OFFICIAL RECORD OF PROCEEDINGS

Tuesday, 27 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 JAMES TIEN PEI-CHUN, 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.

PUBLIC OFFICERS ATTENDING:

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

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

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

DR YEOH ENG-KIONG, J.P.
SECRETARY FOR HEALTH AND WELFARE

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

CLERKS IN ATTENDANCE:

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

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

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

BILLS

Council went into Committee.

Committee Stage

CHAIRMAN (in Cantonese): Good morning, Honourable Members. Council is now in Committee, we will continue to consider clause 4 of the Urban Renewal Authority Bill.

I should like to remind Members here that yesterday we passed a motion to the effect that in the event of further divisions being claimed by Members, the division bell shall ring for one minute only. Hence, please remain in the vicinity of the Chamber as far as possible.

URBAN RENEWAL AUTHORITY BILL

MR LEE WING-TAT (in Cantonese): Madam Chairman, may I seek your consent for me to move under Rule 91 of the Rules of Procedure that Rule 58(5) and 58(7) of the Rules of Procedure be suspended in order that the Committee of the whole Council may consider new clause 25A and new Schedule 2, ahead of the remaining clauses, new clauses and Schedule, as they are related to my amendment to clause 4(6).

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): Mr LEE Wing-tat, you have my consent.

MR LEE WING-TAT (in Cantonese): Madam President, I move that Rule 58(5) and 58(7) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider new clause 25A and new Schedule 2, ahead of the remaining clauses, new clauses and Schedule, as they are related to my amendment to clause 4(6).

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Rule 58(5) and 58(7) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider new clause 25A and new Schedule 2, ahead of the remaining clauses, new clauses and Schedule.

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 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.

Council went into Committee.

Committee Stage

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

CLERK (in Cantonese): New clause 25A Ex gratia allowance

New Schedule 2 EX GRATIA ALLOWANCE.

MR LEE WING-TAT (in Cantonese): Madam Chairman, I move that new clause 25A and new Schedule 2, as set out in the paper circularized to Members, be read the Second time. Madam Chairman, I should like to spend a little time explaining the content of the proposed new clause, since it is rather complicated. To begin with, as Honourable Members know, the Government has already had in place a basic policy regarding the statutory compensation payable by the Land Development Corporation (or the Urban Renewal Authority (URA) in the future). The Government's policy is approximately like this: If the affected owner concerned has only one domestic property, which is a self-occupied flat, he will be paid an Home Purchase Allowance (HPA) as compensation in addition to the full market value of the resumed flat. Hence, the affected owner will be entitled to the statutory compensation and 100% of the HPA for a resumed self-occupied flat. According to the policy of the Government, the total amount of the two compensation payments should enable the affected owner to purchase a 10-year-old (will be revised to eight to10-year-old in the future) replacement flat of a similar size in the same locality. If the affected owner should have two flats, with one for self-occupation and the other for letting out, he will still be entitled to the same levels of statutory compensation and HPA payable for his first flat. As regards his second flat, however, he will only be entitled to the statutory compensation and 50% of the HPA payable. In the event that the owners has three flats, the compensation for his first two flats will remain unchanged. But for his third flat, he is entitled to a statutory compensation based on the market value of the relevant flat without any HPA. In other words, he will be entitled to 0% of the HPA.

The object of my proposed amendment is to add something more on top of this existing basis. According to my proposed amendment, the amount of compensation payable to an affected owner will remain unchanged as he is still entitled to the statutory compensation and 100% of the HPA. If the owner should have two flats, one of which is for self-occupation and the other for letting out, my proposed amendment would enable him to be eligible in respect of the tenanted flat for an ex gratia allowance in addition to 50% of the HPA payable by the Government. According to the proposed new Schedule 2, the

ex gratia allowance would be equal to 50% of the HPA for the "tenanted area". In other words, in addition to the 50% of the HPA payable by the Government, the owner will be entitled to another 50% of the HPA under my proposed amendment. Therefore, the total amount would be equal to 100% of the HPA, which is the same level of compensation payable for his self-occupied first flat. I have already described the compensation for owners with one self-occupied flat and one tenanted flat, I will now switch to cases where the affected owners have three flats. Whereas no HPA will be payable for the third flat under the Government's proposal, my proposed amendment would enable the owner concerned to be eligible for at least 50% of the HPA. As regards the compensation formula for the fourth, fifth, and sixth flats held by the owner, it would be the same as that for the third flat. Why should I describe the proposed amendment in such great details? This is because I heard Honourable friends from the Democratic Alliance for the Betterment of Hong Kong (DAB) say yesterday that my proposed amendment could not achieve the intended effects. I was so anxious that I immediately reviewed it in detail last night and requested the legal adviser to the Democratic Party to examine it again. Then today, at 9.00 am this morning, upon my request Mr James TO and Mr Martin LEE came to examine with me every detail of the amendment. After all these, I have come to the view that my proposed amendment should be able to achieve the intended effects, but still I could not rest assured. At 9.20 am, I met the Deputy Secretary, Mr Stephen FISHER, and consulted him on my proposed amendment. At first the Deputy Secretary seemed to be at a loss as to the situations concerned, but upon reading the Chinese version of my proposed amendment, he supported my view. My proposed amendment is to add new clause 25A(1) to the Bill. The wording of my proposed new clause is as follows: "In addition to (please note this phrase "in addition to") the statutory compensation payable under the Lands Resumption Ordinance (Cap. 124) and the Home Purchase Allowance, owners may be eligible to an ex gratia allowance payable by the Authority in accordance with the scheme set out in Schedule 2." So, the content of the clause is indeed very clearly written. After painstaking discussions within our party, I have finally come to the conclusion that my proposed amendment should be able to achieve the intended effects.

Madam Chairman, I should like to explain my rationale for putting forward this amendment. Actually, there are many ways to compensate owners for their resumed flats, and one of which is to offer them 100% of the HPA irrespective of the number of flats they have. This is the most generous compensation package, since affected owners will be entitled to 100% of the

HPA payable for each of the flat they hold regardless of whether they have one flat, or two, three, four or even 10 domestic properties. Another option is similar to that of the Government, under which 50% of the HPA will be payable for both the first flat and the first tenanted flat, but the remaining tenanted flats will not be eligible for any HPA payments. After discussions within our party, we considered these two options to be too extreme. Why? During our meetings with property owners from different districts, we noted a number of property owners, in particular the elderly owners, did have two flats. Actually, this phenomenon is not uncommon amongst the traditional Chinese community. Some people would use one flat for self-occupation and let out the other, and the rentals collected will then be their source of income on which they depend their living and old age pension. To put it more bluntly, they have to depend on the rentals for their funeral as well.

The existing policy of the Government is that since the resumed flat concerned is for letting out purposes, only 50% of the ex gratia allowance and the HPA will be payable to the affected owners. We consider this to be too tight-fisted and unfair. This is because the tenanted flats are of great importance to their owners. If the Government should resume those tenanted flats and offer only 50% of the HPA to the affected owners as compensation, it might cause the owners to incur a loss of as much as several hundred thousand dollars. As I said yesterday, compared to the entire programme to be conducted by the URA or the Government, several hundred thousand dollars is but a very small sum. But to the elderly flat owners, their lives would definitely be much better if they could receive several hundred thousand dollars more. For this reason, we consider it to be too unsympathetic and unreasonable of the Government not to pay 100% HPA for even the first tenanted flat.

However, some people might query what would happen if an owner should have 10 flats and use only one for self-occupation while the remaining are tenanted flats. Does it follow that 100% HPA should also be payable to the owner for his second to tenth flats? We do not think so. This is because the HPA is not any form of statutory compensation but sort of an allowance. It is true that in some individual areas there might be some companies holding quite a number of such flats, but it would hardly be possible for individual affected owners to have in their possession as many as four, five, six or even seven flats. So, the middle-of-the-road proposal proposed by us is in effect a compromise seeking to prevent the compensation package from developing towards extreme ends. Whereas the Government's proposal cannot address

the needs of the elderly owners who have one flat for self-occupation and depend on the rentals of their second flat for their living, the other extreme would be exceedingly subsidizing those companies engaging in commercial investments. Under the circumstances, we could only put forward an amendment to enable owners to be eligible for 100% HPA for their first tenanted flats but 50% for each subsquent flat they own irrespective of the total number of flats. I consider this an appropriate and well-balanced proposal on the ground that it could on the one hand provide adequate allowance for the affected owners concerned, and on the other avoid over-subsidizing commercial entities which have in their possession a large number of flats.

I just hope Honourable colleagues will support my amendment. Actually, during our discussion yesterday a number of Members even supported using a five-year-old replacement flat as the basis for calculating statutory compensation. I am afraid we cannot do this for the time being, since we must first submit a request to this effect to the Finance Committee beforehand. Nevertheless, for the sake of those affected owners with several flats, I believe we should at least use a more generous or reasonable approach to calculate the amount of compensation payable.

I hereby conclude my explanation of the amendment and urge Members to support it. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 25A and new Schedule 2 be read the Second time.

Does any Member wish to speak?

MR JASPER TSANG (in Cantonese): Madam Chairman, the DAB fully agrees with Mr LEE Wing-tat regarding the object of his moving this amendment that he referred to just now.

I should like to discuss the issue of principle first. According to the Government's existing compensation policy for urban redevelopment, if the resumed property is for self-occupation by the affected owner, a HPA will be offered to the owner to enable him to purchase a newer replacement flat of a similar size in the same locality of the resumed flat — we have already debated

yesterday the question as to whether a newer flat should be a flat of eight to 10 years old or a five-year-old flat. So, this is the existing policy of the Government. As regards the tenanted flat, however, the concept of the Government is that since the owner is letting the flat out to make a profit, it should be considered as a kind of investment, so the Government does not have any responsibility to guarantee that investors could continue to make a profit. As such, if the flat concerned should be resumed, the Government would only offer the affected owner statutory compensation based on the market value of the flat. I will speak more on this point later on. According to the Lands Resumption Ordinance, only the market value of the resumed property will be payable by the Government as compensation. Nevertheless, because of some unknown reasons and principles, the Government has proposed that if the affected owners should have more than one tenanted flat, the first tenanted flat would be eligible for 50% of the HPA in addition to the statutory compensation based on its market value, while the second and further tenanted flats would be eligible for only the statutory compensation based on the market value of the relevant flats but not the HPA. Why is 50% of the HPA payable for only the first tenanted flat but not the other tenanted flats? I consider this to be an arbitrary policy of the Government.

Just now I said I should like to discuss the issue of principle because I question very much the policy of the Government. In this connection, the Government holds that a flat used by the owner for letting out purposes is a kind of investment, and since the Government does not have any responsibility to guarantee that investors could make a profit, only the market value of the resumed tenanted flat concerned would be payable as compensation to the owner. But is it a feasible policy? Given that the flats concerned and the right over them belong to their respective owners, if the Government should indicate its intention to resume the properties, the affected owners as holders of the property rights over the flats concerned would naturally consider the possible effect that such a resumption order could have on them. However, the Government just could not care less. We are not talking about the aftermath of any natural disaster, nor are we talking about any need for the Government to compensate stocks and securities investors for their losses due to some major problems of the local economy at large like serious market turmoil. These are not the situation in question. The issue before us is that the conditions are being artificially changed. Originally, those owners of tenanted flats could continue to let out their flats for rentals without any worry. However, does it follow that the Government should treat them like this just

because they are making a profit and living at ease? Ours is a capitalist society. All along, the people can make investment without any worry. But then all of a sudden the URA says it would resume people's properties. Even though there will be compensation for the affected owners, the amount of compensation is not sufficient to enable them to make similar investments or operate their businesses in the original manner. Is that reasonable?

With regard to the compensation for shop proprietors, the policy of the Government is based on the same rationale as well. In this connection, the Government has made it clear that it does not have any responsibility to guarantee that business operators could always remain in business and earn a profit. If the any shops should see their earnings decline or should suffer losses after moving out of certain premises, it would be the business of but the operators concerned. However, the fact remains that while the premises concerned are the properties of their respective owners, the Government is empowered to resume them on a mandatory basis without entering into any negotiations with the affected owners. Under the circumstances, could the Government still hold fast to its rationale that since the Government does not have any responsibility to guarantee that business operators could always remain in business, only the market value of the premises concerned should be payable as compensation by the Government? There is one certainty, and that is, the market value of such premises is comparatively lower. This is especially true for buildings of an older age. Given that the majority of the occupants have moved out, how could the market value of those buildings stand high? For these reasons, I consider the criticism made by Mr LEE Wing-tat just now against the unfairness of the existing compensation policy of the Government established. With regard to the Government's policy that 50% of the HPA will be payable for only the first tenanted flat but not the rest of the tenanted flats, I hope that the Government could look into it and prudently review whether the underlying principle of the policy is correct.

Now I should like to discuss whether the amendment proposed by Mr LEE Wing-tat is able to achieve its intended objectives. Here, I would like to discuss the following points with Mr LEE Wing-tat.

First of all, the compensation payable under the Schedule 2 proposed in the amendment is called ex gratia allowance. My first question in this connection is: Is it appropriate to legislate to specify the amount of an ex gratia allowance? The proposed new clause 25A has referred to the statutory

compensation, just now Mr LEE Wing-tat has also read out the wording as follows: In addition to the statutory compensation payable under the Lands Resumption Ordinance (Cap. 124) and the Home Purchase Allowance ……". The statutory compensation is an amount payable by the Government in accordance with the law as compensation for the resumed flat concerned. This is the required amount of compensation based on the market value of the resumed flat. However, we are now talking about making legislation to provide for another ex gratia allowance, so that this ex gratia allowance would become statutory compensation as well. In other words, if the Government should fail to pay the full amount of statutory compensation, it breaches the law regardless of the amount in arrears. My first question is: Is it appropriate to legislate to specify the amount of the so-called ex gratia allowance? Upon the enactment of any legislation for this, the policy concerned would lose its flexibility. This is my first point.

Secondly, I have doubts about the so-called HPA as well. In view of the references to the allowance in the Bill, Mr LEE Wing-tat has proposed to give the allowance a definition under clause 25A which reads, "Home Purchase Allowance" means the ex gratia allowance approved by the Legislative Council under the Public Finance Ordinance (Cap. 2) from time to time and payable by the Government to enable Owners of flats resumed under the Lands Resumption Ordinance (Cap. 124) to purchase a replacement flat of a similar size in the same locality of the resumed flat." We must not forget that we are now legislating to provide for a definition. Upon passage, the relevant provision would become the statutory definition of the HPA. What does the HPA stand for? It stands for exactly the meaning contained in the wording I read out just now, with the part "the ex gratia allowance …… to purchase a replacement flat of a similar size in the same locality of the resumed flat" being of paramount importance. And it is exactly the age of this replacement flat of a similar size that we are now arguing about. We debated the issue for quite some time yesterday. While the majority of Honourable colleagues seemed to consider a five-year-old flat should be a suitable basis for calculating the HPA, the Government has insisted that it would only accept an eight to 10-year-old flat as the calculation basis at the most. In this connection, however, the proposed amendment has not specify the age of the replacement flat to be considered as in line with the requirement of the legal provision concerned. Certainly, there is another requirement contained in the proposed new clause, which is the part of the wording on "(the ex gratia allowance) approved by the Legislative Council …… from time to time and payable by the Government to …… owners

of flats resumed under the Lands Resumption Ordinance (Cap. 124)". However, even if it is to be approved by the Legislative Council from time to time, the Council still needs to deliberate very carefully. This is because while it is provided in the law that the HPA should be payable in accordance with the clause in question, the clause has nevertheless failed to specify the age of the replacement flat to be used for calculating the HPA. That being the case, it is possible that upon passage into law, the proposed clause might be challenged. Moreover, if the clause should be passed into law, would the requirements proposed by Mr LEE Wing-tat be in conflict with the law? This is exactly the reason why we have decided not to incorporate any specific proposal into the Bill despite our concern over the absence of any specific compensation package under the Urban Renewal Authority Ordinance once the Bill has been passed into law. If possible, I would also like to introduce an amendment specifying that the HPA shall be calculated on the basis of a five-year-old replacement flat. Why did Mr LEE not incorporate this point into his proposed amendment? Now that Mr LEE has not incorporated this point into his proposed amendment, an ambiguous area is thus created. But then he has chosen to define the meaning of allowance by way of legislation. I just cannot help but doubt whether this would give rise to any problems. Perhaps Mr LEE Wing-tat could explain that later on.

Thirdly, I consider this amendment unable to achieve its intended effects because my reading of the amendment is quite different from the explanation given by Mr LEE Wing-tat just now. The HPA has a very specific legal definition, which has been set out under clause 25A(2). Let me repeat it here. The HPA is "the ex gratia allowance approved by the Legislative Council …… from time to time and payable by the Government to enable Owners of flats resumed under the Lands Resumption Ordinance (Cap. 124) to purchase a replacement flat of a similar size in the same locality of the resumed flat." Since the HPA itself is actually an ex gratia allowance, a paradox would arise if an ex gratia allowance should be introduced on top of an ex gratia allowance (which is the HPA). According to the proposal put forward by Mr LEE Wing-tat, the first tenanted flat will be eligible for another 50% of the HPA on top of the HPA payable for it. As regards the amount of the so-called HPA, it has been specified as the difference between the market value of the resumed flat and the cost of a replacement flat. If 50% of the HPA is payable on top of the statutory compensation and the HPA, the owner concerned will be paid 150% of the HPA in total. I can see no point in raising the HPA payable to 150% and offering the remaining flats 50% of the HPA. If the proposal should be applicable, it would be applied to the first flat. In which case the

affected owner concerned will be entitled to 100% of the allowance. However, according to the explanation given by Mr LEE Wing-tat, thereafter the ex gratia allowance — I repeat, the ex gratia allowance — payable under the law for the second and any further flats should be equal to 50% of the HPA, any payment exceeding that level by as little as 10 cents would still be considered as a breach of the law. This is because under the proposed amendment, there is clear specification of the amount of statutory compensation and ex gratia allowance. In other words, no greater amount of ex gratia allowance could be offered. But is that reasonable? Under certain circumstances, we really do not need to cater for the major landlords to whom I referred yesterday as they would have in their possession many, if not all, of the properties on the entire street. Naturally, it is not appropriate to enable them to purchase a replacement flat for each resumed flat. However, is it appropriate to rigidly specify that those affected owners with only two tenanted flats should be entitled to 0% or only 50% of the HPA payable in respect of their second tenanted flat? I hold that it would undermine the flexibility of the compensation package if all those requirements should be incorporated into the relevant provisions. This is our major reservation about the proposed amendment for we are afraid that in specifying the ex gratia allowance by way of legislation, we would undermine the flexibility of the arrangement concerned.

For these reasons, we hold that the Government should review its policy on provision of ex gratia allowance for tenanted flats. We consider the original compensation package to be too tight-fisted and too mean. On the other hand, notwithstanding our demand for improvements to the present arrangement, we are concerned that upon passage, the amendment proposed by Mr LEE Wing-tat is still unable to achieve this objective. Unless the explanation to be provided by Mr LEE Wing-tat later on could allay all our worries in this respect, we cannot lend our support to his proposed amendment.

MR EDWARD HO (in Cantonese): Madam Chairman, just now Mr Jasper TSANG has stated some arguments in very clear terms. To me, the most important thing we need to know is the spirit of the HPA. In this connection, the HPA is payable as compensation to affected owners upon resumption of their properties in the redevelopment areas, with a view to enabling them to purchase a newer replacement flat of a similar size in the same locality. With regard to the age of the replacement flats, while the standard set by the Government is around eight to 10 years old, a final decision has yet to be made

since the Secretary indicated yesterday that he would take into further consideration the views raised by Members. So, that is the spirit of the HPA.

In the event of the resumed flat being the affected owners' second flat, which is for letting out rather than self-occupation, there is no question of the affected owners having any need for replacement accommodation. Neither is there any need for assistance to enable the affected owners to purchase a replacement flat to improve their living conditions. The only question involved is whether or not the affected owners concerned could depend on the tenanted flats for their living or as an investment. Hence, according to the decision of the Housing Authority, the affected owners will still be entitled to 50% of the HPA payable for their second flat which is not self-occupied but tenanted. As regards the third or any further flats they own, however, they are not eligible for any HPA payments.

Just now Mr Jasper TSANG said that as a principle, generous compensation should be provided for the affected landowners if their properties have been resumed involuntarily. He also said that neither the Government nor the taxpayers should have any responsibility to guarantee that the affected owners could make any profits. I am afraid Mr TSANG was wrong in this connection. Why? This is because the Government has to compensate the affected owners for their resumed properties irrespective of whether the flat resumed is their third, fourth or fifth flat; besides, the amount of compensation payable will be calculated on the basis of the market value of the flat concerned. Provided that the market value is reasonable, the amount of compensation should theoretically be enough for the affected owners to purchase a replacement flat of the same age in the same locality of the resumed flat. Naturally, it would not be possible for them to purchase a better or larger replacement flat with that amount of compensation, but at least they could purchase a replacement flat of the same age in the same locality for letting out purposes. Actually, the affected owners can already earn a profit from their first tenanted flat, given the 50% HPA payable to them as compensation. For this reason, the Liberal Party has reservations about the proposed amendment in this connection, but supports the proposal put forward by the Government.

On the other hand, with regard to the proposed amendment, I do not quite understand some of the points contained therein and hope that Mr LEE Wing-tat could explain them later on. According to the proposed Schedule 2, affected owners are entitled to an ex gratia allowance for each and every of

their tenanted flat resumed. In other words, all tenanted flats will be eligible for an allowance of 50% of the HPA. In this connection, since owners are eligible to receive an ex gratia allowance of 50% of the HPA in addition to the 50% HPA payable for their second flat, they will in effect receive a full payment of the HPA. However, the third and fourth flats will be counted as exceptions under the proposed amendment, given that the third, fourth, fifth and any further flats will be wholly tenanted flats. The Government has made it clear that owners will not be eligible to receive any HPA payments for their third, fourth and any further flats. However, will such flats still be eligible for 50% of the HPA under the proposed amendment? Further still, if the amount of the HPA concerned computed by the Government should be equal to $0, would 50% of $0 equal to $0 as well? Perhaps Mr LEE Wing-tat could give me an explanation in that respect later on!

MR JAMES TO (in Cantonese): I am really sorry, but there are in fact too many papers here. It looks as if I am being surrounded by tons of documents. Madam Chairman, perhaps let me try giving Honourable colleagues a simple explanation of the amendment. I may not be able to explain it fully, but I will try the best I can. As a matter of fact, when we put forward the proposed amendment, we already envisaged that we would need to overcome many hurdles, including the "charging effect" restrictions set out under the Basic Law, as well as the voting system which separate Members into groups in accordance with the way they are returned to the Council. The Democratic Party has put forward this proposed amendment because we believe this is the best we can do under the many existing constraints imposed on us Members. Naturally, we are not saying that ours is an ideal proposal or the best option. But then again, we believe the most important question remains whether we put forward an amendment to improve the relevant provision or we just pay lip service by urging the Government to review the issue. Actually, we have different considerations at different times. With regard to the issue in question, our consideration is whether or not it could be specified in legislation that the HPA payable to affected owners for their second flat could be increased by 50% to 100%. I should like to respond briefly to the view raised by the Honourable Edward HO. Just now Mr Edward HO said that if the HPA should stand at $0, 50% of $0 would still be $0. I am afraid Mr HO's basic concept was completely wrong. Perhaps let me first give a brief explanation on the principle of mathematics. The calculation formula referred to just now was in fact a matter of addition, which is the addition of 50% to $0 of the HPA. Hence, the formula should be $0 plus a certain figure. In which case, the sum

should not be equal to $0. With regard to the third flat they hold, affected owners will receive 0% of the HPA as they are not entitled to any of the allowance according to the proposal set out in the paper of the Finance Committee; however, with the proposed amendment, they will be eligible for an ex gratia allowance of 50% of the HPA in addition to the statutory compensation and that 0% of the HPA. In other words, even though 0% of the HPA will be payable by the Government for the third flat, the amount of ex gratia allowance the affected owners are eligible for under the proposed amendment will not be equal to $0.

As to the question of whether or not affected owners will receive 50% of the HPA for the tenth flat they hold, our answer is very simple: The affected owners concerned "may be eligible" for the allowance. One very important checks and balances factor here is our interpretation of the word "may". On the other hand, we are also faced with another problem. In this connection, we have noted that the size of some of the resumed flats ranges from 800 sq ft to 1 000 sq ft. If the owner should use the entire flat of, say, 800 sq ft, for self-occupation, he would of course be entitled to 100% of the HPA. However, if the owner should divide the flat into two units of 400 sq ft in size and use one of it for self-occupation and the other for letting out, he would not be eligible for 100% of the HPA for the tenanted unit. Certainly, I will not use a flat of 5 000 sq ft as an example to explain the case and say that the flat could be divided into 10 units each of which is 500 sq ft in size, since it is normally not possible for an aged flat to be divided into so many units in reality. Nevertheless, I think the example cited by me just now should be sufficient to explain the reason why we have strongly put forward our proposal regarding the compensation payable for the affected owners' first, second and third flats.

Secondly, we have also taken into consideration the situation of owners who have property rights over many flats. If these owners are really trying to make an investment by paying only a deposit for a number of aged flats and speculate on the returns of such flats like some real estate developers, the proposal put forward by the Government which offers no HPA for the second, third and fourth flats of affected owners could hardly impose any constraint on them. Why? This is because they could hold each of their flats under the names of different limited companies or persons. Actually, they have already made a lot of preparation in this connection. Even if the Bill should be passed today, they might have done a lot of preparatory work before today. Besides, in the run-up to the demolition of the buildings concerned, there is still time for

them to deal with the HPA-related matters as the Government has not specified the minimum ownership period in respect of the eligibility for HPA payment.

At present, the situation of the elderly should be the worst amongst all. For some of the elderly flat owners, they might not know so many financial skills or tricks to avoid paying tax, nor would they know about the many rules and regulations in this respect. It is indeed very miserable for those elderly owners who have only two to three domestic properties. This is because they are forced by the Government's policy to divide their properties among their children — I do not know whether Members understand what I am trying to say. Actually, I have handled wills of this kind before. Because of the existing policy, some elderly persons are forced to draw up wills to allocate a flat to the eldest son for self-occupation, a second flat to the second daughter and so on. This is indeed very miserable because the elderly just do not wish to divide their assets before they die. But since the Government has forced them to do so, many family disputes over the distribution of assets would be created. This is by no means rare cases but very common under the present circumstances. For elderly persons who have more than one property, it is very likely that such things would happen to them. Hence, the parties being affected by the Government's policy will not be those professional speculators or real estate developers, for they have already set up many companies as holders of their properties.

So, these are the reasons why we propose to extend the eligibility for the HPA. On the other hand, with the benefit of hindsight, I think it would be better if we could make new clause 25A(2) more specific. But then again, according to the legal advice we have obtained, even though the new clause 25A does not specify the age of the replacement flats concerned under subclause (2), I am sure the Court could still interpret it as of the same age of the resumed flats concerned when applying the provision …… I am sorry, I think I should better withdraw this remark. The new clause 25A(2) is indeed a tough one to explain; I think I should let Mr LEE Wing-tat to further expound on it.

MR ANDREW WONG (in Cantonese): Madam Chairman, yesterday I spoke a lot on the commencement date and the system concerned. As I said before, I have much doubt about the Bill *per se*. I doubt it very much whether it would be the right solution to the issue to set up the Urban Renewal Authority (URA) if we should find problems with the mode of operation of the Land

Development Corporation. However, now that the White Bill had been transformed into a Blue Bill and presented to this Council, we have reached a point of no return.

This morning, I received yet some more letters from the West Kowloon Redevelopment Concern Group stating their strong objection to the mandatory resumption of people's properties. Hence, as I almost spoke out yesterday, the crux of the problem really lies in the issue of compensation. I feel sorry that the amendment proposed by Mr LEE Wing-tat has never been raised or thoroughly discussed at the meetings of the Bills Committee. So, what is the essence of his proposed amendment? Oh, it has been raised before? Perhaps I was not present at that meeting then — I am terribly sorry about that.

Just now I have heard many Honourable Members expound on their peculiar views on the amendment proposed by Mr LEE Wing-tat. While Mr Jasper TSANG has put his views, Mr Edward HO has raised his. What is more, they have also put some questions to Mr LEE. But why? On the other hand, what government officials have said to me is another story. So, what exactly is that new clause 25A about? After careful reading, I have found the compensation payable by the Government under the existing scheme not reasonable indeed. For example, the Government is willing to pay the affected owners compensation based on the market value of the resumed flat and then offer Home Purchase Allowance (HPA) as compensation on a case to case basis. If the resumed flat is for self-occupation, the affected owner could receive 100% of the HPA calculated on the basis of an eight to 10-year-old replacement flat. However, owners are not eligible to receive the HPA for their other domestic properties. The amendment proposed by Mr LEE Wing-tat is to safeguard the property value for those owners who use their properties for investment purposes. Actually, I agree very much with the first half of the speech made by Mr Jasper TSANG just now. This is because the problem before us now is not caused by the fact that some flat owners have voluntarily bought a number of properties and incur losses due to a downturn in the property market. Rather, it is because of the Government's policy that flat owners have to incur losses when their flats are resumed by the Government, for they will never be able to purchase any replacement flat. Most probably the affected owners are not hoping to buy a newer replacement flat, they would accept it if the flats were older. But the fact remains that they could never find such flats.

For these reasons, I think the amendment proposed by Mr LEE Wing-tat is desirable, only that there are still problems with its content. I cannot agree

with the analysis made by Mr Jasper TSANG in the second half of his speech. I was surprised to hear him say that we could not legislate to provide for an ex gratia allowance.

We can legislate to provide for an ex gratia allowance. The HPA itself is a kind of ex gratia allowance. As regards the additional ex gratia allowance proposed in the amendment, it is calculated on the basis of the HPA. This additional ex gratia allowance is payable for the domestic properties not covered by the Bill, such as the second, third, fourth or even tenth flat of the affected owners. So, where does the crux of the problem lie? It lies exactly in the ex gratia allowance. If the Government and the URA should be willing to offer an ex gratia allowance, I hope they could have it specified in the law, but with some flexibility. Nevertheless, flexibility does have its merits and demerits.

Let me first talk about the merits. Here is the first merit. Supposing a flat owner who is not so well-off, he could only take one of the rooms in his flat for self-occupation and let out the remaining rooms for rentals. In this case, item 2 of the Schedule 2 under the proposed amendment put forward by Mr LEE Wing-tat might be applicable to him. However, this is exactly where the problem lies. This is because I consider that the flat owner in this case should be eligible for 100% of the HPA. Could Mr LEE Wing-tat explain whether this owner is eligible for 100% of the HPA under his proposed amendment? Maybe he can give us a reply later, not now.

Secondly, I should like to speak on flexibility. What kind of flexibility am I talking about? With regard to affected owners of different financial positions, it is possible that we may need to offer some of them yet another ex gratia allowance. Let me cite an example with an affected owner who is a little better off than the one in the previous example. Supposing a widow and her young child have a flat for self-occupation and another flat on which they depend for their living. In my opinion, their tenanted flat should be eligible for more than 50% of the HPA. Since they have to depend on the tenanted flat for their living, perhaps as much as 100% of the HPA should be payable to them as compensation. This is because the tenanted flat is their only source of income, but they could never purchase a replacement flat once it has been resumed. Under the circumstances, the proposed amendment put forward by Mr LEE Wing-tat would hardly be of help.

Thirdly, different kinds of allowance should be payable under different circumstances. This is because there will be cases in which a larger amount of allowance should be provided for the affected owners, while in other cases a smaller amount of allowance could be considered as acceptable. This problem will arise if the ex gratia allowance should be approved flexibly. While the object of the first two kinds of ex gratia allowance is to address the special needs of individual affected owners, the third kind of ex gratia allowance is to cater to the different needs arising from different projects and schemes. In this case, the URA would find itself being confronted with traps. Since the URA might approve a larger amount of allowance in a certain situation but a smaller amount in another, eventually everyone would be asking for a larger amount of allowance. So, the pressure on the URA will be on the increase while the amount of ex gratia allowance approved would be on the decrease. This is because the URA would feel uneasy giving approval for too large an amount of ex gratia allowance. Moreover, if a precedent for approving a larger amount of allowance has been set, people will certainly be asking for more and unwilling to accept a smaller amount of allowance.

I hope Honourable colleagues could take my points into consideration. Madam Chairman, I also hope that the Secretary and Mr LEE Wing-tat could answer some of the questions raised by me just now. Thank you, Madam Chairman.

MR JASPER TSANG (in Cantonese): Madam Chairman, first of all, I should like to respond to the remarks made by Mr Edward HO just now. In this connection, he said that even in the event of the Government mandatorily resuming owners' properties, it would still offer the affected owners compensation based on the market values of the resumed properties concerned. He then said very light-heartedly that with the compensation, owners could purchase other properties and let them out for rentals. However, as we all know, this is not possible in reality. As I said yesterday, there would not be any problem if the proposal put forward by the Government should be to offer the affected owners a replacement flat as compensation for the resumed flat. The owners would not mind even if the replacement flats were 30 years old. But in the present situation, the affected owners may say, "I have repaired and maintained this 30-year-old flat in such a good condition, it could earn a certain amount of rent for me each month. But now the Government is going to take it away and offer me some $300,000 to $400,000 in compensation. How

could I purchase a 30 to 40-year-old replacement flat in the same locality with such a small amount of money? Moreover, while I am trying my best to find a replacement flat, the Government is demolishing the old buildings, how could I purchase any replacement flat in the end?" If the Government should agree to offer a replacement flat as compensation for a resumed flat, I am sure the owners concerned would be very willing to trade in with the Government. After all, they would still have a flat of a similar size in the same locality. They would not mind about the age of the replacements flat or the maintenance conditions either, since all they should need to do would be asking the tenants to move to the replacement flats nearby and continue to pay rents. There would not be any problem if that should be the case. However, since this is not the fact, we should not describe the present situation as if it is like this. The present situation is another story. With that small amount of compensation, the affected owners will never be able to purchase any replacement flat of a similar size for letting out purposes. I think Honourable Members should be very clear about that. However, I do agree very much with the computation made by Mr Edward HO just now. I will come back to that later on.

I should also like to respond to the situation where flat owners are being forced to divide their properties as mentioned by Mr James TO just now. It has been said that the present arrangement would pose flat owners a problem in dividing their properties. For example, they might have to consider whether the first flat should be allocated to the eldest son, the second flat to the second son, the third flat to the third son and so on. However, even if the proposal put forward by Mr LEE Wing-tat should be passed, the same property allocation problem would still exist. At present, there might not be any difference between the first, second and third properties held by a same owner, since they would most probably be three units on a same flat. However, if the properties should be resumed for redevelopment and the compensation proposal put forward by Mr LEE Wing-tat was adopted, problems would then arise. This is because while a large amount of compensation would be payable for the first property, the compensation payable for the second and third properties would be much less in comparison. As such, even if the proposed amendment put forward by Mr LEE Wing-tat should be passed, the property allocation problem of aged flat owners to whom Mr James TO referred just now would still remain unresolved.

I should like to cite an example to facilitate discussion. Is there any point in the case of 0×50% of the HPA raised by Mr Edward HO just now? With regard to the proposed amendment, we could see many references to the term "Home Purchase Allowance" (HPA) in both clause 25A and Schedule 2. According to my understanding, since its meaning has been defined under a provision of the Bill, the term "HPA" could only have one interpretation. This is because a term cannot have a meaning in the first part of a provision and then another meaning in another part of the same provision. So, what is that HPA about? Supposing a tenanted flat of a certain owner is worth $300,000 at the present market value, and that the cost of a replacement flat (an eight-year-old flat in this case) in the same locality of that property is around $1.3 million according to the Government's evaluation. In other words, while the market value of that old flat stands at $300,000, to purchase a replacement flat would need $1.3 million. According to the meaning defined under clause 25A(2), the HPA for this flat would be $1 million. This is not disputable; the amount of HPA payable is $1 million. In other words, the HPA payable under this case would always be $1 million. But is it the case in reality? If that should be the case, then according to clause 25A(2), the owner concerned will be entitled to the statutory compensation payable under the Lands Resumption Ordinance (Cap. 124), which is the first part of the compensation payment based on the market value of his flat, and the HPA of $1 million. On top of that, the owner concerned will also be entitled to the HPA payable by the Urban Renewal Authority in accordance with the scheme set out in Schedule 2 (the relevant part of the Schedule is: 1. Wholly tenanted flats 50% of the HPA for each wholly tenanted flat), which is $500,000 or 50% of $1 million. So, in total, the relevant owner will be entitled to the market value of his flat ($300,000), the HPA ($1 million), and an ex gratia allowance based on 50% of the HPA (which is $500,000). Is that reasonable? I can see Mr LEE Wing-tat shaking his head vigorously. I just wonder how he would explain that the case is not like this.

According to the compensation package proposed by Mr LEE Wing-tat, affected owners are entitled to a compensation payment constituted by three parts: Statutory compensation, the HPA, and 50% of the HPA. Perhaps Mr LEE Wing-tat would say, "No, that is not the case, the computation for the HPA is incorrect." Given that the amount of the HPA is changeable, it is possible for him to say that. Nevertheless, under the existing policy, while the amount of HPA payable for the first non self-occupied flat is $500,000, the

amount of HPA payable for the second flat would be $0 — this is very much in line with the example cited by Mr Edward HO just now. Under the circumstances, how are we going to ensure that the first non-self-occupied flat will not be entitled to an unduly large amount of compensation? How are we going to ensure that the HPA payable for it will not exceed the HPA payable for the self-occupied flat? The HPA is in fact subject to change. In this connection, the HPA payable for the first tenanted flat is equal to 50% of the HPA payable for the self-occupied flat. I have found this explanation rather unconvincing. However, even if I accepted this explanation on the HPA payable for the first tenanted flat, I could still see some problems. This is because if the amount of HPA payable should be $500,000, 50% of the HPA would be $250,000. In which case the affected owner will not be paid 100% of the HPA. So, how much should the amount of the HPA be? This is the first question we need to answer. If the amount of HPA payable should be $1 million, the owner concerned would be entitled to $1 million plus 50% of that $1 million. If the amount of HPA payable should be $500,000, the owner concerned would be entitled to $500,000 plus 50% of that $500,000. So, whatever the explanation may be, the owner concerned just will not be paid 100% of that $1 million of HPA.

