

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 18 January 1995

The Council met at half-past Two o'clock

PRESENT

THE PRESIDENT

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

THE CHIEF SECRETARY

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

THE FINANCIAL SECRETARY

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

THE ATTORNEY GENERAL

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

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

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

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

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

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

THE HONOURABLE SZETO WAH

THE HONOURABLE TAM YIU-CHUNG

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

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

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

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

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

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

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

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

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

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

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

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

THE HONOURABLE ALBERT CHAN WAI-YIP

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

THE HONOURABLE MOSES CHENG MO-CHI

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

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHIM PUI-CHUNG

REV THE HONOURABLE FUNG CHI-WOOD

THE HONOURABLE FREDERICK FUNG KIN-KEE

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

THE HONOURABLE MICHAEL HO MUN-KA

DR THE HONOURABLE HUANG CHEN-YA

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

DR THE HONOURABLE LAM KUI-CHUN

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

THE HONOURABLE LAU CHIN-SHEK

THE HONOURABLE EMILY LAU WAI-HING

THE HONOURABLE LEE WING-TAT

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

THE HONOURABLE FRED LI WAH-MING

THE HONOURABLE MAN SAI-CHEONG

THE HONOURABLE STEVEN POON KWOK-LIM

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

THE HONOURABLE TIK CHI-YUEN

THE HONOURABLE JAMES TO KUN-SUN

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

DR THE HONOURABLE PHILIP WONG YU-HONG

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE HOWARD YOUNG, J.P.

THE HONOURABLE ZACHARY WONG WAI-YIN

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

THE HONOURABLE CHRISTINE LOH KUNG-WAI

THE HONOURABLE ROGER LUK KOON-HOO

THE HONOURABLE ANNA WU HUNG-YUK

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

THE HONOURABLE ALFRED TSO SHIU-WAI

ABSENT

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

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

IN ATTENDANCE

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

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

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

MR JAMES SO YIU-CHO, O.B.E., J.P.
SECRETARY FOR RECREATION AND CULTURE

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

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

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

MR DOMINIC WONG SHING-WAH, O.B.E., J.P.
SECRETARY FOR HOUSING

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.
Legal Aid (Amendment) Regulation 1995	5/95
Waterworks (Amendment) Regulation 1995	6/95
Legislative Council (Electoral Provisions) (Amendment) Ordinance 1994 (57 of 1994) (Commencement) Notice 1995	10/95
Prisons (Hostel) (Amendment) Order 1995.....	11/95

Sessional Papers 1994-95

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| No.58 | — | Report by the Controller, Government Flying Service on the Administration of the Government Flying Service Welfare Fund for the year ended 31 March 1994 |
| No.59 | — | Hong Kong Examinations Authority Financial Statements for the year ended 31 August 1994 with Programme of Activities 1 September 1993 to 31 August 1994 |

ORAL ANSWERS TO QUESTIONS**Traffic Accidents Involving Franchised Buses**

1. MR ROGER LUK asked (in Cantonese): *Mr President, regarding the serious traffic accidents involving franchised buses in recent months, will the Administration inform this Council:*

- (a) *whether such accidents have primarily been caused by human errors; and*
- (b) *what measures are being taken by the operators to improve safety standards?*

SECRETARY FOR TRANSPORT: Mr President, in 1994, there were 274 accidents involving franchised buses which resulted in fatalities and serious injuries. All these accidents have been investigated, although the outcome of some recent cases are still awaited. From the information available so far, it can be said that about 100 of these accidents can be attributed to errors on the part of bus drivers, mainly turning negligently at junctions, driving too fast or following other vehicles too closely.

All four franchised bus companies recognize the importance of safety. Newly recruited drivers are required to undergo a 4 to 6 weeks training programme and pass stringent driving tests set by both the bus companies and Transport Department before they are allowed to drive a bus on the roads. Drivers are also required to take refresher training programmes and familiarization training for new routes and new bus types. Their performance is monitored by inspectors who board buses. All bus companies have restrictions on working hours. Bus companies also have safe driving bonus schemes to promote safe driving amongst their drivers.

In response to recent bus accidents, the Administration has reminded the bus companies to exercise closer supervision of the performance of their bus drivers and to remind their drivers of the importance of road safety.

MR ROGER LUK (in Cantonese): *Mr President, the Secretary pointed out in his main reply that driving too fast is one of the main causes of accidents. It is learned that in the United Kingdom, a control device is installed in urban buses to prevent the buses from exceeding the speed of 50 km per hour for safety reasons. Will the Administration consider requiring buses in Hong Kong to install the same device?*

SECRETARY FOR TRANSPORT: Mr President, I think the Honourable Member is referring to tachographs which perhaps should be installed in buses. These instruments indeed do record the speed and other data. At present, we have no plans to require bus operators to fit tachograph data recorders in the buses. Although some of the accidents have been caused by drivers speeding, the numbers in fact have not been too great because in Hong Kong conditions really, the opportunity to drive fast is not that great. Of the 100 accidents to which I referred, only 15 have been attributed to fast driving. I understand that there is also new technology emerging whereby electronic data recorders will soon be available commercially. The bus companies are aware of this and they will be considering whether or not to install these at their own initiative, but we shall continue to monitor the position.

MR LAU CHIN-SHEK (in Cantonese): *Mr President, it has been reported that one of the main causes of the frequent bus accidents is that quite a number of bus drivers who earn modest salaries have to work overtime frequently. Under excessive work pressure, traffic accidents easily occur. Will the Administration inform this Council whether it has verified the creditability of the above report, and what effective measures will the Administration take to monitor the overtime work of bus drivers?*

SECRETARY FOR TRANSPORT: Mr President, the Transport Department has issued guidelines to the bus companies regarding driving hours. In short, basically every driver should have a break for at least 30 minutes after every five and a half hours of driving. Secondly, the maximum period between the commencement and completion of a day's work should not exceed 14 hours. Thirdly, a bus driver should not drive for more than 11 hours a day and fourthly, there should be an off-duty rest period of at least eight hours between successive shifts. These guidelines were established after a study undertaken in the early eighties by the Industrial Engineering Department of the University of Hong Kong. As a result of the Honourable Member's question today, in fact, we have asked the Transport Department to review these guidelines.

MR WONG WAI-YIN (in Cantonese): *Mr President, in the first paragraph of his main reply, the Secretary mentioned that in 1994, out of the 274 accidents involving franchised buses, 100 were attributed to errors on the part of bus drivers. Does that mean the remaining 174 accidents were attributed to mechanical failure of the buses? Besides, we know that the Kowloon Motor Bus Company (KMB) has a kind of buses, namely the Victory II buses, which have already been regarded as unsuitable for running on some road surfaces or sharp turns in Hong Kong and the company has planned to totally replace that kind of buses. May I ask the Secretary when can all the Victory II buses be replaced; and whether it is possible to advance the timeframe for the replacement?*

SECRETARY FOR TRANSPORT: Mr President, the Honourable Member's assumption is not correct. From the statistics we have got and based on the evidence from investigating bus accidents, only eight out of the 274 serious accidents to which I have referred have been due to mechanical failure of the buses. This is only about 3% and therefore the problem is not serious. At the same time, of course we have, as Members know, a certificate of fitness inspection programme under which all buses are inspected periodically. As regards the Victory II bus to which the Honourable Member has referred, there is no plan, as far as I am aware, on the part of the Kowloon Motor Bus Company to totally replace these vehicles, but obviously the company does acquire new buses and replace the older ones periodically.

MR HENRY TANG (in Cantonese): *Mr President, I would suggest the Secretary ride on cars more often. It is because although my driving speed is not too slow, I constantly find buses passing by my car at a high speed. The speeding problem of buses may be worse than what the Secretary thinks. Last week, I proposed to the Secretary that tachographs be installed in public transport with a view to monitoring the speed of vehicles. The Secretary promised at that time that the proposal would be considered, yet today he stated that there was no intention to require the installation of tachographs in public transport. May I ask the Secretary what has made him change his mind since last week?*

SECRETARY FOR TRANSPORT: Mr President, can I first say that of course the Honourable Henry TANG's views are based on impressions and not on facts. The figures I have quoted are based on facts. Secondly, I think I cannot be far wrong in saying that I probably travel on buses more often than Mr TANG.

Insofar as the installation of tachographs are concerned, I think what I said last week was that buses do not have these instruments yet, but I would ask the bus companies to consider the need to install such instruments. The question asked by the other Honourable Member just now was whether we would require them to do so and my answer is consistent. I said that there is no intention to legislate for this but, rather, it is up to the bus companies to consider.

Foreign Domestic Helpers Suing Employers

2. MR PEGGY LAM asked (in Cantonese): *Recently there has been an increase in the number of cases involving foreign domestic helpers who sued their employers for maltreatment, thus becoming able to stay in the territory legally and take up part-time employment whilst awaiting the completion of the litigation process. In this connection, will the Government inform this Council:*

- (a) *of the number of such cases scheduled for hearing at present;*
- (b) *of the average waiting time for such cases to be heard in court; and*
- (c) *whether foreign domestic helpers are allowed to find jobs to make a living during the pre-hearing period?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, foreign domestic helpers who wish to sue their employers for mistreatment may lodge their complaints with the police, the Labour Department, the Labour Tribunal or the Minor Employment Claims Adjudication Board (MECAB). However, statistics are not kept specifically on foreign domestic helpers as a category of complaints. I am nevertheless advised by the Judiciary Administrator that the number of labour dispute cases involving foreign domestic helpers which are

now awaiting adjudication by the Labour Tribunal is in the region of 500. 19 cases involving foreign domestic helpers are awaiting hearing by MECAB.

At present, the average length of time between the lodging of a claim with the Labour Tribunal and its adjudication is around six and a half months. The waiting time for adjudication is expected to be reduced with the setting up of MECAB on 23 December last year.

Foreign domestic helpers whose contracts have been terminated prematurely may be allowed to remain on visitors' condition pending the hearing of their claims against their previous employers. As visitors, they are not allowed to take up employment during the periods of their permitted stay in Hong Kong.

MRS PEGGY LAM (in Cantonese): *In the second paragraph of his main reply, the Secretary mentioned that the average waiting time is six and a half months and the waiting period may now be reduced. My question is: During these six and a half months, if the foreign domestic helpers are not allowed to seek employment, how can they make a living? The Secretary has still not given me an answer. Besides, what measures are being taken by the Government to prevent these domestic helpers from taking part-time jobs during the waiting period?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, of course during the period that the foreign domestic helpers are waiting for adjudication, they receive temporary accommodation through the assistance of consulates, churches, worker organizations and friends. The Family Service Centres of the Social Welfare Department can arrange accommodation in one of the two shelters for those who are in need of help. In addition, we provide counselling services and other services such as financial assistance for genuine hardship cases.

Clearly, we need to look at the need to reduce the waiting time and I am informed that the Judiciary is now offering to have early hearing of those cases on foreign domestic helpers. This is now being arranged and they can have priority in first hearings, and following the setting up of MECAB, I hope we can reduce the number of cases involving such claims of small amounts.

PRESIDENT: Not answered, Mrs LAM?

MRS PEGGY LAM (in Cantonese): *I do not find the Secretary's answer completely satisfactory. But there is another issue I want to raise. At present, many foreign domestic helpers blackmail their employers by suing them. I have on hand many such complaints lodged by the employers and not by the employees. Is the Government aware of this situation?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, I am not aware of these particular cases but perhaps my colleague, Secretary for Security, might wish to comment on this point.

SECRETARY FOR SECURITY: Mr President, no, I am not aware of any cases where a report has been made to the police that an employer is being blackmailed. If that were the case, of course the police would investigate it. But I am not aware of any such cases.

MRS ELSIE TU: *Mr President, paragraphs (2) and (3) of the reply indicate a clear case of "justice delayed" and "justice denied". May I ask if the Bill of Rights would either support the immediate hearing of these persons or if they have to wait, at least the right to work and not depend on uncertain charity to support themselves during the waiting period? If the Secretary does not want to give a direct answer to this, may he have someone look into the Bill of Rights aspects of these numerous cases?*

PRESIDENT: Secretary, are you able to reply?

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, may I take legal advice on this point and respond in writing. (Annex I)

MR TAM YIU-CHUNG (in Cantonese): *Mr President, it was mentioned in the first paragraph of the main reply that there are about 500 labour dispute cases involving foreign domestic helpers which are now awaiting adjudication by the Labour Tribunal. May I ask if the Government has categorized these cases? For example, among these 500 cases, what are the common charges against the employers and how much compensation has been claimed? Can the Government provide detailed information in this area?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, I do not have a breakdown of these details. I will try to find out and reply in writing. (Annex II)

MS ANNA WU: *Mr President, this is a follow-up to Mrs Elsie TU's question. Irrespective of the answers relating to the Bill of Rights referred to by Mrs TU, can the Government consider removing the restriction in any event against working imposed on the helpers during the pre-hearing period as this is creating severe obstacles to their securing legal redress when they are deprived of a livelihood in the meantime?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, could I defer to my colleague, Secretary for Security, again on this question of immigration control.

SECRETARY FOR SECURITY: Mr President, we did look at this possibility some time ago but we decided that it would be quite wrong to remove the prohibition on working during this period. There is a grave danger that with a waiting time of six months or more, if we were to allow people to work during this period, it would simply give rise to more and more complaints from people wishing to remain in Hong Kong and to take advantage of that period to work. The answer, I think, must be in reducing the waiting time and, as my colleague has said, that is something that we are trying to do.

MISS EMILY LAU (in Cantonese): *Mr President, the six-and-a-half-month waiting period for the cases to be heard by the Labour Tribunal has greatly exceeded the period stipulated in the law. However, it was mentioned that early hearings will be arranged for foreign domestic helpers. Will the Administration inform this Council why the Administration is doing that? Will that be even more unfair to others who have been waiting for a hearing for a long time?*

PRESIDENT: Secretary, are you able to answer?

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, I am advised by the Judiciary Administrator that the Judiciary, while it is reviewing the Labour Tribunal's operation as a matter of priority, is trying to give sympathetic attention to the cases of foreign domestic helpers who are awaiting these claims to be heard and this is why they have offered to arrange an early hearing of these cases. But, as a matter of fact, in many cases the foreign domestic helpers do not take up the offer and they would prefer to taking the normal course of events which is perhaps an indication that they are happy to stay on rather than having an early hearing for reasons which I do not understand.

PRESIDENT: Miss LAU, not answered?

MISS EMILY LAU (in Cantonese): *The Secretary has not answered my question at all. My question is: first of all, does the six-and-a-half-month waiting time exceed the time set by the Government itself? As a matter of fact, this issue was discussed on a number of occasions by some Committees of this Council. If the information is not available at the moment, perhaps a written reply will serve the purpose. However, I would find it very strange if the Secretary does not have the information in this area. Furthermore, whether the foreign domestic helpers accept the offer of earlier hearings or not, how can the Government explain to the public that some people have the privilege to jump the queue? The Government must give reasons to convince us. Legal matters and all sorts of other things must be fair!*

PRESIDENT: Secretary, are you able to answer?

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, can I supply the answer in writing after consulting the Judiciary on this point. (Annex III)

MR MICHAEL HO (in Cantonese): *Mr President, while it takes more than six months for a case to be heard in court, it was said in the reply that during the waiting period, the foreign domestic helpers are not allowed to seek employment because they are staying in Hong Kong as visitors. However, a period of six-odd months is a long time and, if they do not have any job and income, I wonder how they can continue to support themselves? Why does the Government categorize them as visitors instead of considering some special arrangement under which they are allowed to work? What are the reasons for not allowing them to take up employment?*

SECRETARY FOR SECURITY: Mr President, I answered a very similar question just a couple of minutes ago. We do feel that there would be a very grave danger if we allowed all those who had submitted a claim to the Labour Tribunal and were waiting in Hong Kong for several months to work. If we as a matter of course allowed them all to work, we would simply be stimulating a very much larger number of complaints and we do not think that this would be a sensible thing to do. There is, in fact, assistance available to domestic helpers in these circumstances from a number of sources as my colleague mentioned a minute ago. And as I said also in answer to the previous question, I do think that the effort should be devoted to reducing the waiting time, not to allowing people to use this as a means to continue working in Hong Kong.

MRS SELINA CHOW: (in Cantonese): *I believe we are all aware that should the Filipino domestic helpers terminate their contracts under normal circumstances, they have to return to the Philippines in two weeks. In order to know if they have tried to stay in Hong Kong by suing their employers for mistreatment, may I ask if there was an upward trend in the number of such cases over the past three years? Moreover, has the Administration considered sending them back to the Philippines during the waiting period and bringing them back to Hong Kong when they are due to appear in court? The cost thus incurred may be even lower.*

SECRETARY FOR EDUCATION AND MANPOWER: *Mr President, may I defer once again to the Secretary for Security on this point.*

SECRETARY FOR SECURITY: *Mr President, I do not, I am afraid, have figures on the number of cases going to the Labour Tribunal. I am not able to say whether there has been an increase in those numbers in recent years or not.*

We do allow people obviously to go back to the Philippines or to their own country if they wish and then to return to Hong Kong for the hearing. Some do that but in fact the majority opt to stay on in Hong Kong until their case is heard. I think it would be very difficult for us to require, in these circumstances, people to leave Hong Kong and then to come back here.

MR JIMMY MCGREGOR: *Mr President, given the very large number of domestic servants in Hong Kong and the fact that the numbers are actually increasing as our wealth grows, the number of cases pending before the Tribunal and the length of the waiting time, would it not be possible for the Government to set up a special tribunal for these particular cases? It is, after all, very difficult for a young woman, single woman, to find the means to look after herself for six months or so before her case comes before the Tribunal without even the assurance that at the end of it she will be successful. So I wonder whether some determined effort can be made by the Government to set up a special tribunal for these particular cases and bring down the number pending?*

SECRETARY FOR EDUCATION AND MANPOWER: *Mr President, the general issue of waiting time for the Labour Tribunal is being looked at, as I said earlier on, by the Judiciary as a matter of great priority and the review is coming near to its final conclusion. Clearly, the setting up of MECAB since December last year is a distinct step in this direction to reduce the number of cases going to the Labour Tribunal, which deals with cases of \$5,000 and below. We hope that with the setting up of this minor claims tribunal, it is possible to take care of a large number of those cases involving small sums of money. In the meantime, we should await, I think, the review of the Judiciary on the*

Labour Tribunal and see whether there will be some other recommendation coming out to deal with this particular issue.

PRESIDENT: Mr McGREGOR, not answered?

MR JIMMY McGREGOR: *Mr President, the Secretary did not indicate whether in fact he regards, or his department regards, these cases as special in their own right, in that the circumstances of the application by a domestic servant from another country is very different to the situation of a person who lives in Hong Kong. Is special consideration, Mr President, being given to the setting up of a special tribunal or how to deal with these cases on a special basis, in other words, separate from the other cases?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, the total number of foreign domestic helpers in Hong Kong is about 133 000 at the moment. We are talking about 500 cases waiting for a hearing. I do not think it is a very large number in relation to the total size of that population. Equally we must not neglect the welfare of local workers who deserve as do other workers in Hong Kong to have a fair hearing. I am sure that Members would agree we should give every worker equal rights in hearings. Therefore, I think that we should address the matter as a matter of equality for all workers, whether they are local or foreign, in going to the courts or tribunals to have hearings and we are taking steps in every way to speed it up.

Student Representation in Tertiary Institutions' Councils

3. MR CONRAD LAM asked (in Cantonese): *It is learnt that the boards of governors of individual tertiary institutions hold different attitudes towards student participation, and that this has given some students the impression that the boards of governors of their institutions are discriminating against them. In this connection, will the Government inform this Council:*

- (a) *of the tertiary institutions in which students are represented on the institutions' boards of governors;*
- (b) *how the respective numbers of student and staff representatives on the these institutions' boards of governors are determined;*
- (c) *whether the staff and student representatives on the institutions' boards of governors enjoy equal rights; if not, what are the institutions' reasons; and*

- (d) *whether there are any tertiary institutions in which students are not represented on the institutions' boards of governors; if so, which are those institutions and what are the institutions' reasons for excluding student representatives on their boards of governors?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, it is understood that the question refers to the "Councils" of the tertiary institutions as the governing executive bodies, as set out in the Chinese version of the question. Accordingly, my reply is:

- (a) The Administration understands that students are represented on the Councils of five of the tertiary institutions: namely the University of Hong Kong, the Hong Kong Polytechnic University, the City University of Hong Kong, the Hong Kong Baptist University and the Hong Kong Institute of Education.
- (b) The numbers of student and staff representatives on the institutions' Councils are specified in the respective ordinances or statutes of the institutions concerned.
- (c) The Administration understands that both staff and student representatives of the Councils of the institutions enjoy equal rights. However, different institutions have defined different areas of business where participation in discussion by individual members is excluded. These concern mainly matters affecting the appointment, promotion and other personnel matters relating to the staff of the institutions as individuals as well as matters affecting the admission and academic assessment of students as individuals.
- (d) The Chinese University of Hong Kong, the Hong Kong University of Science and Technology, Lingnan College, the Open Learning Institute of Hong Kong and the Hong Kong Academy for Performing Arts do not have student representatives on their Councils. The Administration understands that these institutions consider the existing channels for students to express their views to be both adequate and reasonable. There are extensive student representation on many of the institutions' various Boards and Committees such as the Senate or Academic Board, Student Affairs Committee, Student Consultative Committee, and so on, on which matters affecting students in different aspects are discussed on a regular basis.

DR CONRAD LAM (in Cantonese): *Mr President, according to the reply of the Secretary, at present some universities in Hong Kong still refuse student representation on their Councils and only allow student representatives to participate in the boards and committees which are of a lower level and with less power. This is, obviously, discrimination against the students. At present, there are five tertiary institutions where students are represented on the Councils. From the experience of these five institutions, what are the pros and cons of having student represented on their Council?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, I do not think I should associate myself with a remark that such institutions without student representation on the Councils are discriminatory. I think it would be unfair to make such a remark without knowing the exact history, background and procedures involving students in those institutions concerned. Therefore the Government will not take a view on this matter until we have had further advice from the institutions.

As regards the experience of the five institutions which have students on their Councils, I will of course have to find out from them their experience in relation to the benefits and advantages of involving students. But I understand that of the other five institutions, there are many channels for student participation at various levels and the Government has not so far received any complaint or request from students that such representation is inadequate and that the Government would need to amend the ordinance to such effect.

DR CONRAD LAM (in Cantonese): *My question is, from the experience of these five tertiary institutions, that is their experience of having student representation on their Councils, what are the merits and demerits of student participation? If seems that the Secretary has not answered my question at all.*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, I think I have said that this is a matter for the universities concerned to give their assessments. Of course I cannot judge on the experience of those institutions with student participation. I have to find out from them.

DR YEUNG SUM (in Cantonese): *Mr President, we can all understand that different institutions have different historical backgrounds. Nevertheless, does the Government realize that nowadays, young people aged 18 are already capable of participating in social affairs and the Government also encourages them to do so? If the Government does recognize this spirit, will it get in touch with the tertiary institutions concerned to make them open up their administration to allow student representatives to participate in the administration and management of the institutions instead of confining student*

participation to working groups only? Will the Government make any attempts in this respect?

PRESIDENT: Are you talking about schools or tertiary institutions, Dr YEUNG Sum?

DR YEUNG SUM (in Cantonese): *I am specifically referring to universities.*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, of course I think it would be certainly useful if I am advised of Members' views on this matter and I would be happy to reflect such views to the institutions concerned. Clearly, I have understood the situation that there are many channels within the existing institutions for student involvement at various levels, such as the Senate, student affairs, libraries, student counselling, admission and so on. So far I am advised that such institutions and these channels have proved to be adequate and effective. So I think that we should at least draw from that experience that the present situation is not that unsatisfactory. But clearly we must, of course, be prepared to review the situation and I will be happy to reflect any suggestions which Members may have and put them to the universities concerned for consideration.

MR TIK CHI-YUEN (in Cantonese): *Mr President, the Secretary has just mentioned that there are at present several tertiary institutions that have no student representation on their Councils, the main reason being that the existing channels for expressing opinions are already reasonable and adequate. Apart from communication, students' participation in the Councils can also strengthen democratization of and student involvement in the administration of the institutions. The Government has been encouraging secondary schools to have old students and students' parents on School Boards in order to achieve democratization. Does the Government consider student representation on the Councils can promote democratization of the administration of the institutions and can encourage student participation? If there is such a positive implication, will the Government put in more effort to encourage tertiary institutions to allow student representation on their Councils, in the same way it encourages secondary schools to accept other service users on School Boards?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, without of course pre-empting the autonomy of the institutions concerned in this matter, clearly the Government would be happy to see further student involvement in affairs of the institutions concerned through various channels. I am sure that this is a matter which the Government would wish to discuss with the institutions further following Members' suggestions on this very important matter.

REV FUNG CHI-WOOD (in Cantonese): *Mr President, there are at present five tertiary institutions that have student representation on their Councils. It is obviously the hope of the Hong Kong Government and society that students can get involved in the highest decision-making body of the institutions. However, there are still several tertiary institutions that have no student representation on their Councils, so there appears to have a policy inconsistency. I hope the Government can lay down a timetable for reviewing and encouraging student representation on the Councils concerned. I do not agree with the reply that other boards and committees can serve the purpose. In fact, institutions having student representation on their Councils do have such channels as well. Therefore, I hope that all tertiary institutions can have a uniform policy, that is, allowing student representation on their Councils as soon as possible. I would like to know whether the Government has any specific plans and actions in this respect?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, I do not think it would be wise to lay down any timetable for consultation with the universities concerned on this very important matter involving their own autonomy, their own student affairs and in fact their own policies. I think the Government would be right in, first of all, reflecting such views to the institutions concerned, and secondly, waiting for their further advice. Then we should discuss with these institutions how they feel about the situation. I am sure that the institutions would be happy to talk to Members of this Council as well on this very important matter and try to get some further improvements in this process.

MR MAN SAI-CHEONG (in Cantonese): *Mr President, from the reply of the Secretary, we learn that some tertiary institutions have student representation on their Councils while others do not. Regarding the question whether student participation in the affairs of the institutions has a positive meaning, does the Government have any specific idea at present? If so, will the Government request those institutions which still have no student representation on their Councils to conduct comprehensive consultation and then follow this line of thought?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, I think I have already said enough about the government stand on this matter, that is, we will be happy first of all to reflect the suggestions to the institutions concerned, and secondly, to start this useful dialogue with institutions and the community and this Council on how to make further improvements in this direction.

MR JAMES TO (in Cantonese): *Mr President, according to paragraph (d) of the Secretary's main reply, the Administration understands that those institutions which have no student representation on their Councils consider the existing*

channels for students to express their views to be both adequate and reasonable. Just now, the Secretary said that the Government came to this understanding from what it got from the institutions. I would like to ask the Secretary whether the students have been consulted and if the students have expressed the same view, that is, the channels for students to express their views are adequate and reasonable? Secondly, is participation in the business of the institutions' Councils confined to the expression of views only? A council is actually a decision-making body. In this connection, is it necessary for students to participate in decision-making? I hope the Government will state its position in clear and unequivocal terms instead of just saying that it will reflect our suggestions, like it is acting as a "post box." Is the Secretary assuming such a role? If so, please let us know.

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, if I were to tell a school to have students on their governing council or board of directors, I am sure there will be strong reactions from the sponsoring body and the school directors, to the effect that the Government is interfering with the affairs of the school. Put that into a university, how would they react to this directive if I were to do it without careful consideration, without careful consultation and without careful discussions? I am sure Members will appreciate that this is a matter of great importance to the universities on their autonomy, a matter of great importance to the operations and the philosophy of the universities and their role in the community. The Government should not be so rash as to rush into a decision without careful consultation.

MR JAMES TO: Mr President.

PRESIDENT: We will have to move on.

MR JAMES TO: Mr President, I would like to clarify because I was quoted as trying to ask the Government to interfere with the universities. But I asked for the Government's stand only.

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, the Government's stand is that the Government would not wish to intervene in the internal affairs of the institutions without careful consultation in the first place.

Teacher Suicides

4. MR SIMON IP asked: *It has been reported that at least four cases of teacher suicide have occurred since the beginning of November last year. In this connection, will the Administration inform this Council whether it has*

conducted any investigations into teacher suicides to ascertain if there are any common factors in such suicides, if so, what the findings are?

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, police investigations into the four recent suicide cases involving teachers are still continuing. Nevertheless, the Education Department has conducted its own enquiries with the school authorities concerned to try to find out whether the deaths of these teachers were related to their work in schools. On the basis of the information thus revealed to the Department, it appears that in at least three of the four cases, there is no such indication.

In the fourth case concerning a teacher at a government school which has attracted some press coverage including suggestions that the deceased had been unfairly treated at work and over promotion, the Department has interviewed the principal and some of the teachers of the school. It has also carefully reviewed the records on the deceased's work and performance. The Department has concluded that there is no ground to support these suggestions.

However, we shall have to await the police's investigation reports before the causes of these suicides may be further identified.

MR SIMON IP: *Thank you, Mr President. The Secretary's answer says that three out of the four suicides were not related to their work in schools; I emphasize the words "in schools". However, were any of these suicides related to work outside schools which many teachers have to do in order to supplement their low income as teachers?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, as far as I can understand from the reports of the investigations by the Department which include those teachers' work involving their school duties, I am not aware of any other duties which they have not reported to the school authorities. Clearly, I have yet to find out what those problems are, if there are any such problems involved.

MR CHEUNG MAN-KWONG (in Cantonese): *Mr President, it is a rather high frequency for four teachers to commit suicide within a period of only three months. Some recently conducted surveys and telephone hotlines on teacher suicide cases show that there are three main sources of pressure in schools, namely, personnel problem, teaching problem and the handling of mischievous students. Will the Government inform this Council whether measures will be taken to target these three major sources of pressure and relieve the teachers of their mental pressure so as to prevent teacher suicide at a more fundamental level?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, I am not so sure as to associate myself with the conclusions as such, reached by Mr CHEUNG, on the four cases in question out of 55 000 teachers in Hong Kong, and relating their pressure of work to these particular incidents. I think clearly we should be careful in focusing our minds on these particular cases, and pending the result of investigations, we should then draw conclusions from those investigations. At this stage, I think it would be unwise and premature to draw such conclusions from the four cases.

MR TIK CHI-YUEN (in Cantonese): *Mr President, I would like to add one more point in respect of the issue of pressure on teachers. We heard from not a few teachers that the many changes in the education policy by the Government in recent years had dramatically increased the workload and pressure on them. Does the Government have any plan to assess how much pressure the various existing new policies will have on the teachers and whether the new policies have the teachers' acceptance? In addition, will the Government strengthen communication with front-line teachers in future?*

PRESIDENT: I think we are drifting a bit from the question.

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, I think we are really, clearly trying to draw conclusions and further solutions before we even have the results of the investigations. Clearly, I would not dispute the need to communicate better with teachers and to understand their work and problems. I am sure this is something we should always do. And clearly, all policy improvements, all policy changes are aimed at improving the quality of education and I am sure teachers would welcome rather than not welcome them as such. But having said that, I appreciate that any new policy or initiative of course does pose an extra burden on teachers and I am very much aware of this. This is why, if new policies are proposed, we always try to look at the resource implications and to assess the demand on teachers and ensure they are sufficiently supported to carry out these new policies. This is a matter, of course, I have always in mind before new policies are designed and implemented.

Levy Rate of Pneumoconiosis Compensation Fund

5. MR JAMES TIEN asked (in Cantonese): *Mr President, a resolution was passed by this Council on 21 July 1993 to increase the rate of levy for the Pneumoconiosis Compensation Fund by 15 times, raising it from 0.02% to 0.3%. At the meeting of the Legislative Council Panel on Manpower held on 8 December 1994, officials of the Education and Manpower Branch disclosed that the Government would further raise the levy rate to 0.45%. In this connection, will the Government inform this Council:*

- (a) *whether, in considering the further increase of the levy rate to 0.45%, it has taken into account the impact of the new levy rate on the construction industry as well as sought the views of the construction sector;*
- (b) *how long the levy rate of 0.45% is expected to remain unchanged; and*
- (c) *whether it will consider injecting funds into the Pneumoconiosis Compensation Fund to stabilize the levy rate in the long term, so as to avoid hampering the development of the construction industry?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, the Legislative Council Panel on Manpower was briefed on 8 December 1994 on the need to raise the rate of levy for the Pneumoconiosis Compensation Fund from 0.3% to 0.45%. The position of the levy was further discussed at the meeting on 3 January 1995. An increase in the rate of the levy is necessary to ensure that it will be able to meet its long-term commitments. The possible need for this second phase of increase was already made known to this Council when the rate of levy was last increased from 0.02% to 0.3% in July 1993.

If the rate of levy remains unchanged, it is estimated that the Fund will run into a deficit in 1996 and 1997. The Pneumoconiosis Compensation Fund Board will not then be able to meet the payments due to all eligible beneficiaries.

As regards the three specific questions, first, the impact of the proposed increase in the rate of the levy on the construction industry is not expected to be significant. Assuming that the proposed rate of levy comes into effect from 1 April 1995, our preliminary assessment is that the operating costs of the construction industry will be increased by 0.006% in 1995, by 0.041% in 1997 and 0.071% in 1999. The construction sector has been consulted on this proposed increase through the Pneumoconiosis Compensation Fund Board on which the Hong Kong Construction Association is also represented.

Second, the proposed levy rate of 0.45%, if implemented, will be kept under regular review, having regard to the actual income and expenditure of the Pneumoconiosis Compensation Fund. However, barring any unforeseen downturn in the construction industry, it is estimated that a levy rate of 0.45% will ensure that the Fund maintains a healthy balance well into the year 2000. The situation will need to be reassessed if further improvements are made to benefits payable to pneumoconiotics under the scheme.

Finally, the Pneumoconiosis compensation Scheme is a collective liability scheme established for the specific purpose of providing compensation to post-1981 pneumoconiotics through the Pneumoconiosis Compensation Fund. The Fund is to be financed by a levy on the building and construction industry and

the quarry industry where the bulk of pneumoconiosis cases are detected. For this reason, there is no question for the Government to inject funds into the Fund for the sake of stabilizing the levy rate. Nevertheless, as I have stated in the earlier part of my answer, we will keep the levy rate regularly under review to ensure that the Fund can continue to honour its financial commitments without difficulty. In this connection, both the financial position of the Fund and the impact on the construction industry will be closely monitored, so that they can be taken into account when there is a need to revise the rate of levy further.

MR JAMES TIEN (in Cantonese): *It was mentioned in the third paragraph of the Secretary's main reply that the operating costs of the construction industry will increase by 0.006%. I would not have worried so much if the figure was really so small. But in fact this is not the case. Let us look at the following example. A building site of a hundred thousand-odd square feet will have a construction cost of \$0.1 billion calculated at \$600 per square foot. If the levy rate of 0.45% as recently proposed by the Government is applied, the levy on \$0.1 billion will be \$450,000. In the past, the levy rate was 0.02% and the levy would only be \$20,000. We can thus see a drastic increase of the levy. Insofar as the impact of this \$450,000 on the builders is concerned, a 5% to 6% profit out of the construction cost of \$0.1 billion will translate into \$5 million to \$6 million, and the levy of \$450,000 will represent 9% of the %5 million profit. Perhaps the Secretary could explain why the increase was assessed to be at 0.006%? Mr President, I would also like to raise another question. In the fifth paragraph, the Government said the compensation scheme is a collective liability scheme. Under the circumstances, I hope the Government will take up the collective liability jointly with the business sector, instead of*

PRESIDENT: Mr TIEN, I think perhaps we should give the Secretary time to answer that first question and then you move to your second?

MR JAMES TIEN: Yes, Mr President.

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, clearly, I need to look at the details of the calculations on Mr TIEN's question on paragraph 3, that is, on the calculations of the cost to the industry. I would do so and supply it in writing. (Annex IV)

PRESIDENT: Yes, Mr TIEN, the second part of your question.

MR JAMES TIEN (in Cantonese): *In the fifth paragraph of the Secretary's main answer, the Government said the compensation scheme is a collective liability scheme. I agree with this point. But I hope the so-called collective liability is*

not a liability only of the business sector and the construction industry. Will the Government also share part of the liability? The construction industry has to pay a lot of charges and has to pay tax after making a profit. It is the business sector's hope that the Government can inject funds into the scheme for compensating the unfortunate workers. I propose that the Government inject \$0.1 billion; will the Government consider my proposal? An amount of \$0.1 billion is not large and will earn an annual return of 10%. The \$10 million generated will be sufficient to make up for the present shortfall and enable the pneumoconiotics to receive more compensation.

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, paragraph 5 of my answer made it very clear that the collective liability refers to the liability of the building and construction and quarry industries concerned, where most of the pneumoconiosis cases are detected. This is what is meant by collective liability, that is, those industries concerned should pay the levy to cover these cases of hardship. The Government should not therefore be responsible for injecting funds into this particular case, nor should it take up the liability. It is entirely a matter for the industries concerned to shoulder this responsibility and ensure that the workers who have suffered because of the cases arising from the industries concerned should be fairly compensated.

MR RONALD ARCULLI: *Thank you, Mr President. In paragraph 3 of his answer, the Secretary has said to us that the Hong Kong Construction Association was consulted through its representation on the Pneumoconiosis Compensation Fund Board. From the enquiries that I have made, I think there might be a misunderstanding because the representative on the Board was told about the government thinking but was also requested not to discuss the matter with the industry. I wonder whether the Secretary could check up on this and if that be the case, could the Secretary then take the necessary soundings from the Hong Kong Construction Association and give them a detailed explanation as to why such a hefty increase in contemplated?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, certainly, I will be happy to ensure that the industry is fully consulted. I am sure that this particular case was discussed at the Fund Board and perhaps the industry might wish to have a fuller discussion on this matter. I am happy to make sure that this is to take place.

MR TAM YIU-CHUNG (in Cantonese): *Mr President, during the early period after the Fund was set up, the levy rate was lowered several time and the levy has in fact been shifted to the real estate developers and the owners. Will the Government consider making adjustments in accordance with the actual needs instead of raising the rate of levy in stages with a view to improving the*

financial position of the Pneumoconiosis Compensation Fund to provide better protection for the pneumoconiotics?

