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## **PRESIDENT'S FOREWORD**

The establishment of the Provisional Legislative Council in December 1996 was a major step towards the smooth transition of Hong Kong's reunification with China. Its historic mission was to ensure that the Hong Kong Special Administrative Region (HKSAR) would have a legitimate legislature after the handover, thus avoiding any legislative vacuum being created as a result of the dissolution of the last Legislative Council under the British colonial rule.

The original intention of the Basic Law of the HKSAR was to allow for Members of the last Legislative Council under British rule to sit on the first Legislative Council of the HKSAR if, inter alia, these Members were elected through methods which conform with the Basic Law and the relevant National People's Congress decision passed on 4 April 1990, i.e. the "through-train" arrangement. As the latter condition was not met, the term of the last Legislative Council of the British Colony ended on 30 June 1997.

The Provisional Legislative Council was established as the interim legislature for the HKSAR before the formation of the first Legislative Council. Being an interim law-making body with no precedent, it is not surprising that the Provisional Legislative Council encountered many challenges and difficulties. However, with clear objectives and through our joint effort, we have overcome all obstacles and fulfilled our mission.

Out of respect for the former British colonial government we held our meetings in Shenzhen before 30 June 1997. The primary purpose of our work in Shenzhen was to prepare the way for the

enactment of the Reunification Ordinance which was vital to the smooth transition of Hong Kong in legislative and judicial terms.

The days in Shenzhen, in retrospect, were indeed a unique experience. While Members travelled to Shenzhen every weekend to attend Council and committee meetings, staff had to commute daily. Despite logistical constraints and a tight schedule, Members as well as Secretariat staff carried out their duties effectively, and completed all the necessary tasks as scheduled. Those Members who were also Members of the last Legislative Council before the handover had to work doubly hard because they had to attend to Council business in Hong Kong at the same time, and the legislative experience they brought to the Provisional Legislative Council was invaluable. New Members also injected new ideas and expertise in their respective areas into the work of the Council. All their contributions and diligent work are deeply appreciated. Special recognition should be given to the handful of Secretariat staff who worked tirelessly putting in extra hours and efforts to ensure the Council operated smoothly.

I would like to take this opportunity to extend my thanks to the Shenzhen Municipal Government and the management of the Huaxia Art Centre where our meetings were held. Without their help and support, the Provisional Legislative Council could not have operated so smoothly and efficiently in Shenzhen.

On 1 July 1997, following the establishment of the HKSAR, the Provisional Legislative Council held its first meeting in Hong Kong at the Hong Kong Convention and Exhibition Centre Extension. After that, all our meetings were held in the Legislative Council Building.

In order to enable members of the public to understand our work and to monitor our performance, all the Council meetings and most of the committee meetings were open to the public and the press. Furthermore, most Council and committee papers, including bills, and meeting records have been placed on the Internet, to which the public have easy access.

In addition, we organized for the first time ever an Open Day of the Legislative Council Building on 7 February 1998. The purpose of the event was to enhance public understanding of the legislature and our operation. A total of 2,372 people visited us on that day, including a 95-year-old lady. Comments from visitors were very positive.

Another new initiative that deserves mention is the hosting of regular luncheons for Consuls General in Hong Kong. At these luncheons, we briefed the Consuls General on our activities and they tell us about the general situation in their countries. Eight luncheons were held and were attended by 47 Consuls General and their representatives. This, I believe, enhanced the understanding of our work by the Consuls General, and through them, their governments.

The job of President of the Provisional Legislative Council was not an easy one, but I regard it a great honour to have been elected as President and be able to contribute to the smooth transition of Hong Kong in this capacity. I would like to thank all my colleagues for their support, wise counsel, and most valuable contributions towards the work of the Council over the past 18 months. I also wish to thank all staff of the Secretariat for their hard work and dedication to duty.

No one, even the harshest critic, would deny that the Provisional Legislative Council has played its part in the smooth transition of Hong Kong, setting a sound foundation on which future legislatures can build. Yet, it is merely the first step and much remains to be done. I earnestly wish the first

Legislative Council of the HKSAR every success, and firmly believe all Members will work towards the realization of the “One Country, Two Systems” concept, as well as a stable and prosperous Hong Kong.

# CHAPTER 1

## THE PROVISIONAL LEGISLATIVE COUNCIL

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The Basic Law of the Hong Kong Special Administrative Region stipulates that the Hong Kong Special Administrative Region (HKSAR) shall be vested with legislative power and the Legislative Council shall be the legislature of the Region. The Provisional Legislative Council is an interim legislature set up to enable the smooth functioning of the HKSAR before the first Legislative Council is established.

Articles 66 to 79 of the Basic Law provide for the formation, powers and functions of the Legislative Council, which are to enact laws, examine and approve the Government budget, and monitor the work of the Government. Unprecedented in the legislative history of Hong Kong, the Legislative Council of the HKSAR is also given the power to endorse the appointment and removal of the judges of the Court of Final Appeal and the Chief Judge of the High Court, as well as the power to impeach the Chief Executive.

Moreover, Articles 49 and 50 of the Basic Law state that if the Chief Executive considers a bill passed by the Legislative Council not compatible with the overall interests of the Region and returns it to the Legislative Council for reconsideration, and if the original bill is passed by the Legislative Council again by not less than a two-thirds majority, the Chief Executive must sign and promulgate it within one month, or dissolve the Legislative Council in accordance with Article 50 of the Basic Law. But if the original bill is passed by the new Legislative Council by a two-thirds majority of all the Members, the Chief Executive must sign it or resign. The new powers of the Legislative Council are to ensure that there are adequate checks and balances between the executive branch and the legislature of the Region.



The extent of autonomy of the Special Administrative Region in making its own laws is described in the Basic Law. Under Article 17 of the Basic Law, laws enacted by the legislature of the Region must be reported to the Standing Committee of the National People's Congress for the record. If the Standing Committee, after consulting the Committee for the Basic Law of the HKSAR under it, considers that any such law is not in conformity with the provisions of the Basic Law regarding affairs within the responsibility of the Central Authorities or regarding the relationship between the Central Authorities and the Region, the Standing Committee may return the law in question but shall not amend it. Any law returned shall immediately be invalidated, but the invalidation shall have no retrospective effect. This constitutional provision is different in effect from that under the Hong Kong Letters Patent where the British Crown reserved the "full power and authority to disallow" any laws passed by the Legislative Council and assented to by the Governor. The British Crown had also reserved for itself "the undoubted right to make all such laws as may appear necessary for the peace, order and good government of the Colony".

Under the Basic Law, the laws in force in the Special Administrative Region shall be the Basic Law, the laws previously in force in Hong Kong (as provided for in Article 8 of the Basic Law) and the laws enacted by the legislature of the Region. National laws shall not be applied in the Region except for those relating to defence and foreign affairs as well as other matters outside the limits of the autonomy of the Region as specified by the Basic Law. These arrangements are to reflect the principle of "Hong Kong people ruling Hong Kong".

## **THE NEED FOR THE PROVISIONAL LEGISLATIVE COUNCIL**

The Basic Law also provides for the composition of the legislature of the Region. While the term of office of the Legislative Council shall be four years, the first term shall be two years. The intention was to allow Members of the legislature who came into office in 1995 under the British rule to become Members of the first Legislative Council of the Region on 1 July 1997 provided that certain criteria are met. These criteria are stated in the decision of the National People's Congress made on 4 April 1990, namely, that the composition of the last Hong Kong Legislative Council before the establishment of the HKSAR is in conformity with the relevant provision of that decision and the Basic Law, that Members must uphold the Basic law and pledge allegiance to the HKSAR, and that Members must meet the requirements of the Basic Law and be confirmed by the Preparatory Committee for the HKSAR.

This “through-train” arrangement envisaged above, however, failed to materialize because the election for the 1995 legislature was not conducted according to some of the fundamental principles laid down in the Basic Law, e.g. its requirement that only up to 12 Members can be of a nationality other than Chinese nationality or have the right of abode in foreign countries. Owing to the incompatibility of the 1995 legislature with the requirements of the Basic Law and the lack of any means to hold elections for the first Legislative Council of the Region before 1 July 1997, the Central Government of the People's Republic of China decided that it should determine its own method for the formation of the first legislature of the Region and make transitional arrangements for the smooth functioning of the Region after the handover.

In accordance with the Decision of the National People's Congress on the Method for the Formation of the First Government and the First Legislative Council of the HKSAR made on 4 April, 1990, a Preparatory Committee was established to handle matters relating to the preparation for the

establishment of the HKSAR. The Committee comprised 150 members -- 94 from Hong Kong and 56 from the mainland.

## **ESTABLISHMENT OF THE PROVISIONAL LEGISLATIVE COUNCIL**

On 24 March 1996, the Preparatory Committee decided that a Provisional Legislative Council should be established. According to the decision, the Provisional Legislative Council shall have 60 Members, who shall all be permanent residents of Hong Kong and up to 12 of the 60 Members could be of a nationality other than Chinese nationality or have the right of abode in foreign countries. The tasks of the Provisional Legislative Council are as follows:

- to enact laws needed to ensure the proper functioning of the Hong Kong Special Administrative Region in accordance with the Basic Law and to amend and repeal laws where necessary;
- to examine and approve budgets introduced by the government;
- to approve taxation and public expenditure;
- to receive and debate the policy address of the Chief Executive;
- to endorse the appointment of the judges of the Court of Final Appeal and the Chief Judge of the High Court of the Hong Kong Special Administrative Region;
- participation of the President of the Provisional Legislative Council in the nomination of the six Hong Kong members of the Committee for the Basic Law of the Hong Kong Special Administrative Region under the Standing Committee of the National People's Congress; and

- to deal with other matters which have to be dealt with by the Provisional Legislative Council before the formation of the first Legislative Council of the Hong Kong Special Administrative Region.

The Preparatory Committee also decided that the Provisional Legislative Council shall start operation after the first Chief Executive of the HKSAR is elected and shall cease to operate after the first Legislative Council of the HKSAR is formed; and its term shall not extend beyond 30 June 1998. Any legislation passed by the Provisional Legislative Council before 1 July 1997 shall commence operation upon the establishment of the Hong Kong Special Administrative Region.

The Committee also decided that all the 60 Members of the Provisional Legislative Council should be elected by the 400-member Selection Committee for the First Government of the Hong Kong Special Administrative Region, which was to be formed for the election of the first Chief Executive. Candidacy for the Provisional Legislative Council and the Selection Committee should be totally open, and persons who met the basic requirements were free to participate.

On 2 November 1996, the Preparatory Committee elected the 400 members of the Selection Committee, composed entirely of permanent residents of Hong Kong. The 60 Members of the Provisional Legislative Council were then elected by the Selection Committee on 21 December 1996 from 134 candidates.

The Provisional Legislative Council convened its first meeting on 25 January 1997 in Shenzhen to elect a President for the Council. The Honourable Mrs Rita Fan Hsu Lai-tai was elected President.

On 1 February 1997, the Preparatory Committee further decided that the Provisional Legislative Council shall, before 30 June 1997 :

- determine its own rules of procedure and voting procedure in accordance with the Basic Law and pursuant to the previous decision of the Preparatory Committee;
- scrutinize and pass bills; and
- confirm the bills passed upon the establishment of the Hong Kong Special Administrative Region before presenting to the Chief Executive for signing, promulgation and putting into effect.

At the Fifth Session of the Eighth National People's Congress held on 10 March 1997, Vice-Premier Mr Qian Qichen, Chairman of the Preparatory Committee, presented a report on the work of the Preparatory Committee, highlighting that the establishment of the Provisional Legislative Council was within the scope of power delegated to the Preparatory Committee by the National People's Congress. On 14 March 1997, the National People's Congress passed a resolution endorsing the report.

## CHAPTER 2

# PROVISIONAL LEGISLATIVE COUNCIL MEETINGS

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The Provisional Legislative Council normally meets every Wednesday whilst in session. The Council meetings are open to the public and may be conducted in either Putonghua, Cantonese or English, with simultaneous interpretation provided. They are broadcast live over the radio as well as cable television. The proceedings of the Council are well reported by the mass media and are also recorded verbatim in the *"Official Record of Proceedings of the Meetings of the Provisional Legislative Council"*.

The business transacted at a regular Council meeting comprises the tabling of subsidiary legislation and other papers and reports; questions for replies by the Government; the consideration of bills; and debates on motions. During the period from January 1997 to April 1998, the Council held 46 meetings and sat for 250 hours.