The computation for the second tenanted flat would be more complicated. If the HPA is payable in accordance with the existing compensation practice, then it is possible that 0% of the HPA will be payable for the second tenanted flat as described by Mr Edward HO just now. Moreover, according to the case just now, the first tenanted flat will be entitled to 50% of the HPA while the second tenanted flat will be entitled to 0% of the HPA. However, since the arrangement has not been specified in law, there will still be disputes in the future. But if the law should contain rigid provision on this, the compensation package would be put under "constraint". On the one hand, our hands will be tied; on the other hand, we still could not achieve the purpose of safeguarding the interests of the affected owners. On the contrary, our hands will be tied when we seek to fight for their benefits in the future. This is because everything is rigidly set out under the law, any attempt to provide the affected owners with more compensation would be in breach of the law. Under the circumstances, is it advisable to make such a move?

Mr Andrew WONG left this Chamber after making his speech, but still I would like to respond to the part of his speech on ex gratia allowance. As

mentioned by Mr Andrew WONG just now, actually the provision of ex gratia allowance must be considered on a case-to-case basis. If the owner concerned should be a major landlord, we would find it unreasonable to compensate him fully with the taxpayers' money. However, we would also find it unreasonable if the case of a major landlord should considered on the same basis as that of a retiree depending on his two tenanted flats for his living. But if the relevant conditions have been set out in the law, we will not have any flexibility in considering the cases. I consider the remarks made by Mr Andrew WONG just now to be self-contradictory. On the one hand he said that things would be considered in the light of the individual cases; on the other hand, he also claimed that the provision of ex gratia allowance could be established by legislation. My concern remains that the rigid provisions in law would undermine the flexibility in dealing with the cases concerned.

MR LEE CHEUK-YAN (in Cantonese): Madam Chairman, we support the amendment put forward by Mr LEE Wing-tat because we understand very well the rationale behind the entire proposed amendment. With regard to the present issue, the "imperial sword" held by the Government is in fact its position that affected owners are not allowed to make any bargain. This is a very important concept. Rather than seeking to strive for more benefits for the affected owners, the amendment before us now is just trying to urge the Government to consider the need to safeguard their due interests when depriving owners of their private property rights. However, to call a spade a spade, when it comes to debating skills, I am by no means comparable to Mr Jasper TSANG. The speech he gave just now was really excellent; one could hardly find any points to refute him. Mr Jasper TSANG was originally speaking in support of Mr LEE Wing-tat's principle; it is a pity that his final conclusion pales in comparison with the other parts of his speech. I will speak on his conclusion later on. Nevertheless, I wish to make it clear in the first place that it is exactly because of the no-bargaining policy of the Government that we wish to amend the Bill to provide for a more generous compensation scheme.

On the other hand, in addition to not allowing the affected owners to make any bargain, the Government also will not allow these owners, who are now being deprived of their private property rights, any share of the benefits upon the completion of the redevelopment project. If the Government

undertakes to offer the affected owners share rights of the redevelopment projects upon completion, this could also be considered as another kind of compensation. Regrettably, however, the Government has not made such an undertaking. So, when the Government decides to resume land by using its "imperial sword", how should it compensate the affected owners? Should more generous compensation be payable to owners of tenanted flats, who are also known as investors? What beats me most is the speech made by Mr Edward HO on behalf of the Liberal Party just now. Not long ago, the Liberal Party has made "safeguarding people's assets, bolstering people's confidence" its slogan for the demonstration it organized to urge the Government not to intervene in the property market. Actually, the current practice of the Government is exactly intervening in the property market. With regard to the matters of the Urban Renewal Authority (URA), the Government could be considered as intervening in the property market so long as it resorts to its "imperial sword" in this respect. So, in the present situation where the Government could intervene in the property, how is the Liberal Party going to offer protection for people who have negative assets? Given that the Liberal Party has recently organized a demonstration in this connection, I very much hope that Members from the Liberal Party could answer this question of mine.

The problem facing us now is attributable to the fact that while some affected owners have bought their properties at some $800,000 when the property market was in its prime, the current market value of the properties concerned may stand at just $300,000. If the Government could offer them 50% of the HPA on top of those $300,000, it might be possible for these owners to resolve the problem of negative assets as they would then have money to meet their mortgage repayments. Could the Liberal Party inform me how it sees these owners of negative assets? Just now Mr Jasper TSANG mentioned that if legal provisions should be made in this respect, our hands would be tied when we seek to bargain with the Government in the future. However, I am afraid the prospects for any future bargain would by no means be optimistic. Given that the Liberal Party also considers the policy of the Government to be reasonable, it is doubtful whether we could gather enough strength to cause the Government to change its policy in the future. With regard to any future opportunity to strive for the interests of these owners, I therefore hope that Members from the Liberal Party could make it clear whether they would accept to the full the current practice of the Government.

If their answer should be in the affirmative, it is very doubtful whether the future attempts in this connection could succeed at all. Given that the success of any future attempt remains in doubt, the discussion today would be of paramount importance. Just now Mr Jasper TSANG said that if our hands should be tied now, it would hardly be possible for us to bargain with the Government in the future. Perhaps let us view this matter from another angle. If we could make this proposal not only a reasonable proposal but also the best proposal, there would be no need for us to bargain for a better one in the future. If Members do find this a reasonable proposal, why should we not accept it now? Why must Members insist on claiming that their hands are being tied? To be very honest, how could we be so sure about the compensation packages we could strive for successfully if our hands are really being tied now? So, Members could imagine that the present situation is indeed not very optimistic.

Actually, I agree very much with most of the points made by Mr Jasper TSANG in his speech just now. What is more, he has delivered his speech in a much better way than mine. Despite his brilliant debating skills, I am afraid Mr TSANG would not be so brilliant in pressing the button later on. This is because the last point he raised was incomplete. At the end of his speech, Mr TSANG referred to the reason why he was confused by a technical point, but I just could not see any point of confusion here. In this connection, just now Mr TSANG said that the proposed amendment has given a definition for the HPA. He then went on to cite an example with the HPA being set at $1 million to question whether the amount of compensation payable under the proposed amendment would be $1 million plus 50% of $1 million, which would amount to $1.5 million in total. I just cannot see any point why this would be the end result. This is because one condition set out clearly under the proposed amendment is that in addition to the HPA payable under the relevant provision, owners may be eligible for an ex gratia allowance equals to 50% of the HPA. Let us assume the amount of the HPA to be $1 million for the time being. But then according to the relevant provision, the owner concerned might only be eligible for 0% of the HPA. Yet on top of this 0% an additional HPA would be payable (not the one payable under the provision referred to in the relevant document), thus raising the amount of compensation to $1 million. This is because even if the owner concerned is eligible for 0% of the HPA under the policy of the Government, the proposed amendment has made it clear

that $1 million would be payable for the self-occupied first flat, while 50% of the HPA would be payable for the second and any further flats. The amount will be computed in this way until 0% of the HPA is payable to the owner. So, the amount of the HPA payable to owners might perhaps be clearly set out eventually. Even though such an amount has not been specified in the relevant papers and documents at present, they will be laid down in black and white in the future. Besides, the papers to be submitted to the Finance Committee in the future will also set out clearly that a certain amount like $1 million shall be payable for the first flat, 50% of the allowance shall be payable for the second flat, and then different percentages of the allowance shall be payable for further flats until the percentage is scaled down to zero. When the percentage is scaled down to zero, 50% of the HPA will still be payable for the flat concerned. Hence, it is possible for the amount of allowance to be 0% plus 50% of the HPA. I consider this to be feasible and reasonable.

I have no idea whether Members would still have any points of concern remaining in their mind in the end. For my part, I have one. When the Secretary rises to speak later on, I am afraid he will raise an issue, which, in my opinion, is most repugnant to this Council. Actually, the Secretary referred to it already last night. But since it was already very late in the night, I did not say anything then. I believe the Secretary will certainly say later on that if the proposed amendment should be passed, he would withdraw the motion on the Third Reading of the Bill. Most probably he would say such things, and "lose-hit, win-take" things like he would rather throw out the baby with the bathwater. I guess the Secretary will certainly say such things, albeit I hope very much that he will not. I can see the Secretary nodding his head, so I am just giving Members a prior notice. In that case, what is Members' concern? Are they really afraid that the Secretary will throw out the baby with the bathwater? Is it because the Secretary will certainly say those things in the end that Members have chosen not to touch upon this aspect for the time being and leave this to a later date? I hope Mr Jasper TSANG could clarify whether it is after taking into account this factor that he has come up with this decision: Forget it! Otherwise the relationship between the legislature and the Government will become tense again. I should better forget it and withdraw on the pretext of some technical problems! I hope Mr TSANG could explain clearly to us what he has in mind. I consider it to be a common practice of the Government to throw out the baby with the bathwater. However, frankly, if

the Government should consider withdrawing the Bill like it did several years ago in respect of an amendment proposed by Mr LAU Chin-shek, I must remind it that the situation this time around is quite different. Last time when Mr LAU Chin-shek resigned, the term of office of the then Legislative Council still had six more months to go. But this time, the current Legislative Council term will end in a few days, not six months. Naturally, we would lose our allowance for the summer if we should resign at this juncture. However, that is no big deal to us. Nevertheless, I hope the Secretary will not always resort to this approach, and I hope he will not always treat the legislature like this. This is the last thing that the Government should do. Given that the Government has been talking about improving the relationship between the executive authorities and the legislature all the time, it should understand that the most effective approach is to respect the decision that the legislature in its capacity as a representative council has made by way of a vote.

Thank you, Madam Chairman.

DR YEUNG SUM (in Cantonese): Madam Chairman, I have listened very carefully to the speeches made by Mr Edward HO and Mr Jasper TSANG just now. I should like to respond to the issue of principle raised by Mr Jasper TSANG first. I do not know whether Mr TSANG also hopes that affected residents will be eligible for a larger amount of compensation than that proposed by the Government. If he could base his argument on this principle, he would not have rejected the amendment on the pretext of some technicalities. I am sorry that I cannot support Mr TSANG either, since I consider his proposal not good enough. However, with regard to the legal aspect of the amendment, actually we have requested the Legal Adviser to the Legislative Council to explain the amendment proposed by Mr LEE Wing-tat who, I believe, could repeat the explanation to us later on. If Mr Jasper TSANG should have problems interpreting this piece of legislation, he could further consult our Legal Adviser, who is independent and impartial. So, if Mr TSANG does hope in principle that affected residents will be entitled to an amount of compensation larger than that proposed by the Government, he should contribute his efforts to this end, rather than overturning his own words on some technical problems. I am very sorry to say that I just cannot give my support to Mr TSANG's proposal, which is in effect an endorsement of the compensation policy put forward by the Government. His proposal does not

seek to strive for more allowances for the affected residents. If Mr TSANG should have any further questions on the legal aspect of the amendment, a more appropriate approach should be to consult our Legal Adviser. I hope very much that Mr Jasper TSANG could reconsider the proposed amendment, since his support or otherwise is of utmost importance to the amendment moved by Mr LEE Wing-tat on behalf of the Democratic Party.

Now I should like to respond to the views raised by Mr Edward HO. It is all the more surprising for me to have heard Mr Edward HO making such remarks on behalf of the Liberal Party, given that the Liberal Party has stressed many times the importance of private property rights. According to the policy of the Government, 100% of the HPA will be payable by the Government to affected owners for their self-occupied first flat. As regards the level of compensation payable for the second flat, residents from across the Hong Kong Island to the Sham Shui Po District have come to my office to tell me their views. This is what I have learnt from them: For the elderly, it is rather common amongst them to spend their lifelong savings buying a flat for self-occupation and another one for letting out purposes. And usually these are old flats. But then the Government has said that while 100% of the HPA would be payable for their self-occupied first flat, only 50% of the HPA would be payable for their second flat and their third flat would not be eligible for any allowance at all. So, the Government is taking away the people's private properties and telling them that they are entitled to 100% of the HPA for their self-occupied first flat and 50% for their second flat but will not for their third and further flats. Given that it has been the stance of the Liberal Party all along to protect the private property rights of the people, how could Members from the Liberal Party support the Government's proposal? How could they give the Government their support? I am not talking about the theory of making investment for capital preservation purposes; moreover, investment does not necessarily guarantee capital preservation. The Liberal Party has always believed in the market and held that each investment made would guarantee capital preservation. If profits could be made that easily, could the market still be considered as a market? I am not talking about making investment for capital preservation purposes; I just want to discuss with Honourable Members the issue of private property rights. When the Government takes away a domestic flat from its owners, regardless of whether the flat concerned is for letting out or any other purposes, the fact remains that the Government has taken it away. That being the case, how could the Government say that because the flat is for letting out purposes, only 50% of the allowance would be payable to the affected owners? How could the

Government say such words? If Mr Edward HO should support private property rights, he could not possibly support the Government's proposal, which is no different from robbing the owners of their properties. Regardless of whether the flat resumed is for letting out or any other purposes, it is still the owner's property. How could we support the Government's proposal to rob the people of their properties?

Certainly, it would be best if 100% of the HPA should be payable for all the tenanted flats resumed. But then again, we are also concerned that this would pose a problem to public expenditure. A more agreeable arrangement would be to offer affected owners 100% of the HPA as compensation for their second flat at the least. Since the Government is unwilling to make such an offer, we just hope that the ex gratia allowance payable under the amendment proposed by Mr LEE Wing-tat could top up the compensation for affected owners. Moreover, this proposal will not cause the President of the Council to consider that the ex gratia allowance will add to government expenditure. The President has ruled that the proposal would not prose any problem to or have any charging effect on government expenditure, and therefore given us her permission to present this proposal to the Council for Members' discussion. For these reasons, I should like to urge Members to first consider whether the level of compensation proposed by the Government could be considered reasonable, and if not, whether there are any alternatives to enable the affected owners to receive a larger amount of compensation. The proposal made by us here has been approved for discussion by this Council according to the President's ruling, we therefore very much hope that Members could take it into further consideration before deciding on how they would cast their votes.

Property right is a concept of capitalism of utmost importance to the individuals in a community, particularly in a society like Hong Kong. Irrespective of whether it is for other reasons or even for public interest, it is simply improper of the Government to take away one's private property like this. But since it would not be feasible to offer affected owners 100% of the HPA for each of their resumed flat from a public expenditure point of view, we could not but propose that at least 100% of the HPA should be payable for the second flat and 50% for the third. Actually, this is a very moderate middle-of-the-road proposal. I would be very much disappointed if such a moderate proposal should fail to win the support of Members. Thank you, Madam Chairman.

MR LEE WING-TAT (in Cantonese): Madam Chairman, I know this amendment will certainly bring about a heated debate. First of all, I would like to state that I have prepared this amendment very carefully and I have pondered over all the questions raised by Mr Jasper TSANG.

Mr Jasper TSANG has raised two very good questions. Why do we incorporate the formula of calculating the allowance into the legislation? Why do we not incorporate into the legislation a formula using a five-year-old flat as the basis? Frankly speaking, I have really considered these. See, the Chairman smiled. I have thought about this, but it does not mean that it is feasible. If whatever I wish will be feasible, I will be immensely wealthy — It will be so wonderful if all my dreams will come true. However, I have to stop once Article 74 of the Basic Law is involved. Mr TSANG knows that the situation is difficult because Article 74 specifies that "Members of the Legislative Council of the Hong Kong Special Administrative Region may introduce bills in accordance with the provisions of this Law and legal procedures. Bills which do not relate to public expenditure or political structure or the operation of the government may be introduced individually or jointly by members of the Council."

Actually, we all know that there are inhibitions and we are clear about this when we consider proposing an amendment. If we are confident that we can make amendments to the statutory compensation specified under the Lands Resumption Ordinance (Cap. 124), we would have made the amendment long ago. However, we have discussed the issue with our legal adviser and he indicated that it was not feasible. Why did he think that this amendment was feasible? Mr James TO is right because we have deliberated over this for long, (even Mr Stephen FISHER, the Deputy Secretary, smiled!) and we think that there are a lot of difficulties after all, thus, in the end we used the words "may be eligible" as people may be eligible for the ex gratia allowance under the new provision under certain circumstances. They "may get" the allowance but we are not saying that they "will certainly get" the allowance. Yet, the relevant persons can make an application for the allowance. Shortly after overcoming this, I wrote to the President, refuting government officials for their opposition. As it realized that I intended to propose an amendment, the Government gave me a three-page reply in opposition to my amendment. The major ground for its opposition is that my amendment will have a "charging effect". I would certainly respond to its opposition, otherwise, I would be in trouble for the President would surely rule my amendment out of order.

I gave a different explanation when I elaborated the amendment. Firstly, the resources belong to the Urban Renewal Authority (URA) but the revenues of the URA do not come solely from the Government. The URA is a public body and it has many sources of capital, thus, we cannot say that every cent it uses comes from the Government for there are actually some non-government resources. Secondly, owners are only eligible for ex gratia allowance according to my amendment. I am not sure what the President thought, but I guess that is why I could convince the President to allow me to propose my amendment.

Is it easy? Certainly not. We cannot easily propose amendments to provisions relating to public expenditure because there are really serious inhibitions. This answers Mr Jasper TSANG's question as to why we often propose legislation on compensation. He has even asked me why the basis of calculation cannot be changed from an eight to 10-year-old flat to a five-year-old flat. Indeed I would like to do so, but I cannot. Members should know my character. But why did I not do so? Certainly, I very much want to but I cannot do so. This explains the first point.

Secondly, the calculation of the allowance. Having read the legislation carefully, I find that all the procedures for compensation for land resumption must be handled this way. First of all, regardless of whether the amendments will be passed, HPA must be given for self-occupied flats. As the Government has not yet changed its stance towards owner-occupied premises, these owners will surely be given 100% HPA. As Mr TSANG has said, even if the compensation amounts to $1 million, it will certainly be paid. Secondly, if the second flat of an owner is for letting out purposes, the Government will give him 50% HPA. After we have calculated the allowance for the first owner-occupied flat, we can easily calculate that 50% of the allowance is $500,000. If my amendment is approved, the ex gratia allowance can be calculated on the basis of this allowance as it will be 50% of the HPA. As the Government will pay $500,000 as allowance for the first flat and $500,000 as ex gratia allowance, the total sum payable will amount to $1 million. The calculation of the allowance for the first leased out flat is this simple. This is our consistent view and our legal adviser also thinks that this is a correct analysis. Thus, I really do not understand why Mr TSANG has described in his lengthy speech that the issue is "troublesome" or "such a headache".

This morning, I held a sincere 10-minute discussion with Mr Stephen FISHER, the Deputy Secretary, in the Ante-Chamber, and he agreed that the legal effect pereceived by us might really be resulted. Mr TSANG can certainly make other considerations, but the most important point is that I fail to see why we should be worried when even the Bureau has not raised any objection. If the Government really wants to challenge my analysis, it should have done so at 9.15 am this morning. However, it did not do so and Deputy Secretary Stephen FISHER agreed that my analysis was right. Thus, I wonder why Members should be worried while the Administration also felt relieved. Therefore, I do not think that the 150% HPA suggested by Mr TSANG and Mr Edward HO will arise.

We have actually considered whether this amendment will inhibit us in many aspects? In my view, it is better to have one bird in hand than a hundred birds in the forest. We can certainly visualize a beautiful picture depicting how we convince the Secretary to take on board our views and change his stance at a meeting of the Finance Committee when the Council resumes. However, we can see that Secretary Gordon SIU was very frank yesterday — I agree that officials should be frank and they should not mislead colleagues. He said that the Government's position on eight to 10-year-old flats would not change and he opposed the relevant part of my amendment. As compared with the Government's proposal, my amendment will at least give old people who own two to three domestic premises to get much more ex gratia allowance — comparing "much more" with "perfect", I certainly hope that my amendment will be "perfect" but it will be even more difficult for such an amendment to be approved because Mr Edward HO has reflected that the Liberal Party has reservations about my amendment. I have tried to figure out Mr TSANG's views. He thinks that the ex gratia allowance payable for the second, third, fourth, fifth or more leased out flats under my amendment are not good enough and I sincerely agree with him.

I do not quite remember if Mr TSANG is a member of the Bills Committee but there are DAB colleagues in the Bills Committee. If Mr TSANG finds any deficiencies in my amendment, he should amend my proposal and make a better proposal. I do not want any colleague to say that he opposes my proposal because it is not the best. This is only too right. If the DAB proposes that the first to the tenth leased out flats should be given 100% HPA, the Democratic Party can consider this but such a proposal has not yet been tabled. My amendment can be described as a good proposal but it is certainly not perfect, however, I hope that Mr TSANG and colleagues belonging to the DAB will not oppose it.

If Members approve of my proposal, albeit not the best or perfect, we still have a chance to request the Government to revise the proposal to make it better before the next meeting of the Finance Committee. Moreover, this will not give rise to conflicts. When the Council resumes in October, I hope that colleagues including those belonging to the Democratic Party, Liberal Party, DAB, Frontier and New Century Forum will agree that our consensus is that we will raise objections to all papers submitted to the Finance Committee that have not taken a five-year-old flat as the basis, and we will also raise objections if 100% HPA is not given to all domestic premises. I hope that we can finally arrive at such a conclusion. Why do Members fear that something will happen? Why are Members afraid of approving my amendment? With this basis, perhaps we can force the Government to arrive at a perfect proposal which I will also support. I think it is not at all convincing for colleagues to say that they will oppose my proposal now as the perfect proposal will only be introduced in October. Unless they think that my amendment is unreasonable and a better proposal will not be possible even after the enactment of the legislation, in other words, they think that this is a "Mission Impossible" — a current movie that is a huge box-office success. Nevertheless, this is not the case and we can consider other practicable proposals.

I sincerely urge Mr TSANG to consider my amendment. The DAB can first support me and if the DAB or other colleagues can make better proposals at a meeting of the Finance Committee when the Council resumes in October, we can support them after consideration or we can make further deliberations then. In regard to the stance of colleagues belonging to the Liberal Party, I hope that they will seriously consider the issue because this involves private property rights. I share the views of Dr YEUNG Sum in this respect and I hope that colleagues will consider how we should legislate on the private property rights of owners who own private properties or negative assets. Perhaps the policy of the Government has long been spelt out in the legislation, that is, the Government will forcibly deprive these owners of their rights after giving them a three-month notice, and these owners do not have bargaining rights. Although they may appeal, they will surely not be successful. Thus, we should try our best to do them justice in accordance with the law. I said during the Second Reading debate yesterday that colleagues had assisted the Government in retaining the rights to land resumption and had saved the Government one to one and a half years' time in the land resumption process. I wondered why we could not give owners of negative assets and investors more compensation and ex gratia allowances. I really fail to see why this cannot be done. If we cannot arrive at a more generous arrangement, I think

and I reckon that what both parties would get on the books in the end would not be equitable on the balance.

Let us imagine this. We are saving the Government one to one and a half years' interest payment in respect of every project and the amount involved reaches tens of millions and even hundreds of millions of dollars while the interest payments for the West Rail and the Wah Kai Industrial Centre amount to $8 million a day. Just imagine how much it has to spend every year. At $8 million a day, it has to spend $2.4 billion a year, calculated on the basis of 300 days a year for one project only. If my proposal is adopted, a rough estimate shows that some tens of millions of dollars have to be spent on each project and I do not think the Government will lose a lot. Thus, the amount to be spent should not be the major reason behind the Government's opposition. A balance must be struck. The Government will still have the right to land resumption after colleagues have passed this Bill. This will shorten the time taken by the Government for land resumption, thus, it should give owners, investors and owners of negative assets more preferable allowances to do them justice.

Thank you, Madam Chairman.

MR EDWARD HO (in Cantonese): Madam Chairman, I should like to respond firstly to the remarks made by Mr Jasper TSANG in respect of my speech just now. I am very grateful to Mr TSANG for agreeing with my computation, but I must raise objection to his remark that I have taken the issue lightly. Perhaps my look was not very serious, but I did not rise to speak with a light heart then. In making my speech just now, all I wished to point out was the spirit of the law providing for the HPA.

In addition, I should also like to address the views raised just now by a few Honourable Members, in particular, Dr YEUNG Sum. In this connection, Mr LEE Wing-tat also said later on that the Liberal Party did not respect private property rights. I consider this to be a very serious accusation. What is more, such an accusation can be very misleading, albeit I must admit that the accusation might be very pleasing to the ears of many people sitting in this Chamber now. Perhaps I am not as brilliant a politician as these Members. At any rate, the ordinance providing for the resumption of land does exist in reality; and it is in accordance with this Lands Resumption Ordinance that the provisions for the mandatory resumption of the people's

properties in the Urban Renewal Authority Bill before us are being made. The Liberal Party is not suggesting not compensating the affected owners at all, nor are we saying that only half of the compensation should be payable to them. The proposal before us is that in addition to the market value of the flat resumed, owners are also entitled to the full amount of the HPA payable for their first flat and 50% of the HPA for their second flat. The contentious issue now is whether or not an ex gratia allowance should be payable on top of these compensation payments. This is the only aspect where an agreement has yet to be reached. However, doubtless if we should resume the properties from the people by a mandatory order, we should offer them reasonable compensation. I have made it clear for many times in both the Bills Committee and this Council that I hope the Government could consider relaxing the restrictions on the age of the replacement flats when calculating the HPA in the future. If it is the principle of Dr YEUNG Sum that so long as owners have to give up their flats involuntarily, they should be eligible for an ex gratia allowance on top of the market value of the resumed flat regardless of the number of flats they own, then why did he not suggest extending the compensation formula to all of the flats of a single owner? Why should he suggest that 100% of the HPA be payable for the first and the second flats, but only 50% for the third flat? While Mr LEE Wing-tat has used the term "may be" in his proposed amendment, just now Mr James TO also said that the proposed compensation might not be applied to those affected owners who have more than a dozen tenanted flats earning rents. There is no specification in this proposed amendment on the circumstances under which the HPA would be payable and the situations where the HPA will not be payable. Then what is the point of such a legal provision?

Therefore, I consider that there are still many problems with the proposed amendment. I should like to refute on behalf of the Liberal Party some accusations made by Members today. For instance, just now Mr LEE Cheuk-yan asked why we do not support Mr LEE Wing-tat's amendment to help people with negative assets, given that we had led a demonstration in protest against negative assets before. If Members should be aware of the proposals put forward by us in the demonstration, they would know that we did not ask the Government to offer compensations to people with negative assets. It is indeed unfortunate enough of those flat owners to have bought their flats when property prices were at their highest, for they are now owing a lot of debts to the bank and incurring negative assets following the steep plunge of property prices. While they have our deepest sympathy, we have never asked the Government to compensate them for their losses with taxpayers' money.

We have only urged the Government to adopt polices to stabilize the property market and to check the downward plunge of property prices, hoping that the burden on these people could be alleviated if property prices should pick up one day. So, this was our proposal then.

When we were still in the process of scrutinizing the Bill, we noted that some of the flats might actually be the negative assets of their owners. Hence, the Bills Committee also held discussions on the possible ways to resolve this problem which affects not only owners with two, three or four flats but also owners of self-occupied flats — even though the possibility for owners incurring liability from their self-occupied flats should be quite rare. Given that these self-occupied flats are normally 30 to 40 years old, it is quite unlikely that they were purchased during the prime time of the property market such as the years 1996 and 97 when property prices stood high. But since we cannot deny the possibility that some of such flats were bought during the prime time, it is still possible for owners to incur liability from their first and second flats. During the meetings of the Bills Committee, we therefore discussed with the Government the possible ways to address the situation. As regards the so-called market value of the resumed flats, it is actually the prevailing market prices of the flats concerned and would most probably represent a 50% drop in value compared to the flats' original prices. While the HPA offered by the Government might perhaps help to narrow the gap, but such payments may not necessarily be sufficient to make up for the difference in prices. For this reason, I believe Members should really look into the issue to find out ways to deal with the situations.

The Government made an undertaking yesterday to the effect that the Urban Renewal Authority (URA) may consider granting loans to some unfortunate owners to enable them to repay mortgage loans or to make other payments under exceptional conditions. Naturally, this is only a promise, and I just hope the Government could genuinely honour its promise in the future. But in any case, such a promise should not be mixed up with the HPA or any other ex gratia allowance mentioned in the Bill we are discussing today. For this reason, I must raise my strongest objection to the accusation that the Liberal Party does not respect private property rights. If the Democratic Party really respects private property rights so much, if Members from the Democratic Party really think that they could fully demonstrate their respect for private property rights by offering affected owners an allowance 50% or 100% of the HPA on top of the market value of the resumed flat concerned, then why

should they not propose to extend the compensation formula to all resumed flats? Does it follow that the owner's right over his fifth flat is not a kind of private property rights and hence no compensation will be payable for the flat concerned? Their argument is totally illogical. Hence, I must make it clear that the Liberal Party will certainly continue to strive for more reasonable and more generous compensation for the affected owners, but since we have found many problems with the proposed amendment before this Council today, we cannot give it our support.

MR JASPER TSANG (in Cantonese): Madam Chairman, I think that you and the public listening to our debate do not wish it to degenerate into an opportunity for political parties to attack one another in respect of political issues beyond this motion, especially attacks against the motives of others purely out of speculations. Mr CHEUNG Man-kwong has told me that, regardless of our political stance, we legislators have the responsibility of assuring the quality of legislation enacted by us. I do not understand why Mr LEE Cheuk-yan and Dr YEUNG Sum said that I had ulterior motives in opposing the amendment on technical grounds. They also said that it reflected that I did not really support the relevant principle. What are the technicalities? I do not understand. If this amendment fails to achieve the objective, how can they say that I oppose it on technical grounds?

Mr LEE Wing-tat has just said that we do not have sufficient grounds and that his proposal is better than mine, thus, Members should disapprove of my proposal. However, what Mr LEE Wing-tat has said are self-contradictory. He said that he had racked his brains before proposing the amendment and he finally decided to use the word "eligible". This word has been copied from a policy paper of the Government because the word "eligible to" is often found in the government policies for compensation in respect of redevelopment areas as published by the Government which has specified the eligibility of owners and tenants. Will this way of expression be binding upon the future URA and the Government? Must compensation be given? If not, there will not be any protection. Then, we will ask why we cannot solve more important problems this way. What are the more important problems? We held a lengthy discussion yesterday and some Members touched upon the problem of rental flats. My impression was that some Members had mentioned the problem of more than one rental flats. As this was a very rare case, Members focused on the calculation of HPA which should be based on the age of a flat. The greatest discrepancy was that we thought that the allowance should be

calculated on the basis of a five-year-old flat while the Government insisted on the point that the allowance should be calculated on the basis of an eight to 10-year-old flat. If the use of the word "eligible" can bypass the problem of fiscal expenditure and the word can be incorporated into an amendment, why can we not do the same in this respect? In the policy paper of the Government, the provision on the calculation of the HPA on the basis of an eight to 10-year-old flat also contains the word "eligible". I will not do so because I think that the compensation proposal should not be incorporated into the Bill, and I do not approve of this in principle. This is not a technical problem but if Mr LEE Wing-tat belonging to the Democratic Party thinks that we should, in principle, incorporate into the Bill the compensation proposal we deemed as the best, he should specify the compensation a home purchaser can get under his compensation proposal. He should specify that he is eligible for HPA calculated on the basis of a five-year-old flat as well as the compensation for the ownership of a rental flat. Actually, he needs not make the provision so confusing as it has given rise to misunderstandings. Mr LEE Wing-tat suggested that I could consult the Legal Adviser and I would certainly discuss the matter with him when I have time and see if he can answer my questions. The definition of HPA lacks clarity and it can be interpreted as either $1 million or $500,000 or even 0%. I am really puzzled about why it is written in such a confusing manner. Why does it not specify clearly that each rental flat can be eligible for 100% HPA in addition to the statutory compensation under the Lands Resumption Ordinance, and each subsequent flat can be eligible for 50% HPA. I really do not understand why it is written in such a confusing way. Mr LEE Cheuk-yan has just made a mistake that it is written on the basis of a certain paper, but there is no such paper. Clause 25 A(1) specifies that "the owner is eligible to …… in accordance with ……", it refers to the statutory compensation payable under the Lands Resumption Ordinance, and it is followed by "…… and home purchase allowance". This does not refer to the HPA under the Lands Resumption Ordinance. As Mr LEE Wing-tat has said, this is an additional allowance, thus, there is no such paper serving as the basis. Now that so many problems are involved, if we simply say that to oppose the amendment on these grounds is to oppose it for technical reasons, and that I have been beaten on technicalities, I wonder what is quality legislation or a quality bill.

I should restate our principle, and that is, we demand the Government to reconsider the matter and this is exactly where our view differs from that of Mr Edward HO. A similar case is that I forcibly resume a person's property and pay him statutory compensation on the basis of the prevailing market value

of his property, then, both of us are not in default. Can we solve the problem that way? Certainly not. If so, why do we need so much negotiations? The case is not an owner willingly allows the Government to resume his property for statutory compensation. It is the Government forcibly terminating the business being run by the owner and resumes his property and offers him compensation on the basis of the market value of his property. Is that fair? This is unfair and our principle is very clear. The owners affected by future redevelopment projects including the owners of rental flats and those owners who own more than one rental flat should be given fair and reasonable compensation instead of the compensation given by the Government. It cannot say that owners should only be given statutory compensation and allowances calculated on the basis of the market value of their properties but nothing else for such compensation is unreasonable. Yet, our consistent stance is that we do not think it is reasonable to incorporate the entire compensation proposal including the compensation for rental flats and owner-occupiers into the Bill to be enacted as law.

I do not understand why Mr LEE Wing-tat only pinpoints at rental flats, in particular, he mainly protects the owners of more than one rental flats and he has said that the first flat should be given 100% compensation. I wonder why particular attention should be paid to such people as they are a minority among the owners affected by redevelopment. Of course, we should protect their interests and we cannot leave them alone just because they are in the minority. But why do we need to legislate for the interests of these people? Why do we not legislate to protect other people who are in the majority? Why do we not make laws for compensation and resettlement? If we think that there must be legal protection, why is it not incorporated into the Bill? If that is opposition on technical grounds, I really wonder if legislators still have a sense of responsibility.

CHAIRMAN (in Cantonese): I noticed that some Members have raised their hands. Certainly, Members can speak for more than once at the Committee stage but we have not yet heard the remarks of the Secretary for Planning and Lands. Should Members speak only after the representative of the Government has spoken? Nevertheless, I will ask the two Members who have raised their hands for a long time to speak first.

MISS EMILY LAU (in Cantonese): Madam Chairman, we would surely like to listen to the remarks of the Secretary, but Members should not worry as my

remarks are going to be very simple. I fully support the views expressed by Mr LEE Cheuk-yan and the Democratic Party and I would not repeat them, but I would like to repeat what I told the Secretary yesterday, that is, the proposal we make must be supported by the public. The Secretary may also understand that some people have asked us to oppose this proposal, especially the affected group, and some of them may be listening to our debate in the public gallery while some others may be listening outside this Chamber. Although we said yesterday that we would support this Bill, we understand the worries of some people. I believe the Secretary will not say that these people are insatiably avaricious but he has said that the existing policy is not meant to look after these people. In my view, we should be impartial and it is most important for our proposal to be supported by the public. Madam Chairman, the Secretary said yesterday that the proposal would not be successful if it would cause grievances among the public. We do not want conflicts between the residents and the police to occur every day. If the residents find this proposal hardly acceptable and that it is unfair to them, and they may then take radical actions in future, I believe the Secretary and his colleagues are largely responsible because we are not asking the Secretary to pay a lot of public money to some insatiably avaricious people. Rather we are asking for fair treatment to them.

Madam Chairman, just like the amendments moved by the two Mr LEEs yesterday, I believe the amendment of Mr LEE today will also fail. However, this does not mean that the problem can be solved or the Secretary has won a brilliant victory. As there are many problems to be addressed, the Government has to make a proposal acceptable to the public in any case. This is the hope of the Frontier, and we do not want to see demonstration, procession and fights every day as these incidents will definitely affect the stability of Hong Kong. Madam Chairman, I so submit.

MR MARTIN LEE (in Cantonese): Madam Chairman, I think that many Members have made justified comments and their common viewpoint is that the proposal of the Government is inadequate. We agree with Mr TSANG that the Government is miserly. After all, people do not want to sell their flats or have their flats resumed by the Government, and they would like to continue to live there. It is very important to live in peace and contentment, regardless of whether an owner runs a business in, leases out or occupies a flat. The

Government just says sorry and then asks the owners to leave and resume their flats and pays compensation. So, it is understandable why they think that it is reasonable of them to ask for more compensation. Can I force someone to pass over to me the flat he has been living comfortably in return for some compensation? Can I say that the flat is 20 years old and the compensation will allow him to purchase a newer flat or a 10-year-old flat? Does he want that? Everybody has the right of refusal, thus, our guiding principle is to protect their interests. Although the owners do not want to move and would like to continue to live there, they are forced to move away. It is a great pity that political parties do not have a consistent stance on this. All of us want to help these people, some of when may be sitting in the public gallery while some others may be waiting for us outside. All of us want to do something for our kaifong but how can we help them while we do not have a consistent stance? We have been arguing about this and I note that the handsome Secretary Gordon SIU has all along carried a sweet smile on his face because he knows pretty well about the voting result after our argument. Actually, he needs not speak under these circumstances. Madam Chairman, I would like to ask Members once again: How can we help our kaifong? It is useless for us to go on arguing. The remarks we Democratic Party Members have made may displease some colleagues such as Mr TSANG as well as Liberal Party Members and I will offer them my apologies. We just want to solve the problem.