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, I certainly agree that we should ensure that the Fund is stabilized and that there is sufficient money in 18 months to cover all the cases outstanding or cases to come. This is only a healthy way of managing the Fund. But if the 0.45% increase were approved, I think it would be quite comfortable for us to take care of the requirements of the Fund for a number of years.

MR LAU CHIN-SHEK (in Cantonese): *Mr President, just now the Secretary has repeatedly said that the collective liability does not involve the Government. However, I wish to point out that firstly, many projects are indeed Government projects; and secondly, the Government had appropriated \$50 million to compensate the pneumoconiotics before 1981. Under the circumstances, I would like to ask, firstly, whether the Government should assume the liability; and secondly, is it essential to give the pneumoconiotics compensation to mitigate their sufferings as they will not recover from the illness? If the Government is not willing to inject funds, will it provide loans to the Fund instead?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, of course I cannot speak for the Government on the use of loans or other means of helping. Clearly, if there is a convincing case for the Government to help on a special basis, I am sure the Government as a whole will consider it very carefully.

MR MICHAEL HO (in Cantonese): *Mr President, in the fourth paragraph of the main answer, the Secretary mentioned that the levy rate of 0.45% can be maintained well into the year 2000. When doing the calculation, has the Government considered that the number of new pneumoconiotics will be drastically reduced some time after industrial safety measures have been strengthened and eventually no one will require pneumoconiosis compensation? Will the Government inform this Council what specific plans it has in mind to reduce the incidence of pneumoconiosis in the building, the construction and the quarry industries in the coming two years?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, clearly, there are two particular areas we need to look at in parallel. I agree that if the rate of pneumoconiosis incidence is reduced following further improvements to the operations of this particular trade, we should be able to see a reduction in requirements on cases and therefore the Fund, which is now to be increased by 0.45%, might be in fact even sufficient to cover future years' requirements. In parallel, of course, the Government is doing all it can to ensure that the source

of the problem, that is, pneumoconiosis, is further reduced. We are taking various steps to do this, for example, we will of course be discouraging hand-dug caissons in this particular area and ensuring that workers' benefits can be further improved by reducing the incidence of pneumoconiosis.

PRESIDENT: Yes, Mr Michael HO.

MR MICHAEL HO (in Cantonese): *The Secretary has not answered my question. Firstly, I asked whether the Government has taken this factor into account when it estimated that the levy rate of 0.45% would be maintained well into the year 2000; and secondly, what specific plans the Government has in mind for the coming two years in respect of the three industries I mentioned?*

PRESIDENT: I think the first part of your question falls within the ambit of the question and answer. The second rather goes beyond. But Secretary, are you able to answer?

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, I think what I have said on the requirements in the coming few years and on this new rate of increase reflects the present position. Obviously, if the present position is to be further improved then I am sure, as I said just now, the Fund will be even better in providing for other uses and be more comfortable.

On the second point, of course I need to consult the industry and look at what further measures are in hand to improve the welfare of workers in relation to this particular disease.

MR HENRY TANG (in Cantonese): *Mr President, in the fifth paragraph of his answer, the Secretary said that the Government will not consider the injection of funds again. But Mr LAU Chin-shek just mentioned that the Government did make an injection of \$50 million. Will the Secretary clarify whether that was an "once-and-for-all" injection or that the Government will consider injecting funds again on a need basis?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, if I recall correctly, any government funding clearly must be on a one-off basis as a special case, and I am sure this probably applied to the last particular case. What I have said in paragraph 5 is, as a matter of principle, the Government should not provide for the recurrent requirements of the Fund. The recurrent expenses must be met by the Fund itself through the levy; this is the basic policy underlying the Fund itself. But as I said also, the Government will of course be

sympathetic, I hope, to any particular difficulties which the Fund might have and consider any such request on a one-off basis.

Public Liability Insurance Policy

MR FRED LI asked (in Cantonese): *There are at present quite a number of travel agents who have not taken out "public liability" insurance policies for their package tours. This often gives rise to problem in determining the responsibility for compensation in the event of an accident. Tourists on such tours are also not given adequate protection. In this connection, will the Government inform this Council of the following:*

- (a) *what immediate contingency measures and short-term solution does the Government have to tackle the problem in view of the approaching peak tourist season during the Lunar New Year; and*
- (b) *whether the Government will, in the long term, consider introducing legislation requiring travel agents to take out "public liability" insurance policies for their package tours; if not, what are the reasons?*

SECRETARY FOR TRADE AND INDUSTRY: Mr President, with regard to the Honourable Member's question, we have discussed with the Travel Industry Council and the Consumer Council possible ways to improve protection for outbound travellers, in particular the need for insurance coverage for both outbound travellers and travel agents.

The Travel Industry Council has accepted in principle that travel agents should take out public liability insurance to protect their clients, and has appointed a committee to consider possible options. The committee aims to submit its recommendations to the Travel Industry Council next month — that is February.

As an interim measure, the Travel Industry Council has asked its members to encourage their clients to take out travel insurance themselves and to provide them with detailed information on the travel insurance services available. It has also advised travel agents to disclose details of the insurance coverage included in the travel services provided to their clients. In addition, the Consumer Council and the Travel Industry Council have strengthened their publicity efforts to promote the awareness of travellers of the benefits of being covered by an insurance policy when travelling outside Hong Kong.

Regarding part(b) of the Honourable Member's question, as I have just said, the issue of public liability insurance is being examined by the Travel Industry Council. In the light of the recommendations of the Travel Industry Council and the advice of the Advisory Committee on Travel Agents, the

Government will consider whether it is necessary to introduce legislation requiring travel agents to take out public liability insurance for their package tours.

MF FRED LI (in Cantonese): *Mr President, as far as I know, it is a general practice for the social service agencies which often organize outdoor activities to take out public liability insurance policies. I find it very strange that the Government has all along not required travel agents to take out similar insurance policies. The Secretary has mentioned in his reply that the recommendation of the Travel Industry Council and the Advisory Committee on Travel Agents will be considered. I wish to ask: if the Government has any position on the question of requiring travel agents to take out public liability insurance policies?*

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): It sounds strange to me that the Honourable Fred LI has found it strange, for Hong Kong has never been a place practising socialism or communism. Therefore, no plans are made for the public to see them through from the cradle to the grave. Nor will all the moves be compulsorily set out for them to follow.

I am aware that the people of Hong Kong have been talking all day long that the various freedoms we now enjoy should be maintained before and after 1997. I think one of the most important freedom is the freedom of choice. At present, the Government has not taken any position nor reached any final decision or conclusion. But I personally think that there are both advantages and disadvantages if travel agents are compelled to take out travellers' insurance policies on behalf of their customers. I believe the advantages must have been apparent and it would not be necessary for me to explain to Mr LI. If Mr LI does not know what the advantages are, he would not have asked the question in the first place. The disadvantage is, however, that the public will have no choice. Besides, there will simply appear a shifting of costs. Travel agents operate for profits and not for charitable purposes, we cannot compel them to take out insurance policies on behalf of their customers without shifting the costs to the customers. As a result, the prices of package tours will definitely go up. For some travellers who may have already taken out their own insurance, they will think that it is not only unnecessary but also unfair. Hence, I think we have to consider the matter in detail before reaching a conclusion.

MR FRED LI (in Cantonese): *Mr President, first of all, I am not a socialist. I would only like to clarify one point. I believe the Secretary has misunderstood my question. What I talked about is public liability insurance policy which is like the third party's insurance for a motor vehicle, not the travellers' insurance policies specially designed for individual outbound travellers. Does the Government has any position in this particular area?*

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): I am sorry if I have misunderstood what Mr LI said. According to the information given by the Travel Industry Council, 70% of the major travel agents take out public liability or occupational liability insurance for their package tours. Our position remains that we will only come to a decision after considering the views of those in the trade, that is, the Travel Industry Council and the Advisory Committee on Travel Agents.

MR MARTIN BARROW: *Mr President, could the Secretary advise us whether the Government is also discussing with the two Councils the question of insurance coverage for local tours which are which are enjoyed by visitors from overseas, and if not, why not?*

SECRETARY FOR TRADE AND INDUSTRY: Mr President, the short and simple answer to Mr BARROW is that within the distribution of duties within the Government, I happen to be responsible only for outbound travellers. The question of the safety of inward tourists is, for me, happily, a question for the Secretary for Economic Services (Laughter). So I cannot answer his question and I will happily refer it to my colleague, the Secretary for Economic Service, for a written reply. (Annex V)

MR TAM YIU-CHUNG (in Cantonese): *Mr President, can the Government give this Council an explanation or introduction of the public liability insurance? For example, in case of an accident, will the indemnity of the public liability insurance policy be paid to the members of the package tours or to the travel agents? How is the indemnity calculated and to what extent are members of package tours insured?*

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): According to the information I have, both the tourists and the travel agents will be insured under this kind of policy. In other words, if a member of a package tour suffers any physical injury or property losses, he will be compensated. Moreover, the travel agent will be insured against damages done to any third parties caused by any member of its package tour in the course of the tour. As regards the question on indemnity, I do not quite understand Mr TAM's question. I wonder if he can repeat his question?

MR TAM YIU-CHUNG (in Cantonese): *My question is how the indemnity is calculated. For example, if a member of a package tour suffers a physical injury, how much indemnity will he receive?*

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): I do not have the relevant information now. However, it can reasonably be presumed that the amount will differ from case to case and will depend on the circumstances at the time, the liability and so on. If I can obtain more information, I will be happy to give Mr TAM a written reply. (Annex VI)

MR HOWARD YOUNG (in Cantonese): *Mr President, besides consulting the Tourist Industry Council and the Consumer Council, will the Government seek the opinions of the insurance industry as well? In addition, will the Government consult the measures that have been successfully implemented by overseas countries to give travel agents and tourists the biggest, fullest and most cost-effective protection?*

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): We will certainly consult the insurance industry on this question. Besides, we are now collecting information on how overseas countries have dealt with this problem for reference.

MR ERIC LI: *Mr President, will the Government consider asking each outbound traveller to sign a specific disclaimer every time they opt for not taking out compulsory insurance, to ensure, firstly, that they have considered the matter of insurance very seriously, and secondly, that they still maintain a choice?*

SECRETARY FOR TRADE AND INDUSTRY: Mr President, depending on the recommendations of the Travel Industry Council and also the advice of the Advisory Committee on Travel Agents when we proceed to consult them, we would be prepared to consider any workable solutions.

WRITTEN ANSWERS TO QUESTIONS

Target Oriented Curriculum Programme

MR MAN SAI-CHEONG asked (in Chinese): *The Target Oriented Curriculum (TOC) programme will be introduced by the Government in Primary One classes in 70 primary schools with effect from September this year, and full implementation of the programme will take place in September 1996. In this connection, will the Government inform this Council:*

- (a) *how the mechanism to be set up by the relevant authority to undertake periodic reviews of the TOC programme will operate, and*

- (b) *what measures will be adopted by the Government to assess the effectiveness of the TOC programme?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President,

- (a) The Director of Education intends to establish soon a committee to monitor the phased introduction of the Target Oriented Curriculum (TOC) starting in the school year 1995-96. The membership of the committee is being finalized, and is likely to include educationalists, school principals and teachers as well as parents. The committee will meet regularly to monitor the progress of the implementation plan, identify problems arising from implementation and recommend solutions. It will also evaluate the effectiveness of TOC during implementation and advise the Director on future development.
- (b) The effectiveness of TOC can be measured among the three target groups below using the following criteria:
- (a) For pupils
- * cognitive development — whether there is better development in pupils' thinking and communication skills;
 - * learning behaviour — whether there is more active, pleasurable and effective participation in learning activities;
 - * attitude — whether pupils' attitude towards school work is more positive, confident and independent;
 - * achievements — whether pupils' achievements at the end of primary or secondary education are higher in terms of their ability to apply what they have learned in school to their daily life.
- (b) For schools and teachers
- * whether more effective teaching is being adopted through better planned and more stimulating approach, tailored to meet the pupils' abilities and needs.
- (c) For parents
- * whether parents are better informed about their children's progress, strengths and weaknesses in specific areas of

learning and measures to deal with the weaknesses identified.

The means of measurement can include questionnaires, observations and assessments of performance in the three core subjects of Chinese, English and Mathematics. A decision on the specific technique to be employed will be made after taking advice from the monitoring committee.

Remuneration of Part-Time Court Interpreters

8. MR MOSES CHENG asked (in Chinese): *The remuneration of part-time court interpreters is of a relatively low level which makes it difficult to attract suitable people to take up the job. In a recent trial of an assault case, the progress of the trial has been impeded because of difficulties in finding a part-time court interpreter who speaks the Wenzhou dialect. In this connection, will the Government inform this Council:*

- (a) *of the number of times that part-time court interpreters were employed by the Judiciary in the past year;*
- (b) *of the amount of money allocated to the Judiciary for employing part-time court interpreters this year, and whether the allocation is sufficient;*
- (c) *of the current method of calculating the remuneration of part-time court interpreters; and whether such method of calculation differs from the method of calculating the remuneration of part-time interpreters employed by tribunals established by the Government such as the Insider Dealing Tribunal; if so, why there is such a difference; and*
- (d) *whether the Government will review the remuneration system of part-time court interpreters shortly so as to attract suitable people to take up the job, thus ensuring that the normal operation of the court is not affected?*

CHIEF SECRETARY: Mr President, the Judiciary engages part-time interpreters in cases where interpretation service cannot be provided by the full-time Court Interpreters. These are mostly cases involving foreign languages (other than English and Cantonese) or involving dialects not commonly spoken in Hong Kong. When interpretation is required for a foreign language or a dialect which is rarely spoken in Hong Kong, particularly when a trial is complex and involves technical subjects, the Judiciary has occasionally encountered difficulties in finding suitable interpreters. This is usually due to the scarcity of persons fluent in both English and the foreign language or dialect concerned. Many of these freelance interpreters have their own regular work

and cannot spare the time to do the court interpretation at the specified time. The level of remuneration is not usually the problem, but where it appears to be a significant inhibiting factor in a particular case, the Judiciary Administrator may exercise her discretion to authorize a higher rate.

In the particular case referred to in the question, interpretation of the Wenzhou dialect was required. There were three freelance interpreters on the Judiciary's register at the time. However, one of them was away from Hong Kong at the time of the trial, and another declined to do the court interpretation for this case because he knew some of the people involved in it. The remaining interpreter was engaged by the Judiciary, but was objected to by the defence on the first day of the trial. The case, therefore, had to be adjourned. Another interpreter was subsequently engaged through a private sector agency.

The specific information requested in parts (a) to (d) of the question is as follows:

- (a) In the last financial year, the total number of times that part-time interpreters were engaged by the Judiciary was 9 402, involving a total of 24 700 man-hours of work.
- (b) The amount of money allocated to the Judiciary for employing part-time interpreters in the current financial year is \$4.63 million. This is likely to be inadequate because of an unexpected increase in demand for foreign language interpreters. To quote an example, there was a recent 398-day trial which required interpretation for a significant number of Vietnamese-speaking witnesses.
- (c) The current rate of remuneration of part-time court interpreters engaged by the Judiciary is the same as that applicable to other non-government interpreters engaged by government departments. The Judiciary's rate is determined by reference to the market rate, although the two rates are not strictly comparable, as the market rate also cover elements like overheads, profit margin, and so on, which are not applicable in the case of the Judiciary's rate. The method of calculating the remuneration of part-time interpreters employed by tribunals under the Administration follows that adopted by the Judiciary. Special rates may be paid in some particular cases heard by these tribunals, having regard to their complexity and technical nature.
- (d) The rate of remuneration of part-time interpreters is reviewed every two years. A review is currently being conducted. The Judiciary is also reviewing the feasibility of engaging staff on a contract basis for the provision of foreign language interpretation which has become increasingly common in the courts, such as Tagalog interpretation.

Organizational Structure of Clearing House

9. MR CHIM PUI-CHUNG asked (in Chinese): *Will the Government inform this Council whether:*

- (a) *it is aware of the organizational structure of the clearing house operating under the Hong Kong Stock Exchange; if so, what the organizational structure is; and*
- (b) *it will consider allowing investors to open accounts directly with the clearing house; if so, whether there will be any government department responsible for handling complaints lodged by investors who have suffered losses; if not, what the reasons are?*

SECRETARY FOR FINANCIAL SERVICES: Mr President,

- (a) The Government is aware of the organizational structure of the Hong Kong Securities Clearing Company Limited (Clearing Company). It is a non-profit distributing company, incorporated for the purpose of establishing and operating a centralized securities clearing and settlement system for Hong Kong. The primary function of the Clearing Company is to provide services for the clearing and settlement of transactions in securities admitted into the Central Clearing and Settlement System (CCASS) and effected on the Stock Exchange of Hong Kong Limited (the Stock Exchange).

The Clearing Company is a company limited by guarantee of HK\$50 million and has six members: the Stock Exchange, Bank of China, Hang Seng Bank Limited, Standard Chartered Bank, The Bank of East Asia Limited and The Hongkong and Shanghai Banking Corporation Limited. The Stock Exchange provides 50% of the guarantee and each of the member banks provides 10%.

It is governed by a Board of Directors comprising 10 Stock Exchange appointees, an appointee from each of the five member banks, five directors appointed by the Financial Secretary to represent the public interest, and the Chief Executives of the Stock Exchange and the Clearing Company.

- (b) The Clearing Company was designed to provide "wholesale" automated clearing and settlement services to financial intermediaries, such as stockbrokers and banks. Investors are not able to participate in CCASS directly. They must use financial intermediaries, such as stockbrokers and custodians, to access Clearing Company services.

The question of allowing investors to open accounts directly with CCASS is one which would continue to be reviewed by the Clearing Company and the Securities and Futures Commission (SFC). The matter requires considerable thought and analysis. The following issues, among others, would need to be addressed.

One of the main roles of the Clearing Company is to act as settlement counterparty to all stockbrokers. This role controls the systemic risks of broker defaults. If investors were to participate in CCASS, they would add risk and cost to CCASS operations. Investor access to CCASS would require consideration of what risk management measures would apply to investors and how much they would be required to pay to participate in CCASS. This raises the question of whether investors would be willing to pay the necessary costs.

The Securities (Clearing Houses) Ordinance would need to be reviewed to determine whether legislative amendments would be necessary if the Clearing Company were to change its role from being a wholesale clearing house to also become a retail clearing house.

Another question is whether the Clearing Company is the appropriate entity to provide investors with access to CCASS. This question requires analysis of the appropriate roles of not only the Clearing Company, but also the Stock Exchange and listed companies and their registrars who under the Companies Ordinance are responsible for recording and transferring ownership interests of the company shareholders.

Investors' participation in CCASS would not be a panacea. Even if investors were to have direct access to CCASS, they would still remain at risk during the settlement process if a broker or custodian has defaulted or become incapacitated.

The handling of complaints lodged by investors concerning market matters rests primarily with the Stock Exchange and the SFC. An investor who has suffered pecuniary loss as a result of any act done in the course of, or in connection with, the stockbroking business of a stockbroker in relation to any money or securities entrusted to the stockbroker or his employees may claim compensation from the Compensation Fund pursuant to section 109 of the Securities Ordinance. The Compensation Fund is set up by legislation, funded in part by transaction levy and administered by the Stock Exchange and the SFC.

Employment of Construction Workers for Airport Project

10. MR HENRY TANG asked: *Regarding the employment of construction workers for the Chek Lap Kok Airport project, will the Government inform this Council of:*

- (a) *the number of local construction workers who have been interviewed for employment by the project contractors since the commencement of the construction works; among these workers, how many have been employed and in what main positions they are employed; how many have been rejected and for what reasons; and*
- (b) *the respective numbers of illegal workers who have been arrested and contractors who have been charged since the commencement of the construction works?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, up to 31 December 1994, a total of 11 962 construction workers have been employed on the Chek Lap Kok Airport project and other Airport Core Programme (ACP) projects. Of this total, 8 751 or 73.2 % are local workers. It has been a long-standing tradition of the local construction industry that workers are employed directly by contractors and subcontractors on a contract by contract basis. The employment of construction workers for ACP works follows the same pattern. For this reason, very few local construction workers use the Local Employment Service (LES) of the Labour Department as a channel to seek employment. The total number of construction workers who are registered with the LES at any one time is about 200.

We therefore do not have any statistics on the number of local workers who were interviewed by the ACP project contractors and the number of such workers who were not offered employment. However, in accordance with the arrangement under the existing special labour importation scheme for ACP projects, employers who wish to import labour are required to register their vacancies with the LES of the Labour Department for a minimum period of four weeks in order that local workers are given first priority to apply for them. The Labour Department will also send such information to the construction workers' union, inviting their members to make use of the Department's employment service or to make direct referrals to the contractors concerned. These measures have been in place since October 1992.

Up to now, a total of 539 referrals of local construction workers have been made to contractors for selection interview through the LES. In addition, the Construction Industry Employees General Union and the Shipbuilding, Machinery and Steel Industries Employees General Union have made 103 direct referrals to the contractors. As a result, a total of 105 of such referrals have resulted in employment. 480 have been rejected by the contractors for various reasons, including inappropriate working experience and poor performance

during the interviews, 28 have declined offers and 29 are still waiting for the results.

Local construction workers for ACP projects have been employed mainly in positions such as carpenters, concreters, crew, electricians, bar-benders, welders, skilled and unskilled labourers.

So far, no illegal workers have been arrested at the Chek Lap Kok Airport project site. No ACP contractors have so far been charged for employing illegal immigrants.

Recruitment of Local Workers for Airport Project

11. MR PANG CHUN-HOI asked (in Chinese): *Will the Government inform this Council whether it will consider setting up a special division in the Labour Department responsible for co-ordinating the recruitment of local workers for the New Airport Project and stepping up publicity for such work, so as to ensure that local workers are accorded priority in employment?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, at present, the Tsuen Wan Office of the Local Employment Service of the Labour Department is co-ordinating efforts in the recruitment of local workers for the New Airport and related projects. Additional resources have been earmarked in 1995-96 for the establishment of a special placement team comprising one Labour Officer, two Assistant Labour Officers and two Clerical Officers in the Labour Department to strengthen co-ordination of the work in the recruitment of local workers for the Airport Core Programme projects and to step up publicity on such work.

Sale of Counterfeit Goods in Tourist Areas

12. MR HOWARD YOUNG asked: *Will the Government inform this Council:*

- (a) *whether the Government is aware that there are many hawkers selling counterfeit goods of famous brand names in tourist areas such as Tsim Sha Tsui; and*
- (b) *what actions the Government will take to eradicate these illegal activities in the tourist areas so that Hong Kong's reputation as the "shoppers' paradise" will not be damaged?*

SECRETARY FOR TRADE AND INDUSTRY: Mr President, the Government is aware of the problem, but the operational experience of the Customs and Excise Department indicates that only a small proportion of hawkers in tourist areas are engaged in selling counterfeit goods.

To combat this problem, the Customs and Excise Department conducts frequent raids on hawker blackspots, gathers intelligence from trademark owners and liaises closely with other government departments, such as the police and the Urban Services Department, in operations against hawking of counterfeit goods. In 1994, there were 356 counterfeiting cases involving hawkers, resulting in seizure of 40 906 items valued at \$2.37 million.

In addition to street-level operations, the Department also conducts raids against places where counterfeit goods are stored. In 1994, 62 storage places were detected, resulting in 68 arrests and the seizure of 616 178 items valued at \$24.15 million.

Apart from enforcement action, publicity has also been stepped up to emphasize that counterfeiting is an offence and that the availability of counterfeit goods in Hong Kong damages Hong Kong's international reputation.

Continuous Night Shift Scheme of Hospital Authority

13. MR MICHAEL HO asked (in Chinese): *Regarding the Continuous Night Shift Scheme implemented by the Hospital Authority in mid-1994 to minimize the wastage of nurses, will the Government inform this Council:*

- (a) *of the number of hospitals in the territory which have applied to join this scheme and the respective numbers of nurses who have been given approval to join this scheme in each of the participating hospitals;*
- (b) *what are the criteria adopted by the Hospital Authority to appraise the applications filed by the hospitals;*
- (c) *whether there are any hospitals whose applications to join the scheme have been turned down, if so, what the reasons are;*
- (d) *of the total resources allocated by the Hospital Authority to this scheme together with a breakdown of the resources allocated to each participating hospital; and*
- (e) *when this scheme will be reviewed; and how the Government will monitor and assess its effectiveness?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, as at 12 January 1995, 117 nurses in 16 public hospitals have joined the Continuous Night Shift Scheme. A detailed breakdown is attached.

Since the key objective of this Scheme is to reduce the frequency of night shift for nurses to an average of once per week, the applications filed by individual hospitals are evaluated by the Hospital Authority Head Office based on their operational requirements and the expected outcome. So far, only one application was rejected.

The Hospital Authority has provided sufficient resources for individual hospitals to carry out the service targets contained in their business plans. Hospitals implementing the Scheme are operating within their annual budget but additional resources could be allocated to them if necessary. A review of the effectiveness of the Scheme is expected to be completed by February 1995.

Breakdown of Hospitals Implementing the
Continuous Night Shift Scheme as at 12 January 1995

Hospital	Number of staff
Prince of Wales Hospital	14
United Christian Hospital	4
Tsan Yuk Hospital	10
Caritas Medical Centre	2
Tuen Mun Hospital	10
Tung Wah Hospital	1
Queen Mary Hospital	17
St. John Hospital	1
Kwong Wah Hospital	9
Princess Margaret Hospital	2
Yan Chai Hospital	11
Grantham Hospital	15

Hospital	Number of staff
Pamela Youde Nethersole Eastern Hospital	10
Nam Long Hospital	2
Queen Elizabeth Hospital	9

	117

Safe Operation of New Airport Runways

14. MR SAMUEL WONG (in Chinese): *It is learnt that the reclaimed land on which the Kansai International Airport in Osaka, Japan is sited has been continuously subsiding since the airport came into operation. This has led to worries from many people in the territory that the same problem would happen in the Chek Lap Kok New Airport. Although officials from the New Airport Projects Co-ordination Office have stated that the soil of the two sites and the reclamation methods employed are different, will the Government inform this Council:*

- (a) *whether it will consider requiring the Provisional Airport Authority (PAA) and the contractors for the project to take out insurance for the runways during the construction period and after they are brought into use, so that adequate compensation can be claimed to cover the repair cost of the runways and associated facilities in case of a subsidence; and*
- (b) *whether, in considering the safety and operation of the runways, the PAA will, apart from adopting the design provided by the project consultants or contractors, invite a third party such as an insurance company to conduct an independent assessment of the safe operation of the runways; if not, what the reasons are?*

SECRETARY FOR WORKS: Mr President,

- (a) As mentioned in our reply to a Member's question raised on 10 November 1993, the unique experience at the new Kansai Airport in Japan is not applicable to Chek Lap Kok. There is no evidence so far of the reclamation site having problems with soil settlement. Based on studies of other major reclamation works and observations on a test embankment constructed at Chek Lap Kok in 1982, the Provisional Airport Authority (PAA) adopted a technique which involved the removal of upper layers of soft marine mud. With this

removed, it is estimated that the average settlement of reclamation areas will be between 40 cm and 50 cm over a long period. Prediction of settlement, in particular the rate at which it occurs, is always difficult because of variations in geological conditions. Instrumentation has therefore been installed to monitor settlement as reclamation progresses and results so far confirm that the settlement is performing within our expectations. Provision has already been made to accelerate settlement by mechanical means or surcharge, which are normal practices in Hong Kong.

The responsibility for settlement performance lies with the platform designers, while designers for follow-on works such as runways, drainage and so on must ensure that their designs take into account anticipated settlements. The Government is satisfied that the PAA have, through their consultants or contractors, sufficient insurance in place to cover the design and construction of the New Airport. Details on the construction insurance as advised by the PAA is as follows:

- (i) The Government requires the PAA to effect and maintain through their consultants or contractors, Professional Indemnity insurance in respect of design of the airport project which, subject to availability, is to continue in effect for a period up to 10 years after completion of the project;
 - (ii) Greiner Maunsell, the Master Plan Consultants, who were responsible for preparation of the design of the Airport Platform, have Professional Indemnity insurance in place under their Agreement with the PAA dated 14 July 1990; and
 - (iii) Mitchell, McFarlane Brentall and Partners International Limited and WS Atkins and Partners, Overseas, the designers of the airport runways and pavements, also have Professional Indemnity insurance up to the maximum available in the international insurance market of £10 million which is to be maintained (to the extent that it continues to be available) for a period of 12 years after completion of the works.
- (b) The New Airport will require an Aerodrome Licence from the Director of Civil Aviation prior to opening for normal commercial operations. This will include the need to confirm the runway is safe for full operation. The Government and the PAA are currently considering the procedures that will be involved to complete the Aerodrome Licence process.

Psychogeriatric Services

15. DR LAM KUI-CHUN asked (in Chinese): *It is reported that 30% of the elderly people in the territory, totalling over 160,000, suffer from mental illness of varying degrees. However, there are only 20 psychogeriatric practitioners and five outreaching teams for psychogeriatric services in the territory. In this connection, will the Government inform this Council:*

- (a) *of the measures to be taken to enhance the provision of services for the elderly suffering from mental illness, and*
- (b) *whether additional resources will be provided for the development of different types of psychogeriatric rehabilitation services, such as extending the scope of services of the outreaching teams beyond providing services in the care and attention homes?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, most of the mental illnesses suffered by elderly people in Hong Kong are mild in nature and can be appropriately treated by primary care physicians.

For the elderly with more severe mental illness which require specialist psychiatric care, a comprehensive spectrum of services are available in the public sector including acute care, extended care, ambulatory care and community care. These services are staffed by well-qualified psychiatrists, psychologists, psychiatric nurses, occupational therapists, social workers and other health care workers in the medical as well as social welfare services.

The Hospital Authority has developed psychogeriatric services as a sub-specialty development of psychiatry. The intention of establishing these teams is to offer expert care to special cases, and especially to develop outreach community care programmes. This will augment the quality of care by ensuring continuity of care through close collaboration with other carers and by providing appropriate early detection and intervention of patients with special mental illness. For the most cost-effective use of resources, these teams are currently concentrating on the larger elderly homes where they can see more patients per visit, and train up the staff to better care for a larger number of patients.

The Working Group on Care for the Elderly has recommended that four additional psychogeriatric teams be set up to cater for projected demand. To this end, funds have already been secured for the Hospital Authority to set up a new psychogeriatric team in 1995-96 to serve the eastern part of Hong Kong. Funds for the remaining three teams will be sought.

Traffic Accidents on Tolo Highway

16. REV FUNG CHI-WOOD asked (in Chinese): On the Tolo Highway on 4 December last year, a truck smashed into the rear of a highway maintenance vehicle which had a big arrow signal light on display. The truck pushed the vehicle forward for more than 100 metres before it stopped, and the truck driver sustained serious injuries and died. In connection with this, will the Government inform this Council:

- (a) of the details of the accident and the location at which the highway maintenance vehicle was parked;
- (b) whether the operation of highway maintenance vehicles as well as road sweepers is a common cause giving rise to traffic accidents; and
- (c) whether the Government has issued any guidelines on the safe operation of such vehicles; and whether consideration will be given to introducing further safety measures?

SECRETARY FOR TRANSPORT: Mr President,

- (a) This traffic accident occurred at about 3.30 pm on 4 December 1994. A Highways Department contractor was collecting traffic signs and cones from the fast lane of the Tolo Highway Northbound near the Ma Liu Shui interchange with the Tate's Cairn Highway, following completion of road maintenance works at that location. Part of the lane was closed to traffic at that time. To draw motorists' attention to this, advance warning signs were placed at both sides of the northbound carriageway at 600 m, 400 m, 200 m and 100 m before the beginning of the closed part of the lane. In addition, vehicle equipped with a yellow flashing arrow sign was positioned at the start of the closed section, to direct traffic into the adjacent lane.

Despite these warning signs, a light goods vehicle crashed into the rear of the sign vehicle and pushed it forward about 36 m before it came to a halt. The accident resulted in a fatal injury to the driver of the light goods vehicle, slight injury to the driver of the sign vehicle and serious damage to both vehicles.

- (b) The operation of highways maintenance vehicles, including road sweepers, is not a common cause of traffic accidents.

- (c) The Code of Practice for the Lighting, Signing and Guarding of Road Works contains clear guidelines for the safety of road works and for the operation of road maintenance vehicles. The code includes special requirements for work on expressways. This document is currently being reviewed by the Highways Department, the Transport Department and the police with a view to improving road safety requirements. The measures being considered include the mounting of strobe lights on maintenance vehicles 4.5 m above road level to make them more visible to drivers at a greater distance.

Widening Pavement North of Cenotaph Square

17. MR JIMMY MCGREGOR asked: *Will the Government inform this Council whether it will take steps to widen the pavement running along the north wall of the Cenotaph square (on the southern side of Connaught Road Central) to allow safer movement of pedestrians?*

SECRETARY FOR TRANSPORT: Mr President, the section of footpath in Connaught Road Central north of the Cenotaph is about one metre wide. While this may seem quite narrow, the footpath is not heavily used. Widening the footpath would require setting back the existing wall and reducing the size of the Cenotaph square turfed area.

We will study this proposal further in consultation with concerned departments, taking account of the need to ensure pedestrian safety. I will write to the Honourable Member on the outcome in due course. (Annex VI)

Licence on External Circuits for Intra-Corporate Telecommunications

18. MR ALBERT CHAN asked (in Chinese): *It is stated in the Policy Commitments of the 1994 Policy Address that the Government will issue licences to allow companies and organizations to provide their own "external circuits for intra-corporate telecommunications" in the early part of this year. In connection with this, will the Government inform this Council:*

- (a) *what is the progress so far in the issue of such licences and what are the terms for granting such a licence; and*
- (b) *what companies and organizations are eligible to apply for such a licence?*

SECRETARY FOR ECONOMIC SERVICES: Mr President,

- (a) The drafting of the new "self-provision" licence is substantially completed. We have circulated the draft licence to the telecommunications industry for consultation and are considering, together with the Law Draftsman, the comments received for incorporation into the proposed licence.

As regards the terms of the licence, the licence will permit the licensee to set up an external private circuit, such as by satellite, for its own communications use. The licensee will not be allowed to offer any external public telecommunications service and the self-provided circuit will not be allowed to be connected to any public telecommunications network in Hong Kong unless for the specific purpose of connecting up the various locations of the licensee's business in Hong Kong as approved by the Telecommunications Authority.

- (b) Any legal person such as a company or an organization is eligible to apply for a licence. A licence will be granted if the Telecommunications Authority is satisfied that the licence conditions could reasonably be complied with.

Monitoring of Office Market

19. DR DAVID LI asked: *The "Review of the Office Market" prepared by the Planning, Environment and Lands Branch does not recommend any administrative measures to stabilize office prices/rents in the short term. However, in the Government's June 1994 announcement, the Secretary for Planning, Environment and Lands mentioned that, having implemented measures intended to cool residential prices, the commercial property market is now subject to the attention of the property task force. The Government has not stated categorically that their November 1994 announcement has superseded their June 1994 announcement and investors are left to wonder as to whether or not there would be government intervention in the commercial property market. Moreover, Hong Kong office rentals are the highest compared with its major competitors in the Asia-Pacific region, making Hong Kong the most expensive business centre in the region. Although the supply will increase significantly after 1996, there is no indication that the rentals will drop significantly as the demand remains strong. Will the Government inform this Council, besides increased supply, what other short-term and medium-term measures will be implemented to monitor the commercial property market on one hand, and ease the pressure of rental increase on the other?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, in July 1994, a working group was established under the Task Force on Land Supply and Property Prices to review the commercial property market. The objectives of the review were to establish whether there was a problem and, if so, to recommend measures to ameliorate the situation. The Report on the Review of the Office Market, published in November 1994, concluded that there was no case for government intervention in the office market, but there was a need to monitor the situation.

Since then, we have been monitoring the office market closely. A Report entitled "Updated Property Market Statistics for the Domestic and Office Sectors" is compiled monthly by the Rating and Valuation Department. In order to make the Report more comprehensive, we have recently included a rental index for selected office developments, a report on supply and a forecast of supply of office premises.

The statistics suggests that office rentals have softened since the last quarter of 1994. This is attributed to increased supply and a slight fall in demand. Some 500 000 sq m of office space were completed in 1994, which is 21% more than in 1993. The forecast supply for 1995 and 1996 totals about 950 000 sq m and substantial additional supply is expected to come on stream later. While the supply of Grade A accommodation in core Central will remain tight during the next two years or so, there will be a healthy supply in other districts. This, coupled with the supply coming from composite industrial/office buildings, should be sufficient to meet demand in the years to come.

Despite rising rents, the number of overseas companies operating in Hong Kong has continued to increase since 1991. This reflects our underlying competitiveness and the fact that rent is only one of several key operating costs. With businesses continuing to find Hong Kong an attractive place to operate and given the healthy supply forecast, we still see no need for government intervention now or in the foreseeable future. Close monitoring of the situation will continue however.

BILLS

First Reading of Bills

FILM CENSORSHIP (AMENDMENT) BILL 1995

OCCUPATIONAL RETIREMENT SCHEMES (AMENDMENT) BILL 1995

EMPLOYMENT (AMENDMENT) BILL 1995

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

Second Reading of Bills**FILM CENSORSHIP (AMENDMENT) BILL 1995**

THE SECRETARY FOR RECREATION AND CULTURE moved the Second Reading of: "A Bill to amend the Film Censorship Ordinance."

He said: Mr President, I move the Second Reading of the Film Censorship (Amendment) Bill 1995.

The object of the Bill is to give effect to the policy changes arising from the public opinion survey conducted by the Television and Entertainment Licensing Authority (TELA) in 1994, as well as to make minor amendments to the Film Censorship Ordinance to improve its operation.

In order to gauge the prevailing standards of morality and propriety of the public so that the film censorship standards and film classification system adopted by TELA can keep pace with changes in social attitudes, TELA conducts a public opinion survey once every two years. The latest such survey was completed in early 1994.