### **TABLING OF SUBSIDIARY LEGISLATION AND OTHER PAPERS**

Subsidiary legislation made by the relevant authorities is tabled in the Council for Members' scrutiny after publication of the subsidiary legislation in the Gazette. Members and public officers may address the Council on the subsidiary legislation and may, through the moving of motions in Council within a prescribed time limit, resolve to amend or repeal it where the Council considers appropriate. Other papers tabled in the Council include annual reports of public bodies and Government consultative documents, and reports of the Council's committees, such as panels and bills committees. The Members and public officers presenting the reports may address the Council on these other papers.

During the period from July 1997 to April 1998, 343 pieces of subsidiary legislation were tabled in Council. Of these, 303 pieces were passed without amendments; nine were passed with amendments by the Council; and 19 were repealed.

## **QUESTIONS**

Members' concern for the well-being of the community may be reflected through questions asked at Council meetings. The questions are aimed at seeking information on Government actions on specific problems or incidents and on Government policies or actions. They are also raised for the purpose of monitoring the effectiveness of the Government.

Some questions originate from complaints handled under the Council's redress system; others are on problems that come to Members' attention in the course of their work outside the Council or through their contacts with the public.

During the period under report, Members asked 138 oral questions on a wide range of subjects at Council meetings, and followed up with 767 supplementary questions. Another 391 questions were also asked, to which the Government provided written replies.

## **STATEMENTS**

Statements may be made by public officers on issues of public concern at Council meetings. No statement was made during the period under review.

## **BILLS**

The Government is primarily responsible for proposing new legislation or amendments to existing legislation in the form of bills introduced into the Council. Broadly speaking, bills have one or more of the following purposes:

- to introduce new measures or policies, or to create new organizations or institutions;
- to extend the scope of existing legislation;
- to improve and update existing legislation;
- to modify or reform the machinery of Government; and
- to raise revenue.

A bill is normally published in the Gazette before it is introduced at a Council meeting. It has to be given three readings in order that it can be passed by the Council. The *first reading* is a formality with the short title of the bill being read by the Clerk at a Council meeting. The *second reading* provides Members with an opportunity to debate the general merits and principles of the bill. Normally, after the second reading has been moved, the debate is adjourned, with the bill referred to the House Committee to allow Members more time to study it, either in the House Committee or a bills committee set up specifically for it.

The debate on the second reading resumes after the bill has been studied. During the resumed debate at a Council meeting, Members present their views on the merits and principles of the bill and indicate whether they support the bill or otherwise. If the bill is given a second reading, the Council becomes a "Committee of the whole Council" at the committee stage during which it goes through the bill clause by clause, making amendments where necessary. After the bill has passed through the



Committee of the whole Council with or without amendments, it is reported back to the Council for the *third reading* stage.

If the motion for the second reading of a bill is negatived, the bill cannot proceed further. Where the Council considers that the passage of a bill is sufficiently urgent, it may allow the bill to go through all three readings at a single meeting.

Members of the Council may also introduce bills into the Council for consideration.

If passed, a bill becomes an ordinance after it has been signed by the Chief Executive and promulgated in the Gazette.

During the period from January 1997 to April 1998, the Council processed 63 bills, all of which were passed, with or without amendments proposed by the Government or Members. A list of the bills passed is in **Appendix 2**.

## **MOTIONS AND DEBATES**

Motions are the mechanism through which most of the Council's business is transacted. The enactment of a bill is by way of a series of motions moved and agreed to by the Council. Amendments to bills and the approval of or amendments to some subsidiary legislation are also effected by way of motions.

In regard to subsidiary legislation which required the Council's approval by resolution, 47 motions were moved by public officers. Of these, 46 were passed without amendment and one was passed

with amendments. Members of the Council moved 39 motions in respect of subsidiary legislation which required the Council's approval. Of these, 36 were passed and three were negated by the Council.

Through debating motions, which do not have legislative effect, Members express their views on certain issues of public concern or call on the Government to take certain actions. During the term of the Provisional Legislative Council, 49 such motions were debated, 47 of which were carried with or without amendments. The wording of the motions debated and the decisions of the Council on these motions are in **Appendix 3**.

## **POLICY ADDRESS DEBATE**

The Chief Executive addresses the Council every year on various policy proposals for administering the HKSAR. At a meeting not less than 14 days after the Chief Executive has addressed the Council, a motion is moved to thank the Chief Executive for his Address. The debate which follows provides an opportunity for Members to comment on the Chief Executive's Address and for senior Government officials to respond to these comments. The Chief Executive delivered his Address on 8 October 1997 and the debate on the Motion of Thanks was held on 22, 23 and 29 October 1997.

## **BUDGET DEBATE**

Shortly before a financial year ends in March, the Financial Secretary presents his Budget to the Council in the form of an Appropriation Bill and Draft Estimates, which is followed closely by legislative measures for implementing Government's revenue proposals. These set out the Government's annual revenue and expenditure proposals for the following financial year. After the

proposed estimates of expenditure have been examined by the Finance Committee at its special meetings, the Appropriation Bill is brought back into the Council for consideration and passage. The Financial Secretary introduced the Appropriation Bill 1998 on 18 February 1998. The debate on the 1998-99 Budget took place on 11, 12 and 18 March 1998. Like the debate on the Policy Address, the Budget Debate enables Members and senior Government officials to exchange views on the Budget. The Appropriation Bill 1998 was passed on 18 March 1998 and the bills and resolutions on the revenue proposals were passed at meetings held in March and April 1998.

### **CHIEF EXECUTIVE'S QUESTION AND ANSWER SESSIONS**

During the Chief Executive's Question and Answer Session, held as a meeting of the Provisional Legislative Council, Members may put questions to the Chief Executive on designated topics. Two Chief Executive's Question and Answer Sessions were held during the term of the Provisional Legislative Council.

## CHAPTER 3

## COMMITTEES

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Through a system of committees Members perform the critical roles of scrutinizing bills, controlling public expenditure, and monitoring Government's performance. There are three standing committees, namely the Finance Committee, Public Accounts Committee, and Committee on Members' Interests. Moreover, the House Committee co-ordinates matters relating to the business to be considered at Council meetings and decides whether bills committees or subcommittees should be formed as appropriate. The scrutiny of bills which require in-depth study is done through bills committees which present reports to the Council after they have completed their tasks. Panels are committees which monitor and examine policy issues. The panels to be formed and their terms of reference are recommended by the House Committee to the Council for approval.

### **FINANCE COMMITTEE**

The Finance Committee consists of all Members of the Council except the President. The chairman and deputy chairman of the Committee are elected from among its members.

The Finance Committee is vested with the responsibility for scrutinizing public expenditure proposals. It holds special meetings after the introduction of the Appropriation Bill to examine the Draft Estimates of Expenditure for the coming financial year. It has regular meetings on most Fridays to consider proposals which entail changes to the approved Estimates each year, or note financial implications of new policies. All meetings of the Finance Committee and its subcommittees are open to the public.

During the term of the Provisional Legislative Council, the Finance Committee held 21 regular meetings and examined a total of 113 items of financial proposals, including 17 items containing 167 proposals which had been considered and supported by its two subcommittees: the Establishment Subcommittee and the Public Works Subcommittee.

Apart from the meeting held in May 1997 to examine the Draft Estimates of Expenditure for 1997-98, the Finance Committee held six special meetings from 3 to 6 March 1998 to examine the Draft Estimates of Expenditure for the 1998-99 financial year. In addition to the 996 written questions raised by members prior to the special meetings, members also raised questions on points directly related to the Draft Estimates and on the contents of presentations given by Bureau Secretaries at the meetings. A total of 13 supplementary questions and 14 verbal questions on matters which were not dealt with at the meetings were subsequently forwarded to the Administration for written replies.

The Establishment Subcommittee examines and makes recommendations to the Finance Committee on the Administration's proposals for the creation, redeployment, and deletion of permanent and supernumerary directorate posts, and for changes to the structure of civil service grades and ranks. During the term of the Provisional Legislative Council, the subcommittee, consisting of 23 members, held 13 meetings and examined a total of 73 items of proposals put forward by the Administration.

The Public Works Subcommittee examines and makes recommendations to the Finance Committee on the Administration's proposals for the upgrading of projects to, or downgrading from, Category A of the Public Works Programme, or changes to the scope and approved estimates of projects already in that Category. During the term of the Provisional Legislative Council, the subcommittee, consisting of 27 members, held 12 meetings and examined a total of 100 items of proposals put forward by the Administration.

## **PUBLIC ACCOUNTS COMMITTEE**

The Public Accounts Committee (PAC) is responsible for considering the reports of the Director of Audit on the accounts and the results of value for money audits of the Government and other organizations which are within the purview of public audit. The committee may call for explanation and obtain evidence from public officers, management personnel of public organizations and other relevant persons, if deemed necessary. The committee comprises seven members elected by Council Members and appointed by the President of the Council. The membership of the committee is in **Appendix 4**.

During the term of the Provisional Legislative Council, the committee examined the Director of Audit's Report on the Accounts of the Hong Kong Government for the year ended 31 March 1997 and the Report on the Results of Value for Money Audits (Report No. 29). The conclusions and recommendations of the committee are contained in PAC Report No. 29, which was tabled in the Council on 11 February 1998.

## **COMMITTEE ON MEMBERS' INTERESTS**

The committee considers matters pertaining to Members' declaration of interests and matters of ethics in relation to their conduct, and makes recommendations relating to Members' interests. It also examines arrangements for the compilation, maintenance and accessibility of the Register of Members' Interests. The membership of the committee is in **Appendix 4**.

## **HOUSE COMMITTEE**

The House Committee comprises all Members, except the President, who elect from among themselves the chairman and deputy chairman. While the Provisional Legislative Council was in session, the House Committee normally met weekly and meetings were open to the public.

The House Committee prepares for meetings of the Council and considers matters relating to the business of the Council. One important function of the House Committee is to scrutinize bills introduced into the Council but referred to the committee for detailed study, and subsidiary legislation tabled at Council meetings. The House Committee may form bills committees to scrutinize the bills, or appoint subcommittees to study some of the subsidiary legislation in greater detail. The House Committee then monitors progress and studies reports from the bills committees and subcommittees concerned in preparation for the debates on such bills and subsidiary legislation in Council.

Another function of the House Committee is to recommend the names and terms of reference of panels for approval of the Council. It may also refer to the relevant panels for consideration any policy matters relating to the business of the Council, and may request and receive reports from the panels on matters pertaining to their terms of reference.

The House Committee also serves as a focal point for establishing a formal and regular dialogue with the Administration. The chairman and deputy chairman of the House Committee meet the Chief Secretary for Administration on a regular basis to discuss matters of mutual concern.

During the Provisional Legislative Council term, a total of 42 House Committee meetings were held of which 10 took place in Shenzhen.

## *Subcommittees of the House Committee*

### Subcommittee on the Consultation Paper on Reunification Bill

The Reunification Bill sought to confirm the bills passed by the Council prior to 1 July 1997 and to deal with various transition-related matters including endorsing the appointment of certain judges and maintaining continuity of existing laws and legal system and process. Before formal presentation of the bill to the Council on 1 July 1997, the Chief Executive's Office presented a consultation paper to the Council on 21 June 1997 providing details of the draft bill. A subcommittee under the House Committee was then formed to study the content of the draft bill.

The question of retrospectivity of the Reunification Bill was of prime concern to the subcommittee. The Chief Executive's Office explained that during the small hours of 1 July 1997, the bill would be gazetted, introduced into the Council for three readings, and if passed, would be signed by the Chief Executive. The ordinance would then be published and come into operation at the beginning of the day in accordance with the provisions of the Interpretation and General Clauses Ordinance (Cap. 1).

Some members noted with concern the provision of the bill which stipulated that provisions conferring privileges on the United Kingdom or other Commonwealth countries or territories, except on the basis of reciprocity, shall have no further effect. The subcommittee was concerned about the meaning of the term "reciprocity" and its possible adverse effect on the existing reciprocal professional qualifications. The Chief Executive's Office clarified that the provision was in line with the decision of the Standing Committee of the National People's Congress made on 23 February 1997 and that the term "reciprocity" did not mean equal treatment.



The subcommittee sought clarification on the provision which stipulated that all employment contracts of public officers which remained in force after 1 July 1997 would be subject to the terms of any executive order relating to the public service made by the Chief Executive. Members were assured that the Chief Executive did not have the authority to change the terms in the employment contracts unilaterally if this was not so provided for in the contracts, and that public officers who were employed on permanent and pensionable terms were subject to the provisions of the Civil Service Regulations, which would continue to be in force under the authority of appropriate executive orders.