Mr TSANG has asked a very good question. He asked why we did not do something. I could not answer all his questions but I wonder whether he would support the Government's proposal which is obviously miserly and unfair to our kaifong simply because I could not answer his questions. Would we be pleased with this? Do we have to keep arguing for another four years when we are back here next term? As Mr TSANG and I come first in our respective lists, it can be said that our seats are fairly secure, do we have to argue for another four years after we have returned? How can we help our kaifong? I hope that political parties will not fight against one another. If there are any conflicts, I would apologize and I hope that we can reconsider this issue calmly. The question is that it will be fine if the Government can reconsider the matter, but we can do nothing if the Government takes no notice of us and refuses to reconsider it. Even though Mr LEE Wing-tat's proposal is not perfect and has so many loopholes, can we support it first? The arrangement is not permanent. If the Government knows that we collectively support this amendment, I do not think it will withdraw the Bill. As there are

many bills waiting to be passed, if the Government withdraws the Bill, we can continue to collectively disapprove of the passage of other bills. Let us see what the Government will do then.

Unity is strength. As far as I can recall, we first made the most of this after the May 1998 election. During the election, many people asked us how we could build up the economy and we were under great pressure. We tried our best to find solutions but, frankly speaking, we could not think of any solution. Therefore, the first thing we did after we were elected then was that we sat down and discussed the matter. We reached a consensus very soon and we put forward six points and discussed them with the Government. Certainly, the Government had not accepted all our views but the people could at least see that we had discussed the matter together. Now, our two-year term will soon come to an end and I hope that we can get together this week and put together our strength. I believe we can pass the motion on the vote of no confidence. Why do we not try to do so now? We can do so and we hope that we can force the Government to reconsider the matter. If this amendment is passed, although we agree that it is not perfect, we will be better equipped to negotiate with the Government. We can discuss the matter again if the Government comes up with a sounder and better proposal after our proposal has been accepted. And, if we think that Mr LEE Wing-tat's proposal is not generous enough and we would like the Government to give more, we can co-operate again. How should we move this piece? The proposal is here before us and we can withdraw it if we would like to, yet, will the Government reconsider the matter then? The Government can take no notice of us and there have been numerous instances of its doing so. How can we solve the problem?

I very much hope that political parties will stop fighting against one another as it will be meaningless to go on arguing. Though we can cast opposing votes on the basis of our principles or otherwise, this cannot solve the problem at all. Thus, I hope that Members can first support this amendment because the Government will naturally discuss the matter with us after the amendment. If we do not do so, it will be strange for the Government to take any notice of us. The Government may show due respect for Mr TSANG and discuss the matter with him but the Government knows very well how many votes each party has. Even if a certain party wins a few more seats or even 15 to 17 seats next time, the Government can still take no notice of them. That is

the Government we are facing. So many people have taken to the streets precisely because the Government has not taken notice of them. How can we help our kaifong now that the Government takes no notice of them? All of us would like to help but why do we not unite together in helping them? Therefore, I hope that Members will not go on arguing, if necessary, we can ask Madam Chairman to adjourn the meeting so that we can further discuss the matter. We must do so and we should not only hope that the Government would reconsider the matter as it will definitely not do so as there have been numerous instances of this. It would be different if Secretary Gordon SIU tells me that it will reconsider increasing the compensation. The Government has made many understandings but will it honour its understandings? With a smile, he lets us go on arguing, and this motion will later be disapproved and finished. Then, we have to pack our bags and prepare for another election in order that we will be re-elected to this Council and we will continue arguing for another four years. I really do not want that to happen. Thank you, Madam Chairman.

SECRETARY FOR PLANNING AND LANDS (in Cantonese): Madam Chairman, the Government's view is exactly the same as that of Members in principle. On this basis, I made the understandings yesterday. Let me repeat them for fear that Mr Martin LEE might have forgotten what I promised.

Should a mechanism be set up for the purpose of encouraging owners to surrender their premises voluntarily? Is there a need to raise the level of ex gratia allowance for owners of non-domestic properties? Should a new type of ex gratia allowance be granted? How can the Government help owners with financial difficulties to bail them out of their predicaments? I would like to repeat what I said earlier with respect to these questions. The Government's view is exactly the same as that of Members in principle. If private properties, particularly those belonging to elderly people as mentioned by Members earlier, are to be resumed under the Lands Resumption Ordinance for the purpose of carrying out redevelopment, how can the Government deliberately make things difficult for these people or ignore their needs? The amendment in question involves numerous issues. When I received Mr LEE Wing-tat's proposed amendment, the Bills Committee had already completed its deliberation work. I immediately spoke to myself that I should send a document to Mr LEE to remind him of the relevant historical background. The current compensation system has been used throughout the 1990s. In

1994 and 1995, the system was found to have some drawbacks. As a result, the then Public Accounts Committee (PAC) of the Legislative Council requested the Government to respond to those drawbacks by conducting a review, which subsequently went through "ups and downs three times". In other words, the review was withdrawn by the Government after being presented to the PAC for explanation. On 19 July 1996, the same document was presented to the Finance Committee of the Legislative Council for a lengthy discussion. After discussion, the Finance Committee refused to give its approval and again instructed the Government to take it back. The policies and package laid before Members for discussion at the moment were not given approval until 25 April 1997 when the review was tabled to the Finance Committee again.

I undertook yesterday that a review would be conducted for it has been three years since April 1997. During these three years, the situation in Hong Kong might have experienced some changes, which makes it necessary for the Government to conduct a review again. In addition, we may need to carry out more redevelopment items in future. This is why I undertook to carry out a review. If Members fail to study carefully what the then PAC said at that time, what Members in this Council said in 1996 and in 1997 when the decision was made, as well as the arguments and grounds before passing this amendment hastily by this legislative means with respect to this subject — for this is only one item of the whole compensation scheme — today, they will have acted too hastily. Moreover, they might not be able to understand completely the basis for the decisions made previously or those made in 1996 and 1997. I did discuss with Mr Stephen FISHER, the Deputy Secretary, to see if a paper should be prepared immediately. But given the fact that the Bills Committee was already dissolved, we were unable to explain to Members the historical background to the current policies.

I have undertaken to conduct a review in the hope of identifying a feasible solution considered to be proper by the people being affected for the purpose of providing them with a fair treatment. Members will still have a chance to debate in the Finance Committee again as to whether our proposed solution is able to achieve this goal. Nevertheless, the Government deems it inappropriate to legislate before going through this mechanism and procedure.

With respect to all compassionate compensation or compensation proposals, it has been the Government's usual practice to table the relevant

documents to the Finance Committee for approval before drawing up a set of feasible solutions, rather than incorporating them into the law. For these two reasons, we will be changing a well-proven system without considering its former foundation carefully if we should amend the law hastily. As such, I am obliged to say that this amendment, if passed, will give rise to a huge problem. I do not want to describe the situation as a total disaster or whatever. Yet, I will be left with no option but to withdraw the Bill for another round of examination if there is a possibility of giving rise to a huge problem. This is because the legislation enacted might not be what Members would like to see.

For the abovementioned reasons, the Government is unable to support Mr LEE Wing-tat's amendment. While I support his spirit, I find it impossible to adopt his amendment today.

MR LEE WING-TAT (in Cantonese): I am sorry, but I think that Secretary Gordon SIU may have wrongly comprehended the way we work. I have read the paper of the Finance Committee dated 25 April 1997 and other old papers and I am clear about the matter. I think that it is too time-consuming to read out these four pages and I do not want to waste Members' time. So the Secretary should not think that we have acted rashly and have proposed these amendments without understanding the history and the procedures. We act only after we have grasped the matters and I hope that the Secretary will have confidence in the Democratic Party. I have prepared well before proposing every amendment to the Bill.

The Secretary has told us today that he will support our principles but frankly speaking, sometimes there are great differences between the principles and the facts as well as the spirit and the facts. Mr TUNG has also said that he gives democracy moral support and he supports it in principle but we are not going to have popular elections next year or even many years later. Yet, he gives democracy moral support and he supports it in principle. Legislation or policies precisely turn principles into something that actually benefits the residents, owners and kaifong. I have listened very carefully to the Secretary's remarks just now. He has only touched upon two things: he has promised to make a review and asked whether a review should be made. In fact, what he has said differs totally from the inclinations of all parties and groups. Even though Mr Edward HO belonging to the Liberal Party may not fully approve of our amendment, I respect his views and he only wants to give more generous compensation and he has raised whether rental flats should be

given more compensation. This is a consensus of the Council, but the Secretary cannot accept it today and he has only said that the Government will review if there is such a need and consider whether more compensation should be given. He has not stated if the Government generally accepts our consensus, as there are 40-odd votes by the three political parties and other colleagues, there is a big gap between us. We have reached a consensus but the Government has not accepted it, therefore, I am not confident — I hope the Secretary will excuse me — I am not confident that the Government may be able to meet our minimum requirement after this review. I hope that I have guessed it wrong but I think the Government may propose even less compensation than that proposed by the Liberal Party. Mr TSANG has just said that he is not satisfied with the compensation proposed by me, so, their proposal is the best one at the moment while mine is moderate and that of the Liberal Party is rather conservative. However, I guess that the Government will propose even less compensation than that proposed by the Liberal Party. So, why do I have to consider its proposal? I fail to see why I should consider it. If the amendment is supported by a sufficient number of colleagues, I think that we should approve of it.

Madam Chairman, I cannot help saying that although the Secretary is my good friend, I find this an unacceptable threat. It is unacceptable for a government official to tell us in this Chamber that he will withdraw the Bill if we support this proposal. Is this a "lose-hit, win-take" attitude? Is this throwing out the baby with the bathwater? That is exactly what Secretary SIU is doing. If we respond this way whenever there are material amendments, what else is the Legislative Council if it is not a rubber stamp? Will the Government withdraw the Bill even if 59 colleagues support this proposal? Is this the attitude Mr TUNG insists on adopting even in the face of so many demonstrations? As this is not a fully elected Council, I do not think this proposal will surely be approved but what Mr SIU has just said is somewhat threatening. He has said that the Government will withdraw the Bill if the amendment is approved. Does he wish to see many people take to the streets tomorrow? Do Mr TUNG and Mr SIU want this to happen? Does he wish that the residents of dozens of renewal projects and those sitting in the public gallery to take to the streets? Does he think that 2 000 people are not enough? Would they like to see 10 000 people take to the streets? Does he want 40 000 people to take to the streets after 20 000 civil servants have done so? Madam Chairman, I am really frustrated.

MR MARTIN LEE (in Cantonese): Madam Chairman, Secretary Gordon SIU has just repeated what he said yesterday because he said that I had not noted the points he made. Mr LEE Wing-tat has rightly pointed out that the Secretary has only promised to review whether it should or need to be done, what if the result of the review is negative? This may happen. The Secretary has said that he supports our spirit but those waiting outside are not only looking for moral support. The Secretary has also said that he wants them to think that justice has been done. Will they think so? Will they be pleased? Will they thank the Secretary or Members? Certainly not. Members think that the Government's proposal is too "miserly" and as the Secretary supports our spirit, I would simply ask him not to be so "miserly". As we have similar views, why do we not handle the matter in a better manner? Perhaps we can also consider putting off the matter for further discussion. If the Secretary really wants to look for a proposal deemed by the public as reasonable, this is certainly not the one he is looking for. How can we make improvements now that the major parties and a lot of colleagues find this proposal inadequate and miserly? We cannot wait until the next term to reconsider the matter.

Madam Chairman, just like the interpretation of the Basic Law by the National People's Congress (NPC) and the appointment of Judges to the Court of Final Appeal, the NPC cannot be asked to interpret the law whenever people are unhappy with certain judgment or are discontented. The SAR should not allow these to happen even though the Government is executive-led. This is executive hegemony and even though they may do so, is that beneficial to the people of the SAR? Is that helpful to "one country, two systems"? That is the question. The Government certainly can and it absolutely has the right to withdraw the Bill and we cannot do anything, but what is the benefit of its doing so? It will only make Members discontented. Mr LEE Cheuk-yan has suggested that Members could resign, but what if Members resign en masse? What will the Government do if all of us unite in voting against the motion? Our term of office is coming to an end and I do not want this to happen. Now that we have common views, I am very pleased that the Secretary has just said that he supports our spirit and asks us to explore how we can put forward a proposal that we will really consider as reasonable. Anyway, the Government's proposal is definitely not reasonable. Thank you, Madam Chairman.

MR EDWARD HO (in Cantonese): Madam Chairman, I will be very brief. Firstly, Mr Martin LEE has spoken twice today. When he spoke for the first time, he called upon political parties not to fight against one another but to co-operate in fighting for reasonable compensation for the public. I appreciate what he said but I do not want to give colleagues a wrong impression that the Liberal Party is the most "miserly" in this respect. The Secretary has just promised to conduct a review and I think a review is essential.

It is a very serious problem for the Government to forcibly resume people's land, properties and property rights even for public interests or public use. I would like to respond to Mr Jasper TSANG's remark. I am not saying it is a sound solution to give a person compensation calculated on the basis of the prevailing market value after resuming his flat. Even if Mr LEE Wing-tat's amendment is approved, we cannot assert that the Government will still give compensation calculated on the basis of market value if an owner possesses a certain number of flats. This is where the problem lies. Should the Government review how much more compensation should be given to the people when it resumes their property rights, apart from the compensation calculated on the basis of market value? I do not know the answer yet, and even 20% more compensation may be inappropriate. If the property is 40 years old, even if the owner is given 20% more compensation, its conditions will still be terrible. Therefore, the Government has offered HPA to tackle the problem. Yet, we should know that the Lands Resumption Ordinance should not only be applicable to the URA but also to different cases of land resumption such as land resumption for road, railway and public works projects. Thus, the Government must apply a fair hand and it cannot give more compensation for the resumption of property rights for urban renewal and less for the resumption of property rights for railway development as this will not work. We need a thorough study of all the compensation arrangements under the Lands Resumption Ordinance.

Mr Martin LEE and Mr Jasper TSANG will certainly return to the Council. As Mr Martin LEE has said, he is the first candidate on the relevant list. My chance is still unknown but I can promise on behalf of colleagues of the Liberal Party who may return to this Council that we will co-operate with different political parties and discuss with the Government about the most reasonable compensation for those whose property rights have been resumed. I believe I can promise that.

MR ANDREW WONG (in Cantonese): Madam Chairman, I would like to apologize to you and other Members. I have just attended two meetings on complaint cases on the third floor and I failed to listen to the views of several Members. Therefore, I am not sure whether the question I asked has been answered and I have not listened to the remarks concerning party struggle. Actually, it is very easy for us to discuss party struggle but it is pointless to discuss the topic.

Concerning the question asked by me, the amendment of Mr LEE Wing-tat has good intentions and it may be right, but it may not be completely right. The most important principle is that if the public suffers loses not as a result of wrong investment decisions but certain actions of the Government, those who have suffered losses should be given more generous compensation. The Lands Resumption Ordinance use the prevailing market value as the basis and introduces a Home Purchase Allowance (HPA) Scheme. The original intention of the Scheme is to allow affected people to purchase their homes. Let us consider other cases such as the case of small investors in flats who depend on their investments for a living. Should the Government give them sufficient compensation so that they can continue to maintain the same standard of living? I hope that the Government will be more flexible in this respect. However, Mr LEE Wing-tat's amendment specifies that rental flats, that is, flats that are not for self-occupation, can only be given 50% HPA. Problems will start to emerge and I wonder if a more flexible ex gratia allowance will be a better arrangement. Mr Edward HO's suggestion is certainly extensive and he has said that a review should be made on the official compensation for land resumption but it seems too extensive. If the flats of the owners affected by land resumption for urban renewal or other purposes are residential flats or small investments, I hope that the Government will expeditiously arrange for ex gratia allowance to be paid during this summer recess. It should also work out the relevant arrangements for ex gratia allowances and submit them to the Finance Committee for examination and approval in the next term.

When I spoke for the first time, I said that if the Government was given more flexibility in handling ex gratia allowance, there might be a lot of problems. For instance, it might be sometimes laxer but sometimes stricter. I can accept it if the Government can adopt a more specific criteria that is more human, people-oriented and not as stringent.

Based on the above reasons, I can vote against Mr LEE Wing-tat's amendment but it does not mean that I do not agree to his amendment. The Government has not made any efforts and I wonder if the Government will inform us of how it would calculate the ex gratia allowance when it resumes land for urban renewal? Even if the Government has not worked out the relevant paper to be submitted to the Finance Committee, it can tell us the formula and convince me. If the Government fails to tell us the formula for the allowance, I will not wait until the completion of a review, thus, I request the Government to give me a reply now and inform us of the way in which ex gratia allowance will be calculated.

As I said earlier, I met the representatives of the West Kowloon Urban Renewal Concern Group when I entered the Legislative Council Building, and they asked me to oppose the incorporation of a certain clause into the Bill. In fact, this is not feasible for the entire Bill will be rendered useless if we do not incorporate the clause (that the Urban Renewal Authority may be authorized to cite the Lands Resumption Ordinance) into the Bill. Now that we have reached a consensus at the Bills Committee that urban renewal is an important task and it will not work if the Government does not make land resumption compulsory, the biggest problem lies with the arrangement for compensation and allowance. I hope that the Secretary can give a more positive response today, otherwise, I will support Mr LEE Wing-tat's amendment.

CHAIRMAN (in Cantonese): Honourable Members, in respect of the debate over two new clauses, I have specially permitted Members to speak as much as possible because these two new clauses were not discussed by the Bills Committee. But I must remind Members that Members of the Legislative Council have the responsibilities to stay in the Chamber during a plenary meeting of the Legislative Council. I would not mind if Members have to leave the Chamber for certain reasons because Members of the Legislative Council are busy. However, I cannot allow Members to repeat matters already discussed by other Members in the Chamber when they return to the Chamber. Having said that, I am definitely not pinpointing at Mr Andrew WONG but I think that it is an appropriate time for me to raise this principle. From now on, it is perfectly alright for Members who have left the Chamber to ask to speak when they return, but other Members or government officials should decide on their own whether they will respond because they can determine if it is necessary to respond.

Does any other Member or government official wish to speak?

MR JASPER TSANG (in Cantonese): Madam Chairman, I have not left this Chamber and I can assure you that I do not intentionally do so if I repeat any points. Respectively on behalf of the Democratic Party and the Liberal Party, Mr Martin LEE and Mr Edward HO have just expressed the hope that various parties and groups will fight together for reasonable compensation and rehousing for the owners and residents affected by renewal. I dare not say as affirmatively as Mr Martin LEE that I will surely return to this Chamber in October but I can affirm that certain seats will still belong to the Democratic Alliance for the Betterment of Hong Kong (DAB). When the Government submits a specific proposal to the Finance Committee, we will surely protect the interests of the residents of the redevelopment areas on the basis of the principles we have always adhered to. In particular, we should not have a misconception that we can relax after the passage of Mr LEE Wing-tat's amendment and we can rest assured. This is not the case because the amendment involves only some of the owners affected by redevelopment, that is, leased out flats; secondly and more importantly, the so-called assurance given by the amendment has only assured them of the HPA but not the method of calculating it.

Members who spoke yesterday showed concern for the calculation of the allowance on the basis of the prices of flats of different ages. This issue would certainly be the core of discussion between the Government and us as well as between the Government and the affected owners. Even if this amendment is approved and the Government does not withdraw the Bill, the problem cannot be solved. Mr Martin LEE and Mr Edward HO have promised that they will continue fighting even if this Bill is passed into law, and the DAB can also make the same promise.

DR YEUNG SUM (in Cantonese): Madam Chairman, I will be very brief and I just want to explain clearly to Secretary Gordon SIU two standpoints of the Democratic Party. As the Urban Renewal Authority Bill gives the Government 90 days' time, and despite disputes in respect of land resumption or price negotiation, the Government can resume the land by invoking the Lands Resumption Ordinance. Thus, it gives the Government more administrative convenience but there is a lack of protection for the owners and tenants as the Government has enormous powers. Once the Bill is passed, it will have a legal status, and the Government must increase compensation. We are dissatisfied with the existing way in which the Government gives compensation.

Secondly, the Government is taking away the people's property rights. Madam Chairman, I hope the Secretary will be clear about the point that regardless of whether the flats are leased or otherwise, they are the properties of the people and the Government cannot arbitrarily give them compensation and then take away their property rights. I hope that the Secretary will be clear about this.

Mr Jasper TSANG has said that we cannot stop fighting even if the Bill is passed. We can certainly not stop but if Members do not support this amendment, they will be drawing back further. We may not be perfectly satisfied after the passage of this amendment, but this is the only available solution and we will try our best again in the Finance Committee in the next term. Thank you, Madam Chairman.

MR LEE WING-TAT (in Cantonese): I must elucidate on behalf of the Democratic Party that I can still not accept the remark of Mr TSANG that the amendment is fraught with many problems because we have drafted the amendment very carefully. Mr TSANG can certainly insist on his view but I cannot accept this point. The amendment is clear enough and it can solve the problem and there is no technical problem that causes people to worry that our proposal will lead to any problem. I also agree that this is a moderate proposal and the passage of this proposal will not stop various parties from fighting for better proposals. Thus, I still call upon Members to support my amendment. Thank you.

SECRETARY FOR PLANNING AND LANDS (in Cantonese): Madam Chairman, I have nothing particular to add. However, I would like to respond to a direct question put to me by Mr Andrew WONG. Perhaps he did not hear me explain why the Government found it hard to accept this amendment.

Actually, the easiest solution is for the Government to make a commitment and then conduct a review again. But the problem is that these compensation arrangements, the proposal and the way we deal with the matter have been the result of repeated discussions by the Finance Committee of the Legislative Council in 1996-97. For this reason, the Government is unable to make any commitment before we are given the chance to examine carefully the arguments held at that time and the new situation we now face. The feelings of Members and aspirations of residents have been expressed very clearly. In carrying out the review, we will definitely refer to the basis for the decision

made by the then Finance Committee of the Legislative Council in 1996-97 to see if there have been any changes in these few years that make it necessary for us to revise our policies and if new arrangements should be made under the Urban Renewal Authority Bill, that is, the point raised by Dr YEUNG Sum. We will definitely take all these matters into consideration. Nevertheless, before a detailed review is carried out, I am unable to make any commitment.

Thank you, Madam Chairman.

MR MARTIN LEE (in Cantonese): Point of order, Madam Chairman. Your ruling concerning a Member repeating the topics already discussed after he has returned to the Chamber after a previous absence is great. Similarly, if the Member asks a government official the same question after returning to his seat, the government official should give him an explanation outside instead of repeating the points made because this will waste our time. I have just listened to the explanation for the second time.

CHAIRMAN (in Cantonese): Mr Martin LEE, I have just indicated that Members and government officials should determine on their own whether they should respond. I have allowed the Secretary for Planning and Lands to give the explanation again because Mr WONG has just said that how he votes will depend on whether he is satisfied with the Secretary's reply.

Mr Jasper TSANG, this is the fifth time you speak.

MR JASPER TSANG (in Cantonese): Madam Chairman, as the Secretary for Planning and Lands has just talked about his principle, I would like to remind Members of the point that he will compare the present situation with the one in 1996-97 during the review. The greatest difference between the two lies in the power of the Urban Renewal Authority and the Land Development Corporation and the way in which resumption is carried out.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That new clause 25A and new Schedule 2 be read the Second time. 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): Have all Members cast their votes? Voting shall now stop and the result will be displayed.

Functional Constituencies:

Mr Michael HO, Miss Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai 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, Mrs Selina CHOW, Mr Ronald ARCULLI, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mr Bernard CHAN, Mr CHAN Wing-chan, 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, Mr Andrew WONG, Dr YEUNG Sum, Miss Emily LAU, Mr Andrew CHENG and Mr SZETO Wah voted for the motion.

Miss CHAN Yuen-han, Mr Gary CHENG, Mr Jasper TSANG, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr David CHU, Mr HO Sai-chu, Prof NG Ching-fai, Mr MA Fung-kwok, Mr CHAN Kam-lam, Mr YEUNG Yiu-chung, Mr Ambrose LAU and Miss CHOY So-yuk voted against the motion.

Mr NG Leung-sing abstained.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 26 were present, five were in favour of the motion and 21 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 27 were present, 12 were in favour of the motion, 13 against it and one abstained. 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 negatived.

CHAIRMAN (in Cantonese): As Mr LEE Wing-tat's motion has been negatived, he cannot move an amendment to clause 4(6) or move the revision of the Schedule as Schedule 1.

CLERK (in Cantonese): Clause 4 as amended.

CHAIRMAN (in Cantonese): As the Committee has earlier passed the amendment to clause 4 moved by the Secretary for Planning and Lands, I now put the question to you and that is: That clause 4 as amended earlier be made 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 Members who are present. I declare the motion passed.

CLERK (in Cantonese): Clause 9.

SECRETARY FOR PLANNING AND LANDS (in Cantonese): Madam Chairman, I move that to clause 9 he amended as set out in the paper circularized to Members. This amendment provides that the Managing Director, the highest-ranking executive staff of the Urban Renewal Authority (URA), and two executive directors shall attend the meetings held by the relevant panels and subcommittees of the Legislative Council. The Chairman of the URA will definitely attend the meetings upon invitation. However, it is not necessary to provide for the relevant arrangement by way of legislation. For this reason, I would like to urge Members not to support this amendment to require the Chairman of the URA to attend meetings by law.

Proposed amendment

Clause 9 (see Annex XVII)

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

MR LEE WING-TAT (in Cantonese): Madam Chairman, the Secretary for Planning and Lands has just asked colleagues not to support the amendment. This is a long story. The Bill has originally specified that there should be a chairman cum chief executive whose remuneration is a few million dollars per annum. He will also attend the meetings of the Legislative Council. However, the Government has later accepted the views of various parties and groups and separated the post of chairman from that of the chief executive, adding that the chairman does not need to attend the meetings of the Legislative Council and the chief executive should do so. This Bill and the government policy have become further removed from the people's views. We can certainly not debate the vote of no confidence motion in advance, but I believe the Secretary will know after reading the newspapers and listening to the

comments and public opinions that the community has clearly reached a consensus. A person who takes up the post of the chairman of an authoritative statutory body is a voluntary worker and he is given extensive powers by the Government and the law makers. Many colleagues have just said that the Urban Renewal Authority (URA) is more powerful than the Land Development Corporation, as the URA can forcibly resumes land and it can even resume the relevant flat when an agreement fails to be reached after a 30-day notice has been given. I do not understand why the Government has not yet changed this policy because I think that they should attend the meetings of the Legislative Council.

The difference between the Secretary's proposal and ours is that once the law has made no such stipulation, the chairman of the relevant body may not attend the meetings. Some colleagues such as Mr LEUNG Yiu-chung, Miss CHAN Yuen-han, Mr LEE Cheuk-yan, Mr Fred LI and I have participated in the work of the Panel on Housing, and our experience tells us that not every government official will attend our meetings upon invitation. As Chairman of the Panel on Housing, I do not want to name these government officials but I just want to say that some government officials invited by us will not attend the meetings and the situation is even worse when the chairman of a statutory body is invited. To be frank, our experience is very bitter. Take the Panel on Housing as an example. Sometimes colleagues questioned the director why the relevant policy was made but he replied that he did not make the policy and it was made by the Housing Authority, and he just promised to pass on the views of Members. The meeting would then have to be discontinued because the policy was not made by the director and colleagues could not ask him any questions. I believe colleagues have encountered these in a few panels. I do not want to give too much information on this because it is not appropriate to do so on this occasion, but my experience is that they give more negative than positive responses.

At a meeting of the Bills Committee, the Deputy Secretary, Mr Stephen FISHER, explained why he did not want the Bill to specify that the chairman ought to attend the meetings of certain panels. The first reason was that the post of the chairman was not a full-time one. However, I do not agree with him because we have reached a consensus at a meeting of the Bills Committee that we accepted that the Government could give a chairman a suitable amount

of remuneration — the exact amount would be discussed later — thus, he has remuneration. Secondly, as he has extensive powers, he should be accountable to the public and brief Members on the relevant policies. Thirdly, in the light of my experience, the chairman of this statutory body does not attend our meetings very often. I am sometimes in attendance at the meetings of other panels and I find that we generally will not invite the chairmen of statutory bodies to attend our meetings unless the meetings touch upon very important policies or the strategies for the year. If we simply discuss some minor issues, I believe colleagues will not invite them to attend the meetings. Even so requested, the chairmen of the panels should decline such requests. Nevertheless, if a meeting involves important matters, the programmes for the year or very important policies, they will certainly attend our meetings, otherwise, the phenomenon just mentioned will emerge — the chief executive will say that he has not made the policy and he can only pass on the views of colleagues. Therefore, I do not think the proposal of the Secretary can answer the demand of the general public. These two years, the public have reached the consensus that they do not only request the heads of statutory bodies and department heads to attend our meetings but also to shoulder political responsibilities. As attending meetings is only their minimal responsibility, Madam Chairman, I cannot support the Government's amendment because the chairmen and the chief executives will have to attend our meetings if we oppose this amendment.

MR EDWARD HO (in Cantonese): Madam Chairman, I do not always oppose Mr LEE Wing-tat. I think that the Chairman should attend the meetings of the Legislative Council, especially the meetings of the panels to answer questions. We understand that the post of the Chairman of the URA is not full-time and the Chairman may have difficulties in time allocation, but we have to admit that once he promises to take up the post of Chairman of such an important policy body, he should be mentally well-prepared. Firstly, he should afford to spare the time, and secondly, he should be brave in assuming accountability. Frankly speaking, the panels of the Legislative Council handle a lot of issues every year and they will not discuss the same topic at every meeting. If so, the URA will then be in great trouble. Thus, we need not be excessively worried that the Chairman may not be able to find time to attend our meetings. Yet, we will not force him to do so if he cannot attend our meeting for certain

reasons but we generally we will invite him to attend our meetings. As Mr LEE Wing-tat has said, panels very often invite officials and the management of organizations to attend their meetings but they have not specified that the chairmen or directors should attend such meetings. However, when we discuss important topics, we hope that the directors — the Chairman in the case of the URA — can attend the meeting. The Deputy Secretary, Mr Stephen FISHER, has said that the Chairman may not be well-versed in many administrative particulars. We accept this point but he can attend the meeting together with the chief executive or other executive directors. He can ask his colleagues to answer the questions when particulars are involved. Then, there will not be any difficulties.

The ultimate question is that once the chairman of a government body is willing to assume the public post, he must be accountable and he should let the public know the grounds on which he makes decisions and the public will have a chance to listen to his discussions with Legislative Council Members.

Therefore, I oppose the Government's amendment.

MISS EMILY LAU (in Cantonese): Madam Chairman, I share the views of the Liberal Party and the Democratic Party, and I oppose the Government's amendment. As we have said in our earlier debate, people want to change the composition of the URA Board because they have doubts about the appointment by the Chief Executive and the accountability of the Board. But such an amendment has been negatived. This amendment stipulates that the person who takes up the highest-ranking post of this body should account for certain issues at the Legislative Council. I believe this is a minimal requirement but the Secretary and his colleagues have repeatedly said that this cannot be done because the Chairman is not full-time and the Chairman is not in charge of administrative work. Colleagues have said very clearly that we will not ask questions indiscriminately. Madam Chairman, you may recall that whenever the Legislative Council holds hearings on major issues, we will invite the chairmen of the relevant organizations to attend our meetings, however, we will not ask them questions that have nothing to do with them. Mr Edward HO has made it clear that the Chairman will only be asked on matters within their scope of work, and he may attend the meetings together with the chief executive or ask the chief executives to answer questions on their behalf, yet, he has to be

held responsible when important incidents happen. Thus, the Secretary must explain this point clearly to the appointee. In my view, he should also be given reasonable remuneration because he has heavy responsibilities. Many people have said that this organization is too powerful and a person at the helm of such a powerful organization should be more transparent and accountable and he has to attend the meetings of the Legislative Council to give explanations. Thus, I think the Secretary should withdraw his amendment and I hope that various parties and groups will support my proposal. If we keep arguing over the issue, the Secretary will be very happy because our proposal will once again be turned down. I agree with Mr Edward HO that more and more similar quasi-government bodies are given great powers and the remuneration of a chairman is a few times that of a Policy Secretary. Nevertheless, it is totally unacceptable for them to have very low accountability. Thus, I hope that the Secretary will readily accept good advice after listening to our views and withdraw its amendment. I so submit.

MR LEUNG YIU-CHUNG (in Cantonese): Madam Chairman, from the time of the Bills Committee to the Second Reading of the Bill today, I have learnt from the remarks of the Government that it has not stated in principle that the Chairman should not attend the meetings of the Legislative Council and it has only overwhelmed us by putting forward many technical problems. The Government has referred to such technical problems as the voluntary nature of the job, time allocation and the failure to grasp all information fully. Provided that a person who assumes the post is briefed clearly on these tasks, I do not think there will be any difficulty. Thus, unless the Government thinks in principle that they should not attend the meetings of the Legislative Council to give the public an account of issues, otherwise, there is no need for any further debate. However, the Secretary has only touched upon "minor" technical problems just now and at the Bills Committee. Thus, I fully support the point made by other colleagues today that the Chairman should be more accountable. In particular, it is very important for the chairmen of such organizations to be brave in facing the public. When attending the meetings of the Legislative Council, they face Members and the public. We do not discuss particulars here but we discuss major principles, directions and problems. This is the most important point.

We cannot evade this issue again today. Society is becoming more open and it will be meaningless if we are not sufficiently open in this respect. The Deputy Secretary, Mr Stephen FISHER, has said that the URA would try its best to disclose information and hold open meetings. Why does it take a regressive step in this regard and leave some business unfinished? The Government should try its best to open up thoroughly and be brave in facing the public.

Madam Chairman, I so submit.

DR LEONG CHE-HUNG (in Cantonese): Madam Chairman, I am also speaking in opposition to the Secretary's amendment. We should not forget that such organizations as the Urban Renewal Authority, the Hospital Authority, the Housing Authority and the Airport Authority are statutory bodies established by their respective ordinances. In certain cases, the Board of Directors is conferred executive powers. That being the case, I do not understand why these bodies lack accountability. They should have accountability and they should all be accountable. There is no relation between accountability and remuneration. Some people will even decline remuneration and so long as they have accepted the appointment, they should be mentally prepared that they have to be accountable to the public. I do not understand why we cannot extend the scope of accountability to the full. Later, there will be an amendment on whether the URA should hold open meetings and I will then propose that most meetings should be open meetings.

DR YEUNG SUM (in Cantonese): Madam Chairman, I will be very brief. The Bill has stated that the Chairman shall attend meetings of the Legislative Council but it has not stated that he must attend these meetings. In my view, if the panel is only discussing minor matters, it will not ask the Chairman to attend such meetings. The Government is not worried about whether the post of the Chairman is full-time or part-time but that nobody may be willing to take up the post because the Chairman has to attend certain meetings of the Legislative Council to answer questions. However, the person to hold this post should remember that "he should put up with the thirst after eating salted fish" (accepting the consequences of his decision). Madam Chairman, this is a very important post because he can resume others' flats and it is essential for him to be more accountable.

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

MR ANDREW WONG (in Cantonese): Madam Chairman, I spent much time on the organization of the Urban Renewal Authority (URA) yesterday, expressing that I am not at all satisfied with the arrangement of creating one more post for Managing Director in addition to Chairman. If there is no such post of Managing Director in the organizational chart, the Chairman will take up the role of a Managing Director. Naturally, he will need to attend meetings held by this Council. In my opinion, the structure of all statutory organizations should be standardized in a reasonable manner or else much confusion will arise. As the URA has both a Chairman and a Managing Director, it is only right and proper for both of them to attend meetings held by this Council.

I only want to make it clear that we want all meetings held by this Council or the Legislative Council panels to be conducted in an open manner. Just now, Dr LEONG Che-hung said he would support Mr LEE Wing-tat's amendment to urge the URA to conduct all its meetings in an open manner except when there is a need to keep things confidential. Insofar as this point is concerned, I take a different view. I think it is necessary to have exchanges, not just offering explanations, at meetings held by this Council or the Legislative Council panels. If necessary, some meetings might even need to be held in camera. In my personal opinion, meetings of the URA should be held in an open manner for the purpose of soliciting ideas. However, meetings shall be held in camera for the making of decisions, provided that we are informed of the decisions and the reasons for making such decisions immediately after the meetings. Therefore, I will object to Mr LEE Wing-tat's amendment later on. However, I am now speaking in objection to the amendment moved by the Secretary because I think the Chairman of the URA should attend meetings held by this Council.

MISS CHAN YUEN-HAN (in Cantonese): I think Mr Stephen FISHER, the Deputy Secretary, knew very well our attitude in scrutinizing the Bill. I would also like to suggest the Government to withdraw its amendment for it is very important for both executive and legislative organs to have exchanges. It is also equally important for the Government to listen to our views directly. This is why I suggest the Government to withdraw its amendment.

MR NG LEUNG-SING (in Cantonese): Madam Chairman, I have not expressed my view on a number of amendments discussed earlier because I believe the Government will try its best to do what it can. As regards the controversy over the post of Chairman, we have had discussions about his powers, responsibilities and interests. I once raised the point that we should wait until the post is filled before considering whether the Chairman should receive honorarium for this issue is something we need to resolve. In considering the appointment to this post, the Government might need to consider carefully the powers, responsibilities and interests of the Chairman. I will abstain from voting in a while because the Government said it would encounter enormous difficulty in finding the candidate if the law stipulated that the Chairman had to give briefing to this Council, including answering questions put to him at any time. I wonder if the Chairman will be scared to come here for Mr TUNG did admit that he was a bit scared too. If this is really the case, he will find it very hard to accept this. Insofar as today's amendment is concerned, I am somewhat sympathetic with the Government. Owing to the difficulty involved in finding the right candidate, the Government has proposed not to stipulate in the Bill that the Chairman has to attend meetings of this Council. I find this reason acceptable to me. Just now, some colleagues stated that the Chairman should be prepared to "put up with the thirst after eating salted fish". Is it reasonable for us to ask him to bear such a great responsibility if he is not given any honorarium? We must look at the matter from a holistic angle. If powers, responsibilities and interests can be defined clearly, he could only accept it even if he is not given any water to quench the thirst after eating "salted fish".

