I am afraid I overlooked it.

MAGISTRATES (AMENDMENT) BILL 1993

Resumption of debate on Second Reading which was moved on 24 November 1993

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

Bill read the Second time.

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

EMPLOYMENT (AMENDMENT) (NO. 2) BILL 1993

Resumption of debate on Second Reading which was moved on 15 December 1993

Question on Second Reading proposed.

DR LEONG CHE-HUNG: Mr President, the proposals in the Bill cover basically three main areas:

- firstly, a clarification of the eligible period for maternity leave;
- secondly, the inclusion of medical certificates issued by registered dentists as valid documents for the purpose of claiming sickness allowances; and
- thirdly, a revision of the formula for calculating severance payment and long service payment.

Members of the Bills Committee scrutinizing the Bill have no objection to the first two proposals. Different views have however been expressed on the third one. And I thought it would be timely to report briefly on these concerns.

An employee's entitlement to severance payment and long service payment is currently calculated at a rate of two-thirds of a month's wages for each year of his service. The maximum ceiling of his entitlement is the total amount of wages he earned during the period of 12 months immediately preceding the date of dismissal, or the sum of 12 months multiplying \$15,000, that is a total of \$180,000, whichever is the less. This has the effect of limiting an employee's reckonable service to 18 years, and I repeat this has the effect of

limiting an employee's reckonable service to 18 years, and this is the current situation.

This Bill proposes a removal of the ceiling of 12 months' wages, but retaining the maximum payment of \$180,000. It also proposes to count every two years as one for an employee's service accrued beyond 18 years before the enactment of the provision in the case of severance payment, and by 1 January 1995 in the case of long service payment. The Administration advised that the latter proposal is intended to cushion the financial impact on employers, and confirmed that the maximum payment of \$180,000 is subject to periodical review.

The employee representatives, of course, considered it unfair that an employee's service over and above 18 years cannot be counted in full in the calculation of severance and long service payments, and that the payments should be subject to ceilings. On the other hand, the employer representatives were concerned about the effect of the legislation, particularly on small and medium enterprises.

The Bills Committee has asked the Administration to provide an analysis of the economic implications of the proposals to reckon years of service above 18 years by half and in full. The Administration estimated that as far as severance payment is concerned, the total wage bill in all sectors will increase by 0.011% and 0.022% respectively in 1994, and 0.012% and 0.022% respectively in 1995. As for long service payment, the total wage bill will increase by 0.007% and 0.014% respectively in 1995, and will not have any effect in 1994 as the maximum reckonable length of service for calculating long service payment can only relate to 1 January 1977.

I hope the information would be useful to Members in considering whether or not to support the proposed provisions in the Bill, and the Committee stage amendments to be moved as I understand by my colleagues, Mr TAM Yiu-chung and Mr LAU Chin-shek.

I should also mention that the Bills Committee has discussed the Committee stage amendment to be moved by Mr James TIEN regarding long service payment to employees on fixed-term contract under section 31T(1)(b). I shall leave it to Mr TIEN to brief Members on the background to his proposed amendment, and the Administration to explain its position on the issue. But I would like to take the opportunity to report that while some Members of the Bills Committee agree that the legislative intent of this provision should be clarified, there are others who consider that the issue requires further consideration and that any amendments, if necessary, should be made at a later stage after consultation with the parties concerned.

Finally, Mr President, I would like to thank Members of the Bills Committee who have worked so diligently on the Bill and the Administration in providing the necessary supporting data to help Members in the deliberation.

With these remarks, Mr President, and subject to the amendments to be moved, I support the Second Reading of the Bill.

MR TAM YIU-CHUNG (in Cantonese): Mr President, under the existing Employment Ordinance, the amount of severance payment or long service payment for which an employee is eligible shall not, at the most, exceed the total amount of his wages for the 12 months immediately preceding the date of dismissal or an amount equivalent to 12 times \$15,000, which is \$180,000. The length of reckonable service is, in effect, limited to 18 years. Service accrued beyond 18 years would not be taken into account at all. As a consequence, the compensation made to employees fails to give an accurate account of employees' years of service. Such calculation method is extremely unfair to employees who have long years of service. For this reason, labour representatives have repeatedly urged a total removal of the maximum ceiling for severance payment and long service payment to ensure that the payments are computed on the basis of the actual number of years of service.

The Hong Kong Federation of Trade Unions and I welcome the amendment as proposed in the Bill tabled by the Government, which seeks to repeal the maximum ceiling of 12 months' wages for severance payment and long service payment. We are, however, dissatisfied with the fact that the amendment fails to remove the maximum ceiling pertaining to the reckonable length of service for severance payment and long service payment. The amendment which provides that, if enacted, employees' years of service beyond 18 years will be reckoned by half indeed discounts half of their accrued years service beyond 18 years and this is, in my view, still not fair to employees with long years of service. Since the Bill has retained the maximum ceiling of \$180,000, I think this additional limitation, which sets the maximum ceiling for the length of service at 18 years, beyond that an employee's service is to be reckoned by half, is unjustified.

Statistics show that 55% of employees in Hong Kong earn less than \$7,000 per month. That means an employee in that category has to work for the same employer for over 40 years before he could get the maximum amount of \$180,000. Employees have laboured for the better part of their life. Why are they still being denied of, time and again, the benefits they are entitled to over the severance payment and long service payment? I shall, therefore, propose a Committee Stage amendment to clauses 6 and 7 in a bid to repeal the provisions therein under which employees' accrued service beyond 18 years is reckoned by half.

Mr President, these are my remarks. I shall move a Committee stage amendment.

MR PANG CHUN-HOI (in Cantonese): Mr President, we are resuming the Second Reading of the Employment (Amendment) (No. 2) Bill 1993. I welcome the Government's amendment to remove the upper limit of 12 months' wages in the calculation of severance payment and long service payment. The amendment will benefit the low-paid workers who have no retirement protection so that they may receive more reasonable compensation when their services are terminated or when they are sent away.

However, it seems that today's amendment is not sufficient to safeguard employees who are aged and whose years of service are long. The Bill provides that the period of service exceeding 18 years shall be computed at a 50% discount. It is totally unfair to employees who have spent several tens of years of their prime with the same company throughout. Moreover, the amount of compensation payment to the employee, since it was last revised on 8 June 1990, has remained unchanged at \$180,000. Adjustment should be made to it, as well.

Three Members are going to move amendments today. I am going to support that of Mr TAM Yiu-chung which provides that employees working with the same employer for more than 18 years shall have the period computed in full. This is what we regard as an equitable method of computation and it is also the aspiration which the labour sector has been actively making known to the Administration. As a matter of fact, if we take the local median wage \$7,000 as an example, an employee will have to work with the same employer for nearly 40 years before he/she is entitled to receive the upper ceiling of \$180,000 should the Government impose a restriction on the period of service to reduce the benefits accruing to an employee, it will be very unfair to the aged employees in view of the reduction in benefits.

I also support Mr LAU Chin-shek's amendment to remove the \$180,000 ceiling. As a matter of fact, the Government is well aware that employers will not be seriously affected even if the amendment is passed because a low-paid employee has to have 40 years of service before he/she is entitled to receive \$180,000. As for the high-paid employees, the majority of them are covered under the privately-run provident fund scheme or pension scheme undertaken by their employers for their protection. It would therefore not cause any serious financial burden on the employers.

Mr James TIEN will be moving an amendment to specify the eligibility of fixed-term contract employees for long service payment upon the expiry of the contract. I am of the view that the Government failed to give the wording a precise interpretation at the time when the Ordinance was formulated. As a consequence, the fixed-term contract employees are in a more favourable position than the average employees as regards their eligibility for long service payment upon the expiry of the contract. Although it is unfair to certain

employees, I think that the Government should find out a way to strike a balance between the interests of the employees on month-to-month terms and the employees on contract terms. I, therefore, do not support Mr TIEN's amendment.

Mr President, these are my remarks.

MR LAU CHIN-SHEK (in Cantonese): Mr President, legislation on severance payment was first enforced in 1974 and, up to now, it has been existing for 20 years. Legislation on long service payment also has a history of nine years. Employers in Hong Kong are very familiar with such laws and should have enough time to make full preparation for providing their employees with severance payments and long service payments. As some of the employers have already set up provident fund schemes, they need not make haste to deal with this issue. For this reason, the further removal of the limit of 12 months' total wages will merely raise the level of severance payment or long service payment to which only a handful of employees with more than 18 years of service will be entitled. Employers should be able to deal with the issue with ease because the amendments will merely bring negligible impacts on them. The Government should, indeed, set no ceiling in this respect.

To a majority of middle-aged and old-aged workers in Hong Kong, the removal of the ceiling of 12 months' total wages can be regarded as "a spring overdue". In the early 1980s, a large number of factories relocated northwards, leading to the dismissal of batches and batches of manufacturing workers. Now the total number of manufacturing workers has declined from 900 000 to 400 000-odd. It is a pity that these veterans in the manufacturing industry could do nothing but helplessly watch the amount of their own severance payments or long service payments being cut in various ways owing to restrictions imposed by the harsh legislation. Only up till today when there remain a smattering of employees with length of service exceeding 18 years does the Government remove the ceiling of 12 months' wages. As a result, the number of people benefiting from the removal of the ceiling has dropped tremendously as compared with the past.

However, there are still various restrictions imposed by the late amendments. After all, a ceiling is still set to keep on depriving veteran workers of their rights and interests and forcing the workers to lose out. Our workers have, in fact, worked so hard for their employers for so many years. Why can they not get full severance payments? Why has the Government to set up so many additional hurdles? In a fair society, we should not bully the weak and support the strong. We should not be partial to the employers and exploit the underprivileged workforce.

I would like to point out here that there is, despite the removal of the ceiling of \$180,000, actually still an upper limit being set because we can only base on a wage not exceeding \$15,000 to calculate the severance payment for an employee. To the employers, this has already had the effect of setting a ceiling.

Furthermore, I would like to stress that my amendments and those proposed by Mr TAM Yiu-chung will not lead to any major alteration and the impact on employers will be very slight. An employer only need to make long service payment when he dismisses an employee; so the initiative is entirely in the employer's hands. As for employees aged 65 who have resigned from their jobs, they are only individual cases and the number of them is small. As regards severance payment, employers also need not feel worried because, in case of a winding-up, the amount of severance payment should have nothing to do with the employer and in case of termination of business after making a profit, the employer should not be so mean about the payment of additional compensation.

Mr President, I will propose my amendments later. I will also support Mr TAM Yiu-chung's motions to remove the ceiling of 18 years' service and to cancel the provision that every two years have to be counted as one.

MR JAMES TIEN: Mr President, it has been said that in a free economy a worker is protected from his employer by the existence of other employers. This is only partially true. An employee must also have certain securities by legislation. For example, an employee must be safeguarded against impromptu dismissal and be given reasonable compensation for services rendered. Therefore, the business and industrial sector wholeheartedly acknowledge an employee's entitlement to severance payment and long service payment. We support the proposed Employment (Amendment) (No. 2) Bill 1993 by the Government because it outlines reasonable improvements to the current scheme.

Under the proposed scheme, worker benefits are to be boosted in two ways. Firstly, the new scheme will address the compensation of some long serving employees who are presently precluded from earning payments beyond 18 years of service. Secondly, the new scheme will increase severance and long service payment potentials by removing the ceiling of wages earned during the period of 12 months immediately preceding the date of dismissal, if such is less than the maximum limit of \$180,000.

Furthermore, the proposed scheme is aware of the need to cushion the financial impact on employers as well. To illustrate, let us suppose an employee with 30 years of service in the same company, who now receives a \$10,000 monthly salary. Under the existing scheme if he is dismissed he will receive severance and long service payment of \$10,000 multiplied by two-thirds multiplied by 18 years' work, which is equal to \$120,000 of compensation. Under the new scheme proposed by the administration, the same employee shall receive the whole amount, which is \$10,000 multiplied by two-thirds multiplied

by 18 years, equal to the \$120,000 plus \$10,000 multiplied by two-thirds multiplied by 12 years, which is 30 years minus 18 years, and divide by two, which is the 12 years divided by two. That sum should be equal to \$40,000. Therefore the total compensation proposed by the Government will now become \$160,000. This employee shall then receive an additional \$40,000, an increase of 33% in compensation. Such an improvement is certainly reasonable.

As the representative of the industrial sector in this Council I am encouraged by the Administration's show of understanding. These are difficult times. According to the data provided by the Federation of Hong Kong Industries, employment has fallen for nearly all of the major local trade and industries. I call your attention to the following figures. From 1987 to 1992, a period of five years, employment has fallen 39.7% for the apparel trade, 31% for textile and an astonishing 58% for plastic production. Surely, we are well aware of the industrial sector's general downward trend. Now, are we to choose payment plans of a realistic and gradual manner or are we to insist upon huge increases? Are we to offer severance and long service payments as a form of protection for workers or are we to insist upon them, as somewhat of a form of redistribution of wealth?

Time and again, I have cautioned this Council that such pursuits, though popular for political reasons, if executed, will improperly send the wrong message to investors, both local and international.

The Honourable TAM Yiu-chung puts forth a counter proposal that beyond the prescribed 18 years of service an employee should be compensated to the full instead of for half of those additional years' work, while the Honourable LAU Chin-shek argues for the removal of the \$180,000 ceiling. Keeping in mind the general decline of major industries, I would like here to relate a plea I recently received from the Small and Medium Enterprises Committee:

“The Small and Medium Enterprises Committee feels that the proposed legislation appears to be reasonable. There was concern expressed that it might affect some small businesses quite severely. While each individual initiative by itself represents a small step the overall effect is to make Hong Kong labour legislation increasingly detailed and to add substantially to the cost of employment for small businesses. The small business sector is very much central to the economy and many businesses are finding it increasingly difficult to operate in the high cost environment in Hong Kong.”

Bearing in mind that the proposed amendment imposes responsibility on all employers alike, irrespective of size, its impact on small employers, in particular, should by no means be underestimated. To illustrate, let us suppose again that an employee receives \$10,000 a month as compensation. Currently this employee will receive \$120,000 if dismissed by the employer. Under the new scheme, as proposed by the Government, after 30 years of service this

employee shall receive \$160,000. However, if both Mr TAM and Mr LAU's amendments are passed, this employee shall receive \$200,000. This will stand a staggering 66% increase from the existing scheme. I do not think any employer of any size can afford to maintain many long service employees if such be the case.

Mr President, I oppose Mr LAU and Mr TAM's amendments because regulations conducive to investment should not be changed drastically nor abruptly and that they be changed only if circumstances so warrant.

Mr President, the Liberal Party legislators will support the Employment (Amendment) (No. 2) Bill as proposed by the Administration, which strikes a right balance between the interests of the employer and employee.

Mr President, now I would like to move to the amendment that I am proposing. Mr President, the Employment Ordinance is the sole document of labour legislation in Hong Kong. Therefore it is most important that the wording of this Ordinance be clear and concise so that its intention remains singular and uncontested. Recently, the interpretation of section 31 (T)(1)(b) of the Employment Ordinance has sparked a series of debates. Thus, I hereby seek to amend the wording of the relevant section to avoid future confusion.

Section 31 (T)(1) of the Employment Ordinance prescribes various situations of dismissal wherein an employee of over five years under the same employer would be eligible for long service payment. In particular, part (b) of section 31 (T)(1), I quote:

“An employee shall be taken to be dismissed by his employer if, where under that contract he is employed for a fixed term that term expires without being renewed under the same contract.”

That raises such ambiguities. The question here is, the Ordinance failed to lay down what constitutes dismissal when the same contract is not renewed.

According to the Labour Department's interpretation, an employee on a fixed-term contract is automatically entitled to long service payment irrespective of whether the employee or the employer refuses to renew. That is whether he is fired or whether he resigns, it makes no difference. When queried the Labour Department explained that the Employment Ordinance sought to “give greater protection to employees so that those who have entered into fixed-term contracts will be eligible to receive long service payment upon expiry of their contracts”. The point at issue had in fact been considered in the drafting of the law.

Mr President, the Bills Committee also examined the 1985 Legislative Council minutes from the Employment Amendment Bill debate and the memorandum for Executive Council Employment (Amendment) Bill 1985. Nowhere are there records of the intention to give fixed-term contract

employees greater protection than monthly employees. Secondly, during consultations with Legislative Council's legal advisor he has concluded that given conditions of renewal are no less favourable, dismissal should be confined with the employer's right of refusal to renew. This conclusion is based upon extensive reading of the British Labour Law from which Hong Kong's Employment Ordinance is modeled after.

Here I must warn my honourable colleagues that the Labour Department's open-minded interpretation of section 31 (T)(1)(b) carries with it a much bigger problem, which has nothing to do with the business/ industrial sector. Hong Kong currently employs about 100 000 domestic workers. These domestic workers are on a fixed-term contract. After five years of service, these domestic workers, while refusing to renew to same contract with their employer and seek instead long term service payment from them. Even if their employer is willing to offer a fair renewal of contract with equally favourable conditions, he would then be forced by the Labour Department's interpretation of section 31 (T)(1)(b) to pay out tens of thousands of dollars because their employee simply refuses to renew. This is not fair when compared to the monthly employee.

Of course, the employer can challenge this payment and voice his objection with the Labour Tribunal but with the Administration's stand that it is, the employer's effort is not likely to bear fruit. The Administration does suggest that the employer appeal to the High Court, but the employer's position is that it is hardly worthwhile to go to the High Court when the compensation is only in tens of thousands of dollars.

To prevent further confusion and unnecessary and likely numerous labour disputes I am moving an amendment to the Employment Ordinance's section 31 (T)(1)(b) with subsection (1A).

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

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, I am grateful to Members' support to the proposed amendments concerning the provisions on maternity leave and sickness allowance. As regards the provisions on severance payment and long service payment, Members of the Bills Committee have expressed divergent views and some of them have proposed further Committee stage amendments. I shall explain here why the Administration feels unable to support any of the Committee stage amendments to be moved by Honourable Members. First, on the Honourable TAM Yiu-chung's amendment: The issue of whether the full length of an employee's service beyond 18 years should be reckoned for the calculation of severance and long service payments had been discussed at length by the Labour Advisory Board (LAB). Some LAB members considered it unfair that an employee's accrued service beyond 18 years before the enactment of the Bill should be partially reckoned in the calculation of severance and long service payments

whilst other members were concerned about the financial impact that retrospective reckoning of an employee's service might have on the employers. The proposal in our current Bill is formulated by taking account of the interests of both parties and it is in our view a reasonable balance. Besides, after this amendment Bill comes into effect, all subsequent years of service of employees will be counted in full. For these reasons, the Administration is unable to support the proposed amendment by the Honourable TAM Yiu-chung.

On the Honourable LAU Chin-shek's proposed amendment: Our proposals in the present Bill have taken into consideration the possible financial impacts on the employers as a result of the removal of the 12 months' wage ceiling for severance and long service payments and the retrospective reckoning of half of an employee's service beyond 18 years. We considered that in these circumstances the existing ceiling of \$180,000 for severance and long service payments should be retained at this stage but we will review this maximum payment provision regularly to make sure that it is in keeping with present day wage levels. Besides, this proposal to remove the wage ceiling has not been debated in the LAB nor has the public been given the opportunity to express their views on this proposal. For these reasons, the Administration is unable to support the proposed amendments by the Honourable LAU Chin-shek

On the Honourable James TIEN's proposed amendment, I would like to reiterate the Administration's views that the legislative intention of section 31T(1)(b) under the Ordinance is to give protection to employees so that those who have been employed under fixed-term contracts would be eligible to receive long service payments upon expiry of their contracts, even if they have refused an offer by their employers to renew their contracts. The Honourable James TIEN's proposed amendment will, in our view, represent an erosion of an existing right of the fixed-term contract employees. Besides, this proposal has not been considered by the LAB nor has it been given the chance for public consultation which such an amendment rightly deserves. For these reasons, the Administration feels unable to support the proposed amendment on this occasion.

I shall respond to their amendments at the Committee stage later. I shall also propose a technical Committee stage amendment to change the title of the Bill to "Employment (Amendment) Bill 1994".

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).

EMPLOYEES' COMPENSATION (AMENDMENT) BILL 1994**Resumption of debate on Second Reading which was moved on 4 May 1994**

Question on Second Reading proposed.

MR RONALD ARCULLI: Mr President, the Administration will, at the Committee stage, move amendments to repeal a number of proposed provisions in the Bill. This move is made at the request of the Bills Committee scrutinizing the Bill, not because we feel that these provisions are unnecessary, but because we want more time to consider them carefully.

Let me explain the background.

The House Committee agreed at its meeting on 24 June 1994 that a Bills Committee should be formed to study the Bill. The first Bills Committee meeting was convened the following Monday, 27 June.

In going through the main proposals in the Bill, Members were particularly anxious that one of the proposed provisions should be enacted at the earliest opportunity. This is the proposed section 5(4)(f) under clause 3, which would make compensable an accident happening to an employee whilst travelling between his home and his place of work within the duration of a gale warning or a rainstorm warning. In view of the impending rainstorm season, Members hoped that the provision could be considered before the summer recess of this Council.

Section 5(4)(f) is however only one of the many proposals in the Bill. There are other provisions that Members want to discuss and consider carefully. Hence more meetings will be necessary if we were to complete scrutiny of the whole Bill, and the resumed debate on the Bill cannot be scheduled before the end of this Legislative Council Session.

Under such circumstances, the Bills Committee agreed that the proposed provision involving compensation for accidents during gale or rainstorm should first be considered at the sitting today. The other provisions should then be reintroduced by the Administration as a new Bill at the first regular sitting of this Council in the next Session. This would then allow time for Members to consider the other proposed provisions before their intended commencement date of 1 January 1995.

I wish to thank the Administration for moving the Committee stage amendments this afternoon, and look forward to their continued co-operation in reintroducing the other provisions at the sitting of this Council on 12 October 1994.

With these remarks, Mr President, I support the Bill subject to the amendments to be moved by the Administration and ask Members to give their support. Thank you, Mr President.

MR LAU CHIN-SHEK (in Cantonese): Mr President, I am disappointed that the Employees' Compensation (Amendment) Bill 1994 cannot be passed in one go but has to be dealt with in stages. There are indeed some problems in the existing system. According to the present Employees' Compensation Ordinance, the compensation to the injured employees is still grossly insufficient, and there is a real need to make further improvement. To those employees who suffer from injuries or permanent incapacity, and even to those who died in the course and arising out of work, the existing compensation is all too insufficient to cover their losses. The labour sector seeks to expand the scope of compensation or to increase the rate of compensation, and this is the main driving force behind the effort to amend the Ordinance. The employers are also willing to pay slightly more and support an amendment to the Ordinance.

However, the greatest problem usually encountered in every amendment exercise of the Ordinance is that the insurance company will substantially increase the premium on employees' insurance by relying on the excuse of a corresponding increase in compensation payment following the amendment of the Ordinance. This will delay the amendment exercise and directly affect the amount of compensation payable to the injured employees. Whether the sharp increase in premium proposed by the insurance company is justifiable or not is open to question. But it has, no doubt, become the largest obstacle to any attempt to improve the Ordinance. I believe that in order to solve the problem effectively, it is indeed necessary for the Administration to replace the existing separate private insurance schemes with a central employees' compensation scheme, so as to ensure that all the premium on employees' insurance can be exclusively used for the benefit of the employees.

Mr President, although this Bill has to be dealt with in stages, in order to expedite the payment of compensation to the injured employees in view of the impending rainstorm or typhoon season, I support the Bill.

MR TAM YIU-CHUNG (in Cantonese): Mr President, first of all, I would like to urge the Government to reintroduce to this Council, as soon as possible in the next Legislative Council Session, the other original amendments proposed under the Employees' Compensation (Amendment) Bill so as to facilitate the early completion of scrutiny of the whole Bill to ensure its coming into effect in January 1995. These amendments include, *inter alia*, the extension of the employers' liability to make compensation for accidents which occur outside Hong Kong and periodical payments being made payable to the employees who are temporarily incapacitated.

The part of the Bill which is most worrying to Members is the possibility of a premium rise by about 10% to 15% after the proposal is passed. To relieve the worries of both Councillors and the employers, I believe that in the long run the Government should seriously consider the proposal of the Hong Kong Federation of Trade Unions, made as early as two years ago, for the setting up of a central compensation fund for employees in order to centralize all employees' compensation matters and to improve the existing employees' compensation system.

At present, the insurance cover against injuries and diseases suffered by employees is mostly offered by insurance companies to employees via the mandatory labour insurance taken out by the employers. However, the profit and the mode of operation of insurance companies are free from control and they have their own systems to determine their operating costs and profit. Statistics show that in the past few years, operating costs, agents' commission and profit derived from labour insurance accounts for 60% of the total income from insurance premium. This has made it difficult to raise the amount of compensation payable to the injured employees and to the surviving families of deceased victims. Insurance premiums would have to go up if the compensation were to increase.

However, if a central compensation system is set up in place of the existing employees' compensation schemes which are separately managed by private insurance companies, then those factors such as making a profit and earning a commission will vanish and the income from insurance premiums can go towards paying as much employees' compensation as possible. At the same time, the collection of premiums and the handling of compensation matters can be more centrally administered, thus reducing the difficulties encountered by the employees when they have to claim for compensation.

In fact, foreign experience in the establishment of central compensation funds tells us that the operating costs only account for about 10% of the insurance premiums, which is below the level of operating costs incurred by the existing employees' compensation schemes run by private insurance companies. Therefore, to do away for good the difficulties encountered in every attempt to refine the compensation system or to have the compensation amount raised, I would like to repeat my appeal to the Government and to the employers' organizations. I would urge them to seriously consider the proposal of setting up a central compensation fund for employees.

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

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, the Honourable Ronald ARCULLI has already explained why Members of this Council would like to have more time to study the bulk of the provisions in this Bill, but without delaying the particular provision concerning protection for

employees injured by accident while travelling between their place of residence and their place of work under a typhoon or rainstorm situation.

The Administration would have preferred that all the provisions in this Bill are considered in time for passage within this Session. Nevertheless, given Members' suggestion, we are agreeable to deal with the part on typhoon and rainstorm situation first. Accordingly, I shall move the Committee stage amendments standing in my name at a later stage to this effect.

As regards the other proposed amendments to the Employees' Compensation Ordinance, I shall seek to introduce a new Bill in the 1994-95 Legislative Council Session as soon as practicable.

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).

DANGEROUS DRUGS (AMENDMENT) BILL 1994

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

Question on Second Reading proposed.

MR JAMES TO (in Cantonese): I rise to speak in support of the Second Reading of this Bill. I would like to comment on the proposed deletion of a clause in the Bill, a presumption clause, which was ruled in contravention of the Bill of Rights Ordinance in a court case. I am really disappointed because I took part in the deliberation of this particular presumption clause when I became a Member of this Council in 1992. I recollect that I requested, at a Bills Committee meeting, to put on record my view that this presumption clause would contravene the Bill of Rights Ordinance. There were Members supporting my view. But eventually, the Bill concerned together with this presumption clause was passed with amendments. It is a pity that after the passage of this presumption clause, it was declared invalid in a High Court case several months ago for contravening the Bill of Rights Ordinance.

I would like the Government to do two things. First, it should see if there is the possibility to establish a simple connection between the driver and the two requirements under this presumption clause, that is, the search of a motor vehicle and drugs found in the vehicle. If this presumption clause is in contravention of the Bill of Rights Ordinance, is it possible to reconsider it and make slight amendments so that it does not contravene the Bill of Rights Ordinance on the one hand but makes the discharge of the onus of proof easy on

the other? Secondly, if the Government still cannot find a better way, after racking it brains, to formulate a presumption clause that will not contravene the Bill of Rights Ordinance, I hope that the Government, in particular the police and Customs and Excise, will reinforce their training on staff to teach those front-line polices officers or customs officers how to make tactical arrangements in the interception of motor vehicles and the performance of duty. In this way, more independent evidence may be collected to have the drug traffickers brought to justice without having to resort to invoking this presumption clause. I consider it a very important measure at this point in time. Without it, I am afraid that the enforcement of law would be affected.

Mr President, with these remarks, I support the Second Reading of the Bill.

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).

DANGEROUS DRUGS (AMENDMENT) (NO. 2) BILL 1994

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

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

Bill read the Second time.

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

ACETYLATING SUBSTANCES (CONTROL) (AMENDMENT) BILL 1994

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

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

Bill read the Second time.

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

CONSUMER COUNCIL (AMENDMENT) BILL 1994**Resumption of debate on Second Reading which was moved on 25 May 1994**

Question on Second Reading proposed.

MR STEVEN POON (in Cantonese): Mr President, I agree that the Consumer Council should monitor the 25 companies as listed in the Schedule to the Consumer Council Ordinance. However, there are justifiable grounds for the original Ordinance to exclude these 25 corporations from the jurisdiction of the Consumer Council. These corporations have empowered the Government to monitor their operation through some sort of agreement, which may be in the form of an ordinance, such as the Mass Transit Railway Corporation Ordinance (MTRC Ordinance), a franchise licence or a Profit Control Scheme. I hold the view that those matters which fall under the scope of the agreements should continue to be monitored by the respective government departments pursuant to the respective agreements, or else the monitoring mechanism may fall into serious disarray.

There are indeed many consumer-related issues which do not come within the scope of the agreements between the corporations and the Government. Let us take the two power companies as examples. Their Profit Control Schemes do not specify the laying down of "Supply Rules" for them to supply electricity to the consumers. To cite another example, the MTRC Ordinance does not specify the frequency of train journeys. All these constitute work which the Consumer Council should deal with.

Therefore, what the Government should pay attention to is how best to ensure that, on the one hand, the Consumer Council can assume certain roles in the monitoring of these corporations while, on the other hand, such roles shall not duplicate the existing roles of the Government as provided under the respective agreements, in order to avoid creating conflicts on the monitoring front.

I hope that the Government can state clearly whether the purpose of the Bill is to enable the Consumer Council to share the roles of the existing monitors under the respective agreements, or to monitor those matters which fall outside the scope of the existing monitoring agreements. I will not lend my support to the former case.

I so submit.

MR FRED LI (in Cantonese): Mr President, at present, the 25 public utility companies, broadcasting companies and statutory bodies listed in the schedule of the Consumer Council Ordinance are not within the jurisdiction of the Consumer Council. The Schedule was drawn up in 1977, and the reason was

that these bodies were either already under the control of certain schemes of the Administration, or were being monitored by the public. Therefore, it would be a duplication of monitoring efforts should these bodies be included within the jurisdiction of the Consumer Council.

The purpose of the Consumer Council (Amendment) Bill 1994 is to delete the Schedule from the Ordinance so that these bodies will no longer be exempted in regard to the provision of goods or services to consumers and thus they will have to comply with the provisions of the Ordinance. This would help the Consumer Council in dealing with complaints against these bodies by the consumers and in conducting the necessary studies, in order to be in line with the Administration's policy of reinforcing the protection of consumers.

The authorities concerned have consulted the bodies listed in the Schedule on this proposal. There are four broadcasting companies who have raised objection to it. They are: Asia Television Limited, Hong Kong Commercial Broadcasting Company Limited, Metro Broadcast Corporation Limited and Television Broadcasts Limited.

This Bill was submitted to the Legislative Council on 25 May 1994. A Bills Committee consisting of 10 Members was then set up and two meetings were held, one of which was attended by the Administration and the Chief Executive of the Consumer Council. Besides, the Committee also deliberated on the joint submission presented by the four broadcasting companies and met with their representatives. As the chairman of the Bills Committee, I take this opportunity to thank my colleagues in the Bills Committee for the time they contributed. I would also like to thank the Administration and the Consumer Council for their participation.

Mr President, I am now going to state the gist of discussions by the Bills Committee.

The grounds of objection relied upon by the four broadcasting companies are as follows:

- (a) their broadcasting services are already under licensing control as well as Broadcasting Authority control and also subject to the relevant television and telecommunication legislation;
- (b) there is no clear demarcation of responsibilities between the Consumer Council and the existing regulating bodies, which would lead to duplication of work and confusion;
- (c) there are already extensive and sound channels for communication with the public and for the receipt of complaints; and

- (d) no extra function by way of providing better benefits to the consumers can be served by giving such jurisdiction to the Consumer Council.

The Administration's explanation for this is that the power and function of the Consumer Council and the Broadcasting Authority are stipulated in the Ordinances concerned. As the Consumer Council is not a regulating body and it can only give advice to the consumers, it can only assume an auxiliary role which, by monitoring for the consumers in aspects that have not been sufficiently looked after, supplements what have not been covered. These areas include: advertisements broadcast by radio or television stations, publicity activities, concerts and new services such as fax and video-on-demand that are forthcoming. The Administration has confirmed that the Broadcasting Authority is still the statutory body for the investigation of complaints by the public against the content of broadcast programmes. As for the Consumer Council, its job is confined to matters concerning the rights of consumers but beyond the jurisdiction of the relevant departments. Some of the Members of the Bills Committee are satisfied with the Administration's explanation.

Although the Administration has categorically pointed out that the Consumer Council will not interfere with matters which are subject to exclusive monitoring pursuant to specific regulating arrangements entered into by the Administration or the statutory authority with a certain company or statutory company, yet the Bills Committee is of the opinion that such demarcation of powers should be clearly reflected in the legislation in order to avoid misunderstanding or disputes. The Administration explains that as the clauses of these agreements are temporary in nature, it would be more appropriate to adopt administrative measures. Some of the Members of the Bills Committee are satisfied with the Administration's explanation.