In response to the subcommittee's concerns, the Chief Executive's Office proposed a number of amendments including, amongst others, specifying the appointment of judges as first-term appointment, and refining the drafting of various provisions of the bill in line with those of the Basic Law and the decisions of the Standing Committee of the National People's Congress. The Reunification Bill, embodying the amendments suggested by the subcommittee, was passed on 1 July 1997.

#### Parliamentary Liaison Subcommittee

A Parliamentary Liaison Subcommittee was formed in November 1997 to provide overall co-ordination of all parliamentary liaison activities between the Council and other parliamentary organizations outside Hong Kong, consider proposals for setting up friendship groups with such organizations, and make recommendations to the House Committee. The membership of the subcommittee is in **Appendix 4**. During the reporting period, the subcommittee considered and recommended to the House Committee a proposal to send a delegation of Members on a visit to Singapore.

## **COMMITTEE ON RULES OF PROCEDURES**

The Committee on Rules of Procedure, which was formed in September 1997 to take over the functions of the former Working Group on Rules of Procedure, is responsible for reviewing the Rules of Procedure of the Council and proposing to the Council such amendments or changes as are considered necessary. The committee consists of a chairman, a deputy chairman and 10 members appointed by the President in accordance with the election procedure determined by the House Committee. The membership list of the committee is at **Appendix 4**. The President is invited to take part in the discussions of the Committee.

The Working Group, which was established during the early days of the Provisional Legislative Council, held 14 meetings between 22 February 1997 and 9 July 1997 to draw up the Rules of Procedure, the House Rules and the Finance Committee Procedure. It also studied the committee structure and the relationship between the Council and its committees.

The Committee on Rules of Procedure held nine meetings between 17 November 1997 and 31 March 1998. Major issues deliberated by the Committee included updating of the House Rules to reflect changes to the Rules of Procedure endorsed by the Council as well as current practices of the Council and its committees, and giving advice to the Secretariat on aspects which required elaboration in the draft Rules of Procedure of the first Legislative Council for compliance with the Basic Law.

## **BILLS COMMITTEES AND SUBCOMMITTEES**

The House Committee may allocate bills, except the Appropriation Bill and bills not referred to the House Committee by the Council, to bills committees for detailed scrutiny. All Members, other than the President, may join any bills committee. The chairman of each bills committee is elected from among its members. Government officials and members of the public may be invited to attend its meetings.

A bills committee considers the principles and merits of the bill concerned as well as its detailed provisions, and may propose amendments relevant to the bill. It may also appoint subcommittees for the purpose of assisting in the performance of its functions. After the completion of scrutiny of a bill, the House Committee is advised of the bills committee's deliberations in writing. The bills committee is dissolved on the enactment of the bill concerned or as decided by the House Committee.

During the term of the Provisional Legislative Council, 29 bills committees and one subcommittee were formed to study 36 bills. There were also 25 subcommittees which considered 110 items of subsidiary legislation. The membership of these bills committees and subcommittees is in **Appendix 4**. Some of the bills and legislative proposals studied by bills committees and subcommittees are noted below :

***Immigration (Amendment) (No. 3) Bill 1997***

Introduced into the Council on 7 June 1997, the bill sought to implement by local legislation Article 24 of the Basic Law relating to permanent residents with the right of abode in the Hong Kong Special Administrative Region. As a constitutional provision, Article 24 merely sets out the fundamental criteria for a person to be classified as a permanent resident and domestic legislation providing for the necessary supplementary details had to be enacted. Recognizing the importance of the bill, the bills committee invited public views on the bill and met with interested organizations.

The principal concern of the bills committee was to ensure the consistency of the provisions of the bill with those of the Basic Law, particularly in regard to the legitimate right of citizens to obtain the right of abode provided for in Article 24 of the Basic Law and how the provision would be implemented. Members were concerned that children born in Hong Kong to new immigrants from China should be entitled to the right of abode at birth, irrespective of whether their fathers or mothers were settled in Hong Kong at the time of their birth or at any later time. The bills committee acknowledged that the relevant provision of the bill was fully consistent with the advice of the Preparatory Committee for the Hong Kong Special Administrative Region on how Article 24 of the Basic Law should be enforced and reflected the agreement reached by the Sino-British Joint Liaison Group. Nonetheless, the bills committee requested the Chief Executive's Office to review the existing administrative measures of imposing limits of stay on one-way permit holders with a view to permitting children born to new Hong Kong immigrants to qualify for the right of abode immediately at birth. Members noted that a task force had been set up to examine the issue of illegal entry of persons who claimed to have the right of abode in Hong Kong.

The bills committee noted in the provisions of the bill the differential treatment between a Chinese citizen born in Hong Kong and a person of Chinese nationality born outside Hong Kong to a Hong Kong permanent resident in respect of their right to obtain the right of abode at birth. Whilst the latter would qualify for the right of abode at birth, the former would not, unless his parent had settled in Hong Kong at the time of his birth or at any later time. To rectify this unfairness, the Chief Executive's Office accepted members' suggestion to amend the bill to provide for the right of abode at birth to a Chinese citizen born in Hong Kong to a permanent resident who had the right of abode in Hong Kong.

As an integral part of the statutory framework for the determination of a person's permanent resident status, the bills committee also examined in depth some key concepts such as "Chinese citizenship", "settled", "ordinarily resident", "parent and child", the manner of establishing permanent residence and transitional arrangements as set out in the bill. The bills committee was satisfied that the provisions of the bill were sufficiently clear for their intended purpose. Other major amendments moved by the Chief Executive's Office to address the bills committee's concerns included amending the items of information to be furnished to the Director of Immigration for the purpose of establishing permanent residence in Hong Kong.

The bill, as amended, was passed on 21 June 1997.

***Provident Fund Schemes Legislation (Amendment) Bill 1997 and related subsidiary legislation***

The bill, introduced into the Council on 26 November 1997, sought to amend the Mandatory Provident Fund Schemes Ordinance (MPFSO) and 11 related ordinances. The bills committee scrutinized the bill together with the relevant draft subsidiary legislation setting out implementation details of the Mandatory Provident Fund (MPF) system. In the course of deliberations, the bills committee considered the views of 15 organizations.

A major proposal under the bill was the reconstitution of the Mandatory Provident Fund Scheme Authority (MPFA) as an independent corporation to be headed by an Executive Director. Given the absence of similar provisions for setting up a board of directors as for other statutory bodies, members were gravely concerned about the apparent lack of checks and balances on the wide decision-making powers to be vested with the Executive Director. The majority of members agreed in principle that the MPFA should be made up of a body of executive and non-executive directors, the former being

full-time senior management staff of the MPFA and the latter being representatives of employers, employees, persons with knowledge and experience in pension matters and related professionals. The Administration agreed to revise its legislative proposals broadly in line with members' suggestions. It also accepted members' suggestion of stipulating in the MPFSO the membership requirements of the proposed MPF Schemes Advisory Committee and the Industry Schemes Committee to be set up for providing advice to the MPFA.

Members noted the Residual Provident Fund Scheme (RPFS) currently provided for under the MPFSO as a last resort for eligible persons who could not join an MPF scheme in the market. The bill proposed to replace the RPFS with a requirement that a scheme trustee could not reject any eligible person from becoming a member of its scheme. While welcoming the no-rejection requirement, members reiterated the need for retaining the RPFS to cater for persons who might ultimately be unable to join an MPF scheme. The Administration finally agreed to retain the option of establishing the RPFS under the MPFSO if the no-rejection requirement did not work effectively.

Members had extensive discussions on the controversial capital preservation product (CPP) in connection with proposals relating to investment prescribed in the draft MPF Schemes (General) Regulation. After considering various measures including the feasibility of requiring every CPP to provide a guaranteed investment return, members accepted the Administration's revised proposal whereby a trustee could not charge administration fees if the investment return of the CPP for the month did not exceed the savings deposit interest rate, but the trustee might recoup losses in administration fees if investment income in future months exceeded that rate.

On proposed restrictions on investment activities, Members reviewed the minimum Hong Kong dollar currency exposure of MPF funds, the limitations on investment in shares not listed in

recognized stock exchanges and on transactions between fund managers and associated stock brokers and banks. The Administration took note of members' concern about fair competition among all future MPF market players and agreed to relax the proposed restrictions on the delegation of overseas investment management functions by local investment companies. The Administration also undertook to include the subject of stock lending, over which some members had expressed reservations, in its comprehensive review of financial services in Hong Kong.

As regards proposed interface arrangements for existing schemes under the Occupational Retirement Schemes Ordinance (ORSO) with the MPF system as set out in the draft MPF Schemes (Exemption) Regulation, members examined the proposed exemption of ORSO schemes set up on or before 15 October 1995 from MPF requirements. To keep benefits of ORSO schemes more closely in line with those of MPF schemes, members accepted an improvement reached after previous discussions with the Administration and employer groups that taking the implementation of the MPF system as the cut-off date, an employee's accrued benefits under an ORSO scheme up to his minimum MPF benefits would not be withheld by the employer even upon dismissal for cause.

The bill was passed on 25 February 1998 with amendments, including the amendment to the effect that the chairperson of the MPFA should be a non-executive director. A subcommittee was subsequently formed to take up outstanding issues arising from the bills committee's scrutiny of the draft subsidiary legislation. Apart from a number of investment-related issues, in particular the CPP, over which there was divergence of views, members were agreeable to the proposed provisions under the subsidiary legislation. Three motions on the MPF Schemes (General) Regulation, the MPF Schemes (Exemption) Regulation and the MPF Schemes (Amendment of Schedule 6) Notice 1998 were passed on 1 April 1998.

### ***Housing (Amendment) (No. 3) Bill 1997***

Introduced into the Council on 7 January 1998, the bill sought to remove the limit on the number of members of the Appeal Panel that might be appointed by the Secretary for Housing for hearing appeals against termination of leases for public rental housing and interim housing; to empower the Director of Housing to delegate his function to assess Prevailing Market Value of Home Ownership Scheme and Private Sector Participation Scheme flats; and to provide for an additional fine up to three times the amount of rent undercharged for supplying false particulars to the Housing Authority.

The bills committee agreed to remove the limit on the number of members of the Appeal Panel to give the Secretary for Housing flexibility to suitably expand membership to cope with the increased workload. In anticipation of an increase in the number of applications for selling or letting Home Ownership Scheme and Private Sector Participation Scheme flats in the open market after the ten-year resale restriction period, members also agreed to the proposal to empower the Director of Housing to contract out premium assessment work to qualified estate surveyors in the private sector. Members noted that the proposed delegation provision would save staff resources in scrutinizing the work completed by private estate surveyors in a case by case manner, but the ultimate responsibility for assessing Prevailing Market Value would still rest with the Director of Housing.

Members, however, held different views on the need to add a further fine for making false declarations to the Housing Authority, as there was no indication showing a trend of increase in such cases. The Administration explained that with the introduction of the policy on better-off tenants paying market rent on 1 April 1997, the number of tenants making false declarations would likely be increased, hence the need to raise the penalty to strengthen the deterrent effect. The proposed penalty provision, modelling on similar provisions in the Inland Revenue Ordinance, would reflect the relationship between the level of fine and the amount of rent undercharged. The absence of such a



provision would convey a wrong impression that making false declarations to the Housing Authority was not a serious offence and would invite further abuses of public housing resources. The bills committee could not reach a consensus on the proposal. The bill was debated and passed without amendment on 1 April 1998.

### ***Legislative Provisions (Suspension of Operation) Bill 1997***

The omnibus bill, introduced into the Council on 9 July 1997, sought to suspend until further notice the operation of seven Private Member's bills passed by the former Legislative Council at its last sitting in June 1997 in order for the Administration to assess fully the impact of the legislative changes on Government policies and operations .

Five of the enactments proposed to be suspended were labour-related ordinances. On the Employee's Rights to Representation, Consultation and Collective Bargaining Ordinance, which conferred on employees inter alia a statutory right to collective bargaining, members noted its controversial implications on employment relationships and supported its suspension to facilitate further examination by the Administration in consultation with the Labour Advisory Board.

Most members did not support the proposed suspension of the Occupational Deafness (Compensation) (Amendment) Ordinance 1997. They suggested including the improvements provided therein as part of the improvement package to be implemented following the Administration's comprehensive review of the Occupational Deafness Compensation Scheme.

