

# **OFFICIAL RECORD OF PROCEEDINGS**

**Wednesday, 21 June 2000**

**The Council met at half-past Nine o'clock**

## **MEMBERS PRESENT:**

THE PRESIDENT

THE HONOURABLE MRS RITA FAN, G.B.S., J.P.

THE HONOURABLE KENNETH TING WOO-SHOU, J.P.

THE HONOURABLE DAVID CHU YU-LIN

THE HONOURABLE HO SAI-CHU, S.B.S., J.P.

THE HONOURABLE CYD HO SAU-LAN

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

THE HONOURABLE ALBERT HO CHUN-YAN

THE HONOURABLE MICHAEL HO MUN-KA

IR DR THE HONOURABLE RAYMOND HO CHUNG-TAI, J.P.

THE HONOURABLE LEE WING-TAT

THE HONOURABLE LEE CHEUK-YAN

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

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

THE HONOURABLE LEE KAI-MING, S.B.S., J.P.

DR THE HONOURABLE DAVID LI KWOK-PO, J.P.

THE HONOURABLE FRED LI WAH-MING, J.P.

DR THE HONOURABLE LUI MING-WAH, J.P.

THE HONOURABLE NG LEUNG-SING

PROF THE HONOURABLE NG CHING-FAI

THE HONOURABLE MARGARET NG

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

THE HONOURABLE RONALD ARCULLI, J.P.

THE HONOURABLE MA FUNG-KWOK

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE HUI CHEUNG-CHING

THE HONOURABLE CHRISTINE LOH

THE HONOURABLE CHAN KWOK-KEUNG

THE HONOURABLE CHAN YUEN-HAN

THE HONOURABLE BERNARD CHAN

THE HONOURABLE CHAN WING-CHAN

THE HONOURABLE CHAN KAM-LAM

DR THE HONOURABLE LEONG CHE-HUNG, J.P.

THE HONOURABLE MRS SOPHIE LEUNG LAU YAU-FUN, J.P.

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE GARY CHENG KAI-NAM, J.P.

THE HONOURABLE SIN CHUNG-KAI

THE HONOURABLE ANDREW WONG WANG-FAT, J.P.

DR THE HONOURABLE PHILIP WONG YU-HONG

THE HONOURABLE WONG YUNG-KAN

THE HONOURABLE JASPER TSANG YOK-SING, J.P.

THE HONOURABLE HOWARD YOUNG, J.P.

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE YEUNG YIU-CHUNG

THE HONOURABLE LAU CHIN-SHEK, J.P.

THE HONOURABLE LAU KONG-WAH

THE HONOURABLE LAU WONG-FAT, G.B.S., J.P.

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

THE HONOURABLE AMBROSE LAU HON-CHUEN, J.P.

THE HONOURABLE EMILY LAU WAI-HING, J.P.

THE HONOURABLE CHOY SO-YUK

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE SZETO WAH

THE HONOURABLE TIMOTHY FOK TSUN-TING, S.B.S., J.P.

THE HONOURABLE LAW CHI-KWONG, J.P.

THE HONOURABLE TAM YIU-CHUNG, G.B.S., J.P.

THE HONOURABLE FUNG CHI-KIN

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

**MEMBER ABSENT:**

THE HONOURABLE JAMES TIEN PEI-CHUN, J.P.

**PUBLIC OFFICERS ATTENDING:**

MR MICHAEL SUEN MING-YEUNG, G.B.S., J.P.  
THE CHIEF SECRETARY FOR ADMINISTRATION

THE HONOURABLE DONALD TSANG YAM-KUEN, J.P.  
THE FINANCIAL SECRETARY

THE HONOURABLE ELSIE LEUNG OI-SIE, J.P.  
THE SECRETARY FOR JUSTICE

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

MR GORDON SIU KWING-CHUE, J.P.  
SECRETARY FOR PLANNING AND LANDS

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

MR JOSEPH WONG WING-PING, G.B.S., J.P.  
SECRETARY FOR EDUCATION AND MANPOWER

MISS DENISE YUE CHUNG-YEE, J.P.  
SECRETARY FOR THE TREASURY

MR STEPHEN IP SHU-KWAN, J.P.  
SECRETARY FOR FINANCIAL SERVICES

MR DAVID LAN HONG-TSUNG, J.P.  
SECRETARY FOR HOME AFFAIRS

MRS LILY YAM KWAN PUI-YING, J.P.  
SECRETARY FOR THE ENVIRONMENT AND FOOD

MRS REGINA IP LAU SUK-YEE, J.P.  
SECRETARY FOR SECURITY

MS MARIA KWAN SIK-NING, J.P.  
SECRETARY FOR ECONOMIC SERVICES

### **CLERKS IN ATTENDANCE:**

MR RICKY FUNG CHOI-CHEUNG, J.P., SECRETARY GENERAL

MR LAW KAM-SANG, J.P., DEPUTY SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY  
GENERAL

**TABLING OF PAPERS**

The following papers were laid on the table pursuant to Rule 21(2) of the Rules of Procedure:

**Subsidiary Legislation/Instruments***L.N. No.*

Financial Resources Rules (Exemption) Notice 2000 .... 215/2000

**Other Papers**

- No. 105 — Report on the Administration of the Immigration Service Welfare Fund prepared by the Director of Immigration Incorporated in accordance with Regulation 12(b) of the Immigration Service (Welfare Fund) Regulation
- No. 106 — The Government Minute in response to the Report No. 33B of the Public Accounts Committee dated April 2000
- No. 107 — Report of the Public Accounts Committee on Report No. 34 of the Director of Audit on the Results of Value for Money Audits (June 2000 - P.A.C. Report No. 34)
- No. 108 — 1999 Annual Report by the Commissioner of the Independent Commission Against Corruption Hong Kong Special Administrative Region
- No. 109 — Sir Robert Black Trust Fund Annual Report for the year 1 April 1999 to 31 March 2000
- No. 110 — Sir David Trench Fund for Recreation Trustee's Report 1999-2000
- No. 111 — The Twelfth Annual Report of the Ombudsman, Hong Kong (June 2000)

No. 112 — Independent Commission Against Corruption Complaints Committee  
Annual Report 1999

No. 113 — Report of the Independent Police Complaints Council 1999

Committee on Rules of Procedure of the Legislative Council of the  
Hong Kong Special Administrative Region  
Progress Report for the period May 1999 to June 2000

Report of the Panel on Home Affairs 1999/2000

Report of the Panel on Transport 1999/2000

Report of the Panel on Housing 1999/2000

Report of the Panel on Security 1999/2000

Report of the Panel on Constitutional Affairs 1999/2000

Report of the Panel on Financial Affairs 1999/2000

Report of the Panel on Planning, Lands and Works 1999/2000

Report of the Panel on Welfare Services 1999/2000

Report of the Panel on Information Technology and Broadcasting  
1999/2000

Report of the Panel on Health Services 1999/2000

Report of the Panel on Environmental Affairs 1999/2000

Report of the Bills Committee on Legal Practitioners (Amendment) Bill  
1999

Report of the Bills Committee on Evidence (Amendment) Bill 1999

Report of the Bills Committee on Companies (Amendment) Bill 2000

Report of the Bills Committee on Building Management (Amendment) Bill  
2000

Report of the Bills Committee on Human Reproductive Technology Bill

Report of the Bills Committee on Broadcasting Bill

## **ADDRESSES**

**PRESIDENT** (in Cantonese): Addresses. Chief Secretary for Administration will address the Council on the Government Minute in response to the Report No. 33B of the Public Accounts Committee dated April 2000.

### **The Government Minute in response to the Report No. 33B of the Public Accounts Committee dated April 2000**

**CHIEF SECRETARY FOR ADMINISTRATION:** Madam President, laid on the table today is the Government Minute responding to Report No. 33B of the Public Accounts Committee (PAC) which contained the PAC's deliberations on three outstanding subjects investigated by the Director of Audit in his Value For Money Report No. 33. The efforts of the PAC in considering these important subjects in detail and producing a supplemental report are appreciated. This Minute sets out the measures that the Government has taken, or is planning to take, on the conclusions and recommendations contained in the Report.

The Honourable Eric LI, Chairman of the PAC, spoke in this Council in 12 April when tabling the PAC Report No. 33B. He commented at some length on each of the three subjects. I would like to respond to them in turn.

First, the refuse collection service of the Urban Services Department. The Administration is determined to improve the quality and cost-effectiveness of our refuse collection service. Keeping our city clean is a top priority for the Government. The new institutional framework for the delivery of municipal services put in place since 1 January 2000 is conducive to our achieving this objective. I am pleased to report that the new Food and Environmental Hygiene Department has taken a number of measures to improve and strengthen the refuse collection service. These include strengthened supervision of the refuse



collection teams through regular and surprise checks, regular reviews on the refuse collection routes taking into account changes in refuse yield and operational conditions to ensure that there is no excess capacity and use of modern equipment and devices.

Service quality aside, the PAC has rightly expressed concern about the cost-effectiveness of the refuse collection service and the productivity of the in-house refuse collection teams. We have taken fully on board the PAC's recommendation to speed up the contracting out of this service to achieve greater cost-efficiency. The Director of Food and Environmental Hygiene has drawn up a programme with the objective of contracting out 50% of the refuse collection service by late 2002.

Like the PAC, we realize that we have to carefully manage the impact of a more rapid outsourcing programme on existing civil service staff. Over the last few months, the Administration has deliberated on the question of surplus staff, not only in connection with the contracting out of refuse collection service, but also those relating to other efficiency measures across the Government. On the one hand, the Government is committed to providing public services in a cost-effective manner. On the other, it remains our policy to avoid staff redundancy. To achieve both objectives, we have decided to introduce a Voluntary Retirement Scheme on a one-off basis for staff in grades which are likely to have a surplus. I am glad that Members are in support of this Scheme and the Finance Committee approved funding of \$1.1 billion for its implementation earlier this month. The Food and Environmental Hygiene Department will monitor the response of staff in the affected grades to the Voluntary Retirement Scheme in planning the programme for further contracting out of the refuse collection service. The Department will also work closely with the Civil Service Bureau on the redeployment of surplus staff.

The PAC has expressed concern that the consultancy study commissioned by the former Urban Services Department on the cleansing services had not been reported to the former Provisional Urban Council and suggested that better arrangements should be put in place to ensure the publication of consultancy reports. In addressing the concern of the PAC, the Secretary for the Environment and Food has already pointed out in her reply to the PAC on 15 March 2000 that the recommendations of the consultancy study, particularly those on the contracting out of refuse collection service, had far-reaching staffing and resource implications and, therefore, had to be reviewed in the light of the

reorganization of municipal services. I am sure the Bureau and the Department will take account of the study's recommendations in the review of cleansing and refuse collection services. As regards the general issue of disclosure of consultancy reports commissioned by the Government, there are already established arrangements for bureaux and departments to consult the relevant Panels of the Legislative Council before and after the commissioning of those studies, especially where significant funding or policies are involved.

Let me now turn to the PAC's comments on the management practices of the Vocational Training Council (VTC). The main recommendations of the PAC are that key output and outcome performance indicators for planning and measuring the results of vocational education and training services, as well as clear definition of respective responsibilities of the Government and the VTC, should be included in a framework agreement to be agreed between the Government and the VTC. As Members are already aware, the Administration and the VTC have entered into a Memorandum of Administration Arrangements (MAA) earlier this month. As the MAA has been submitted to the Finance Committee for information earlier this month, I do not intend to go into the details of its provision, save to express our thanks to the PAC for its observations and recommendations, many of which have now been reflected in the MAA.

I am pleased that in noting the MAA with the VTC, the Finance Committee has supported the new funding arrangements which will give the VTC greater flexibility in managing its resources to meet changing demands and greater incentive to achieve productivity savings. These improvements are part of the Administration's efforts to invigorate the subvention system in order to bring out the greatest potential of our non-governmental organizations in providing services to the community. I look forward to Members' support of our similar endeavours in other sectors.

I now turn to a subject of much concern to the community, and that is, water supply. Water is essential for life. Given our very limited local water resources, Hong Kong must obtain a reliable water supply to meet our primary need and sustain its stability and prosperity. With the co-operation from Guangdong, we secured a more reliable water supply from Dongjiang in 1989. In fact, Dongjiang water has played an extremely important role in supporting our lives and sustaining the economic growth of Hong Kong over the past 30 years.

It should be noted that negotiating for a steady and reliable supply of raw water to meet growing population needs is no easy task. Heavy and front-end loaded capital investment in infrastructure is involved and some projections of demand are unavoidable. Seen against these, the 1989 agreement was already the most flexible and pragmatic arrangement achievable at the time. Notwithstanding the fact that the agreement has not provided for the flexibility in the supply quantities or resolution of disputes, we have tried our utmost effort all the time to seek reduction of supply quantities and improvement in raw water quality standard whenever such a need became apparent. For example, in the 1998 loan agreement for financing the closed aqueduct project which, upon completion, should significantly improve quality of water supplied to Hong Kong, we have successfully obtained a total reduction of 560 million cu m in the supply quantities from 1998 to 2004, amounting to 10% reduction in the fixed annual supply quantities for the period and saving contract payments in the order of \$1.8 billion.

Treated water in Hong Kong is in full compliance with the World Health Organization standards and is always safe for consumption. To achieve a quality supply of Dongjiang water to Hong Kong, there are regular meetings with the Guangdong authorities to monitor the quality of Dongjiang water and formulate improvement measures to maintain the raw water quality. The Guangdong authorities have pledged to elevate the water quality to the 1988 standard of the Environmental Quality Standard for Surface Water upon the commissioning of the closed aqueduct.

The Administration has never had any intention of holding back information to the Legislative Council on the Dongjiang water issues. Nonetheless, we recognize that with increasing concern from the community about the quality of water that we consume, there is a need to enhance communication with both the Legislative Council and the public on water quality issues. For this purpose, we have established an Advisory Committee on the Quality of Water Supplies with a wide representation from academics, professionals, local district representatives and green groups. The Advisory Committee will render useful advice on how to strengthen the monitoring of water quality and how to enhance transparency through public participation. As an initial step, test results on both raw and treated water will be released to the public on a regular basis.

The two Governments' commitment to protecting Dongjiang for the sustainable development of the Pearl River Delta Region was clearly reaffirmed in the Joint Statement made by the Governor of Guangdong Province and the Chief Executive in October last year. The Joint Working Group on Sustainable Development and Environmental Protection will ensure that both side will work closely to tighten pollution control and improve the Dongjiang water quality. It is expected that improvement in the water quality will become more apparent with the commissioning of the closed aqueduct in 2003 and the Guangdong authorities' continued effort to combat the pollution at source in Guangdong Province.

I wish to express my sincere thanks to the Chairman and members of the PAC for their valuable work and sound advice. The Administration will continue to work in partnership with the PAC in a positive and constructive spirit. Thank you.

**MISS EMILY LAU** (in Cantonese): Madam President, may I ask for your consent to seek elucidation under Rule 28(2) of the Rules of Procedure on the speech of the Chief Secretary for Administration.

**PRESIDENT** (in Cantonese): Miss Emily LAU, you may ask a short question.

**MISS EMILY LAU** (in Cantonese): Madam President, I would like to ask a question about the quality of Dongjiang water. When the Chief Secretary for Administration talked about the closed aqueduct project in her speech just now, she said that the Guangdong authorities have pledged to elevate the water quality to the 1988 standard of the Environmental Quality Standard for Surface Water upon the completion of the closed aqueduct. However, no one has ever mentioned this point during the hearing of the Public Accounts Committee. At that time, the Secretary for Works only said he was "confident" that this standard could be reached, but the key word in this case is that the Authority has "pledged". However, Madam President, I notice that in the Chinese version of the Secretary's speech — the Secretary just delivered her speech in English — it was said that it "pledged to endeavour" ( “承諾盡力” ) to do so. If we referred to paragraph 22 of the Government Minute, we will only find the word "pledge" ( “承諾” ) but not the word "to endeavour" ( “盡力” ).

Madam President, what I would like the Secretary to elucidate is whether the Authority will "endeavour", for everyone knows that "pledged to endeavour" is different from "pledged". Furthermore, since the Authority has "pledged" to do so, then I would like to know whether the Secretary is aware of the consequences if the standard in this "pledge" cannot be reached?

**PRESIDENT** (in Cantonese): Chief Secretary for Administration, will you please elucidate on this?

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): Madam President, I agree that there seems to be a slight difference between the Chinese version and the English version, as pointed out by Miss Emily LAU. In the English version, it is "pledged (to elevate)" but it is rendered as "承諾盡力" in the Chinese version, which carries the meaning of "pledging to make utmost efforts". I think this is a technical problem in translation. Yet, Members should be well aware of the central idea, that is, the Guangdong Authorities have pledged to elevate the water quality to the 1998 standard.

**PRESIDENT** (in Cantonese): Miss LAU, please be brief.

**MISS EMILY LAU** (in Cantonese): Madam President, the Secretary has not answered my second question, and that is what will be the consequences if the pledged standard cannot be reached.

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): Madam President, I think that is a hypothetical question. We certainly hope that the standard can be met.

**PRESIDENT** (in Cantonese): Mr Eric LI, Chairman of the Public Accounts Committee, will address the Council on the Committee's Report of the Director of Audit on the Results of Value for Money Audits (Report No. 34).

**Report of the Public Accounts Committee on Report No. 34 of the Director of Audit on the Results of Value for Money Audits  
(June 2000 - P.A.C. Report No. 34)**

**MR ERIC LI:** Madam President, on behalf of the Public Accounts Committee (PAC), I have the honour to table our Report No. 34 today.

The Director of Audit's Report on the results of value for money audits completed between October 1999 and February 2000, that is, Report No. 34 was submitted to you on 15 March 2000 and tabled in the Legislative Council on 29 March 2000. The Report tabled today contains the conclusions reached by the PAC on the Director of Audit's Report.

In studying the subjects covered in the respective chapters of this Report, the PAC has also examined the following significant matters of principle:

- (a) the role and responsibility of Policy Bureaux for monitoring the operation and performance of the departments under their spheres of responsibility;
- (b) transparency in public administration, including disciplinary proceedings in the Civil Service; and
- (c) the efficient use of public resources in the administration of justice.

In examining the Audit Report, the PAC is seriously dismayed at the dereliction of management duties on the part of the Official Receiver during the period covered in the Report. The lack of a proper management system has led to problems including the wide variation in workload among Insolvency Officers; the absence of productivity standards; the longer time taken by the Official Receiver's Office, by contrast with private insolvency practitioners, to complete an insolvency case; inadequate monitoring of the performance of debt collection agents and private insolvency practitioners; and the failure to achieve the target cost-recovery rate, which resulted in substantial operating deficits.

The PAC condemns the senior management of the Official Receiver's Office for its dilatory attitude towards the obvious delays in the adjudication of claims and the distribution of dividends. As part of the interest earned on the bank deposits of the insolvent estates is paid to the general revenue in accordance

with the law, the delays have prejudiced creditors' rights and interests in favour of the Government. We note that the Official Receiver has pledged at the public hearing that his Office will pay dividends to all long-outstanding cases by July 2000 and has established a performance pledge to distribute dividends within nine months of the funds becoming available.

The PAC also notes that resources have been allocated to the Financial Services Bureau to undertake a consultancy study to review the future role and functions of the Official Receiver's Office. We hope that the review will be completed expeditiously, so that the roles and functions of the Official Receiver can be properly established and the management system revamped accordingly.

In examining this chapter and the one on "Management of outdoor road maintenance staff", we have found that the relationship between Policy Bureaux and the departments under their respective portfolios is not entirely clear, neither is the responsibility of the bureaux for monitoring and overseeing the work of the departments clearly demarcated. With rising expectation of the Civil Service's accountability to the public, we believe that Bureau Secretaries should bear responsibility for the operation and performance of the departments under their portfolios. We hope that the Director of Administration will clarify the relationship and lines of accountability between Policy Bureaux and departments, and to account for this publicly.

In our Report No. 31, we examined the management of outdoor staff in three government departments, namely, the Water Supplies Department, the Census and Statistics Department and the Government Supplies Department. At that time, we were concerned about the extent of the problems regarding the monitoring of outdoor staff and invited the Director of Audit to conduct similar investigations into the operations of other government departments. The Director of Audit has included in his Report No. 34 a chapter on "Management of outdoor road maintenance staff". We are disappointed that the Highways Department (HD) has not learned from the experience of its counterparts, and the problems which existed in the three departments are recurring almost in identical form.

The PAC is seriously concerned that the HD has no productivity standards for use in work allocation and monitoring of staff productivity. The supervisory staff are left on their own in allocating work and monitoring staff productivity. The Department as a whole has been slow in taking effective

action to enhance its monitoring mechanism, and significant improvements in many areas are seriously lacking. We are astonished and dismayed that the Department's senior management has not given its Direct Labour Force sufficient core-business work to do and has generally condoned slackness in the Department. Even though the Department is well aware that the services provided by the Direct Labour Force are not cost-effective and are much more costly than similar services provided by private maintenance contractors, it has not been proactive in running down the strength of the Force and returning its surplus staff to the Civil Service.

The PAC finds it unacceptable that, although many HD staff, including the Direct Labour Force which had significant idle time, routinely worked a large number of overtime hours, the Department had not critically reviewed and revised its staff deployment methodology. We are also dismayed that the existing management system is ineffective in preventing the Department's staff from taking excessive time-off in lieu or claiming excessive overtime allowance.

We note that the HD has set up a working group, chaired by the Deputy Director of Highways, to follow up the various issues relating to the monitoring of its outdoor staff and the management of the Direct Labour Force and overtime work. We urge the Director of Highways to take into account the PAC's views and recommendations and to take expeditious action to address the issues seriously.

More importantly, the PAC believes that the Administration should deal with weaknesses in the management systems of government departments in their totality. The Civil Service Bureau should help departments to strengthen their human resources management, redeploy surplus staff and improve efficiency. In conjunction with the respective Policy Bureaux, it should also take positive action to ensure that, in departments where there is a large number of outdoor staff, the performance and productivity of such staff are closely monitored.

The PAC wishes to make an observation regarding the disciplinary action taken against the officers of different grades and ranks in the HD for misconduct. At our request, the Director of Highways had provided the PAC with details of the disciplinary cases, but suggested that the names of the officers concerned be omitted from the PAC's Report. In response to our inquiries, the Secretary for the Civil Service has confirmed that it is the current practice of the Civil Service not to publish the names of the officers involved in disciplinary cases, either



internally or for the information of the public. This practice is adopted in accordance with Data Protection Principle 3 in Schedule 1 to the Personal Data (Privacy) Ordinance. While it is not for the PAC to comment on the merits of the practice, we are concerned as to whether this practice serves the purpose for which the disciplinary system is established and whether it also goes against the public's aspiration for more transparency in public administration. We consider this to be a subject worthy of further consideration by the Civil Service Bureau and the Council's Panel on Public Service.

In examining the various issues raised in the chapter on "The administration of the Judiciary", the PAC fully recognizes the importance of the independence of the Judiciary and the fact that the scope of Audit's review must not impinge on the exercising of judicial authority. However, with rising public expectation of the standards, efficiency and cost-effectiveness in the provision of judicial services, there has been increasing public concern over various aspects of the administration of the Judiciary. One of the issues examined by the PAC relates to the measures taken by the Judiciary to reduce court waiting time. We note that notwithstanding a general increase in caseload, the Judiciary has reduced the waiting time in most of the courts and tribunals. However, the Judiciary has not been able to meet some of its waiting time targets for the higher courts, in particular the Court of First Instance, due to a significant increase in civil caseload in the Court of First Instance in the past few years. With the passage of the District Court (Amendment) Bill 1999 on 17 May 2000, the financial limit of the District Court will be raised from \$120,000 to \$600,000. We hope that this will bring about a large-scale downward shift and redistribution of civil caseload to the District Court, thereby easing the pressure on the High Court. In the light of this development, we urge the Judiciary Administrator to clear the backlog in the Court of First Instance as soon as possible and, for the longer term, to devise a mechanism for reviewing the financial limits of the civil jurisdiction at all levels of courts.

The second issue examined by the PAC relates to the administration of justice under the Labour Tribunal. There is a statutory requirement that the Labour Tribunal should hear a claim within 30 days from the date of filing the case. However, in practice, since 1992, the Judiciary has had to resort to using the appointment register mechanism to require a claimant to file a case with the Labour Tribunal only after a time slot is available for hearing the case. The PAC is dismayed that despite its promise in 1995, the Judiciary is still using this appointment system as a means to circumvent the 30-day statutory time limit.

We urge the Judiciary to review urgently the use of this mechanism so as to comply with the letter and the spirit of the Labour Tribunal Ordinance. At the same time, it should take expeditious action and consider using other options to clear the backlog in the Labour Tribunal. In view of the lower cost and shorter time incurred by the Minor Employment Claims Adjudication Board (MECAB) in dealing with labour dispute cases, we also urge the Judiciary Administrator, in conjunction with the Labour Department, to actively consider raising the financial limit of the MECAB's jurisdiction so that it can take over more minor employment claims, thereby enabling the Labour Tribunal to fulfil its original objective of providing a simple and informal means for resolving labour disputes.

On the use of court sitting time as an indicator for measuring the efficiency in the utilization of judicial time, the PAC is dismayed to find that the issue has still not been resolved, notwithstanding indication by the Chief Justice in 1994 that four hours a day was satisfactory as an average standard taken over the year. As at today, there are still no objective performance indicators to publicly account for the utilization of judicial time. Having regard to the statement made by the Chief Justice of the Court of Final Appeal in 1999 that:

" ..... Judges will have to recognize that court time is a public resource and that as with all public resources, it is limited. They therefore have to ensure that this public resource is fairly and efficiently allocated and used. Judges will find that they will be increasingly held publicly accountable for its use .....",

the PAC has urged the Judiciary Administrator to make his best endeavours to enhance the Judiciary's transparency and public accountability in the utilization of public resources. To equip ourselves in following up this issue at a later stage, we have asked the Council's Research and Library Services Division to conduct an independent study on the practices and experience of other jurisdictions in assessing the efficiency in the administration of justice.

In conclusion, Madam President, in presenting the final PAC Report in the current term of the Legislative Council, members of the PAC and I are keenly aware of our mission to play our part in safeguarding the public interest by ensuring that high quality public services are delivered in an efficient and cost-effective manner across the board.

Hong Kong is an international financial and commercial centre built on the rule of law. We must strive to attain the highest standards for an advanced community and a developed economy, in the administration of justice, the management of liquidation and insolvency, and in public administration as a whole. The PAC has put forth this Report and recommendations in the finest tradition and hope that we can contribute to the good governance of Hong Kong.

Madam President, the workload of the PAC in the past two years has been exceptionally heavy. Instead of producing four reports in two years under normal circumstances, the PAC has produced seven reports by the end of this Legislative Council term. I am indebted to members of the PAC, the Director of Audit and his colleagues and the staff of this Council for their contributions and dedication. My appreciation also goes to members of the Administration for their input and co-operation throughout this period.

Thank you.

**PRESIDENT** (in Cantonese): Mr Fred LI will address the Council on the 1999 Annual Report by the Commissioner of the Independent Commission Against Corruption of the Hong Kong Special Administrative Region.

### **1999 Annual Report by the Commissioner of the Independent Commission Against Corruption Hong Kong Special Administrative Region**

**MR FRED LI** (in Cantonese): Madam President, as a member of the Advisory Committee on Corruption, I have great pleasure in briefing Members on the 1999 Annual Report of the Commissioner of the Independent Commission Against Corruption which was submitted to this Council today.

During the year, the Independent Commission Against Corruption (ICAC) received a total of 3 561 corruption reports, up by six reports from the 3 555 registered in 1998, the highest ever since the ICAC was established in 1974, but the increase should not be interpreted as equivalent to a corresponding surge in corrupt activities. On the contrary, through the continued publicity efforts of the ICAC in eradicating corruption and nurturing a clean culture, and extensive media coverage of cases on successful investigations has boosted public confidence in the ICAC and in its ability to combat corruption activities. The

number of people who are willing to reveal their identity when making corruption reports to the ICAC remains at a 68% high. These are really encouraging achievements.

During the year, the ICAC continued to make use of the proactive strategy in unearthing corruption. It also enhanced co-operation efforts with other law enforcement agencies, government departments and private organizations to deal with the corruption problem. To keep abreast of the latest technological advances and to enhance their investigative capability to deal with corruption-related cyber crimes, in 1999, the ICAC established a specialist section on computer forensic and information technology research and development. An aggressive training programme for investigators ensured that they kept pace with the use of information technology and the latest investigation methods.

As regards the work on community relations, the ICAC continued to maintain the honesty and integrity of the Hong Kong Civil Service. Working in concerted effort with the Civil Service Bureau, the ICAC kicked off a two-year "Civil Service Integrity Programme" to map out tailor-made corruption prevention programmes. As regards the business sector, the ICAC promoted ethical management through the organization of conferences and on-site training. These activities reinforced Hong Kong's status as an international financial and business centre, and underlined the ICAC's commitment to maintaining a level playing field for investors. Moreover, another important area of work of the ICAC was instilling positive values in young people. In the year under review, the Department made use of multi-media programmes and newspaper features articles to nurture an ethical culture among the young. This helps to keep the corruption issue on the public agenda.

In the area of corruption prevention, the ICAC completed 106 detailed studies of the practices and procedures of government departments and public bodies to reduce opportunities for corruption. In selecting work areas for examination, the Corruption Prevention Department gave priority to those where the Department's investigations had revealed corruption or related malpractice. Furthermore, the ICAC also provided free and confidential corruption prevention service to private firms. During the year, it received and promptly dealt with 260 such requests. Meanwhile, the ICAC also produced a series of Best Practices Packages for a selected group of trades for the benefit of a wider audience.

Madam President, the Commissioner of the ICAC and I would like to take this opportunity to thank this Council and members of the public for their support, and the members of our advisory committees for their support and advice. We would also like to pay tribute to all loyal and dedicated staff of the ICAC.

**PRESIDENT** (in Cantonese): Mr Howard YOUNG will address this Council on the Independent Commission Against Corruption Complaints Committee Annual Report 1999.

### **Independent Commission Against Corruption Complaints Committee Annual Report 1999**

**MR HOWARD YOUNG:** Madam President, as a member of the Independent Commission Against Corruption (ICAC) Complaints Committee, I hereby table the ICAC Complaints Committee Annual Report 1999 to this Council on behalf of the Committee.

This is the fifth annual report published by the Committee. The Report explains in detail the functions and mode of operation of the ICAC Complaints Committee, and summarizes the work handled in the past year. Through publishing the Annual Report, the Committee hopes to report to the public on a regular basis the work done by the Committee.

Should Members have any comments regarding the Annual Report, they are welcomed to forward them to the Secretary of the Committee whose address and telephone number can be found in the Annual Report. I so submit.

**PRESIDENT** (in Cantonese): Dr LEONG Che-hung will speak to this Council on the report of the Independent Police Complaints Council 1999.

### **Report of the Independent Police Complaints Council 1999**

**DR LEONG CHE-HUNG** (in Cantonese): Madam President, on behalf of the Independent Police Complaints Council (IPCC), may I present the IPCC's Annual Report for 1999.

The IPCC is an independent advisory body appointed by the Chief Executive to monitor and review the investigation of public complaints against the police. Whilst the investigation work is carried out by the Complaints Against Police Office (CAPO) of the Hong Kong Police Force, case files, documents and other related materials are examined in depth by the IPCC. A case will not be finalized until the IPCC has endorsed the CAPO's investigation results.

In 1999, the IPCC reviewed and endorsed a total 3 195 complaint cases involving 5 385 allegations, representing an increase of 609 cases and 1 185 allegations when compared with the corresponding figures in 1998. Allegations of Assault, Misconduct/Improper Manner/Offensive Language, and Neglect of Duty constituted 78.1% of the complaints, representing a slight increase of 0.8% when compared with the figure of 77.3% recorded for 1998. Of the 5 385 allegations endorsed, 1 272 allegations of a very minor nature, such as impoliteness, were resolved by Informal Resolution, that is, mediation by a police superintendent who is the senior supervisor of the complainee; 223 classified as Substantiated or Substantiated Other Than Reported; 1 011 as Unsubstantiated; 19 as Curtailed; 410 as False; 2 108 as Withdrawn/Not Pursuable and 233 as No Fault. The substantiation rate in relation to fully investigated allegations (1 986) in 1999 was 16.7%, which showed a small increase over the substantiation rate of 15.9% in 1998.

In 1999, the IPCC raised 772 queries on the CAPO's investigation reports. Consequently, 480 allegation results were changed. Arising from the investigation results endorsed by the IPCC, criminal proceedings were instituted against nine police officers, disciplinary action taken against 43 police officers and other forms of internal action against 440 police officers last year.

To provide a higher level of service, the IPCC has promulgated a set of performance pledges in terms of standard response time in handling public inquiries and monitoring complaints against the police. The performance of the IPCC in meeting its pledges in 1999 was satisfactory. 95.1% of normal cases were endorsed within the pledged period of three months. In addition, 93.7% of complicated cases and 79.8% of appeal cases were endorsed within the pledged period of six months. With experience gained from the past years' operation, the IPCC will strive to ensure that a higher level of performance is attained in future.

To further enhance the IPCC's monitoring role in the police complaints system, the IPCC Observers Scheme was expanded with effect from 1 September 1999 with 29 retired IPCC Members and other community leaders appointed as Observers to observe the CAPO's investigations and Informal Resolution interviews. Since 1 April 2000, the number of Lay Observers has been increased further to 57. Together with the IPCC Chairman and 18 IPCC Members, there are now 76 Observers. The Observers provide feedback on the conducting of investigations and interviews to the Council after each observation, which has been useful for the IPCC in monitoring the complaint cases. With an increased number of Observers, it is hoped that certain serious complaint cases can be conducted entirely or at least substantially in the presence of an Observer.

During 1999, the IPCC stepped up its efforts to publicize its functions, work and image. Since March 1999, the IPCC TV and Radio Announcements in Public Interest have been broadcast through three TV stations and three radio stations. Apart from this, the IPCC has also placed advertisements on public transport facilities, including the Mass Transit Railway, the Kowloon-Canton Railway, Light Rail, trams, franchised buses and public ferry piers with a view to raising the awareness of the IPCC among all sectors of the community. To sustain and reinforce the efforts in this area, the IPCC is planning to organize a public opinion survey to assess the public's understanding of the work and the role of the IPCC, a seminar on the police complaints system, and the production of a series of TV episodes in 2000-01.

It is also worth mentioning that in 1999, the open part of the bi-monthly Joint IPCC/CAPO Meetings were always full and well attended by the public. There was always press coverage in both the Chinese and English media the following day. This shows the public's interest in the police complaints system. The number of visitors to the IPCC homepage is also on an upward trend with no less than 300 callers each month.

As is the tradition, the IPCC espouses a policy of open communication with police officers on operational duties. Apart from visiting police formations and observing operations, the IPCC Members held nine discussions in 1999 with operational police officers of various ranks. Both sides found such open exchanges of views very useful and constructive.

Madam President, to sum up, 1999 was a very eventful and successful year for the IPCC. We shall continue to keep up the high standard of thoroughness and impartiality in our monitoring and review of investigations into public complaints against the police, and to enhance public confidence in the integrity of the police complaints system. We also hope that the Administration will re-introduce the IPCC Bill to the Legislative Council as early as possible to give the IPCC a statutory status as well as to have its role firmly anchored in the police complaints system.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): Mrs Selina CHOW will address the Council on the Committee on Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region Progress Report for the period May 1999 to June 2000.

**Committee on Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region Progress Report for the period May 1999 to June 2000**

**MRS SELINA CHOW** (in Cantonese): Madam President, on behalf of the Committee on Rules of Procedure, I would like to submit to this Council the Progress Report of the Committee on Rules of Procedure for the period May 1999 to June 2000.

This is the second report submitted by the Committee on Rules of Procedure since its establishment on 10 July 1998. The Report sets out the details of the study by the Committee concerning the following three major items in the past year:

First, the procedural arrangements pertaining to the implementation of Articles 49, 50 and 51 of the Basic Law;

Second, improvement to the procedural arrangements of the Legislative Council; and



Third, improvement to the procedural arrangements of the Committees of the Legislative Council.

This Report has also set out the amendments proposed by the Committee to the Rules of Procedure in respect of the above items. As regards the amendments proposed to the rules on speaking during debates as well as the rules on the notice of motion of thanks, they were already carried by this Council on 5 April. For the rest of the amendments, I will move a resolution in this regard later in this meeting, with detailed explanation to the amendments proposed.

Since this Report is a summary of the work of the Committee during this session, I would like to expound on the working pattern of the Committee in fulfilling our duties. We reckon the formulation of the Rules of Procedure of the Legislative Council as a very important and serious task. Therefore, whenever we have to make a review of any matter, we will certainly conduct very detailed study in advance, including consulting the practice of other jurisdictions, as well as the precedents and the usual practice of Hong Kong. We will examine various possible options from different angles and with an open attitude. It is only after repeated discussions that we will submit the proposal to the House Committee for consultation, before formally submitting it to this Council for endorsement.

If the subject under study is related to the implementation of the Basic Law or may affect the work of the Government, we will consult the Government. For instance, when considering the implementation of Article 49 of the Basic Law, concerning the procedure whereby the Chief Executive returns a bill, already passed by the Legislative Council, to the Council for reconsideration, we have conducted repeated discussions with the Director of Administration through the Secretariat. The amendments that I am going to move on behalf of the Committee have already taken the needs of both the Government and the legislature into full account.

When considering the implementation of Article 50 of the Basic Law, which concerns the procedure after the Legislative Council refuses to pass a budget, the Committee has, in regard to the interpretation of the word "budget", also tried to understand the viewpoint of the Government through the Panel on Constitutional Affairs. And finally, the Committee accepted the viewpoint of the Government in this regard and suggested to put in place the procedural arrangements concerned.

From the above, we can see that before putting forward any procedural amendments or proposals, members of the Committee and staff of the Secretariat have made a lot of efforts. However, we believe that such efforts are necessary and worthwhile. It is because what we are formulating is a *modus operandi* which enables the legislature to work efficiently while taking into account of the rights and interests of each and every Member of the Legislative Council.

I am very grateful to Members for their support and trust to the Committee. And I am also taking this opportunity to thank the staff of the Secretariat for their contribution to the Committee with their professionalism during the past two years.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): According to our Agenda, some other Members will address the Council in succession. Since the next speaker is not within this Chamber at the moment, I now call upon the Honourable Mrs Miriam LAU to address the Council on the Report of the Panel on Transport 1999/2000.

### **Report of the Panel on Transport 1999/2000**

**MRS MIRIAM LAU** (in Cantonese): Madam President, in the capacity as Chairman of the Panel on Transport, I would like to submit the Report of the Panel on Transport 1999/2000 and to highlight some major discussion items to Members.

The transport strategy of Hong Kong was high on the agenda of the Panel. Members shared the Administration's view that in regard to the long-term transport strategy of Hong Kong, transport infrastructure and services should be provided in an environmentally acceptable manner so as to ensure the sustainable development of Hong Kong. Members also agreed that transport and land use planning should be integrated to reduce the public's reliance on road-based transport and that greater emphasis should be placed on the needs of pedestrians. On the review of transport infrastructure, the Panel urged the Administration to review the actual need for individual projects and the exact timing of implementation. Members especially reminded the Administration that, in the planning of the infrastructure concerned, it was necessary to take into account future demands in cross-boundary passenger and freight movements.

On the planning and implementation of railway projects, the Panel has studied the Railway Development Strategy 2000 recently released by the Government. Since that strategy would provide a sustainable infrastructure to support the economic, social and population growth in Hong Kong in the next 15 years, and would facilitate closer economic and social linkage between Hong Kong and the Mainland, Members especially called on the Administration to put in place adequate resources to speed up the delivery of various railway projects. In regard to the various railway projects underway or under planning, including the West Rail (Phase I), Mass Transit Railway Tseung Kwan O Extension, the Sheung Shui /Lok Ma Chau spur line of the Kowloon-Canton Railway (KCR), the Penny's Bay Rail Link to tie in with the development plan of Disney theme park, the Ma On Shan to Tai Wai Rail Link and the KCR Extension to Tsim Sha Tsui, the Panel will keep on monitoring the progress of construction and designing works.

Following the Government's announcement to privatize a substantial minority share of the Mass Transit Railway Corporation (MTRC) through an Initial Public Offering, the Panel conducted a joint meeting with the Panel on Financial Affairs to address some of the key concerns expressed by the community on the issue, particularly the fare determination mechanism and the performance of the MTR after privatization. Members urged the Administration to put in place an effective regulatory mechanism which would help balance the interests of both the commuting public and the shareholders of the future privatized Corporation.

With regard to other public transport services, Members generally agreed that it was necessary to maintain suitable bus services to meet the transport need of the public and to provide different choices. The Panel, therefore, has examined some of the measures which can help enhance the efficiency of bus services, including the inter-district bus-only lane scheme and the bus-bus interchange scheme. On waterborne transport, the Panel noticed that the Administration would commission a consultancy study on a wide range of issues relating to the operation of ferry services, with a view to identifying potential areas of development. Members urged the Administration to formulate a strategy which would enable the provision of good quality ferry services at acceptable fare levels while maintaining the commercial operation of the ferry company.

On the major premise of improvement of air quality, the Panel has held a series of joint meetings with the Panel on Environmental Affairs to review measures to control emissions from diesel vehicles as well as the development of an environmentally sustainable transport system. Members urged the Administration to introduce environmentally acceptable alternatives to diesel vehicles and to adopt measures to assist the trade to upgrade their maintenance standard with a view to alleviating the pollution problem. While supporting the launch of liquefied petroleum gas (LPG) taxi scheme, the joint Panels stressed the need to provide adequate supporting measures, including LPG filling stations and maintenance workshops for LPG taxis, and to keep the price of automobile LPG and the operating cost of LPG taxis at reasonable levels to encourage members of the trade to convert to the use of LPG taxis.

Madam President, I so submit. Thank you.

**PRESIDENT** (in Cantonese): The Honourable LEE Wing-tat will address the Council on the Report of the Panel on Housing 1999/2000.

### **Report of the Panel on Housing 1999/2000**

**MR LEE WING-TAT** (in Cantonese): Madam President, as Chairman of the Panel on Housing, I would like to submit the Report of the Panel on Housing 1999/2000 and highlight some of the key areas of work contained therein.

The spate of blunders in the construction of public housing in recent years has been a cause of grave concern to the Panel on Housing. In December last year, the Panel conducted a series of special meetings to discuss measures to improve building quality in public housing and to receive views from the construction industry, professional bodies and the Administration. Members considered that immediate actions should be taken to push for reforms in the tendering system, reinforcement of site supervision, tightening of the control of the sub-contracting system, revamping of the piling procedure, provision of reasonable construction time, and improvements in work culture and ethics.

Following the publication of the Housing Authority (HA)'s consultative document entitled "Quality Housing: Partnering for Change" in January this year, the Panel examined with the Administration the various measures put forward in

the consultation document. Pursuant to the outcome of the consultation exercise, the Administration announced in April this year that it would undertake a series of reforms to address the problems in public housing quality. Most of the suggestions put forward by the Panel have been dealt with by the Administration, including the provision of a 10-year structural guarantee for all new and existing Home Ownership Scheme (HOS) developments from the date of completion. And due to geological complexity of Tin Shui Wai, the structural guarantee for the HOS estates in that district could be prolonged to 20 years. In order to ensure objectivity of its building control standard, the HA also agreed to consider putting public housing under the scrutiny of the Buildings Ordinance.

Since the revelation of serious short-piling in two sites, namely Tin Chung Court of Tin Shui Wai and Yuen Chau Kok of Sha Tin, the Panel has been closely following up the matter. As the investigating panels appointed by the HA to look into these two cases did not have statutory investigative powers, the Panel passed a motion to urge the Chief Executive to appoint a statutory committee to undertake a review of the entire construction industry and to follow up on the investigations. Subsequently, the Administration has set up an independent committee to review and improve the operation of the construction industry.

Since the two investigation reports have both identified dereliction of duties on the part of the staff in charge during the production process, members were of the view that apart from the developers and contractors, the staff of the Housing Department should also be held accountable. The Panel requested the HA and the Housing Department to review their working guidelines and procedures with a view to improving their work culture.

The Panel also requested the Administration to conduct thorough investigations on the impact on structural safety of the public housing flats under construction arising from the use of non-compliance building materials at the housing development at Tung Chung Area 30, Phase 3 and at the Shek Yam Estate Phase 2 redevelopment project. In view of the problems faced by some housing estates at Tseung Kwan O due to site settlement, the Panel requested the Administration to find out the cause for site settlement as soon as possible and to monitor the progress of the remedial works concerned.

The rehousing arrangements for residents affected by clearance of squatter and cottage areas as well as redevelopment programmes have always been a

cause for concern to the Panel. A Subcommittee on Rehousing Arrangements for Residents Affected by Clearance of Squatter Areas was thus set up under the Panel with a view to providing necessary assistance to the affected residents. The Panel also followed up closely the clearance and compensation arrangements concerning the cottage areas as well as the progress of the redevelopment project of North Point Estate.

In order to have an overall picture on the supply and demand for housing, the Panel examined the overall supply of housing flats and the results of the 1999 Survey of Housing Aspirations of Households with the Administration. The Administration assured that the concept of mixed development and the proposed partial replacement of subsidized home ownership flat production with the provision of loans, if implemented, would not affect the overall number of households benefiting from the Government's housing assistance.

The Panel has set up a Subcommittee to study the Sales Descriptions of Uncompleted Residential Properties White Bill. The Subcommittee examined the provisions of the White Bill to ensure that adequate and accurate information on uncompleted residential properties was supplied to prospective purchasers by property developers.

In regard to other key areas of work of the Panel, they were already contained in the Report. Madam President, I so submit.

**PRESIDENT** (in Cantonese): The Honourable James TO will address the Council on the Report of the Panel on Security 1999/2000.

### **Report of the Panel on Security 1999/2000**

**MR JAMES TO** (in Cantonese): Madam President, as Chairman of the Panel on Security, I would like to highlight some major items of the Report of the Panel on Security 1999/2000.

The Administration has briefed the Panel on the progress of establishing a formal rendition arrangement with the Mainland on surrender of fugitive offenders. The Panel noted that on completion of the discussions with the mainland authorities, the Administration would make public the proposal and

undertake consultation. Members urged the Administration to include in the agreement with the Mainland a provision in respect of the usual safeguard in the existing Surrender of Fugitive Offenders Agreements with other jurisdictions the normal exclusion in relation to political offences and political prejudice.

The Panel noted that the Administration has reached a consensus with the mainland authorities on the genetic test arrangements for verifying the parentage of persons claiming the right of abode under paragraph 2(c) of Schedule 1 to the Immigration Ordinance. Besides, security measures and safeguards would also be implemented by the relevant authorities in Hong Kong and the mainland authorities to ensure the accuracy and reliability of the genetic test results. Members urged the Administration to take steps to ensure a system of reliable and corruption-free genetic tests.

In the wake of the Lin Qiaoying incident early this year, the Panel expressed concern about the procedures of the Administration for handling cases where forged travel documents was involved, particularly that forensic examination of a travel document would not be carried out if the suspect had made a confession. Members were worried that the investigating officers of the Immigration Department might be inclined to rely solely on the admission statement of the accused rather than on the result of forensic examination as the main evidence for prosecution. The present procedures could have exerted pressure on frontline officers to obtain admission statements from suspects in order to avoid the trouble of arranging forensic examination of the travel documents in question. Besides, Members also expressed doubt about whether it was appropriate for officers of the Immigration Department to act as prosecutors as the accused could be sentenced to a maximum of 14 years' imprisonment upon conviction. Members were of the view that prosecutions should be made by legal practitioners as the quality of the evidence presented was very important. Members called upon the Administration to examine this aspect in its current review of the procedures.

The indebtedness of police officers was one of the major concerns of the Panel. The Panel expressed concern that when police officers were unable to repay their debts, particularly those who were indebted due to gambling or overspending, they were prone to corruption or be exploited by criminals. A subcommittee formed under the Panel was tasked to examine in detail the problem of indebtedness of police officers. Members urged that the Force management should convey a clear and strong message to the Force members

that under no circumstances would overspending or gambling be tolerated; and that the Force management should continue to explore, in consultation with the Secretary for Justice, other feasible measures to tackle the problem.

The Panel discussed the three options recommended by the consultants on introducing a new identity card, namely, a non-smart identity card, a smart identity card which is capable of supporting the Immigration Department's core businesses only, and a smart identity card which could support multiple applications. Some Members expressed reservations about the need for introducing a new identity card which would have the capability of storing a lot of personal data to support multiple applications. These Members were concerned about how personal privacy and data security would be safeguarded. Some Members indicated support for the option of a smart identity card which is capable of supporting multiple applications. The Administration agreed to consult the Panel again when a decision was made on the way forward on the new identity card project, including the choice of a new identity card.

I would like to thank Members and the staff of the Legislative Council Secretariat for their contribution to the work of the Panel.

Thank you.

**PRESIDENT** (in Cantonese): The Honourable Andrew WONG will address the Council on the Report of the Panel on Constitutional Affairs 1999/2000.

### **Report of the Panel on Constitutional Affairs 1999/2000**

**MR ANDREW WONG:** Madam President, I speak in my capacity as Chairman of the Panel on Constitutional Affairs. The Panel has discussed many issues in this Session. Today, I would like to highlight only a few major ones.

First, on the Panel's request that certain provisions of the Prevention of Bribery Ordinance should be applicable to the Chief Executive, the Administration agreed to introduce legislative amendments to extend existing section 10 of the Ordinance concerning the possession of unexplained property to include the Chief Executive. However, on the offence of bribery, the Administration was of the view that it was already a common law offence for a



"public officer" to accept a bribe and for anyone to bribe a "public officer". The Chief Executive would fall within the meaning of "public officer" under the common law and would be liable to prosecution if he accepted a bribe. No amendment to the Ordinance was therefore considered necessary. On the latter point, the Panel disagreed and requested the Administration to reconsider whether the common law offence of bribery should be codified. The Administration agreed to revert to the Panel when it has come to a view on the matter sometime in the future.

Second, on the mechanism for amending the Basic Law, the Administration advised in May 1999 that it would need to consult all relevant parties on a number of issues identified and that it would take about five to 22 months for the consultation process, not counting consultation with the Central Authorities. The timetable included drafting and enactment of local legislation to give effect to the finalized proposal. Two meetings were held by the Panel in this Session to follow up on the matter. Members were disappointed that the Administration had no substantive progress to report so far.

Third, the issue of employees of publicly-funded bodies taking up public offices was discussed at a number of meetings. Noting that the policies and practices of the medical, education and welfare sectors were not the same, the Panel considered that there should be standardized guidelines for publicly-funded bodies to follow to ensure transparency and fairness. The Administration was of the view that to have a set of standardized guidelines across the board would be difficult to implement and unlikely to be feasible.

The Panel was particularly concerned about the situation of the welfare sector and further pursued the matter with the Administration. The Administration agreed to draw up a set of guidelines for the reference of employees of subvented welfare organizations taking up public offices. It would also consider the feasibility of inserting clauses that would state some broad guiding principles in general on adjustment of salaries and benefits of employees, if their normal duties were affected as a result of their taking up remunerated public offices. The proposed guidelines would be ready in the latter half of 2000.

Fourth, the Panel was consulted on the two proposed options to conduct the count for the 2000 Legislative Council Election. Members have divided views on the two options. The Electoral Affairs Commission has subsequently

decided that there would be one counting station for each of the five geographical constituencies, and one central counting station would be adopted for the 2000 Legislative Council Election for the functional constituencies and the Election Committee. To respond to members' request that the counting process should be speeded up, the Administration proposed a range of initiatives for adoption in the coming election. Members noted that the Administration hoped to complete the count for the Election Committee subsector elections and the general election by about 9 am and 11 am respectively on the day following the polling day.

In the course of considering the electoral arrangements for the 2000 Legislative Council Election, the Panel requested the Administration to consider implementing automatic voter registration and computerized voting system for future Legislative Council elections. The Panel noted that the Administration would further consider the two proposals on the basis of the outcome of two studies, that is, a consultancy study conducted by the Immigration Department to prepare for the launch of the next generation of the Registration of Persons system, and a feasibility study conducted by the Registration and Electoral Office on the development of a new Electoral and Registration System.

Madam President, last but not least, the development of the Hong Kong Special Administrative Region's political system was a issue of major concern to the Panel. The Panel submitted a separate report on this subject to the Council. A motion debate on the report and related issues was held by this Council on 14 June 2000.

Madam President, in addition to these few short remarks on the Report, I would like to take this opportunity to officially thank, on behalf of the Panel, the staff of the Secretariat for their professional and conscientious support. These include the Legal Service Division, the Research and Library Services Division and, in particular, the Council Business Division 2 Team 3. Madam President, allow me to say "thank you" to them before saying "thank you" to you, Madam President.

**PRESIDENT** (in Cantonese): Mr Ambrose LAU will speak to this Council on the Report of the Panel on Financial Affairs 1999/2000.

**Report of the Panel on Financial Affairs 1999/2000**

**MR AMBROSE LAU** (in Cantonese): Madam President, in the capacity of the Chairman of the Panel on Financial Affairs, I would like to submit to the Council the work report of the Panel for the year 1999-2000. As our report has set out our major work, I would only like to highlight a few points here.

The Panel was deeply concerned about the boom in information technology-related (IT) stocks since the last quarter of 1999. The Panel urged the Securities and Futures Commission (SFC) to ensure that all listed companies would disclose their business information accurately and in a timely manner to enable investors to assess their own risks and make investment decisions accordingly. In terms of investment education, members welcomed the various education initiatives launched by the SFC including the establishment of an Electronic Investor Resource Centre providing a 24-hour one-stop reference centre for investors. Members noted that further initiatives for investor protection would be enshrined in the consolidated Securities and Futures Bill.

In order to maintain Hong Kong's status as a global financial centre, the Panel discussed with the Administration, the SFC and the Hong Kong Monetary Authority (HKMA) on the improvement in subscription arrangements and the responsibilities of an initial public offering (IPO) sponsor. Members were supportive of increased transparency in IPO process and better co-operation among concerned parties and promotion of public subscription by electronic means in the long term.

Regarding the intention of the Stock Exchange of Hong Kong (SEHK) to modify its Growth Enterprise Market (GEM) marketing strategy including relaxing the Listing Rules to promote listings on the GEM, the Panel reminded the Administration to strike a balance between attracting companies on the GEM in competition with other markets and putting in place an appropriate regulatory framework for the protection of investor interests. The Panel also urged the SFC to maintain a fair and transparent market during the listing process.

The Panel examined the ground rules adopted by the Government for giving special consideration to private sector's initiatives. Members considered it important to uphold the principle of maintaining a level playing field for all interested companies and to adopt open and competitive bidding process in awarding projects. As the ground rules adopted by the Administration provided

too much flexibility for a departure from the norm of following a bidding process, the Panel passed a motion on 6 December 1999 expressing its objection to the ground rules and urging the Government to reconsider policy guidelines for future initiatives proposed by the private sector.