Finally, as to whether the term "consumer" should be defined in the Bill, the Administration's reply was that defining the term would not be appropriate. To do so would only limit the scope of operation by the Consumer Council. Therefore, it would not be in the best interests of the consumers. Moreover, no precise definition has been given even in the United Kingdom law. Some of the Members of the Bills Committee are satisfied with the explanation.

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

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Mr President, I have decided to speak once again today in the purest and most standard Cantonese, as it is not yet permissible under Standing Orders for me to speak in Putonghua.

First of all, I am grateful to the Honourable Fred LI and other Members of the Bills Committee for their efficient examination of, and support for, the

Consumer Council (Amendment) Bill 1994 in a little over a month's time. I would like to respond briefly to the three points mentioned by Mr LI.

First, regarding the concern expressed by the broadcasters about possible duplication of work between the Consumer Council and the Broadcasting Authority, I would like to inform Members that the Broadcasting Authority and the Consumer Council have exchanged letters confirming their common understanding of their respective statutory functions and powers in respect of the broadcasters. The Broadcasting Authority will continue to regulate, investigate and direct licensees on all broadcasting matters. It will continue to be the statutory body for the investigation and consideration of complaints about the contents of material broadcast.

As a matter of fact, the Consumer Council is not a regulatory body and cannot adjudicate on any complaints regarding broadcasting matters which are within the jurisdiction of the Broadcasting Authority. If complaints on such matters are received by the Consumer Council, these will be referred to the Broadcasting Authority for appropriate action. There is also no question of the Consumer Council interfering with the editorial freedom of the broadcasters.

On Mr LI's second point, I have noted the concern which the Honourable Steven POON has just expressed on the same subject. In response, I would like to repeat what I said in introducing this Bill on 25 May 1994, which is that the Consumer Council has pledged, first, that it will not intervene in those matters which are subject to minitoring under the terms of a specific regulatory arrangement between the Government or a statutory authority on the one hand, and a particular company or statutory corporation on the other, and, second, that the role or importance of the existing consumer liaison and complaint handling channels of the scheduled bodies will not be undermined in any way. In order to give further reassurance to Mr POON, I would like to state that the Consumer Council's pledge fully reflects the Government's policy intent in introducing the Bill.

Finally, I have considered the question whether the term "consumer" should be defined in the Ordinance and have come to the conclusion that it would not be appropriate to do so.

The functions of the Consumer Council, as specified in section 4(1) of the Ordinance, are general in nature so as to enable the Consumer Council to undertake various consumer protection initiatives. This flexibility is crucial if the Consumer Council is to deal with new kinds of goods and services emerging from time to time. Introduction of a definition of "consumer" would narrow the scope within which the Consumer Council may operate and would therefore not be in the best interests of consumers.

Also, our research shows that a precise definition of "consumer" is not set out in the relevant the United Kingdom legislation. The scope of "consumer" has been developed by case law and common understanding based on questions

of fact. Since the enactment of the Consumer Council Ordinance in 1997, the absence of a statutory definition of “consumer” has not presented any problems and we do not see any need for a definition now.

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).

PUBLIC BUS SERVICES (AMENDMENT) BILL 1994

Resumption of debate on Second Reading which was moved on 26 January 1994

Question on Second Reading proposed.

REV FUNG CHI-WOOD (in Cantonese): Mr President, the Bill tabled before us has the support of the Bills Committee.

Members welcome the introduction of the new section 26A, which will ensure that financial penalties of franchised bus operators cannot be passed onto bus passengers. This is achieved by excluding them as operating expenses for the purpose of fare determination. Previously the Administration has been reluctant to impose financial penalties under the Ordinance for fear of having an adverse impact on bus fares. With the removal of such a constraint, we hope that the Administration will be able to discharge its authority empowered by the legislation more readily when service deficiencies are detected.

We have discussed with the Administration whether it would still be possible for the bus operators to pass on the fines to bus passengers through an increase in the directors' remuneration. On this, the Administration undertook to continue to monitor the amount of directors' remuneration payable by each bus company at the time of fare determination. The Administration informed Members that the directors' remuneration is calculated either as a percentage of profits or set at a fixed amount, and such payments have to be approved by resolution of shareholders of the respective bus companies in their annual general meetings. It has further advised that under the fuller disclosure initiative, the bus companies will be asked to disclose in their annual reports the number of directors in various remuneration brackets. With the passage of the Bill, the bus companies will also have to disclose separately in their annual accounts the amount of financial penalties paid.

The Bills Committee is also in support of the proposal to allow financial penalties to be imposed on each occasion where service deficiencies arise on any

bus route. This should enhance the deterrent effect of the financial penalty provision.

We have sought clarification from the Administration on details of the proposed arrangements and ways of monitoring the performance of bus operators. In determining whether the offence is actually the first, second, third or subsequent violation for which different amounts of penalty will be imposed, the Administration will take into consideration the operator's past five year's records. The five year period will count backwards from the day of the offence. The number of times of offences will be based on the number of times financial penalties are sustained, irrespective of whether the offences are related to the same bus route.

In the course of discussion, we have asked the Administration to step up its effort in monitoring the performance of bus operators. Some suggestions were put forth to the Administration which include increasing the frequency of surveys on bus service, and checking the bus frequencies according to schedules agreed with the bus operators. We hope that the passage of the Bill, coupled with close monitoring, will help improve the quality of bus service. More importantly, we hope that the bus companies themselves will take the initiative in working towards the goal of providing better service to the public.

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

MR LEE WING-TAT (in Cantonese): Mr President, perhaps we rarely or seldom experience the feeling of having to wait for a bus for a long time but with none being in sight. However, for the citizens who rely on buses to travel to and from work, the experience of being late because buses are not available or because buses are not punctual is absolutely the most irritating and distressing thing in everybody life. Among the citizen's complaints on transport matters, the complaints against bus services invariably make up the bulk of complaints. This can well reflect that the bus services have all along failed to attain the standard expected by citizens.

The inadequate frequency and impunctuality of bus services is a very major problem. Nevertheless, no matter how great the trouble the citizens take in complaining this problem to the Transport Department, at most that the authorities concerned will do is to caution the bus company. Very soon, the problem will relapse.

The root of the problem lies in the fact that most of these bus routes are probably non-profitable. Consequently, bus companies are unwilling to provide the service frequency required. Of course, the other reason is that the Transport Department is very passive in its monitoring work. Knowing too well that the bus companies are wrong, the Department fails to punish them by invocation of the legal provisions.

The current amendment to the Public Bus Services Ordinance can categorically empower the Administration to levy fines on individual routes where services are unsatisfactory. Therefore, the authorities responsible for transport matters should no longer have the excuse that there is a loophole in the legislation and continue to be slack in dealing with the problem of unsatisfactory bus services just like what they did in the past.

Bus companies which enjoy franchises rarely or simply never suffer loss. While operating profitable routes, bus companies have the obligation, according to the agreement, to operate non-profitable routes which are nevertheless essential to the transport needs of the community. It is regrettable that franchised bus companies often like to reduce the vehicle turnout and service frequency on non-profitable routes or during off-peak hours. In doing so, the companies concerned fail to carry out their obligations as franchised bus companies. Although this reduce their cost in the provision of services, the precious time of many commuters is sacrificed. Take the example of the survey conducted by the United Democrats of Hong Kong and Meeting Point on the service provided by the China Motor Bus Company on Hong Kong Island several months ago. According to our observation, during the peak hours in the morning and in the evening, tunnel buses and air-conditioned buses that are certain to make a profit are too frequently deployed, that is, the frequency is a lot higher than required. The problem of inadequate frequency and unpunctuality of ordinary buses is very serious, particularly in districts such as the Eastern District, Wanchai and the Western District because perhaps the routes concerned are non-profitable or are even suffering losses.

Actually, bus companies have been saying that the impunctuality and insufficient turnout of buses are due to road congestion. Such a statement is not tenable. If this amendment to the Ordinance is implemented effectively, the above situation can be rectified and that should be good for the citizens. We are aware that some bus companies are against this amendment. However, if franchised bus companies do nothing wrong, there is actually no need for them to be afraid of this amendment to the legislation. Moreover, the legislation also allows the bus companies time to improve and to prove that there is no problem with the service standard of the routes concerned. A responsible bus company will not be affected by this amendment in any way.

The financial penalty specified in this amendment will be imposed on every single route which has violated the Public Bus Services Ordinance. It is also stipulated that the financial penalty cannot be included in the operating costs. For those bus operators who deliberately reduce bus frequency and turnout, the amendment can achieve the deterrent effect.

Mr President, I wish to raise one point, that is, although the legislation stipulates that a bus company may be liable to financial penalty if it fails to provide adequate frequency and service and the financial penalty cannot be included as an item of expenditure of the company, I would like to raise an issue here which I hope the Transport Branch and the Transport Department will

follow up on. Since the board of directors of every company is entitled to director's fees, the amount of which can be determined by the board, what worries me most is that when a bus company is fined due to inadequate service, for example the fine is \$10,000, the directors' fees will be increased by \$10,000 for the next year. Therefore, it is only the commuters rather than the shareholders who are indirectly penalized. Therefore, I hope that the Transport Branch or the Transport Department will see if there is any obvious change in the directors' fees of these bus companies after the enactment of this legislation.

Mr President, the United Democrats of Hong Kong and the Meeting Point support this amendment to the Public Bus Services Ordinance. We also request that after the amended ordinance has taken effect, the transport authorities can inform this Council at appropriate times of the state of implementation of the new legislation as well as the review findings as to its effectiveness.

Mr President, I so submit.

SECRETARY FOR TRANSPORT: Thank you, Mr President. May I take this opportunity to express our gratitude to Rev the Honourable FUNG Chi-wood who chaired the Bills Committee and to the Honourable LEE Wing-tat and other Members for their support.

As Rev FUNG Chi-wood has explained, the Bill seeks to strengthen the financial penalty provisions in the Public Bus Services Ordinance, which may be used if a bus company's performance is unsatisfactory. The purpose is to facilitate further improvements in the quality of bus services provided to the public.

Some Members have urged the Administration to monitor bus services carefully and to seek to impose the new financial penalties wherever necessary and justified. I can assure Members that such monitoring will be carried out diligently and that we will not hesitate to enforce this new legislation. I can also confirm that as a result of this new legislation any financial penalties imposed will not be passed onto bus passengers in the form of higher fares.

With regard to the point made by the Honourable LEE Wing-tat, we would be particularly conscious to ensure that the penalties are not in any way added into or contained in directors' fees and we will be requiring the bus companies to disclose financial information to that extent of detail.

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).

ROAD TRAFFIC (AMENDMENT) (NO. 2) BILL 1994

Resumption of debate on Second Reading which was moved on 22 June 1994

Question on Second Reading Proposed.

MRS MIRIAM LAU (in Cantonese): Mr President, the Government has resolved to implement a new taxi licensing scheme to dampen speculation in the taxi licensing market. Although the effectiveness of the new scheme has yet to be tested, it at least shows that the Government has got the determination to solve the issue by means of a specific policy. This is worth our commendation.

An important aspect of the new taxi licensing scheme is the 12-month restriction on transfer of ownership of newly licensed taxis. The Road Traffic (Amendment) (No.2) Bill 1994 seeks to have this important requirement enacted. The Liberal Party agrees that it is a correct approach to prohibit the transfer of ownership of newly licensed taxis during an initial period because the restriction will increase the risk of speculation and the cost. The incentive to speculate will then be dampened. The ultimate aim is to eradicate profit-making speculative activities so that people who have the *bona fide* intention to engage in the taxi trade may have their own taxi licences. However, there are two hidden worries in its operation that should be faced by the Government squarely.

First, the new scheme is after all a change in policy. It is learnt that many people in the trade do not have a thorough understanding of the new scheme and the new provisions. Take for an example, in case the licence-holder suddenly dies within 12 months after he successfully tendered for a new licence, how will the Secretary for Transport deal with the transfer of ownership then? Moreover, under what circumstance the Commissioner for Transport may exercise his discretion to allow the transfer of ownership within the first 12 months. The Government should explain to the trade clearly the implementation details in concrete terms and issue notes of guidance. It should also seek the views of the trade to see their difficulties so that people intending to tender for a licence will not flinch from doing so simply because they do not understand the new scheme.

Second, under the restriction on transfer of new licences, will individual driver-operators have substantial difficulty in applying for financing arrangement with banks? In the past, most of the taxi licences were tendered by taxi firms. Individual operators purchased their taxi licences from these firms and applied for bank financing through them as well. These taxi firms acted as guarantors. Therefore, it is likely that banks may not accept applications for

loans made by individual operators directly. Should this be the case, individual operators cannot afford to tender for taxi licences because most of them are incapable of settling the payment in full.

Besides, it is disclosed by people in the trade that, at the moment, the prices of some of the taxi licenses hypothecated through the taxi firms are lower than the market price by several tens of thousand dollars because the banks concerned usually pay the firms a commission. Therefore, the firms are willing to lower the price of taxi licences. There is the concern that if direct hypothecation is to be made without going through the taxi firms, the existing preferential arrangement may be abolished. "Give a lark to catch a kite", as the saying goes. Maybe this is merely a rumour or maybe it is the fact. Whether it is a rumour or a fact, it will have a bearing on those who have the interest to invest in the taxi trade. It is imperative that the Government investigate into the case and get a thorough understanding of the actual market situation. It should also closely monitor the implementation of the new scheme and take appropriate contingency measures when necessary.

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

MR LEE WING-TAT (in Cantonese): Mr President, I speak in support of the Second Reading of the Bill. The Bill is basically a package of proposals seeking to regulate to a certain extent the speculative activities in the taxi licensing market. One proposal is on the issuance of taxi licences. Licences are to be issued at irregular intervals with no pre-set quota. However it is a pity that we have not yet heard from the Executive Council and the Transport Branch as to when the next batch of taxi licences will be issued since the publication of the *Consultative Paper on Taxi Policy Review*. It has been a long time since the last issuance of licences and I believe that the cumulative demand is exceedingly great. Although I personally do not wish to compel the Government to issue more licences, I do hope that the Transport Branch will realize that that the cumulative demand is indeed great.

The second point I would like to address is the Government's acceptance of one of the proposals by the United Democrats in this review exercise. It is in respect of the restriction on transfer of taxi licence ownership. Despite that our proposed restriction is for half a year whereas that proposed by the Government is for one year, the underlying principles are the same. By putting forward this proposal, we seek to help those genuine operators to own their own licences and to dampen speculation in the taxi licensing market. This said, we still insist that the Transport Branch should conduct regular reviews of the scheme. The initial purpose of our proposal is to impose a restriction on transfer of ownership for a short period of time to cool down the speculative activities. If the desired result is achieved, the period will be considered appropriate. However, if there is no adjustment to the price of taxi licence even after an increase in the number of new licences and the imposition of a one-year restriction period, we shall then urge the Transport Branch to further consider

our proposal, that is, to impose stricter time restriction on the transfer of ownership.

Mr President, when we put forward the proposal, we understood it to be a two-edged sword, so to speak. It will have a dampening effect on the speculators but a certain measure of adverse effect on the genuine users, the genuine operators who earn a living from taxi operation. We, therefore, hope that the Transport Branch will conduct a survey among people in the trade some time after the implementation of the scheme to see if they encounter difficulties in obtaining bank financing. As I understand it, many banks give preferential rates to consortium companies when they apply for financing but offer less favourable terms to individual taxi-operators. I, of course, have no intention to interfere with the banks' practices. But if the Transport Branch finds that the situation still persists after the passage of the Bill and its implementation for a certain period of time, I think that the Transport Branch should conduct a review to see what can be done to help those genuine taxi operators provide better services.

Mr President, with these remarks, I support the Second Reading.

SECRETARY FOR TRANSPORT: Thank you, Mr President. I am grateful to the Honourable Mrs Miriam LAU and Mr LEE Wing-tat for their support.

This Bill, as has been said, seeks to prohibit the transfer of ownership of newly licensed taxis during an initial period. To provide flexibility, the exact period has not been specified in the Bill, but it will normally be 12 months.

The proposed legislation, together with the new requirement enacted under subsidiary legislation, that both the transferor and the transferee of a taxi licence must register the transaction in person before a designated public officer, will help to dampen speculation in the taxi licensing market. However, the Commissioner for Transport may, as an administrative decision, refrain from imposing a 12-month restriction on transfers in exceptional circumstances, for example, on the death of the registered taxi owner.

I note the specific points raised by the Honourable Mrs Miriam LAU and the Honourable Mr LEE Wing-tat. To ensure that the trade and other interested parties are aware of the new restriction on transfer of ownership, the Commissioner for Transport will specify the arrangement in the tender documents inviting applications for new taxi licences. In addition, the Commissioner will liaise with representatives of the taxi trade to explain publicly how the restriction will be applied and practised.

The financial companies that fund the purchase of taxis will also be made fully aware of the restriction so they can decide on what terms to provide financing. The restriction is aimed at reducing the level of speculative activity and the period of 12 months has been carefully determined to achieve this

objective without inhibiting normal transactions or taxi financing arrangements. We do not believe that the arrangements that are proposed in this Bill will be unduly restrictive or will interfere with the funding of taxi purchases, but I can assure Members that they will be very, very carefully monitored and if problems do arise they will be tackled early.

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).

CIVIL AVIATION (AIRCRAFT NOISE) (AMENDMENT) BILL 1994

Resumption of debate on Second Reading which was moved on 27 April 1994

Question on Second Reading proposed.

MR JAMES TO (in Cantonese): I speak in support of the Second Reading of this Bill. Speaking in its favour though I am, I think this Bill is deficient in certain respects in terms of reducing aircraft noise.

First, the Bill endeavours to meet as far as possible the noise level requirements for aircraft as set out in Chapter 3 of Annex 16 of the Chicago Convention on International Civil Aviation. This of course is far better than that set out in Chapter 2.

However, this merely addresses the noise limited by each arriving aircraft. But as was canvassed in an oral question raised earlier on, it was learned, after discussion and consultation with the Administration, that sections 6(1)(a) and 6(1)(b) also take into account the number and frequency of arriving aircraft as well as the noise problem caused to our community as a whole, apart from dealing with the question of whether noise emission from individual aircraft complies with the noise level requirements.

Recently, the Administration has begun its study and consultation exercise on the question of whether the number of inbound and outbound flights between 9.00 pm and 11.30 pm should be increased. As the Secretary for Transport said earlier on, the Administration is trying its best to bring forward to 10.30 pm the landing of aircraft which would otherwise arrive by or after 10.30 pm (only one flight at present). I hope that when the study is completed, the Secretary for Transport will conduct a formal consultation exercise and, in particular, such

formal consultation should not focus solely on cost-effectiveness. If, having done so much to try to have the landing time of 10.30 pm brought forward, the Administration at the end of the day increases the number of flights that land or take off between 10.30 pm and 11.30 pm, would it not be self-contradictory? Therefore, I hope that after the passage of the Civil Aviation (Aircraft Noise) (Amendment) Bill, the Administration can implement the provisions of the ordinance before the commissioning of the Chek Lap Kok Airport and further restrict the number of flights during this period of time, so that tens of thousands of people living beneath the flight path may live better during the remaining few years of operation of Kai Tak. Never should we think that as there are only a few years to go, people may as well put up with the noise that much longer. It is because that may lead to a sharp increase of aircraft noise in the night-time.

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).

SUPPLEMENTARY APPROPRIATION (1993-94) BILL 1994

Resumption of debate on Second Reading which was moved on 22 June 1994

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

Bill read the Second time.

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

Resumption of debate on Second Reading which was moved on 15 June 1994

Question on Second Reading proposed.

MR PETER WONG: Mr President, I speak to both this Bill as well as the Inland Revenue (Amendment) (No. 2) Bill 1994 which follows.

One of the main objectives of the two Bills before us is to relieve the obstacles and anomalies in the taxation of stock borrowing and lending transactions and to create a domestic market so that the existing stock borrowing and lending activities currently conducted in overseas markets are brought back into Hong Kong.

The taxability or enforceability of tax on offshore activities, however, continues to be unclear. The benefits of the tax relief provided under the amending legislation may not, therefore, have the effect of enticing businesses to Hong Kong when currently tax is not in force on offshore trading and appears to continue to be unenforceable by the Inland Revenue Department.

The Hong Kong Society of Accountants consider that the opportunity could have been taken to clarify this and other peripheral issues such as the identifying or defining of source of various fees payable in the amending legislation. In addition, the drafting of the Bills could also be improved in a number of areas to clarify and to remove ambiguities. At the moment it would appear that the Inland Revenue (Amendment) (No. 2) Bill 1994, in particular, could potentially lead to abuse.

However, notwithstanding the above reservations we would not wish to let the above matter delay the passage of the Bills unnecessarily. Although we are not sure if the amending legislation would create a drain to the revenue, which would otherwise not exist, we would specially wish to ensure that nothing in the amending Ordinances could have the effect of increasing the liability or duty of tax payable by any taxpayer. It would have been desirable for such a clause to be included in the amending legislation to ensure that it is purely a relieving legislation and does not create any additional chargeable profits, real, deemed or otherwise.

Given that this is a rapidly developing business we believe it is fair to request an undertaking from the Administration that any subsequent proposal or recommendation which the Society put forward should be given immediate and genuine hearing from the Administration and refinement to the legislation should be put in place, as we know more about how the market will develop.

With this, we express our support for the two Bills.

SECRETARY FOR FINANCIAL SERVICES: Mr President, I would like to thank the Honourable Mr Peter WONG for his support for the Stamp Duty (Amendment) (No. 2) Bill 1994 and the Inland Revenue (Amendment) (No. 2) Bill 1994.

The purpose of the two Bills is to relax the current restrictions on stamp duty relief available to stock borrowing and lending transactions. This will encourage the development of an effective stock borrowing and lending market in Hong Kong, which will in turn enable the short-selling of some securities to take place.

The Administration had received submissions from market practitioners that the current limitations had hampered market development initiatives. We understand that other jurisdictions in the region are trying to attract major local market players to establish stock borrowing and lending operations in those

places. We believe that the two Bills will help stop this trend by providing a reasonable framework for stock borrowing and lending to take place in Hong Kong.

The Honourable Peter WONG mentioned the possibility of abuse under the amendments proposed in the Inland Revenue (Amendment) (No. 2) Bill 1994. In working out the legislative amendment, the Administration was indeed mindful of the need to avoid any possibility of stock borrowing and lending transactions being used to abuse the stamp duty or tax regime. We have accordingly incorporated measures to enable the Commissioner of Inland Revenue to effectively monitor stock borrowing and lending transactions eligible for stamp duty and profits tax relief. We are satisfied that the current proposals in the two Bills, taken together, should provide sufficient safeguards against potential abuses.

The Administration is also satisfied that the Bills will not have the effect of increasing the liability of duty or tax payable by any taxpayer, as mentioned by the Honourable Peter WONG. Quite to the contrary, the effects of the Bills are designed to provide relief from stamp duty and profits tax to stock borrowing and lending activities under a wider range of circumstances. The objective of the exercise is therefore clearly to provide relief from certain existing liabilities and we see no need to include a clause to clarify this point at this stage.

I fully agree with the Honourable Peter WONG's observation that we are looking at a rapidly developing business. The Administration will therefore keep the matter under constant review to see if further changes to the legislative framework should be introduced to address market needs. We, of course, would welcome the views of the Hong Kong Society of Accountants in this process.

Mr President, with those remarks, I commend the two Bills 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).

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

Resumption of debate on Second Reading which was moved on 15 June 1994

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

Bill read the Second time.

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

COMPANIES (AMENDMENT) (NO. 4) BILL 1993

Resumption of debate on Second Reading which was moved on 7 July 1993

Question on Second Reading proposed.

MR MARTIN BARROW: Mr President, with your permission I will speak to this Bill and on the two subsequent ones.

Members have no objection to the first Bill, which would allow the Financial Secretary to exercise more effectively his power to initiate preliminary investigation of companies.

The second Bill would provide the Securities and Futures Commission (SFC) with the power to conduct preliminary inspections of records and documents of listed companies. Members sought clarification on why the SFC should be given such power, when authorization of these preliminary inspections can be made by the Financial Secretary.

The Administration explained that problems have been encountered in the monitoring of some listed companies, and action has to be taken to safeguard investor confidence. The alternative for all preliminary inspections to be authorized by the Financial Secretary has been examined but is not considered workable, as there can be occasions when prompt action is needed to protect investors' interests.

The Administration stressed that the purpose of the preliminary inspections of companies is to ascertain whether a full scale investigation is warranted. Members have been assured that these preliminary inspections will be carried out in confidence without public announcement, and that enquiries will usually be completed within weeks. The information obtained will be kept on a confidential basis, except in cases of suspected misbehaviour when follow-up action by the authorities concerned is needed.

I turn now to the third Bill, which seeks to clarify the power of the Stock Exchange to make listing rules and to allow it to enjoy statutory immunity in carrying out its listing functions. This is the most controversial of the three Bills. The Hong Kong Society of Accountants and the Law Society of Hong Kong raised strong objections to the proposed power for the Stock Exchange to impose sanctions on professional bodies. And both organizations have been

concerned by the trend towards over-zealous over-regulation being proposed by the SFC. Their main arguments are that solicitors and accountants providing service in their respective capacity as solicitors and accountants in their private practice have duties imposed by law and by virtue of rules of professional conduct; hence their conduct should be subject to sanction, if necessary, by their respective professional bodies. As they have explained to us, their concern stemmed from their duty to uphold confidentiality; they will not be able to defend themselves without jeopardizing their clients' interests.

The Administration held the view that professionals acting within the confines of the Stock Exchange should be subject to its rules and regulations, and that the same rules and sanctions should apply to all. If there is an overlap between listing matters and professional conduct, the case should be referred to the relevant professional bodies, although this should not prevent the Stock Exchange from taking action against the professionals concerned.

At the request of the Bills Committee, the Administration initiated discussions with the two professional bodies, the SFC, and the Stock Exchange four months ago to try to resolve their differences. This did not prove to be an easy task. A great deal of effort has been put in by the parties concerned, which have met many times in recent months to find an alternative solution. They have finally agreed to a set of proposed proviso to be added to the Bill, and that a Memorandum of Understanding should be drawn up to incorporate the principles agreed among them. I wish to take the opportunity today to express my appreciation for their contributions and effort in resolving the issue.

With the passage of the Bill, parties have yet to work on the Memorandum of Understanding along the principles that have been agreed. The Administration has undertaken to see to the conclusion of the Memorandum of Understanding as soon as possible.

Subject to this commitment by the Administration, and the amendments that it will move at the Committee stage, I support the Bill.

SECRETARY FOR FINANCIAL SERVICES: Mr President, first of all, I am most grateful to the Honourable Martin BARROW and other Members of the Bills Committee for the careful consideration given to all the three Bills and the bills represent an attempt to strengthen the regulatory framework in relation to company investigation and listing matters.

I now would turn to the Companies (Amendment) (No. 4) Bill 1993. The Companies (Amendment) (No. 4) Bill 1993 primarily seeks to lower the threshold for the Financial Secretary to appoint an inspector to carry out a preliminary inquiry into the books and papers of a company under section 152(a) of the Companies Ordinance. At present the criteria for doing so are the same as those for a full-scale investigation. The Ordinance also requires the

appointment of a public officer as an inspector but such expertise is not available in the Government.

These restrictions have hindered the application of this provision. In fact, apart from one abortive attempt the provision has never been resorted to. It is proposed, therefore, to relax the criteria so that section 152(a) can be invoked when the Financial Secretary considers there is good reason to do so and thus the Financial Secretary may appoint either a public officer or any competent person as an inspector for this purpose.

Concerns have been expressed that the proposed relaxation might be too wide. Some suggest that the scope of preliminary inspections should be, for example, limited to listed companies. While working on the Bill, we have taken reference from the experience in the United Kingdom. We were told that over 200 such preliminary inspections were carried out in the United Kingdom each year and that about 10% only were related to listed companies. The authorities regard the ability to carry out preliminary inspections as very useful since it provides a quick and less expensive alternative to full-scale inspections. The limitations in our existing legislation, which are referred to, has rendered this potentially very useful provision almost useless.

Members may like to note that the preliminary inspection will be conducted in confidence and can be completed in a relatively short span of time. The potential disruption to the companies concerned can therefore be minimized. The cost to the Government for carrying out preliminary inspections will also be much lower than that for full-scale investigations under the Companies Ordinance. We believe the amendments to relax the existing provision is necessary and fully justified.

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

Bill read the Second time.

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

SECURITIES AND FUTURES COMMISSION (AMENDMENT) BILL 1993

Resumption of debate on Second Reading which was moved on 7 July 1993

Question on Second Reading proposed.

SECRETARY FOR FINANCIAL SERVICES: Mr President, the second Bill, the Securities and Futures Commission (Amendment) Bill 1993 seeks to provide the power for the Securities and Futures Commission to conduct preliminary

inspections on the records and documents of a listed company and its subsidiaries or co-subsidiaries. The power is similar to that for the Financial Secretary under section 152(a) of the Companies Ordinance.

As explained to the Bills Committee, the Securities and Futures Commission (SFC) at present may only initiate the inspections and matters in connection with the trading of securities as they find in the Securities and Futures Commission Ordinance and the Securities Ordinance. Since the Commission is close to the market, it may frequently come across suspected anomalies on the management of the affairs of listed companies outside its defined scope of authority during its normal contact with these companies. It is useful, therefore, for the Commission to be able to commence preliminary examination of such cases in an effective manner, to collect the facts about suspected anomalies, while negative impact on the companies concerned can be minimized, and to help it determine whether a full-scale investigation is necessary. Such a power will greatly assist the regulator in performing its function.

The main concern of members of the Bills Committee is that this is a new and wide power for the SFC. I should reiterate that the Commission is not being given a blanket authority to inspect the records and documents of listed companies. Before it can do so, the Commission has to satisfy itself that at least one of the three criteria set out in the Bill is fulfilled. This is a higher threshold compared with the new criteria for the Financial Secretary to invoke a preliminary inspection under section 152(a) of the Companies Ordinance.

I have just been requested by one Member to address his concern that it was unreasonable for the Bill to have retrospective effect so that the SFC can conduct preliminary inspection on the records and papers in relation to matters which happened before the enactment of the Bill.

I would like to confirm that. The new power of the SFC to require the production of companies' records will indeed apply to records and matters recorded therein, which existed or took place before enactment of the new power. Nevertheless, our legal advice confirms that the presumption against retrospective operation of Ordinances does not arise in this case. It was not the Government's intention to restrict application of the new power to post-enactment records. Otherwise it would take some considerable time before the effective use of the power would, in practice, be possible since the new suspicious activities or behaviour would only come to the regulator's attention after considerable time whereas the limitation I referred to before would continue to restrict the SFC's ability to act on cases that happened before but only came to its attention after enactment of the Bill. In the interest of justice, such a delayed effect would be most undesirable.

Furthermore, the new provisions create no new offences nor impose new substantive penalties, which would otherwise give rise to retrospectivity questions. It mainly provides the regulator with a channel of preliminary and

limited inspections on the books and records of listed companies and their subsidiaries or co-subsidiaries under certain circumstances. The Administration is therefore satisfied that the question of retrospectivity does not arise in this case.

However, I will be moving shortly some minor amendments to the Bill which have been agreed with by the Bills Committee. These are textual improvements to both the English and the Chinese versions of the Bill.

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).

STOCK EXCHANGES UNIFICATION (AMENDMENT) BILL 1993

Resumption of debate on Second Reading which was moved on 7 July 1993

Question on Second Reading proposed.

SECRETARY FOR FINANCIAL SERVICES: Mr President, this now brings me to the third Bill considered by the Bills Committee, the Stock Exchange Unification (Amendment) Bill 1993. It seeks to put beyond doubt that the Stock Exchange of Hong Kong Limited is a statutory power to promulgate and to administer rules governing listing matters. This is crucial because the Exchange can only derive their immunity under the Securities and Futures Commission Ordinance if it is exercised in a statutory function. In the absence of such immunity, the Exchange may be subject to the threat of legal actions whenever it takes important decisions under the listing rules.

The main criticism on the Bill, as pointed out by the Honourable Martin BARROW, came from the Law Society of Hong Kong and the Hong Kong Society of Accountants. The two professional bodies were of the view that the Exchange should not, through the listing rules, have the power to impose sanction on solicitors or accountants and that such authority should rest with the two societies.

As the Administration has clearly explained to the Bills Committee, the power for the Exchange to sanction professional advisors, in general, already exists in the listing rules of the stock exchange. The purpose of the Bill is just to put it beyond doubt in the statute book that such a power does exist and the Administration cannot accept any amendment that would have the effect of watering down the existing regulatory framework which has been functioning well.

It has been suggested that the Bill constitutes an encroachment into the regulatory role of the Law Society of Hong Kong and the Hong Kong Society of Accountants by allowing the Exchange to make rules to govern the professional conduct of solicitors or accountants. I take this opportunity to make some clarifications.

The stock exchange has confirmed to the Administration that it has no intention to make new rules to such effect. Indeed, it is not the purpose of the Bill to give the Exchange a free rein to make rules against professionals. The relevant listing rules at present are applicable to all professional advisers in general and will remain unchanged.