Let me briefly outline the main findings of the 1994 survey. First of all, there is strong support for TELA to continue its role as the film censorship authority. We are also heartened to learn that the film censorship standards adopted by TELA resemble closely those held by the majority of respondents. In response to the public's wish for clearer standards governing the depiction of triads, imitable criminal behaviour and perverted sexual behaviour in films, additional film censorship guidelines covering these matters have been formulated and will be gazetted on 27 January.

The results of the survey as a whole demonstrate general public support for the existing three-tier classification system and standards, and I wish to emphasize here that we have no intention of changing this three-tier system. All our new measures will be incorporated within this three-tier framework.

However, there are two important issues arising from the survey which need to be addressed by legislative amendments. Firstly, there is a clear and strong support for imposing more stringent control on the public display of Category III film posters in view of the public nuisance they caused. More than 70% of the respondents wished to see posters for Category III films being subject to censorship, as opposed to the present arrangement whereby film posters are regulated under the Control of Obscene and Indecent Articles

Ordinance through a voluntary submission system. Secondly, the findings indicated that the existing Category II classification embraced a very broad range of films. A refinement of this classification into two sub-categories would help provide more information to the public, in particular parents, to choose films for their children or for themselves.

Mr President, I would now like to highlight the important clauses of the Bill.

To implement the refinement to the existing Category II classification, clause 6 of the Bill enables film censors to classify Category II films as either "Not suitable for children below 12 and parental guidance is recommended" or "Not suitable for persons below 18". Same as the existing Category II, these two sub-categories are advisory in nature. The purpose is simply to provide more information in the form of age advice to movie-goers. I should add that in terms of the standards to be applied, we are not changing the goal posts.

In the light of the overwhelming public support for tightening control on the public display and publication of posters of Category III films, clause 15 of the Bill makes it a compulsory requirement that advertising materials of Category III films must be submitted to TELA for approval prior to public display or distribution. The reason for the control to apply to all advertising materials of Category III films is to ensure that the use of excessively offensive material for film promotion will not be permitted, whether in the form of film posters, newspaper advertisement, stills, billboards or handbills. Offenders are liable to a maximum fine of \$200,000 and imprisonment for one year.

To cater for the situation where publicity for a film needs to start prior to obtaining a classification, clause 15 introduces an arrangement whereby advertising materials of all films intended for exhibition can be submitted to TELA for examination on a voluntary basis.

We are also proposing other minor changes to the Film Censorship Ordinance. These changes include the following:

- (a) To cater for the common situation whereby alterations and additions such as subtitles and soundtracks are made to an approved film when it is published as videotapes or laserdiscs, TELA is empowered under clause 9 to examine videotapes and laserdiscs which contain alterations to the version approved and to give an appropriate classification;
- (b) In line with the expansion in the scope of the Film Censorship Ordinance, clauses 17, 18 and 19 expand the terms of reference of the Board of Review so that the Board can in future review TELA's decisions not only in respect of films, but also their advertising materials and packaging; and

- (c) The number of non-official members of the Board of Review will be increased from six to eight to allow for greater community participation.

Mr President, the aim of our film censorship policy is to maintain a balance between the need to protect public morals on the one hand, whilst safeguarding freedom of expression and artistic creation as well as the rights of the individual to information on the other. I believe that our proposal to require advertising materials for Category III films to be approved before publication is a necessary measure to achieve this fine balance. I hope that this, together with other proposals in the Bill, will gain the support of Members.

Mr President, I beg to move.

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

OCCUPATIONAL RETIREMENT SCHEMES (AMENDMENT) BILL 1995

THE SECRETARY FOR FINANCIAL SERVICES moved the Second Reading of: "A Bill to amend the Occupational Retirement Schemes Ordinance."

He said: Mr President, this Bill seeks to amend the principal Ordinance so as to enable the Registrar of Occupational Retirement Schemes to regulate and monitor private retirement schemes more effectively. The proposals would allow greater flexibility in the investment of scheme assets without compromising the safeguards. This is in line with our overall objective of ensuring that private occupational retirement schemes are properly managed and funded, thus providing greater certainty that retirement benefits will be paid to scheme members when they fall due.

The Bill's primary proposal seeks to resolve practical difficulties encountered by trustee administrators of pooled schemes in complying with the statutory requirement to separate the assets of each participating scheme in a pooling agreement. Pooled schemes account for the majority of all private occupational retirement schemes. In practice, pool administrators combine not only the administrative duties but also the assets of each participating scheme. Strict separation of assets between each of the participating schemes is costly to administer, inhibits diversification of investment and results in lower returns for scheme members. Inevitably, this in turn discourages the small-scale employers from establishing a scheme within a pool. To overcome these problems, pooling of assets will be permitted. There will be two safeguards. Firstly, the assets of each scheme will have to be kept separate from those of the employer and remain under trust. Secondly, the annual accounts of each scheme maintained by the trustee administrator of a pooling agreement will be required to conform to a common accounting year, and be audited by the same auditor.

The Bill's second purpose is to seek to relax statutory investment restrictions upon scheme assets but without compromising safeguards against fraud or mismanagement. The statutory investment restrictions have been criticized by scheme administrators as being too severe. They have a point. Investment in mutual funds is prohibited, as is investment in shares not listed on the Unified Exchange or any stock market not recognized by the Securities and Futures Commission (SFC), for instance, in shares on emerging stock market such as Taiwan, Indonesia and Spain. We consider these criticisms and concerns justified and propose to relax the restriction by allowing scheme administrators to invest up to 100% of a scheme's assets in mutual funds, and up to 15% of the assets in the listed shares of companies on stock exchanges not recognized by the SFC but legally established and regulated as stock exchanges in accordance with the laws of the jurisdictions in which they are established. Investment in private companies will, however, continue to be prohibited.

The Bill also proposes to make a number of miscellaneous amendments to the Ordinance to facilitate administration of schemes by the Registrar. These amendments briefly include —

- the imposing of a requirement to obtain the approval of the Registrar before any changes are made to the registered particulars of a scheme which may materially alter the grounds upon which the scheme has been registered;
- the imposing of penalties for breaches of such requirements;
- the empowering of the Registrar to amend the Occupational Retirement Scheme Register, and to prescribe the payment of fees for changes in scheme particulars; to cancel registration of a scheme upon its termination or winding up; and to make rules relating to approval and notification procedures for changes.

Mr President, with these remarks, I commend the Occupational Retirement Schemes (Amendment) Bill 1995 to this Council.

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

EMPLOYMENT (AMENDMENT) BILL 1995

THE SECRETARY FOR EDUCATION AND MANPOWER moved the Second Reading of: "A Bill to amend the Employment Ordinance."

He said: Mr President, I move the Second Reading of the Employment (Amendment) Bill 1995.

This Bill seeks to improve the amount of severance payment and long service payment for long-serving workers, and to rectify some ambiguities in the provisions of maternity leave and sickness allowance under the Employment Ordinance.

At present, an employee's entitlement to severance payment and long service payment is calculated at the rate of two-thirds of a month's wages for each year of service, subject to a maximum limit of 12 months' wages or \$180,000, whichever is the less. This arrangement has the effect of limiting the reckonable service of an employee to 18 years.

To enable long-serving employees to earn severance payment and long service payment beyond 18 years, we now propose to remove the ceiling of 12 months' aggregate wages. The years of reckonable service for the calculation of severance payment and long service payment will be increased from the current limit of 18 years to 25 years, plus 50 % of any remaining service immediately upon enactment of this Bill. This limit will be increased by two years on 1 October 1995, and every subsequent year until it reaches 43 years on 1 October 2003. There will be no ceiling as from 1 October 2004, which means that all years of service will be reckoned. The absolute payment ceiling will also be increased from the current limit of \$180,000 to \$210,000 when the amendment takes effect. This ceiling will be increased by \$20,000 on 1 October 1995, and on 1 October of every subsequent year until it reaches \$390,000 on 1 October 2003. This comprehensive and forward-looking package of improvements will provide substantial improvements to severance payment and long service payment immediately for our hardworking labour force, and in the long term, further enhancement of the benefits, as it will raise both the absolute payment ceiling and the reckonable length of service on a gradual basis and within a definite timetable.

Let me now turn to the provisions on maternity protection. At present, a female employee who has been employed by the same employer under a continuous contract for a period of not less than 26 weeks shall be entitled to maternity leave. However, the law is silent on how to count the 26 weeks when the pregnant employee is about to take maternity leave. We propose to remove this ambiguity by specifying in the law that the 26-week period should be counted backward from the expected date of commencement of maternity leave. To improve protection to pregnant employees, we also propose to make late payment of maternity leave pay an offence liable to a maximum fine of \$10,000.

Under the existing provisions of the Employment Ordinance, an employer is not liable to pay sickness allowance to an employee unless the employee meets the specific requirements in the Ordinance. Among other things, the day of sickness has to be specified in an appropriate medical certificate issued by a medical practitioner. However, as the law now stands, a medical certificate issued by a registered dentist is not regarded as an appropriate medical certificate. An employee having encountered a dental injury or received a dental surgical operation requiring a few days' sick leave is at present unable to

receive any sickness allowance. To rectify this anomaly, we now propose to include the medical certificate issued by a registered dentist as a valid document for the purpose of claiming sickness allowance.

Mr President, the proposals in the Bill are the result of very careful deliberations by the Labour Advisory Board (LAB). They contain further improvements to provisions in the earlier version of the Bill which was withdrawn before the Third Reading on 14 December 1994. Those earlier proposals had been recommended by the LAB and represented the delicate balance achieved through serious negotiations by the employers' and employees' representatives serving on the Board. We therefore felt it was essential to take the matter back to the LAB for further discussion. I should like to reassure this Council that the sole purpose was to enable us to consult the LAB again on the important issue of severance payment and long service payment. This new package of improvements put together by the LAB at two special meetings last month takes fully into account the interests of both the employers and employees and the views of this Council's Members and the community. I am pleased to note there has been general support for this new package.

I should like to take this opportunity to place on record my thanks to the members of the LAB for their understanding, co-operation and patience in the formulation of the package of proposals in this Bill. The progressive improvement to long service payment and severance payment with a definite timetable is a major step forward in improving employees' welfare.

I should also like to thank Members of the Legislative Council Manpower Panel for their support for the proposals in the Bill and I share their wish for a speedy passage through the Council today.

Mr President, I move under Standing Order 42(3A) that the Second Reading debate on this Bill shall not be adjourned and the debate be proceeded with now.

I am moving this motion to enable the above Bill to be passed in one single sitting today, so that all the improvements we have proposed for the provisions of severance payment and long service payment, as well as the clarifications of the provisions for maternity leave and medical certificates under this Bill, can take effect as soon as possible. The LAB, the Manpower Panel of this Council and the representatives of the political parties whom I met in the last couple of weeks all expressed an earnest wish, which I fully share, for the speedy enactment of this Bill.

I therefore propose that the three readings of the Bill should be taken in one sitting today to enable all eligible workers to benefit from these proposals without any further delay. I commend this Bill to Members for passage in one sitting.

Thank you, Mr President.

Question on the motion proposed.

MR PANG CHUN-HOI (in Cantonese): Mr President, today is actually the third time the Employment (Amendment) Bill 1995 is tabled for this Council's consideration.

As far as I remember, the Bill was negated by this Council during the Third Reading in July last year. In last December the Bill managed to pass through the Committee stage but was subsequently withdrawn by the Government, resulting in the resignation in protest by the infuriated Mr LAU Chin-shek. I personally have deep sympathy with Mr LAU and am extremely displeased with the way the Government dealt with the matter. Renewed discussion on the issue was later conducted by the Labour Advisory Board (LAB) and the amount of severance payment as well as that of long service payment were subsequently set at a level higher than what were provided for by the previous Bill. A schedule was also attached which clearly set out that the qualifying years of service and the compensation would be uplifted by phases with a view to eventually abolishing the ceiling for qualifying years of service and the amount of compensation. The new Bill is still far from ideal. For instance, the ceiling for reckonable wages is still maintained at \$15,000; and the discretion for dismissing or laying off workers is still totally initiated by employers. Nevertheless, the representatives of both parties in the LAB have obviously done their best to finally reach this consensus, which is not at all an easy task.

Mr President, over the past few decades, representatives of both parties in the LAB, particularly representatives of the employees, have to be elected into this consultative organ by registered trade unions all over the territory by means of voting. Both my colleagues, Mr SZETO Wah and Mr TAM Yiu-chung, have formerly been elected as representatives of the employees to serve on the LAB. During the period from the 60s to 80s, I myself too have served on the LAB for 20 consecutive years and I deeply appreciate that, in the absence of a collective negotiating system in Hong Kong, the LAB can play a specific role and specifically discharge its function and effect. Therefore, I fully respect and accept the Bill as amended by the LAB.

Here, it is worth-mentioning that last year, that is, in the month just passed, after the Government has withdrawn the Bill, Mr TAM Yiu-chung and Mr Michael HO who had each submitted a private Bill have, after taking the whole situation into account, automatically withdrawn the Bill for the sake of safeguarding the interests of low-income workers and those who have been

serving the same employer for a long period of time. For this reason, it is appropriate that the amended Bill should be able to pass through the First, Second and Third Reading in one go in this Council today.

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

PRESIDENT: I would just remind Members that this is a procedural motion to take all three stages of the Bill today. The substantive debate on the Bill will arise later. So for Members who have indicated their wish to speak, do they wish to speak on the procedural motion only, leaving the debate on the Bill to follow later? Does any Member wish to speak on the procedural motion that we do not adjourn the debate?

MR FREDERICK FUNG (in Cantonese): Mr President, I support the motion. But I feel that this motion is being moved as a result of the fact that the Government "lose-exit, win-take" action last time. I hope this will never happen again. In fact, I think it will be more significant if Members are allowed to discuss a Bill at different stages. Nevertheless, as the Lunar New Year is approaching and as this is the time when many people may be dismissed, I will take this as a special case and accept that the three stages be taken within the same day.

SECRETARY FOR EDUCATION AND MANPOWER: Thank you, Mr President. I would just like to clarify the point made by Mr FUNG on the Government's stance in withdrawing the Bill on 14 December last year. I would like to clarify once again for the record that the Government is acting in accordance with the Standing Orders of this Council, and there is no question of its not taking it properly in accordance with established procedures. I am sure this is an important point which the Council should understand, and the public should understand. This is a matter entirely within the Standing Orders of this Council that the Government withdrew the Bill for the reasons that I just mentioned in the debate. Thank you.

Question on the motion put and agreed to.

Question on the Second Reading of the Bill proposed.

MR SZETO WAH (in Cantonese): Mr President, if you are to choose between plain rice and rice with barbecued pork, what would be your choice? Which one would you choose for the wage earners? If someone abstains from voting for the "rice with barbecued pork" and if he is not a vegetarian advocate, do you think that he is fighting for the interests of the wage earners?

The "plain rice" package was put forward by the Government on 14 December last year while the amended "rice with barbecued pork" package was proposed by Mr LAU Chin-shek. Although the "rice with barbecued pork" amendment was carried at Committee stage, the Government went so far as to make a "lose-exit win-take" gesture. Not only did the Government snatch away the "rice with barbecued pork", but it also withdraw the "plain rice" package it originally put forward. In the face of such a fact, who should be condemned? Some people do not condemn the Government, instead, they condemn Mr LAU Chin-shek, blaming him for depriving the wage earners of their "plain rice". Thus, how far do these people represent the interest of the wage earners? They are but from the "whatever" clique which "opposes whatever the Democratic Party supports and supports whatever the Democratic Party opposes".

To protest against the Government's trampling on the spirit of council politics, Mr LAU Chin-shek has resorted to resigning. As "one rock (shek) excites a thousand (chin) waves", how many waves will be excited by a thousand rocks (chin shek)? A thousand of a thousand is one million, Mr LAU's resignation has agitated an indignant tide of justice with a million waves. In the face of this indignant tide, the Government could not but hurriedly do some damage control which results in the new package of "rice with barbecued pork and chicken" proposed today. Apart from plain rice and barbecued pork, chicken is also added which makes the new package even better than the "rice with barbecued pork" package. This benefit for the wage earners comes as a result of Mr LAU's resignation in protest. In this regard, all wage earners in the territory should thank Mr LAU and regret over his resignation.

Will any Member still abstain from voting or vote against today's "rice with barbecued pork and chicken" package? We will just wait and see.

There is still room for urgent improvement in today's "rice with barbecued pork and chicken" package. For instance, a wage earner will not be able to receive any long service payment if he resigns of his own accord; the ceiling on the total amount of long service payment will take 10 years to be abolished; the ceiling on monthly wages is only \$15,000 and so on. The wage earners have not dreamed of having "shark's fin to go with rice". What they want are only a plate of vegetable and a bowl of soup in addition to rice with barbecued pork and chicken. The Democratic Party will continue to join force with the wage earners all over the territory in the fight for the vegetable and soup.

After the adjournment of today's meeting, Mr LAU Chin-shek will leave this Council. I firmly believe that his departure is only temporary. In October this year, he will definitely return to this Council. His close ally Mr LEE Cheuk-yan will participate in the by-election to fill his vacancy. I would like to call upon the territory's wage earners and the voters of Kowloon Central to support Mr LEE so that he can take over from Mr LAU Chin-shek during Mr LAU's short absence from this Council and can speak loudly in this Council for the workers.

Salute to the Honourable LAU Chin-shek!

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

MR ERIC LI (in Cantonese): Mr President, fighting for better conditions of service for workers is worth supporting. But, the amendment to the Bill moved by Mr LAU Chin-shek on 14 December last year was just like suddenly "laying mines" in this Council which subsequently detonated in "explosive media coverage", almost blowing off the legs of the Government. Its fallout also tainted the Democratic Party and some Members of this Council. The Labour Advisory Board (LAB) and Members who were not directly involved in this matter were caught in a dilemma. Mr LAU himself had to pay the heaviest price for his political commitment by "removing his own name" from the establishment.

Hong Kong is a community led by a free economy. I believe what the public likes most is a harmonious relationship between employers and employees. When the economic conditions are favourable, both sides are benefited; but when adverse conditions reign, the two sides should work together to tide over the difficulty. Employers and employees should fairly and gradually share this "large pie of fortune". I do not believe the economy of Hong Kong is a menu from which people may choose their dishes freely. I believe anyone who cares about the interests of Hong Kong is well aware that he has to "cut his coat according to his cloth". However, with uncertain economic and political prospects, rising rents, increasing wages, tight liquidity, speedily diminishing marginal profits for businesses, the spectacular folding up in the recent two months of two Chinese newspapers, lay-off being contemplated by many organizations, little incentive for investment, and the "large pie of fortune" continuously reducing in size, the proposal of substantial improvement to the interests of workers at this juncture therefore will not only put the Government, this Council or the LAB in an awkward position, but will also make the burden of medium and small businesses heavier, making it hard for their operation to continue. This also fundamentally affects the harmonious relationship between employers and employees and will do more harm than good to the overall long-term development of Hong Kong.

The improvement on the conditions of service for workers as proposed by Mr LAU Chin-shek is, in principle, worth supporting. But the timing and the circumstances of the proposal are not in line with the actual economic situation, and he has even adopted an inappropriate means of "trying to force the amendment through". Even though the proposal may finally manage to realize the objective of unilaterally improving labour conditions, it is by no means the best outcome for the overall economy of Hong Kong. In fact, a lot of people would have to pay for what he fought for.

Although my political views, the stance and the manner with which I dealt with this issue are obviously different from those of Mr LAU, I will say that he has displayed the highest degree of political ethics and moral integrity, qualities that are both rare and highly laudable and worthy of public admiration. I know my vote cannot affect the carrying of the motion today. Therefore, despite the fact that I think the Government's original package is better than the present one, in order to pay respect to Mr LAU for his responsible behaviour and hopefully to affirm that what he has done is worthwhile, I will vote for the Bill and make my first step towards better cooperation in the future.

MR LAU CHIN-SHEK (in Cantonese): Mr President, the Bill before the Council is undoubtedly more progressive than the one put forward by the Government last year. In particular, the Government finally agrees to deal with the current unreasonable limit of \$180,000 as the ceiling on severance payment and long service payment, and to further improve the ceiling on the reckonable years of service. However, according to the timetable currently set for improving the ceilings on payments and reckonable years of service, it will take ten years for the ceiling on reckonable years of service to be fully abolished and the maximum payment increased to \$390,000. The progress is so slow that it can only be termed as "snail-paced". How disappointing it is!

As a matter of fact, an amendment for immediate abolition of all ceilings on the amount of severance payment and long service payment and reckonable years of service was passed by this Council in July last year. Although the amendment was defeated during the Third Reading by only one vote, 25 colleagues did vote for the amendment. By tabling this "snail-paced" improvement package, the Administration is essentially ignoring the wish of nearly half of the Members of this Council!

In fact, the limitations imposed by the severance payment and long service payment legislation on the amount of compensation are not confined to the ceilings on the amount and reckonable years of service only. The existing legislation provides that, in calculating monthly wages, earnings more than \$15,000 will be treated as \$15,000 only. This ceiling on "monthly wages" also partly contributes to the unfairness of the existing legislation. The ceiling of \$15,000 on monthly wages came into effect in 1990. In the past, the Government used to adjust the ceiling every three to four years, with the adjustment pegged to the rate of wage increases over the same period. But it is really puzzling that nearly five years have lapsed and yet there is no sign that the ceiling on monthly wages will be raised, regardless of the fact that wages have increased by nearly 50% in Hong Kong over the past four odd years.

For this reason, I urge the Administration to submit proposals to amend the legislation as soon as possible, with the ceiling on monthly wages raised from \$15,000 to somewhere between \$21,000 and \$23,000.

A fundamental problem with the long service payment is that the security it actually provides falls short of what its name suggests!

Theoretically speaking, the only condition for receiving long service payment is having "long service" which can be defined as, say, 10 years or 5 years. However, as things now stand, unless you have reached the age of 65 when you resign of your own accord, you will not be entitled to receive any long service payment at all. This shows how restricted the security enjoyed by employees is under the legislation. From time to time, not a few employers will, for the sake of evading the long service payment, use various means to force their employees to "resign voluntarily". Therefore, unless the legislation is rectified, the long service payment will remain mere trick of something inferior to what its name suggests.

I demand that the Administration should address this issue by amending the conditions for obtaining the long service payment so that having long service will be the only criterion for such payment.

The forcible withdrawal of the Employment (Amendment) Bill by the Government last time has met with fierce opposition from this Council as well as the public at large. This time the Government has taken the initiative to table a new Bill within a short period of time. Whether the Government was forced to do so or not, the question is, has it learnt its lesson? Regretably, up to the present moment, the remarks made by the Governor and the Chief Secretary and the speech delivered by the Secretary for Education and Manpower in this Council today as well as the attitude of the Secretary at this Council's recent Manpower Panel meeting all show that they are still insisting that the Government did nothing wrong in withdrawing the Bill. This reflects what a so-called open government really is in their minds.

Being lawful does not necessarily mean being reasonable. The Chief Secretary and the Secretary for Education and Manpower have repeatedly said that the withdrawal of the Bill does not contravene the Standing Order. However, if the Administration keeps on ignoring the decisions reached by the majority of this Council in the future and keeps dealing with the Council by what they call a legitimate means, what is the difference between this and the Governor refusing to sign a Bill passed by this Council after the Third Reading?

I do not know how many lessons the Chief Secretary and the Secretary for Education and Manpower have to learn before they come to realize that they should cease to cherish the past colonial bureaucratic authoritarianism.

It is not easy for a government's to build up its good name. Having authority is not tantamount to having a good reputation. If to maintain its authority a government has to resort to suppressing the democratic mechanism and threatening or intimidating Members of the legislature, you will know how feeble it is!

Mr President, to enable wage earners to get better protection now that the Lunar New Year is near, I will support the passage of the Bill today. Nevertheless, I have to reiterate that many unreasonable provisions still exist in the amended legislation that need improvement. For this reason, I will still seek amendment to this piece of legislation, including the "snail-paced" timetable carried today.

The present amendments to the Employment Ordinance demonstrate precisely that we cannot rely on those in power to bestow wage earners rights and interests. We must continue our struggle to fight for them. To improve the protection for workers' interests, we still need wage earners all over Hong Kong to stand up and fight. We cannot sit down and wait in vain.

Mr President, my resignation will take effect tomorrow. As Members are aware, my resignation is the result of the Government's "lose-exit, win-take" act in handling the Employment Ordinance last time. I am not going to repeat that incident here. As elected Members, we cannot avoid playing the so-called power game with the Administration. However, we must realize that a so-called executive-led government has ample resources for playing the game, whereas the capital we have for the power game is terribly limited.

PRESIDENT: Mr LAU, I really have extended a lot of flexibility to you. But I must remind you that speeches have to be relevant to the subject matter. The subject matter is the Employment (Amendment) Bill 1995. Please exercise some restraint yourself.

MR LAU CHIN-SHEK (in Cantonese): Thank you, Mr President. The last point I would like to raise is that I will, as in the past, do my best to safeguard the interests of the grass roots without fear of influence, without ambiguity, retreat or compromise, in order to build a democratic Hong Kong. May I wish my colleagues, present today or not, good health in the Year of the Pig. I would also like to extend my gratitude to all the colleagues of the Legislative Council Secretariat for the assistance they rendered in conducting the business of the Council. Thank you, Mr President.

MR HENRY TANG (in Cantonese): Mr President, the Employment (Amendment) Bill has encountered one problem after another since last July when it was first tabled in the Legislative Council. In particular, Mr LAU Chin-shek resigned during the period in objection to the Government's withdrawal of the Bill, after his amendments had been passed in the legislative Council, on the basis that those amendments upset the consensus reached by the Labour Advisory Board (LAB). I think the whole course of the event was really regrettable because it has done nobody any good.

Firstly, we lost a Member of the Legislative Council who had all along been working hard for the interests of workers. The incident has also destroyed the mutual trust between the executive and the legislative organs. The iron-handed policy of the Government makes the public feel that the Government has in the past

PRESIDENT: Mr TANG, I have just reminded Mr LAU of the need to be relevant. Please be relevant.

MR HENRY TANG (in Cantonese): There is direct relevance and I shall continue. The incident was regrettable and it would, to a greater or lesser extent, affect the good employer-employee relationship which was the very factor contributing to Hong Kong's success in the past. Certainly, the incident also sparked off internal conflicts within the labour unions which had been brewing for a long time. I hope that as the Bill goes through its third reading smoothly today, all these would become something of the past.

Mr President, I regret that the repeated adjournments of the Employment (Amendment) Bill might have resulted in losses on the part of the workers. I am very pleased that the LAB, after holding meetings actively before the Chinese New Year to discuss this Bill, has come up with the present improved package and reached a consensus expeditiously. I am very pleased to see that both sides of the LAB have reached a consensus that upholds their tradition of good employer-employee relations.

According to the present consensus package of the LAB, the ceiling of severance and long service payments will be increased from \$180,000 at present to \$210,000 and the ceiling of reckonable length of service will be increased from 18 years to 25 years. Besides, the absolute payment ceiling and the ceiling of reckonable length of service will also have an annual increase of two years and \$20,000 respectively. I think the proposed amendments do show some improvements. In fact, when calculated on this basis, the ceiling of reckonable length of service will be automatically removed after 10 years, that is, after the year 2005.

Friends from the labour sector might still think that this package does not tally with workers' interests and in particular, it might not be fair enough to workers who have long years of seniority. However, Mr President, let me say that the healthy development of Hong Kong can only be possible by gradually improving the welfare of workers. Too radical progress may not match with the interests of society as a whole. In fact, the economy of Hong Kong is not as prosperous as what we might have thought. We may not be aware that there are many potent worries. The growth of many small and medium-sized companies in Hong Kong has continued to shrink and they have been facing financial difficulties. Many of these companies even have to worry about whether they have enough cash to pay their employees' salaries every month. Frankly

speaking, the recent macro-economic control in China has caused some capital in Hong Kong to be switched to China. Hence, employers have their troubles, too.

When we legislate, we should take a macroscopic view and orient our legislations to the interests of society as a whole. The interests of workers are certainly important, but we should not be ruthless to small companies. In fact, allowing grace and gradual improvements will be beneficial to both sides in the long run. Otherwise, if employers have to close down their business, employees will be unemployed. There is really no need to make both side suffer!

Mr President, I hope my colleagues can reach mutual understanding and support this amendment. I would also like to extend my thanks to two of my colleagues, Mr Michael HO and Mr TAM Yiu-chung, for not moving their Private Members' Bills, so that this Bill can go through three readings and be passed today, thereby enabling workers to be benefited without delay.

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

MR TAM YIU-CHUNG (in Cantonese): Mr President, I must say in the first place that I do not advocate vegetarianism as I do not like vegetarian dishes. Besides, I like barbecued pork, chicken and suckling pig. I also want everybody to share the food and have the food as soon as possible. Moreover, I differ from the others in that I would like to eat, after I have had barbecued pork, chicken, followed by suckling pig. It seems to me impractical for one to insist on waiting for suckling pig with rice when one is hungry. Actually, it was Mr SZETO Wah who had taught me this. Why did I use the word "taught"? Perhaps you may not know the story behind this. I assure you, Mr President, the story is not too long.

We all know that Mr SZETO Wah is a senior veteran in labour movement. We all respect him and I respect him, too. I recall that when I first joined the Legislative Council in 1985, the discussion on long service payment had just begun in the Labour Advisory Board (LAB). Mr SZETO Wah and I were both members of the LAB at that time, and we were representatives of the employees. When the issue of long service payment was brought up for discussion, the employers' representatives in the LAB showed their defiance. They were not prepared for it and so they were unable to commit themselves when the Administration suddenly proposed this Bill. Therefore, they were unwilling to make concession in quite a number of areas when this Bill was discussed.

However, under the leadership of Mr SZETO Wah, the representatives of both employees and employers in the LAB held a number of discussions outside the meetings of the LAB. Of course, if it were to be judged against today's standard, it might have been criticized as a deal under the table, or an operation

conducted secretly behind closed doors. But we did manage to arrive at some solutions through discussions.

These solutions did not work out satisfactorily when the Bill was being implemented, and they were widely criticized. One of the major criticisms was that "working people" under 40 years of age were entitled to only half the sum of long service payment. We felt very uneasy when we accepted this. However, Mr SZETO Wah taught us that it would not do the "working people" any good if we delayed this any longer, and that we might as well "accept this for the time being", and introduce improvement step by step later on.

Incidentally, a labour organization which was on very good terms with Mr LAU Chin-shek asked me, on one occasion, to support them in proposing their amendment. Of course, we were not inside this Chamber at that time, and the amendment they were proposing was especially concerned with discrimination against young workers. I was caught in a dilemma at that time. I found that the amendment was right, and as they were collecting signatures, I signed to support them. Subsequently, before the bill was submitted to the Legislative Council, Mr SZETO Wah criticized me for that, as we had already reached a so-called "consensus" at the LAB, and as we had agreed to the employers' views and both sides had compromised, it was not right for us to support other amendment proposals with contrary views. I accepted what he had criticized about me and I found his criticisms right. It is because if we easily break promises made, how can other people discuss with us next time? Moreover, if we pass the Bill as quickly as possible, we can still make the second, the third and the fourth amendments; therefore, I accepted his views. When the Bill on long service payment was submitted to this Council, I remained firm in my position and I accepted the views of Mr SZETO Wah. Eventually, the bill on long service payment was passed and it has become what it is today, although it is quite different from what it was initially.

The reason I tell you this story is that I often adopt this method when fighting for the interests of workers. I can summarize it in two sentences: We fight for the greatest possible improvement regarding labour legislation; and we also fight for the soonest realization of the improvements. It is because if we cannot fight for the soonest realization, it is merely empty talks for the workers. Every minute, there are workers who are dismissed or laid off or who resign of their own accord. After any subsequent legislation takes effect, these workers will not have retrospective rights to get back what should have belonged to them, and this I think is unfair to them. Besides, we all know that amendments of legislations can be done very quickly, for example, we can finish the three readings in a day today. As long as the Government agrees and Members of the Legislative Council support it, we can actually complete the amendment very quickly. There is also no limitation to the number of amendments, and amendments can be made one after another.

After recounting this past incident, let me look at what is happening today. I find that on the surface, the Government takes this issue seriously and has promptly submitted the amendment to this Council for it to go through three readings in one day. However, looking back, we find that improvements on the Employment Ordinance as a whole have actually been effected "at a snail pace". This has a lot to do with the fact that the Government has all along been treating labour policies with indifference. For example, this Bill which seeks to amend the methods of calculation of severance and long service payments under the Employment Ordinance was actually read for the first time in December 1993. It was subsequently dealt with on 6 July and 14 December and, needless to say, you all know how long it has been delayed, and workers have continuously been affected during that time. Whilst there are some improvements made to the Bill submitted to the Legislative Council today, I am still not satisfied. I think there are still a lot of areas that need further amendments even after passing this Bill. For example, the ceiling of \$15,000 for monthly wages was originally set in 1991. If we take inflation in these few years into account, it should no doubt be lifted to \$21,000, as only by doing so 'can we cater to the needs of people who have higher salaries, and increase the amount used for calculating compensation for work-related injuries.

As to the methods of calculation of severance and long service payments under the current Employment Ordinance, the method of calculation of severance payment has been adopted for almost 20 years because the Ordinance was passed in 1974. However, the two barriers of 12 months' aggregate wages and \$180,000 ceiling still remain despite the passage of 20 years, which seems too long a time to me. During that period, both the trade unions and I have repeatedly suggested that the Government should make amendments, and even if the Bill is passed by this Council today, it will take another 10 years before the ceilings for reckonable years of service and wages to be completely removed. We find this far too slow, and this has also been pointed out by another Member just now. In view of this, how can it be considered satisfactory?

I recall that in a recent meeting of the Education and Manpower Panel, Mr Michael LEUNG, Secretary for Education and Manpower, stressed that the Government had made a lot of efforts in making amendments to the Employment Ordinance. I trust that my colleagues in this Council would not question this. But what I want to point out is that the main reason why the Government had been at pains of dealing with the employees and employers, the Legislative Council and the LAB over the past few weeks is that, I would like to reiterate, the Government has all along failed to work out a comprehensive set of labour policies. Should the Government have a comprehensive set of labour policies, what we now witness today would never have happened, I think the reality is that the Government seems to be playing the role of "messenger" between the employees and employers. Whenever the labour sector presses the Government to improve the wages of workers or to amend the labour legislations, the Government would turn to persuade the employers, hoping that they would make concessions. My impression is that the Government does not have an objective. To put it simply, the objective should be that "plain rice"

should be replaced by "barbecued pork with rice", then by "chicken with rice", and then by "suckling pig with rice". The Government should have a clear objective and it must find this reasonable, rather than asking employers whether it will be feasible to give workers "barbecued pork with rice" when they ask for this after having "plain rice" for a long time. And if employers say they cannot give workers barbecued pork but only vegetables, the Government would then ask workers to agree to have vegetables. The Government has been adopting this method all along, but we find this unacceptable, and it is especially so these days. Compared with the improvements made by the Government on its policies concerning the people's livelihood, I think labour policies have clearly been overlooked. I would like to talk about what should be included in labour policies. I think the Government should pay attention to the following aspects:

- (1) Retirement protection: retirement protection schemes including compulsory provident fund, central provident fund and old age pension should be implemented as soon as possible.
- (2) Safeguarding the employment of local workers: importation of foreign workers should be stopped and positive efforts should be made to help the affected workers find alternative employment.
- (3) Safeguarding workers from being unreasonably dismissed by employers: legislation to protect workers against unfair dismissal should be promptly enacted.
- (4) Attaching importance to the status of trade unions: the right of trade unions to conduct collective bargaining should be affirmed.

In fact, the above four points do not embrace the entire policy. I have merely stated the most important ones which the labour sector has long been fighting for or concerned about but which have not been heeded by the Government. I hope that the Government can take this opportunity to pay serious attention to these matters again, so as to really safeguard and improve the wages and interests of the workers.

Mr President, when today is done, as what Mr SZETO Wah has just said, Mr LAU Chin-shek will say goodbye to the Legislative Council for the time being. But to those who have elected him, they certainly hope that their representative can serve in this Council until his tenure comes to an end. I also think that it is totally unnecessary for this to happen today. It could have been avoided.

I would also like to take this opportunity to call upon the Government once again to really take the views of the workers and their trade unions seriously when amending or formulating labour legislation in the future. If the Government attaches importance to the LAB's status, it should not have regarded the LAB as important when it needs its service and disregards it when it is not needed. The Government will only get the LAB involved when it is in

trouble, and this is entirely inappropriate. My view is that the Government should draw lessons from this incident. The most important point is to ensure that the decisions or consensus reached by the LAB will be given due attention in the Legislative Council.

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

MR CHEUNG MAN-KWONG (in Cantonese): Mr President, I have to affirm two points in the Bill tabled in this Council today at long last: The Employment (Amendment) Bill regarding severance payment can be passed before the Chinese New Year and more workers will be benefited. Generally speaking, many companies which are going to wind up will choose to distribute "big envelopes" on New Year's Eve. This is a Chinese tradition of carrying something through to the end even in the event of winding up a business. Another point is that the latest amendment Bill has at last been introduced after broad consultation which reflects that everybody is willing to give up some of his own demands for the time being so that workers can get better protection within the shortest period of time. This is the rational side of a democratic political system.

Nevertheless, I must point out specifically that there are still certain drawbacks in the amendment Bill. The ceiling of payment and reckonable years of service can only be entirely removed in 10 years' time. Since the enactment of the legislation on severance payment in 1974, there has always been a ceiling of payment. A dismissed worker can only get a maximum compensation which is equivalent to 12 months' salary. This is a compromise on the part of the Government as a result of the employers' resistance. This compromise is most unfair to workers who have served for many years. Let's imagine, when a loyal worker who has worked for the same employer for 30 years is dismissed, he can only get a severance payment which is equivalent to his salaries in 18 reckonable years of service. This is both unfair and unreasonable.