MRS SELINA CHOW (in Cantonese): Madam Chairman, to start with, I was puzzled as to why this Secretary had moved the amendment for he often told us "openness" was a very important policy of his. While we were welcome to open discussion with him at any time, he could also come to this Council to explain to us. Undeniably, he is in my opinion one of the most open-minded Policy Secretaries. This is why I found it very strange for him to have moved the amendment. Any person who takes up the post of Chairman of a statutory organization, whether he is given honorarium or not, should be considered a leader, unless the Government has no intention of appointing him as a *de facto* leader. Otherwise, he will have to do what we expect of a leader. If he is qualified to be a leader, he will need to bear the responsibilities bestowed upon him and do what a leader is expected to do, that is, accounting to the public. It has absolutely nothing to do with whether he is given honorarium or not.

As far as I understand it, this is what "putting up with the thirst after eating salted fish" as mentioned by Honourable colleagues really means.

I cannot agree with the Government that if it is stipulated that the Chairman shall come to this Council to give explanation, less candidates could be indentified for the appointment. On the contrary, I believe we can definitely find someone, who is capable and willing to be accountable from among the public and who will be delighted to accept the appointment as a leader. Should the Government insist on sticking to this argument, some people might question why the Government should have failed to act fairly for some chairmen are not required to attend meetings and some could hide behind the backs of executive directors. If this organization is to be accountable to the public, we will need to clarify the standard of its leadership. If the Chairman assumes the leadership, then he will be required to be accountable to the public.

For these reasons, I object to the amendment.

MISS MARGARET NG (in Cantonese): Madam Chairman, I was originally in opposition to clause 9 because I found it extremely degrading for us to provide in the law for the responsibility of certain persons to face the Legislative Council, not to mention the fact that we are given the relevant power under the Legislative Council (Powers and Privileges) Ordinance. Nowadays, a legislature set up under a constitutional system should have nurtured such a culture: all responsible persons should voluntarily come before this Council to face questions raised by the general public and Members. This explains why I found clause 9 extremely degrading. It really surprised me that some people should find it necessary to move an amendment to require the Chairman to face Members in this Council. For me, this is even more degrading. Nevertheless, after listening to the speeches delivered by Honourable colleagues, I found the culture we should have nurtured as a parliamentary assembly was far different from what we had in reality. We really needed to regulate by a legal means, or else no one would be willing to take up the post. As we have come to such a state of degradation, we cannot but face the reality and effect regulation by way of legislation. However, Madam Chairman, we will have done the right thing if fewer people show willingness to take up the post because of such a requirement in the law. If a person accepts the post of Chairman just because he is not required to face questions raised by this Council, I am afraid he will not be able to fit in our parliamentary culture. The Government should therefore make it clear that the person who accepts the

appointment will be obliged to come before this Council to face all those sharp questions raised by Members. The Government will have picked the right person if he is still willing to take up the post of Chairman on learning this point. Madam Chairman, after we have gone through such a tortuous development, I can only vote against this amendment by supporting the original clause 9. Nevertheless, I feel the way in which we have handled the matter is close to a scandal.

DR RAYMOND HO (in Cantonese): Madam Chairman, I was not prepared to speak for I thought Dr LEONG Che-hung's speech could have represented the view held by Members from the breakfast group. However, I decided I needed to add something when I heard Mr NG Leung-sing say he would abstain from voting. I think this is an extremely valuable chance for heads or leaders of major organizations or departments which have a significant impact on people's livelihood or policies to attend open meetings held by this Council to explain their rationales of formulating a certain policy. Let me cite my experience as Chairman of the Transport Advisory Committee. Many people thought that I must be given very good pay. Actually, I was not given a penny. Yet I would still come forward and explain the rationales for policies made. If all Members can vote against the Government's amendment this time, the Government will be given a clear message that all chairmen of major organizations are required to come before this Council to give accounts or explanations. Actually, this might provide a good opportunity for us to identify talented people for those people might be interested in running for elections after taking up the posts of chairman for several years. Subsequently, we will able to nurture a great number of talented people. For these reasons, I hope Mr NG Leung-sing will not abstain from voting this time. Rather, he should vote against the Government's amendment, like what many Members choose to do.

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

(No Member responded)

CHAIRMAN (in Cantonese): If not, I would ask the Secretary for Planning and Lands to speak again.

SECRETARY FOR PLANNING AND LANDS (in Cantonese): Madam Chairman, I believe no person, as Chairman of such an important organ, will be able to give any reason to refuse to attend meetings held by this Council. This is because he definitely needs to explain the policies and measures formulated by the Urban Renewal Authority (URA). The crux of the problem we have at the moment rather lies in the fact that subsequent to changes in its structure, the URA will have a Chairman as well as a Managing Director, the latter being given actual executive powers. This explains why I have proposed the amendment. Actually, the Chairman will also attend meetings held by this Council. However, after listening to the views expressed by a number of Members, I would like to ask the Chairman to suspend the meeting for five minutes so that I can consider these views and the position held by the Government.

CHAIRMAN (in Cantonese): The Secretary for Planning and Lands has my consent. The meeting is now suspended until a decision is made.

12.17 pm

Meeting suspended.

12.30 pm

Council then resumed.

SECRETARY FOR PLANNING AND LANDS (in Cantonese): Madam Chairman, after considering Members' views, I propose to withdraw the amendment to clause 9 under Rule 58(11) of the Rules of Procedure.

CHAIRMAN (in Cantonese): Honourable Members, pursuant to this rule, the Secretary can only withdraw his amendment, by leave of the Committee, if no Member objects. Does any Member wish to object to the withdrawal of the amendment by the Secretary for Planning and Lands? If not, the Secretary shall have obtained the leave of the Committee to withdraw his amendment.

As the Secretary for Planning and Lands has withdrawn his amendment, I now put the question to you and that is: That clause 9 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.

CLERK (in Cantonese): Clause 12.

MR LEE WING-TAT (in Cantonese): Madam Chairman, I move that clause 12 be amended, as set out in the paper circularized to Members. Clause 12 of the Bill concerns the URA's power to lend money. Subclauses (1) and (2) actually seek to set out such power in general terms. Subclause (1) stipulates that: "The Authority may lend money on such terms and conditions as the Authority thinks fit to any person or persons for the purposes of implementing a project of the Authority"; while subclause (2) stipulates that: "The Secretary for the Treasury may give directions in writing of a general or specific character to the Authority in relation of the amount of money which may be lent under subclause (1) and the Authority shall comply with those directions". Insofar as clause 12 is concerned, it is actually subclause (1) that matters. My proposed amendment to clause 12 actually seeks to define the scope of such power more clearly. As regards my reasons for moving the amendment, I must trace back to the Wah Kai Industrial Centre incident in connection with the West Rail project. Factory operators of the Industrial Centre were having business problems because their properties might have been mortgaged with the banks or might have turned into negative assets. They were not asking for the Government to bear the shortfall of their negative assets; they were only asking the Government not to resume the Industrial Centre so that they could at least be given time to "survive" for they thought

they could manage to do it. Regrettably, the Industrial Centre was eventually resumed by the Government under the Lands Resumption Ordinance. As a result, the banks decided to call their loans and they were forced to terminate their business. In dealing with the Wah Kai Industrial Centre incident, we repeatedly urged the Government to consider the plight of these small factory operators and businessmen. We did not ask the Government to give them money. The situation we now face is like "someone has mistakenly been sacrificed for us". I think the Government should at least lend them some money to tide them over their difficulties. Of course, they will be required to repay the money to the Government. We have actually a precedent for this type of bridging loan. The Government set up a $5 billion Special Finance Scheme for small and medium enterprises in the wake of the financial turmoil. Although the Government did not take an active role in causing the turmoil, it was still willing to help small businessmen by earmarking $5 billion to them, a move which I supported. Nevertheless, the resumption of land this time was effected in a compulsory manner. The small factory operators were only having some cash flow problems. The Government could hardly justify its decision of not lending any money to them. Even up till today, I can still not agree with the approach taken by the Secretary in dealing with the Wah Kai Industrial Centre incident for he was unwilling to provide bridging loans.

Let us now come back to the Bill. The amendment I am going to move today seeks to clarify beyond doubt that the Secretary has such power. I went through the Kowloon-Canton Railway Corporation Ordinance last Saturday and was given to know that the Secretary could actually have such power, which is similar to the power provided under clause 12(1) of the Bill. Regrettably, however, the Kowloon-Canton Railway Corporation insisted that the Secretary had no such power. In order to remove any doubts, I cannot but move this amendment and hope Honourable colleagues can give me their support. Insofar as many factory operators running with a small capital as well as ground-floor shops to be resumed by the URA in future are concerned, they may be operating under different conditions. However, I consider it appropriate for the Government to provide them with bridging loans. I urge Honourable Members to support this amendment.

Proposed amendment

Clause 12 (see Annex XVII)

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

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

MR EDWARD HO (in Cantonese): Mr Deputy, the Liberal Party is in support of Mr LEE Wing-tat's amendment. In the course of deliberating the Bill, we have actually discussed this issue at meetings held by the Bills Committee. As far as I can remember, a proposal was raised at that time that the Urban Renewal Authority (URA) would be recommended to provide bridging loans in future to help owners with difficulties. The amendment moved by Mr LEE Wing-tat today only seeks to define more clearly that the URA has the power to do so. Of course, we hope that the URA will, apart from possessing such power, really provide bridging loans. We will support this amendment moved today for it states clearly that the URA will possess such power in future.

MR JASPER TSANG (in Cantonese): Mr Deputy, the Democratic Alliance for the Betterment of Hong Kong supports Mr LEE Wing-tat's amendment.

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

(No Member responded)

SECRETARY FOR PLANNING AND LANDS (in Cantonese): Mr Deputy, it has actually been prescribed in clause 12 that the Urban Renewal Authority (URA) may lend money to any person or persons for the purposes of implementing a project of the Authority whereas "any person or persons" should include property owners and business operators. Given the reasons cited by Mr LEE and after listening to the views expressed by Members, the Government will not object to the amendment.

THE CHAIRMAN resumed the Chair.

CHAIRMAN (in Cantonese): Mr LEE Wing-tat, do you wish to speak again?

(Mr LEE Wing-tat indicated that he did not wish to speak again)

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.

(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.

CLERK (in Cantonese): Clause 12 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 2, 6, 7, 16, 19, 20, 21, 24, 25, 26, 29 and 32.

SECRETARY FOR PLANNING AND LANDS (in Cantonese): Madam Chairman, I move the amendments to the clauses read out just now, as set out in the paper circularized to Members. These amendments are mainly technical, minor or consequential in nature. Thank you, Madam Chairman.

Proposed amendments

Clause 2 (see Annex XVII)

Clause 6 (see Annex XVII)

Clause 7 (see Annex XVII)

Clause 16 (see Annex XVII)

Clause 19 (see Annex XVII)

Clause 20 (see Annex XVII)

Clause 21 (see Annex XVII)

Clause 24 (see Annex XVII)

Clause 25 (see Annex XVII)

Clause 26 (see Annex XVII)

Clause 29 (see Annex XVII)

Clause 32 (see Annex XVII)

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 Planning and Lands 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 2, 6, 7, 16, 19, 20, 21, 24, 25, 26, 29 and 32 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): Clause 18.

SECRETARY FOR PLANNING AND LANDS (in Cantonese): Madam Chairman, may I seek your consent for me 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 new clause 17A ahead of the remaining clauses and schedules, as it is related to clause 18.

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 Planning and Lands, you have my consent.

SECRETARY FOR PLANNING AND LANDS (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 new clause 17A ahead of the remaining clauses and schedules, as it is related to clause 18.

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 new clause 17A ahead of the remaining clauses and schedules.

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.

CLERK (in Cantonese): New clause 17A Urban renewal strategy.

SECRETARY FOR PLANNING AND LANDS (in Cantonese): Madam Chairman, I move that new clause 17A, as set out in the paper circularized to Members, be read the Second time. New clause 17A requires that the public shall be consulted before the finalization of the urban renewal strategy. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 17A 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 clause 17A.

SECRETARY FOR PLANNING AND LANDS (in Cantonese): Madam Chairman, I move that new clause 17A be added to the Bill.

Proposed addition

New clause 17A (see Annex XVII)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 17A 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.

SECRETARY FOR PLANNING AND LANDS (in Cantonese): Madam Chairman, I move the amendments to clause 18, as set out in the paper circularized to Members. The amendment to subclause 3(a) is a consequential amendment, whereas the amendment to subclause 4(a) requires that the approval given by the Financial Secretary to a draft corporate plan shall be restricted to an approval to the whole Bill and no amendment to the Bill will be permitted. Thank you, Madam Chairman.

Proposed amendment

Clause 18 (see Annex XVII)

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 Planning and Lands 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 18 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): New clause 23A Appeal Board.

SECRETARY FOR PLANNING AND LANDS (in Cantonese): Madam Chairman, I move that new clause 23A, as set out in the paper circularized to Members, be read the Second time. The amendment seeks to set up an appeal board for the Urban Renewal Authority developments to deal with appeals against decisions made by the Secretary for Planning and Lands in respect of objections. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 23A be read the Second time.

Does any Member wish to speak?

MR LEE WING-TAT (in Cantonese): Madam Chairman, I greatly welcome the Government's introduction of the amendment, which all colleagues on the Bills Committee have unanimously been calling for. The Government has imposed stringent time constraints in the course of effecting compulsory resumption of land. As a result, people affected by land or property resumption will feel aggrieved. In the past, it was stipulated that the Secretary should make final rulings with respect to appeals. However, Honourable colleagues on the Bills Committee, including myself, found this practice grossly unfair. After all, this would give outsiders an impression of unfairness however fair the Secretary had acted for he was among those who took part in preparing the relevant strategy and had great influence on it. The public would find it hard to accept the arrangement of having the Secretary to decide how objections or appeals should be dealt with. I am very grateful to the Government for acceding to the views expressed by the Bills Committee by setting up an appeal board. I hope the appeal board can, after its establishment, give play to its function so that residents and owners who have been aggrieved or hold different views can represent their opinions to the appeal board. Thank you, Madam Chairman.

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

MR ALBERT HO (in Cantonese): Madam Chairman, I also welcome the Government's decision to set up an appeal board. I believe the Secretary would still remember that, when the Railways Ordinance was under deliberation in 1996, we did put forward a similar request that an appeal board be set up to solicit the opposing views of the public on the alignment as well as their views on the entire railway plan. We conducted a lengthy discussion at that time but the Government firmly rejected our demand. Eventually, the Secretary (he was also responsible for the Bill at that time) agreed to set up a non-statutory appeal board in which independent people from outside the Government would be appointed to listen to the opposing views on the alignment or the entire railway project as well as handling appeals lodged by the public. I understand that the work of the appeal board has been going on although the way it operates might differ greatly from the proposed appeal board. But still I did not understand why the Government was reluctant at that time to make the appeal board a statutory organ. Of course, everything has a beginning. As we have now taken the first step, I hope the Secretary can in due course consider standardizing the relevant practices, such as introducing amendments to the Railways Ordinance to enable the appeal board to become a statutory organ and enable its procedures to become statutory procedures. Thank you, Madam Chairman.

CHAIRMAN (In Cantonese): Does any other Member wish to speak?

(No Member responded)

CHAIRMAN (In Cantonese): Secretary for Planning and Lands, do you wish to speak again?

SECRETARY FOR PLANNING AND LANDS (in Cantonese): I will forward Mr Albert HO's view on the arrangements provided for in the Railways Ordinance and the current operation of this non-statutory board to my colleagues working in the relevant bureaux for consideration. Thank you, Madam Chairman.

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 clause 23A.

SECRETARY FOR PLANNING AND LANDS (in Cantonese): Madam Chairman, I move that new clause 23A be added to the Bill.

Proposed addition

New clause 23A (see Annex XVII)

CHAIRMAN (In Cantonese): I now propose the question to you and that is: That new clause 23A 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): New clause 23B Appeals.

MR LEE WING-TAT (in Cantonese): Madam Chairman, I move that new clause 23B, as set out in the paper circularized to Members, be read the Second time. This is actually a very simple amendment. Basically, the entire appeal mechanism has been drafted in a comprehensive manner. We are only worried with one point. The Government has undertaken that if an owner appears before the Appeal Board to lodge his appeal in his personal capacity or with his relatives or social work representatives, the Urban Renewal Authority will be requested not to appoint a lawyer to attend the hearing and the related issues will be dealt with through a simpler procedure. I consider this mechanism, similar to a labour tribunal, a terrific idea. This is because if one needs to appoint a team of lawyers or barristers to lodge his appeal, the compensation he will receive in future might not be able to cover the lawyers' fees. What we have been worrying is, in the course of lodging an appeal, some fees must be paid. These include mainly the amount of remuneration payable to the Chairman and the members of the Appeal Board. In this respect, we did inquire with the Government for we wanted to know the amount of fees payable with respect to the hearing of a simple appeal. We were told by the Government that each hearing would cost approximately more than $200,000. Insofar as small owners are concerned, this figure is quite substantial. We are of the view that owners' right to appeal should not be deterred because of these charges.

My amendment is very simple — small owners should not be required to bear all costs unless it is apparent that an appellant deliberately puts forward some ridiculous reasons for delaying or other purposes. I think the Government should support my amendment for I believe even the Government does not consider owners to have harboured such an ulterior motive of delaying the whole procedure. Moreover, the amount of money thus involved is not substantial. I hope owners will not be required to bear all the relevant fees. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 23B be read the Second time.

Does any Member wish to speak?

MR ALBERT HO (in Cantonese): Madam Chairman, we must reiterate our principle. We can definitely not accept the provision of a mechanism under the law while, by virtue of this mechanism, people will be allowed to lodge complaints and appeals on the one hand and deterred from doing so in actual operation because of fees involved on the other. This is absolutely unacceptable to us. In my opinion, the lodging of appeals should be a right. As long as an appellant has reasons to believe that he is aggrieved, the Government should try every possible means to provide him with channels of appeal or complaint. According to our knowledge, however, staff responsible for hearing appeals in the Appeal Board might levy charges by virtue of this mechanism.

I find it very strange that appeal mechanisms set up under the entire government regime often operate in different manners. From my experience, most appeals do not involve any charges. Among these appeals, those related to municipal services, liquor licensing, billiard establishment licensing and hawker licensing do not incur any charges. Other appeals, such as those lodged with the Appeal Panel of the Housing Authority under the Housing Ordinance because some public housing residents have their registered tenancy terminated, do not incur any fees too. Similarly, appeals lodged with respect to immigration matters, that is, appeals lodged with the Immigration Tribunal in connection with a decision made by the Director of Immigration, do not incur charges. I was once a member of the Inland Revenue Board of Review, which comprises almost entirely of lawyers or barristers, though sometimes including people from outside the legal profession. No charge was levied for all of us worked on a voluntary basis. Likewise, no charge was levied with respect to the vast majority of appeals lodged in connection with administrative affairs, with which I have come into contact. Of course, there might be some exceptional cases. According to my knowledge, the Securities and Futures Appeals Panel, for instance, does levy charges. Nevertheless, Members should be aware that appeal cases brought to this Appeals Panel are extremely complicated and technical. As a result, the service of lawyers will be required. Generally speaking, however, no charges are levied for the lodging of appeals.

For these reasons, I do not understand why this Appeal Board finds it necessary to incur special expenses. In particular, we should understand that people appealing to the Appeal Board are mostly members of the general public as well as members from the grass-roots. The vast majority of appellants are not major companies from the securities and futures sectors. This explains why I do not understand why there is a cost element for this will have a deterring effect on complainants. Actually, this amendment is moderate in the sense that we can introduce amendments to abolish all charges. In short, the lodging of appeals should be a right. No fees shall be payable even if an appeal ends in failure. At the moment, the Inland Revenue Board of Review and all appeal boards mentioned by me earlier are operating in this manner. I consider this amendment extremely important for appellants should not be deterred from lodging appeals because of fee considerations. The amendment will serve to provide them with a channel for expressing their dissatisfaction or their grievances. As such, I hope Honourable colleagues can support the amendment. Thank you, Madam Chairman.

MR EDWARD HO (in Cantonese): Madam Chairman, the Liberal Party supports Mr LEE Wing-tat's amendment.

CHAIRMAN (In Cantonese): Secretary for Planning and Lands, do you wish to speak?

SECRETARY FOR PLANNING AND LANDS (in Cantonese): Madam Chairman, the Government supports Mr LEE Wing-tat's amendment. This amendment is basically the same as the new clause 23B proposed by me earlier. It stipulates that the appellant shall not be required to bear the expenses and costs of the hearing unless the Appeal Board is satisfied that it is fair and reasonable for the appellant to do so. As the Government has agreed to this provision, I have withdrawn my previous amendment to enable Mr LEE to move his amendment. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Mr LEE Wing-tat, do you wish to speak again?

(Mr LEE Wing-tat indicated that he did not 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 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.

CLERK (in Cantonese): New clause 23B.

MR LEE WING-TAT (in Cantonese): Madam Chairman, I move that new clause 23B be added to the Bill.

Proposed addition

New clause 23B (see Annex XVII)

CHAIRMAN (In Cantonese): I now propose the question to you and that is: That new clause 23B 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 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.

CLERK (In Cantonese): Schedule.

SECRETARY FOR PLANNING AND LANDS (in Cantonese): Madam Chairman, I move that the Schedule be amended, as set out in the paper circularized to Members. These amendments mainly provide that the Chief Executive shall determine the terms and conditions of appointment of the Chairman and executive directors (including the Managing Director). These are basically technical amendments. Thank you, Madam Chairman.

Proposed amendment

Schedule (see Annex XVII)

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 Planning and Lands 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.

MR LEE WING-TAT (in Cantonese): Madam Chairman, I move that the Schedule be further amended, as set out in the paper circularized to Members. The new section 3A provides that meetings held by the Urban Renewal Authority (URA) shall be open to the public. I have to explain that if a meeting involves commercial or sensitive matters or the URA is satisfied that it is desirable for the meeting to be held behind closed doors to deal with such matters as advancements, this amendment will allow the meeting to be held in private. Therefore, I hope Honourable colleagues can support the principle of this amendment.

Proposed amendment

Schedule (see Annex XVII)

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

MR EDWARD HO (in Cantonese): Madam Chairman, the Liberal Party objects to this amendment for we think that most agendas of the Board of the Urban Renewal Authority (URA) are going to be sensitive matters, whether for commercial reasons or because the relevant projects are not yet ready for open discussion. It might lead to difficulty in making arrangement if we make it compulsory for the Board to hold its meeting in public every time when there is one not-so-sensitive agenda item, thus giving people the impression that it is trying to "put on a show". Actually, I once proposed in the Bills Committee that the URA could consider holding meetings in public once or twice annually for the discussion of policies, and so on. Members of the public would then be admitted in attendance. However, we still feel that meetings of the Board are not suitable to be made public. Although we understand that Mr LEE

Wing-tat's amendment will still treat sensitive agendas as exceptional cases, most agendas are likely to be sensitive in nature. Therefore, our assumption is that there will be little chance for the meetings to be held in public and it is therefore useless for us to make this provision.

MRS SELINA CHOW (In Cantonese): Madam Chairman, I want to raise the point that the nature and objective of a meeting are extremely important, apart from whether sensitive information will be involved in the course of discussion. As regards certain meetings, such as meetings of this Council, we absolutely support in principle that they should be held in public so that members of the public can be kept informed of what matters are under discussion. This is very important for this can provide us a way to demonstrate accountability and enable the public to play a monitoring role. However, if a meeting requires discussion to be conducted in a candid manner or debate to be held on certain matters, it must not be conducted in public for the sake of producing the best result. For instance, we have all along been holding the view that meetings of the Executive Council should not be open to public. This does not mean that the Executive Council needs not to be accountable to the public for Members of the Council will still be required to explain to the public after its meetings. However, it is inappropriate for the meetings to be held in public. This is because if the meetings were open to the public, members might refrain from speaking their minds freely. In expressing ideas in the course of discussion, Members might also try to persuade other Members holding different views. At the beginning, a certain Member might hold a certain view on a certain issue. However, he might change the way he thinks after listening to the views expressed by others. Because of that, opening the meetings to the public might make it relatively difficult for discussion to be entirely held in a candid manner and for debate to achieve the best result. Members should be aware that this is how the Executive Council operates. Even for select committees set up under this Council, although hearings are conducted in an absolutely open manner to allow the public to take part and express their views, meetings will still be held in camera when Members are considering views or collecting evidence. Why? Because this will enable us to hold discussions in an absolutely candid manner. I believe not every meeting held by central standing committees or other internal organs of political parties are conducted in an absolutely open manner. I also believe this applies to all political parties, including the Democratic Party, the Liberal Party and other political parties. The Frontier says it is exceptional for all its meetings are open. This is the way its members prefer. There might be a need for them to be so candid.

Nevertheless, I believe most cases are like this. In doing so, the advantages actually outweigh the disadvantages. Holding meetings behind closed doors will definitely help produce a better result. Nevertheless, I must reiterate the point that we expect public organizations to be accountable and to bear the responsibility to explain to the public. If discussion and debate can be conducted before explaining to the public after reaching the most ideal conclusion, this is already the most effective means to guarantee proper operation. In doing so, the Board of the URA can also operate most effectively. Thank you, Madam Chairman.

MISS EMILY LAU (in Cantonese): Madam Chairman, I speak in support of Mr LEE Wing-tat's amendment. We have discussed the issue in the Bills Committee a number of times. I think that it would be better if the meetings of the URA can be open to the public instead of including some Members of the Council as members of the URA Board of Directors or to add in some members who represent public opinion. This will enable the public to attend the meetings and be able to know more about the issues of concern to them. In this way they can monitor the URA. I think the Secretary will not oppose this. However, owing to a number of reasons, many meetings cannot be open to the public. I agree with Mr LEE Wing-tat that if issues of a commercial or sensitive nature are involved, then the meetings may not be open to the public. It is understandable that meetings are not open to the public under these circumstances. For if not, it will be difficult to get things done. But if it is about policy matters, then these should be discussed more instead of just in one or two meetings in a year. I think policy issues should be discussed in every meeting and they should be open to the public. Madam Chairman, the purpose of this is to enhance transparency. The Deputy Secretary, Mr Stephen FISHER, has said that the result will be many members of the public coming to attend the meetings, which may have to be held in camera three minutes after they have been open to the public. If this is something that has to be done, then the public will have to accept it. We should lay down some principle to the effect that meetings of a general nature should be open to the public and that members of the public may attend such meetings. The venue for holding meetings may have to be a larger place to facilitate attendance by members of the public. The existing venues will definitely not be large enough to hold these meetings, for there must be seats for the public. But for those meetings at which issues of a sensitive and commercial nature are involved, then they cannot be open to the public. We may adopt the practice of listing out the items on the agenda so that the public can know which items are open to the

public and which items will require their withdrawal. This is something we aim at doing, why? Madam Chairman, it is because the public does not have any confidence in this small number of people appointed by the Chief Executive. I have said so many times about that point to the extent that I feel somewhat embarrassed to say it again, for each time it brings out the central issue of the public's lack of confidence in the people appointed by the Chief Executive. All the amendments proposed by Honourable Members which aimed at raising the accountability of the URA, except this one, have been voted down. It is my wish that the public can attend the URA meetings.

Just now Mrs Selina CHOW has said that the discussions in the meetings may not made open to the public. I object to this. In matters of public policy, why should they not be open to the public and let the position of the members be known to the public, just like what we are doing in the meetings of this Council? But the Government is telling us every time that if meetings are held in public, then no one will like to be board members. The Government says that these people will only state their positions in a soft voice behind closed doors, but they will not say anything when the doors are open. I think that is not fair to these members, for these people are not that evasive, they can talk about their positions behind closed doors as well as when the doors are open. Otherwise, these people will say different things to different people and there will be no credibility on their part. I think the Secretary needs to understand this point. Even if some matters cannot be made public, we can adopt the practice of holding a press conference after each meeting of the URA and tell the press what decisions the URA has made. For this suggestion, Deputy Secretary Stephen FISHER said in the Bills Committee that there would be press releases. I think press releases are not enough for this purpose. Madam Chairman, we know that press releases are very brief and there is no way in which people can ask questions. What we should do is to make the meetings public. The Secretary should really consider this. He said earlier that we had forgotten what we had said. But we can recall that he did say that he might do so. Could he make that point clear? It is because I am old and I do not have a good memory and he has said so many things. It would be a good thing if he will consider that.

Madam Chairman, I do not quite understand why Mrs Selina CHOW compares the URA to the Executive Council. I do not think the two can be compared. The Executive Council is the highest decision-making body in the SAR Government and the public accepts that the content of its meetings should

be kept confidential. In the case of the URA, it also has great powers and its decisions can affect a lot of people. The public is worried that its operations are not transparent and requires that it should be accountable to the public. Madam Chairman, mention was made of us in the Frontier just now. All our meetings are open to the public, and so are the meetings of our executive committee. If any member of the public calls at us and tells us that he wants to know what we are doing, we would invite him to attend our meetings. That is what we do. Other parties may have different ways of handling this. Having said that, I do not think that the work of the URA can compare to the political parties. We are talking about an organization which will soon be given great statutory powers and its decisions will affect a lot of people. Many members of the public are becoming worried, they want us to vote down this Bill even now, for they have no confidence in this institutional framework. So even if Honourable Members lend their support to the Government and pass this Bill, we still have great responsibilities. We must do the best we can to make this organization transparent and accountable to the public. Is there a better way to achieve this than to make the meetings open to the public? This will enable those affected residents or any interested parties to attend the meetings. They can also have a channel to express their disagreements. In the end, decisions made by the URA will have regard to public opinion. This is what we call the "people-oriented approach" and that is precisely what we want to achieve. With these remarks, I support the amendment moved by Mr LEE Wing-tat.

MR ANDREW WONG (in Cantonese): Madam Chairman, just now in a debate on another topic I expressed my opposition to the amendment proposed by Mr LEE Wing-tat. I presented the reasons for my opposition in that debate when I was speaking on Dr LEONG Che-hung's support of the motion. Then Mrs Selina CHOW gave an excellent interpretation of my position just now and Miss Emily LAU has made some rebuttal on that earlier. I would like to expound my position in a calm and rational manner. We need to know that public organizations like the Housing Authority (HA) and the Hospital Authority, and so on are already very open. Having said that, that does not necessarily imply that being open is a good thing. For organizations such as the URA, the Kowloon-Canton Railway Corporation and the Mass Transit Railway Corporation, and so on, it does not matter if they are business organizations or not, they are all public service organizations managed by a board of directors. The status of the Executive Council is of course much higher, for it is the board of directors which runs the entire Hong Kong. It is

like a cabinet. But it is by nature not a parliamentary assembly. The plenary meetings of a parliamentary assembly must be open. As to whether the meetings of its committees should be open, I do have a different view. I do not think all their meetings should be open to the public. The accountability, transparency and extent of openness of some meetings which are of a business nature will be a reflection of the matters considered and the views that have been heard. Views heard should be taken as much as possible and the considerations made should be accounted for. The decisions made and the reasons for such decisions should be made public in order to convince the people that the decisions are correct. Commercial organizations in the private sector have to convince their shareholders, and for the public sector organizations, they should be able to convince the public, especially those affected. In this way, they may be able to feel that they have been treated fairly, though these people seldom think that they have been treated fairly, because they are the victims afterall. So we ought to take some middle-of-the-road kind of approach. But we have to obtain the support of the majority of the people first. I hope Members can understand that it is an easy thing to propose an amendment to demand that certain things be open to the public. The Hospital Authority is open in many respects, and the HA has made many of its meetings open, but the results are futile and meaningless. If we are to ask the chairman of a board of directors of a public organization to assume responsibility, that is tantamount to asking the entire board of directors to assume responsibility and to act with collective responsibility. Representativeness is not in the nature of such a board. The directors are not representatives of political parties or groups, nor are they representatives of particular groups of voters. That is meaningless because there is no team spirit. In such circumstances, the chairman is the leader and he has to bear even greater responsibilities. If he does not do his job well and if he is not open enough, he will have to bear the responsibilities. Even if the Secretary agrees later to make the meetings open to the public, but if the chairman of the board does not agree to that, the meetings will still not be open to the public. Even if Mr LEE Wing-tat's amendment is passed, but if the chairman says everything should be kept confidential, then it is possible that everything is not open to the public. However, he still has to bear the responsibility for the relevant matters. If we are to ask the principal public officers and the heads of public organizations to assume political responsibilities, then we should not try to dilute the whole thing and talk about the representativeness and about making all the meetings open to the public.

As to the Legislative Council, as Mrs Selina CHOW has said, the meetings of our select committees and the hearings of our commission of

inquiry are all open to the public. But their discussions are held in camera. Why? The reason is very simple. Members of these committees are accountable to the plenary meeting of the Council and there is no justification for them to steal the limelight by disclosing everything before the meetings of the Council are held. When meetings are held, it is hard to balance the claims of the political parties, for they all claim to be representing something. It is impossible to strike a balance. Once remarks are made in public and once the positions are stated, it is hard to reach any compromise afterwards. What happens later is a political show staged by the parties. Things are different at the level of panels of the Council, for we are used to this. Our day-to-day work is to oversee the work of the Government. It is as open as the Council meetings. But if we are to undertake any study, I think we should consider whether or not we can model on the practice in the United Kingdom. For example when the Foreign Affairs Committee of the British Parliament is to study issues about Hong Kong, the hearings will be made in public, the discussions will be held in camera and finally, a report will be published. That kind of practice is perfectly alright. The functions of a parliamentary assembly can come into full play, it can be made accountable to the public and hence the government can be made accountable to the public. The assembly can deliberate on some issues as a whole and reach a consensus after an exchange of opinions. This is a topic which deserves our careful consideration and it does not hinge on the simple question of whether we should trust the members of the URA Board appointed by Mr TUNG. We are talking about institutional framework and I hope we can think carefully about that. We must not support amendments like these. In respect of the operation of this Council, that is, if we are lucky enough to be able to return to this Chamber again, I hope we can think again whether to keep things as they are or to ask each panel to choose a few topics each year to make in-depth studies and listen to more views before writing a report of substance. This will be something that the Government will find difficult to reject, for our views have all been well thought out. The Government has a lot of resources, we ……

CHAIRMAN (in Cantonese): Mr Andrew WONG, I must interrupt you, for the operation of the Council should be discussed on other occasions.

MR ANDREW WONG (in Cantonese): Sorry, Madam Chairman. The remarks on the operation of the Council are meant to serve as an example to illustrate that certain outcomes can only be achieved in meetings held in camera. Therefore, whether we regard the URA as a representative

assembly — I do not think we should — or as a board of directors, we need to keep the meetings confidential and hold the meetings in camera. Thank you, Madam Chairman.

MR GARY CHENG (in Cantonese): Madam Chairman, as to whether the meetings of the Board of the Authority should be open to the public, I think all the parties concerned have made their views clear. The DAB supports the amendment proposed by Mr LEE Wing-tat mainly because despite the principle of openness, there is also a mechanism whereby the Board and the Chairman may make a ruling to hold some meetings in private on certain matters. As for the grounds on which meetings should be open to the public, I do not quite agree with Miss Emily LAU's point, that is, it is because we do not trust these people. Even if these people have all our trust, there has to be a system. We do not think that since these people can be trusted, then there is no need to set up any system. Or that since we do not trust these people, so the meetings have to be open to the public. Even if Mr Jasper TSANG, the person whom I trust most, is the Chairman of the Board, I would still ask him to make the meetings charied by him open to the public. That is a question of system, not about individuals. Thank you, Madam Chairman.

MISS EMILY LAU (in Cantonese): I will be very brief. First, I would like to respond to what Mr Andrew WONG has just said. He said that the meetings of the Hospital Authority and the Housing Authority were open to the public, but the results were futile and meaningless. Madam Chairman, I do not really know if this is really the case. We have been fighting for all kinds of meetings be made open to the public. Is he saying that these meetings should now be held in camera? That kind of argument cannot stand at all. We should fight for more meetings to be open to the public. One cannot possibly say that the results are futile and meaningless. He also said that if someone was held responsible, then it would be alright if he would assume responsibility and there was no need for meetings be open to the public. Otherwise his responsibility will be diluted. How can this be possible? As a matter of fact, these two things should be done. Anyone holds the highest position is bound to be responsible. That is why the Chief Executive will be held for things done by the Government and the Chairman of the URA will be held for things done by the URA. Should anything happen, the person should resign to take the blame for any problems. But that does not mean that once the meetings are open to the public, his responsibility will be diluted. That is simply impossible.

Mr Gary CHENG has said just now that we support making the meetings open to the public because we do not trust these people. That is one of the reasons. Another more important reason is that we have been hearing all the time that people have no trust in the existing appointment system because those appointed will not care about the interest of the people. So it is because of this special reason that I have said earlier that we should make the meetings open so that people may be able to know what these people are talking about. Madam Chairman, may be you are also aware of the intricate relationships that exist among these people. Although it has been clearly specified that they should declare their interests, at times these interests are so many that they defy any attempt to trace them. That is why we should have greater transparency. It is also why I wish to respond to what Mr Gary CHENG has said. I agree that the meetings should be open to the public as a matter of principle. Now the public is making such a strong demand because these people are all related in some way to each other and so it is hard to trust them. These people have very low credibility. So the meetings should all be open. They can speak anything they like. But the public wants to see whether they are upholding public interest, or just the private interest of certain individuals. I think that is very important and a system must be set up.

Madam Chairman, the last point is about select committees. Why do select committees sometimes hold their meetings behind closed doors? That is because of the very nature of select committees, they are not courts. Select committees may summon a lot of witnesses, but findings cannot be made public before any conclusions are drawn. The select committees will justify their conclusions. But before any conclusion is made, the committee members should not say publicly that anyone is guilty or make any comments. That is why meetings should be held in camera. That applies to the Public Accounts Committee, the select committees, and so on. After members of these committees have held their discussions, they will tell the public the conclusions they have reached. That is how things are done. I do not mind if an organization wants to adopt this practice. As for the discussion of policies, since there are divergent views, why should meetings not be open to the public? Madam Chairman, I support Mr LEE Wing-tat's amendment. I hope Honourable colleagues will have the courage to support him so that the URA can hold its meetings in public and enable the public to oversee its work.