Members did not hold a concerted view on the proposed suspension of the other three labour-related ordinances, namely the Employment (Amendment) (No.4) Ordinance 1997, the Trade Unions (Amendment) (No.2) Ordinance 1997 and the Employment (Amendment) (No.5) Ordinance 1997,

which dealt with employees' statutory right to reinstatement, relaxation of restrictions on certain trade union activities and the addition of 1 May as a statutory holiday respectively. They urged the Administration to consult employers and employees on the legislative provisions and take into consideration their views in formulating the way forward.

The bills committee noted the objection of a concern group to the proposed suspension of the Protection of the Harbour Ordinance, as well as the Administration's concern about uncertainties caused by the declarative principle of presumption against reclamation in the central harbour which might affect four major reclamation projects currently under planning. Members also took note of the Administration's proposal to suspend the Hong Kong Bill of Rights (Amendment) Ordinance 1997 on the grounds that the amending provisions might have the effect of extending the application of the Ordinance to inter-citizen actions, which was incompatible with the Government's policy intent.

Although members held different views on the proposed suspension of operation of the seven enactments, they agreed unanimously on the need to specify a suspension period in the bill to ensure that the Administration would complete its review and propose the way forward upon the expiry of the period. The Administration agreed to move amendments to provide for the suspension period up to 31 October 1997 and to specify that any further extension had to be approved by the Council.

The Council voted down the provisions concerning the suspension of the operation of the Occupational Deafness (Compensation) (Amendment) Ordinance 1997, the Employment (Amendment) (No.5) Ordinance 1997 and the Protection of the Harbour Ordinance and passed the bill with the Administration's amendments on 16 July 1997.

### ***Societies (Amendment) Bill 1997***

### ***Public Order (Amendment) Bill 1997***

The two bills were introduced into the Council by the Chief Executive's Office on 17 May 1997. The Societies (Amendment) Bill 1997 sought to reinstate the registration system for societies, which had been repealed in 1992, and provided that a local society (or its branch) to which the Societies Ordinance applied must apply to the Societies Officer for registration or exemption from registration within one month of its establishment. The Public Order (Amendment) Bill 1997 sought to modify the notification system introduced in 1995 for organizing public processions and provided that a public procession might take place if the Commissioner of Police was notified of the intention of holding such a procession.

The bills committee noted that the re-instated registration system as set out in the Societies (Amendment) Bill 1997 was in compliance with the decision of the National People's Congress, the provisions of the Basic Law and the International Covenant on Civil and Political Rights as applied to Hong Kong. The re-instated system could also strike a right balance between civil liberties and social order, and would enable the authority to prevent the establishment of triad societies. After studying the bill from the policy, legal and operational perspectives, the bills committee agreed with the underlying principle of the bill, and supported the proposed registration system.

The bills committee supported the Public Order (Amendment) Bill 1997 in principle. However, it held the view that the proposed threshold for triggering off intervention by the Commissioner of Police during meetings, processions and gatherings should not be lower than the existing standard as was prescribed in the principal ordinance. Also, the Commissioner of Police, in the exercise of power to prohibit notified public meetings, should be required to reasonably consider whether the interest of national security or the interest of public order or the protection of the rights and freedom of other

people could be safeguarded by the imposition of conditions. The Chief Executive's Office accepted members' suggestion to move amendments to the bill to achieve this effect.

In addition to introducing technical amendments to the two bills, the Chief Executive's Office also agreed to move amendments to ensure that the two principal ordinances as amended by the two bills would have continual legal effect on or after 1 July 1997. The bills, as amended, were passed on 14 June 1997.

### ***Occupational Deafness (Compensation) (Amendment) (No.2) Bill 1997***

Introduced into the Council on 15 October 1997, the bill sought to implement several improvement measures and reinstate the original scale of permanent incapacity for the purpose of compensation.

The bills committee proposed two amendments for the Administration's consideration : one to relax the service requirement in respect of the four very noisy occupations, and the other to raise the maximum degree of permanent incapacity by reference to hearing loss from the current 60% to 100%. After consideration, the Administration agreed to the first proposal but objected to the second one. It pointed out that the second amendment would increase the average compensation amount per case by about 60% and deplete the compensation fund at the end of the first year. The bills committee accepted the Administration's explanation.

The bill, with amendments moved by the Administration, was passed on 25 February 1998.

### ***Hong Kong Bill of Rights (Amendment) Bill 1998***

The bills committee examined in detail the Administration's proposal to repeal section 3(3) and (4) of the Hong Kong Bill of Rights Ordinance (BORO) which was added by an Amendment Ordinance enacted 1997.

In scrutinizing the bill, the bills committee received views of legal professionals regarding the Administration's argument that section 3(3) and (4), when read with section 7, would give rise to legal confusion about the applicability of BORO. Possibilities of amending or re-drafting section 3(3) and (4) or section 7 of BORO were also discussed. Members held divergent views as to whether section 3(3) and (4) should be retained as a general provision to regulate inter-citizen relations. While some members were in favour of retaining or amending the provisions, some other members pointed out that the original legislative intent of BORO was to restrict its application to Government and public authorities only. As regards the impact of the bill on human rights protection in Hong Kong, the Administration assured members that the Basic Law had provided for continued application of the provisions of the International Covenant on Civil and Political Rights (ICCPR) in Hong Kong, and that specific legislation such as privacy protection and anti-discrimination laws had already been put in place to govern inter-citizen relations.

The bill was passed without amendment on 25 February 1998.

### ***Dutiable Commodities (Amendment) Bill 1998***

The bill, introduced into the Council on 4 March 1998, sought to give legal effect to the proposals in the 1998-99 Budget to increase the duties on tobacco, fuel and methyl alcohol by 6% and to make ancillary amendments to allow the granting of duty exemption to franchised bus companies in respect of buses operated under a hiring agreement or a hire-purchase agreement.

The bills committee had no objection to the proposed increase in duty on tobacco and the proposed duty exemption in respect of certain categories of buses. Members, however, were gravely concerned about the impact of the proposal to increase duties on fuel and methyl alcohol on the community and considered the Administration's explanations for the proposed increase unfounded. Members noted the absence of any statistical support for direct relationship between increase in petrol duties and decrease in the use of private vehicles. Given that there was at present no alternative to diesel oil for commercial vehicles, the proposed duty increase in diesel oil could not help reduce air pollution. The bills committee considered that the Administration should reduce the duty on unleaded petrol or introduce positive incentives to encourage the use of cleaner fuel instead of using a negative measure, i.e. by increasing the duty on leaded petrol, to achieve the purpose. Moreover, members were concerned that the proposed increase on fuel duties would aggravate the problem of illegal use of industrial diesel fuel as a substitute for light diesel oil in vehicles. Having regard to the recent economic downturn and the financial impact of the proposed increase in fuel duties on the operators and drivers in the taxi, public light bus and lorry trades, the bills committee unanimously agreed to move an amendment to freeze the fuel duties at the current rate.

As regards the proposed duty increase on methyl alcohol, the bills committee did not consider this an effective deterrent against its abusive use. In view of the application of methyl alcohol for industrial use, members also agreed to amend the bill to repeal the proposed increase.

The bill was passed with amendments to repeal duty increase in leaded and unleaded petrol and diesel oil on 25 March 1998.

***Land (Compulsory Sale For Redevelopment) Bill***

Introduced into the Council on 21 January 1998, the bill sought to enable persons who owned not less than 90% of the undivided shares in a lot to make an application to the Lands Tribunal for an order to sell all the undivided shares in the lot by public auction for the purposes of redevelopment of the lot. Whilst fully supporting the need to expedite urban renewal to improve the environment, the bills committee was concerned about the introduction of a mechanism for proper and fair compensation for lawful deprivation of private property rights.

The appropriateness of setting the minimum ownership level at 90% of the undivided shares in a lot as a condition for making an application for a compulsory sale order was vigorously debated by the bills committee. The bill also provided that the Chief Executive in Council might, by notice in the Gazette, lower this percentage to 80%. Taking note of the view of some depositions, the bills committee explored the desirability and viability of lowering the acquisition threshold to 75% of the undivided shares of four-unit buildings. However, noting the numerous number of owners holding 25% of undivided shares in a multi-storeyed ageing building and the dwindling number of four-unit ageing buildings due for redevelopment, the bills committee considered it inadvisable to reduce the lower threshold of 80% to cater for one specific situation.

The bills committee also examined whether owners holding an average of 90% of aggregate undivided shares in contiguous lots should be allowed to make an application to redevelop the lots as a package. As there was a possibility of the applicant not holding any shares in one of the lots, members considered it unjustified to compel all the owners of such a lot to sell their properties against their will. Members agreed that the ownership percentage should apply to each lot except where two buildings were served by a common staircase, in which case it would be the average of the undivided shares in the lots on which the buildings stood.

The bills committee agreed that compensation to owners, owner-occupiers and tenants affected by a compulsory sale order should be in monetary terms. To prevent the creation of spurious tenancies to defeat the object of the bill or to maximize benefits, the Administration accepted members' proposal that compensation to tenants should be paid out of the apportioned share of the proceeds of sale receivable by the tenants' landlord.

The Administration took on board members' suggestions to move a number of amendments to improve both the policy and technical aspects of the bill. The bill, as amended, was passed on 7 April 1998.

### ***Legislative Council Bill***

Introduced into the Council on 20 August 1997, the bill sought to provide for the constitution, convening and dissolution of the Legislative Council as well as for the election of its Members.

The bills committee studied the bill in detail and also considered the views received from 71 organizations/individuals and the various amendments proposed by individual Members. In response to the bills committee, the Administration made a number of significant amendments to the bill which included : firstly, providing a broad framework to facilitate the first Legislative Council of the HKSAR to elect its own President and to commence its business; secondly, putting in place arrangements which would trigger off the disqualification mechanism prescribed in the Basic Law; thirdly, specifying that except in the case of a Member of the 12 specified functional constituencies (FCs) who was allowed to change his/her foreign nationality to Chinese nationality, a Member would cease to hold office on the ground of a change of nationality or right of abode during his/her LegCo tenure; and fourthly, requiring ex-officio members of the Election Committee (EC) to be first registered as geographical constituency electors before they could exercise their right to vote in the



EC election and also allowing those who were also electors of FC a choice either to vote in the election of the EC or that of a FC.

The bill was passed with amendments at the Council meeting on 27 and 28 September 1997. In addition to the amendments moved by the Administration and the bills committee, two Members also successfully moved amendments to expand the electorate of the Social Welfare FC and the Textiles and Garment FC. To address implementation problems posed by these amendments, the Administration subsequently moved a motion to seek the Council's approval of an Amendment Order which was passed at the Council meeting on 29 October 1997.

### ***Prevention of Copyright Piracy Bill***

Introduced into the Council on 21 January 1998, the bill sought to introduce a licensing scheme for the manufacture of optical discs in Hong Kong.

The bills committee supported a proposal made by some deputations that the manufacturers' codes should be assigned, and not approved, as proposed in the bill, by the Commissioner of Customs and Excise, and that a standard coding system should be adopted. The purpose was to ensure the integrity of the source coding system and reinforce the protection of intellectual property rights. Although the Administration maintained that the scheme proposed in the bill would not prejudice any existing codes, it agreed to amend the bill.

The manufacturing industry's concern about the revocation or non-renewal of a licence on the basis of records of previously adjudged civil liabilities of copyright infringement was discussed by the bills committee. The Administration agreed that consideration to revoke or refuse to renew a licence should only be based on records of criminal convictions of copyright infringement and would move

an amendment. In addition, a provision would be added to the bill to make it a defence for the accused if he could show that he had taken all reasonable steps to avoid committing an offence under the bill.

In response to concern expressed by some members about the power of the Department of Customs and Excise to seal an optical disc manufacturing plant under the bill, the Administration agreed to specify in the bill that the period for which a place was sealed should not exceed 14 days and any application to extend the period should be made to a magistrate.

The bill, as amended, was passed on 25 March 1998.

### ***Adaptation of Laws (Interpretative Provisions) Bill***

Introduced into the Council on 25 February 1998, the bill sought to adapt the Interpretation and General Clauses Ordinance to bring it into conformity with the Basic Law and the status of Hong Kong as a Special Administrative Region of the People's Republic of China (PRC).