During the session, the Panel invited the Financial Secretary on two occasions to brief Legislative Council Members on overall economic development of Hong Kong. Following the passage of the 2000-01 Estimates, the Panel was briefed on the Government's proposals on the raising of fees and charges not directly related to people's livelihood. Noting the intention of the Administration to restore the "user pays" principle, members expressed concern over the cost of the provision of government services. The Panel urged the Administration to review the cost-effectiveness of its services and their fee-charging structures before proposing any revision in fees. Members also suggested measures on containing government spendings. Upon members' request, the Administration undertook to provide further information on the fee revision proposals for consultation of other Panels.

The Panel has invited the Chief Executive of the HKMA on two occasions to brief members on the work of the Authority. The Panel also visited the Hong Kong Note Printing Limited to gain better understanding of the government involvement in the production of Hong Kong dollar notes.

Madam President, the Panel has exchanged a lot of views with the Administration and relevant parties on financial affairs in the past year. I would like to thank members of the Panel and members of the Secretariat for the hard work.

Madam President, these are my remarks.

**PRESIDENT** (in Cantonese): Mr Edward HO will address the Council on the report of the Panel on Planning, Lands and Works 1999/2000.

### **Report of the Panel on Planning, Lands and Works 1999/2000**

**MR EDWARD HO** (in Cantonese): Madam President, with your permission, I, as Chairman of the Panel on Planning, Lands and Works, would like to report

the work of the Panel during this legislative session to the Council. Details of the work of Panel are set out in the report tabled at the meeting today. I would like to briefly summarize the views of the Panel on items which have attracted the concerns of wide spectrum of the public.

With regard to planning, the Panel is deeply concerned about the re-planning proposal of the West Kowloon Reclamation (WKR). Members noted that the re-planning of the WKR would render part of the finalized projects abortive. But for the long term benefits of Hong Kong, there is a need to revise the original planning intention for the purpose of developing the WKR into a centre of culture, art and tourism. The Panel also welcomed the Administration's proposal of organizing an open design competition for the development of that area. I urge the Administration to disclose the details as soon as possible so that local and overseas interested parties can have ample time to make preparation.

With regard to clashes arising from land resumption in the past year, the Panel expressed its concerns. The confrontation between the police and the residents in Shek Wu San Tsuen in Sheung Shui during the clearance operation at the end of last year was a particular serious case. Members suggested that the Administration should review the existing land resumption procedures and the compensation system as quickly as possible. It should also enhance liaison and communication with landowners before taking steps to resume their land.

The widespread flooding after downpours happened in Northwest New Territories in mid-April this year demonstrated the inadequate flood prevention facilities. Although the cause of the flooding in different areas has yet to be decided and affected residents are claiming compensation, the Panel has urged the Administration to review the progress of various flood prevention projects and to actively take improvement measures to prevent recurrence of the problem.

Finally, the Panel urged the Task Force on Building Safety and Preventive Maintenance to formulate comprehensive programmes as quickly as possible to tackle the chronic problem of unauthorized building works at root.

Madam President, these are my remarks.

**PRESIDENT** (in Cantonese): Miss CHAN Yuen-han will address the Council on the report of the Panel on Welfare Services 1999/2000.

### **Report of the Panel on Welfare Services 1999/2000**

**MISS CHAN YUEN-HAN** (in Cantonese): Madam President, as Chairman of the Panel on Welfare Services, I would like to submit the report of the Panel for the year 1999-2000 to the Council. I would also highlight some major work of the Panel.

We were most concerned about the changes to the Comprehensive Social Security Assistance (CSSA) Scheme. Members were particularly concerned about the requirement that persons living with family members had to apply for CSSA on a household basis. They were worried that the policy would make it necessary for more and more elderly CSSA recipients to move out in order to retain their eligibility and avoid being a burden to their children. They urged the Administration to allow some flexibility in respect of elderly recipients taking into account the fact that there was no old age pension scheme in Hong Kong.

The Administration explained that the Social Security Field Unit (SSFU) staff was required to ask the elderly applicant in each case whether he/she had any difficulties in applying for CSSA on a household basis. If the SSFU staff detected a relationship problem between the elderly applicant and his/her family members, the staff would refer the case to a family service centre for assistance. Members suggested that for the withdrawal cases, the SSFU staff should ask for the reasons and put them on record. In addition, the record system should be improved to facilitate easy retrieval of particular cases for follow-up and review.

Besides, the Administration also suggested during this session a package of measures in 2000-01 to promote self-reliance. Some members were skeptical about the cost effectiveness of the proposed measures which would require a lot of additional staff for the SSFU. Some members felt that there was a basic conflict between vetting CSSA applications and providing career counselling. If the SSFU staff played these two roles at the same time, it would give people the impression that the SSFU were forcing the recipients to work in order to reduce the CSSA payments. In order to avoid role confusion, members recommended that the Administration should consider inviting non-governmental organizations (NGOs) to implement these suggested measures.

Members were also very concerned about the proposed reforms to the social welfare subvention system. Members noted that under the proposed lump sum funding system, NGOs were allowed to retain any savings achieved for redeployment. Some of them were worried that if the Administration no longer required the salary structure of NGO staff to be linked to the Master Pay Scale of the Civil Service, it was highly likely that NGOs would discontinue the linkage in order to cut costs. They considered that such a change would have a serious effect on staff morale and stability of services.

Members urged the Administration to provide sufficient resources to NGOs to enable them to maintain the current remuneration and benefit packages for existing staff and to defer implementation of the new funding proposal until it had the support of the welfare sector. Members also asked the Administration to report to the Panel details of the finalized proposal before it applied for funding from the Finance Committee.

Some members were also concerned about the effect of the competitive bidding system on service quality. At the conclusion of the discussion, members expressed objection to further contracting out welfare services through competitive bidding and urged the Social Welfare Department to consult social services organizations, staff and users of services before further implementation of the policy.

As for other areas of our work, I will not go into details as they have been covered in our report.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): Mr MA Fung-kwok will address the Council on the report of the Panel on Information Technology and Broadcasting 1999/2000.

### **Report of the Panel on Information Technology and Broadcasting 1999/2000**

**MR MA FUNG-KWOK** (in Cantonese): Madam President, as Chairman of the Panel on Information Technology and Broadcasting, I would like to submit the report of the Panel for this year. Since details of widely concerned issues tackled by the Panel during the past year are covered in the report, I would only speak on some highlights.

The Panel continued with its vigorous efforts in overseeing the work on tackling the Year 2000 (Y2K) problem in various major service agencies. The Panel had discussed with the Administration the operation of the territory-wide Y2K contingency plan and publicity and promotional programmes. In view of the far-reaching implications of the Y2K issue, all Legislative Council Panels had taken follow-up actions in respect of the progress of Y2K rectification work and contingency plans under their respective policy purview. The Panel was pleased to note that with the efforts of various sectors, the rollover to the new Millennium had been smooth.

The Panel had also watched closely the common computer security hazards posed by computer viruses and hacking. In the wake of recent repeated vandalism on the Interactive Government Services Directory homepage, members had reviewed with the Administration on the sufficiency of existing arrangements and future preventive measures. On the proposed establishment of a computer emergency response team in Hong Kong, members felt that it was a matter of top urgency and explored with the Administration possible ways to expedite its establishment.

The Panel was gravely concerned about the progress of the Cyberport project and received the Administration's report on regular basis. We would closely oversee whether the Cyberport was serving its intended purpose of creating a strategic cluster of leading information technology and services companies. As regards the Project Agreement between the Administration and the Pacific Century Group, the Panel noted that the Agreement would give legal effect to the provisions in the Letter of Intent, with new additional terms to further safeguard the Government. Some members had also expressed the industry's views to the Administration on the demand and supply of office space in the Cyberport.

On telecommunications services, the Panel attached great importance to an open market and the maintenance of a level playing field in the industry. The Panel was very concerned about some changes happened earlier in the market, such as the proposed merger of Cable & Wireless Hongkong Telecom with other major industry players and the simultaneous price adjustments by existing mobile phone companies. The Panel urged the Administration to ensure that these activities would not lead to market monopolization or anti-competitive acts.



The Panel had actively exchanged views with the Administration on the proposed licensing framework and other regulatory issues for Third Generation (3G) mobile services. Members were particularly concerned about the arrangement for the selection of 3G services operators, that is, whether the option of spectrum auctioning should be adopted or a limited number of licences should be granted by evaluation of the merits of applications or other means. Having discussed the merits and demerits of various selection options, members urged the Administration to fully balance all considerations when making a decision. The Panel will watch the future development closely.

The proliferation of obscene and indecent articles and their harmful effects on the younger generation was also a major issue of concern to the Panel. The Panel had deliberated on proposals detailed in the consultation paper published by the Administration recently. Members expressed views on the desirability of the establishment of an obscene articles classification board outside the judicial system and the deterrent effect of proposed penalties. Meanwhile, members affirmed the importance of regular opinion surveys and urged the Administration to ensure that the proposed regulatory regime must not become an instrument in curbing press freedom. On the indecent articles transmitted via the Internet, members suggested that the Administration should examine the legal responsibility of the web hosts and the web site owners under the relevant law. To further gauge public views on the consultation paper, the Panel convened a special meeting just yesterday to hear the representation from deputations. The Panel will follow up closely the outcome of the consultation.

I believe the Panel will continue to monitor the progress of all major events. I would like to take this opportunity to thank my colleagues on the Panel, the Administration and the Secretariat for their support which has enabled the smooth functioning of the Panel.

These are my remarks.

**PRESIDENT** (in Cantonese): MR Michael HO will address the Council on the report of the Panel on Health Services 1999/2000.

**Report of the Panel on Health Services 1999/2000**

**MR MICHAEL HO** (in Cantonese): Madam President, as Chairman of the Panel on Health Services, I would like to submit the report of the Panel for the year 1999-2000 to the Council and highlight some of the major work of the Panel.

Mechanism for handling medical complaints has all along been the concern of the Panel. As most members shared the view that the existing system lacked transparency, they expressed support for an independent medical ombudsman to enhance the credibility of the existing mechanism.

The Administration pointed out that the scope of such an office was often limited to administrative complaints only for lack of the required expertise to deliver a judgment on allegations of professional misconduct. However, the Administration agreed that there was a need to enhance the credibility and transparency of the existing mechanism and was exploring improvements in collaboration with the Medical Council of Hong Kong.

Some members suggested that the Public Complaints Committee (PCC) of the Hospital Authority (HA) should be made independent from the HA in order to enhance its credibility. The Administration informed the Panel that under section 5(m) of the Hospital Authority Ordinance, only the HA can exercise powers to establish and maintain a system for providing a proper consideration of complaints from users of hospital services, or of members of the public, in relation to hospital services. Hence, the PCC cannot be an independent committee.

As to the creation of an independent appeal body outside the HA, the Administration said that its views on the issue would be included in the forthcoming Green Paper on health care reform.

Besides, the Panel was also concerned about the lenient enforcement of certain legislative provisions, giving people an impression that the Administration was not active in law enforcement.

There were still many people smoking in shopping malls and designated no-smoking areas in restaurants since the implementation of the Smoking (Public Health) (Amendment) Ordinance 1997 over the past 18 months, but no one had been prosecuted so far. Members pointed out that many of the offenders were actually aware of the no-smoking requirement but had ignored it since it was not actively enforced by the Government.

Furthermore, on the implementation of Undesirable Medical Advertisements Ordinance, members were also concerned that there had only been one successful prosecution under the Ordinance since 1998. They considered that the present practice of first issuing a warning letter to anyone found misleading the public by inducing them to use improper medical products was too lax. As a result, many unscrupulous operators made misleading or even false claims without suffering any penalty. Members urged the Administration to review its enforcement measures and step up prosecution under the Ordinance so as to protect public health.

As details concerning other issues are contained in the report, I am not going to repeat them here.

Madam President, these are my remarks.

**PRESIDENT**(in Cantonese): Miss Christine LOH will address the Council on the report of the Panel on Environmental Affairs 1999/2000.

### **Report of the Panel on Environmental Affairs 1999/2000**

**MISS CHRISTINE LOH:** Madam President, I speak in the capacity as Chairman of the Panel on Environmental Affairs. As the Report already gives a detailed account of the work of the Panel, I would only highlight some major issues.

Air quality remains on the top of our agenda this year. As the respirable suspended particulates level is exceptionally high in Hong Kong, and since diesel powered vehicles are the main source affecting road side air quality, the Panel has urged the Administration to impose more stringent standards on fuel standards and vehicle emissions, and to identify cleaner alternatives to diesel vehicles.

To facilitate the implementation of control measures on vehicle emissions, the Panel has reminded the Administration that adequate support measures must be put in place well in advance. For instance, the Administration must ensure sufficient refilling capacity for liquefied petroleum gas vehicles, consistent standards for emission tests, training of vehicle mechanics and availability of maintenance information to the vehicle maintenance trade.

The Panel has also pointed out the problem of some diesel vehicle drivers refilling their vehicles in the Mainland where the sulphur content of the fuel is 10 times that of Hong Kong, and we want to see proposals to encourage drivers crossing the border back to Hong Kong to buy cleaner fuel. Furthermore, to combat the problem of illegal use of marked oil by vehicles, members want to see more effective enforcement by the Customs and Excise Department.

On water quality, the Panel has serious concern about the signs of pollution in the water supplied from Dongjiang. Members are disappointed that the Administration has not strived for better terms to ensure that the water supplied is of the same quality as the regional and national standard of 1988. The Panel also took note of the strong criticisms of the Public Accounts Committee on the mismanagement on negotiating water supply with Guangdong and the Administration's attempts to hide relevant information. The Panel suggests that negotiation for a better water supply agreement should be raised from a technical to a political level between the Government of the Hong Kong Special Administrative Region and the Guangdong authorities. For the long-term benefits of Hong Kong, the Panel is of the view that Hong Kong should also explore alternative water sources.

In view of the substantial investment of the Strategic Sewage Disposal Scheme and the engineering problems in the deep tunnelling works during Phase I of the Scheme, the Panel urged the Administration to seriously review the feasibility of other alternatives. In response, the Administration appointed a six-member international panel to review the Scheme. The Panel requested that an objective, independent assessment should be taken, and that the international review panel should not feel the need to defend the Administration's previous option.

On waste management, members stressed the need for waste reduction at source, and segregation and recycling of reusable materials wherever possible.

The Panel has much concern about the Administration's approach for waste disposal, particularly by incineration. Members have urged the Administration to seriously reconsider other options, instead of expanding the scope of the existing Chemical Waste Treatment Centre to include clinical waste. Furthermore, members were concerned about the Administration's apparent preference for constructing new giant incinerators for other forms of waste.

A Subcommittee was formed under the Panel to provide dedicated attention to environmental hygiene issues. The Subcommittee discussed the streamlining of restaurant licensing, hawker control, crematoria service, hygiene standards of public toilets and other issues.

Madam President, this is my brief report on the work of the Panel. I would also like to take this opportunity to thank all members of the Panel for their support and efforts in promoting a better environment for Hong Kong. It has been a long, hard year with many meetings — indeed, more meetings than any other Panel. I also wish to take this opportunity to thank the Panel secretary, her support crew and all those members of the Secretariat who have given us their very efficient and able service.

**PRESIDENT** (in Cantonese): Miss CHOY So-yuk will address the Council on the report of the Panel on Home Affairs 1999/2000.

### **Report of the Panel on Home Affairs 1999/2000**

**MISS CHOY SO-YUK** (in Cantonese): Madam President, in the capacity as Chairman of the Panel on Home Affairs, I would like to submit the report of the Panel for the year 1999-2000.

The Panel has discussed a broad spectrum of issues during this legislative session. I would like to highlight some of the important issues.

With regard to the publication of the Hong Kong Special Administrative Region (SAR)'s initial report under the International Covenant on Civil and Political Rights (ICCPR), the Panel discussed with non-governmental organizations (NGOs) and the Administration on the contents of the report and concluding observations of the United Nations Human Rights Committee

(UNHRC). Some members urged the Administration to implement as quickly as possible the recommendations in the concluding observations of the UNHRC and report to the Panel on the latest development.

The Panel also discussed with NGOs and the Administration the outline of topics included in the initial report to be submitted by the SAR under the International Convention on the Elimination of All Forms of Racial Discrimination and the initial report under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The Panel also discussed with the Administration the progress of the follow-up actions taken by the Government on the concluding comments made by the United Nations Committee on the Elimination of Discrimination against Women on the initial report on the SAR under the Convention on the Elimination of all Forms of Discrimination against Women.

The Panel discussed with the Law Reform Commission (LRC) and journalists' associations, press organizations, and other concerned organizations and individuals on the Consultation Papers on Regulation of Media Intrusion and Civil Liability for Invasion of Privacy published by the LRC's Subcommittee on Privacy. Some members expressed reservations on the proposal of the LRC's Subcommittee to set up a Government-appointed Press Council with sanction powers. They urged the media industry to expedite the progress of setting up a self-regulatory mechanism in order to address public concern about malpractices of some media organizations.

On the bid to host the 2006 Asian Games, the Panel discussed the procedural arrangement, financial implications, economic assessment reports and the financial study. The majority of the Panel members gave their support to hosting the 2006 Asian Games on the grounds that apart from boosting the tourism and creating more job opportunities in the hosting process, there would be many intangible benefits including promotion of sports and an interest in sports among the young people. Some members also urged the Government to set a spending limit and put in place a cost-control mechanism to make sure that the spending would be within the limit.

With regard to the report on review of law and administrative measures affecting divorcees and children eligible for alimony, the Panel was very disappointed at the Government's decision not to set up an intermediary body for

the collection of maintenance payment. The Panel was of the view that the Administration should not have taken the position primarily on economic considerations. The Panel stressed that although the measures proposed by the Working Group could be of some assistance, the hardship and torment encountered by divorcees and their children in collecting maintenance payment would not be alleviated in the absence of an intermediary body.

Madam President, I would like to take this opportunity to thank all Members for their enthusiastic participation in the discussion of various issues and the support of the Secretariat.

Madam President, these are my remarks.

**PRESIDENT** (in Cantonese): Mr LEE Cheuk-yan and the Chief Secretary for Administration will separately address the Council on the Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulation 2000, which is subsidiary legislation laid on the table of the Council on 24 May 2000.

### **Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulation 2000**

**MR LEE CHEUK-YAN** (in Cantonese): Madam President, thank you for allowing me to speak on the Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulation 2000 (the Regulation).

The Regulation was gazetted on 19 May and was tabled before this Council on 24 May. One provision in the Regulation proposes changing from using the Comprehensive Social Security Assistance rates to the 35 percentile household expenditure as the personal allowance deductible from the gross income of legal aid applicants in assessing their financial capacity for disposable income. According to the Administration, the proposal will allow 58% of the total number of households in Hong Kong to become financially eligible for legal aid, up from 48%. Hence the needs of households with middle class income will have been satisfied.

To do justice, the Government must put in place a proper legal aid system to ensure that people will not fail to gain fair treatment from the courts due to a

lack of means. Due to the fact that legal costs are exorbitant in Hong Kong, even middle class households may not be able to afford them. Data from the Census and Statistics Department show that at the 65-percentile, household income is only \$24,000. Little is left after deducting the necessary expenditure. Such households would find it difficult to afford legal charges, which are expensive. So, although the Government says 58% of the people will have been benefited after the change is made in the law, it does not mean the remaining 42% can afford lawyers in private practice. Hence, there are still some who are needy but who are not covered.

When this Council scrutinizes the Legal Aid (Amendment) Bill 1999, other Members and I already suggested raising the allowance to .....

**PRESIDENT** (in Cantonese): Mr LEE, I am sorry I have to interrupt your speech. This is a time for Members to speak, not to debate, as stipulated by the Rules of Procedure. So, your speech and the speech of the Secretary for Administration have to be approved by me beforehand. I have a text of your speech. When I compared it with what you said, I found quite a number of differences. For example, you added a lot of numbers. I do not think you should do that and I hope you could speak according to your original speech.

**MR LEE CHEUK-YAN** (in Cantonese): Yes, Madam President, but could you let me have my original speech back? *(Laughter)*

**PRESIDENT** (in Cantonese): Mr LEE, have you even thrown away your original speech?

**MR LEE CHEUK-YAN** (in Cantonese): No, I just forget to bring it with me.

Thank you, Madam President. Madam President, should I start from the beginning or from where I ....., but .....

Madam President, thank you for allowing me to speak on the Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulation 2000 (the Regulation).



The Regulation was gazetted on 19 May and was tabled before this Council on 24 May. One provision in the Regulation stipulates that the 35 percentile household expenditure be used as a standard in assessing the disposable income of legal aid applicants.

I had given notice to move a resolution to amend clause 8 by raising the allowance to the median household expenditure. I believe by so doing, we will be able to reflect more accurately the actual disposable income and financial capacity of middle class families. However, I expected the resolution might involve public moneys, in which case the consent of the Chief Executive could be required under the Rules of Procedure. So, I finally decided to withdraw my motion of my own accord.

I was glad that in scrutinizing the Regulation, the Government undertook to follow up the above proposal. I hope when the Government conducted a review of the Regulation next year, it will accept suggestions to further relax the standards in assessing the financial capacity of legal aid applicants so that more people can be qualified to apply for legal aid.

Thank you, Madam President.

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): Madam President, thank you for allowing me to speak on the Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulation 2000 which has been tabled before this Council on 24 May.

In respect of the issues concerning the amended Regulation and other recommendations of the Legal Aid Policy Review 1997, they have been discussed in detail in the Legislative Council's Panel on Administration of Justice and Legal Services and the Bills Committee on the Legal Aid (Amendment) Bill 1999.

The objective of revising the personal allowance is to reflect more realistically the expenditure level of our target groups, that is, households in the lower middle class, so that more people can become financially eligible for legal aid.

At present, the Comprehensive Social Security Assistance rates are used as the personal allowance deductible from the gross income of legal aid applicants in assessing their financial capacity. In the course of the consultations conducted for the Legal Aid Policy Review, we have considered the views put forward by related parties and revised the original proposal to further raise the personal allowance.

Under the proposed Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulation, we will adopt the criterion of the 35-percentile household expenditure. This index will on average allow 58% of the total number of households in Hong Kong to become financially eligible for legal aid, up from 48% under the existing arrangement. That is to say, from the original 860 000 households to 1 060 000 households.

As to the proposal of further increasing the personal allowance, such as using the mean household income as the basis, we think that this will not necessarily reflect the average income and expenditure pattern of our target groups.

We are grateful to Honourable Members for their views on improving the legal aid scheme. As I have mentioned, we will keep a close watch of the implementation of the legal aid scheme and will make reviews and improvements as when necessary, in the hope that the scheme can better meet the needs of the public.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): Mrs Miriam LAU will speak to this Council on the Road Traffic (Construction and Maintenance of Vehicles) (Amendment) (No.2) Regulation 2000. The Regulation is a subsidiary legislation tabled before the Legislative Council on 24 May 2000.

**Road Traffic (Construction and Maintenance of Vehicles) (Amendment) (No. 2) Regulation 2000**

**MRS MIRIAM LAU** (in Cantonese): Madam President, the Road Traffic (Construction and Maintenance of Vehicles) (Amendment) (No. 2) Regulation 2000 seeks to amend the Road Traffic (Construction and Maintenance of

Vehicles) Regulations (Cap. 374 sub. leg.). The purpose of the Amendment Regulation is to extend the emission tests to cover petrol and liquefied petroleum gas (LPG) vehicles as part of their roadworthiness inspection and to introduce exhaust emission standards for these vehicles.

The Subcommittee held one meeting with the Administration. Members of the Subcommittee welcome the proposal to extend the emission tests to cover petrol and LPG vehicles so as to ensure that a certain degree of vehicle maintenance is upheld so that air quality is improved.

The Subcommittee notes that the European Commission (Euro) standards will be adopted as the emission standards for petrol vehicles. Concerns have been raised as to whether the proposed standards are appropriate and whether pre-Euro vehicles will have difficulties in meeting the standards.

The Administration has pointed out to members that the Euro standards are commonly adopted as the emission standards for petrol vehicles elsewhere. They provide flexibility in the sense that different standards are imposed on different category of vehicles with reference to the date of manufacture and the maximum permissible level specified by the vehicle manufacturer. This will ensure that the standards so imposed are realistic as vehicle manufacturers shall be fully conversant with their own products. In case such standards are not available, prescribed standards will be applied to different categories of vehicles with reference to their ages. The Administration indicated that the standards are not very tight and so the vehicle maintenance trades in Hong Kong should be able to cope with the required maintenance work. The Administration has also consulted the Motor Traders Association, the Service Managers Association, and the Hong Kong Vehicle Repair Merchants Association, and so on and they all indicated support to the proposal.

Despite the Administration's reply, which the Subcommittee noted, there were members who were very much concerned about whether the vehicle maintenance trades in Hong Kong knew about the emission standards and whether they have sufficient maintenance experience and information to cope with the work.

In order to ensure that small and medium size service depots can have access to emission standards and acquire the necessary techniques and equipment for undertaking the maintenance work, the Subcommittee requests the

Administration to assist by making available the relevant repair manuals from the vehicle manufacturers to the trades.

Madam President, the Subcommittee notes that the subsidiary legislation will come into effect on 1 November 2000. I hereby urge the Administration again to ask vehicle manufacturers and their agents to provide the vehicle maintenance trades with repair manuals to help them acquire the relevant emission standards and techniques so that they can carry out the work.

After the Subcommittee finished scrutinizing the Regulation, I contacted the Hong Kong Vehicle Repair Merchants Association representing most of Hong Kong's small and medium size service depots. They said the Environmental Protection Department consulted them several months ago about their support for regulations on emission tests conducted on petrol engine vehicles and LPG engine vehicles. But the Government did not go further to find out the difficulties they might face in complying with the relevant requirements. The Association supported the proposed emission tests but they told me existing maintenance technicians lacked repair manuals and they found it difficult to diagnose correctly. Therefore, they very much hope the agents can release Service Manuals and Auto Data. This is beneficial to proper maintenance of vehicles and road traffic. In addition, this is also an effective means to reduce exhaust emissions. This is the demand of the trades. Indeed, to solve the emission problem, repair is certainly important. But proper maintenance through acquisition of sufficient repair information by the trades for accurate diagnosis should not be ignored. This applies to both diesel- and petrol-driven vehicles. So, I hope the Government can face the relevant issue squarely.

Madam President, I so submit.

## **ORAL ANSWERS TO QUESTIONS**

**PRESIDENT** (in Cantonese): Questions. First question.

### **Determination of Number of Kindergartens in Public Housing Estates**

1. **MR JASPER TSANG** (in Cantonese): *Madam President, regarding the allocation of premises in public housing estates by the Housing Department (HD)*

*to sponsoring bodies for operating kindergartens, will the Government inform this Council:*

- (a) of the length of the tenancies in general;*
- (b) whether HD has a right to and will repossess, in part or in whole, the premises leased to a kindergarten before the expiration of the tenancy when the intake of the kindergarten is much lower than the target; and*
- (c) whether it adjusts the respective numbers of kindergartens in public housing estates in the light of the changes in the population profile in these estates; if so, of the way in which the adjustment mechanism operates?*

**SECRETARY FOR HOUSING** (in Cantonese): Madam President, tenancies for kindergartens in public housing estates normally last for three years.

Under the terms of the standard tenancy agreement, either the Housing Authority or the tenant may terminate the tenancy by giving three months' notice. The Housing Authority's general policy is not to terminate a tenancy before its expiry.

The Housing Authority adjusts the number of kindergartens in a public housing estate in the light of demand for kindergarten places. When an operator terminates the tenancy for a kindergarten, the Housing Authority will request the Education Department (ED) to nominate another organization to run the kindergarten. If no operator comes forward after two letting attempts by the ED, the Housing Authority will, in conjunction with the ED, review the situation, including local demographic changes, to see whether there is still demand in the vicinity for the viable operation of the kindergarten. If not, the premises will be disposed of for other uses.

**MR JASPER TSANG** (in Cantonese): *Madam President, in his main reply, the Secretary said the Administration would only review the demand of the housing estate for kindergarten places if no operator came forward after two letting attempts by the ED. However, as we understand, a feature of kindergartens in*

*housing estates is that they serve mainly residents in a particular housing estate or a certain building. In newly-built housing estates, demands for kindergartens are essential but may also be short-lived. To fully utilize space, will the Government plan according to the growth of housing estates into maturity by changing the uses of the relevant units by stages, such as from kindergartens, to youth centres, job training centres and centres for the elderly?*

**SECRETARY FOR HOUSING** (in Cantonese): Madam President, the answer is in the affirmative. As the population in a housing estate grows in age, that is, as the number of babies born will decrease, the number of kindergartens will decrease accordingly. When the number decrease to a certain point, and the Administration does not think there is a need anymore for kindergartens, the HD in conjunction with the ED will consider cancelling the use of the relevant units as kindergartens. The HD will then consider leasing the units for other uses such as homes for the elderly, use by welfare organizations, offices or storage. The space spared could fit for a variety of services.

**PRESIDENT** (in Cantonese): Mr TSANG, which part of your supplementary question has not been answered?

**MR JASPER TSANG** (in Cantonese): *Madam President, my supplementary question asked about whether the Government has made any anticipatory planning, and not a rushed decision for a change in the use of the premises only when it is found there would be no longer any demand for kindergartens.*

**PRESIDENT** (in Cantonese): Secretary for Housing, do you have anything to add?

**SECRETARY FOR HOUSING** (in Cantonese): Madam President, the Government has in fact made anticipatory planning. In designing a new district or a new housing estate, the Government would make arrangements in advance services to be provided, such as schools, welfare services, youth centres, or centres for the elderly. Kindergartens are of course one such kind of service. When a certain district or housing estate does not need kindergartens any more,

the HD and the ED will consider using the premises for purposes other than kindergartens and making them available for those other purposes that are still in demand.

**MR TAM YIU-CHUNG** (in Cantonese): *Madam President, I would like to ask the Secretary for Housing whether he has any data at hand right now to show the number of kindergartens in housing estates which have been closed or of units in them which have been left vacant?*

**SECRETARY FOR HOUSING** (in Cantonese): Madam President, we note in the past five years six kindergartens have ultimately ceased operation due to a lack of demand in the relevant districts. The units have now been used for other purposes such as homes for the elderly or centres for computer support or for welfare purposes.

**MR CHAN WING-CHAN** (in Cantonese): *Madam President, in his main reply the Secretary mentioned when an operator terminated the tenancy for a kindergarten, the Housing Authority will request the ED to nominate another organization to run the kindergarten. Will the Government inform this Council the number of kindergartens that have ceased operation in the past three years, whether any other organizations have applied for running kindergartens and how many have made such applications?*

**SECRETARY FOR HOUSING** (in Cantonese): Madam President, I have mentioned the number of kindergartens that ceased operation for the past five years just now. I did not take special note of the number for the past three years but I think the number I mentioned was sufficient, that means, in the past three years, less than six kindergartens ceased operation. As regards the number of operators which rented the units vacated by the kindergartens, I do not have their information at hand; but if necessary, I may ask the ED and then give a written reply on the relevant data. (Annex I)

**MISS CYD HO** (in Cantonese): *Madam President, assuming there is a decrease in demand and the intake drops, then each student will have more space. In*

*past meetings, we had numerous discussions on the space for primary students, but we did not discuss space for kindergarten students. Will the Government inform this Council whether there is any policy to specify the space in terms of a maximum number of square metres for kindergartens so that when the student population drops below a certain level and the space for each student increases, a request by the Administration to wind up the business of the kindergarten would be triggered? Or is the Administration ready to allow flexibility so that even if the number of students drops it will allow the operators to continue renting the premises for operation as far as teaching conditions can be improved?*

**SECRETARY FOR HOUSING** (in Cantonese): Madam President, even if the number of students decreases, the HD will not take the initiative to request the kindergarten to stop its operation. So, the initiative still remains with the operator who decides when he would tell the HD he does not intend to go on with his operation, upon which the HD will then consider what to do next. The HD will contact the ED as regards what to do with the vacated units. If there is still a need for kindergartens in the housing estates, the units will certainly be used as a kindergarten; otherwise they will be used for other purposes.

**MISS CYD HO** (in Cantonese): *Madam President, the Secretary has not answered my question about whether or not there is any policy specifying the upper limits of space for activities for kindergarten students.*

**PRESIDENT** (in Cantonese): Secretary for Housing, do you have an answer for this Council in this respect?

**SECRETARY FOR HOUSING** (in Cantonese): Madam President, I am sorry I do not have one but I can obtain information from the Education and Manpower Bureau before providing the same. (Annex II)

**MR CHAN KWOK-KEUNG** (in Cantonese): *Madam President, supposing a certain operator has a low intake of kindergarten students so that there is idle space, and if the operator let some non-profit making organizations use the space as a reading room for students in the area, would the HD terminate the tenancy of the operator?*



**SECRETARY FOR HOUSING** (in Cantonese): Madam President, every tenancy agreement would stipulate the use of a unit. If it is stipulated that a unit should be used as a kindergarten, it should be so used. If it is desired that the use be changed, then it amounts to a change in the terms of the tenancy agreement. In that case, the Administration will have to reconsider the case. If this situation arises, I believe the HD will first seek advice from the ED before giving any further considerations.

**MR LAU KONG-WAH** (in Cantonese): *Madam President, in replying to questions about the transfer of the use of kindergartens, it seems the Secretary focused on public housing estates. My observation is that in some housing estates such as home ownership housing estates, some space for kindergartens has been left vacant for several years without being used. But in fact, in the area, the elderly would very much want to have a centre for the elderly. Up to now, however, there are still no such facilities. So, in terms of numbers, there appears to be some discrepancies. Would the Secretary also provide some data in home ownership housing estates so that we can see clearly what the picture is like?*

**PRESIDENT** (in Cantonese): Mr LAU, the main question is actually about public housing estates, but if the Secretary has the information now, he may also answer the question.

**SECRETARY FOR HOUSING** (in Cantonese): Madam President, I am sorry we do not have the information now.

**MR HO SAI-CHU** (in Cantonese): *Madam President, in paragraph two of the main reply, it was mentioned that the Housing Authority's general policy is not to terminate a tenancy before its expiry. Does this general policy include the case where a kindergarten breaches the rules by, for example, over-enrolment, and even so, the HD will not terminate the tenancy? If that is the case, will the Administration review the policy?*

**SECRETARY FOR HOUSING** (in Cantonese): Madam President, I think the purpose of the relevant tenancy agreement is to specify that a certain place is to be used by operators to run kindergartens. So, if the tenancy agreement specifies that only kindergartens can be operated, the operator must operate a kindergarten there. Issues such as over-enrolment are purely issues of education policy and the daily operation of the schools, which naturally should be dealt with by the ED rather than on the basis of the tenancy agreement.

### **Reciprocal Postal Remittance Service between Hong Kong and Mainland**

2. **MR LAU WONG-FAT** (in Cantonese): *Madam President, with regard to the reciprocal postal remittance service between Hong Kong and the Mainland introduced by the Post Office on 30 March, will the Government inform this Council of:*

- (a) the total amount of remittance, in terms of Hong Kong currency, remitted to the Mainland through the service, as at the end of last month; and*
- (b) the reasons for the Post Office converting a remittance from Hong Kong dollars into US dollars before remitting it to the Mainland?*

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): Madam President,

- (a) On 30 March, Hongkong Post introduced reciprocal postal remittance service between Hong Kong and the Mainland of China. Up to end of last month, the total remittance (in terms of Hong Kong currency) remitted to the Mainland amounted to around \$770,000.
- (b) The US currency is used as the unit for postal remittance services between the Mainland and other countries. Hence in response to request from the Mainland, the postal remittance service between Hong Kong and the Mainland has also adopted the same arrangement. The US dollar is therefore used as the unit for the issue of money order and settlement of accounts. In fact, some overseas postal administrations also use the US dollar as the unit for

remittance transactions, including the Philippine Post. That is why currently the remittance services between Hong Kong and the Philippines also use the US dollar as the unit for remittance.

**MR LAU WONG-FAT** (in Cantonese): *Madam President, using US dollars as a mediating postal currency would require that Hong Kong people pay the conversion charges for an extra round before the payee receives the money in renminbi. Furthermore, Hong Kong is now part of China. It is hardly convincing to use another country's currency as a mediating postal currency. Under the "one-country" principle, is it possible for the SAR Government and the Central Government to explore the use of Hong Kong dollars as a currency for remitting money to the Mainland, or the arrangement for Hong Kong people to send out money in renminbi directly through the Post Office?*

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): Madam President, we have had discussions with mainland postal authorities about using Hong Kong dollars as remittance currency. However, since they maintained they had been using US dollars as a currency for postal remittance service, they hoped we could use US dollars as a unit of currency. Nevertheless, we can discuss with them again requesting that they reconsider our proposal.

**MR FUNG CHI-KIN** (in Cantonese): *Madam President, will the Secretary inform this Council whether the senders of remittance know beforehand the money has to be first converted into US dollars before being sent to the Mainland? Has the Government any statistics showing there were some senders of the remittance who did not agree to the arrangement and cancel the remittance?*

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): Madam President, the Post Office have published pamphlets and posters about reciprocal postal remittance service to explain the arrangement. Such posters are put up in our post offices. When people require such service from the Post Office, Post office staff will explain to them and they can decide for themselves whether or not to proceed with the remittance.

**PRESIDENT** (in Cantonese): Mr FUNG, which part of your supplementary question has not been answered?

**MR FUNG CHI-KIN** (in Cantonese): *Madam President, the Secretary did not answer the part on whether there were many cases where people did not accept the remittance arrangement.*

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): Madam President, we do not have such data.

**MRS MIRIAM LAU** (in Cantonese): *Madam President, at present China capital banks can accept remittance to the Mainland using Hong Kong dollars whereas the Post Office cannot. Will the Secretary inform this Council whether he has reflected the situation to the relevant authority in the Mainland, that is, the fact that China capital banks can provide the service; if not, will it consider doing so?*

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): Madam President, first of all, the sender can use Hong Kong dollars to remit the money; but the Post office converts it into US dollars first and then send it in US dollars to the Mainland. So, still, people who need the service can remit the money using Hong Kong dollars.

**MR NG LEUNG-SING** (in Cantonese): *Madam President, will the Government inform this Council whether it had done any assessment on the service before it launched the same? Did it assess the benefits the service would bring?*

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): Madam President, the Post Office provides the service because it wants the people to have one more alternative. While the banks are providing the same service, the Post Office feels that with over 50 000 post offices in the Mainland, the service may cover some remote areas which may not have banks so that Hong Kong people, who are closely related to the Mainland, may have an alternative with a broader service network.

**MR HO SAI-CHU** (in Cantonese): *Madam President, in part (a) of the main reply, the Secretary said within slightly over two months the total remittance remitted to the Mainland amounted to around \$770,000, that is around \$10,000 per day. Will the Government inform this Council whether it was because of the need to convert the money first into US dollars and then back into Hong Kong dollars that causes fewer people to use the service? I think the banks must have had a much larger volume of remittance to the Mainland. Will the Secretary inform this Council whether the arrangement discourages prospective clients?*

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): Madam President, the Post Office has only provided the service for a little over two months, and the business volume in the second month exceeded that in the first. I believe it would take a longer period of time to see the trend in this line of business.

On the other hand, the service provided by the Post Office and that by the banks is slightly different. There is an upper limit for remittance through the Post Office. For instance, the upper limit for remittance to the Mainland is US\$1,000, whereas to the Philippines, US\$5,000. Therefore, the clients patronizing the Post Office and those patronizing the banks should be slightly different. An advantage in using the Post Office is that it has a wider postal network than banks in some areas.

**MR SIN CHUNG-KAI** (in Cantonese): *Madam President, will the Government inform this Council the percentage of the indirect cost consisting of conversion and handling charges when the Post Office provides the service, as compared to the banks? For example, how much would the payee receive ultimately for a remittance of \$5,000 in Hong Kong dollars? How does the cost compare with that of the banks? The service has been launched for two months by now, could the Secretary provide data in this respect to this Council?*

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): Madam President, according to my understanding, if the amount of remittance is below the upper limit, say US\$3,000 remitted to the Philippines (US\$5,000 being the upper limit), the Post Office is more competitive than the banks. But for larger sums remitted, banks would be more competitive. This is a natural consequence because we are charging 0.5% on the amount remitted plus \$40, which means our charges will rise as the amount remitted rises, and banks will be more competitive by then.

**DR LUI MING-WAH** (in Cantonese): *Madam President, I had wanted to ask Mr SIN's question.*

*Will the Government inform this Council in writing after this meeting about the fees that are actually charged on the sender? How favourably does the cost compare with the banks after the Post Office charges for postage and deducts conversion rates twice?*

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): Madam President, the Post Office adopts the exchange rate announced by the Hong Kong Association of Banks. It will switch to another exchange rate only when fluctuations in the exchange rate exceed a certain level.

Regarding how much more or how much less the sender pays the Post Office when compared with the banks, I do not think we can provide the information without difficulty because it all depends on the amount involved in each remittance. As I pointed out just now, at present the Post Office charges 0.5% on the amount remitted (which is in fact paid to the counterpart post authority) and \$40. Hence, the charge varies with the amount remitted. So, it is difficult to make a comparison.

**MR FUNG CHI-KIN** (in Cantonese): *Madam President, thank you for allowing me to ask a second supplementary question.*

*The Secretary cited the postal remittance service from Hong Kong to the Philippines as example. I trust she must have regarded that part of the business as more successful. Will the Secretary inform this Council when did the Post Office start the remittance service to the Philippines and the amount of remittance serviced each year?*

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): Madam President, the situation is exactly the opposite. The Post Office has had more remittance sent to the Mainland than to the Philippines. We had more than 360 cases of remittance to the Mainland, amounting to \$770,000-odd. Our postal remittance service to the Philippines started in December last year and up to the end of last month, we had drawn only a dozen or so postal orders for a total of US\$1,000-odd.

**MR CHAN KWOK-KEUNG** (in Cantonese): *Madam President, the money sent by the sender is first converted to US dollars and then to renminbi before being remitted to the Mainland. Will the Secretary inform this Council how much profit has been made from the \$770,000-odd remitted in which there was a conversion?*

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): Madam President, the Post Office did not intend to profit from the conversion in the service. It just wanted to collect a service charge. However, due to fluctuations in the exchange rate, as at the end of April when there was a settlement, the remittance service to the Mainland recorded a surplus of \$600-odd.

**MR HOWARD YOUNG** (in Cantonese): *Madam President, the Secretary said in providing the service the Post Office wanted to give one other alternative to the people. I believe she should say the alternative is for mainland people. In Hong Kong banks outnumber rice shops or post offices. Will the Secretary inform this Council that when establishing the needs of the consumers for the service, has the assessment been done on the extra coverage of post offices in some areas over banks?*

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): Madam President, it has always been the intention of the Post Office to make the best use of its resources to provide more services. The Post Office has started the postal remittance service in view of the increasingly close link between Hong Kong and China. So, it discussed with mainland post authorities to launch the service. Moreover, there is quite a number of Filipino workers in Hong Kong and the Post Office felt this might be an opportunity. So, it also started the remittance service with priority. The Post Office also had discussions with other countries for the same service. Such countries include the United Kingdom, the United States, Canada, Australia and so on.

**MR ANDREW WONG** (in Cantonese): *Madam President, will the Secretary confirm that the postal remittance service operates under the Trading Fund so that it is absolutely legitimate to operate at a profit?*

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): Madam President, the answer is in the affirmative. The service operates under the Trading Fund.

**MR NG LEUNG-SING** (in Cantonese): *Madam President, since the service is reciprocal in nature, will the Secretary provide to this Council the data regarding the remittance from the Mainland to Hong Kong?*

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): Madam President, up to last week there are 21 postal remittances from the Mainland to Hong Kong amounting to around \$60,000.

**PRESIDENT** (in Cantonese): Last supplementary.

**MR HOWARD YOUNG** (in Cantonese): *Madam President, will the Secretary inform this Council whether the Post Office will calculate the cost-effectiveness of the service on a separate account? Are the charges collected sufficient to cover salaries of the staff?*

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): Madam President, the Post Office supports the service with existing resources, which we hope can be fully utilized. Thus, no extra cost is required. Furthermore, the income received will help lower the costs in other areas in the Post Office.

### **Determination of Prices of Public Housing**

3. **MR MA FUNG-KWOK** (in Cantonese): *Madam President, late last month, the Hong Kong Housing Society (HS) put up for sale the remaining flats of three Sandwich Class Housing Scheme (SCHS) estates at prices 10% to 30% lower than those set for these estates when they were first put up for sale. Some owners of the flats in those estates were dissatisfied with the HS's move to sell the remaining flats at reduced prices. In connection with the determination of the prices of public housing, will the Government inform this Council whether:*



- (a) *it is aware of the HS's considerations and rationale in deciding to sell these flats at reduced prices;*
- (b) *it knows if the price level of private residential property, or the affordability of the potential buyers, is the HS's main consideration when it determines the prices of the SCHS flats; and*
- (c) *the prices set for public housing have been used for stabilizing the price level of the overall residential property market in Hong Kong; if so, whether the HS has set the prices of the SCHS flats according to such an objective?*

**SECRETARY FOR HOUSING** (in Cantonese): Madam President, when setting the prices of the SCHS flats, the HS considers primarily applicants' affordability, that is to say, the mortgage to income ratio generally should not exceed 50%. Consideration will also be given to prices of private flats in nearby areas. As income levels and prices of private flats change, sale prices of the SCHS flats will also be adjusted.

The aim of providing the SCHS flats is to assist those of the Sandwich Class who are unable to afford flats in the private residential property market to fulfil their wish to buy a flat and not to stabilize prices in that market.

**MR MA FUNG-KWOK** (in Cantonese): *Madam President, the HS announced yesterday its decision to postpone the sale of some SCHS flats in reflection of market conditions. However, before making this decision, the HS put up for sale the remaining flats of some estates at rather substantial discounts. I would like to ask the Government if it knows the reasons for such changes in the SCHS policy of the HS recently?*

**SECRETARY FOR HOUSING** (in Cantonese): Madam President, regarding the decision made by the HS yesterday, it is no doubt an operational arrangement of the HS. We have also heard the Chairman of the HS explain how they looked at the general market conditions. When putting up flats for sale, they have to consider circumstances such as the demand of the market and make adjustments accordingly. Thus, every time they put up flats for sale, they have

to study the conditions first. I am sure that before making the decision yesterday to tentatively postpone the sale of the next lot of SCHS flats for a few months, they had taken into account the general situation over the next few months.

**PRESIDENT** (in Cantonese): Mr MA Fung-kwok, which part of your supplementary question has not been answered?

**MR MA FUNG-KWOK** (in Cantonese): *Madam President, actually, I had wanted to ask the Government what its attitude towards this decision of the HS was.*

**PRESIDENT** (in Cantonese): Secretary for Housing, do you have anything to add?

**SECRETARY FOR HOUSING** (in Cantonese): Madam President, I do not have anything particular to add. The HS has made this decision on its own. The Government will allow the HS to act according to its institutional decision, only hoping that it will operate in good condition.

**PROF NG CHING-FAI** (in Cantonese): *Madam President, I would like to ask the Government how the market responded when the HS reduced the prices of the remaining flats of the three estates by 10% to 30% earlier. Could the HS achieve its aim by reducing prices? It is said that the HS still has 1 000 flats left. Will similar reductions be applied to these flats?*

**SECRETARY FOR HOUSING** (in Cantonese): Madam President, recently, the HS has put up the latest SCHS flats for sale. The oversubscription rate was about 400%, which is quite high. As for when the HS will put up the remaining flats for sale, as I said earlier, it will decide after considering the situation over the next few months. However, the HS has tentatively decided to put up the next lot of flats for sale early next year.

**MR LEE WING-TAT** (in Cantonese): *Madam President, I am puzzled about one thing and that is, the SCHS of the HS was originally a Government scheme. The HS is only authorized to implement the scheme as an agent. From what I have seen in the past, even the setting of new prices for the SCHS flats has to be approved by the Housing Bureau. Why is it that judging from the way the Secretary put it, the sale of the remaining SCHS flats seems to have nothing to do with the Bureau? Is it because it is such a controversial issue that the Secretary dared not say anything? If so, can he tell us whether the Government approves of it? Hence, I wish to repeat the questions asked by Mr MA Fung-kwok: Has the Housing Bureau discussed this with the HS and has the Secretary agreed or approved of this scheme?*

**SECRETARY FOR HOUSING** (in Cantonese): Madam President, when determining the prices of the SCHS flats, the HS has to submit the prices to the Housing Bureau for its consideration. The latter will decide if the price levels are appropriate before they can be adopted. However, as to when the SCHS flats should be put up for sale, the initiative still lies with the HS.

**PRESIDENT** (in Cantonese): Mr LEE Wing-tat, which part of your supplementary question has not been answered?

**MR LEE WING-TAT** (in Cantonese): *Madam President, my follow-up question is very simple. Did the Secretary for Housing discuss with the HS its proposal to stop the sale of the remaining flats? Did the Secretary agree to it? The Secretary has so far failed to answer this supplementary question. Did the Secretary in fact agree to it and was it discussed?*

**SECRETARY FOR HOUSING** (in Cantonese): Madam President, the HS had not submitted this decision to the Housing Bureau officially. However, the HS held a meeting and I am an incumbent member of the HS. This matter was discussed at the meeting. Although there were diverse views at the meeting, a decision was made in the end, that is, the one announced by the Chairman of the HS yesterday.

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, in the last paragraph of the main reply, the Secretary mentioned that the aim of providing the SCHS flats was to assist those of the Sandwich Class who could not afford flats in the private residential property market to fulfil their wish to buy a flat rather than to stabilize prices in that market. However, the Chairman of the HS Mr CHUNG Shui-ming pointed out clearly yesterday that his decision was meant to stabilize property prices. Now, the Secretary has said this. Has the Chairman of the HS given the Secretary a slap in the face or has the Secretary given the Chairman of the HS a slap in the face? What is their real aim? I would like the Secretary to clarify this. Is the aim of providing those flats to assist those of the Sandwich Class to purchase flats or to stabilize property prices? If the aim is to help those of the Sandwich Class to purchase flats, then what Chairman CHUNG Shui-ming said was wrong. If so, should the Secretary do something to make him answer for his incorrect remarks or for the incorrect decision?*

**SECRETARY FOR HOUSING** (in Cantonese): Madam President, I cannot comment on what the Chairman of the HS has said, or rectify what he has said. However, the Government's initial aim in drawing up the SCHS was certainly to assist those households which could not afford to buy flats in the private property market but wished to do so to fulfil their wish. At that time, property prices were at their peak. I believe Chairman CHUNG Shui-ming was referring to the general situation in the present property market. However, I cannot comment on whether his remarks were right or wrong.

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, the point that I made in my supplementary question was whether the remarks of the Chairman of the HS were right or wrong. Actually, what the Secretary talked about was the Government's initial aim in drawing up the SCHS, while Chairman CHUNG Shui-ming was talking about the present aim. If the Government's initial aim differs from the present aim, should the Secretary rectify what he stated in the main reply?*

**PRESIDENT** (in Cantonese): Mr LEE Cheuk-yan, it is now question time and not the time for debate. You did not mention the word "initial" in your supplementary question. It was only after you had heard the word "initial" in

the Secretary for Housing's reply that you asked this follow-up question. Hence, you should queue up again for your question. Otherwise, it would be unfair to other Members. I will give you the opportunity to ask questions again. Please wait for your turn.

**MR LAU KONG-WAH** (in Cantonese): *Madam President, the Government in fact subsidizes to a certain extent the SCHS flats of the HS. After building the flats, the HS now refuses to sell them. However, many people are waiting to buy these flats. Although the HS has not yet submitted this proposal to the Housing Bureau officially, will the Secretary approve of it when it is submitted to the Housing Bureau? Such a policy and such an act suggest that the Government is interfering with the property market. Is this the right thing to do?*

**SECRETARY FOR HOUSING** (in Cantonese): Madam President, I find this supplementary question somewhat hypothetical.

**PRESIDENT** (in Cantonese): Mr LAU, please repeat your supplementary question so that I can hear it more clearly.

**MR LAU KONG-WAH** (in Cantonese): *Madam President, this supplementary question is not at all hypothetical. Just now, the Secretary said that the HS had held a meeting and the decision of the meeting would be submitted to the Secretary. I would like to ask the Secretary what he will do when this decision is submitted to him. It is not a hypothetical question at all.*

**PRESIDENT** (in Cantonese): Mr LAU Kong-wah, as I recall, what the Secretary for Housing said was a meeting would be held after the HS submitted this proposal to him. However, Secretary for Housing, please answer for yourself.

**SECRETARY FOR HOUSING** (in Cantonese): Madam President, what I said was the HS had not submitted this proposal to the Secretary for Housing, that is,

to me, for consideration beforehand. However, it discussed this issue at the meeting held yesterday and all members talked about it together. After discussion, a decision was made. As the decision was announced, there was no need to submit it to the Housing Bureau for approval.

**MISS EMILY LAU** (in Cantonese): *Madam President, since the Secretary for Housing participated in the meeting of the HS, I believe we can assume that the Housing Bureau agrees with this decision, since the decision was made after they held a meeting together. Madam President, I still wish to ask about the aim of building SCHS estates. In his main reply, the Secretary said that the aim was neither to prop up the market nor to stabilize the prices of the private residential property market. However, yesterday, the Chairman of the HS said this was the aim. I would like the Secretary to clarify whether the aim of the SCHS has changed. If it has changed, when did this change take place? If not, did someone do something yesterday that contravenes the Government's policy?*

**SECRETARY FOR HOUSING** (in Cantonese): Madam President, the aim of the SCHS has never changed from the very beginning up to now. It is to assist people who are unable to afford flats in the private residential property market to fulfil their wish to purchase a flat. This would also answer the question raised by Mr LEE Cheuk-yan just now, that is, the aim has never changed throughout.

**MR LEE KAI-MING** (in Cantonese): *Madam President, just now, the Secretary said that the aim of providing the SCHS flats had never changed. Those flats are built to assist those from the Sandwich Class who cannot afford flats in the private residential property market to fulfil their wish to purchase a flat. The Secretary also said that the flats were oversubscribed four times. If so, why are the completed flats not put up for sale now, but have to be put up for sale in January next year instead? This decision and the policy are completely contradictory.*

**SECRETARY FOR HOUSING** (in Cantonese): Madam President, as I said, the present decision was made after all members of the HS held a meeting. Of course, as I also said, there were many diverse views at the meeting. However, the final collective decision is the same as the one announced by the Chairman of

the HS yesterday. Therefore, in this connection, we have no other comments to make.

**MR MICHAEL HO** (in Cantonese): *Madam President, I wish to follow up Mr LEE Wing-tat's question just now. If I heard it correctly, the Secretary replied that he has participated in the discussion of this matter at a meeting of the members of the HS. I would like to ask the Secretary whether he had discussed with the HS in his capacity as Secretary for Housing and whether the Bureau has approved of this proposal?*

**SECRETARY FOR HOUSING** (in Cantonese): Madam President, at the meeting of the HS yesterday, I participated as a member of the HS. I did not have any special powers at the meeting because of my position as Secretary for Housing and could not exert any influence or what-not on behalf of the Housing Bureau. In short, I participated in the meeting as a member.