MR FUNG CHI-KIN (in Cantonese): Madam Chairman, I do not think every meeting of the Board of the URA should be open to the public. I understand of course that, as Miss Emily LAU said, there may be intricate relationships among all the members of the Board, but I think such relationships in the URA are not those between the real estate companies, the developers and the property owners, but those with all the members of the public. That is something we know very well. However, we must let members speak their hearts out in the meetings and we should not make the meetings open to the public simply because some members have certain interests in the issues being discussed. I think this will affect the discussion process for it is precisely because of this kind of intricate relationships that things will be made more complicated.

Let me cite a simple example. For example, with discussions on compassionate rehousing or compensation, when we are to decide on certain specific questions like the use of flats of eight or 10 years old as a basis for calculation, or when we are to decide on the development projects to be carried out in a district, such kind of intricate relationships would be involved. In such circumstances, the discussions will become heated. For many people may refrain from speaking because their interests are involved. As a result of this, the discussions will be affected. I think we should be more practical in this respect. We should not think that since the issue at hand does not involve any of our interests, so we will not want other people to know what we think. It is precisely because our views have nothing to do with our personal interests that we should think from the perspective of other people's interests. However, there are people who are afraid of inviting criticism when they make comments, for example, on giving their support to the use of 10-year-old flats as a basis for calculating compensation. In such circumstances, how can the members reflect the interest of the people of Hong Kong? How can a strategy for urban renewal be determined? I am worried that this will lead to a situation where members cannot discuss issues peacefully and where there are too many views put forward, such as some people will like To Kwa Wan, some will like Sham Shui Po, while some like Yuen Long, and so on. No desirable results can be reached when things are open to the public. This is my worry.

I am not worried that things discussed in the Board of the future URA will not be publicized. I think the results of the discussions will be published when the appropriate time has come and when decisions are made on the policies. Any questions from the public will be welcome. Therefore, I think it would be a more appropriate practice if meetings are not open to the public.

Thank you, Madam Chairman.

MRS SELINA CHOW (in Cantonese): Madam Chairman, I would like to respond to the remarks made by Miss Emily LAU just now. First of all, I do not agree at all to her use of the word "courage". It seems that those who support her argument have "courage", while those who do not do not have any "courage" and that they are afraid to let people know what they have said in the meetings. I do not think this has anything to do with courage, a more important thing is that when we are working for public interest, what we should care is that we should aim at the most effective and the best results. The way to achieve the most effective and the best results does not lie only in Miss Emily LAU's suggestion, that all meetings should be open to the public. She treats every meeting as the same. All meetings, irrespective of their nature, whether they are those of parliamentary assemblies or not, should be open to the public in order to increase the transparency. She thinks that only by doing this can the ultimate goal be achieved. I do not want to repeat what I have said before. Mr Andrew WONG has said clearly that meetings have different natures and aims, and so the way they are held should be different. Miss Emily LAU has said just now that the select committees of this Council will make reports after hearing all the testimonies. But she has made light of what is usually a long and in-depth discussion and debate process, and this is held in camera. I believe she would also agree that many of the select committees we used to have all had undergone such a discussion process before a report was made. This is the practice which can best give play to the functions of a select committee. The work of the Public Accounts Committee is one such example.

Just now she said that I should not have compared the URA to the Executive Council. Mr Andrew WONG has made it clear earlier that the URA is in fact like a board of directors. It is responsible for formulating important policies, unlike a parliamentary assembly. Miss Emily LAU also says that we should not compare the URA to the Executive Council, the latter can be said to be the highest board of directors in Hong Kong. Then she compares the Board of the URA with the meetings of the Frontier right away. In my opinion, insofar as the functions of the URA are concerned, I think it is closer to the meetings of the Executive Council than to the public meetings of the Frontier. I think their aims are different. From the perspective of Miss Emily LAU, all meetings have only one aim and that is, they should be open to the public. If transparency is one such aim, then for Miss LAU there is simply no difference at all. All meetings are the same. But we must also consider what the functions of a meeting are and how a meeting should be conducted in order to uphold public interest most effectively. This applies especially to organizations which have a certain responsibility to the public.

Having said this, I agree very much with Miss Emily LAU on one point, and that is, these organizations should all be accountable to the public. That is of extreme importance, for these organizations must let the public know why they are making certain decisions and the considerations they have made. They must let the public know on what grounds they have based their decisions. Though I think this should be done in the way considered the most effective by these organizations, I must stress the importance of being accountable. I think the two things are different, that is, the transparency of meetings and how the decisions can be accounted to the public. We should look at the matters separately.

MR JAMES TO (in Cantonese): Madam Chairman, Honourable Members may like to refer to section 3A again. It reads, "All meetings of the Board of the Authority shall be open to the public unless the Board of the Authority is satisfied that it is desirable for the meeting to be held in private." Two principles are embodied in this provision. The most important one is meetings should be open to the public as far as possible, unless it is considered that it is not appropriate to open them to the public. However, after listening to the arguments put forward by Honourable Members, I am very much concerned about the possibility that if this amendment is negatived, the URA may have this mentality that even if meetings can be open to the public, there may not be a need to do so. That idea is shared by many Honourable Members, and there may well be half of the Members of this Council who think in this way. Why? It is because if we think or agree to the idea that meetings of the Board of the Authority may be open to the public, though not many discussion items can be open to the public for attendance, the Board may think that these meetings may be open to the public. It is because the Board may consider that this move may not affect the free discussion of these items. This point has been raised by Mr FUNG Chi-kin and Mrs Selina CHOW earlier. As a matter of fact, the URA and Honourable Members would not oppose to making the meetings open to the public. The wording of the provision does not impose any restrictions on the URA in this regard. The final decision rests with the URA itself. Take an extreme case: Can we impose the requirement that a judicial review will be made should the Board refuse to make its meetings open to the public? The wording of the amendment is "it is desirable". It does not specify that sensitive matters are the consideration to be made. Nor does it specify the grounds for doing so. The words are only "it is desirable", in the sense some

matters are desirable for free discussion and some are desirable to be discussed in private. So it would be very bad if voting against this amendment will impart a wrong message. In the course of deliberating on the Bill in the Bills Committee, the government officials said that they would convey the message to the Board of the URA so that board members can take the social climate and the prevailing accountability system into consideration. In addition, other bodies such as advisory committees will also be open their meetings to the public. In this regard, I have never thought that even the meetings of the Complaints Against Police Office can be open to the public — there are some reports of cases of a general nature which can be open to the public. These cases often become the focus of media coverage. If the URA can obtain the records of this debate, I do not know what kind of message they will get. The fact that this amendment is negatived is a kind of message itself. If we also take the remarks made by Honourable Members in this debate, I have a worry that in the end the URA will become very conservative. For they will think that in some matters which should be made public, many Honourable Members of the Legislative Council still have some reservations, thinking that meetings should not be open to the public as much as possible, for that will facilitate a freer discussion.

CHAIRMAN (in Cantonese): Does any other Member wish to speak? Miss Emily LAU. This is the third time you speak.

MISS EMILY LAU (in Cantonese): Madam Chairman, I would like to say briefly again. I know that you are getting impatient, but I think I need to make a clarification because my views have been distorted. Mrs Selina CHOW has said just now that I wanted to make everything open to the public. But if Members can listen to the tape recordings, they will know that I made it very clear that meetings of the Executive Council should not be open to the public. There is a distinction between different kinds of meetings. Remarks may be made at any time, but it would not be a good thing if one distorts other people's remarks in the Council.

Mrs CHOW also said that I made a comparison between the Frontier and the URA, I have never said such a thing. I was only saying that the meetings

of the Frontier were open to the public. I did not make a comparison between the two. The Frontier is such a small organization, how can it be compared with the URA? Madam Chairman, someone is distorting the facts. I want to make a clarification of this in the records of the Council meeting. I support making the parliamentary assembly open to the public. But I have not said that I want to make the meetings of the Executive Council or all other meetings open to the public. I think that since the powers of many non-government or quasi-government organizations are so great and that they have been given so many resources, and that their decisions will affect so many people, they should make their meetings open to the public. However, I do not want to get framed and held responsible for those remarks which I have never made.

CHAIRMAN (in Cantonese): Mrs Selina CHOW, do you have a point of order?

MRS SELINA CHOW (in Cantonese): Madam Chairman, may I know when can I make a clarification?

CHAIRMAN (in Cantonese): You may do so now. This is the Committee stage and you may speak more than once.

MRS SELINA CHOW (in Cantonese): I think Miss Emily LAU can listen to the tapes herself for what she has just said. She said that I was relating the URA to the Executive Council. As a matter of fact, in the remarks I made I was responding to her remark on relating the URA to the Executive Council. With respect to this point, Mr Andrew WONG has talked about it and I do not want to repeat here. Miss LAU has also related the Frontier to the URA.

MR ANDREW WONG (in Cantonese): Madam Chairman, I will be very brief. I do not want to get myself in a battle of words, I only want to point out that once the amendment is passed, the URA will be obliged to make an explanation whenever it feels that a meeting should not be open to the public. That is a very troublesome thing. As I see it, meetings of a board of directors

which deal with general business matters should not be open to the public. A board of directors may make its meetings as open as it possibly can, but the meaning of this is to make those meetings meant to hear views from members of the public more open. Notwithstanding this, the board has its own duties and it has to get its work done. Once this amendment is passed, not only does the Board have the responsibility to be as open as possible, but the situation will become more serious. For by then any Honourable Member or member of the public who is affected may query why the Board of the URA does not open its meetings to the public. That is especially true among the affected members of the public, for their rights and interests are at stake. Though the arrangements concerned may be unfair to them, that will make the issue very complicated. I am not saying that the URA may therefore do whatever it likes. It must act in a just and fair manner and it must disclose the grounds on which it has based its decisions. Apparently, all these will have to be disclosed. With regard to this point, I do not think anyone will oppose to it, not even Miss Emily LAU. Thank you, Madam Chairman.

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

(No Member responded)

CHAIRMAN (in Cantonese): Secretary for Planning and Lands, do you wish to speak?

SECRETARY FOR PLANNING AND LANDS (in Cantonese): Madam Chairman, as regards increasing the transparency of the URA, it is actually one of the undertakings made by me yesterday. I have made it very clear that the Board of the URA will try its best to operate in an open manner and enhance its transparency. Although some meetings might not be open to the public for commercial information of a sensitive nature is involved, it should try to be open in other areas.

Apart from holding meetings in public, there is much we can do to enhance transparency. For instance, we can manifest this spirit by holding briefings and consultative meetings. Madam Chairman, insofar as this

amendment is concerned, the Government holds the position that there is no need to make provisions for meeting arrangements through legislation. What matters most is to enhance operational transparency. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Mr LEE Wing-tat, do you wish to speak again?

(Mr LEE Wing-tat indicated that he did not wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the addition of new section 3A to the Schedule 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.

(No hands raised)

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): Have Members cast their votes? Are there any queries? If not, voting shall now stop and the result will be displayed.

Functional Constituencies:

Mr Michael HO, Mr CHEUNG Man-kwong, Mr CHAN Wing-chan, Dr LEONG Che-hung, Mr SIN Chung-kai, Mr WONG Yung-kan, Mr LAW Chi-kwong and Dr TANG Siu-tong voted for the motion.

Mr Kenneth TING, Mr James TIEN, Mr Edward HO, Dr Raymond HO, Mr Eric LI, Mr LEE Kai-ming, Mrs Selina CHOW, Mr Ronald ARCULLI, Mr HUI Cheung-ching, Mrs Sophie LEUNG, Dr Philip WONG, Mr Howard YOUNG, Mr LAU Wong-fat, Mrs Miriam LAU and Mr FUNG Chi-kin 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 Christine LOH, Miss CHAN Yuen-han, Mr LEUNG Yiu-chung, Mr Gary CHENG, Dr YEUNG Sum, Mr LAU Kong-wah, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah and Mr YEUNG Yiu-chung voted for the motion.

Mr Andrew WONG, Mr TAM Yiu-chung, Mr David CHU, Mr HO Sai-chu, Mr NG Leung-sing, Prof NG Ching-fai, Mr MA Fung-kwok, Mr Ambrose LAU and Miss CHOY So-yuk 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, 23 were present, eight were in favour of the motion and 15 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 27 were present, 17 were in favour of the motion and nine 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 negatived.

CLERK (in Cantonese): Schedule as amended.

CHAIRMAN (in Cantonese): Since the Committee has passed the amendments moved by the Secretary for Planning and Lands earlier on, the question now put is: That the Schedule, as amended by the Secretary for Planning and Lands, 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.

URBAN RENEWAL AUTHORITY BILL

SECRETARY FOR PLANNING AND LANDS (in Cantonese): Madam President, the

Urban Renewal Authority Bill

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 Urban Renewal Authority Bill 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)

Mr LEUNG Yiu-chung rose to claim a division.

PRESIDENT (in Cantonese): Mr LEUNG Yiu-chung has claimed a division. The division bell will ring for three minutes.

PRESIDENT (in Cantonese): Will Members please proceed to vote.

PRESIDENT (in Cantonese): Have all Members cast their votes? 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 James TIEN, Mr David CHU, Mr HO Sai-chu, Miss Cyd HO, Mr Edward HO, Mr Albert HO, Mr Michael HO, Dr Raymond HO, Mr LEE Wing-tat, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Eric LI, Mr LEE Kai-ming, Mr Fred LI, Dr LUI Ming-wah, Mr NG Leung-sing, Prof NG Ching-fai, Mrs Selina CHOW, Mr Ronald ARCULLI, Mr MA Fung-kwok, Mr James TO, Mr CHEUNG Man-kwong, Mr HUI Cheung-ching, Miss CHAN Yuen-han, Mr CHAN Wing-chan, Dr LEONG Che-hung, Mrs Sophie LEUNG, Mr Gary CHENG, Mr SIN Chung-kai, Mr Andrew WONG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard

YOUNG, Dr YEUNG Sum, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Ambrose LAU, Miss Emily LAU, Miss CHOY So-yuk, Mr Andrew CHENG, Mr SZETO Wah, Mr LAW Chi-kwong, Mr TAM Yiu-chung, Mr FUNG Chi-kin and Dr TANG Siu-tong voted for the motion.

Miss Christine LOH and Mr LEUNG Yiu-chung voted against the motion.

THE PRESIDENT, Mrs Rita FAN, did not cast any vote.

THE PRESIDENT announced that there were 51 Members present, 48 were in favour of the motion and two against it. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CLERK (in Cantonese): Urban Renewal Authority Bill.

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Intellectual Property (Miscellaneous Amendments) Bill 2000.

INTELLECTUAL PROPERTY (MISCELLANEOUS AMENDMENTS) BILL 2000

Resumption of debate on Second Reading which was moved on 26 January 2000

PRESIDENT (in Cantonese): Mr SIN Chung-kai, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's report.

MR SIN CHUNG-KAI (in Cantonese): Madam President, as the Chairman of the Bills Committee on Intellectual Property (Miscellaneous Amendments) Bill 2000, I now address this Council on the deliberations of the Bills Committee.

The Intellectual Property (Miscellaneous Amendments) Bill 2000 seeks to provide that any person who, without lawful authority, has in his possession in a place of public entertainment any video recording equipment commits an offence. It also seeks to clarify that it will constitute an infringement act to use infringing articles in the course of business activities, regardless of whether the business is in the dealing of the infringing articles themselves. Since the Bill can effectively prevent bootlegging in cinemas and further combat infringing acts, it is generally supported by both the film industry and the copyright industry. The Bills Committee also received joint submissions from 18 film industry associations and six copyright-based organizations, and in these submissions, strong support for the early passage of the Bill is expressed.

In the course of scrutiny, Members expressed the concern that it might be unfair to a person who has no intention of bootlegging if the mere possession of unauthorized video recording equipment in a place of public entertainment is made an offence. Therefore, Members considered that it was more justified to criminalize the act of video recording rather than the mere possession of video recording equipment. The Administration referred to the difficulties in enforcing the existing provisions of the Copyright Ordinance against bootlegging, such as the need to catch a person red-handed and to prove that the recording in question was made for sale or hire and not for private or domestic uses. The Administration therefore considered that if bootlegging was to be effectively prevented, there was a need to introduce a provision prohibiting the possession of video recording equipment.

Although Members recognized the need for effective prevention of bootlegging, they also considered it necessary to ensure that the innocent public would not be caught unawares. To strike a balance between these two needs, the Bills Committee recommended that a defence of "reasonable excuse" for the offence should be introduced. This recommendation was later accepted by the Administration, which agreed to move Committee stage amendments on this.

Morever, at the request of the Bills Committee, the Administration will also move Committee stage amendments to require the management of places of public entertainment to display warning signs on the prohibition of unauthorized

possession of video recording equipment in these places. Failure to display such signs may render the management of the place of public entertainment concerned liable to prosecution. The form and locations of these signs shall be prescribed by way of subsidiary legislation.

Members were also concerned as to whether or not the reprographic copying of news clippings and articles by educational institutions for the purposes of education and instruction will be regarded as an infringing act as a result of the provisions of the Bill. The Administration explained that under the existing Copyright Ordinance, an educational institution may, for the purpose of instruction and to reasonable extent, make reprographic copies of copyright works, and this will not be regarded as an infringing act.

The Administration has undertaken to conduct extensive publicity on the legal implications of the Bill following its passage, so as to remind members of the public that they must not use any infringing articles in the dealing of their business, for this will constitute a criminal offence.

Madam President, since the Administration has accepted the recommendations of the Bills Committee and will move corresponding Committee stage amendments, I commend to Members the resumption of Second Reading debate on the Bill.

Madam President, with your permission, I would now like to speak in my capacity as a Member representing the information technology (IT) sector.

Madam President, this Bill is related especially to the IT; it clarifies the law and makes it clear that it will constitute an infringing act to use infringing articles in the course of business, regardless of whether the business is in the dealing of the infringing articles themselves.

This amendment will greatly enhance the reputation of Hong Kong in the field, for this actually means that in the future, all softwares used by industrial and commercial organizations must be copyrighted products, or else they may be held criminally liable.

However, I hope that the Administration can adopt an orderly and systematic approach and conduct more publicity before actually implementing the provisions of the Bill, because at present, the industrial and commercial

organizations in Hong Kong are using a variety of softwares. Following the passage of the Bill, these organizations may specify the types of software that their employees can use, but some of their employees may still be using their own notebooks in their offices. That being the case, they may violate the law unintentionally. On the whole, Hong Kong has not yet built up a culture of using copyrighted software. Many big companies, I think, are quite strict on that, but small and medium enterprises (SEMS), on the other hand, have yet to develop a comprehensive and satisfactory system. I know that some IT or software companies have developed a software called Software Assets Management, and this is available to users free of charge. The purpose of this is to foster a better management of various licences and permits. This can also assist SMEs in respect of managing their personal computers and software systems.

I believe that there is room for the Commerce and Industry Bureau to join hands with organizations like the Software League in publicity exercises, so as to alert industrial and commercial organizations and urge them to adhere to the relevant provisions.

I so submit. Thank you, Madam President.

MR HUI CHEUNG-CHING (in Cantonese): Madam President, the Hong Kong Progressive Alliance (HKPA) welcomes this Bill submitted by the Government, for it will raise the awareness of Hong Kong as a whole to the concept of intellectual property rights and enhance the enforcement of intellectual property rights legislation.

With respect to film piracy, in particular, I believe the prohibition of the possession of video recording equipment in a place of public entertainment can effectively combat bootlegging in cinemas. However, in view of the popularity of video cameras and digital cameras, we are also concerned that the offence may easily catch the public unawares. Therefore, we are glad that the Government has taken the advice of the Bills Committee on the inclusion of "reasonable excuse" in the Bill, and we support the requirement on displaying warning signs in cinemas and places of public entertainment. We support all these measures, and believe that they can prevent bootlegging without victimizing the innocent.

To sum up, the HKPA supports the Bill. Thank you, Madam President.

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

MR YEUNG YIU-CHUNG (in Cantonese): Mr Deputy, the DAB has always supported government actions clamping down on piracy. However, despite the efforts of the Government, film and music piracy is still far from being stamped out. The problem is so serious that it is already endangering the development of the local film industry.

Why is it that even when a film is still showing, pirated video compact disc (VCD) copies of the film are already available in the streets? Bootlegging in cinemas is the answer. And, because of this, a producer who has worked hard to make a film may end up having his profits snatched by piracy criminals. So, the actions to clamp down on piracy will not only protect intellectual property rights, but will also, more importantly, protect the film and music industries. That is why the Bill is supported by the film industry.

Having said that, I wish to point out that the object of the Bill to criminalize bootlegging in places of public entertainment can be described as the only of its kind in the whole world. Therefore, we must handle it very carefully. However, in view of the rampant piracy activities in Hong Kong, I agree that if we do not criminalize such activities, we really cannot think of any other ways which can enable us to stage prosecutions against those caught bootlegging in places of public entertainment for commercial purposes. Those of us who have ever watch any pirated films will certainly remember the bleeping of pagers, the ringing of mobile phones and the shadows of people moving around. All this is also the only of its kind in the whole world. So, in a way, the Bill is quite "harsh", but we actually do not have any alternative. But since the Bill is "harsh", there must be sufficient notice, or else innocent people may be caught unawares. That is why during the process of scrutiny, we strongly urged the Government to legislate on the display of notices at conspicuous places. The Government has agreed to move Committee stage amendments on this.

Another point which caused concern among Members was the lack of any "defence" provisions in the Bill. Members considered this extremely unacceptable, as they thought innocent people might well be victimized. Fortunately, the Government agreed to take Members' advice in the end, and it would move amendments on this. Therefore, we will support the Second Reading of the Bill.

Thank you, Mr Deputy.

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

(No Member responded)

DEPUTY PRESIDENT (in Cantonese): If not, I shall now call upon the Secretary for Trade and Industry to give his reply. After that, the debate shall end.

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Mr Deputy, the Government introduced the Intellectual Property (Miscellaneous Amendments) Bill 2000 to the Legislative Council for the purpose of improving the relevant legislation and enhancing protection of intellectual property rights.

I am very grateful to the Legislative Council for giving priority to forming a Bills Committee to study the Bill. The Bills Committee Chairman, Mr SIN Chung-kai, and various members have studied and discussed the Bill in detail and put forward many invaluable views. I wish to thank them now.

Mr Deputy, after consulting the Legislative Council Panel on Trade and Industry last year, the Government decided to amend the legislation to implement three proposals to enhance protection of intellectual property rights. One of these proposals, to incorporate piracy and counterfeiting offences into the Organized and Serious Crimes Ordinance, was officially endorsed by the Legislative Council in January this year. The purpose of the Intellectual Property (Miscellaneous Amendments) Bill 2000 is to implement the other two proposals concerning the following:

(1) prevention of bootlegging by creating an offence of unauthorized possession of video recording equipment in places of public entertainment, such as cinema, theatre or concert venue; and

(2) clarification of the relevant law to make the possession of infringing copies in the course of any trade or business an infringing act and an offence, for example, when firms use pirated computer software or pirated books in the course of business.

The first amendment is proposed because in their law enforcement action, Customs and Excise officers have found some pirated film optical discs made from unauthorized recordings in cinemas. Under the existing law, there is difficulty in providing evidence to bring charges against such unauthorized recording. Thus, the Bill stipulates that unauthorized possession of video recording equipment in places of public entertainment used primarily as a cinema, theatre or concert hall for the showing of film or playing of performances is an offence. The person in charge of the venue will be empowered to refuse the entry of persons possessing such equipment. To ensure that the general public is not caught unawares by the new legislation, the Government intends to bring the provisions into effect only after wide and effective publicity measures have been undertaken.

Moreover, the Hong Kong Theatres Association Limited, which represents virtually all the main cinemas, has undertaken to provide secure storage facilities for customers to deposit their video equipment before entering their cinemas. They will also put in place conspicuous notices on the prohibition of video equipment in cinemas. In addition, warning messages will be shown on the screen before the beginning of a movie and similar messages will be relayed to those who purchase tickets via the telephone or the Internet. Similar publicity measures will be arranged for concert venues.

Another proposed amendment in the Bill clarifies certain expressions in the Copyright Ordinance that relate to infringing acts. Under the existing legislation, infringing acts in relation to the possession of infringing copies will only be an offence if they are committed for the purpose of trade or business. The Government's legal counsel has advised that it is uncertain whether the expression "for the purpose of trade or business" is sufficient to cover trade or business which does not consist of dealing in the infringing goods concerned. For example, a firm may engage in business activities using pirated computer software. But since it does not sell such computer software directly, it might be able to get off scot-free because of this unclear provision. Thus, the Bill amends all provisions in the Copyright Ordinance containing the expression "for the purpose of trade or business" and substitutes it with a clearer expression, in order to clearly express the Government's legislative intent and make the relevant infringing acts an offence. We will carry out appropriate publicity measures before implementing the relevant provisions to remind business operators not to use infringing articles.

Mr Deputy, I will move amendments to amend certain provisions in the Bill and also the Second Reading of certain new clauses at the Committee stage, including the introduction of a defence of "reasonable excuse" for the offence of unauthorized possession of video recording equipment and the provision of a statutory requirement for the display of relevant warning notices by managers of places of public entertainment. The Bills Committee has studied and endorsed these proposed amendments.

THE PRESIDENT resumed the Chair.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Intellectual Property (Miscellaneous Amendments) 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): Intellectual Property (Miscellaneous Amendments) Bill 2000.

Council went into Committee.

Committee Stage

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

INTELLECTUAL PROPERTY (MISCELLANEOUS AMENDMENTS) BILL 2000

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Intellectual Property (Miscellaneous Amendments) Bill 2000.

CLERK (in Cantonese): Clauses 13 to 24, 27, 28 and 30.

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 to 12, 25, 26 and 29.

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Madam Chairman, I move the amendments to the clauses read out just now, as set out in the paper circularized to Members.

These proposed amendments are mostly of a technical nature and are made to solve some problems in drafting. The proposed amendment to clause 1 is made to tie in with the change of the English title of the Secretary for Trade and Industry to "Secretary for Commerce and Industry" effective from 1 July 2000. The proposed amendments to clauses 2(c), 3(b), 4(b), 5(b), 6(b), 7(c), 8(b), 9(b), 10(b), 11(b) and 12 of the Bill change the term "買賣" in the Chinese version of the Bill to "經營", in order to more clearly reflect the meaning of "dealing in" in the English version.

As for the amendments proposed to clauses 25, 26 and 29 of the Bill, they are consequential amendments made upon the renumbering of the relevant provisions as well as amendments to correct minor typographical errors.

Madam Chairman, after taking into account the Bills Committee's view, the Government has agreed to introduce a defence of reasonable excuse for the offence of unauthorized possession of video recording equipment in the proposed section 31C(1) in clause 25 of the Bill.

The scope of the proposed defence would however be limited as there are statutory warning notices in places of public entertainment reminding the public of the prohibition of possession of video recording equipment in such places. In the Government's view, the introduction of the defence will not affect the prevention of bootlegging.

At the request of the Bills Committee, we have agreed to add new section 31E to clause 25 to require the manager of a place of public entertainment to display statutory warning notices. New subsection (1) prescribes that such warning notice should be to the effect that the unauthorized possession of video recording equipment is prohibited. The wording in this proposed amendment is mainly borrowed from the wording in similar provisions in the Smoking (Public Health) Ordinance.

The proposed sections 31E(1) and 31E(2) stipulate that the warning notices shall be in the prescribed form and include the prescribed statements, as well as be displayed in the manner and in the locations required by the regulations made by the Secretary for Commerce and Industry. Subsection (3) stipulates that the warning notices shall be maintained in legible condition and good order. Before making the abovementioned regulations, the Government will consult the relevant persons, such as the operators of cinemas and places of entertainment.

The proposed section 31E(4) stipulates that any manager of a place of public entertainment who contravenes subsection (1), (2) or (3) is liable to be prosecuted. The maximum penalty is a fine at level 2, that is, $5,000. In terms of this penalty, subsection (5) further clarifies that apart from the definition in clause 14, "manager" also includes any person who holds a licence in relation to the place of public entertainment, since such persons may also be held responsible for failure to display the relevant notices.

Madam Chairman, the Bills Committee has studied and endorsed these proposed amendments.

Proposed amendments

Clause 1 (see Annex XVIII)

Clause 2 (see Annex XVIII)

Clause 3 (see Annex XVIII)

Clause 4 (see Annex XVIII)

Clause 5 (see Annex XVIII)

Clause 6 (see Annex XVIII)

Clause 7 (see Annex XVIII)

Clause 8 (see Annex XVIII)

Clause 9 (see Annex XVIII)

Clause 10 (see Annex XVIII)

Clause 11 (see Annex XVIII)

Clause 12 (see Annex XVIII)

Clause 25 (see Annex XVIII)

Clause 26 (see Annex XVIII)

Clause 29 (see Annex XVIII)

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 Trade and Industry 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 1 to 12, 25, 26 and 29 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):	New clause 7A	Penalties for offences under section 118
	New clause 8A	Minor definitions
	New clause 8B	Index of defined expressions

New clause 11A	Expressions having same meaning as in copyright provisions
New clause 11B	Index of defined expressions
New clause 12A	Copyright: Transitional provisions and savings
New clause 28A	Regulations.

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Madam Chairman, I move that the above new clauses read out just now, as set out in the paper circularized to Members, be read the Second time.

The new clause 7A amends section 119(1) of the Copyright Ordinance, adding the words "on indictment" after "conviction" to make it consistent with the wording in section 119(2). This technical amendment puts it beyond doubt that cases involving serious infringing acts under section 119(1) will be heard at higher courts.

Clauses 8A, 8B, 11A, 11B and 12A are all technical amendments. The purpose is to add the definition of "dealing in" and an index of defined expressions to the Copyright Ordinance, so that the meaning of the word includes "buying, selling, letting for hire, importing, exporting and distributing".

Clause 28A is also a technical amendment. The purpose is to amend section 38 of the Prevention of Copyright Piracy Ordinance, so that the Secretary for Trade and Industry can make the relevant regulations for the purpose of new section 31E in clause 25 of the Bill.

The Bills Committee has studied and endorsed these proposed amendments.

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

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, 8A, 8B, 11A, 11B, 12A and 28A.

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Madam Chairman, I move that the above new clauses read out just now be added to the Bill.

Proposed additions

New clause 7A (see Annex XVIII)

New clause 8A (see Annex XVIII)

New clause 8B (see Annex XVIII)

New clause 11A (see Annex XVIII)

New clause 11B (see Annex XVIII)

New clause 12A (see Annex XVIII)

New clause 28A (see Annex XVIII)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the above new clauses 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.

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading.

INTELLECTUAL PROPERTY (MISCELLANEOUS AMENDMENTS) BILL 2000

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Madam President, the

Intellectual Property (Miscellaneous Amendments) Bill 2000

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 Intellectual Property (Miscellaneous Amendments) 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): Intellectual Property (Miscellaneous Amendments) Bill 2000.

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Adaptation of Laws (No. 12) Bill 1999.

ADAPTATION OF LAWS (NO. 12) BILL 1999

Resumption of debate on Second Reading which was moved on 19 May 1999

PRESIDENT (in Cantonese): Does any other 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. 12) 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. 12) Bill 1999.

Council went into Committee.

Committee Stage

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

ADAPTATION OF LAWS (NO. 12) 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. 12) 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): Schedules 1, 2, 3, 5 to 10 and 12 to 16.

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 4 and 11.

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Madam Chairman, I move that Schedules 4 and 11 be amended, as set out in the paper circularized to Members.

I move that section 9 of Schedule 4 and section 5 of Schedule 11 be repealed. These sections originally seek to repeal references to "Crown" and substitute by "State" in the non-immunity provisions of the Hong Kong Industrial Estates Corporation Ordinance and the Hong Kong Industrial Technology Centre Corporation Ordinance.

We consider the said proposal best suits the principle of the adaptation of laws, that is, the relevant legislation should have the identical legal effect as the original after adaptation. However, some Members considered that as the term "Crown" was replaced by "Government" in some non-immunity provisions of certain legislation passed before the reunification, therefore, they suggested the term "Crown" should be replaced by "Government" for all non-immunity clauses in the course of the formulation of adaptation bills.

After weighing up the matter meticulously, the Government considers that substituting the reference to "Crown" by "Government" in order to uphold the uniformity of law has exceeded the permitted scope of adaptation of laws. Therefore, the Government has proposed to remove from the Bill the proposed amendments in respect of non-immunity provisions, and suggested to make separate amendment to the legislation in the 2000-01 Legislative Session to repeal the reference to "Crown" and substitute by "Government" in the relevant non-immunity provisions.

Proposed amendments

Schedule 4 (see Annex XIX)

Schedule 11 (see Annex XIX)

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 Trade and Industry 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 4 and 11 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. 12) BILL 1999

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Madam President, the

Adaptation of Laws (No. 12) 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. 12) 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. 12) 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. 13) Bill 1999.

ADAPTATION OF LAWS (NO. 13) BILL 1999

Resumption of debate on Second Reading which was moved on 19 May 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. 13) 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. 13) Bill 1999.

Council went into Committee.

Committee Stage

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

ADAPTATION OF LAWS (NO. 13) 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. 13) 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): Schedules 1 and 4 to 7.

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 2 and 3.

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Madam Chairman, I move that Schedules 2 and 3 be amended, as set out in the paper circularized to Members.

I move that section 37 of Schedule 2 be deleted. The section originally seeks to repeal references to "總監" and substitute by "關長" in regulation 6 of the Import and Export (Registration) Regulations. As the Import and Export (Registration) (Amendment) Regulation 1999 which came into operation recently on 1 April 2000 had already repealed regulation 6, therefore, the Government considers it unnecessary for the proposed amendment in section 37 of Schedule 2 to stand part of the Bill.

I also move the deletion of section 8 of Schedule 3. The section originally seeks to repeal references to "Crown" and substitute by "State" in the non-immunity provisions of the Consumer Council Ordinance. We consider the said proposal best suits the principle of the adaptation of laws, that is, the relevant legislation should have the identical legal effect as the original after adaptation.

However, some Members considered that as the term "Crown" was replaced by "Government" in some non-immunity provisions of certain legislation passed before the reunification, therefore, they suggested the "Crown" should be replaced by "Government" for all non-immunity clauses in the course of the formulation of adaptation bills.

After weighing up the matter meticulously, the Government considers that substituting the reference to "Crown" by "Government" in order to uphold the uniformity of law has exceeded the permitted scope of adaptation of laws. Therefore, the Government has proposed to remove from the Bill the proposed amendments in respect of non-immunity provisions, and suggested to make separated amendment to the legislation in the 2000-01 Legislative Session to repeal the reference to "Crown" and substitute by "Government" in the relevant non-immunity provisions.

Proposed amendments

Schedule 2 (see Annex XX)

Schedule 3 (see Annex XX)

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 Trade and Industry 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 2 and 3 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. 13) BILL 1999

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Madam President, the

Adaptation of Laws (No. 13) 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. 13) 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. 13) Bill 1999.

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Witness Protection Bill.

WITNESS PROTECTION BILL

Resumption of debate on Second Reading which was moved on 26 May 1999

PRESIDENT (in Cantonese): Mr James TO, Chairman of the Bills Committee scrutinizing the Bill, will now address this Council on the report of the Committee.

MR JAMES TO (in Cantonese): Madam President, as the Chairman of the Bills Committee on the Witness Protection Bill, I now report to this Council on the deliberations of the Committee.

Members noted that in determining the inclusion or otherwise of a witness in the witness protection programme (WPP), one of the criteria was the perceived danger to the witness. Members were of the view that in determining whether a witness should be included in the WPP, the main consideration should be the perceived danger to the witness, and for this reason, they recommended that the relevant provisions be amended to reflect this intent.

The Administration explained that there were practical difficulties in weighing different factors, and that each case had to be examined on its own merits. To address Members' concern while providing the approving authority with the necessary flexibility, the Administration agreed to highlight in the provisions the nature of the perceived danger to a witness as a factor that must be considered by the approving authority while deciding whether or not to include the witness in the WPP.

Under the Bill, a WPP participant is required to sign a Memorandum of Understanding (MOU) with the approving authority. The MOU will set out the basis on which a participant is included in the WPP and the details of the protection and assistance to be provided. The MOU may also contain a list of the outstanding legal obligations of the participants as well as any other obligations of the participant, and an agreement by or on behalf of the participant as to how these obligations are to be met. Members have discussed in camera samples of the MOU currently used by the police and the Independent Commission Against Corruption (ICAC). They have noted that the MOU will be modified in the light of the proposals in the Bill.

Madam President, another major feature of the WPP is the establishment of new identity for participants in the WPP. Under the existing WPP, there is no specification on the arrangements relating to the establishment of new identity. Since such arrangements are not set out in law, Members questioned the Administration how it would procced with the creation of new identity for WPP participants.

The Administration explained that the Bill would confer powers on the relevant authorities to issue new documents pertaining to the new identity of witnesses, based on "specially created" information and without indicating that any change of identity has taken place. This measure can provide further reassurance to protected witnesses to help them overcome fear of vengeance. The new documents which may be issued on "specially created" identity include Birth Certificates, Identity Cards and Marriage Certificates.

Members also expressed concern about how the criminal records of an "identified witness" would be dealt with. The Administration explained that all records pertaining to an "identified witness" under his original identity, including his criminal records, if any, would not be removed or altered, because if he chooses to restore his original identity in future, his criminal records will still exist.

Madam President, Members' another concern was a witness' right of review. Under the Bill, a person who is aggrieved by a decision of the approving authority not to include him or to terminate his protection as a participant in the WPP can request a review of the decision. Members were of the view that the decision of not establishing a new identity for a participant should also be subject to review.

The Administration subsequently agreed that a participant should be allowed to request a review of such a decision by the approving authority. It also agreed that the approving authority should be required to notify the participant of its decision of not establishing a new identity for the participant in writing as far as practicable if the request for a new identity was made by the participant. The Administration will move the relevant Committee stage amendments.