The bills committee deliberated in detail the definition of "State" in the bill which would replace the word "Crown" in provisions in the Ordinance which relate to the binding effect of ordinances. Members also sought clarification on what constituted "subordinate organs" within the meaning of the definition of "State". Members noted that the proposed definition of "State" included only bodies which corresponded to what was previously covered by the "Crown". After considering a number of other alternatives, the bills committee agreed with the Administration that the expression "State" and its definition remained the most appropriate term to reflect the position after the reunification, without changing the *status quo*. Noting the bills committee's concern and comments, the

Administration proposed amendments to improve the clarity and precision of the definition of “State”.

The Administration assured Members that the effect of the amendments was to maintain the legal position as it was immediately before and after the reunification. The definition of “State” was to identify those organs of the PRC that corresponded to the authorities that were previously within the meaning of the “Crown”. The definition of “State” included functional tests for deciding whether or not a subordinate organ of the Central People’s Government or Central Authority was within the definition, and in the final analysis, the courts would decide on its legal status and this judicial process would be no different from that which applied to the Crown.

The bill, with amendments proposed by the Administration, was passed on 7 April 1998.

### ***Hong Kong Special Administrative Region Passports Bill***

Introduced into the Provisional Legislative Council on 9 July 1997, the bill sought to provide for the issue, amendment and cancellation of the Hong Kong Special Administrative Region (HKSAR) passports.

The bills committee was concerned about the retrospective effect of the bill. It questioned the legal basis on which the Director of Immigration could issue passports prior to the enactment of the bill, and whether in the absence of the retrospective clause, the validity of such HKSAR passports issued would be affected. The Administration explained that the authorization for the HKSAR Government to issue passports of the HKSAR was provided under Article 154 of the Basic Law which had come into force on 1 July 1997. The bill provided for the detailed implementation of this provision of the

Basic Law. There was no question about the validity of passports issued prior to the enactment of the bill.

To avoid legal arguments about the validity of passports already issued before the enactment of the bill and to provide for uniformity of implementation arrangements, the bills committee accepted the Administration's proposal that the bill should take retrospective effect from 1 July 1997.

In response to the bills committee's request, the Administration agreed to amend the bill to provide for an appeal mechanism regarding the decisions made by the Director of Immigration.

The bill, with amendments, was passed at the meeting on 23 July 1997.

### ***Immigration (Amendment) (No.5) Bill 1997***

The bill, introduced into the Provisional Legislative Council on 9 July 1997, sought to make detailed provisions for the application of Article 24 (2)(3) of the Basic Law.

Under the certificate of entitlement scheme, children who had the right of abode in Hong Kong under Article 24 (2)(3) of the Basic Law were required to produce a certificate of entitlement issued by the Director of Immigration. Some members were concerned that the scheme would deprive these children of their constitutional right under the Basic Law. The Administration took the view that the scheme provided an effective means to establish the right of abode of children born outside Hong Kong. The admission of eligible children in a planned and orderly manner was in line with Article 22 of the Basic Law.

The subcommittee was concerned that, if enacted, the bill (other than the provisions on criminal offences) would take retrospective effect from 1 July 1997. The Administration explained that the retrospectivity of the bill was necessary to provide the Director of Immigration with the legal power to remove children who came to Hong Kong before the date of enactment and who claimed for right of abode. Otherwise, it would be tantamount to granting an amnesty to those child illegal immigrants who surrendered themselves after 1 July 1997.

In view of the urgency and seriousness of the matter, the subcommittee accepted the Administration's proposal to complete the three readings of the bill at one Council meeting. The bill, with amendments, was passed on 9 July 1997. A Committee Stage Amendment moved by a Member to delete the clause providing for retrospectivity of the bill was negatived.

***Food Business (Urban Council) (Amendment) Bylaw 1998***

***Food Business (Regional Council) (Amendment) Bylaw 1998***

***Public Health (Animals and Birds) (Amendment) (No.2) Regulation 1998***

The main objective of the Regulation and the two amendment Bylaws, tabled in the Provisional Legislative Council on 4 March 1998 and 11 March 1998 respectively, was to implement the policy of segregating the trading of live water birds (including ducks and geese) from other live poultry at the import, wholesale and retail levels, and in the Western Wholesale Food Market.

While the subcommittee had no objection to the segregation policy from the public health point of view, members were concerned about the implementation arrangements, in particular the allocation of poultry stalls in the Western Wholesale Food Market to the wholesalers in the Cheung Sha Wan Temporary Wholesale Poultry Market. At the subcommittee's request, the Administration undertook

to further consult the wholesalers on their needs. The subcommittee urged the Administration to put in place a set of fair and unified guidelines in dealing with applications from wholesalers to seek further waiver or reduction of poultry stall rental. The Administration was requested to work out a long term policy on the establishment of additional slaughtering centres in Kowloon and the New Territories.

No amendment was made to the Regulation and the Bylaws.

***Subcommittee on Telecommunication (Amendment) Regulation 1998 and Telephone (Repeal) Regulation 1998***

The two pieces of subsidiary legislation were part of a series of arrangements for implementing the Agreement between the Government and Hong Kong Telecommunications Limited (HKT) for early surrender of the Hong Kong Telecommunication International (HKTI) licence on 31 March 1998.

The subcommittee noted that the Government had to pay a cash compensation of \$6.7 billion to HKT for the surrender of the HKTI licence in order to further liberalize the telecommunications market. Members welcomed the opening up of the market but were concerned about whether genuine and effective competition could be introduced in the industry so that consumers would benefit in the long run. In particular, members were concerned that the small number of Fixed Telecommunication Network Services (FTNS) operators allowed to supply non-exclusive external services from 1 January 1999 might form a cartel. The Administration assured the subcommittee that consumer protection measures and safeguards against anti-competitive practices had been incorporated in the terms and conditions of the FTNS licence, and contravention of these might lead to penalties on the licensee or even revocation of the licence.

As the Hong Kong Telephone Company Limited (HKTC) would be required to open up its already installed local access lines to give other FTNS licensees access to at least half of the residential exchange line customers by 1 January 1999, members were concerned about the mechanism for setting charges for access to HKTC's or other operators' networks, as these charges would have a direct bearing on the tariffs. The Administration pointed out the availability of existing guidelines to ensure that access charges, subject to negotiation between the parties concerned in a transparent and fair manner, were cost based. The Telecommunications Authority could also act as an arbitrator in case of disputes and take action against anti-competitive practices. Furthermore, as external telecommunications facilities-based competition would commence on 1 January 2000, relevant licensed service providers would be able to provide services over their own infrastructure, by-passing other operators' facilities. Notwithstanding these measures, the subcommittee held the view that the legislature should continue to monitor these access charges.

Noting that the issue of provision of additional telecommunications facilities operators would only be considered in the FTNS review scheduled for mid 1998, the subcommittee questioned the fairness of the proposed arrangement of giving the three new FTNS operators licensed in 1995 a head-start to supply non-exclusive external services from 1 January 1999. The Administration undertook to advance the FTNS review to April 1998 and to consult the trade on relevant issues including access charges, so that new licensees of external telecommunications services would be able to start operation at approximately the same time as the three new FTNS operators.

The two sets of subsidiary legislation in the form as proposed by the Administration were supported by the subcommittee and enacted.

### ***Subsidiary Legislation relating to 1998 Legislative Council Election***

A subcommittee was set up to scrutinize 11 items of subsidiary legislation relating to the 1998 Legislative Council elections made by the Administration and the Electoral Affairs Commission. The subsidiary legislation were related to the demarcation of constituency boundaries, arrangements and appeal procedures for registration of electors/voters/Election Committee (EC) members, distribution of EC members among six designated religious bodies, election expenses limits, subscribers, amount and forfeiture threshold of election deposit, Nominations Advisory Committees, procedures for conducting the 1998 LegCo elections and for lodging appeals against results of LegCo elections.

On the Legislative Council (Subscribers and Election Deposit for Nomination) Regulation, some members suggested that the threshold for forfeiture of election deposit of 2.5% for the EC subsector elections should be increased to 5% and that the basis should be the total number of valid ballot papers. In addition, in order not to discourage eligible persons from standing as candidates for the EC subsector elections, the amount of election deposit for nomination should be reduced from \$5,000 to \$1,000. The motion to so amend the Regulation was carried at the Council meeting on 21 January 1998.

Amendments were also made to the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation which included : firstly, authorizing any one of the candidates on a geographical constituency list to serve the notice of appointment or revocation of appointment of agents, and secondly, allowing electors of the six special functional constituencies to cast all the votes that they were entitled to in the geographical constituency polling stations near to their place of residence. A revised candidate numbering system was also proposed for easy identification. The motion to amend the Regulation was carried at the Council meeting on 25 February 1998.



### *Subcommittees on Subsidiary Legislation relating to Fee Increases*

Seven subcommittees were formed under the House Committee to study 57 items of subsidiary legislation relating to fee increases. The subcommittees supported 38 items, the majority of which involved proposals seeking to increase Government fees and charges for the issue of permits and licences under various ordinances. Two items seeking to increase fines to deter illegal parking as well as one item seeking to increase Lantau taxi fares to restore the financial position of Lantau taxi operators to a level comparable to their previous average income were also supported. The remaining 19 items of subsidiary legislation, which were introduced into the Council after mid-December 1997, were rejected on the ground that the Government should not seek to increase fees and charges at a time of economic downturn arising from financial turmoil in the region.

### **PANELS**

Panels are committees of the Council tasked to monitor and examine Government policies. They serve as a forum for the exchange and dissemination of views on policy matters and issues of public concern. Each panel is headed by a chairman elected from amongst its members. The subjects for discussion can be brought up by members of the panel, referred to it by the House Committee, raised by other members following meetings with provisional district boards or upon receipt of complaints or representations, or at the request of the Administration. A panel may appoint subcommittees to study specific issues and present reports to the Council as it considers appropriate.

Eighteen panels were formed in the 1997-98 session to monitor policies of their corresponding Bureau Secretaries in the Government. Membership of the panels and their subcommittees is shown in **Appendix 4**.

### ***Panel on Manpower***

Tackling the aggravating unemployment problem was high on the agenda of the panel. The panel explored with the Administration ways to provide assistance to job seekers and to safeguard employment opportunities of the local workforce. Apart from urging the Administration to require contractors bidding for Government projects to give priority of employment to local workers, the panel stressed the importance of resolving the multi-faceted problem of unemployment by a high-level body and better co-operation among relevant departments and bureaux. Members also pointed out the need for adjusting the programmes of vocational training and employees retraining proactively to meet market needs.

The panel urged the Administration to be vigilant of changes in the economic and employment situations before launching the proposed Construction Labour Importation Scheme and stressed that priority must be given to local workers in filling job vacancies. The Administration subsequently deferred the Scheme. To attract new entrants and retain skilled workers in the construction industry, members saw the need for the trade to consider employing workers on fixed-term contracts or on monthly remuneration.

The panel continued to monitor closely the development of labour legislation, notably the implications of the suspension of three labour-related ordinances which provided for employees' right to collective bargaining, compulsory reinstatement of employees and relaxation of restrictions

on certain trade union activities. Members also reviewed improvements to compensation for occupational deafness and the proposed arrangements for statutory and general holidays.

On the front of occupational safety and health, members examined various new initiatives and highlighted the need for sustained education and enforcement, as well as tripartite co-operation among employers, employees and the Government in promoting safety and health at work.

### ***Panel on Public Service***

The Administration had assured the panel that in conducting the review on the system for declaration of interests by civil servants, it would maintain a right balance between civil servant's right of private investments and upholding a high standard of integrity and impartiality in the civil service.

On the revised criteria and arrangements for transfer from agreement to local permanent and pensionable terms in the civil service, most members agreed with the Administration that the Chinese language requirement was consistent with the long-term policy objective of developing a biliterate, trilingual civil service. Members urged the Administration to determine a required Chinese language standard for each grade having regard to operational needs.

As regards the creation of posts in the civil service, the panel had been assured by the Administration that existing mechanisms and established procedures provided the necessary checks and balances to ensure that additional posts were only created when functionally justified.

The panel was briefed on the mechanism for reviewing the pay scales of individual grades and a proposal to adjust the Junior Police Officers' pay scales. The panel was informed that any requests

from other disciplined services for adjustment of pay scales would be examined on their own merits under the established mechanism.

### ***Panel on Broadcasting, Culture and Sport***

The panel met deputations and the Administration to discuss ways to streamline procedures to overcome problems encountered by the film industry in applying for permission to use pyrotechnics during film-shooting. The Administration responded positively, and an inter-departmental working group was set up to review existing procedures.