**MISS CHOY SO-YUK** (in Cantonese): *Madam President, I would like to ask if the plan of the Housing Authority (HA) and HS to postpone the sale of Home Ownership Scheme (HOS) flats and SCHS flats or to lease instead of selling them is consistent with the Special Administrative Region (SAR) Government's housing policy.*

**SECRETARY FOR HOUSING** (in Cantonese): Madam President, generally, an organization has the right to decide when to sell its completed flats or flats under construction. The sales timetable is entirely up to them. However, I also recall that in one passage in the 1998 policy address, the Chief Executive talked about the sale of flats. He was referring to the sale of HOS flats. He said that in considering the sales timetable for HOS flats, the HA would adapt the timetable according to the market conditions, that is, it would decide according to the demand and supply situation. With regard to this question, I believe that each organization, whether the HA or the HS, would have a right to decide on its own the sale of flats according to circumstances.

**PRESIDENT** (in Cantonese): Miss CHOY, which part of your supplementary question has not been answered?

**MISS CHOY SO-YUK** (in Cantonese): *Madam President, the Secretary did not say whether this decision is consistent with the Government's housing policy.*

**SECRETARY FOR HOUSING** (in Cantonese): Madam President, I already quoted the Chief Executive's remarks in his 1998 policy address just now. It means that the decision does not contravene the SAR Government's policy.

**MR ALBERT HO** (in Cantonese): *Madam President, I just wish to ask about a piece of simple information. I would like to know at the relevant meeting of the HS, in which it decided to postpone the sale of the SCHS flats to next year, what stand did the Secretary take whether in his capacity as a member or in whatever capacity. For instance, did the Secretary say that it was not the right thing to do and that the flats should be put up for sale as scheduled, or else it would be a waste? What stand did the Secretary take?*

**SECRETARY FOR HOUSING** (in Cantonese): Madam President, I do not think I should make known the views I expressed at the meeting of the members of the HS on a public occasion such as this. But usually, I would explain at the members' meetings that many people wish to buy the SCHS flats in the hope that the members would make their decision after taking into account the current situation. In the end, the HS made the decision that the Chairman of the HS announced yesterday.

**PRESIDENT** (in Cantonese): We have spent more than 17 minutes on this question. However, I have promised to give Mr LEE Cheuk-yan a chance to ask about the Government's former policy.

Mr LEE, do you wish to ask another supplementary question?

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, earlier, the Secretary said that the Government's initial aim was to help the Sandwich Class to purchase flats. Did it change its aim later? The Secretary did say that the Government wanted to help the Sandwich Class to purchase flats all along. But I would like to ask whether the Secretary will retract the remark "the aim of*



*providing SCHS flats is ..... not to stabilize prices in the private residential property market" in his main reply. Is it the present policy of the Government to "stabilize property prices", or is it "not to stabilize property prices"? I would like to ask if the Secretary wishes to retract this remark.*

**SECRETARY FOR HOUSING** (in Cantonese): Madam President, there is no need to retract the remark, since the aim has never changed. The former aim and today's aim are the same. There is no need for me to retract the remarks in the capacity as Secretary for Housing. In my view, Mr LEE was only elaborating his own remarks. In this connection, I still reserve the remarks made in my main reply.

### **Age Discrimination in Job Market**

4. **MR SZETO WAH** (in Cantonese): *Madam President, the Administration commissioned a survey in January last year to obtain public views on age discrimination in recruitment. According to the findings of the survey, 82% of the respondents considered that employers did practise age discrimination in recruitment, and 57% concurred that legislation was an effective measure to eliminate such discrimination. In this connection, will the Government inform this Council:*

- (a) of the follow-up actions it has taken in this regard;*
- (b) given that it undertook last June to review in six to 12 months' time the problem relating to age discrimination practices, of the details and the conclusions of the review; and*
- (c) whether it has drawn up a timetable for legislating against age discrimination; if so, of the details; if not, the reasons for that?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President,

- (a) The follow-up actions that the Government has taken since the survey result was published in May 1999 are as follows:

- (1) With the assistance of the Information Services Department, the Education and Manpower Bureau (EMB) produced an Announcement of Public Interest (API) in June 1999 on the theme of "Broaden your horizon; Put aside the prejudice on age" to get across through television the message of equal opportunities in employment. Meanwhile, we are producing two other APIs. The first one intends to bring home to the employers that job placement should not be determined on the ground of age. The API is now being shot and will be arranged for broadcast in July. The production of the other API, which urges the elimination of age discrimination that possibly exists in the work place, is expected to be completed in October.
- (2) The Labour Department (LD) has issued 120 000 copies of the Guide to Good People Management Practices since May 1999 to remind employers to ensure that all suitable job seekers and employees are given equal opportunities in employment and are not discriminated, among others, on the ground of age. Moreover, in order to introduce to employers and employees the specific measures on eliminating age discrimination in employment, the LD has sent out the Practical Guidelines for Employers on Eliminating Age Discrimination in Employment to all employers employing five employees or more. The Guidelines explain to employers and employees in detail the issue of age discrimination in employment and provide specific recommendations on the elimination of age discrimination in such areas as recruitment, conditions of employment, promotion, dismissal and retirement. The first batch of some 100 000 copies of the Guidelines were all sent out in August 1999 and the Government has arranged printing of another 14 000 copies for distribution to employers and the public.
- (3) The LD has organized the following events/activities since May 1999 to promote equal opportunities in employment:

- (i) in September 1999, the LD launched the "Know the Employment Ordinance Week" during which competitions, mass media programmes, exhibitions, training courses and seminars were held to promote the Employment Ordinance and the notion of equal opportunities in employment;
  - (ii) in March 2000, the LD held a seminar on equal opportunities in employment with some 300 personnel managers, employers and employees participating in the discussion of equal opportunities in employment;
  - (iii) since May this year, new exhibition panels have been put up to promote the Employment Ordinance, the message of equal opportunities in employment and the elimination of age discrimination in employment ;
  - (iv) LD staff has attended the meetings of 19 Personnel Managers' Clubs, which were held once every two months, to introduce the message of equal opportunities in employment to the club members face to face; and
  - (v) in the past year, the LD organized a total of 19 Labour Relations Certificate Courses, which has incorporated the topic of equal opportunities in employment, for 900 employers and employees.
- (b) We have assessed the present situation of age discrimination in employment. In our assessment, we have drawn on the statistics on the number of complaints and inquiries received by the Equal Opportunities Commission (EOC), the EMB and the LD last year. The EOC received some 30 inquiries on age discrimination in the past year. The EMB received one complaint and two inquiries last year. As regards the LD, only one case relating to age discrimination and requiring conciliation has been received since October 1997. We have observed that our recent public education and publicity programmes have been well received by employers, employees and the general public.

- (c) For the time being, the Government has no plan to introduce legislative measures against age discrimination. While 57% of the respondents in the 1999 survey opined that legislative means were effective in eliminating age discrimination in recruitment, other data in the survey indicated that the respondents held diverse views on whether legislative measures should be introduced. In this connection, 25% of the respondents did not consider that legislation is an effective means whereas 47% regarded enhancing the services of the LD and strengthening publicity through the mass media are both effective measures in eliminating age discrimination. On the other hand, the findings of the survey also revealed that 35% of the respondents were in favour of a step-to-step approach to eliminate age discrimination in recruitment and another 31% held that the Government should consider the issue thoroughly before taking any action. Therefore, we think we should continue and enhance our effort in public education and publicity at the current stage.

A good many respondents in the 1999 survey considered that employers did practise age discrimination in recruitment. We believe that such situation may be related to Hong Kong's economic recession in recent years. The shrink in the demand for labour resulting from the unfavourable economic conditions has probably led unsuccessful job seekers to attribute their failure in securing the jobs to age discrimination. In fact, job seekers in all age groups are invariably victims of the impact of the economic recession. However, we envisage that the situation will improve as our economy recovers.

The promotion of equal opportunities through public education and publicity is a long term measure. We will therefore seek provision in the annual budget exercise to continue this measure and review its effectiveness from time to time.

**PRESIDENT** (in Cantonese): As more than 10 Members have indicated their wish to ask supplementary questions, I hope that Members could keep their supplementary questions as concise as possible so that more Members can ask questions.

**MR SZETO WAH** (in Cantonese): *Madam President, according to the minutes of the meeting of the Panel on Manpower on 24 June 1999, when the Panel on Manpower discussed the relevant Government's survey result last year, the Secretary indicated that the possibility of legislation would not be ruled out. He also said that the view that legislative measures would not be effective was only the view of some respondents, and not that of the Government. However, today, one year later, the Secretary is still putting off legislation against age discrimination. I wish to ask the Secretary under what circumstances the Government will legislate on this?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): *Madam President, our stand has remained unchanged. On the one hand, we do not rule out the possibility of legislation. On the other hand, as I said at the meeting of the Panel on Manpower last year and in the main reply, as there is diverse views in the community on legislating against age discrimination, our principal task now is to enhance our effort in public education and publicity. In the main reply, I also said that we considered that at the current stage, such work could help us solve the problem as far as possible or eliminate age discrimination among members of the public. We do not intend to draw up a timetable for legislation in this regard before the next review.*

**DR YEUNG SUM** (in Cantonese): *Madam President, it seems to me that the Secretary was just evading the supplementary question in his reply. According to the Government's survey, over 80% of the respondents considered age discrimination to be very serious, while nearly 60% of the respondents were in favour of legislating in this regard. However, the Secretary said that the survey result showed that there were diverse views among the respondents. Mr Secretary, normally there cannot be any consensus in the results of surveys. This is common sense. In the making of decisions, the majority always have the say over the minority. According to the Government's survey, the majority were in favour of legislating in this regard. I wonder if the Government is aware that people aged over 40, especially women, face enormous obstacles in job seeking. I urge the Government to reconsider the need for legislation.*

**PRESIDENT** (in Cantonese): *Dr YEUNG, you are asking whether the Government will reconsider the need for legislation?*

**DR YEUNG SUM** (in Cantonese): *Will the Government review the matter in this light?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, with regard to the survey result and our view, I have already offered a detailed explanation in part (c) of the main reply. I will not repeat them.

We conducted a survey in 1999. We are most willing to conduct similar surveys again maybe in 2001 to find out the people's views on these matters after we have enhanced publicity and education in these two years. We are most willing to conduct a survey on this, but before conducting the survey, I do not think we will make a decision or draw up a timetable for legislating in this regard.

**MISS CHAN YUEN-HAN** (in Cantonese): *Madam President, to me, the Government's reply is nothing but a big joke. What Mr SZETO Wah mentioned in his supplementary question was something that happened last year, and the Government has also discussed the relevant issue with the Provisional Legislative Council after reunification in 1997. At that time, the Government mentioned that there was a need to consider legislating on the matter. According to the Government's survey, 80% of the respondents considered that age discrimination did exist and nearly 60% of the respondents felt that there was a need for legislation .....*

**PRESIDENT** (in Cantonese): Please ask your supplementary question directly.

**MISS CHAN YUEN-HAN** (in Cantonese): *Madam President, I am going to ask my question now. We will see that this is going to be a very serious problem in future. Why is the Government still procrastinating in solving this problem? Does the Government want to wait until it affects more people or even everyone before starting the work of legislation?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese):

Madam President, actually, as I mentioned in part (b) of the main reply, we have assessed the situation, and judging from the complaints and inquiries we received over the past year, there is no indication that the relevant situation has deteriorated. I also wish to provide some more figures. Just now, Dr YEUNG Sum referred to the situation of those over 40 years of age. According to our unemployment statistics, the unemployment rate of people aged between 40 and 49 is lower than the overall unemployment rate. For instance, during the three months between February and April, our overall unemployment rate was 5.5%, while the unemployment rate of those aged between 40 and 49 was 5.3%, which is lower than the overall unemployment rate of 5.5%. A more detailed analysis shows that the unemployment rate of women aged between 40 and 49 was lower than that of men, for the relevant rate of women was 5.1%. We will closely monitor the relevant situation. However, at this stage, we do not think we should make a hasty decision.

**MR LAW CHI-KWONG** (in Cantonese): *Madam President, I wish to follow up on the figures provided by the Secretary. I wish to remind the Secretary that the unemployment rate of women aged between 40 and 49 first rose and then dropped over the past 20 years. If we look at the unemployment rate alone, we cannot see the relationship between the employment situation and sex or age. What I mean is, the Secretary just quoted some figures out of context. Very often, women aged between 40 and 49 fail to find a job. They face such serious discrimination that they are basically detached from the labour market. In view of this almost universally recognized problem, how will the Government help these women overcome the relevant difficulties?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese):

Madam President, first, I will go back and find out if the unemployment rate of women aged between 40 and 49 first rose and then dropped over the past 20 years. I will provide Mr LAW with the relevant data later on. (Annex III)

Second, we do have a series of measures to assist the unemployed in job seeking. For instance, the LD helps women of different ages to find employment. However, as I said in the main reply, we do not think there are sufficient data to show that the situation has deteriorated. However, we are willing to enhance publicity and education in this respect. In fact, we have done a lot of work and we will continue to do so. So far, the Government has not changed its stance.

**MR ANDREW CHENG** (in Cantonese): *Madam President, my question is about part (c) of the Secretary's main reply. The Secretary said that 57% of the respondents opined that legislative means were effective, while 47% of the respondents regarded enhancing the services of the LD as an effective measure. While the Secretary said that 25% of the respondents did not consider that legislative means were effective, he did not mention that 22% of the respondents in the same survey also did not consider enhancing publicity and the services of the LD to be effective. With the one offsetting the other, there were basically more respondents who considered legislation to be effective. Therefore, I would like to ask the Government on what criteria did it base on in deciding to enhance the relevant services of the LD, instead of legislating expeditiously against age discrimination?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): *Madam President, with regard to the figures I quoted in part(c) of the main reply, while 57% of the respondents considered that legislation should be made to eliminate age discrimination in recruitment, a rather significant number of the respondents, between 25% to 47%, held diverse views. Besides, many respondents (although not the majority) were in favour of a step-by-step approach to deal with the matter or held that other measures should be adopted first. Therefore, our conclusion is that legislation is a very complicated and important task. Since there were diverse views among the respondents in this survey, we think that the first thing we should do is to enhance publicity and education. This is the stand we maintain at present.*

**MR LEE KAI-MING** (in Cantonese): *Madam President, my supplementary question is about the second paragraph of part(c) of the main reply. In asking his supplementary question, Mr SZETO Wah said that according to the findings of the Government's survey in January 1999, 82% of the respondents considered that age discrimination did exist. However, in the above-mentioned passage, the Secretary said that "In fact, job seekers in all age groups are invariably victims of the impact of the economic recession." In other words, the Secretary has not admitted the existence of discrimination. Were the findings of the Government's survey wrong or is the present reply made by the Secretary erroneous?*



**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, the passage points out that as our economic recession was quite serious in 1999, many people who had thought of the existence of age discrimination might have in fact become unemployed due to the impact of the economic recession. That is why we envisage that the situation will improve as our economy recovers.

In answering another Member's question just now, I said that we would be most willing to consider conducting another similar survey in 2001. I am sure the economic environment then will be completely different from that in 1999. We will study if the relevant situation has changed and consider whether there is a need to explore in depth the possibility of legislating in this regard.

**MR TAM YIU-CHUNG** (in Cantonese): *Madam President, apart from enhancing publicity and education, has the Government considered offering incentives to employers and business organizations so that they will not practise discrimination? For instance, the Government could reward and commend their good conduct so that they would receive public recognition, or even adopt measures such as tax deductions and allowances. I wonder if the Secretary has considered such measures?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, we have not considered adopting these measures. In fact, it is quite difficult to consider giving incentives. According to our unemployment figures, the age group with the highest unemployment rate is that between 15 and 19. We are not sure whether it is because of their age or their lack of working experience that they cannot find a job.

As I said just now, the unemployment rate of the age group 40-49 is lower than our overall unemployment rate. If Members have any good suggestions, we are happy to consider them. However, I wish to point out that it is a very complicated matter.

**PRESIDENT** (in Cantonese): Although several Members are still waiting for their turn to ask questions, we have spent more than 20 minutes on this question. I am afraid I have to make some Members feel disappointed. Last supplementary question.

**DR LUI MING-WAH** (in Cantonese): *Madam President, discrimination does exist in society. Not only older people suffer from discrimination, young people also suffer from discrimination. This is a universal phenomenon. One of the reasons why this problem is particularly common and acute in Hong Kong may be the unfavourable economic conditions in Hong Kong. This has led to a heated debate among Members. However, as far as the business sector is concerned, legislative measures are ineffective.*

**PRESIDENT** (in Cantonese): Dr LUI, please ask your supplementary question directly.

**DR LUI MING-WAH** (in Cantonese): *Madam President, I will ask my question now. The business sector considers that legislative measures are ineffective and that they will even stir up social conflict. I wonder if the Secretary agrees with me. (Laughter)*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, the Government's stand is that it does not rule out the possibility of legislation. However, the most important task now is to enhance education and publicity. Hence, in terms of legislating in this regard, we have neither made a decision nor drawn up a timetable.

### **Installation of Automated Refuse Collection Systems**

5. **MR LAW CHI-KWONG** (in Cantonese): *Madam President, regarding the installation of automated refuse collection systems, will the Government inform this Council:*

- (a) *of the progress of the plan to have such systems installed in newly completed public rental housing estates and Home Ownership Scheme housing courts;*
- (b) *how such systems should be designed and operated to achieve the objective of separate collection of waste that can be recycled; and*

- (c) *whether it will consider introducing legislation to require the installation of such systems in all newly completed residential buildings?*

**SECRETARY FOR THE ENVIRONMENT AND FOOD** (in Cantonese):  
Madam President,

- (a) The Housing Department has installed an automatic refuse collection system in two housing estates. It also plans to install similar systems in six other housing estates in Tin Shui Wai, Tseung Kwan O, Sha Tin, Lai Chi Kok and Tsing Yi by 2003.
- (b) The primary objectives of the system are to facilitate refuse collection and improve environmental hygiene. Such systems will not affect domestic waste separation and recycling efforts because residents can continue to place the recyclable materials into separation bins while non-recyclable waste is collected through the systems.

If we were to redesign the systems to facilitate waste separation and recovery, we would need to examine a number of factors, including technical feasibility, installation and operational costs and management of the systems for waste separation.

- (c) At this stage, the Administration has no intention to introduce legislation to require provision of such systems in new buildings because some buildings may not be suited for such installations. We will encourage developers to install automatic refuse collection systems to improve environmental hygiene. If individual developers plan to install such a system and request us to exempt the space required for the facility from the gross floor area (GFA), we would be prepared to consider the request favourably.

**MR LAW CHI-KWONG** (in Cantonese): *Madam President, the Secretary has mentioned in part (b) of her main answer that the primary objective of the system is to facilitate refuse collection. Since he aim is to facilitate, we are certainly concerned about the possibility that wastes which could have been separated are*

*mixed up with other common wastes. Will the Government seriously consider studying some high-technology recovery systems with innovative designs, for example, by pushing a button the system will dispose of papers; by pushing another button the system will dispose of common wastes; while pushing a third button the system will dispose of plastic bottles, and so on?*

**SECRETARY FOR THE ENVIRONMENT AND FOOD** (in Cantonese): Madam President, in the waste separation and recovery aspect, I consider public concept in waste separation and recovery to be the most important thing. In fact, we have also considered possible and practicable measures to facilitate waste separation and recovery work; and we have taken relevant information for reference. Mr LAW was right, certain overseas' trader has recommended to us some computerized waste collection system, as tenants only have to press the buttons and all the wastes will be automatically separated. For example, if the button for plastic disposal is pressed, plastic wastes will be conveyed to the plastic disposal duct. However, we should take notice of the specific situation in Hong Kong. Firstly, we should consider the space required for the system, and secondly, the frequency of utilization of such system. From the reality viewpoint, I think we are unable to make use of this kind of complete automation system yet.

**MR LEE WING-TAT** (in Cantonese): *Madam President, in the meeting of the Panel on Planning, Lands and Works of this Council last month, we have discussed the development of East and West Kowloon, and the development of Tai Ho Bay was discussed last month. These are all new plots. Some Members have asked whether the Government will adopt the principle of sustainable development by encouraging developers to install waste separation system in each building. The Secretary has mentioned in part (c) of her main reply that the Government will encourage developers to install the system, but no legislation will be introduced for such requirements. Will the Government introduce legislation to require provision of such systems on the one hand, and provide certain exemptions to the plot-ratio on the other? Then the Government may offer the stick and the carrot at the same time. Now that the Government's encouragement seems to have achieved very little success, will the Government consider a step forward?*

**PRESIDENT** (in Cantonese): Which Secretary will answer this? Secretary for Planning and Lands.

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, actually, the existing legislation and the recent legislation passed in this Council have already allowed the Director of Buildings to exempt the waste collection system and the waste separation system from the Gross Floor Area (GFA) calculations. Therefore, we already have such incentive measures in place. With regard to East Kowloon and other newly developed districts, we will certainly take the idea of a centralized waste collection system. If the idea can work out, then we shall take it as a principle. However, just as the Secretary for the Environment and Food has said, whether each building can achieve the objective is still limited by the practical difficulties encountered in the designing. As buildings in Hong Kong are generally high-rise and densely populated, we have not seen any designer who could design any waste separation system for every household in a high-rise of 50-60 storeys with six to 10 households on each floor, notwithstanding our numerous incentives. However, we shall make use of every concession allowed by the existing legislation to encourage the design of such a system.

**MR SIN CHUNG-KAI** (in Cantonese): *Madam President, it seems that the Secretary for the Environment and Food has flatly dismissed the possibility of implementing the centralized waste separation and recovery system in part (b) of her main reply. However, this kind of system is very common in the Scandinavian countries. Will the Government conduct studies with a more realistic view for the situation of Hong Kong? It seems that the Government has even dismissed the possibility of conducting any study. In fact, I remember I had proposed this system to the Urban Council a decade ago, when I was still a member of the Urban Council in 1991-92. At that time, I had urged the Housing Authority (HA) to install the system. It takes 10 years to have this concept materialized. Do we have to wait for another decade before the Government would agree to install such a refuse separation system? Will the Government practically conduct a feasibility study in the installation of this system and consider to have it implemented?*

**PRESIDENT** (in Cantonese): Which Secretary will answer this? Secretary for Planning and Lands.

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, I have seen those Scandinavian systems and the relevant publicity material. The leaflet was particularly interesting: a couple was sitting together in a very spacious kitchen and behind them were three partitions for the integrated treatment of three categories of wastes. However, please be reminded that their houses are low-rise with only two or three storeys, but the problem with Hong Kong is that we do not have too many two or three-storey buildings in the coming decade. We are now constructing high-rise buildings of over 30 or 40 storeys, can we use the same centralized waste separation system for low-rise houses with only two or three storeys? I think we are still a great distance from them. Therefore, just as I have mentioned, we have promised to give the biggest support, provided that any designer can create such a system. However, I think this is still an idea and cannot be implemented territory-wide.

**PRESIDENT** (in Cantonese): Mr SIN Chung-kai, which part of your question has not been answered?

**MR SIN CHUNG-KAI** (in Cantonese): *Madam President, I find that I am only casting pearls before swine, my supplementary question is not .....*

**PRESIDENT** (in Cantonese): Mr SIN Chung-kai, please restrict your speech to this supplementary question.

**MR SIN CHUNG-KAI** (in Cantonese): *Madam President, my question is, as most public housing estates are designed by the Government, will the Government examine the specific feasibility of installing such system in public housing estates? This question should be crystal clear now.*

**PRESIDENT** (in Cantonese): Which Secretary will answer this? Secretary for Housing.

**SECRETARY FOR HOUSING** (in Cantonese): Madam President, up to now, the HA has not conducted any study with regard to this idea yet, it is directly

related to the area of the land allocation. As a result, we have to discuss this issue internally in the first place and see if there is any difficulty in the land allocation aspect. Secondly, it depends on whether or not this technology is available to Hong Kong for experimental purpose. In fact, as the current automated refuse collection system of the HA is also experimental, therefore, we cannot carry out so many experimental schemes all of a sudden. I think we should wait until the existing experimental scheme is completed, then we may proceed step by step and consider what we should do next. It is the plan of the HA to adopt this automated refuse collection system substantially in large scale housing projects in the future.

**MISS EMILY LAU** (in Cantonese): *Madam President, I am very much concerned about whether this automated refuse collection system will affect the waste separation and recovery process. The Secretary for the Environment and Food has replied that it will not affect the waste separation and recovery process so long as the public know how to separate the waste for disposal. Madam President, according to the answer of the Secretary for the Environment and Food, the automated refuse collection system has already been installed in two housing estates. May I ask which two housing estates have installed that? How does the system work? Are there any separation bins in such housing estates? Is the Secretary able to confirm that no adverse influence will take place provided that the public are careful enough in the course of waste disposal?*

**PRESIDENT** (in Cantonese): Which Secretary will answer this? Secretary for the Environment and Food.

**SECRETARY FOR THE ENVIRONMENT AND FOOD** (in Cantonese): I will try to answer the supplementary question of Miss Emily LAU.

First of all, I would like to state whether this automated refuse collection system will affect waste separation and recovery efforts from practical experience. I still remember last time when I came to this Council and answered the questions of Miss Emily LAU with regard to waste separation and recovery work, I have explained that we did not have the figures to demonstrate systematically the progress of waste separation and recovery work in public

housing estates at that time. However, through a number of competitions held by the Environmental Campaign Committee (ECC), we have obtained some figures. As the figures indicate, it seems that there is very little difference between the two housing estates with the automated system installed and other estates without the system insofar as waste separation and recovery is concerned. Currently, separation bins are placed in every block of each housing estate. We are now considering whether we should place separation bins on each floor other than putting them on the ground floor of each building only, and use the automated system for the collection of other wastes. The current practice and the figures obtained from the competitions have consequently proved that the automated system has little influence on waste separation and recovery.

With regard to the second part of Miss Emily LAU's supplementary question, the two housing estates with the automated refuse collection system installed are Wah Sum Estate and Shek Yam Estate of the Housing Department.

**MR TAM YIU-CHUNG** (in Cantonese): *Madam President, is it because of the relatively high operational expenses and cost of such automated refuse collection system that the HA and the Housing Department are not so proactive in promoting it, in order that an increasing financial burden be avoided? May I ask whether this factor has been taken into consideration?*

**SECRETARY FOR HOUSING** (in Cantonese): Madam President, after considering the overall condition, the HA has decided to proceed with an experimental project, that is, to install the automated refuse collection system in the two aforementioned housing estates. In addition, the HA has decided to install the system in six other housing estates, thus we shall have eight system installed in total. With regard to the question of how the matter be handled in future, the HA would consider installing the system in other large-scale housing estates, that is, housing estates with 2 400 units or more.

With regard to the cost, actually, in the daily operation, the monthly cost for each household will only be a few dollars more for the automated system in comparison with the manual refuse collection process. Therefore, the monthly-based operational cost will not be very high. However, the problem lies in the real cost, that is, the overall purchase price for the entire system, which requires additional funds.



**PRESIDENT** (in Cantonese): The last supplementary question.

**MR CHAN KWOK-KEUNG** (in Cantonese): *Madam President, although the Secretary for the Environment and Food has mentioned earlier that the public are encouraged to adopt the facility, not much has been done. At present, the Government would provide Loan Fund to buildings without adequate fire fighting facilities. Will the Government consider providing interest-free loan or subsidy to some buildings which are fit to install such waste separation system?*

**PRESIDENT** (in Cantonese): Which Secretary will answer this? Secretary for Planning and Lands.

**SECRETARY FOR PLANNING AND LANDS** (in Cantonese): Madam President, the existing concessions are no empty talk. Concessions exempting the system from the GFA calculations would encourage developers to construct or sell bigger houses. Therefore, this should be considered a very practical pecuniary support. Madam President, I consider it premature to discuss the question of the provision of any form of support whenever we come across with new ideas. I think we should wait until any designer has come up with a practical waste separation and recovery system which fits the condition of Hong Kong, then we shall take that into consideration.

### **Obtaining Permits for Holding Performances in Public Places**

6. **DR TANG SIU-TONG** (in Cantonese): *Madam President, according to the Summary Offences Ordinance (Cap. 228), any person who organizes or participates in a lion dance, dragon dance or unicorn dance, or any attendant martial arts display in a public place shall have to apply for and obtain a permit from the Commissioner of Police in advance. In this connection, will the Government inform this Council:*

- (a) *of the purposes of and the justifications for requiring that such permits be obtained;*

- (b) *of the reasons for requiring the applicants and the participants of such activities to authorize the Commissioner of Police to check if they have any records of criminal convictions; how such records affect the decisions of the Commissioner of Police in approving permit applications; and*
- (c) *whether the organizers or participants of sports activities and performances held in a public place are also required to obtain permits issued by the Commissioner of Police, or heads of other government departments, in advance; if so, whether the application procedures relating to such activities also require the applicants and the participants to authorize the authorities concerned to check if they have any records of criminal convictions?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President,

- (a) Section 4C of the Summary Offences Ordinance (Cap. 228) stipulates that any person who organizes or participates in a lion dance, dragon dance or unicorn dance, or any attendant martial arts display in a public place shall be subject to the conditions of the permit issued by the Commissioner of Police. The reasons for subjecting these activities to licensing control are:
  - (i) for preventing involvement of criminal elements in these activities; and
  - (ii) for ensuring that such activities will not cause public disorder, including traffic congestion, noise nuisance, other inconvenience to the public or endanger public safety.
- (b) The Government requires the applicants and the participants of such activities to authorize the Commissioner of Police to check if they have any records of criminal convictions for the purpose of facilitating a full assessment of the application. This consent is provided on a voluntary basis, as explained in the application form. The police will not reject an application simply because such consent is not given. The application will continue to be processed provided that other requisite details are available. In case the

applicants or the participants have records of criminal convictions, the Commissioner of Police will, in the light of the nature and gravity of the convictions, assess whether the real purpose of the activities is to celebrate festivals and offer entertainment or to cover up illegal activities. The Commissioner of Police will reject the applications if illegal activities are suspected upon investigation.

- (c) An organizer of public entertainment is required to apply for a Temporary Place of Public Entertainment (PPE) Licence under the Places of Public Entertainment Ordinance (PPEO) (Cap. 172) and its subsidiary legislation. The Temporary PPE Licence is issued by the Food and Environmental Hygiene Department (FEHD). Public entertainment is defined under section 2 and in Schedule 1 of the PPEO which includes stage performance, concert, opera, circus, exhibition, sporting contest, bazaar, and so on. In processing the applications, the FEHD usually refers them to the Buildings Department, the Fire Services Department and the police for comment to ensure public safety and public order. However, record-checking of criminal conviction of the applicants and participants is not required under the PPE licensing system.

**DR TANG SIU-TONG** (in Cantonese): *Madam President, the Secretary mentions in part (b) of the main reply that all applicants and participants of such activities are required to authorize the Commissioner of Police to check if they have any records of criminal convictions. May I ask the Administration that whether such requirement is made in contravention of human rights, and will the Administration consider to remove such requirement? Furthermore, as lion dance is one of the many sports activities, will the Administration adopt the same measure towards participants of other sport activities?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, concerning the requirement of the Commissioner of Police in the release of criminal conviction record of relevant participants, there is a section in the application form for the applicant to make declaration, which states: "I hereby authorize the Commissioner of Police, or his representative, to release full particulars of any and all criminal convictions recorded against me to the Regional/District/Divisional Commanders/Licensing Office." As a result, the Commissioner of

Police may proceed with the verification of the applicant's criminal conviction record only after the applicant has granted his authorization, which is in full compliance with the protection principle of the Personal Data (Privacy) Ordinance. As for the reason why other sports activities are not subject to this requirement, one should understand the unique background of the activity in question at the outset. The requirement has come into force since 1981. Lion dance, dragon dance or unicorn dance is virtually different from other sports activities by its martial arts nature. Besides, the Summary Offences Ordinance has also included it with other martial arts displays. Performers of such activities are usually people from martial arts training workshops or so-called martial arts parlours, and performance are mostly typified by the flaunting of one's strength. When activities such as the drawing of the "green" or "fa pau" are involved in the lion dance parade from time to time, members from different martial arts establishments may possibly battle with each other in the course of competitions. As a result, the police consider it more on the safe side to verify the background of the attendants provided that the applicants have authorized the police to do so.

**PRESIDENT** (in Cantonese): Dr TANG Siu-tong, which part of your supplementary question has not been answered?

**DR TANG SIU-TONG** (in Cantonese): *Madam President, the Secretary has not answered the first part of my supplementary question, that is, will the Government consider removing such restriction?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, as I have just said, the requirement has come into force since 1981, furthermore, in the past three years, we have received 1 200 applications each year, and only a few of them were rejected. Through the control of licensing and verification of background and criminal conviction records, we are able to see successful processions of lion dance, dragon dance or unicorn dance with no disturbance caused to the public. Therefore, we are happy with the system and will not consider removing it.

**MR CHAN KAM-LAM** (in Cantonese): *The Secretary has mentioned in part (b) of her main reply that applications would be rejected if illegal activities are suspected upon investigation. I would like to know how many applications have been rejected for this reason, and whether a mechanism for defence is in place?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, the number of applications rejected each year is actually very minimal: of 1 000 applications in 1998, only one application was suspected of possible triad connection; in 1999, no application was rejected by reason of the involvement of illegal activities; as at 3 May 2000, four cases were rejected, in which the police suspected that illegal activities were involved, such as the soliciting for "red packets" through lion dance or dragon dance activities. There is no mechanism for defence in the Summary Offences Ordinance. However, if the applicant wish to appeal against the ruling, he may certainly put forward the case to the Complaints Against Police Office (CAPO), or seek review on the ruling of the Commissioner of Police via judicial proceeding, or file the complaint directly to me.

**MR JAMES TO** (in Cantonese): *Madam President, of course this requirement may serve its preventive purpose. To some organizations, they may feel that such are but normal activities, but every participant has to go through a good deal of checks and verifications; on the other hand, of course, the requirement can in fact prevent penetrations of triad or illegal elements into such activities, has the Government made an assessment on such effects? Under the current social climate and situation, will the Administration consider seriously these pros and cons?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, if I understand the supplementary question of Mr James TO correctly, he is asking whether it will affect normal activities. In fact, section 4C of the Summary Offences Ordinance stipulates that the requirement for the permit shall not apply to any person exempted by the Commissioner of Police. If organizations such as student groups wish to conduct performance in public places, they may apply for exemption from the Commissioner of Police. However, I was told that the

police have not received any application for exemption in the past few years. As regard other organizations, I was told by the police that they felt the system was working well. Besides, martial arts parlours frequently conduct lion dance, dragon dance or unicorn dance have shown their understandings in the legislation. Sometimes, although there is a large number of participants in each performance, for example, although the number of people taking part in the dragon dance may be as high as 150 to 300, no criminal elements would be involved in the majority of participants. Therefore, the system is working well, and illegal elements are only found occasionally in some such activities.

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, it seems that the Secretary has taken me back to the era of WONG Fei-hung, the legendary Kung-Fu hero. We are in fact in the era of the Internet, is it necessary for the Administration to insist on keeping this piece of outdated legislation? The Secretary assumes that each participant is an illegal element, thus in order to prevent the infiltration of illegal elements in these activities, these people have to be subject to verification to see if illegal elements are involved. Is it necessary for the Administration to impose such kind of supervision? Furthermore, will that be a waste of public money if each application is to be examined one by one?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I can give Mr LEE my word that the police will not presume that all applicants are illegal elements or that they would definitely be engaged in illegal activities. Anyway, this kind of martial arts activities usually consist of a certain strength show-down nature in view of their unique background. For example, everybody knows that lion dance activities will involve actions like the competition for "green" or "fa pau" from time to time, or even some intricate movements, which I have seen by myself recently. Sometimes, it is inevitable for them to use wooden clubs to clear the path, as a result, it may cause social disturbance or even provoke fights. Of course, sometimes people will solicit for "red packets" in the disguise of such kind of activities, thus the police consider that continual control on such activities is necessary. In the past, we have received 1 000 applications each year and only a few were rejected, but as we have still found triad connection in such events from time to time, we feel it necessary to maintain the system.

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, the Secretary has not answered whether or not it is a waste of public money as only one case out of 1 000 applications was being rejected.*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I do not consider it a waste of public money. Notwithstanding occasional rejection of one or two applications, it is still the responsibility of the police to ensure public safety.

**MR HOWARD YOUNG** (in Cantonese): *Madam President, the Administration mentions in part (b) of the main reply that applicants for participation in such activities may authorize the Commissioner of Police to check if they have any records of criminal convictions; and in the latter part it states that the Commissioner of Police will reject the applications if illegal activities are suspected upon investigation. As the authorization depends solely on the discretion of the applicant, may I ask if this system can really achieve its objective? Is it possible that applicants without records of criminal convictions will give their authorizations, while applicants with records of criminal convictions will not give their authorizations? Would this help the Commissioner of Police to decide whether to accept or reject certain applications?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, the police have explained to me that ascertaining the participants' records of criminal convictions, especially when there is a large number of participants, is helpful to their decision-making process. However, in some cases, records of criminal convictions are not obligatory. Therefore, the police consider the flexibility in the arrangement has not caused any inconvenience to their work.

**MR LEE WING-TAT** (in Cantonese): *Madam President, I have received some complaints from certain sports societies which are officially established with the assistance of the District Office. These complaints stated that although the legislation has its own historical background, it is now outdated and tended to target against some people, presuming that these people would commit crimes. May I ask the Secretary whether or not she will review it together with the police, and see if the enforcement of such legislation should be more accurately targetted in certain aspects? Of course lion dances and dragon dances throughout the*

*city should apply for permits in advance. However, lion dances in community halls are neither disturbing, nor are they intended to solicit for "red packets", yet they have to apply for the same permits. May I ask the Secretary is it possible to provide more flexible arrangements to the applications according to different situations?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I will check with the police in this aspect, but according to my understanding, if the activity is held within private premises, such as school or community halls, then no permit should be required. A permit is required only if the activity is held in public places, but I shall verify this point again. (Annex IV) However, I would like to explain that in the course of authorizing the Commissioner of Police to check the records of criminal convictions of the applicants or participants, nobody is being targetted against, nor is anybody being presumed to have a definite intention of breaking the law. According to provisions in the law licencees of many different trades should have to be fit and proper persons, that is to say, they are subject to the police's verification on their records of criminal convictions, such examples include massage establishment licence, pawnbroker licence and security personnel permit. However, that does not tantamount to targetting against them or presuming that they have broken the law.

**PRESIDENT** (in Cantonese): The last supplementary question.

**MR JAMES TO** (in Cantonese): *Madam President, a moment ago, Mr LEE Wing-tat said that he has received complaints from an organization, I would like to ask if the Administration has received such complaints through its community contact or the District Office, and whether there is a large number of such complaints?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, the answer is in the negative, the Security Bureau has not received any such complaint in recent years. The police said that they believe that organizers of these activities would have very thorough understanding of the legislation, and they have not received any complaint.



**WRITTEN ANSWERS TO QUESTIONS****Complaints Lodged by Mainland Tourists**

7. **MR FUNG CHI-KIN** (in Chinese): *Madam President, will the Government inform this Council whether it knows:*

- (a) *the number of complaints lodged with the Consumer Council by mainland tourists in each of the past three years, together with a breakdown of the complaints by subject matter; and*
- (b) *if the Consumer Council has considered taking further measures to give more assistance to these tourists in claiming compensation?*

**SECRETARY FOR TRADE AND INDUSTRY** (in Chinese): Madam President,

- (a) The complaints received by the Consumer Council from mainland tourists between 1997 and May 2000 are listed by nature and by goods/services involved as follows:

<i>Year</i>	<i>1997</i>	<i>1998</i>	<i>1999</i>	<i>2000</i> <i>Jan-May</i>	<i>Total</i>
<i>Nature of complaint</i>					
Trade practices	68	88	135	68	359
Price disputes	69	62	86	46	263
Quality of goods	29	15	25	12	81
Quality of services	2	3	7	5	17
Repair and maintenance services	2	3	8	0	12
Others	18	26	21	9	74
Total	188	197	282	140	807

<i>Year</i>	<i>1997</i>	<i>1998</i>	<i>1999</i>	<i>2000 Jan-May</i>	<i>Total</i>
<i>Goods/service involved in the complaint</i>					
Audio-visual equipment	107	95	128	49	379
Jewelry	27	35	73	36	171
Communications equipment	22	31	36	15	104
Electrical appliances	10	13	9	7	39
Pharmaceutical products (including Chinese medicine)	2	5	4	9	20
Travel agencies	4	2	8	5	19
Apparel	2	5	5	3	15
Watches and clocks	3	2	7	2	14
Foods and beverages	4	0	5	1	10
Others	7	9	7	13	36
Total	188	197	282	140	807

- (b) The Consumer Council considers its existing measures in assisting mainland tourists to claim compensation adequate. With the exception of a case in 1999 in which no follow-up action could be taken since the complainant failed to provide adequate information, all complaints received by the Consumer Council from 1997 to March 2000 were settled and compensation obtained. Complaints lodged by mainland tourists in April and May this year are still being processed.

Upon receipt of a complaint from a mainland tourist, the Consumer Council will contact the shop concerned immediately and mediate between the two parties with a view to settling the case before the departure of the complainant. Where the complainant wishes to seek compensation by legal process, the Consumer Council has

made special arrangement with the Small Claims Tribunal for this kind of cases to be heard on the next working day after the case is filed. In case the complainant has already departed, the Consumer Council will maintain contact with the complainant in writing until the case concerned is concluded.

In addition, the Consumer Council maintains close liaison with the police and Customs to tackle shops operating with unscrupulous business practices. The Consumer Council also collaborates regularly with the Hong Kong Tourist Association in enhancing consumer education for mainland tourists.

### **Theft of Container Trailers**

8. **MRS MIRIAM LAU** (in Chinese): *Madam President, will the Government inform this Council of:*

- (a) *the number of stolen container trailers reported in each of the past three years, and its percentage in the total number of registered container trailers at the end of each year;*
- (b) *the number of stolen trailers recovered in each of the past three years; and*
- (c) *the measures in place to combat such theft?*

**SECRETARY FOR SECURITY** (in Chinese): The statistics relating to the theft of container trailers in the past three years are as follows:

<i>Year</i>	<i>No. of container trailers registered</i> (A)	<i>No. of container trailers stolen</i> (B)	<i>Percentage of container trailers stolen (B/A)</i>
1997	27 388	377	1.4%
1998	25 479	354	1.3%
1999	24 474	380	1.6%

- (b) The number of stolen container trailers recovered in the past three years is set out below:

<i>Year</i>	<i>No. of stolen trailer recovered</i>
1997	87
1998	23
1999	24

- (c) The police are concerned about the theft of container trailers. A multi-pronged approach has been adopted to combat the crime, by (i) strengthening preventive programmes and educational measures targeted at the transportation industry, (ii) stepping up enforcement actions, and (iii) enhancing interdepartmental co-operation and cross-border liaison.

(i) *Preventive Programmes*

In respect of preventive measures, the Crime Prevention Bureau has maintained close liaison with operators of parking lots, the freight industry and drivers' unions, to heighten their crime prevention awareness and brief them on security devices available in the market. They are encouraged to adopt more stringent security measures. Discussions have also been held with the insurance industry on the possibility of raising the level of security requirement and lowering the premium for owners of trailers who could meet the requirement.

(ii) *Enforcement Action*

Proactive actions have been taken by the police at all levels. At the district level, high profile inspections have been mounted at parking lots to induce tighter management control. At the regional level, the Regional Crime Unit of New Territories North gathers intelligence on trailer theft and investigates all syndicated vehicle crimes. In addition, the Organized Crime and Triad Bureau conducts surprise checks on goods vehicles and trailers at border control points. The Bureau also from time to time inspects trailers and tractors parked in parking lots in New Territories North well known to be blackspots for trailer theft.

The Customs and Excise Department (C&ED) is considering installing an automatic vehicle recognizing system (AVRS) at the border control points. This system will be put on trial at the Lok Ma Chau border control point in August 2000. After the installation of system, the vehicle registration number of tractors will be recorded. This would hopefully help solve the theft of trailers. The C&ED will evaluate the effectiveness of the system, and examine the feasibility of installing similar systems at all border control points.

(ii) *Interdepartmental Co-operation and Cross-Border Liaison*

The police work closely with the Immigration Department and the C&ED in combating the illegal smuggling of trailers into the Mainland. The police also maintain close co-operation with the mainland authorities in exchange of intelligence and the recovery of lost containers and trailers.

### **LPG Light Bus Scheme**

9. **MR DAVID CHU** (in Chinese): *Madam President, regarding the scheme under consideration to replace diesel light buses with liquefied petroleum gas (LPG) light buses, will the Government inform this Council whether:*

- (a) *it has compared the prices of LPG public light buses and diesel public light buses, and assessed if the prices of LPG public light buses will be an obstacle to the implementation of the scheme; if they will, of the corresponding measures it will adopt; and*
- (b) *it has compared the operating costs of LPG public light buses and diesel public light buses, and whether concessionary measures or subsidies will be offered to public light bus owners and drivers to encourage them to switch to LPG vehicles?*

**SECRETARY FOR THE ENVIRONMENT AND FOOD** (in Chinese):  
Madam President,

- (a) LPG light buses are not currently available in the market. The LPG light buses on trial are prototypes. If we decide to replace diesel light buses with LPG versions at the end of the trial scheme, the Administration will have to determine the appropriate specifications for LPG light buses and these would affect their retail price. We are unable to indicate at this stage whether the price of LPG light buses would be an obstacle to their use in Hong Kong.
- (b) The purpose of the trial scheme is to ascertain the reliability of LPG and electric light buses under local intensive driving conditions, as well as to obtain operational data such as fuel consumption, maintenance requirements and emission performance. Similar data for diesel light buses will also be collected during this period for comparison purpose. The measures that the Government would take would depend on the outcome of the trial scheme.

### **Poor Quality of Certain PRH Estates and HOS Courts**

10. **MR FRED LI** (in Chinese): *Madam President, residents in a number of Harmony-type Public Rental Housing (PRH) estates and Home Ownership Scheme (HOS) housing courts, including Ping Tin Estate, Tsz Lok Estate, Tsz Ching Estate, Hiu Lai Court and Hong Pak Court, complain that although they have moved in for just a short period of about two to three years, problems such as debonding of mosaic tiles on the corridor walls and external walls, smoke doors not closing tight and exposure of reinforcing bars on the walls of fire escapes, have emerged in their estates or courts. In this connection, will the Government inform this Council:*

- (a) *of the names of estates and housing courts within five years of occupation in which the problems mentioned above are common, and the respective numbers of housing blocks concerned in each of these estates and courts;*

- (b) *of the causes of such problems in these housing blocks; and the specific measures to prevent occurrence of such problems in housing blocks to be completed in future;*
- (c) *whether it will conduct thorough investigations in all the housing blocks in those estates and courts to identify all the places plagued with such problems and carry out proper maintenance works; if not, of the reasons for that; and*
- (d) *whether the authorities concerned will shoulder the responsibility for the repairs and maintenance of HOS housing courts when these problems occur within five years of occupation; if not, of the reasons for that?*

**SECRETARY FOR HOUSING** (in Chinese): Madam President, a list of Harmony-type PRH estates and HOS courts which have been found with the problems mentioned and the numbers of blocks involved are shown at Annex.

The problems have been caused largely by the sub-standard workmanship of contractors undertaking the works. The Housing Department has commissioned a consultant to look into the problem of debonding of wall tiles.

When a complaint is received or a problem identified, the Housing Department will conduct an investigation and arrange for the necessary remedial works. Since the problems identified so far are minor in nature and not widespread, thorough investigations of all building blocks in the estates and courts concerned are not considered necessary.

The contractor is liable for making good latent defects within 12 years of completion of the HOS courts. Owners are responsible for the maintenance of their buildings and for addressing problems arising from normal wear and tear.

## Annex

Public rental estate and Home Ownership Scheme courts  
with problems reported within five years of occupation

<i>Problem reported</i>	<i>Estate/Court</i>	<i>Number of blocks involved</i>
Debonding of tiles at external wall	Ka Fung Estate	2
	Ping Lai Court	1
	Hing Tung Estate	3
	Tung Yan Court	2
	Lok Fu Estate	1
	Lower Wong Tai Sin (2) Estate	2
	Tsz Man Estate	2
	Choi Fai Estate	1
Debonding of wall tiles in common areas	Kam Fung Court	6
	Shek Lei (2) Estate	2
	Kwai Fong Estate	2
	Wah Sum Estate	2
	Siu Sai Wan Estate	4
	Yiu Tung Estate	11
	Fu Tung Estate	3
	Yu Tung Estate	5
	Hing Tung Estate	4
	Kwong Ming Court	7
	Tsui Ping South Estate	3
	Tak Tin Estate	1
	Kai Tin Estate	3
	Ping Tin Estate	8
	Lower Wong Tai Sin (2) Estate	3
	Tsz Lok Estate	4
	Tsz On Court	1
	Sau Mau Ping (3) Estate	2
	Lei Muk Shue (2) Estate	1
	Po Lam Estate	1
	Shek Yam East Estate	3
	Hau Tak (1) Estate	6
	Wan Hon Estate	2
Spalling of concrete in fire escape	Kam Fung Court	6
Smoke door not closing properly	None	0



**Port Back-up Facilities and Land Requirement Study**

11. **MR AMBROSE LAU** (in Chinese): *Madam President, in reply to a question raised in this Council on 23 February this year, the Government advised that it would complete the Study on Port Back-up Facilities and Land Requirements (the Study) in the first quarter of the year. In this connection, will the Government inform this Council of the conclusions and recommendations of the Study, as well as the measures it has taken or will take to implement the recommendations?*

**SECRETARY FOR ECONOMIC SERVICES** (in Chinese): Madam President, the Study has broadly concluded that at present, there is no gross shortage of zoned port back-up land, nor is there expected to be so in the medium term. However, in some cases, land zoned for port back-up uses has not been taken up by the industry whereas in other cases land used for such purposes are located in areas not so zoned. Various recommendations have been put forward in the Study to improve the mis-matching situation. They include:

- (a) to establish an improved information system which would provide regular updates on the demand and supply of back-up land. This information system is to be linked up with that for the Port Cargo Forecasts and Port Development Strategy Review update exercises so that the demand and supply of back-up land is updated at the same time as other forecasts;
- (b) to enhance the established communication between the Government and the industry with a view to identifying more land for port back-up uses that can meet the needs of both the industry and the Government;
- (c) to review measures to facilities the take-up of zoned port back-up sites; and
- (d) to strengthen enforcement actions against sites not considered suitable for use as back-up land.

These recommendations are mainly designed to refine the process for provision and management of port back-up land with a view to better meeting the

needs of the industry in line with Hong Kong's planning requirements, and further enhancing the competitiveness of the port.

The broad conclusions of the Study have been put to the Port and Maritime Board in May. Taking into account their views, implementation details are being discussed between the consultants and the Government.

### **Elderly Persons Sharing PRH Unit with Unrelated Persons**

12. **MR TAM YIU-CHUNG** (in Chinese): *Madam President, regarding the elderly persons sharing public rental housing units with unrelated persons, will the Government inform this Council:*

- (a) *of the number of applications received from such elderly tenants for transfer to one-person units and, among them, the number of approved applications, in each of the past three years; and*
- (b) *whether it has plans to allocate additional resources so that each of them is provided with a one-person unit, for the purpose of improving their living conditions; if so, of the relevant details; if not, the reasons for that?*

**SECRETARY FOR HOUSING** (in Chinese): Madam President, the numbers of applications and approval given are as follows:

	1997	1998	1999
Applications for transfer	306	371	395
Applications approved	40	48	68

Not all elderly persons wish to live alone. Many elderly people apply for public housing on a sharing basis so that they may take care of each other in the future. Requests from elderly tenants for splitting of tenancies or transfer to other housing units will be considered on individual merits according to the prevailing policy.

**Extension of Hongkong Electric Company Limited's Lamma Power Station**

13. **MISS CHRISTINE LOH:** *Madam President, the Government has accepted in principle the extension of Hongkong Electric Company Limited's (HEC's) Lamma Power Station to cater for additional generation facilities which will be fuelled by liquefied natural gas (LNG) supplied by a LNG Terminal to be built in Shenzhen. In this connection, will the Government inform this Council:*

- (a) whether the increased level of works now being undertaken at the Lamma Power Station is part of the reclamation and site formation works for the new generation facilities;*
- (b) of the assurances the Government has obtained in respect of the completion date of the LNG Terminal in Shenzhen in order to tie in with the scheduled opening date of the new generation facilities;*
- (c) how an adequate supply of electricity in the HEC's service area in 2004 can be ensured in the event of a failure in the supply of LNG and the HEC cannot fall back on the use of light gas oil as an alternative fuel due to environmental protection considerations;*
- (d) whether it has learnt from the mainland authorities that the Hong Kong Special Administrative Region (SAR) Government's approval of the HEC's proposal would facilitate the financing of the LNG Terminal in Shenzhen; and*
- (e) whether the capital costs of reclamation and site formation will be included in the calculation of profits under the Scheme of Control Agreement (SCA) entered with the HEC; if so, of the mechanism in place to prevent an excessive generation capacity resulting in an overcharge of basic tariff on customers?*

**SECRETARY FOR ECONOMIC SERVICES:** Madam President,

- (a) The works now being undertaken at the Lamma Power Station are not part of the reclamation and site formation works for the new generation facilities of the HEC. They relate to the improvement of the jetty facilities due to the operational requirements of the existing power station.

- (b) The HEC has signed a Letter of Intent with China National Offshore Oil Corporation over the purchase of LNG from the proposed LNG Terminal in Shenzhen. It has assured the Administration that a long-term reliable supply of gas would be secured to meet the commissioning of the new generation plant in 2004. In addition, our independent consultants have assessed the HEC's system reliability under different gas disruption scenarios. They have concluded that the HEC's system reliability would not be affected by temporary non-availability of gas because the new combined cycle unit would be able to fall back on light gas oil, and there are adequate local storage of light gas oil and reserve arrangement in place in the HEC's system.
- (c) The use of light gas oil by the generation units at the Lamma Extension as a contingency has been addressed in the Environmental Impact Assessment (EIA) study for the project. The findings showed that the air quality impacts would be within the relevant Air Quality Objectives if upon full development of the Lamma Extension, all six generation units are required to be fuelled by light gas oil as a result of gas disruption. In case the first generation unit at the Lamma Extension has to be temporarily fired by light gas oil in 2004, this would be subject to a further EIA study. However, it is expected that the environmental impact should be less since the consumption of light gas oil in such circumstances would likely be much lower than the contingencies addressed in the completed EIA study.
- (d) The mainland authorities have not indicated to us that the financing of the LNG Terminal in Shenzhen hinges on the SAR Government's approval of the HEC's proposal.
- (e) According to the SCA between the Government and the HEC, the site formation cost will be captured in the SCA accounts and shareholders will be entitled to earn a return on it. To protect the interests of consumers, we have agreed with the HEC an arrangement whereby shareholders will not obtain return on pre-mature site formation works and that consumers will not be worse off if site formation works are required later than planned. With this arrangement, consumers are protected against pre-mature site

formation works that might arise from a lower than expected growth in demand, and at the same time enjoy security of electricity supply afforded by timely advance planning of additional generation capacity.