In view of this, the amendment proposed by Mr LAU Chin-shek in July 1994 to remove the payment ceiling is very reasonable. The amendment Bill was passed with support from the majority of legislators at its second reading. Unfortunately, when the Bill was read the third time, the Liberal Party "summoned" its members to vote in the Chamber and the Bill was not passed because there was one more vote in opposition. To solicit support from more members, Mr LAU Chin-shek made some concessions when he introduced the second amendment in December and he proposed an amended payment ceiling of \$230,000. However, Mr LEUNG Man-kin, Secretary for Education and Manpower, rudely withdrew the Bill before its third reading, even though the Bill had already passed the second reading. This has aroused public out-cry and criticism, and workers dismissed during this period were unable to get better protection under the law.

Hence, there was a rumour among the Hong Kong Federation of Trade Unions that Mr LAU Chin-shek had complicated the issue and impaired the workers' benefits. Actually, people in the labour sector should not blame each other because those who have really complicated the issue are Mr LEUNG Man-kin and the Government, and the Government should be solely accountable for this autocratic incident.

After the incident, however, the Governor, the Chief Secretary and Mr LEUNG Man-kin all stressed that the Government had acted in accordance with legal principles and that the power was given by the Standing Orders of the Legislative Council as what Mr LEUNG Man-kin has just said. I would like to respond to his statements. What Mr LEUNG has said are really disappointing and infuriating. It shows that the Government has neither taken the lesson seriously, nor learnt how to head the office of civil servants in a democratic political system. It has not yet forsaken the tradition of autocratic colonists at all.

Before there were elected Members in the Legislative Council and before there was such a large number of members of community calling for democracy, the Legislative Council was merely a body controlled by elite bureaucrats. To describe it in a modern term, it was absolutely executive-led. I believe terms like "public accountability" and "monitoring the Government" are not yet found in their dictionaries. The Secretaries were used to having their bills passed in the Legislative Council without any challenges.

The speech made by the Secretary for Education and Manpower on 14 December during the second reading of the amendment Bill on severance payments suddenly reminded me that an arrant bureaucrat was right in front of me, indicating that the Government did not like Members to amend its bills. Otherwise, the Government would have stopped the game. Surely the withdrawal of the Bill is empowered by the Standing Orders, as what Mr LEUNG has just said. But can the Government just refer to the rules when exercising its powers, without taking heed of public sentiment? Is it that "the state officials are free to burn down houses, while the common people are even forbidden to kindle their lamps"?

The Secretaries should understand that when election was introduced to the Legislative Council, appeals of the public and supervision of the Government by the public were brought to the Legislative Council together with the elected members. The traditional elite bureaucrats cannot evade public opinion and they cannot ignore Members' inquiries and criticisms. Moreover, they should not adopt the autocratic attitude of "lose-exit win-take" just because their proposed bills are amended.

Judging from the speech made by Mrs Anson CHAN, the Chief Secretary, in the Legislative Council during the policy debate last year, Members have begun to have a strong feeling that the Government is not positively and actively facing up to the impact of the progress of democratization. On the contrary, it

is trying to override the Legislative Council in order to prove that the Hong Kong Government is still a strong government. Obviously, the withdrawal of the amendment Bill of severance payment is a gesture to show the Government's authority.

What is more infuriating is that the strength of the Government is shown at the expense of the minimal benefits of the workers who are in a less advantageous position. The Government would rather make no improvements to the legislation on severance payment, and let the workers continue to endure the unreasonable provision of the law which is really detestable and shameful.

Mr President, I am going to talk about the effects of this incident on the Labour Advisory Board (LAB). Undeniably, the fact that Mr LAU Chin-shek could twice solicit the support of the majority of Members in the Legislative Council for his amendments shows that the proposals concerning workers' benefits can be further improved in the Legislative Council even after they have gone through the conventional channels of consultation by employers and employees. From the standpoint of fighting for the workers' benefits, any means which can effectively fight for more benefits for the workers will be recognized and accepted, and it is not that "the same old book will always be followed", as what Mr TAM Yiu-chung said. This might be the case in the past, but the Legislative Council and the public opinions today are different from those in the past. This must be affirmed by an advanced society.

To our surprise, the Secretary for Education and Manpower still used the pretext of respecting the decision of the LAB. He was in fact "talking nonsense with eyes wide open", intending to get the LAB "visibly involved". In fact, even the employees' representatives in the LAB do not appreciate this.

PRESIDENT: Mr CHEUNG, you know the Standing Orders and you know I do not tolerate describing Members of this Council as telling lies. Please withdraw those statements.

MR CHEUNG MAN-KWONG (in Cantonese): Mr President, I respect your ruling because you are respected by all Members. But Mr LEUNG Man-kin has just explained that he had withdrawn the Bill in accordance with the decision of the LAB. If any grounds given by government officials are like the laws which Members cannot comment on, then only the Government's voice will be heard tomorrow. Mr President, you have always allowed Members to comment on official statements here. I certainly respect your ruling, Mr President, but please understand that this is my response to Mr LEUNG Man-kin's statement.

PRESIDENT: Mr CHEUNG, you cannot describe statements made by Members of this Council or public officers as lies. That would be contrary to parliamentary language. You can make your point in a way that does not contravene Standing Orders or parliamentary practice, Mr CHEUNG. But please do not use those words.

MR CHEUNG MAN-KWONG (in Cantonese): Mr President, there may be an error in simultaneous interpretation. What I said is "talking nonsense", and "talking nonsense" does not mean telling lies. It only means saying something wrong. This is a common Chinese saying. I did not mean to say that Mr LEUNG Man-kin had told lies. Thank you, Mr President.

Does the Government really respect the status of the LAB? I believe, people have heard the name of the LAB for the first time because of this incident. The LAB is an advisory body at departmental level. When the Labour Department wishes to amend a general labour legislation, it will usually discuss the proposed bill with the LAB and conduct the so-called employer-employee consultation.

However, the LAB is actually controlled by the Government. It is entirely up to the Labour Department to decide what should be and what should not be discussed, and how to deal with the outcome of the discussions. The LAB is the only elected advisory body. However, its composition does not tally much with its functions. Many policies affecting workers' interests are implemented after directly adopted by the Executive Council, without consulting the LAB. If the Government really respects the status of the LAB, why is the LAB not upgraded to an advisory body pegged to the Policy Branch? Why was the LAB not consulted before amending the Trade Description Regulation in 1991, which would jeopardize the employment of thousands of textile workers, and before rejecting the Central Provident Fund in 1993, which would involve 2.9 million would-be participants?

The most recent example was the announcement, made by the Education and Manpower Branch in the same month as the incident regarding severance payment occurred, that approval had been granted for the importation of a maximum of 27 000 workers for the airport scheme. This policy may affect the employment and livelihood of 220 000 local construction workers. Has the LAB been consulted in advance? Even the Legislative Council was given just a short briefing, not to mention the LAB. The Government should seriously review the relations among the elected legislature, the advisory bodies and the executive organ of the Government. The Government should not befriend one group and strike a blow at another in order to get the benefit. Only by making a success of such relations can we ensure the continued development of democratic politics.

The Bill to be passed today still has much room for future improvement, including lifting the upper limit of wages so that employees earning more than \$15,000 a month can enjoy the protection of full severance payment. In addition, there remains some provisions in respect of payment ceiling and the maximum reckonable years of service which are unfair to workers who have served for a long time. In addition, under the law governing long service payments, young workers can only get partial compensation and employees who are unreasonably dismissed cannot receive reasonable compensations.

Hence, we should not be too excited at the passing of some improved provisions today, thinking that, since we have eaten "barbecue pork and chicken with rice", we can now stop fighting. The road along which we fight for workers' interests is long and arduous. There are still a large number of flawed and unreasonable provisions in the labour legislations awaiting our concern and it is for us to propose improvements which match with workers' interests.

Mr President, thank you for your leniency. With these remarks, I support the motion.

MR FREDERICK FUNG (in Cantonese): Mr President, the purpose of establishing severance payment and long service payment is to protect workers who have devoted most of the time during their life to work, so that they can get reasonable compensation when the organizations they had worked for close down or when they are unfairly dismissed. In this respect, severance payment and long service payment should not be regarded as an extra favour bestowed on the workers, but rather a reward for the employees who deserve it. In a fair society, class exploitation should no longer be tolerated. Workers who serve their employers loyally and diligently for a long period of time are hard to come by, so the employers should be sympathetic towards their employees and give them reasonable reward.

I support the new package put forward by the Labour Advisory Board very reluctantly. It is mainly because I hope this package will be approved as soon as possible to ensure that employees get their reward at an early date, especially when Lunar New Year is coming and this is also a prime time for employers to lay off their employees. Therefore, the sooner the Bill is passed, the better will the elderly employees be protected. Otherwise, when they are dismissed, they will not be able to get the reward and protection they are entitled to.

Information shows that the new package can benefit over 95% of the employees. This is really gratifying. To the low-waged blue-collar workers, fighting for the highest payment ceiling is not the crux of the problem. Most of these low-waged blue-collar workers have worked in the same establishment for a very long period of time. I think fighting for a reasonable method of calculating the length of reckonable service will be more beneficial to them. The new package suggests that the ceilings for the reckonable years of service

and the long service payment should be progressively removed in 10 years' time. In my opinion, the time limit of 10 years is far too long and conservative. The legislation governing long service payment and severance payment was enacted in 1974. Amendment was introduced in 1994 after 20 years of implementation. In 1995, it is again decided that the ceiling for the reckonable years of service can only be removed in 10 years' time. It takes a total of 30 years. Indeed, the Government should expedite the process of removing the ceiling for the reckonable years of service to remedy the Government's procrastinating attitude towards this matter and make up for the loss incurred to workers over the past 20 years.

In calculating the severance payment and long service payment, a monthly wage of \$15,000 is taken as the upper limit. Even if the salary of an employee is more than \$15,000, the basis taken for calculation will still be \$15,000. In fact, on what basis does the Government come up with a ceiling of \$15,000? The high-waged employees are unfairly treated in this respect. Does it mean that high-waged employees will not be subject to the risk of sudden dismissal? I am of the view that the calculation of the severance payment and long service payment should not be restricted by how much the employees earn. I certainly understand that this may increase the burden of employers. But firms and organizations which employ high-waged employees should have definite level of achievements and operational basis and they are absolutely capable of bearing such costs. Moreover, medium and small sized enterprises only employ very few high-waged employees. Therefore, my proposal will not bring about too much burden to the employers of these enterprises in terms of costs.

Although the new package offers improvements both on the ceiling of reckonable years of service and the payment ceiling, a more important question is how many workers will actually be benefited? This will depend on whether the terms of the long service payment are harsh or not.

Under the Employment Ordinance, employees may apply for severance payment in case of lay-off, for instance, they are on duty on less than half of the number of working days in four consecutive weeks, or, when they are provided with work on less than two-third of the number of working days in 26 consecutive weeks. Is this provision harsh? Why is it that workers themselves cannot take the initiative to ask for severance? This deserves further study by the Government.

As to long service payment, an employee may only apply for it if he is unreasonably dismissed having been proved to be unfit for the work concerned upon completing five years' service; or if he is aged 65 or above with 10 years' service. Are these restrictions too strict? Young employees nowadays like to change their working environment. Only a few of them are willing to stay with the same employers for five years or even more. In view of this, I think, when the Government defines the word "long" within the context of "long service payment", it should keep abreast of time and define it in such a way as to cater for different time and situation. Setting five or 10 as the years of service should

be reviewed and revised on a regular basis in order to keep in pace as well as cope with the changes in the labour pattern of Hong Kong.

In the course of amending the Bill, I remember I have once talked to Mr TAM Yiu-chung, Mr LAU Chin-shek and their supporters at the City Forum. I think, in respect of this issue, the problem lies not with the labour sector but with the Administration. We hope that the two labour leaders and their supporters will not criticize one another. I remember that at that City Forum, Mr LAU Chin-shek and Mr TAM Yiu-chung both agreed that there should be co-operation between workers. As Mr LAU had just said, I think that the labour sector have to work together before workers can rise to their feet. I hope the passage of the Bill today will bring the clash among members the labour sector to an end. Members of the labour sector, please join hands and co-operate!

Mr LAU is leaving and I respect his decision, although I have dissuaded him from doing this for many times. It is most regrettable that he is leaving this Council. I look forward to seeing his return to this Council and him joining us in the fight for the rights and interests of workers. I hope Mr LAU will take good care of himself and continue his efforts in fighting for the rights and interests of workers.

With these remarks, and with much reluctance, I support the Bill.

MR JAMES TIEN: Mr President, following the withdrawal of the Employment (Amendment) Bill 1994 by the Administration on 14 December 1994, the Labour Advisory Board (LAB) was further consulted on 23 and 31 December on revised proposals by the Administration to improve the level of severance payment and long service payment.

The major concessions agreed by the employers' representatives on the LAB over the previous Employment (Amendment) Bill includes the following:

firstly, to advance the effective date for higher payments to 1 October 1995 instead of 1 January 1996 as previously proposed;

secondly, to increase the reckonably year of service from the current limit of 18 years to 25, plus 50% of the remaining years of service. This limit will increase at a rate of two years per year until it reaches 43 years in October 2003. There will be no ceiling as from 1 October 2004; and

thirdly, to raise the absolute payment ceiling from the current \$180,000 to \$210,000 upon enactment. This limit will increase at a rate of \$20,000 per year until it reaches \$390,000 in October 2003.

Mr President, with a view to soliciting Members' views on the proposed amendment as agreed by the LAB, I have invited, as Convenor of the Manpower Panel of this Council, all Honourable Members to attend a Manpower Panel's meeting on 3 January 1995 with the Administration. A total of 13 Members attended the meeting. After discussion, Members shared the following broad consensus:

- (a) there was support in principle for the proposed improvements to severance payment and long service payment as agreed by the Labour Advisory Board on 31 December 1994;
- (b) the various proposals should be enacted as quickly as practicable in order that eligible employees can benefit from the improved provisions without delay; and
- (c) it is hoped that the First, Second and Third Readings of the proposed amendment Bill can be moved and passed at the Legislative Council sitting today to take effect.

Mr President, I have already expressed my views on this Bill and the debate on 14 December 1994 and have few new points to add. The Liberal Party and the business sector are glad that the debate on the Employment (Amendment) Bill 1995 can finally come to an end today. We believe that progressive, steady improvements in labour and employee benefits with the support — and I emphasize the word "support" — of the employers and the business community, is vital for Hong Kong's future stability as well as prosperity.

I also share the views, as expressed by the Honourable Henry TANG and the Honourable Eric LI, regarding the financial problems the employers and small employers faces today.

With these remarks, the Liberal Party and the business sector support the passage of this Bill.

MR MICHAEL HO (in Cantonese): Mr President, the Democratic Party (DP) admits that there are areas of improvement in the Bill presented today when it is compared with the Bills presented in July and December last year. Again, if we again try to use "barbecue pork with rice" and "plain rice" to describe these Bills, the Bill presented last December is "plain rice" while the Bill presented today can barely be called "barbecue pork with rice". However, from the perspective of my occupation, "barbecue pork with rice" is not ideal because it cannot achieve a balanced diet. The DP thinks that the current level of labour protection still leaves much to be desired. This Bill has raised the absolute payment ceiling to \$210,000 only which is lower than the amount originally proposed by the DP and the amount of \$230,000 proposed by the Honourable LAU Chin-shek last year in his amendment motion which was successfully

passed. However, this Bill has also set down a timetable for the gradual increase of the absolute payment ceiling and also the uplifting of the limit of reckonable years of service in stages. We hope the Bill can be passed before the Lunar New Year so that those workers who are sacked during this period can receive the new compensation payment.

The DP thinks that after the passing of the Bill today, we still need to continue fighting for several things. First of all, the monthly wage ceiling applicable to the calculation of payment is \$15,000. It is unfair to those who earn more than \$15,000 per month and the ceiling should be revised as soon as possible. I very much hope that I can hold discussions with the Labour Advisory Board (LAB) on this issue as soon as possible after the Lunar New Year holidays and that they will arrive at a satisfactory resolution very soon. Secondly, it takes 10 years to increase the absolute payment ceiling to \$390,000. It is indeed too long. We hope that we can have the opportunity to discuss with the Government on this matter in future. The time required to uplift the limit of reckonable years of service is also too long. Therefore, it will be one of the items which we have to discuss with the Government after the Lunar New Year holidays.

As regards the Bill presented today, some people have said that it is already a great improvement. It is in fact an illusion. We have such an illusion because improvement in legislations relating to labour protection came too slowly under the previously undemocratic Legislative Council. It is just like having a piece of rock to say that a tortoise is walking too fast. Last year when Mr Michael LEUNG, the Secretary for Education and Manpower, withdrew the Bill, he said he wanted to respect the consensus reached by the LAB. We deemed it totally unacceptable that the opinions of a government advisory body should override the intent of all the Members of this Council. We agree that the Legislative Council should listen to different voices. Of course, we should consider the opinions of the LAB. But it does not mean that we cannot amend the scheme proposed by the Government. We would like to remind the Government that the Legislative Council has the responsibility and the authority to amend and enact legislations. I hope the Government will understand that while they respect the LAB, they should respect this Council as well. Is the Government really thinking highly of the LAB? In what way has the LAB been consulted on the several occasions when the Government decided to expand the scheme of importing labour?

When the Government withdrew the bill in December last year, Mr LAU Chin-shek resigned in indignation. Now, a new scheme finally comes up. Of course, all relevant parties have devoted considerable effort in discussion before arriving at the scheme and it is better than the previous ones. But I hope my colleagues will realize that Mr LAU Chin-shek was in fact acting in accordance with the Standing Orders of this Council when he proposed the amendments in December last year. Mr Eric LI said that the amendments were intrinsically "laying mines". He told us to "cut our coat according to our cloth". From what he has said, it seems that Hong Kong is in a very poor economic condition. By

so saying, does he mean that Hong Kong cannot afford such a scheme? I cannot agree with him. He described Mr LAU Chin-shek's amendment as an attempt "to force through". In a democratic council, we discuss matters, we propose amendments, and we solicit each and every supporting vote in order to have the amendments passed. What is wrong with that? I believe this is exactly the point for Mr LAU Chin-shek, who has over the years been participating in labour campaigns, to take part in politics. It is also the point for the workers to take part in politics. The DP has not the least intention of wiping out the employers. It is absolutely not the case.

We very much hope that despite Mr LAU Chin-shek has left this Council, we can maintain even closer contact with friends from the commercial and industrial sectors. I know that Mr LAU Chin-shek and Mr Henry TANG of the Liberal Party have very good communication over various labour issues. We hope we can continue such communication. We also hope that we can have more chances to communicate with institutions in their capacity as employers and their representatives. Because of the resignation of Mr LAU Chin-shek, the DP will of course lose one valuable seat in this Council and we are deeply sorry about this. But this incident has brought about further improvements to the welfare of the labour and has also safeguarded this Council from being trampled on. The DP is willing to pay such a price. In this incident, we feel that if Mr LAU Chin-shek had not fought for his amendments, it would be difficult to tell when this bowl of "barbecue pork with rice" would be available.

Mr President, these are my remarks. The DP supports this Bill.

MR CHIM PUI-CHUNG (in Cantonese): Mr President, I would abstain from voting on the Bill presented today, the reason being that the Government "bullies the meek and weak, and fears the firm and strong". If the Honourable LAU Chin-shek or other people did not fight against the Government, would the Government come up with such an amendment so quickly? I doubt it. As a responsible Government, it should have overall assessment of the issue and a general plan in mind and should not bow to the firm and strong. Otherwise, people of Hong Kong will all stand firm and strong, can the Government then accede to all their requests? This is what an unreasonable government without a proper system would do. Of course, a politicians' government could act in such a way, because if you could not get the votes, you would not be re-elected. However, we have to understand that at present, the Government of Hong Kong is still a framework staffed by an establishment of civil servants. The Government should strive to strike a balance when it deals with its multitude of affairs and do not have to bow to any kind of pressure.

The success of Hong Kong nowadays is attributed to a number of factors. At present, what business in Hong Kong makes the most money? Are the business with large workforce making money? Are the employers exploiting the working class? We all know that it is absolutely not the case. It was the foreign capitalists back in the fifties who exploited the workers. They made

money in Hong Kong and they left Hong Kong. Nowadays, the capitalists of Hong Kong have gone to China to exploit Chinese workers. The workers of Hong Kong are not being exploited.

Government statistics may show something has gone down — "oh, by over 10%!" Business and restaurant owners can, however, tell us that, in fact, only 10% or so of restaurants and other service industry undertakings are making a profit. 35% are just breaking even while 50% are losing money. You may find it puzzling that people continue to run business that lose money. Well, this is a free society. Some businesses fold up and some get started; as you quit, somebody would take up your place. Therefore, as an employee, one should be aware of the reality and understand who is exploiting whom. The present state of affairs requires that we help each other for mutual benefits. We set out goals and should know which direction to turn to in pursuing them. We cannot ask our boss to continue to operate his failing business simply because we are poor. The boss may ask us to take a perspective in his shoes instead of making endless demands when he is about to go out of business. Therefore, we must understand the actual circumstances and be aware that Hong Kong can only rely on an economic restructuring in the entire society. During this period of restructuring, the retraining programmes run by the Government are very important in ensuring that employees can earn what they deserve. However, we should definitely not label employers as unscrupulous. In fact, a lot of employers are now on the verge of closing down their business. Many choose to carry on because some of their employees have been working for them for one or two decades. If they wind up their business, their longtime employees would not be able to switch to another field and would then become jobless. For this reason, many businessmen are thus struggling to stay in business. This is the reality. A representative of the Labour Constituency should know the actual situation.

My own case is not worth mentioning since I do not have many employees. The representatives of the industrial and commercial sectors, the Honourable Henry TANG and the Honourable James TIEN, remarked that we had an agreement. In fact, they failed to speak out the grievances of many business owners on their behalf. I must rise to tell my honourable colleagues the reality. Why has the economy of Canada and Australia, where resources are so rich, fallen into such a difficult state? Many people ask for my advice and my answer is: firstly, the tax rate is too high there, ranging from 30% to over 40%. Why do investors put in so much money only to share their profits with the government? Secondly, the trade unions there are too powerful, and the workers may go on strike whenever they like. A similar trend is in fact developing in Hong Kong. However, the working class of Hong Kong is both reasonable and sensible and the law does not give the workers so much power. This explains why Hong Kong can weather adversities and survive. Therefore, we should learn from the experience and the facts of foreign countries, so that Hong Kong can grow from strength to strength in all aspects. Of course, the Government with over 180 000 civil servants remains to be the biggest

employer in Hong Kong. The Hong Kong and Shanghai Banking Corporation is also in an influential position with several ten thousand employees.

In any case, I personally do not want the matter to be politicized. There should be no one saying "Oh! You are such a great hero who has been fighting for so many benefits for the workers. Come, be the boss, run the entire Hong Kong Government!". If you are competent enough, the public will of course vote for you. Using these matters only to win votes is really a tragedy for Hong Kong. It is not necessarily desirable for Hong Kong to follow the example of foreign countries. As politicians, we should rely on our own ability and reasonably say what we should say. We should never use our influence or hard work in grabbing more votes. It is also unreasonable to try to paint ourselves as heroes. I hope Mr LAU Chin-shek can take my point. In fact, we have two representatives from the Labour Constituency here in this Council, namely, Mr PANG Chun-hoi and Mr TAM Yiu-chung. Please make no mistake, Mr LAU Chin-shek was elected in the Kowloon Central Constituency, and is not a representative of the labour sector. In tendering his resignation, Mr LAU has his own political consideration. While we respect his decision, we should not be blind to other matters solely because he has his purpose. I very much hope that Mr LAU could, when fighting for the interests of the working class, also take into account the predicaments of the business sector, as well as the capitalists, or in fact, the predicaments of both the employers and the employees. Enhanced communications between the two sides could let our different sectors complement each other. Better co-ordination between the employers and the labour force can upgrade the living conditions and environment in Hong Kong. No one would oppose this approach.

Conceptually speaking, I personally give my unreserved support to the proposal of raising the limit to \$210,000. I remember that Mr LAU suggested the ceiling be raised to \$230,000 when he lobbied for my support the other day. I responded with the figure \$210,000. Now that the present proposal turns out to be \$210,000, I have been proven correct. I promised Mr LAU on that day that I would abstain from voting but later I would want to support the Government as a result of the Government's lobbying efforts. Why did I support the Government? It is because I really hope that our government will have credibility and is capable of doing things well. I must reiterate that the government belongs to the people and it would be most desirable if we could work happily together and rectify faults wherever possible. Is it necessary to be so "philistine"?

Mr President, I rise to speak in the hope that the issue will not be over-politicized and we will not be too confrontational. With the scarcity of resources, Hong Kong hinges its success on our mutual tolerance and on the co-operation between the employers and employees. I am resentful at the way this government policy "bullies the meek and weak and fears the firm and strong". On this ground, I would abstain today.

Mr President, these are my remarks.

SECRETARY FOR EDUCATION AND MANPOWER: Thank you, Mr President. I am very grateful to Members for those who made constructive comments on the way forward. I shall not, of course, comment on those suggestions which have not been helpful or constructive or forward-looking. The Government looks forward to further improvements, obviously, in this area using the very important mechanism of the LAB which has certainly served a very useful purpose as endorsed by Members of this Council in this debate.

At least, there is one common feature in this debate and, that is, that Members fully appreciate the importance of both employers' and employees' interests in labour matters. I have heard comments from both sides on this matter. Some have gone to the extreme, but on balance I think the conclusions have been sensible and balanced, and that all supported the recommendations made by the LAB in this very important matter. In other words, we should go by our previous experience and aim to achieve further improvements by progressive steps and not to confront or to upset without taking the balanced outlook, as we have now done on this occasion.

So I am very glad that common sense has at last prevailed in this debate, and that Members have come to the same conclusion as the Government has, that the LAB's latest recommendations have balanced the interests of both employers and employees in Hong Kong. They have served Hong Kong well for the last 30 years, and I am sure this will go on for the next 40 to 50 years.

Thank you, Mr President.

Question on Second Reading of the Bill put.

Voice vote taken.

THE PRESIDENT said he thought the "Ayes" had it

MR LAU CHIN-SHEK (in Cantonese): I claim a division.

PRESIDENT: Council will proceed to a division.

PRESIDENT: Will Members please proceed to vote?

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

The Chief Secretary, the Attorney General, the Financial Secretary, Mrs Selina CHOW, Mr HUI Yin-fat, Mr Martin LEE, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Dr LEONG Che-hung, Mr Jimmy MCGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Albert CHAN, Mr Vincent CHENG, 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 Eric LI, Mr Fred LI, Mr MAN Sai-cheong, Mr Henry TANG, Mr TIK Chi-yuen, Mr James TO, Dr Samuel WONG, Dr Philip WONG, Dr YEUNG Sum, Mr Howard YOUNG, Mr WONG Wai-yin, Dr TANG Siu-tong, Miss Christine LOH, Mr Roger LUK, Ms Anna WU, Mr James TIEN and Mr Alfred TSO voted for the motion.

Mr CHIM Pui-chung abstained.

THE PRESIDENT announced that there were 51 votes in favour of the motion and no vote against it. He therefore declared that the motion was carried.

Question on the Second Reading of the Bill agreed to.

Bill read the Second time.

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

BUILDINGS (AMENDMENT) (NO. 2) BILL 1994

Resumption of debate on Second Reading which was moved on 12 October 1994

Question on Second Reading proposed.

MR JAMES TIEN: Mr President, the Buildings (Amendment) (No.2) Bill 1994 deals with three matters. First, it seeks to limit the use of hand-dug caissons to an absolute minimum by requiring the Building Authority to refuse to approve building plans where the building works involve the construction of hand-dug caissons, unless the caisson is less than 3 m deep or for the site concerned, the use of a hand-dug caisson is the only practical construction method and there is no other safe engineering alternatives. Second, the Bill seeks to amend section 40(6) of the Buildings Ordinance to make it compatible with the Bill of Rights. Third, it seeks to require ground investigation works to be conducted in certain sewage tunnel protection area to have the approval of the Building Authority.

A Bills Committee, of which I am the Chairman, was set up to study the Bill. As the other two matters do not involve any controversial issues, the Bills Committee has focused its attention on the provisions relating to hand-dug caissons. The Bills Committee has held three meetings with the Administration and has met representatives of a number of labour organizations which have set up a concern group on the hazards of hand-dug caissons. The group advocates a total ban on all hand-dug caissons because of the serious health hazard to workers and the availability of engineering alternatives to eliminate the need for manual excavation. The representatives also expressed concern about how the special circumstances would be determined and approved by the Authority if exemptions were allowed.

In view of the concern of the labour organizations, the Bills Committee has asked the Administration to consider, in consultation with the Construction Association, the practicability of imposing a total ban, and to provide scientific data to support its belief that hand-dug caissons less than 3 m deep are less hazardous to workers.

In response, the Administration has pointed out that the dust concentration of a hand-dug caisson under construction at a level of less than 3 m is relatively low because shallow caissons are more open to the effects of cross draughts from open air. Also, for such caissons, the chance of having to drill rocks is lower and soil excavation generates much less dust than rock drilling. In addition, statistics of accidents involving hand-dug caissons show that all the 21 fatal accidents since 1982 occurred in caissons more than 10 m deep.

As for the number involved, the Administration has advised that only a very small number of hand-dug caissons less than 3 m deep has been approved in 1994 and the total number is unlikely to exceed 10 out of a total of 7 700 approved hand-dug caissons. To ban caissons which are less than 3 m deep would run the risk of interfering with other types of manual excavations not intended for control. One way to improve control is to specify a minimum width for such hand-dug caissons. In view of the small number of hand-dug caissons less than 3 m deep and the less hazardous working conditions involved, Members agree that they can be allowed subject to a minimum width or diameter of 1.5 m to be specified in the Bill to ensure better ventilation and safety condition. The Administration has agreed to amend the proposed section 16(1A)(a) to include such a specification.

As regards the scrutiny of special circumstances for exemption, the Administration has assured Members that a decision will only be made after scrutiny by professional officers at at least three levels. It has also explained that the proposed provision is to cater for the very exceptional circumstances and the unique geotechnical situation of Hong Kong. Although engineering alternatives may be available, the use of machinery in some cases, for example, on a steep slope, may be more dangerous. The Construction Association which has been consulted by the Administration supports the present provisions which

allow some flexibility. The Bills Committee agrees that a little flexibility is desirable but strict control must be exercised by the Administration.

Since a grace period of 12 months will be given for the building industry to prepare for the ban, Members agree that the legislation should be enacted as soon as possible to reduce hand-dug caisson work to an absolute minimum at an early date.

The Bills Committee is pleased that the Administration has accepted Members' proposal and views. Amendment to the Bill will be moved by the Administration later at the Committee stage.

Mr President, with these remarks, I commend the Building (Amendment) (No.2) Bill 1994 to Honourable Members.

MR LAU CHIN-SHEK (in Cantonese): Mr President, the so-called "caisson" is an inhumane working process which poses serious threat to the safety and health of workers. I suppose I need not repeat all that here. The problem is, as the Government has acknowledged, that there is so far no effective measure that can completely prevent the workers from inhaling dust particles while working in the shaft, thus making the workers susceptible to pneumoconiosis. Why does the Government still not impose a total ban on the so-called "caissons"?

On the one hand, the Bill proposed by the Government this time aims at banning the so-called caissons, but on the other hand, it allows this kind of construction to continue where the caissons are less than 3m in depth and their inner diameter exceeds 1.5m. In addition, the Building Authority is authorized to approve under special circumstances the use of caissons if, for the site concerned, using such so-called caissons is the only practical construction method or there is no other safe alternatives. The Government is actually making a "double-deal" and the exemption obviously runs against the objective of the legislation in safeguarding the safety and health of workers.

The Government emphasized to the Bills Committee that the safety problem of caissons of less than 3m deep is not serious. However, a fact that the Government has all along refused to recognize is that, although the incidence of fatal accidents in shallower caissons is relatively low, people working in these caissons still cannot refrain from inhaling dust particles all the time and are still susceptible to pneumoconiosis which may result in incurable permanent injuries. In addition, the noises generated in caissons are extremely hazardous to workers' hearing. In view of all these, one just cannot help wondering whether it is reasonable to allow caissons of less than 3m deep. As regards the approval of caissons under special circumstances, it is but an excuse employed by the Government for not introducing comprehensive improvement to workers' safety.

As a matter of fact, it is doubtful whether the Government has enough manpower to effectively scrutinize special circumstances applications and monitor such projects. It may be highly probable that applications from the constructors will not be handled in a strict manner, so that special circumstances become general circumstances. The banning of caissons in principle will subsequently be empty words. Therefore, I demand that the Government make the following commitments in concrete terms in this Council today:

- (1) To deploy additional manpower to monitor caisson operations approved under special circumstances and to set out clearer and stricter guidelines to decide whether caissons should be approved or not;
- (2) To stipulate that employers must arrange regular medical examinations for workers engaging in caisson operations;
- (3) To step up prosecuting the employers who fail to ensure the use of safety equipment and observation of safety measures by workers;
- (4) To submit to this Council a quarterly progress and reports on all approved caisson operations, and make known the locations of these operations; and
- (5) To conduct a review shortly with a view to imposing a total ban on hand-dug caissons as soon as possible.

Mr President, these are my remarks.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, I am grateful to the Honourable James TIEN, the Chairman of the Bills Committee for supporting the Bill, and to all the other Members of the Bills Committee for their careful and detailed deliberations on this legislation in recent weeks.

The legislative proposal regarding hand-dug caissons is that they should be banned subject to certain exceptions. The legislation aims to protect the health and safety of caisson workers who are susceptible to pneumonconiosis, hearing impairment and serious accidents. A total ban could interfere with other types of manual excavation which are valid practices and do not need such controls.

Members of the Bills Committee were concerned that the exemption of hand-dug caissons of 3 m deep or less might defeat the aim of the legislation to protect the health and safety of workers. I will move an amendment during the Committee stage which will reduce the risk to workers working in hand-dug caissons up to 3 m deep.

Another exemption proposed is where the use of hand-dug caissons is the only practical construction method or there is no other safe engineering alternative. The decision as to whether a hand-dug caisson proposal falls within the special circumstances and thus can be approved by the Building Authority will only be made after scrutiny by professional officers at at least three levels. Further expert advice may also have to be sought. The Labour Department will also be informed of all approved building plans involving the use of hand-dug caissons so that it can monitor the situation. The provision is to cater for very exceptional circumstances and the restricted geotechnical situation of Hong Kong. In some cases, the use of machines may be more dangerous, especially on steep slopes.

The Administration will closely monitor the safety and health of caisson workers and will consider requiring employers to arrange for regular medical examinations of workers engaged in hand-dug caisson operations.

The Administration will also keep statistics on all approved hand-dug caisson operations and will provide reports to this Council on a quarterly basis if required.

The provisions regarding hand-dug caissons will commence 12 months after the Bill is passed to enable the building industry to prepare for the ban.

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).

SECURITIES AND FUTURES COMMISSION (AMENDMENT) (NO. 2) BILL 1994

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

Question on Second Reading proposed.

MR PETER WONG: Mr President, with your leave, I will speak on both the Securities and Futures Commission (Amendment) (No. 2) Bill 1994 and the Leveraged Foreign Exchange Trading (Amendment) Bill 1994. These two Bills seek to enable the Securities and Futures Commission (SFC) to provide reciprocal investigatory assistance to overseas regulators by exercising its various existing powers under the principal Ordinances.

At present, the SFC is allowed to give non-public information which it already has to overseas regulators, subject to public interest considerations. The SFC, however, cannot assist overseas regulators in investigation unless the case also violates Hong Kong securities and futures law. Since the local securities and futures market is moving towards internationalization, it becomes important for the SFC to be able to be eligible for reciprocal assistance. This is more so in the light that the legislation in the major overseas markets has already allowed such reciprocal investigatory assistance.

The Bills were introduced into this Council on 26 October 1994. A Bills Committee with 11 Members was formed and commenced scrutiny of these two Bills on 4 November 1994. The Bills Committee met three times, including two meetings with the Administration and the SFC. The Bills Committee received written submissions from the Stock Exchange of Hong Kong and the Hong Kong Society of Accountants which both supported the proposal to give the SFC the power to render investigatory assistance to overseas regulators.

The Administration assured the Bills Committee that the SFC would not be obliged to provide investigatory assistance automatically on request. The SFC would have to consider individual cases on their own merits and against the background of certain criteria. The underlying principle for the SFC to provide assistance would be that it must be in the interests of the public or of the investing public locally. There would be an arrangement for settlement of investigatory costs so that Hong Kong would not be unfairly saddled with the expenses and the SFC would not experience any cash-flow problem. The decision of the SFC would be subject to judicial review. Also, the Governor had a reserve power to give directions to the SFC.

The Bills Committee also learned that the Bills sought to extend the power of the SFC only in respect of the bodies which it could assist. As far as the extent of assistance was concerned, it would be confined to the existing limits on the powers of the SFC. Some Members of the Bills Committee however were concerned that under the proposed section 59A of the Securities and Futures Commission (Amendment) (No. 2) Bill and the proposed section 63A in the Leveraged Foreign Exchange Trading (Amendment) Bill, the SFC might undertake pre-emptive investigative actions when rendering assistance to overseas regulators. In response, the Administration agreed to amend these proposed sections by deleting the expression "about to contravene" in order to bring the provisions of the SFC in line with the existing domestic powers of investigation of the SFC. In this connection, the Secretary for Financial Services will move amendments at the Committee stage.

Finally, in response to a Member's question, the Administration confirmed that the provisions of the Bills did not create new liabilities on past acts. They would only create new procedures to permit investigation into acts which pre-dated their enactment. In this regard, the Bills were not retrospective.

Mr President, with these remarks and subject to the Committee stage amendments, I commend the Securities and Futures (Amendment) (No. 2) Bill 1994 and the Leveraged Foreign Exchange Trading (Amendment) Bill 1994 to Honourable Members.