On the review mechanism, the Administration explained that the review mechanism under the Bill would work in the same way as the existing Police Witness Protection Appeal Board. A Member opined that the Bill should stipulate that there would be a review board comprising four members, that is, the officer designated by the Commissioner of Police as the chairman for the purpose of reviewing the original decision of the approving authority, one official member and two non-official members from the panel of persons appointed by the Chief Executive. As for the ICAC, the Member viewed that the board should comprise a chairman and at least two non-official members, and a chairman should be a person appointed by the ICAC for the purpose of reviewing the original decision of the approving authority. He further suggested that the Bill should also stipulate that the decision as to whether or not the approving authority's original decision should be upheld should be a decision of the review board, rather than the designated officer's decision as is now stipulated in the Bill.

The Administration accepted the Member's suggestions in the end, and agreed to stipulate in the Bill the composition and operation of the review boards which would be similar to that adopted by the existing Police Witness Protection Appeal Board. The Administration will move the relevant Committee stage amendments.

Clause 17(1)(b) of the Bill provides that any person shall not, without lawful authority or reasonable excuse, disclose information that will compromise the security of a person who is or has been a participant or who has been considered for inclusion in the WPP. Any person who contravenes this provision commits an offence and is liable on conviction to imprisonment for 10 years.

Some Members expressed the concern that this provision might have implications on freedom of the press, because journalists might thus become

over-cautious and even exercise self-censorship. They viewed that a proper balance should be struck between the protection of witness and freedom of the press.

The Administration replied that the information mentioned in this provision actually referred only to information that would affect the safety of a witness, such as press reports which might lead to the disclosure of the identity of a witness. It added that general reports which would not compromise the security of a witness would not be prohibited. The Administration considered that the provision on "reasonable excuse" would be a sufficient defence for persons charged with an offence under this provision.

Nevertheless, the Administration agreed to the suggestion of adding a provision to the Bill to the effect that any prosecution under clause 17(1)(b) should require the consent of the Secretary for Justice.

Madam President, the Bills Committee supports the resumption of Second Reading of the Bill and the Committee stage amendments to be moved by the Secretary for Security later.

Madam President, I have reported to this Council as the Chairman of the Bills Committee. Can I now continue to speak in my personal capacity?

Madam President, I support this Bill. This Bill has not yet been passed, but I do not think that this is the greatest pity. As far as my understanding goes, this piece of legislation will only be invoked when, for example, there are cases involving sedition, large-scale crime syndicates and triad societies. We have discussed the matter over and over again, and the Organized and Serious Crimes Ordinance has been implemented for so many years, but nothing has been achieved so far. Had the Government and the police planned any systematic actions, there should have been some results by now, which is already five or six years later. I do not know why, but I have the impression that people do not seem to think that the Organized and Serious Crimes Ordinance has achieved any significant results at all. But I must of course add that we cannot possibly depend on the protection of witnesses as a means of detecting all crimes.

Ten or eight years ago, we did have some big cases in which the heads of some triad societies were prosecuted, but over the past few years, we have rarely heard any cases involving crime syndicates or triad societies, not even

any news about any crime syndicates being prosecuted or compromised. So, the effect of passing this Bill is unknown, and I do not think that it can produce any significant effect. However, I still hope that this Bill can be passed to provide further protection and to enable the relevant witnesses to change their identity. I hope that the relevant law-enforcement agencies can grasp this opportunity and demonstrate to the community over time that the police are determined to detect cases involving crime syndicates and triad societies.

I now wish to say a few words on the appeal mechanism. The review board will make collective decisions, but with the exception of some extreme cases, I do not think that appeals and complaints can always reach the review board. In general, these sensitive witnesses are all in a rather complex psychological state, and they may put forward some unreasonable conditions which the police and the ICAC may find hard to accept. I have been approached by some witnesses who complain that when they are useful to the police, they will treat them very well, but when they are no longer of any use, they cannot even voice their complaints by holding press conferences or through any other open channels, because all the relevant work is done in secret. That being the case, their demands may have to be handled by more senior staff of the approving authority.

Very often, officers of the rank of Senior Inspector or Chief Superintendent will make promises to a witness, but then, when the witness lodges a complaint, he is usually not interviewed by any officers of the rank of Chief Superintendent or Assistant Commissioner of Police. I do not know why this is the case, because all this is clad in secrecy. But I am really very disappointed if these high-ranking police officers refuse even to meet their witnesses. If complaints are handled by people outside the law-enforcement agencies, such as by the review board and Members, they may well find it difficult to make any decision due to their lack of understanding of the whole case. And, when Members responsible for handling a complaint asks for more information, the police may refuse to comply, citing one reason or another. This will make things very difficult. I hope that the police and the ICAC can establish a sound internal mechanism to deal with these appeals.

Lastly, I wish to talk about clause 17(1)(b) which I mentioned a moment ago. Why am I so worried about this clause? Why am I worried that freedom of the press may be affected? In the end, I made a concession by agreeing to accept the Government's proposal to leave the decision to the

Secretary for Justice, as one of the safeguards. Let me read out the offence specified in clause 17: "A person shall not, without lawful authority or reasonable excuse, disclose information about the identity or location of a person who is or has been a participant or who has been considered for inclusion in the witness protection programme; or that compromises the security of such a person."

The Government can put forward many justifications indeed, and we need not worry. For example, the clause mentions lawful authority and reasonable excuse. The scope of "lawful authority" is very confined, referring only to the authority prescribed by the relevant laws or those powers implied by the relevant laws. "Reasonable excuse" is hard to define. Can oversight be considered a "reasonable excuse"? Very often, the information we have about a certain case comes mainly from press reports, in which some details of the crime and the identity of the witnesses are invariably mentioned. And, when it comes to information that may compromise the security of the witness, how are we going to determine what information may compromise the security of the witness? Some magazines have reported, on the positioning of witness protection officers around a witness — "2, 2, 1", "1, 2, 1" and how many people are placed before and after a witness and so on. These reports also mention the types of guns used — fast-loading guns or shotguns, and so on. How are we going to determine whether a certain report is referring to any particular person in any particular case? There will not be any problem if the reports are general in nature. However, if a case is not a big one, many people will turn up at the Court and the press reports on the case may very often be close to the line of maximum allowance. Should prosecutions be staged then? What requirements should the law set down? I think this actually involves the difference in how much people know. What do I mean by this? A reporter may not know too much about a certain case, but the police certain know much more, and for this reason, they may think that the information disclosed by the reporter is already very crucial. However, since the reporter does not know too much about the case, he may simply think that what he is reporting is just a minor, interesting story related to the case. This leads to the "difference" mentioned by me just now. I hope that the Government can exercise particular caution when it considers the application of the provision on leaving the decision to the Secretary for Justice, or else the mass media may become over-cautious. Just one single case of this kind will affect people's access to information and freedom of the press. I hope that the Government can take note of this point. Thank you.

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

(No Member indicated a wish to speak)

SECRETARY FOR SECURITY (in Cantonese): Madam President, the Witness Protection Bill was submitted to the Legislative Council on 26 May 1999 for First and Second Readings. The purpose of the Bill is to provide a legal basis for the existing witness protection programme (WPP), and to give the Administration statutory powers. Witnesses who are in grave danger will be offered protection, and be given completely new identities when necessary. This will greatly enhance the effectiveness of the WPP, help witnesses to overcome their fear, encourage them to come forward and testify, and work with us to fight against crimes.

I would like to take this opportunity to specially thank Mr James TO, the Chairman and other members of the Bills Committee. In the course of scrutinizing the Bill, Mr TO and members of the Bills Committee have carefully discussed the contents of the Bill and other related issues, including the operational details. They have also made various suggestions on improving the Bill in order to make it perfect. I shall move a number of amendments to this Bill and elaborate on them at the Committee stage. These amendments were carefully discussed and endorsed by the Bills Committee. I believe that witnesses will be offered more comprehensive protection after the Bill has come into effect. I anticipate that more members of the public will come forward to report crimes and testify in court. This will greatly help the authority concerned in their work of investigation and prosecution, especially in relation to organized and serious crimes.

Madam President, I hope Members will support the Witness Protection Bill and the amendments that I shall move at the Committee stage. Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Witness Protection Bill 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): Witness Protection Bill.

Council went into Committee.

Committee Stage

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

WITNESS PROTECTION BILL

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Witness Protection Bill.

CLERK (in Cantonese): Clauses 1, 3, 7, 16, 18 and 20.

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 2, 4, 5, 6, 8 to 15, 17 and 19.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move the amendments to the clauses read out just now, as set out in the paper circularized to Members.

The proposed amendments seek to set out the principle of operation of the witness protection programme (WPP) more clearly and comprehensively in the Bill, so as to perfect the programme. By doing so, it can enhance the effectiveness and attractiveness of the programme on the one hand, and reduce the chance of abuse on the other.

The amendment to clause 4(3) of the Bill seeks to highlight the nature of the perceived danger of the witness as a factor to be considered by the approving authority, that is, an officer designated by the Commissioner of Police or the Commissioner of ICAC, when deciding whether or not to include a witness in the WPP.

The amendment to clause 5 stipulates clearly that the approving authority may require a witness to undergo medical tests or examinations before deciding whether or not a witness should be included in the WPP. However, the results of such tests or examinations are not to be used for screening purposes.

Furthermore, the amendments to clauses 13 and 14 stipulate the review mechanism built into the Bill in detail. Under the provisions, if the relevant persons are aggrieved by a decision of the approving authority of not including them in the WPP or not establishing a new identity for them, or terminating their protection as participants in the WPP, they can request a review of the decision. The request for a review will be handled by an appeal board which is appointed by the Commissioner of Police or the Commissioner of ICAC, and chaired by a person who is more senior than the approving authority. Moreover, members of the board will comprise at least two persons not being public officers. By doing so, the professionalism and independence of the board can be duly maintained concurrently, and its credibility to the public enhanced.

Moreover, amendments to clauses 4(5) and 8 stipulate that the approving authority should notify a witness of the decision of denying his request for inclusion in the WPP or the establishment of a new identity in writing as far as

practicable if the request has been made by the witness, in order to enable him to submit his request for a review if he is aggrieved by the decision of the approving authority.

I believe the amendments are helpful to enhancing the confidence of the public in the WPP, in so doing, the effectiveness of the programme can also be enhanced.

On the other hand, in order to prevent abuse of the WPP, in particular to the establishment of new identity, the amendment to clause 12 empowers the approving authority to take reasonable and practicable steps to ensure that when a participant's original identity is restored and outstanding legal rights or obligations are incurred or he is subject to legal restrictions in respect of the identity that have been provided during the period the new identity is adopted, such applicable rights, obligations and restrictions will be dealt with according to law. It is in line with the principle which deals with the rights, obligations and restrictions incurred before the new identity is established.

As to other amendments, they seek to clarify and make technical additions and modifications to the relevant provisions.

The relevant amendments are the consensus between the Government and the Bills Committee through meticulous discussions, I therefore urge Members to support the passage of the amendments. Thank you, Madam Chairman.

Proposed amendments

Clause 2 (see Annex XXI)

Clause 4 (see Annex XXI)

Clause 5 (see Annex XXI)

Clause 6 (see Annex XXI)

Clause 8 (see Annex XXI)

Clause 9 (see Annex XXI)

Clause 10 (see Annex XXI)

Clause 11 (see Annex XXI)

Clause 12 (see Annex XXI)

Clause 13 (see Annex XXI)

Clause 14 (see Annex XXI)

Clause 15 (see Annex XXI)

Clause 17 (see Annex XXI)

Clause 19 (see Annex XXI)

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 Security 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 2, 4, 5, 6, 8 to 15, 17 and 19 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.

WITNESS PROTECTION BILL

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

Witness Protection Bill

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 Witness Protection Bill 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): Witness Protection Bill.

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Dangerous Drugs, Independent Commission Against Corruption and Police Force (Amendment) Bill 1999.

DANGEROUS DRUGS, INDEPENDENT COMMISSION AGAINST CORRUPTION AND POLICE FORCE (AMENDMENT) BILL 1999

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

PRESIDENT (in Cantonese): Mr James TO, Chairman of the Bills Committee scrutinizing the above Bill, will address the Council on the Committee's report.

MR JAMES TO (in Cantonese): Madam President, in my capacity as the Chairman of the Bills Committee on Dangerous Drugs, Independent Commission Against Corruption and Police Force (Amendment) Bill 1999, I wish to report on the main deliberations of the Bills Committee.

The Bill proposes that a serious arrestable offence refers to an offence for which a person may be sentenced to imprisonment for a maximum term of not less than five years. Members are concerned that the threshold of five years' imprisonment is too low and propose that the threshold for taking of samples should be an offence for which a person may be sentenced to a maximum term of seven years or above, a sexual offence or a violent offence. The Administration agrees to members' proposal and will move amendments to the Bill.

Members note that where a person is convicted of a serious arrestable offence and no intimate or non-intimate samples have been taken from that person before his conviction, the police may authorize the taking of a sample of a swab from the mouth of that person. Some members point out that if a person is convicted of the offence of shoplifting, he may be fined several hundred dollars only, but since this offence carries a maximum penalty of 14 years' imprisonment, so according to the Bill, a swab of a sample will be taken from the mouth of the convicted person and the DNA data so derived will be permanently stored in the DNA database. Some members are concerned that many people who are convicted of such an offence will have samples taken from them and therefore propose that in deciding whether a sample should be taken from a convicted person, consideration should be made on the basis of the actual term of imprisonment.

The Administration indicates that the actual sentence may not necessarily reflect the seriousness of the offence committed. The Administration considers that the proposed threshold for deciding whether to take a sample from a convicted person and to store the DNA data of the sample is appropriate. According to the Administration's criteria and owing to limited resources, the authorities estimate that approximately 4 000 to 5 000 samples will be taken a year. The Administration undertakes to explain the criteria for the taking of these samples in its speech at the resumption of the Second Reading debate on the Bill.

Members consider that the taking of a sample of a swab from the mouth of a convicted person should be done within a certain period after the conviction. The Administration agrees to move amendments to limit the period to 12 months after a person has been convicted of a serious arrestable offence.

Some members are concerned that samples proposed to be taken by the Bill and the data derived from the samples may be used for the purpose of

investigating any offences. As these samples and data are taken on the basis that a person is suspected to have committed a serious arrestable offence, these members think that the use of samples should also be restricted to investigative work carried out in connection with such offences, that is, serious arrestable offences.

The Administration is of the view that law-enforcement agencies must combat crimes and safeguard public security in Hong Kong. Conferring this power on law-enforcement agencies is in the interest of the general public and is therefore reasonable.

Some members and I hold different opinions. We are of the view that when samples and the DNA data derived from them are used in the investigation of any offences or any undetected crimes, they should be restricted to serious arrestable offences only. The Committee has divided opinions in this aspect and I will move amendments in connection with this.

Madam President, the Bill permits a person aged 18 or above to volunteer to authorize police officers in writing to take a non-intimate sample. Some members are very concerned that some people may be forced or may be under duress to volunteer to provide samples.

The Administration advises members that it will lay down guidelines specifying how to accept and obtain voluntary samples. The Administration also undertakes to state clearly in its speech at the resumption of the Second Reading debate on the Bill that it will not appeal to the public for the voluntary provision of samples. The Administration also agrees to move amendments specifying that a person who volunteers to provide a sample will be notified of how his sample will be used, his right to access to information and to withdraw his authorization, and so on.

Some members are concerned that whether the data stored in the DNA database will be used in "genetic characterology" or any other social control. The Administration points out that DNA data is in the form of a series of numbers and these numbers cannot possibly be used for "genetic characterology" purposes. In order to allay members' worries, the Administration undertakes that it will give prior notice to the Legislative Council Panel on Security in the event of any change in the science and technology in respect of DNA in future.

Some members also think that a defendant should be provided with a statutory right to request the Government Laboratory to provide forensic services so that the defendant can obtain the required information to make preparations for his case.

The Administration explains that if a defendant claims that a forensic analysis conducted on an article may help to identify the criminal and thus assist his defence, provided that the request is reasonable, the Government Laboratory will accept his request. The Administration also undertakes to elaborate on this point in its speech at the resumption of the Second Reading debate on the Bill.

Madam President, the Bills Committee has thoroughly discussed whether the Bill should be binding on the State. The Bill provides that except for specified purposes, no one may access data stored in the DNA database or disclose or use such data. Any breach of the provision may be punishable by a fine of $25,000 and six months' imprisonment.

Some members and I consider it necessary to add a definite provision specifying that the State is also bound by that provision in its access to, use or disclosure of data stored in the DNA database.

The Administration explains that the criminal offence provision applies to all individuals, including state officials stationing in Hong Kong and considers that the provision is adequate to include all those who are held responsible for the breach of the provision and it is therefore unnecessary to add a definite provision to bind the State. Whether the "State" should be bound by necessary implication shall be determined by the Court.

Some members and I think that in the absence of a provision specifically binding on the State, those State organizations outside the territory of the Hong Kong Special Administrative Region (SAR) will not be bound unless the Court decides that the State is bound by necessary implication. We worry that this will cause uncertainties. We think it is necessary to add a definite provision to bind the State. The Committee has divided opinions in this aspect and I will move an amendment in connection with this in my personal capacity. I will also move amendments providing that the provisions relating to the use of samples and results of a forensic analysis will be binding on the State.

The Bills Committee supports the resumption of the Second Reading debate on the Bill and supports the Committee stage amendments to be moved by the Secretary for Security later on today.

Madam President, I will present my own views only after I have listened to the other Members' speeches. Thank you.

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

MR GARY CHENG (in Cantonese): Madam President, since I joined this Bills Committee, I have learned a lot and I have particularly acquired more knowledge about the physiology of human bodies.

Currently the taking of DNA samples, the DNA analysis and database have gradually been recognized as a new scientific discovery in the world and have become increasingly popular and generally used. I understand that the legislative intent of this Bill is of course the hope that the Police Force will be more efficient and will find it easier to conduct investigations and take evidence and that it will be more accurate in seeking evidence, adducing evidence in court or giving a ruling. However, in the course of our discussions, we have spent a long time deliberating. At the 10 to 20 rounds of meetings, we revolved around discussions about how to strike a balance between human rights and privacy while paying attention to the efficiency and accuracy in conducting investigations and taking evidence.

The Honourable James TO has just stated the views of the Bills Committee so I am not going to repeat them. I only wish to present my personal views on three issues.

The question of whether the voluntary provision of samples should be permitted has caused much controversy in the Committee. I personally think that since we say we have to respect human rights and privacy, then if the parties concerned or the people involved make voluntary requests whether for the sake of reducing any subsequent troubles or proving their innocence, their right as such should be protected.

During discussion, as Mr James TO has just said, some Honourable colleagues are worried that they might be "forced to volunteer" or "compelled to volunteer". Of course, according to my understanding, if they are compelled, their acts will be involuntary. Hence, it would be more accurate to say that certain circumstances have compelled one to volunteer. We have

repeatedly cited the example of a small town inhabited by 20 men only. One day a lady had been raped and then every man was required to provide a DNA sample. If one of the men refused to do so, it would cause suspicions among the others that he was the suspect. During our discussions, we mainly considered the probability of such problems arising in Hong Kong. If the Government indicates in its speech later that it will not appeal to the public for the voluntary provision of DNA samples, we should be free from the worry.

On this question, I have always thought that when we think that a balance has to be struck between human rights and the privacy of the public, the power of voluntary provision of samples should be essentially subject to positive protection. We have also grasped a lot of overseas information. For example, there are the so-called "Innocence Projects" in the United States that allow those criminals who claim to have been done injustice to volunteer to provide samples in a bid to prove their innocence. There might be dozens of these cases each year on record. From these instances, we can see that the right to voluntary provision of samples should be protected. Of course, if the Government's reply can relieve members of the worry of the so-called "compelled volunteer", it will be a good deed.

Secondly, as regards whether the data of a sample taken for a serious arrestable offence can be used in the investigation of other offences, I personally think that it should be acceptable. Some members are of the view that since a sample is taken for a serious arrestable offence, so it should be used only in the investigation of the serious arrestable offence. However, insofar as I understand it (I have never been a police officer and I do not know whether this is logically correct), a serious arrestable offence is certainly a serious one, but some offences which are unlikely to be serious arrestable offences may be critical and very important. Although the penalty for those offences is not so serious as five or seven years' imprisonment, if evidence can be taken from that part, it will be helpful to the detection of crimes. In these circumstances, if we limit the use of data to the investigation of a serious arrestable offence, will the system of creating this database for evidence taking be subject to limitation in relation to its original intention? I personally think that these data can be used in the investigation of other offences.

Besides, there is probably a technical problem that I find unsatisfactory in this Bill, which is the so-called "intimate" and "non-intimate" sample. We have argued many times at the meetings of the Bills Committee over the

distinction between "voluntary" and "involuntary" samples. I think that the wording "intimate and non-intimate" is not a proper description after all. The Chinese term of an intimate sample is not necessarily close to the English version. We have considered many other proposals such as "non-intrusive, intrusive" and "private, non-private", but they do not seem to be proper or immaculate. However, I will not reject this Bill for this reason.

Madam President, my colleagues in the DAB and I support this Bill. Thank you, Madam President.

MISS EMILY LAU (in Cantonese): Madam President, I rise to speak in support of the Second Reading of the Bill.

Madam President, I am one of the members of the Bills Committee. Under the leadership of Mr James TO, we have held 21 meetings and visited the Government Laboratory. I hereby thank the Government for the assistance offered to us and I am grateful to them for completing the task in such a short time. Although I agree generally to the substance of the Bill, I will support the amendments to be proposed by Mr James TO later on in the hope of perfecting the Bill.

Madam President, I agree with the Honourable Gary CHENG's point that we have learned a lot in the course of scrutinizing the Bill. In fact, this Bill may be a bit dull and will not necessarily cause great concern in the community, but I believe that we will need to do that sooner or later because we will take a DNA sample of a swab from the mouth of a person arrested in the future. DNA is deoxyribonucleic acid. I believe no one will understand what it means by such a name, so would the President please allow us to speak in a mixture of Chinese and English since the Bill is also a mixture of Chinese and English. The general public may not figure out what will happen in such a short time. I hope that after the passage of this Bill, the media will have more coverage on this. In the event that someone who is suspected of having committed a serious arrestable offence is arrested and punishable by no less than seven years' imprisonment or that he has committed a sexual offence and a violent offence or that the police or ICAC suspect that the DNA sample of the suspect will help to prove whether he has committed an offence, they will take his DNA sample and may store his sample. This is a significant issue and I very much hope that the media will have extensive coverage on that so that the

public will be aware of the state of scientific development and that it will apply to us in the future. Just as we discussed the issue of surrogacy earlier, I feel that it deserves more coverage provided to the public. Hence, we have held 21 meetings to carefully discuss this Bill.

Mr CHENG just now mentioned the issue of intimate and non-intimate samples. We have held several meetings in this connection and our subsequent discussions even proposed that it would be quite all right to change "intimate or non-intimate" to "1, 2 ,3", and so on. At last, the Government dismissed that as meaningless. I find one point unconvincing, which is, putting something into a person's mouth for the taking of a sample is just tantamount to taking something out of the mouth, but why is it called a non-intimate sample? Maybe it will be better to call it "intrusive" or "non-intrusive". We have considered this over and over again, but we have failed to draw a conclusion. I am a member of the Hong Kong Human Rights Monitor, which does not agree to the Government's approach. They think that asking someone to open his mouth, to take a sample of a swap from his mouth is a very intrusive act. The existing approach is that if a police officer of or above the rank of superintendent is authorized to take a sample while the suspect does not agree to it, the police can use appropriate force to take a sample. I am a bit worried about that.

In any event, I still support this Bill today. I notice that the Privacy Commissioner for Personal Data has also proposed that for the purposes of non-intimate samples, if the party concerned does not agree, an application should be made to the Judiciary for approval. Actually the Government has declined a number of proposals made by the Privacy Commissioner. The Government is of the view that the approach is feasible for it will not cause any pain and it is also fast and non-intrusive. Today we will approve of this approach and I believe most Members will support the Government's existing approach. However, I hope that a review can be done soon to examine if it will not cause any problems or no abuse of powers will arise. I hope the Secretary will undertake to do so.

In addition, Mr James TO earlier said that we were worried that once the door was opened, a massive taking of samples might arise. The figures provided by the Government indicate that during the period between 1997 and 1999, 29 200 people were arrested in connection with serious arrestable offences yearly; from 1996 to 1998, 19 800 people were convicted in connection with these offences. But the Government indicates that it will focus

on the taking of samples from serious offenders in the future. Hence, as Mr James TO has said, it is forecast that there will be only 4 000 to 5 000 cases yearly. We will bear these figures in mind. We have also expressed that we hope the Government will report to the relevant panel of this Council regularly. If there is an abrupt increase in the above figures, we will investigate the cause. Will this deviate from the standard to be mentioned by the Secretary in her speech later? Madam President, this approach is novel and sensitive as well, so I hope that we can handle it with care. I am very glad to see that the Secretary is willing to do so because in many countries such as Britain and Australia, a sample can be taken for whatever offence the suspect has committed. The case is different in Canada. Canada has set a very narrow scope. It will only perform this on suspects of sexual and violent offences. Hence, countries differ in their approaches. We all know that in the area of human rights, Canada is recognized worldwide as number one, but Britain is often rebuked by the European Court of Human Rights. We therefore need not learn from a country with the worst track record, but I hope the Secretary will then tell us the relevant figures.

Madam President, I mentioned the voluntary provision of samples earlier. We have discussed this issue many times in the Committee and studied the information obtained from Australia, that is, the example cited by Mr CHENG earlier. Owing to the small size of the town, all criminals were required to provide DNA samples and those who do not provide samples will fare badly. However, we note that the documents provided by the Government point out that the local human rights organizations and legal profession have criticized that approach. Although many people provided DNA samples, there were also dozens of people who did not do so. I find this approach no good in that it will pressurize people. As long as a suspect provides a sample to prove his innocence, the police will find it easy to conduct investigation. I am glad that the Government has informed the Committee that it will not adopt this method. It is really very difficult to adopt this method in Hong Kong. As the small town in the above example has a population of only several hundreds, but a housing estate in Hong Kong often accommodates thousands of people, so the Government considers this impracticable. In her speech later, the Secretary will state clearly that the Government will not appeal to the public to provide DNA samples in those circumstances because it will surely exert pressure. We totally disagree with the approach of requiring the public to prove their innocence.

Lastly, I wish to talk about the question of binding the State. Madam President, you must be aware that Article 22 para 3 of the Basic Law explicitly states that "All offices set up in the Hong Kong Special Administrative Region by departments of the Central Government, or by provinces, autonomous regions, or municipalities directly under the Central Government, and the Personnel of these offices shall abide by the laws of the Region." Madam President, during the period of the Provisional Legislative Council, the Government tabled a Bill amending Chapter 1 of the Laws of Hong Kong, substituting "Crown" with "State" so that when legislation is enacted in the future, unless "binding on the State" is specified in the Bill; otherwise, it will mean not binding. Madam President, I hope that in the future someone will explain to me why it is that while Article 22 of the Basic Law expressly provides that the said offices and personal should abide by the laws of Hong Kong, but the amendment to Chapter 1 of the Laws of Hong Kong has granted immunity so that the State is not bound. Therefore the Committee has sought to specify the relevant provisions. Although the Government has repeatedly told us that it will not cause any great problems because the legislation is binding on anyone, including a state organization, our Legal Adviser has told us that there might be problems. It refers to anyone on the one hand, but it refers to a state organization on the other. An organization is not bound while anyone is bound by it. In that case, if something is not taken hand to hand but via the computer or other methods, will it be free from any problems? As a state organization is not bound by it, is it in order for a state organization to take something while it will cause trouble for an individual to take something? The legal problems and troubles in various aspects arising from this remain unresolved. I do not quite understand why the Government refuses to expressly state that the State shall be bound. We have asked if approval of the Central Government is required as to whether the state should be bound. I remember that the reply I received was "No", pending discussion. The Government however said at the time that there was no time for discussion.

Madam President, another ordinance, that is, the Personal Data (Privacy) Ordinance, has not achieved any results after two years' discussion. Documents have been tabled at the Legislative Council seven or eight times, but every time the Government would say that it was a very complicated problem and no conclusion had been reached notwithstanding several rounds of meetings held with the Central Authorities. This Bill is more interesting in that there is

even no need to have a discussion because the Government has decided that it is not necessary to bind the State. Madam President, we have just said that the problems of DNA are very sensitive and its application will have significant implications. I believe we have to handle it carefully and it is hoped that there will be no abuse. But we also hope that a state organization will be regulated by this Ordinance, so I very much support the amendment to be proposed by Mr James TO later on. I hope the President will agree that many Hong Kong residents aspire for full implementation of Article 22 of the Basic Law. Unless with sufficient reasons, this Council should state clearly in the Bill that the relevant law shall regulate a state organization every time legislation is enacted. Should such circumstances arise, we will feel that perhaps someone has intentionally acted in contravention of Article 22 of the Basic Law.

With these remarks, Madam President, I support the Second Reading of the Bill.

MR ALBERT HO (in Cantonese): Madam President, with scientific advances, we all expect that not only will new technology be able to protect the physical health of people, but it will also help to detect crimes with a positive effect on law and order. This Bill enables the Government to make use of technology to obtain forensic evidence relating to human genes and assists in the detection of crimes. This is a very important development. As far as this direction and the general principle of policy are concerned, we support this Bill earnestly. At the past 20-odd meetings, we have carefully considered every clause and positively pondered over their effects.

As some Honourable colleagues have just said, when we introduce new technology, there are a few issues that require particular attention. Firstly, what is the use of a DNA database? Apart from the taking of forensic evidence to assist in detecting crimes and cracking cases and providing the same to the Court for the purposes of judicial proceedings, are there any other purposes? Hence, we hope that we can clearly set out the limitations on use. We think that this Bill can achieve this aim. We are gravely worried that the use of human genes will involve a lot of ethical arguments. We all know that recently Iceland has sold the genetic data of the whole country to another country for research on why Icelanders have a particularly long lifespan. This

has caused a great controversy. It is possible that the community of Hong Kong will initiate a debate on that sooner or later. At present, since we have authorized the Government to set up such a database to store many records of human genes and DNA information, before a consensus is reached in the community, we cannot approve at will any methods of using them without consent.

Secondly, in the process of obtaining DNA, how can we strike a balance between human rights and the protection of privacy? We have been very careful in drafting this Bill. Insofar as intimate samples are concerned, we have carefully prescribed that not only is consent required from the persons being affected, but a Court approval is also required. In the process of scrutiny, consideration has been given to whether there are sufficient reasons to take non-intimate samples and how the relevant process is going to be. We have also expressed our opinions. But the crux of the matter is as follows. First, under what circumstances can the Government exercise this power? The Bill specifies that it must involve serious arrestable offences; we also agree that the threshold should be raised from the original five years of imprisonment to seven years, and sexual offences should be included. We think that there have been improvements in this area. In addition, after samples are taken, under what circumstances can they be re-used? For example, they can be used for verifying other data in the database. The Government's opinions are different from ours. Earlier on, I heard Mr Gary CHENG say that the verification of other samples or records should not be subject to any limitation. We object to this point. We feel that we have clearly stated that these samples can be used only for the investigation of serious arrestable offences (punishable by a maximum penalty of not less than seven years' imprisonment) and other sexual crimes. Hence, we should not relax control in other circumstances or allow them to be used for other purposes in other circumstances, including minor offences. First, we find it inappropriate for them to be used too widely at the initial stage of implementation. We have specified the serious offences that need to be dealt with and there is no need for them to be used for the detection of minor offences. Second, it is the matter of costs. We have to employ government resources to take evidence and store records.

Thirdly, the taking of huge quantities of such data or using them in such a way in future will defeat the original intent of legislation. We must clearly restrict their use and should not approve lightly the wide application of the relevant methods. The greatest argument is in the distinction between intimate and non-intimate samples, in relation to the determination of under what circumstances the concerned party's consent and a Court approval are required.

We have spent a long time examining this point and the Honourable Miss Emily LAU often mentioned that how could the taking of a swab of a sample from the mouth not be deemed as the taking of an intimate sample? Some people ask whether the taking of a urine sample is a very intrusive act. There are people who ask whether a distinction should be drawn between intrusive and non-intrusive. In any event, all methods may cause controversy and we have eventually agreed that the Government's current distinction is acceptable to us. As regards the taking of a sample from the mouth, we consider this a borderline case, which will be intrusive, but the Government Laboratory has informed us that the degree of interference is in fact very low for a swab will only be wiped softly along the lip of the person concerned. In these circumstances, we can accept the Government's point. However, we will closely monitor the developments and see if there is a need to review the situation after implementation.

Some Members ask whether videotaping the taking of a sample is a better approach. We have raised this point because we hope to avoid certain situations where the officer concerned may consider that the party concerned has given his consent but he might not have agreed to it or it might be that the officer concerned has used force to make him yield under pressure. Is this an appropriate approach after all? All sorts of matters may cause controversy in future. There are similar disputes in court. Whether or not the party concerned agrees to give evidence is adequate to determine whether the evidence given can be adduced in court. Attendance in court is not required for the taking of non-intimate samples and the Court's approval is not required either. Our concern lies in whether the least force or reasonable force should be used to take a sample. This is the most important point. In these circumstances, the process of taking a (intimate or non-intimate) sample should be videotaped and we hope that the Security Bureau will consider this measure.

We have mentioned the issue of impartiality as well. According to the law, the entire database is kept by the Commissioner of Police or is subject to his instructions and management. But many members of the Committee are of the view that this database or its data is not owned by the Commissioner of Police. We all know that this is a public property or a property of the whole community and is to be used for public interest. It then brings out a concept: Is it supposed to be used only by the Government and the prosecution? If a defendant considers it necessary to have an analysis conducted by a laboratory to help clear some doubts, can he do so? This point is not clearly stated in the existing legislation, but from the communication between the Government and us and the government officials' explanation, we understand that they should

not object to a reasonable request and should offer assistance to those making a reasonable request for forensic investigations. I hope that a review can be done after the implementation of the law for a certain period of time.

In brief, we hope that after the passage of the Bill, the Government can have more opportunities to rely on highly objective forensic evidence in adducing evidence. We do not want to see a statement that turns out to be the only evidence admissible in court for conviction. We hope that objective forensic evidence can help to bring about judicial justice. We hope to propose amendments in the future so that the Coroner's Court can use this forensic evidence to establish the identity of the deceased or to assist in studying the cause of death.

Finally, I wish to talk about the issue of binding the State. First, we have to consider Article 22 of the Basic Law. Miss Emily LAU mentioned earlier that the Central Government and the provincial and municipal governments directly under it shall abide by the Basic Law. Of course the law can state that they are not required to abide by it and we have the right to do so. If it is prescribed in the law that it is not binding on them, then they are not bound by it. But when they engage in any activities in Hong Kong or when anyone comes to Hong Kong, they should receive the same treatment as ordinary citizens. Under certain circumstances, they can say that on account of certain grounds, they should not be bound by it and should be granted immunity. But the Central Government or the organization requesting immunity should state why they are different from the general public, organizations and the Government in Hong Kong. At least we should be satisfied with the reasons given by them. At present, are there sufficient reasons? I do not think so and I am not aware of any.

Second, the Government often indicates in its letters that we need not panic because individuals are bound. If they interfere with the DNA database illegally, those people will be bound. But I think a correct concept is that when the law states that it is "binding" on the Central Government or mainland organizations, they should know that they are bound by it and therefore respect the law instead of fearing any criminal consequences. They may think that even if they do not abide by it, we can do nothing about them because no one will be held responsible or be arrested. The problem lies not in the criminal liability. It does not matter whether or not it is possible to arrest some people and have them fined or imprisoned, but since the relevant policy has been clearly spelt out and they are bound, then they should respect and abide by it. The Government explains that if an individual violates the law, he will still be

bound by it and prosecuted notwithstanding that his government is not bound by it. I do not wish to consider this matter from a technical angle, but we should start from the policy and let the Central Government know that if anyone is bound by the law, they should respect it and know that this is their legal obligation and they must fulfil their obligation in accordance with the Basic Law.

Lastly, as far as acts of State are concerned, the Government has indicated in its letters to us that this is not related to defence and foreign affairs, but it is connected with many acts. They might have overlooked one point. Article 19 of the Basic Law states that acts of State include without limitation to national defence and foreign affairs because that article states, "concerning acts of state such as defence and foreign affairs". Please note the wording "such as". There was a fierce argument over this during the drafting of the Basic Law. The Basic Law Drafting Committee also participated in the fierce argument on the wording "such as". What acts are implied to be included in the wording "such as"? I hope the Government can carefully consider this issue. Thank you, Madam President.

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

MR FUNG CHI-KIN (in Cantonese): Mr Deputy, I wish to deliver a brief speech on behalf of the Hong Kong Progressive Alliance (HKPA).

The HKPA is of the view that in conferring statutory powers on law-enforcement agencies, the Bill has struck a reasonable balance between the taking of intimate or non-intimate samples from suspects for criminal investigation and the protection of privacy of the suspect.

The HKPA agrees with the Government that only the DNA data of a person who is convicted of a serious arrestable offence or who volunteers to provide a sample will be stored in the database. In addition, as for suspects who have not been charged, suspects who have been charged but the charge against whom is withdrawn, suspects who are discharged by a Court before conviction of the offence, suspects who are acquitted of the offence and suspects who are acquitted on appeal, the data of their DNA samples will be destroyed. It is believed that this arrangement will win public support.

As regards Mr James TO's proposal that a definite provision be added to the Bill specifying that the "State" is also bound by the law in its access to, use

or disclosure of data stored in the DNA database, the HKPA considers the proposal unnecessary. In common law, any acts of unauthorized access to the database or unauthorized use of DNA data shall be performed by an individual and thus the relevant provision will only be violated by an individual. According to common law, while the legal liability shall be assumed by an individual, the execution of duties or obedience to a superior's orders does not constitute a defence in criminal proceedings. Moreover, the criminal offence provisions in the existing Bill are applicable to all individuals, including state officials based in the Hong Kong Special Administrative Region (SAR) and it is therefore unnecessary to add a provision to bind the State.