The above safeguard is in addition to a number of others already introduced. These include improvements made to the forecasting arrangements, the arrangement to approve additional generation capacity on an in-principle and unit-by-unit basis rather than as a series of units, the requirement for power companies to enter into contracts for procurement and installation of the additional generation unit only after a review of the latest demand forecast in consultation with the Government, and the mechanism for dealing with excess capacity on commissioning whereby part of the investment will not provide a return to shareholders.

### **Treatment of Tuberculosis**

14. **MR LAU KONG-WAH** (in Chinese): *Madam President, regarding the treatment of tuberculosis (TB), will the Government inform this Council:*

- (a) *of the percentage of TB cases confirmed to have been caused by drug-resistant TB strains in the total number of TB cases reported in the past three years; how the treatment processes, costs and recovery rates of such TB cases compare to those of general TB cases;*
- (b) *of the percentage of TB patients who refused to continue treatment during the process over the past three years and the reasons for that, as well as the impact of TB patients discontinuing treatment on the spreading of the disease; and*
- (c) *whether the Administration will step up publicity to enhance public awareness of the causes and treatment of TB?*

**SECRETARY FOR HEALTH AND WELFARE** (in Chinese): Madam President,

- (a) According to data collected by the chest clinics of the Department of Health which treat around 80% of all TB cases in Hong Kong, the percentages of multi-drug resistant tuberculosis (MDR-TB) cases in the past three years are as follows:

<i>Year</i>	<i>MDR-TB</i>
1997	3.1 %
1998	1.1 %
1999	1.6 %

For the general TB cases, a full course of treatment usually lasts for about six months, and the drug cost is around \$600. Around 85% of these cases have been successfully cured.

For MDR-TB cases, a full course of treatment lasts for more than 12 months, and the drug cost can be in the order of \$10,000 to \$20,000. The treatment success rate is lower than the general cases by about 20%.

- (b) In recent years, the percentage of patients defaulting anti-TB treatment is around 7%. These patients failed to complete the full course of treatment owing to various reasons, for example, long duration of treatment, side effects from anti-TB drugs, and patients misinterpreting their TB as already cured when their symptoms improve after treatment.

The Department spares no efforts in trying to contact the defaulters to persuade and assist them to continue treatment. Defaulting patients run the risk of failing to recover from TB, emergence of drug resistance, relapse, and, upon relapse, spreading the TB to others. Since the defaulting patients may be at different stages of illness and have received varying duration of treatment, the potential of relapse may differ from person to person. For example, a study on patients where the TB bacteria cannot be seen by microscopic examination of sputum but confirmed by bacterial culture indicated that 32% of those who had taken drugs for two months would suffer from relapse within five years, whereas 13% of those who had taken

drug for three months would suffer from relapse within the same period.

- (c) The Department of Health carries out regularly health education on the causes and treatment of TB through the media, health talks, leaflets and posters. For example, each year on the World TB Day (March 24), the Department collaborates with the Hospital Authority and the Hong Kong Tuberculosis, Chest and Heart Diseases Association to organize major health exhibitions to enhance public awareness of TB and its prevention and treatment process. The Department will take active steps to strengthen these health promotion activities in coming years.

### **Participation of Kindergartens in Kindergarten Subsidy Scheme**

15. **MR JASPER TSANG** (in Chinese): *Madam President, regarding the participation of kindergartens in the Kindergarten Subsidy Scheme (the Scheme), will the Government inform this Council of:*

- (a) *the number and percentage of kindergartens which have joined the Scheme at present;*
- (b) *the respective numbers of kindergartens which joined or withdrew from the Scheme in each of the past two school years; and*
- (c) *the measures in place to encourage non-profit-making kindergartens to join the Scheme?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Chinese): Madam President,

- (a) There are at present 769 kindergartens in Hong Kong, out of which 470 are non-profit making. The Scheme is only available to non-profit making kindergartens. As at October 1999, a total of 286 kindergartens have joined the Scheme, accounting for about 61 % of all non-profit making kindergartens in Hong Kong.
- (b) The number of kindergartens joining and withdrawing from the Scheme in the 1998-99 and the 1999-2000 school years is as follows:

<i>School year</i>	<i>Joining the Scheme</i>	<i>Withdrawing from the Scheme*</i>
1998-1999	24	3
1999-2000	15	2

\*Including four kindergartens leaving the Scheme because of closure or suspension of operation.

- (c) Since the introduction of the Scheme in the 1995-96 school year, the number of participating kindergartens has increased from 236 to 286, representing an increase of about 21%. The Government conducted a review of the Scheme in the 1997-98 school year and, taking into account the views expressed by the pre-primary education sector, introduced a number of improvement measures from the 1998-99 school year to attract more kindergartens to join the Scheme. To help minimize fluctuations in the level of assistance provided to kindergartens, the basis for calculating the rate of subsidy was changed from the number of pupils enrolled to the number of classes in operation. In addition, the Government has stipulated that all kindergartens should employ 40% Qualified Kindergarten Teachers (QKTs) by the 1997-98 school year, 50% by 1999-2000 and 60% by 2000-01. To encourage kindergartens to employ more QKTs at an earlier date than required, kindergartens employing a higher percentage of QKTs than the requirement will receive an enhanced rate of subsidy.

The Education Department has also streamlined the administrative procedures of the Scheme. For example, kindergartens are not required to re-apply annually and will continue to receive subsidies once they have joined the Scheme.

After the implementation of the revised Scheme, the number of participating kindergartens has increased from 252 to 286, representing an increase of about 13.5%. The Government has pledged to conduct a review in the 2000-01 school year to assess the effectiveness of the Scheme.



**Competitiveness of Hong Kong**

16. **MR FUNG CHI-KIN** (in Chinese): *Madam President, it has been reported that in the International Institute for Management Development's report on world competitiveness released in April this year, Hong Kong was ranked 14, with a slip of seven positions from the ranking last year. An academic has pointed out that one of the reasons for the decline in ranking is that the Hong Kong Government lacks a clear target. Besides, the Economist published last month also downgraded Hong Kong to the sixth position, from its top position in the business environment ranking in the world last year. In this connection, will the Government inform this Council:*

- (a) whether it has studied if the competitiveness of Hong Kong is declining; if it has, of the details;*
- (b) whether the authorities will step up publicity and promotional efforts to enable investors to appreciate clearly the future trend of the territory's business development; and*
- (c) of the counter-measures in place in response to Hong Kong's being downgraded by foreign organizations and publications in terms of its competitiveness and business environment?*

**SECRETARY FOR TRADE AND INDUSTRY** (in Chinese): Madam President,

- (a) Hong Kong is widely considered one of the most competitive economies in the region. The World Economic Forum ranks Hong Kong as the third most competitive economy in the world, while both the Heritage Foundation of the United States and the Fraser Institute of Canada consider Hong Kong the world's freest economy.

Nevertheless, we noted the drop in ranking of Hong Kong in recent reports compiled by some international organizations recently. Three factors contributed to this development:

- (1) Some of the organizations put emphasis on short-term economic performance. Because of the economic downturn over the past one or two years brought about by the Asian financial crisis, Hong Kong inevitably experienced a decline in ranking as a result. However, with our economic recovery setting in, we expect upward adjustment in Hong Kong's ranking in future.
- (2) Some other organizations are still concerned over possible changes in the political environment and the practice of the rule of law in Hong Kong after our reunification. The facts have proved such worries to be unfounded.
- (3) Since the focuses and methodologies adopted by such foreign organizations and publications often vary, it is not surprising that they arrive at different conclusions and draw up different rankings regarding the competitiveness of an economy.

We believe that there is no evidence to show that Hong Kong's competitiveness is declining. As a matter of fact, Hong Kong's sustained competitiveness has enabled us to continue to play an important role in the international and regional arena. For example:

- Hong Kong is the 10th largest trading entity (sixth if the European Union is counted as one single entity) and the 10th largest exporter of services in the world. Following the considerable growth in the fourth quarter in 1999, Hong Kong's merchandize trade attained an accelerated growth of 20.1% in the first four months of this year. In addition to the strong global demand, continued improvement in Hong Kong's price competitiveness reflecting the ongoing cost adjustment in the local economy, and the rebound in the Southeast Asian currencies, also contributed to the recent surge in Hong Kong's exports.

- Hong Kong is the ninth largest banking centre in terms of external transactions and the seventh largest foreign exchange market in the world. Besides, Hong Kong's stock market is the second largest in Asia.
  - Hong Kong is the busiest container port in the world. The international airport of Hong Kong is the busiest in the world in terms of cargo throughput and its passenger throughput ranks fifth in the world.
  - Hong Kong ranks second in inward investment in Asia, only next to the mainland China.
- (b) Over the years, the Government of the Hong Kong Special Administrative Region (SAR) has been keeping investors abreast of business opportunities in Hong Kong and our competitive edge through various channels. For instance:
- (i) Senior officials of the SAR Government have made use of their overseas visits to meet overseas businessmen and introduce to them Hong Kong's latest developments and the business opportunities that Hong Kong has to offer;
  - (ii) The Government's Hong Kong Economic and Trade Offices (ETOs) have been maintaining close contacts with overseas businessmen. With a view to promoting inward investment and trade links between overseas communities and Hong Kong, the ETOs are tasked to keep overseas businessmen updated about the commercial trends and investment environment in Hong Kong, and the trade and investment policies of the SAR Government;
  - (iii) The Industry Department organizes various investment promotion activities, such as company visits, exhibitions and seminars, to brief potential investors on Hong Kong's investment environment and render the necessary assistance in their move to invest in Hong Kong;

- (iv) The Hong Kong Trade Development Council (TDC) regularly organizes overseas high-level business seminars and roadshows, and arranges media interviews as part of its promotion efforts. For example, the TDC will organize business conferences in Europe and the United States this year to brief overseas businessmen on the Asian economic recovery and the business opportunities for Hong Kong following China's accession to the World Trade Organization;
- (v) Each year, the SAR Government invites politicians and businessmen from different parts of the world to visit Hong Kong so that they can gain a first-hand and more in-depth understanding of Hong Kong's latest developments; and
- (vi) Bureaux/departments of the SAR Government have set up websites to enable foreigners to have easy access to Hong Kong's major economic data and information on investment in Hong Kong.

Looking ahead, the SAR Government is committed to strengthening its efforts to promote to overseas investors the business opportunities that Hong Kong can offer to them. To this end, we will set up a dedicated agency, "Invest Hong Kong", on 1 July this year to attract foreign investment. The agency will adopt a proactive marketing strategy to attract foreign enterprises to invest in Hong Kong.

The Government has also engaged an international consultancy firm to offer advice on how Hong Kong may re-position itself internationally. The SAR Government will study the recommendations put forward by the consultant and implement the adopted recommendations to strengthen Hong Kong's international image.

- (c) As explained above, owing to different focuses and approaches adopted in their analyses, foreign organizations and publications may come up with different assessment results regarding an economy's degree of competitiveness. In spite of this, the SAR Government will continue to keep the world's major rating agencies,

think tanks as well as heads and editors of foreign publications informed of our latest developments by providing them with updated economic data and other information on Hong Kong to facilitate their conducts of an objective assessment.

Internally, the Government will maintain the bedrock of its economic and trade policies, viz low taxes, free trade, free flow of information and the rule of law. Building on such fundamental principles, we will keep upgrading our hardware (infrastructure) and software (human resources and institutional framework) in the continuous strive to sharpen our competitive edge and make perfect our business environment.

### **Developing Hong Kong into a World Class Design and Fashion Centre**

17. **MR AMBROSE LAU** (in Chinese): *Madam President, in his 1998 policy Address, the Chief Executive introduced the policy objective of developing Hong Kong into a "world class design and fashion centre". In this connection, will the Government inform this Council of the specific measures and plans it has implemented to achieve the above-mentioned policy objective, as well as the progress and achievements of such measures and plans?*

**SECRETARY FOR TRADE AND INDUSTRY** (in Chinese): Madam President, thanks to the hardwork and dedicated efforts of the industry over the years, the products and designs of local designers have reached internationally acclaimed standard in recent years. The works of local fashion designers have also stamped their mark in the international market. This has laid a solid foundation for Hong Kong to develop into a world-class design and fashion centre. To this end, we are actively implementing the following initiatives:

- (1) Through the Innovation and Technology Fund set up last March, we provide assistance to tertiary institutions, industrial and business support organizations, non-profit marketing organizations and individual companies to embark on projects which will help upgrade the overall standard of Hong Kong designs, as well as step up related educational and publicity activities;

- (2) The Hong Kong Trade Development Council (TDC) has formulated a comprehensive plan to promote Hong Kong's quality fashions and designs to the world. Major promotional activities of the TDC include participating in and organizing fashion festivals and design exhibitions in our major markets in Europe, the United States and Asia. Hong Kong's brand names and designers are introduced to renowned merchandizers and traders in these markets, and through these contacts, strengthen the image of Hong Kong as the design centre in the region. In March next year, the TDC will also organize, for the first time, a visit by a number of prominent Italian designers to Hong Kong. The visit is intended to encourage co-operation between the world's top designers and local talents, thereby enhancing the status of local designs in the international arena;
- (3) We will make continued efforts to help the industry open up new markets by removing bilateral trade barriers and ensuring that Hong Kong exports will not be subject to discriminatory treatment in overseas markets. This will help secure the best market access opportunities for Hong Kong fashion and garments. In line with our stance to promote trade liberalization in the World Trade Organization, we will seek the full implementation of the Agreement on Textiles and Clothing by important countries; and
- (4) To ride on the growing popularity of e-commerce and to enhance the efficiency of the industry, we will expedite and streamline the processing of trading documents by electronic means.

We believe that the above measures, coupled with the innovative and enterprising spirit of the local industry, will accelerate Hong Kong's development into a leading world player in fashion and original designs.

### **Formulating New Regulatory Framework for Power Supply Market**

18. **MISS CHRISTINE LOH:** *Madam President, having regard to the need to take into account the objectives of sustainable development in formulating a new regulatory framework for the power supply market, will the Government inform this Council:*

- (a) *of its present vision of the regulatory framework upon the expiry in 2008 of the Scheme of Control Agreements entered between the Government and the two power companies respectively; the steps it has taken or will take to design a new regulatory framework; the department responsible for designing and implementing such a new regulatory framework, and the technical support such a department will receive;*
- (b) *whether it will adopt an energy policy to include greenhouse gas limits and financial incentives for renewable energy; if so, of the timing for doing so; and*
- (c) *whether and when the costs of pollution, such as health remedy costs, damage of acid rains to crops and forests, climate change costs, will be taken into account in considering the feasibility and financial viability of various options for meeting Hong Kong's power demand?*

**SECRETARY FOR ECONOMIC SERVICES:** Madam President,

- (a) Recognizing the global and regional trend and that a number of long-term issues will need to be addressed in future, the Government has commissioned a consultancy study on interconnection and competition in the electricity supply sector in Hong Kong. We have briefed the Panel on Economic Services on the findings of the study and sought public comments on the study report. We see increased interconnection, not just between the two power companies but also with mainland China, as the logical way forward for the longer term. However, to ensure reliability of supply, we need to sort out a number of engineering and planning issues first. Since the consultancy study completed is only an initial feasibility study, we have made preparation for further detailed studies on the routing and timing for construction of the new interconnectors as well as the planning criteria for our electric systems under an increased interconnection scenario. These further studies would start in a few months' time and, if everything goes according to plan, we expect them to be completed in the latter half of 2001.

In parallel, we are examining the restructuring of the electricity market in other places with a view to identifying practicable options for Hong Kong in future. We will need to study the complementary regulatory and institutional structure for increased interconnection. We are also liaising with mainland authorities regarding market and regulatory reforms in the Mainland with a view to exploring the possibility and scope for the supply of electricity, particularly that generated by renewable energy resources, from the Mainland to Hong Kong. We see the importance of coming to an early view on the post-2008 regime and we hope to map out the broad direction for the future development of our electricity sector before the next interim review of the Scheme of Control Agreements scheduled for 2003.

The Administration will also be commissioning a consultancy study on the potential applications of renewable energy in Hong Kong. The study will examine, among other things, the latest developments in renewable energy technologies, the potential for local applications in the short and long term, and will try to identify practical means to get the power companies to supply a proportion of power from renewable energy sources.

In taking forward the above tasks, the Economic Services Bureau and the Electrical and Mechanical Services Department (EMSD) will consult and work together with other relevant bureaux and departments including the Environment and Food Bureau (EFB) and the Environmental Protection Department and seek outside assistance and support as necessary. The mode and resources will be kept under review in the light of developments.

- (b) The objectives of our energy policy are to ensure that the energy needs of the community are met efficiently, safely and at reasonable prices, and to minimize the environmental impact of energy production and promote the efficient use and conservation of energy. Power-related projects are subject to the requirements of the Environmental Impact Assessment Ordinance and designated projects are required to conduct comprehensive assessments to address any environmental concerns before they could proceed. In addition, minimizing greenhouse gas emissions and exploring



renewable energy have always featured in our consideration of energy matters. For example, we have introduced natural gas for new power generation facilities since 1996 and drawn up with the two power companies programmes for promoting demand side management. The Administration has commissioned a Greenhouse Gas Emission Control Study and is about to commission another consultancy study on renewable energy. Whether, and if so how, greenhouse gas limits should be set and incentives given to renewable energy would be considered in the light of the findings of the studies.

- (c) The EFB has advised that it is impracticable to assess the costs of pollution in a project as there are a lot of uncertainties in such assessments. Nonetheless, proponents of designated projects, including power-related projects, are required to conduct comprehensive assessments under the Environmental Impact Assessment Ordinance. Such comprehensive assessments would address any environmental concerns and appropriate mitigation measures necessary.

### **Statistical Surveys on Cancer and Serious Diseases**

19. **MR LAU KONG-WAH** (in Chinese): *Madam President, in response to my question raised at the Legislative Council Meeting held on 24 March 1999, the Secretary for Health and Welfare replied that the Administration could only provide the number of various types of cancer cases in Hong Kong up to 1994. Regarding the statistical surveys on various types of cancer and serious diseases, will the Government inform this Council:*

- (a) *given that the Administration has not completed compilation of statistics on the number of various types of cancer cases for recent years, how it can ascertain the latest trend of cancer cases in Hong Kong and examine the correlation between the living habit of Hong Kong people and the incidence rates of cancer cases, and whether this has led to difficulties in promoting public awareness of cancer prevention;*

- (b) *of the respective numbers of new cases of various types of cancer in each of the most recent three years for which data compilation has been completed; and whether these figures have shown that the age profiles of cases of colon and breast cancers are becoming younger;*
- (c) *according to the preliminary statistical information about cancer cases obtained by the Administration, how the incidence rates of lung, liver and nasopharyngeal cancers in Hong Kong compare to the corresponding figures in New South Wales in Australia, Canada and Los Angeles in the United States over the past three years; and*
- (d) *whether there are differences in the methodology for conducting statistical surveys and the time required for compilation of statistics on new cases of cancer and on other serious diseases; if so, of the details?*

**SECRETARY FOR HEALTH AND WELFARE** (in Chinese): Madam President,

- (a) Since it takes many years for cancer to develop in an individual, all major epidemiological researches on cancer rely on incidence data in terms of decades to evaluate trends and possible causative factors. It is insufficient to refer to cancer data of a few years to analyse the trend of cancer. Living habit is but one of the many factors leading to cancer. As such, time lag in collating information on the cancer incidence should not affect the analysis of the trend of cancer incidence in the last decade in Hong Kong. Our existing cancer incidence databank should be able to provide sufficient data for further research on correlation between the living habit of Hong Kong people and the incidence rates of cancer cases. Neither would the time lag data collation affect the health education and disease prevention programme.
- (b) The latest available cancer incidence data are those for the year 1996. The number of new cases of cancer diagnosed in 1994, 1995 and 1996 are 17 974, 18 297 and 19 344 respectively. A detailed breakdown is at Annex A.

As explained in (a) above, it is insufficient, for identifying trends, to examine cancer data of a few years only. We have made reference to available cancer incidence data for the period 1977 to 1996 (that is, a total of 20 years) for the purpose of analysis. For colon cancer, the increase in incidence rate was more significant in the age group of 50 and above. For female breast cancer, the average age-specific incidence rate for the 30-39 age group rose from 22.4 per 100 000 population in 1977-81 to 30.7 per 100 000 population 1992-96 (up 37%), that for the 40-49 age group rose from 54 per 100 000 population to 85 per 100 000 population (up 57%), and for the age group of 70 and above, from 115.4 per 100 000 population to 136.8 per 100 000 population (up 19%). These figures show that over the years, the younger age groups experienced a higher rate of increase in breast cancer incidence.

- (c) The incidence rates of lung, liver and nasopharyngeal cancer in Hong Kong during 1994 to 1996 as well as those of lung cancer in Canada are at Annex B. Canada registered lower incidence rates of lung cancer than Hong Kong during 1994-96. The incidence rates of liver and nasopharyngeal cancer in Canada, and those of lung, liver and nasopharyngeal cancer in New South Wales in Australia and Los Angeles in the United States during 1994-96 are not available. It should however be noted that liver and nasopharyngeal cancer are more common in Hong Kong.
- (d) The Hong Kong Cancer Registry (the Registry) adopts the standards and procedures of the International Agency for Research of Cancer in compiling the statistical data on cancer incidence in Hong Kong. The Registry collates information on cancer incidence collected from all public and private hospitals as well as from voluntary notifications filed by medical practitioners. Each year, the Registry identifies genuine new cases from over 140 000 reported cancer cases which include old cases diagnosed in previous years. The verification process includes checking against consolidated data in previous years to filter out the old cases, eliminating double-counting of the data of the same patient reported from different sources, and confirming the validity of the data by verifying a

patient's age against his/her date of birth, sex against the site of cancer, and site of cancer having regard to pathology. Because of the elaborate data verification process, the Registry, similar to other cancer registries elsewhere, needs at least two to three years to finalize annual cancer incidence statistics. The methodology of compiling incidence rates of serious diseases is basically the same. While the time required to verify and collate data pertaining to one new case should be broadly similar, there may be variations depending on the complexity of data to be analysed.

## Annex A

## Number of New Cases of Various Types of Cancer

(1994-96)

<i>Type of Cancer</i>	<i>Number of New Cases</i>		
	<i>1994</i>	<i>1995</i>	<i>1996</i>
Lung Cancer	3 726	3 616	3 750
Liver Cancer	1 707	1 589	1 738
Colon Cancer	1 658	1 710	1 786
Breast Cancer	1 273	1 352	1 542
Nasopharyngeal Cancer	1 127	1 136	1 177
Stomach Cancer	962	946	1 017
Rectum Cancer	889	943	1 078
Oesophagus Cancer	553	533	515
Bladder Cancer	526	581	559
Non-Hodgkin's Lymphoma	482	494	537
Others	5 071	5 367	5 645
Total	17 974	18 267	19 344

Source: Hong Kong Cancer Registry of the Hospital Authority

## Annex B

Age-standardized Incidence Rates  
of Lung, Liver and Nasopharyngeal Cancer in Hong Kong  
and Lung Cancer in Canada  
(1994-96)

*Age-standardized Incidence Rates per 100 000 Population*

Year	Lung cancer		Hong Kong		Nasopharyngeal cancer		Canada	
			Liver cancer				Lung cancer	
	Male	Female	Male	Female	Male	Female	Male	Female
1994	104.0	42.5	49.0	13.6	26.7	10.5	86.7	39.6
1995	97.8	39.3	42.5	14.0	26.3	9.9	83.6	40.4
1996	97.0	39.6	46.2	13.2	26.2	9.9	84.6*	42.5*

\*Estimate rates

Source:

1. Hong Kong Cancer Registry of the Hospital Authority
2. National Cancer Institute of Canada

## Financial Management of Hong Kong Philharmonic Orchestra

20. **MISS CYD HO** (in Chinese): *Madam President, regarding the financial management of the public-funded Hong Kong Philharmonic Orchestra (HKPO), will the Government inform this Council whether it knows:*

- (a) *the total income and expenditure of the HKPO in each of the past three years, together with a detailed breakdown of such income (including government subsidies and other revenues) and expenditure;*
- (b) *the revenue the HKPO received from the sale of the copyright of its performances and sound recordings since it entered into a contract for such with the Global Music Network (GMN) last year; and*

- (c) *the number of musicians from outside Hong Kong invited by the HKPO, since the above contract took effect, to perform with it in Hong Kong who were also engaged in recording musical works for the GMN during their stay in Hong Kong, and how the expenses (including those for air passage, hotel accommodation and remuneration) were apportioned between the HKPO and the GMN?*

**SECRETARY FOR HOME AFFAIRS** (in Chinese): Madam President, according to information provided by the HKPO, my reply to the Honourable Miss Cyd HO's question is:

- (a) The total income and expenditure of the HKPO in the past three years with detailed breakdown is summarized below:

	1997-1998	1998-1999	1999-2000 <sup>(Note)</sup>
	HK\$	HK\$	HK\$
<i>Income</i>			
Cash Subsidies from Provisional Urban Council (up to 31 December 1999)/Home Affairs Bureau (from 1 January 2000)	63,731,679	67,483,022	62,865,341
Revenue from performances	17,092,692	15,550,632	20,109,572
Interest income	1,915,480	2,174,870	1,201,854
Sponsorship and fund raising income	2,273,852	1,347,321	1,816,845
Income from recording	1,046,354	1,116,905	121,087
Advertisements	471,410	298,202	402,028
Miscellaneous income	51,489	116,316	70,367
Total	86,582,956	88,042,268	86,587,094

	1997-98	1998-99	1999-2000 <sup>(Note)</sup>
	HK\$	HK\$	HK\$
<i>Expenditure</i>			
Musicians salaries and benefits	51,888,084	54,836,563	55,963,125
Music Director and guest conductors	5,356,303	6,453,699	6,411,422
Soloists	3,877,565	4,653,880	5,463,443
Other concert expenses	3,566,395	3,464,808	3,442,995
Promotion and publicity	5,212,161	5,054,496	6,319,121
Administrative and general	12,198,488	12,872,011	12,740,623
Total	82,098,996	87,335,457	90,340,729

(Note: For the 1999-2000 financial year, the figures may need to be adjusted subject to annual final audit.)

- (b) Contracts with the GMN were entered into on a project basis. Since 12 March 1998, six contracts have been signed. The recordings have not yet been turned into commercial products yet, that is, compact discs and tracks available for downloading or pay-to-listen services. It is expected that they will become available in the market in the near future.

For studio recordings and live concert recordings, the HKPO will receive 10% and 5% royalties respectively based on the sale price for each disc sold, each download or each time when a customer uses the pay-to-listen service. So far, the HKPO has already received an advance royalty of £22,500 (equivalent to \$277,070) and recording fees amounting to \$816,456 from the GMN.

- (c) The HKPO has engaged a total of 130 guest artists since March 1998. Out of the 130, 18 were recorded by the GMN. While the concert fees, airfare and hotel accommodation for these 18 artists were paid by the HKPO or sponsors, the recording fees were the responsibility of the GMN.

## **BILLS**

### **Second Reading of Bills**

#### **Resumption of Second Reading Debate on Bill**

**PRESIDENT** (in Cantonese): We will resume the Second Reading debate on the Legal Practitioners (Amendment) Bill 1999.

### **LEGAL PRACTITIONERS (AMENDMENT) BILL 1999**

#### **Resumption of debate on Second Reading which was moved on 30 June 1999**

**PRESIDENT** (in Cantonese): Chairman of the Bills Committee on the above Bill, Miss Margaret NG, will address the Council on the Committee's Report.

**MISS MARGARET NG:** Madam President, I make the following report in my capacity as Chairman of the Bills Committee on the Legal Practitioners (Amendment) Bill 1999.

The Bill proposes to repeal section 27 of the Ordinance to remove the existing privileges of admission to the Hong Kong Bar Association (the Bar Association) conferred on barristers and advocates in England, Northern Ireland and Scotland, as it is inconsistent with our general obligations under the General Agreement on Trade in Services (GATS) which require admission criteria to be objective, reasonable, non-discriminatory and standards-based.

Under the proposed admission mechanism, the court may admit a person to be a barrister if he is considered to be a fit and proper person and has complied with the general admission requirements, including passing any required examinations and paying any required fee, as prescribed by the Bar Council.

Members support the proposal in principle. However, they are concerned about the effect of the change on United Kingdom law students who would be seeking admission to the Bar under the existing route. The Administration has proposed to deal with the issue by delaying the commencement of the section relating to the new admission criteria to a date not



earlier than 1 November 2001. Members do not find this acceptable. Firstly, the delay to November 2001 will not exempt students who have already enrolled in legal studies in the United Kingdom before the enactment of the Bill. Many of these are Hong Kong students intending to come back to practise. It is unfair to them to frustrate their purpose. Inquiries with the law schools of the two universities in Hong Kong have revealed that no allowance has been made regarding Postgraduate Certificate in Law (PCLL) places to cater for the increase of law graduates returning from the United Kingdom. At present, while a local law graduate is practically assured of a place in the PCLL course, a law graduate from an overseas university has to face tough competition. This is both unfair and undesirable.

The Bills Committee is of the view that the exemption should be extended to all students who are enrolled or registered or have been offered a place in a course of legal studies in the United Kingdom as at the time of enactment of the Bill. As a matter of principle, the same arrangement should apply to those pursuing an external course of studies in Hong Kong offered by an institution in the United Kingdom.

Secondly, members prefer express transitional provisions to simply delaying the date of commencement. Students planning on a career in law and their families should be able to see from the legislation itself exactly where they stand a couple of years down the road.

The Administration has agreed to introduce amendments to defer the deadline for seeking admission as barristers to 31 December 2004, and to make express transitional provisions reflecting this. Under this revised proposal, the existing route will be preserved up to that date. This means that law students commencing legal studies no later than the academic year 2000-01 will benefit. But the existing route will be preserved for them only until 31 December 2004.

Members have noted that the existing section 27A of the Ordinance may not be GATS compliant for the same reason which applied to section 27.

Section 27A was enacted in 1989. It allows lawyers from specific jurisdictions listed in Schedule 1 of the Ordinance and employed as Government Counsel to be admitted as barristers under specified conditions. Such admissions are limited to a maximum of four a year, and any person so admitted must start private practice within 12 months. The Schedule 1 jurisdictions are

Australia, Canada excluding Quebec, New Zealand, the Republic of Ireland, Zimbabwe and Singapore. The Administration agrees that section 27A is inconsistent with the GATS.

To address the Bills Committee's concern, the Administration agrees that section 27A should be repealed. However, some transitional arrangements should be provided to preserve the accrued rights of those counsel in the Department of Justice who will have satisfied the criteria for admission under that section by 1 November 2001. Application for admission can be made at any time in the future, subject to the quota of four admissions in any period of 12 months. Members have been assured that the proposed arrangements are the result of thorough consultation with all affected persons, and have their support as well as the support of the Bar Association.

I shall now turn to two major proposals relating to solicitors.

One proposal is for the Law Society of Hong Kong (the Law Society) to appoint a prosecutor to summon not only members of the Law Society and their employees, but also any other persons who may be able to assist in a suspected disciplinary offence for questioning at the investigation stage for the purpose of deciding whether a charge should be brought. Under the existing Ordinance, an inspector may be appointed to assist the Law Society in verifying compliance by a solicitor, a foreign lawyer, a trainee solicitor or an employee of a solicitor or foreign lawyer, and determining whether disciplinary steps should be taken. He may only question the above mentioned persons or someone purported to be one of them, and require such persons to produce certain documents for inspection.

Members have queried the effect and appropriateness of appointing prosecutors and giving them the power to "summon" for questioning persons other than members of the Law Society and their employees at the investigation stage. Only the Disciplinary Tribunal itself can have the power to summon witnesses and require them to answer questions.

Having regard to members' views and after consultation with the Law Society, the Administration has agreed to withdraw the proposal, and instead, extend the authority of the inspector appointed by the Law Society. The inspector may question other persons upon authorization of the Council of the Law Society, but has no authority to compel them to answer him.

The Bill also proposes that the Law Society be given the right to appeal against a finding of the Solicitors Disciplinary Tribunal.

The Law Society has explained that the Solicitors Disciplinary Tribunal is appointed by the Chief Justice and is independent of the Law Society. Several decisions made by the Tribunal within the past 12 months or so have caused concern to the Council of the Law Society because they appear to have been "perverse". Some examples were provided to members. It is the Law Society's view that these decisions did not do justice to the complainants or meet the public interest.

Members note that none of the 27 other professional bodies in Hong Kong has such a right of appeal. They have raised concerns about the justification for departure from the existing general practice, and potential unfairness to lawyers in terms of costs and prejudice. However, members also noted that the Law Society of England and Wales and legal professional bodies in Northern Territory of Australia, New South Wales of Australia and New Zealand may appeal against an order or a decision of their respective disciplinary boards.

To address members' concern about the proposal, the Law Society has conceded that the proposed right of appeal should be subject to the leave of the Court of Appeal. After consideration, the Bills Committee has agreed to support the revised proposal.

The Bills Committee has also considered and discussed a number of proposals under the Bill which aim at clarifying ambiguities in the existing Ordinance and enhancing the efficiency and effectiveness of the two legal professional bodies. The Administration will move a number of amendments in response to the views of members of the Bills Committee and the legal professional bodies. All of them have the support of the Bills Committee.

Madam President, subject to the amendments to be moved by the Administration at the Committee stage, the Bills Committee supports the resumption of the Second Reading debate on the Bill.

**MR AMBROSE LAU:** Madam President, both the Law Society of Hong Kong and I have concerns over the proposed section 31C of the Bill under which the category of "employed barristers" will be created. Our concern is that whilst

the Bill prohibits the employed barristers from giving instructions to a barrister in private practice other than for seeking a legal opinion, no such prohibition exists against the barristers in private practice. So far as I am aware, there is currently no professional duty contained in the Bar Code of Conduct to require a barrister in private practice to satisfy oneself that the employed barrister from whom one accepts instructions is not in breach of the proposed section 31C or other provisions of the Legal Practitioners Ordinance.

There are provisions in the Bar Code of Conduct permitting direct access by other professions to the private bar. However, the Hong Kong Bar Association (the Bar Association) places the onus for enforcing compliance with those rules solely on the other professional bodies. The Bar Association maintains that "the Bar's rules regulating direct professional access cannot cater for direct instructions by employed barristers". Thus, it appears that the Bar Association has no proposal to regulate this activity and no procedure for doing so. In view of the aforesaid, I hope that the Administration will, in due course, review whether the relevant provisions relating to "employed barristers" are effectively enforced.

Madam President, I support the Second Reading of the Bill.

THE PRESIDENT'S DEPUTY, DR LEONG CHE-HUNG, took the Chair.

**DEPUTY PRESIDENT** (in Cantonese): Does any other Member wish to speak?

(No Member responded)

**DEPUTY PRESIDENT** (in Cantonese): If there is no Member who wish to speak, I will call upon the Secretary for Justice to speak in reply. After the Secretary has spoken, the debate will come to an end.

**SECRETARY FOR JUSTICE**: Mr Deputy, as I explained when I introduced the Legal Practitioners (Amendment) Bill 199 into this Council in June 1999, the purpose of the Bill is to make improvements to the law relating both to solicitors and barristers.

Since the introduction of the Bill, the Bills Committee, chaired by the Honourable Miss Margaret NG, has examined the clauses of the Bill thoroughly and made constructive comments and suggestions. Representatives of the Law Society of Hong Kong (the Law Society) and the Hong Kong Bar Association (the Bar Association) have also been invited to attend some of the Bills Committee meetings to present their views on the issues. I am most grateful to the Chairman and to the members of the Committee, namely Dr the Honourable LEONG Che-hung, the Honourable Jasper TSANG, the Honourable Albert HO and the Honourable Ambrose LAU, for their hard work and helpful contributions. Some changes to the Bill have been proposed and agreed. As a result, I will be moving a number of Committee stage amendments later this afternoon. For the moment, I will give a brief outline of the more important Committee stage amendments.

*Clause 3 (Appointment and powers of a prosecutor)*

It was originally proposed that the Law Society should be empowered to appoint a new category of officers called "prosecutors", who would be qualified as lawyers in other jurisdictions, or as solicitors in Hong Kong. Such "prosecutors" would assist the Law Society Council in the gathering of evidence in respect of a matter the Council is considering for the purpose of deciding whether or not it should be submitted to the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel. A "prosecutor" would be empowered to summon persons who may assist the Council to appear before him for the purpose of answering questions put by him. Non-compliance by a person so summoned would not, however, attract any penalty.

The proposal was made with the intention of enabling the Law Society Council to proceed more expeditiously with complaints of misconduct made to it, and to ensure that only substantive cases would be referred to the Solicitors Disciplinary Tribunal. This would ensure that deserving and substantiated cases are proceeded with expeditiously, whilst avoiding unnecessary costs for all parties concerned over unsubstantiated cases.

After careful discussion amongst members of the Bills Committee, the Administration and the Law Society, it was decided that "inspectors," who are currently provided for under section 8AA of the Ordinance, should be entrusted with the task instead of the proposed "prosecutors". Under the current law, inspectors can only question a person who acts or purports to act as an employee

of a solicitor in the premises of any court or place of lawful detention. In the execution of the additional task, an inspector will now be empowered, where authorized by the Council, to question at any place any person whom the inspector considers may be able to assist the Council.

*Clause 5 (Appeal and saving against orders of the Solicitors Disciplinary Tribunal)*

Two other agreed amendments relate to the Solicitors Disciplinary Tribunal. Under section 13 of the Ordinance, a solicitor is entitled to appeal against an order made against him by the Solicitors Disciplinary Tribunal. The Bill proposes that the Law Society Council should also have a right to appeal against an order of the Tribunal where it is found appropriate to do so. After thorough discussion amongst members of the Bills Committee, the Law Society and the Administration, it was agreed that such a right should be subject to leave from the Court of Appeal. With such a requirement, the Law Society would be in a better position to protect the public and maintain public confidence in disciplinary proceedings, and members of the Law Society would be assured that they would not be involved in appeal proceedings unnecessarily.

It should be noted that Law Societies in other common law jurisdictions, such as the United Kingdom and Australia, also have the right to appeal against the orders of their respective disciplinary bodies.

*Clause 6 (Publication of findings of Solicitors Disciplinary Tribunal)*

Clause 6 of the Bill expressly provides for the Law Society to publish a summary of the findings and orders of the Solicitors Disciplinary Tribunal and the name of the solicitor convicted of an offence, unless the Tribunal orders otherwise. A Committee stage amendment will be moved to make it clear that a solicitor has a right to apply to the Tribunal for an order to the effect that the findings should not be so published.

*Clause 7 (Power of the Court to admit barristers)*

A number of proposed amendments relate to the power of the court to admit barristers. Under the current section 27 of the Ordinance, subject to specific residency requirements, a person who has been called to the Bar in England or Northern Ireland, or who has been admitted as an advocate in

Scotland, can be admitted to practise as a barrister in Hong Kong. The provisions are not applicable to lawyers from other jurisdictions and constitute special privileges.

Clause 7 of the Bill removes these privileges and enables the court to admit any person to be a barrister if he or she is considered to be a fit and proper person and has complied with the specified requirements.

All foreign lawyers who seek admission to practise as barristers in Hong Kong will have to sit and pass examinations to be set by the Bar Association.

Time is required to put the examination mechanism in place and so it has been agreed that the proposed repeal and replacement should not come into operation until a date to be appointed by myself, which is not to be earlier than 1 November 2001.

The proposed new section 27 also provides that a foreign lawyer may be admitted as a barrister for the purpose of any particular case or cases, provided that certain requirements are satisfied. After thorough discussion, it was agreed that a Committee stage amendment be moved to provide an additional requirement that the foreign lawyer must have substantial experience in advocacy in a court.

*New clause 7A (in relation to repeal of section 27A); new clauses 17 to 23 (transitional provisions for repeal of sections 27 and 27A)*

Various other issues arose in connection with the proposed repeal of section 27. The first is the effect that the repeal would have on Hong Kong students who are pursuing a law course provided by institutions in the United Kingdom.

As I have said, the proposed repeal of section 27 was intended to come into operation on a day to be appointed by me, which should not be earlier than 1 November 2001. No transitional provisions were originally intended.

Members of the Bills Committee expressed concern that only those Hong Kong students who were already in the third year of a United Kingdom law degree when this Bill was gazetted would be able to seek admission as barristers in Hong Kong under the existing section 27 before it is repealed. It was

suggested that this would be unfair to those in junior years who also have embarked on the United Kingdom law courses on the understanding that they could rely on their United Kingdom qualifications to seek admission in Hong Kong.

The issues were thoroughly discussed and considered by members of the Bills Committee, the Administration and the Bar Association, and it has been agreed that the existing section 27 should continue to apply to those who have started their first year in or before September 2000. This approach has taken into consideration the fact that, by the time the Bill is enacted, students may have already been offered a place or enrolled in the United Kingdom legal studies, and it would be too late for them to change plans if they want to commence their academic year in September 2000. In order to benefit from the existing route to admission, however, these students will have to complete their studies, become qualified in the United Kingdom, and seek admission in Hong Kong on or before 31 December 2004. A Committee stage amendment will be moved to introduce a new section 74C to the Ordinance to provide for this situation.

Another issue related to the repeal of section 27 concerns counsel employed by the Department of Justice. It was proposed by the Bar Association and agreed by the Administration that, with the removal of the privileges conferred on barristers and advocates from the United Kingdom, it would be untenable for counsel from jurisdictions specified in Schedule 1 to the Ordinance, who are working in the Department of Justice, to continue to enjoy privileges relating to admission to the Bar under section 27A of the Ordinance.

Under the existing section 27A, counsel from the Department of Justice who seek admission to the Bar pursuant to the section must leave government employ within 12 months of the admission. Only four counsel may rely on section 27A in any period of 12 months.

It is agreed that section 27A should be repealed, but that counsel in the Department of Justice who are qualified to rely on section 27A as at a date to be appointed by myself, which is not to be earlier than 1 November 2001, shall continue to be entitled to seek admission under the section. The same date will be chosen for the repeal of both sections 27 and 27A to come into operation.

It was also agreed that, as from the date of enactment of the Bill, counsel who obtain admission under section 27A shall no longer be required to leave



government service and commence private practice within 12 months of their admission.

With the repeal of section 27A, Schedule 1 to the Legal Practitioners Ordinance, which sets out the jurisdictions from which counsel can benefit from the section, is no longer relevant to that Ordinance. The Schedule, however, remains relevant to various other pieces of legislation that relate to legal officers in the Government. I will therefore move an amendment to relocate that Schedule.

*Clause 12 (Employed barristers)*

Clause 12 of the Bills allows an employed barrister to instruct a barrister without retaining a solicitor for the purpose of obtaining legal opinions only. As noted by the Bills Committee at its deliberation, "employed barristers" is not new but defined in the Code of Conduct of the Bar as barristers who are engaged to provide legal advice or services exclusively to his employer under contracts of employment.

Clause 12 does not allow employed barristers to instruct counsel without retaining solicitors generally, but limited for the purpose of obtaining legal opinions. The Administration is of the view that the proposed amendment is reasonable and in the interest of consumers. The suggestion made by the Mr Ambrose LAU for review of the enforcement mechanism will be looked at.

In addition to the amendments that I have described, I will also be moving other Committee stage amendments to deal with minor and technical issues.

Mr Deputy, with these remarks and subject to the Committee stage amendments proposed by the Administration, I commend the Bill to this Council. Thank you.

THE PRESIDENT resumed the Chair.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Legal Practitioners (Amendment) Bill 1999 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

**PRESIDENT** (in Cantonese): Those against please raise their hands.

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): Legal Practitioners (Amendment) Bill 1999.

Council went into Committee.

### **Committee Stage**

**CHAIRMAN** (in Cantonese): Committee stage. Council is now in Committee.

### **LEGAL PRACTITIONERS (AMENDMENT) BILL 1999**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Legal Practitioners (Amendment) Bill 1999.

**CLERK** (in Cantonese): Clauses 2, 4, 8, 9, 13 and 14.

**CHAIRMAN** (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): Clauses 3, 5, 6, 7, 10, 11, 12, 15 and 16.

**SECRETARY FOR JUSTICE** (in Cantonese): Madam Chairman, I move that clauses 3, 5, 6, 7, 10, 11, 12, 15 and 16 be amended as set out under my name in the paper circularized to Members.

*Clauses 3 and 5 to 7*

I have explained the reasons for proposing CSAs to clauses 3, 5, 6 and 7 earlier on this afternoon. The amendment to clause 3 empowers inspectors authorized by the Law Society Council to question persons in respect of complaints against solicitors. The amendment to clause 5 provides that the leave of the Court of Appeal is required before the Council may appeal against decisions of the Solicitors Disciplinary Tribunal. The amendment to clause 6 relates to restrictions on the power to publish a summary of the findings and orders of the Tribunal, and the amendment to clause 7 provides that foreign lawyers who seek ad hoc admission to the Bar must have substantial advocacy experience.

*Clause 10 (practising certificates for barristers)*

I turn now to the amendment to clause 10. That clause provides for conditions for the issue of practising certificates. Overseas practitioners admitted as barristers on ad hoc basis are to be required to pay a membership subscription to the Bar Association. After discussions amongst members of the Bills Committee, the Administration and the Bar Association, it was agreed that an amendment should be moved to allow barristers so admitted to apply for waiver of part of the membership subscription, which is normally calculated on an annual basis. The Bar Council will have discretion in respect of such a waiver.

*Clause 11 (practising certificate for "employed barristers")*

The amendment to clause 11 is a drafting improvement to the proposed section 31(1)(c), which relates to employed barristers.

*Clause 12 (definition of the term "employed barrister")*

The amendment to clause 12 provides for the publication in the Gazette by the Bar Council of a list of the names and addresses of employed barristers as *prima facie* evidence of their status.

*Clause 15 (power of Bar Council to make rules)*

Clause 15 provides for the Bar Council to have the power to make rules regulating the practice of its members. The Chief Justice has the power to make rules for the same purpose. The amendment to the clause makes it clear that, in the event of conflict between the rules made by the Chief Justice and the rules made by the Bar Association, the former will prevail.

*Clause 16*

Clause 16 contains transitional provisions relating to the repeal of section 27. The amendment to the clause makes it clear that people already admitted pursuant to the section will not be affected by the repeal.

Madam Chairman, I beg to move.

*Proposed amendments*

**Clause 3 (see Annex V)**

**Clause 5 (see Annex V)**

**Clause 6 (see Annex V)**

**Clause 7 (see Annex V)**

**Clause 10 (see Annex V)**

**Clause 11 (see Annex V)**

**Clause 12 (see Annex V)**

**Clause 15 (see Annex V)**

**Clause 16 (see Annex IV)**

**CHAIRMAN** (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Justice be passed. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): Clauses 3, 5, 6, 7, 10, 11, 12, 15 and 16 as amended.

**CHAIRMAN** (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Member present. I declare the motion passed.

**SECRETARY FOR JUSTICE** (in Cantonese): Madam Chairman, may I seek your consent to move under Rule 91 of the Rules of Procedure that Rule 58(5) of the Rules of Procedure be suspended in order that this Committee may consider the new clauses, ahead of clause 1 of the Bill.

**CHAIRMAN** (in Cantonese): As only the President may give consent for a motion to be moved to suspend the Rules of Procedure, I order that Council do now resume.

Council then resumed.

**PRESIDENT** (in Cantonese): Secretary for Justice, you have my consent.

**SECRETARY FOR JUSTICE** (in Cantonese): Madam President, I move that Rule 58(5) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider the new clauses, ahead of clause 1 of the Bill.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That Rule 58(5) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider the new clauses, ahead of clause 1 of the Bill.

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

**PRESIDENT** (in Cantonese): Those against please raise their hands.

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

Council went into Committee.

### **Committee Stage**

**CHAIRMAN** (in Cantonese): Council is now in Committee.

<b>CLERK</b> (in Cantonese):	New Clause 7A	Additional power of Court to admit barristers
	New clause 17	Legislative Council may amend Schedule 1
	New clause 18	Sections added
	New clause 19	Schedule repealed
	Heading before new clause 20	Consequential Amendments Bankruptcy Ordinance
	New clause 20	Appointment of Official Receiver and other officers
	Heading before new clause 21	Legal Officers Ordinance
	New clause 21	Interpretation
	New clause 22	Appointment qualification
	New clause 23	Rights and privileges of a legal officer

New clause 24	Power of the Chief Executive to amend Schedule
New clause 25	Schedule renumbered
New clause 26	Schedule added
Heading before new clause 27	Legal Aid Ordinance
New clause 27	Appointments
Heading before new clause 28	Municipal Services Appeals Board Ordinance
New clause 28	Interpretation
Heading before new clause 29	Director of Intellectual Property (Establishment) Ordinance
New clause 29	Interpretation
Heading before new clause 30	Hong Kong Court of Final Appeal Ordinance
New clause 30	Interpretation.

**SECRETARY FOR JUSTICE** (in Cantonese): Madam Chairman, for the reasons given earlier today in my speech on the resumption of the Second Reading of this Bill, I move that new clauses 7A, 17 to 30 as set out in the paper circularized to Members be read a Second time.

*New Clause 7A (to provide for repeal of section 27A)*

The new clause 7A proposes the repeal of section 27A, which provides a special channel for admission to the Bar for certain members of the Department of Justice. The repeal is to take place in two phases. In the first phase, section 27A(1)(e) and (3) will be repealed immediately. This will remove the



requirement that counsel who rely on their service in the Department of Justice for seeking admission as barristers have to commence private practice within 12 months of such admission or risk being struck off the roll.

In the second phase, the repeal of the remainder of section 27A will come into operation on a date to be appointed by me. That date will be the same date as the repeal of section 27, which shall not be earlier than 1 November 2001.

*Clause 17 (consequential amendment to the repeal of section 27A)*

The proposed new clause 17 provides for the repeal of section 72B of the Legal Practitioners Ordinance, and is consequential to the repeal of section 27A.

*Clause 18 (transitional provisions for repeal of sections 27 and 27A)*

New clause 18 introduces a new section 74C to the Ordinance. This is a savings provision for students enrolled in a course of studies in the United Kingdom that will qualify them for a vocational course leading to admission as a barrister in the United Kingdom. At the initiative of members of the Bills Committee, the savings provision is also extended to students who are pursuing external United Kingdom degrees in Hong Kong. In order to become admitted as a barrister under the existing channel, both sets of students must apply for admission in Hong Kong not later than 31 December 2004.

Clause 18 also introduces a new section 74D into the Ordinance. The new section provides for transitional provisions in respect of the repeal of section 27A.

*Clause 19 to 30 (consequential amendments to repeal of sections 27 and 27A)*

The amendments in proposed new clauses 19 to 30 are all consequential to the repeal of sections 27 and 27A.

Madam Chairman, I beg to move.

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the new clauses and headings read out just now be read the Second time.

**CHAIRMAN** (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): New clauses 7A, 17, 18 and 19, heading before new clause 20, new clause 20, heading before new clause 21, new clauses 21 to 26, heading before new clause 27, new clause 27, heading before new clause 28, new clause 28, heading before new clause 29, new clause 29, heading before new clause 30 and new clause 30.

**SECRETARY FOR JUSTICE** (in Cantonese): Madam Chairman, I move that the above new clauses and headings read out just now be added to the Bill.

*Proposed additions*

**New clause 7A (see Annex V)**

**New clause 17 (see Annex V)**

**New clause 18 (see Annex V)**

**New clause 19 (see Annex V)**

**Heading before new clause 20 (see Annex V)**

**New clause 20 (see Annex V)**

**Heading before new clause 21 (see Annex V)**

**New clause 21 (see Annex V)**

**New clause 22 (see Annex V)**

**New clause 23 (see Annex V)**

**New clause 24 (see Annex V)**

**New clause 25 (see Annex V)**

**New clause 26 (see Annex V)**

**Heading before new clause 27 (see Annex V)**

**New clause 27 (see Annex V)**

**Heading before new clause 28 (see Annex V)**

**New clause 28 (see Annex V)**

**Heading before new clause 29 (see Annex V)**

**New clause 29 (see Annex V)**

**Heading before new clause 30 (see Annex V)**

**New clause 30 (see Annex V)**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the above new clauses and headings read out just now be added to the Bill.

**CHAIRMAN** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): Clause 1.

**SECRETARY FOR JUSTICE** (in Cantonese): Madam Chairman,

*Clause 1 (commencement dates)*

The amendment to clause 1 provides for the different dates on which different parts of the Bill will come into operation. There are basically two groups. The first group (comprising clauses 1 to 6, the proposed new clause 7A(1), and clauses 12 to 15) will come into operation on the day on which this Legislation is published in the Gazette. The second group (comprising provisions relating to the repeal of sections 27 and 27A) will come into operation on a date, which is not to be earlier than 1 November 2001, to be appointed by me.

Madam Chairman, I beg to move.

*Proposed amendment*

**Clause 1 (see Annex V)**

**CHAIRMAN** (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Justice be passed. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): Clause 1 as amended.

**CHAIRMAN** (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CHAIRMAN** (in Cantonese): Council now resumes.

Council then resumed.

**Third Reading of Bill**

**PRESIDENT** (in Cantonese): Bill: Third Reading.

**LEGAL PRACTITIONERS (AMENDMENT) BILL 1999**

**SECRETARY FOR JUSTICE** (in Cantonese): Madam President, the

Legal Practitioners (Amendment) Bill 1999

has passed through Committee with amendments. I move that this Bill be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Legal Practitioners (Amendment) Bill 1999 be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

**PRESIDENT** (in Cantonese): Those against please raise their hands.

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): Legal Practitioners (Amendment) Bill 1999.

**Resumption of Second Reading Debate on Bill**

**PRESIDENT** (in Cantonese): We will resume the Second Reading debate on the Evidence (Amendment) Bill 1999.

**EVIDENCE (AMENDMENT) BILL 1999****Resumption of debate on Second Reading which was moved on 7 July 1999**

**PRESIDENT** (in Cantonese): Mr Albert HO, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's report.

**MR ALBERT HO** (in Cantonese): Madam President, in my capacity as Chairman of the Bills Committee on Evidence (Amendment) Bill 1999, I wish to report on the deliberations of the Committee.

The Bills Committee has met with deputations from a number of organizations in the process of scrutinizing the Bill, I will report on the details of the meetings and the views raised then one by one.

I will begin with the position of the Hong Kong Bar Association. The Bills Committee has noted the views of the Bar Association and Law Society of Hong Kong. The Bar Association is of the view that the corroboration rules in respect of sexual offences should not be abrogated. Since allegations of sexual offences are easy to make but difficult to refute, it is very concerned about the danger of convicting an innocent person of a sexual offence. In addition, it also points out that sexual offences have certain characteristics which distinguish them from other criminal offences and thus call for particularly careful treatment. It recommends that the proposal to abolish the corroboration rules should either be rejected or referred to the Law Reform Commission (LRC) of Hong Kong for consideration.

With regard to the seven sexual offences stipulated in the Crimes Ordinance, the Bar Association is of the view that if the Administration can demonstrate that the reason for singling them out for special treatment no longer exists, it has no objection to putting these offences in the same category as other sexual offences.