However, there may be circumstances under which it would be necessary to introduce certain changes to the scope of application of the listing rules to solicitors and accountants. On this matter, the Administration and the SFC have conducted intensive discussions with the two professional bodies and the Exchange in the past few weeks, in an attempt to resolve the difference in opinion. I am glad that an arrangement, or an agreement, has finally been reached on the number of amendments to the Bill, which I shall move at the Committee stage. The amendments will make it clear that the power of the Exchange regarding the listing rules is limited in certain circumstances under which cases involving solicitors or accountants should be referred to the two professional bodies for further action. The detailed arrangement for doing so will be set out in a Memorandum of Understanding to be worked out by the Exchange and the two societies. The Administration will see to it that the parties concerned will continue to co-operate in good faith and use their best endeavours to reach an early conclusion on the matter.

To allow some time for preparation of the Memorandum of Understanding the commencement of the Bill will be deferred. The intention is that subject to its passage today the Bill will take effect in, say, six months' time or upon the promulgation of the Memorandum of Understanding mentioned before, whichever is the earlier.

The amendments to the Bill being proposed are finalized after detailed and careful consideration by various parties concerned. May I take this opportunity to thank the two societies for their contributions in scrutinizing the Bill and the co-operative spirit in trying to reach an agreement and for the patience and understanding demonstrated by the Bills Committee throughout the discussion among the parties concerned.

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).

COINAGE BILL**Resumption of debate on Second Reading which was moved on 22 June 1994**

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

Bill read the Second time.

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

INSURANCE COMPANIES (AMENDMENT) (NO. 3) BILL 1993**Resumption of debate on Second Reading which was moved on 24 November 1993**

Question on Second Reading proposed.

MRS MIRIAM LAU: Mr President, a Bills Committee chaired by Mr LAU Wah-sum was set up to study this Bill, and I wish to highlight some of the principal areas of concern covered by this Committee.

One of the objectives of the Bill is to define the roles of agents who are appointed by insurers, and brokers who act for the insured. Members of the Bills Committee were concerned that the general public, in particular the potential policy holders, should be made aware of the status of the insurance intermediaries. The Administration informed Members that the Code of Practice for insurance agents, issued by the Hong Kong Federation of Insurers and the Insurance Authority, already requires an appointed insurance agent to identify himself and disclose his principal insurers when contacting a potential policy holder. It is intended that similar requirement will be imposed on the insurance brokers through regulations to be prescribed by the Insurance Authority.

Clarification was sought from the Administration on the restrictions regarding the dual role of agents and brokers under the proposed section 65(3). The Administration explained that the policy intent is that a person shall not be an appointed insurance agent and an authorized broker at the same time. It would have no objection if a person changed his role from that of an agent to a broker, provided that he shall not be both at the same time. The Administration will be moving Committee stage amendment to further clarify the restrictions regarding the dual role.

As a further safeguard, the Administration has agreed to take up the suggestions of including in the Code of Practice or regulation:

- that an insurance agent or broker has to specify his status on the proposal form of the insurance companies;
- that in the case of associated companies, one acting as agent and the other as broker, there must be clear separation of responsibilities of agents and brokers with companies operating independently in providing service to the public; and
- that the insurance intermediary should be required to disclose to his clients his relationship with any insurance companies.

Another issue that the Administration was asked to clarify involves the proposed section 68(2), whether it would extend an insurer's liability beyond the Common Law position. The Administration explained that the objective of section 68(2) is to prohibit an insurer from excluding or limiting his liabilities towards the policy holders or potential policy holders for the actions of his appointed insurance agent. The legislative intent is not to extend the liabilities of an insurer beyond the Common Law position, except that where an appointed insurance agent is representing more than one insurer, the liabilities shall be spread among the insurers if a particular insurer cannot be identified. This exception is contained in the proposed section 68(4).

As regards the regulatory system for insurance brokers, the Administration clarified on the need to allow an insurance broker to seek direct authorization from the Insurance Authority under the proposed section 69, as it may not be appropriate to require by statute a broker to join a non-statutory body of brokers. Furthermore, authorization to a non-statutory body of brokers may have to be withdrawn if, for instance, its operation gives cause for concern. The Administration intends to run the direct authorization system on a full-cost recovery basis.

The Administration has agreed to move amendments to clarify the accounts and audit requirements to facilitate proper monitoring by the regulatory authority. It has also undertaken to explain today the legislative intent to some of the proposed provisions, and to review the need for specifying in a guideline, after consulting relevant parties, the period within which financial statements have to be filed.

Another area of concern is the proposed provision for non-compliance with the Code of Practice to be liable to imprisonment. The Administration explained that the Code of Practice itself has a legal status as it is authorized by a statutory body, and failure to comply with it leads to an insurer committing an offence. In line with similar offence committed under the Insurance Companies Ordinance, the financial risk is a \$1,000,000 fine. Since an insurer may find it financially worthwhile to run the risk of non-compliance if the cost of compliance is significant, the Administration considers penalty in the form of imprisonment appropriate as it may serve as deterrent against non-compliance.

In view of the proposed imprisonment provisions, the Administration was asked to consider including the Code of Practice in subsidiary legislation. The Administration is of the view that it is appropriate for the Insurance Authority, the statutory body responsible for the supervision of insurance business in Hong Kong, to be accountable for the monitoring of compliance with the Code of Practice by insurance brokers. It advised that such an arrangement is legally in line with common practice and consistent with the purpose of the Bill, namely, to support self-regulation measures by the industry by statute and to ensure the effective regulation of intermediaries. Nevertheless, to address the concern raised, it has agreed to move amendments to specify the important provisions the breach of which will be subject to the heavier penalty provisions of imprisonment.

There were two issues that the Bills Committee recommended follow-up by the relevant panel of this Council, they are the suggestions that the insurance intermediaries be required to disclose their remuneration, commission or fees received, and the need to impose a cooling-off period to long-term insurance policies and general insurance policies. It is understood that these are important issues which requires careful consideration and consultation with the insurance industry.

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

8.00 pm

PRESIDENT: It is now eight o'clock and under Standing Order 8(2) this Council should now adjourn.

ATTORNEY GENERAL: Mr President, with your consent, I move that Standing Order 8(2) should be suspended so as to allow the Council's business this evening to be concluded.

Question proposed, put and agreed to.

MR PETER WONG: Mr President, I speak on the Second Reading of the Insurance Companies (Amendment) (No. 3) Bill 1993.

The Hong Kong Society of Accountants is generally supportive of the aims of this Bill, and in particular the measures to strengthen the financial reporting of brokers and agents. We appreciate that there is great value in implementing these measures to enable the insurance industry to regulate itself.

Although the Society submitted its initial comments on 5 January 1994, because of the necessity to wait in the queue, the Bills Committee and the

Secretariat did not start to process the submissions until 15 June 1994. There followed many urgent meetings, telephone calls, and so on, to try to resolve outstanding and new matters which arose out of the subsequent discussions. We tried very hard to do all the necessary work to meet the deadline of this, the last meeting of the Session.

And though I cannot say that this Bill is as good as we can make it, I am satisfied that the essential problems have been addressed. It was only after the deadline (for Committee stage amendments) had passed that it was realized that the wordings of “continued to” in clauses 4(h) and 4(g)(ii) strictly could not be achieved unless the auditor kept continuous watch over the capital and net assets of the client. Further, the auditor’s report, in clause 4(h), could be confused with the statutory audit report.

If there were no time constraints I would have demanded amendments to put these beyond all possible doubt. The Administration has suggested that these matters be clarified in the codes of practice and regulations to be promulgated by the Insurance Authority. Further, they have agreed to consult fully with the Hong Kong Society of Accountants to ensure that such codes and regulations are to the society’s satisfaction. On balance, I have reluctantly agreed to this course of action but I would urge that the Administration undertake to bring forward amendments at the first opportunity to clear up any possible doubt.

A lesson to be learned from this exercise is that the Legislative Council Secretariat should establish a mechanism to handle public submissions, even though no Bills Committee has been formed, nor Secretariat staff assigned to look after a particular Bill.

DR HUANG CHEN-YA (in Cantonese): Mr President, first of all, I feel somewhat surprised that the recommendations of the Bills Committee were read out by Mrs Miriam LAU when Mr LAU Wah-sum was not in the Chamber. It is because the recommendations are the views of the Bills Committee and, in case Mr LAU Wah-sum is absent, they should be read out by other members of the Bills Committee instead of a Member belonging to the same political party! I hope such kind of things will not happen again because I think the deliberations of Bills by the Legislative Council should not involve a contention between political parties.

Hong Kong’s insurance industry

PRESIDENT: Sorry, Dr HUANG, I do not think you are taking a point of order, but if you were taking a point of order, Mrs Miriam LAU delivered the speech on the basis that this was her speech although she did mention that it was Mr LAU Wah-sum who chaired the Bills Committee.

DR HUANG CHEN-YA: Yes, Mr President, I am just surprised that a speech basically representing the views of the committee that examined the Bill should be presented by someone who is not a member, as far as I know, of the Bills Committee. I am surprised although obviously Mrs LAU has full right as a Legislative Councillor to speak on a bill.

PRESIDENT: Yes, that is a point to be taken in the Bills Committee, not in the Legislative Council.

DR HUANG CHEN-YA (in Cantonese): Mr President, Hong Kong's insurance industry is still in an incipient stage of development and I believe that many people will be taking out their policies for the first time ever. Furthermore, with China opening up her service market, Hong Kong's insurance industry, which takes advantage of its proximity to China, will have an opportunity to flex its muscles in the mainland. For this reason, whether Hong Kong's insurance industry can get onto the right track is not only of prime importance to Hong Kong but will also have a far-reaching impact on China. However, Hong Kong people have all along been complaining from time to time about the insurance industry. The success rate of the Claims Complaint Bureau has been low. It is reported that many people often complain about the ambiguities in the terms of the policies, making us wonder whether insurance agents and brokers have fully performed their responsibility of explaining clearly the terms and conditions to consumers so that members of the public will not take out wrong policies. Furthermore, have insurance companies mislead the public with some excessively complicated, difficult and confusing terms or have they intended to put the public in a disadvantageous position? All these serve to bear witness to the need for stepping up the monitoring of the insurance industry so as to enable the insurance industry to discharge its functions and contribute to our community. I hope the Government will make unrelenting efforts to perfect its performance of this task.

The Bill seeks to establish a regulatory system for insurance agents and brokers in order to provide the public with greater protection. Since an agent is not allowed to hold the job of a broker concurrently, members of the public when taking out policies can be confident that their brokers will choose the best policy for them and right to choose will also be enhanced. For this reason, both the United Democrats of Hong Kong (UDHK) and Meeting Point support the Bill.

In the course of examination of the Bill, we spotted some problems in clause 76(8). As Mrs LAU mentioned just now, according to this clause one is liable to be fined or imprisoned if he or she has breached the "Code or Practice". However, as the Code of Practice is approved by the Hong Kong Federation of Insurance or the Insurance Authority, we think it may lead to two problems:

First, this means that the power of the Legislative Council is taken up by a private body or an executive authority which can promulgate a Code of Practice that may lead to a penalty of imprisonment;

Second, this will result in the lack of transparency in the formulation of the Code of Practice which may give rise to excessively harsh or inappropriate penalties.

We are very pleased to see that, after a number of rounds of discussion, the Government has finally agreed to amend this clause so that the decision as to what offences will attract a penalty of imprisonment will rest with this Council. For this reason, I withdraw my amendments to the Bill. The UDHK and Meeting Point will support the Government's proposed amendments.

SECRETARY FOR FINANCIAL SERVICES: Mr President, the Insurance Companies (Amendment) (No. 3) Bill 1993 before us today seeks to supplement efforts by the insurance industry in the self-regulation of intermediaries, that is, insurance agents and brokers.

I would like to thank the Chairman, Mr LAU Wah-sum and other Members of the Bills Committee for the careful consideration of the Bill. I would also like to thank the Hong Kong Federation of Insurers, the Hong Kong Federation of Insurance Brokers and the Hong Kong Society of Accountants for their valuable comments on the Bill.

The main objective of the Bill is to define the role of agents and brokers. Given that an agent is appointed by the insurer whereas a broker acts for the insured, the mutually exclusive role and the potential conflict of interests that may arise by combining these roles have made it necessary that a person should not be an agent and a broker at the same time. To ensure that a person does not take on the dual role of agent and broker, I shall move a number of Committee stage amendments to clarify the circumstances in which a person may not be an agent and a broker at the same time.

It is also an objective of the Bill to strengthen protection for policy holders by requiring agents and brokers to meet specified standards before being appointed or authorized. Insurers are required to comply with the Code of Practice drawn up by the Hong Kong Federation of Insurers and approved by the Insurance Authority for the appointment and administration of agents.

The Bill prohibits an insurer from excluding or limiting his liabilities towards policy holders or potential policy holders for the action of his appointed insurance agent. However, I wish to make it clear that the Bill does not seek to extend the liabilities of an insurer beyond the Common Law position except in one respect. That is, where an insurance agent, who has been appointed as agent for more than one insurer, enters into a transaction in which a particular principal cannot be identified, the liability should be spread among all the principal insurers. The industry has agreed to this share of the liability, which is now contained in section 68(a)(iv).

Authorized insurance brokers, on the other hand, must comply with minimum qualification requirements. For monitoring purposes, the Bill requires submission of an annual auditor's report relating to such compliance by an authorized broker. These minimum requirements are to be specified by the Insurance Authority in the form of guidelines. The Hong Kong Society of Accountants will be consulted when the guidelines have been drawn up. Actually, I will explain this aspect further when I move the Committee stage amendments.

To ensure effective implementation offences and penalties are covered in section 76. Concern has been raised by a Member on whether the Code of Practice should be made subsidiary legislation since non-compliance could result in imprisonment for two years. The Administration considers that since the Code of Practice is drawn up by the industry for the purpose of self-regulation, it should not be appropriate for it to become subsidiary legislation. However, to address this Member's concern, those important provisions of the Code of Practice, breach of which may be subject to imprisonment for two years, are now specified in section 76(8).

Concern has also been expressed that an insurer may be unjustly penalized if an agent deceived him by providing false information regarding his appointment and qualifications. I confirm that this will not happen. The position will be that, in common with other offences of a similar nature, the onus of proof of actual wrong doing is upon the prosecution. There will be no prosecution in any case in which the Insurance Authority is satisfied that the insurer has taken reasonable measures to ensure compliance with the relevant requirements.

There are suggestions from the Hong Kong Society of Accountants to require an insurance intermediary to disclose his commission and to allow a cooling-off period. While these suggestions might further enhance protection for policy holders, the Administration considers that in view of their far-reaching implications, it would not be appropriate to include them in this Bill. Careful consideration and consultation with the industry will be necessary.

On the timing for enactment of the Bill, having regard to the lead time required for drawing up guidelines and rules to govern the authorization and effective functioning of brokers and to acquire necessary financial resources to supervise the industry's system of self-regulation, it is the intention of the Administration that the Bill should commence operation when the guidelines and regulations are in place and the necessary resources are available.

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).

BUILDINGS (AMENDMENT) BILL 1994

Resumption of debate on Second Reading which was moved on 20 April 1994

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

Bill read the Second time.

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

Committee Stage of Bills

Council went into Committee.

CRIMINAL PROCEDURE (AMENDMENT) BILL 1994

Clauses 1 and 2

ATTORNEY GENERAL: Mr Chairman, I move that clauses 1 and 2 of the Bill be amended as set out under my name in the paper circulated to Members.

The first amendment merely adds “(No. 2)” before the name of the Ordinance which is to be enacted, since there has already been an Ordinance by a similar name this year.

The second amendment is consequent to the recent introduction of fixed penalties under the Housing Ordinance (Cap 283). Those penalties need to be excluded from the operation of the proposed standard scale of fines.

Mr Chairman, I so move.

Proposed amendments

Clause 1

That clause 1(1) be amended, by adding “(No. 2)” after “(Amendment)”.

Clause 2

That clause 2 be amended, in the proposed section 113C(1)(c), by adding “the Housing Ordinance (Cap. 283),” after “of”.

Question on the amendments proposed, put and agreed to.

Question on clauses 1 and 2, as amended, proposed, put and agreed to.

Clauses 3 to 5 were agreed to.

MINOR EMPLOYMENT CLAIMS ADJUDICATION BOARD BILL

Clause 1 to 7, 9, 10, 12 to 32, 34 to 40, 42, 43, 45 and 47 to 56 were agreed to.

Clauses 8, 11, 33, 41, 44 and 46

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

The amendment to clause 2(b)(ii) of the Bill is to define more clearly the claim brought previously by the same claimant against the same defendant, which may be declined jurisdiction by the board under clause 8.

The amendment to clause 11(ii)(a) is to make it clear that claims in writing can be made in English or Chinese.

Amendments are also proposed to clauses 33(iii)(a) and 41(ii)(b) to provide better translation terms to the Chinese text of the Bill.

The amendment to clause 44 is to re-number the sequence of the Minor Employment Claims Adjudication Board in the Schedule to the Official

Language Ordinance, in anticipation of the enactment of the Official Languages Amendment Bill 1994.

Finally, the amendment to clause 46 is to give jurisdiction to the board to handle the outstanding claims at the Labour Tribunal in order to help clear the backlog, and hence reduce the overall waiting time at the Labour Tribunal.

Mr Chairman, I beg to move.

Proposed amendments

Clause 8

That clause 8(2)(b)(ii) be amended, by adding “or being heard” after “pending”.

Clause 11

That clause 11(2)(a) be amended, by adding “in either the English or Chinese language” after “in writing”.

Clause 33

That clause 33(3)(a) be amended, by deleting “獲” and substituting “按” .

Clause 41

That clause 41(2)(b) be amended, by deleting “中斷” and substituting “打斷” .

Clause 44

That clause 44 be amended, in the item proposed to be added, by deleting “8.” and substituting “11.”.

Clause 46

That clause 46 be amended, in the proposed section 7A, by deleting “the right of action in respect of which arose before the commencement of that Ordinance shall” and substituting

—
“which is pending or being heard before the tribunal immediately before the commencement of that Ordinance shall continue in and”.

Question on the amendments proposed, put and agreed to.

Question on clauses 8, 11, 33, 41, 44 and 46, as amended, proposed, put and agreed to.

Schedule was agreed to.

SUPREME COURT (AMENDMENT) BILL 1994

Clauses 1 to 9 and 16 were agreed to.

Clauses 10 to 15

ATTORNEY GENERAL: Mr Chairman, for the reasons I gave earlier, I move that clauses 10 to 15 of the Bill be amended as set out under my name in the paper circulated to Members.

I so move.

Proposed amendments

Clause 10

That clause 10 be amended, by deleting the clause.

Clause 11

That clause 11 be amended, by deleting the clause.

Clause 12

That clause 12 be amended, by deleting the clause.

Clause 13

That clause 13 be amended, by deleting the clause.

Clause 14

That clause 14 be amended —

- (a) by deleting paragraph (b).

- (b) by deleting paragraph (c)(ii).

Clause 15

That clause 15 be amended, in Part II of the proposed Third Schedule —

- (a) by deleting “Registrar of the Supreme Court”, “Deputy Registrar of the Supreme Court”, “Temporary Deputy Registrar of the Supreme Court” and “Assistant Registrar of the Supreme Court”;
- (b) by adding “Adjudication Officer, Minor Employment Claims Adjudication Board” after “Coroner”.

Question on the amendments proposed, put and agreed to.

Question on clauses 10 to 15, as amended, proposed, put and agreed to.

MAGISTRATES (AMENDMENT) BILL 1993

Clauses 1, 4, 6 and 8 to 13 were agreed to.

Clauses 2, 3, 5 and 7

ATTORNEY GENERAL: Mr Chairman, I move that clauses 2, 3, 5 and 7 of the Bill be amended as set out under my name in the paper circulated to Members.

Mr Chairman, when the Attorney introduced this Bill to the Council, he explained that it is mainly intended to rationalize existing operating practices in the processing of summonses in the magistracy. One feature of that processing is a computerized case and summons management system introduced in July 1992. When that system was introduced, the view was taken that its use did not need to be provided for in legislation. However, after the validity of some documents issued through the system was challenged in court, provisions were inserted in the Bill to give the system a statutory backing. Recently, however, the court’s rule of appeal has confirmed the validity of a summons issued through the system and has considered that the provisions are not needed. And I propose that, therefore, they be removed from the Bill. I so move.

Proposed amendments

Clause 2

That clause 3 be amended, by deleting the clause.

Clause 3

That clause 3 be amended, by deleting the clause.

Clause 5

That clause 5 be amended, by deleting the clause.

Clause 7

That clause 7 be amended, by deleting paragraph (a)(i).

Question on the amendments proposed, put and agreed to.

Question on clauses 2, 3, 5 and 7, as amended, proposed, put and agreed to.

Schedule was agreed to.

LEGAL PRACTITIONERS (AMENDMENT) BILL 1993

Clauses 1, 3, 7 to 9, 11, 16 to 19, 21 to 30, 32 to 35, 37, 40, 41 and 43 to 45 were agreed to.

Clauses 2, 4 to 6, 10, 12 to 15, 20, 31, 36, 38, 39 and 42

ATTORNEY GENERAL: Mr Chairman, I move that clauses 2, 4 to 6, 10, 12 to 15, 20, 31, 36, 38, 39 and 42 of the Bill be amended as set out in the paper circulated to Members.

*Proposed amendments***Clause 2**

That clause 2 be amended, by adding —

““foreign jurisdiction” means a jurisdiction other than Hong Kong;

“foreign law” means the law of a foreign jurisdiction;”.

Clause 4

That clause 4(a) be amended, in the proposed section 4(1), by deleting “fit” and substituting “a fit and proper person”.

Clause 5

That clause 5 be amended, by deleting the clause and substituting —

“5. Roll of solicitors

Section 5 is amended -

- (a) in subsection (1) by repealing “section 3” and substituting “section 4”; and
- (b) in subsection (2) by repealing “signed by the Chief Justice” and substituting “signed by a judge”.”.

Clause 6

That clause 6 be amended —

- (a) in paragraph (b), by deleting “and” at the end.
- (b) in paragraph (c), by deleting the full stop at the end and substituting”; and”.
- (c) by adding -
 - “(d) in subsection (10) by repealing “in the United Kingdom, over a considerable period of time” and substituting “elsewhere”.”.

Clause 10

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

“10. Section added

The following is added -

“8AA. Appointment and powers of inspector

- (1) The Council may appoint a person as an inspector to assist the Council -
 - (a) in verifying compliance by a solicitor, a foreign lawyer, a trainee solicitor or an employee of a solicitor or foreign lawyer with the

provisions of this Ordinance or any practice direction issued by the Society;

(b) in determining for the purpose of section 9A whether the conduct of any solicitor, foreign lawyer, trainee solicitor or employee of a solicitor or foreign lawyer should be inquired into or investigated; or

(c) in relation to an inquiry or investigation under section 9B.

(2) For the purposes of subsection (1), an inspector may -

(a) in relation to any person who acts or purports to act as an employee of a solicitor in the premises of any court or place of lawful detention -

(i) question there and then the person as to his name, identity card number, the identity of any client for whom he acts or purports to act on that occasion and the name of the firm of which he acts or purports to act as the employee; and

(ii) require the person to produce for inspection there and then all documents in his possession that the inspector reasonably suspects to be relevant to any matter referred to in subsection (1)(a), (b) or (c) and copy or seize any of the documents; and

(b) (i) subject to subsection (3), require a solicitor, a foreign lawyer or an employee of a solicitor or foreign lawyer to produce or deliver to him for inspection, at a time and place specified by him, all documents in the possession of the solicitor, foreign lawyer or employee of a solicitor or foreign lawyer that the inspector reasonably suspects to be relevant to any matter referred to in subsection (1)(a), (b) or (c) and specifies particularly or generally; and

(ii) copy or seize any of the documents produced or delivered under subparagraph (i).

(3) An inspector shall not exercise his power under subsection (2)(b)(i) except under a direction of the Council to do so.

(4) No liability shall be incurred by any person in respect of anything done or omitted to be done by him in good faith in the exercise of any power under this section.

(5) In this section, “identity card” means an identity card issued under the Registration of Persons Ordinance (Cap. 177).”.”.

Clause 12

That clause 12 be amended —

(a) in paragraph (a)(i), by deleting “and” at the end.

(b) In paragraph (a), by adding -

“(iii)by repealing “10 lay persons” and substituting “30 lay persons”;”.

(c) in paragraph (b), by deleting the full stop at the end and substituting”; and”.

(d) by adding -

“(c) by adding -

“(5) If the Tribunal Convenor is precluded by illness, absence from Hong Kong or any other cause from exercising his functions under this Ordinance, a Deputy Tribunal Convenor may act in his place.”.”.

Clause 13

That clause 13 be amended, by deleting the clause and substituting —

“13. Complaint about solicitor’s conduct

Section 9A(1) is amended by repealing “a solicitor, a trainee solicitor or an employee of a solicitor” and substituting “a person

who is, or was at the relevant time, a solicitor, a foreign lawyer, a trainee solicitor or an employee of a solicitor or foreign lawyer”.”.

Clause 14

That clause 14(a) be amended, by adding “a person who is, or was at the relevant time,” after “in respect of”.

That clause 14(b) be amended —

- (a) in the proposed section 9B(1B), by adding “a person who is, or was at the relevant time,” after “in respect of”.
- (b) by renumbering the proposed section 9B(1B) as section 9B(1A).

Clause 15

That clause 15(5) be amended, in the proposed section 10(2)(m), by deleting “to the foreign” and substituting “to a foreign”.

That clause 15 be amended, by deleting subclauses (6) and (7) and substituting —

“(6) Section 10(3) is amended by repealing “solicitor” and substituting “person affected”.

(7) Section 10(4) is repealed and the following substituted -

“(4) An order that may be made under subsection (2) may also be made in respect of a person who was, at the relevant time, a solicitor, a foreign lawyer, a trainee solicitor or an employee of a solicitor or foreign lawyer.”.”.

Clause 20

That clause 20(a) be amended, by renumbering the proposed section 19(1B) as section 19(1A).

Clause 31

That clause 31 be amended, in the proposed sections 39A(1) and 39B(1)(b), by deleting “the law of a jurisdiction other than Hong Kong” and substituting “foreign law”.

Clause 36

That clause 36 be amended, in the proposed section 50B —

(a) in subsections (1) and (2), by deleting “practises or holds himself out as a practitioner of the law of a jurisdiction other than Hong Kong” and substituting “offers his services to the public as a practitioner of foreign law”;

(b) by adding -

“(1A) A person who is qualified to practise foreign law and who -

(a) from within a foreign firm but not as a foreign lawyer; or

(b) from within a Hong Kong firm but not as a solicitor or foreign lawyer,

offers his services to the public as a practitioner of foreign law, does not commit an offence under subsection (1) so long as he does not so offer his services in any 12 month period for more than 3 continuous months or more than 90 days.”.

Clause 38

That clause 38(a) be amended, in the proposed section 53(1)(b) and (1A), by adding “other than under section 19” after “cancelled”.

That clause 38(d) be amended, by renumbering the proposed section 53(5B) as section 53(5A).

Clause 39

That clause 39(b) be amended, in the proposed section 54(1A), by adding “other than under section 19” after “foreign lawyer has been cancelled”.

Clause 42

That clause 42(1)(b) be amended —

(a) by deleting the proposed section 73(1)(ca) and substituting -

“(ca) respecting procedures for investigations by an inspector under section 8AA;”.

- (b) in the proposed section 73(1)(cb), by deleting “employees” and substituting “employee”.

That clause 42(1)(e) be amended, in the proposed section 73(1)(dd), by deleting “the “practice of Hong Kong law”” and substituting “, limit or expand the meaning of the practice of Hong Kong law”.

Question on the amendments proposed, put and agreed to.

Question on clauses 2, 4 to 6, 10, 12 to 15, 20, 31, 36, 38, 39 and 42, as amended, proposed, put and agreed to.

New clause 30A	Roll of barristers
New clause 32A	Unqualified person not to act as solicitor
New clause 32B	Penalty for pretending to be a solicitor, etc.

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

ATTORNEY GENERAL: Mr Chairman, I move that new clauses 30A, 32A and 32B as set out in the paper circulated to Members be read the Second time.

As I explained earlier, new clause 30A is to expedite the signing of certificates of admission of solicitors or barristers, and new clause 32B makes it an offence for any person to pretend to be an employee of a solicitor, barrister or foreign lawyer. New clause 32A amends section 45 of the principal Ordinance, which prohibits unqualified persons from acting as a solicitor. The amendment repeals the provision under which a person who contravenes the section is liable to a financial penalty, in addition to any criminal penalty. This provision has rarely, if ever, been invoked and is considered to be redundant. The Bill increases the maximum penalty for an offence under the section from \$10,000 to \$500,000.

Mr Chairman, I so move.

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

Clauses read the Second time.

ATTORNEY GENERAL: Mr Chairman, I move that new clauses 30A, 32A and 32B be added to the Bill as set out in the paper circulated to Members.

I so move.

Proposed additions

New clause 30A

That the Bill be amended, by adding —

“30A. Roll of barristers

Section 29(2) is amended by repealing “signed by the Chief Justice” and substituting “signed by a judge”.

New clauses 32A and 32B

That the Bill be amended, by adding —

“32A. Unqualified person not to act as solicitor

Section 45 is amended -

- (a) in subsection (2) by adding “and” at the end of paragraph (b), by repealing “and” at the end of paragraph (c) and by repealing paragraph (d); and
- (b) by repealing subsection (3).

32B. Penalty for pretending to be a solicitor, etc.

Section 46 is amended -

- (a) by renumbering it as section 46(1);
- (b) by adding -

“(2) Any person who -

- (a) not being an employee of a solicitor, a barrister or a foreign lawyer, wilfully pretends to be, or takes or uses any title, addition or description implying that he is, such an employee;
- (b) without the authority of a solicitor, a barrister, a foreign lawyer or a trainee solicitor, purports to act with such authority,

shall be guilty of an offence and shall be liable on summary conviction to a fine of \$500,000.”.”.

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

EMPLOYMENT (AMENDMENT) (NO. 2) BILL 1993

Clause 1

SECRETARY FOR EDUCATION AND MANPOWER: Mr Chairman, I move that clause 1 be amended as set out in the paper circulated to Members. This technical amendment is to correct the title of the Bill to Employment (Amendment) Ordinance 1994.

Proposed amendment

Clause 1

That clause 1 be amended, by deleting “(No. 2) Ordinance 1993” and substituting “Ordinance 1994”.

Question on the amendment proposed, put and agreed to.

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

Clauses 2 to 5 and 8 to 11 were agreed to.

Clause 6

MR LAU CHIN-SHEK (in Cantonese): Mr Chairman, I move that clause 6 be amended as set out under my name in the paper circulated to Members.

Mr Chairman, this amendment is related to the upper limit of severance payment and long service payment, and such upper limit is the only unfair

provision still existing in the Employment Ordinance. It is because according to that provision, the longer the service of the employee, the less the compensation he can get. If the existing upper limit of \$180,000 is still maintained without being abolished, it will become a punishment in disguised form to those loyal employees who have been serving the same employers for long period of time. As a matter of fact, in order to obtain a compensation of more than \$180,000, the income of an employee should be at a median wage of \$7,000 and he has been serving the same employer for more than 40 years. I am not going to repeat the arguments mentioned earlier. I just want to do justice to those elderly and loyal employees.

proposed amendment

Clause 6

That clause 6 be amended, by deleting paragraph (a) and substituting —

“(a) in subsection (1) by repealing “subject in all cases to a maximum payment not exceeding the total amount of wages earned during the period of 12 months immediately preceding the relevant date, or the amount of 12 times \$15,000, whichever is less”.

Question on the amendment proposed.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr Chairman, I have explained earlier why under the current circumstances the Administration thinks that the ceiling should be kept at \$180,000. Of particular importance is our view that it is more desirable to propose any amendments to the law, which will affect both the workers and the employers, only after full consultation and thorough discussion have been conducted at the LAB. For this reason, I have to reiterate that the Administration will not support this amendment.

Question on the amendment put.

Voice vote taken.

MR James TIEN claimed a division.

CHAIRMAN: The Committee will proceed to a division.

CHAIRMAN: Will Members please vote on Mr LAU Chin-shek's proposed amendment to clause 6 of the Employment (Amendment) (No.2) Bill 1993.

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

Mr Martin LEE, Mr PANG Chun-hoi, Mr SZETO Wah, Mr TAM Yiu-chung, Dr LEONG Che-hung, Mrs Elsie TU, Mr Albert CHAN, Mr CHEUNG Man- kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Mr LAU Chin-shek, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin and Ms Anna WU voted for the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Andrew WONG, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr Simon IP, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr TANG Siu-tong, Miss Christine LOH, Mr Roger LUK and Mr James TIEN voted against the amendment.

THE CHAIRMAN announced that there were 23 votes in favour of the amendment and 20 votes against it. He therefore declared that the amendment was carried.

MR TAM YIU-CHUNG (in Cantonese): Mr Chairman, given that Mr LAU Chin-shek's amendment to clause 6 has been approved by Committee, I do not think it necessary to move my further amendment to the clause.

CHAIRMAN: Secretary for Education and Manpower, you have an amendment to make.

SECRETARY FOR EDUCATION AND MANPOWER: Mr Chairman, I move that clause 6(b) be amended as set out in the paper circulated to Members for the same reason as I proposed to move clause 1 to this Bill.

CHAIRMAN: I could not quite hear you, Secretary for Education and Manpower. Could you please move your amendment again?

SECRETARY FOR EDUCATION AND MANPOWER: Mr Chairman, I move that clause 6(b) be amended as set out in the paper circulated to Members.

Proposed amendment

Clause 6

That clause 6 be amended, by deleting “(No. 2) Ordinance 1993 (of 1993)” and substituting “Ordinance 1994 (of 1994)”.