Regarding the 1998 review of the television environment, the panel welcomed the Administration's proposal to open up the market to provide more choices to customers in the light of new technological developments which brought about the convergence of broadcasting, telecommunication and computing services.

To ensure fair competition in the provision of video-on-demand programme services, the panel had urged the Administration to resolve expeditiously the legal issues surrounding the award of the second licence to a company which was involved in litigation concerning the use of confidential business information in its application. The second licence was subsequently awarded in February 1998.

The panel expressed disappointment over the lack of co-ordination between the Government and the two municipal councils in the formulation of cultural policies and use of resources for cultural activities. Members urged the Administration to take a critical look at the existing constitutional and legislative framework with a view to rationalizing the policy formulation process and resource utilization for promoting arts and culture.

The panel also requested the Administration to speed up the construction of a major multi-sports venue and maintain closer liaison with private developers and the municipal councils on heritage protection.

### ***Panel on Administration of Justice and Legal Services***

An important area of concern to the panel was the use of Chinese in courts. Members discussed with the Administration resources available and the various steps taken by the Department of Justice and the Judiciary to facilitate the implementation. The panel was briefed on the setting up of a Committee on Bilingual Legal System to oversee the implementation of the policy of bilingualism in the legal system.

The panel was also briefed on the progress of localization in the Department of Justice. Members noted that with the help of three special localization schemes, the Department had made significant progress with localization in the past nine years.

The panel discussed the consultation paper on Legal Aid Policy Review 1997 with the Administration. The panel also discussed with the Judiciary Administrator and family law practitioners the relocation of the Family Court from the High Court Building to the Wanchai Law Court Building. At the panel's request, the Judiciary Administrator agreed to seek further improvements after the relocation in August 1998.

The panel held a special meeting to discuss the prosecution policy of the Department of Justice in the wake of public concern over the decision of the Secretary for Justice not to prosecute a named co-

conspirator in an ICAC case. Members requested for a full statement to be made on the case after the trial.

### ***Panel on Home Affairs***

The panel had discussed with the Administration the various measures adopted to protect the rights of women following the extension of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women to Hong Kong since October 1996. Members also sought and received briefings by the Equal Opportunities Commission on the progress in implementing anti-discrimination laws.

Following up on the motion on youth policy passed by the Provisional Legislative Council on 3 December 1997, the panel invited and received views from youth organizations. Members requested the Administration to revise the Charter for Youth and devise a more concrete youth policy in consultation with youth organizations and interested parties.

Members were concerned about the problems relating to building management and safety. The panel urged the Administration to adopt a proactive approach to assist owners of buildings in solving these problems. On the licensing of guesthouses in private buildings, members suggested that the Administration should further review the Building Management Ordinance to protect the interests of owners and tenants of private buildings.

Regarding the difficulties experienced by maintenance payees in recovering alimony, the panel had requested the Provisional Legislative Council Secretariat to study the effectiveness of overseas intermediary bodies in the collection and enforcement of maintenance payments. The study findings would provide the basis for further discussion by the Legislative Council.

### ***Panel on Transport***

The panel closely monitored the implementation of the priority rail projects identified in the 1994 Railway Development Strategy. In examining the recommendations in the engineering feasibility study of the Ma On Shan to Tai Wai rail link and the extension of the present East Rail line from Hung Hom to Tsim Sha Tsui, members studied, in particular, the interface with other rail links in the urban area and the impact on the existing lines. The panel also deliberated on the Administration's proposal to inject an equity of \$29 billion into the Kowloon-Canton Railway Corporation (KCRC) for West Rail Phase I works and examined the proposed financial arrangement and the impact of the West Rail on the fare levels for existing lines.

Following the announcement of non-renewal of the franchise of China Motor Bus Company Limited and invitation of tenders to operate 88 franchised bus routes, the panel urged the Administration to implement measures to ensure a smooth transition and continued provision of satisfactory bus services in the interim. Members also stressed the importance of safeguarding the interest of the redundant staff and urged employment of these staff by the new franchisee. To enhance the safety of bus operation, members suggested that the roster systems of bus companies be reviewed with a view to minimizing stress and fatigue of bus drivers.

On taxi related issues, the panel studied the Transport Advisory Committee's consultation paper on the taxi licensing system. Members considered it important to preserve the livelihood of taxi drivers when assessing the different options proposed in the paper.

The panel also studied ferry services, and urged the Administration to expedite franchise negotiations and finalization of the Pier Development Package with the ferry companies concerned. Members

also considered a comprehensive study on the role of waterborne transport essential in addressing traffic congestion problems.

Noting the pledge in the Chief Executive's Policy Address for the production of 85,000 residential units per year from 1999 onwards, in conjunction with the Panel on Housing, the panel monitored the development of the infrastructure, particularly the transport infrastructure, in facilitating the meeting of the flat production target.

### ***Panel on Housing***

The panel examined various new initiatives including the new Home Starter Loan Scheme to provide financial assistance to first-time home buyers, the Tenants Purchase Scheme and its impact on the sale of Home Ownership Scheme (HOS) flats. Taking note of the White Paper on Long Term Housing Strategy, members urged the Administration to consider the actual housing needs in implementing a flexible land disposal programme for the private sector.

Noting the defects in a number of HOS flats, the panel passed a motion urging the Administration to conduct a comprehensive review of the mechanism in monitoring the construction quality and maintenance works of HOS flats and to shoulder the costs of works for rectifying building defects attributed to negligence of contractors. In the wake of the incident of a fallen glass panel in Ping Tin Shopping Centre, members called for close scrutiny of the work supervision system in respect of construction of public rental housing flats to ensure quality compliance with the stipulated standards.

The panel continued to exert pressure on the Administration to implement the provisions of the Housing (Amendment) Ordinance 1997 to enable the review of rent for public rental housing flats to be carried out every three years and to confine the rate of rent increase to not exceeding 10% of the



median rent-to-income ratio. The Administration subsequently agreed to bring these provisions into effect in March 1998. The panel also deliberated on the clearance policy of Temporary Housing Area, development of interim housing, redevelopment of flatted factory estates and issues related to public rental housing flats including installation of air-conditioners, triad infiltration in the decoration of new estates, and rehousing policy .

### ***Panel on Security***

While supporting the Administration's decision to abolish the port of first asylum policy for Vietnamese boat people, the panel requested the Administration to step up efforts to deter Vietnamese illegal immigrants from entering the territory and to reach an early agreement with Vietnam for speedy repatriation of Vietnamese illegal immigrants. The Administration was also asked to continue to urge the United Nations High Commissioner for Refugees to arrange resettlement of the Vietnamese refugees presently stranded in Hong Kong and to settle the outstanding debt.

Given the serious implications of the cases before the Court of Appeal relating to right of abode, the panel urged the Administration to consider contingent measures to ensure speedy and orderly admission of eligible children from the Mainland who had the right of abode in Hong Kong under the Basic Law.

Concern was expressed by the panel about the management of police officers with psychological problems. The Administration had informed members that the adequacy of psychological counselling services provided to police officers in need would be examined in a full review of the management of officers who had encountered psychological problems.

Members noted that following a review, the Administration had confirmed the need to retain the Closed Area as a buffer zone to facilitate effective operations against illegal immigration, smuggling and other cross-boundary crimes. The panel called upon the Administration to re-examine the coverage of the Closed Area with a view to achieving an effective use of land resources.

The panel noted the three-pronged approach adopted to tackle the problem of domestic violence. The Administration was requested to consider ways of shortening the prosecution time taken against the offenders and also strengthen related training to front-line police officers.

A subcommittee was tasked to examine possible ways to resolve the problem of overcrowding in penal institutions. Members urged the Administration to expedite efforts to increase the supply of penal places.

### ***Panel on Constitutional Affairs***

The panel received regular briefings on matters relating to the 1998 Legislative Council (LegCo) elections. Members expressed concern about the unsatisfactory voter registration rate and urged the Administration to step up its publicity efforts. The panel also urged the Administration to take into account the findings of past analyses on non-voting behaviour in devising a targeted and effective publicity strategy to promote the LegCo elections. Regarding the guidelines on election-related activities in respect of the 1998 LegCo elections, some members expressed reservations about the decision of the Electoral Affairs Commission not to allow photographs of candidates to be printed on the ballot paper. On the election-related subsidiary legislation, a few members raised strong objection to the proposed election expenses limits, in particular to the increase in the limit for the geographical constituency elections.

The panel was briefed on the Administration's proposal to establish an office in Beijing as a step to further enhance liaison and communication of the Hong Kong Special Administrative Region (HKSAR) with the Central People's Government and other provincial/municipal authorities. While members supported the proposal in principle, concern was expressed about the need to pitch the post of the Director of the Beijing Office at Director of Bureau (D8) level.

The panel also discussed the provision of assistance to HKSAR residents encountering problems in the Mainland. The panel urged the Administration to publicize the type of assistance, albeit limited, available to HKSAR residents in distress in the Mainland.

Regarding the review on district organizations, i.e. the municipal councils and district boards, as announced in the Chief Executive's Policy Address in October 1997, the panel was briefed by the Administration on the feedback received during the informal consultation and its progress in preparing the public consultation document to be issued in June 1998. The panel made a number of suggestions on the content and presentation of the consultation document.

### ***Panel on Financial Affairs***

Following the financial turmoil in Asia, the panel continuously sought updates on the developments in the local and Asian financial markets and urged close monitoring of the banking and financial sectors against excessive exposure and manipulation. Members exchanged views with the Administration and the authorities concerned on the appropriate degree of Government intervention in the money market and the reliance on the interest rate as the weapon to fend off speculation and maintain the stability of the Hong Kong dollar. Noting the speculative elements of derivatives, members called on the Administration to review their operation and convey to the Hang Seng Index Services Limited suggestions of reviewing the constituent stocks of the Hang Seng Index. In view of

the knock-on effect of high interest rates, the panel urged the Administration to take immediate steps to restore public confidence in the economy and alleviate the impact of the economic downturn on the community.

The panel reviewed the existing legislation in regulating subsidiaries of securities companies pursuant to the default of the CA Pacific Group and urged early introduction of legislative amendments to subject broker-related finance companies to appropriate regulation. In examining the problem of fraudulent and deceptive activities in relation to trading on Loco London Gold, the panel noted that the majority victims were job seekers who were lured into investing or deceived into authorizing the company concerned to trade on their behalf. Apart from strengthening public education, members considered it necessary to regulate London gold trading by conferring the Chinese Gold and Silver Exchange Society with such a statutory authority.

Noting the inconvenience caused by frequent shortage of coins to the community, the panel took the issue up with the Hong Kong Monetary Authority and urged improvements to the re-allocation and re-distribution mechanism. In addition to negotiating with the mints on speeding up the minting and delivery of new coins, the Authority undertook to discuss with major relevant parties with a view to working out more equitable arrangements for re-distribution of coins in circulation.

### ***Panel on Education***

The panel continued to monitor closely the development of key educational issues. Following the announcement of the approval for 100 schools to use English as the medium of instruction and the appeal by 20 schools against the decision of the Vetting Committee to require them to teach in Chinese, members sought explanation on the vetting criteria and procedures to ensure their

impartiality and transparency. The Administration was urged to take active measures to assure the community of the merits of mother-tongue teaching, and to provide more resources to schools adopting Chinese as the medium of instruction.

On the proposed Native-speaking English Teacher (NET) Scheme which sought to improve the English proficiency of secondary students, members raised questions on the extent of assistance of NETs in developing school-based curriculum and strengthening training on English teaching for local teachers. Members were also concerned about the proposed monthly housing allowance and end-of-contract gratuity for NETs and urged the Administration to align as far as possible the employment terms between local and expatriate teachers. The levels of allowance and gratuity were subsequently adjusted in view of members' concern.

The panel also monitored closely the progress in promoting information technology in education, in particular the formulation of the five-year information technology education strategy, and stressed the need to equip teachers with the necessary training and to provide adequate supporting resources to schools.

Regarding the target of raising the percentage of primary pupils in whole-day schools from 40% to 60% by the 2002 school year, the panel cautioned the Administration against compromising the quality of education in seeking to expedite implementation of whole-day schooling.

The panel also examined the proposed recurrent funding for the 1998-2001 triennium for the eight institutions funded by the University Grants Committee and called for assurances that the quality of tertiary education would not be affected by the 10% reduction in student unit cost.

### ***Panel on Planning, Lands and Works***

The panel was consulted on the proposed mandatory Building Safety Inspection Scheme to address the chronic problems of poor maintenance of ageing buildings. Taking into account members' views and after public consultation, the Administration modified the Scheme so that owners of buildings of 30 years or above and assessed to require detailed investigation would be invited to participate voluntarily in the Scheme, and a \$500 million loan was set up for the purpose.