MR CHIM PUI-CHUNG (in Cantonese): Mr President, I am also a member of the Committee responsible for scrutinizing these two Bills. As a matter of fact, the Securities and Futures Commission (SFC) invoked Section 50 of the Securities and Futures Commission Ordinance (SFCO) in 1991, to interfere with the composition of the Council of the Stock Exchange of Hong Kong Limited (SEHK). The SFC also invoked Section 33 of the SFCO to investigate the operation of some listed companies. As far as balance of power is concerned, the Governor undoubtedly has the authority to intervene in the operation of the SFC. However, from what we can gather, since he took office on 9th July 1992, the Governor has never exercised his power to intervene in any of the decisions of the SFC. Some may say that it is because the SFC is absolutely right in what it has done. However, the fact is that some of the actions taken by the SFC have been criticized by people from various sectors in the community and by the professions concerned. Has the Governor ever exercised his power on such occasions?

In the circumstances, the proposals as embodied in these two Bills to entrust the SFC with greater power to invoke Section 29A and 37A of the SFCO to provide reciprocal investigatory assistance to overseas regulators have worried me. I doubt whether it is appropriate to do so. There are several reasons. Firstly, policies on matters concerning foreign exchange or other financial issues currently adopted by many overseas countries are still very conservative. For instance, under Chinese laws, causing confusion to the State's financial order is a capital offence. How would the SFC respond to future requests for reciprocal investigatory assistance from the Chinese Government? As a further example, exchange control is still being imposed in Thailand and in many other countries. If investigations in Hong Kong by these countries into matters concerning foreign exchange operation, have resulted in certain reciprocal information from Hong Kong being disseminated to nationals or residents of these countries, who would guarantee what they will do or worry about? Thirdly, despite the current authority of the Financial Secretary given under Sections 143 and 152A of the Companies Ordinance, the Secretary will have to gather ample evidence before he can investigate a company or question it about its operation. Now if the SFC invokes Section 29A, as well as Section 36 of the SFCO, its power would definitely be greater than that possessed by the Financial Secretary. Although with the imminent sovereignty handover in 1997, some of the Secretaries may try to get by without bothering themselves too much with Hong Kong affairs. The 1997 issue is not the only thing Hong Kong residents are concerned about. Hong Kong residents do look beyond. They are looking forward to a system that would remain unchanged for another 50 or even 100 years. It is unfair if some in our community are given excessive powers by an ordinance. Fourthly, would the conferment of powers to the SFC

by the relevant ordinances cause an overlap of duties with the Commercial Crime Bureau? Overlapping structures naturally make people strive to protect their powers and keep their jobs. This will result in unnecessary interference to the public.

In addition, we should consider setting up a department to balance the power of the SFC. Although matters can be resolved through judicial reviews or legal proceedings, I do not think it is desirable to bring all the things to the court for settlement. Recently, in a judicial review, some listed companies were conferred certain powers but the SFC appealed to the Privy Council. It can be seen that we have good grounds to worry if excessive powers are conferred to any organization devoid of any means of balance or regulation. While we are still considering whether the Independent Commission Against Corruption should be vested with such great power, why are we now entrusting the SFC with such great power?

The SFC gives the public a general impression that, firstly, it is treated in a way far better than its performance. Secondly, it is too powerful. Sometimes, in the exercise of its powers, it may act in an unfair manner and may therefore be challenged. Thirdly, some of its staff are too conceited. Instead of holding dialogues or showing willingness to solve problems with the relevant departments or the profession, they resort to abusing their powers. This is extremely dangerous. Mr President, in the discussions concerning these two Bills, it has been stressed that the SFC has not asked for more power than those it already has, and that as Hong Kong is an international financial centre and stock market, the SFC needs to respond to the requirements of overseas markets. Nevertheless, we have to understand that not all the regulations or codes of overseas regions are the same. In future, what evidence will the SFC have to provide in order to prove that it has really been entrusted by an overseas country to conduct investigations? We must bear in mind the possibility that the SFC may conduct an investigation on the pretext that it is entrusted to do by an overseas country while in fact it is investigating for its own sake. Is there any organization which can assess and restrict actions by the SFC? This is a matter of utmost importance. Therefore, I hope the Secretary for Financial Services may focus on the issue of balance of power in his reply later on. I do not want to hear the Administration stressing again that the Governor has such authority or that one may institute legal proceedings or go through judicial reviews. I hope the Secretary for Financial Services may consult the Administration in order to exercise their respective authority or establish a committee to achieve balance of power to ensure that the SFC will be abuse its power. Hong Kong lacks natural resources. Financial business such as security trading has become a very important part of Hong Kong's economy. I do hope that developments in this area may be enhanced.

As Members of this Council, we may find it easy to confer power. However, when we want to amend or revoke the powers we have conferred, we will have to face a lot of constraints and challenges. As I said a moment ago, the conferment of powers prescribed in Section 50 on the SFC had a direct impact on the SEHK. Stock brokers and members of the SEHK cannot find a channel to lodge their complaints. Complaints cannot be readily made by invoking the Ordinance, as legal fees and other fees and charges are extremely high in Hong Kong. If complaints cannot be made, the Ordinance may become unfair and unreasonable. In principle, I should have opposed these two Bills today, but I want to treat these the Bills as a gift to Mr Tony Neoh, who would become the new chairman of the SFC on 3rd February. I hope he will be a good chairman of the SFC and will not be challenged by the public so often.

Mr President, despite my above views, I still support the Bills.

SECRETARY FOR FINANCIAL SERVICES: Mr President, I am most grateful to the Honourable Peter WONG and the other Members of the Bills Committee for the careful consideration given to the two Bills. The Bills aim at providing the legal basis for the SFC to provide reciprocal investigatory assistance to overseas regulators under the Securities and Futures Commission Ordinance and the Leveraged Foreign Exchange Trading Ordinance.

I would like to emphasize, with particular reference to the comments that we have just heard from Mr CHIM Pui-chung, that it is not the purpose of these two Bills to widen the powers of the SFC. Under the two Bills, the investigatory powers given to the SFC to enable it to assist overseas regulators will be no wider, no wider than those presently available to the SFC under the two Ordinances. In other words, cases presented by overseas regulators must involve circumstances similar to those which, had the cases arisen in Hong Kong, would have enabled the SFC to invoke its investigatory powers under the two Ordinances.

The Bills Committee in this connection did express concern that the phrase "is about to contravene legal or regulatory requirements" in the proposed sections 59(A)(1)(a) and (b) of the SFC (Amendment) (No. 2) Bill 1994, and the proposed section 63(A)(1)(a) and (b) of the Leveraged Foreign Exchange Trading (Amendment) Bill may give the SFC broader powers of investigation than it had in local cases. These words had originally been adopted so that in certain circumstances a regulatory body could exercise its powers to prevent anticipated breaches of legal or regulatory requirements. But, in view of the comments of the Bills Committee, we have reconsidered the proposed wording and concluded that we can accept deletion of the phrase "is about to contravene", and I will therefore move at the Committee stage amendments to this effect.

With regard to the question of safeguards and checks and balances with reference to the powers of the SFC that was raised by Mr CHIM, Mr CHIM is in fact well aware of the existing channels of recourse, and in fact he mentioned some of them. There is a formal Securities and Futures Appeals Panel appointed by the Governor which hears statutory appeals on specified matters against decisions of the SFC. The SFC is also subject to the purview of the Independent Commission Against Corruption and of the Commissioner for Administrative Complaints, and there is also, as Mr CHIM mentioned, the possibility of recourse to the courts for judicial review. The Administration's view is that there are adequate checks and balances. But obviously in all circumstances one cannot expect to please all the customers all of the time, and it is an inevitable fact of life that there will be those who are dissatisfied with the decisions and it is up to them to decide whether to take the recourses that are available. The Administration, however, keeps that under review and does look into complaints and will consider in future the possibility of amending or improving those checks and balances.

That said, Mr President, I believe that the question of how the powers are exercised by the SFC is not raised by these Bills because, as I have indicated, these Bills do not seek to widen those powers.

Mr President, in the light of those comments I commend the Securities and Futures Commission (Amendment) (No. 2) Bill 1994 and the Leveraged Foreign Exchange Trading (Amendment) Bill 1994 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).

LEVERAGED FOREIGN EXCHANGE TRADING (AMENDMENT) BILL 1994

Resumption of debate on Second Reading which was moved on 26 October 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.

EMPLOYMENT (AMENDMENT) BILL 1995

Clauses 1 to 12 were agreed to.

BUILDINGS (AMENDMENT) (NO. 2) BILL 1994

Clauses 1, 3 and 6

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Chairman, I move that clauses 1(1), 3 and 6 of the Bill be amended as set out under my name in the paper circulated to Members.

The amendment to clause 1(1) changes the short title of the Ordinance following the arrival of the new year.

The amendment to clause 3 imposes an additional condition in relation to the exemption of hand-dug caissons which are 3 m deep or less. As I have said previously, the Administration believes that it will reduce the risk to workers by providing for hand-dug caissons to be better ventilated. This amendment has been discussed and agreed by the Bills Committee.

The amendment to clause 6 amends the proposed sewage tunnel protection area from 100 m from either side of a sewage tunnel to 50 m. After the Bill was published in the Gazette in September 1994, representations were made by the professional bodies that the proposed sewage tunnel protection area of 100 m from either side of a sewage tunnel was too wide. We have accepted this.

Thank you, Mr Chairman.

*Proposed amendments***Clause 1**

That clause 1(1) be amended, by deleting "(No. 2) Ordinance 1994" and substituting "Ordinance 1995".

Clause 3

That clause 3 be amended, in the proposed section 16(1A)(a), by adding after "3 metres" —

"and the diameter of the inscribed circle of the hand-dug caisson is not less than 1.5 metres".

Clause 6

That clause 6 be amended, by deleting "KCE/S/G/765 to 771, dated 5 September 1994" and substituting "KCE/S/G/765A to 771A, dated 11 November 1994".

Question on the amendments proposed, put and agreed to.

Question on clauses 1, 3 and 6, as amended, proposed, put and agreed to.

Clauses 2, 4 and 5 were agreed to.

SECURITIES AND FUTURES COMMISSION (AMENDMENT) (NO. 2) BILL 1994

Clauses 1 and 4

SECRETARY FOR FINANCIAL SERVICES: Mr Chairman, I move that clauses 1 and 4 be amended as set out in the paper circulated to Members.

For the reason I have already explained, the Administration can accept deletion of the phrase "is about to contravene" which is the subject of these amendments.

Mr Chairman, I beg to move.

Proposed amendments

Clause 1

That clause 1 be amended, by deleting "(No. 2) Ordinance 1994" and substituting "Ordinance 1995".

Clause 4

That clause 4 be amended, in the proposed section 59A(1)(a) and (b), by deleting ", is contravening, or is about to contravene" and substituting "or is contravening".

Question on the amendments proposed, put and agreed to.

Question on clauses 1 and 4, as amended, proposed, put and agreed to.

Clauses 2 and 3 were agreed to.

LEVERAGED FOREIGN EXCHANGE TRADING (AMENDMENT) BILL 1994

Clauses 1 and 2 were agreed to.

Clause 3

SECRETARY FOR FINANCIAL SERVICES: Mr Chairman, I move that the clause specified be amended as set out in the paper circulated to Members.

For the reason I have explained, we can accept deletion of the phrase "is about to contravene" which is the subject of this amendment.

Mr Chairman, I beg to move.

Proposed amendment

Clause 3

That clause 3 be amended, in the proposed section 63A(1)(a) and (b), by deleting ", is contravening, or is about to contravene" and substituting "or is contravening".

Question on the amendment proposed, put and agreed to.

Question on clause 3, as amended, proposed, put and agreed to.

Council then resumed.

Third Reading of Bills

THE ATTORNEY GENERAL reported that the

EMPLOYMENT (AMENDMENT) BILL 1995

had passed through Committee without amendment and the

BUILDINGS (AMENDMENT) (NO. 2) BILL 1994

SECURITIES AND FUTURES COMMISSION (AMENDMENT) (NO. 2) BILL 1994
and

LEVERAGED FOREIGN EXCHANGE TRADING (AMENDMENT) BILL 1994

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

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

Bills read the Third time and passed.

PRIVATE MEMBER'S MOTIONS

PRESIDENT: I have accepted the recommendations of the House Committee as to the time limits on speeches for the motion debates and Members were informed by circular on 13 January. The movers of the motions will have 15 minutes for their speeches including their replies and another five minutes to reply to proposed amendments. Other Members, including movers of amendments, will have seven minutes for their speeches. Under Standing Order 27A, I am required to direct any Member speaking in excess of the specified time to discontinue his speech.

WONG WAI TSAK TONG

MR LEE WING-TAT moved the following motion:

"That this Council urges the Government to introduce legislative measures expeditiously to resolve the dispute relating to Wong Wai Tsak Tong's land ownership in Cheung Chau and to revoke the Tong's status as the leaseholder, so as to restore the property rights of the affected residents."

MR LEE WING-TAT (in Cantonese): Mr President, I move the motion standing in my name on the Order Paper.

My dear colleagues, the motion I move today has an important bearing on whether this Council can fully discharge its duty of monitoring the operation of the Government and urging the Government to govern Hong Kong on the basis of facts and reasoning. Likewise, I hope the stance taken by my colleagues towards this motion is also based on facts and reasoning. I am very confident of this. In the following speech, I am also going to base my arguments on facts.

First of all, I would like to explain to you the status of the Wong Wai Task Tong (WWTT):

On 18 March 1905, a Block Crown Lease covering almost 90% of the private land on Cheung Chau Island was granted by the Government to WWTT which became the leaseholder. But according to historical data, WWTT was not a union of villagers or other indigenous residents at that time (1905). Therefore, unlike those other "Tongs" in the New Territories, WWTT did not have blood relationship or geographical ties with the indigenous residents of Cheung Chau Island. These historical data include a Government Gazette of July 1899. This argument was further affirmed by the Lands Tribunal judgment in a case in 1988.

It was only in 1950, when six village representatives, together with all the residents of Cheung Chau Island, petitioned the Governor and the Colonial Secretary to oppose the decision by which WWTT was made the leaseholder, then it came to light that, in 1901, the status of WWTT as a "taxlord" at that time was recognized by the Presiding Judge of the Land Court as a "landlord". As it is understood, a taxlord was a person who merely collected for the Government Crown rent from landlords or tenants holding permanent leases. A taxlord was by no means the owner of the land either by virtue of ownership or right of occupation. The taxlord was allowed to claim an interest in the land because his status was not yet ascertained by the Land Court before 1905. However, in February 1905, a member of the Land Court, C.M. MESSER, confirmed in the Land Court Report that, "The status of the taxlord under Chinese Law was entirely-illegal. The claims of the taxlords were not approved, but in some cases, Crown land was granted to them as compensation for their loss of income". Therefore, making WWTT the holder of the Block Crown Lease ran counter to historical truth. While the then British Hong Kong Government failed to rectify this error, the present British Hong Kong Government should not commit the same mistake again.

When the Hong Kong Government made WWTT the holder of the Block Crown Lease in 1905, it also required the Tong to sublease the land to affected residents of Cheung Chau (known as "owners of sublease"), or commonly named "sublessees". The sub leases were renewable on the same terms every five years until the termination of the Block Crown Lease in 1997. Crown rent was payable by the sublessees to the Government through the Tong. In the

event of buying or selling, mortgaging or leasing, reports had to be made to the Tong. Any increase in Crown rent by the Government were to be borne by the sublessees. The details of this unique arrangement were found in the file CSO 269, but according to the present officials, this file was lost.

In more than 70 years from 1905 to 1981, managers of WWTT processed subleases for sublessee renewals and collected Crown rent from them as provided. At that time, there was great freedom for the renewals which were processed every week at no cost. However, between 1981 and 1983, the Tong managers started to charge \$300 for each renewal. And since the setting up of the new Executive Committee of the Tong in 1985, the Tong charged sublessees excessive fees for late renewals and charged additional fees for giving consent to redevelopment and change in land use, in amount ranging from several ten thousand to several hundred thousand dollars. This practice has led to serious disputes between the Tong and its sublessees.

In mediating the disputes between WWTT and its sub lessees, the Administration issued a written statement on 26 October 1992, pointing out that the arrangement made in 1905, whereby WWTT would have to be responsible for the collective payment of Crown rent for the land under the Block Crown Lease, could be compared to an agency system. This clearly indicates that the Tong should only collect Crown rent from sublessees, and not rent on the land as in the case of a tenancy relationship.

In the course of disputes between the two parties, there was a Lands Tribunal precedent case which showed that a sublessee has ownership of the land.

On 12 February 1985, the Government resumed land in Tai Shek Hau, Cheung Chau, for the construction of a public housing estate, and the District Lands Officer, Islands regarded the "lessee of the grant", commonly known as sublessee, concerned as subsidiary of WWTT and specified that the sublessee could only collect compensation from the Government accompanied by a Tong manager. The Tong then took this chance to demand 51% of the compensation of \$1.4 million or more due to owner of the land, Mr SUEN Sun-yau.

Mr SUEN's land was indeed owned by his deceased grandfather before the British take-over. To protect his ownership, he initiated civil proceedings in the High Court. On 26 February 1988, a judgement was given by the High Court to the effect that Mr SUEN was entitled to claim compensation from the Government, and so was WWTT should it consider that it had an interest. This indicates that the Tong did not have the right to claim a share of the compensation payable by the Government to the sublessee. Mr SUEN then engaged a professional surveyor through his lawyer to file a claim with the Lands Tribunal on his behalf for compensation from the Government. On 15 December 1989, the Director of Lands, in a document submitted to the Lands Tribunal, offered \$1 to the Tong as the compensation for its share of interest. The Tong eventually withdrew its claim on 31 January 1990. Mr Suen, on the

contrary, received full compensation in the sum of \$1.6 million inclusive of interest. This case shows that the Tong only has nominal rights, but not substantive rights, to the sublessees' land.

Furthermore, in a document dated 2 August 1993 issued to WWTT by Mr EASON, the Secretary for Planning, Environment and Lands, it was pointed out by the official concerned that, firstly, "it is the Administration's view that the Tong should not charge for giving its consent to lease modification or surrender and regrant: this was the practice prior to 1981." Secondly, "the Tong has no claim to any amount beyond Crown rent imposed by Government."

The above information comes from official documents and correspondence including the written statement issued by the Government. Even Government officials could not deny the reliability of these pieces of information when they discussed the question of ownership of land on Cheung Chau Island. All this information shows that, WWTT was not the big landlord of Cheung Chau Island prior to the grant of the Block Crown Lease. Even after the Block Crown Lease was granted, the Tong still did not have the right to enjoy the interests in over 610 lots of land on Cheung Chau as it now claims to have. Had the Tong been the owner of over 90% of land on Cheung Chau Island, there was no reason for the Government to spend the taxpayers' money over the past decades in developing the infrastructure and other constructions on the land on Cheung Chau Island, thereby enhancing the market value of the land owned by the Tong, the so-called owner of the land, and increasing the profits which the Tong reaps through controlling the development and transaction of land and properties on Cheung Chau Island, presumably it will be hard for the Government to give us a satisfactory explanation on this.

In their effort to resolve this matter, sublessees of Cheung Chau Island have tried to negotiate with the Tong in a tolerant manner and also accepted mediation by the Government. Regrettably, they only met with the unco-operation of the Tong and the bureaucratic style of work of the Administration. Some sublessees also made attempts to solve the problem by judicial means, but given the financial viability of the Tong, these sublessees simply did not have adequate financial means to file a lawsuit against the Tong, furthermore, in view of the variety of cases, the time for legal proceedings must be very long. The sublessees are rendered even more helpless in that the contracts for renewal by the Tong stipulate that the terms of the contract shall override judicial judgments; so once they signed the contracts, they cannot seek any judicial protection.

Under these circumstances, enactment of legislation is the only option in dealing with this dispute over land ownership. Some colleagues and I made the proposal a few years ago for an early and reasonable solution to the problem. However, the Administration chose not to take the most effective means, as a result, sublessees have been bogged down by endless negotiations. It was not until October 1994 then the Administration proposed to introduce legislation to rectify the situation, but these proposals did not address the arguments put

forward by sublessees and were in all respects taking sides with the Tong, making sublessees completely lose confidence in the Government in fighting for the restoration of land ownership.

What is most perplexing is that, in the "Note on the Proposed legislation to Regulate the Relationship between the Wong Wai Task Tong and Sub-lessees on Cheung Chau" issued by the Government in October 1994 to Cheung Chau sublessees, the Government made certain proposals which were contradictory to its previous statement. The most unacceptable thing is that the Government tried, by enactment of legislation, to change the status of WWTT from that of an agent to that of a landlord who officially owns the rights to the land. This approach simply changes a "comprador agent" into a "landlord" by means of a law, thereby legalizing a deal which is illegal. In addition, it was proposed to allow the Tong to charge sublessees an administrative fee of not more than 10% of the land premium payable by the sublessees to the Government for modification and exchange of subleases. This is obviously contradictory to the contents of the letter issued by Mr EASON, the Secretary for Planning, Environment and Lands, in August 1993.

The vacillating stance of the Government is a result of its unrepentant attitude and refusal to admit the mistake it made in 1905. I would like to tell the Government that it has an unshirkable responsibility to correct a past error which it has made. If the Government fails to take the initiative to revoke the status of WWTT as a leaseholder, either for fear of losing face or of the liability to pay compensation to the Tong, it will cause the government, all the same, to plunge into a deeper credibility crisis. In view of this, I urge the Government to make a provision in the drafted Bill to revoke the Tong's status as a leaseholder. Otherwise, the Democratic Party and I will certainly propose amendment to the Bill in question in order to achieve the aim of restoring land ownership to the affected residents and to see that justice is done.

Mr President, grievances involved in the WWTT case has lasted for 90 years. Today is high time for us to sweep away the dark clouds and see the sunlight.

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

Question on the motion proposed.

PRESIDENT: Mr Edward HO and Mr TAM Yiu-chung have given notice to move amendments to this motion. As Members were informed by circular on 16 January, under Standing Order 25(4) I shall ask Mr Edward HO to speak first, to be followed by Mr TAM Yiu-chung; but no amendments are to be moved at this stage. Members may then debate the main motion as well as each of the two amendments listed in the Order Paper.

MR EDWARD HO (in Cantonese): Mr President, the background surrounding land ownership of Wong Wai Tsak Tong (the Tong) in Cheung Chau is very peculiar and the issue has plagued Cheung Chau residents for a long time. The Legislative Council Panel on Lands and Works, that is, the predecessor of the Panel on Planning, Lands and Works, first discussed the issue with the Government in 1991. But the issue remains unresolved. The Liberal Party hopes that this problem and dispute left over from history can be properly resolved as soon as possible.

Recently, the Government proposed to regulate the relationship between the Tong as the leaseholder and the affected Cheung Chau residents as the sub lessees by way of legislation. However, the Liberal Party is of the view that the Government should start off by negotiating with the Tong for a solution. Only if this fails to yield a satisfactory solution and resolve the dispute between the Tong and the residents should legislation be enacted to regulate the relationship between the two parties. As it stands, the legislative proposals put forward by the Administration is still far from adequate to properly resolve the fundamental problem between the Tong and Cheung Chau residents. According to one of the government proposals, the Tong will be allowed to charge sublessees not more than an amount equivalent to 10% of the premium charged by the Government for modifications and exchanges for the purpose of redevelopment. The Liberal Party thinks that the Government's arrangement is tantamount to continuing the Tong's status as a leaseholder, causing affected sublessees to pay additional expenses, and the disputes will go on indefinitely.

What is more, the Government has been fluctuating in its stance and has gone back on its own words over this issue. In a letter to the Tong in August 1993, the Government pointed out that the Tong should not charge any fees when handling modifications and exchanges for sublessees and that this was merely the usual practice before 1981. But now the Government has changed its stance and proposed that the Tong can charge fees. This decision has not only baffled us, but also made the sublessees unhappy. In fact, whether the Tong actually owns the land, there are diverse views, but documentation shows that the Tong was responsible for collecting rents and taxes in respect of the land on Cheung Chau during the Qing Dynasty, and was at that time known as the taxlord. Subsequently, the Court recognized that the Tong was the owner of the land on Cheung Chau and a Block Crown Lease covering 90% of the land on Cheung Chau was granted to the Tong in 1905. As a result, the Tong has maintained its status as the leaseholder for nearly 90 years since 1905. On the other hand, the Cheung Chau sublessees accused the Government of maladministration in granting the land to the Tong in that year as the Tong at that time was not the land owner, but only a taxlord responsible for collecting rents and taxes in respect of the land. Their views and situation are understandable and worthy of our sympathy. However, in order to solve the problem, I do not think we should rectify a mistake by yet another wrongful means. The Government should not employ tough tactics hastily to revoke the Tong's status as a leaseholder in order to restore land ownership to the affected residents. As the Government has previously recognized the Tong's ownership,

it should offer reasonable compensation, if the Tong's leaseholder status were to be revoked, so as to make up for the loss incurred by the Tong in respect of their interests.

Mr President, what we are now discussing is not merely confined to the case of the Wong Wai Tsak Tong. It involves whether the property rights of private land is under protection. The decision we make today will have a very far-reaching implication. Therefore, I urge my Honourable colleagues to make a prudent decision. I am of the opinion that Mr LEE Wing-tat's motion and Mr TAM Yiu-chung's amendment will set a dangerous precedent as it would seriously violate the spirit of the rule of law if private property rights were stripped or forfeited rashly without valid grounds and adequate compensation. Some of the opinions emerged in the course of the present discussion even make me feel that I was taken back to the Mainland China of 1949. Nevertheless, Article 120 of Section 2 of Chapter V of the Basic Law has stipulated that, "All leases of land granted, decided upon or renewed before the establishment of the Hong Kong Special Administrative Region (SAR) which extend beyond 30 June 1997, and all rights in relation to such leases, shall continue to be recognized and protected under the law of the Region." Therefore, the forfeiture of private property rights without compensation should definitely not be the practice of the Government prior to 1997 or the SAR Government.

Therefore, given the above reasons, I would like to propose an amendment to Mr LEE Wing-tat's motion to the effect that the Government should give the Wong Wai Tsak Tong reasonable compensation before revoking its status as the leaseholder in order to restore land ownership to the affected residents. In addition, I can absolutely not accept Mr TAM Yiu-chung's amendment as it proposes that before the legislation comes into force, the Government should replace the Tong in handling the relevant matters on a temporary basis in order to restore land ownership to the affected residents. In my opinion, it is inconceivable and unacceptable that administrative changes can take place before the enactment of legislation, which in effect means that the administrative organ can override the law by intervening with the law with administrative means. Hence, I cannot support Mr TAM Yiu-chung's amendment either.

As whatever decision we make today will have a far-reaching impact on the protection of private property rights, I hope that my colleagues will support my amendment offering reasonable compensation to the Tong.

MR TAM YIU-CHUNG (in Cantonese): Mr President, today is 18 January 1995, but this Council is now debating how the Government should rectify a serious error made as long ago as in 1905. This is very ridiculous. However, it is even more regrettable that the Government is not only reluctant to admit its past mistakes, but is also trying to "leave a mistake uncorrected but try to make the best of it" by legalizing past mistakes through legislative means.

On 18 March 1905, the then Government, for unknown reasons, deviated from its usual practice of issuing individual Crown lease to each of the 500 odd holders of "red deeds" issued by the Qing Dynasty Government, and mistakenly granted only a single Block Crown Lease to the Wong Wai Tsak Tong (WWTT). The Block Crown Lease was signed by the Tong's managers and then issued to the original owners of the private land. Government documents reveal that six Cheung Chau village representatives raised strong objections to the practice of the then Government and signed a joint submission to the then Government to voice their discontent, but the then Government turned a blind eye to their objections which sowed the seeds of today's discord.

In fact, according to the information provided by Cheung Chau residents, the WWTT was not an indigenous resident of Cheung Chau at all. The fact that it was granted a Block Crown Lease by the then Government leads us to the reasonable belief that this might involve corruption among officials or other secret deals, and this explained why the Government went its own way despite the residents' objections. However, this only showed that the Government in the early days was inaccessible and corrupt. I wonder why the present Government still harbours the WWTT and even enacts laws to protect the prerogatives mistakenly granted to them by the Government in the early days. On the contrary, I think that, as an open, fair and responsible government, its should be courageous enough to face up to the fact handed down by history and be bold enough to rectify the mistakes made by people in the past and to resolutely cut off the root of evils — the WWTT; otherwise, perpetuating these mistakes through the 21st century will only seriously affect the credibility of the Government.

Mr President, years of discussions have made the position of this Council absolutely clear, that is, we hope the Government could act decisively and immediately and draw up legislation with a view to terminating the unreasonable prerogatives all along enjoyed by the WWTT.

The Deputy Secretary for Planning, Environment and Lands, Mr Canice MAK, emphasized repeatedly at an earlier meeting with myself and members of the Democratic Alliance for the Betterment of Hong Kong (DAB) that Government legal advice confirmed that the WWTT did enjoy the titles to the majority of the land on Cheung Chau and the existing landlords on Cheung Chau were merely sublessees. He also pointed out that if the Government enacted laws to terminate the status of the WWTT as a leaseholder under the Block Crown Lease, it would set an undesirable precedent of the Government depriving landowners of the ownership of private property through legislation. This viewpoint has actually been raised by Mr Edward HO earlier on. The argument seems irrefutable at first, but in fact, it fully reflects the Government's inconsistency and contradiction in dealing with the WWTT issue.

It is recalled that in October 1992, the Government made a statement which mentioned that, "..... the 1905 arrangement, whereby the WWTT paid the Crown rent for land under the Block Crown Lease in Cheung Chau, including that for subleased land, might be said to have resembled an agency system" . Obviously, at that time, the Government regarded the WWTT as the agency or the intermediary between the Government and the Cheung Chau landlords, not a Block Crown leaseholder or a title owner as is described at present. It also stated that with effect from November 1994, the obligation of the WWTT to pay rent on behalf of residents of Cheung Chau would be absolved, but the issue of depriving landowners of the ownership of private property was not touched upon. Did the Government seek legal advice before it made the above statement in 1992? If it did, why is there such a great discrepancy between the legal advice it obtained at that time and the legal advice it obtains now?

The legal opinion given to the Cheung Chau Rural Committee and the Cheung Chau residents, as well as the information obtained from the Public Records Office of the Government Records Services reveal that the WWTT was actually only a "rent collector", and did not enjoy any titles to land on Cheung Chau. In that case, why has the Government all along been so scared of disclosing the legal advice on the status of the WWTT obtained in 1992 and recently during the debate in this Council?

Moreover, government representatives have been reiterating that if Cheung Chau landlords do not agree that the WWTT should enjoy the titles to the land on Cheung Chau, they should initiate proceedings and wait for court rulings. This shows that the Government is shirking its responsibilities. In addition, government officials have emphasized that there was no successful case in the past where Cheung Chau landlords could confirm their titles to the land through court rulings. However, in the court case of Mr SUEN Sun-yau, a Cheung Chau landlord, rulings by the High Court and the Lands Tribunal were given in 1988 and 1990 respectively, which confirmed that the land titles enjoyed by Cheung Chau landlords had nothing to do with the WWTT and that the WWTT enjoyed no interest in the land owned by individual landlords. With such categorical rulings as evidence, how can the Government still turn a blind eye to this precedent? How can the representatives of the WWTT distort the facts by fabricating that the case of SUEN Sun-yau was settled out of court due to insufficient evidence?

Mr President, the Cheung Chau Rural Committee and the representatives of landlords actually have substantial evidence, including information dated before 1905, to prove that they really enjoy titles to the land. Why can the Government insist that it will not take note of information dated before 1905?

The motion moved by Mr LEE Wing-tat today is in fact similar to the one I intended to move in early December last year, but it is unfortunate that I failed to pick a time slot at that time. Since the approach of this motion tallies with my arguments, I would lend my support to the original motion. However, I am worried that it may take time for legislation to be enacted, therefore, I hope that

during the period before the relevant legislation comes into effect, the Government can put into practice its commitment made in 1992, and collect rents from Cheung Chau landlords in place of the WWTT, so as to stop it from blackmailing the landlords unchecked.

As regards Mr Edward HO's amendment, I believe the amendment is moved in the hope that the WWTT will be willing to give up its existing prerogatives if the Government offers a significant amount of compensation to the Tong. But I am worried that Mr Edward HO's suggestion

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PRESIDENT: You have to stop, Mr TAM, I am afraid.

MR LAU WONG-FAT (in Cantonese): Mr President, the dispute over the land ownership of Wong Wai Task Tong on Cheung Chau Island is an issue left over from history. It has dragged on for years and is still unresolved. The residents of Cheung Chau have been deeply disturbed. If we trace the origin of the problem which has now become so complicated and difficult to manage, the Government has to take the blame. Therefore, the Government has an unshirkable duty to work out a reasonable and feasible solution.

Because of the passing of the times and the loss of records, it is difficult to know exactly why the Government granted almost 90% of the private land on Cheung Chau Island to the Tong in 1905. It will not do any good if we keep on quibbling over this point. In any case, the Tong is a legitimate holder of the Block Crown Lease. Its status is protected by law and should not be revoked arbitrarily. In fact, any unilateral action without the consent of the Tong might be futile because the Tong can take legal action and petition the Court for a judicial review. The Tong is not without a chance to win.

I fully understand the feeling of the Cheung Chau residents. It is reasonable that they should feel they have been unfairly treated and be furious. It is also reasonable that they should ask to terminate their relationship with the Tong as sub lessees and leaseholder. But one has to be practical and realistic. If we really want to solve this problem as soon as possible, then it is not desirable to revoke the Tong's status as a leaseholder only by legislative measures without taking into account its interests. This is because such action will inevitably lead to prolonged litigation. It will also have an adverse effect on the Government's image of rule by law.

Mr President, since the problem was caused by the Government, I think the Government should bear the consequences. Under the current situation, it would be a feasible and more acceptable arrangement for the Government to give reasonable compensation to the Tong in exchange for its consent to revoke its status as the leaseholder. The Government's present proposal to regulate the

relationship between the Tong and its sublessees on Cheung Chau by legislative measures is only a perfunctory and remedial solution and does not tackle the root of the problem. It is natural that the Cheung Chau residents refuse to accept this proposal. I hope the Government will re-orientate itself and start to negotiate with the Tong as soon as possible on the matter of compensation.

Mr President, with these remarks, I support the Honourable Edward HO's amendment motion.

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

MR ALBERT CHAN (in Cantonese): Madam Deputy, it is the Administration who has forced this Council to hold a debate today on the dispute over land ownership on Cheung Chau Island. Representatives of the sublessees on Cheung Chau Island lodged their complaints with the Office of Members of the Executive and Legislative Councils in as early as 1989. An inter-departmental working group was then set up by the Government to look into the issue. Two years ago I called on the Government to enact legislation in order to revoke the status of Wong Wai Tsak Tong (the Tong) as the leaseholder under a Block Crown Lease so as to restore the rights of the affected sub-lessees.

However, the Government officials concerned have for a long time turned a deaf ear to the arguments put forward by representatives of the sublessees on Cheung Chau Island and have tried to evade responsibility arising from the administrative and judicial errors made during the period 1901 to 1905 by the then Government. They have left the matter unsettled through prolonged negotiation. All along, the problem of land ownership has been worrying the sublessees on Cheung Chau Island. Some sublessees were forced to conclude new "leases" with the Tong on unreasonable terms under circumstances that the sublessees were neither consulted nor given any explanation. Thus the interests of the sublessees were being further infringed upon.

What is more infuriating is that in December 1993 the Government admitted that it was impossible to solve the dispute between the Tong and the sublessees on Cheung Chau Island through mediation and negotiation and undertook to solve the problem by means of legislation. Yet, the Administration has so far not tabled the Bill before this Council for deliberation. As regards the Bill which is still being drafted, the status of the Tong as the leaseholder under a Block Crown Lease will not be revoked thereunder. On the contrary, the Tong will be allowed to make extensive profits through handling formalities such as the modification of deeds or exchange of subleased land.

In fact, as early as 1905, Government officials knew well that the Tong was ruled to be the leaseholder because the Land Court had mistaken the Tong as the owner of 90% of the land on Cheung Chau Island. It is a disgrace that Government officials of the then colonial government did nothing at all to rectify the mistake, thereby allowing injustice to last for almost a century. It is really ridiculous for officials of an old capitalist country to seize the inviolable right to land ownership from legitimate owners and to grant such rights to someone else. It also reflects that in the early 20th century, British colonialists were arbitrary and contemptuous of the rule of law.

How about the modern colonial government we have today? Once again, it turns its back to the appeal lodged by the sublessees on Cheung Chau Island. It refuses to repent and tries to defend the wrongful decision in the past and protects those who have vested interests on the pretext of safeguarding the right to privately owned property according to the spirit of capitalism.

Under the protection of the colonial government, those who have vested interests will of course speak plausibly and volubly. Recently, the subcommittee under the relevant panel of the Legislative Council has invited representatives of the Tong to convey their views and standpoints on the matter. In the meeting the representatives rebutted and attacked point by point the arguments of the sublessees on Cheung Chau Island. Their counter arguments might have sounded convincing, but upon checking what they have said during the meeting, it is discovered that the so called facts that they put forward are packed with flaws.

There are two obvious fallacies.

First, in the case of land resumption compensation paid to Mr SUEN Sun-yan, formerly a sublessee on Cheung Chau Island, both the High Court and the Lands Tribunal have given official verdicts. It is explicitly pointed out in the judgment that Mr SUEN has the right to claim compensation from the Government and the Tong can also claim compensation from the Government should it deem itself to hold interest on in the said land.

According to the submissions from the Director of Land to the Lands Tribunal on 15 December 1989, the Tong was given compensation of HK\$1 as its entitlement whereas Mr SUEN Sun-yau was finally able to receive compensation in full plus interest totalling \$1.6 million.

Such a self-explanatory judicial verdict was nevertheless described by representatives of the Tong as an out-of-court settlement. Moreover, representatives of the Tong alleged that Mr SUEN was a member of the WONG clan. It is obvious that these two points are contrary to reality. It is even more absurd that the Tong's solicitor even claimed that he was not aware of such a precedent during the meeting with the subcommittee of the Legislative Council.

As the representatives of the Tong have behaved so impervious to reasons even when they were facing the Legislative Council and the media, one can imagine the bullying and oppression that residents on Cheung Chau Island, in particular the old and the weak, women and children alike, have been subjected to for the past 90 years.