Question on the amendment proposed.

8.32 pm

CHAIRMAN: Does any Member wish to speak? I think if Members are uncertain as to where we are, I will take a short break.

8.42 pm

CHAIRMAN: As Mr TAM Yiu-chung is not proceeding with his proposed amendment to clause 6, it is open to the Secretary for Education and Manpower to proceed with his technical amendment to clause 6(b) and that is the amendment you have just moved, Secretary.

Question on the amendment put and agreed to.

Question on clause 6, as amended, proposed, put and agreed to

Clause 7

MR LAU CHIN-SHEK (in Cantonese): Mr Chairman, I move that clause 7 be amended as set out in the paper circulated to Members.

Proposed amendment

Clause 7

That clause 7 be amended, by deleting paragraph (a) and substituting —

“(a) in subsection (1) by repealing “subject in all cases to a maximum payment not exceeding the total amount of wages earned during the period of 12 months immediately preceding the relevant date, or the amount of 12 times \$15,000, whichever is less”.

Question on the amendment proposed.

SECRETARY FOR EDUCATION AND MANPOWER: Mr Chairman, the Administration maintains its position that we would object to the amendment for the very fundamental reason that labour legislation which affects the interests of

both the employers and employees should be debated in full in the established channel of the Labour Advisory Board and let the public be given the proper chance to debate the issues concerned before they are brought to this Council. On this very fundamental point of consultation, the Administration will object the amendment.

Question on the amendment put.

Voice vote taken.

MR JAMES TIEN: I call for a division.

CHAIRMAN: Council will proceed to a division.

CHAIRMAN: Will Members please proceed to vote?

CHAIRMAN: We are three short of the head count. Are there any queries? If not, the results will now be displayed.

Mr Martin LEE, Mr PANG Chun-hoi, Mr SZETO Wah, Mr TAM Yiu-chung, Dr LEONG Che-hung, Mrs Elsie TU, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Mr LAU Chin-shek, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin and Ms Anna WU voted for the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Andrew WONG, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr Timothy HA, Mr Simon IP, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr TANG Siu-tong, Miss Christine LOH, Mr Roger LUK and Mr James TIEN voted against the amendment.

THE CHAIRMAN announced that there were 23 votes in favour of the amendment and 21 votes against it. He therefore declared that the amendment was carried.

MR TAM YIU-CHUNG (in Cantonese): Mr Chairman, since the amendment moved by the Honourable LAU chin-shek has been carried, I therefore withdraw my proposed amendment.

Question on clause 7, as amended, proposed, put and agreed to.

New clause 6A Dismissal by employer

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

MR JAMES TIEN: Mr Chairman, I move that new clause 6A as set out in the paper circulated to Members be read the Second time.

Question on Second Reading of new clause proposed.

SECRETARY FOR EDUCATION AND MANPOWER: Mr Chairman, I reiterate the point made earlier that we do not support the proposed amendment for the main reason that we really have to respect the existing channel of consultation through the Labour Advisory Board, on which both the employers and employees have elected representatives sitting on them and have had a long history of successful negotiation and consensus reaching in considering proposals for legislative amendments. On this very fundamental point, the Administration is unable to support the amendment.

Question on Second Reading of new clause put.

Voice vote taken.

MR JAMES TIEN: I call for a division.

CHAIRMAN: Council will proceed to a division.

CHAIRMAN: Will Members please proceed to vote?

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

Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAW, Mrs Miriam LAU, Dr LEONG Che-hung, Mr Peter WONG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr Timothy HA, Mr Eric LI, Mr Steven

POON, Mr Henry TANG, Dr TANG Siu-tong, Mr Roger LUK and Mr James TIEN voted for the motion.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Martin LEE, Mr PANG Chun-hoi, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Andrew WONG, Mrs Elsie TU, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Mr Simon IP, Dr Conrad LAM, Mr LAU Chin-shek, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH and Ms Anna WU voted against the motion.

Mr Vincent CHENG abstained.

THE CHAIRMAN announces that there are 16 votes in favour of the motion and 28 votes against it. He therefore declares that the motion is negated.

CHAIRMAN: As the Second Reading of new clause 6A has not been agreed, it cannot be added to the Bill.

EMPLOYEES' COMPENSATION (AMENDMENT) BILL 1994

Clauses 1 to 18

SECRETARY FOR EDUCATION AND MANPOWER: Mr Chairman, I move that clauses 1 to 18 be amended as set out in the paper circulated to Members. The reason has been set out in my speech made at the resumption of Second Reading debate, that is, to remove all the provisions in the Bill except the one dealing with compensation for workers injured on their way to work during typhoon or rainstorm situation. The removed provisions will be resubmitted to this Council in the next Session for further consideration.

Proposed amendments

Clause 1

That clause 1 be amended —

- (a) in the section heading, by deleting “and commencement”.
- (b) by renumbering clause 1(1) as clause 1.
- (c) by deleting clause 1(2).

Clauses 2 to 18

That clauses 2 to 18 be amended, by deleting clauses 2 to 18 inclusive.

Question on the amendments put.

Voice vote taken.

MR JAMES TIEN: Mr Chairman, I call for a division.

8.58 pm

CHAIRMAN: Council will proceed to a division. Just one minute. I will have to suspend the sitting for a few minutes. The computer appears to be malfunctioning.

9.10 pm

CHAIRMAN: Committee will now resume. The division bell will ring again.

CHAIRMAN: I will just remind Members that the question for the Committee is whether clauses 1 to 18 of the Employees' Compensation (Amendment) Bill 1994 be amended as proposed by the Secretary for Education and Manpower. Will Members please proceed to vote?

CHAIRMAN: We appear to be one short of the head count. Are there any queries? If not, the results will now be displayed.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Martin LEE, Mr PANG Chun-hoi, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Dr LEONG Che-hung, Mrs Elsie TU, Mr Albert CHAN, Mr Moses CHENG, Mr CHEUNG Man-kwong, 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 Fred LI, Mr MAN Sai-cheong, Mr Henry TANG, Mr TIK Chi-yuen, Mr James TO, Dr Samuel WONG, Dr YEUNG Sum, Mr Howard YOUNG, Mr WONG Wai-yin, Dr TANG Siu-tong, Miss Christine LOH and Ms Anna WU voted for the amendments.

Mr Edward HO and Mr James TIEN abstained.

THE CHAIRMAN announced that there were 37 votes in favour of the amendments and no vote against them. He therefore declares that the amendments were carried.

New clause 19 Employer's liability for compensation
 for death or incapacity resulting from
 accident

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

SECRETARY FOR EDUCATION AND MANPOWER: Mr Chairman, I move that new clause 19 as set out in the paper circulated to Members be read the Second time for the same reason I have explained earlier.

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

Clause read the Second time.

SECRETARY FOR EDUCATION AND MANPOWER: Mr Chairman, I move that new clause 19 be added to the Bill.

Proposed addition

New clause 19

That the Bill be amended, by adding —

**“19. Employer's liability for compensation for
 death or incapacity resulting from
 accident**

Section 5 of the Employees' Compensation Ordinance (Cap. 282) is amended by adding -

“(5B) For the purposes of this Ordinance an accident to an employee shall be deemed to arise out of and in the course of his employment if it happens to the employee when, within the duration of a gale warning, or of a rainstorm warning, both as defined in section 2 of the Judicial Proceedings (Adjournment During Gale Warnings) Ordinance (Cap. 62), he is travelling between his place of residence and his place of work -

(a) to his place of work, by a direct route within a period of 4 hours before the time of

commencement of his working hours for that day or to his place of residence, within a period of 4 hours after the time of cessation of his working hours for that day, as the case may be; or

(b) in such other circumstances as the Court thinks reasonable.”.”.

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

DANGEROUS DRUGS (AMENDMENT) BILL 1994

Clauses 1 to 10 were agreed to.

DANGEROUS DRUGS (AMENDMENT) (NO. 2) BILL 1994

Clauses 1 to 2 were agreed to.

ACETYLATED SUBSTANCES (CONTROL) (AMENDMENT) BILL 1994

Clauses 1 to 22 were agreed to.

CONSUMER COUNCIL (AMENDMENT) BILL 1994

Clauses 1 to 3 were agreed to.

PUBLIC BUS SERVICES (AMENDMENT) BILL 1994

Clauses 1 to 5 were agreed to.

ROAD TRAFFIC (AMENDMENT) (NO. 2) BILL 1994

Clause 1

SECRETARY FOR TRANSPORT: Mr Chairman, I move that clause 1 of the Bill be amended as set out in the paper circulated to Members. This is a minor technical amendment which does not affect the substance of the Bill. Thank you, Mr Chairman.

Proposed amendment

Clause 1

That clause 1 be amended, by deleting “(No. 2)”.

Question on the amendment proposed, put and agreed to.

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

Clause 2 was agreed to.

CIVIL AVIATION (AIRCRAFT NOISE) (AMENDMENT) BILL 1994

Clauses 1 to 18 were agreed to.

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

Clauses 1 to 9 were agreed to.

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

Clauses 1 to 3 were agreed to.

COMPANIES (AMENDMENT) (NO. 4) BILL 1993

Clause 1

SECRETARY FOR FINANCIAL SERVICES: Mr Chairman, I move that clause 1 be amended as set out in the paper circulated to Members.

The amendment reflects a re-numbering of the Bill.

Proposed amendment

Clause 1

That clause 1 be amended, by deleting “(No. 4) Ordinance 1993” and substituting “(No. 2) Ordinance 1994”.

Question on the amendment proposed, put and agreed to.

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

Clauses 2 to 9 were agreed to.

New clause 3A Proceeding on inspector's report

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

SECRETARY FOR FINANCIAL SERVICES: Mr Chairman, I move that new clause 3A as set out in the paper circulated to Members be read a Second time.

The new clause seeks to amend section 147(2)(b) of the Companies Ordinance. That section at present empowers the Financial Secretary to present a petition for a court order to protect the interests of shareholders where the business of a company is conducted in a manner unfairly prejudicial to any part of the company's members.

It is necessary to expand the scope of this section to cover a situation whereby the business has been conducted in a manner unfairly prejudicial to shareholders. This is in line with another clause in the Bill contemplating a similar amendment to section 168A of the Companies Ordinance, concerning application for court orders by aggrieved shareholders.

Mr Chairman, I beg to move.

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

Clause read the Second time.

SECRETARY FOR FINANCIAL SERVICES: Mr Chairman, I move that new clause 3A as set out in the paper circulated to Members be added to the Bill.

Proposed addition

New clause 3A

That the Bill be amended, by adding —

“3A. Proceeding on inspector's report

Section 147(2)(b) is amended by repealing “conducted in a manner unfairly prejudicial to the interests” and substituting “or has been conducted in a manner unfairly prejudicial to the interests of the members generally or”.”.

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

SECURITIES AND FUTURES COMMISSION (AMENDMENT) BILL 1993

Clauses 1, 2 and 4 to 9 were agreed to.

Clause 3

SECRETARY FOR FINANCIAL SERVICES: Mr Chairman, I move that clause 3 be amended as set out in the paper circulated to Members.

Clause 3 of the Bill seeks to add to section 29A of the Securities and Futures Commission's Ordinance, which stipulates, *inter alia*, that the Securities and Futures Commission may inspect the records and documents of a company when it appears that there are circumstances suggesting the business of a listed company has been, or is being, conducted with intent to defraud its creditors. It is uncertain whether the current wording applies to a company which was but no longer is listed. The amendments being proposed put this beyond doubt.

Mr Chairman, I beg to move.

Proposed amendment

Clause 3

That clause 3 be amended, in the proposed section 29A(1)(a) by adding “company which is or was at the relevant time a” after “business of a”.

Question on the amendment proposed, put and agreed to.

Question on clause 3, as amended, proposed, put and agreed to.

New clause 4A Investigations

New clause 8A Additional powers — restriction
 notices relating to Exchange
 Companies and clearing houses

New clause 8B Preservation of secrecy, etc.

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

SECRETARY FOR FINANCIAL SERVICES: Mr Chairman, I move that new clauses 4A, 8A and 8B as set out in the paper circulated to Members be read the Second time.

New clause 4A revises the Chinese translation of the term “recklessly” in section 33(12)(d) of the Securities and Futures Commission Ordinance to bring it in line with the translation adopted in the Bill.

New clauses 8A and 8B seek to revise the Chinese translation of Registrar of Companies, which appears in several places in the Securities and Futures Commission Ordinance, to bring them in line with the translation adopted in the Bill.

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 FINANCIAL SERVICES: Mr Chairman, I move that new clauses 4A, 8A and 8B as set out in the paper circulated to Members be added to the Bill.

Proposed additions

New clause 4A

That the Bill be amended, by adding —

“4A. Investigations

Section 33(12)(d) is amended by repealing “魯莽” and substituting “罔顧後果” .”.

New clauses 8A and 8B

That the Bill be amended, by adding —

“8A. Additional powers — restriction notices relating to Exchange Companies and clearing houses

Section 50(9) is amended by repealing “註冊官” where it twice occurs and substituting “註冊處處長” .

8B. Preservation of secrecy, etc.

Section 59(2)(e) and (2A)(a) is amended by repealing “註冊官” and substituting “註冊處處長” .”.

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

STOCK EXCHANGES UNIFICATION (AMENDMENT) BILL 1993

Clauses 1 and 2

SECRETARY FOR FINANCIAL SERVICES: Mr Chairman, I move that clauses 1 and 2 be amended as set out in the paper circulated to Members.

Clause 1 is amended to allow deferred commencement of the Bill. The intention is that the Bill, if passed, will be brought into effect six months after the enactment or upon the promulgation of two Memoranda of Understanding, to be agreed by the Stock Exchange of Hong Kong Limited with the Law Society of Hong Kong and the Hong Kong Society of Accountants, whichever is the earlier.

The Memoranda of Understanding will set out the arrangement for handling cases involving breaches of the listing rules by solicitors or accountants.

Clause 2(b) is amended by adding several provisos, to limit the power of the Exchange in making and administering the listing rules in respect of cases involving solicitors or accountants. It requires, among other things, the Exchange to refer such cases to the Law Society of Hong Kong or the Hong Kong Society of Accountants in certain circumstances. The arrangements will be, as mentioned above, stipulated in two Memoranda of Understanding, to be worked out by the parties concerned.

Mr Chairman, I beg to move.

*Proposed amendments***Clause 1**

That clause 1 be amended —

- (a) in the heading, by adding “and commencement” after “title”.
- (b) by renumbering it as clause 1(1).
- (c) by adding -

“(2) This Ordinance comes into operation on a day to be appointed by the Secretary for Financial Services by notice in the Gazette.”.

Clause 2

That clause 2(b) be amended, by adding after the proposed subsection (3) —

“(4) In making rules under subsection (1)(a) the Exchange Company shall take into account that a solicitor or professional accountant (as defined in section 2 of the Professional Accountants Ordinance (Cap. 50)) acting in his professional capacity in private practice has duties imposed by law and by virtue of rules of professional conduct.

(5) The Exchange Company shall, in circumstances stipulated in arrangements agreed from time to time between it and The Law Society of Hong Kong or the Hong Kong Society of Accountants, refer breaches of rules made under subsection (1)(a) -

- (a) which are alleged to have been committed by a solicitor or professional accountant in private practice; and
- (b) which may also constitute a breach of duty imposed by law or by virtue of rules of professional conduct,

to The Law Society of Hong Kong or, as the case may be, the Hong Kong Society of Accountants, for determination of whether to make a finding, impose a penalty or sanction or take other disciplinary action.

(6) For the purpose of subsection (4) and (5), a person shall be regarded as acting the capacity of a solicitor or professional accountant in private practice if in the course of private practice he provides legal or professional accountancy services to a client, but he shall not be regarded as so acting where, in respect of a matter governed by rules made under subsection (1)(a), he is also connected with that matter in any other capacity.”.

Question on the amendments put.

Voice vote taken.

MR RONALD ARCULLI: Mr Chairman, I ask for a division.

CHAIRMAN: Council will proceed to a division.

CHAIRMAN: The question for the Committee is whether clauses 1 and 2 of the Stock Exchanges Unification (Amendment) Bill 1993 be amended as proposed by the Secretary for Financial Services. Will Members please proceed to vote?

CHAIRMAN: We seem to be three short of the head count. Are there any queries? If not, the results will now be displayed.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Martin LEE, Mr PANG Chun-hoi, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Edward HO, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mrs Elsie TU, Mr Peter WONG, Mr Albert CHAN, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, 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 LAM Kui-chun, 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, Mr Roger LUK and Ms Anna WU voted for the amendments.

Dr Samuel WONG voted against the amendments.

Mr Ronald ARCULLI, Mr Simon IP and Mr James TIEN abstained.

THE CHAIRMAN announced that there were 43 votes in favour of the amendments and one vote against them. He therefore declared that the amendments were carried.

Question on clauses 1 and 2, as amended, proposed, put and agreed to.

COINAGE BILL

Clauses 1 to 7 were agreed to.

INSURANCE COMPANIES (AMENDMENT) (NO. 3) BILL 1993

Clauses 1 and 2 were agreed to.

Clauses 3 and 4

SECRETARY FOR FINANCIAL SERVICES: Mr Chairman, I move that clauses 3 and 4 be amended as set out in the paper circulated to Members.

The two clauses encompass a number of amendments most of which are of technical nature in order to enhance the effectiveness of the Bill, clarify points not clear therein and bring the provisions in line with those in other existing Ordinances.

I wish to only highlight the more important changes proposed. Under clause 4, new subsection 65(3A) to (3I) are added through clause 4(b) to elaborate the various situations under which a person shall not assume the role of agent and broker at the same time. The aim of this new subsection is to ensure that a person shall not take on a dual role in dealings with policy holders.

Sections 69 and 70 are amended through clauses 4(c) and (d) by adding a new subsection (b) to provide the Insurance Authority with a reserved power to impose conditions for the better protection of policy holders on potential policy holders.

Proposed section 71(2) is amended through clause 4(e) to allow a broker to use a client's money only for the purpose of the client. The amendment is in response to a point raised by the Hong Kong Confederation of Insurance Brokers to cater for circumstances in which a client's cheque covers both the insurance premium and brokerage fees.

New subsection 71(2A) clarifies that an insurance broker is entitled to retain the interest earned on client monies unless the client and the broker agree otherwise.

Section 76 is amended through clause 4(j) to specify that it is an offence to contravene new sections 65(3A) to 65(3H) which separate the roles of an insurance broker and agent. New subsections (8) and (8)(a) are added to section 76 to clarify the penalties for breaches of the Code of Practice by an insurer. The more serious breaches specified would result in a penalty of imprisonment for two years and a fine of \$1 million. Other less serious breaches would incur a fine of \$100,000.

Mr Chairman, I beg to move.

Proposed amendments

Clause 3

That clause 3 be amended, by deleting “amended by adding -” and substituting —

“amended -

- (a) in the definition of “prescribed person” -
 - (i) in paragraph (b) by adding “or” at the end;
 - (ii) by adding -
 - “(c) an auditor or former auditor of an insurance broker or a former insurance broker appointed under section 71A;”;
- (b) by adding -”.

Clause 4

That clause 4 be amended —

- (a) in the proposed section 65(3), by deleting “act as” and substituting “be”.
- (b) in the proposed section 65, by adding -
 - “(3A) A proprietor of, or partner in, an insurance agent shall not be a proprietor or employee of, or partner in, another insurance agent or an insurance broker.
 - (3B) An employee of an insurance agent who provides advice to a policy holder or potential policy holder on insurance matters shall not be a proprietor or employee of, or partner in, another insurance agent or an insurance broker.
 - (3C) A proprietor or employee of, or partner in, an insurance agent may be a director of another insurance agent or of an insurance broker only if he does not provide advice to policy holders or potential policy holders on insurance matters for the company.
 - (3D) A director of a company which carries on business as an insurance agent and which director provides advice to a policy holder or potential policy holder on insurance matters, may be a director of another insurance agent or of an insurance broker only if he does not provide advice to policy holders or potential policy holders on insurance matters for the other company.
 - (3E) A proprietor of, or partner in, an insurance broker shall not be a proprietor or employee of, or partner in, an insurance agent.

(3F) An employee of an insurance broker who provides advice to a policy holder or potential policy holder on insurance matters shall not be a proprietor or employee of, or partner in, an insurance agent.

(3G) A proprietor or employee of, or partner in, an insurance broker may be a director of an insurance agent only if he does not provide advice to policy holders or potential policy holders on insurance matters for the insurance agent.

(3H) A director of a company which carries on business as an insurance broker and which director provides advice to a policy holder or potential policy holder on insurance matters, may be a director of an insurance agent only if he does not provide advice to policy holders or potential policy holders on insurance matters for the insurance agent.

(3I) Nothing in this section prevents a person from being the agent of more than one insurer.”.

(c) in the proposed section 69, by adding -

“(6) The Insurance Authority has the power to impose conditions on the authorization of an insurance broker to ensure that the insurance broker functions properly and that policy holders and potential policy holders are protected.”.

(d) in the proposed section 70, by adding -

“(8) The Insurance Authority has the power to impose conditions on the approval of a body of insurance brokers to ensure that its members function properly and that policy holders and potential policy holders are protected.”.

(e) in the proposed section 71 -

(i) in subsection (2), by deleting “that for which the client authorizes in writing” and substituting “for the purposes of the client”;

(ii) by adding -

“(2A) An insurance broker is entitled to retain the interest that is earned on client monies that he holds unless the insurance broker and the client agree otherwise.”.

(f) by adding -

“71A. Appointment of auditor

(1) An insurance broker shall appoint as its auditor -

(a) a person who is qualified for appointment as auditor of a company under the Professional Accountants Ordinance (Cap. 50) and is not disqualified under section 140 of the Companies Ordinance (Cap. 32); or

(b) for an insurance broker incorporated outside Hong Kong, a person -

(i) who may lawfully practise as an auditor in the place of its incorporation; and

(ii) who holds a qualification that the Insurance Authority accepts as being of a standard comparable to that of a person referred to in paragraph (a).

(2) An insurance broker shall appoint an auditor -

(a) if the insurance broker is carrying on business as an insurance broker at the commencement of this section, within 1 month from such commencement; or

(b) if the insurance broker begins to carry on business as an insurance broker after the commencement of this section, within 1 month from beginning to do so.

(3) An insurance broker shall within 1 month from appointing an auditor under subsection (1) serve on the Insurance Authority a notice in writing of the appointment and the name and qualifications of the auditor appointed.

(4) If the appointment of an auditor ends, the insurance broker shall within 1 month from the ending of the appointment -

(a) appoint a new auditor; and

(b) serve notice on the Insurance Authority of the ending and new appointment.”.

(g) in the proposed section 72(1) -

(i) by adding after “Authority,” -

“a copy of the audited profit and loss account for the last preceding financial year, a copy of the audited income and expenditure account for the last preceding financial year, a copy of the audited balance sheet as at the end of the last preceding financial year, an auditor’s report on the financial statements,”;

(ii) by deleting “certificate relating to section 69(2)(b), (c), (d) and (e)” and substituting -

“report as to whether the auditor is of the opinion that the person has continued to satisfy the minimum requirements for capital and net assets, professional indemnity insurance, keeping of separate client accounts and keeping of proper books and accounts”.

(h) in the proposed section 72(2), by deleting “certificate relating to section 70(2)(b), (c), (d) and (e)” and substituting -

“report to the extent and in the manner set out by the Insurance Authority on the continued compliance by the members of the approved body with the minimum requirements for capital and net assets, professional indemnity insurance, keeping of separate client accounts and keeping of proper books and accounts”.

(i) by deleting the proposed section 75(1) and substituting -

“(1) If an insurance intermediary is -

(a) a company which may be wound up by the High Court under the Companies Ordinance (Cap. 32); or

(b) an individual,

and the Insurance Authority considers that it is in the public interest that the company should be wound up, or the individual made bankrupt, the Insurance Authority has the power to present a petition for -

(i) the company to be wound up if the High Court thinks it just and equitable for it to be wound up; or

(ii) the individual to be declared bankrupt.”.

(j) in the proposed section 76 -

(i) by adding -

“(4A) A person who contravenes section 65(3A), (3B), (3C), (3D), (3E), (3F), (3G) or (3H) commits an offence and is liable on summary conviction to a fine of \$100,000 and imprisonment for 6 months.”;

(ii) by deleting subsection (8) and substituting -

“(8) An insurer who -

(a) appoints an agent knowing that the appointment causes the agent to be appointed by more than the prescribed number of principals;

(b) appoints an agent with less than the minimum qualifications set under an approved code of practice;

(c) appoints an agent under a written agency agreement that fails to meet, in a material respect, the minimum requirements of a model agency agreement adopted by the Hong Kong Federation of Insurers under an approved code of practice;

(d) confirms the appointment of an insurance agent without the confirmation of the Insurance Agents Registration Board set up by the Hong Kong Federation of Insurers; or

(e) fails, where the Insurance Agents Registration Board set up by the Hong Kong Federation of Insurers refers a complaint to the insurer -

(i) to investigate the Complaint;

(ii) to report to the Insurance Agents Registration Board the findings of the investigation and the action taken, if any; or

(iii) to take disciplinary action as required by the Insurance Agents Registration Board,

commits an offence and is liable -

(i) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years;

(ii) on summary conviction to a fine of \$100,000.

(8A) An insurer who fails, other than as set out in subsection (8), to comply with a code of practice approved under section 67 commits an offence and is liable to a fine of \$100,000.”;

(iii) by adding -

“(12) An insurance broker who fails to comply with section 71A commits an offence and is liable to a fine of \$10,000, together with a further fine of \$500

for each day on which the magistrate is satisfied that the offence continued.”.

Question on the amendments put.

Voice vote taken.

MR HOWARD YOUNG: I call for a division.

CHAIRMAN: Council will proceed to a division.

CHAIRMAN: Will Members please proceed to vote?

CHAIRMAN: We seem to be three short of the head count. We are still short of the head count, but I think Members will all have had time to check their machines. Are there any queries? If not, the result will now be displayed.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Martin LEE, Mr PANG Chun-hoi, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Edward HO, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mrs Elsie TU, Mr Peter WONG, Mr Albert CHAN, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Timothy HA, Mr Michael HO, Dr HUANG Chen-ya, Mr Simon IP, Dr LAM Kui-chun, 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 Henry TANG, Mr TIK Chi-yuen, Mr James TO, Dr Samuel WONG, Dr YEUNG Sum, Mr WONG Wai-yin, Dr TANG Siu-tong, Miss Christine LOH, Mr Roger LUK and Ms Anna WU voted for the amendments.

Mr Ronald ARCULLI, Mr CHIM Pui-chung, Mr Steven POON, Mr Howard YOUNG and Mr James TIEN abstained.

THE CHAIRMAN announced that there were 42 votes in favour of the amendments and no vote against them. He therefore declared that the amendments were carried.

BUILDINGS (AMENDMENT) BILL 1994

Clauses 1 to 13 were agreed to.

Council then resumed.

Third Reading of Bills

ATTORNEY GENERAL: Mr President, may I make it clear because I shall be parting from the script that I will not be moving the Third Reading of the Employment (Amendment) (No. 2) Bill 1993. Of course the President and other Member may move that. But it makes no sense for me to vote against it but move it. But I do report however that it passed through Committee with amendments.

Mr President, the

CRIMINAL PROCEDURE (AMENDMENT) BILL 1994

MINOR EMPLOYMENT CLAIMS ADJUDICATION BOARD BILL

SUPREME COURT (AMENDMENT) BILL 1994

MAGISTRATES (AMENDMENT) BILL 1993

LEGAL PRACTITIONERS (AMENDMENT) BILL 1993

EMPLOYEES' COMPENSATION (AMENDMENT) BILL 1994

ROAD TRAFFIC (AMENDMENT) (NO. 2) BILL 1994

COMPANIES (AMENDMENT) (NO. 4) BILL 1993

SECURITIES AND FUTURES COMMISSION (AMENDMENT) BILL 1993

STOCK EXCHANGES UNIFICATION (AMENDMENT) BILL 1993 and

INSURANCE COMPANIES (AMENDMENT) (NO. 3) BILL 1993

have passed through Committee with amendments and the

DANGEROUS DRUGS (AMENDMENT) BILL 1994

DANGEROUS DRUGS (AMENDMENT) (NO. 2) BILL 1994

ACETYLATED SUBSTANCES (CONTROL) (AMENDMENT) BILL 1994

CONSUMER COUNCIL (AMENDMENT) BILL 1994

PUBLIC BUS SERVICES (AMENDMENT) BILL 1994**CIVIL AVIATION (AIRCRAFT NOISE) (AMENDMENT) BILL 1994****STAMP DUTY (AMENDMENT) (NO. 2) BILL 1994****INLAND REVENUE (AMENDMENT) (NO. 2) BILL 1994 COINAGE BILL and
BUILDINGS (AMENDMENT) BILL 1994**

have passed through Committee without amendment and the

SUPPLEMENTARY APPROPRIATION (1993-94) BILL 1994

having been read the Second time, is not subject to Committee stage proceedings in accordance with Standing Order 59. I move that these 22 Bills, excluding the one I have especially mentioned, be read the Third time and do pass.

PRESIDENT: I will take the Employment (Amendment) (No. 2) Bill 1993 separately from the other 22 Bills.

Question on the Third Reading of the 22 Bills proposed, put and agreed to.

Bills read the Third time and passed.

PRESIDENT: As the Attorney General has not moved the Third Reading of the Employment (Amendment) (No. 2) Bill 1993, it will be necessary for a Member to move that the Bill be read the Third time and do pass. Mr LAU Chin-shek, do you so move?

MR LAU CHIN-SHEK (in Cantonese): Yes, Mr President, May I speak as well?

PRESIDENT: I will propose it first, then we will proceed to a debate.

Question on the Third Reading of the Bill proposed.

MR LAU CHIN-SHEK (in Cantonese): Mr President, Members are doing me great honour in taking the trouble to hurry back to this Chamber at this moment. The present amendment to the Bill seeks only to do justice, in matters relating to severance and long service payments under the Employment

Ordinance, to some elderly employees who have been serving the same employer for a long time. My amendment only seeks to remove the ceiling of \$180,000 and to calculate the severance and long service payments according to the actual length of service of an employee. This is a very reasonable and fair amendment.

However, a ceiling is still retained in the above amendment. For an employee whose wage exceeds \$15,000, his severance and long service payments would still be calculated on the basis of \$15,000. In fact, the impact of the present amendment on employers would be very minor because long service payment is payable only on the termination of service of an employee. The initiative of terminating the service of an employee rests entirely with the employer. As regards severance payment, the level of such payment will be no concern of the employer in the case of bankruptcy and liquidation. If an employer winds up his business after making a profit, would it be inhumane to require him to give the employees a more reasonable severance payment?

I would like to remind Members that if we negative the motion on the Third Reading of the Bill today, we will be reverting to the original and unamended Ordinance. Employees will not be able to get the compensation as amended for a period of time. Although my colleagues have asked me to speak more on other issues, I do not want to take this opportunity to condemn any persons or matters. I just feel very sorry.

MR TAM YIU-CHUNG (in Cantonese): Mr President, during the Second Reading a moment ago, I was most excited when the two amendments of Mr LAU Chin-shek were passed one after the other. However, such excitement may melt into thin air very soon. It is because we are seeing quite a number of Members hurrying back from far away, and their purpose is to counter and oppose the resultant effect of the amendments that have just been passed. I would like to call upon all Members to reconsider it before pressing the buttons in the voting that will start shortly. If the present Bill should revert to its original state or to the state of the principal Ordinance, many workers who have been longing for a further relaxation of the ceiling for severance and long service payments (that is to say, not limited to the aggregate of 12 months' wages or \$15,000 times 12) will be disappointed. As a matter of fact, this amendment cannot be regarded as radical. But if it reverts to the state of the principal Ordinance, I think that it will not be fair to those long-serving employees. I thus urge the Members to think carefully before casting their votes.

MR SZETO WAH (in Cantonese): Mr President, I originally did not intend to speak. However, I would feel bad if I do not speak now. We notice that some Members have been trying to buy time, some keep on making telephone calls for back-up; others hastily returned. What has happened to warrant such a high degree of combat readiness? It is merely a matter of giving employees a little

more benefit upon severance or dismissal. Why are they so anxious? One should act according to one's conscience. Is it such a bad thing to give one's employees a little bit more benefit? I hope that all the employees of Hong Kong can see for themselves in the final vote on the Third Reading later on, who ignore their interests and who would become so very vigilant when it comes to giving them a little bit more benefit!

MR MARTIN LEE (in Cantonese): Mr President, I wish to declare my interest because I am an employer. I certainly have not employed a lot of people, but I do support the amendment of this Bill with great pleasure.

MR JAMES TIEN (in Cantonese): Mr President, I will not be pleased with the voting result, no matter whether the Honourable LAU Chin-shek's motion be carried by a majority of votes or be negated.

I have mentioned earlier that, in accordance with the existing legislation, an employee earning, say, \$10,000 a month, will be eligible for a long service payment of \$120,000. The matter has been canvassed at great length between the representatives of the employers and the employees in the Labour Advisory Board. The employers claim that, given the present business downturn, the increase in the long service payment should not be excessive if the amount of payment is to go up. However, the employees argue that they should be reasonably compensated with a larger sum of payment. The Government therefore goes for the middle ground and proposes in the Bill to count every two years as one for an employee's service accrued beyond 18 years, in a bid to cushion the impact on the financially less sound employers.