As regards the Law Society, it appreciates that there are legitimate reasons for reform but is not satisfied that the proposals in the Bill provide sufficient safeguards to protect defendants' interest. It recommends that the matter should be referred to the LRC for a full review of the legislative proposals both in the local and international context.

In relation to the views raised by other organizations, the Bills Committee has also considered the views submitted by the following organizations when scrutinizing the Bill. To begin with, the Hong Kong Human Rights Monitor is not opposed to the Bill. However, it hopes that the Administration can demonstrate that the abolition of the corroboration rules will in no way impede a judge from giving himself or a jury such warning considered appropriate to the case concerned.

As regards the Equal Opportunities Commission, the Association Concerning Sexual Violence Against Women, the Hong Kong Council of Social Service and the Hong Kong Federation of Women, they all welcome the proposed abolition of the corroboration rules in sexual offences.

I will now switch to the responses of the Administration to the views expressed by the aforementioned organizations. The Administration points out that the historical assumption of an inherent lack of credibility of the evidence of women and girls in sexual offence cases is the reason leading to the evolution of the corroboration rules in the common law. Given that the assumption is now widely regarded as discredited and without any scientific basis, the Administration has therefore decided that this common law practice be abrogated. As regards the statutory provisions that are based on the same discredited assumption, they should also be abolished consequentially.

With regard to the concern of the Bar Association for the possibility of convicting an innocent person, the Administration is of the view that even the corroboration rules in sexual offences are abrogated, the prosecution is still required to prove its case beyond reasonable doubt. Moreover, the duty of the trial judge to sum up the evidence according to the circumstances of the case and the mechanism of appeal and scrutiny by higher courts already provide sufficient protection for defendants in all cases.

The Administration considers that the suggested salient features cited by the Bar Association as distinguishing sexual offences from other criminal



offences are in fact not peculiar to such offences. There are other offences which involve the word of the victim against the word of the accused. For instance, victims of deception cases and robberies can also be the only persons making the allegations and yet no corroboration is required.

Let me now turn to the problems arising from the corroboration rules. The Bills Committee notes that in those statutory offences requiring corroboration, where an accused has been convicted in the absence of corroboration, the conviction will be overturned. As to those common law offences requiring corroboration warning, the trial judge is required to not only give such a warning but also explain what is corroborated evidence and what kinds of evidence constitute corroboration. Should the judge fail to give a suitable warning or should he or she make a misstatement to the jury on the corroboration requirement, it would usually result in a conviction being reversed on appeal. The Court of Appeal could order a retrial or even an acquittal. It is therefore very important that an appropriate balance be struck between the competing needs to safeguard the interests of the victims and that of the accused.

The Bills Committee notes that the abolition of the corroboration rules in Hong Kong will not prevent a judge from determining, on the basis of some particular facts of the sexual offence case concerned, to remind the jury to consider the reliability of the evidence of a certain witness during the proceedings. The Bills Committee also considers that even if the corroboration rules were abolished, judges could still be trusted to exercise discretion to decide, in circumstances they deem fit, whether a warning should be given to themselves or the jury in a sexual offence case in the same manner as they handle cases of other offences. As to the question of whether or not a warning will be given, and of the kinds of wording a judge should use to warn himself or the jury, it should be decided in the light of the circumstances of the case concerned, the point of contention, as well as the substance and quality of evidence given by the relevant witness. The Bills Committee notes that the aforementioned principles are already established by precedents of other common law jurisdictions that have abolished the corroboration rules.

As regards the reason why the proposals have not been submitted to the LRC for consideration beforehand, the Administration explains that not every issue has to be referred to the LRC for consideration, as legislative changes in Hong Kong have often benefited from studies made in other jurisdictions. The proposed abolition of the corroboration rules in Hong Kong is not based solely

on the United Kingdom Law Commission report; the state of law in other jurisdictions has also been studied.

In view of the extensive studies on the subject, the Administration does not consider that referring the matter to the LRC would generate any new information or arguments on the subject. As the LRC has a long list of issues for its examination, the Administration estimates that the proposed abolition would be deferred by a few years if it were referred to the LRC.

Madam President, after taking into careful consideration of the views of the Administration and the different organizations, members of the Bills Committee have unanimously decided to give support to the passage of the Bill.

With these remarks, I support the Second Reading of the Bill. Thank you.

**MISS CHAN YUEN-HAN** (in Cantonese): Madam President, the Democratic Alliance for the Betterment of Hong Kong (DAB) and the Hong Kong Federation of Trade Unions (FTU) support the Evidence (Amendment) Bill 1999.

The Bill seeks to abolish the common law rule requiring a warning of corroboration to be given in respect of sexual offences; and the statutory requirements in relation to the seven sexual offences of which prosecution evidence must be corroborated before an accused can be convicted.

Under the existing legislation, corroborative evidence is not a prerequisite for the conviction of an accused in the trial of other offences; only in sexual offences, prosecution evidence must be corroborated before an accused can be convicted of the offences concerned. Currently, as most of the victims in sexual offences are women, the corroboration rules are indeed unfair to the female.

The amendment is one of the major steps towards the elimination of sexual discrimination. In the course of the deliberation of the Bills Committee, some organizations have expressed concern that the abolition of the warning to be given by the trial judge on corroboration and of the corroboration rules might run the risk of convicting an innocent person. However, we consider such concern already unfair to the victims, or in a more extreme way, discrimination against

women. The so-called concern of the risk of convicting the innocent itself is disputable. We consider as we have abrogated the corroboration rules in other offences, in addition to the fact that our existing judicial procedure is able to ensure fair trials to all suspects; therefore, we should not impose different conviction provisions for different offences purely due to the nature of the offence and its sexual connection.

The application of the rules in respect of the evidence of accomplices and children in Hong Kong were abolished in the past, and the same in respect of sexual offences is to be abolished now. I consider that only the abolition will facilitate the unity of the legal system. Besides, since the rules are borrowed from British laws decades ago, thus the abolition will only reflect the progress of the legal system.

With these remarks, Madam President, the FTU and the DAB support the Bill. Thank you.

**MISS MARGARET NG:** Madam President, in certain sexual offences such as rape, indecent assault or buggery, a magistrate, judge or jury can convict even though there is no corroborative evidence. However, the law requires that the judge warns the jury or, where it is a magistrate or a judge sitting without a jury, he warns himself, of the danger of convicting an accused on uncorroborated evidence.

The main objective of the Evidence (Amendment) Bill is to abolish this requirement altogether.

The Hong Kong Bar Association (the Bar Association) is strongly opposed to this proposal. The Law Society of Hong Kong (the Law Society) is not satisfied that the Bill provides sufficient safeguards to protect the accused.

This is not the first time that the proposal is made. It was first made in 1996. At that time, the main consideration was whether the change in the United Kingdom following the recommendation of its Law Reform Commission should be adopted in Hong Kong. The main consideration was whether the warning requirement could be abolished without undermining proper protection for the accused.

The Bar Association had reservations about outright abolition, but suggested replacing the mandatory warning with a new formula based on the Australian approach. However, the matter lapsed because the Legislative Council ran out of time to deal with it.

This time round, it was reintroduced with a new emphasis. It is presented as a protection of women's rights legislation. The Secretary for Justice made this the theme of her speech last March to the Equal Opportunities Commission (EOC). The corroboration rule is opposed as discrimination against women.

This is evident from the Administration's paper to the Bills Committee. In the written submissions of the EOC, quotations are taken from judgments of eminent judges to demonstrate their prejudice against women. The basis of the corroboration rule is said to be that judges believe that "women tell lies" and that "men must be protected from these lies". "It is arguable," says one submission, "that the existing corroboration rules are indirectly discriminatory against women".

This is a wilful distortion and absurd accusation. If judges indeed think like this, they would be not only prejudiced, but stupid beyond comprehension. The warning would have been required not only for sexual offences where there is only uncorroborated evidence. It would be required for all female witnesses. But, as a matter of fact, women are regularly accepted as reliable witnesses in all kinds of trials across the land.

Even in sexual offence cases, the allegation of prejudice against women is not borne out by statistics. There is no evidence in Hong Kong, of a lower conviction rate for rape or indecent assault against women. Defendants are frequently convicted on the uncorroborated evidence of women and girls.

It is not borne out by personal experience of lawyers: Sexual offences are among the most difficult to defend where the complainant comes up to proof. Magistrates and judges regularly accept the evidence of women and girls and have no qualms saying so in their verdicts and judgments.

The warning is attached not to the gender of the witness but arises from the nature of sexual offences. Buggery can be committed equally against a male or a female person. Yet the same rule applies: A judge is required to give the warning if the evidence is uncorroborated, that is, if it is a matter of the word of the complainant against the word of the accused.

The reason is clearly given by SALMON L. J. — because in these cases, false stories are easy to fabricate, but extremely difficult to refute. His judgments in *Henry and Manning* is quoted condemningly in a submission of the EOC because the learned judge dared to say that "girls and women do sometimes tell lies". But the case is about rape, which by definition at that time can only be committed by a man against a woman. No woman stood in danger of facing a charge of rape.

No doubt, now that sexual offences are extended to both sexes, and in England, rape against a man has been a crime since 1994, judges will tailor their warnings to apply to both sexes.

The Administration cites the comments of a Hong Kong Court of Appeal in the 1998 case of *KWOK Wai-chau* that their lordships, POWER, Vice President, MAYO and Stuart MOORE J.J., were "unable to understand" why Hong Kong has not followed England to abolish the rule. But in a case decided in October 1999 by a Court of Appeal composed of Patrick CHAN, Chief Judge of High Court, WONG J.A. and YEUNG J., the rule was not doubted. The Chief Judge gave very much the same reason as SALMON L. J. :

"The main reason for the need to exercise great caution before convicting an accused of a sexual offence upon the uncorroborated evidence of the complainant is that allegations of such nature are usually easy to make but difficult to refute."

Nobody can accuse the Chief Judge of any disposition to discriminate against women.

It may be that the judges have got it wrong. It may be that fabrication from psychological or physiological reasons, sexual neuroses, fantasy and so on are simply not a real concern as they think, or have become so exceptional as to be irrelevant in the modern age. If so, let us argue on the evidence. Let us not resort to calling names such as discrimination against women, and compromise the protection of the accused because it is no longer politically correct to uphold the rule requiring a warning to be given.

Madam President, indeed the heat and polemics themselves demonstrate that a person accused of a sexual offence such as rape is now subject to even greater prejudice than before. If anything, there is greater need than before for

the warning where there is uncorroborated evidence. This caution and pause for second thoughts may be the only counterbalance against a sea of adverse factors.

The Evidence Ordinance is about evidence, not about equal opportunities. What is at stake is not balancing the rights of the accused against women's rights. The risk of an innocent person being convicted is the paramount concern of our system of criminal justice. The rule requiring a warning to be given can only be abolished on one ground, and that is, that it can be abolished without harming the protection of the innocent against the risk of conviction. This is signally not the focus of the Administration's case.

Madam President, perhaps these days, the public has come to expect the Bar Association and the Law Society to take opposite views. But they are together in opposing this Bill. They speak from experience and knowledge. Their great reservation on this serious matter should be heeded by this Council.

Madam President, I urge Honourable Members to oppose the Bill.

Before I sit down, I would like to explain why I will oppose clause 3 of the Bill, which seeks to abolish the requirement for corroborative evidence for specified offences. The Bar Association and the Law Society are of the view that abolition should be accepted only after the matter has been fully considered by the Law Reform Commission. Abolition is not opposed as such. Personally, I am prepared to support abolition of the requirement of corroborative evidence for these offences. However, on the material that the Administration has provided on the offences specified, it seems that charges for these offences are few and rarely serious. On balance, the safer approach is to be preferred.

Thank you, Madam President.

**MR MARTIN LEE:** Madam President, having practised at the criminal Bar for over 30 years, I have deliberated long and hard on this Bill before finally agreeing to support it. Of course, it is not often that I disagree with the Bar and my Honourable colleague, Miss Margaret NG. And it seems to me perfectly understandable that the Bar should have defended this as what they may consider to be the last ditch defence of the rule of corroboration, since we in this Council already abolished the corroboration rule for accomplices in 1994 and for children in 1995. I have to say that I share the view of the Bar that this may not be

discriminatory against witnesses of the female sex, although in practice, of course, when we talk about rape and indecent assault, more women witnesses would be affected by this rule than men or boys.

Historically, Madam President, the lord of the manor owned not only the manor house and the lands surrounding it, but everything else on his lands including, in particular, servants and maids. So it would be thought inconceivable that the lord of the manor could be convicted of rape of any peasant girl or buggery of any young boy on his lands on the evidence of these girls and boys alone, without any independent supporting evidence which, of course, we call corroboration. After all, in those days, these girls or boys would be treated as the chattels or things belonging to the lord of the manor.

But this rule, as well as similar rules for accomplices and young children, then developed from case to case under the common law until the last decade of the last century when they were abrogated by statute in a number of common law jurisdictions, including the United Kingdom. The Legislative Council here followed suit and abrogated the corroboration rule for accomplices and children in 1994 and 1995 respectively. So the question that we face here today is: Should we also abrogate the corroboration rule for witnesses in sexual offences including rape, buggery and indecent assault?

Madam President, for these offences, consent on the part of the adult complainant, in particular, will certainly render the sexual conduct complained of lawful. And of course, we know how easy it is for the complainant in such cases to change her or his mind after the event, although having consented at the time or at least having given the impression to the accused person involved that that act was done with her or his consent. And so the old practice was that independent corroborative evidence was required in order to make sure that the ultimate conviction, if that be the case, would be beyond any reasonable doubt. But there is also a lack of logic, Madam President, because this rule of corroboration does not apply only to cases where consent or the lack of it is raised as a defence, for it is applied also to other defences raised, for example, alibi. And so, this rule was required, for example, in all sexual offences of the type which I have described, irrespective of the actual defence raised.

Madam President, so logically, there is no reason why a judge should direct the jury or himself only in sexual offences and not in other types of offences which are even more serious, like murder or bank robbery when the

sole evidence in fact of the prosecution comes from one single witness. Nor does it help the accused in the sexual offences if the judge was able to give the right warning to the jury or to himself that there was no corroboration at all. Thus, I have to ask this question: Why should an accused person's guilt depend on whether the trial judge was able to make a right incantation or not?

I would like to move forward and I would like the Bar to think positively and look ahead, because I believe that it would be much better protection to all accused persons in all criminal trials where, depending on the circumstances of the case, for example, the judge would find it necessary to direct the jury or himself that acting on the evidence of one or more witnesses alone without independent supporting evidence could be dangerous. And of course, it does not depend on the nature of the charge. It should depend on all the circumstances of the case. For instance, where the prosecution case depends on the evidence of one witness alone or where the evidence coming from more witnesses is generally weak or unreliable, or depending on the nature of the defence, for example, the accused may say "this is a police frame-up". And in such cases, of course, it would be natural for the judge to caution the jury, or if he is sitting alone himself, of the danger of acting on such evidence without strong, independent supporting evidence.

And so, if this rule were to be abolished today, I would like a court in Hong Kong to follow the courts in other jurisdictions to abandon the former rule, but to look forward and apply whenever necessary this cautious rule to cases of whatever nature whenever the circumstances would warrant it. And I am glad to find support in the Court of Appeal case in England in *Regina v. Makanjuola*, and *Regina v. Eastorn* reported in the 1995 III All England Reports 730 at Page 733B where, in summarizing the judgment of the court, Taylor L.J., the Chief Justice had this to say. In paragraph 2, he said:

"It is a matter for the judge's discretion what if any warning he considers appropriate in respect of such a witness [meaning a witness in sexual offence] as indeed, in respect of any other witness in whatever type of case. Whether he chooses to give a warning and in what terms will depend on the circumstances of the case and the issues raised and the content and quality of the witness(es)' evidence."

And in paragraph 3:



"In some cases, it may be appropriate for the judge to warn the jury to exercise caution before acting upon the unsupported evidence of a witness. This will not be so simply because a witness is a complainant of a sexual offence nor will it necessarily be so because a witness is alleged to be an accomplice. There will need to be an evidential basis for suggesting that the evidence of the witness may be unreliable. Any evidential basis does not include mere suggestions by cross-examining counsel."

And in paragraph 4:

"If any question arises as to whether the judge should give a special warning in respect of a witness, it is desirable that the question be resolved by discussion with counsel in the absence of the jury before the final speeches."

Madam President, for these reasons, I will support the Bill and the Democratic Party will also support the Bill. But before I close, I would urge the Administration and/or the Law Reform Commission to study the whole area of criminal justice and see whether in fact in Hong Kong, there has been too much reliance on confession statements and too little use of scientific evidence, in particular, DNA evidence.

Madam President, confession statements are reliable if they are given voluntarily. And really, it should be in the context of a Christian community where a sinner, having committed a sin, goes to a priest for confession and he tells the priest that he has raped somebody and the priest will say, "God will forgive you but provided you give yourself up to the police". And so this suspect, in order to buy himself forgiveness from God, will march into the next police station and make a clean breast of it, as we say. This confession statement, of course, is entirely reliable if such be the basis for it. But unfortunately, in Hong Kong, there are not too many Christians and not too many Christians who believe in going to confession. And also at this day and age, people are no longer made of such sterner stuff that they were used to, and they would give a confession even though they did not commit the offence alleged against them by the police, and they may even succumb to even threats of violence, not physical violence itself. And so, they will make confessions so as to buy some peace of mind, so as to be given some food, for example, and then think of some defence later on when they work out their case with their lawyers.

I am afraid that there has been too much reliance on confession statements, and there have been cases recently which caused a lot of public outcry in the press. It was reported that the police, or perhaps customs officers, were happy with confession statements coming from people suspected of having used false passports. So they did not even bother to check up the scientific evidence as to whether or not those passports were indeed false or genuine.

Thus, Madam President, while we support this Bill, we would call upon the Administration really to consider this in depth. It may be a suitable subject to be referred to the Law Reform Commission. It may be a matter to be taken up with the Director of Public Prosecutions, but we believe that the time has come for a very serious look to be taken into this area of criminal justice.

With these remarks, we support the Bill.

**PRESIDENT** (in Cantonese): Does any other Member wish to speak?

**MR ALBERT HO** (in Cantonese): Madam President, just now, Mr Martin LEE expressed some of the views held by the Democratic Party. Nevertheless, I want to give some additional information on certain areas — particularly after listening to the points raised by Miss CHAN Yuen-han and Miss Margaret NG in relation to their allegation of the Bill being sexually discriminatory.

It is true that, during the scrutiny period, a number of organizations came to us to express their views strongly for they considered the existing corroboration rules discriminatory. On the other hand, the Hong Kong Bar Association (the Bar) felt strongly that there was no discriminatory element at all because the victims of the sexual offences under discussion could be male or female. What worries the Bar is that these cases frequently involve solely the word of one person against the other. Therefore, such allegations are easy to make but difficult to refute. Nevertheless, I must raise a point on the historical background of these corroboration rules. It is true that the Equal Opportunities Commission (EOC) did provide us with some information to show that some judges viewed these issues with a tint of discrimination. Of course, this did not take place in our time. I have also made reference to some precedents of an

earlier time, which were indeed like that. Looking at recent cases, however, we find that this viewpoint has no longer been mentioned. From the victims' angle, the number of female victims is practically much greater than that of male victims. Therefore, from a realistic point of view, sex discrimination has been resulted. However, I must point out that I support the passage of the Bill not because of this point of view. I share the view of the Bar that these rules have nothing to do with sex discrimination. On the contrary, I am concerned with the reasons why the corroboration rules are still applicable to sexual offences only. In particular, the corroboration rules applicable to two other categories of witnesses, such as minors and accomplices, whose evidences are traditionally considered to be suspicious, have been abolished already. As such, is it fair to retain the corroboration rules for sexual offences? I am rather concerned with this point. As a matter of fact, I did raise this question with the Government repeatedly: If the corroboration rules were retained, will the Government consider that Hong Kong has failed to comply with the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)? However, the Government did not give me a clear reply. It did not even dare to say that the CEDAW would be contravened if the Bill is not passed this time. It did not say so. Of course, I can foresee that many women organizations will lodge complaints against this point at the next hearing. I also understand the voices reflected by Miss CHAN Yuen-han in this area. Members can see that the organizations appearing before this Council on that day included the EOC, the Hong Kong Council of Social Service and even people from the academic sector.

I want to stress that, judging from the principle of law, we have actually not targeted at a certain sex. Therefore, we have been emphasizing that the reason for us to support the passage of the Bill is absolutely not anti-discrimination. Our focus is whether these corroboration rules should be retained. We can also see that these rules are subject to a certain degree of regulation for the Court must give warning in an absolutely clear or non-discretionary manner — either to the judge himself or to the jury. If the wordings of the warning do not comply with the rules laid down by some precedents, the cases in question will invariably be overturned before the Court of Appeal, so that the accused will eventually be acquitted.

Members should understand that the passage of the Bill does not mean that all rules will be abolished and that judges can no longer give warning. Rather, the Court will be given such power. This point is indeed most crucial.

Eventually, it will depend on whether we believe a judge has assessed whether it is appropriate for him to give some proper caution or warning — to himself or the jury — in dealing with each case in the Court according to the circumstances of the case and after listening to the evidence given by all witnesses. In many common law jurisdictions where the corroboration rules have been abolished one after another, I have not found many of these complaints: first, many people have been wronged; second, a rise in the conviction rates of sexual offences leading to doubts raised by numerous human rights or legal organizations. For these reasons, I feel that victims of all offences should be treated equally and fairly. In particular, I want to emphasize that when the word of one person against the word of another is involved, the Court should, under a great number of circumstances, decide who is the most credible.

As such, I want to add this point to illustrate that we support the abolition of the rules not because we consider the Ordinance or these corroboration rules carrying a discriminatory element. This is what I want to add. I so submit. Thank you, Madam President.

**PRESIDENT** (in Cantonese): Does any other Member wish to speak?

(No Member responded)

**SECRETARY FOR JUSTICE:** Madam President, as I explained when I introduced the Evidence (Amendment) Bill 1999 into this Council in July 1999, the purpose of the Bill is to abolish the formal rules of evidence requiring corroboration, or a warning by the judge of the dangers of convicting on the uncorroborated evidence of a single witness, in sexual offence cases. When introducing the Bill, I explained how the rules operate and why the Administration proposes their abolition. I will not repeat those explanations today.

The Bills Committee, chaired by the Honourable Albert HO, has examined the Bill and related issues thoroughly, and has made constructive comments and suggestions. Representatives of the Hong Kong Bar Association, the Equal Opportunities Commission, the Association Concerning Sexual Violence Against Women and the Hong Kong Council of Social Services attended before the Bills Committee to present the views on the issues. Various other organizations,

such as the Hong Kong Human Rights Monitor, the Law Society of Hong Kong and the Hong Kong Family Law Association, made written submissions to the Bills Committee.

I am most grateful to the Chairman and to members of the Committee for their hard work and helpful contribution. I am also most grateful for the support shown by many organizations for the proposed abolition and for the views they expressed. The Bills Committee's Report on the Bill has comprehensively set out the views expressed by the various bodies and the issues considered by members of the Committee, and I will not repeat them. I would, however, like to take this opportunity to elaborate on the following points to Members of this Council.

First, the issue of discrimination. The proposed abolition seeks to remove discrimination between the treatment of evidence of witnesses or complainants in sexual offence cases and the treatment of the evidence of witnesses or complainants in other kinds of cases, such as those involved in the evidence of accomplices and children. In addition, the abolition of the rules would also effectively remove one form of indirect discrimination against females. Although the language in the law is gender-neutral, it is an inescapable fact that the majority of victims in sexual offence cases are female. The corroboration rules evolved from a line of authorities which, at least up to 1969 and perhaps for some time thereafter, reflected the view that "girls and women do sometimes tell an entirely false story which is very easy to fabricate, but extremely difficult to refute", and that "such stories are fabricated for all sorts of reasons ..... and sometimes for no reason at all". More recent judicial decisions have accepted that there is no concrete evidence to suggest that females are prone to lie and fantasize in sexual offence cases and that corroboration rules in sexual offence cases have not worked well.

Another objection to corroboration rules is their inflexibility and complexity. They are inflexible in two ways. Firstly, they apply to every witness concerned, effectively removing the judge's discretion to rely on the particular facts or characteristics of the particular witness. Complainants in sexual offence cases are automatically regarded as unreliable. Secondly, the content of the warning is inflexible. The judge must warn the jury of the danger of convicting the accused unless the evidence of the complainant was corroborated. He must explain the rationale for such danger; but then he must tell the jury that it is free to convict in the absence of corroborative evidence. A

failure by the trial judge to give the corroboration warning must result in conviction being quashed on appeal.

The operation of corroboration rules is complex in that, in explaining the concept, the judge has to deal with issues such as the independence of a piece of evidence; how the evidence must point to the accused and link him with the crime in question; how evidence which is not corroborative may still be admissible, and may be left to the jury as evidence which may lend support to the witness's account without actually corroborating it. The trial judge is required to instruct the jury on what evidence might constitute corroboration if believed. As Lord DIPLOCK has observed, this instruction is, and I quote, "a frequent source of bewilderment" to the jury.

The third point that I wish to raise is the right to a fair trial. The Administration would not be proposing the abolition of corroboration rules if it believed that by doing so, there would be an increased risk that an innocent person might be convicted of a sexual offence.

The Administration is confident that the duty of the trial judge to sum up the evidence according to the circumstances of each case, and the mechanism of appeal and scrutiny by higher courts, provide sufficient protection for the defendants in all cases, regardless of the nature of the offence. In sexual offence cases, as in other cases, the prosecution has the onus of proving its case beyond reasonable doubt. After the corroboration rules are abolished, a judge hearing an allegation of a relevant sexual offence will hear and see the testimony and demeanour of the witnesses, and will assess their reliability according to the laws of evidence and the practices that apply in other criminal cases. These include the principle that it is the quality and not the quantity of the evidence that counts. If the judge errs in his approach, the normal appeal mechanism that applies in all criminal cases may be invoked to rectify the mistake.

The proposed abolition would not deprive a defendant of the right to a fair trial, or of adequate protection about false complaints. All that it would do is to remove unjust and irrational rules that affect witnesses or complainants in a special class of case.

It has been suggested that there are some special characteristics of sexual offences that justify the corroboration rules. The Administration does not accept this. There are other offences that involve the word of the victim against

the word of the accused. Victims of deception cases and robberies can also be the only persons making the allegations. No corroboration warning is required for such offences. If a victim of a rape is also robbed at the same time, as the law now stands, her evidence of the rape requires corroboration, yet her evidence of the robbery does not. There is no logic basis for this distinction. There are also other offences that involve an absence of consent, theft and assault for example, but corroboration does not apply to those offences.

It has been suggested that penalties for sexual offences are higher in Hong Kong than in the United Kingdom and that corroboration rules in sexual offences should not be abolished because a wrongful conviction would carry even greater significance. It is true that the maximum penalties for the seven sexual offences for which corroboration is statutorily required in Hong Kong are higher than those in the United Kingdom, but these are ceilings only. However, the level of penalty has no relevance on the question of whether the corroboration rules should be retained. The offence of murder carries life imprisonment, but evidence of such an offence does not need to be corroborated. There are no statistics to suggest that sentences for sexual offence cases are significantly higher in Hong Kong than in other jurisdictions. However, even if they are, it only goes towards reflecting the attitude of the community towards crimes of this nature. It does not in any way justify differences in treatment between the evidence from complainants in sexual offence cases and evidence from other witnesses in other cases.

It has also been suggested by the Hong Kong Bar Association and the Law Society of Hong Kong that the abolition of the corroboration rules is an issue which should be considered by the Law Reform Commission. Members are, of course, well aware that not every law reform measure emanates from the Law Reform Commission. Indeed, the Commission does not have the resources to take on every such review even if it wanted to. In the present case, the Administration has had the benefit of studying similar proposals for legislative changes in other common law jurisdictions. In particular, we have looked at reports on this issue produced by the English Law Commission and the Law Reform Commissions of Australia, South Australia and Victoria, together with the subsequent amending legislation. Our own proposal for abolition of the corroboration rules is in line with these developments elsewhere.

The arguments for and against the corroboration rules were also studied in detail by the Administration when proposing their abolition in respect of

accomplices and child witnesses in 1994 and 1995. There is no evidence that the corroboration rules in sexual offences have operated in Hong Kong differently from the way they operate in other jurisdictions, or that victims of sexual offences in Hong Kong possess different characteristics from those in other jurisdictions. In the circumstances, I do not believe that it would be a productive use of the Law Reform Commission's efforts to refer this issue to the Commission. Indeed, to do so would divert the Commission from other projects where its advice is more anxiously sought. In my view, Honourable Members have more than enough information on this issue to come to a fully informed legislative decision. So far as public sentiment is concerned, I think that there is clear support for the abolition of the corroboration rules.

It was suggested that the Administration was hurrying the proposed abolition and that there is no justification for such speed. In fact, this proposal has been under consideration in Hong Kong for several years and, compared with many other common law jurisdictions, we have been slow to act. In the United States, the courts have, since the 1970s, treated corroboration, or the lack of it, as only one of the many elements that go towards the credibility of evidence, instead of the hinge on which the whole case may be based. In Australia, the corroboration rules in sexual offence cases were abolished in the various states in one form or another in 1980s. New Zealand abolished the rules in 1985. Canada abolished the rules in 1987. England abolished the rules in 1994. In view of this established trend in other jurisdictions, Hong Kong cannot be said to be moving to abolish the rules with undue speed.

The corroboration rules for accomplices and children were abolished in Hong Kong in 1994 and 1995 respectively. Abolition in —respect of sexual offences was proposed in September 1995 and included in the Evidence (Amendment) Bill 1996 which was introduced into the Legislative Council in March 1996. The Bill lapsed without proceeding to resumption and debate. In 1998, senior members of the Hong Kong Judiciary publicly expressed surprise at the fact that the rules were still not abrogated. It is now half way through the year in 2000.

Article 2(f) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which was extended to Hong Kong on 14 October 1996, states that parties to the Convention should "take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against



women." As I have previously indicated, although the corroboration rules applied to male victims in sexual offence cases as much as female victims, the sad reality is that the majority of victims are female. The abolition of rules is, therefore, in accordance with the spirit of the CEDAW.

I would emphasize, however, that the present reform was not promoted simply to comply with our international obligations. It would nevertheless remove criticism that our law relating to sexual offences does not comply with those obligations. In May this year, the United Nations Committee Against Torture welcomed the proposed abolition of the requirement of corroboration in respect of sexual offences. In the light of this background, I must reject accusations that the Administration has been acting with undue haste. In my view, this reform is long overdue.

Madam President, with these remarks, I commend the Bill to Honourable Members.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Evidence (Amendment) Bill 1999 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

**PRESIDENT** (in Cantonese): Those against please raise their hands.

(Members raised their hands)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): Evidence (Amendment) Bill 1999.

Council went into Committee.

**Committee Stage**

**CHAIRMAN** (in Cantonese): Committee stage. Council is now in Committee.

**EVIDENCE (AMENDMENT) BILL 1999**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Evidence (Amendment) Bill 1999.

**CLERK** (in Cantonese): Clauses 1, 2 and 3.

**CHAIRMAN** (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): The Committee will now vote on the Bill clause by clause, since a Member has so requested beforehand. I now put the question to you and that is: That clause 2 stand part of the Bill.

Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(Members raised their hands)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That clause 3 stand part of the Bill.

Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(Members raised their hands)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That clause 1 stand part of the Bill.

Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CHAIRMAN** (in Cantonese): Council now resumes.

Council then resumed.

**Third Reading of Bill**

**PRESIDENT** (in Cantonese): Bill: Third Reading.

**EVIDENCE (AMENDMENT) BILL 1999**

**SECRETARY FOR JUSTICE** (in Cantonese): Madam President, the

Evidence (Amendment) Bill 1999

has passed through Committee without amendment. I move that this Bill be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Evidence (Amendment) Bill 1999 be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

**PRESIDENT** (in Cantonese): Those against please raise their hands.

(Members raised their hands)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): Evidence (Amendment) Bill 1999.

**Resumption of Second Reading Debate on Bill**

**PRESIDENT** (in Cantonese): We will resume the Second Reading debate on the Adaptation of Laws (No. 3) Bill 1999.

**ADAPTATION OF LAWS (NO. 3) BILL 1999****Resumption of debate on Second Reading which was moved on 10 February 1999**

**PRESIDENT** (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Adaptation of Laws (No. 3) Bill 1999 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

**PRESIDENT** (in Cantonese): Those against please raise their hands.

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): Adaptation of Laws (No. 3) Bill 1999.

Council went into Committee.

**Committee Stage**

**CHAIRMAN** (in Cantonese): Committee stage. Council is now in Committee.

**ADAPTATION OF LAWS (NO. 3) BILL 1999**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Adaptation of Laws (No. 3) Bill 1999.

**CLERK** (in Cantonese): Clauses 1, 2 and 3.

**CHAIRMAN** (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): Schedule 2.

**CHAIRMAN** (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): Schedules 1, 3, 4 and 5.

**SECRETARY FOR HOUSING** (in Cantonese): I move that sections 1, 6(b) and 13 of Schedule 1; section 1 of Schedule 3; section 4(a) of Schedule 4 and section 3 of Schedule 5 be amended, as set out in the paper circularized to Members.

In addition to amending all references to the "Governor" to read "Chief Executive", the Government has also proposed repealing the expression "the rights of the Central People's Government or the Government of the Hong Kong Special Administrative Region under the Basic Law or other laws" originally proposed in the Bill, and substituting "the rights of the Central Authorities or the Government of the Hong Kong Special Administrative Region under the Basic Law and other laws". This proposal is made according to item 10 of Annex 3 to the Decision of the Standing Committee of the National People's Congress on Treatment of the Laws Previously in Force in Hong Kong in accordance with Article 160 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China.

Lastly, following our discussions with Honourable Members at the meetings of other Bills Committees, the Government now proposes to delete section 4(a) from Schedule 4 of the Bill. The Government will re-examine the relevant proposed adaptations before resubmitting the Bill to the Legislative Council for consideration in the next Legislative Session. I earnestly urge Members to vote in favour of the passage of the Bill.

*Proposed amendments*

**Schedule 1 (see Annex VI)**

**Schedule 3 (see Annex VI)**

**Schedule 4 (see Annex VI)****Schedule 5 (see Annex VI)**

**CHAIRMAN** (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Housing be passed. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): Schedules 1, 3, 4 and 5 as amended.

**CHAIRMAN** (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)



**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CHAIRMAN** (in Cantonese): Council now resumes.

Council then resumed.

### **Third Reading of Bill**

**PRESIDENT** (in Cantonese): Bill: Third Reading.

### **ADAPTATION OF LAWS (NO. 3) BILL 1999**

**SECRETARY FOR HOUSING** (in Cantonese): Madam President, the

Adaptation of Laws (No. 3) Bill 1999

has passed through Committee with amendments. I move that this Bill be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Adaptation of Laws (No. 3) Bill 1999 be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

**PRESIDENT** (in Cantonese): Those against please raise their hands.

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): Adaptation of Laws (No. 3) Bill 1999.

### **Resumption of Second Reading Debate on Bill**

**PRESIDENT** (in Cantonese): We will resume the Second Reading debate on the Supplementary Appropriation (1999-2000) Bill 2000.

### **SUPPLEMENTARY APPROPRIATION (1999-2000) BILL 2000**

#### **Resumption of debate on Second Reading which was moved on 7 June 2000**

**PRESIDENT** (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Supplementary Appropriation (1999-2000) Bill 2000 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

**PRESIDENT** (in Cantonese): Those against please raise their hands.

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): Supplementary Appropriation (1999-2000) Bill 2000.

Council went into Committee.

### **Committee Stage**

**CHAIRMAN** (in Cantonese): Committee stage. Council is now in Committee.

### **SUPPLEMENTARY APPROPRIATION (1999-2000) BILL 2000**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Supplementary Appropriation (1999-2000) Bill 2000.

**CLERK** (in Cantonese): Clauses 1 and 2.

**CHAIRMAN** (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): Schedule.

**CHAIRMAN** (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CHAIRMAN** (in Cantonese): Council now resumes.

Council then resumed.

### **Third Reading of Bill**

**PRESIDENT** (in Cantonese): Bill: Third Reading.

### **SUPPLEMENTARY APPROPRIATION (1999-2000) BILL 2000**

**SECRETARY FOR THE TREASURY** (in Cantonese): Madam President, the

Supplementary Appropriation (1999-2000) Bill 2000

has passed through Committee without amendment. I move that this Bill be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Supplementary Appropriation (1999-2000) Bill 2000 be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

**PRESIDENT** (in Cantonese): Those against please raise their hands.

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): Supplementary Appropriation (1999-2000) Bill 2000.

### **Resumption of Second Reading Debate on Bill**

**PRESIDENT** (in Cantonese): We will resume the Second Reading debate on the Companies (Amendment) Bill 2000.

### **COMPANIES (AMENDMENT) BILL 2000**

#### **Resumption of debate on Second Reading which was moved on 19 January 2000**

**PRESIDENT** (in Cantonese): Mr Ronald ARCULLI, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's report.

**MR RONALD ARCULLI:** Madam President, as Chairman of the Bills Committee on Companies (Amendment) Bill 2000, I wish to report on the work of the Committee.

The Companies (Amendment) Bill 2000 is a complex and technical piece of legislation. Its principal purpose is to amend the Companies Ordinance to give effect to the recommendations contained in the Report on Corporate Rescue and Insolvent Trading issued by the Law Reform Commission. The Bill has also incorporated various recommendations of the Standing Committee on Company Law Reform to amend the Companies Ordinance.

We have held a total of eight meetings and received 19 written submissions from professional groups and interested parties.

Madam President, in the course of scrutiny of the Bill, issues relating to the corporate rescue and insolvent trading proposals have attracted the widest interest and understandably heated controversy. This explains why the professional groups have asked for an extension of the deadline for submitting written submissions from late March to mid/late April.

We recognize that a statutory corporate rescue proposal is an important piece of legislation which may help a financially-troubled company to turn around instead of proceeding with the winding-up immediately. We, therefore, do not dispute the need and potential benefits of the proposed corporate rescue and insolvent trading proposals. However, the introduction of a moratorium to protect the debtor company from creditor actions, and the taking over of the control of the company during the moratorium by a provisional supervisor may affect the competing interests of the various parties involved. There is a need to ensure that the proposals are generally acceptable to the general public, especially to those parties whose interest will be affected by the proposals. As views from various professional bodies were only available in mid/late April and their submissions contain substantive comments and criticisms on the proposals, the Bills Committee does not find it practicable, or at all possible, to proceed with the examination of the corporate rescue and insolvent trading proposals.

One of our major criticisms on the proposed corporate rescue procedure lies with its practicality. We cast doubt on whether a financially-troubled company can set aside sufficient funds to settle all arrears of wages, severance pay and other statutory entitlements of its employees as if it is a going concern before initiating the corporate rescue procedure. We also consider that some form of flexibility in respect of the requirement on a company to settle all these outstanding claims from employees before the relevant date shall be provided. Presently, even if the employees concerned are willing to give up their legal

rights to assist the company to turn around in return for some other considerations granted by the company, for example, the allotment of stock options, it is legally speaking not acceptable under the present provisions. There are other situations where the moratorium shall not be applied such as fresh debt incurred by the company during provisional supervision or whenever an exemption is granted by the Court for creditor suffering from significant financial hardship. All these uncertainties could not be addressed within the time given to the Bills Committee, let alone other policy and technical aspects of the proposals. We have to ensure that there is a right balance and that sufficient control and monitoring mechanism is in place to avoid conflict of interest during the provisional supervision.

The Bills Committee decides only to deal with the other parts of the Bill. The Administration also agrees to move Committee stage amendments to excise all the clauses in relation to corporate rescue and insolvent trading from the Bill. In order to facilitate the re-submission of the proposal within a shorter timeframe, we suggest that the Administration shall start consulting the Labour Advisory Board on our suggestion to provide more flexibility in respect of the requirement on a company to provide for in a trust account all the arrears it owes to its employees by virtue of the Employment Ordinance, before initiating the corporate rescue procedure. In the meantime, the Administration shall meet with various professional bodies on the views expressed so that the proposals can be fine-tuned before they are put in a fresh bill to be submitted to the next Legislative Council for consideration.

Apart from the corporate rescue and insolvent trading proposals, we have examined two other issues. One is related to the passing of resolutions by unanimous consent of members of a company without general meetings under section 116B. And the other is about the repeal of section 228A on special procedure for voluntary winding-up by a company in case of inability to continue its business.

In considering the proposal to section 116B, we are concerned about the provision on duty to notify auditors of the proposed written resolution. We consider the Bill not sufficiently clear as to which directors or secretaries will hold responsibility for notifying the auditors. We are pleased that the Administration has accepted our request and will move a Committee stage amendment to specify the defence available to directors or secretaries.

On the proposal to repeal section 228A, we share the view of the professional groups that there is no need to repeal the section. There is no sufficient or concrete evidence to illustrate that unscrupulous directors have made use of the provision to their own advantage in the period between the date of the resolution and the meeting of creditors. Since a creditor may apply to the Court to determine any question arising in the winding-up of a company under another section in the Ordinance, we take the view that there is no sufficient justification to repeal the section.

To address our concern, the Administration agrees to tighten the conditions under which section 228A shall be applied. It now proposes to amend the relevant provision so that a voluntary winding-up under section 228A shall only be used in circumstances of extreme emergency and that it is not reasonably practicable for the winding-up to be commenced under another section of the Ordinance.

The Bills Committee is in support of the revised proposal put forward by the Administration. The Honourable Eric LI, however, holds a different view. He has pointed out to us that the Administration did not consult the relevant professional bodies on its proposed amendment to section 228A, which was only put to the Bills Committee for consideration in late May. The Hong Kong Society of Accountants has reservation about the proposed amendment to section 228A as there are no substantial instances of abuse of the voluntary winding-up procedure under the section. I understand that Mr LI has given notice to move a Committee stage amendment to the relevant clause.

Madam President, before I conclude my speech, I wish to take this opportunity to thank all the deputations which have made written submissions to the Bills Committee. The points made in many of these submissions have been extremely useful. I also wish to thank the Administration for their co-operation and assistance throughout the scrutiny process. Finally, I urge the Administration to speed up the review of the corporate rescue and insolvent trading proposals, taking into account the views expressed by the Bills Committee and the various professional bodies and reintroduce the proposals to the next Legislative Council for consideration at the earliest opportunity.

With these remarks, I support the Second Reading of the Bill.



THE PRESIDENT'S DEPUTY, DR LEONG CHE-HUNG, took the Chair.

**DEPUTY PRESIDENT** (in Cantonese): Does any other Member wish to speak?

**MISS CHAN YUEN-HAN** (in Cantonese): Mr Deputy, since the outbreak of the Asian financial turmoil, a number of companies, big and small, were faced with unprecedented operational difficulties. Company bankruptcy has also become very serious. As far as we can see, a number of small, medium and big enterprises were faced with the same predicament. For instance, the Yaohan, a department store, the Peregrine, a financial institution, the KPS video company and so on, closed down one after another. The impact on the small and medium companies was even greater. Those who suffered were not only bosses and clients; employees who face unemployment were the most vulnerable. They were not only faced with the problem of losing their jobs. Sometimes they were not even given wages by their unscrupulous employers. They can indeed be compared to "dumb persons tasting bitter herbs — to be unable to express their discomfort".

Sometimes, some enterprises might encounter financial crises just because of sudden cash flow problems. If they can carry out corporate rescue to tide themselves over their difficulties, they might not need to wind up. As a result, they might be able to save their companies, thus benefiting their employees. This explains why the Government decided to include the provision embracing the "corporate rescue" concept in amending the Companies Ordinance in order to prevent enterprises suffering from operational difficulties temporarily from winding up. The Hong Kong Federation of Trade Unions (FTU) supports the Government's proposal. Why? This is because I have the experience of witnessing the winding up of the Dai Dai Department Store upon the winding up petition of a certain bank in 1986. Actually, the department store had in possession goods amounting to \$70 million at that time. It was forced to wind up just because it owed a certain "key person" \$20 million to \$30 million. Insofar as the entire enterprise is concerned, that was undoubtedly a loss to both the enterprise and debtor companies. Their employees also suffered losses too. Later, the department store re-opened through the efforts made by its employees through various channels. Finally, more than \$70 million was raised after all the goods were sold. Some goods were left even when all the debts had been paid off. From my experiences of handling labour disputes over more than 30

years, I feel that many such companies stand a good chance of standing up again. Based on this point, the provision of rescue measures in the interim will benefit not only employers and employees, but also retailers and wholesalers. We can describe the rescue package, if it works, a win-win solution.

Nevertheless, insofar as the details are concerned, we are seriously concerned about the key issue pertaining to arrears of wages. As it might take a long time, probably one or two years or an even longer period, for a company to carry out "corporate rescue", how can adjustment be made in the course of carrying out the rescue? There will be no problem if arrears of wages can be settled before the "rescue" is carried out. If not, employees might have to wait endlessly, which is extremely unfair to them. What is more, they will be subject to unnecessary pressure.

For these reasons, the FTU has all along stressed that arrears of wages must be settled by the company which is required to carry out "corporate rescue" prior to the implementation of the rescue procedure. The Government has, to a very large extent, listened to our views. It has, therefore, included the relevant provisions in its original amendments for the sake of safeguarding employees' interests. Nevertheless, as some other colleagues of this Council held the view that there is a need for us to spend more time to study the provisions concerning "corporate rescue", they proposed to divide the original amendments into two parts so that the part concerning "rescue" should be scrutinized by the next Legislative Council. I do hope that Members will take part then. We hold no objection to the proposals made by other Members. Nevertheless, I want to stress that even if the relevant legislation will not be dealt with until the next Legislative Session, the FTU still insists that all arrears of wages must be settled before resorting to corporate rescue for this is fairer to employees as well as the entire society. Mr Deputy, I hope you will come back in the next Legislative Session too.

I would also like to point out that once a company is ordered to wind up, its employees may apply to the Protection of Wages on Insolvency Fund for advance payment of their arrears of wages. Such an arrangement will give better protection to employees so that they will not need to go through a tedious recovery process. At the same time, they will "have some money in hand" in times of unemployment. However, if their employer opts for voluntary winding up, their applications to the Fund for advancing their arrears of wages will not be entertained. Such an arrangement is aimed at preventing the Fund

from being abused by unscrupulous employers. This is indeed understandable. However, in the event that a company opts for voluntary winding up, its employees who have not had their arrears of wages settled will be given no protection at all. The FTU has received a number of complaints against the failure of unscrupulous employers to properly deal with the arrears of wages of their employees when opting for voluntary winding up. As a result, their employees, who had their rice bowls broken, were required to spend a lot of time and efforts to recover their arrears of wages. It is even more tragic that their arrears of wages might eventually come to naught. Therefore, we are of the view that if a company is required to "wind up voluntarily", it must act with extreme care and prudence.

Owing to the reasons cited, the FTU and I support the Government in proposing amendments to section 39 to stipulate that the person in charge of a company can only opt for voluntary winding up when no other means of winding up are practically available. This is because the relevant provision will prevent companies from opting for "voluntary winding up" indiscriminately. This will give better protection and fairer treatment to employees.

Mr Deputy, I found this process helpful when the Bill was being scrutinized. Although Members from the labour sector held views differently from those held by Members from other sectors, we have eventually managed to reconcile and agreed to divide the Bill into two parts for the purpose of tabling to this Council for scrutiny. Frankly speaking, as representatives from the labour sector, we are more concerned with the part which has been postponed to the next Legislative Session for scrutiny. Nevertheless, we agree to the way our colleagues have chosen to handle the matter. In any case, I hope all Honourable colleagues, including the Deputy President, will be able to take part in scrutinizing the second part of the Bill in the coming Session. Thank you.

**MR HUI CHEUNG-CHING** (in Cantonese): Mr Deputy, the Hong Kong Progressive Alliance (HKPA) welcomes the Government's introduction of the Bill, particularly the amendment to section 116B, to allow companies to, under certain circumstances, pass resolutions by a unanimous written resolution without the need to call a general meeting. The relevant resolution should of course be signed by all members and representatives of the company. Copies of such written resolutions should also be forwarded to the company's auditors. The HKPA believes the amendment can effectively reduce the frequency of

meetings held by companies and facilitate its operation. This is particularly conducive to small and medium enterprises.

The relatively controversial part of the Bill is the provision related to the introduction of corporate rescue and insolvent trading. The HKPA basically support this proposal for this can help companies in financial difficulties to turn around without the need to wind up immediately. However, owing to the complexity of the matter, this Council should scrutinize it carefully. Therefore, the HKPA welcomes the Government's decision to accept the suggestion put forward by the Bills Committee by deleting the relevant provisions from the Bill.

As regards the special procedure to be followed under section 228A when a company chooses to wind up voluntarily when it is unable to continue with its business, the HKPA welcomes the Government's decision to accept the recommendations put forward by the Bills Committee and introduce relevant amendments. In doing so, section 228A can be preserved so that directors of a company will be provided with a practical channel to wind up the company in an emergency situation. The newly added provision can also further tighten applications of the relevant provision and prevent it from being abused. For these reasons, the HKPA supports the amendments proposed by the Government. Thank you, Mr Deputy.

**MR ALBERT HO** (in Cantonese): Mr Deputy, the Democratic Party welcomes the Government's decision to collaborate with the Law Reform Commission (LRC) in examining the corporate rescue question before tabling the Bill to this Council. Of course, many people might ask: Has the Bill come too late? Would many of those dissolved enterprises have been saved if the issue could be examined earlier and the relevant legislation be passed? Even if there might be such criticisms, it is after all a constructive attempt for this issue has eventually been put forward for examination and discussion in the hope that some legislation can be passed. As a matter of fact, with the gradual revival of the economy, we can now have ample time to consider legislation of this nature carefully.

As Chairman of the Bills Committee, Mr Ronald ARCULLI has categorically told us the views held by members of the Bills Committee. In particular, owing to the complexity of the whole mechanism and the involvement of many technical provisions, there is a need for us to conduct detailed scrutiny. Moreover, we need to work with a number of relevant organizations, particularly

those possessing expertise knowledge and experiences in this area, to conduct detailed discussions and exchanges in a comprehensive manner. Mr Ronald ARCULLI once said that at least 10 more meetings should be held. Under such circumstances, I consider it not suitable for the Bill to be passed hastily in this year for Members have not been given time to make careful consideration. Just now, Mr Ronald ARCULLI put forward something quite innovative, which we need to explore. In addition, Miss CHAN Yuen-han has also raised the issue pertaining to the fund for paying arrears of wages to employees. Of course, from the angle of employees, the setting up of the fund can provide them with sound protection. Mr Ronald ARCULLI, however, raised the question as to whether a certain degree of flexibility could be allowed. For instance, some employees might be willing to work with the management of enterprises to tide it over difficult times in the hope that the enterprises can eventually prosper or even develop into successful enterprises. For this reason, he wondered if the employees could be given the choice to obtain some shares from their companies instead of being forced to opt for safeguard in the form of payment of arrears of wages. Actually, we can consider allowing employees to make their own decisions.

In relation to these issues, I understand that negotiations should be carried out by the Labour Advisory Board (LAB) with respect to the entire mechanism. Therefore, I consider it not at all appropriate for this Council to discuss these issues immediately without going through the LAB. For this reason, I hope this Council can refrain from passing the Bill hastily in this legislative year. It is desirable for us to let Members representing the employee/employer sides to raise the matter with the LAB. Upon our request, the Government has also given its consent. Therefore, the comprehensive discussion on the part related to corporate rescue will be suspended temporarily. Neither will the part of the Bill related to this be passed within this Legislative Session. We hope the Government can carry out consultation expeditiously in the next term of the Legislative Council and re-table this part of the Bill to this Council for discussion and passage after listening to Members' views or after conducting further discussion with the LAB.

It is most regrettable that we learnt that Mr Ronald ARCULLI might not come back in the next term of the Legislative Council. Under his brilliant leadership, the whole scrutiny process this year has run very effectively. He has made incisive analysis with respect to problems in various areas and put forward a number of views. I hope he can change his mind and continue to lead this Committee next Session to finish its scrutiny task.

As for the other parts of the Bill, they have been endorsed by all members of the Bills Committee. I would only like to raise two points. First, the issue pertaining to written meetings, as mentioned by Mr HUI Cheung-ching earlier. It is undeniable that the current provisions have seen an improvement in the sense that the procedure has been streamlined. In the course of scrutinizing the Bill, we have reminded the Government of how we should deal with electronic records. With the commencement of the electronic era, electronic records will be widely used. For instance, computer software or even computer discs will be used for storing records. Will these be considered as acceptable records? We were told by government representatives at that time that the Government had yet to formulate a comprehensive plan with respect to electronization. Neither was there a comprehensive package for dealing with this issue. If reforms were to be carried out in future, the Companies Registry might take the lead in examining the issue by drafting bills to deal with electronic records. I hope the Government can deal with this issue expeditiously by informing Members of the findings of its related studies and put them into implementation as soon as possible to tie in with the development of our time.

Second, provisions related to corporate liquidation under section 228A. When discussing the amendments introduced by the Government, we agreed that section 228A should be preserved. This is the view held by the majority of Members, if not all of them. We are of the view that voluntary winding up might not be suitable for a company under many circumstances. This is because some companies might be unable to offset their debts with their capitals. It might give rise to a lot of problems if they were asked to petition the Court for liquidation. For instance, we might fail to locate the creditors, who might be reluctant to wind up the company, whereas the remaining management or shareholders might be hoping desperately to put the matter to an end. Section 228A does indeed provide these shareholders or the management with a relatively simple procedure so that they can choose to proceed with a liquidation procedure with respect to the company. As mentioned by Mr Ronald ARCULLI earlier, we have never received any complaints against abuse of this procedure. This is why we want to preserve this provision.

As both the Court and the relevant sector shared the view that current legislation had failed to perform very satisfactorily after discussing with the Government, some amendments were introduced. Upon examination, we decided to accept the Government's amendments. Regrettably, Mr Eric LI has failed to put forward his amendments for our discussion at that time. I hope he

can explain his amendments to us. Nevertheless, after we were given a chance to go through Mr LI's amendments, we felt that there are a number of areas we need to preserve. Of course, in delivering his speech, Mr LI can try to lobby us. Nevertheless, we are of the view that there are a number of areas which are far from clear. We can even say that if his proposal is included, the liquidation procedure will be difficult to operate and the whole procedure will be impeded. The major problem is that it might bring uncertainties. What does catering to the interests of some creditors really mean? All these issues have only brought us ambiguities. For these reasons, the Democratic Party will not support Mr Eric LI's amendments at this stage. Of course, we will listen carefully to his speech later.

With these remarks, I support the Second Reading of the Bill.

**MR ERIC LI** (in Cantonese): Mr Deputy, first of all, I would like to commend the contributions made by Mr Ronald ARCULLI, Chairman of the Bills Committee, before delivering my speech. As a member of the profession, I understand all too well the complexity and generality of this piece of legislation. These amendments can indeed be described as revolutionary company reforms. It is commendable that Mr Ronald ARCULLI led us to complete this mission at an extremely highly professional manner within such a short period of time. I deeply feel that it will be a great loss to this Council if Mr Ronald ARCULLI decides not to come back in the next term.