The Democratic Party has adopted a pragmatic attitude toward the dispute over land ownership with a view to protecting the rights of those who have been unfairly treated. In this connection, I hereby make the following appeal:

First, the Hong Kong-British Government should realize the seriousness of the situation. Land development works and property transactions on Cheung Chau Island have come to a standstill as a result of the dispute. Besides, the sub-lessees on Cheung Chau Island will have to renew their leases soon and this has brought great pressure on them. If the dispute were not settled in time, they may very likely be forced to sign new leases on unreasonable terms. Therefore, the Government has to submit legislation to the Legislative Council as soon as possible so as to revoke the status of the Tong as the leaseholder and reinstate the property rights of the affected residents. The legislation concerned should have retrospective effect so that unreasonable contracts which sub lessees have been forced to enter into in the course of the dispute can be repealed.

Finally, sub lessees on Cheung Chau Island as well as various social organizations and political parties participated in this matter enthusiastically. In fact, we should co-operate with sincerity and strive towards our common goal. However, it is a pity that some have refused to communicate or take concerted actions. This, I think, is really regrettable. Therefore, I call on all individuals and organizations who have worked hard to restore the landowner status of the Cheung Chau Island residents to put aside their differences and join hands in working towards a common goal.

With these remarks, I support the motion.

MRS MIRIAM LAU (in Cantonese): Madam Deputy, the dispute over land ownership on Cheung Chau Island dates back to the beginning of this century. The question at issue is whether Wong Wai Tsak Tong (the Tong) or the residents on Cheung Chau Island should have the legal title of the land on the Island. According to the Cheung Chau residents, prior to the lease of the New Territories to Britain in 1889, the then Qing Government had issued "red deeds" to over 500 indigenous residents on Cheung Chau Island to prove that they were the legitimate land owners. At that time, the Tong collected rents and taxes from the residents on Cheung Chau Island on behalf of the Government and thus became the "taxlord". It seems that the Government does recognize this historical fact, but the granting of 90% of the private land on Cheung Chau Island to the Tong under a Block Crown Lease by the Hong Kong-British Government in 1905 is also a historical fact. The Tong has since then become the leaseholder. The reason why the Government did so can no longer be traced

for the Government has lost the relevant documents afterwards. The only thing that is sure is that the Government did, by means of a title deed, confer land ownership on the Tong who was originally responsible for collecting rents, thus granting the Tong the status of a legitimate leaseholder. As a result, the original Cheung Chau landowners with the "red deeds" in their possession became sub-lessees and their leases are subject to renewal every five years.

I fully understand the grievances of the Cheung Chau residents. They were actually the owners and should be the direct lessees of the Hong Kong Government. It is unreasonable that they have been downgraded as sublessees under the control of the principal tenant to whom they are required to make payment every five years. In fact, Cheung Chau Island is the only place in Hong Kong where land is owned by sublessees. The Government is unable to explain reasonably why such a special arrangement exists on Cheung Chau Island alone. Though we cannot ascertain that the Government has been wrong in this issue, the problem caused by the contradictions between these two historical facts has to be resolved. The most desirable and equitable solution is the voluntary withdrawal of the status as leaseholder by the Tong with a reasonable payment to the Tong as compensation. The Government can then grant land directly to the residents so that they will be able to enjoy the property rights just like other land owners in the territory. The Tong refuse to do so, the Government should adopt legislative means to resolve this dispute which has caused so much hardship to the Cheung Chau residents during all these years.

The motion as amended by the Honourable Edward HO seeks to revoke the status of the Tong as the leaseholder, subject to the payment of a reasonable amount of compensation. The amount of compensation may be negotiated between the Government and the Tong or is to be determined by the Land Court. It has to be reasonable, anyway. The right of owning a piece of leased land is regarded as private property. Even though in the resumption of land for public purposes, the Government is still required to pay a reasonable amount of compensation under the Crown Lands Resumption Ordinance. Therefore, it is all the more necessary for the Government to pay compensation when it plans to resume land from the Tong for the purpose of resolving a problem arising from historical factors. To deprive citizens of their legal title without giving them reasonable compensation is something which a sensible and responsible government will not do. Only authoritarian states will act like this. No matter whether the Hong Kong Government has been right or wrong, the fact remains that according to the law, the Tong is the legitimate leaseholder of land on Cheung Chau Island. Hong Kong is ruled by law and so we should respect the law. Therefore, the dispute over the Tong's legitimate ownership of land should be dealt with on the principle of equality according to the law.

Some may think that since the residents have produced their "red deeds" to prove that they are the original landowners and that the Tong is merely the taxlord, the Government has obviously conferred the title on the Tong by mistake, and it is unnecessary to pay any compensation to the Tong because we are just trying to rectify the mistake. This argument is based on the assumption

that the Tong did not have any benefits for being the taxlord. This argument, however, is not necessarily correct. According to the documents submitted to the Legislative Council by the Planning, Environment and Lands Branch in 1991, even in 1904 when the Government granted land to sublessees directly, the Government would compensate the taxlord with other land. In this connection, we cannot possibly say that the taxlord does not have any entitlements. But so far as Cheung Chau Island is concerned, the Government has not granted any land to the Tong as compensation but recognized the Tong as the legitimate leaseholder. If we went back to 1905, we would find that the Tong as the taxlord did have compensation to a certain extent.

I cannot agree with the amendments proposed by the Honourable TAM Yiu-chung. Mr TAM called on the Government to introduce legislation in order to revoke the status of the Tong as the leaseholder. As I said just now, I agree to this point. But Mr TAM also proposed that before the legislation came into force, the Government should replace the Tong as tax collector on a temporary basis. I think this suggestion is very much in need of further discussion. It implies that the Government can override the law. Does it mean that when the Government is dissatisfied with certain legislation, it can simply ignore the law and replace it by administrative measures? This is certainly not allowed in Hong Kong where the rule of law is upheld. Neither should we encourage the Government to do so. I believe that Mr TAM has proposed the amendments in good faith. I appreciate the worries of the Cheung Chau residents. They hope that the problem will be resolved as quickly as possible, but we cannot just ignore the law.

Finally, I am disappointed in the way the Government handled the dispute over of land ownership on Cheung Chau Island. This problem has lingered on for years. Yet, the Government has been procrastinating all the time and tried to evade its responsibility. Although it was finally proposed in 1993 that the problem was to be resolved through legislative measures, the Bill has not been formally tabled. The attitude of the Government towards this issue is always changing. At the very beginning, the Government suggested that the Tong should not charge any fees for giving its consent to modification of deeds or exchange of the subleased land. However, the proposed legislation released in October 1994 has suggested that the Tong can charge a fee of not more than 10% of the premium. In addition, the implementation of the arrangement for the Government to collect Crown rent directly from the sublessees is deferred to 1 July 1997. It seems that the intention behind is to leave all the consequences brought about by these changes to the future Special Administrative Region Government. This is an irresponsible act. The Government's present proposal only aims at reducing some of the powers vested in the Tong but it fails to eliminate the conflicts between the Tong and the residents. My view is that the Government should not allow the issue of land ownership on Cheung Chau Island to drag on any longer. Instead, it should act decisively and adopt measures to resolve the problem radically on the principle of equality according to the law. This is the way through which the Government can earn the confidence of the people.

Madam Deputy, with these remarks, I support the Honourable Edward HO's amendment.

DR TANG SIU-TONG (in Cantonese): Madam Deputy, the dispute over the land ownership of Wong Wai Tsak Tong on Cheung Chau Island is a whole lot of a mess. According to the known facts, it was the Government that created the problem. It is understood that in the Qing Dynasty, residents on Cheung Chau Island were issued with "red deeds" as a proof of their land ownership. At that time, the residents could pay land tax to the Qing Government either by themselves or through the "taxlord". The Tong served as a "taxlord" at that time. In 1905, by the granting of a Block Crown Lease, the Hong Kong Government gave the Tong the power to lease the land and to collect Crown rent from the residents and to pay the same to the Government. The Tong's role as a "taxlord" was mistakenly changed to that as a "leaseholder" and the original landowners were turned into "sublessees". This mistake deprived the original landowners of their land ownership. What is most unfortunate is that the Government lost some of the most crucial records in the Block Crown Lease of land on Cheung Chau Island, making the whole case "a case with no clue". This, in turn, has led to the present dispute over land ownership in which each side sticks to its own arguments.

Owing to the repeated and strong representations on the part of the residents of Cheung Chau, the Government has finally agreed to draft legislation to revoke the power of the Tong to collect Crown rent from the residents. However, the draft legislation to be proposed does nothing to revoke the Tong's status as the leaseholder of the land on Cheung Chau Island. Although the proposed measures reduce part of the privileges of the Tong, it fails to completely settle this "historical abnormality" of the dispute over land ownership on Cheung Chau Island. On the contrary, the measures would become a new law reaffirming the Tong's status as the leaseholder. The passing of the Bill would make it more difficult for the land dispute to be resolved and the land ownership of the *bona fide* landowners on Cheung Chau Island to be restored.

I realize that the Government is being caught in a dilemma over the issue. But since the Government lost some of the crucial records, the Tong is no doubt the legitimate owner of land on Cheung Chau Island according to the principle of law. If the Government tries to take away the land ownership of the Tong forcibly by legislative or administrative measures, it would not only lead to legal actions but more seriously, it would set a bad precedent for "the Government to take the people's land by force". It would arouse unnecessary panic. Yet, if the status of the Tong as the leaseholder is not totally revoked, the dispute would never end and the Cheung Chau sublessees would remain grievous and furious.

In my view, apart from withdrawing the Tong's authority to collect Crown rent from the sublessees through legislative measures, the Government should try to solve the problem in a peaceful and reasonable way by having negotiations with the Tong. The Government may consider paying reasonable compensation to the Tong for it to give up its status as the leaseholder voluntarily. The negotiation should be commenced and solution arrived at as soon as possible so as to avoid any troubles or new problems cropping up unexpectedly because of the delay.

I have to stress that the whole incident was caused by the Government's double administrative faults. Therefore, the Government has the responsibility to resolve this dispute over land ownership. As regards the motion today, I totally agree that "the Government should resolve the dispute on land ownership on Cheung Chau expeditiously". However, I have reservations at this stage as to the proposal to "introduce legislative measures to revoke the Tong's status as the leaseholder". If the Government can assure us that such legislative measures will not set a bad precedent for "the Government to take the people's land by force", I will totally support the proposal. Otherwise, I will only support the motion conditionally.

I am the chairman of the subcommittee on proposed legislation on Wong Wai Task Tong under the Legislative Council Panel on Planning, Lands and Works. The subcommittee has met thrice. It has also met with representatives of the Cheung Chau residents and the Tong to listen to the views of the parties involved. The subcommittee is still studying the case and so far no conclusion has yet been reached. However, all members of the subcommittee queried the way the Block Crown Lease was granted in 1905 and regretted that the Government lost the important file CSO 269/1901. The Government should be held responsible for all these things. As regards the Bill to be proposed by the Government which seeks to solve the problem by legislative means, both sides have shown reservations. The Government should forthwith consider the possibility of paying compensation to the Tong so as to solve the dispute as soon as possible. In view of the information available, I am in favour of the Honourable Edward HO's amendment motion, but in doing so I do not represent the opinion of the subcommittee.

Madam Deputy, these are my remarks.

MR ANDREW WONG (in Cantonese): Madam Deputy, I speak in support of Mr LEE Wing-tat's motion. I agree entirely to every word that he has said just now. He said that I knew this matter best. In fact, he has a good grasp of the subject and I only want to add a few words.

Although I do not like Private Members' Bills, if the Government does not propose another new bill should today's motion be carried, or if it goes on delaying, I Will certainly ask the Subcommittee on Proposed Legislation on Wong Wai Tsak Tong (WWTT) under the Lands and Works Panel (namely, the

subcommittee headed by Dr TANG Siu-tong) at its meeting to bring forth today's motion in the form of a Private Members' Bill. I have already proceeded to contact some lawyers for the drafting of such a bill. If the Legal Advisor of the Legislative Council Secretariat finds that he is running out of time, there are people outside the Secretariat who can assist. If the Government goes on delaying, we will certainly do so.

We can support the amendment proposed by Mr Edward HO. Dr TANG Siu-tong mentioned just now the spirit of the amendment was that reasonable compensation should be made. I agree to this, and I also agree that negotiation should first be conducted. But he mentioned in his speech that negotiation should first be conducted and compensation should be given before the enactment of legislation. I find that such a view has gone too far. Later on, Mrs Miriam LAU also made a point which inclined to negotiation. However, if it fails, it is still necessary to enact legislation.

Madam Deputy, I would like to draw Members' attention to the difference between the English and the Chinese versions of Mr Edward HO's amendment. The English version is "subject to payment of reasonable compensation", but the Chinese version states an order of priority, it is "after payment of reasonable compensation is made" (並在給予合理賠償後). Does it mean that payment should be made first to be followed by enactment? There is a significant difference between these two arrangements. Does it mean that in the process of enactment, the provisions of the Bill will not exclude the possibility that the WWTT can make a claim? Of course, we can carry out negotiation first, as this is what we can do according to the English version of the amendment. But the Chinese version says that it is only "after payment of reasonable compensation is made" that other issues can be attended to, this probably means negotiation before enactment. If negotiation is unsuccessful, a long delay will be inevitable. If negotiation goes on and on, when can legislation be enacted? And what are we going to enact? If negotiation is successful, it may obviate the need for enactment. We hope this is going to be the case ultimately. Therefore, it is most important that we will resort to the enactment of legislation, as this is what Members have already agreed to in principle. We have no idea as to how much reasonable compensation is to be made. If this is what he meant to say, I can support his amendment. Therefore, I am basically in support of the English version of the amendment.

As to Mr TAM Yiu-chung's amendment, we can see from his speech that he has grasped this issue perfectly, and his amendment can have our support. But it seems to me that both Mr Edward HO and Mrs Miriam LAU are not very much inclined to support this amendment. The grounds for objection put forward by Mr HO and what Mrs Miriam LAU had said make certain sense. He has pointed out a question, that is, the question of the legal status of the WWTT. If, as what Mr Edward HO and the Government had said, the WWTT is a lessee and the so-called small landlords are merely sublessees, then the WWTT is not collecting land tax but collecting rents from its tenants. But if the WWTT is

collecting land tax, then it would just show that small landlords under the WWTT in Cheung Chau are real lessees, and the WWTT merely plays the role of a taxlord. The position of a taxlord is an illegal one whether under the laws of the Qing Dynasty or the laws of Hong Kong subsequently. A taxlord collects land tax on behalf of the government which is an administrative measure. As Mr TAM Yiu-chung has just pointed out, the Government has mentioned in 1992 that land tax could be collected directly by the Government before the enactment of any legislation. This will mean that there is no need to wait until 1997 (according to the Government's proposed Bill, it will only collect land tax directly after 1997). This can simply be done now.

Madam Deputy, basically I think that, in spite of the absence of specific proof that the so-called small landlords are the true title owners as a result of the loss of a document CSO 269 dated 1901, a document 5941405 dated 1905 clearly tells that as the WWTT was judged as "taxlord" at that time, it was granted the title to land. In some other places in the New Territories, all former "taxlords" were compensated in certain form with land. Therefore, there is not any arrangements similar to that for the Wong Wai Tsak Tong Block Crown Lease (BCL) in the entire New Territories. The BCL of Cheung Chau has some substantial features, that is, in the register for all places in the New Territories, the column under land tax was left blank; but in the register for the BCL of Cheung Chau, the word "lessee" was put in the column for land tax, which refers to the capacity of the so-called small landlords. Under the BCL, only the owner of the WWTT is the lessee, therefore, all these small landlords have become sub lessees, that is to say, their status has changed from a lessee to a sublessee. If this is done as a result of the fact that the WWTT was originally a taxlord, then it is questionable. Now we can still find a red deed, albeit it is the only one found. If that is the case, it clearly shows that with circumstantial evidence, the WWTT was only a taxlord, therefore, the decision made in 1905, namely, the decision in relation to the BCL, was basically wrong. Under such circumstance, I think the simplest and most clear-cut solution is to enact an ordinance changing all "lessees" in the land tax register of 1904 to "owners", which means that their status under the BCL is equivalent to that of owners, and that the "owner", the WWTT, will not have a status. In this way, the problem can be satisfactorily solved.

MR CHIM PUI-CHUNG (in Cantonese): Madam Deputy, I am not an expert in this area but I am a member of the Committee concerned. Many Cheung Chau residents, now staying outside, would like me to say something on their behalf and I know the relevant issue quite well. Although I do not know much about what happened at the beginning, I have received more information after joining the Committee.

First of all, I have to condemn the Administration. The reason is that the Administration only knows how to charge Crown rent but does not know how to settle the relevant disputes. From 1905 till now, the Administration has been claiming that it does not know the facts of the case. During this period, there has been different people who assumed the post of the Secretary for Planning, Environment and Lands and they have been paid a lot of money in terms of salaries. It is impossible that the problem should be allowed to remain unsolved. Does the Administration intend to let the problem drag on until 1997 and then take to its heels? I must reiterate that a responsible Government has to solve the problem ultimately.

This Cheung Chau issue and the Crown Lands Resumption Ordinance (Cap. 124) are equally unreasonable. Luckily, in the three years from the implementation of the Crown Lands Resumption Ordinance in 1992 till now, the Administration has not enacted similar ordinances because the Executive Council has declared that this should not be done again. However, we hope that the Land Development Corporation will give proper assistance to the landlords or pay appropriate compensation, so that the citizens would not refuse to accept the conditions of compensation.

We shall have to find a way out eventually. We have discussed so much and in fact I support the three motions. The problem has to be solved and those who can solve the problem are heroes and those who cannot or who are reluctant to do so are irresponsible.

I suggest that we should first be prepared to enact legislation. Some of the future Secretaries may be reluctant to give compensation, but the Administration still has to go through the legislative process. The process will certainly involve the interests of certain parties or legal formalities. No matter what the Administration wants to do, it has to start taking actions itself internally. The legislation proposed by the Administration may not be acceptable to most of the Cheung Chau residents because the present legislation recognized the status of the Wong Wai Tsak Tong (The Tong), which is actually unreasonable.

In the meantime, the Administration should authorize the authorities concerned to handle the three issues (mentioned by some colleagues just now) which the Government intends to solve through legislation. They are: the payment of \$300 by every household; the payment of \$25,000 as overdue charge and the right of the Tong to charge the residents 10% of the premium if payment is required. The Administration should work out what the total sum would be if each household pays \$300. As regards the overdue payment of \$25,000, I believe the residents will not delay in making payments, therefore, this problem can be ignored. The last issue involves 619 lots of land and the Administration should calculate the total area covered. Even if premium has to be paid in future and the Tong can only get a maximum of 10% of the premium charged, the Administration should work out the actual total amount the Tong is

going to receive. The Administration should accept that it has made a mistake since 1905 and should shoulder all the responsibilities. The public funds are not contributed by the Secretaries but by the public. The public is willing to solve the problem under peaceful and reasonable circumstances. Why does the Administration still insist on not doing so? The Administration has to face up to the problem. There will be more criticisms if the Administration stresses that what it did was right and acts in a bureaucratic manner.

When the amounts are known, the Administration should send representatives to give assistance to the representatives of the Tong for the sake of cost effectiveness. Although I came into contact with the Tong only once, I know many of them agreed to my suggestion. What they want was to get some reasonable compensation (which they do not care even if the compensation is unreasonable). As long as there is compensation, they will be satisfied. The Administration will also need to take into account the number of years it may take before the Tong can get the sum of money. If the Administration does not require the payment of premium or does not carry out the relevant measures, the Tong may have to wait for a long time before they can get the money. However, if the Administration pays the Tong the amounts in a lump sum, the problem will be solved immediately. To be able to redeem their titles in a reasonable way, the Cheung Chau residents will be relieved of their perplexity regardless of whether the future rental values or market values of their properties would increase or not. This is what a really responsible Government should do.

Actually the Administration does not need to evade the problem and it can make use of the right it possess. Some colleagues have already mentioned that if the Administration recognized that the property rights and titles of the residents belong to the Tong, why should the Administration assist the Tong in constructing so many public facilities to the benefit of the Tong. If the Tong refuses to settle the problem through consultation and by reasonable means, the Administration can resort to the Crown Land Ordinance. Some colleagues have just mentioned that the Court has already ruled that the titles should belong to the original residents under the Crown Land Ordinance. The Administration can invoke the Crown Lands Resumption Ordinance in solving the problem.

In principle, therefore, the Administration should first recognize that this is a mistake made in the past and not the fault of the government officials currently in office. The mistake has been existing for decades but it still has to be rectified. I hope that the Chief Secretary can take the lead to work out a solution together with other Secretaries after listening to our opinions. This will be helpful to the future Special Administrative Region government and to establishing her own credibility in the civil service and the general public. This is a challenging task. If the Administration needs my advice in respect of cost-effectiveness in a capacity other than that of a Member, I am willing to do so, in a bid to avoid the emergence of problems in the society, for a single spark will start a prairie fire.

The political parties should not make use of the general public. I do not intend to criticize politics but this is political reality. Some political parties may take this opportunity to stir up the emotions of the public, but confrontation will develop if the public's emotions are being stirred up too much. As a result, those who are not involved in this issue will suffer unnecessary disturbances and obstructions. This is unfair to the Hong Kong society. I hope therefore that the Administration could tackle this problem with sincerity. I think this is not a big problem at all, but it will be Hong Kong's misfortune if it is not solved.

Madam Deputy, I also support the other suggestions.

THE PRESIDENT resumed the Chair.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, there has been a lot of surmise and guess work today about what happened in 1905. Some Members have expressed certainty about circumstances about which there can be no such certainty. It is not established that a mistake was made and it is not likely at this distance in time that it can be so established. Mr President, we cannot proceed on the basis of guess work. We cannot proceed purely on the basis of the brilliant clarity of hindsight. We should not pretend that something so complex is so simple.

The Wong Wai Tsak Tong (the Tong) was first granted land on Cheung Chau by a Block Crown Lease as long ago as 1905. Since then, the Tong has been granted additional land on Cheung Chau under New Grants with the result that the Tong is now the registered owner of 90% of the private land on Cheung Chau.

The Tong subleased most of its land on Cheung Chau, using a simple form of sublease which is renewable, on the same terms, every five years until the termination of the Block Crown Lease.

The Block Crown Lease, like the majority of New Territories leases, was extended to 30 June 2047 by the New Territories Leases (Extension) Ordinance, relatively recently.

The legal position today is therefore that the Tong is the holder of a lease from the Government in respect of the majority of the private land on Cheung Chau with a term up to 2047. Although it may be argued that the Tong has not acted entirely reasonably, this is — and must be — the starting point from which our handling of the disputes which have arisen between the Tong and its sub-lessees must proceed. Our approach to this problem is to identify the specific problems about which there are disputes and to address them in a practical way to try to resolve those disputes. For several years, we tried to do this by mediation between the two parties in the hope that an agreement could be reached. Sadly, this effort proved to be in vain and we have reluctantly

concluded that we have no choice but to introduce legislation to regulate the relationship between the Tong and its sublessees.

There are three issues about which there are disputes:

First, the renewal of subleases;

Second, the payment of government rent; and

Third, the charging by the Tong of fees for giving its agreement to modifications and land exchanges affecting its lease. This issue arises when a sublessee wishes to redevelop the subleased property in a way which affects the Tong's interest as head lessee.

The Bill which I will introduce into this Council in April this year will deal with these issues in the following ways.

First, all subleases registered in the Land Registry at any time prior to the coming into effect of the legislation will be renewed from the date they would otherwise have expired until 27 June 2047, with the exception of subleases which have already been extended beyond 8 November 1994 — the date on which the majority of subleases expired — by agreement between the parties.

Second, the Bill will provide that government rent will be payable directly by the sublessees to the Government. The Tong will only be entitled to collect from the sublessees the amount of rent specified in the subleases.

Third, the Tong will be deemed to have agreed to modifications and exchanges unless it has reasonable grounds for objecting to them. The Tong will be allowed to charge sublessees not more than an amount equivalent to 10% of the premium charged by the Government for such modifications and exchanges. This is in recognition of the Tong being the owner of the land and the fact that, but for the legislation, the Tong would not be obliged to agree to enter into any modifications or exchanges of the subleased land.

The effect of these proposals will be that, after the legislation has been enacted, the sublessees will have certainty as to their interests in their property through to 2047. They will pay government rent direct to the Government. They will be able to continue to occupy and enjoy all the benefits of their properties as they have done in the past. It will be possible to buy and sell properties on the land sub leased from the Tong in the normal way, just as it was until the current disputes created uncertainty in the minds of prospective purchasers and the banks who were asked to lend money in the form of mortgages. Those sublessees who wish to redevelop, in a way that requires some modification of the Tong's lease or a land exchange affecting that lease, will be able to do so in the knowledge that the Tong will not be able unreasonably to frustrate their proposals and with certainty as to the level of fees which the Tong can charge for giving its consent.

The motion before us today calls on the Administration to do something quite different from the proposals I have just outlined — to use legislation to revoke the Tong's status as leaseholder. In the free-for-all context of a motion debate and given the strong feelings that have been running on this issue, as politicians, Members may feel that nothing less than an extreme solution is what should be proposed. As legislators, however, they should consider very carefully what this would mean. It would surely not be right to enact legislation depriving a landowner of property legally come by. To do so in this case would ignore the legal rights of the Tong as holder of a lease from the Government and create uncertainty in the minds of others as to whether the Government might one day seek to dispossess them in a similar way.

We must deal with the situation currently obtaining on Cheung Chau. But we must do so in a way that respects the legal rights of the parties involved. I am sure that when we bring the proposed legislation to this Council in the near future, Members will examine it soberly and with their traditional respect for the rule of law and abhorrence of arbitrary deviation from it.

Mr President, I can only agree with the first part of the original motion which is acceptable to the Administration. Neither the rest of it nor any of the amendments proposed would, in our view, provide a sound legal basis for the equitable solution which is required in this case. In the circumstances, the Official Members will not support the original motion or any of the amendments and the Administration would have great difficulty in proposing legislation which would comply with any such motion. Similarly, should Members introduce legislative amendments or proposals in like spirit in due course, this also would present the Administration with considerable difficulty. I feel bound, Mr President, to counsel Members against raising the expectations of those they seek to assist that what they are proposing would achieve an easy and quick solution to the problem.

Thank you, Mr President.

PRESIDENT: Mr Edward HO has given notice to move an amendment to the motion. His amendment has been printed in the Order Paper and circulated to Members. I propose to call on him to move his amendmet now.

MR EDWARD HO moved the following amendment to Mr LEE Wing-tat's motion:

"To add the words "subject to payment of reasonable compensation" after "leaseholder"."

MR EDWARD HO: Mr President, I move that Mr LEE Wing-tat's motion be amended as set out in the Order Paper.

Question on Mr Edward HO's amendment proposed.

PRESIDENT: Mr LEE Wing-tat, do you wish to speak? You have a total of five minutes to speak to all the amendments.

MR LEE WING-TAT (in Cantonese): Mr President, I would like to respond briefly to two points. The first one relates to the stripping of private property rights by means of legislation — a point raised by both Mr EASON and Mr Edward HO. This is a very serious problem. The right to private property is a very important right for the people in our capitalist society. This right is also provided for in the Basic Law and the Joint Declaration. But the reason that Members of this Council are prompted, or forced, to come up with this solution is that the Government has all along been refusing to face the problem of whether the Wong Wai Tsak Tong (the Tong) really owns the properties in question.

- (1) Mr EASON or for that matter any other officials from the Policy Branch attending our meetings, are never willing to face squarely the historical aspect of this problem. They always take the year 1905, the year when the Government affirmed the leaseholder status of the Tong, as the starting point for discussions. We cannot accept this for we feel that the Government is evading the problem.
- (2) If Mr EASON recognizes the Tong as the owner of 90% of the land on Cheung Chau, why has the Government spent billions of dollars since 1905 in drainage, roads and other construction projects to improve Cheung Chau for this private property owner? Why has the Government been so generous? And why have this to be done?
- (3) The Democratic Party theoretically agrees that the best way to settle disputes on property right is by lawsuits and bringing the case to court and, as a matter of fact, this is what has been done. The case of Mr SUEN Sun-yau which dragged from 1985 to 1988 is a case in point. Nevertheless, when the Lands Tribunal finally ruled that if the Tong could make an application to the court if it had any interest in the land, the Tong refused to do so. If this happens to every lawsuit, a judgment can never be reached.

Looking at the matter from another perspective, if the sublessees in Cheung Chau want to enter a lawsuit when they have problems in paying Crown rent of sublease renewal, they may face litigation expenses equivalent to several times or even several hundred times the value of their property. The Tong is rich enough to bring the case to the High Court, the Court of Appeal, and even

the Privy Council if need be. But how can a sublessee in Cheung Chau whose property is worth only several hundred thousand or a million dollars do the same? Resorting to the court of law is theoretically correct but practically infeasible. Are we going to wait hundreds of years for this problem to be solved after the title right in relation to the entire 619 lots has been brought to the court? We in the Democratic Party have discussed this issue among ourselves several times and it is felt that the present solution is most practical one as it will not deprive the Tong of its right to sue the Government in a court of law. If the Tong really believes that it owns the land on Cheung Chau, it may bring in a lawsuit against the Government at any time after the enactment of the new legislation. And, I think the Tong will probably do that. I welcome this as such move is the most effective means to clearly resolve the problem of real ownership of the land.

Mr President, we do not have strong objection to Mr Edward HO's amendment because, as seen in Mr SUEN Sun-yau's case, the "reasonable compensation" as suggested by Mr HO may range from one dollar to thousands of dollars. For this reason, we can hardly object when you say something is reasonable. If one dollar is the amount we are talking about, the compensation would be \$619, and I think we will raise no objection. And since Mr HO has not put into writing what is reasonable compensation, we can only assume that this so-called "reasonable compensation" is set at a reasonable level. Besides, since the sublessees have not made any mistakes, the reasonable compensation should naturally be borne by the Government.

Thank you, Mr President.

Question on Mr Edward HO's amendment put.

Voice vote taken.

THE PRESIDENT said the thought the "Ayes" had it.

MR EDWARD HO: Division.

PRESIDENT: Council will proceed to a division.

PRESIDENT: Will Members please proceed to vote.

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

Mrs Selina CHOW, Mr Martin LEE, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr SZETO Wah, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mrs Elsie TU, Mr Peter WONG, Mr Albert CHAN, Mr Vincent CHENG, Mr Moses CHENG, 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 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, Mr James TIEN and Mr Alfred TSO voted for the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary and Mr TAM Yiu-chung voted against the amendment.

THE PRESIDENT announced that there were 40 votes in favour of the amendment and four votes against it. He therefore declared that the amendment was carried.

PRESIDENT: Mr TAM Yiu-chung, you may move your amendment now.

MR TAM YIU-CHUNG moved the following amendment to Mr LEE Wing-tat's motion as amended by Mr Edward HO:

"To delete the word "and" after "Cheung Chau" and replace it by a comma; and to insert the following words after "leaseholder":

"and to enable the Government to collect standard Crown rent directly from the owners and, that before the legislation comes into force, the Government should handle the relevant matters on behalf of the Tong on a temporary basis"."

MR TAM YIU-CHUNG (in Cantonese): Mr President, I move that Mr LEE Wing-tat's motion as amended by Mr Edward HO's amendment be further amended as set out under my name in the Order Paper.

Question on Mr TAM Yiu-chung's amendment proposed.

PRESIDENT: Mr LEE Wing-tat, do you wish to speak on Mr TAM's amendment? You have one minute 20 seconds left.

MR LEE WING-TAT (in Cantonese): Mr President, concerning Mr TAM Yiu-chung's amendment, the Government has, during discussions with the Cheung Chau Rural Committee last year, actually promised to make arrangements through legislation for sublessees to pay government rent directly to the Government. Hence, there should not be any problem in this respect, and I find it odd that the Government should raise its objections today as its response is different from what I have pointed out.

Mr Edward HO questioned whether this should be done prior to the enactment of the new legislation. In fact, the Government has repeatedly opined at meetings with the Cheung Chau Rural Committee and the Union of Cheung Chau Residents and Landlords that serious legal problems would not arise in doing so and this point has also been reiterated at various other meetings. I think that such matters as renewal of lease, redevelopment and exchange of land in Cheung Chau have come to an end by now and many sublessess who have their leases renewed have basically not considered during this period to pay rents to the Tong or the Government. Hence, there are no actual problems. However, since Mr TAM Yiu-chung's proposal is meaningful, the Democratic Party would lend it its support.

Thank you.

PRESIDENT: Yes, Mr WONG.

MR ANDREW WONG: May I point out there is a discrepancy between the English version and the Chinese version of the motion.

PRESIDENT: So it is simply a matter of translation, Mr WONG?

MR ANDREW WONG: Yes. But I think in the Chinese version, it should be preceded by the word "and", that is, "及改由政府直接向業主收取標準地稅", or else it does not really make sense. The English version says "and to enable the Government to collect standard Crown rent directly from the owners". It is merely a question of translation. Perhaps, Mr President, you may wish to direct that the wording be so corrected.

PRESIDENT: I shall put the amendment in the English version and if the Chinese version needs to be corrected in that way, I am sure it will be done, Mr WONG.

Question on Mr TAM Yiu-chung's amendment put.

Voice vote taken.

MR TAM YIU-CHUNG (in Cantonese): 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 result will now be displayed.

Mr Martin LEE, Mr PANG Chun-hoi, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Andrew WONG, Mrs Peggy LAM, Mrs Elsie TU, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr CHIM Pui-chung, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Timothy HA, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Mr LAU Chin-shek, Mr LEE Wing-tat, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Mr Roger LUK and Mr Alfred TSO voted for the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Dr LAM Kui-chun, Miss Emily LAU, Mr Henry TANG, Dr Samuel WONG and Mr James TIEN voted against the amendment.

Dr TANG Siu-tong abstained.

THE PRESIDENT announced that there were 26 votes in favour of the amendment and 17 votes against it. He therefore declared that the amendment was carried.

PRESIDENT: Mr LEE, you are now entitled to reply on the whole of the motion and you have one minute four seconds out of your original 15 minutes.

MR LEE WING TAT (in Cantonese): Thank you, Mr President, and I would also like to thank my colleagues. Although the subject of the today's motion debate is not about legislation, we have at least sent a very clear message to the sublessees on Cheung Chau that we, Members of the Legislative Council, are concerned about their problems. We have put forth a suggestion and we hope that the Government will take heed of it. The suggestion we made seeks to revoke through legislation the status of Wong Wai Tsak Tong as the leaseholder of the land on Cheung Chau Island.

I would like to say something about the legislative procedure only. Mr Tony EASON said that a Bill would be introduced around April this year but he seemed to have given some warnings between the lines. It seems that he may not wish to introduce the Bill if the Bill to be proposed will be amended by us on the basis of the motion to be passed today. Secondly, if the proposal about compensation as suggested by the Honourable Edward HO is acceded to, he is also reluctant to introduce the Bill. Thirdly, it worries him a lot if, just as what the Honourable Andrew WONG has said or what we have said before, we are to resort to tabling a Private Member's Bill in the event of the Government failing to take any action. Since the Government has been at fault in this issue for such a long time, I think it is wrong for the Government not to admit its fault even at this stage. Now that the general view of Members of the Legislative Council has been brought to the attention of the Government, we think that the Government should introduce legislation in accordance with the legislative timetable for Members' deliberation.

Thank you, Mr President.

Question on Mr LEE Wing-tat's motion as amended by Mr Edward HO and Mr TAM Yiu-chung put.

Voice vote taken.

THE PRESIDENT said he though the "Ayes" had it.

MR LEE WING-TAT (in Cantonese): 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 result will now be displayed.

Mr Martin LEE, Mr PANG Chun-hoi, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Andrew WONG, Mrs Peggy LAM, Mrs Elsie TU, Mr Albert CHAN, Mr Vincent 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 MAN Sai-cheong, 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 Mr Alfred TSO voted for the motion.

The Chief Secretary, the Attorney General, the Financial Secretary, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Peter WONG, Mr Moses CHENG, Dr LAM Kui-chun and Mr Henry TANG voted against the motion.

THE PRESIDENT announced that there were 29 votes in favour of the motion and 13 votes against it. He therefore declared that the motion was carried.

Post meeting note: Pursuant to a suggestion made by the Honourable Andrew WONG as per Page 118 and consented by the Honourable LEE Wing-tat, the Chinese version of Mr LEE Wing-tat's motion, as amended by the Honourable Edward HO and the Honourable TAM Yiu-chung, is amended as follows:

「本局促請政府盡快以立法方式解決長洲黃維則堂土地業權糾紛，並在給予合理賠償後，取消黃維則堂土地承批人地位，及改由政府直接向業主收取標準地稅，並在法例實施前，由政府臨時取代該堂處理有關事宜，以恢復受影響居民的業權。」

ASSISTANCE TO FIRST TIME HOME BUYERS

MR FREDERICK FUNG moved the following motion:

"That this Council urges the Government to assist first time home buyers in getting preferential bank loans at 90% of property prices."

MR FREDERICK FUNG (in Cantonese): Mr President, the Government claimed that it was not necessary to implement the second-phase measures as property prices had fallen by 10% - 20% after the introduction last June of the various measures to tackle the problem of property prices. Many developers reduced prices to promote sales and some even offered mortgage loans at 100% of the property price to attract buyers. Some banks thought that there is no need for changes to be made to the existing policy of offering mortgage loans up to 70% and that the percentage should, at most, be increased to 75% only. Besides, the Government stressed that it was not the right time to review the policy of 70% mortgage loans. The Deputy Chief Executive of the Hong Kong Monetary Authority (HKMA) also mentioned that the decision to relax the ceiling on certain mortgage loans should be left to banks.