Mr Deputy, I so submit.

MR JAMES TO (in Cantonese): Mr Deputy, I was speaking on behalf of the Bills Committee, and now, I am going to speak in my personal capacity.

Recently, a very significant development in biotechnology has been disclosed, and the Deputy President should be particularly interested, because the disclosure is about the success of American and British scientists in the area of DNA genome after long years of studies. Technology is ever and rapidly developing, and one never knows what purposes the information and samples we now have will serve in the future. We should not turn a blind eye to technological development, for technology can provide the basis and impetus for the progress of human society. However, while we seek to benefit from technological development, we must also adapt our legal system to it as a whole. One example of such adaptation is our debate on the Human Reproductive Technology Bill a couple of days ago, in which we sought to explore the need or otherwise to impose more restrictions. Similarly, when we studied the legislation relating to DNA, we must consider both the present and the future. It is of course always possible for us to introduce amendments when the need arises in the future. But if DNA technology is really useful to us, and also since we can already master this technology even now, should we not act now and consider how we are going to strike a proper balance? The most radical thing to do will be to take the DNA samples of all babies as soon as they are born and then store all these samples on a permanent basis, in very much the same way as we now record the particulars of a new-born baby in his or her Birth Certificate. That way, when a person grows up, he will never be able to get away from the law. By this I mean, in case a person commits a crime after he has grown up, whether it is just a minor crime, or a serious crime involving robbery, murder, kidnapping and looting, he will definitely be

identified and tracked down. From the perspective of combating crimes, some people in the community may well support this practice, because they will think that there is no problem as long as one does not break the law.

The Government has quoted the examples of many countries which have adopted the abovementioned practice, and in these countries, there seem to be no problem at all. However, we must remember that what we are discussing now actually involves all these questions: Under the existing legislation, what crimes should warrant the collection of the DNA data of suspects? In the end, how many people will have their DNA data stored in the database? Will these data be stored on a permanent basis? Miss Emily LAU has quoted many of the statistics provided by the Government. We are now focusing our discussions on crimes punishable by a prison term of seven years or longer. This is already quite a strict criterion. But we still have to remember that this is only one way of classifying crimes, a very general way at best. For the crime of theft, for example, the maximum penalty is a prison term of 14 years, but theft as a crime also covers the act of stealing a pack of chocolate, which is punishable only by a fine of $500 or a Community Service Order. In the latter case, if the convict does not commit any crime again in the next few years, he can be considered legally "clean", because he will be given a chance to begin a new life. Every year, about 20 000 people are investigated for their suspected involvement in crimes punishable by a prison term of seven years or longer. So, in theory, we may collect their DNA information. In the end, some 16 000 to 17 000 people may be convicted, and we may collect their DNA information. The Government now says that owing to the constraints imposed by manpower and various criteria, it will only collect the DNA information of several thousand people a year. Actually, when it comes to the application of DNA information to crime investigation, we all hold a common principle, and that is, that such information should only be used for serious crimes. People may of course ask why such information should not be used for less serious crimes. The answer is that this actually involves considerations relating to the availability of resources and infringement upon human rights; this may mark a permanent stain on a person. Should a person's DNA information be stored forever simply because of a crime he has committed?

Actually, we should not discuss DNA only, for the same problem is also found with fingerprint. If we are to give a person a real chance to reform himself, his various data should never be stored on a permanent basis. Let us imagine what the situation will be like. Suppose we disregard multiple

offenders, then in theory, we may still collect the DNA information of some 10 000 people a year. This means that 10 years from now, we will have collected the DNA information of some 100 000 people. So, just 20 or 30 years from now, in this community, the DNA information of a substantial portion of those living will still be stored in the database. And, let us not forget that technology is developing very rapidly, and so, although I understand that we can always adapt our laws to suit technological advances, I am still worried that our society may well lose control on that in the future. Will the application of DNA analysis infringe upon human rights and privacy? And, will it affect genetic engineering? I am enormously worried indeed.

Since we cannot turn a blind eye to technological advances, we naturally have to strike a proper balance. It is now already several years into the reunification and we may now review the situation in Hong Kong. Has a new situation emerged by now? Or, is the existing situation very much the same as that before 1997? If we have already enacted the laws required to implement Article 23 of the Basic Law, and if such laws are accepted by all, then the situation will really be very much the same as that before 1997. But the process of enacting such laws has not yet started, and we have so far failed to know anything about the relevant information and proposals. We do not know whether there will be changes in our human rights and freedoms. We do not know whether the Government will reorgainze the Special Branch. We do not know whether the Government will change the set-up, manpower deployment and equipment of the Special Branch for the purpose of implementing Article 23 of the Basic Law which prohibits acts of sedition, and so on. We do not know whether the laws eventually enacted are going to be strict or lenient. All this is still largely unknown. That being the case, when it comes to the large-scale collection of DNA samples or the large-scale storage of personal particulars in electronic Identity Cards, we must really adopt a very cautious approach. All these proposals should be implemented slowly and gradually in our community. To illustrate my point, let us look at the Organized and Serious Crimes Ordinance as an example. Following its implementation, we can see that the number of complaints has been very small, and that the authorities concerned have not abused its special power of forcing people to disclose information. So, we would think its implementation can be furthered. The same should also apply to the application of DNA information. Should we actually start with a relatively narrow scope of sample collection, restricting it to the most serious crimes first? The number of samples collected may be very small at first, but once a start is made to apply this technology to the category of people committing the most serious crimes, the community can

surely build up their confidence in it over time. We notice that in foreign, democratic countries, whenever there is any scandal or abuse of power, even the Prime Minister has to step down. Yesterday, outside the Government Secretariat, we saw police officers attacking demonstrators with their fists; some police officers even attacked these demonstrators with pepper spray while they were about to leave the scene. In a genuinely democratic society, a select committee will at least be set up to look into the case. But the Secretary for Security claimed yesterday that the force used was already very minimal. And, the police even said that they had acted properly by using pepper spray instead of batons. When we hear such comments, and when we realize how these people look at human rights and governance, we cannot help wondering whether the authorities have been given too much power. For this reason, we must consider this matter very seriously.

Concerning the application of lawful force to collect DNA samples, we can learn a lesson from a recent case connected with the ICAC. The verdict for this case was made just a couple of days ago. It is *Mr FOK us ICAC*. Under the relevant ordinance, the ICAC is empowered to take photographs of a convicted person in his face, from his right and from his left, very much like taking photographs of a debtor. Law-enforcement officers have the power to do this. But it turned out that the law-enforcement officers concerned had to apply lawful force before they could take photographs of Mr FOK. Mr FOK maintained that this had gone overboard. He said that several persons held his neck and head when the photographs were being taken, and he complained that people would only do this when taking photographs of a dead person. In the end, after a series of appeals, he won. I hope that the Government can ask the police to learn a lesson from this case, because some people may still think that force can be applied in case a person refuses to have his fingerprint or DNA information collected. This warrants some thinking. From this court case, we can see that even the application of lawful force in taking photographs of a person may be illegal. I just do not know what will happen if the force applied has not been lawful. In response to the scuffle outside the Government Secretariat yesterday, the Administration said that only minimal force was applied. It should really reflect on this.

Besides, there is also the point about the restrictions to be imposed on the State with respect to its access to and use and disclosure of the information stored in the DNA database. But I am not going to repeat the points of Mr Albert HO here. I just want to point out that in the Bills Committee, I

actually gave a chance to the Administration: To enable the Bill to get through, I am prepared to make a concession; I will refrain from moving any amendment seeking to insert the word "State" in the relevant provisions provided that the Administration agrees to discuss with the Central Government on the restrictions to be imposed, just as what it did in the case of the privacy legislation. I will welcome the Administration to discuss with the Central Government and reach a consensus with it. And, I of course hope that the Central Government can accept the restrictions eventually worked out. The reason is that even if restrictions are forcibly added to the relevant ordinance, the Central Authorities can simply ignore them (I am not saying that this will necessarily be the case) despite their proper underlying principle if it wants to do so. The State Security Bureau has infiltrated each and every level of our community, and it is perfectly possible for it to bypass all restrictions without being noticed. This is my observation. However, if the Central Authorities agree to be bound by the restrictions, then it will not matter much even if many people put forward many different views. As long as the Central Authorities' overall policy is accepted, there will be no need to say who should be bound while the State should not. Unfortunately, the Government never raises this matter with the Central Government. In the case of the privacy legislation, the Government discussed with the Central Government for more than two years. Members must note that on this matter, the Central Government has never said that it does not want to be bound. And, I think it has actually considered this matter very seriously. Similarly, I think that when it comes to the use of the information stored in the DNA database, the Central Government should also do some serious thinking.

I once told the SAR Government that I did not want the Central Government to interfere with the affairs of the SAR. But I must say that on this matter, the SAR Government, especially the Secretary for Security, has never reflected our views to the Central Authorities as required by their duties. They have never asked whether the Central Government is willing to discuss the matter, or whether it is unwilling to accept any restrictions. The Secretary has simply told us that there is no such a need at all. The Secretary is duty-bound to discuss with the Central Government to see if it is willing to discuss with us, to see if it is willing to consider the acceptance of any restrictions. So, in a way, the Secretary has even deprived the Central Government of any opportunity to consider whether it should abide by Article 22 of the Basic Law. I have made a very serious accusation, and I request that my accusation be put on the records. And, I will also try every possible means to pass this record to the Central Government, to make it realize that the legislators of Hong Kong strongly hope that it can consider this matter

instead of leaving the decision to the SAR Government. This is a most serious accusation.

Technically speaking, is it a correct principle to restrict individuals but not the State? Is such a practice adequate? This is in fact a matter of a very basic nature. If the State has agreed to be bound, then it should know that it is not supposed to use the DNA database no matter what cases are involved. I once asked this question: Should we also forbid the State to use the DNA database even under some special circumstances, as when, for example, the overall interests and security of the State are prejudiced? If, for example, a secret agent has stolen some important state secrets in China, and if signs are that the agent may be a Hong Kong resident, or even a Hong Kong resident with criminal records, should the State still be barred from using the database despite the possible danger to state interests? This example shows that we must consider and discuss the matter frankly and openly instead of trying to avoid the issue of restricting the State so furtively as we now are. I am sure that many Members will support my view. I think that insofar as the relationship between the Central Authorities and the SAR is concerned, this approach of avoiding discussions is utterly irresponsible.

THE PRESIDENT resumed the Chair.

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

(No Member responded)

SECRETARY FOR SECURITY (in Cantonese): Madam President, the Dangerous Drugs, Independent Commission Against Corruption and Police Force (Amendment) Bill 1999 was submitted to the Legislative Council for First and Second Readings on 30 June 1999. The Bill seeks to confer statutory powers on the law-enforcement agencies to take intimate and non-intimate samples from a person suspected of involvement in a serious arrestable offence for the purpose of forensic analysis mainly for investigation of crimes and court proceeding. The Bill has also included a series of checks and balances to protect the rights of the individuals concerned.

I would like to express my gratitude to Mr James TO and members of the Bills Committee who have carried out meticulous studies and comprehensive discussions on the Dangerous Drugs, Independent Commission Against Corruption and Police Force (Amendment) Bill 1999, and put forward numerous valuable comments at over 20 Bills Committee meetings. After hearing the suggestions of the Bills Committee, we agree to propose amendments in order to perfect the legislation proposal. I will move the relevant Committee stage amendments later and brief Members on the reasons for the amendments.

First of all, I would like to discuss about the DNA information. DNA analysis is one of the most effective ways of forensic analysis. The analysis is conducted by extracting substances out of the intimate and non-intimate sample of an individual, and subsequently a series of numerical DNA profiles can be obtained. Since the profiles are specific to that individual, they can therefore be used for the identification of an individual from tens of millions of people with precise accuracy. Forensic comparison performed on sample profiles of the suspects and the sample profiles of all sorts of human secretion and body tissues obtained at the crime scene can implicate a suspect with a high degree of accuracy, or it can exonerate him absolutely as the source of the material, thus excluding the possible involvement of innocent individuals. With this technology, the crime detection capability and the efficiency of law-enforcement agencies can be enhanced significantly. The practical application of taking bodily samples for DNA analysis in crime investigation and detection has been recognized unanimously by Hong Kong and every advanced and developed country.

With regard to DNA database, in view of the distinctive personal characteristics of the DNA profile, the Bills Committee proposes that a DNA database be set up for crime investigation purposes. If a suspect is convicted of a serious arrestable offence, his DNA profile will be stored in the database. Forensic comparison between the sample profile of the suspect and the sample profile of substances obtained at the crime scene will not only accurately confirm his involvement in that particular case, but also other previous undetected cases. Overseas experience indicates that the setting up of the DNA database is enormously useful to the combat against crimes, in particular to the identification of recidivists.

In the course of strengthening the capability of law enforcement agencies, we have not forgotten the importance of protecting human rights and individual privacy. The Bill has stipulated clearly the prerequisites and every standard procedure for law enforcement officers to follow when they take bodily samples. Under the Bill, law enforcement officers will be allowed to take a non-intimate sample, including samples of saliva or hair, or a buccal swab of cell samples from a person under the authorization of a police officer of the rank of superintendent or above only, provided that there are reasonable grounds for the officer to believe that the person is involved in a serious arrestable offence, where the sample will tend to confirm or disprove the involvement of such person. Intimate samples shall include samples of blood, urine and semen. Owing to the intrusive nature of this latter action, the Bill requires a written consent of the suspect and the approval of a Magistrate on top of the same requirement for the taking of non-intimate samples. Furthermore, the Magistrate has the power to conduct a hearing if he considers necessary.

In addition to the requirements on the taking of samples, there are also strict provisions on the administering of samples. These provisions limit the access, disclosure, use and disposal of the results of forensic analysis and the DNA database, in order to protect the human rights and privacy of the suspect, in addition to guaranteeing that the samples and database will not be abused.

In the course of deliberation, some members of the Bills Committee have expressed concern for the number of samples to be collected by the law-enforcement agencies yearly. During the initial implementation of the ordinance, the police will aim at serious offence such as rape, murder, kidnap and serious assault since such offences may cause more significant trauma to the victims. Furthermore, according to the past experience of the law-enforcement agencies, DNA analysis is also applicable to offences involving recidivism. Moreover, cases that are more suitable to ential the application of DNA analysis will also be given priority consideration by the police.

In view of the prerequisites of taking bodily samples required by the Bill, in addition to the aforementioned guidelines and resource considerations, it is estimated that we will take 4 000 to 5 000 samples annually. Comparing with the number of people arrested for suspicious involvement in serious arrestable crimes, it will account for 15% of the total number of people arrested. After the implementation of the ordinance, we will submit the figures of samples taken annually to the Panel on Security of the Legislative Council for reference.

Some Members have expressed concern in relation to a mechanism that people who have attained the age of 18 years may voluntarily give an authorization to the law-enforcement agencies to take non-intimate sample from him. The mechanism is established in the light of overseas experience, with the major objective to enable some reformed offenders who wish to volunteer such information to pre-empt further approaches from the law-enforcement agencies, as well as to keep away from inconveniences. Under the voluntary mechanism, convicted criminals may also voluntarily give an authorization to have his sample taken for the purpose of reversing his conviction. As a result, the mechanism may provide the people who have been wrongfully convicted a chance to quash the charges against them.

I understand that some Members are concerned about the possible exertion of public pressure because of the mechanism, so that some people may be compelled to give authorization under involuntary circumstances. I must emphasize that the mechanism is absolutely voluntary, and we will absolutely not force anyone to provide his DNA information in order to prove his innocence. The Bill allows the individual who has made the authorization voluntarily to withdraw his authorization at any time by giving notice to the police in writing, and all the relevant information of the DNA profiles will be destroyed as soon as practicable. We will not appeal to the public for voluntary authorization of sample taking in any individual case. Therefore, the involuntary authorization of anyone owing to public pressure is extremely implausible.

The principal object of the Bill is to regulate the taking of bodily samples from suspects which is carried out by law-enforcement agencies and the usage of laboratory analyses conducted by the Government Laboratory. Some Members have raised the question that whether a defendant should be entitled to the right to request the Government Laboratory to provide forensic analysis services on certain evidence or substances so as to facilitate his defence or the detection of the case. Under the existing judicial system, the onus of proving beyond reasonable doubt that the defendant has commited the crime is on the prosecution. Therefore, if a defendant suggests that a forensic analysis of certain items might be helpful to clarifying the identity of the culprit or would be useful to his defence, we think the authority will provide the assistance as far as possible on the condition that all the relevant aspects of the case concerned have been taken care of.

Mr James TO will move two amendments to the Bill. The first amendment is to restrict the use of bodily samples and DNA information to serious arrestable offences only. The second amendment is to add a provision that makes the restrictions on the access to, disclosure or use of bodily samples and DNA information of the same binding on the State. The Government opposes these two amendments. We consider under the principle of protecting public safety, the duties of the law enforcement agencies in crime investigation should not be restricted. As a result, to restrict the use of DNA information to serious arrestable offences only is totally unacceptable. With regard to the express provision to bind the State, we also consider it unnecessary. Since the provisions on the administering of DNA information are already applicable to every individual, including state officials in the SAR, thus the Administration considers the Bill at it stands has already provided adequate coverage.

In the light of the above reasons, we do not support the two amendments to be moved by Mr James TO. I will further elucidate my justification later.

The technology of forensic analysis on DNA is advancing with giant strides. In the past, forensic analysis on DNA can only be carried out by taking massive quantity of samples, in particular, reliable result can only be obtained from blood samples. In the wake of technological development, now we only have to use a swab to scrub the buccal cavity of the suspect and we can obtain adequate cell tissue for profile analysis.

The Bill seeks to enhance the crime fighting capability of law enforcement agencies with the help of the development of forensic analytical technology, with a view to enforcing law and order and to safeguarding public safety. The Bill can also ensure that we can strike a balance between effective law enforcement and protection of human rights. I will move amendments later, many of which are provisions which seek to improve relevant clauses, so as to make provisions on the protection of human rights more explicit and free from interference. I will explain them at the Committee stage.

Madam President, I hope Members will support the Dangerous Drugs, Independent Commission Against Corruption and Police Force (Amendment) Bill 1999 and the amendments to be moved by me at the Committee stage.

Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Dangerous Drugs, Independent Commission Against Corruption and Police Force (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): Dangerous Drugs, Independent Commission Against Corruption and Police Force (Amendment) Bill 1999.

Council went into Committee.

Committee Stage

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

DANGEROUS DRUGS, INDEPENDENT COMMISSION AGAINST CORRUPTION AND POLICE FORCE (AMENDMENT) BILL 1999

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Dangerous Drugs, Independent Commission Against Corruption and Police Force (Amendment) Bill 1999.

CLERK (in Cantonese):Clauses 1 and 7.

CHAIRMAN (in Cantonese): 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.

CLERK (in Cantonese): Clauses 2, 4 and 6.

MR JAMES TO (in Cantonese): Madam Chairman, I move the amendments to proposed sections 54AA and subsections (1), (2), (4) and (6) in clause 2 and addition of subsection (3A) to section 54AB in the same clause; the amendments to proposed section 10E, section 10F (1) and (2) of and addition of subsection (4) to section 10F and the amendments to proposed section 10G in clause 4; and the amendments to proposed sections 59A(4)(e), 59C, 59D(1) and (2) and addition of subsections (4) and (5) to proposed section 59D, the amendments to proposed section 59G(2)(i) and proposed section 59H (1) and (4) in clause 6, as set out in the paper cicularized to Members.

Madam Chairman, first of all, let me explain that although there are many amendments, the intention is in fact very straightforward. At the first stage of investigation, that is, when law-enforcement officers, be they ICAC or police officers, suspect that a person has committed a serious arrestable offence (later on, the Government will move an amendment to specify that this refers to an offence punishable by a prison term of seven years or longer and one of the several offences involving sex and serious violence as listed in the Schedule), they can take non-intimate samples of the suspect, provided that the requirements set out in the Bill are met and that it is believed that the DNA sample or urine sample of the suspect can help detect the crime, that is, can prove or disprove the suspect's involvement in the crime. If intimate samples are to be taken, the consent of both the Court and the suspects must be obtained. This means that no application will be made to the Court without the suspect consenting. What we are now discussing involves the taking of non-intimate samples from the suspect even without his consent. The Bills

Committee has reached a consensus that when serious arrestable offences are involved, law-enforcement officers should be empowered to use this new technology.

My amendments actually involve the second stage of investigation. A law-enforcement officer may initially suspect a person of a serious crime, but he may subsequently find out that the person has nothing to do with the crime. However, for one reason or another — intelligence or other clues, he may begin to suspect the person of other crimes in the past. And, if the records of these crimes contain some DNA information which can be compared with the samples collected from the present suspect, the law-enforcement officer may think that there is a chance of detection and wish to find out whether the present suspect was involved in these past crimes.

We are now actually looking at the second stage of investigation. There are hundreds and thousands of crimes in this world. Once a DNA database is established, it will keep accumulating data collected. But should we thus use it as a "handy" tool? I mean, should we think that since the database is already there, we may as well make use of it whenever we want to, so as to find out whether a certain person has ever committed any other specific offences, regardless of their seriousness?

The object of my amendments is to restrict the references made at the second stage of investigation to serious arrestable offences in the past, that is, those serious offences punishable by a prison term of seven years or longer. My justifications are very simple. First, it is the principle of uniformity. When we deal with the issue of empowering the Government to collect these samples as evidence, we always think that there must be a proper balance. This means that the taking of DNA samples should not be applied to all types of offences. In fact, we have been arguing over and over again whether a law-enforcement officer should always be allowed to take DNA samples for all types of crimes regardless of the length of prison terms.

We think that there must be a balance, and the nuisances caused to the public must be taken into account, because the taking of DNA samples from a person does not necessarily mean that he is guilty. Besides, we must also consider the impact and intrusion caused to the person concerned. With modern technology, taking a sample from one's mouth is not possibly intrusive, but we still have to draw a line and strike a balance. For the first stage of investigation, we demand that DNA samples from suspects should only be taken in respect of serious arrestable offences. But why is it that for the second

stage of investigation, we are saying that these samples can be used for investigation into all types of crimes? Why are we saying that since the samples are already there, we should not "waste" them? I think this attitude shows a lack of uniformity in the principles we apply.

Second, this is actually also a question of logic. For example, if we pass this Bill today, law-enforcement officers will be able to collect DNA samples from suspects of serious arrestable offences. Suppose the clock can be turned back …… I mean, if this Bill is not passed today, but was passed in 1990, then the DNA samples collected between now and 1990 would all have been connected with the suspects of serious arrestable offences. In other words, even if this Bill took effect as early as 10 years ago, it would still have been subject to the first condition, that law-enforcement officers were allowed to take DNA samples from suspects only in respect of serious arrestable offences. Therefore, even if the clock was turned back 10 years, even if law-enforcement officers were already given such a power 10 years ago, they would still be unable to collect DNA samples from persons not suspected of serious arrestable offences. But what some people are saying now is that since law-enforcement officers are given this power now, they should be allowed to use all these DNA information for all types of crimes which occurred in the past, including even crimes that were not serious arrestable offences. I think this is really flawed in logic.

Third, in fact, some organizations and the Privacy Commissioner for Personal Data have told us that if no restriction is set, some law-enforcement officers (just some, but not all) may be induced to target at past crimes instead of present ones. In an attempt to investigate some past crimes, they may claim that a person is suspected of a serious arrestable offence and then collect his DNA samples. Then, after investigation, they may find that the relevant person is not involved in such a crime. But then, they can check the person's DNA information in the computer and find out whether he has committed any other offences in the past, whether serious ones or minor ones. So, this may well induce law-enforcement officers to abuse the power conferred on them by this Bill. The Privacy Commissioner for Personal Data has stated in his written statement that this is one of the reasons for his objection to the application of such information to all types of crime investigation.

I agree to this view as well. However, after the implementation of this type of evidence collection, if people think that the whole thing is very efficient, if law-enforcement officers do not abuse their power, if the Government can make continuous efforts to democratize our society, to uphold human rights and to refrain from various harassment, if there are no complaints

and if it proves to be very useful in crime detection, can we expand the scope? I do not rule out such a possibility, nor would I say that we should not do this. This is largely the choice of the people. But I must say that the present situation is that there is no uniformity to begin with, and there are chances of abuses. So, I must say that the proposal can hardly be justified.

The Secretary for Security said just now that we should not try to impose restrictions on crime investigation of the police. She remarked that such restrictions cannot be accepted, because there were times when we knew clearly that just by pressing a button, law-enforcement officers would be able to ascertain whether a person had committed any specific offences. But why are we unwilling to let them press the button? Why do we want to make a distinction between serious crimes and minor crimes? The answer is actually very simple. There is a need to set out some restrictions in respect of DNA samples collection in the new legislation, because there must be a balance. Along the line of the Secretary's argument, we can actually infer that as long as a law-enforcement officer has any suspicion, then, regardless of whether or not a person is involved in a serious arrestable offence punishable by a prison term of seven years or longer, the officer can always take the DNA samples of the person. Why do we not want them to do so? Because we want to draw a line, whether as a starting point or as a balance. That way, we hope that people can have greater confidence in the introduction of this new technology and support its application.

If anything goes wrong with the application of this new technology, or if abuses occur, even the Government and the law-enforcement agencies will suffer. People hope that the application of this new technology can be restricted to genuinely serious arrestable offences. For example, in Britain, there were some cases involving serial killers who raped and killed many people. In similar cases, law-enforcement officers should be allowed to apply DNA technology as a means of crime detection.

I do not know why the Government wants to get all the powers right at the very beginning. Is that because there is a strong and loud demand from law-enforcement agencies? Or, is that because there are any secret motives? Why does the Government want to get all the powers right at the very beginning? Why is the Government so insistent? The state is not going to be bound by the provisions of the Bill, and even discussions with the Central

Government are not allowed. This will affect our confidence and make us worried. Therefore, I hope that Members can support my amendments.

Proposed amendments

Clause 2 (see Annex XXII)

Clause 4 (see Annex XXII)

Clause 6 (see Annex XXII)

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

MISS EMILY LAU (in Cantonese): Madam Chairman, I rise to speak in support of Mr James TO's amendments. Since I support many of the arguments advanced by him, I am not going to repeat them here.

We have made a concession whereby we agree that DNA information or more. However, we do not think that DNA samples of suspects should be collected for all offences. In some countries, this is the case, but we are of the view that the use of DNA information in the course of investigation should be governed by such a line.

I very much agree with Mr James TO that we must proceed very carefully, because this is a new technology and may produce far-reaching impact. We do not want the public to have any doubt about it, nor do we wish to see them lose confidence in it. That is why we think that we should be very careful at the very beginning. This means that we must draw a line. Mr James TO's amendments may not be passed today, but I still think that there is a need to put our worries on record.

Madam Chairman, as mentioned by Mr James TO, this is also a worry expressed by the Privacy Commissioner for Personal Data. The Government actually rejected the advice of the Commissioner several times during the scrutiny of the Bill. On this particular issue now under discussion, the Commissioner is of the view that the investigation of the Government into certain types of offences should not go beyond the scope. The Government

naturally refuses. But I think that since we have the Privacy Commissioner, we should really allow the Commissioner to play his proper role. If even the Commissioner thinks that something should not be done, we should really be especially cautious. If abuses really occur in the future, or if any problem arises, the Commissioner will certainly say, "See, I told you."

With these remarks, I support the amendment.

MRS MIRIAM LAU (in Cantonese): Madam Chairman, the maintenance of law and order is the responsibility of the law-enforcement agencies in Hong Kong, especially the police. We require and expect the Hong Kong Police Force to be able to combat crimes efficiently, so, we should give them sufficient legislative support and assistance.

The use of DNA technology for the detection of crimes is a major progress in recent years. Many people have in fact described this as the most significant development since the discovery of fingerprint. We hope that following the passage and implementation of this Bill, this kind of technology can be widely applied by the police of Hong Kong as an additional means of detecting crimes and protecting the life and property of the public.

With this in mind, I would think that if we follow Mr James TO's recommendation, that is, if we just use legally collected DNA samples and information for investigating serious arrestable offences but not other crimes, it will be kind of a pity. As mentioned by Mr James TO, in other countries, this technology is used to detect many cases of serial killers which are otherwise totally undetectable. Admittedly, Hong Kong may not need to use this technology for the investigation of such crimes, but there are still other kinds of crimes, and if this technology can help us detect them, why should we tie our own hands and refuse to use this information? It would be very much a pity if we do not make use of such information, for culprits may thus get off scot-free. I am sure that the community will not wish to see this.

Insofar as crime detection is concerned, DNA information can provide a highly reliable source of evidence, thus increasing the rate of detection and saving resources for the law-enforcement agencies. And, since DNA data are highly person-specific, they can be used as evidence in Court, thus saving a lot of hearing time.

Some may rightly be concerned about human rights, but to them, I would say that in some cases, when the police suspect a person of a crime, DNA technology can actually work the other way round to prove the innocence of the person. If DNA information is not used as evidence, the person may well remain a suspect forever. Therefore, if we look at the matter from a different perspective, we will see that the application of the technology is not just about proving the guilt of a culprit; rather, it can also prove the innocence of a person.

Besides, a DNA database will also produce a deterrent effect on some criminals, because they will know that once their DNA information is stored in the database, whenever they commit any crimes in the future, the law-enforcement agencies may be able to detect the crimes and track them down by using the information in the DNA database. So, this can certainly produce a deterrent effect.

As far as I know, the State and Federal executive authorities in the United States, and even the general public there, are now attaching an increasing importance to DNA analysis as forensic evidence, and the technology has become a highly effective means of crime detection. Over the past five years, the DNA databases maintained by the various States of the United States have expanded rapidly both in terms of quantity and coverage; the Federal Investigation Bureau also renders its assistance and co-ordination in this respect. Besides, in the United Kingdom, starting from 1994, the DNA samples collected from suspects and the information stored in its DNA database can be used for all investigation.

Miss Emily LAU also admitted that the technology had been applied in other countries, but then she also seemed to be saying that since we were just making a start in Hong Kong, we should first tie our own hands. My question is: Is there really a need for us to tie our own hands now? Presumably, Mr James TO and Miss Emily LAU are looking at the matter from the perspective of human rights. We of course uphold human rights, but I also think that we should look at the matter from the perspective of crime victims. Very often, the failure to detect a crime is attributable to the lack of forensic evidence. If a crime thus remains undetected forever, can there be any human rights for the victim?

Mr James TO often argues that the application of DNA technology in the course of investigation will be very unfair to suspects of minor offences. He often refers to some minor offences such as stealing a pack of chocolate from a shop. However, he must realize that shop theft may well involve some

syndicates engaged in organized and serious crimes. What I am trying to say is that for the shop owner concerned, he will certainly wonder how he can possibly carry on his business if people keep stealing chocolate from his shop. He is a victim, and he will certainly hope that the police can detect these cases of shop theft. This is how we should also look at the matter, from the perspective of crime victims.

In addition to respecting human rights, we must also strike a proper balance and see if the current proposal is reasonable. I think the proposal is reasonable, in the sense that the police can take the DNA samples of a person only if he is suspected of a serious arrestable offence. But then, if the person commits a minor offence later, should we simply "let him go" and spare him the rod of law? The fact is that we cannot do something like this. Once we start to collect such information, we should make the best use of it to increase the crime detection rate and combat crimes, so that people can enjoy better law and order. Only this, I believe, is in the best interest of the public.

Madam Chairman, for the above reasons, the Liberal Party will not support the amendments of Mr James TO.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, the Government is opposed to the amendments to clauses 2, 4 and 6 moved by Mr James TO concerning any serious arrestable offence.

I have just listened carefully to the reasons advanced by Mr TO, Mr HO and Miss LAU on why the use of DNA samples and information collected by the police should be restricted. They have put forth some reasons of principle as well as some more specific reasons. I feel sorry that Mr TO, a Member I once respected very much and whom I once considered practical and realistic, is now shooting indiscriminately, elevating the issue to the political plane unfairly and exaggeratedly by pulling a number of irrelevant issues together. I am really skeptical of his motive.

For instance, Mr James TO has just mentioned that he disagreed with the purposes of the DNA profile. He said that he did not know how legislation would be made to implement Article 23 of the Basic Law. He also mentioned the way the police had treated the recent demonstrations and questioned that the power of the police was so excessive that they might have infringed the privacy of the public at large. Moreover, he also sounded a number of similar warnings. I feel that Mr James TO has abused the provisions of Article 23 of

the Basic Law, and it can be said that he is almost on the verge of creating white terror. Much to my regret, regarding the making of law to implement Article 23 of the Basic Law, I have elucidated the matter in detail on various occasions, including the briefing in this Council, stating that the Government has no timetable for the legislation yet. In the future, we will implement it only after we have consulted substantial public opinions and gained the acceptance of this Council and the public. As to the way in which the police handled the demonstration outside the Government Secretariat the other day, I have told Mr James TO today that we will brief the Panel on Security this Thursday or Friday. Under the circumstances, I feel extremely sorry that Mr TO has still cited the incident to criticize the Government and create white terror.

I have listened to the justifications of Mr James TO and other Members for objecting the use of DNA profiles in the investigation of other offences. I feel that these high-sounding reasons are seemingly protecting the privacy of the public and restricting the rights of the Government, but they have actually reflected a number of misconceptions. Perhaps we should ask ourselves, what exactly is the DNA information stored in the DNA database? Is it just like the identity card number or vehicle licence number which can be easily identified or which can be used for criminal purposes after being stolen? Or is it just like our pretty faces that can be identified soon after we are looked upon? Or is it just like some parts of our body that should not be seen casually? All of these are fallacies. DNA profile is just a string of numbers, a series of number without any meaning. After it is stored in the database, the DNA profile of an individual is nothing but a number of random identification. In other words, if someone saw a string of numbers, say 1234567, he can never tell to whom it belongs. How can we say this is casual disclosure of personal privacy?

On the other hand, if the authorities use such DNA information for investigation purposes, is it harmful or beneficial to the suspect in the end? I have just listened carefully to the speeches of Mr TO, Mr HO and Miss LAU, who considered that such information should be protected and kept away from the police in order to avoid abuse. Furthermore, the usage should be restricted as they considered it would prejudice the interest of those people giving the DNA information. Again, this is not true. As every Member may be aware, practical experience in overseas countries has proved and more and more evidence has shown that DNA analysis is the most scientific way to asscertain whether or not a suspect has committed a certain offence. In other words, to the suspect, he has everything to gain and nothing to lose in the use of the information.

I wonder if Members have noted that *Newsweek* has published two consecutive articles on the DNA analysis issue recently, and it has associated the issue with death penalty. It points out that in recent years, the United States have set 72 prisoners on the death row free after the DNA analysis was utilized. Recently, the State of Texas executed a prisoner on the death row but the authority has not collected any DNA sample information from him. He was found guilty of gunning someone to death in 1981 and executed on the strength of the testimony by a single witness. It has incited extensive public criticisms as the public consider nation-wide provisions should be drawn up to give prisoners the right to ask for DNA analysis and have legislation similar to the practice in Illinois and New York implemented. Therefore, in view of experience from overseas, it is absolutely harmless to use DNA information to verify whether an individual has committed an offence.

Moreover, if the police are subject to restrictions in using the information, will it be practicable in actual operation? I think it will cause a number of inconveniences. When the police carry out a criminal investigation on the scene, they may be unable to tell whether the case is a serious arrestable offence or an offence that is punishable by a prison term of seven years or longer during the initial search for evidence. It is possible that they will find out it is a serious arrestable offence at a later stage. Then, can the police collect the DNA information? Should they look through the DNA database? In the meantime, if several suspects are involved in several counts of offences of different degrees of severity, the police are unable to conduct equal treatment without discrimination in the course of investigation despite their full knowledge of the fact that the DNA information can help them to determine in a more accurate way if a certain suspect has committed a certain offence. Will it be a good thing to let some suspects make use of scientific analysis and offer them a chance to acquit themselves while some other suspects are not allowed to have such chances?

Therefore, after considering opinions from all sides, I feel that even though Members move the amendments because they have a sincere motive to protect the privacy of individuals by restricting the powers of the Government, it will not be helpful to clear the names of the suspects at all. In contrast, it will impose unnecessary restrictions on the police in fighting crime.

Perhaps I should clarify that I have mentioned earlier that Mr James TO was told that the Administration will brief the Panel on Security concerning the approach used by the police in handling yesterday's demonstration. However, a minute ago one of my colleagues told me that Mr TO was unaware of the

matter, as I was just intending to tell him in advance. I am sorry. I knew there must be some misunderstandings as I saw the expression of Mr TO. We are prepared to explain the matter to him on some other occasions. In the meantime, I hope Members should not mix some irrelevant issues together and create white terror in society.

In view of the above reasons, we consider the information in the DNA database information we have already acquired, thus it is unnecessary to inconvenience the persons concerned. Furthermore, as the information is helpful to the acquittal of these people, it is therefore worthy to be supported by Honourable Members.

Thank you, Madam Chairman.

MR JAMES TO (in Cantonese): Madam Chairman, I wish to respond to the Secretary point by point.