A number of Members have spoken on the three parts of the Bill. Speaking from the viewpoint of the accountancy profession, we will simply give our full support to the part related to corporate reform. Therefore, I do not want to make particular reference to it today. I only hope that the related provisions contained in the Bill can be put into implementation as early as possible. This also explains why we will still support the Second Reading of the Bill in the hope that the part related to corporate reform will be passed even though I have reservations about some of the amendments, particularly the amendments to section 228A mentioned by Mr Albert HO earlier.

The second part is related to corporate rescue. Although we have decided not to conduct detailed scrutiny at this stage, I would like to take this opportunity to express my disappointment. This part will be extremely helpful for rescuing companies and, in particular, employees who will be thrown out of

job in face of the closure of their companies. In my opinion, this economic cycle has provided us with the best opportunity to help those companies. We will lose a valuable opportunity if we postpone this part of the legislation. The economy will definitely experience ups and downs, though it seems that the present situation is improving. Yet we definitely do not want to see continuous argument on these crucial issues when the next economic cycle appears. I hope this matter can be treated as the Government's priority task in the next term of the Council. The Government should try its best to act as a mediator no matter what different views will be held by different sectors.

I will focus on section 228A. I would like to apologize to my colleagues in the Bills Committee. I hope Members can understand that we did not receive the amendments from the Government until end of May. While the experts in our profession are working on a busy schedule, we are a very large sector indeed. It takes time for us to develop an expertise response of a commercial nature or even table some legal amendments of a considerable technical nature. We were only given a little more than two weeks to proceed with the matter and the general message did not reach me until it was quite late for me to present our views to the Bills Committee. Nevertheless, time was running out at that time and the Bills Committee had no more time for further discussion. Of course, I hope Members can make an in-depth study if we are given another chance in future.

I will move amendments to section 228A at the request of members of the profession. The amendments will cover several areas. As far as the main objective is concerned, we think the Government's approach might close the door completely instead of leaving it half open. In terms of theory and practical implementation, experts from the profession pointed out that the door is actually tightly closed, particularly in terms of full compliance. No matter how the Government interprets the law, people in the profession are required to bear great risks as a result of the law itself. If we apply section 228A indiscriminately whereas the Court disagrees that such act is in compliance with section 228A regardless of the interpretation made by the Government today, the relevant liquidators will need to face criminal consequences. Of course, the profession hopes that the provision can be applied with no legal ambiguities for we simply cannot solve the problem by way of interpretation.



I was given some advice by the experts. However, given the fact that the advice was given completely in English and I have no time to translate it, I am now forced to "switch channel" in order to explain section 228A. I hope I can persuade some colleagues to consider the matter.

**MR ERIC LI:** Section 228A was introduced in 1984 following a recommendation made by the Companies Law Revision Committee in 1973. This followed a recommendation by the Jerkins Committee in the United Kingdom, but it was not implemented in the United Kingdom. There is however a comparable provision in the Singapore Companies Act, section 291.

Under section 228A, where the directors of a company have formed the opinion that the company cannot by reason of its liabilities continue its business, they can initiate a winding up procedure. They must *inter alia* resolve that it is necessary for the company to be wound up and that there are good and sufficient reasons for the winding up to be commenced under this section. This resolution must be verified by a statutory declaration which should be delivered to the Registrar of Companies within seven days. Under subsection (2), a director making such a declaration without having reasonable grounds for the opinion that the company cannot continue in business due to its liabilities is liable to a fine and imprisonment.

In essence, the provision is designed to speed up the appointment of a provisional liquidator in emergency cases or to ensure that a liquidator can be appointed where for some reason a shareholders' meeting cannot be arranged first. There have been suggestions of abuse of the section arising from the fact that the winding up can be commenced without input from creditors or shareholders. However, by and large the evidence of this is hearsay and it relies on the idea that a "tame" liquidator will work with the directors against the interests of the creditors. However, in 1993, amendments were made to section 228A which included a requirement under subsection (3C) that a provisional liquidator appointed under the section must be a solicitor or professional accountant, that is, a member of the Law Society or the Hong Kong Society of Accountants. Thus if a delinquent liquidator were to emerge, he or she would potentially be subject to the disciplinary action of his or her professional body and could, quite apart from any other action that may be taken against him or her, be struck off the professional register. The professional bodies concerned have not received any complaints against their members in relation to this procedure since the amendment was given effect. It should also be pointed out that the

provisional liquidator's powers under the section are restricted and that ultimately creditors can remove a provisional liquidator.

The Administration's proposed amendment to the section would in effect limit the use of section 228A only to one set of circumstances where the provision is currently invoked, namely where shareholders are not available or not traceable or where they are somehow prevented from resolving to wind up the company. There are meanwhile various other circumstances where it may justifiably be used in emergency situations which would be excluded in future by the amendment, because it is unlikely that it can be claimed that it is procedurally impracticable to use another section to wind up the company. These include circumstances, which unfortunately are not uncommon, where after notice of the meetings of shareholders and creditors have been publicized, assets are removed unlawfully by creditors or employees in order to pre-empt the procedures and to advance their own claims to the prejudice of others' claims. In addition, debt collectors acting within or outside of the law may well turn up to try to make recovery. Although in theory the subsequently-appointed liquidator has a right to pursue persons who have taken goods in this way, often in practice it may not be possible or worthwhile to do so in terms of costs, time and sheer difficulty of identifying the culprits and establishing a case against them.

A further point to make here is one to which I have already referred. The directors must verify that there are "good and sufficient reasons for the winding up to be commenced under this section". The Administration has already pointed out in a letter to me, which other Members have seen, that the phrase "good and sufficient reasons" has already been interpreted judicially in *Bozell Asia (Holdings) Limited v CAL International Limited (1997)*. It would appear therefore that the amendment proposed by the Administration is redundant since it is clear from the letter that it does not add to that interpretation. It is true, however, that the Administration's proposed amendment also strengthens the sanctions against directors resolving on the need to use the section 228A procedure without having reasonable grounds to do so.

The amendment that I am proposing on behalf of the insolvency profession also accepts the tightening of sanctions against directors who seek to misuse the section. At the same time, it would allow section 228A to continue to be invoked in those emergency situations where commencing the winding up more quickly can help to preserve assets that would otherwise be in danger of being lost and facilitate a more orderly winding up that is in the best interests of the

general body of creditors as a whole, rather than enabling one or two creditors or groups of creditors to pursue their own interests to the detriment of the rest. I believe that requiring the directors to have regard to the interests of the general body of creditors, which is the main element of my proposed amendment, and applying stiffer sanctions where they have not done so in good faith, is the best solution to this problem and will enable the section to continue to be used for all legitimate purposes.

Section 228A will remain a useful addition to Hong Kong's insolvency law, particularly when this Council reconsiders the introduction of insolvent trading provisions which, although now removed, were originally contained in this Bill and which will no doubt be put forward again in a future Session. If directors run the risk of being heavily penalized for trading in situations where they may not be able to pay their debts as and when they fall due, then they must have a ready means to cease trading quickly and to stop incurring further debts. Section 228A can provide this.

Finally, it should be emphasized that practitioners do not stand to gain commercially by retaining a more broadly-defined provision in section 228A than that proposed by the Administration. In most cases, if this section is not used, then practitioners will in any event be appointed as office-holders pursuant to other sections of the Companies Ordinance. The point is that they see this as continuing to serve a useful purpose in dealing with specific types of urgent situations. Moreover, they are not aware of any actual abuses following the amendments made in 1993 and they are willing to see more extensive sections against potential abuses of section 228A by directors which will not at the same time, throw out the baby with the bathwater and deprive the provision of its effectiveness.

**MR ERIC LI** (in Cantonese): Mr Deputy, I have to speak in Cantonese again. As regards today's voting, I would like to remind Honourable colleagues that there are two options. First, to support my amendments. I admit that, owing to the time constraint, my amendments might not have been drafted perfectly in terms of legal language. Neither do I have time to give a clear explanation to all colleagues. If some colleagues find it impossible to support my amendments, they can take another option by voting against the Government's amendments. In doing so, we will be able to keep the existing section 228A intact. The next term of the Legislative Council will then be given ample time to discuss the matter again. I think this option merits Members' consideration. Otherwise,

Members will need to enact this piece of legislation hastily. Of course, we have to apologize to Members for having failed to give a quicker response. Nevertheless, Members should understand that we should not be held responsible for the time constraint. If Members consider it impossible to discuss the issue in an in-depth manner under such circumstances, should we re-open discussions on the provision instead of hiding such an important change in this substantial amendment, thus pre-empting Members from saying what is in their minds freely?

Thank you, Mr Deputy.

**MR HO SAI-CHU** (in Cantonese): Mr Deputy, I thought that since the Chairman of the Bills Committee is a member of the Liberal Party, he can speak on behalf of the Party all our views on the Bill. He has indeed stated that we support the passage of the Bill and that we also support the amendments proposed by the Government. As for the proposal made by Mr Eric LI, we used to have reservations; but unfortunately after listening to the views expressed by Mr LI, our views remain unchanged.

On behalf of the Liberal Party, I reiterate that we support the Bill and the amendments proposed by the Government. Many Honourable Members have spoken in a touching manner on our colleague from the Liberal Party. Though I cannot say on his behalf that he will continue to work in this Council in the coming Session, for that is his own decision, I would like to thank Members' kindness on his behalf. As a matter of fact, both my colleagues from the Liberal Party and I myself all think that often when we come across complicated bills like these, we would certainly elect a most experienced colleague to be the chairman of the bills committee concerned. And that colleague is of course Mr Ronald ARCULLI. If he really does not want to be a Member of the Council in the coming Session, I believe it is very difficult for us to find someone as qualified as he to assume the leadership in our deliberation of the bills.

I would like to thank all Members again and hope that Mr ARCULLI would change his mind. If he would continue to serve as a Member of the Council, our deliberations of bills would be much easier. I am just speaking out what Honourable colleagues think on this, for I do not know if I myself may serve in this Council in future.

**DEPUTY PRESIDENT** (in Cantonese): I share your feelings, Mr HO, but please speak on the content of the Bill.

**MR HO SAI-CHU** (in Cantonese): Yes, Mr Deputy.

I would like to state the position of the Liberal Party on this Bill, and that is we support it. Thank you.

**DEPUTY PRESIDENT** (in Cantonese): Does any other Member wish to speak?

(No Member responded)

**DEPUTY PRESIDENT** (in Cantonese): If not, then I will invite the Secretary for Financial Services to speak in reply. When the Secretary finishes his speech, the debate will come to an end.

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Mr Deputy, first of all, I should like to thank Honourable Members for their support for the Companies (Amendment) Bill 2000. Besides, I am also grateful to Mr Ronald ARCULLI, Miss CHAN Yuen-han, Mr HUI Cheung-ching, Mr Albert HO and Mr Eric LI for the invaluable views they raised just now.

The Bill has two principal objectives: firstly, to implement the Law Reform Commission's proposal on the introduction of a statutory corporate rescue procedure in Hong Kong and to make provisions spelling out the liabilities of the responsible persons of a company in insolvent trading; and secondly, to implement the various amendments to the Companies Ordinance recommended by the Standing Committee on Company Law Reform, with a view to making the Ordinance more user and business friendly, and facilitating the daily operation of the Companies Registry and the Official Receiver's Office.

Over the past three months, the Bills Committee under the Chairmanship of Mr Ronald ARCULLI has held a total of eight meetings to earnestly scrutinize the clauses of the Bill in great detail and to offer us many invaluable suggestions. I hereby take this opportunity to extend my heartfelt thanks to Mr Ronald ARCULLI and other members of the Bills Committee. Perhaps some unfinished business, such as the Bill before Members, would induce Mr Ronald ARCULLI to consider standing for election to the Council again. At the same time, I should also like to express my gratitude to the relevant professional bodies, business institutions and academics for their written submissions on the Bill.

Concerning the corporate rescue and insolvent trading proposals in the Bill, as mentioned by Mr Ronald ARCULLI just now, after taking into consideration the technical complexity of the relevant provisions, the Bills Committee has come to the view that it would need more time to scrutinize the Bill thoroughly. However, in view of the time constraint, the Bills Committee considered it practically not possible to complete the scrutiny work of the proposals concerned within this Session. It therefore suggested the Government to excise the relevant clauses from the Bill and resubmitting them for consideration by the future Legislative Council. We certainly hope that the relevant part of the Bill can be passed within the current Legislative Session, but we also appreciate that the Bills Committee would need more time to scrutinize the provisions concerned, bearing in mind in particular the written submissions it has received from a number of organizations during the course of scrutiny.

With regard to the views from the different sectors of the community on the introduction of a statutory corporate rescue procedure, many of them reflect the basic principles and stances of the sectors concerned. Take arrears of wages as an example. Should they be given the top priority and properly dealt with before the corporate rescue procedure commences? Should creditors have the right to determine and veto appointments of provisional supervisors? Should the interests of secured creditors be shared? What role should the Court play in relation to the corporate rescue procedure? We believe that unless all parties concerned could co-ordinate their interests as a whole and adopt an open-minded attitude towards this proposal, it would not be possible for any statutory corporate rescue procedure to operate in Hong Kong.

As a matter of fact, when drafting the relevant provisions we have already taken into consideration the recommendations of the Law Reform Commission, as well as the submissions received during the consultation exercise on the Commission's recommendation for changing the use of the Protection of Wages on Insolvency Fund to cover all arrears of wages owed to employees of a company undergoing corporate rescue. We have made an effort to ensure that the clauses of the Bill could strike a balance among the interests of the different parties concerned as far as practicable. It is my hope that the relevant parties, including employers, employees, creditors and other professionals could reach amongst themselves a consensus regarding core issues, thereby formulating a statutory corporate rescue proposal that could enable viable companies to overcome their financial difficulties.

I should also like to respond to the views raised by the Bills Committee in relation to the clauses on corporate rescue. With regard to the provisions requiring a company to deposit sufficient funds in a trust account to settle all arrears of wages owed to employees and former employees in accordance with the Employment Ordinance, the Bills Committee is of the view that the requirements concerned are too inflexible. In this connection, the Bills Committee hopes that more flexible arrangements can be offered to employers and employees to enable the company concerned to be considered for exemption from the requirement to deposit sufficient cash in a trust account for the settlement of all or parts of its debt upon reaching an agreement with its employees. That way, the company could have a greater amount of working capital left.

Concerning the aforementioned views, I have promised that the Government would consult the Labour Advisory Board on the proposal put forward by the Bills Committee to handle arrears of wages owed to employees with greater flexibility. At the same time, we would also look into the views expressed by Members and the various sectors of the community in relation to the statutory corporate rescue proposals, with a view to making improvements to the provisions of the Bill. Just like Members, I also hope that a new bill could be submitted to the Council expeditiously, thereby enabling the statutory corporate rescue procedure to be implemented as soon as practicable.

In view of the developments, I will move an amendment later on to excise from the Bill all clauses relating to the introduction of a statutory corporate rescue procedure and insolvent trading. The amendment has been endorsed by the Bills Committee.

In addition to this proposed amendment, I will move two more amendments to address the concerns of the Bills Committee. The first one is to amend clause 14 of the Bill which introduces the new sections 116B and 116BA providing for a company to approve a written resolution without convening a general meeting if a unanimous consent could be obtained from all members of the company. I will propose to add new provisions for an additional defence clause and to require a company to cause the written resolution concerned to be properly filed. Given that under the new provisions a written resolution will be deemed as having the same effect as a general meeting, company members could save the effort of making arrangements to attend meetings. Moreover, as the Electronic Transactions Ordinance has already come into force, companies meeting the requirements set out under the relevant sections of the Electronic Transactions Ordinance may consider passing resolutions via electronic means in the future.

Another proposed amendment is related to clause 39 of the Bill, which deals with the removal of section 228A. Section 228A provides for the ability of the directors of a company to appoint a provisional liquidator by majority resolution to place the company in voluntary winding up. After discussions with the Bills Committee and having regard to the views raised by the sectors concerned, I will move an amendment to retain section 228A and to introduce new conditions to further clarify the legislative intent of the section, thereby preventing it from being abused or misused as a short cut to wind up a company in a non-emergency situation.

Other proposed amendments are either of a technical nature or consequential amendments. These amendments have already been vetted and endorsed by the Bills Committee. I will expound on them at the Committee stage.



The major purpose of the Companies (Amendment) Bill 2000 is to cater for the need of Hong Kong as an international business centre to maintain a business friendly environment, as well as to facilitate the operation of the Companies Registry and the Official Receiver's Office.

I hereby urge Members to support the Bill and the amendments I shall move later on. Thank you, Mr Deputy.

THE PRESIDENT resumed the Chair.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Companies (Amendment) Bill 2000 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

**PRESIDENT** (in Cantonese): Those against please raise their hands.

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): Companies (Amendment) Bill 2000.

Council went into Committee.

### **Committee Stage**

**CHAIRMAN** (in Cantonese): Committee stage. Council is now in Committee.

**COMPANIES (AMENDMENT) BILL 2000**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Companies (Amendment) Bill 2000.

**CLERK** (in Cantonese): Clauses 3 to 8, 10 to 13, 15, 20, 23, 25 to 29, 31, 32, 34 to 37, 46 to 50 and 54.

**CHAIRMAN** (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): Clause 39.

**CHAIRMAN** (in Cantonese): The Secretary for Financial Services and Mr Eric LI have separately given notice to move amendments to clause 39.

Committee now proceeds to a joint debate. I will first call upon the Secretary for Financial Services to move his amendment, as he is the public officer in charge of the Bill.

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam Chairman, I move the amendment to clause 39, as set out in the paper circularized to Members.

The object of clause 39 of the Bill is to implement the proposals made by the Standing Committee on Company Law Reform and the Law Reform Commission. Both bodies think that section 228A of the Companies Ordinance, which allows the directors of a company to wind up the company during the grey period from the date of a resolution to the date of convention of a meeting of creditors, without consulting the creditors or shareholders, will injure the interests of the creditors and shareholders. Therefore, a proposal was made to delete this provision.

In the course of scrutinizing the Bill, the Bills Committee is inclined towards retaining section 228A. Having carefully considered the views supporting and opposing the deletion of section 228A, we think that the provision can be retained but we must put in place a suitable mechanism to stop abuse or misuse.

We have made reference to a High Court case in 1996. The ruling of the judge stated that section 228A failed to provide guidelines as to how the provision should be applied. He also stated that the section mentioned that "good and ample" grounds are required before commencing winding up on the basis of the provision. It appears the provision pinpoints the situation in which a company cannot commence winding up by invoking other provisions of the Companies Ordinance. In our view, the statement of the judge tallies with the legislative intent of this provision. The objective of incorporating section 228A into the Companies Ordinance in 1984 is to specify special procedures so that the directors of a company can invoke the Ordinance and commence voluntary winding up in an emergency situation. In the light of the guideline issued by the Court, we think that we can present more explicitly the "good and ample" grounds as stated under section 228A.

Therefore, the amendment provides an additional mechanism and states the legislative intent more explicitly, and it also specifies that the directors of a company should state in the resolution recorded in his statutory declaration the grounds on which he thinks that winding up by virtue of other provisions of the Companies Ordinance are not reasonably practicable before invoking section 228A to commence winding up, substituting "good and ample" grounds as specified under the existing provision. The amendment also specifies that if a director of a company does not have reasonable grounds to support the statutory declaration he made, the director may be prosecuted and is liable to a fine and imprisonment.

We understand that the relevant profession may worry that the standard set by section 228A that winding up in accordance with other provisions may not be reasonably practical is too strict, and the directors of a company may then be unable to invoke section 228A to commence winding up in future. In other words, they cannot invoke a provision although it exists. Mr LI has also said that they may be worried about this. I would like to point out clearly that the policy intent of section 228A is to provide special procedures so that the directors of a company can commence voluntary winding up in an emergency situation. Thus, section 228A should definitely not be used to make things convenient and allow companies to evade the responsibilities to invoke other provisions in the Ordinance for winding up procedures.

What do "not reasonably practicable" mean? The Court should define this on account of the circumstances of individual cases. However, as I have just explained, the legislative intent of section 228A is really to tackle an emergency in which a provisional liquidator must be appointed within a very short time to commence voluntary winding up whilst other winding up provisions of the Companies Ordinance are not applicable to such an emergency. For example, when the assets of a company are particularly threatened and need immediate protection as they may be lost within a very short time, or when it is not possible to call together members of the company to attend a meeting to pass a special resolution on the voluntary winding up of the company within a very short time. As the purpose of the provision is pinpointed at special emergencies, the profession should feel relieved. Provided that they can prove that it is impossible to implement in an emergency voluntary winding up which requires a resolution of the directors of a company, they can still invoke this provision.

We believe that the new provision answers the requests of the Committee and the profession for retaining the provision, and addresses the concerns of the Standing Committee on Company Law Reform and the Law Reform Commission that this provision may be abused or misused, and it has also made reference to the relevant guidelines of the Court. Actually, the Bills Committee has endorsed this amendment, thus, I hope Members will support this amendment that caters for the interests of various parties. Thank you, Madam Chairman.

*Proposed amendment*

**Clause 39 (see Annex VII)**

**CHAIRMAN** (in Cantonese): I will call upon Mr Eric LI to speak on the Secretary for Financial Services' amendment and his own amendment. I will not ask Mr Eric LI to move his amendment unless the Secretary for Financial Services' amendment is negated. If the Secretary for Financial Services' amendment is passed, that will mean Mr Eric LI's amendment will not be passed.

**MR ERIC LI** (in Cantonese): Madam Chairman, as you know, I always respect your ruling but this may be the last chance for me to convince Members of this Council to accept my amendment. As I have given the details not long ago, I will now respond briefly to the remarks made by the Secretary for Financial Services.

Firstly, I would like to remind Members that, from the perspective of accountants, this issue does not involve the interests of any person of the profession itself. Even if a company is wound up in other ways, accountants will still have business and we will still do the same. These amendments are fine to professionals and we will just act according to the law, but for the sake of public interests and the interests of creditors, I find it necessary to express my views and discuss the matter with Members.

In respect of the case I have just mentioned, I am really grateful to the Secretary for Financial Services for giving us many reassurances when he just spoke. He reassured us that we should feel relieved because this was the original policy intent. It is very helpful for him to clarify this point and I do not think the Secretary has not clarified the matter. Yet, I would like to express the views of the profession that, regardless of what the Secretary, Members and I say today, when the case is brought to court, the judge will not be influenced by what we said because he will make a decision independently. The actual situation is that when a certified public accountant, liquidator or lawyer advises the directors to choose to invoke section 228A, even though such remarks have been made today, he cannot guarantee that the Court will hold the same views. What if the choice is incorrect? This will involve criminal liabilities. Under these circumstances, lawyers and liquidators dare not give advice. I can also tell Members that I really doubt who dares ask the directors to try their luck. Obviously, the result is very serious. Although the door seems to be open, it is actually closed. What will happen if we do not negative the amendment of the Secretary for Financial Services today? The conclusion of the Bills Committee

is that the door should be opened and in the light of the experience in implementing section 228A, we think that the section is worth retaining. In fact, we can roughly say that section 228A has mostly been abused in the past, therefore, the door seems to be open but it exists in name only. Will this result give people an impression when the Legislative Council debates over the Amendment Bill today, despite the original intent and the conclusion of the Bills Committee, the actual result may differ. Is it the most logical result? We must reflect the situation to professionals such as accountants and lawyers. But I would like to reiterate that this is not a problem with our profession but the problems lie with the enactment of laws, the liquidator and the advice we give company directors. Thus, I hope Members will think thrice about how we should vote. Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): Members may now debate the amendment moved by the Secretary for Financial Services as well as the amendment by Mr Eric LI.

Does any Member wish to speak?

**MR ALBERT HO** (in Cantonese): Madam Chairman, after going through section 228A again, that is, the version provided by the Government, I find that it specifies that when a director makes a statutory declaration, if he does not have reasonable grounds to believe that the company cannot by reason of its liabilities continue in business or explain why the company cannot commence voluntary winding up under other provisions of the Companies Ordinance, he will incur punishment. If convicted, the director concerned shall be liable to a fine or imprisonment.

Firstly, the consequence of such criminal liability is included under the existing section 228A. I must point out in particular that this is an existing provision but not an amendment made by the Government. Thus, the *status quo* has not been changed and only some provisions have been changed. We are very much concerned about these changes.

However, we would like to know the meaning of "without reasonable grounds"? As Mr Eric LI has said, if a director has taken the advice of a professional, I believe we can hardly say that he does not have "reasonable grounds". Regardless of whether the advice given by the professional is wrong

or not shrewd enough, so long as the director of a company accepts his advice, I do not quite believe that there will be consequential criminal liability. Of course, if the advice given by a lawyer or an accountant is incorrect — he is certainly not responsible for making the declaration — although he needs not shoulder the criminal liability specified under this provision, he may have to face other consequences. For instance, he may be deemed as negligent or his professional conduct may be doubted. Yet, the professional will not have to shoulder the consequential criminal liability because of this provision. Thus, I do not think the relevant provision will have deterrent effect on professionals and the most important point of the provision is to ensure that the directors have a basis on which they will believe that they have acted in accordance with this Ordinance and they do not have other purposes or ulterior motives, for example, to injure the interests of creditors or other shareholders.

The Bills Committee has accepted this proposal after consideration. Most importantly, the wordings of the original provision are roughly the same, that is, criminal liability has already existed for many years and the Government has indicated that it will not arbitrarily invoke this provision, and past records also show that it has not been invoked before. The most important part of the provision is that there should be reasonable grounds. It is reasonable because a director should be held responsible if he makes a declaration without grounds. For these considerations, I support this Bill.

Therefore, the comments just made by Mr Eric LI are not adequate to persuade us that the Government's proposal is unacceptable.

Thank you.

**CHAIRMAN** (in Cantonese): Mr Eric LI, do you wish to speak again?

**MR ERIC LI** (in Cantonese): Madam Chairman, I would like to respond briefly to the speech delivered by Mr Albert HO.

Mr Albert HO understands it very well that the amendment seeks to raise the requirement of accountability. This is also a new provision, though it has never been invoked for the purpose of penalizing some so-called professionals. But given the emergence of a new environment, there is bound to be a certain

degree of risks, that is, higher risks. This provision is not going to pose any problems to accountants for they will, as usual, consult advice from their lawyers. We will certainly seek legal advice. It will be really strange for us not to seek legal advice if the procedure for exercising this provision has not been applied before. Mr Albert HO, being a lawyer, might know it better than I do. All lawyers know how to protect themselves. In giving advice, they will often say both options are feasible and their clients will eventually be asked to make their own choice. Therefore, directors might eventually make the final decision.

Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): Does any other Member wish to speak?

(No Member responded)

**CHAIRMAN** (in Cantonese): Secretary for Financial Services, do you wish to speak again?

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam Chairman, first of all, I would like to thank Mr Albert HO, for he has said a lot of things on my behalf. I do not think that I need to speak too much on that, for it has been discussed in the Bills Committee. I think professionals all know how to protect themselves and we do not have to worry for them. As a matter of fact, after our revision, the original intent of the provision will become clearer and I think for the professionals, that is a good thing. About the door mentioned by Mr LI just now, I am also very puzzled. He said that sometimes that door was open and sometimes that door seemed to be closed. I think that it may be Mr LI's own door. I have said earlier that that door is open. As to when that door will be open, I have said that it will be open under certain circumstances. That will mean of course some very unusual and urgent situation. That is not a door for convenience's sake to be opened at any time.

Mr LI's proposal is unacceptable to us, for it is inconsistent with the legislative intent. I have said many times that section 228A is intended to address some emergency situations, that is, commencement of winding up procedure under other provisions on the winding up of companies in the



Companies Ordinance is not reasonably practicable and it is not in agreement with the guidelines given by the Court in the application of these provisions. As to Mr LI's proposal to add a provision about the interests of the general body of creditors, we think that there are some problems with the provision itself. Precedents have shown that if the provisions are challenged, the party which has to have regard to the interest of others is obliged to prove that he has indeed completed the proper procedure before he is deemed to have had regard to the interest of others. In respect of section 228A, it is hard to believe that the directors of a company can have regard to the interests of the general body of creditors, unless before the company directors decide to initiate the voluntary winding up of the company by invoking section 228A, they have inquired into the interests of all of the creditors. Otherwise, it is difficult, if not impossible, for a company to know the interests of the general body of creditors. If the company directors are required to inquire into the interests of each and every creditor, it may delay the commencement of the winding up procedure. It also undermines the advantage of this provision to enable the prompt commencement of the winding up procedure.

The point in section 228A which is most strongly opposed is that the provision has deprived the creditors of their right to appoint a liquidator of their own choice through a general meeting of all creditors. Under this provision, company directors will inform the creditors of the *fait accompli* that the company is to be wound up. Now Mr LI wishes to add in a provision on the company directors in respect of the interests of the general body of creditors. From the perspective of the creditors, the provision may deprive them of the right to appoint a liquidator of their own choice. This kind of arrangement has clearly not taken the interests of the creditors into full account. Therefore, this addition of the provision on "having regard to the interests of the general body of creditors" will lead to disadvantages before its merits can be proved. It will make it more difficult for company directors to initiate the winding up procedure by invoking section 228A. We believe that the provision on "not reasonably practicable" is more objective, positive and can better suit the needs of the companies. Moreover, if the words "having regard to the interests of the general body of creditors" are put into the provision in such a simplified manner, the interests of the shareholders may be overlooked.

Madam Chairman, when drafting the amendments, we have given full consideration to the views expressed by the profession on the proposal to delete section 228A. The amendments proposed by us have also gained the support of

the Bills Committee. The amendments are made with the interests of all parties concerned taken into consideration. Mr LI has mentioned earlier that those Honourable Members who oppose his amendment may also consider opposing the amendments proposed by the Administration. My view is that since we all agree that there are inadequacies in section 228A in the first place, then if we are to keep section 228A as it is, it is doubtful that it is in the best interest of the public. Therefore, we hope that Honourable Members can lend their support to the amendments proposed by the Administration.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Financial Services be passed. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(Members raised their hands)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CHAIRMAN** (in Cantonese): As the amendment moved by the Secretary for Financial Services has been passed, Mr Eric LI may not move his amendment now, for this is inconsistent with the decision already made by the Committee.

**CLERK** (in Cantonese): Clause 39 as amended.

**CHAIRMAN** (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): Clauses 1, 2, 9, 14, 16 to 19, 21, 22, 24, 30, 33, 38, 40 to 45, 51, 52 and 53.

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam Chairman, I move the amendments to clauses 1, 9, 14, 30, 33 and 51 of the Bill and the deletion of clauses 2(b), 16, 17, 18, 19(b), 19(c)(i), 19(d), 21, 22, 24, 38, 40, 41, 42(b)(iii), 43, 44, 45, 52 and 53, as set out in the paper circularized to Members.

The amendment proposes to delete clauses 16, 17, 18, 19(b)(ii), 19(c)(i), 19(d), 21, 22, 24, 44, 45 and the entries of 168ZI(2), 168ZN(5) and 168ZW(4) under clause 51(b) and clause 53. The above provisions to be deleted are related to the introduction of provisions of corporate rescue procedure and insolvent trading, and as I have explained in the resumption of Second Reading debate, these should be deleted from the Bill. The proposed deletion of clauses 19(b)(i), 38, 40, 41, 42(b)(iii), 43, 52 and the proposed amendment to clause 51(c) are all consequential amendments to the amended clause 39 which has just been passed, that is, the preservation of clause 228A.

Clause 14 of the Companies (Amendment) Bill 2000 amends section 116B and adds in new sections 116BA and 116BB, stipulating the passing of a resolution by unanimous written consent in lieu of general meetings provided that the resolutions are signed by or on behalf of all voting members of the company. The new section also imposes an obligation on company directors and secretaries to notify the auditors of the resolutions passed by written consent. The amendment proposes that a company shall cause a record of all resolutions agreed to in accordance with the requirements to be entered into a book of the company. The amendment will result in a more satisfactory operation of the provision. On the obligation of the company director to notify the company's

auditors of the resolutions, the Bills Committee requires that the defence provision be made clearer to stipulate the liabilities of all parties concerned. We have taken on board the suggestion.

We now propose to amend clause 14 of the Bill, that is, the new section 116BA(3) on the related legal procedure, by adding item (c), stating that if the defendant (that is, the company director or secretary) had reasonable grounds to believe and did believe that a person was specifically charged with the duty of sending a copy of the resolution to the company's auditors or of otherwise informing the auditors of its contents, then it shall be his defence. We believe that together with the proposed items (a) and (b) in the Bill, there will be adequate protection for company directors with regard to provisions for defence. Other amendments in the motion are all technical or consequential amendments to clarify the provisions to facilitate their application.

Lastly, the Bill as amended will improve on the Companies Ordinance and facilitate the operation of the Companies Registry and the Official Receiver's Office. The Amendment Bill as proposed by clause 1 shall come into force on 1 July this year.

I hope Members can support the amendments moved by the Administration. Thank you, Madam Chairman.

*Proposed amendments*

**Clause 1 (see Annex VII)**

**Clause 2 (see Annex VII)**

**Clause 9 (see Annex VII)**

**Clause 14 (see Annex VII)**

**Clause 16 (see Annex VII)**

**Clause 17 (see Annex VII)**

**Clause 18 (see Annex VII)**

**Clause 19 (see Annex VII)**

**Clause 21 (see Annex VII)**

**Clause 22 (see Annex VII)**

**Clause 24 (see Annex VII)**

**Clause 30 (see Annex VII)**

**Clause 33 (see Annex VII)**

**Clause 38 (see Annex VII)**

**Clause 40 (see Annex VII)**

**Clause 41 (see Annex VII)**

**Clause 42 (see Annex VII)**

**Clause 43 (see Annex VII)**

**Clause 44 (see Annex VII)**

**Clause 45 (see Annex VII)**

**Clause 51 (see Annex VII)**

**Clause 52 (see Annex VII)**

**Clause 53 (see Annex VII)**

**CHAIRMAN** (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Financial Services be passed. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CHAIRMAN** (in Cantonese): As the amendments moved by the Secretary for Financial Services have been passed, therefore clauses 16, 17, 18, 21, 22, 24, 38, 40, 41, 43, 44, 45, 52 and 53 have been deleted from this Bill.

**CLERK** (in Cantonese): Clauses 1, 2, 9, 14, 19, 30, 33, 42 and 51 as amended.

**CHAIRMAN** (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): Schedule.

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam Chairman, I move the amendment of the Schedule, as set out in the paper circularized to Members. The amendments are consequential amendments of a technical nature. Thank you, Madam Chairman.

*Proposed amendment*

**Schedule (see Annex VII)**

**CHAIRMAN** (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Financial Services be passed. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): Schedule as amended.

**CHAIRMAN** (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CHAIRMAN** (in Cantonese): Council now resumes.

Council then resumed.

### **Third Reading of Bill**

**CHAIRMAN** (in Cantonese): Bill: Third Reading.

### **COMPANIES (AMENDMENT) BILL 2000**

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam President, the

Companies (Amendment) Bill 2000

has passed through Committee with amendments. I move that the Bill be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Companies (Amendment) Bill 2000 be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

**PRESIDENT** (in Cantonese): Those against please raise their hands.

(No hands raised)



**PRESIDENT** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): Companies (Amendment) Bill 2000.

### **Resumption of Second Reading Debate on Bill**

**PRESIDENT** (in Cantonese): We will resume the Second Reading debate on the Building Management (Amendment) Bill 2000.

### **BUILDING MANAGEMENT (AMENDMENT) BILL 2000**

#### **Resumption of debate on Second Reading which was moved on 26 January 2000**

**PRESIDENT** (in Cantonese): Mr CHAN Kam-lam, Chairman of the Bills Committee, will address the Council on the Committee's report.

**MR CHAN KAM-LAM** (in Cantonese): Madam President, as the Chairman of the Bills Committee on Building Management (Amendment) Bill 2000, I now table the Committee's report.

The object of the Bill is to amend the Building Management Ordinance to provide for the following:

- (a) specification of building management and maintenance standards for compliance by owners' corporations (OCs);
- (b) mandatory management of buildings with serious management and maintenance problems;
- (c) simplifying the manner for owners of new buildings to convene meetings to appoint management committees (MCs); and

- (d) miscellaneous matters relating to insurance, auditing of OCs' accounts, notice of an owners' meeting and quorum at a meeting of OC.

The Bills Committee has held 11 meetings for detailed and extensive discussions on the Bill. This report stated in detail the scrutiny by the Bills Committee. I will speak briefly on the most controversial and important issues under the Bill.

Under the existing Ordinance, if owners want to form an OC, but the deed of mutual covenant (DMC) has not specified the appointment of an MC, the owners have to convene a meeting to appoint an MC in accordance with sections 3, 3A or 4 of the Building Management Ordinance which specify the shares as 50%, 30% and 20% respectively.

To simplify the way for owners of new buildings to convene meetings to appoint MCs, the Administration has proposed to specify that the quorum of such meetings shall not be less than 10% of the owners. Some organizations including the Real Estate Developers Association of Hong Kong (REDA) have expressed opposing views on the proposed quorum requirement of 10% of the owners to convene an owners' meeting for the purpose of appointing an MC. They are worried that the requirement which allows the formation of an OC prior to the full completion of a phased property development may lead to a minority group of owners dominating the resolutions of the OC, hence affecting the long-term design, planning and implementation of the development.

The Administration holds the view that at the early stage of its large-scale property developments, the developer, as a major owner, still owns most of the shares under the master DMC, and it may exert great influence on the voting on resolutions by the OC to protect its own interests. Besides, as the drafter of the DMC, the developer may include in the DMC terms which prevent owners in general, during the construction of all phased property developments, from exercising their power of management over the development of the remaining uncompleted common areas or interfering with such development.

These organizations disagree with the Administration's view. They have pointed out that unnecessary disputes will arise if the developer exerts influence on the voting on resolutions by the OC with its shares. They are also worried that as legally, the Building Management Ordinance prevails over the DMC, the

inclusion of relevant terms in the DMC may not be effective. Given the strong views of these organizations, some members have asked the Administration to explore solutions to address their concerns.

After consideration, the Administration agrees that the REDA's proposal is acceptable. The new quorum requirement of 10% of the owners to convene an owners' meeting for the purpose of appointing an MC under the new section should be applicable only after occupation permits in respect of all the buildings in a single property development (including a phased property development) have been issued under the Buildings Ordinance.

Some members are dissatisfied with the Administration's decision and questioned why it has changed its original position. These members have pointed out that it will be unfair to small real estate developers if the new quorum requirement of 10% of the owners to convene an owners' meeting for the purpose of appointing an MC is only applicable to single phase developments. Moreover, owners who take possession of their flats at the early stage of a phased property development still have to convene an owner's meeting under sections 3, 3A or 4 of the Ordinance in order to form an OC. As such, the proposal defeats an object of the Bill, that is, to simplify the manner for owners of new buildings to convene meetings to appoint MCs. Members belonging to the Democratic Party have indicated that they will propose a Committee stage amendment in this respect.

According to some members, for existing buildings, the requirement under the existing Ordinance for the shares for convening an owners' meeting for the establishment of an OC should be lowered.

After consideration, the Administration accepts the proposal of members belonging to the Democratic Alliance for the Better of Hong Kong (DAB) and agrees to lower the percentages from the current 50%, 30% and 20% under sections 3, 3A and 4 to 30%, 20% and 10% respectively. The Administration will propose the relevant amendments at the Committee stage.

Madam President, the Bills Committee supports the resumption of the Second Reading of the Bill. I so submit. Thank you.

**MR EDWARD HO** (in Cantonese): Madam President, urban Hong Kong is probably a region in the world that has the highest density of buildings. As buildings are gradually ageing, building safety problems are often found in recent years. Since buildings in Hong Kong generally lack maintenance, the overall conditions of buildings have kept deteriorating. This affects the living environment and even calls for large-scale urban redevelopment. The Urban Renewal Authority Bill to be discussed next week reflects that the urban area needs redevelopment and the redevelopment must be expedited.

In respect of buildings with serious management and maintenance problems, the Fire Services Department conducted in 1998 a territory-wide survey of a total of 27 148 private multi-storey buildings, but only 28% were rated satisfactory in terms of their fire service installations. The main reason why most buildings in Hong Kong are unsatisfactory in this respect is a lack of proper building management, for instance, absence of owners' corporations or professional management. In fact, many owners neglect their responsibilities to regularly maintain, repair and properly manage their properties to avoid endangering the safety of themselves or even the public. These owners have certainly forgotten that maintenance and repair can maintain the value and life of their properties. Thus, it is most important to cultivate among them a culture of proper maintenance and repair. The Administration should inject more resources into this and I also believe that professional associations such as the Hong Kong Institute of Surveyors will gladly offer assistance.

Under the present circumstances, we need this Bill. Let me briefly discuss several points in the Bill. The first object of the Bill is to specify building management and maintenance standards. Although these Codes of Practice do not have direct legal effects, section 18(1) of the Ordinance provides for certain obligations of OCs in relation to the management and maintenance of a building's common parts, therefore, the Codes will specify the standards of management and maintenance.

The Government proposes to amend the Ordinance to empower the Secretary for Home Affairs (the Authority) to prepare, review and publish in the Gazette a Code of Practice on Building Management and Maintenance (the Code) for compliance by OCs. The Code will provide specific standards, in user-friendly layman's terms, for OCs to discharge their building management and maintenance duties. However, the Hong Kong Institute of Surveyors has also expressed their views. To state the management and maintenance criteria

comprehensively or clearly, they think that these criteria must be professional and technical. If owners need to understand such criteria, the Government can separately compile simple reference materials to introduce the main points of such criteria. In my view, the views of the Hong Kong Institute of Surveyors merit consideration and I hope that the Administration will consult the relevant associations as far as possible in the course of drafting such criteria.

As to the proposed criteria for building management agents for the mandatory management of buildings with serious management and maintenance problems, I hope the Administration will draft such criteria after consulting the relevant professional bodies.

The second object of the Bill is the mandatory management of buildings with serious management and maintenance problems. While most owners have not spontaneously done so, I find this compulsory measure essential. However, we have discussed one problem with the Bills Committee. If owners are compulsorily required to appoint agents, as the relationship between owners and agents are not voluntarily established, will agents encounter difficulties in respect of management in the future? Will problems arise in respect of management fee payment and will agents fail to receive such payments? We have discussed these in the Bills Committee. Although I do not agree that the Government should advance such payments, that is, taxpayers make the payments first and recover the payments from owners when difficulties arise, we think that the problem should not be overlooked. Therefore, I hope that the Government will review the problems that may be encountered under these circumstances after the implementation of this Ordinance. If so, how will the Government make amendments to solve these problems?

The third object is to facilitate owners of new buildings to convene a meeting for the appointment of a management committee (MC). The most important issue is related to larger scale developments, especially multi-phased developments. The proposed section 3 specifies that a meeting can be held to appoint an MC when 10% of the owners attend the meeting. We have received submissions by many groups who have expressed worries about this. If a minority group of owners attending a meeting can make certain decisions affecting the later stage development, design, planning and management policies, problems will arise. The Administration explained that although they can convene meetings, as the major owner still owns most of the shares, it may turn down the proposals of the meeting with its shares of ownership. This is the

crux of the problem. If the major owner often opposes a committee established with its shares, it will lead to management and other difficulties.

Generally speaking, large-scale developments should not have management problems. In any case, as we can see, a developer, its subordinate company or the professional company it appoints should not have management problems. It is because a developer must uphold its reputation and most of the buildings it sold will be affected by its management. Therefore, we need not particularly worry about large-scale or phased developments. Should we rashly allow a minority group of owners to decide the power of management? We have discussed this in the Bills Committee and the Government has accepted our views and stated that it will propose relevant Committee stage amendments. As Mr CHAN Kam-lam has said, the amendments will mainly involve the quorum requirement of 10%. For large-scale phased property developments, this requirement should only be applicable after the issue of occupation permits under the Buildings Ordinance but this proposal is also applicable to a single phase property development.

Madam President, I would like to discuss another problem. This Bill only simplifies the convening of meetings for the appointment of management committees by owners of new buildings while existing buildings are not affected. We have to face this problem after all because many problems of management and building conditions actually occur in old buildings. If the DAB's proposals are accepted by the Government at the Committee stage, we can set a lower quorum requirement under a different mechanism. I will discuss this again later. I support this amendment.

With these remarks, Madam President, I support this motion.

**PRESIDENT** (in Cantonese): Does any other Member wish to speak?

**MR ALBERT HO** (in Cantonese): Madam President, the objects of the Building Management (Amendment) Bill 2000 include specification of building management and maintenance standards, simplifying the manner for owners of new buildings to convene meetings to appoint management committees (MCs), mandatory management of buildings and other miscellaneous matters. Mr CHAN Kam-lam, Chairman of the Bills Committee, has mentioned that the

Secretary for Home Affairs will later propose some amendments on the basis of the consensus reached by the Bills Committee. The Democratic Party thinks that the amendments proposed by the Secretary are correct and we support them, but as the Government fails to accept the amendments proposed by us or adopt them as the Government's amendments, we find it essential to propose these amendments, otherwise, the management difficulties faced by the owners can hardly be solved and their interests will not be adequately and reasonably protected.

According to our experience, including our experience in assisting owners in establishing OCs, we realize that the owners would encounter a lot of difficulties and some owners cannot and are unable to establish OCs. For example, under the existing Ordinance, because some owners may control the OC and shares of the common areas in a property development, that is, they hold more than 50% of the shares, even if all the other owners agree or request the establishment of an OC, they cannot achieve their aim. In our view, if most owners agree to establish an OC but they fail to do so or enjoy protection under the Building Management Ordinance as a result of the harsh restrictions of the Ordinance or technical difficulties, this is unfair to the owners and they will fail to effectively monitor the building manager so as to improve management quality and the living environment.

All along, the Democratic Party has reflected to the Government our wish that improvements can be made to the procedures for establishing OCs. This time, the Government has accepted the proposals of the Democratic Party and other political parties to lower the quorum requirement for convening owners' meeting in existing buildings and amend the definition of owners. This is definitely an important step forward. At the early stage after the formation of the Bills Committee, the Government said that it would only examine the procedures for the establishment of OCs in new buildings and refused to review the procedures for existing and completed buildings. However, after several meetings, the Government finally agreed to amend sections 3, 3A and 4 of the existing Ordinance. According to section 3, an OC can be established only with the support of the owners of not less than 50% of the shares. The Government is now willing to lower the requirement to 30%. According to the existing section 3A, a meeting of owners can only be convened after an application has been filed by the owners of not less than 30% of the shares with the Home Affairs Bureau. With the amendment by the Government, the relevant shares requirement has been reduced to 20%. Section 4 of the existing Ordinance

specifies that the owners of not less than 20% of the shares can file an application with the Lands Tribunal for the convention of a meeting, and this statutory requirement has been lowered to 10%. At the meetings, the Democratic Party asked to lower the relevant shares to 30%, 20% and 10% respectively and indicated an intention to propose amendments. However, as the Government has accepted and is willing to make the amendments mentioned by me, the Democratic Party has not proposed the amendments we intended to make.

Under the existing Ordinance, the vote in respect of a share jointly owned by two or more persons may be cast by proxy by the co-owner whose name stands first in relation to that share in the register kept at the Land Registry. However, many difficulties are encountered in actual operation. For instance, when a couple jointly owned a property, the name of the husband would stand first, followed by that of the wife. After separation, the husband may have moved out of the property and the wife will not ask the husband to sign the instrument appointing a proxy for the purpose of attending the meeting. Very often, the husband works overseas and fails to return timely to sign the instrument appointing the proxy. As a result, although one owner is present, he cannot sign the instrument appointing the proxy, or when an owner cannot attend a meeting, he will not appoint a proxy to attend the meeting. This is unfair and many owners grumble about why they are so treated and are even unable to exercise their rights to appoint proxies just because their names stand second in the register. Finally, the Government agreed to make an amendment so that either owner can issue an instrument appointing a proxy. We certainly welcome and support this amendment.

Among the proposals adopted by the Government, the most controversial one is that it may take years before occupation permits in respect of all of the flats of large-scale buildings or property developments have been issued for all owners to take possession. In that case, can the owners establish an OC on the basis of 10% of the shares according to the new ordinance? Actually, the legislative intent of the Government is to adopt this new mechanism for the establishment of OCs in all new buildings, regardless of scale. After lobbying by the REDA, although the Government has held wonderful debates with the Association and given strong reasons to refute the worries of the Association, that is, it will be unfair to allow the owners of 10% of the shares to establish OCs (as elaborated by Mr CHAN Kam-lam), the Government has also pointed out that the establishment of OCs does not mean depriving owners who have not taken possession of their flats of their rights. In fact, the interests of owners



may not be conflicting, and all of them will be concerned about the overall development of the estate in the future. Even after the establishment of an OC, the OC cannot decide everything because voting is still restricted by such factors as shares. Yet, the Government has finally accepted the views of the REDA and specified that new estates must only establish OCs after the issue of all the occupation permits. The Democratic Party does not agree to this but we will propose amendments. Later, Mr LEE Wing-tat will explain in detail and comprehensively why we make such amendments. We agree that an OC cannot be established when owners start taking possession of their flats or when only around 10% of the owners have moved in, and that we should wait for a certain period of time until a certain number of owners have taken possession of their flats. Yet, we cannot accept that an OC can only be established after 100% of occupation permits have been issued because this will take very long. I will not discuss this point in detail and I will leave it to Mr LEE Wing-tat to express our views in detail.

The Democratic Party has also proposed some amendments, including reducing the statutory requirement of the support of owners of 50% of the shares for terminating the appointment of a building management agent to 30%. We know that colleagues belonging to the DAB have proposed another amendment specifying an even lower requirement. It only provides that the quorum of a meeting at which a resolution for the termination of a building management agent's appointment is decided shall be 20% of the owners, and that the resolution shall be decided by a majority vote of the owners. While we support the amendment we proposed, we also support the DAB's amendment. Thus, if the amendment Mr Gary CHENG proposes later is passed, we may not need to vote on our amendment. Our objectives are consistent and we all want owners to enjoy the right to terminate the appointment of a building management agent by a specified percentage of shares. We want to stress that after many buildings have terminated the appointment of building management agents and appointed new building management agents through tender, there are not any particular problems. It is because most contracts have specified a three-month notice period, that is, the management committee only needs to give three months' notice and the contract between the parties can then be terminated. This amendment is only pinpointed at a situation in which contracts include unconscionable terms and a building management agent is given privileges that this amendment revokes such privileges. Therefore, I do not think this will give rise to heated arguments and I hope that colleagues will support it.

The Democratic Party has proposed two amendments but it is a pity that they are not accepted by the President. However, I would like to elaborate on them briefly here and I hope that the Government will study them in future because both amendments are very important.

Firstly, in respect of some small house or town house developments, that is, house developments comprising detached houses each of which has one owner, as these house developments do not have divisible shares, the Ordinance is not applicable, thus, many large-scale house developments such as the Fairview Park, Hong Lok Yuen and Palm Springs have failed to establish OCs. However, we all know that this Ordinance seeks to facilitate participation by owners in the management of the housing developments and even in deciding how building management agents should be monitored. Yet, these house developments are not protected and there are evidently some legal loopholes. I take regrets to note that the Government has so far failed to attend to the requests of these owners. The amendment I would like to propose will give the owner of each house one vote, but the President thinks that this has gone beyond the scope of the Ordinance. I certainly respect the decision of the President but I hope that the Government will expeditiously study how the scope of the Ordinance can be expanded to cover such house developments so that the owners can exercise the rights granted under the Ordinance to improve management.

Secondly, concerning the DMCs, some DMCs are completed in the early years and the lawyers might be careless in the course of drafting or their designs were extremely unreasonable or were purely intended to protect the interests of individuals, and the Lands Department might not have stringently examined these DMCs in the early years, that is, the 1980s. Therefore, the contents of these DMCs are often utterly ridiculous and unreasonable and can hardly be implemented. At present, even if most owners agree to amend the DMCs, and even if none of them oppose this, it is impossible to amend the DMCs because it may be impossible to contact one to two owners or some owners may not be willing to put their signatures on the relevant documents. Under the existing Ordinance, unless unanimously endorsed by all owners, the terms of DMCs cannot be amended. Thus, we hope that the Government will establish a mechanism to allow the Home Affairs Bureau to make reasonable amendments to the DMCs, subject to monitoring by the Court. The amendment originally proposed by us specifies that the owners of certain shares can file an application for a certificate with the Home Affairs Bureau to certify that the relevant amendments are reasonable. The Home Affairs Bureau can also consult some

owners and submit the amendments to the Lands Tribunal for approval. Nevertheless, this amendment is not accepted by the President. I hope that the Secretary will note this down and consider this in the near future to help the owners solve problems that can hardly be solved.

On the whole, this is another important amendment to the Ordinance since the last exercise in 1993. Building management in Hong Kong is entering a new stage and I think that progress has been made. We have made reference to many foreign laws in search of similar laws but the result is not as Mr Edward HO has described. There are a lot of buildings and multi-storey buildings in Hong Kong and the environment is unique. I believe that Hong Kong laws in future will become reference materials for many countries in respect of building management improvement, and Hong Kong can be called a pioneer in this respect. We have conducted a lot of tests, gained valuable experience from these tests and we keep carrying out reforms. We hope that the road of reform will go on continually and, after this reform, I hope that we will continue to conduct reviews including a review on the issue I have just mentioned in the near future.

Under this premise, I hope Members will support the Second Reading of the Bill and the Government's amendments, and I call upon Members to support the amendments of the Democratic Party and the DAB because I trust that they are beneficial to the owners.

Thank you.

**MR GARY CHENG** (in Cantonese): Madam President, for a long time in the past, we received a lot of complaints from the community and most of them involved the fact that the interests of owners were not reasonably protected or they failed to exercise their rights. Perhaps, many owners lack a deep understanding of the Building Management Ordinance and they are not sure how they can exercise their rights. We have heard many members of OCs, especially their chairmen, complain that the Government earnestly wanted to make the establishment of OCs compulsory but it needs to create supplementary legal conditions to facilitate the implementation of agreed principles.

Since the enactment of the Building Management Ordinance (Cap. 344) in 1970, several amendment exercises have been made. We agree to the objects

and principles of the amendments proposed this time. The objects of the Bill are actually the original intent of Cap. 344 and we support such objects as the protection of the interests of the owners, specification of the building management and maintenance standards, mandatory management of buildings with serious management and maintenance problems, and providing explicit legal bases for the establishment of OCs. However, even if the clauses we support are passed, we have only taken one step towards perfecting the Ordinance and we still need to make further improvements in future.

Actually, owners really encounter difficulties in respect of the operation and management of buildings. On the one hand, the DMC protects the developer and put restrictions on the owners. On the other hand, the existing Ordinance puts many restrictions on the establishment of OCs or the termination of the appointment of building management agents or managers, and a lot of difficulties will be encountered in respect of the convention of owners' meetings. Therefore, as I have said, the Ordinance gives the owners inadequate protection.