Undoubtedly, the prices of local private property have stopped the rapid rise they went through last year. This good sign has, however, created many illusions. First, the Government thinks that its measures to tackle rising property prices have been very effective and hence it can breathe more easily in dealing with the housing problem. Second, developers are over-confident that the adjusting of the market mechanism is still functioning. A few days ago, the Hong Kong Real Estate Agencies Association stated that the Hong Kong

Government should not use executive means to intervene with the market, saying that as the ceiling on mortgage loans was set at 80% only, the government need not interfere with market operation, so that market prices of land could be allowed to reflect public demand for private property. Only in the face of falling property prices that the banking sector made a mild suggestion to raise the percentage of mortgage loan from the present 70% to 75%. Mr David CARSE, Deputy Chief Executive of HKMA, also said that the performance of the property market should be determined by supply and demand. The fact however remains that with 70% mortgage loans, the majority of the public are still unable to afford the downpayment.

For example, after banks reduced mortgage loan percentage to 70% in 1991, the downpayment and associated expenses for a small residential flat of \$3 million would amount to about \$1 million. I believe it would not be easy for a young couple, both university graduates, to save \$1 million before they reach the age of 30. Even if property prices fell another 10% from their present level, the downpayment and expenses would still be \$900,000. Besides, the recent increase in interest rates has also added burden to first time home buyers in terms of repayment. Hence there is even a stronger reason for the Government to allow banks to offer loans up to 90% of the property price to first time home buyers.

In Hong Kong, young couples of the middle income bracket are the main pillars of society. If their wish to buy a flat to settle down or as an investment was not reasonably heeded, their confidence in society and the future would be seriously affected. The Government should understand this.

I suggest that the Government should assist first time home buyers in getting preferential bank loans at 90% of the property price to relieve their financial burden. Who exactly are "first time home buyers"? We all know that it is difficult to define. However, I have a suggestion for the Government's reference. The Government can consider carefully whether a first time home buyer can be defined as anyone who has not owned any property in the past five years but wishes to buy one now. Such a person may also be required to support his claim with valid legal declaration, bearing in mind it is an offence in law to make a false declaration. In addition, I suggest that bank loans at 90% of the property price should be applicable only to flats under \$4 million while big, luxurious flats are to be excluded from the offer.

Banks often emphasize that it is difficult to determine whether an applicant for a mortgage loan is a first time home buyer. That is only an excuse. If the Government is determined to help first time home buyers, it should draw up guidelines for the banks and require them to offer first time home buyers loans at 90% of the property price. If a bank cannot differentiate home buyers from speculators, the Government department concerned can issue certificates to the bank after checking information with the Land Registry, so that the bank will know whether clients claiming to be first time home buyers own property or not, and then decide if loans at 90% can be made.

Furthermore, if the banks still think that they cannot afford to take the risk of the extra 20%, I think the Government can provide guarantee against any bad debt (actually, default of repayment is rarely committed by first time home buyers). The expenditure in this regard, I believe, would be less than the \$7 billion that need to be spent on the housing scheme for the sandwich class.

I have to repeat that the provision of assistance to first time home buyers to obtain bank loans at 90% does not mean that the Government is relieved from its commitment to providing more public housing. After the Housing Branch was disbanded in 1988, the Housing Authority began to experience difficulties and pressure in building public housing, and the progress in solving the housing problem for the people of Hong Kong was subject to serious constraints. Worse still, the continuous drop in the supply of public housing provided by the Housing Authority (according to a report of the Housing Authority, the number of units produced in 1993-94 was 20 000 less than expected) has indirectly created a big opportunity for the private property market. The Government can hardly refrain from taking the blame. To solve the housing problem, the Government should set aside more resources to build reasonably - priced public housing and home ownership housing flats instead of leaving the private property market alone to provide housing to the public.

Some people may be worried that if banks provide property mortgage loans at 90% to first time home buyers, there might be a great number of applicants, resulting in a sudden rise in the demand for private property, which would in turn push property prices up and up. I admit such a possibility. Hence, if bank loans can really be offered at 90%, I suggest the Government should exercise control and set an annual quota of, say, 3 000. I believe the quota, which would be similar to that of the Sandwich Class Housing Main Scheme or Housing Loan Scheme, would not affect the market very much. I think that the actual number can be decided by the Government. In particular, the question can be considered carefully by the Secretary for Housing of the newly established Housing Branch.

Regarding the amendment proposed by Mr Alfred TSO, I have the following comments: The amendment proposing that banks provide preferential mortgage loans at more than 70% of the property price is exactly what the banks and the Hong Kong Real Estate Agencies Association have recently suggested. They have agreed that the present percentage of 70% should be raised. Unfortunately, the proposal did not mention any specific percentage, such as 90%. The proposal, therefore, does not provide anything definite to assure first time home buyers. Under this proposal, these buyers would not be sure what percentage bank loans they could obtain. Different banks would decide on the percentage on the basis of different criteria and that might give rise to inequity. I think that in order to enable that every first time home buyer will receive fair and reasonable treatment in relation to mortgage loans, the Government should encourage banks to provide mortgage loans up to 90% of the property price to all first time home buyers without exception.

Besides, in order to enjoy tax concession for interest paid on mortgage loans, first time home buyers must first be able to afford the downpayment. Tax concession for interest payments will only be the concern of those who can afford to buy a flat in the first place. To talk about tax concession, it can be compared to the choice of sitting in the front row or the back row after one has bought the admission ticket. If one does not have the admission ticket, basically there is no way to obtain any tax concession for interest payments on mortgage loans. So, I think that any discussion on tax concession is really premature if people cannot satisfy the precondition of buying a flat. I think ultimately, the first question to be dealt with is whether banks will provide mortgage loans up to 90% of the property price to first time home buyers. I shall discuss the details in my second speech. Furthermore, during its discussion on the prices of the Sandwich Class Housing Main Scheme, the Housing Panel of this Council considered the question of the Housing Society selling flats to the sandwich class at 60% - 70% of the market price while bank loans being offered at 70% of the property price. An overwhelming majority of the Members of this Council thought that 70% was too low under the circumstances and a family earning an income of \$22,000 - \$44,000 might not be able to buy a flat under the scheme. As a result, there was a demand for mortgage loan at 90% of the property price. When buyers of flats sold at 60% - 70% of the market price still have to ask for bank loans at 90%, should there not be an even stronger reason to demand for mortgage loans at 90% for flats sold at full market prices? Therefore, Mr Alfred TSO's proposal to offer preferential mortgage loans at more than 70% of the property price has obviously failed to meet the expectation of those who hope to get mortgage loans at 90%, or has clouded the issue so that it could not be grasped. Mr Alfred TSO's proposal has not made any specific request to the Government and therefore, I do not support it.

The Government has indicated that it has no intention to make any change at present because there are a number of external problems and uncertainties, including the possibilities of a trade war between China and the United States, a rise in interest rates and so on. The Government has therefore thought that the earliest suitable time for a review would be after the second or the third quarter of the year when the trend of interest rates worldwide and in Hong Kong becomes clearer. I think that is only the Government's excuse. Any responsible government that aims to fulfil the wish of the public, especially that of the first time home buyers, "to live and work in complacency and contentment", would assist them and provide reasonable loan arrangements for them, regardless of favourable or unfavourable factors. I think offering mortgage loans at 90% of the property price is reasonable. Furthermore, setting mortgage loans at 70% is meant to crack down on speculators only and first time home buyers should not receive the same "penalty".

The Government has hoped that the public would be able to buy a flat when property prices fell further by 5% to 10% and hence it was thought that there was no need to review the present policy on mortgage loans. I think this is merely the Government's delaying tactics. The Government's policy of high land prices which has been pushing property prices up year after year, makes people believe that it is impossible for property prices to fall below normal, reasonable prices and keep falling, that any fall in prices is only very short-lived and that property prices will soon rise again, and nobody knows how far they will go. In the minds of the general public, it is unknown how high will property prices rise, to what new height they will soar later on and whether home buyers can afford to buy. Therefore, I think that urging banks to offer mortgage loans at 90% of the property price is one of the solutions.

I agree that the Government should strike a hard blow at speculators and profiteers in the property market. Hence, they should not be the target beneficiaries of the mortgage loan relaxation policy. The policy should serve to offer mortgage loans at 90% of the property price to first time home buyers. I hope that the Government, the banks and colleagues of this Council will support the motion.

These are my remarks.

Question on the motion proposed.

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

MR ALFRED TSO moved the following motion:

"To insert "to draw up concrete plans" after "the Government", to delete "in getting preferential bank loans at 90%" and substitute with ", including encouraging banks to provide preferential mortgage loans at more than 70%" and to add after "property prices" the words ", introducing a tax allowance for mortgage interest payments and expediting the implementation of the first-phase measures to dampen property prices recommended by the Task Force on Land Supply and Property Prices"."

MR ALFRED TSO (in Cantonese): Mr President, I move that Mr Frederick FUNG's motion be amended as set out in the Order Paper.

Mr President, there have been repeated tumbles in the property market recently, and the most popular guessing game among the public is when will the property prices settle to its lowest level? And is it an appropriate time to buy a flat?

The public has two extremely different states of mind in regard to the fall in property prices. People who do not own flats hope that the downward adjustment of property prices will continue so that they can purchase property at a lower cost in the future. For people who have bought their own homes in the last few years, in particular those owner-occupants who have scrapped their lifelong savings to purchase a flat, they fear that once there is a dramatic drop in property prices, they will suffer tremendous loss.

Neither a sharp rise nor a steep fall in property prices is wholesome, and in the long run, it will even strike a blow at our economic prosperity and social stability. In this respect, the Government has the responsibilities of resuming the property market to normal, balancing the supply and demand of flats, and stabilizing the property prices to bring it within the affordability of members of the public so that they can live and work in complacency and contentment and their living problem can be properly solved.

In the last few years, high land prices have caused the property prices to spiral and have stimulated rents to soar. Many people are hard pressed by the housing problem. Only by June last year did the Government take a square look at the evil consequences that spiralling property prices have brought to society and announced a series of counter measures to bring down property prices. This time, the Hong Kong Government started with increase in the supply of land. This is undoubtedly a step in the right direction which seeks to remedy the situation and lower property prices. For more than half a year, property prices have returned to normal which proves that the measures have gained initial effects.

However, I believe that the Government would not be complacent about this because, as the Secretary for Planning, Environment and Lands, Mr EASON, has said, although the current property prices have dropped by 10% to 20% from its peak last year and have returned to the 1993 level, the existing price level is still far beyond the affordability of the public. This is because the property prices had increased in multiples in the last few years and a 70% mortgage ceiling has been set by the banks. Many people can only "moan at their inability" to buy any flats.

I believe that the Government can adopt a three-pronged approach to maintain the healthy development of the property market and return the prices to a reasonable and stable level. Apart from increasing the supply of land and residential units and striking a blow at profiteering speculations, the Government should also take positive steps to assist the genuine owner-occupants, in particular first time home buyers, with a view to meeting their needs for home ownership.

The motion moved by Mr Frederick FUNG aims at urging the Government to assist first time home buyers in getting preferential bank loans at 90% of property prices. This motion has brought up this key issue. However, I think that it is not sufficient just to relax the mortgage ceiling and it is also not possible for the Government to force banks to provide mortgage loan at 90% of property prices for first time home buyers. Once the mortgage percentage is immediately raised to 90%, it may also result in other negative consequences. Therefore, the Government should draw up a set of specific proposals and adopt more positive measures to assist first time home buyers to realize their lifelong wishes. This is why I move the amendment to the motion.

One of the main causes of the strange phenomenon that the property prices have dropped and yet flats still remain at an unaffordable level is the restricted ceiling of bank mortgage at 70% of property prices. Even if property prices drop by a further 5% to 10% this year as predicted by Mr EASON, it will not give would-be home owners much help. So long as the banks maintain the policy of a 70% mortgage ceiling, to buy a small residential unit at \$3 million, will entail a downpayment of \$900,000, in addition to other expenses such as stamp duty, solicitor's fees and commission. This can be rather a big strain on small families in general.

Some people in the banking sector have recently asked for relaxation of the mortgage ceiling, but their request was turned down by the Government. In a commercial society such as Hong Kong, the money loans made by banks to buyers is purely a commercial activity and banks should enjoy absolute freedom in this regard. The responsibility of the Government is to assist the public in solving their housing problem, instead of deciding on the mortgage percentage on behalf of banks. I firmly believe that the professionals in the banking sector are surely more competent than senior government officials in assessing the risk of property mortgage. The amounts of loans extended by banks vary according to the repayment abilities of the borrowers. The banks are the most authoritative as to how much they should lend, be it 75%, 80% or 90%, and they should make the final decisions. In this way, some flexibility can be given to the borrowers in need which would ultimately realize their objective of buying their own flats.

Mr President, another way to assist the first time home buyers is to alleviate their burden of mortgage repayment. Here I urge the Government to consider introducing tax allowance for mortgage interest payment for first time home buying families. The amount of allowance may be determined in due course. The introduction of such an allowance is illustrative of the Government's determination in providing tax relief to first time home buyers.

I hope my colleagues will not be mistaken, this is not an offer of "free lunch". I just want to point out a fact that, at present, many people buy properties in the name of companies. This allow them to make use of the Inland Revenue Ordinance and make the mortgage payment interest tax-deductible when calculating profits tax, and to cut down their tax payment legally in a perfectly justifiable manner. Is this fair for members of the public who have been cutting down on food and clothing, paying about half or more of their monthly salaries as mortgage payments and leading difficult lives, and yet still fulfilling their civic responsibilities of paying taxes? My proposed tax allowance for mortgage payment interest is a means by which the burden on the shoulders of first time home buyers can be alleviated. I hope the Government can follow my good advice and accept the recommendations. It should start deliberating on the details immediately so that the proposed allowance can be implemented in the Budget in March and that the public can be benefited as expeditiously as possible.

Lastly, I would like to say that the first stage measures announced by the Government last year for dealing a blow to property prices have shown the Government's determination in curbing property prices. Through the adoption of a series of measures, including increasing the supply of land, the public is glad to note that the property market has gradually been cooled down recently. However, this does not mean that our objectives have been reached because the recommendations set out in the Report have yet to be implemented. The Government should tell us clearly the progress of implementation of these measures, and let the public know that it has a set of long-term policies and not just pursuing a piecemeal approach.

As the Year of the Pig is approaching, my New Year wish is that the people of Hong Kong could have their wishes realized and have their own homes, so that they can live happily and that, our property market can be set on to the right track.

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

Question on the amendment proposed.

PRESIDENT: Mrs Selina CHOW, I have to stop you, though, at eight o'clock for the interruption.

MRS SELINA CHOW (in Cantonese): Mr President, for many years, I have been urging the Administration to adopt different methods to affirm the policy of home purchasing. I have in this Council repeatedly requested the Administration to look squarely at this issue and my views are shared by the Liberal Party. At present, property prices downwards are still very high. Although the Administration has introduced a number of measures since last June which have undeniably adjusted the property prices downwards by 10% to 20%, buying properties is still the fond dreams of many people.

We all know that people with low income can rely on the Home Ownership Scheme and that people with high income certainly do not have problems in purchasing properties. However, many young middle class families are not as fortunate. With such a high living standard and such a continuously high inflation rate, not only commercial services but also public services have to be self-financed or ask for reasonable return. Under such circumstances, how can working people who are required to pay taxes but are not qualified for receiving such benefits save several hundred thousand dollars for the downpayment to buy their own homes? I believe this is rarely the case in many advanced communities. I strongly support what the original motion asks for, that is the hope that the downpayment can be lowered to 10% and that up to 90% bank loans can be provided. The first time home buyers should be recognized and assisted by society as a whole, inclusive of the Administration and the banking sector.

It is scarcely convincing for the Administration to say that it is hard to verify first time home buyers. Many other places have adopted different criteria to make judgments. The banking sector also says that it is impossible to define first time home buyers but I think this is only an excuse. Many people say that when you borrow money from the bank, the bank will ask whether you will live in the flat or buy the flat as investment.

8.00 pm

PRESIDENT: It is now eight o'clock and under Standing Order 8(2) the 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.

MRS SELINA CHOW (in Cantonese): Now that this can be done all over the world, how can Hong Kong, which has always claimed that it is more flexible in business than other countries and regions, fail to give bank loans to home buyers? This certainly depends to a large extent on the credit-worthiness of the applicants and the banks' confidence in them and the final decisions are made by the lenders. Since the information given by the middle class working people is very clear, without any concealed information, criteria could be sufficiently met for the banks to make proper decisions.

However, according to the information given, many people in the banking sector have actually also asked for relaxing the percentage of mortgage, only that they have failed to obtain the Administration's consent. We earnestly hope that the Administration will readily accept good advice and address the needs of the middle class by urging the banks to handle their applications more flexibly.

Later on, Mr Edward HO of the Liberal Party will elaborate on the reasons why the Liberal Party objects to Mr Alfred TSO's amendment. However, I believe what we basically objects to is that various measures are still being employed unnecessarily to intervene in the free market. We think the core of the problem lies in the supply of land and we have talked about this many times. This is certainly a relatively thorough and long-term solution. In the meantime, if not necessary, the Administration should not intervene any more for this will only result in a continuous decrease in property prices. Recently, it is reported that the slump in the property market has gradually got other industries involved. Do we want this situation to persist? We have already heard calls from some people in the property business for the Administration to stop intervening. Apart from the property sector, we have also heard the same calls from the legal sector or other professional sectors. We hope that the Administration can try its best to take note of these calls.

Furthermore, we have heard something about tax relief. A long time ago in this Council, I requested the Administration to reduce tax on mortgage interest. After examining the issue, the Liberal Party finds that not only home buyers, but also those who rent flats, especially the middle class, should also be entitled to such tax relief. Therefore, we have repeatedly urged the Administration to consider allowing certain concession for housing expenditure which, I think, is better than the amendment proposed by Mr Alfred TSO.

Mr President, I support Mr Frederick FUNG's original motion and object to Mr Alfred TSO's amendment.

MRS ELSIE TU: Mr President, I will not oppose this motion because it appears to be intended to assist home buyers of middle income. However, there is a question in my mind as to whether or not the motion, if it is passed and, less likely, is implemented, will really achieve its purpose. Will the proposal on this motion make buying a flat easier? I must express some doubts about that.

To buy a small flat at, say, \$2.5 million at present requires an outlay of nearly \$1 million, including stamp duty and other expenses. The buyer then needs to earn about \$50,000 to \$60,000 a month to ensure he can shoulder the mortgage payment of over \$25,000 a month, and support his family at a standard commensurate with his middle class position. If the banks were to offer a 90% loan as the motion asks, the initial outlay would only be somewhat over \$300,000. However, the monthly payment of the loan would be much higher, even if the buyer continued to pay for half a lifetime. In Hong Kong, where fortunes are easily won, and even more easily lost, it is too risky to buy a flat, even with a 90% loan, and I very much doubt whether many would be attracted to take such a risk.

Whichever way one looks at it, buying a flat is only for the rich or the upper middle income groups. This well-intended motion in my estimation does not get at the root of the problem, and the root of the problem is that the Government claims all land to be Crown land and nothing belongs to the poor or the lower middle income groups. They have to be content with a bedspace, or a rooftop hut that could be demolished whenever the Government thinks fit; those in the lowest income band have to put up with a cage, or a bed under a flyover.

I know I will be reminded that about half the population live in reasonably rented public housing. Yes, the public housing programme was a godsend between the 1950s and the 1980s. But for years, the rental housing programme has been run down, and thousands of families have no hope of getting it from the Waiting List, either because there is little of it available, or because they earn just a few dollars above the income limits. I am tired of pointing out that thousands of families fall between the criteria for rental housing and the criteria for Home Ownership. Nothing is being done for them, while very little is being done for those who are within the income limits because too little rental housing is being built.

On the matter of housing, the Government is now totally irresponsible, demolishing but not providing, registering waiting list applicants but not delivering the goods.

Therefore, Mr President, while I do not oppose the motion, I still consider it to be unrealistic, and that it does not deal with the root of the housing problem, which is the need to build housing that the workers can afford to rent. I urge the Government to wake up to the need of thousands of families for a decent home, at a rent they can afford, before the groundswell of discontent over demolitions without proper rehousing escalates. Only when citizens can get the low-rent housing will they be able to save money and then be able to put down a deposit and mortgage for a flat.

MR VINCENT CHENG (in Cantonese): Mr President, it is the desire of everyone in our society to be a home owner. I believe that such an ideal is cherished by all. But unfortunately, because of the fact that Hong Kong has scarcely enough land but a large population, and because of other reasons, property prices stand at a very high level. As a result, it is impossible for most of the people who want to buy a home to realize their wishes.

Mr Frederick FUNG is motivated by good intention to move this motion, but I find his proposal hardly feasible. The main reason is that we have no means at all to ascertain whether a person is a first time home buyer. In fact, I discussed this issue with my colleagues several years ago but we just could not find any means to achieve this end. A few colleagues have just now mentioned that banks were shirking their responsibilities because they did not consider the issue at all. I feel sorry for what they have said. Actually, these colleagues themselves have also failed to work out a way to verify first time home buyers. For example, can these colleagues tell where can the banks get confirmation that the customer is a first time home buyer? Which department should they approach in order to get the relevant information? Should banks be held responsible for carrying out such verification? Is it appropriate at all to carry out such a kind of investigation? Will such investigation infringe upon the customer's privacy? I hope Mr Frederick FUNG will give more definite answers to these questions later in his reply.

Mr Frederick FUNG has pointed out that we can achieve this aim by adopting the method of self-confirmation, that is, oath taking. Are we able to guarantee that there will not be cases of misrepresentation if we adopt this so-called "self-monitoring" method? If someone was granted a mortgage but was later found to have given false information (assuming that we could really detect it), how should we handle the case? Should we change the mortgage terms and refuse to offer a 90% loan to the customer? Or should we impose other forms of penalty on him? What should we do if the customer does not have the money even though we change the mortgage terms and would not offer a 90% loan to him? Moreover, is it appropriate for us to increase suddenly the financial burden of the customer after he has just bought a flat and is repaying the mortgage loan? I would also like to ask Mr Frederick FUNG to answer the above questions too. Mr Frederick FUNG has also said that perjury is an offence. But I am not sure how heavy the penalty for perjury is. Is the penalty heavy enough to deter people from giving misrepresentation? And the greatest problem is: how can we get enough manpower to do the checking and through which department can we verify whether a customer is a first time home buyer or whether he has bought a flat in the name of another person or in the name of a company?

On the other hand, the higher the mortgage ceiling, the heavier the burden of repayment will become. Is such an arrangement really beneficial to those who want to buy a flat? For example, if a person wants to buy a \$3 million flat and he gets a mortgage loan of \$2.7 million, he must have a family income of around \$60,000 to \$70,000, or else he will be unable to repay the loan and support his family. But how many first time home buyer can have such a big income? To what extent can we help in this matter? In my opinion, it is basically the high property prices which have rendered many people ill afford to buy a flat. However, Mr Frederick FUNG has put the incidental before the fundamental. It is simply not a matter of the percentage of the mortgage loan. Banks want to do business and they will not turn customers out of their doors. They pay interest to depositors and in turn, earn interest by lending the money of the depositors. This means that the money lent to borrowers does not belong to the banks themselves but rather it is the depositors' money. Therefore, the banks have to be very cautious when considering whether to grant a loan or not. They have to examine carefully the risks associated with the provision of a loan to any person. The fluctuation of property prices will easily exceed 10%. If the mortgage ceiling is raised, the risk will also be increased. If the banks are not prudent in their lending policy, the stability of the banking system will be undermined. If we ask the Government to interfere directly with the banks' lending policy by forcing the banks to bear the risks which they are not willing to bear, the banking system will be affected seriously.

To put it simply, I hope Mr Frederick FUNG will give more definite answers to the following questions: First, how could we check whether a customer has given false information? Second, what penalties has he in mind that should be imposed in order to deter misrepresentation? Third, if there are cases of misrepresentation, how should we handled such cases? Fourth, if the flat involved in a transaction is registered under the name of a certain company, then in what way should we carry out the investigation?

Even if banks are willing to bear such administrative responsibilities and expenses, I still find many conflicting points in this Motion. Mr Frederick FUNG said on the one hand that we should relax the lending policy, and on the other hand he said we should dampen property prices. It will be unfair to the banks, to the Government and also to the public at large if requests are made without any effective mechanism proposed. As regards Mr Alfred TSO's amendment to introduce a mortgage interest tax relief, I am a bit sympathetic with his proposal. But it is an important issue, and practically it will affect the tax revenue of the Government and also the stability of the tax base. I do not agree to handle it in such a hasty manner. Therefore, I oppose Mr Frederick FUNG's motion and also Mr Alfred TSO's amendment.

Thank you, Mr President.

DR SAMUEL WONG: Mr President, we deeply sympathize with bona fide first time home buyers. We support the added stability a pool of new buyers would bring to the property market. And we want to encourage the civic pride and sense of community that is heightened by owning your own home.

But this motion is deeply and irreparably flawed. First, it is impractical. How would this Council propose to define a first time buyer to deter speculators from abusing any preferential loan system? Who would qualify as a first time home buyer? Would it be the borrower who has no title to a flat? What if the borrower's spouse already owns three flats? Should this borrower be granted a preferential bank loan? Should he or she be granted a loan instead of the couple who may be trying to upgrade from a 400 sq ft flat to one that is 600 sq ft?

And why should banks grant preferential loans to those who may present a greater risk? Like the Government, the banks are always thinking about how they can help first time home buyers. But both the Government and the banks must first respect the realities of the Hong Kong property market and safeguard the stability of the financial system by lending prudently, no matter how much we may sympathize with these would-be borrowers.

If this Council were to urge the Government to assist first time home buyers, it would be inviting the Government to undermine the existing Home Ownership Scheme which is of such great assistance to Hong Kong's sandwich class. Instead of proposing new schemes, this Council should urge the Government to expand the Sandwich Class Home Ownership Scheme and to strengthen its efforts to increase the supply of homes by making more land available.

Dr the Honourable David LI, representative of the finance constituency, very much wanted to participate in this debate. Unfortunately, an urgent matter has called him from Hong Kong. For Members' consideration, he has asked me to convey the views of the banking industry on this motion which I share and wholly support.

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

MR LEE WING-TAT (in Cantonese): Mr President, after the Government has announced its first phase measures for dampening property prices, their implementation worked in discouraging speculators. Members of the public who have been longing to become property owners are very happy and they think that they can soon buy their own flats. But the reality is that these measures only bring about a 10 to 20% drop in property prices, and medium income families still find it difficult to buy their own flats. These measures are not of much help to genuine users.

The Government's short-term measures to curb property speculation do not touch upon the ways to help *bona fide* home buyers. As I have just said, although the Government's measures for dampening property prices have brought about some results, the property prices are still far too high for those who have been longing to buy their own flats. Take a family of four members as an example. To buy a unit of 400 square feet, it will cost the family about \$1.7 million with a downpayment of \$520,000. If the family earns \$30,000 per month, it will take 5 years before it can save the downpayment of \$520,000, on the basis of saving \$10,000 per month. They will also have to scrimp on other living expenses.

Mr President, the Government's Sandwich Class Housing (SCH) Scheme will benefit about 1 500 families a year in the next six years. But according to the studies made in 1992-93 by the Housing Authority regarding housing for the sandwich class, there are about 50 000 to 60 000 sandwich class families in Hong Kong. In six years, only about 9 000 to 10 000 sandwich class families will be subsidized. No doubt, this is utterly inadequate and in no way meets the housing needs of this class.

On the one hand, the Government hopes to attain its "home ownership" ideal, and the Governor had also mentioned this in his policy address last year. He said that he hoped 60% of Hong Kong people would become property owners by 1997. But on the other hand, the Government fails to take effective measures to remedy the situation suitably. The result is that efforts to curb property speculation turn out to be something "much said but little done". The first phase proposals for depressing property prices are piecemeal measures which are hardly sufficient for solving the core problem that causes the sharp rise in property prices, that is, public housing and home ownership housing supplied by the public sector fall far behind demand, and the selling prices of home ownership housing are pegged with market prices, though both the Housing Authority and many government officials would not admit the fact. The Government has from time to time been making discounts of the public's demand for public housing, by "underrating" instead of exaggerating it, claiming that there are merely 70 000 to 80 000 families on the Waiting List instead of 150 000. Recently, there are signs that the upset price of properties in auctions is on the decrease, but we must note that the prices of land sales over the past last years had risen so much that the present short-term drop in prices in one to two quarters should not be enough to make the major constituent of property prices, namely land prices, drop to a comfortable level in the long run.

Mr President, let me reiterate the Democratic Party's stance on the solution to the problem of high property prices. We think that it is most essential to increase supply, particularly, the supply of land to the public sector, including housing under the home ownership scheme, public housing scheme and SCH scheme. Only by increasing the supply of land can we really solve the housing problem of people who need to own a flat and of tenants. Also, as supply increases, positive competition with private supplier in the existing private property market will become possible.

The Democratic Party is of the view that, in the long run, the Long Term Housing Strategy (LTHS) ought to be revised so that the priority accorded to the private sector under the LTHS should be replaced by one with priority given to the public sector. We have suggested the increase in land supply. Although the Government has through the Task Force on Land Supply and Property Prices (TFLSPP) put forward the proposal that from now until 2000 land supply is to be increased and that more housing units would be built, but the quantity so proposed is far less than what is required. Let me reiterate this, according to what the TFLSPP has said, although there are more than five years from now to 2000, the demand of people on the Waiting List and of single persons has yet to be satisfactorily met.

Mr President, as to the medium-term measures, efforts must be made to gain timely approval for land for residential use in the next few years through the Sino-British Land Commission. In the meeting between Mr CHAN Wai-yip and the Director of Lands last Friday, we understand that the Government might not be able to sell within this year all the land appropriated by the Land Commission for the year 1994-95. We find this really worrying because these approved uses of the land cannot be carried forward to the following year. If any of the land remains unsold, the appropriation will lapse.

Mr President, we all understand that we cannot get results from the long-term measures within a day. However, it is not true to say that the Government does not have good solutions to help those who genuinely want to buy flats. As a short-term measure, the Government may encourage banks to grant more preferential mortgage for properties at a suitable time and in a suitable way. We are looking forward to the implementation by the Government of the policies as stated in the report as soon as possible, so as to keep down property prices, so that those with a genuine housing need can have flats of their own.

Thank you, Mr President.

MR EDWARD HO: Mr President, I would like to offer the Liberal Party's views on the Honourable Frederick FUNG's motion and on the Honourable Alfred TSO's amendment.

With regard to the amendment, we believe that Mr TSO's heart might be in the right place, but we doubt whether good intentions will carry the day. Our tax system is simple. To introduce a mortgage interest tax relief scheme could make that simple tax system complicated. But more importantly, it does not take care of those who are renting their homes.

Several years ago we put forward a proposal to the Financial Secretary which, put simply, was a housing allowance for those who pay rent or those who were paying mortgage payments for their own homes. In our revenue proposals for 1995-96, we repeated this request and put up the sum of \$20,000 per annum as the claimable housing allowance. We hope the Financial Secretary will accept this proposal in his "farewell" budget on 1 March.

As regards Mr TSO's proposal to expedite Phase I of the Task Force's measures, my understanding is that they have already been implemented. I sincerely hope Mr TSO is not suggesting that the property market requires further dampening. We have always maintained that market forces should be allowed to operate without government intervention. Some critics are already saying that it is time to cancel some of the measures introduced. Indeed, the original motion is calling on the Government to cancel its directive to banks on lending policy, that is, restricting lending to not more than 70% of the purchase price.

We believe that banks should be left to decide their lending policy. The government directive was given in November 1991. It was not given for prudential banking reasons, but for controlling property prices. We therefore believe that the time has come to do away with the 1991 directive, but that first time home buyers or indeed end-users should be given preferential consideration.

Mr President, for the reasons I have given, Members of the Liberal Party will not support Mr TSO's amendment but will support Mr FUNG's motion. My colleague, Mr Ronald ARCULLI, wishes to associate himself with all that I have said.

MRS PEGGY LAM (in Cantonese): Mr President, Hong Kong is a small place with a large population. Housing is one of the issues in the daily lives of the public which they are deeply concerned about. The Government's housing policy should fit in with the economic conditions of the 1990s and the wishes of the people. My opinion is that the desire to own a home is cherished by Hong Kong people of the 1990s. The Government should take this into account when formulating its housing policy. As a matter of fact, owning a flat is a traditional custom of the Chinese and this custom is, to a very large extent, related to their emphasis on the idea of "root". Westerners prefer to rent a house. They do not share the same desire as Hong Kong people do in owning a flat. This desire has contributed to the prosperous development of the Hong Kong property market.

However, because of high property prices in recent year, the public are pessimistic about the chance of having their own homes. It makes us realize that when Hong Kong is approaching 1997 when the important moment of the transfer of sovereignty will take place, to become a home owner is not just a matter of satisfying the basic need of having a place to live home. It has become an impetus to stabilizing our society and building up for the future. To own a

home in one's homeland is the catalyst to foster a sense of belonging and unity among the people of Hong Kong. This, in turn, will encourage more people to stay behind rather than to emigrate.

In view of the above, I urge the Government to provide assistance to those families which are basically capable of acquiring a flat without interfering with the normal operation of the property market so that the rate of home ownership among families in Hong Kong may be improved.

In order to achieve this goal, the Government has to do something in respect of both public housing and private housing. As regards public housing, I think the Sale of Flats to Sitting Tenants Scheme is commendable in principle. The Hong Kong Government should consider the views expressed by the community in 1991 when the Scheme was first launched. It should readily accept the good advices, amend the Scheme thoroughly and then introduce it to the tenants again for their consideration. I think it is not appropriate for the Government not to mention the Scheme any more as if the Scheme has already been shelved. Although the public expressed quite different views when the Sale of Flats to Sitting Tenants Scheme was first introduced, we should not lose sight of the fact that the low prices of public housing have helped many citizens realize their dreams of having their own home. Moreover, Hong Kong has limited land resources. As many public housing estates are ideally located, it is beyond doubt that the sale of public housing is an effective way of allocating existing land resources and also a means to improve the rate of home ownership.

I suggested in 1991 that any approach intended to combat property speculation had to be carefully planned so that normal property transactions and investment activities would not be affected and the spirit of free market economy in Hong Kong could be maintained. Similarly, the Government should bear this principle in mind and act prudently when devising plans to assist families to buy their own home.

I suggest that the Government should offer mortgage interest tax concession to families which are first time home buyers. Banks should also be allowed to make their own decision on the provision of mortgage loans of more than 70% of the purchase price to these families. The above mentioned tax concession to be fixed at a certain percentage of the mortgage repayment may be operated in a way similar to the tax deduction applicable to charitable donations. The applicant should produce his mortgage repayment slips for the calculation of the amount of tax concession. It should also be stipulated that application for tax concession relating to any one property can only be made by one person only. The applicant is required to submit an application to the Inland Revenue Department each year within a certain term and mortgage repayment slips should be enclosed to prove that the property has not been assigned.

Since the target beneficiaries of the proposal are not speculators but families which have the intention and the basic capability to own a home, the Government has to lay down clearly the requirements for application for tax concession and relaxation of the mortgage ceiling. I suggest that "first time home buyer" should be a person who has not owned any property in his or her own name or in the name of a company or jointly with any other person or persons within a period of 20 years, and that "family" should be defined as a couple or single parent with his or her child or children. The proposal can be implemented in the following way. Having identified an ideal flat, the family should approach a bank to apply for a mortgage loan of over 70% of the purchase price. It should produce information about all family members and also a confirmation issued by the Land Registry. On the other hand, banks can handle each mortgage application with flexibility according to their own commercial considerations. While the Honourable Vincent CHENG considered it improbable for the banks to do so, my opinion is that if the banks are willing to try, they will figure out the way for doing it. With the Government's co-operation, I believe that the banks can obtain the required information.

In order to enable the applicant to produce to banks and the relevant authority documents issued by the Land Registry to prove that the applicant has not owned any property within a certain period of time, the Government has to expedite the computerized keeping of Land Registry records so that the applicant and the authority concerned will be able to check the information on properties speedily, thereby reducing the administration cost concerned.

In my opinion, these measures only aim at offering favourable treatments in terms of better mortgage loans and tax concessions to families which have the intention to own a home mortgage loans and taxation. They should not be taken as an active interference in the property market on the part of the Government I hope not only families which are first time home buyers can be benefited from these measures, the property market and the banking industry can also be fuelled by the market forces created by these genuine home users. I urge the Government to take heed of these advices and earnestly study the possibility of implementing them, so that the rate of home ownership can be improved very soon.

Mr President, these are my remarks.

MR ROGER LUK (in Cantonese): Mr President, there are a number of assumptions implicit in the subject for debate today:

Firstly, there is a strong demand for residential flats, which however, is not fully met due to some objective factors. This is not conducive to the maintenance of social stability.

Secondly, the major factor that inhibits aspiring home buyers from buying flats is not the fact that the prices of properties are too high and out of line with people's income, but the harsh mortgage terms set by the banks which made it is hard for the public to fulfil their long-cherished wishes.

Thirdly, the motive of first time home buyers differs from that of people who wish to change their present properties for new ones. It is the responsibility of the Government to help first time home buyers to borrow sufficient loans from the bank to fulfil their wishes.

In fact, the above assumptions are sweeping, specious and open to discussion.

At the end of last year, there were around 1.7 million households in Hong Kong and around 1.9 million permanent flats. The supply and demand of residential flats are basically balanced. The demand for flats, is basically motivated by people's desire to improve their living environment as well as to own their own homes and not by their basic housing need. In fact, the major factors that affect the demand for home purchase are economic conditions such as incomes and savings of households, property prices and bank mortgage terms. It is, therefore, putting the cart before the horse by asking the banks to relax their mortgage terms in order to fulfil the home buyers' wishes, on the ground that property prices are too high and getting out of line with people's income.

Speaking from another angle, if the residential property market cannot fully reflect the actual demand and supply and the pricing mechanism is distorted due to artificially imposed obstacles, it is for the Government to adopt corresponding measures to correct the situation instead of asking the banks to adjust the mortgage terms to meet the demand of home buyers.

At present, the property market has been experiencing a downturn from the peak and has advanced into a consolidation period. The market mechanism is obviously functioning. If the Government tries to intervene in the bank's mortgage policies without careful consideration, by asking the banks to give preferential mortgage terms, such as a 90% mortgage, to first time home buyers, this would be counter-productive and the buyers will eventually suffer.