As is evident from my earlier example, if the Honourable LAU Chin-shek's amendment or the Honourable TAM Yiu-chung's amendment is passed, the payment may rise to \$200,000, representing an increase of 60%. Of course, the Bill has been read the Second time and we cannot go back to the Government's original proposal. I would not wish to see Mr LAU's amendment disapproved and the ceiling be maintained at \$120,000. Neither would I wish to see his amendment approved and the payment ceiling be raised to \$200,000. I very much regret the way this matter has developed, whatever the voting result may be.

MRS ELSIE TU: Mr President, I am an employer, some of my employees are professionals and well-paid. It does not affect them. Some of them are labourers, and I do not think they get a fair deal even now. I would be very very happy if the amendment passes and they get more compensation.

MR FREDERICK FUNG (in Cantonese): Mr President, my feelings have changed. Those Members who did not attend this sitting thought that the matter

was not so important and hence decided not to come. For those who did not come or did not speak in the Second Reading debate, they had given up their right to move amendment during the Second Reading. From the legal point of view, of course, none of us can stop them from coming back to join the Third Reading debate and participate in the voting. However, I do hope that those who only come back to vote will understand that the result of their voting will greatly affect the general public. For employees whose income is below \$15,000 and who have served their employers for a long time, if their employers are not willing to give them a bit more by way of long service payment, I think those Members who only come back to vote will be doing these employees an ill turn. I support the motion of Mr LAU Chin-shek.

MR CHEUNG MAN-KWONG (in Cantonese): Mr President, I understand how sad the Honourable LAU Chin-shek must feel because his once sanguine hope was dashed. He must have thought that the Bill, after so much efforts, could finally be passed. I feel sorry for him when I see that Members are “called back” to the Chamber one after the other.

In any parliamentary type of assembly, the conduct of business requires due respect for sportsmanship, much in the same way as it should be in a soccer match. Sportsmanship means the value you attach to a particular match and the spirit to participate regardless of the result. If you call in more players when you find that you are going to be beaten at the game, it is an exhibition of poor sportsmanship and it runs against parliamentary ethics.

I have two questions for those Members who are called back to the Chamber. What vote will you cast? What is the crux of this Bill? Maybe you are not so sure because you have not followed the entire debate, nor have you listened to the arguments of both sides. You are only trying to please those who called you back and to vote for or against the Bill or to abstain from voting in accordance with their instructions. Can you not be conscience-stricken when you go to bed tonight? Do you know that you are doing a disservice to many elderly workers?

I know that I cannot possibly shake the power and influence of political parties, but I would like to make a last-ditch attempt for Mr LAU Chin-shek by making an appeal to the independent Members. If you are called back just to vote or if you do not fully comprehend the question before you, please at least abstain. Please make it an honest and fair play. Please uphold sportsmanship and respect parliamentary ethics. You will have both my gratitude and respect if you vote in support of the Honourable LAU Chin-shek.

MR WONG WAI-YIN (in Cantonese): Mr President, I believe many of our colleagues in this Council have never before been so heavy-hearted as they are now, especially when I saw that the Honourable LAU Chin-shek did not want to say any more when he had the opportunity to do so.

Just now the Honourable James TIEN, a big boss, said that he regretted to see what was happening today. I believe every one of us is also finding it regrettable. But who is causing this “regret”? We are seeing people “calling back by telephone” other Members for the sake of getting a voting result that would entail the withdrawal of the Third Reading by the Administration.

There were occasions when the Administration did not agree with the views of Members in the course of our examination of Bills, and the Administration threatened to withdraw the Bills. But we warned the Administration that should it withdraw the Bills, its credibility would be seriously affected. Fortunately, withdrawal of Bills at the Committee stage has never happened to date. But today — the last day of the current Legislative Council session — the Administration is withdrawing an amended Bill from its Third Reading. What does this signify? Does it mean that the Administration is really a “lame duck” or “a coward”? We have to bear in mind that these amendments have been passed at the Committee stage. But of course the rules of the game are that they can be negated at the Third Reading.

Just now the party whip of the Liberal Party has been making telephone calls non-stop, and the two bigwigs of the Liberal Party have actually shown up for voting after the seven-hour long meeting. It is clear how significant the voting result will be to them. Mr President, I do not know how I should describe this, but let me say this, I at last understand what it means by “collusion between businessmen and the Administration”.

MR ALLEN LEE (in Cantonese): Mr President, I have in fact fallen sick today. However, there are rules in the parliamentary game as much as there is a position in every political party. Is our coming back to vote wrong? There have been numerous occasions that Members were asked to come back and vote.

That we disagree with other people’s stance does not mean that our own stance is not clear-cut. Here I wish to make it very clear to you all. Many a time employers are accused of having no regard for their employees. If this is really the case, the world we see now can hardly have existed at all. Today, you can see that we have a very clear-cut stance and that we will not waver in our stance. Is it wrong of me to come back to vote even though I am sick? Can the other parties come clean of such an act? I have seen similar acts before when a certain Member of the United Democrats of Hong Kong insisted on coming back to vote when he was so sick and weak that he could barely sit in his chair.

MR ALBERT CHAN (in Cantonese): Mr President, throughout my three years as a Legislative Councillor, I feel particularly distressed today. I feel distressed, not because the amendment moved by Mr LAU Chin-shek or the Third Reading of the Bill will be vetoed. I am distressed because, from Members’ performance today, the Hong Kong legislature has been degraded to a kind of “on-call business”. The “on-call business” that I said is of course different from

the on-call taxis or take-away pizzas. The degradation of the legislature is, I believe, a major step backward in the development of democratic government in Hong Kong, and is also contrary to the Governor's constitutional package which was passed last week. It is likely that Governor PATTEN, with his years of experience in the British Parliament, will not approve of the performance and the decisions of the three Secretaries today.

During the last hour or so, I witnessed numerous gimmicks as well as a display of human nature. That reminds me of a statement made by Vladimir LENIN, "There is only machination but no morality in politics". What miserable degradation the Soviet Communist Party led by LENIN has gone through should be obvious to all. If there is anyone who wants to go the way the Soviet Communist Party did, I believe that he will encounter the same fate.

MR PANG CHUN-HOI (in Cantonese): Mr President, I think Mr LAU Chin-shek does not have to feel heartbroken while Members who have objected to the amendment need not be overjoyed. Frankly speaking, it is well expected that things would turn out in this way since, in the Bills Committee, Mr TAM Yiu-chung had indicated his intention to move an amendment, so did Mr LAU Chin-shek and Mr James TIEN.

I think today's voting results are unreasonable. However, we understand that the Legislative Council has its own rules of the game. One is dead wrong if one thinks that the development towards a democratic political system in Hong Kong may enable political parties to sway government policies. After all, this is still an executive-led government.

Last week, we have fought a very tough battle on the political reform package. Some Members still have bitter feelings about the failure of the "1994 model". Anyway, the "1994 model" was finally negated and so did Miss Emily LAU's proposal of 60 directly-elected seats by one vote (20 to 21). We should have learnt the rules of the game in this Council. These rules will still be in force for the next three years. After all, we must realize that some people will often change their stance under the influence of the Government.

Mr President, I have nothing further to add.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, I am here today with a heavy heart. This Bill was introduced by the Administration and we support the proposals of the Bill to further improve the benefits of Hong Kong workers. These are a basket of proposals which have emerged after being debated by the Labour Advisory Board (LAB), a very important consultative body, who have reached a consensus thereon. This is the result of a great deal of arguments, concession and give and take by both sides. Tonight, what we are to discuss is not the question of fairness, still less the money figures or the impact on employers. What we are to discuss is whether

we should respect the proposals of the LAB which comprises representatives from both employers and employees. This consultative body is well established and representatives from both sides are elected in an open and fair manner.

We have made quite a few significant points tonight which might not be opposed when they are further discussed in the LAB. However, from the Administration's point of view, we think it is most important not to alter rashly the agreement painstakingly arrived at in the LAB, before the public has had the opportunity to psychologically prepare itself for the alteration or before it has acquired sufficient understanding.

In the debate earlier on, I repeatedly explained why the Administration could not support the amendments moved by the three Members. This is not a question of principle. It is rather that we think certain important proposals cannot be altered rashly without giving a full and reasonable explanation to the LAB. Such alteration would lead to very serious consequences. It would destroy instantly the amicable labour relations established in the past decades through the LAB. I believe the Administration, the employers and employees are unwilling to see this happen.

However, I undertake that whilst the Administration cannot support the Third Reading of the Bill, it will submit to the LAB the gist of tonight's debate as soon as possible and then have a new Bill resubmitted to this Council soon.

MR JAMES TO (in Cantonese): Mr President, Mr LAM Woon-kwong has mentioned just now that since the public lacks a thorough understanding of the amendments, the Administration cannot support the Third Reading of the Bill. As a matter of fact, many of the Bills considered by this Council are amended at the Second Reading and the drafting process of many of the Bills involves the consultation of relevant advisory committees formed by representatives from various sectors. How can the Administration withdraw a Bill from its Third Reading simply because Members move amendments to it? The Administration has never done this before. It would indeed be a very bad precedent for the Administration to do so this time.

I recollect that when we deliberated the Organized and Serious Crimes Bill, we proposed an amendment to the definition which would render it entirely different from that as drafted by the Administration. The Administration did not withdraw the Bill at that time. This is but one example to illustrate that the Administration does not necessarily have to reject every amendment. Should the Government object to the amendment, it can simply vote against it when the Bill is being read the Third time. Why should it withdraw the Bill instead? I consider that the Government's performance this time leaves much to be desired.

Mr Allen LEE said that he was sick but still he managed to come back to vote. I hope that next time when he falls sick, he will sit through the meeting

“from beginning to end”. Many of the Members of the United Democrats did sit through the meeting even when they fell sick. This is the rule of the game. Please do not show up only at times of voting and keep on asking for three more minutes so that Members informed by phone may come back to vote in time. What sort of attitude is this?

It does not matter if you are opposed to the amendment. It is imperative that you were present in this Chamber, listened to the debate and voted against Mr LAU Chin-shek's amendment at the Second Reading rather than showing up only at the decisive, critical moment. It is excusable that Mr Allen LEE acts the way he does because he is ill. How about the other Members? I would like to ask the other Members, such as Mrs Selina CHOW, Mr LAU Wong-fat, Mr Peter WONG, Mr CHIM Pui-chung, Dr LAM Kui-chun, Mr Timothy HA, Dr Samuel WONG, Dr Philip WONG, Mr Alfred TSO, who come back to vote one question: Are you also sick? We have to observe the rules of the game, the rules of the legislature and sportsmanship in our conduct of council business. We should not waste other Members' time. It is unfair that the whole Council has to wait for you to return to cast your vote without listening to the debate beforehand. You may even not know the topic of the debate and are just voting for voting's sake. Can you tell me what sort of parliamentary spirit this is?

PRESIDENT: You have spoken once. Do you want to raise a point?

MR TAM YIU-CHUNG (in Cantonese): Mr President, I just want to point out that something said by Mr LAM Woon-kwong was incorrect.

PRESIDENT: I should have let you raise a point of elucidation if you wanted to, but it would be up to the Secretary whether he elucidates or not. Do you wish to raise a point of elucidation?

MR TAM YIU-CHUNG (in Cantonese): Mr President, just now Mr LAM Woon-kwong claimed that the maximum amounts of severance and long-service payments were suggested by the Labour Advisory Board (LAB) after consensus had been reached between the two parties of LAB. As far as I know, the views expressed on this matter by representatives of the employees differed from those by representatives of the employers, and I understand that no consensus had been reached by both sides.

PRESIDENT: Do you wish to elucidate, Secretary?

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, it is right that the two parties did not have any consensus in relation

to the treatment of service exceeding 18 years even after thorough discussion; as such, the Administration made a compromise suggestion. But as for the \$180,000 ceiling, a consensus had been reached by the LAB which was the agreement on the ceiling of \$180,000.

MR CHIM PUI-CHUNG (in Cantonese): Mr President, I have to protest that the Honourable James TO showed me no due respect. I left my council papers here while I was away attending a very important meeting. I would like to speak on the Securities and Futures Commission (Administration) Bill 1993, and I hope the Secretary for Financial Services will later respond to my questions

PRESIDENT: I am sorry, Mr CHIM, you are supposed to be speaking on the Employment (Amendment) (No. 2) Bill.

MR CHIM PUI-CHUNG (in Cantonese): Mr President, employees and employers in Hong Kong have close relations. That this debate today has led to conflicts between the labour sector and the employers is basically because of manipulation by political bodies. And it is the United Democrats of Hong Kong (UDHK) that aims to sow seeds of discord between the labour sector and the employers in order to create a confrontational community. Members of the public should realize that this would affect Hong Kong's spirit of solidarity in future. Therefore, I have to condemn the UDHK.

The industrial and commercial sector is very concerned about the debate on political reforms on 29 June 1994. They are worried that once the 1992 package is carried, the liberals and the UDHK would emerge as a predominant force wielding enormous power. In such a case even the officials of Secretary rank would have to give way, not to mention other Members of the Legislative Council. We have just seen the aggressiveness of the UDHK and their all-out attack on other colleagues. Should there come a day when the liberals reap all the votes in Hong Kong, it is believed that they would look even nastier.

I learnt from the newspaper yesterday that the Honourable Emily LAU was willing to have dialogues with the industrial and commercial sector and make concessions. The kind of attitude shown by the UDHK just now has already sent a strong signal to the industrial and commercial sector, real property sector and financial sector of Hong Kong. What would Hong Kong become should Hong Kong be led by these people? I must appeal to all the employers and employees of Hong Kong that we should have better solidarity and not be influenced by what has been said by the UDHK.

Thank you, Mr President.

MR TIMOTHY HA (in Cantonese): Mr President, as an independent legislator, I do not want to get involved in any row between political parties. However, as I was named just now as one of those who were “called back” to vote, I have to clarify my position. I had an appointment at dinner time and I did not receive any phone call before I returned to this Chamber. I decided to come back of my own accord and I arrived at this Chamber at around 8.40 pm.

DR SAMUEL WONG (in Cantonese): Mr President, thank you for giving me a chance to clarify. The Member who named me is Mr James TO whom I respect most. He referred to Members by their Chinese names but when he came to me, he chose to call me by my English name. I know that my Chinese name is quite difficult to pronounce and remember; so I may change my name later. I was not gone actually but was only away for dinner. I have yet to participate in the debate on the motion to be moved by Mr MAN Sai-cheong, urging the Government to provide a cable television channel. I have already drafted a speech but it is in English.

DR LEONG CHE-HUNG: Mr President, I am not standing up here to either comment or defend the labour side or the employer side, nor am I defending the different parties concerned on this political argument. But I thought as the Convener of the Bills Committee that looked at this particular Bill, I would like to say a few words.

First of all, I have to say that I am appalled by the words of the Secretary for Education and Manpower, saying that he objected to the passage of the Bill, or the amended Bill, on the grounds that this is contrary to the wish of the Labour Advisory Board and that the public has had no time to debate on the matter or the amendment.

Firstly, the Bill was discussed with the full understanding of the wish of the Labour Advisory Board. In other words, Members of the Bills Committee realized the feelings of the Labour Advisory Board when the Bill was discussed and I presume that, as Legislative Councillors, we have the right to determine amendments or otherwise, and not to be forced to take on what the advisory bodies pass onto us.

Secondly, may I remind the Secretary and this Council that the Bills Committee has received representation and deputation from both the employers and the employee groups which presumably represent the parties concerned. In my mind, therefore, the words of the Secretary are a very weak excuse for objecting to the Third Reading of the Bill on this.

MR LEE WING-TAT (in Cantonese): Mr President, I have the feeling that Mr CHIM Pui-chung's presence in this Council serves only one purpose, that is, to find faults and criticize whatever proposal put forward by the United Democrats

of Hong Kong. I am already fed up with his disgusting behaviour. Though we may have divergent views with the Liberal Party, we respect each other's point of view. Notwithstanding that they may sometimes label us as practising socialism much the same way as we criticize them, the Liberal Party, for being the pro-business group, both of us voice our views respectively through debates and the choice lies with the public. I have never come across any state or country practising the free economic system which bars a conservative political party from forming the government. Take the United Kingdom as an example, the Conservative Party has been in power since 1979. Why is it not feasible for the local commercial and industrial sector, the financial sector and the real estate sector to group together to form a political party and run for elections formally so as to obtain the people's mandate in giving effect to their manifesto and policies? Why is it that they have to achieve their objectives through appointed seats or small scale elections?

Mr Allen LEE claimed that his position is very firm and I understand his position well. Should their position be so firm, they should have remained seated in this Chamber until the end of the sitting even though the Standing Orders do not specify that Members are not allowed to leave during the sitting. As a matter of fact, this Council is a peaceful and sensible legislature up to the present. We observe the rules of parliament and the parliamentary spirit. Surely no one wants us to follow the example of another country's legislature and start a fight in this Chamber or employ the money politics.

We have all along been the minority in this Council and we are still the minority today. We are going to be the minority still by 1995. After 1997, maybe our number will become even fewer. What disappoints us most this time is that some people do not observe the rules of the game in parliament.

Mr President, I totally disagree with what Mr CHIM Pui-chung has said just now, that is, whatever we do, the business and industrial sector will be against us. I can only say that we shall keep on working to dispel the doubts that the business and industrial sector may have with respect to the United Democrats and the Democratic Party and to make them realize that unlike what other people allege, our social policy is not one that poses a fearful menace. Some may refer to us as socialists. Some may say that we are not popular with the business and industrial sector. I earnestly hope that these people will make a self-examination and tell me what we should do in 1995, in 2003 or 2007 when the Legislative Council will undergo tremendous changes. Are people in the financial sector going to retreat from Hong Kong completely? Why are Members not facing up to this challenge and be well prepared for the advent of a fully elected Legislative Council?

Any political debate will lead to divergence in views. Success or failure does not count very much. What the United Democrats and Meeting Point find most heartrending is that we are defeated by some sort of dishonourable tactics.

MR CHIM PUI-CHUNG (in Cantonese): Mr President, may I ask Mr LEE Wing-tat to elucidate the meaning of “disgusting”, was he hinting that I am not qualified to air my views?

PRESIDENT: It is up to you, Mr LEE, whether you elucidate.

MR LEE WING-TAT (in Cantonese): Mr President, I have great pleasure in explaining the term. As I have said earlier on, it is well known that we and the Liberal Party differ in views in respect of our social policies. We do not mind the Liberal Party pinning whatever labels on us because this is a common political tactic. However, hurling political abuses with neither aim nor substance or hurling abuses without realizing what one is saying this is the sort of “disgusting” behaviour I referred to.

Mr President, this is the meaning of “disgusting”.

MRS SELINA CHOW (in Cantonese): Mr President, I think the people of Hong Kong know very well who is the expert at labelling people. The most notable deficiency of the Liberal Party before its formation and up to now is that it does not know how to label others, and, worst still, it does not know what to do after being labelled.

Some people have labelled us the Commercial and Industrial Party. But we have never been such a party from beginning to end. I think that even the Conservative Party in the United Kingdom would not admit to being a Commercial and Industrial Party. It is undeniable that they have a closer relationship with the commercial and industrial sectors but this is only because their beliefs are closer to the right wing and they are more capitalistic. However, we cannot call the Conservative Party the Commercial and Industrial Party. By the same token, we cannot call the Liberal Party the Commercial and Industrial Party.

Mr President, I did not intend to speak at first. However, as I was referred to by name earlier, I have to respond.

The fact is that I have just come back from abroad by plane. However, I learnt that I had to come back to this Council immediately after getting off the plane. I failed to attend the meeting in time for personal reasons. I came back not because I was so informed by phone but because this is the last meeting of the Session. It is for this reason that I came back to attend the meeting after leaving the airport.

I feel sad about today's incident. However, I am not saddened by this incident but by the fact that some people among us are making an issue of this incident to attack other colleagues. We are not children and do not need our

colleagues to sermonize us. We know what we are doing when we vote, for we would have to be accountable to our conscience. We do not need colleagues in this Council, especially colleagues from the United Democrats of Hong Kong, to remind us about this. We know very well what it is all about. However, I have to make it clear to Members that a political party is bound to have party rules as well as discipline. Since our party whip summoned us to come back to vote, we came back to vote in support of our beliefs in this matter.

MR STEVEN POON (in Cantonese): Mr President, just like many other Members, I did not intend to speak originally. I believe that the labour sector is as much disappointed as the industrial and commercial sector. Mr LAU Chin-shek is one of those Members whom I respect, so I would not wish to say anything that would sadden him. On the other hand, Mr James TIEN, too, is another of those Members whom I most respect, and so I would not wish to sadden him either.

However, Mr President, I cannot tolerate this kind of pointless trouble-making by the United Democrats of Hong Kong (UDHK). We have to follow rules and regulations in doing things. The rules are laid down by ourselves. We have the right to vote and, regardless of the way we were returned to this Council, we do have this right to vote. I have served in this Council for three years and I do not mind other Members here classifying me as an appointed Member. This Council has its own rules. The UDHK keep emphasizing democracy but do they follow the rules of democracy? What kind of attitude do they hold in scolding others who are only following the rules as regards the conduct of council business? Fearing that they will lose or may lose, the UDHK then ignore all the rules laid down by this Council and concentrate on attacking other Members. What is the point in talking about parliamentary spirit?

I have already said that the UDHK are good at pinning labels on people. But I feel that this is all meaningless. We should conduct council business in an upright manner. Voting is just voting and if one does not feel like it, one may just refrain from pushing the button. It is as simple as that and one should not fly off at a tangent to talk of other things. The UDHK should be able to get 31 votes if they are really “smart” enough. Therefore I feel that row between parties is but a triviality. The most important point, on the other hand, is that we should follow the rules of the game instead of unjustifiably pinning labels on people.

DR YEUNG SUM (in Cantonese): Mr President, on behalf of the UDHK and Meeting Point, I would like to censure the way the Government handles this Bill. This is the first time I witness such a situation since I joined the Legislative Council, in which the Government introduced a Bill without any prior consultation or lobbying and once the proposed legislation met with strong opposition, it put up resistance and eventually even withdrew the Bill. I hope that the Government will do a serious review of the case. As a matter of fact,

a

government with enough sophistication should do some lobbying beforehand once legislators' views are clear to them. Should this be the case, the present embarrassing situation would not have arisen.

The Government has set a very bad precedent this time. It gives Members the misconception that the Government may withdraw the motions it moves at the end of the day. I would like to censure the Government for the way it handled this matter and hope that it will give the case a serious re-examination.

With regard to sportsmanship, we should keep a cool head and carry on with the match regardless of the outcome, whether we win or lose.

MF FRED LI (in Cantonese): Mr President, I only wish to make two points. First, Mr LAM Woon-kwong said that the proposals were put forward only after the Labour Advisory Board had reached a consensus on them and that there was no reason to alter them rashly. However, like this Bill, many Bills have also been considered in the Government's appointed advisory committees before being tabled in this Council. For example, the Residential Care Home (Elderly Persons) Bill has been discussed in the Social Welfare Advisory Committee. Is he suggesting that the Bill is not subject to any amendment when tabled in the Legislative Council after the discussions? If so, the Legislative Council is no more than a rubber stamp, is it not? Second, just now the voting was delayed thrice. I wonder why. Anyway, that is an undeniable fact.

MR HENRY TANG (in Cantonese): Mr President, I believe if I said that I fully appreciated how the Honourable LAU Chin-shek felt today, many people would accuse me of either "making mock of" or "adding to the furore". I say with all my heart that I am neither "making mock of" nor "adding to the furore". The Honourable LAU Chin-shek and I have on many matters exchanged views; we have mutual understanding and we are mutually accommodating; we have "chit-chats" always. I think Mr LAU Chin-shek is a conscientious and responsible Councillor. On this matter we did have discussions (I am also a member of the Committee). But regrettably, we could not arrive at a compromise on this matter because of the great implications. Therefore, we could only say that we could wait and see when the time came for "vote counting". It is with this in mind that we come to this meeting today.

I have sat on the Labour Advisory Board (LAB) for seven years. Apart from myself, the Honourable SZETO Wah, the Honourable TAM Yin-chung and the Honourable PANG Chun-hoi used to be members of the LAB. As early as 1985, the issue of setting up the long-service payment scheme already appeared on the LAB agenda. The very subject matter of discussion today is long-service payment. We take special care in catering to the needs of elderly workers and increase the amount of the long service payment step by step. In present-day Hong Kong the long service payment has already become a kind of semi-pension. On the other hand, younger employees also benefit from it.

Just now Mr LAU Chin-shek asked whether step-by-step improvement has been made to the long service payment. As an employer myself, I completely espoused this basics concept. A worker will get higher retirement benefits the longer he works for me. This is completely acceptable to me and I am supportive of it. But looking around, I can see that this Council has clearly become to a certain extent, an arena for tit-for-tat exchanges and mud-slinging. I feel very unhappy at seeing this. Although employers and employees have different stances, yet, as the Honourable LEE Wing-tat has just said, difference in stance does not necessarily mean that we must resort to mud-slinging.

Mr LAM Woon-kwong has said that this Bill had been discussed at the LAB. But it does not mean that it cannot be improved. During the years I had been with the LAB, what I found was the mutual understanding and mutual accommodation that representatives of both sides displayed. Matters were discussed candidly and agreements were reached. The reason why we cannot support the amendment by Mr LAU Chin-shek on this occasion is that these proposals are the result of consultation by both sides and the issues were discussed with both sides on an equal footing. If of course does not mean that these matters cannot be amended. But since we have arrived at a step-by-step approach which is an acceptable one, we should then adopt it. Therefore, I support the original proposals.

Question on the Third Reading of the Bill put.

Voice vote taken.

Mr LAU Chin-shek claimed 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 Martin LEE, Dr David LI, Mr PANG Chun-hoi, Mr SZETO Wah, Mr TAM Yiu-chung, Dr LEONG Che-hung, Mrs Elsie TU, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Mr LAU Chin-shek, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH and Ms Anna WU voted for the motion.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr Jimmy MCGREGOR, Mr Peter WONG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr CHIM Pui-chung, Mr Timothy HA, Mr Simon IP, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr Roger LUK and Mr James TIEN voted against the motion.

THE PRESIDENT announced that there were 25 votes in favour of the motion and 26 votes against it. He therefore declared that the motion was negatived.

PRESIDENT: As the motion for the Third Reading of the Bill has been negatived, no further proceedings can be taken on the Bill.

Member's Motions

HONG KONG ROYAL INSTRUCTIONS 1917 TO 1993

MRS ELSIE TU moved the following motion:

“That with effect from 6 July 1994 the Standing Orders of the Legislative Council of Hong Kong be amended -

- (1) in Standing Order No. 4 by adding before paragraph (1) -

“(1A) The Secretary General of the Legislative Council Secretariat shall be the Clerk to the Legislative Council.

(1B) The Clerk shall be responsible for advising the President on all matters relating to the procedure of the Council.”;

- (2) in Standing Order No. 4A -

(a) in paragraph (1) by repealing “Law Draftsman” and substituting “Legal Adviser of the Legislative Council Secretariat”;

(b) by repealing paragraph (2) and substituting -

“(2) The Counsel to the Legislature shall have the general duty of advising the President and the Clerk on legal questions arising in relation to the business or administration of the Council.”;

(3) in Standing Order No. 39 by repealing paragraph (1) and substituting -

“(1) A Member may at any time give notice of his intention to present a bill; such notice shall be sent to the office of the Clerk and shall be accompanied by a copy of the bill and memorandum required by Standing Order No. 38 (Form of Bills), and in the case of a Member other than an ex officio Member, also by a certificate signed by the Law Draftsman pursuant to paragraph (1A).

(1A) In the case of a bill to be presented by a Member other than an ex officio Member, the Law Draftsman, if satisfied that the bill conforms to the requirements of Standing Order No. 38 (Form of Bills) and the general form of Hong Kong legislation, shall issue a certificate to that effect.”.

MRS ELSIE TU: Mr President, I move the first motion standing in my name on the Order Paper.

The resolution seeks to reflect Members' decisions regarding the respective roles of the Secretary General and the Legal Adviser of the Legislative Council Secretariat.

If the amendments are passed today, the Secretary General of the Legislative Council Secretariat will formally be the Clerk to the Legislative Council and principal Table Officer. Apart from performing those duties already stipulated in the Standing Orders, he is also responsible for advising you, Mr President, and Members of this Council on all procedural matters.

The Legal Adviser replaces the Law Draftsman as Counsel to the Legislature. He will advise the President and the Clerk to the Legislative Council on legal questions relating to the business and administration of the Council.

In respect of the issue of certificates regarding the form of bills presented by non-government Members of this Council, the House Committee is of the view that the Law Draftsman should continue to perform this function. If necessary, the arrangement may be reviewed at a suitable stage.

Mr President, I beg to move.

Question on the motion proposed.

ATTORNEY GENERAL: Mr President, if this Council does vote for my dismissal as Counsel to the legislature, I will have to bear that with as much fortitude and good grace as I can, but I wonder if the possibility of a very heavy severance payment has been considered by the Council.

Question on the motion put and agreed to.

HONG KONG ROYAL INSTRUCTIONS 1917 TO 1993

MRS ELSIE TU moved the following motion:

“That with effect from 1 October 1994 the Standing Orders of the Legislative Council of Hong Kong be amended -

(1) in Standing Order No. 60 -

(a) in paragraph (1), by repealing everything after “shall be” where it secondly appears and substituting “all the Members other than the President and the Attorney General.”;

(b) by repealing paragraph (2) and substituting -

“(2) The chairman and deputy chairman of the committee shall be elected by and from amongst its members, other than the ex officio Members, and shall hold office until the first sitting of the committee in the session next following that for which they were elected. In the event of the temporary absence of the chairman and deputy chairman, the committee may elect a chairman, other than an ex officio Member, to act during such absence.”;

(c) in paragraph (4), by adding at the end -

“Neither the chairman nor any other member presiding shall vote, unless the votes of the other members are equally divided, in which case he shall have a casting vote.”.

MRS ELSIE TU: Mr President, I move the second motion standing in my name on the Order Paper.

This is the third consecutive year that I move a motion to amend the Standing Order relating to the committee system of the Legislative Council. The first two were on the Bills Committee and the panel system respectively. The amendment this time is on the Finance Committee.

The Finance Committee is currently chaired by the Chief Secretary, and, in her absence, the Financial Secretary. Following a review of the committee system of the Council, the House Committee decided that, *inter alia*, the Finance Committee should be chaired by a non-government member; the changeover of chairmanship should take place on 1 October 1994; and the procedures governing the conduct of the meetings and the election of Chairman and Deputy Chairman of the Finance Committee should be determined.

To implement the above decisions, it will be necessary to introduce amendments to the Standing Orders. This is what I am now doing.

Mr President, I move the motion.

Question on the motion proposed, put and agreed to.

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

LAND SUPPLY AND PROPERTY PRICES

MR MICHAEL HO moved the following motion:

“That this Council urges the Government:

- (a) to take fully into consideration the views expressed by this Council and the public on the Report of the Task Force on Land Supply and Property Prices, and implement the relevant measures as soon as possible; and
- (b) in view of the inadequacy of the proposals in the Report, to positively consider providing more land for public and private residential development than that proposed, so as to further increase the housing supply, and consider assisting the public, through effective means, to purchase old flats.”

MR MICHAEL HO (in Cantonese): Mr President, I move the motion standing in my name on the Order Paper.

The reason for my motion to urge the Government to take further measures to curb property prices is that the measures being adopted currently are so feeble that they can only keep the spiralling property prices in check for a while but fail to provide for the stable and healthy development of the property market in the long run and relieve the hard-pressed sandwich class from high rents.

The measures being taken by the Government to curb property prices have produced little effect because of their failure to take an effective approach to cope with the problem properly in the long, medium and short term. As far as short-term measures are concerned, taxation is the only means which can have an immediate effect on the property market, but the Government is

opposed to the introduction of any punitive taxes and chooses not to play its “trump card” in the fight against speculation in the property market.

As for medium-term measures, up to 2001, the supply of public and private housing will be increased only by about 1% annually. How can this have a significant impact on the market? What is more, there has been a shortfall of 15 000 private domestic flats over the past two years. Judging by the experience over the past 10 years, property prices have been rising steadily even with a sharp increase in the supply of flats. Of what avail is such a marginal increase in the supply of flats as proposed in the Report?

From a long-term point of view, the measures taken by the Government are directionless. The Government has taken isolated, piecemeal and short-sighted measures rather than a comprehensive approach in trying to cool down the overheated property market. One of the underlying factors for the runaway property prices is the Government's Long Term Housing Strategy (LTHS) which gives priority to private housing while suppressing the demand for public housing and restricting the supply of public housing, thus forcing the lower and middle-income groups to look for accommodation in the private market. As long as this underlying factor remains, it will most likely trigger off another significant upward movement of property prices in the future.

Now the Government is simply making up some measures to “shield” itself from public criticism. The problem of high property prices will still drag on remaining unsolved.

The report by the Planning, Environment and Lands Branch lists five factors for the spiralling property prices in recent years, but none of them has been attributed to the Government, as if the Government's policy had nothing to do with the spiralling property prices. It is true that there are many factors affecting the property prices over which we have no control, but at least we must review the Government's policy to identify its shortcomings with a view to formulating future policy.

One of the main factors contributing to the rapid increases in property prices has been the fact that the supply of public housing has been far from being able to meet the demand, forcing people from both the lower and middle-income groups to buy properties in the private sector. Moreover, prices of flats under the Home Ownership Scheme (HOS) are pegged to those in the market, which has failed to suppress the property market but further fueled the heated property market.