Before scrutinizing the Bill, the DAB issued a consultation document and extensively discussed the matter with and consulted the OCs of private buildings in Hong Kong. Fortunately, our efforts have not been wasted. In the course of scrutinizing the Bill, we consolidated the views of the public and the difficulties faced by the owners and proposed seven amendments. They include lowering the quorum requirement for meetings convened to form OCs and that for owners' meetings, enhancing monitoring of building management agents by OCs, perfecting the procedures for convening owners' meetings, fighting for relaxing or exploring the possibility of relaxing restrictions on amendments to the DMCs, mandatory establishment of a contingency fund and the establishment of a building management arbitration panel. We are very pleased that the Government's amendments have adopted some of our proposals, including lowering the quorum requirement for meetings convened to form OCs and that for owners' meetings, and that in terminating the appointment of building management agents, payment can be made in lieu of three months' notice. When voting on the termination of the appointment of building management agents, the voting rights of owners having shares to common parts and not liable to pay management fees in respect of such shares should be separately considered.

We are somewhat disappointed because other amendments have not been adopted. We will continue to press for these amendments at the Committee stage.

As to some proposals that we have failed to make as a result of the ruling of the President, some of them are proposed by us while some others related to the DMCs are proposed by other colleagues.

Regarding the amendments to the DMCs, many people will say as conditioned reflex that DMCs are commercial contracts executed on the principle that they should not be amended unilaterally. But we should know that a DMC will come into effect when the first owner puts his signature on it, and it will then be binding on other owners. Therefore, can we have some terms that may be fairer and more impartial to the owners? As shares cannot be changed, and we understand that the unanimous consent of all owners are required in respect of changes in the shares, ownership of properties, management problems or problems involving shares. We also know that this is highly difficult in practical operation. Although this problem is not raised in the current amendments, the problem exists after all. Thus, I hope that the community, the Government, the owners and different quarters will continue to examine and discuss this problem.

Mr Albert HO has just mentioned the case with the Fairview Park. I would like to declare an interest for I am an owner of a house in the Fairview Park. Cap. 344 protects the interests of the owners but the existing provision is only related to the undivided shares. If we define such properties as the Fairview Park as having divided shares, it seems that we should hold discussions in this regard. Regardless of the number of shares, that is a fact and the interests of the owners should be protected, therefore, we should examine this. However, I am pleased that the Government has made an informal pledge in the course of deliberations by the Bills Committee that it is willing to take follow-up actions and consider the cases of these "minority group" of properties or house developments with "divided shares". I hope that it is not giving an excuse but will really take follow-up actions and consider the cases step by step. We would like the Government to consider these cases in future.

Madam President, the amendments to the Ordinance will after all improve the quality of building management and relax the control and restrictions placed on management by the owners. We hope that the new Ordinance as amended will bring about more satisfactory management of a large number of private properties in Hong Kong. As millions of Hong Kong people are flat owners, their interests should be better protected. These provisions can also encourage all the owners of old and new buildings alike to participate in building management more actively and voluntarily.

With these remarks, I support the Second Reading of the Bill.

**MR LEE WING-TAT** (in Cantonese): Madam President, I speak in support of the Second Reading of the Building Management (Amendment) Bill 2000. Mr Albert HO and Mr CHEUNG Man-kwong have explained some of the views which were put forward in the course of the scrutiny of the Bill, so I will not repeat them here. I just wish to make a number of other points.

Firstly, I think those who have the experience of assisting residents to form OCs will know that the formation of OCs is indeed a tall order. As I said in the Bills Committee, from my past experience, I think it is a more arduous task to form an OC than running in elections because on the one hand, we have to obtain proxies and we have to ask owners to attend meetings on the other. Furthermore, many disputes often arise in large housing estates as a result of divergence of opinions. Therefore, if I am not wrong, only less than 20% of all private buildings in Hong Kong have formed OCs. The rest of these buildings only have owners' committees which do not have statutory powers.

In this connection, the problem should not have been so serious if the property management companies in Hong Kong can do a better job. The problem is serious because on the one hand, the small owners do not have statutory powers to form OCs to handle on their behalf all related matters such as the management and maintenance of common areas. On the other hand, there is still room for improvement on the part of the local property management companies. While there is, of course, improvement when compared to the situation a decade or two ago, progress has been made rather slowly. Therefore, there are often divergent views between the management companies and the small owners and their owners' committees or OCs over many issues, such as building management, management fees adjustments, repair and maintenance, and so on. My view is that the Bill will only address part of the problem. First, as Members have said, a lower percentage of shares will be required for the formation of an OC. In fact, when the Bill was tabled at the Legislative Council, the Government initially did not consider whether the percentage of shares required for the formation of OCs in existing buildings should be prescribed. At first, the Government had only considered adopting a very low quorum requirement, that is, 10% of the number of owners, for buildings which are completed after the enactment of the Bill to form OCs; and the proposed quorum was even lower than what we expected. Subsequently, at the request of various political parties in the Bills Committee — I remember that on this question, we had, at many meetings, argued with Mr Peter CHEUNG on the

application of the Bill to existing buildings because the existing buildings, especially the older ones, are actually most in need of OCs to provide assistance for owners and to collect views. At the request of various political parties in the Bills Committee, the Government finally agreed to lower the percentage of owners required for the formation of OC in existing buildings. As many colleagues said just now, the relevant percentages will be lowered from the present 50%, 30% and 20% to 30%, 20% and 10% respectively. I think this represents a small victory to owners of existing buildings, and this will be helpful to them in setting up OCs in future.

Yet, I think the Bill still fails to address a diversity of management problems. In the course of the scrutiny of the Bill, there were views that great variations exist in the standard of local management companies. In some buildings, an elderly was employed as the janitor and he is the person responsible for managing the whole of a pencil building. He is the manager, the night-watchman and is also responsible for refuse collection; and he must take care of anything that happens in the building. Besides, there are also small management companies which do not meet the requirements of owners. Regrettably, the legislative amendments proposed by the Home Affairs Bureau this time failed to address these problems, so I hope the Bureau will conduct further studies on this basis in future. At present, many providers of service to the public are subject to certain checks and balances. For example, there is the Estate Agents Authority regulating real estate agents; and many service providers, be it organizations or individuals, have to comply with some sort of registration requirements and are subject to certain checks or supervision, but there is not anything as such for management companies. The Government may take the view that this can be done through a free market in that a management company which operates well will continue to have business, and owners may cease to use the service of a company with poor performance. It is true that if an OC can be formed and if it can exercise its powers, the owners are in a position to replace the management company. But as far as I understand it, it is not the wish of owners' committees to play this trump card since replacing the management company is almost the last resort. They hope that the services of the management company can be improved through negotiations or a regulatory authority or complaint mechanism. I hope that after the enactment of the Bill, the Government will give some thought to how improvements can be made in this regard.

Secondly, I wish to turn to mandatory building management and maintenance. I support this because there are now many old private housing estates and pencil buildings usually found in such districts as Wan Chai, North Point, Causeway Bay, Tsim Sha Tsui, Tai Kok Tsui and Mong Kok. They are not large housing estates. Neither are they built by major developers nor managed by well-established management companies with a good reputation. As I have said, they mostly employ an elderly caretaker to handle everything, or a small management company is engaged jointly by a number of buildings to take care of the buildings. Some of these pencil buildings are grossly dilapidated and plagued with problems. In view of the many incidents that happened in the past two years, such as the fire at Garley Building, the fire caused by a short-circuit in a building in Kwun Tong, and so on, the Government had been eager for some time to make the formation of OCs mandatory in all buildings, but this was subsequently found to be very difficult. However, I maintain that on the question of mandatory building management, we should first consider how the Home Affairs Department is going to assist owners of these pencil buildings to manage their buildings on their own. It is because to provide for mandatory management in law will involve a great deal of problems, such as which companies will be responsible for enforcing mandatory building management, and whether other disputes will arise from defaulted payment of management fees on the part of owners or tenants given that the contract so made is mandatory, just as some colleagues have pointed out. I very much hope that after the enactment of the Bill, the Home Affairs Department will provide more assistance for these pencil buildings which are most likely to be brought under the ambit of mandatory building management. I hope that the Government can help them improve the management of their buildings through education and assistance.

Thirdly, the requirement to take out insurance. I have brought this up in the Bills Committee time and again because those buildings with OCs will be required to take out public liability insurance after the enactment of the Bill. This will, in fact, involve many complications and as of today, the Government still has not given me a definite answer. What should a building with unauthorized structures do in view of the mandatory requirement to take out insurance? In its representation to the Bills Committee, the Hong Kong Federation of Insurers stated that for buildings with such structures, they hoped that the owners or the OC of the building can engage an Authorized Person, who can be an architect or engineer, to certify that those illegal structures do not pose



any danger or constitute other nuisances or problems. I think if an architect or engineer can be hired as the Authorized Person, the cost of which will surely not be cheap, if not exorbitant, would it not be better to remove the structures instead? Why bother engaging an Authorized Person to inspect if there is anything wrong with the illegal structures? The Government nevertheless did not admit that the purpose of this requirement is to expedite the removal of unauthorized structures. So, I think there are some uncertainties in it. I very much hope that in the next Legislative Session — the Buildings Department has repeatedly stated their intention to introduce legislative amendments to provide for mandatory building maintenance and mandatory removal of unauthorized structures — I hope that there will be a very clear position by then. In my opinion, if we should make it mandatory for OCs to take out insurance, we should seek to enable them to take out insurance in compliance with the laws in a very simple manner. Moreover, I hope that through the Home Affairs Department (HAD) and members of the insurance industry, such as Mr Bernard CHAN and his colleagues of the Hong Kong Federation of Insurers, the Government will step up publicity among OCs or owners on the scope of insurance coverage. It is because after the owners or OCs have taken out an insurance policy, they often mistakenly think that everything is covered. Mr Bernard CHAN has once treated me to a meal during which we talked about this issue. He told me not to think that everything is covered by an insurance policy and added that one must read clearly the scope of coverage listed out in the policy. I think after the enactment of the Bill, the Government and the Hong Kong Federation of Insurers should do more to tell owners that they must be clear about what are and what are not covered in the insurance policy. Obviously, the higher the premium, the more extensive the scope of coverage.

I also wish to make a few points which do not concern the provisions of the Bill. First, the deed of mutual covenant (DMC). I do not intend to repeat my views but I have very strong views on one point. That is, in the Legal Advisory and Conveyancing Office (LACO) of the Lands Department, most of the staff working there are lawyers who, I think, usually work in the office and seldom get in touch with the public. They are the gatekeepers for small owners because an overwhelming majority of DMCs are drafted by the developer and I believe owners will have no opportunity to read the DMC before buying their flats for the DMC is signed by the developer and the first small owner who is usually the estate agent of the developer or someone else. Personally, I have bought a

residential flat once or twice before but never have I read the DMC. I think a small owner is really smart if he has read the DMC before buying his flat. So, apart from the need of reviewing the DMC, as colleagues have suggested, I think the LACO also has to operate with a higher degree of transparency. In setting out the principles of the DMCs or examining the effects, they should listen more to the views of the public or OCs and indeed we have have a multitude of views in this regard.

Another area that I would like to speak on is the Building Management Resource Centre under the HAD. Over the years, many different political parties and colleagues in the Legislative Council have stated that the assistance provided for small owners by this Centre is very limited. While the Centre is now assisted by lawyers, owners wish to make a few points for the consideration of the Administration. First, should there also be assistance from other professionals? Other than legal assistance, the public badly needs assistance in the engineering aspects because with regard to the repair and maintenance of buildings or on the question of whether there are illegal structures, owners usually do not know how to read the plans — nor do we know how to read them — and the assistance provided by the HAD in this area is always insufficient.

On the other hand, I believe the HAD may have to put more resources into the Building Management Resource Centre so that it can promptly provide effective assistance when more and more buildings may be setting up OCs after the enactment of the Bill.

Madam President, with regard to my amendments, I will explain them in detail at the Committee stage. Basically, I believe that the passage of the Bill will be of great help to owners in participating in the management of their buildings. I also hope that after the passage of the Bill, the Home Affairs Bureau and the Planning and Lands Bureau will conduct a more comprehensive review of building management, repair and maintenance, mandatory removal, preventive repair and maintenance, and so on, and then introduce in the next Legislative Session a more comprehensive package of amendments to the Ordinance. Thank you, Madam President.

**PRESIDENT** (in Cantonese): Does any other Member wish to speak?

(No Member responded)

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, first of all, I would like to thank the Bills Committee under the leadership of Mr CHAN Kam-lam for its meticulous deliberations on the Bill.

As I said in introducing the Bill for Second Reading on 26 January, the Bill aims at taking forward the measures relating to the management of private buildings as proposed in the public consultation document on "Proposals to improve fire safety in private buildings" published in 1998 so as to enhance the responsibilities of owners on the management and maintenance of the buildings they own. This will help improve further the management of buildings in Hong Kong.

The major proposals in the Bill include the following five points:

- (i) To provide for the specification of building management and maintenance standards for compliance by owners' corporations (OCs) and to issue a code of practice for this;
- (ii) To add provisions to enable the Government to impose mandatory management of buildings with serious management and maintenance problems; and before this provision is enforced, our colleagues from the District Offices and other government departments will help the owners concerned solve their problems;
- (iii) To simplify the manner for owners of new buildings to form OCs;
- (iv) To require an OC to take out third party insurance in respect of common areas of a building; and
- (v) To require an OC of a building with more than 50 flats to appoint a qualified accountant to audit its accounts and financial records.

I am grateful to the Bills Committee for its support of the Bill. In the course of the deliberations by the Bills Committee, members and professional bodies concerned have proposed some amendments to the Building Management Ordinance. Most of these proposals have a positive impact on the enhancement of building management and so we have taken these on board and we will move Committee stage amendments in this respect.

I would like to take this opportunity to explain some of the major amendments we will move.

- (i) In order to facilitate the formation of OC in new buildings, clause 3(3) of the Bill proposes to enable those new buildings to convene meetings with a quorum of not less than 10% of the owners to appoint management committees (MCs). After discussing with the professional bodies concerned, we accept the idea that it may be difficult to invoke this provision in new buildings which are part of a large-scale phased development constructed by the private sector. We have therefore proposed an amendment to the effect that the method for convening owners' meetings with not less than 10% of owners to appoint an MC under the new section 3(3) should be applicable only after occupation permits in respect of all the buildings in a single property development (including a multi-phased property development) under a same DMC have been issued;
- (ii) For existing buildings, under the Buildings Management Ordinance, owners may form an OC by 50%, 30% or 20% of the shares. We have accepted the suggestion from Honourable Members to introduce an amendment to relax the share percentage requirements to 30%, 20% and 10% respectively. The amendment will facilitate owners of existing buildings to form OCs;
- (iii) Again, in response to the request of the Bills Committee, we have introduced an amendment to provide for the right of any co-owner of a flat under joint ownership to attend and vote in an owners' meeting personally or by proxy;

- (iv) After considering the views of professional bodies, we will introduce an amendment to the effect that the requirement for qualified accountants to audit the accounts of an OC be changed from certification of such accounts to preparing an audit report of the OC's accounts and to state whether or not the accounts are a true and fair record of the financial dealings of the OC;
- (v) We have accepted the suggestion of the Bills Committee to add provisions to the effect that in event of a resolution by an OC to terminate the appointment of a building management agent, the OC may enter into an agreement with the management company to make payment in lieu of three months' notice, and that shares which are not required or do not attract the liability to pay management fees will carry no voting rights in respect of such a resolution;
- (vi) We have added Schedule 11 to state clearly the method of counting the owners' percentage in the formation of a quorum to avoid any confusion which may arise in future.

The Legal Adviser to the Bills Committee has also scrutinized the provisions of the Bill and offered some valuable advice in certain technical aspects. We think that these are reasonable comments to make and we will move some Committee stage amendments of a technical nature later.

Apart from those amendment proposals which we have accepted, there are still some other amendments introduced by other members of the Bills Committee. As we have different views on these, we are afraid we cannot accept these proposals.

Later on when Honourable Members move their amendments at the Committee stage, I will explain why we cannot accept the relevant proposals.

The implementation of the Building Management (Amendment) Bill 2000 will greatly enhance the owners' powers and accountability in building management and maintenance so that work in these areas can be improved. We hope to implement the provisions in the Bill as soon as possible so that OCs can manage property in the private sector more effectively and that the interests of the owners and the public can be better protected.

Madam President, I commend the Bill and the Committee stage amendments proposed by the Government to Honourable Members.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Building Management (Amendment) Bill 2000 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

**PRESIDENT** (in Cantonese): Those against please raise their hands.

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority of Members present. I declare the motion passed.

**CLERK** (in Cantonese): Building Management (Amendment) Bill 2000.

Council went into Committee.

### **Committee Stage**

**CHAIRMAN** (in Cantonese): Committee stage. Council is now in Committee.

### **BUILDING MANAGEMENT (AMENDMENT) BILL 2000**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Building Management (Amendment) Bill 2000.

**CLERK** (in Cantonese): Clauses 1, 2, 5, 8, 9, 10, 12 and 13.

**CHAIRMAN** (in Cantonese): Will those in favour please raise their hands?

(Members raise their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): Clause 3.

**CHAIRMAN** (in Cantonese): The Secretary for Home Affairs and Mr LEE Wing-tat have given notice separately to move amendments to clause 3(3) and to add the new clause 3(4).

The Committee will proceed to a joint debate. I will call upon the Secretary for Home Affairs to move his amendment.

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam Chairman, I move to amend section 3(3) proposed under clause 3(b) and to add new section 3(4), as set out in the paper circularized to Members.

In the course of deliberations by the Bills Committee, the Real Estate Developers Association of Hong Kong (REDA) expressed its concern to the Bills Committee, opining that new section 3(3) of the Bill would pose difficulties when applied to multi-phased large property developments because prior to the full completion of these phased property developments, the owners of completed flats will account for only a small percentage of the owners of the entire estate. If 10% of this minority group of owners is allowed to form an owners' corporation

(OC), this may affect the interest of the majority of owners who move in later, and even the development of the remaining phases to be completed. Some members of the Bills Committee urged the Administration to reach a consensus with the REDA. As a result, many rounds of discussions with the REDA were held and a number of proposals explored. When a consensus is reached in many respects, the REDA put forward a proposal which is the present amendment. Having given serious thoughts to it, we think that the proposal made by the REDA can be accepted to address the special circumstances of multi-phased large estates. We therefore introduce a Committee stage amendment to put this into effect.

In this regard, the application of the proposed Committee stage amendment will be limited to multi-phased private developments only. Single phase property developments and developments which do not require the issue of occupation permits such as those under the Home Ownership Scheme and exempted houses in the New Territories can still be able to form OCs under the new section 3(3). Buildings which form part of an estate in a multi-phased property development can still form OCs by complying with the share percentage requirement of 30%, 20% and 10% respectively under sections 3, 3A and 4.

The major difference between the amendment proposed by Mr LEE Wing-tat and our amendment is as follows: our amendment will cause the formation of OCs under the method prescribed in new section 3(3) only after the issue of occupation permits to all of the buildings in a phased property development. The amendment proposed by Mr LEE Wing-tat permits the formation of OCs at any time three years after the issue of an occupation permit in respect of any of the buildings in that estate or group of buildings and when not less than 40% of the units of such buildings has been occupied. As a matter of fact, similar proposals have been studied in our meetings with the REDA and the result is that there will be difficulties in implementing this proposal and it will not be effective. Therefore, I implore all Members to support the amendment proposed by the Administration.

Thank you, Madam Chairman.

*Proposed amendment*

**Clause 3 (see Annex VIII)**



**CHAIRMAN** (in Cantonese): I will call upon Mr LEE Wing-tat to speak on the amendment moved by the Secretary for Home Affairs and on his own amendment. However, only when the amendment moved by the Secretary for Home Affairs is negated will I ask Mr LEE Wing-tat to move his amendment. But if the amendment moved by the Secretary for Home Affairs is passed, that will mean Mr LEE Wing-tat's amendment is not passed.

**MR LEE WING-TAT** (in Cantonese): Madam Chairman, this amendment basically deals with whether 10% of the owners of flats in a large scale multi-phase property development can form a quorum for the purpose of setting up an OC. I note the concerns of the developers that, firstly, this clause may violate the principle of the majority rules; secondly, it may cause disruptions to multi-phase developments; and thirdly, it may lead to factions competing to form OCs.

I wish to respond to their concerns. Firstly, on their concern that the clause may violate the principle of the majority rules, I would assure the developers that we will not abandon the principle of the majority rules. The proposed quorum requirement of 10% of the owners is applicable in specific circumstances only. It is a quorum requirement for a meeting convened for the purpose of appointing a management committee (MC). At the meeting, a resolution to appoint a MC would need to be passed by a majority of the owners present either in person or by proxy. Once the MC has been appointed and registered with the Land Registry, the subsequent operation of the OC will continue to be governed by the existing rules, whereby all matters pertaining to building management are normally decided through voting by ownership of undivided shares. To put it simply, the number of owners will affect the quorum required to convene a meeting; and firstly, the formation of an OC is subject to the voting result; secondly, while 10% of the owners can form a quorum, other resolutions concerning building management, repair and maintenance, and so on, will continue to be decided through voting by ownership of shares. In other words, a major developer possessing a majority of the shares can still exercise an influence on or even control the housing estate concerned.

Their second concern is that the clause may cause disruptions to multi-phased developments. The Mass Transit Railway Corporation has raised a similar point with the Legislative Council Bills Committee. An OC formed under section 3(b) will not result in a minority of owners controlling the OC.

For large-scale developments in multiple phases having one master DMC, developers would normally hold the undivided shares vested in the remaining undeveloped phases and therefore could vote in owners' meetings to safeguard the interests of future purchasers and themselves. Furthermore, as drafter of the DMC, the developer should be able to see to it that, in the case of a multi-phased development under different land grants and separate DMCs, the OCs of the earlier phases would not have authority over areas beyond the intended scope.

On the developers' third concern that the clause may lead to factions competing to form OCs, the Building Management Ordinance contains procedure for proper notice of an owners' meeting. All owners are thus assured of the opportunity to attend the meetings and vote. Madam Chairman, the three areas of concern to developers and what I said above in response to their concerns are, in fact, not my own observations. I have only read out the reply from Mr Peter CHEUNG, Deputy Secretary for Home Affairs, to the views of developers on 23 March 2000. Mr Peter CHEUNG, on behalf of the Government, argued very plausibly in response to developers' concern over the quorum requirement of 10% of the owners. I consider his response the best of the various responses made in this connection, so I read it out here and I take it as the position of the Government.

But it is a pity that Mr CHEUNG was transferred to another department in mid-May, with another official taking over his work. After two meetings, the Government made an about-turn, completely reversing all of its views that I read out just now. They said that the developers have put forward very cogent reasons, so they accept the developers' suggestion that this quorum requirement of 10% of the owners for the purpose of forming an OC should be applicable only after full occupation or occupation permits in respect of all buildings have been issued. I have misgivings about this sudden about-turn on the part of the Government. I do not understand the rationale of the Government for I do not see any argument more plausible than those of Mr Peter CHEUNG in addressing the concerns of developers. My only concern is this: Will the Government, yet again, succumb to pressure from developers? What are the considerations of the Government? According to the Secretary, difficulties are envisaged in enforcing the amendment. But regrettably, he did not explain in detail the enforcement difficulties involved.

In fact, my amendment is not an amendment in its absolute sense but, I think, a compromise instead. At present, for new pencil buildings, or those ready for full occupation in one go, OCs can be formed very quickly with a quorum of 10% of the owners. I did not adopt this quorum requirement for I agree that a multi-phased development, say, in three or four phases, may take as long as five to seven years to complete. If an OC is formed in the first year, it may be unfair to subsequent owners as the number of owners who have taken possession of their flats then may account for only 15% or 20% of the total number of owners. For this reason, this very modest requirement is not incorporated in my amendment. My amendment, which reads, "where the building ..... at any time three years after the issue of an occupation permit, ..... and when not less than 40% of the units has been occupied.", is a balanced measure proposed to the effect that owners cannot form an OC too easily in order not to affect owners of buildings completed in the intermediate and final phases. However, we cannot accept the Government's proposal under which the formation of OCs would entail excessive difficulties. Under the Government's proposal, owners almost have to wait until the final phases of a development before they will have a chance to form an OC in this manner. In the case of a four-phase development to be completed in 10 years, for example, owners must wait for 10 years until occupation permits in respect of all buildings have been issued. Therefore, my amendment is actually a middle-of-the-road proposal.

The Government may say that this is not the only option for owners, that is, they do not necessarily have to invoke the 10% requirement. Aside from the threshold of 10%, they may also base on other quorum requirements of 30% or 20% of the owners, as provided for in the subsequent amendments which may be passed by Members later on. That is, if a quorum of 30% of the owners cannot be obtained, they may try to meet the requirement of 20%, and so on. But I would like to tell the Secretary that the residential units in many large scale multi-phased developments do not take up 100% of the shares. From my experience, the commercial units and carparks in most of the large scale developments take up 30%, 40% or even over 50% of the shares. I note that the DMC of a well-known public corporation is very special in that the shares taken up by the residential units are just below 50%, which means that the developer is in possession of over 51% of the shares through the commercial units and carparks. In other words, if the developer raised objection, it would be impossible to form an OC for good under the old rules. A phenomenon that we observed is this: The commercial units and carparks in large scale developments usually take up a majority of the shares. If, for instance, the

commercial units and carpark take up 50% to 60% of the shares, it would be very difficult to get 30% out of the remaining 40% to 50% of the shares taken up by residential units. While I think that the proposed requirement of 30% may not be entirely impossible, it goes against the principle of the amendment, that is, to facilitate the formation of OCs by further simplifying the relevant procedures. Nonetheless, the Home Affairs Bureau has not told us the reasons for their complete reversal on this issue. I wonder if it is due to a new Deputy Secretary taking office (which seems not to be the case since Mr LAN has all along been the Secretary) that they have made an outright about-turn as such.

Under the Government's proposal, an OC can be formed only when the property development has reached its final stages. I think this will deprive the owners of their rights to participate in the management of their buildings. The developers raised the point of whether OCs will oppose everything initiated by major developers. I do not quite understand this mindset of the Government and major developers. I feel that the people of Hong Kong are generally timid and afraid of getting into troubles. To be honest, they will not resort to protests, assemblies or taking to the streets if not for gravely pressing issues. To the people of Hong Kong, who work intensely and who immerse themselves in making money, prefer to go to restaurants, watch a movie and go shopping over the weekend. To say that owners will oppose everything that major developers propose is, I think, unfair to small owners. Given that the small owners are unable to form their OCs, they do not even have an effective channel to put forward many reasonable proposals or ideas.

I very much hope that Honourable colleagues, after hearing my explanation, will see that my amendment actually does not go for the minimum quorum requirement which requires only 10% of the owners who take possession of their flats at early stages. My amendment is just a middle-of-the-road proposal between a very modest requirement and the proposals of the Home Affairs Bureau and developers. Under my amendment, a building can form an OC only three years after the issue of an occupation permit and when not less than 40% of the units has been occupied. I consider this very reasonable and a balanced measure which is fair to both the developers and small owners. I hope Members can support my amendment. To render support to my amendment, Members must first oppose the amendment of Secretary David LAN. So, I hope Members will first join me in vigorously opposing the amendment of Secretary David LAN and then throw weight behind my amendment. Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): Members may now debate the amendments moved by the Secretary for Home Affairs as well as the amendments by Mr LEE Wing-tat.

Does any Member wish to speak?

**MR HOWARD YOUNG** (in Cantonese): At the start of this debate, Mr Edward HO told us that multi-storey residential buildings were rare in the rest of the world, and they were the unique feature of Hong Kong. As far as I can recall, the first large-scale housing estate in Hong Kong was constructed at Lai Chi Kok around the 1960s, when there were not as many regulations as there are today. Later, housing estates of a relatively larger scale were also constructed in the Eastern and Southern Districts on Hong Kong Island during the 1970s. I was then living in company quarters, and there, I witnessed the completion of one of these housing estates. I understand that most of the people who came to Hong Kong from overseas in the 1990s were not tourists. They were businessmen. At that time, large-scale housing estates were a favourite stop for tourists, and when they came to Hong Kong, they would often visit these housing estates, either for sightseeing or fact finding. Many people from the Mainland even said that they would learn from Hong Kong and construct similar housing estates in the Mainland. This is indeed an achievement of Hong Kong.

I remember that in 1987 when I took a trip to Scandinavia, and I visited one of the countries — I cannot recall now whether it was Sweden or Finland, I read from a magazine there that they had invented a revolutionary mode of housing for the new century, where the people were also provided with entertainment, shopping and even parking facilities. I was surprised to find that Scandinavia was so advanced. So, I caught a bus, trying to look for that very place. The bus travelled for almost an hour, and when I spotted the place, the bus had almost gone past it. When I finally got there, I found that there were just about five buildings, each with some 10 storeys, a few shops and a two-storeyed carpark. So, I realized how exaggerated the magazine article had been. Comparing them to the new towns and housing estates in Hong Kong, we were actually much more advanced. I also thought that if Hong Kong was to learn from them, we should look for the kind of living environment that could not be found in Hong Kong. Hong Kong is really second to none when it comes to the development of large-scale housing estates, in terms of construction techniques, design or management facilities.

Many people have recently become jobless, and our economy is also in very poor shape. If there are no small and medium enterprises, no employers, how can there be jobs? How then can workers make a living? If there are no large property developers in Hong Kong, how can there be any housing estates? Large housing developments are something that small companies cannot possibly handle. So, I think we really have to be fair and admit the contribution of property developers in this respect. Unfortunately, very often, whenever people think of property developers, they would regard them as scourges that would do nothing but evils, or they would simply think that property developers are the natural enemies of residents and tenants. I think such a view is wrong. I am not in the property development business, but I have the experience of living in large-scale housing estates. Property developers all wish to maintain a good relationship with residents because they want business. If they fail to provide good management services, or if the designs of their housing estates are poor and plagued with many problems, then there are bound to be many conflicts and disputes. In that case, who would buy the flats to be built by them in the future? So, there are very good reasons to believe that property developers wish to maintain a good relationship with individual property owners and provide good management services.

Moreover, it is a common practice in Hong Kong to develop a housing estate in a number of phases. One example is Taikoo Shing, the construction of which started in the 1970s and took far more than three years to complete. I am a bit worried if an owners' corporation (OC) is set up for a housing estate at too early a time. This may lead to the formation of many systems and rules even at the very early stage of development, when half, or even more than half, of the construction works are yet to be completed. And then, by the time when the construction of the housing estate is eventually completed, the founders of the OC may have already sold their units and moved out. In other words, by that time, there may well be a different group of owners. I understand that some facilities may be built for the whole housing estate, but still, there may be arguments. Following the completion of phases I and II, the owners of phase III may want to change the planned location of the refuse collection centre and have it constructed in another phase, and they may also want the bus terminus or entertainment facilities to be constructed near their phase. All these may involve changes in the original planning, and owners of the early phases of a housing estate may have views and demands different from those of later phases. This leads me to think that the proposal of the Government is actually able to take account of different opinions.

I have just said that phased housing development projects are an achievement of Hong Kong. To keep up such perfect quality in the course of developing planned housing estates, it will be appropriate to set up an OC only after the issue of occupation permits. Some Members said that if the percentage of owners required for the establishment of an OC is set too low, some people may ask for changes on various excuses after the establishment of the OC, and these Members said that they do not want this to happen. They went on to say that if only 10% of owners are required, two OCs, three OCs or even 10 OCs may be formed, and it is not good for it may become a farce. Some may of course argue that it is simply impossible for such a scenario to occur, but I am still worried. While I support the amendment of the Government, I do not think that it is impossible to work out some ways to enable owners of the early phases to voice their opinions, and this applies even to tenants, for tenants should also have the right to comment on the management of the housing estates where they live. I notice that some property developers are already doing this, which is why I also wish to promote such a practice among Members.

As for housing estates for which OCs have not been set up, large-scale property developers are all the more obligated to help tenants and residents to establish some consultative bodies similar to advisory committees or management committees, so that they can communicate with residents more frequently to gauge their views. Although this is not required by the law, if property developers can do this, I am sure that many will be benefited, including residents, owners of the early phases and later phases and even property developers themselves, when they sell their housing units in the future. For all these reasons, the Liberal Party will support the amendment of the Government.

**CHAIRMAN** (in Cantonese): Does any other Member wish to speak?

**MR GARY CHENG** (in Cantonese): Madam Chairman, the amendment now under discussion involves quite an important topic. The DAB does not think that the amendment moved by Mr LEE Wing-tat is really perfect, and in fact, during the discussions, many Members have put forward many other views. However, we also think that the amendment put forward by the Government, having taken account of all these views, is still plagued with many problems, one example being the fairness or otherwise to owners who moved in at the early phases of a housing estate.

Before expressing our views on this point, I wish to comment on the remarks delivered by Mr Howard YOUNG just now. In the absence of an OC, or if an OC cannot be established, the developer may of course set up other consultative bodies such as an owners' committee. However, I must say that an owners' committee and an OC are indeed two completely different things, because they are different in nature. The members of an OC may well face a very difficult job, and there may be many disputes and problems, but they are vested with real powers and they can exercise their powers independently. In contrast, an owners' committee is nothing but an advisory body, and the most it can do is to introduce limited improvements and conduct mere discussions in respect of their living environment and conditions. In the final analysis, they cannot exercise their powers as owners of undivided shares.

The DAB has reservations about the amendment of the Government, and it will not support it. As for the amendment of Mr LEE Wing-tat, we also think that it is not entirely satisfactory despite his claim that it represents a middle-of-the-road approach. However, since the original intent of the amendment of the Government is to relax the requirements to allow owners to form OCs more easily, we will support the amendment of Mr LEE Wing-tat.

**CHAIRMAN** (in Cantonese): Secretary for Home Affairs, do you wish to speak again?

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, I just want to raise one point. I have just explained the issue of 10% of the owners and I hope Honourable Members will lend us their support. We are not saying that owners in property developments with more than one DMC cannot set up OCs. However, as I have said, owners can still form OCs according to the share percentages of 30%, 20% and 10% as prescribed in the amended sections 3(3)(a) and 4. I just want to make that clear.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Home Affairs be passed. Will those in favour please raise their hands?

(Members raised their hands)



**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr LEE Wing-tat rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr LEE Wing-tat has claimed a division. The division bell will ring for three minutes.

**CHAIRMAN** (in Cantonese): Will Members please proceed to vote.

**CHAIRMAN** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Kenneth TING, Mr David CHU, Mr HO Sai-chu, Mr Edward HO, Dr Raymond HO, Mr Eric LI, Mr LEE Kai-ming, Mr NG Leung-sing, Prof NG Ching-fai, Mrs Selina CHOW, Mr Ronald ARCULLI, Mr MA Fung-kwok, Mr HUI Cheung-ching, Mr Bernard CHAN, Dr LEONG Che-hung, Mrs Sophie LEUNG, Mr Andrew WONG, Dr Philip WONG, Mr Howard YOUNG, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Ambrose LAU, Miss CHOY So-yuk, Mr Timothy FOK, Mr TAM Yiu-chung, Mr FUNG Chi-kin and Dr TANG Siu-tong voted for the motion.

Miss Cyd HO, Mr Albert HO, Mr Michael HO, Mr LEE Wing-tat, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Dr LUI Ming-wah, Mr James TO, Mr CHEUNG Man-kwong, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, Mr CHAN Wing-chan, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Mr Gary CHENG, Mr SIN Chung-kai, Mr WONG Yung-kan, Mr Jasper TSANG, Dr YEUNG Sum, Mr YEUNG Yiu-chung, Mr LAU Chin-shek, Mr LAU Kong-wah, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah and Mr LAW Chi-kwong voted against the motion.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that there were 55 Members present, 27 were in favour of the motion and 27 against it. Since the question was not agreed by a majority of the Members present, she therefore declared that the motion was negatived.

**DR LEONG CHE-HUNG** (in Cantonese): Madam Chairman, in accordance with Rule 49(4) of the Rules of Procedure, I move that in the event of further divisions being claimed in respect of other provisions of the Building Management (Amendment) Bill 2000, the Committee of the whole Council do proceed to such divisions immediately after the division bell has been rung for one minute.

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That in the event of further divisions being claimed in respect of other provisions of the Building Management (Amendment) Bill 2000, the Committee of the whole Council do proceed to such divisions immediately after the division bell has been rung for one minute. Does any Member wish to speak?

**CHAIRMAN** (in Cantonese): Mr LEE Wing-tat, do you wish to speak on the question on the division bell being rung for one minute?

**MR LEE WING-TAT** (in Cantonese): No.

**CHAIRMAN** (in Cantonese): Does any Member wish to speak?

(No Member responded)

**CHAIRMAN** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority respectively from each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee, who are present. I declare the motion passed.

I direct that in the event of further divisions being claimed in respect of other provisions of the Building Management (Amendment) Bill 2000, the Committee of the whole Council do proceed to such divisions immediately after the division bell has been rung for one minute.

**CHAIRMAN** (in Cantonese): Since the amendment moved by the Secretary for Home Affairs has been negatived, I now call upon Mr LEE Wing-tat to move his amendment.

**MR LEE WING-TAT** (in Cantonese): Madam Chairman, I move the amendments to proposed section 3(3) in and the addition of new section 3(4) to clause 3(b), as set out in the paper circularized to Members.

Madam Chairman, can I speak now?

**CHAIRMAN** (in Cantonese): Mr LEE, at the Committee stage, all Members are allowed to speak.

**MR LEE WING-TAT** (in Cantonese): Madam Chairman, this outcome is somewhat unexpected, and I have not thought that even the decision of the DAB would be negatived. I think we really have to handle this matter very carefully. If my interpretation is correct, once my amendment is also negatived, there will be no amendment to clause 3(3). In that case, I hope that the Secretary can tell us what the consequences are. Does this mean that the percentage of owners for

phased property developments will be the same as that for single-phase developments? Does this mean, in other words, that only 10% of owners of the early phases of development can already meet the requirement of setting up an OC? I hope that the Secretary can examine as soon as possible whether this will really be the case because Members have to vote on this.

When it comes to my proposal, I must say that I do not support the original proposal in the Bill, and so I have proposed a middle-of-the-road approach. I do not think that an OC should be set up just by mustering a mere 10% of the owners one or two months immediately after the occupation of the early phases of a property development project. The Democratic Party is opposed to this. We think that an OC should only be set up at least three years after occupation, and the minimum percentage should be 40%. I guess that if colleagues of this Council oppose my amendment, we will only get something even more extreme than my proposal in the end. I do not know whether such a conclusion is correct.

I hope that the Secretary can really give us an answer, or else those Members who oppose my amendment will fail to know what the final outcome will be. I hope that the Secretary can support my amendment, because we have only two options now. One of them may lead to a very extreme outcome: In the case of a four-phase property development project, for example, an OC can already be set up as early as the initial period of occupation, just by gathering 10% of the owners who have moved in. The second option is to support my amendment, which represents a middle-of-the-road approach. Under my proposal, an OC can only be set up at least three years after occupation, and the minimum percentage of owners is 40%. I hope that the Secretary can explain the respective consequences of these two different options lest colleagues of this Council may really think that things will be "O.K." once they have negated my amendment. Well, things are not going to be "O.K.", and the situation may well be far worse than that foreseen by the Secretary. The rejection of my amendment will lead to an outcome which I hate to see, because an extreme situation will arise.

I shall stop here for the time being because this is now the time for Committee stage debate. With leave from the Chairman, I shall speak again as early as possible. However, in the meantime, I hope that the Secretary can first clarify this point. Thank you, Madam Chairman.

**MR EDWRD HO** (in Cantonese): Madam Chairman, actually, I wish to seek your approval to suspend the meeting for five minutes, so that we can have time to discuss whether or not we should support Mr LEE Wing-tat's amendment. Thank you.

**CHAIRMAN** (in Cantonese): Mr Edward HO, please sit down first. I now declare the meeting suspended.

**MR LEE WING-TAT** (in Cantonese): Perhaps, we should not make the whole thing so complicated. I think it is better for the Secretary to explain the consequences of the two options, because up to now, Members do not know what consequences there are if they support, or oppose, my amendment. I believe that the views of the Secretary on this should be authoritative .....

**CHAIRMAN** (in Cantonese): Mr LEE, please sit down first. Under the Rules of Procedure, the Secretary will definitely have a chance to speak. And, actually, Members can exchange their views on this during the time when the meeting is suspended.

I now declare the meeting suspended. When the meeting resumes, I shall call upon the Secretary to speak.

5.42 pm

Meeting suspended.

6.08 pm

Council then resumed.

**CHAIRMAN** (in Cantonese): Honourable Members, before the suspension of the meeting, Mr LEE Wing-tat asked the Secretary to give his comments. However, the Secretary is not in this Chamber now. Does any Member wish to speak while we wait for the Secretary to return?

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): Let us wait for one minute, and if the Secretary for Home Affairs does not return after that, I will suspend the meeting until he returns to this Chamber.

**MR ANDREW WONG** (in Cantonese): Madam Chairman, as the saying goes: "In the country of the blind, the one-eyed man is king." So, perhaps, you would allow me to say a few words first. I was a member of the Bills Committee, but I attended only half of its meetings. I would say that the entire matter has not been handled satisfactorily, because when amendments to this building management Bill were first proposed, it was said that a thorough review had been conducted. However, in fact, the review is never as meticulous as claimed, and it is a patchwork effort made to introduce more latitude to those relatively stringent provisions of the Ordinance. But these amendments also go too far in introducing latitude, failing to solve many problems at all. One example is the question of quorum. Concerning the issue of defining ownership for the purpose of establishing an owners' corporation (OC), the quorum proposed in the Bill is set on a "head count" basis. But when it comes to voting, ownership is defined on the basis of shares. There are indeed many problems, and I do not want to dwell on them here. But where is the main problem? Even in the case of a single-phase property development, under the Government's proposed amendment to the original Ordinance, 10% of the owners can already form a quorum, and a decision on forming an OC can already be made if there is majority support from the shares held by the owners present (not majority support from all the shares of the entire property development). In other words, right after the signing of the DMC, just three or five owners who have moved in can already form an OC regardless of how many phases of development are yet to be completed. It does not matter whether the project is to be developed over 10 years, eight years or even one year. In all cases, an OC can already be set up when most of the units are sold. So, many people with ulterior motives — let us perhaps not call them people with ulterior motives; they may be people involved in politics, or they may be not — may start to stir up troubles. Will an OC thus formed really work for the interests of residents? I doubt it, honestly.

Admittedly, if the requirements are too harsh, and if things are thus delayed severely, it will not be acceptable either. That is why I found the amendment proposed by the Government acceptable, because it is better than Mr LEE Wing-tat's amendment, because Mr LEE's proposal is far harsher than the

10% requirement originally proposed in the Bill. Having said that, I must add that I still have some worries about the amendment of the Government, and it is fortunate that it has been negated. I hope that having voted down the amendment of Mr LEE Wing-tat, Members will also negative the original clause 3 proposed by the Government, because the percentage is far too low when only 10% of all the owners can already set up an OC. Under the original clause 3, an OC can already be set up for a property development which takes 10 years to complete as early as units in phase I are offered for sale, that is, right after initial sale when only a few households have moved in. This is not satisfactory at all.

I hope that Members will first vote down the amendment of Mr LEE Wing-tat. I very much respect Mr LEE Wing-tat, and I also think that he was right and reasonable in saying that the relevant requirements should not be relaxed excessively, for this might make OCs sources of many troubles. However, I also have reservations about the 40% restriction; I think that there may be problems if a mere 40% occupation rate is made a sufficient requirement for the setting up of an OC in the early stages of development or before the entire project is completed. As for the three-year requirement, the time spent on uncompleted works may also have to be included. Therefore, Members should first vote down Mr LEE Wing-tat's amendment. Following this (that is, if I can persuade Members to vote down his amendment), when the Chairman put the question to Members that the original clause 3 stand part of the Bill, I hope that they would also cast a negative vote. Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): Does any Member wish to speak?

(No Member responded)

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): I would try to talk about what would happen if the amendment proposed by Mr LEE Wing-tat was negated. If his amendment is negated, then clause 3 of the original Building Management (Amendment) Bill on the proposal to have not less than 10% of the owners in a completed building to convene a meeting and form an OC by a simple majority resolution will not be amended. As to the appointment of members of a management committee, such as the chairman and the secretary, and so on, it will be decided by voting according to the shares held. Mr LEE

Wing-tat asked earlier if I could support his amendment. I think from the position of the Government, it is not proper for us to make our stand known in this respect. Thank you, Madam Chairman.

What I have said is a brief explanation of what would happen if Mr LEE Wing-tat's amendment is negatived.

**MR ANDREW WONG** (in Cantonese): Madam Chairman, I wish to ask the Secretary a question. Is the Government still of the view that the original clause 3 is appropriate? Is this the reason why the Secretary is so indifferent when it comes to the question of whether or not Members are going to support the original clause 3? Or, does the Secretary still hope that Members can support the original clause 3? I wish to hear a clarification on this point, because I am really puzzled — while the Secretary opposes Mr LEE Wing-tat's amendment, he also refuses to say how he thinks about the original clause 3 moved by he himself. Actually, clause 3 was moved by the Government. Madam Chairman, I hope that the Secretary can make a clarification on the position of the Government.

**CHAIRMAN** (in Cantonese): Secretary for Home Affairs, do you wish to speak again?

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): I was trying to say that we would not withdraw our original proposal. However, after listening to the views expressed by all parties, we feel that there is one possible way and so we have introduced a Committee stage amendment in the hope that we can provide a practical proposal which is acceptable to all for discussion and voting in this Council. As to the outcome of the voting, it will be up to the decision of Honourable Members. Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): Honourable Members, let me give a brief explanation since Mr Andrew WONG is very eager to help everyone of us to understand the matter. If Mr LEE Wing-tat's amendment is passed, then Members will need to decide whether the amended clause 3 will stand part of the Bill. But if Mr LEE's amendment is negatived, that will mean the two



amendments are all negated. Then we have to go back to deal with clause 3 of the original Bill. Then, I will ask you to vote on the question of whether clause 3 should stand part of the Bill. If the outcome of the voting is that the motion is passed, then clause 3 will stand part of the Bill. If it is negated, then the Building Management (Amendment) Bill will have no clause 3. I think that is clear to everyone.

**MR ANDREW WONG** (in Cantonese): Madam Chairman, just a point of elucidation. The Secretary said just now that the Government had wanted to withdraw the whole thing. Does this mean that the Government had wanted to withdraw clause 3 of the Bill, that is, only 10% of the owners will already be able to convene a meeting? What does the Secretary mean by the withdrawal? The Secretary wanted to withdraw the whole thing, but then he managed to work out a better amendment which could be moved at the Committee stage. He eventually moved this amendment, but it was subsequently defeated. What does the Secretary mean by withdrawal?

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): As far as I can recall, I have not used the word "withdraw" alone. I have said we will not withdraw our original Bill. I was not saying that we would withdraw. It will not be withdrawn. If I have to make that clear, that is what I have to say. Just now I have explained why we have introduced an amendment. That is because after listening to the views from all parties, the Administration thought that there would be a possible way that could be accepted by all parties and it would work. So we have introduced this Committee stage amendment. It remains, of course, that how this amendment will fare is entirely up to Honourable Members.

**MR LEE WING-TAT** (in Cantonese): Madam Chairman, I urge Honourable colleagues to support my amendment.

As we can all see, the fact is there. The voting result was 27 votes to 27 votes. Like it or not, this is the vote.

When we compare the original clause 3 and my amendment with the amendment put forward by the Government, we will see that the original proposal of the Government can better facilitate the formation of OCs. The later amendment put forward by it represents a more stringent approach. And, my amendment is in the middle of the two.

I do not think that my amendment will do any harm to property developers, nor do I think that it will do any harm to the Government either. Actually, the original clause 3 proposed by the Government allows more latitude than my amendment. So, in a way, my amendment has been moved more or less out of the desire to balance the interests of owners and property developers. As rightly pointed out by Mr Andrew WONG, I do not seek to enable owners to form OCs right after occupation. My proposal is, for new and phased development projects in which buildings have to be completed in a number of different phases, the right of forming an OC should be exercised only three years after occupation, and when the rate of occupation has already attained 40% or more.

Moreover, let us not forget that in case the developer of a development project has not sold all its flats, it can actually vote down the formation of any OC. Besides, even after the formation of an OC, all resolutions not connected with the formation of the OC, such as those concerning the management and maintenance of the phased development in question, will not be voted upon on the basis of the number of owners, but on the basis of ownership shares. As we all know, in general, the developer often holds the largest number of shares. Therefore, even if my amendment is passed, it can at best provide nothing more than a mechanism under which owners can set up an OC to voice their views. If, after the implementation of my amendment, there is any proposal which may harm the interests of the developer, I am sure that with the shares it owns for the uncompleted phases, it can already vote down the proposal.

It is very much a pity that Mr Andrew WONG has not urged colleagues in this Council to support my amendment. If even my amendment is negatived, what is left will just be the original clause 3, and, compared to my amendment, this clause can actually make it even easier for owners to set up OCs. However, Mr Andrew WONG has called upon Members to negative this amendment as well. I do not think that this is appropriate at all. Many owners have been waiting for years, and finally, the Bill is put before the Legislative Council. But

then, in the end, they are still denied any means through which they can form OCs more easily than before. They still end up having nothing at all.

For this reason, I hope that Members can consider very carefully whether the passage of my amendment will really produce the great impact on property developers as imagined. I do not think that this will be the case.

Therefore, I hope that Members can uphold the interests of owners and support my amendment. If they cannot support my amendment, I still hope that they can support the original motion, so that clause 3 can stand part of the Bill. In other words, I hope that when the Chairman moves that clause 3 stand part of the Bill, they can cast a positive vote. I wish to say once again with all sincerity that if Members vote down both my amendment and the original clause 3, owners will have to suffer immensely. I am sure that they will all be very unhappy.

I hope that Members can support my amendment. If they cannot, I urge them to support the original clause 3.

Thank you, Madam Chairman.

**MR ERIC LI** (in Cantonese): Madam Chairman, towards the end of each Legislative Council Session, many unexpected and strange things will always crop up. On this motion, I think many Members will share my view that it is indeed highly controversial, and this can in fact be shown by the voting results. Besides, the views inside this legislature are also divided. I also suspect if those Members who have not participated directly in the scrutiny of the Bill can really understand the whole matter thoroughly, or whether they have any thorough understanding of the Bill at all. This is perhaps the reason why they found it necessary to consider the matter so thoroughly before voting.

It is naturally very good if we can reach a decision on the Bill today; however, we may fail to solve all the problems by voting today. But although the current Session is coming to an end, we should not thus think that it is going to be the end of the world anyway, because a new Legislative Council will be formed in October following the elections. I think Members now have a question in mind, and I hope that the Secretary for Home Affairs can give an answer to it. If it really turns out that all the proposals today have to be shelved,

then, as Mr Andrew WONG has asked just now, what is the Government going to do? Members have already made it very clear to the Secretary that they do not find the original motion the most satisfactory. I therefore hope that he can take some actions in response. Members' views are divided. In the next Session, that is, when the Legislative Council resumes, will the Government put forward other proposals or new amendments, so that Members can have enough time to scrutinize the whole thing in detail? Does the Secretary have any plans in this respect? Members' views are no doubt divided, but if they know that there will be another opportunity to scrutinize the matter in detail, they may well look at the whole thing differently. Thank you, Madam Chairman.

**MR ALBERT HO** (in Cantonese): Madam Chairman, I cannot quite catch the question asked by Mr Eric LI. Is he saying that the Secretary should withdraw the Bill? I do not know whether this is what he means. Put simply, the Bill contains just three major proposals. The first one involves lowering the quorum of meeting for setting up an owners' corporation (OC) in a newly completed building to 10% of all owners; the second involves the establishment of OCs for the purpose of managing mandatory building maintenance; and the third involves insurance matters. These three proposals are all the proposals found in the Bill. Surely, there are arguments, but I simply do not think that such arguments are really so acute, so acute that Members have to veto the entire Bill or any of its major proposals. If Members really have such strong views about the Bill, why did they not voice their opinions during the resumption of Second Reading? Mr Andrew WONG did not speak at that time, and neither did Mr Eric LI. If they are really so strongly opposed to clause 3, then, to begin with, they should have said so during the resumption of Second Reading. Besides, there should be no reason for them to support the amendment moved by the Secretary for Home Affairs. They should have insisted throughout that this clause should not stand part of the Bill.

What kind of impression do I get from them? Well, my impression is that they have simply been doing their utmost to fight for the implementation of the demands made by the REDA. In case they cannot have it their way, then it had better make sure no one will come out winners. I really cannot understand why they should adopt such a position, such an attitude. It beats me. If their position is really consistent throughout, and if they really do not support the quorum of 10%, they should have also negated both the proposals of Mr LAN and Mr LEE Wing-tat. And, they should also have insisted that clause 3 should

not stand part of the Bill. Only this is fair. But what is happening now is that when they see that Mr LAN's proposal stands no chance of passing at all, and also since they do not like the proposal of Mr LEE Wing-tat, they are proposing to pull down the whole thing. They even give people the impression that they wish to shelve the entire Bill — I am not sure whether I have misinterpreted the intention of Mr Eric LI. However, by saying that we can scrutinize the whole thing at a later time, does he mean that he wants the Bill to be withdrawn now? If the answer is yes, then, I am strongly dissatisfied. I cannot help asking, "If these Members' opinions are really so different, why did they not raise their opposition earlier?" And, I must also ask, "In what stand are we supposed to speak in this Chamber this morning? In the position of just a particular commercial association? And, if these Members fail to achieve their purpose, are they going to blow up the whole thing?" Thank you, Madam Chairman.

**MR ANDREW WONG** (in Cantonese): Madam Chairman, I will not repeat my points earlier. I will introduce some new points. I wish to clarify that even if a Member does not speak during the resumption of Second Reading, it does not necessarily mean that he or she is "dumb". Nor does it necessarily mean that he or she has no opinion at all. Since the object of the Bill is to improve building management, I have held the view that as long as some provisions of the Bill can generally bring about the improvements desired, I should not put up any unnecessary hindrances, nor should anyone escalate the issue either. For this reason, I must say that the remarks delivered by Mr Albert HO a moment ago are going overboard, and I am strongly dissatisfied. Mr Albert HO was a member of the Bills Committee, and he had the opportunity to listen to my opinions. He should also know that I failed to attend the meetings of the Bills Committee quite often. However, people should realize that I chose to be absent only because I knew that the meetings were going to discuss technical details, one example being the issue of quorum. However, let me tell Members that from my experience of working for my constituency, I notice that many owners and residents do want to set up OCs, but I have also met many who are in very strong opposition. Besides, one should never think that simply by lowering the quorum to 10% of all owners, things will all go smoothly. Do Members know the procedure of forming an OC now? Well, a person, any person, only needs to obtain a certificate from the District Office and he will be given a full list of all the owners of a building and their addresses. With this, he becomes the only person who has the sole right to form an OC. He will be the only person who can locate all the owners. The certificate is to be obtained on a first-come-

first-served basis. The group of persons who succeed in getting the certificate can control the development of an OC for the building; others are barred from doing so. This is precisely what is so political about the whole matter.