The basic function of banks is to absorb idle capital to finance various trades and industries and promote economy and trade. Therefore, the philosophy of risk management is the foundation stone of the banking industry. A bank provides loans to its clients according to three principles: Firstly, it must know the client, its financial viability, business performance, prospects, and the market situation. Secondly, it must verify the client's creditworthiness by checking the client's repayment ability and his relationship with the bank. Thirdly, the bank will choose the required security and set a mortgage percentage with sufficient margin so that when the client's credit-worthiness changes or when the market is volatile, the lender will still be suitably protected. It can be seen from the above that each loan case is, in principle, unique and the mortgage terms will depend upon the risks involved.

In fact, properties, like other commodities, fluctuate in prices. The basic factors that affect property prices are invariably market demand and supply, people's desire to purchase flats and the overall economic performance. The current mortgage terms set by banks for residential flats are formulated after taking into account such objective factors as the relevant risks, the financial policies of the Government and the concern of the Monetary Authority. If the Government is asked to assist first time home buyers in obtaining preferential bank loans at 90% of property prices, the only feasible way is for the Government to provide direct or indirect loan guarantee to home buyers who buy private residential flats. Basically, this in itself is a violation of the market-led economic policy and distorts the market price mechanism. In fact, the factors under consideration by first time home buyers or those who want to change their properties are basically the same. Therefore, the giving of preference to first time home buyers is not adequately justified from the economic point of view. Moreover, it will rack our brains in determining who are first time home buyers and this will give rise to controversies. As Mr Vincent CHENG and Dr Samuel WONG have just analysed the practical issues in detail, I am not going to repeat those points.

Some commentators said that as the Government has already afforded some guarantee, through the Housing Authority and the Housing Society, for the sale of public housing flats so that the purchasers can obtain mortgage loans at 90% of property value, it is undoubtedly logical and equitable to make the same arrangement for first time home buyers who buy private flats so that the entire community can benefit. This argument is specious because the purchase and re-sale of public housing flats are subject to certain limitations which do not apply to private residential flats. Moreover, a wise manager of public finance will not adopt a policy under which public money is used to indirectly subsidize private home buyers and developers, which is against the principle of a free market economy.

Mr President, "Janus", the double-faced ancient Roman deity who kept the gate of Heaven, is a good portrayal of some political bodies and parties which claim to promote people's livelihood. On the one hand, they advocate fair trade and market competition and object to monopoly in commercial and industrial

activities. On the other hand, they strongly promote a housing policy of domination by the public sector, Government commitment and active intervention. This is self-contradictory, puzzling and even amazing.

Lastly, I wish to clarify two points which are misunderstood. First, the current mortgage terms offered by banks are not harsh. Back in the '70s and even before, the loan terms for residential flats were 70% mortgage, with an annual interest rate of not less than 10% and a repayment period of not more than seven years. In the '80s, these terms were generally relaxed in response to market conditions and other objective factors. Home purchase loans were once relaxed to up to 90% of property prices and the annual interest rate was prime rate plus 0.75%, while the repayment period could be as long as 25 years. In comparison, our current mortgage terms, though tighter than the most preferential terms, are not harsh at all. Second, if the home buyers cannot afford a downpayment of 30% of the property prices, it is not due to the banks' harsh mortgage terms but because the banks have to consider the risks involved. Why do we not put the blame on property prices, which are still high and awaiting adjustments?

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

DR TANG SIU-TONG (in Cantonese): Mr President, since the implementation of a package of measures by the Administration to dampen property prices in the middle of last year, the latter have gradually gone down, dealing a blow to speculation in the property market. In order to promote sale, some property developers provide 90% or even 100% mortgage loans to purchasers and some even cut the price of properties to attract buyers. Despite all these measures, the property market is not as prosperous as before.

Although the developers have tried every means, the property market is still slack. I think the reasons are as follows:

- (1) Although property prices have dropped by more than 20% on average in half a year, they still stand at an unreasonable level beyond the affordability of the public who can only "bemoan their inadequacy at the sight of properties";
- (2) the financial situation of Hong Kong and even that of the world leaves much to be desired. With high interest rates for loans and an uncertain economic future, even those who have the ability to buy properties will hold back and adopt a wait-and-see attitude;
- (3) the recent stagnation in the property market and other peripheral causes have led to falling share prices and reduced investment. Property speculators, in particular, dare not take reckless actions, and this has a further cooling effect on property sales.

Although property prices have dropped by over 20% by now, a small flat of 400 square feet still costs more than \$2 million. If the bank provides a 70% mortgage, the property purchaser still have to pay more than \$600,000 as downpayment. It is indeed a heavy burden for the general public. If the Administration can assist the public in obtaining 90% property mortgage from banks, the burden of downpayment for home purchasers will undoubtedly be relieved. Apart from property mortgages, whether the prices of flats are reasonable and the overall economic performance of society also play an important part in stimulating public desire to purchase properties. These two conditions are not favourable at present and it is not a good time for the general public to purchase flats even if the mortgage ceiling can be raised. An obvious example is that, at the end of last year, a property developer has increased the mortgage for flats to 100%, but the purchasers still held back.

I understand that the Administration is not watching with folded arms in regard to assisting the public in home purchasing. A number of measures are now being implemented which include the Sandwich Class Housing Loan Scheme in which the Administration provides purchasers with 1/4 of the price of properties which cost less than \$3.3 million, or a \$550,000 loan (whichever is the less); and the Home Purchase Loan Scheme for public housing tenants in which the Administration provides loans of \$300,000, or subvention of \$2,600 per month for 48 months. As for the Home Ownership Scheme and the newly launched Sandwich Class Housing Scheme, although the Administration does not provide any loans, the public is assisted by banks offering a mortgage ceiling of 90% and 80%. Although the above measures cannot satisfy all those in need, they can still benefit many people.

Mr FUNG has just elaborated on the positive aspects of today's motion which requests the Administration to assist first time home buyers in obtaining from banks mortgage loans at 90% of the property prices. I would like to draw your attention to the following points:

- (1) The Administration must examine the applicants to avoid abuse of the preferential treatment of 90% mortgage. I think it is not easy to carry out such examination because the applicants may temporarily transfer the ownership of their properties to other family members or to companies before filing applications or even provide false information. Examining whether the applicants are qualified will definitely increase the Administration's expenditure on manpower resources and administrative work;
- (2) if the proposed schemes can only provide a limited number of application quota, not many people will be benefited. Conversely, if a large number of quota is provided, the Administration will have to shoulder greater mortgage loan risks. Any fluctuation in property prices may adversely affect the financial stability of the Administration;

- (3) this proposal will certainly stimulate the quiet property market, activate speculation and push up property prices again. Under such a vicious cycle, not only will the ability of the public in purchasing properties be weakened, but the whole economy will also be affected;
- (4) the sandwich class benefits most from this proposal. The Administration has already introduced the Sandwich Class Housing Scheme, Sandwich Class Housing Loan Scheme and Home Purchase Loan Scheme to assist the sandwich class in purchasing properties. I suggest that the Administration should not allocate most of the housing resources to the sandwich class, and it should also cater for the needs of the grassroot class. Over 100 000 families are now waiting for public housing and most of them come from the grassroot stratum and they still cannot afford to purchase flats even if the Administration provides them with a preferential 90% mortgage. This new proposal does not help to solve their housing problem. Any further allocation of resources by the Administration to the sandwich class will be unfair to those queuing up for public housing.

Mr President, housing is a basic need of the general public, and the Administration has the responsibility to solve our housing problem. The erroneous policy of the Administration has brought about high property prices, the supply of Home Ownership Estates falling short of demand and the reduction of public housing constructed year after year. The only solution to the housing problem is to increase the allocation of land for building more flats. This simple, direct and effective method is well understood by everyone except the Administration. The present supply and demand of flats is just like a race between a tortoise and a rabbit. On the one hand, there are insufficient flats, on the other hand, there is an ever-increasing demand. The rate of increase in construction and sales is as slow as the steps made by a tortoise which falling far behind the pace of demand. The provision of indirect or direct subsidies and increase in mortgage ceiling can only bring about short-term effect, resulting in the property prices being pushed up endlessly, without offering any substantive help in alleviating the housing problem.

The housing problem cannot be solved overnight. I agree that the Administration should carry out some short-term measures to assist the public in overcoming their problem. However, these measures should be fair and not ending in the reduction of resources for constructing public housing and Home Ownership Estates, so that the problem would not be further aggravated.

Mr President, these are my remarks.

DR HUANG CHEN-YA (in Cantonese): Mr President, over 50% of the people of Hong Kong live in public housing, while only a small number of them own flats. Hong Kong often takes pride in its prosperity and affluence, but the majority of its people are actually "shell-less snails". What a bitter irony this is!

Therefore, I believe that any government which is conscientious should formulate a policy to help its people become home-owners. The new Secretary for Housing should really give priority to the target of formulating a policy to help first time home buyers.

The major reason why people find themselves scarcely able to buy their own flats is that the increase in property prices is so steep that it exceeds their wage increase. Over the past few years, property prices in Hong Kong have sky-rocketed by several times. Despite the recent drop of 20% to 30%, the property prices are still far beyond the affordability of the people. As a 550-sq ft flat will cost \$3 million, one must have \$900,000 savings for the downpayment plus a household income of at least \$30,000 per month to pay for the mortgage. If the mortgage ceiling is to be uplifted to 90%, only those families with a household income of over \$50,000 per month can afford to pay for the mortgage. Therefore, the crux of the problem is that property prices are basically too high and the percentage of mortgages is but part of the problem. The high property price is mainly a problem of supply and demand. When the supply cannot meet the demand, the property price naturally climbs up. For this reason, increasing housing supply is inevitably the most important measure to help people buy their own property. As this issue has been debated many times in this Council, the Government should have recognized this situation. It should therefore try its best to increase housing supply.

Property prices have recently fallen, not because the supply of flats exceeds the demand, but mainly because of the tightened money supply, lowering of the mortgage percentage and the rising of interest rate. What is most important is that the public's demand must be satisfied by providing sufficient number of flats or else property prices are bound to bounce up again if the banks slacken the money supply. In view of this, the percentage of mortgages offered by the banks should be uplifted only after an increase in the supply of land and flats.

On the other hand, we must not forget the stability of our financial system. In Hong Kong, bank loans for property over the past few year have accounted for a record high of 40% of the total bank loans. Some banks have even gone so far as to frantically devote nearly 80% of their loans to property. What with the rise in interest rates, the world-wide financial crises and the ups and downs of DENG Xiao-ping's health, the property market is becoming all the more uncertain. In offering mortgages to the public, the banks should weigh all risks and act within their means instead of adhering to a fixed percentage of mortgage dogmatically. Furthermore, we must not let ourselves lose sight of other important things and allow such a risk as closure of banks to take place.

As regards whether mortgage interest tax exemption should be granted to first time home buyers, the American experience shows that many people would take advantage of the exemption and deliberately purchase luxury property to lower the amount of the tax they have to pay. Therefore, unless a ceiling is

imposed, this will easily lead to a loophole and provide a channel for tax reduction for the rich. As for first time home buyers, there must be a reliable registration system which can ascertain their identities and true particulars. Moreover, adequate legislation must be put in place to penalize those who give false information. After meeting the abovesaid requirements and if the economic condition permits, it will certainly be feasible to offer 90% mortgage loans to first time home buyers when the demand and supply for housing regain balance. However, as we are now mainly relying on the tightening of money supply to dampen property prices, it would send a dangerous and misleading message to property speculators if mortgage loans were sharply increased to 90%. For calculation purposes, the capital injected by 3 000 people into the market will amount to \$9 billion. This will once again give people a perception that there is huge capital for a limited number of flats. Property prices will then be pushed up even before the percentage of mortgages are uplifted. When the mortgage loan percentages are really uplifted, the first batch of high income families will be benefited while other end-users may have to "bemoan at the sight of the flats". I believe nobody will want to see this "bad deeds with good intention" happen.

As we all know, the Government has long been adopting a policy of high land prices and high property prices. When property prices rocketed last year, the Government decided not to interfere. It was only after months of petitions and vigils as well as hard work that the Government finally acceded our request to take action to dampen property prices. Tightening money supply is one of the most effective measures that can produce the quickest result. It is also the most effective measure before the number of flats can match people's demand. Now property developers are already lobbying the Government to loosen its grip. I am really worried that if we only focus on raising mortgage loans, the Government will take this opportunity to allow property prices to shoot up. The Legislative Councillors will then be held responsible for the spiralling property prices, and Mr Frederick FUNG will then become the "Buoyant Property Market Magnate".

Although today's motion is by no means impeccable, I feel that the spirit of the motion is to urge the Government to formulate policies to help fulfil the aspirations of first time home buyers to purchase their own property. Such an aspiration deserves our support. Today, this Council should focus on urging the Government to formulate policies as soon as possible so that the public can live peacefully and work happily. We must not entangle ourselves over certain side issues or the issue of how many percentage of mortgages should be offered. More importantly, we must not allow a sudden uplift in the percentage of mortgages before comprehensive measures are put in place. It is with this spirit that the Democratic Party supports the motion and the amendment.

PRESIDENT: Mr Frederick FUNG, do you wish to speak to the amendment? You have five minutes for the purpose.

MR FREDERICK FUNG (in Cantonese): Mr President, I would like to express my sincere gratitude to about a dozen of my colleagues who have spoken. Regarding the questions raised by some Members in their speeches, I will give my answer here.

First of all, I would like to respond to Mr Roger LUK's question. A flat is a piece of commodity in its own right, but at the same time it is also a necessity. If we only treat a flat as a piece of commodity without taking into account its function as a necessity, we will distort the value of a flat *per se*. As Hong Kong people, we wish not only to be able to sell or purchase a flat in the market as a piece of commodity, but also to enable those who have such a need to own a property for their self-occupation. Therefore, as far as a piece of commodity is concerned, if the current price of a property or its sale and purchase does not permit a person whom we consider has the ability to own this property to actually own this property for self-occupation, the property price will be deemed unreasonable. Take a family of the sandwich class which earns as much as \$44,000 as an example. Although such families already represent 5% of the top income-earners in Hong Kong, they are still unable to buy a flat by instalments and have to "seek government assistance" by applying for Sandwich Class Housing or Government loans. Under the circumstances, we feel that government intervention is both appropriate and essential. What we are now discussing is the extent and the means of such intervention. The housing loan scheme and the Sandwich Class Housing we previously mentioned are two of the means. The present proposal to raise the rate of mortgage to 90% is another means. When compared with the two means just mentioned, the raising of mortgage percentage involves a lesser degree of intervention. Therefore, we agree to this kind of intervention and we also think that such an intervention is essential as a flat is not only a piece of commodity but also a necessity.

As to the problem of definition raised by Mr CHENG, I agree with him, as I mentioned in my earlier speech, that it is hard to define. However, bearing in mind the income stability of the sandwich class people and the professions in which they are engaged, I am of the opinion that it is of great importance for us to lay down a definition if we are to satisfy their need. I agree that there is need to conduct further studies in detail. I have cited some examples in my speech. If the Secretary for Housing accepts my opinion, I hope he will conduct a more in-depth study in future.

For some middle-class professionals, a great psychological barrier will prevent them from giving false declaration as this may lead to imprisonment. There should not be many who would give false declaration if they have a steady income, a stable job and a good profession.

As to the risks incurred by the banks, I have also mentioned earlier on that the Government may consider shouldering the risks of offering 20% of the mortgage loans. Why should the Government consider bearing the risks? It is

because I have always believed that for those first time home buyers, especially the professionals, it is very unlikely that they would back out after paying the deposit. Therefore, the risks incurred by the banks may be far lower than the \$2 billion lent by the Government or even lower than the \$7 billion possibly granted by the Government to the sandwich class as principal. I feel that this commitment will not constitute a major problem to the Government.

Another problem concerns the ability to own a property in the 1970s. Actually, even though the 70% mortgage rate offered at that time was higher than the present rate, the question lies with the fact that 5% of the highest income-earning professionals at that time found it easier to purchase a property than the professional of today. Moreover, the desires of the professionals at that time to own a property was not so strong as the professionals nowadays. Therefore, I feel that we cannot compare the state of mind of the 30 000 to 40 000 professionals in the 90s with that of the 5% of the highest income-earners in the 70s. I am of the view that the matter should be dealt with according to the needs of society.

Finally, I would like to raise one more point. Regarding the topic I raise this time, the most important thing is that we do not want to include the issue of tax relief for mortgage in our discussion. This is because we feel that mortgage tax exemption can only help save \$10,000 to \$20,000 a year, that is, \$1,700 to \$2,600 a month, on the average. For a flat that is valued at between \$2 million and \$3 million, the tax saved actually only amounts to one to three thousand dollars a month. Besides, the pre-requisite of getting an exemption is to purchase a flat first. The main purpose of the motion this time is to pinpoint on whether or not the public can afford to buy a flat. The difference between a \$2 million-flat and a \$3 million-flat actually lies in the amount of downpayment. As far as a \$2 million-flat is concerned, the downpayment will be in the region of \$200,000 to \$600,000 while for a \$3 million-flat, the downpayment will be in the region of \$300,000 to \$900,000. Therefore, the difference will be in the region of between \$400,000 and \$600,000. However, such difference is enough to make the sandwich class people ill afford to buy an "admission ticket".

Actually, the motion I move this time is only intended to focus on the discussion of the "admission ticket". If the issue of mortgage tax exemption is to be included, it will lead to many discussions such as: Is the exemption applied to first time home buyers only? Is the exemption also applied to those who have already owned their properties? Why is the exemption not applied to those who buy a flat for self-occupation? Many such questions may be brought up for discussion and I feel that this will only make the issue complicated and unclear. Therefore, I have not included this issue in this discussion.

Mr President, I hope the above response can answer some of the questions raised by the Members who opposed my motion just now. Thank you, Mr President.

SECRETARY FOR HOUSING: Mr President, it is the Government's policy objective under the Long Term Housing Strategy to provide adequate housing at an affordable price or rent to the people of Hong Kong. At present, over 52% of our population lives in public housing: 41% in public rental housing and 11% in various home ownership schemes in the public sector. Over the past ten years, we have made efforts to increase the home ownership rate in the community from 33% to 48%.

Subsidized schemes for home purchase

To achieve this, I must say again that we have indeed introduced various subsidized housing schemes to help eligible families to purchase flats. Under the Home Ownership Scheme (HOS) and the Private Sector Participation Scheme (PSPS) operated by the Housing Authority, flats are sold at up to 48% off the market price to eligible families who earn an income of less than \$22,000 per month. Loans of up to 95% of sale price, underwritten by the Housing Authority and repayable over a period of 20 years, are granted to beneficiaries, with interest charged at the prime rate plus half a percentage point. So far, about 190 000 flats have been sold. A further 57 000 such flats are expected to be offered in the next three years and production is expected to increase steadily, as will also the number of public housing rental flats to be built.

The Housing Authority also administers a Home Purchase Loan Scheme which, since 1988, has helped 9 000 eligible families to buy flats in the private sector. There is an annual quota of 1 500, with an interest-free loan ceiling of \$300,000, or an option to receive a grant of \$2,600 per month for 48 months for mortgage repayment.

There is also another scheme, the Option to Rent or Buy Scheme, which targets tenants affected by the Comprehensive Redevelopment Programme, clearances from squatter areas and Temporary Housing Areas, and Waiting List applicants due for public housing allocation. The first 1 214 flats were sold at a price level below that of HOS and PSPS, with similar financing arrangements. I can assure Members that more such flats will be offered this year and also in the future years.

The Government has also responded to calls for housing subsidies from sandwich class families who are not eligible for public housing and yet cannot afford to buy flats in the private market. In August 1993, the Sandwich Class Housing Loan Scheme was introduced as an interim measure, with a government loan of \$2 billion operated by the Housing Society. The Scheme assists about 4 000 sandwich class families by giving them loans of up to \$550,000 at very low

the Sandwich Class Housing Main Scheme. Sites are granted to the Housing Society at half full-market value to build flats for sale at prices affordable to families with an income between \$22,001 and \$44,000 per month. The first 1 024 flats in Tsing Yi are now being sold at a discount of about 40% off the market price, with major banks agreeing to offer a mortgage ceiling of 80% and with the last 10% underwritten by the Housing Society. These flats are four and a half times over-subscribed. I am confident that the Government's undertaking to assist some 24 000 sandwich class families to buy their own homes before the year 2000 can be achieved.

The schemes which I have just outlined go a long way towards meeting the community's growing aspiration for home ownership. It is our declared policy commitment to ensure that just under 60% of families in Hong Kong will own their own homes by the end of 1997. Over the next few years, we will help an additional 180 000 families to buy their own homes through the various subsidized housing schemes I have just mentioned.

Task Force on Land Supply and Property Prices

Members will recall that, in response to a wide body of public opinion early last year that property prices had risen beyond the affordability of average households in Hong Kong, the Government set up the Task Force on Land Supply and Property Prices which proposed a package of measures in June last year to cool the over-heated residential property market. The three-pronged approach to tackle the problem of property prices has been followed up vigorously. First, we have dampened speculation by modifying the Consent Scheme to restrict private sales of uncompleted flats and various types of resale. Second, we aim to increase land for housing supply, and have established an inter-departmental Housing Project Action Team to accelerate housing projects already in the pipeline. We aim to provide land to encourage the private sector to produce about 195 000 flats in the next six years. Third, we are striving to streamline planning and development processes, enhance our knowledge of the market situation and increase our responsiveness to it. Since the package of measures was announced, the prices of new flats have fallen by about 10% to 30% depending on location and many speculators have already left the market. We are satisfied that the recommendations of the Task Force are being effectively implemented without undue interference in market forces. The resulting moderation in property prices will help first time home buyers to purchase their own homes.

Private developers' schemes

The Government and public housing organizations, of course, are not alone in helping first time home buyers to purchase their own homes. Private developers too have been offering a variety of supplementary financing schemes to boost the marketability of their flats.

Mortgage ceiling

Some Members have called on the Government to encourage banks to provide preferential mortgage loans at more than 70% of property value. Our view is that several schemes to promote home ownership are already in existence for those who are in genuine need of help, that is to say, the low and middle income groups. While trying to help first time home buyers to buy their own homes, we need to be conscious of another equally important objective, that of preserving the stability of the banking system which is the backbone of our economy. Any problem which puts pressure on its health would threaten to destabilize other sectors of the economy, and have effect on the population at large.

There are good reasons why banks maintain a prudent lending policy and refrain from increasing the lending limit. First, the mortgage ceiling provides banks with a prudent margin of comfort against any erosion of the security for their mortgage loans owing to fluctuations in property prices. The banking sector's exposure to property loans has, I understand, already reached about 40% of total loans for use in Hong Kong. This is a high figure. Second, there are a number of uncertain factors: the rising interest rates in the United States; the possibility of a trade dispute between China and the United States; the macro-economic adjustment still underway in China; the consolidation which has been taking place in the local property market, and so on. All these factors underline the need to maintain prudence in the banking sector, which is in turn essential for the financial stability of Hong Kong. Lending decisions are commercial decisions, and clearly, the banking sector will need to take careful decisions on their own. The Government cannot and will not encourage banks to take higher risks than necessary. Nor can the Government guarantee any risks above the 70% mortgage for a special class of people whose income earnings are already above the income cut-off level of \$44,000 per month for the sandwich class. Such preferential treatment is not justified.

Tax concession for mortgage interest payments

Some Members have urged the Government to introduce a tax concession for mortgage interest paid by first time home buyers. There are good arguments against such a concession. Under the current tax regime, home owners already enjoy two tax benefits. First, any capital gain on disposal of a private residential property by a home owner is not subject to profits tax. Second, a home owner is exempt from property tax on private residence. Granting relief for mortgage interest payments would have the effect of singling out this group of people for even more favourable treatment. Moreover, to provide a tax concession for first time home buyers would add complexity and cost to the tax system, and is contrary to the international trend to abolish or limit tax relief on home mortgage interest payments. It should also be remembered that personal allowances for salaries tax purposes are not designed in favour of specific classes of expenditure. To introduce a concession for housing expenditure would also make it difficult in future to resist similar

requests for other classes of expenditure not incurred in the production of assessable income.

Conclusion

In conclusion, we share Members' views that some first time home buyers may need assistance to purchase their homes, but we do not agree that the motion and the amendment moved by the Honourable Frederick FUNG and the Honourable Alfred TSO respectively are the only solutions. As I have explained at length, the Government, public housing organizations and the private sector have already put in place a wide range of schemes, options and measures to assist first time home buyers to purchase their own homes. These are concrete plans in themselves which can meet the aspiration for home ownership for those who are genuinely in need of help, without changing our prudential banking supervision policy or our low tax policy. I would stress also that the Government will continue to make land available to increase the supply of both public and private housing in Hong Kong.

For these reasons, Mr President, the Administration does not support the motion or its amendment.

Question on the amendment put and negatived.

PRESIDENT: Mr Frederick FUNG, you are now entitled to reply and you have three minutes 44 seconds out of your original 15 minutes.

MR FREDERICK FUNG (in Cantonese): Mr President, the measures taken by the Government last year to dampen property prices are in fact targetted mainly on property speculators and not end-users. However, if the end-users are also being hit by the measures introduced, it will be necessary for the Government to have a review.

I will not repeat those Government measures just mentioned by the Secretary for Housing. Nevertheless, the mortgage loan ceiling of 70% has become one of the measures affecting some end-users. Other measures like restricting the mortgage percentage, stamp duty, shortening the period allowed for the sale of uncompleted flats and restriction on internal sale of such flats are all aimed at hitting property speculators. I hope that the Secretary for Housing can reconsider this issue.

The second point that I would like to raise concerns the abundant statistical data that we see at present. As we all know, 52% of the people in Hong Kong are property owners. To an affluent society, this percentage is on the low side. As Mr LUK just mentioned, we have 1.9 million flats but in fact we have only 1.3 million households. We can see that more than 40% of the Hong Kong people are unable to own a residential flat. This indicates that home

ownership is still not satisfactorily achieved in Hong Kong. The second figure illustrates that people with an monthly income of between \$22,000 and \$44,000 represent the top 5% of all the income-earners in Hong Kong. However, they still need to obtain assistance from the Hong Kong Government in purchasing the Sandwich Class Housing Main Scheme flats or securing the Sandwich Class Housing Loan. As a matter of fact, this figure is also unreasonable. I do not think the top 5% of the income-earners in the world as a whole need any government assistance in purchasing their own property. In this aspect, I think it is necessary to assist the sandwich class or the professionals I just mentioned, particularly the younger ones, to purchase their first property.

The proposals I just put forward have covered four aspects. If these aspects can be dealt with properly, I believe my proposals are feasible. The first is the definition of first time home buyers. I have already mentioned this and I do not want to repeat here. Secondly, a penalty system should be set up. Thirdly, the Government should be willing to take the risk involved. As I have mentioned earlier, first time home buyers are usually young professionals. Basically, they will not make any false declarations or do anything wrong to ruin their future. The fourth is the quota, that is, a limit on the number of people who should be offered mortgage loans at 90% of the property price.

I feel that at present the Government is in fact assisting these people to purchase their own homes in various ways through the Home Ownership Scheme, the government housing loan and the Sandwich Class Housing Main Scheme. Actually, we only want to add one more form of assistance and that is the offering of mortgage loans at 90% of the property price. This is not meant to write off the support of my colleagues who in the past identified with the need for housing and for land to be supplied by the Government. I would reiterate that I only wish to add one more form of assistance. If the motion is carried today, we will be able to convey a message to the Government, that is, the government assistance to the first time home buyers in getting mortgage loans at 90% of the property price is one of the means that help the public purchase their own homes.

With these remarks, I hope that my colleagues will support my motion. Thank you.

Question on the motion put.

Voice vote taken.

THE PRESIDENT said he thought the "Ayes" had it.

Mr Frederick FUNG claimed a division.

PRESIDENT: Council will proceed to a division.

PRESIDENT: Would Members please proceed to vote?

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

Mr Martin LEE, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Edward HO, Mrs Peggy LAM, Mrs Miriam LAU, Mr Peter WONG, Mr Moses CHENG, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Mr LAU Chin-shek, Mr LEE Wing-tat, Mr MAN Sai-cheong, Dr YEUNG Sum, Mr Howard YOUNG, Mr WONG Wai-yin and Mr Alfred TSO voted for the motion.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Vincent CHENG, Mr Marvin CHEUNG, Dr Samuel WONG, Dr TANG Siu-tong, Miss Christine LOH and Mr Roger LUK voted against the motion.

Mrs Elsie TU and Miss Emily LAU abstained.

THE PRESIDENT announced that there were 20 votes in favour of the motion and nine votes against it. He therefore declared the motion was carried.

PRIVATE MEMBER'S BILL

Second Reading of Bill

KADOORIE FARM AND BOTANIC GARDEN CORPORATION BILL

Resumption of debate on Second Reading which was moved on 14 December 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 Bill

Council went into Committee.

KADOORIE FARM AND BOTANIC GARDEN CORPORATION BILL

Clauses 1, 2, 3, 6, 8 to 24 were agreed to.

Clauses 4, 5 and 7

MR PETER WONG: Mr Chairman, I move that the clauses specified be amended as set out in the paper circulated to Members. They are all related to the translation of the Bill into Chinese, and there are no matters of principle.

*Proposed amendments***Clause 4**

That clause 4(a) be amended —

- (a) by deleting "增進" and substituting "增強".
- (b) by deleting "環保" and substituting "環境".

Clause 5

That clause 5(2)(d) be amended, by deleting "修路" and substituting "築路".

Clause 7

That clause 7(2) be amended, by deleting "委予" and substituting "施加".

Question on the amendments proposed, put and agreed to.

Question on clauses 4, 5 and 7, as amended, proposed, put and agreed to.

Council then resumed.

Third Reading of Bill

MR PETER WONG reported that the

KADOORIE FARM AND BOTANIC GARDEN CORPORATION BILL

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

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

Bill read the Third time and passed.

ADJOURNMENT AND NEXT SITTING

PRESIDENT: It is appropriate that I should recognize for the record the contribution made by the Honourable Mr LAU Chin-shek to the business of this Council.

In accordance with Standing Orders I now adjourn the Council until 2.30 pm on Thursday, 19 January 1995.

Adjourned accordingly at twenty-one minutes past Nine o'clock.

Note: The short titles of the Bills listed in the Hansard, with the exception of the Film Censorship (Amendment) Bill 1995, Occupational Retirement Schemes (Amendment) Bill 1995, Securities and Futures Commission (Amendment) (No.2) Bill 1994, Leveraged Foreign Exchange Trading (Amendment) Bill 1994, Kadoorie Farm and Botanic Garden Corporation 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 Education and Manpower to Mrs Elsie TU's supplementary question to Question 2**

According to our legal advice, section 11 of the Bill of Rights Ordinance provides that as regards persons not having the right to enter and remain in Hong Kong, the Ordinance does not affect any immigration legislation governing entry into, stay in and departure from Hong Kong, or the application of any such legislation. Since the conditions on which foreign domestic helpers are permitted to stay following the termination of their contracts are in strict accordance with provisions under the Immigration Ordinance, the relevant arrangements including the prohibition against employment are not an infringement of the Bill of Rights.

Annex II**Written answer by the Secretary for Education and Manpower to Mr TAM Yiu-chung's supplementary question to Question 2**

The Labour Tribunal does not keep statistics on the nature and the sums claimed of those cases awaiting hearing. The requested statistical breakdown in respect of the 500-odd cases involving foreign domestic helpers is therefore not available.

Annex III**Written answer by the Secretary for Education and Manpower to Miss Emily LAU's supplementary question to Question 2**

The average waiting time of six and a half months for adjudication is made up of two separate but continuous periods. The former runs from the booking of an appointment with the Registry of the Labour Tribunal for filing a claim and the appointment date so given. This takes about five and a half months at present. The latter counts from the filing of a claim to first appearance before a Presiding Officer. This takes about three to four weeks and is within the statutory limit of 30 days for a claim to be heard from filing under section 13(1)(a) of the Labour Tribunal Ordinance.

WRITTEN ANSWERS — *Continued*

As far as arrangement for early hearing is concerned, the Labour Tribunal does not allocate early appointment dates to foreign domestic helpers as a category of applicants. In fact, any applicant can apply for an early hearing date provided that he/she has valid reasons to do so.

Annex IV**Written answer by the Secretary for Education and Manpower to Mr James TIEN's supplementary question to Question 5**

The estimated increase of 0.006% in the operating costs of the construction industry in 1995 as a result of the proposed increase in 0.15% in levy rate with effect from 1 April 1995 has been computed on the basis of the estimated amounts of levy expenditure at both the existing and the proposed levy rates from 1994 to 2001, and the total operating costs of the building and construction industry. The detailed calculation is at Annex.

As regards the 9% change mentioned in the supplementary question, this refers to the percentage of the total amount of levy on the amount of profit derived from construction projects estimated on the assumption that the profit rate is 5% of the value of such projects. This is therefore different from our estimated increase of 0.006% which refers to the increase in the operating costs of the construction industry in 1995 as explained above.

Annex A

**Assessment of the Impact of an increase in levy rate from 0.3%
to 0.45% in 1995 on the building and construction industry**

		1993 (actual)	1994 (estimate)	1995 (estimate)	1996 (estimate)	1997 (estimate)	1998 (estimate)	1999 (estimate)	2000 (estimate)	2001 (estimate)
(A)	Amount of levy expenditure under* the 0.45% levy as estimated by the Pneumoconiosis Compensation Fund Board (SM)	10	26	55	100	174	239	296	340	384
(B)	Amount of levy expenditure under the existing levy rate of 0.3% as estimated by the Pneumoconiosis Compensation Fund Board (SM)	10	26	49	86	130	174	206	233	259

WRITTEN ANSWERS — *Continued*

	1993 (actual)	1994 (estimate)	1995 (estimate)	1996 (estimate)	1997 (estimate)	1998 (estimate)	1999 (estimate)	2000 (estimate)	2001 (estimate)
(C) Additional levy expenditure + due to revision in the levy rate to 0.45% in 1995 [(A) - (B), SM]	0	0	6	14	43	65	89	107	125
(D) Total operating cost in the # B and C industry derived from C and SD's latest survey results (SM)	75,956	82,033	89,416	97,463	10,235	115,796	126,217	137,577	149,959
(E) Share of levy expenditure in total operating cost under existing levy rate of 0.3% [(B)/(D),%]	0.013%	0.032%	0.055%	0.088%	0.123%	0.150%	0.163%	0.169%	0.173%
(F) Share of levy expenditure in total operating cost due to revision in the levy rate to 0.3% in 1993 and further to 0.45% in 1995 [(A)/(D),%]	0.013%	0.032%	0.061%	0.103%	0.163%	0.206%	0.234%	0.247%	0.256%
(G) Difference in cost impacts [(F)-(E), percentage points]	0	0	0.006	0.014	0.041	0.056	0.071	0.078	0.083

Notes: * Only the new construction projects which commence work in or after 1995 will be subject to the revised levy rate of 0.45%. The levy rate for the existing projects which commenced work earlier than 1995 will remain the same as before (either 0.02% or 0.3%).

+ Since only the new construction projects are subject to the revised levy rate of 0.45%, the additional cost impacts due to the proposed upward adjustment in levy rate will be progressively felt over the coming years.

The total operating cost for the building and construction industry as in 1993 is derived from the latest survey results compiled by Census and Statistics Department. For the purpose of this assessment, it is assumed to increase by about 9% annually thereafter.

Data sources: Penumoconiosis Compensation Fund Board
Census and Statistics Department (C&SD)

WRITTEN ANSWERS — *Continued***Annex V****Written answer by the Secretary for Economic Services to Mr Martin BARROW's supplementary question to Question 6**

It appears that there is already a considerable degree of protection for inbound tourists in this regard. It is noted, for example, that the existing legislative requirements under the Motor Vehicles Insurance (Third Party Risks) Ordinance provides that all local residents and overseas visitors must be insured in respect of third party risks, in case they have the misfortune to be involved in a motor vehicle accident in Hong Kong. Furthermore, it is usual practice for the major local tour operators to take out public liability insurance policies for local tours in Hong Kong, thereby safeguarding the interests of both the customers and the companies concerned.

The Hong Kong Tourist Association has advised that overseas visitors are generally well aware of the benefits of purchasing insurance when travelling abroad. Many of them, especially those from the long haul markets, usually take out their own insurance coverage before they travel overseas.

Taken as a whole, these arrangements appear to provide adequate protection to visitors to Hong Kong.

Annex VI**Written answer by the Secretary for Trade and Industry to Mr TAM Yiu-chung's supplementary question to Question 6**

According to the Travel Industry Council (TIC), the proposed group travel accident insurance policy (which is what the TIC now prefers to call what was referred to at the Legislative Council sitting on 18 January 1995 as "public liability insurance policy") for travel agents would enable travellers to receive compensation at the earliest possible time and safeguard travel agents from possible claims from consumers. The insurance policy will normally cover compensation payments arising from the following:

- (a) injury or property damage to their clients caused by the use of a non-owned or hired automobile in the travel agency operations of the insured; or
- (b) any negligent act, error or omission of the insured or any other person for whose act the insured is legally liable in the conduct of operations of the insured; or

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- (c) the payment of the defence costs incurred by the insured in defending any suit against the insured seeking for damages on account of the above occurrences.

Details of the claims procedure, the extent of coverage and financial payment will be set out in the terms and conditions of the insurance policy.

In this connection the Honourable Member may wish to note that the Advisory Committee on Travel Agents (ACTA) has recommended that travel agents should be required to take out compulsory group travel accident insurance initially through changes to TIC's Codes of Conduct, and in the long term through changes to the Travel Agents Ordinance, in order to protect their clients. In addition, outbound travellers should have the choice of taking out an insurance policy individually according to their own needs. Travel agents will be advised to inform their clients of the details of coverage included in the group travel accident insurance and encourage them to take out additional travel insurance to protect themselves. TIC has been asked to study the feasibility of this option and come up with a firm proposal of compulsory minimum group travel accident insurance for further consideration by ACTA.