The shortage of public housing has been due to the Government's existing LTHS which gives priority to private housing and thus relying on the private sector for the supply of housing to an excessive extent. The Government has long been tightening up on the eligibility for public housing and HOS. For example, income limits have been set at an unreasonably low level so that many people are ineligible for public housing. In this way, the number of applicants

on the waiting list was reduced and the demand for public housing was suppressed, offering an excuse for cutting down the supply of public housing. The LTHS 1987 had even predicted that the supply of public rental housing would be able to meet the demand by 1997, thus clearing up the long queue on the waiting list by then. These wrong projections have resulted in to the serious shortage of public housing over the past few years, forcing many people to rent or buy flats in the private sector.

The Report claimed that of the 250 000 households with rented accommodation, only 60 000 “have to rely entirely on their own means or employers’ assistance”. This is highly misleading, for it gives the public the impression that among the 250 000 households with rented accommodation, only 60 000 have to dig deep into their own pockets to meet their housing needs while the remaining 190 000 households are receiving various degrees of assistance such as public rental housing, HOS and the Sandwich Class Housing Scheme (SCHS) from the Government. The naked truth is that these households are just eligible to apply for assistance. Absolutely, only a small percentage of them can actually move into a public housing estate or buy a flat.

What is more ridiculous is that prices of flats under the HOS have been rising at a rate higher than that for private housing. Therefore, instead of functioning as a cushion against the heated private market, the HOS has indeed added fuel to the flames. Since 1982, property prices as a whole have risen by 4.6 times whereas prices of flats under the HOS have risen by 5.4 times, which are now two to three times or even four to five times their construction costs. These facts demonstrate that what the Government has been doing is to rob and plunder the public by fueling the property market, rather than adopting a positive non-interventionist policy.

As the current property prices are far too high for the ordinary people to afford, the UDHK are of the view that piecemeal and cosmetic measures are not enough to keep the soaring property prices in check. We must strike at the root of it with the following measures.

- (1) In the long run, the LTHS must be changed. Priority should be shifted from private housing, which receives more preference at present, to public housing and the HOS so that the demand for public housing will no longer be suppressed. As for the question of how much more land and how many flats are needed, the Government should base its decision on actual needs. The supply of flats should be increased according to a public housing-led strategy. In addition, prices for flats of the HOS and SCHS should be pegged to their construction costs and set reasonably to reflect the relative values of different districts.
- (2) Regarding medium-term measures, the Sino-British Land Commission should act as soon as possible to grant the amount of land for residential purposes for the next few years at one go and

increase the amount of land for public housing in urban areas as far as possible, including that in the West Kowloon Reclamation and the present Kai Tak Airport site. As for the suggested additional 10 000 flats to be built after 1997 under the SCHS, this number must be increased significantly.

- (3) As far as short-term measures are concerned, despite the Government's opposition to the introduction of a capital gains tax, the UDHK remains of the view that capital gains tax is an effective tool to discourage people from engaging in property speculation. This weapon cannot and should not be given up. Although the Government has made it clear during previous debates that it would not consider the introduction of a capital gains tax, we hope the Government will actually and seriously reconsider its position. At least it should not have told the speculators openly that it would not give a thought to such an idea. By so doing, it has encouraged speculators to keep on speculating with properties. We believe that, for the time being, the simplest and most effective way to dampen speculative activities in the property market is to amend the Stamp Duty Ordinance, making it unprofitable for frequent property transactions or having to bear higher costs in speculative activities. As regards the suggestion to set up a fund to help people buy older properties, the Honourable LEE Wing-tat will speak on this.

Finally, I want to emphasize that as long as the underlying factors for the spiralling property prices remain, the slight abatement in property prices will be no more than a transient adjustment. I call on the Government to consider the second-stage measures to further bring down property prices, including the imposition of a punitive tax on vacant properties. I hope that the Government will submit a preliminary feasibility study to this Council in three months', time during which it should act firmly to curb property prices and listen to the views expressed by Members of this Council and the general public. I hope that the Government will not tell us in its response later on that our suggestions need not be considered.

Mr President, with these remarks, I move this motion.

Question on the motion proposed.

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

HONOURABLE EDWARD HO (in Cantonese): Madam Deputy, it has been barely a month (with still two days to go) since the Government announced the measures to curb the soaring property prices, yet there are signs in the property market to show that property prices have already dropped by 10% to 15%. Meanwhile, real estate developers are seeking to sell their flats at cut-down

prices. This is certainly an encouraging scene. Nevertheless, does it mean that the initial measures just adopted by the Government are effective? It is still too early to draw any conclusion.

In our views, the range of measures taken by the Government is moderate in nature and worth implementing in that they prevent property prices from rising and falling sharply, which might affect the property market and the economy of Hong Kong. We must not forget that the expenditure of the private sector on property development constitutes almost 40% of the total investment expenditure in Hong Kong. It is also clearly stated in the Report of the Task Force on Land Supply and Property Prices that “the economic significance of the property sector to Hong Kong calls for a prudent and incremental approach to moderating property prices so as to avoid any damage to the economy”.

Besides, the moderate measures proposed by the Government have to be implemented for some time before it can be seen whether they are effective or not. Therefore, following the announcement of the measures, the Liberal Party already made a statement to ask the Government for a report to be submitted within six months in order to review the effectiveness of these measures. It is hoped that the Government would take our advice.

On the other hand, when I moved the motion debate on “land/housing supply” in this Council on the 18th of this month, I had reiterated that increasing land supply is the most essential means of curbing property prices. I am glad that the same view is expressed in the report and a number of proposals are put forward to increase land/housing supply.

On the issue of housing supply, it is stated in the report that from now to 2001, there will be 45 000 additional residential flats, comprising 20 000 public housing units, 15 000 private flats and 10 000 Sandwich Class Housing units. Is the provision of such additional flats enough to meet the keen demand on housing? As for public housing, the Housing Authority, in response to the Government’s promulgation of the measures concerned, pointed out that according to the latest estimates, the number of additional flats needed to be produced with the aid of the Government from now to 2002 was 37 000, 17 000 units in excess of the 20 000 flats as announced by the Government. The figures on additional flats put forward by the Government are therefore insufficient to meet future demands on public housing.

Judging from the above figures, increasing the number of flats by 45 000 in the coming 6 years is actually insufficient to meet future demand. Although it is mentioned in the report that the number of additional flats may be further increased to 60 000 if necessary, the excess of 15 000 flats over the original proposal is barely enough to make up the difference of 17 000 flats in the demand for public housing. I hope the Government would actively consider building more residential units on land along the Airport Railway and on military land so as to alleviate the keen demand.

Furthermore, we must not neglect the fact that older properties also provide an important source of housing supply and are in demand to a certain extent. However, mortgage loans offered by banks are of very low percentage for older properties and loans are not even granted for older properties of more than 20 years' standing. This presents a stumbling block to potential buyers who scramble for new flats at higher prices. I hope banks can brush aside their discrimination against older properties and consider increasing the mortgage loan for older properties to a higher percentage of property prices under an acceptable level of risk. Moreover, preferential treatment should be given to genuine users and first time homebuyers.

The United Democrats of Hong Kong has suggested a joint injection of capital by the Government and the banking sector to set up a "Loan Fund for the Purchase of Older Properties". Since Honourable LEE Wing-tat has not yet delivered his speech, I have no idea of the details of the proposal. Nevertheless, according to press reports, it seems that his intention of setting up this fund is to assist families purchasing private properties of over 20 years' standing to secure mortgage loans at the prevailing lending rate. If such a concept is meant to be materialized with public funds and loans are offered to these buyers at a low interest rate, then firstly, we feel tht this is just another subsidy scheme; and secondary, the Liberal Party will not agree to such a proposal as it will interfere with the market. We are of the opinion that the granting of this type of loans should be determined solely by the banks concerned.

In a nutshell, the Government's measures to curb soaring property prices are both moderate and balanced. Time is needed for their implementation before we will be able to know whether they are effective or not. I hope the Government would bring into effect the various measures stated in the report as soon as possible so that property prices would stop skyrocketing in such an absurd manner.

With these remarks, I support the motion.

MR TAM YIU-CHUNG (in Cantonese): Madam Deputy, there are some signs that the property market in Hong Kong is going off the boil following the Government's announcement of a package of measures to curb the rise of property prices and to combat property speculation, which was made known to the public last month. But this may just be the reflection of the people's wait-and-see attitude, as well as the initial result of a further mortgage squeeze by major banks. In fact, the housing supply in Hong Kong still falls short of public demand and it is impossible to actually cool the property market down. The Government is duty-bound to tackle the problem of inadequate housing supply in Hong Kong.

The recently published *Report of the Task Force on Land Supply and Property Prices* emphasizes the increased supply of housing units by setting the target of providing a further 7 500 flats per annum, which aims to increase

output by at least 45 000 housing units by 2001, in order to meet the strong demand for housing. However, out of these 40 000-odd housing units, only 10 000, being the Sandwich Class Housing (SCH) flats, have been scheduled for completion before 1997, while the completion dates of the remaining 30 000-odd housing units are not accounted for. If these housing units are not completed on time to increase housing supply, the shortage of residential units will only continue to sustain high property prices. A research conducted by the Democratic Alliance for the Betterment of Hong Kong shows that the public demand for public rental housing will peak before 1997, reaching a demand level of 43 000 flats per annum. This, coupled with the demand for Home Ownership Scheme (HOS) flats, will drive the total demand for public sector housing to over 60 000 units per year. However, what is even more worrying is that, according to information provided by the Planning, Environment and Lands Branch, the number of housing units built by the Housing Authority (HA) will drop to a low of less than 36 000 flats in the next three years. Even with the additional supply of an average of more than 3 000 public sector housing units per year as recommended in the Report, the supply of housing will still lag behind local demand in the next three years. Against this background, how can the property prices be actually brought down?

Therefore, the Government must start with increased supply, if it is to curb the steep increase of property prices, including the increased supply of land to expedite new residential development. The information recently released by the Housing Authority reveals that out of the 49 hectares of land allocated to HA in 1993, 31.4 hectares have not yet been formed and building works thereon will not be possible until around 1998. Assuming that 700 flats can be built on every hectare of land, about 20 000-odd flats will not have been completed within a short time and their completion dates may have to be extended to around the year 2 000. How can this pace of construction ease the demand for residential units? It is all the more disappointing that the Report is silent on the remedial measures designed to tackle the problem of the pace of construction failing to tie in with demand because of the non-availability of formed land. Is the Government evading its responsibility by creating an illusion that sufficient land has been further allocated?

In a word, so long as housing shortage still persists, it is impossible to put an end to the spree of property speculation. Therefore, the proposal to combat property speculation as mentioned in the Report will, at most, increase the risk exposure and the cost of the speculators, and may deter the less well-heeled speculators. But the proposed measures will only have a very limited effect on the financially sound speculators.

Therefore, notwithstanding a minor price correction currently prevailing in the overheated property market, property prices are still subject to upward pressure in a tense situation of supply and demand. It is also worth noting that a number of new airport-related projects are due to commence in the latter half of the year when the airport project will be in full swing. What is worrying is

that construction costs will surely soar, which will then push the property prices up.

Madam Deputy, to ease the problem of housing shortage, one of the feasible options would be to encourage the public to purchase older flats. In view of the banks' reluctance to grant mortgage to those flats of over 10 years, I recommend that the Government consider extending the scope of the Home Purchase Loan Scheme (HPLS) administered by HA since 1987, in order to subsidize the purchase of older flats by middle and lower income families. At present, although this scheme aims at assisting the public in purchasing their own flats, only a few hundred applications are successful each year, because the size of the loan cannot keep up with the spiralling property prices even after raising the loan ceiling to \$300,000 since 1 July this year. With a hefty financial reserve in the public coffers, the Government should consider increasing the quota of application under the scheme, increasing the loan amount and lifting the restrictions on the age of the units for purchase, so that the genuine buyers can purchase those units over 15 years old with the loan provided under the Scheme. In addition, the Scheme also provides for measures to prevent speculation; for example, it is stipulated that the resale of property will have to be approved by HA if the resale takes place during the loan repayment period. This kind of anti-speculative measures should be retained to prevent speculation in older property.

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

MR FREDERICK FUNG (in Cantonese): Madam Deputy, it has been nearly one month since the Government implemented its first-phase measures to dampen property speculation. The measures seem to be effective on the face of it, as some leading property developers have cut the sale prices of their flats. Last Saturday, 80 units were put up for sale for a reduction of 10% of the sale prices, and the subscription rate was four times the number of flats available for sale. It is believed that these figures could be used by the Government as proof that the measures have taken effects.

But we have to appreciate that it might well be wishful thinking that a slight drop of the sale prices means success of the policy. We also have to recognize this fact: have the property prices reached a reasonable level after the reduction? Can the citizens afford flats for over \$5,000 per square foot? I believe that the mere fact that \$5,000 per square foot is sufficient to embarrass, not to appease, the Government.

The success or otherwise of a policy should depend on persevering efforts and long-term supervision. If the Government goes on to spare its efforts in a way not to harm the beneficiaries of a deep-rooted institution, and to make mild policy proposals which serve only to soothe the people's indignation to a small extent, our society would only develop on the basis of an unhealthy economic structure.

In an overview of the Report, the Association for Democracy and People's Livelihood (ADPL), including myself, are of the view that the Government has failed to directly address many problems. The crux of the problem of soaring property prices lies in the favour shown by the Government, when it formulates its policies towards the property consortia which have strong financial bases. Since mid-1980s, with the implementation of a long-term housing strategy, it is obvious that property giants have been playing an important role in the supply of domestic flats. As a result, they, not the ordinary people in the society, are the direct beneficiaries. The recommendations in the Report have indicated that the Government is not bold enough to do much on the consortia. It is believed that this is due to an expansion of the political pressure brought about by these consortia when their economic power grows with time. On the day following the announcement of the mild measures to cool down the property market, they sternly voiced their dissatisfaction that such measures were disadvantageous to them. So it is no easy task to solve the problem of property prices. We are worried that when the Government is balancing the interests of the consortia with that of the public's, the voices and the bargaining power of the consortia would be far greater than the public's.

The ADPL, including myself, consider that, in order to solve the problem of high property prices, the existing private sector-led housing strategy should be abandoned to give way to a public sector-led housing strategy. At the Legislative Council sitting on January 26 this year, a motion debate was held on the *Report on the Mid-Term Review of the Long Term Housing Strategy* and the motion was passed in the sitting urging the Government to adopt a public sector-led housing strategy. It is not known what final decision the Government has made on this issue; or if it is correct that the Government has never taken into consideration of the public's voices — but only the consortia's! The Government thought that the announcement of the Report could be used as an excuse that the problem has been settled. It would be very disappointing if the Government continues to adopt a private sector-led housing policy.

Furthermore, I would also like to urge the Government to try its best to increase the supply of land. The Government's proposals in themselves are good. I only hope that the Government would be cautious as not to let any good-intentioned proposals turn out to be mistakes. The proposed ratio of land allocated to public and private housing on new land in the future is inappropriate. Let me take the present Kai Tak Airport site and the Kowloon Bay reclamation area as examples. The total area for development in the area is 575 hectares, of which only 44 hectares are allocated to public housing, whereas 101.8 hectares are allocated to private housing. The ratio of land allocated to the development of public housing to that of to private housing will be three to seven. From this we can see that the Government is still relying on resources from property developers in the private sector instead of on the Housing Authority or the Housing Society housing supply. Despite the fact that the Housing Authority has sufficient financial and human resources to undertake this task, the Government is not willing to increase the ratio in favour of public

housing for no other reason than the need to look after the interests of businessmen. The Government would not want to let the Housing Authority build low-cost housing estates at locations which have high market value because the Crown Land there could be auctioned, from which a substantial sum of revenue would be generated. The consequences of such high land price policy are seen in today's high property prices, which results in a vicious cycle whereby the Government has to use huge resources to resolve various social problems brought about by the policy. I would like to ask the Government this: Is it worthwhile to invite grievances from the public just for some short-term benefits? Therefore, for the sake of maintaining social stability, I hope that the Government would re-consider the ratio of land allocated to public housing to that allocated to private housing.

Regarding assistance rendered to people for purchasing older flats, I think the banks have imposed very harsh terms on their mortgage lending policies, so that those people who cannot afford to buy new flats and wish to turn to old ones still cannot have their wishes fulfilled. Both the ADPL and I agree that the Government should encourage the banks to review and relax their existing policies on mortgaging older flats provided that the older flats are located on prime sites, in good locations and of good quality, I see no reason why there should be worries that they would be stranded with no buyers. I believe that if the banks are willing to relax their policies, the supply of flats in the market could be increased. In the end property prices could be lowered, a result which, as I believe, must be arrived at by my proposal.

Furthermore, I would like to touch on the proposal regarding the sale of flats to sitting tenants in public housing estates. I think this proposal, if implemented, could play a positive role in curbing the soaring property prices. However, quite unaccountably the proposal was voted down by the Executive Council and has since been shelved. We consider that it is the right time to re-consider this proposal. Both the ADPL and I have always advocated the sale of such flats to sitting tenants at replacement cost. It is believed that low and reasonable prices should be an incentive to induce people to buy homes, as the condition would then be fair for them to buy. And only until this situation is achieved would a society be seen in which everyone leads a settled life.

Finally, I would like to suggest that, in view of the Administration's plan that 45 000 additional flats will be provided under the Sandwich Class Housing Scheme by the year 2001, and that only about 10 000 more such flats will be provided before 1997, it can be seen that the majority of the flats (35 000) will not be completed until after 1997. The imminent problem of shortage of housing supply cannot be resolved in the meantime, and property speculation would remain heated. This is why I am still of the opinion that the imposition of capital gains tax on property transactions is the positive and effective measure to combat property speculation.

With these remarks, I support the motion.

MR LEE WING-TAT (in Cantonese): Madam Deputy, my speech today focuses mainly on a few topics today. First, it concerns the strategy and analysis contained in the report. Though Mr EASON has said at several debates in this Council that long-term housing strategy is not a “private sector-led strategy”, the report published in 1987 does mention this term. On course, the Government may have made changes after the announcement of the strategy in 1987-88. If this is the case, the Government should make a public statement to inform people that the strategy is no longer adopted and a strategy based on actual needs is implemented instead.

Paragraph 4.12 of the report mentions the so-called “assumptions” that the Task Force used in formulating its various new proposals in the report. Every debate on the demand and supply of housing is based on the various assumptions we make on the economic development of society, increase in population, changes in family structure and in the number of family members. As Mr EASON said, the target of such assumptions is ever evolving or changing. I basically agree to this concept. Firstly, I would like to ask Mr EASON to consider disclosing all the details of the study and assumptions mentioned in paragraph 4.11 so that we may debate about them. Why? Because the Housing Department has conducted another study but the outcome of that report is definitely different from this analysis and Mr EASON knows it. The number of flats to be constructed from the present to the year 2 000 as proposed by the Housing Authority is very different from that proposed by the Task Force. The discrepancy lies in their different interpretation and application of the assumptions and I hope Mr EASON will think about my suggestion.

Secondly, I think Mr EASON will agree that virtually every time we review the Long Term Housing Strategy ever since its formulation, we find the “anticipated demand” is always lower than the actual demand, that is, the number of flats provided each year never meets the actual demand. What is the reason? I know there is an arrangement called “safety margin” in the strategy. It may be 5% or 10%. However, it seems that Mr EASON has to consider one thing and that is, the strategy may not be well-formulated and the “safety margin” is too low. Therefore, as far as I can remember, from the announcement of the strategy in 1988 until now, there has not been a single year when the actual supply can meet the actual demand. In the future three or even five to six years, there will be a serious shortage of both public-sector and private-sector flats.

Madam Deputy, I will not repeat what Mr Edward HO and Mr Frederick FUNG said on the significant shortfall of output in the public sector from the demand of the Housing Authority and the Housing Department. I think the output is inadequate.

Moreover, regarding land supply, the Government always says that land cannot be acquired overnight. I agree with this point and I always hope that the Government will have a well-planned and up-to-date land disposal programme. We know that at present, the Government has a 10-year land development plan.

However, it is apparent that in the past two to three years, there are a lot of problems in the identification of land use, planning of land development and even land sales every year. Therefore, I suggest the Government should consider improving the situation in the present review so that land can be granted according to schedule.

Madam Deputy, besides speaking on buildings and land, we will express our opinion on assisting people to buy older flats in today's motion debate. According to the findings of a small-scale survey conducted by the United Democrats of Hong Kong, the number of private residential flats completed in each of the past four years is under 30 000 in average. However, there are 110 000 old flats which are built 15 to 20 years ago, 100 000 built 20 to 25 years ago and 90 000 built 25 to 30 years ago. Therefore, there are nearly 300 000 older flats (built 15 to 30 years ago), which is 30 times of the annual production. On the other hand, information from the Land Registry shows that in the past year, the number of mortgage granted to the transaction of 10 to 15-year older flats is 120 000 and a total of 110 000 to 15 to 20 year old and 20 to 25-year old flats. It is even fewer for flats which are older. Many banks do not grant mortgage to flats over 30 years at all. We think it will help boost the supply of flats if we can make use of the old property market. It is most important to treat properties as a kind of commodity and increase their circulation.

We have two proposals, the first of which is the same as that proposed by the Liberal Party and that is, banks should not adopt discriminatory mortgage policy in which new flats may be granted 70% mortgage, some even 80%, whereas older flats can get, instead of a low percentage mortgage, no mortgage at all.

Our second proposal is that the Government and the banks can set up a fund together if the banks refuse to consider the first proposal. However, we suggest that the fund should apply the market interest rate instead of a subsidized interest rate so that the Government will not subsidize purchasers of those flats. In this way, people can get a mortgage and the Government and the banks can make money.

Madam Deputy, finally, I would like to express my appreciation on two points in this report. Firstly, paragraph 4.9 mentions that the property market of Hong Kong is not a completely free market to which I totally agree. Secondly, it is on the subject of vacant flats. Paragraph 7.4C of the report admits that there is hoarding of flats in Hong Kong. It seems that this is very different from Mr EASON's ongoing criticism on UDHK making irresponsible remarks in this aspect. I am very happy that Mr EASON admits this mistake.

DR TANG SIU-TONG (in Cantonese): Madam Deputy, we already have had four debates within this Legislative Council session on the chain problem of land supply, housing policy and the curbing of property prices. And today we are

having it the fifth time. The intention of Members of this Council is actually quite clear, which is that we strongly demand of the Government to increase the number of public sector housing units and to bring down to a reasonable level the property prices which are too much on the high side.

As to the current housing policy, the Government sketches a beautiful picture of “everyone to own a home”. But the demand for public sector housing units put on the market outruns supply. With developers and various speculators fuelling the flame, private residential property has become a money spinner in that housing units that are supposed to be the basic necessity of the people have now been turned into a kind of rare commodity that makes money. So now the ideal that everyone is to own a home has become a much too remote goal to achieve as far as the majority of the public is concerned. What members of the public feel is not that everyone is going to own a home but that “everyone is going to cry his eyes out!”

The Report of the Task Force on Land Supply and Property Prices published on 8 June by the Government is no doubt a product that has emerged “after a thousand times of asking and urging”. But unfortunately, it still gives the impression of “things being done by halves”. The measures stated in the proposals are rather subdued, and they cannot accomplish in one stroke the full objective of curbing property prices. During the Question Time of this Council on 10 June the Governor claimed, on one hand, that the measures taken by the Government were mild, and if these measures did not work, the Government would be taking the even harsher measure of introducing punitive taxes; but on the other hand, he stressed that the Government would not interfere with market prices. His words are contradictory, which shows that the Government is dillydallying on this issue.

In the first quarter this year, increase in the prices of private property varied from 35% to 50%. When the Government indicated that measures to curb property prices would be implemented, the prices went through an immediate downward adjustment of 10% to 15%. After the report was published, there was a further drop of 5% to 6%. Looking at the actual trend of adjustment, the recent drop in property prices is merely the result of the selling prices having exceeded the affordability of property buyers and of the mortgage squeeze by the banks. Judging from the magnitude of the adjustment, it is merely a normal phenomenon of “large upward adjustment with a minor price correction”. If the Government thinks the measures are effective because of this and is complacent enough to rest upon its oars, property prices are bound to make another unreasonable rebound.

In the report, the Government has cited quite a few statistics on the long-term housing strategy, for example, that the Housing Authority will provide 40 000 public sector housing units each year in the next five years; also it says that in the next six years, at least 45 000 extra housing units will be built. No doubt, the data provided by the Government are rather impressive. But as to the timing of completion of these units, the details of ratios relating to the

number of public housing units, Home Ownership Scheme units and private property units, there is no elaboration whatever, which makes it impossible for members of the public to accurately estimate the real situation. According to the information provided by the Planning Department, the Government will supply nearly 200 hectare of land for residential development in the next five years, and 112.09 hectare will be allotted out of it for private residential development, which is 30% more than that for public sector residential development. In inferring the supply of housing units from the land supply, we can conclude that the Government is still minded to have a private sector-led housing supply in the future. I think people who are on the waiting list for public housing flats are not happy with this. What calls for attention is that disposal of most of the land to be supplied will be concentrated in the period between 1996 and 1999 and therefore completion of flats must be after 1997. So how can this slow remedy cater to our immediate need?

It has been suggested that the Government should provide effective means such as relaxing the restrictions on mortgage of older property and the setting up of a mortgage fund for older property in order to help members of the public to buy older flats.

I think this suggestion deserves a closer study, but the actual effects might be contrary to what we expect. Older flats are less expensive than newly constructed units and are more suitable for ownership by people who are less affluent. However, banks are not very much interested in granting mortgage to older flats, and most of the banks are reluctant to grant it. Even if we have a bank willing to grant mortgage, the loan will only be 30% to 40% of the assessed value of the flat and the payment period will be rather short. Should the Government use executive directives to direct banks to relax the mortgage restrictions on older property, it would certainly be accused of “interfering with the business operation of the private sector”. Besides, this would boost market demand for older property, and it would be very likely that speculators would turn their attention to older property for speculative profiteering. The rise in the prices of new flats will boost prices of older flats and vice versa. Also, if a market fund was to be set up by the Government, the fund would of course be welcomed by those who would benefit from it. But if the fund was not a large sum, few people would benefit from it; if the fund was too large, it would become a burden for the Government to bear. I agree that we should help members of the public to enhance their ability to become home owners so as to improve their living standard, but it will have to be accomplished in a fair way. Therefore, I support the idea that the Government should undertake a study in this respect. But full consideration must be given to it having regard to the principle of equity, and to the need for extensive consultation with all sectors. We must not just act on impulse.

Madam Deputy, “when can we have roomy houses that are thousands in number, so that the needy humble members of the public can all rejoice?” Clothing, food, accommodation and transport are the basic necessities of the people. In Hong Kong today, the demand for accommodation is especially

acute. Although the motion today is harping on the same old and well-worn string and will have no binding force no matter whether it is carried or out, yet it is crystal clear that members of the public are longing to own their own homes. “When the walls have crumbled and trees have wilted, the young face has grown old. But when can he at last find a proper shelter to breed the orchid?” Members of the public have long been waiting with eager expectancy. What they are asking for is not just to be able to carry on as they are, but when they will have their own flats.

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

MR WONG WAI-YIN (in Cantonese): Madam Deputy, on the question of housing, the ultimate responsibility of the Government is to provide members of the public with a place to live in. Therefore, the objective of any policy pertaining to housing should be to enable members of the public to own their homes. The past five years saw the prices of private property rocketing to a level beyond the reach of the general public. This is a fact that the Government has recognized.

The upsurge in property prices may have been caused by economic and political factors, such as the linked exchange rate or the agreement reached by the Sino-British Land Commission, based on which land disposal is limited to 50 hectares a year and so on. Be that as it may, in the final analysis, the underlying problem which explains the Government’s inability to deal with the soaring property prices stems from its long-term housing strategy formulated in 1987, which laid emphasis on private sector housing as the mainstay of housing supply. Consequently, the supply of public sector housing is limited and property prices in the private sector soar.

In March this year, under pressure from many sectors including Members and the general public, the Government proposed to curb the spiralling property prices and vowed to put property prices on a downward trend. After a study conducted by a government working group, the Government released recently the first-phase measures in a bid to curb property prices. But from what has been announced, the measures give the impression of “much is said but little is done”. The public as well as we Members are completely baffled.

As regards developers and speculators, they cannot be more delighted as they can carry on with the speculative activities in property. Developers can also continue to reap handsome profits from the high property prices. Madam Deputy, I wonder if you have ever heard of the way members of the public nowadays describe the Government (particularly on this issue). Some people said to me, “The Government, the Government, you are a toothless tiger for certain.” The measures fail completely to have any impact on the fundamental problem.

According to the Government, as a result of the announcement of these measures, the prices of new flats have already gone down straightaway, trading has quietened down and these measures have produced the desired effect. We have a great many reservation on such remarks or assessment. In fact property prices in Hong Kong early this year (around Lunar New Year) rocketed by as much as 20% to 40% when compared to those of the preceding year. Meanwhile, the property market was drained of upwards of 50% of liquidity subsequent to several large-scale residential developments having been put on the market. Therefore, it is only natural that there were signs of prices moderating thereafter. Besides, in view of the Government's high profile on the matter, it is believed that the leading developers have to act in a way as if they are in full co-operation with the Government. In fact, even property tycoon, Mr LI Ka-shing, remarked that the measures were acceptable after their announcement. One can, therefore, imagine how gentle and feeble these measures are.

Developers at present are still co-operating with the Government by lowering the prices of some new flats. But some major developers have stated explicitly earlier in their joint action to bid for land that they would not tolerate any undue intervention from the Government. Neither do they wish to see substantial setbacks to property prices. It is said that some of the developers have to lower the prices so as to attract buyers. In fact, it is only a move intended to sell the few as yet unsold flats quickly, which is a reflection of the normal business practice after an upsurge in property prices. It has nothing to do with property prices *per se*. Can these measures really be of any effective assistance to home buyers in acquiring their own flats? The objective of the measures of limiting the re-sale of pre-sale flats or reducing the ratio of internal subscription is, obviously, to combat speculation. But like the previous anti-speculation measures, these measures will affect the genuine home buyers at the same time. There is no denying that such measures can produce the desired effect for some time but the effect cannot last long.

Therefore, in order to really clamp down on property prices, Meeting Point is of the view that the Government should perform its function as the largest supplier of land by holding back property prices through the supply of land and price fixing so as to stabilize the prices, thereby to solve the housing problem that members of the public are facing. On the supply side, the Government should enter the housing market as a supplier. Its housing policy should be revised to emphasize public sector housing (which includes HOS and public rental housing) instead of private sector housing. Public sector housing, both for rental and for sale, should be provided in line with the public demand so that those are genuinely in need of a place to live in can move into the appropriate public sector housing units having regard to their respective affordability. This is the only solution which can really address the problem in the long run. In fact, we ought to put in more effort on the psychological front. To achieve this end, more land should be provided and the Government should even put on the market in one go the 10 000 flats under the sandwich class housing scheme for short-term and long-term forward sales. In the meantime,

the proposal to continue with the provision of 30 000 units for the sandwich class in three years can well exert psychological pressure on the private market. This is what we consider to be a long-term measure to curb property prices.

Madam Deputy, due to the time constraint, I cannot go on any longer. With these remarks, I support the motion.

MR RONALD ARCULLI: Madam Deputy, under the leadership of the Secretary for Planning, Environment and Lands, the task force had a daunting job to do within a relatively short period of time in what was made a highly politicized issue. Despite this, some good might come out of the task force report, if it is given time to run its course.

However, hardly before the ink on the task force report is dry, and here we are in this Council this evening shouting that the proposals are inadequate. Members must realize, Madam Deputy, that there is not any instant fix to this problem. Indeed the task force asserts that it is taking a cautious and incremental approach. It is right that any intervention in a sector that accounts for nearly 40% of our GDP should be cautious. That apart, may I remind Members of the interests of those 850 000 domestic unit owners, largely occupiers and small landlords.

The task force has looked at really two issues — short-term solutions and long-term solutions. As regards the short-term measures, essentially they deal with the question of speculation of domestic units developed under the Consent Scheme. Two proposals were made, firstly, that forward sales be made only about nine months before the scheduled completion date and that no resale be allowed before the certificate of compliance or consent to assign is issued. Secondly, the initial deposit is increased to 10% from 5% and 5% is forfeitable in case the purchaser fails to sign the sale and purchase agreement.

As regards the new restrictions on forward sales and resale, Madam Deputy, all I can say is, rather than increasing the supply or the circulation of flats, it will remove these flats from the market. It is interesting to note that as regards Home Ownership Scheme, Private Sector Participation Scheme and sandwich class housing flats, the task force is recommending relaxing restrictions on resale, and indeed, forward sales, as this would free up more units for circulation in the market, and would also assure, on the other hand, families of a permanent home. Additionally, the latter restriction may give rise to hardship in terms of a purchaser finding it difficult to meet the financial payments and the necessity of a resale arises.

As regards initial deposit, Members may wish to note that it was 10% until the private sector was virtually coerced into reducing it to 5%, despite protests and warnings that it would encourage speculation.

Madam Deputy, artificial intervention by the Government to suppress demand, and I emphasize to suppress demand, will make some effect in the short term but the problem facing us will not go away. The answer really lies in adequate supply of land as well as efficient planning and development process.