I would say that it is inadvisable to turn an issue involving owners' interests into a battlefield for political parties. To be very frank, I wish to see improvements, and I agree entirely that big developers should not be allowed to bully the people. However, at the same time, when it comes to a matter involving all owners, we must make sure that political differences will not be allowed to turn OCs into venues of pursuing any political ambitions of individuals. Owners' interests and political ambitions should be two separate issues. An OC should not be politicized. Its sole purpose should be to further owners' interests instead of allowing itself to turn into a venue where political parties scramble for influences. In some cases, practically all the posts in the management committee of an OC are held by members from one single political party. If people can realize this, they will be able to notice how sensitive the issue is. This is also a major issue, a serious problem, which needs to be looked at in a comprehensive manner. It is a pity that the Home Affairs Bureau has not conducted any comprehensive review in this respect. Instead, it has tried to rush in a Bill like this. That said, despite my dissatisfaction, I still agree that improvements should be made, and for this reason, I have decided to let the Bill proceed, with my silent approval.

Finally, I should add one last remark: One who does not speak is not necessarily dumb, and one who has said a lot may not necessarily be speaking sensibly at all.

**CHAIRMAN** (in Cantonese): Mr Albert HO, do you wish to make a clarification, or do you wish to debate?

**MR ALBERT HO** (in Cantonese): I wish to give a reply, but I shall be very brief. Madam Chairman, as I listened to Mr Andrew WONG, I was terribly shocked, for he simply escalated the matter to a cardinal political issue, ostensibly thinking that he was speaking more on the side of owners than property developers. Actually, as a directly elected Member, Mr WONG should have many opportunities to serve property owners, and he should thus know very well what difficulties there are. If he is unable to do anything for

them, or if he does not know how to do his job, he should leave it to others instead of accusing them for furthering their partisan interests and expanding their spheres of influences. This is an irresponsible accusation. As Members are aware, I have never criticized any colleague for serving any residents, and sometimes, when I encountered difficulties, I even told my clients that they should not seek assistance from one single Member only. I told them that they should seek help from more Members, because there was always a limit to what one single Member knew and could do. Therefore, I often advised them to seek assistance from more Members and more political parties. The fact is that we frequently offer assistance to people, but very often we do not even mention the name of our political party. This is precisely the kind of political culture that we need to build up now. Therefore, please do not drag all things into this discussion, because this will only show that while the person concerned is either ill-informed or incompetent, he is also unwilling to let others do the job for him.

I simply wish to stress that in the course of serving its constituents, a political party, any political party, must always attach primary importance to the residents' interests instead of seeking to expand its influence. At the same time, however, the fear of being criticized for expanding its influence should not lead it to ignore the residents' interests either. Actually, property developers as majority owners have been holding an argument like this: If OCs can be set up too easily, some people would try to extend their evil influences to residential buildings. However, I must ask, what will happen if it is extremely difficult to set up OCs? If this is the case, property developers as majority owners will be able to exert control through various means. They may, for example, dictate who can become members of owners' committees and then put everything under their control. In many housing estates, owners are still reluctant to set up an owners' committee even several years after occupation. As a result, everything in these housing estates are put under the control of the developers, who can do whatever they like to change the rules of the game, and simply ignore all advice from others. How then can the interests of all owners be protected?

I only hope that Members can discuss the matter objectively. Many Members are returned by direct elections, and I am sure that they can tell us that no one would possibly listen to them if they ever try to propagate any political ideas in residential buildings. Owners are interested only in the question of who can help them solve their problems. This is their most practical concern. Therefore, I hope that Members can refrain from escalating the matter to a political issue. This is not a good thing, even to owners.

**MR RONALD ARCULLI:** Madam Chairman, I have refrained from participating in this debate, but I really would like to remind Members that what we are debating now is not affecting the entire formation of owners' corporation. What we are really debating now only involves the multi-phase developments.

As far as the Real Estate Developers' Association of Hong Kong is concerned, we see the need for improvement. We agree with most of the proposals. We are only concerned with one aspect of the proposal that is put forward. Because we truly believe that it is neither fair nor right, nor sensible, in multi-phase developments, to allow either a 10% of the ownership to form an association from day one, or to follow the Honourable LEE Wing-tat's amendment. If Mr LEE Wing-tat was convinced that the 10% is correct, why did he not put it in an amendment? Why? Unfortunately, I have to point the finger at the Home Affairs Bureau.

If the 10% was not on the table today, we may not even have an argument. I think I can understand, to some extent, Members' frustration in going through the Bills Committee and, all of a sudden, winding up with a completely different formula and we are now degenerating this important issue into a political argument. Of course, ownership of property is very important to everyone in Hong Kong, and I do not think that the developers take a different view. After all, they would wish to continue to have customers, otherwise there will be no developers. If in fact Mr LEE Wing-tat's amendment is defeated, I think it is incumbent upon this Council not to pass clause 3 as it stands.

**CHAIRMAN** (in Cantonese): Does any Member wish to speak?

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam Chairman, I just want to say that I have listened to the views put forward by Honourable Members on whether to support Mr LEE's amendment or not. Let me say it once again: From the position of the Administration, we do not have anything to say on that.



**MR GARY CHENG** (in Cantonese): I would also like to ask the Chairman to give us five more minutes for discussions.

**CHAIRMAN** (in Cantonese): Permission granted, as I also think that Members may still be unable to make a decision. I now declare a second suspension of the meeting, so that Members can find out more about the matter before voting.

6.38 pm

Meeting suspended.

6.57 pm

Council then resumed.

**CHAIRMAN** (in Cantonese): Does any Member wish to speak?

(No Member responded)

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr LEE Wing-tat be passed. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr LEE Wing-tat rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr LEE Wing-tat has claimed a division. The division bell will ring for one minute.

**CHAIRMAN** (in Cantonese): Will Members please proceed to vote.

**CHAIRMAN** (in Cantonese): Will Members please check their votes. If there are no queries, the result will now be displayed.

Functional Constituencies:

Mr Michael HO, Mr CHEUNG Man-kwong, Mr CHAN Kwok-keung, Mr CHAN Wing-chan, Mr SIN Chung-kai, Mr WONG Yung-kan and Mr LAW Chi-kwong voted for the motion.

Mr Kenneth TING, Mr Edward HO, Dr Raymond HO, Mr Eric LI, Mr LEE Kai-ming, Dr LUI Ming-wah, Miss Margaret NG, Mrs Selina CHOW, Mr Ronald ARCULLI, Mr HUI Cheung-ching, Dr LEONG Che-hung, Mrs Sophie LEUNG, Dr Philip WONG, Mr Howard YOUNG, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Timothy FOK, Mr FUNG Chi-kin and Dr TANG Siu-tong voted against the motion.

Geographical Constituencies and Election Committee:

Miss Cyd HO, Mr Albert HO, Mr LEE Wing-tat, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Miss CHAN Yuen-han, Mr LEUNG Yiu-chung, Mr Gary CHENG, Mr Jasper TSANG, Dr YEUNG Sum, Mr LAU Chin-shek, Mr LAU Kong-wah, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr TAM Yiu-chung, Mr CHAN Kam-lam, Mr YEUNG Yiu-chung and Miss CHOY So-yuk voted for the motion.

Miss Christine LOH, Mr Andrew WONG, Mr David CHU, Mr HO Sai-chu, Mr NG Leung-sing, Mr MA Fung-kwok and Mr Ambrose LAU voted against the motion.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 26 were present, seven were in favour of the motion and 19 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 29 were present, 21 were in favour of the motion and seven against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negated.

*(After the Secretary for Home Affairs had been called upon to move other amendments to clause 3, he rose but did not indicate anything and asked other officials sitting next to him what he was supposed to say.)*

**CHAIRMAN** (in Cantonese): Secretary for Home Affairs, you may move to further amend clause 3. You may decide whether or not to move an amendment.

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam Chairman, I have no amendments and I do not intend to move any amendments.

**CHAIRMAN** (in Cantonese): Then we will decide whether clause 3 shall stand part of the Bill.

**MR LEE WING-TAT** (in Cantonese): May I speak on this part?

**CHAIRMAN** (in Cantonese): Yes.

**MR LEE WING-TAT** (in Cantonese): Madam Chairman, I hope that Members can support the original clause 3 stand part the Bill. As I said a moment ago, I hope that Members can support my amendment, but now it has been voted down.

My amendment is actually comparatively mild in nature, but I can still accept the inclusion of the original clause 3 proposed by the Government. Mr Ronald ARCULLI asked me why there was a need for me to propose my amendment. I have done so because of the views put forward by the Real Estate Developers' Association.

Actually, we put forward two possibilities. The first one is that an Owners' Corporation (OC) should be set up only when the number of owners has increased over time, instead of immediately after the issue of occupation permits. The second possibility is to take account of the proportion of owners who have moved in. Since both these two possibilities have not been accepted, I think I may as well accept the original Bill moved by the Government. Members must note that the setting up of an OC does not actually mean that owners can thus exert control over all aspects of the property developments concerned. As the Secretary for Home Affairs and members of the Bills Committee are aware, the 10% ratio will apply to the establishment of an OC only. For all other matters relating to the buildings concerned, such as maintenance, management fees or the phasing in of arrangements, the relevant voting is still going to be conducted on the basis of shares. Mr LEUNG Yiu-chung put a question to me, asking if it might be too easy to secure the proposed percentage of owners. I replied that even if this was really the case, we could at best only provide owners with a channel through which they could voice their views. The point is that owners cannot exert any control over other aspects of the property development.

For property development projects, we can see that developers actually own the shares relating to shopping arcades, carpark and unsold units. That being the case, even if owners succeed in forming an OC, they can at best be provided with a legal channel through which they can convene meetings and air their views to the management company. I fail to see why they should not be allowed to do so in an open and democratic society like ours. The main reason is that at the end of the day, all major decisions will have to be made on the basis of shares, not the number of owners. I notice that in many housing developments located at different places, owners are unable to form any owners' committees or corporations, and even when these organizations are formed, they do not actually enjoy any great powers.

I must express my regret towards the Secretary's refusal to state his position on the original clause 3. Members must not forget that this clause was drafted by the Government itself. So, I fail to see why the Government cannot

state its support for it or call upon Members to support it. Is the Government suggesting that now that its amendment has been voted down, it wants to pull down everything? By now, it has become a fact; the interests of owners will be affected. Is that something Members want to see? The Secretary owes us an explanation. Since the original clause 3 was proposed by the Government itself, we can infer that it is actually acceptable. And, I must say that the consequences will not be as serious as alleged by some Members.

When I was preparing my amendment, I was kind of struck by sadness. I felt sorry, very much like how I felt when Mr Ronald ARCULLI announced yesterday that he was not going to run in the upcoming election. I was not sure whether the Government actually wanted to blow up the whole thing because the amendment, despite its relatively mild nature, was moved by LEE Wing-tat of the Democratic Party. To quote Mr Ronald ARCULLI's words yesterday, the relationship between the legislature and the executive can many a time be extremely frustrating. When a bill stands no chance of passage, the Government would rather blow up the whole thing and see to it that a Member's amendment is also negated. It would rather do it all over again the following year. Is this a proper attitude of the Government? Is this executive hegemony at its best? Is the Government trying to tell Members that they should be smarter in the future? Is it trying to tell Members that if a certain amendment of the Government cannot be passed, all amendments proposed by Members will also stand no chance of passage? I am sorry that the Government has adopted such an approach, for it is not a good approach at all.

Finally, I hope that Members can think about the matter more carefully. I still insist that for the protection of owners' interests, they should support the inclusion of the original clause 3 in the Bill. Thank you, Madam Chairman.

**DR LEONG CHE-HUNG** (in Cantonese): Madam Chairman, I was not a member of the Bills Committee, and I know nothing about housing management. However, in accordance with the normal Council procedure, I hope the Chairman can ask the Secretary clarify several points.

Following the implementation of Article 74 of the Basic Law, whenever any Member moves an amendment to a Government Bill, the Government will fall into a flutter. First, the Government hopes that the amendment can be negated, for it will not know what to do if it is passed. That is why very often,

the Government will try to hijack the motion. However, in the course of doing so, the Government would even wish to be defeated, so that it can retain the original provisions. I think this is understandable in some cases. The Government may still think that its original provisions are good, but it may still wish to hijack the motion because it can only get a limited number of votes in support. That way, it can save itself from being caught in any possible dilemma. However, the case now is somewhat different. Clause 3 of the Bill was first introduced by the Government itself, and it has been subject to discussions. The Government has now introduced an amendment to it. Does this mean that even the Government finds the original clause 3 not satisfactory? If this is really the case, the Secretary should really offer an explanation to Members. Does he think that there are problems with clause 3? What are the justifications for moving the original clause 3 in the first place? Should he explain the differences between the two amendments? I think the Secretary should show us his position on clause 3, so as to make it easier for Members to make a decision.

Thank you, Madam Chairman.

**MISS CHOY SO-YUK** (in Cantonese): Madam Chairman, as the views expressed by many Honourable colleagues are similar to mine, therefore I have not spoken so far. Now the situation is very ridiculous. I think the Government should be largely held responsible for this.

All along people have fought for the lowering of the percentage of owners required for the purpose of setting up an owners' corporation (OC). The Government now proposes to lower the percentage to 10% of the owners and it is more favourable than what we have expected. I am a member of the relevant Bills Committee and we have held about 10 meetings on this Bill. As a matter of fact, the Bills Committee has reservations about this 10% requirement. It is because the Government has made such drastic moves of turning from one extreme to the other. It has tried many times to persuade us to accept the 10% requirement and that it is practicable. But at the second last meeting, when we were close to concluding all the deliberations, the Government made another U-turn and proposed the "321 proposal". We had mixed feelings at that time. With regard to the amendment proposed by Mr LEE Wing-tat just now, I think that is acceptable. I have also obtained an exemption from the Hong Kong Progressive Alliance to support Mr LEE's proposal, and I hope very much that his amendment will be passed. But now the amendment has been negated. It

appears that the Government has never thought of this ridiculous situation. So, I repeat, the Government should bear most of the responsibility. Even if this 10% requirement is passed, there will be a lot of other unknowns in future. Our worries will still exist. But if this Government Bill fails to be passed, the Government may withdraw it. Then we will never know how many more years will it take before the Bill is introduced again. So I hope the Secretary will undertake to propose a new amendment in the next Legislative Session. Otherwise, it is grossly unacceptable to me to vote in favour of the original motion without any amendments.

**MR GARY CHENG** (in Cantonese): Madam Chairman, as I said in my first speech, Honourable colleagues and I have spent lots of time and efforts on the amendments to this Bill, and government officials also knew long ago that amendments were already proposed by us. Mr Albert HO, Mr LEE Wing-tat and I proposed these amendments at a very early stage. I feel very sorry that Mr LEE Wing-tat's amendment was voted down just now. On Mr LEE Wing-tat's proposal, although I would not say that it was initiated by us, we have indeed played a part in it. We shared the same views. Just that the amendments are not proposed by us, but by the Democratic Party. So, I very much regret that the amendments were negatived for we have indeed made great efforts in the process. I am not worried about the Government not tabling the Bill at the Legislative Council for it is also the hope of the Government to relax the relevant provisions to facilitate the formation of OC by owners, save that the Government has departed from this original intention. Just now Mr Ronald ARCULLI rightly said that our discussion now only deals with part of the package of amendments and there are many other provisions to follow. Whether it be the views we take or the Government's proposal, they are all going for a higher degree of openness. When the Government proposed the requirement of 10% long ago, we considered whether 10% was acceptable. The organizations concerned, residents, owners and Members all focused their discussions on whether the requirement of 10% was acceptable. The proposals that Mr LEE Wing-tat, other colleagues and we attempted to put forth were trying to fine-tune and rationalize the requirement of 10%. If my views are sought on incorporating into the Ordinance only the provision stipulating a quorum of 10% for implementation in the event that Mr LEE Wing-tat's amendments are defeated, I would say I shall be worried. We have been following up the matter in the hope that the requirement of 10% can be considered in a more judicious manner. If both amendments are voted down

and only the one on a quorum of 10% is passed, my concern is that further amendments would be required in future should new problems arise in enforcement. Since the Government has not denied that its intention is to relax the provisions on the formation of OCs, the Government should, as Miss CHOY So-yuk suggested just now, consider introducing the amendments at the Legislative Council as early as possible in the next Session.

I do not agree that the original clause 3 stand part of the Bill for I think that is not necessarily a responsible arrangement. If I do not understand it wrongly, clause 3 also has the effect of replacing the original 50% with 30% in respect of the number of owners required to form an OC. This is also our earliest proposed amendment which is accepted by the Government. As this amendment will not be made possible if clause 3 does not stand, we hope that the Government will promptly take on board our views, learn its lesson, and introduce the new amendments expeditiously.

Madam Chairman, I so submit.

**MR ALBERT HO** (in Cantonese): Madam Chairman, in fact, there should not have been so many twists and turns if not for the sudden and vigorous lobbying by the Real Estate Developers Association of Hong Kong (REDA) in the end and the subsequent "volte-face" on the part of the Government. I remember that I was absent at just one meeting throughout the entire scrutiny process. I attended the rest of the meetings, listening attentively to the views of every colleague. On the proposal of a quorum of 10%, some colleagues did express their concerns but never had I heard anyone saying that he would vote against it. Everyone knows that I do not like to point my finger at any colleague, accusing him for being irresponsible. I do not like it. But I must do so this time because we must have an unequivocal position and we must expressly state which clauses we will not support. This is very important because the Chairman of the Bills Committee, in the light of our views, should report on our deliberations so that the Government will be able to make preparations. Now that the question is not as simple as just voting down clause 3. Do Members know how many more amendments are consequential to the clause? Do they know how many clauses are related to clause 3? I believe the Secretary must immediately defer the Bill and then sort out those provisions that cannot be passed today. Why has the situation come to this? It is because firstly, everyone hoped in the first place that the Government's amendments could be passed and no one was



psychologically prepared for the otherwise. Secondly, if the Government's amendments are passed, some people would not know how to explain the case to the REDA and some would not know how to explain it to the Government either as the Government does not wish to see the passage of clause 3. As a result, everyone made an about-turn and even the Government itself dared not support its amendments. So, everyone suddenly flocked to profess their opposition against the incorporation of the clause. I have served in this Council not for a very long time, but I have never seen this before. What we are now discussing is just one of the three major proposals. If Members genuinely have strong views on it or if they want to openly state their opposition, they should simply tell the Government that they do not support clause 3 and the related provisions proposed by the Government, in which case the Government may need to revise them all over again.

If this cannot be done today, Madam Chairman, I wonder if it is possible to do so in future. In this connection, the Secretary must keep up with his efforts. So, I can draw a conclusion today that the REDA is indeed far too domineering in Hong Kong. I really do not know who is actually ruling Hong Kong. Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): Mr LEE Wing-tat, this is the second time you speak.

**MR LEE WING-TAT** (in Cantonese): I wish to make a brief clarification. I am not too sure about the views of Mr Gary CHENG. The most important point made by Mr Gary CHENG is this: If clause 3 is not incorporated into the Bill, the part on replacing the quorum requirements of 50%, 30% and 10% with 30%, 20% and 10%, which is not controversial, will also disappear. I think Members are aware that this would be very serious, for it is the most important part of the entire Bill. As a matter of fact, this proposal was not put forward by the Government, but jointly by a number of political parties and owners of new flats. Now that two of the major proposals are not accepted. The entire legislation appears to have its brain and heart taken away, leaving behind just mandatory maintenance which does not carry much significance and also the requirement to take out insurance. Since there is virtually nothing left, why do we still have to enact this piece of legislation? I think it is incumbent on the Secretary to explain to us in what way is this different from withdrawing the Bill.

I wonder how the Secretary will deal with this awful mess. I very much hope that he can explain it to us for I do not wish to see colleagues making mistakes in the vote. Secretary, please think seriously whether the Bill should proceed. I think that the Bill as it stands now is like a man without his brain and heart, and all that is left is an empty shell. Could the Secretary please clarify the situation? Thank you, Madam Chairman.

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam Chairman, I want to point out in the first place that we wish to amend the Ordinance to permit the formation of an OC when there is consent from 10% of the flat owners of a new building. Our original intention is to facilitate owners to convene a meeting and form an OC. It remains of course that a majority vote is required to pass a resolution on the formation of an OC.

That original intention of ours is also our principle. In the entire course of the deliberations, we also heard many views. Many people made their views known. For example, the developers as the major owners, the owners in general, the professional bodies in building management and the management companies, they all have different views. We have listened to these views from all parties. The REDA did make some lobbying, but what they did was no different from others. It is not the case, as alleged by some people, that whoever comes to lobby will have the final say over Hong Kong affairs. I have met some flat owners, as would that mean that they have a final say over me? I have also listened to the views expressed by management companies, the Law Society made some comments and the Hong Kong Society of Accountants even made the proposal that a professional accountant should be hired for OCs with more than 50 members. Can we say that the accountants have a final say over Hong Kong? Things cannot be interpreted in this way. We must listen to views from all parties. And having done that, we think that there is a workable solution. There are some large-scale residential property developments which will take eight or 10 years to complete or will be completed in phases, but all the buildings are using the same deed of mutual covenant. I will not go into the details for I have explained that clearly earlier. I think that in circumstances as these, we can find a workable solution and that is: we will make a proposal and we will discuss it with the interested parties and the political parties and we will introduce an amendment to this effect. The proposal will be subject to the voting by Honourable Members of this Council. We will respect the outcome of such a voting.

I do not agree to the idea that when an amendment is introduced, it will imply that there is something wrong with the original bill. I do not want to say that this is right or wrong. For needless to say, nothing in this world can ever be perfect. One can always propose better ideas. Some Honourable Members asked me this question just now: If the amendment is negatived, are you going to sit back and do nothing about it? No. If the original Bill fails to get passed, I will think about how to introduce the Bill to the Legislative Council again. No one should ever say that when the Bill is not passed, the Government will "pull down everything" or "blow up everything". How? I fail to understand why remarks like these were made. When Honourable Members introduce an amendment and we do not put forward any views on that, that shows precisely our wish to stay neutral. I have not asked Members to vote in favour or against my amendment. If I have made such a request and asserted that we might pull down everything if Members do not accede to it, then there is some sense in making such an allegation. But I was just trying to remain neutral. I have said earlier on a few occasions that I will not make my views known. It is because some Honourable Members have just presented some views and I do not want to exert any influence on how other Honourable Members will vote. After Honourable Members have cast their sacred votes, I will accept the outcome of the voting, no matter what it is. I have no wish to create a scenario of "pulling down everything". This shows my respect for the votes cast by Honourable Members. We should look at the matter from this positive point of view. Having said that, I have never objected to the amendment proposed by Mr LEE Wing-tat. From this we can see that we want to stay neutral. That is what we mean. Therefore, I have said repeatedly that I do not want to make my views known. And that is why I have said that. It has nothing to do with things getting completely out of control. On the contrary, everything is under control. I do not think that there is anything getting out of control, not even in the slightest sense. I have respect for Honourable Members. They have the right to vote according to their decision. I am just trying to explain and do some lobbying. I have the right to do that. But it is up to Honourable Members to decide for themselves. They have my full respect when they vote "yes" or "no". This is something I want to make clear.

As to Miss CHOY So-yuk's point, that is, if my amendment is negatived, the original Bill will be voted down as well. Then will the Bill fall apart? Are we not going to give any thoughts to it any more? As a matter of fact, the Bill comprises a number of major proposals. One of these is about the requirement for a professional accountant, that is, a professional accountant should be hired

for any OC with 50 or more owners. Another proposal is that insurance should be taken out in respect of the common areas of a building. Should anyone of these proposals be negatived, we shall need to rethink about it. I must make this position clear to Miss CHOY. That is all I want to say. If it so happens that the remarks I have made are offensive to any Honourable Member, I would like to make it clear that this is never intended. What I have done is to show my utmost respect for all of the sacred votes to be cast by Honourable Members.

Thank you, Madam Chairman.

**MR ANDREW WONG** (in Cantonese): Madam Chairman, I wish to make two points briefly. First, perhaps I may sound a bit impolite. Earlier Mr Albert HO said that I had escalated the issue to the political plane, but I did not say that he was actually the one doing so. His remarks were virtually an instance of escalating the issue to the political plane. While I did not indicate opposition or support at the meetings, it does not mean that I do not have any views on it. He must understand this point. What I have said are my arguments and my observations of the matter. I think the Government's proposal, in general, is acceptable. However, there are people escalating the issue, alleging that we (including me and the Committee) have been pressurized by the REDA. This is an instance of escalating the issue and this really leaves a lot to be desired. We should be more careful with our words. This allegation has not caused big troubles because it so happens that I do not mind at all. Anyhow, I will still raise money from property developers. In raising funds for my candidature in the Legislative Council Elections, I will certainly accept all the donations coming my way, whoever the donor is.

Second, I hope that Mr Gary CHENG or Secretary David LAN can respond to the question raised by Mr LEE Wing-tat earlier on for that is actually the most important question. That is, if clause 3 does not stand part of the Bill, does it follow that other amendments could not be proposed any more or is it that they would require some sort of revision? Just now Mr Gary CHENG did not give an answer, but Secretary David LAN did respond to this point. I hope that this can be addressed squarely because any revision would require the approval of the Chair and more time might also be required. I do not know how much time would be needed but even if revisions are deemed necessary, I think there would not be too many complications involved for they could be dealt with separately and some technical problems could perhaps be resolved immediately.

But if Members consider that there are problems with this arrangement, could I ask for the permission of the Chair to leave the rest of the proposals to tomorrow so that revisions could be worked out tonight? This is my request. Thank you, Madam Chairman.

**DR YEUNG SUM** (in Cantonese): Madam Chairman, I think we should really come back to earth and try to tackle this matter. I have taken part in the scrutiny of many Bills in this Council, and I must say that the experience today is the most troublesome and chaotic so far, and these adjectives apply to the honourable Secretary as well. Madam Chairman, I sincerely hope that the Secretary can stand up and tell us clearly what effects will be produced on the subsequent provisions if this clause does not stand part of the Bill, for Members have to make their voting decisions. Mr LEE Wing-tat suggests the inclusion of this clause in the Bill. Mr LAN is the Secretary, the honourable public officer responsible for this Bill. So, I must ask him to explain clearly what effects will be produced on the subsequent provisions if this clause does not stand part of the Bill. Just a simple explanation will suffice, for we need it to make our voting decisions. I have taken part in the scrutiny of many Bills, and I have never seen that the Government still does not know what it is doing even at such a late stage. The Government wishes to facilitate the setting up of OCs to improve building management, but it now seems to have lost its direction. Can the Secretary say succinctly what effects will be produced on the subsequent provisions if this clause does not stand part of the Bill? Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): Quite a number of Members are still waiting for their turn to speak. I shall wait until all these Members have spoken before I ask the Secretary to give his reply.

**MISS CHRISTINE LOH** (in Cantonese): Madam Chairman, I also feel that I am faced with a dilemma in making a decision. I have never come across a situation where the Government has provided us with so little assistance. Having heard what the Secretary said just now, words fail me. I think this is ridiculous. I think Dr YEUNG Sum has a point in making his request just now. But if Secretary David LAN was asked to give a further explanation and if he should speak so ridiculously yet again, I think he would not be of any help to us. Such being the case, may I ask the Chairman whether we are allowed under the

Rules of Procedure to ask another government official to give a reply? This is unprecedented. But should Secretary David LAN rise to speak again, I indeed cannot see how he could be of any help to us. If I am made to listen to such speeches of the Secretary any longer, I would only become more and more infuriated.

**MR RONALD ARCULLI:** Madam Chairman, we are lawmakers. Each of us have our own responsibility. The Government proposes a bill, the officer-in-charge moves the bill, and Members put forward any amendments. All I can say is that I am disappointed that Members are pressing Mr LAN, who is not a lawyer, to explain the consequences of a vote that may happen, I hope, in not too long a time.

I think that one has to be fair to Mr LAN. It is a technical issue. If Members say, "Listen, we do not want to vote until we know what the consequences are", let them stand up and say so. The election is in September, Madam Chairman. It is very simple. If they as lawmakers say, "We do not know how to vote because we do not know what the consequences are", say so. But do not blame others for our own job.

**MR LEE WING-TAT** (in Cantonese): Madam Chairman, I would not say that Mr Ronald ARCULLI is wrong for we do have the responsibility to scrutinize laws. However, we are faced with unexpected developments and I have not blamed anyone. All I hope is that Secretary David LAN can throw light on the consequences as he had discussions with his colleagues during the time when the meeting was suspended just now. It is because this is very important to every colleague in casting their votes. In the event that clause 3 cannot stand, will there be other consequences, particularly those suggested by Mr Gary CHENG? If the Secretary cannot give us an answer, I must ask for yet another suspension for we must know clearly what the consequences are before casting our votes. I consider that this is a very solemn Council. I must know what the consequences are before casting each vote. Disregarding whether or not Members agree with my amendments, and perhaps they have made their decisions long before, we must, at least, grasp the full picture in the first place.

**MR GARY CHENG** (in Cantonese): Madam Chairman, I would like to respond to the question raised by Mr Andrew WONG just now. He asked me to give a response; and in fact, I have served in this Council only for a short time. With regard to what I have brought up earlier on, I wish to ascertain one thing (if I do not understand it wrongly or perhaps you, Madam Chairman, can clarify this): Has the Secretary actually moved the amendments to clause 3 as indicated on page 36 of the Script?

I mean I did not see him move the amendments just now. Does this mean that in item (1), for instance, the provision to substitute 50% with 30% on which I cast doubt just now, does not exist any more? Is my understanding correct?

**MISS MARGARET NG** (in Cantonese): Madam Chairman, this Council seems to have got into some technical difficulties. I think Mr ARCULLI was absolutely right. If the Secretary could help us, this is of course the best; but if he could not, or even if he could, we still need to ascertain whether that is the correct way. Therefore, I hope we can adjourn the meeting now. Let our legal adviser explain to us, because we have a legal adviser for the Bills Committee. He knows the provisions like the back of his hand. There is also a Chairman for the Bills Committee. He also knows the provisions well. We should use our own way to solve the problem. Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): Indeed I also wish to suspend the meeting so that Members can hold discussions. But, at this stage, I would let members continue to speak.

**MR RONALD ARCULLI**: Madam Chairman, I think the most practical use of time might be, in fact, for us to adjourn this debate and proceed with the next Bill. In the meantime, those of us who want to look into the consequences of an "aye" or "nay" vote and the amendments, if any, can actually talk to the Legal Adviser so that we can proceed. I perfectly understand Members' concern as it is an important issue.

As I have said earlier, there is only one issue that is controversial, and that is multi-phase development. I do not think that there is any dispute regarding any of the other terms. If there is any amendment that requires short notice, or no notice, I am sure that Madam Chairman, you would consider the views of this Council if Members are, as it were, in a consensus.

**CHAIRMAN** (in Cantonese): Mr Ronald ARCULLI, I will respond to your suggestion later on. I shall now call upon Dr LEONG Che-hung to speak first.

**DR LEONG CHE-HUNG** (in Cantonese): Madam Chairman, I would like to make three points. Firstly, I agree with Mr Ronald ARCULLI that we, as lawmakers, must be held fully responsible no matter how we are going to vote. We cannot allow ourselves to be influenced by others' comments and listen to them in casting our votes. If we should subject ourselves to others' influence, would it not be better for us to simply cast a vote without even taking a look at the Bill, just as the Government has always suggested? I think this is a very important point.

Secondly, now we are actually faced with a hypothetical situation that will arise only if clause 3 cannot stand part of the Bill. But if the clause stands, perhaps there will not be any problem at all.

Thirdly, assuming clause 3 is negated, will the other amendments proceed? Is it that the Chairman should suspend the meeting only at that time to allow examination of the technical problems involved? Is this a more appropriate arrangement? Thank you, Madam Chairman.

**DR YEUNG SUM** (in Cantonese): Madam Chairman, with regard to this Bill, we certainly know what the consequences are if clause 3 does not stand part of the Bill. However, as this Bill is proposed by the Government, there is every reason for the Government to state its position as to whether it hopes to see the incorporation of the clause for this is a proposal put forth by the Government.

We share the views of Mr Ronald ARCULLI and we hope that you, Madam Chairman, could exercise your power. Insofar as this Bill is concerned, this is in fact a very important clause. So, I hope you could adjourn the vote on it so that all parties concerned could hold further discussions on it. I think this will enable the Bill to be scrutinized in a better way. Thank you, Madam Chairman.



## SUSPENSION OF MEETING

**CHAIRMAN** (in Cantonese): Members, what happened in this Chamber today is unpredictable. In fact, a substantial part of the speeches made by Members should have been made one way or another much earlier in the Bills Committee, time permitting. However, since this Bill is included in our Agenda, we certainly have to handle it. I have considered Mr Ronald ARCULLI's suggestion that I shall suspend the scrutiny of this Bill and proceed with another Bill. But then I think it would not be a desirable precedent because with this precedent, other Members may in future make the same request.

I have two choices now. The first is to suspend the meeting so that Members could have further discussions or seek views from the Legal Adviser. Alternatively, I can allow the meeting to continue. However, if clause 3 does not stand part of the Bill, the Secretary for Home Affairs might also request for a suspension of today's meeting until tomorrow so that he could examine clearly the implication of this result on the entire Bill. Under such circumstances, I have also considered that while we have a long Agenda tomorrow, we would still be able to finish all the business at around 10.00 pm with the co-operation of Members. Therefore, I now suspend the meeting to allow time for Members to think it over, and for the Secretary for Home Affairs to consider what actions to take or how his amendments should be revised if clause 3 does not stand part of the Bill.

Under these circumstances, I now suspend the meeting until 9.30 am tomorrow.

*Suspended accordingly at twenty minutes to Eight o'clock.*

**Annex I****WRITTEN ANSWER****Translation of written answer by the Secretary for Housing to Mr CHAN Wing-chan's supplementary question to Question 1**

Over the past three years, a total of three kindergartens in public housing estates had ceased to operate. During the same period of time, the Education Department received a total of 198 applications in relation to leasing premises in public housing estates for operating kindergartens. Since the applicants could only indicate the districts of their preference instead of designating which housing estate premises they would like to lease, the number of sponsoring bodies that had applied for operating kindergartens in the said vacant premises is therefore not available.

**Annex II****WRITTEN ANSWER****Translation of written answer by the Secretary for Education and Manpower to Miss Cyd HO's supplementary question to Question 1**

According to Regulation 40 of the Education Regulations, a classroom to be used by pupils undergoing kindergarten education shall have an area of floor space of not less than 0.9 sq m for each pupil. Besides, the Manual of Kindergarten Practice compiled by the Education Department also recommends that in addition to an indoor play area of not less than 50% of the total floor space of all classrooms, kindergartens should also provide, where possible, an outdoor play area offering easy access from classrooms.

As indicated in the aforementioned information, the Government has not set any limit on the maximum activity space for kindergarten pupils.

## Annex III

## WRITTEN ANSWER

**Written answer by the Secretary for Education and Manpower to Mr LAW Chi-kwong's supplementary question to Question 4**

Attached please find a table which sets out the information on the employment rates of women aged between 40 and 49 over the past 20 years.

Employment rate of women aged between 40 and 49 in the past years

<i>Period</i> (see footnote below)	<i>Employment rate</i> (%)
1980	98.2
1981	97.6
1982	98.1
1983	97.9
1984	98.1
1985	98.6
1986	99.1
1987	99.4
1988	99.6
1989	99.6
1990	99.5
1991	99.1
1992	99.0
1993	99.0
1994	98.6
1995	97.3
1996	98.3
1997	98.4
1998	96.4
1999	95.8
2000 (1st Quarter)	94.9

Footnote:

1. Figures for 1982 to 1999 are based on the average obtained from General Household Surveys of the year.
2. That for 1980 is based on the Labour Force Surveys of the year.
3. That for 1981 is the average based on 1981 Population Census and General Household Survey for the period from August to October.
4. That for 2000 is based on the General Household Survey for the 1st Quarter of 2000.

**Annex IV****WRITTEN ANSWER****Written answer by the Secretary for Security to Mr LEE Wing-tat's supplementary question to Question 6**

We have followed up the issue with the police which confirmed that any person who organizes or participates in a lion dance, dragon dance or unicorn dance in private premises is not required to obtain permits under the Summary Offences Ordinance. Generally speaking, schools and community halls are regarded as private premises. However, if the performance is open to the public, the venue would become a public place. The police would require the organizer to apply for a permit under section 4C of the Summary Offences Ordinance so as to ensure public order and safety.

**Annex V****LEGAL PRACTITIONERS (AMENDMENT) BILL 1999****COMMITTEE STAGE**Amendments to be moved by the Secretary for Justice

<u>Clause</u>	<u>Amendment Proposed</u>
1	<p>(a) In subsection (2), by deleting "section 15" and substituting "sections 7A(1) and 15".</p> <p>(b) By adding -</p> <p style="padding-left: 40px;">"(3) Sections 7, 7A(2), 8, 9, 10(b), 11(a) and 16 to 30 shall come into operation on a day to be appointed by the Secretary for Justice by notice in the Gazette, which shall not be before 1 November 2001."</p>
3	<p>By deleting the proposed section 8AAA and substituting -</p> <p style="padding-left: 40px;"><b>"8AAA. Additional powers of an inspector</b></p> <p style="padding-left: 80px;">(1) In this section "inspector" (調查員) means an inspector appointed under section 8AA.</p> <p style="padding-left: 80px;">(2) The Council may direct an inspector to assist it in gathering evidence in respect of a matter the Council is considering for the purpose of deciding whether or not it should be submitted to the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel.</p> <p style="padding-left: 80px;">(3) For the purposes of this section, an inspector may question -</p>

ClauseAmendment Proposed

- (a) persons who are, or were at the material time, members or employees of any law firm; or
- (b) where authorized by the Council, any other persons whom the inspector considers may be able to assist the Council."

5(b) In the proposed subsection (2A), by deleting "Where the Council is not satisfied with an order made by a Solicitors Disciplinary Tribunal, it may appeal the order under this section" and substituting "The Council may, with leave of the Court of Appeal, appeal an order of a Solicitors Disciplinary Tribunal under subsection (1)".

6 In the proposed section 13A -

- (a) in subsection (1), by deleting "The" and substituting "Unless, on application by the solicitor, the Solicitors Disciplinary Tribunal or the Court of Appeal, on an appeal under section 13, otherwise orders, the";
- (b) by deleting subsection (2).

7 In the proposed section 27 -

- (a) in the Chinese text, by deleting subsection (2)(b)(i) and substituting -

"(i) 在緊接認許申請的日期前的 3 個月內或更長的時間內一直居於香港；";

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

ClauseAmendment Proposed

"(4) Notwithstanding that a person does not satisfy all the requirements specified in subsections (1) and (2)(b), where the Court considers that he is a fit and proper person to be a barrister and is satisfied that he has -

- (a) the qualification acquired outside Hong Kong to engage in work that would, if undertaken in Hong Kong, be similar to that undertaken by a barrister in the course of ordinary practice as a barrister in the High Court or Court of Final Appeal; and
- (b) substantial experience in advocacy in a court,

the Court may admit such person as a barrister under this section for the purpose of any particular case or cases and may impose such restrictions and conditions on him as it may see fit."

New

By adding -

**"7A. Additional power of Court  
to admit barristers**

- (1) Section 27A(1)(e) and (3) is repealed.
- (2) The remainder of section 27A is repealed."



ClauseAmendment Proposed

10

By deleting paragraph (b) and substituting -

" (b) by repealing subsection (3) and substituting -

"(3) A practising certificate may only be issued to an applicant who has paid to the Hong Kong Bar Association -

(a) except where the Bar Council has exempted the applicant therefrom, the membership subscription; and

(b) except where the applicant has been admitted as a barrister under section 27(4) and the Bar Council has exempted him therefrom, the premium prescribed for insurance of the applicant under the current master policy for professional indemnity insurance effected by the Hong Kong Bar Association,

in respect of the period for which the practising certificate is to be issued.

(3A) On application by a barrister admitted under section 27(4), the Bar Council may waive part of the membership subscription." ;".

ClauseAmendment Proposed

11(c) By deleting the proposed paragraph (f) and substituting -

"(f) if he is an employed barrister within the meaning of section 31C(1).".

12 In the proposed section 31C, by adding -

"(3A) The publication in the Gazette by the Bar Council of a list of the names and addresses of those barristers who have obtained employed barrister's certificates for the period therein stated shall be prima facie evidence that each person named therein is the holder of such a certificate for the period specified in such list, and the absence from any such list of the name of any person shall be prima facie evidence that the person does not hold such a certificate.".

15 By adding -

**"72AAA. Conflict between rules made  
by Chief Justice and Bar  
Council**

Where power is given to -

(a) the Chief Justice; and

(b) the Bar Council,

to make rules in respect of the same matter, rules made by either or both of them in respect of such a matter shall be valid unless there is a conflict between such rules, in which case the rules made by the Chief Justice shall be given precedence to the extent of such conflict.".

<u>Clause</u>	<u>Amendment Proposed</u>
16	(a) By deleting "(i) and (ii)" and substituting "(i), (ii) and (v)".  (b) By deleting "as long as he qualifies to practise as a barrister under section 31 of the principal Ordinance" and substituting "because of such repeal".

New By adding -

**"17. Legislative Council may  
amend Schedule 1**

Section 72B is repealed.

**18. Sections added**

The following are added -

**"74C. Students already  
enrolled in legal  
studies in the  
United Kingdom**

Notwithstanding the repeal and replacement of section 27 by section 7 of the Legal Practitioners (Amendment) Ordinance 2000 ( of 2000) ("the amending Ordinance"), where a person, on the day the amending Ordinance is published in the Gazette, is enrolled or registered in, or has been offered a place -

- (a) in a course of studies in the United Kingdom that, on completion, will qualify him for a

ClauseAmendment Proposed

vocational course  
leading to admission as  
a barrister in the  
United Kingdom;

(b) in the Bar Vocational  
Course in the United  
Kingdom; or

(c) in an external course  
of studies in Hong  
Kong offered by an  
institution in the  
United Kingdom that,  
on completion, will  
qualify him for a  
vocational course  
leading to admission as  
a barrister in the  
United Kingdom,

the person may, instead of complying with  
the requirements established under section 27  
for admission as a barrister, elect to be  
admitted under section 27 as that section  
existed before its repeal by the amending  
Ordinance, provided he -

(i) has been called to the  
Bar in England or  
Northern Ireland or  
admitted as an  
advocate in Scotland;

ClauseAmendment Proposed

- (ii) qualifies for admission under the other criteria established under the repealed section 27(1)(b), (c) and (e) and (1A); and
- (iii) applies for admission not later than 31 December 2004.

**74D. Lawyers employed in  
Department of Justice**

(1) Notwithstanding the repeal of section 27A by section 7A of the Legal Practitioners (Amendment) Ordinance 2000 ( of 2000) ("the amending Ordinance"), where a person, on or before the date appointed by the Secretary for Justice by notice in the Gazette for the coming into operation of section 7A(2) of the amending Ordinance, meets the requirements in section 27A(1)(a) to (d), as that section existed before its repeal, the Court may at any time admit such person as a barrister of the High Court of Hong Kong in accordance with the said section 27A(1).

(2) The Court shall not admit as a barrister, under subsection (1), more than 4 persons in any period of 12 months.

ClauseAmendment Proposed

(3) For the avoidance of doubt, section 27A(1)(e) and (3) does not apply to admission as a barrister under this section."

**19. Schedule repealed**

Schedule 1 is repealed.

**CONSEQUENTIAL AMENDMENTS****Bankruptcy Ordinance****20. Appointment of Official Receiver and other officers**

Section 75(2) of the Bankruptcy Ordinance (Cap. 6) is amended by repealing "Schedule 1 to the Legal Practitioners Ordinance (Cap. 159)" and substituting "Schedule 2 to the Legal Officers Ordinance (Cap. 87)".

**Legal Officers Ordinance****21. Interpretation**

Section 2 of the Legal Officers Ordinance (Cap. 87) is amended, in the definition of "legal officer", by repealing "the Schedule" and substituting "Schedule 1".

ClauseAmendment Proposed**22. Appointment qualification**

Section 2A is amended by repealing "Schedule 1 of the Legal Practitioners Ordinance (Cap. 159)" and substituting "Schedule 2".

**23. Rights and privileges  
of a legal officer**

Section 3(3) is amended by repealing "the Schedule" and substituting "Schedule 1".

**24. Power of the Chief  
Executive to amend  
Schedule**

Section 11 is amended by repealing "the Schedule" and substituting "Schedule 1".

**25. Schedule renumbered**

The Schedule is renumbered as Schedule 1.

**26. Schedule added**

The following is added -

"SCHEDULE 2 [s. 2A]

1. The States and Territories of the Commonwealth of Australia.

ClauseAmendment Proposed

2. The Territories and Provinces of Canada, except Quebec.
3. New Zealand.
4. The Republic of Ireland.
5. Zimbabwe.
6. Singapore."

**Legal Aid Ordinance****27. Appointments**

Section 3(2) of the Legal Aid Ordinance (Cap. 91) is amended by repealing "Schedule 1 to the Legal Practitioners Ordinance (Cap. 159)" and substituting "Schedule 2 to the Legal Officers Ordinance (Cap. 87)".

**Municipal Services Appeals  
Board Ordinance****28. Interpretation**

Section 2(1) of the Municipal Services Appeals Board Ordinance (Cap. 220) is amended, in the definition of "legal officer", by repealing "the Schedule" and substituting "Schedule 1".



ClauseAmendment Proposed**Director of Intellectual Property  
(Establishment) Ordinance****29. Interpretation**

Section 2 of the Director of Intellectual Property (Establishment) Ordinance (Cap. 412) is amended, in the definition of "legally qualified", by repealing "Schedule 1 to the Legal Practitioners Ordinance (Cap. 159)" and substituting "Schedule 2 to the Legal Officers Ordinance (Cap. 87)".

**Hong Kong Court of Final  
Appeal Ordinance****30. Interpretation**

Section 2(1) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) is amended, in the definition of "legal officer in the Department of Justice", by repealing "the Schedule" and substituting "Schedule 1".

**Annex VI****ADAPTATION OF LAWS (NO. 3) BILL 1999****COMMITTEE STAGE**Amendments to be moved by the Secretary for Housing

<u>Clause</u>	<u>Amendment Proposed</u>
Schedule 1, sections 1, 6(b) and 13	By deleting "in Council".
Schedule 3, section 1	By deleting "People's Government or the Government of the Hong Kong Special Administrative Region under the Basic Law or" and substituting "Authorities or the Government of the Hong Kong Special Administrative Region under the Basic Law and".
Schedule 4, section 4	By deleting paragraph (a).
Schedule 5, section 3	By deleting "People's Government or the Government of the Hong Kong Special Administrative Region under the Basic Law or" and substituting "Authorities or the Government of the Hong Kong Special Administrative Region under the Basic Law and".

**Annex VII****COMPANIES (AMENDMENT) BILL 2000****COMMITTEE STAGE**Amendments to be moved by the Secretary for Financial Services

<u>Clause</u>	<u>Amendment Proposed</u>
1	By deleting subclause (2) and substituting -  "(2) This Ordinance shall come into operation on 1 July 2000."
2	By deleting paragraph (b).
9	By adding before paragraph (a) -  "(aa) in subsection (1), by repealing "最少";".
14	(a) In the proposed section 116B, by adding -  "(6A) A company shall cause a record of all resolutions (and of the signatures thereto) agreed to in accordance with this section to be entered into a book kept for that purpose in the same way as minutes of proceedings of a general meeting of the company.  (6B) Where a record made in accordance with subsection (6A) by a company purports to be signed by a director of the company or secretary of the company, then -

ClauseAmendment Proposed

- (a) the record is evidence of the proceedings in agreeing to the resolution to which the record relates; and
- (b) until the contrary is proved, the requirements of this Ordinance with respect to those proceedings shall be deemed to have been complied with.

(6C) Section 120 shall apply to a record made in accordance with subsection (6A) as that section applies to the minutes of proceedings of any general meeting of a company.

(6D) If a company fails to comply with subsection (6A), the company and every officer of the company who is in default shall be liable to a fine and, for continued default, to a daily default fine."

(b) In the proposed section 116BA -

(i) in subsection (3) -

(A) in paragraph (a), by deleting "or";

(B) in paragraph (b), by deleting the full stop and substituting "; or";

(C) by adding -

"(c) that he had reasonable grounds to believe and did believe that a person was specifically charged with

ClauseAmendment Proposed

the duty of sending a copy of the resolution to the company's auditors or of otherwise informing the auditors of its contents.";

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

"(4) A failure to comply with subsection (1) shall not affect the validity of any resolution.".

16, 17 and 18 By deleting the clauses.

19 By deleting paragraphs (b), (c)(i) and (d).

21 and 22 By deleting the clauses.

24 By deleting the clause.

30 By deleting paragraph (a)(iii) and substituting -

"(iii) by repealing paragraph (d) and substituting -

"(d) the court may make any appointment and order as it thinks fit if the creditors and contributories of the company do not pass a resolution or do not meet;".

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33(b) In the proposed section 199(4)(b), by deleting "subsection (5)" and substituting "subsection (6)".

38 By deleting the clause.

39 By deleting the clause and substituting -

**"39. Special procedure for  
voluntary winding up  
in case of inability  
to continue its  
business**

Section 228A is amended -

(a) by repealing subsection (1)(b) and substituting -

"(b) subject to subsection (1B), they consider it necessary that the company be wound up and that the winding up should be commenced under this section because it is not reasonably practicable for the winding up to be commenced under another section of this Ordinance; and";

(b) by repealing subsection (2) and substituting -

ClauseAmendment Proposed

"(1B) The resolution referred to in subsection (1) shall specify the reasons in support of the consideration mentioned in paragraph (b) of that subsection.

(2) Any director of a company making a declaration under subsection (1) without having reasonable grounds -

(a) for the opinion that the company cannot by reason of its liabilities continue in business; or

(b) to consider that the winding up of the company should be commenced under this section because it is not reasonably practicable for the winding up to be commenced under another section of this Ordinance,

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shall be liable to a fine and imprisonment."."

40 and 41      By deleting the clauses.

42              By deleting paragraph (b)(iii).

43, 44 and      By deleting the clauses.  
45

51              (a)    In paragraph (b) -

(i)    by adding before the entry relating to the proposed section 116BA(2) -

"116B(6D) Company    Summary    Level 3    \$300";  
failing to  
enter  
record    of  
resolutions  
agreed    in  
accordance  
with section  
116B

(ii)    by deleting the entries relating to the proposed sections 168ZI(2), 168ZN(5) and 168ZW(4).

(b)    By deleting paragraph (c) and substituting -

"(c)    in the entry relating to section 228A(2), by adding ", or declaring that it is not reasonably practicable for company to be wound up under



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a provision other than section 228A," after "liabilities".

52 and 53      By deleting the clauses.

Schedule      By deleting sections 30, 32, 40, 45, 47, 48, 49, 50, 51, 53, 54 and 55.

**Annex VIII****BUILDING MANAGEMENT (AMENDMENT) BILL 2000****COMMITTEE STAGE**Amendments to be moved by the Secretary for Home Affairs

<u>Clause</u>	<u>Amendment Proposed</u>
3	<p>(a) By adding before paragraph (a) -</p> <p style="padding-left: 40px;">"(aa) in subsection (1), by repealing "A" and substituting -</p> <p style="padding-left: 80px;">"Except in the case of a meeting to be convened under subsection (3), a";".</p> <p>(b) In paragraph (a), by deleting everything after "(2)" and substituting -</p> <p style="padding-left: 40px;">"-</p> <p style="padding-left: 80px;">(i) by repealing "At" and substituting "Subject to subsection (3), at";</p> <p style="padding-left: 80px;">(ii) in paragraph (b), by repealing "50%" and substituting "30%";".</p> <p>(c) In paragraph (b) -</p> <p style="padding-left: 40px;">(i) in the proposed section 3(3), by adding after "building" -</p> <p style="padding-left: 80px;">"which may be occupied without the issue, in respect of that building, of an occupation permit or a temporary occupation permit, under section 21(1)(a) or (b) of the Buildings Ordinance (Cap. 123) and";</p>

ClauseAmendment Proposed

(ii) by adding -

"(4) In the case of a building which may not be occupied without the issue, in respect of that building, of an occupation permit or a temporary occupation permit, under section 21(1)(a) or (b) of the Buildings Ordinance (Cap. 123) and the deed of mutual covenant of which is executed by the parties to it after the commencement of section 3 of the Building Management (Amendment) Ordinance 2000 ( of 2000), a management committee may be appointed in accordance with subsection (3) -

- (a) where that building does not form part of an estate or a group of buildings, at any time after the issue of the occupation permit or the temporary occupation permit, as the case may be, in respect of that building;
- (b) where that building does form part of an estate or a group of buildings, at any time after the issue of an occupation permit or a temporary occupation permit, as

ClauseAmendment Proposed

the case may be, in respect of all of the buildings in that estate or group of buildings, as the case may be.

(5) For the purposes of subsection  
(3) -

(a) the expression "10% of the owners" (業主人數 10%) -

(i) means 10% of the number of persons who are owners without regard to their ownership of any particular percentage of the total number of shares into which the building is divided; and

(ii) does not mean the owners of 10% of the shares;

(b) subsection (1)(c) shall not apply to a

ClauseAmendment Proposed

meeting to be held  
under subsection (3)  
and for any such  
meeting -

(i) the meeting  
may be  
convened by  
not less than  
10% of the  
owners;

(ii) notice of a  
meeting  
convened  
under  
subparagraph  
(i) may be  
served by an  
owner  
nominated by  
the convenors.

(6) Where a meeting of owners convened under subsection (3) has passed a resolution to appoint a management committee, the members of the management committee are to be appointed by a resolution passed by a majority of the votes of the owners of the shares voting either personally or by proxy."

## BUILDING MANAGEMENT (AMENDMENT) BILL 2000

**COMMITTEE STAGE**Amendments to be moved by the Honourable LEE Wing-tatClauseAmendment Proposed

3(b) (a) In the proposed subsection (3), by adding after "building" -

"which may be occupied without the issue, in respect of that building, of an occupation permit or a temporary occupation permit, under section 21(1)(a) or (b) of the Buildings Ordinance (Cap. 123) and".

(b) By adding -

"(4) In the case of a building which may not be occupied without the issue, in respect of that building, of an occupation permit or a temporary occupation permit, under section 21(1)(a) or (b) of the Buildings Ordinance (Cap. 123) and the deed of mutual covenant of which is executed by the parties to it after the commencement of section 3 of the Building Management (Amendment) Ordinance 2000 ( of 2000), a management committee may be appointed in accordance with subsection (3) -

(a) where that building does not form part of an estate or a group of buildings, at any time after the issue of the occupation permit or the temporary occupation permit, as the case may be, in respect of that building;

(b) where that building does form part of an estate or a group of buildings, at any time 3 years

ClauseAmendment Proposed

after the issue of an occupation permit or a temporary occupation permit, as the case may be, in respect of any of the buildings in that estate or group of buildings and when not less than 40% of the units of such buildings has been occupied."