On slope safety, members noted the concentration of the current 5-year Accelerated Landslip Preventive Measures Programme on man-made slopes in the existing Slope Catalogue which was compiled in 1977-78 and urged the Administration to expeditiously update the Catalogue to include all sizeable man-made slopes in the territory and to identify the maintenance responsibility of registered slopes.

Of equal concern to members was the need to control and prevent floods. Given the El Nino effect of weather conditions, members urged the Administration to upgrade or construct where practicable the drainage systems capable of withstanding rainstorms of a return period of 200 years.

To safeguard against recurrence of failure of contractors to complete tunnelling works under the Strategic Sewage Disposal Scheme Stage I, members supported the measures adopted by the Administration in the selection of contractors for the completion contracts and noted some delay in one of the tunnelling works.

In deliberating on the Final Executive Report of the Territorial Development Strategy Review and the progress of the Study on Sustainable Development for the 21st Century, members stressed the need to take account of development trends in South China, especially in the Pearl River Delta, in planning

strategic development beyond 2011 and to develop measurable sustainability indicators appropriate to Hong Kong's situation.

### ***Panel on Trade and Industry***

Government support for the development of manufacturing and service industries in Hong Kong was a subject of major concern to the panel. The panel supported the financial proposals put forth by the Administration for implementing various initiatives in this area including the establishment of a Science Park, the setting up of the Credit Guarantee Scheme, and the enhancement of the Applied Research & Development Scheme and the Co-operative Applied Research & Development Scheme.

To increase Hong Kong's competitiveness in the international market, members urged the Administration to make extra effort in supporting the manufacturing industries, in particular, the small and medium enterprises. Members were concerned about the increase in the operating costs of enterprises in complying with the requirements stipulated under various regulations. Apart from examining the Administration's measures to assist various industries, members expressed views on the proposal to admit service industries into the industrial estates.

The subject of protection of intellectual property rights was also high on the agenda of the panel. Members supported the Administration's strategy to combat piracy activities at source and welcomed the introduction of the Prevention of Copyright Piracy Bill in this regard.

In examining the report entitled "Competition Policy for Hong Kong", the panel took note of the Administration's intention of establishing a Competition Policy Advisory Group comprising Government officials to monitor the degree of compliance and the progress of reviews on trade practices in different sectors and to assess the feasibility of new initiatives. Members stressed the

need to appoint non-official members to the Group. Whilst noting the justification for retaining the rice control scheme as rice remained the staple diet of the local population, the panel supported the Administration's proposal to conduct an overall review on the trade to ensure fair competition.

### ***Panel on Economic Services***

Following the Government's decision to slaughter all chickens in local farms and all poultry in Government wholesale markets and at all retail outlets to prevent the spread of influenza A H5N1, the panel examined the compensation package and the arrangements to tide operators over. Having considered members' views, the Administration revised the compensation package to provide higher compensation rates and make available low-interest loans to operators to improve hygiene in the facilities.

In the deliberation on the Administration's proposal to expand the Mainland Fisherman Deckhands Scheme to relieve the manpower shortage in the fishing industry, members urged the Administration to carry out a comprehensive review on the manpower requirements of the fishing industry, giving due regard to changes in modes of operation and circumstances surrounding the industry.

The panel sought regular progress reports on the New Airport project. Following the announcement of the deferment of the opening of the New Airport, the panel reviewed with the Administration the cost of the delay to the community. Members considered the issues of safety and efficiency of paramount importance, and urged concurrent commencement of operation of the New Airport with other supporting facilities, including the Airport Railway.

Members debated intensively on the terms and conditions of the Agreement reached between the Government and Hong Kong Telecom International Limited for the company to surrender its licence



with exclusive rights for certain external circuits and telephone services. Whilst reckoning the benefits of liberalization of the external telecommunications market to consumers, members were concerned about the value-for-money aspect of the \$6.7 billion cash compensation to the company, the impact on local exchange line tariffs which were allowed to be raised on 1 January 1999, and fair competition among local telecommunications operators. The panel critically assessed the compensation package and how far the competitiveness of Hong Kong's telecommunications fed into the overall competitiveness of Hong Kong's economy.

### ***Panel on Information Policy***

The development of information technology (IT) was a major issue discussed at several meetings and on which views had been received from 22 deputations from the IT industry and educational institutions. Regarding the implementation of the various IT initiatives announced in the Chief Executive's Policy Address, the panel stressed that there should be advance preparation and careful planning. The panel urged the Administration to formulate strategies for IT development and set up a dedicated bureau and a high level steering committee to lead Hong Kong into an information age. Subsequently, the panel was consulted on the establishment of the Information Technology and Broadcasting Bureau for the co-ordination of all IT-related matters including telecommunications and broadcasting.

The panel had requested the Administration to open up the market of telecommunications and also ensure effective and fair competition. The Government subsequently reached an agreement with the Hong Kong Telecommunications Ltd. on the early resolution of its exclusivity of certain external circuits and telephone services on 31 March 1998.

Addressing a concern that press freedom might decline after the transfer of sovereignty, the panel sought assurance from the Secretary for Home Affairs that the Government was committed to maintaining an environment in which a free and active press could operate under the minimum regulation.

Other issues discussed by the panel included the protection of personal data privacy, the implementation of the Code on Access to Information in Government departments, and newspaper reports on triad activities.

### *Panel on Welfare Services*

Members discussed with the Administration the implementation of the recommendations of the Working Group on Care for the Elderly and the study on elderly recipients of Comprehensive Social Security Assistance (CSSA) conducted by the University of Hong Kong. The panel urged the Administration to commence the additional monthly payment for elderly CSSA recipients, announced in the Chief Executive's Policy Address in October 1997, with immediate effect.

The panel was concerned about the supply of subvented residential care places for the elderly. The panel had discussed with the Administration its plans to increase the supply of residential care places and the outcome of two separate reviews : one on community centres and the other one on sites reserved for development of such centres. Members urged the early release of premises and land for development into welfare facilities.

The panel considered that the Administration had failed to address the concerns raised by members and deputations regarding, firstly, the lack of retirement protection for the elderly, housewives and people with a disability under the Mandatory Provident Fund Scheme, and secondly, the increasing

financial burden caused to the society by CSSA payments. The panel requested the Administration to further study these issues and explore the various proposals put forward by members and deputations at the meeting.

The panel also noted with concern the shortage of Social Security Assistants at a time when the number of CSSA cases was continuing to increase. Members were worried that easement measures would lead to more abuse of the system and urged the Administration to review the CSSA application and investigation procedures.

### ***Panel on Health Services***

The panel met representatives of the Hospital Authority (HA) to express its concern over the series of medical incidents at public hospitals and discuss the remedial measures to be taken. Members urged the HA to do its best to assure quality of care and enhance professional accountability.

Following the outbreak of influenza A H5N1 virus cases, members urged the Administration to set up a special task group to publicize up-to-date information and to educate the public on precautionary measures against infection. Members also expressed their concern over the way in which the chicken slaughtering operation was conducted and requested the Administration to draw up a contingency plan in the event of an epidemic.

The panel also discussed with the Administration the legislative control for pharmaceutical products and radioactive substances. Members urged the Administration to improve co-ordination between the two licensing bodies and also ensure that importers of pharmaceutical products were fully aware of the licensing requirements.

Members expressed their dissatisfaction with the present arrangement under which the Department of Health had to work with the two municipal councils and two other Government departments in order to carry out its responsibility for the prevention and control of infectious diseases. Members considered that there was a need to review such an arrangement with a view to strengthening infectious diseases surveillance work.

The panel also commissioned research projects on Health Care for Elderly People, Long Term Health Care Policy and Health Care Expenditure and Financing in Hong Kong and studied the findings of such researches with the Administration.

### ***Panel on Environmental Affairs***

Members exchanged views with the Administration on the management of different types of wastes. Noting the Administration's intention of utilizing the Chemical Waste Treatment Centre at Tsing Yi for treating clinical wastes, members urged the Administration to consult the relevant parties and study the environmental and financial assessments before making a final decision. Given the difficulties in identifying new sites for landfills for disposal of wastes, members agreed that waste-to-energy incineration and waste reduction should be the way forward.

In the light of the interim findings of the Liquefied Petroleum Gas (LPG) Taxi Trial Scheme, which showed that LPG taxis were technically practicable and commercially viable, members urged the Administration to formulate plans to introduce LPG taxis on a large scale and consider extending the use of LPG to other types of vehicles.

Noting a projected substantial operating deficit of the Sewage Services Trading Fund, members supported winding up the Fund but stressed the need to critically review the experience. The panel

urged the Administration to expedite Phase I of the Environmental Impact Assessment Study for Stage II of the Strategic Sewage Disposal Scheme and to consult members on its outcome.

In the wake of the spate of sewage leaks which resulted in the temporary closure of some beaches, the panel deliberated with the Administration on the effectiveness of the emergency response plan and urged further improvement in communication among Government departments.

Given that pollution was no respecter of administrative boundaries, the panel called for strengthened co-operation with the Mainland authorities in addressing environmental issues of mutual concerns and enhanced transparency of the Hong Kong-Guangdong Environmental Protection Liaison Group.

## CHAPTER 4 REDRESS SYSTEM

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The Council operates a redress system under which the public can make representations on or seek solutions to problems arising from Government policies, decisions and procedures. Under the system, Members provide assistance, where justified, to members of the public who are aggrieved by Government actions or policies. They also deal with public representations on Government policies and legislation as well as other matters of public concern.

In groups of six, Members take turns to be on duty each week to oversee the system and to receive petitions as well as representations made by deputations. In addition, they take turns to be on "ward duty" during their duty week to meet individual complainants and to give guidance to staff in processing cases. Staff of the Secretariat provide full-time support service to Members in the operation of the system.

With the establishment of more grievance redress channels, the redress system maintains its primary target towards representations that raise wide policy issues and matters of public concern, while the ambit of service to the public remains unchanged.

During the term of Council, 961 new cases were received. Of these new cases, 163 were group representations and 798 cases were brought up by individual members of the public. Out of the 996 cases completed within the period, Members directly handled 271 cases which constituted 27.2% of the caseload. The remaining 725 cases were handled by Secretariat staff on behalf of Members. In view of the increased complexity of the cases and the increasing awareness of public rights, the qualitative demand on the services grew considerably. In order to resolve some cases expeditiously,

Members held 28 case conferences with representatives of the Administration. In addition to cases, over 1793 telephone enquiries were handled during the period.

**Appendix 5** illustrates the nature and outcome of the cases completed. **Appendix 6** is a breakdown of these cases by Government policy bureaux/departments, independent organizations and non-Government organizations.

## **ANALYSIS OF SIGNIFICANT CASES DEALT WITH**

Some of the more common and significant cases dealt with under the redress system are as follows :

### ***Housing Cases***

Housing attracted the highest number of cases, totalling 161. More than half of the complaints lodged by individual complainants were about estate management. Other more common complaints were about public rental housing (PRH) applications. The rest of the complaints were about applications for transfer, addition of family members to tenancy, over-crowding relief and split of tenancy, termination of tenancy, sale and purchase of Home Ownership Scheme (HOS) flats, squatter control etc.

The 20 group representations in this category were about redevelopment of old PRH estates, clearance of temporary housing areas, rent policy and redevelopment arrangements for Housing Authority flatted factory estates, regulations on installation of air-conditioners in PRH flats and the Approved Decoration Contractors System for PRH and HOS flats etc. Representations were received from owners of HOS flats on the poor construction quality and maintenance works of these flats. The significant cases included the site settlement problem at On Ning Garden, miscalculation in saleable

areas at Verbena Heights and flooding/landslip at Mei Chung Court. In some of these cases, site visits were conducted by Members followed by case conferences with Government officials at the site. Some issues were resolved while those requiring a change in policy or in law were referred to the Panel on Housing for further deliberation.

### ***Immigration Cases***

Immigration cases, totalling 108, were the second largest category of cases handled during the period. Requests for assistance and enquiries on the acquisition of the right of abode in Hong Kong in relation to Article 24 of the Basic Law, which provides for the definition of permanent residents of the Hong Kong Special Administrative Region, constituted over 58% of the immigration cases processed. A considerable number of complainants of these cases, who had been granted leave for judicial review regarding their claim for right of abode, also solicited assistance to reduce their frequency of reporting to the Immigration Department and to take up study courses during their temporary stay in Hong Kong. With Members' support, many cases were sympathetically considered by the Government.