I shall like now to direct some of my remarks to the question of supply. I think one of the problems is that in terms of the household formations between 1994 and the year 2000, it is now estimated that there is an underestimation of about 4 000 to 6 000 family household formations per annum, which will now be estimated at 36 000 to 39 000 units. Amongst private domestic units, some 70% are owner occupied with the remaining 30% representing some 250 000 households. Other Members have, in fact, given details of this, so I will not repeat it. Thirdly, we have 1.71 million households but we do have 1.8 million units. That is a rather curious feature in the sense that we have more units than we have households. On the face of it, there should really be no shortage of housing, as indeed there is not.

The declared government objective is to achieve an overall home ownership of 60% by 1997. How is this going to be done? Well, the task force has highlighted several points. Firstly, increasing somewhere between 7 500 to 10 000 units per annum. Secondly, we also have possibility of 24 000 units for completion between 1997 and the year 2001 in respect of airport/railway developments. Thirdly, additional units might come from military sites that will now revert to the Government. Fourthly, promoting home ownership amongst public housing tenants will again ease the demand. Fifthly, reviewing the development density of the West Kowloon reclamation will certainly help and lastly, possible government assistance in land assembly on redevelopment of urban sites, subject to fairly stringent conditions might again be a possibility.

Can it therefore be seriously suggested that these proposals to get domestic units into the private and public sectors are inadequate? I think if one examines them, one would dispute that assertion.

Madam Deputy, I look forward to an update on the streamlining and the development processes. The Real Estate Developers Association has long been pressing the issue for some time and welcome the proposals put forward by the task force.

In conclusion, the Real Estate Developers' Association supports any valid and reasonable measures that are aimed at curbing excessive speculation. The Association, however, does not agree with all the short-term measures, but are prepared to co-operate on the basis of curbing excessive speculation in the short term. And I repeat, in the short term.

Madam Deputy, with these remarks, I shall abstain from voting.

THE PRESIDENT resumed the Chair.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, I would like to thank Members for their views this evening. Amongst them, of course, there are views which we have heard before, and which we have in many cases taken fully into account in the work of the task force. The Report of the Task Force on Land Supply and Property Prices attracted a great deal of attention and a wide range of views. Despite some disagreement over the details, and I must say contrary to the views presented by Mr Michael HO and some other Members this evening, however, I am pleased to say that there is general support for the comprehensive, as opposed to the suggestion that it was “piecemeal”, approach of the task force towards dampening speculation in the short term, starting with pre-sale of flats; increasing supply in the longer term; and improving the planning and development processes so as to ensure a better matching of supply with demand in future.

As I say, Mr HO and other Members have chosen to go over a lot of the ground covered by the task force again. I do not propose to go over the parts of the report that they have ignored or my statement made in the Legislative Council on the report on 8 June, or my speech here on land supply on 18 May. I also do not intend to go over the question of tax ground again. I think the Government’s position is well known on this subject. It does not require restating.

Price movements

As regards price movements, since the package of measures was announced on 8 June, prices in the primary market are reported to have fallen by between 5% and 20%. There are signs that asking prices in the secondary market have also come down. However, it is too early to say whether prices are actually on a downward trend. Slow turnover in the market shows that potential home buyers expect further price reductions. This is not unreasonable given the rapid increases over the last two years. I hope that if the trend does develop, Members would not continue to attribute this to a conspiracy.

The Administration will be watching for any resurgence of excessive speculation or unscrupulous practices in the property market. As things now stand, the outlook for increasing supply is good, reinforced by the recently announced availability of sites to be released by the military. The prospects for speculators are dim. While the property market may appear to be slightly lacklustre at the moment, developers, home buyers and the community as a whole should welcome the disappearance of the speculative bubble and the emergence of a more healthy market, serving largely end-users.

Free market philosophy

Some people criticized the task force for interfering in the free market and threatening the basic commercial principles which underlie Hong Kong’s economic success. Such criticism reflects a superficial understanding of the true basis of the free market and a misunderstanding of the approach of the task

force. A free market must be underpinned by open and fair competition; and freedom is not the same as disorder. Acknowledging the efficiency of market forces, the task force has chosen to address the imbalance between supply and demand rather than proposing direct controls on property prices, as some people have suggested.

The task force has also put home buyers, speculators and investors on the same level playing field by reducing the advantage to some buyers which private sales offer. While continuing to allow a small quota for private sales, we have also sought to ensure that the provision is not exploited by those whose aim is to speculate, to circumvent the re-sale restriction on uncompleted flats, or to seek tax benefits through the use of landholding companies.

The prohibition against re-sale of flats before assignment has been criticized by some as interfering with the freedom to dispose of one's own property. This may be true to some extent but, prior to assignment, the buyer does not have full title to the property. Where the exercise of individual freedom causes the market to behave irrationally, as we witnessed in the first quarter of this year, intervention is justified, particularly when the community becomes alarmed at events. What the task force proposed was the minimum necessary to ensure fair competition and to safeguard the interests of home buyers. We do not, at present, see the need for more severe measures; but I wish to re-emphasize the Administration's determination to keep the market under close scrutiny and to bring in more measures if the situation requires.

Housing supply

Some people have criticized the production target of 45 000 to 60 000 additional flats as inadequate. Mr President, what is adequate? Are we to aim to satisfy 100% of potential demand, including the demand for investment in properties as opposed to the demand for housing, or take a realistic view of the level of effective demand? We should not lose sight of the fact that the total housing stock already exceeds the number of households and we are currently producing over 70 000 flats a year, of which the majority are assisted housing. We must also avoid the mistake of over-correction based on a snap-shot view of a continuum of events in the market cycle.

Mr President, the task force has taken a pragmatic view of what is reasonable and achievable after careful analysis of housing demand, taking into account both the accommodation needs of newly formed households and the aspirations of an increasingly more affluent population. I repeat, we are concerned with what is achievable, rather than as suggested by Mr TAM and Mr Frederick FUNG looking for a magic solution of instant production, which does not exist. Assessment of housing demand is not an one-off exercise. The task force has proposed a comprehensive review of the scale and composition of housing demand in both the public and private sectors, to guide us in the allocation of land for different types of housing. Work has already begun on this. If the study shows a need for a higher output of flats, we will respond by

supplying more land. This explains the recommendation for building up a land reserve to enable us to respond flexibly to changes in housing demand as and when they occur. I hope that Mr LEE Wing-tat will note this. There is no question of the Government relying on private production, as suggested by Mr Frederick FUNG, Mr LEE Wing-tat and others. There is no question of there being a private sector-led housing policy. Both the private and the public sectors have their equally important parts to play. Sooner or later, I may be able to lay that myth to rest, but I suspect not for the time being.

Older properties

Various groups and individuals have suggested ways of assisting people in buying older properties which are more affordable, for example, by requiring banks to relax their lending policies, setting up a housing loan scheme with public funds, or pooling resources through a credit union type operation. These arguments are, however, based on assumptions which do not stand up well to scrutiny.

First, people assume that there are few transactions in older properties. An analysis of the sales record between July 1993 and March 1994, however, shows that about one-third of the transactions in residential properties involved flats which are over 15 years old. This represents a healthy turnover of 4% to 6% of the total number of such properties, which make up just under 50% of the total housing stock.

Second, some people assume that relaxing the lending policy would release a large demand for older properties. It is true that the downpayment is an important consideration in home purchase, but we must not forget that other factors shape buyers' preferences. For example, older properties generally involve higher costs for renovation and regular maintenance, are less attractive in design, provide fewer facilities compared with modern estate-type development, and are deteriorating in quality, thus reducing their potential capital appreciation. Older properties are therefore naturally less popular than new properties. To zero in on the banks' lending policies alone, therefore, over-simplifies the situation.

Third, there are no hard and fast rules on mortgage lending. The policy varies from bank to bank and the lending ratio varies from case to case, even for properties of a similar age. Other important considerations include the condition of the flat, the repayment ability of the borrower, his or her credit history, the bank's overall exposure to the property sector, perceived risk and so on. The Secretary for Financial Services, in reply to a question in this Council, has reaffirmed that it is not the policy of the Government to interfere with commercial decisions on the part of the banks. It goes against the principles of prudential supervision to require banks to assume higher risks than they would otherwise take. These are risks, of course, with depositors' money. It is equally important that buyers should be prudent in assessing their

affordability to repay their mortgage loan, especially when interest rates are increasing.

Finally, it is wrong to assume that if more people were able to buy older properties, there would be less demand for new properties, and hence prices of new properties would fall. The fact of the matter is that while making older properties more marketable may widen the choices for home buyers, it achieves little or no increase in the overall supply because the vacancy rate among older properties is low, only about 1%, compared with 56% among new properties completed in 1993. On the contrary, the household size in older properties is usually bigger, often with shared occupancy. The net effect of a low vacancy rate and a high occupancy rate is that helping people to buy older properties is more likely to increase overall demand, thus, until overall supply is increased, raising the prices of older properties without necessarily reducing the prices of new properties. This goes against the basic objective of moderating property prices in the short term. I must invite Members to reconsider this point very carefully.

Increasing housing supply is our top priority. We shall, however, keep the situation under review and consider the possible need to assist those — and perhaps more particularly first-time buyers — buying older properties at some time in the future.

Conclusion

I can assure Members of the Administration's determination to follow up vigorously the recommendations of the task force, to continue to monitor the property market and ensure fair competition and stability, and to keep an open mind on what more might need to be done to further these objectives. We do not accept the premise of the motion that the task force's proposals are inadequate. On the contrary, we are confident that the package of measures is comprehensive, balanced and positive. Nor will we agree to set another time limit on our monitoring period, since it will simply have a negative effect on the situation. Nonetheless, the Official Members are prepared to support this motion, in recognition of its underlying spirit which we share. By this I mean we are not complacent and will continue to work for further improvement.

Thank you, Mr President.

PRESIDENT: Mr Michael HO, you have five minutes out of your original 15 minutes.

MR MICHAEL HO (in Cantonese): Mr President, first of all, I would like to thank colleagues for participating in the discussion and offering their views tonight. I would like to make a very brief response.

Firstly, regarding the setting up of a fund, I hope that I will have the opportunity in the future to further discuss this issue with colleagues from the Liberal Party. During the discussion held just now, several colleagues have mentioned that the 45 000 additional units will not be completed until 2001, that is to say it will take six years, from now to 2001, for the 45 000 units to be built and completed. Just now when the Government was giving a reply, it asked how many units would be sufficient. Very obviously, I think that the addition of 45 000 units in six years will not be sufficient. Looking back at the past few years, we had already an aggregate shortfall. Now that we do have a shortfall, I would not say how many more units would be sufficient. I very much hope that when the Government will follow up on this issue in future, it will do so in earnest and will focus on the demand. If it is found to be really insufficient, can the Government add some more to this figure of 45 000 or 60 000? I hope that the Government can do so.

I do not quite agree with what Mr Ronald ARCULLI said, namely, that if the circulation of flats is reduced, it may result in property prices going beyond control.

The Secretary for Planning, Environment and Lands said that he did not want to repeat the contents of several speeches that he had made. According to my understanding, the contents of the several speeches made by him previously continue to constitute the present stand of the Government, which includes the Government unwillingness to consider measures to dampen property prices, for example, the introduction of a capital gains tax. I am rather disappointed about that. The Administration has told us that there will be continual close monitoring. I very much hope that the Government will do so.

The Government claims that the assessment of demand is not the job of the task force and so the task force's report does not give a clear and detailed account on this. Since the Planning, Environment and Lands Branch should undertake such a duty, I hope the Government can provide a clearer and more reliable assessment in this respect in the future.

Concerning helping citizens to buy flats, the Secretary for Planning, Environment and Lands has just said that one-third of the properties transactions involve flats which are over 15 years older. Right, this is a fact. However, I would also like to point out that the previous transactions involving older flats are mainly concentrated on some large housing development such as Mei Foo, Taikoo Shing and so on. For those older flats which are not located in large housing developments and have poorer management, for example, the tenement buildings in Shun Shui Po and Tai Kok Tsui, it is in fact difficult to buy or sell them or obtain mortgage for them at present. I very much hope that citizens can be given assistance in buying old flats in general rather than just those in the large housing developments. If sale, purchase and mortgage lending are only limited to flats in these large housing developments, and the Secretary for Planning, Environment and Lands has just described that as a healthy situation, I cannot really go along with that.

Finally, I wish to discuss the point made just then by the Secretary for Planning, Environment and Lands that the Government does not want to intervene in the market. There is probably only a thin line between intervention and assistance. We do not want the Government to intervene fully in the market. Nevertheless, our market is in fact not a totally free one. We have public housing, Home Ownership Scheme housing and sandwich class housing. Therefore, the Government is actually participating and interfering in this market to a certain extent. It is therefore only a matter of extent. It is difficult to distinguish between the so-called intervention and assistance.

Mr President, I so submit.

Question on the motion put and agreed to.

ALLOCATION OF CABLE TELEVISION CHANNELS TO GOVERNMENT

MR MAN SAI-CHEONG moved the following motion:

“That, as Wharf Cable will be required under its licensing conditions to provide three television channels to the Government free of charge, this Council urges the Government to formulate relevant policies promptly for providing Radio Television Hong Kong with a channel to develop public television broadcasting, and for making a public access channel available to the public for producing programmes and managing this cable television channel, so as to express their views freely.”

MR MAN SAI-CHEONG (in Cantonese): Mr President, for four reasons, I now beg to move this motion.

Firstly, there has been a drastic change in our broadcasting environment in recent years — an obvious example is the significant roles now played by satellite television and cable television in our mass media. Under this new circumstance, we must look into the impact and significance such a broadcasting environment has brought to the public.

Secondly, since the Broadcasting Authority has conducted a review on public broadcaster in 1985, leading to a scheduling of RTHK programmes to be shown on the two commercial stations during “prime time” in 1989, no review has been “publicly” made on the role of RTHK in the mass media or on its future development. Thus, in moving this motion, I would like to examine the future way of development of public broadcasting.

Thirdly, Hong Kong is a city of thriving communication activities with great diversities of information interchanges. However, our community has not built up “a channel to facilitate the public in transmitting or receiving information”, particularly in the area of the electronic media, making it

impossible for the public to communicate through such a media. This situation is detrimental to our development towards a diversified community and certainly warrants review and improvement!

Finally, as the political development of Hong Kong has become matured, people are more and more aware of social events and the Government prides itself on aiming to set up an “open Government”. Under this circumstance, we are urgently in need of a forum where “public participation” is possible, so that the public, the Government and different bodies can communicate and exchange views on public affairs. In order to achieve this aim, I would like to focus on the electronic media.

Overview of the broadcasting milieu

The developments of our mass media in recent years have been astonishing. Star TV, first introduced to Hong Kong in 1991, now provides us with nine broadcasting channels and their programmes are received by over 300 000 households. Cable Television which began operation in Hong Kong in October 1993, has about 300 000 household subscribers up till now. In addition, there are two commercial television stations with over 1.5 million audiences, our choices of television programmes have undoubtedly increased significantly in terms of “quantity”.

In view of these changes, we are inclined to believe that our mass media have been moving towards the goal of diversification, that we have been provided with more choices, and that the quality of programmes has been improved. However, if we look closely into the situation, we would notice some rather strange phenomena and the limitations of different media. For instance, the two commercial TV stations are still in great enthusiasm to screen “Justice Bao”, once in the afternoon and once in the evening to make sure that no audience would miss the show. The World Cup were broadcast by four channels at the same time, and non-soccer fans can hardly put up with it. According to the report on the Mid-term Review of Television Broadcasting, published by the Government in 1994, programmes on culture and art, documentaries, and information programmes were considered insufficient by the public at large. Yet, a television station claimed that “the BBC’s documentary on MAO Zedong has no market”. These examples illustrate that commercial TV stations very often ignore the diversified programmes in order to appease the largest number of audience.

Although Star TV may provide us with another choice, its target is to serve audience in the whole Asian region, and thus cannot extensively meet the taste and culture of Hong Kong audience. Moreover, as the broadcasting languages are limited to English and Putonghua, not many people can be reached. Cable TV may have a strong potential for development, nevertheless, with an audience size of only 300 000 households, it is far from adequate to compensate and satisfy the demand of over a million audience for diversified and high quality programmes.

As different TV media are inadequate in various degrees and have their own limitations, we should adopt a positive approach and explore the value of public broadcasting.

Significance and development of public broadcasting

The existence of a public broadcaster serves to promote and reflect our culture, as public broadcasting programmes can cater to our needs and tastes. More important still is that, public broadcasting can “balance the commercial interests” by broadcasting high quality programmes that are neglected by commercial broadcasting stations. The success of RTHK over the years has proved to the public that it is capable of attaining this objective. A survey on the appreciation index of TV programmes conducted by the Survey Research Hong Kong Limited was a strong proof. The survey showed that RTHK’s programmes on news, public affairs and information are most welcomed and their annual average appreciation index was higher than that of the two commercial stations. From this survey, we can see that the RTHK’s programmes are welcomed by the public.

However, thanks to the Government, the development of RTHK has come to a standstill in recent years. The Government smothered the corporatization plan of RTHK on the pretext of “inappropriate political environment”, thereby disallowing RTHK to plan for long-term development on the basis of effective utilization of resources. The resources of the station are also constrained. If RTHK continues to struggle within a limited sphere against the present drastic changes in the broadcasting environment, all we shall have is a “non-growing”, stagnant and doomed public television station.

Opportunities provided by three cable channels

In our opinion, the Government should make use of the three TV channels provided by Cable TV to set up an independent channel for RTHK, so that RTHK will have a wide sphere for development. Though the number of Cable TV subscribers is at present relatively small and the channels will only be provided in 1996, we can still foresee a better development potential of the Cable TV in the two years to come. In the long-run, the utilization of one channel will allow RTHK to provide more programmes on current affairs, information, education, local culture and art, thereby providing better TV programme to the public.

However, RTHK has, after all, been well established in the two commercial stations and can provide choices to over a million television viewers, an enormous size of audience. Therefore, RTHK should not give up its development in the wireless television broadcasting, and the Government should not, under the pretext that RTHK has a special channel in Cable TV, cut or freeze the existing resources of RTHK as this will restrict the development of RTHK in the two commercial stations.

Apart from promoting the development of public broadcasting, I would also like to talk about “public access channel”. First of all, we must not mix up “public access channel” with “public broadcasting”. On the production aspect, public access channel ascertains the public’s right to “use” the channel to transmit information and express opinions, to produce their own programmes, and to participate in the management of the channel. As regards Public broadcasting station, although it provides programmes to the public and is accountable to the public, it is, after all a “programme supplier” and the public are never given the chance to be involved in the production of programmes. Moreover, from a financial standpoint, programmes of public broadcasting stations are financed by tax-payers whereas programmes of public access channels are financed and produced by the public. The Government only provides people with the “basic facility” for broadcasting programmes. As for management, public broadcasting stations should be accountable to the public, but the public cannot be involved in the management of the stations. The situation of public access channel is different, for the managing body of the channel is required to be formed by the public. The public will thus be involved in the management of the channel.

We support the operation of public broadcasting as well as the setting up of a public access channel. Public access channel ascertains and promotes our rights to freedom of expression, which is most precious. By giving the public a channel to transmit information and express opinions freely through the electronic media, it serves a great purpose in promoting the freedom of expression and diversification of information.

The local media do not have a lot of coverage and discussions on the setting up of a public access channel, yet there are some misunderstanding which I would like to take this opportunity to clarify.

First of all, I want to point out that our community has already had the concept and the potential to transmit information via the media. At present, quite a number of people and organizations have used home video equipment to produce different types of programmes. These programmes are of great varieties to suit different needs, they can be produced by religious groups, women organizations, environmental protection bodies and film-makers. It can be seen that the public and different bodies have long been aware of the enormous need of a channel to transmit and exchange information. With the growing popularity of video equipment, we should not doubt that the patronage of the public access channel is insufficient!

Secondly, as the programmes of public access channel are broadcasted on a first-come-first-served basis without “pre-censorship” it is worried that the content of certain programmes may be indecent and immoral. However, we can well rest assured because our legal framework has provided the Government with a powerful, or even an overpowerful right to monitor and prosecute after the screening. Legislation against libel and the Crimes Ordinance are, in our eyes, lethal weapons against the people. If the legislation is still inadequate, I

cannot imagine what other means the Government will adopt to deprive the public of their freedom of expression!

Finally, financial expenditure is one of the underpinnings for setting up a public access channel. In order to set up such a “Public Access Channel Centre” we need a sum of “infrastructure fund” so as to provide the public with the minimum technical support. It is generally estimated that a one-off amount of around \$10 million is needed. As regards production costs of channel programmes, experience of other countries show that they can be borne by the public. However, if it is the Government’s intention for the public to participate in the production of certain types of programmes, subsidies can be given in the form of funds. We can draw on the experience of the Civic Education Committee which is now playing a similar role.

To conclude, under this new broadcasting environment, the Government is responsible to make a long-term and constructive planning for the future development of RTHK. It is necessary for RTHK to expand its sphere of existence. As regards the public access channel, the planning of a broadcasting milieu which enables us to exchange information and express our ideas freely. It is also an important step in moving towards a diversified and democratic society. We have a rather tight schedule because it takes about a year for RTHK to plan for a new channel. As for the public access channel, the setting up of a management body and a Centre will take more than one year. Therefore, we hope the Government will formulate a policy at this stage, so that when channels are to be provided by Cable TV, the “public access channel” and “public broadcasting” can come into operation in 1996.

With these remarks, I beg to move.

Question on the motion proposed.

MR HOWARD YOUNG (in Cantonese): Mr President, Hong Kong is an economically well-developed and a pluralized society. According to a recent government slogan “make yourself heard” that calls on voter registration, the people of Hong Kong also have their “voice”. However, this pluralized society is in fact made up of many social strata. We cannot say that we have heard and echoed the voice of the general public by meeting the interests of the majority. As we can see, the programme of “Justice Bao” was broadcast simultaneously on the channels of the two television stations recently. Just now one Honourable Member said that during the recent World Cup Final, the four television channels transmitted the same kind of programmes. Commercially speaking, it is understandable for television stations to do so as to increase the audience. This in fact fails to meet various needs of our pluralized society. Because of this, we cannot enjoy the greatest freedom and democracy. This is sheer autocratic because there is only one voice.

We should take into account the expectations of those who are in the minority groups and strata in the society of Hong Kong. We should give these people opportunities to enjoy those television programmes they wish to watch and treat them as fans of football matches, Judge Bao and other news programmes. For instance, some people are fond of classical music that is less popular while others like watching documentaries. Some foreigners residing in Hong Kong may know neither Cantonese nor Putonghua and they may even be unable to speak English fluently. How can the demands of these people, especially those non-Chinese Hong Kong residents, be satisfied? I think that only a non-commercial television station can satisfy them.

In this respect, I believe that Radio Television Hong Kong (RTHK) has played an important role. In fact we can be proud of the production quality of RTHK and its success in attracting a large number of viewers. In recent years, some of the staff of RTHK have been at loss because of many inconclusive discussions arising for various reasons or for the problem of independence of the RTHK. In my view, the Government should realize that it serves no real purpose to continue the discussion on the question of the independence of RTHK. The Government should make up its mind and look into ways to provide adequate resources to RTHK for it to develop its forte. I hope that the Government would allocate adequate resources to the RTHK in the coming financial year so that the latter can continue its production and screening of programmes that have been proved to be well received on existing television channels and perform its functions on the future cable television channels. I hope that Cable TV would transmit new production from RTHK but not programmes that have already appeared on the channels of wireless television stations.

As I mentioned earlier, Hong Kong is a pluralistic society. Many opportunities should be available to the people of Hong Kong to show their creativity. The economic success of Hong Kong owes much to the hardworking and creativity of Hong Kong people. I remember that there was a movie called “The Story Teller” and its Chinese title seems to be “講故事的人” (I am not sure whether it was screened in Hong Kong). It is about the story of the success of an American public access channel. The hero of the story was a retiree who made use of his talent in story telling. By chance a non-commercial public access channel screened his programme and it turned out to be widely accepted by the public while the viewership increased continually.

I am confident that within the various cultural groups in Hong Kong, including those high standard performing groups sponsored either by the Hong Kong Academy for Performing Arts and the Cultural Centre or the Urban Council and the Regional Council, as well as many local bodies, there are youngsters who are eager to show their talents and have a chance to perform. I feel that a public access channel will be a very good opportunity to them.

Although there are still one to two years to go before such opportunity will be available on Cable TV for the implementation of a public access channel, I think that some plans should be formulated in advance. In this regard, the Government should consider the following three issues:

- (a) It is imperative for the Government to set the standards for the future public access channels and these standards together with the broadcasting time and relevant criteria should be considered now.
- (b) Consideration should be given to the quality of the programmes to be screened on the future public access channels. It is because experience of some countries has shown both good and bad examples. There have been programmes with obscene or objectionable content and some of them even have resulted in the polarization of the society. The Government should therefore consider the ways to guarantee the quality of programmes on future public access channels, so that the latter could really meet the demands of the general public and achieve the criteria required.
- (c) Lastly, there is the problem of resources. One could do nothing without money. I think that what we should strive to achieve is that while these future public access channels will be free to the Government, the use of relevant equipment and the production by other non-government bodies to show their talents should be charged for costs.

Mr President, I support today's motion.

DR SAMUEL WONG: Mr President, before developing the theme of public access television, I will first deal with two points which arise from the motion itself. First, cost.

Under the licence, three channels are to be provided to the Government free of charge. Now, a free cable channel is no different from free space (for terrestrial broadcasting) in being free of charge. The cost of operating a channel or free space — the studios, production, technical support and so on — still remains and is substantially the same. It follows that in formulating the licence, the Government has committed itself, just as if it had claimed three new frequencies, to ensure all the necessary support is funded.

Look at it another way. The cost of every television broadcast originating in Hong Kong is met in full by you and me — the public at large. It may be funded from our taxes, as for Radio Television Hong Kong (RTHK); it could be funded by subscription in the future; we might pay for it by renting a video; or it may be concealed in the price of goods and services advertised in TV commercials. But make no mistake about it — we pay for it in full. In fact,

when we take into account the overheads of advertising agencies and so on, it is clear that a public access channel would cost us less than any other.

It follows that the cost of a public access channel is not an issue. The Government has already committed itself to ensure that all three channels get operational funding, irrespective of their use, and it is likely to be very cost effective anyway.

Then, there is the matter of policy. The Government's broadcasting policy was encapsulated in a statement by the Recreation and Culture Branch on 8 December 1992: "Let the broadcaster make his best assessment of what will sell and let the audience tell him whether he has judged correctly or not." This was amplified last month by a spokesman who pronounced three goals in the context of three types of broadcasting — commercial, satellite and subscription:

1. to provide the widest possible choice of quality programmes to meet a wide range of interests and tastes, at a cost the community can afford;
2. to provide a level playing field for a minority of people who wish to make a business out of broadcasting; and
3. to maintain freedom of expression and information.

Note the emphasis on cost. Both statements largely leave the businessmen to make business decisions, and the latter emphasized the limitation of the affordability to the community. But, remember we pay for it in full anyway. So more channels mean more costs to us, irrespective of what they carry, unless quality is sacrificed for quantity or a channel is devised which is highly cost effective.

But the emphasis on business means that channels will tend to be filled with what makes good business, namely, what pleases the majority. Let us look therefore at the implication of government policy on wide choice and range of interests and tastes, and on freedom of expression and information. None of these is necessarily provided by businessmen.

Now I would prefer to classify broadcasting in an operational way, rather than by the Government's technical categories of commercial, satellite and subscription. I suggest that the Government's goals could be more readily applied to categories such as business, government and public. Business and government are so well recognized that they can be developed as required. What is missing, especially culturally, is broadcasting by and for the public. This in itself can be divided into two groups.

First, there are many minorities with a legitimate requirement for broadcasting not met by business or government. There are, for example, large minority ethnic groups whose primary culture is to be found in English, Tagalog, Indian, Japanese, Indonesian, and so on, and whose needs are not satisfied by the mass Cantonese fare. There are the intellectuals who favour more classical, modern or philosophical programmes. All such minorities are a substantial part of the culture of Hong Kong and need to be served to preserve its international status.

Secondly, there may be a vast potential for amateur presentation, ranging from comment on society, typical of a radio talk show, to promotion of fringe events which have no other outlet. Such public access channels have gained popularity in other countries, and indeed were perhaps spawned in London's famous Hyde Park Corner where speakers have had total freedom of expression, since beyond living memory, to the amusement of some and to the harm of nobody.

Of course, in this sensitive time in our history, I can see such an idea might be met with some nervousness. However, with an operating committee drawn from the public, or a public services foundation serviced by RTHK and made accountable for its own primary censorship, and with facilities to record most programmes or have security delays on live ones, I believe the result would offend no one. Indeed, I strongly recommend the experiment is tried as soon as possible, as it might be less likely to be given a chance after 1997, but, if previously proved acceptable, might survive 1997 on its track record. And what have we lost if it does not?

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

MR CHEUNG MAN-KWONG (in Cantonese): Mr President, science and technology advanced at a tremendous pace. Due to limited channels available in the past, the voice of the minority and less prominent groups was often ignored by the mass media. But today, with the coming of the age of optic fibre, there is an upsurge in the number of television channels. Cable television network can even release spare channels for public use. Through such a channel, different people can express their views on social issues or government policies, thus help enhancing freedom of expression and free flow of information.

Under the licensing conditions of Wharf Cable, the Hong Kong Government can use a maximum of three channels of the station free of charge from next year onwards. Upon Wharf Cable's switch-over to the optic fibre network in 1996, the Government has to notify the station of the schedule of using the channels.

The Recreation and Culture Branch, the Television and Entertainment Licensing Authority, Radio Television Hong Kong, the Home Affairs Branch and the Telecommunications Authority have formed an inter-departmental

working group to examine the issues. It is understood that the working group is now looking into the proposals on “public broadcasting” and “public access channel”. It plans to submit a report in August and consult the groups concerned.

“Public access channel” is a new concept in Hong Kong. There is no precedent on how to set up and develop such channel. I believe that many Hong Kong people are not aware that Wharf Cable will have to honour its obligation to provide three channels to the Government free of charge. They may even not realize that they can express their own views in slots allocated by Wharf Cable.

Mr President, as the name implies, “public access channel” stresses public participation. However, the public did not respond enthusiastically to the discussion of this issue. Members of the public know absolutely nothing about their participation in programme production, channel management, financial and technical requirement, as well as social, political and cultural implications on the local community caused by the establishment of the channel. Thus, the Government should take the lead in pursuing the matter. For example, it can conduct a survey to gather the opinions of different local organizations on “public access channel” and to encourage public discussions. This will not only enable the Government to educate the public on “public access channel” but also to solicit public opinions to avoid drawing policies behind closed doors. Thus, future policies can meet public aspirations and interests. We should also bear in mind that future policies should be able to prevent commercial or government groups from using the public access channel improperly and from turning public interests into corporate interests, because this will run counter to the aim that the public access channel is mainly open to the general public.

Another way of using Wharf Cable channels is to allow Radio Television Hong Kong (RTHK) to use one of the channels for the provision of “public broadcasting” service. Deputy Director of Broadcasting, Mr CHU Pui-hing, said at a meeting of the Legislative Council’s Recreation and Culture Panel that RTHK was interested to use one of the government channels. If the proposal is accepted by the Government and funding is secured, RTHK will introduce a “public broadcasting channel” in the latter half of 1996.

RTHK’s programmes have always maintained a certain quality standard. The station is keen on producing different types of programmes, providing a wide variety of choice for the public. But RTHK’s programmes have long been broadcasting under the roof of the two commercial television stations in that they take up the prime time slots of the two stations. With Cable TV and Star TV coming into operation, the two commercial television stations are facing keener competition. In the past, they have been asking for reduction in the provision of prime time slots for RTHK. So, if RTHK relies solely on the two commercial televisions for broadcasting slots, there is really limited room for development.

In addition, as a government department, RTHK is hamstrung by the government's fiscal measures in one way or another. For instance, in the past few years, RTHK's production budget decreased rather than increased as a result of freezing the growth of the expenditure of government departments. Securing group or organization sponsorship tends to result in the need to look after their interests and images, which would no doubt undermine RTHK's long established independence and autonomy.

Furthermore, RTHK's personnel system would no longer cope with the ever-changing broadcasting industry. Many RTHK staff are both employees of a broadcasting organization and officials of the Government, the fact of which has hampered the day-to-day operation of the media.

Recently, the Secretary for Recreation and Culture has officially announced the shelving of the corporatisation plan of RTHK. In other words, the station still has a long way to go before it can shed its image of a "government station" and escape the tangible and intangible constraints of the Government and finally becomes a public broadcasting organization. The Government should seriously consider various issues mentioned earlier on and set a direction for RTHK in its long-term development.

The broadcasting policy of the Hong Kong Government has long been criticized as "lack of foresight". Examples are many. One of which is shelving the corporatisation plan of RTHK. Another is constantly changing the policy on Cable TV and Star TV, causing a delay in the operation of cable television till last year. A recent case is the hasty formulation of legislation to curb cross-media ownership so as to prevent cross-media merger. I very much hope that the Government can learn from previous lessons. Facing with a new way of broadcasting brought about by new developments in science and technology, the Government should give up its conservative way of formulating policies. Based on public opinion, the Government should draw up a set of long-term policies which actively encourages the freedom of speech and information.

Mr President, with these remarks, I support Mr MAN Sai-cheong's motion.