Other immigration cases encompassed requests for family members' permanent stay or extension of stay in Hong Kong for the purpose of family reunion or on other compassionate grounds. Enquiries and requests for assistance were also received from members of the public regarding the issue of identity cards and applications for HKSAR or British National (Overseas) passports.

### ***Social Welfare Cases***

Social welfare cases, totalling 57, were the third largest category of cases handled during the period. The majority of these were individual cases mainly relating to applications for social security. They included enquiries on the eligibility for assistance under the Comprehensive Social Security



Assistance (CSSA) Scheme and Social Security Allowance (SSA) Scheme, the progress of applications for these Schemes, requests for cancellation of the absence restriction under the SSA Scheme and delay in payment of the CSSA.

Other cases related to enquiries on the progress of applications for compassionate rehousing in PRH estates, complaints/views on residential care homes for the elderly, requests for more assistance to street sleepers, and requests for assistance in private housing arrangements etc.

### ***Police Cases***

The Hong Kong Police Force attracted the fourth highest number of cases, totalling 56. The most common topics of the complaints related to complaints against police officers for impolite manner, unfair treatment and improper action.

Nearly 20% of these cases were complaints about the arrangements for the issue of Closed Area Permits (CAP) lodged by a group of Sha Tau Kok and Ta Kwu Ling residents. They petitioned Members about the alleged change in policy on the issue of CAP, as well as the inconsistency and disparity in treatment by different police officers on their applications for CAP. A case conference was held with the Government at which it undertook to revise the CAP system with a view to increasing transparency and providing a review mechanism for rejected cases. The issue was taken further by the Panel on Security in conjunction with the proposal to review the general policy on closed areas.

### ***Transport Cases***

The most common topics of the 48 cases in this category concerned road safety, and bus and ferry services.

Motorists complained about the inconvenience caused by the two incompatible automatic toll collection systems, namely the Autopass System and Electronic Toll System, adopted by different tunnels and toll roads. Moreover, they had to pay deposits for both systems. The Government subsequently proposed to set up a new joint venture company which would merge the two systems into a single clearing house.

Shortage of coins in the period had also caused much grievance, especially among bus passengers who were not given change for their bus fares. They strongly urged that the use of common stored value tickets be extended to all bus services. The Government requested the public transport operators to speed up the installation of the Octopus system in all franchised buses.

### ***Other Significant Cases***

Subsequent to the announcement of the legislative proposal to increase revenue relating to dutiable commodities in the 1998-99 Budget, representatives from the taxi, minibus and lorry trades petitioned Members to raise objection to the proposed six percent increase in duties on fuel, in particular that of light diesel oil. Members were sympathetic to their plight. Their petition was referred to the bills committee on the Dutiable Commodities (Amendment) Bill 1998 for consideration. After deliberation, the bills committee unanimously agreed to freeze, inter alia, the proposed increase in duties on fuel. The Bill was passed with this and other amendments.

In the wake of the influenza A H5N1 infection in both chickens and human beings, the Government ordered the slaughter of some 1.5 million birds in local farms, Government wholesale poultry markets and retail outlets. Poultry farmers, wholesalers, retailers and transport operators affected by the operation were dissatisfied with the initial compensation package proposed by the Government. Members were sympathetic to their petition. The policy aspects of the issue was further examined by

the Panel on Economic Services. Consequently the Finance Committee approved an enhanced compensation/financial assistance package to the affected operators.

The influenza A H5N1 virus incident had allegedly also cast undesirable impact on the quail trade. Numerous quail farmers petitioned Members for compensation and financial assistance from the Government. Following a case conference with the Government, the case was satisfactorily resolved with appropriate financial assistance in the form of loans to the quail farmers.

Representations were received from the Hong Kong Private Nursing Home Owners Association and Owners' Corporations of private buildings regarding the issue of licences for residential care homes for the elderly and guesthouses in private buildings respectively. The former petitioned that they faced difficulties in operating these homes in either commercial or residential premises. They requested the Government to specify the nature of these homes, viz commercial or residential, so that they could avoid possible legal action by owners of the buildings. They also requested the Government to specify certain parts of buildings for use of these homes in future land grants. The Owners' Corporation objected most strongly to the operation of guesthouses in residential buildings. They requested the Government to review the procedures thereby specifying compliance with the Deed of Mutual Covenant of the building concerned a pre-requisite for the issue of guesthouse licences. Members supported their petitions.

Several petitions were received against the Land Development Corporation (LDC). Owners/residents of the Tsuen Wan "Seven Streets" and Kennedy Town "Five Streets" were dissatisfied with the compensation and rehousing arrangements proposed by LDC in connection with the redevelopment of their areas. Owners/residents of the Hanoi Road redevelopment project complained about LDC's delay in offering the compensation and rehousing package and the lack of transparency in its work. The representations were referred to the Government and the matter was

also discussed at the Panel on Planning, Lands and Works. With regard to the redevelopment project in Tsuen Wan and Kennedy Town, LDC subsequently announced a more favourable Home Purchase Allowance for tenanted area of resumed properties and improved the assessment basis for the allowance to enable owners to purchase a one- to 5-year old instead of a 10-year old replacement flat. Individual owners who disagreed with LDC's valuations were advised to appeal to the Lands Tribunal. With regard to the Hanoi Road project, LDC made the offer and held a briefing with the owners/residents.

The Joint Committee of Hong Kong Fishermen's Organizations, Coalition of Hong Kong Fishing Industry and Hong Kong Fishing Vessel Owners Association petitioned on the Mainland Fishermen Deckhands Scheme introduced in 1995 to allow a maximum of 3500 mainland fishermen deckhands employed on distant water fishing fleet to enter Hong Kong to assist fishermen to land catches in Hong Kong. The deputations complained about the insufficient quota of 3500. They also complained that the scheme applied only to vessels of not less than 25 metres in length and with an engine power of not less than 400 horsepower. The Government subsequently agreed to increase the quota of the scheme to 5500 and relax the application of the scheme to vessels of not less than 20 metres in length or with an engine power of not less than 200 horsepower.

Representatives of the Parents' Association of Pre-School Handicapped Children enlisted Members' assistance for the early reprovisioning of Buddhist Po Kwong School at Fanling and Hong Chi Morninghope School at Tuen Mun in view of the poor conditions and sub-standard facilities of the existing premises. Reprovisioning of these schools would also provide additional places for mentally handicapped children in North District. Following a visit to the schools, Members held a case conference with Government officials. The reprovisioning for Buddhist Po Kwong School would be advanced by one year while advancement of the project for the other school was being examined.

Pending the reprovisioning, the Government undertook to take necessary measures to improve the existing environment and facilities of the schools.

**LIAISON WITH SHENZHEN MUNICIPAL GOVERNMENT**

Before the establishment of the Hong Kong Special Administrative Region, the Provisional Legislative Council conducted its business in Shenzhen. From February to June 1997, the Council was serviced by a 20-member Secretariat which also operated in Shenzhen. All open meetings of the Council and its committees were held at Huaxia Arts Centre where a temporary office was fitted out to provide support to the business of the Council.

In making logistical arrangements for meetings, the Secretariat was given much support from various departments of the Shenzhen Municipal Government in aspects such as local transportation and immigration clearance. The Huaxia Art Centre also rendered assistance in setting up the facilities for open meetings and providing guarding service. Through the help of the Shenzhen Television Station, live broadcast of the proceedings of Council meetings was made available to the members of the public in Hong Kong.

**OVERSEAS VISITS BY MEMBERS**

From 12 to 15 February 1998, a nine-member delegation of the Provisional Legislative Council visited Singapore at the invitation of the Singapore Parliament's Hong Kong-Singapore Parliamentary Friendship Group. During the four-day visit, the delegation held meetings with Singaporean parliamentarians, ministers, officials of various ministries and Government-funded agencies, and community leaders. The delegation received briefings on a variety of subjects, and discussed with their hosts issues of common interest.

## **LUNCH WITH CONSULS GENERAL**

To enhance closer contacts between Members and the diplomatic community in Hong Kong, regular lunches were organized to provide opportunities for Members to make acquaintance and to exchange views with consular officials on the work of the Council as well as matters of mutual concern. During the year under review, eight such lunches were held, which were attended by a total of 47 consular officials.

## **CONTACT WITH PROVISIONAL MUNICIPAL COUNCILS AND PROVISIONAL DISTRICT BOARDS**

During the term of the Provisional Legislative Council, Members of the Council held on a roster basis a round of meetings with members of each of the 18 provisional district boards to exchange views on matters of mutual concern. These meetings were followed by a luncheon attended by the President and other interested Members. Issues on matters of policy raised at the meetings were referred to the relevant panels for more in-depth study, while individual cases were taken up by the Complaints Division for follow-up with the Administration.

## **VISITORS**

Between July 1997 and June 1998, Members held a total of 69 meetings with visitors from outside Hong Kong and took the opportunity to brief them on the latest developments in Hong Kong. Among

the visitors were members of other legislatures, political and business leaders, Government officials and prominent persons from various territories. A list of the visitors received during the session is in **Appendix 7.**



**THE PROVISIONAL LEGISLATIVE COUNCIL COMMISSION**

The Provisional Legislative Council Commission was a statutory body established under The Legislative Council Commission Ordinance (Cap 443) to direct the operation of a secretariat to service the Provisional Legislative Council. Chaired by the President of the Council and comprising 12 other Members, the Commission exercised managerial and financial autonomy in providing administrative support and facilities to the Council. There were three committees under the Commission to carry out certain delegated functions. Membership of the Commission and its committees, and their terms of reference are set out in **Appendix 8**.

Prior to the establishment of The Provisional Legislative Council Commission on 1 July 1997, the supervision of the Secretariat to provide service to the Council in Shenzhen was undertaken by the Working Group on Administrative Matters composed of 12 members. The Working Group was dissolved on 1 July 1997 and its members continued to serve as members of The Provisional Legislative Council Commission.

**THE PROVISIONAL LEGISLATIVE COUNCIL SECRETARIAT**

Headed by the Secretary General, the Provisional Legislative Council Secretariat comprised nine divisions. Staff of the Secretariat were directly appointed by the Commission. As at 30 June 1998, there were 308 staff in the Secretariat. The organization chart is shown in **Appendix 9**.

## ***Council Business Divisions***

Servicing of Council and committee meetings was undertaken separately by three divisions: Council Business Divisions 1, 2 and 3. Their respective responsibilities are described below :

### Division 1

The division provided secretariat and support services to the Finance Committee and its two subcommittees, the Committee on Rules of Procedure, as well as nine panels and any bills committees/subcommittees on bills or other Council business relating to the same policy areas. The division was also responsible for co-ordination work in respect of panels and Members' regular meetings with provisional district boards.

### Division 2

The division serviced the House Committee, and nine panels and any bills committees/subcommittees on bills or other Council business relating to the same policy areas. The division also co-ordinated the scrutiny of bills and subsidiary legislation introduced into the Council.

### Division 3

The division serviced the regular meetings of the Council as well as the Public Accounts Committee and the Committee on Members' Interests. In addition, it assisted Members in receiving overseas visitors and serviced parliamentary liaison activities.

## ***Legal Service Division***

Headed by the Legal Adviser, the division prepared legal reports on bills and subsidiary legislation, and advised committees of the Council on legal matters relating to proceedings of committees. The

Legal Adviser was also the Counsel to the Provisional Legislative Council, advising the President and the Clerk to the Provisional Legislative Council on legal matters in respect of Council proceedings.

### ***Research and Library Services Division***

The division provided a research service to the Council and its committees. It also managed the Council library which was open to Members and staff of the Secretariat. Members of the public were allowed access to records of open meetings of the Council and its committees and related papers.

### ***Complaints Division***

The division assisted Members in handling complaints and representations from members of the public. It serviced Members' meetings with complainants and case conferences with Government officials.

### ***Public Information Division***

The division was responsible for the development and implementation of a public information and education programme on the Council.

### ***Translation and Interpretation Division***

The division was responsible for the production of the Hong Kong Hansard - Official Record of Proceedings of the meetings of the Provisional Legislative Council. It also provided translation service in respect of questions, motions, papers, minutes and other Council and committee papers.

### ***Administration Division***

The division provided secretariat service to The Provisional Legislative Council Commission and internal administrative support to other divisions of the Secretariat. It also administered Members' remuneration and allowances.