MR ERIC LI (in Cantonese): Mr President, Members may recall that we had a motion debate on broadcasting policy on 29 April 1992. I spoke on that occasion to ask the Government to provide special guarantee to Radio Television Hong Kong (RTHK) so that it would have enough room for manoeuvre in the highly competitive commercial environment and maintain its proper role in "producing a diverse range of impartial and high quality programmes" to cater for the needs of the minority.

Most of the Members participating in the debate on that day concentrated on how the four television stations could compete on equal terms. A few Members as well as I myself highlighted the importance that RTHK should have

independence and autonomy, and we asked the Government that “certain time slots be reserved for airing RTHK productions regardless of the number of new broadcasting channels which Hong Kong would eventually have.” The motion moved by the Honourable MAN Sai-cheong today is even more to my liking and it meets the demands I spoke about on that day. So, even though it is brief, I fully support his motion.

In the speech that I delivered in 1992, I specifically quoted the examples of young people and the disabled to demonstrate the demand of the minority for programmes and information through the medium of television, which I shall not repeat today. Although the Government has accepted the Youth Charter and formulated the Green Paper on Rehabilitation Policies and services to stress the minority’s right of access to information, owing to the shortage of actual resources and the non-availability of channels for independent management by RTHK, these so-called rights cannot be realized. Whilst there will be two more stations in two years’ time, it will not improve the situation of RTHK. On the contrary, with these stations coming onstream and with many more programmes becoming available, the programmes of RTHK which are non-commercial oriented will become rarer and more valuable.

Today’s debate is on the establishment of a cable station. This is a rare and timely opportunity to test this Council’s support for public sector stations and the Government’s commitment. It is of even greater significance that to RTHK staff of all levels who have been working hard with the issue of corporatization hanging over their head for years and in the face of limitations imposed by the Government, this opportunity will hopefully bring goods news, giving them a booster for their already high morale.

In the debate two years ago, I said that RTHK was a healthy stream contributing to the vast ocean of information in a climate of predominating commercial interests. I hope that this healthy stream can grow bigger soon so that youth programmes, civic education and a sense of belonging to the community can be promoted through it. RTHK’s valuable and non-commercial oriented programmes of information should be subject to adjustment through the staunch policy of the Government so that the programmes will account for a due proportion in terms of quantity among the multiplicity of programmes on offer.

Mr President, with these remarks, I support Mr MAN Sai-cheong’s motion

MRS SELINA CHOW (in Cantonese): I would like to begin by declaring my interest of being an adviser to one of the channels of Wharf Cable. I would briefly deal with two points today since at first I was not quite sure whether I could be back to make my speech in this Council.

I indeed share many of the points encapsulated in the speech made by Mr Howard YOUNG just now. I believe that in principle we do not object to the provision of such public access channels. We all think that these channels are essential in an era of broadcasting diversification and it is certain that they would be a positive encouragement to the broadcasting business. Having talking about principle, however, there are basically two points which warrant our attention.

First, there is the problem of resources. One has to know how to make available adequate resources to meet various needs in producing programmes. Producers of television programmes always say that a notion or an idea concerning a programme is but a castle in the air until it is realized. What matters at the end of the day is to what extent it can be realized; what can it arrive at and whether the effects conform to the original idea can be achieved? These are in fact the most important considerations. To what extent will the resources support? This of course concerns financial arrangements. What would be the financial arrangements for the support of equipment or other resources? I think that the Government must give thorough consideration to these matters. The Government of course cannot rely upon commercial sponsorship as programmes on a public access channel are usually not commercially viable and some of these programmes which may be catered for a minority of people are not commercially viable at all. In such case, how should the support for production be arranged? I think the Government has to make a definite decision in this regard.

As a matter of facts, programmes are the souls of broadcasting. How can programmes meet certain quality standards while at the same time the greatest freedom is given to all those people who are making use of such public access channels? How should we avoid the abuse of public access channels for producing programmes which are in the interests of producers only but not the public? I think these are rather difficult problems. Who should take control of the management of public access channels? Who should be held responsible for the scheduling of programmes as well as encouraging and promoting programme production, deliberation and making? All these are rather difficult questions. As I know, from time to time we say that we are greatly inspired by public consultation. But from my experience in television programme production over the years, I have found that we can obtain some views from members of the public. For instance, we can assess or predict some of the taste of the public from the programmes they viewed and know which of the programmes are more acceptable and which are not. Certainly there would be some indications. Having involved in programme production for so many years, I however believe that viewers or members of the public are unable to give producers guiding views in respect of programme making. After all, programme making is the job of a group of producers and specialists. Who will be responsible for gathering, judging or considering the diversified tastes of the general public in order to cater for the production of programmes? Who will then arrange for the broadcasting of the programmes thus produced? In my view, such work should not be taken up by a government department or a group

of civil servants. It would be far better if it could be taken up by specialists and those who have in-depth knowledge of and particular interest in broadcasting.

Mr President, I would like to end here. I hope that public access channels can start broadcasting as soon as possible. But what is most important is that I hope they could function well as they are supposed to be. In this connection, we must give more opportunities to those good programmes so that they could be promoted and put on air.

MR LAU CHIN-SHEK (in Cantonese): My speech will concentrate on the part of the Honourable MAN Sai-cheong's speech dealing with public access channel, and I will supplement some of the remarks that Mr MAN has just made. In Europe and the United States, provision of public access channels in the cable television system is very common. It aims at providing a channel that is free of charge for members of the public to broadcast their production on a first come, first served basis. This will make available the opportunity for different voices, points of view and ideas of the community to be broadcast through the mass media. At the same time, the licensees of cable television in many places will even provide the venues of production and filming facilities for the public to produce their own programmes. Just now the Honourable Selina CHOW has expressed concerns on public access channels. I believe it is worthwhile for us to take reference from the successful example of other places.

The provision of a public access channel in Hong Kong will be extremely helpful both to individuals and organizations, especially those individuals and organizations who are unfavourably placed in the community in terms of economic means, social status and scope of influence, as this will allow them to have a more equal opportunity to deliver through the mass media their ideas, points of view and values. Also, a public access channel will provide a forum that will enable people of different points of view to exchange their ideas, and that will enhance communication within and understanding of the community in general. It should be realized that no matter how many television stations we have in Hong Kong and how keen the competition is, television stations are invariably run by major consortia, the production policies of which cannot, in any event, cater for all classes of society and all the people who think differently from one another. Therefore, the provision of a public access channel is necessary and there can be no substitute. Besides, it also has an important guidance function in upholding freedom of speech and freedom of expression. I discussed with the management of Wharf Cable Television in the middle of last year on setting up a public access channel by Cable Television. I understand that in the early stage of Cable Television's commissioning, only 20 channels were available because of the use of microwave transmission. They therefore considered that space was too limited for the provision of a public access channel. But in the foreseeable future after the fibre optic network has been installed, Cable Television will be able to accommodate at least 30 channels. So, it will be no problem setting up a public access channel then. The management of Cable Television has indicated that they are willing to consider the proposal.

Mr President, as one who has been engaged for many years in grassroots and labour union work, I have come across various sorts of people who are not what they would have others believe them to be. It would be quite worthwhile for the public to understand their experience, their lives and their thinking. Rarely do the existing mass media present these aspects comprehensively and in three dimensions. Therefore, I sincerely hope that the Government will work out the policy for the setting up of a public access channel.

Thank you, Mr President.

SECRETARY FOR RECREATION AND CULTURE: Mr President, I have listened with interest to the speeches of Honourable Members. I thank them for their compliments on the performance of RTHK and their concern for its future. These comments, I am sure, will be appreciated over there. I also thank Members for their useful and wide ranging comments on the subject of public broadcasting and public access channels. I am pleased to have this opportunity to give Members some background information and to clear up some possible misapprehensions and misunderstandings.

Wharf Cable's licence

First of all I would like to make clear where the Government stands in relation to the provision of cable channels from Wharf Cable. The relevant condition of Wharf Cable's licence reads as follows:

“Upon not less than six months notice in writing given by the Broadcasting Authority to the Licensee to expire at any time or times throughout the period of validity of this licence after 1 January 1995, the Licensee shall, in addition to the obligations referred to in other clauses, make available to Government free of charge and expense such use of not more than three channels in the basic package of programmes as may be directed by the Broadcasting Authority, subject to the availability of radio frequency spectrum during the period that the Licensee is utilizing that spectrum under this licence.”

Thus it is clear that:

- first, after 1 January 1995 the Government will make a decision as to how many channels, to a maximum of three, it wants Wharf Cable to hand over and the Broadcasting Authority will formally make the request to Wharf Cable in this regard;
- second, Wharf Cable will have to hand over use of those channels at a date specified by the Broadcasting Authority but not earlier than six months following the request;

- third, the channels will be made available free of charge and will be for government use; and
- fourth and finally, that they should be handed over subject to the availability of radio frequency spectrum, or in other words, when the Wharf Cable system has capacity available.

These requirements, of course, were devised at the time of drafting Wharf Cable's licence, and were predicated upon the likelihood of spare channels being available over and above that needed by Wharf Cable for its own service. Care was taken to ensure that the imposition did not compromise Wharf Cable's ability to provide a commercially attractive channel line-up, vital to secure sufficiently high penetration rates which in turn are necessary to bring the licensee to economic viability. So while on the one hand the licence specified ambitious rollout targets attached to a performance bond to hold the licensee to its commitments, we had to bear in mind on the other, the technical limitations arising from the fact, as Members have mentioned, that Wharf Cable would first be distributing its services through a microwave system which by its nature has limited capacity as compared with the fibre optic network to which Wharf Cable would move in due course. For these reasons, it was clear from the outset that Wharf Cable would realistically not be able to release the government channels until it switched over to its optic fibre network. The target date set in the licence for this switch-over is 1998, but I am glad to say that the latest indications are that Wharf Cable is well ahead of this schedule and the transfer to optic fibre will be sufficiently well advanced by about mid-1996 to make it technically feasible to introduce a service on the public broadcast channels to a good proportion of homes in the second half of that year.

It would be as well for me to explain why the Government put the relevant condition into the Wharf Cable licence in the first place. When devising the licence framework back in 1992 we had no precedent in Hong Kong to work on. We had to draw on experience from elsewhere, notably from the United States. The normal practice there when issuing cable franchises, is for the municipality to require the franchisee to open up access channels, often free to the subscriber, in return for allowing the franchisee to use commercial and public broadcasting off air channels free of charge. These channels are to provide educational access, government access and public access. We considered similar requirements for the Wharf Cable licence, but because of uncertainties at the time of the tendering exercise as to the economic viability of a cable franchise in Hong Kong, the requirement was modified to a less burdensome imposition to hand back free of charge a number of channels for Government use. We believed that this was a good compromise bearing in mind the large channel capacity that the franchisee would have upon implementation of its optic fibre network.

Possible uses for Wharf Cable channels

At the time that the relevant licence condition was first signalled to potential tenderers for the Cable TV franchise and then agreed with the successful bidder, we did not have very specific ideas about how the government channel would be used. This was not necessary at that stage given the time in hand and bearing in mind the many other higher priority tasks which had to be accomplished simply in order to get Wharf Cable on air within the very tight time-frame that we had set ourselves. Nonetheless, we have for some time been conducting initial research into what has happened in other countries with a view to deciding what might be suitable for Hong Kong. We have concluded that there are two main ways in which these channels could be used.

The first is as a public broadcast service, known commonly and internationally as PBS. Of course our own RTHK already produces 10 hours of public affairs television each week, so you could say we are already provided with a PBS facility. RTHK makes programmes on current affairs, drama, information and community services, variety and quiz shows, children and youth, and educational television. Their focus is largely on promoting civic responsibility and social awareness. RTHK, however, does not have its own dedicated broadcast channel and has to rely on its programmes being carried by our local broadcast licensees so it indeed could be argued that there is room for an upgrading and expansion of the service.

Public broadcasting is well established overseas. Many countries have their own government funded dedicated public broadcast corporations producing their own channels. Famous examples are the BBC in the United Kingdom and the ABC in Australia. Such stations are renowned for the quality and depth of their programming.

In the United States, strong public sentiment has made it obligatory for the government to set aside frequencies for non-commercial broadcasting, but very few PBS channels are government-run. Most are provided by cable stations and associations organized within the cable industry. Their funding is from a multiplicity of sources including public donations and institutional sponsorship with government funds only constituting a small proportion. As a result PBS in the United States is seen as largely independent of the government. One particular channel, Cable Satellite Public Affairs Network, known more commonly as C/SPAN, provides a very interesting model for what can be done on a PBS service. Its two television channels provide full coverage without editorial comment of the proceedings in the House of Representatives and the United States Senate, as well as airing other public affairs programmes produced by C/SPAN teams. Another good example of PBS broadcasting from the United States is the Children's Television Workshop which produces quality children's programmes like Sesame Street.

It is clear from overseas experience that public broadcasting generally is associated with quality programming, serious and in-depth treatment of current affairs and news reporting, together with a heavy emphasis on culture and the arts, areas that are often under-represented from commercial stations. This therefore is something that could be considered for Hong Kong although we would need to bear in mind that both in the programmes it already provides and in channels that it has planned for the future, Wharf Cable has done a very commendable job in providing good coverage of Legislative Council proceedings and reaching out to minorities and to groups which are not so well-served by traditional TV programming. We must be careful to respect the special nature of PBS and not to duplicate what is adequately provided by the commercial licensees.

The second main way that the government channels provided by Wharf Cable could be used, of course, is for public access channels (PACs). Many Members have spoken out strongly in favour of the introduction of such a channel in Hong Kong. It would be as well therefore to note, first of all, how PACs have been organized overseas.

The concept appears to have begun in the United States, based on the philosophy of freedom of speech behind the First Amendment, and made possible by surplus channel capacity on the large numbers of localized cable systems which were first established there before being established in any other country. The idea was to give the public a voice on broadcast television, independent of that controlled by media monopolies. It was not about television as an entertainment or information medium; it was about community communication. Whereas commercial television was broadcasting, aimed at a large and diversified audience, access was regarded as narrow casting aimed at a small audience with perhaps one common bond of interest. Thus broadcasting was one-way and passive, access two-way and very much participatory.

In 1972 the Federal Communications Commission (FCC) ruled that the larger cable systems in the United States must open up public access channels. These were to be free to the subscriber and were to provide education access, government access and public access. These access requirements were imposed upon the cable operators in return for allowing them to use commercial and public broadcasting off-air channels free of charge.

At the same time, a markedly different situation was developing in the United Kingdom where cable TV systems had not been established as early as in the United States. Instead, what happened was that the British Broadcasting Corporation established a Community Programme Unit which researched into stories of local concern, and often with input from individual members of the public, produced programmes mainly of a documentary type that were broadcast weekly at a particular time slot. This practice developed in a rather ad hoc manner and not in the systematic and structured manner of the American situation.

Since then, a number of other Western countries have introduced PAC- type services in conjunction with cable systems and have based mainly on the United States model. Most have met with a degree of success but there have been problems the seriousness of which should not be underestimated. In the United States, while organization of the channels has worked well and funding has been adequate, a tendency has developed in a number of cases for PAC facilities to be exploited by extremist and hate groups and for obscene or pornographic programming. In Canada cable operators are held legally responsible for programme content, and as a result they sometimes refuse access to some community produced programmes to protect themselves, but thereby of course compromise the free access principle.

If we are to consider making available a channel for public access here in Hong Kong, great care would need to be taken to design a system that met all the necessary requirements for free public access and free speech but protected it from abuse. It is no easy task to balance the requirement for free speech against the need for programme content controls, and to devise a credible and effective enforcement mechanism should programmes overstep the mark. As Mr CHEUNG Man-kwong had indicated just now, an internal working group under the aegis of my branch is currently looking at the matter in some depth.

Financial resources

The working group is still examining various issues related to the provision of public broadcasting channels and public access channels in Hong Kong, including the question of likely financial implications. As regards the latter, I can say at this stage that the provision of a public broadcasting channel would require significant resources, probably in the order of \$50 million to \$60 million annually recurrent expenditure and a similar amount in one-off capital expenditure. The cost of mounting a public access channel is more difficult to assess as it would depend on what kind of organization is to run it and whether or not government subsidies would be given for programme production. Funding for such channels in the United States comes from a multiplicity of sources, but we are as yet uncertain of whether similar diverse sources of funding would be available in Hong Kong.

A decision on whether the Government will introduce a government channel on Wharf Cable will have to be made in the light of resource availability. As Honourable Members are well aware, there are always competing demands for public funds and the Administration has to determine priorities carefully. Proposals for mounting a government channel on Wharf Cable will have to be assessed against proposals in other policy areas, many of which may also have the support of Honourable Members.

Conclusion

Our hope and intention is that by the end of this year the way forward will be reasonably clear as regards whether and how the Government will make

use of the television channels that will become available to it on Wharf Cable. By that time we will have been able to synthesize the views from the public that we have received and will doubtlessly continue to receive and will have been able to have sought a direction from the Executive Council. The views expressed by Members during this motion debate will be carefully considered by us and will form a most valuable component of this policy-making process. We have thought carefully about the wording of the motion that Honourable MAN Sai-cheong seeks to move today. We have come to the conclusion that we are not yet ready to commit ourselves to the extent that the wording of the motion would suggest. The Official Members of the Council will therefore abstain from voting.

Thank you, Mr President.

PRESIDENT: Mr MAN Sai-cheong, you have one minute 32 seconds out of your original 15 minutes.

MR MAN SAI-CHEONG (in Cantonese): Mr President, I would like to express my gratitude to those Members who spoke today for their unequivocal support. However, I feel sorry and a bit disappointed to learn that the Secretary for Recreation and Culture is adopting a non-committal attitude towards this concept which deserves support. We know that if the proposals on public access channels and public broadcast are to be implemented, the Government's active support will be necessary. It is because if Wharf Cable Limited hands over a channel to the Government, the use of this channel will all depend on the attitude and planning of the Government. If the Government can play an active role in this matter by undertaking to set up a public access channel, whether in conception or in planning, the mass media will turn a very important page of historic significance. I earnestly hope that the result announced in August will bring some good news to us. I do cherish ardent expectation in this matter.

Question on the motion put and agreed to.

Private Member's Bills

First Reading of Bills

PROFESSIONAL ACCOUNTANTS (AMENDMENT) BILL 1994

EQUAL OPPORTUNITIES BILL

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

Second Reading of Bills

PROFESSIONAL ACCOUNTANTS (AMENDMENT) BILL 1994

MR PETER WONG moved the Second Reading of: “A Bill to amend the Professional Accountants Ordinance.”

MR PETER WONG: Mr President, the Professional Accountants Ordinance, enacted in 1972, provides for a self-regulatory framework for the accountancy profession through the Hong Kong Society of Accountants.

This amendment Bill deals largely with measures which aim to enhance the self-regulatory capabilities of the Society in keeping with today’s circumstances.

The Administration is supportive of the Bill and, in light of its nature, which reflects the Society’s policy, considers that it is appropriate to promote it as a Private Member’s Bill through me as the accountants’ representative on this Council.

Consultation with members of the Society was carried out over the past, as and when an idea for change concerning any part of the Ordinance was initiated. A comprehensive paper embracing all the proposed changes was circulated to members earlier this year before the drafting of the Bill was finalized.

Comments received from members have all been thoroughly considered. There was one submission lodged with this Council. The Society has met with the member and fully responded to his views. A letter was received from another member commenting that Part VA of the Bill on investigations was in violation of the Bill of Rights, the rules of natural justice and the Basic Law. The member’s comments were passed to the Legal Department for advice, and clearance was obtained from that Department. The Society of Chinese Accountants and Auditors also made a submission. Their comments were considered at an open forum attended by small practitioners and the President of the Society.

The Bill proposes to delete the Schedule of approved institutes from the Professional Accountants Ordinance, such that all overseas accounting institutes are being put on equal footing for the matter of assessment for recognition of their qualifications in Hong Kong.

The provision of “approved institutes” in the Professional Accountants Ordinance was necessary when it was first enacted in 1972 because at that time Hong Kong did not have its own accreditation system. The Society has, since its inception in 1973, been successfully running an accreditation system through its own professional examinations and practical experience requirements.

Following the principle that the Society is the accrediting body in Hong Kong, an institute should only be recognized for membership purposes if it is of a standard acceptable to the Society. The Schedule list of approved institutes ignores the dynamics in the accreditation systems in Hong Kong and elsewhere, which needs may not always be compatible with each other. The Council of the Society should be given the discretion, should an overseas institute fail to meet the desired standards, to refuse to register members of such an institute.

The proposed amendment accords with the spirit of GATT, which has begun negotiation on trade in services.

I wish to point out that this change will not affect current members of the Society. It is the Council's intention to continue, after the proposed change, to grant recognition to the currently approved institutes and those institutes accepted under section 24(1)(c)(ii). Any change, if at all, in status of these institutes will apply only to the future and ample notice will be given such that students and other persons following the courses leading to qualifications awarded by these institutes will not be unduly prejudiced. Furthermore, the council will continue to apply the objective criteria it has adopted as of today with regard to institutes considered under section 24(1)(c)(ii).

The Bill will also allow a firm of Certified Public Accountants (CPA) to admit as partners professional accountants who are not holders of practising certificates. Under the present regime, practising certificates are effectively licences to audit. But as CPA firms have developed to provide a wide range of professional services in addition to audit, they need to take in partners who specializes in areas other than audit and who are probably not eligible for a practising certificate if restricted strictly to audit.

I will add that there will be published rulings by the council of the Society to restrict the number of non-CPA partners of a CPA firm, and that the council will still maintain control over each and every partner of a CPA firm in that all of them will have to be members of the Society.

The main purpose of the Bill is to strengthen the Society's self-regulatory framework through the introduction of investigatory powers to be conferred to an Investigation Committee appointed by the council of the Society.

The present system discourages complaints in that a person making a complaint has to be prepared to fully investigate the matter in question, to gather evidence and to present his case at a Disciplinary Committee hearing. If the evidence available is inadequate to support a *prima facie* case against a professional accountant, the disciplinary proceedings do not come into play and there is no mechanism whereby the Society can compel the professional accountant to respond to enquiries arising therefrom. An investigation is also appropriate where there is a public concern over the professional conduct of a professional accountant, or where a report is made by a regulatory authority against the professional conduct of a professional accountant but there is lack of

evidence in its hands for the council to refer the case to the Disciplinary Committee.

The institution of an Investigation Committee quite separate from its disciplinary machinery, will enable the Society to be pro-active in its regulation of the profession and demonstrate its determination to self-regulate.

Checks have been built into the provisions of the Bill restricting the powers of the Investigation Committee to prevent abuse of the system. Moreover, the council of the Society will lay down guidelines to define the circumstances under which investigations can be initiated.

Mr President, I move that the Professional Accountants (Amendment) Bill 1994 be read the Second time.

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

EQUAL OPPORTUNITIES BILL

MS ANNA WU moved the Second Reading of: “A Bill to promote equality of opportunity in Hong Kong and to provide remedies in respect of discrimination on the grounds of sex, marital status, pregnancy, family responsibility or family status, race, religious or political conviction, disability, sexuality, spent criminal conviction, age, or union membership or activities, or involving sexual or racial harassment or harassment on the ground of disability or sexuality.”

MS ANNA WU (in Cantonese): Mr President, I move that the Equal Opportunities Bill be read a Second time.

The Equal Opportunities Bill is a consolidated and comprehensive package aiming at giving every citizen in Hong Kong a fair chance. Under this Bill, discrimination on a range of grounds such as race, sex, age, disability or sex preference is prohibited. The Bill seeks to protect every one of us in Hong Kong to the effect that they can have a fair chance to make their first step into competition in a level playing field.

Over the past year, I have consulted with many groups and individuals on the Equal Opportunities Bill and have found broad support for this Bill. In an opinion poll commissioned by the *South China Morning Post* last month, the majority of the 600 people interviewed said that appropriate government action was needed to curb discrimination that takes on various forms: 81.9% of the people interviewed said that the Government should take steps to remove discrimination against the handicapped; on discrimination against the elderly, it was 78.7%; on sex discrimination, it was 51%; on sexual harassment in the work place, it was 77%. Furthermore, in the case of racial discrimination, 39.2% said government action was needed to curb it.

The principle of anti-discrimination has doubtless been broadly embraced by the people of Hong Kong. Both the International Covenant on Civil and Political Rights and the Bill of Rights Ordinance provide that “all people are entitled to the equal protection of the law” and that “the law shall prohibit discrimination”. Also, other international treaties applicable to Hong Kong contain similar protection.

Many colleagues in this Chamber will remember that, in 1990, when the draft Bill of Rights Ordinance was first introduced by the Government, it included provisions against discrimination by private parties. At the last minute, the Government withdrew them on the ground that such matter had better be dealt with by separate legislation. Unfortunately, that was four years ago and very little progress has been made until now.

This Bill is inspired by, and seeks to implement, international norms relating to equality and anti-discrimination. This Bill’s provisions are intended to be interpreted in the light of those standards. It eschews a formalistic approach to equality and embodies rather a commitment to anti-discrimination which will ensure that members of disadvantaged groups are not subject to any discrimination.

This Bill is based upon legislation that has worked in other countries and takes into account the special circumstances of Hong Kong. It provides exemptions where the legislation might interfere with individual’s privacy, or where compliance would impose undue hardship. And the legislation is by no means a “radical” one, as it does not impose quotas or any form of “affirmative action”.

In the case of promoting equal opportunities, this Bill does not rigidly require an employer to hire a woman or someone over 40, but rather it is requesting that an employer should seriously consider every application. To put it simply, it is aiming at widening the choice and let everyone have a fair go at participating. This precept is not a danger to our economy. On the contrary, it further enhances the competitiveness of our economy. It also reduces the burden on our community by providing the disabled with the opportunity to take care of themselves.

There is fear that this Bill will interfere with market forces and as a result will increase costs, erode profit margins and undermine the territory’s competitive edge. Indeed we have seen these negative arguments before when the same were levelled against the introduction of legislation on child labour, workers’ safety and environmental protection. But those legislation did not upset industrial development and nowhere is there any proof in other countries that such anti-discrimination measures would cause economies to falter.

There is also the argument that one cannot get rid of prejudice by legislation alone. No doubt this is true. What this Bill seeks to achieve is to tell people that this society does not sanction such behaviour. We believe this

prosperous society should offer remedies to persons who are discriminated against, including the disabled Catholics, pregnant women, people over 40, Sikhs or single parents. This Bill says such discrimination is wrong and that society does not condone such behaviour.

Although this Bill has been introduced by a private Member, I trust that the Government should at least give me the fair chance to take this Bill to its Third Reading, and its enactment, as the Government has frequently proclaimed its commitment to the Bill of Rights Ordinance and as it is bound by international norms to introduce effective legislation to protect Hong Kong people against discrimination. I also think that the Government should support and facilitate its passage. I of course hope that this is not just an idealization.

A Private Member's Bill is indeed a taxing task for a private Member who does not have the benefit of huge financial or human resources. I did indicate to the Government that its initiative to legislate on equal opportunities was welcome. Perhaps the Government felt that a private Member should not usurp its initiative by gazetting and introducing this Bill. In June this year the Government, with all the symptoms of disarray, presented a proposal for sex discrimination legislation that was hastily conceived and deficient, so much so that marital status and pregnancy were not included. Hence it is clear that the proposal on sex discrimination was made in the most grudging, perfunctory and piecemeal fashion.

Whether adequate provisions against sex discrimination will show up when the Government finally introduces its Bill next year is anybody's guess. But it is certain that there will be no, and I repeat absolutely no, measures in the government proposal to eliminate age or racial discrimination. These are only the tip of the iceberg left out by the Government.

Even those who resist legislation cannot deny that discrimination does exist. But we know that we have no other means, except legislation, to improve the situation. Legislation serves as a reminder of not to do what we all know is wrong and represents a social contract among all of us under which we will not deny one and other the opportunity to a better life because of colour, sex or age.

The people of Hong Kong want a set of comprehensive and effective measures. They are not content with half measures. Nor are they niggardly as we thought. Were this so, the territory would not be as prosperous as it is today. If we can further expand our human resources and make the best use of talents, our society will certainly be becoming more stable and prosperous. It is my conviction that everyone in Hong Kong should be given a fair chance.

Finally, I would like to thank all the Members in this Chamber who persevere to the end of this last sitting of this Session. I do hope that all of you will persevere likewise for the cause of equal opportunities.

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

FEDERATION OF HONG KONG INDUSTRIES (AMENDMENT) BILL 1994**Resumption of debate on Second Reading which was moved on 15 June 1994**

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

Bill read the Second time.

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

UNIVERSITY OF HONG KONG (AMENDMENT) BILL 1994**Resumption of debate on Second Reading which was moved on 22 June 1994**

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

Bill read the Second time.

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

Committee Stages of Bills**FEDERATION OF HONG KONG INDUSTRIES (AMENDMENT) BILL 1994**

Clauses 1 to 32 were agreed to.

UNIVERSITY OF HONG KONG (AMENDMENT) BILL 1994

Clauses 1 to 3 were agreed to.

Council then resumed.

Third Reading of Bills

MR JAMES TIEN reported that the

FEDERATION OF HONG KONG INDUSTRIES (AMENDMENT) BILL 1994

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

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

Bill read the Third time and passed.

DR DAVID LI reported that the

UNIVERSITY OF HONG KONG (AMENDMENT) BILL 1994

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

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

Bill read the Third time and passed.

Adjournment and Next Sitting

PRESIDENT: In accordance with Standing Orders I now adjourn the Council until 2.30 pm this afternoon, 7 July 1994.

Adjourned accordingly at twenty-eight minutes past One o'clock, 7 July 1994.

Note: The short titles of the Bills/motions listed in the Hansard, with the exception of the Wills (Amendment) Bill 1994, the Intestates' Estates (Amendment) Bill 1994, the Inheritance (Provision for Family and Dependants) Bill, the Carriage of Goods by Sea Bill, the Sewage Services Bill, the Minor Employment Claims Adjudication Board Bill, the Supplementary Appropriation (1993-94) Bill 1994, the Securities and Futures Commission (Amendment) Bill 1993, the Coinage Bill and the Equal Opportunities 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 Planning, Environment and Lands to Mrs Peggy LAM's supplementary question to Question 3**

According to the Housing Department, the minor defects in question included uneven wall and floor finishes, water seepage through window frames, loose door handles and hinges, poor finishes of paint on doors, and so on. These minor defects are not uncommon in newly completed projects and were found in each block of Yuet Wu Villa. They have all been made good by the developer.

Annex II**Written answer by the Secretary for Economic Services to Dr LAM Kui-chun's supplementary question to Question 4**

Where a public procession takes place on land, the Public Order Ordinance (Cap. 245) requires that prior approval in the form of a licence issued, and subject to conditions imposed, by the Commissioner of Police must be obtained. The Commissioner may issue a licence for holding the public procession if he is satisfied that the requirements of public order and public safety are met. The police officers on the spot will ensure that demonstrations are held without causing or leading to a breach of peace.

Processions at sea do not require prior approval. During such events, the role of the Marine Department and the Marine Police is to ensure orderly traffic and that participating vessels observe all navigation rules and maritime laws and regulations.

As I said in reply to Mrs LAU, following recent demonstrations by fishermen in the harbour, the Administration is now reviewing existing legislation to determine whether there is a need to tighten control over demonstration or procession at sea. One option might be to require advance notification of such demonstrations. This would enable better planning by the Marine Department and the Marine Police to minimize the disruption to traffic in the harbour.

WRITTEN ANSWERS — *Continued*

Annex III

Written answer by the Secretary for Economic Services to Rev FUNG Chi-wood's supplementary question to Question 5

A table showing aircraft movement over North Kowloon during the period October 1993 to June 1994 is attached for Rev FUNG's reference.

Aircraft Movements Over North Kowloon
During October 1993 - June 1994 (2100 - 2400 hour)

	<i>Oct 93</i>			<i>Nov 93</i>			<i>Dec 93</i>		
2100 - 2230	ARR	DEP	TTL	ARR	DEP	TTL	ARR	DEP	TTL
Monthly Total	106	13	119	373	36	409	343	41	384
Daily Average	3.42	0.42	3.84	12.43	1.20	13.63	11.06	1.32	12.39
2231 - 2400	ARR	DEP	TTL	ARR	DEP	TTL	ARR	DEP	TTL
Monthly Total	32	29	61	158	27	185	128	53	181
Daily Average	1.03	0.94	1.97	5.27	0.90	6.17	4.13	1.71	5.84
	<i>Jan 94</i>			<i>Feb 94</i>			<i>Mar 94</i>		
2100 - 2230	ARR	DEP	TTL	ARR	DEP	TTL	ARR	DEP	TTL
Monthly Total	366	31	397	357	10	367	443	9	452
Daily Average	11.81	1.00	12.81	12.75	0.36	13.11	14.29	0.29	14.58
2231 - 2400	ARR	DEP	TTL	ARR	DEP	TTL	ARR	DEP	TTL
Monthly Total	123	15	138	99	10	109	79	1	80
Daily Average	3.97	0.48	4.45	3.54	0.36	3.89	2.55	0.03	2.58

WRITTEN ANSWERS — *Continued*

	<i>Apr 94</i>			<i>May 94</i>			<i>Jun 94</i>		
	ARR	DEP	TTL	ARR	DEP	TTL	ARR	DEP	TTL
2100 - 2230									
Monthly Total	460	6	466	471	7	478	482	0	482
Daily Average	15.33	0.20	15.53	15.19	0.23	15.42	16.07	0.00	16.07
2231 - 2400									
Monthly Total	46	0	46	41	5	46	50	0	50
Daily Average	1.53	0.03	1.53	1.32	0.16	1.48	1.07	0.00	1.67