I shall start from the last point made by the Secretary. Just now she said many times that it would be in the interest of the suspect if his information was checked against all previous offences in history. I really do not know how this conclusion is drawn. It is likely that all previous offences in history were committed by that person simply because he is now suspected of a serious arrestable offence. What is the logic? Is it that when a person is suspected of an offence and after collecting his DNA samples, the Government can then suspect him of having committed offences No. 1, No. 4, No. 5, No. 7 and No. 9 in the past; or the Government can suspect him of a particular offence in 1988, a robbery in 1983 or a rape in 1947? The Government must have certain evidence before it can check the suspect's information against the offences. Only in this way would I consider it reasonable. However, the Government is not saying anything like this. It proposes that if, for example, there were 20 000 offences, and as long as a person is suspected of a single offence in 2000, his DNA information can be used to check against the records of those 20 000 offences. What on earth is the logic? It is claimed that the checking of the suspect's information against the 20 000 offences in the past is in the interest of the suspect for this can prove that the suspect was not involved in those cases. But the fact is no one has ever suspected him of those 20 000 offences in the first place. It is so outrageous for the Government to say that this is necessary in order to prove the suspect's innocence. This is utterly

flawed in logic and does not make sense at all. If the Secretary for Security considers this logical, then, this is downright a "fishing expedition". That is to say, so long as a person is suspected of a crime, the Government can assume that he might also have a part in those 20 000 undetected cases in history. If the Government suggested that there should be other independent corroboration for the person's possible involvement in certain offences and hence, for instance, his DNA information will be checked against three cases only, I would consider it a fair arrangement. I think it is fair to provide for this in the Bill. The logic is simple, and I trust that Members will understand it.

Secondly, if the purpose is to prove somebody's innocence, the Bill has already provided expressly that members of the public can give their DNA samples voluntarily. If there is independent corroboration for a person's involvement in certain offences, the police would keep on going after him, laying charges against him or interrogating him. To avoid troubles, that person can provide his DNA samples to the police to prove his innocence under the new ordinance. Since there is this provision, the person concerned can make clarifications and the problem can then be resolved after his samples are checked against information in relation to those offences. Therefore, the Government cannot say that mandatory collection of a suspect's DNA samples for checking purposes is helping the suspect because this can prove his innocence. How can the Government say so?

Moreover, the Secretary also cited overseas experience to justify the usefulness of DNA information. I agree that this is true. But Members must bear in mind that overseas countries have progressively gone through a process of development before they come to know how useful this information is. In this very process, they were able to see whether or not there would be other sequels. Most importantly, the major difference between Hong Kong and overseas countries is that we do not have a democratic system here in Hong Kong, and on this point, I think some Members may take issue with me. I must say so even though the Secretary may say that I am extending the scope of question indefinitely. But by how many people was Mr TUNG elected? How many of us here in this Chamber have a say in the election of the Chief Executive? While this Council represents so many people of Hong Kong, how many Members of this Council have a say in the election of the Chief Executive? How can these measures be implemented in the absence of a democratic system? How can we have the confidence to allow the Government to obtain so much information? The Government does not want

to go through the painful process that others have gone through. Nor does it want to suffer like others did as a result of taking the wrong path. Yet, it does want to get things done in just one step.

The Government cited a case in a foreign country in which it was found that the DNA information of an executed prisoner could prove his innocence, and this had caused a huge uproar. This is also what Mr Gary CHENG has referred to as the "Innocence Projects", projects carried out to prove someone's innocence. As a matter of fact, I believe that such information may really redress the injustice done to some of those people currently in prison. Many people have written to me asking if investigation could be conducted as there might be further evidence. I believe that in Hong Kong, there will also be calls for the use of new technology to prove certain people's innocence. Dr LAW of the Government Laboratory also told us that there was a case in which a prisoner who had been imprisoned for a long time was eventually cleared of his charge by this means.

Finally, the Government said that I was creating an atmosphere of "white terror", and I very much regret this. All I can say is that had the Government handled this matter more carefully and proceeded step by step, I would not have all these worries. Besides, I think this is actually related to Article 23 of the Basic Law. Please allow me to explain it to the Government. The term of imprisonment to be set out in future for those offences provided for under Article 23 of the Basic Law is directly related to whether law-enforcement officers have the authority to collect DNA samples from suspects. From the Government's attitude towards the question of whether the Bill is binding on the State in the course of the scrutiny, there is every reason for me to have this misgiving.

Simply enough, one will be astonished by the obvious discrepancies in the attitude of the Government when a comparison is drawn among different ordinances. On the question of whether the State is bound by the Personal Data (Privacy) Ordinance, we have discussed it for two years. The Government's attitude is that further meetings need to be held, and records show that meetings were still held in May 2000 for this purpose. But insofar as this Bill is concerned, there is no need at all to take this matter into consideration and the Government can jump to the conclusion that it is unnecessary for the State to be bound by the Bill. The Government argued that since the Bill is binding on all individuals, could it be that the ruling of a country involves no individuals? Firstly, the ruling of a country may really

involve no individuals. No one can tell how technology is going to develop. While it was considered impossible in the past for a person's voice to be heard one thousand miles away, this has been made possible by radio now. We cannot possibly tell what advances technology will make in future. Secondly, if it is adequate for a piece of legislation to be binding on individuals and if this is an important principle of our laws, then why does the Government not reach a decision expeditiously on the Personal Data (Privacy) Ordinance that the State should not be bound by the Ordinance because it is adequate for the Ordinance to bind individuals? Obviously, the case is not as simple as that. There are certainly more complications and more significant implications involved.

From my personal analysis, the discussion on the Personal Data (Privacy) Ordinance is related to Article 23 of the Basic Law. The questions of whether information can be retrieved for checking purposes and how much information can be collected are all related to Article 23 of the Basic Law. But are these related to Article 23 of the Basic Law only? That is, of course, not necessarily the case. But if it is considered adequate for a piece of legislation to be binding on individuals, just as the Government has argued in respect of this Bill, then, it would not be necessary for us to continue with the discussion. Given that the Personal Data (Privacy) Ordinance has been enacted, why does the discussion have to drag on for two years? Why were so many meetings held on it? So, this rationale is totally invalid.

Members are to make their own decision as to whether they will support this amendment. But I hope that in future discussion on marking legislation to implement Article 23 of the Basic Law, or even in discussion on the Personal Data (Privacy) Ordinance, Members must bear in mind that all such DNA information, personal data, and all recorded information must be dealt with carefully and judiciously. I wonder if Members notice that in the discussion on electronic identity cards, Dr the Honourable David LI, whom I very much respect, quite unusually came back to this Chamber amidst his tight schedule to vote against the proposal. The reason is that serious consequences could be resulted, so we must handle this matter with care.

MR ALBERT HO (in Cantonese): Madam Chairman, I was a bit shocked by what the Secretary for Security said just now. She did not have to get so angry at this stage, querying the motives behind Mr James TO and even using such words as "white terror", and so on. The Secretary should appreciate that

our criticisms of the administration of the Government or the approach of the Government in handling certain matters are not directed against individual officials. We understand that the decision or response of the Government does not represent the personal view of an individual official who might be following the direction of the Government only. This is the first point I wish to make.

Secondly, we all know that in a democratic and open society or one which is not too open or just quasi-open like ours, we are only allowed some opportunities or latitude to speak and under such circumstances, it has been our practice to put a myriad of questions to the power that be so as to effect checks and balances over the exercise of powers. This is simply natural. In fact, only in this way that society will advance. What is a constitutional government? What does a constitutional system mean? It means that all the powers conferred on a government or a state are subject to checks and balances in order to prevent the government or the state from abusing these powers or suppressing human rights and freedoms with their powers. We all know that this is the way how society runs. History can often prove that this is constructive and useful because if powers are not subject to checks and balances, and if they are not subject to any monitoring, they would be abused gradually.

As I said in the resumption of the Second Reading debate of the Bill, the application of this DNA technology in forensic analysis is a progress for it can provide the Government or the police with information to assist in investigations and adducing evidence. Therefore, we support the broad principle and the policy in general. But insofar as implementation is concerned, we hold that we must be careful for many reasons. Earlier on, we have already explained a host of reasons. For example, we consider that requiring a person to go to a laboratory to give his samples for forensic analysis is in itself intrusive. The dignity of that person will be injured to a certain extent however slight the intrusion is.

Given that DNA samples can provide a great deal of information and that the information will be kept in a database, for what purpose will such information be used in the long term? We do not know. But we do know that there are lots of controversies revolving around this question. I do not wish to start yet another argument about concepts. But just now I cited an example in which some countries sold the whole database to, for instance, pharmaceutical companies which can use the information for research purposes or even controlling society in the long run. We do not know how things will

develop and that is why we must raise many questions in the hope that the matter will be handled carefully in all aspects. This is our reason. So, the Secretary does not have to query our motive, thinking that we deliberately wanted to make things difficult for the Government and even using words like "white terror". I wonder if the Secretary knows the meaning of this expression.

Frankly speaking, for people like us who have neither power nor influence, what ability do we have to create an atmosphere of "white terror"? "White terror" usually refers to a situation where people who have enormous powers and who are in a position to suppress other people threaten to launch suppressions at any time without actually exercising their powers, or even arrest other people and order closure of others' shops, using all these threats to inspire terror. This is "white terror". For people like us who have neither power nor influence, all we can do is to make a few comments and the Government can even choose not to listen to us or ignore us as at all. How can we possibly create an atmosphere of "white terror"?

Anyhow, I do not wish to engage in these arguments any longer. I only wish to emphasize that what we can do as Members of this Council is very limited. All we intend to do is to tell the Government that while we support this Bill, we at the same time hope that the Government can proceed with caution in all aspects and that the many powers of the Government should be subject to checks and balances, and to control. If the Secretary thinks so positively about the usefulness of such information, why are there so many restrictions in the Bill? Why is it that the information will be used to check against serious arrestable offences only and the Court's approval will be required? Would it not be better to impose no restriction at all so that the collection of a person's samples will be approved as long as the police is suspicious of that person? I believe that the Government also sees that this is not the way it should be. I think the Secretary would not have made that remark just now if she had stayed calm. It is just because she had lost her temper that she made those illogical and irrational remarks.

All in all, we support this Bill. Our intention is to improve the Bill technically and put in place more checks and balances so that the future implementation of the Bill will be useful to society and criminal investigations while at the same time offering reasonable protection for human rights and privacy.

MR KENNETH TING (in Cantonese): Madam Chairman, originally I did not intend to speak on this amendment today, but having listened to the views of Members, I wish to add a few points.

In fact, DNA is a mark that comes with birth, similar to our fingerprints and looks. One cannot change his look no matter how ugly he is, unless he resorts to plastic surgery. But DNA cannot be changed. So, just as Mrs Miriam LAU and the Secretary for Security have said, DNA can often be used as proof of a person's identity and hence we can determine whether the person is guilty or not. If everyone is required to give his DNA samples after his photograph is taken when applying for a birth certificate or identity card, I believe that there would not be these controversies today.

Is it stipulated in the existing laws that the Government cannot use our fingerprints for investigation, or that they can be used for investigation on certain cases only? The answer is in the negative. My view is that DNA is basically a characteristic of each person, and it can help the police prove the guilt of a person or otherwise. This is simple and clear. So, I wish to allay Members' worries. It is not the case that a person's DNA samples will be kept in a DNA database as a result of that person having done something. The case is that these are actually inborn in all human beings.

MR JAMES TO (in Cantonese): Madam Chairman, I wish to respond to what the Honourable Kenneth TING has said. Earlier on, I said that the collection of DNA samples of babies at birth is not required by the government of any country or region elsewhere. Finally, Mr Kenneth TING is the first one who made this suggestion here. From the information that I have collected in this connection, I found that no one has made this proposal even in autocratic states, or in countries considered as undemocratic, including governments in the Asian or African regions; at least there is no such record in historical documents.

I hope that Mr Kenneth TING can take a look at the records of our deliberations or the process of thinking, if possible. I am most concerned that the Government would really take on board this proposal and collect DNA samples of babies at birth in order to save troubles. In that case, our society in future could really be a scenario where the "Big Brother is watching you", as described in the novel *1984*. Worse still, our footsteps or smells could also be used gradually to prove our identity. In fact, the Central Intelligence Agency

has actually conducted many research studies in this area during its significant studies on identification over the past decade or so.

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

(No Member responded)

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak again?

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I just want to make a brief comment on Mr HO's remarks. Why does Mr HO feel that I have taken offence? I wish to explain that of course I am not offended with Mr TO with his amendment, since Members do have the right to move amendments. We welcome any amendment moved after a bill has been subject to meticulous scrutiny, as it will show the earnest attitude of Members.

I am astonished because Mr TO has mixed up issues that I considered do not have any direct relationship with each other over and over again, such as Article 23 of the Basic Law, the way the police dealt with yesterday's petition and the electronic identity card. Furthermore, the "big brother scenario" of the fiction *1984* he cited makes me ponder if he really wants to spread white terror.

Anyway, these are all irrelevant. The topic we have to study today is whether the amendments are helpful or harmful to the suspects. This is the real question Members have to examine seriously.

I also wish Members to accept that under the modern-day parliamentary culture, as Members may make criticisms freely, of course officials may also express how they feel about such criticism.

MR JAMES TO (in Cantonese): Madam Chairman, I do not wish to respond to points about wording or feelings any further for this would be meaningless.

If the Secretary failed to see why I would link those issues together, let me explain it to her now. Questions arising out of yesterday's petition were not the thrust of the Bill, but mainly reflected concerns on electronic identity cards, DNA information and Article 23 of the Basic Law. The Secretary may not understand it and I can explain it to her.

I have thought about this: What would I do to control Hong Kong if I were a "bad guy"? I imagined the worst scenario and then I thought about it the other way round, that is, I thought about ways to prevent the "bad guy" from controlling Hong Kong by making use of the system. That would be most desirable. But in fact, legislation is not perfect. It can only make us feel assured as far as possible and make us trust each other so that the principle of "one country" can continue to be upheld, "two systems" practised and freedoms safeguarded in Hong Kong. I have been thinking along this line so that everyone of us can feel at ease, and that would be the best.

As regards those issues, I have no intention to enlighten those "bad guys". Nor am I qualified to do so. Obviously, it is not my wish to see "bad guys" appearing on the scene. But in my reasoning, I think that while the developments of these issues appear to be "innocent", a different picture will be presented if these issues are linked up. If the office of the Secretary is not to be taken up by Mrs Regina IP in future and not by a person of integrity who is dignified and who adheres to principles, but by someone who acts arbitrarily, things would not develop as the Secretary and a few of us so wish. The system could then be tampered with and used as a tool to suppress the people. I have simply considered the matter from this angle in the hope that all of us can feel at ease.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by Mr James TO 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 James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO 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.

Functional Constituencies:

Mr Michael HO, Miss Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai and Mr LAW Chi-kwong voted for the motion.

Mr Kenneth TING, Mr James TIEN, Mr Edward HO, Dr Raymond HO, Mr Eric LI, Mr LEE Kai-ming, Dr LUI Ming-wah, Mrs Selina CHOW, Mr Ronald ARCULLI, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mr Bernard CHAN, Mr CHAN Wing-chan, Dr LEONG Che-hung, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, 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, Dr YEUNG Sum, Mr LAU Chin-shek, Miss Emily LAU, Mr Andrew CHENG and Mr SZETO Wah voted for the motion.

Miss CHAN Yuen-han, Mr Gary CHENG, Mr Andrew WONG, Mr Jasper TSANG, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr David CHU, Mr HO Sai-chu, Mr NG Leung-sing, Prof NG Ching-fai, Mr MA Fung-kwok, Mr CHAN Kam-lam, Mr YEUNG Yiu-chung, Mr Ambrose LAU and Miss CHOY So-yuk 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, 28 were present, five were in favour of the motion and 23 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 28 were present, 12 were in favour of the motion and 15 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 negatived.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move that clauses 2, 4 and 6 of the Bill be amended as set out in the paper circularized to Members. All the amendments are supported by the Bills Committee. Some of the amendments are proposed with a view to further ensuring that the human rights and personal privacy of the persons from whom samples are being taken are protected.

Firstly, one of the proposed amendments seeks to amend the definitions of intimate samples and non-intimate samples in the Independent Commission Against Corruption Ordinance, which proposes to specify that a sample of head hair to be an non-intimate sample while a hair sample other than a head hair sample to be an intimate sample. Furthermore, it narrows down the definition of an impression of any part of a person's body within the non-intimate sample definition by excluding the private part and the face.

Secondly, it is clearly stipulated that a written authorization should be made for the taking of an intimate sample. As to a non-intimate sample, a written authorization should be made where it is impracticable. In case the authorization is made orally, a confirmation in writing should be made as soon as practicable.

Thirdly, a provision is added to make the person from whom an intimate sample was taken entitled to access to the information derived from the analysis of the sample.

Fourthly, the provisions administering the use of samples and results of the forensic analysis are amended to limit the use of samples, and the access to

and disclosure of forensic analysis. Furthermore, a provision is added to expressly stipulate that when the authority decided not to charge a suspect, or the charge is withdrawn, or he is acquitted after trial or appeal, the samples taken from him or the forensic analysis derived from the samples should not be used in legal proceedings even if they have not been destroyed.

Fifthly, it is stipulated that if there are no other relevant charges against the person from whom the samples are taken which make it necessary to retain the samples after the conclusion of all proceedings upon conviction, the law-enforcement agency concerned should destroy the samples as soon as practicable.

Sixthly, section 59E of the Police Force Ordinance is amended to provide that the taking of a non-intimate sample of a swab from the mouth of a convicted person will only be allowed within 12 months after he has been convicted of a serious arrestable offence.

Seventhly, in the proposed section 59F of the Police Force Ordinance, it is stipulated that the police officer taking the sample from a volunteer should inform him how the sample will be used, his right to request access to the DNA information and his right to withdraw his authorization at any time.

Besides the aforementioned amendments on the protection of the rights of individuals, we have carefully considered the views of the Bills Committee before we agreed to move the following four amendments.

Firstly, the Bill originally empowers law-enforcement officers to take samples from a person suspected to have involvement of a serious arrestable offence. Now it is amended and stipulated expressly that they can only take samples from a person who is suspected to have committed a serious arrestable offence.

Secondly, the definition of serious arrestable offence in the Dangerous Drugs Ordinance and the Independent Commission Against Corruption Ordinance is amended by repealing a imprisonment term not less than five years and substituting by a imprisonment term not less than seven years. The purpose of the proposed amendment is to narrow down the permitted scope of samples taking.

Thirdly, the proposed section 59G of the Police Force Ordinance is amended to clarify the definition of the administering of the DNA database and to allow the use of the DNA database for any purposes under the Coroners Ordinance.

Fourthly, the proposed section 59A in the Dangerous Drugs Ordinance and section 59I in the Police Force Ordinance are amended to require that amendments to Schedules 7, 1A and 2 of the relevant Ordinances should be approved by the Legislative Council.

Madam Chairman, the aforementioned amendments are proposed after detailed discussions by the Bills Committee. They are also made to address the concerns of Members in relation to more effectively restricting the power of the Government and protecting the human rights of individuals. The amendments are supported by the Bills Committee, and I hope Members will support the passage of the amendments.

Proposed amendments

Clause 2 (see Annex XXII)

Clause 4 (see Annex XXII)

Clause 6 (see Annex XXII)

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 Security 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 2 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.

MR JAMES TO (in Cantonese): Madam Chairman, I move the addition of subsection (5) to proposed section 10F in clause 4, subsection (6) to proposed section 59D and subsection (4) to proposed section 59G in clause 6, as set out in the paper circularized to Members.

These amendments serve to establish a binding effect on the State. As I already expounded my arguments just now in the Second Reading debate and during discussions on other provisions, I do not wish to repeat them here. I hope Members will support these amendments.

Proposed amendments

Clause 4 (see Annex XXII)

Clause 6 (see Annex XXII)

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak?

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, the Government opposes the amendments of Mr James TO by adding provisions to clauses 4 and 6 which seek to make them binding on the State.

We have studied carefully whether there is a need to add express provisions to the proposed section 10F of the Independent Commission Against Corruption Ordinance and the proposed sections 59D and 59G of the Police Force Ordinance to bind the State. Eventually, we have come to the conclusion that it is unnecessary because under the proposed provisions, any person who gains access to the DNA database or discloses or uses any of the samples, forensic analysis or the DNA information except for specified purposes will commit an offence. As the criminal offence provision applies to every individual including State officials in the SAR, obedience to superior orders is therefore not a defence in a criminal prosecution even if the person can prove that he is authorized by a senior official.

Furthermore, since a contravention of the proposed sections 10F, 59D and 59G can only be committed by individuals, thus the proposed sections have already provided adequate coverage to catch all persons criminally liable for any contravention.

Madam Chairman, I would like to take this opportunity to respond briefly to the serious allegations made by Mr James TO against the Government. He is holding the Security Bureau accountable for negligence since the Government has discussed the Personal Data (Privacy) Ordinance with the Central Government for two years, thus he has questioned why the Bureau has not put forward the issue to the Central Authorities for discussion this time around. The reason is simple. According to Article 22 of the Basic Law, "all offices set up in the Hong Kong Special Administrative Region by departments of the Central Government, or by provinces, autonomous regions, or municipalities directly under the Central Government, and the personnel of these offices shall abide by the laws of the Region". Under our legal system, if any law is

contravened, it has to be contravened by an individual person, not by an organization. Mr TO even said that when technology develops to such an extent in the future that computers will be able to convey fidelities from afar, data can be retrieved unnoticeably. In fact, Mr TO also knows that we are studying computer crime these days. Even computers are used by some people for such purpose, I still do not believe that in the future, the one to be charged is a computer, not the computer user. Therefore, an offence ultimately needs a person to commit it. Furthermore, Mr TO has also asked why we have not consulted the Central Authorities this time around. As a civil servant, my answer is: Do we have no confidence in the judgment made by us? The Security Bureau, the Department of Justice and relevant departments have studied the issue, and we are convinced that the provision is construed in this way. That is, state officials in the SAR will not be not bound. As we are sure that the provision is construed in this way, why should we be so childish to discuss with the Hong Kong and Macao Affairs Office whether it should be binding on state officials in the SAR? If we do everything in this way, I wonder if Mr TO will then blame us for not knowing how to implement the high degree of autonomy? As a result, after consideration and making a judgment, we think that it is not necessary to consult the Central Government, nor should we incorporate express provisions in the Bill to make the proposed provisions applicable to the State. Therefore, we oppose the amendments of Mr James TO.

MR JAMES TO (in Cantonese): The discussions in respect of the Personal Data (Privacy) Ordinance have been going on for two years. Whoever consults the Central Authorities and whoever brings troubles to the Central Authorities may eventually be given the sack. Just now the Government said that it considers consultation unnecessary so there is no reason for it to discuss with the Central Authorities like a child asking about everything. But there is one question that the Government has not answered. The Government contended that the Bill is binding on individuals and since it binds individuals, can those offences be committed by any party other than individuals? I have thought to myself: The Personal Data (Privacy) Ordinance is also binding on individuals, and this view is echoed by the legal opinion that I have obtained, then why is there a need for discussion with the Central Authorities? Both pieces of legislation concern personal information. The Personal Data (Privacy) Ordinance has to do with private information of an individual person whereas this Bill involves the personal data of a large number of people for it has to do with a DNA database. Under the Personal Data (Privacy)

Ordinance, it could be an offence to collect the personal information of an individual person. Let alone this DNA database which may collect the information of hundreds of thousands of people. Since both are binding on individuals, can the Secretary explain to us why one of them requires consultation with the Central Authorities whereas the other does not? The Secretary may argue that the Personal Data (Privacy) Ordinance has nothing to do with her for it was ultimately submitted to the Central Authorities by the Constitutional Affairs Bureau. But as I said in the Bills Committee, the Government should examine them in juxtaposition. If the Secretary argued that the Bill seeks to bind individuals, then the Personal Data (Privacy) Ordinance should not have been submitted to the Central Authorities for discussion at the outset. Even if discussion was required, two rounds of discussion should suffice reaching a conclusion because the purpose of the Ordinance is simple and clear and that is, it only serves to bind individuals, not the Central Authorities. But that is not so in reality. The SAR Government has been discussing it with the Central Authorities for two years. After so many rounds of discussion, and even in the face of strong pressure from the media recently, no conclusion has yet been reached. From this, we know that there must be something that has prevented the discussion from getting anywhere.

Regarding the binding effect on the State, the State may actually authorize an individual to act and be punished on its behalf. Still, there would be many people who are willing to do those things and be punished for the State so long as the State is not bound by the law, in which case the State can obtain the information and does not have to return the information to us. It is precisely because of this reason that we must make it binding on the State. If the State (that is, the Central Government) is aware that it is bound by the law but raises no objection or lodges no protest, it means that the Central Government has explicitly agreed in concept at least, that this piece of legislation is binding in respect of the database. Furthermore, Article 22 of the Basic Law also provided that the Central Authorities should be bound by the law. Conceptually, the Central Authorities should know well that it is not allowed to access such information, whether such access is made through an individual or not. Perhaps there would be people voluntarily providing the Central Authorities with such information despite the fact that they would be punished as a result. But as the Central Authorities should know that the information was obtained by illegal means, coupled with the binding effect of the law, they should return the information and bring to light this illegal act. This is the most important objective of making this piece of legislation binding

on the State. The Government stated that no discussion has been held with the Central Authorities for it fears that the "high degree of autonomy" would be compromised. But it has been the Government's position that discussion should be held with the Central Authorities even on matters which theoretically do not require the consent of the Central Authorities. So, would it be a better arrangement procedurally if discussion is held with the Central Authorities? My view is that in any case, or at least up to now, no Member has indicated that discussion with the Central Government over the question of whether the Personal Data (Privacy) Ordinance should be binding on the Central Authorities is a violation of Hong Kong's "high degree of autonomy". We all understand that there are problems in the relationship between the Central Authorities and local administrations, and thus a relationship of consultation and implementation has evolved. I do not know if the Secretary means that the Central Authorities should not be consulted even on the Personal Data (Privacy) Ordinance. I think she does not mean that. She only means that it is unnecessary to consult the Central Authorities on this piece of legislation for she has already made a decision. So, let me just end with this: Whoever dares to bother the Central Authorities may have to die.

MISS EMILY LAU (in Cantonese): Madam Chairman, I rise to speak in support of Mr James TO's amendments. I do not quite understand what the Secretary said just now. She said that this question has been thoroughly studied. But as I said earlier on, it was not too long ago that the Bill was tabled for our scrutiny. Although we have had 21 meetings, not much time was left for us to look into this question since it was raised as a subject of discussion. At the meetings, we raised the concern that I expressed just now and that is, as the Legal Adviser has said, to make the Bill binding on individuals and to make it binding on state organs are two different matters. Now that the Secretary wants us to accept that both scenarios carry the same effect because state organs are tantamount to individuals. But I still have some doubts about it. I hope that the Legislative Council Secretariat can do some research for us in order to ascertain whether a piece of legislation which binds all individuals can be taken as binding on state organs as well. Our Legal Adviser declined to confirm this view, so I think there must be some differences between them. Since the Secretary has claimed that the Bill also binds state organs for it is binding on all individuals, why is this not expressly provided in the Bill? Many people are gravely concerned about why, notwithstanding an express provision in Article 22 para 3 of the Basic Law, the Provisional Legislative Council still enacted legislative amendments to

Chapter 1 of the Laws of Hong Kong to the effect that the State shall not be bound by an ordinance unless it is so provided therein. My view is that Chapter 1 of the Laws of Hong Kong has violated the spirit of Article 22 para 3 of the Basic Law. The Secretary may not wish to answer this question for she may say that she is not responsible for the entire Basic Law and that Article 22 para 3 of the Basic Law is not within her purview. But since there is this provision in the Basic Law, and if the Bill is really binding on the Central Authorities for it binds all individuals, as the Secretary has said, then, we must ask: Why is this not expressly written in the Bill? What are the difficulties involved? In her reply, the Secretary said that it is unnecessary to consult the Central Authorities and it is unnecessary to ask about everything like a child does because they can make the judgment.

Madam Chairman, if they really mean to bring "a high degree of autonomy" into play, I would certainly throw weight behind them. In that case, we do not have to ask questions. All that the Government needs to do is to expressly state in the Bill that the Central Authorities shall be bound by it because only in this way can "a high degree of autonomy" be realized. Now that our Government does not consult the Central Authorities and it does not dare to include in the Bill an express provision to that effect. Could this be "a high degree of autonomy" in any sense? Madam Chairman, this is not "a high degree of autonomy". This is a downright destruction of our own bulwark. Please do not deceive us. Do not think that we are children. We are Members of the Legislative Council, not children. The 7 million people out there are not children either. They know that Article 22 para 3 of the Basic Law provides that all state organs in Hong Kong shall abide by the laws of Hong Kong. But they do not understand why Chapter 1 of the Laws of Hong Kong has provided the leeway in that the State will not be bound by an ordinance if this is not so provided therein. The Secretary said explicitly that the Bill binds all individuals but refused to write that down in the Bill. I believe that the 7 million people of Hong Kong will not understand this. Nor will they agree with this, let alone thinking that this is a manifestation of "a high degree of autonomy".

MR ALBERT HO (in Cantonese): Madam Chairman, I shall be very brief. I do not wish to repeat the points made by the two Honourable colleagues just now, for I agree entirely with them. The only thing I want to say is about acts of state. The Secretary mentioned in her letter to Members that the definition of acts of state is very restricted. In general, the definition will apply only to matters such as defence and foreign affairs; and, since the acts of people

engaged in state services are not necessarily acts of state, such acts will be construed as outside the scope of acts of state prescribed in Article 19 of the Basic Law. This means that the courts of Hong Kong will have jurisdiction over such acts. However, the letter seems to have failed to tell us what in the Government's concept should be acts of state. If, for purposes of national defence and state security, a person does something on behalf of the state in Hong Kong, how is the Government going to judge whether the acts in question are acts of state? The letter mentions defence and foreign affairs only. However, as far as the Government's interpretation goes, what acts should be interpreted as acts of state other than those in relation to defence and foreign affairs? In case someone comes to Hong Kong, and, on behalf of the State, he does something most dreaded by us, such as tampering with our databases, can the Government tell us clearly what it thinks? Will it think that such acts are not acts of state and should not come under the ambit of our laws? These questions show that the Government's interpretation is extremely crucial. There are still many arguments concerning Article 19 of the Basic Law, for many people are still not sure how it should be interpreted. Naturally, we hope to see the adoption of the narrowest definition, which covers only defence and foreign affairs. But the problem is that there is the expression "such as" in Article 19 of the Basic Law: "acts of state such as defence and foreign affairs". What actually does the expression "such as" mean? All this is bound to arouse our worries and anxieties.

Therefore, let me repeat that as Members, we have indeed raised many questions because we do have many worries and doubts. To anyone in power, we will always raise many possible questions in the hope of achieving proper checks and balance. This is our duty, and we are certainly not trying to spread panic around. To sum up, we think that we have the duty to raise questions in this respect. I hope that the Secretary can reply to them as well.

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak?

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I just want to give a brief reply. We explored the meaning of "acts of state" with government legal advisers. According to my understanding, under common law traditions, the concept of "acts of state" is very narrow. Although Article 19 of the Basic Law mentions "such as defence and foreign affairs", making it look as if there were acts other than defence and foreign affairs

included in the term, there are in fact very few acts that can be regarded as acts of state. If we have to debate this today, we may need more than several days because a number of legal and constitutional issues are involved. I think this would stray far from the Bill specifics under discussion today.

The specific issue under discussion today is: Do we need such a provision since the Bill already provides such information cannot be obtained illegally, and even if state offices want to obtain such information, they need to do it through an individual, and the Basic Law already restricts actions of state offices and their personnel? The Security Bureau has made the judgement that there is no such need and has therefore decided not to consult the Central Authorities.

Time and again, Mr TO compared the Personal Data (Privacy) Ordinance and the Bill today. I want to point out that they are very different. While the former applies to the Government, it does not say whether it is binding on the State, but there are suggestions that it should be. If it is to be binding on the State, there is a need to consult the State. The present situation is different because the Government of the Hong Kong Special Administrative Region perceives no need to consult the Central Authorities because it regards that the State is already bound.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by Mr James TO 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 James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Miss CHAN Yuen-han.

MISS CHAN YUEN-HAN (in Cantonese): I beg your pardon, Madam Chairman. My documents touched the button, which is a wrong one.

CHAIRMAN (in Cantonese): Is the light still blinking?

MISS CHAN YUEN-HAN (in Cantonese): The documents touched the button and it transpired that I had cast a wrong vote.

CHAIRMAN (in Cantonese): Is the light still blinking? Is it that no correction can be made?

CLERK (in Cantonese): The light is not blinking.

CHAIRMAN (in Cantonese): Miss CHAN, could you press the button again?

MISS CHAN YUEN-HAN (in Cantonese): I did press it again but there was no response.

CHAIRMAN (in Cantonese): In that case, Miss CHAN, could you please tell us how you would vote?

MISS CHAN YUEN-HAN (in Cantonese): I would vote against the motion.

CHAIRMAN (in Cantonese): Thank you.

CHAIRMAN (in Cantonese): Would other Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

CHAIRMAN (in Cantonese): Among Members returned by functional constituencies, 25 were present, four were in favour of the motion and 21 against it. The motion is not agreed by this group of Members. Among Members returned by geographical constituencies through direct elections and by the Election Committee, 27 were present, and the result here shows that 13 were in favour of the motion, 12 against it and one abstained. So, the motion is also not agreed by this group of Members. I will check against the computer printout later on, and if Miss CHAN's vote is not rightly reflected in the voting result, I will then make a correction.

The computer printout is now available. As Miss CHAN Yuen-han voted against the motion and did not mean to abstain, the voting result should be as follows: Among Members returned by geographical constituencies through direct elections and by the Election Committee, 27 were present, 13 were in favour of the motion and 13 against it. The motion is not agreed by this group of Members.

Functional Constituencies:

Mr Michael HO, Miss Margaret NG, Mr SIN Chung-kai and Mr LAW Chi-kwong voted for the motion.

Mr Kenneth TING, Mr James TIEN, Mr Edward HO, Dr Raymond HO, Mr Eric LI, Mr LEE Kai-ming, Dr LUI Ming-wah, Mrs Selina CHOW, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mr CHAN Wing-chan, Dr LEONG Che-hung, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, 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, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr LAU Chin-shek, Miss Emily LAU, Mr Andrew CHENG and Mr SZETO Wah voted for the motion.

Miss CHAN Yuen-han, Mr Gary CHENG, Mr Andrew WONG, Mr Jasper TSANG, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr David CHU, Mr HO Sai-chu, Mr NG Leung-sing, Mr MA Fung-kwok, Mr YEUNG Yiu-chung, Mr Ambrose LAU and Miss CHOY So-yuk 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, 25 were present, four were in favour of the motion and 21 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 27 were present, 13 were in favour of the motion and 13 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 negatived.

CLERK (in Cantonese): Clauses 4 and 6 as amended.

CHAIRMAN (in Cantonese): Since the Committee has earlier on passed the amendments to clauses 4 and 6, the question now put is: That clauses 4 and 6 as amended 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.

CLERK (in Cantonese): Clauses 3, 5 and 8.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move that clauses 3, 5 and 8 be amended, as set out in the paper circularized to Members.

The amendments to clauses 3 and 8 seek to amend the Schedule proposed to be added to the Dangerous Drugs Ordinance and the Police Force Ordinance concerning applications to a magistrate for approval to collect "intimate samples". There are two parts to the proposed amendments. The first part states clearly that law-enforcement officers can collect intimate samples only from persons suspected of having commited a serious arrestable offence. The second part allows magistrates to specify the dates before which an order for hearing must be served on the applicant and respondent, taking into consideration of the needs of each case.

The amendments to clause 5 are made after listening to the views of Members. These amendments seek to amend the definitions of "intimate samples", "non-intimate samples" and "serious arrestable offences" and to incorporate some technical amendments to the drafting of the Bill. Their main purpose is to further protect the privacy and human rights of persons from whom samples are collected. They also serve to impose strict regulatory requirements on the law-enforcement agencies in collecting samples so that a suitable balance can be struck between the protection and regulation mentioned. The proposals include: firstly, specifying that head hair sample is a non-intimate sample but other hair samples are intimate ones; secondly, narrowing down the definition of non-intimate sample to an impression of any part of a person's body other than an impression of a private part or the face; and thirdly, raising the imprisonment term of an offence which is considered a serious arrestable offence from five to seven years, and including in the definition of serious arrestable offences those other offences listed in the six items specified in Schedule 1A of the Police Force Ordinance and other offences related to sex or violence.

The above amendments are made in response to suggestions by the Bills Committee.

Madam Chairman, I move the above amendments and urge Members to support them.

Proposed amendments

Clause 3 (see Annex XXII)

Clause 5 (see Annex XXII)

Clause 8 (see Annex XXII)

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 Security 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 and 8 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):	New clause 5A	Declaration of office.
	New clause 7A	Schedule 1A added.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move that new clauses 5A and 7A, as set out in the paper circularized to Members, be read the Second time.

The new clause 5A seeks to make technical modifications to the Police Force Ordinance. As the Bill proposes to add Schedule 1A to the Police Force Ordinance, the original Schedule is therefore renamed Schedule 1.

The new clause 7A proposes a new Schedule to the Police Force Ordinance which itemizes the offences specified as serious arrestable offences and offences with a maximum term of imprisonment less than seven years. The proposed Schedule includes six items of sexual offences and violent offences.

Madam Chairman, I hope Members will support these new clauses.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clauses 5A and 7A 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 5A and 7A.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move that clauses 5A and 7A be added to the Bill.

Proposed additions

New clause 5A (see Annex XXII)

New clause 7A (see Annex XXII)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clauses 5A and 7A 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.

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading.

DANGEROUS DRUGS, INDEPENDENT COMMISSION AGAINST CORRUPTION AND POLICE FORCE (AMENDMENT) BILL 1999

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

Dangerous Drugs, Independent Commission Against Corruption and Police Force (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 Dangerous Drugs, Independent Commission Against Corruption and Police Force (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): Dangerous Drugs, Independent Commission Against Corruption and Police Force (Amendment) Bill 1999.

Council went into Committee.

Committee Stage

CHAIRMAN (in Cantonese): Council is now in Committee and continues to deal with clause 3 of the Building Management (Amendment) Bill 2000.

BUILDING MANAGEMENT (AMENDMENT) BILL 2000

CHAIRMAN (in Cantonese): I have granted the Secretary for Home Affairs leave to move amendments to clause 3 without notice. His amendments are set out in the paper circularized to Members. I now invite the Secretary for Home Affairs to move his amendments.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam Chairman, I move the amendment to paragraph (a) of clause 3 in order to add subparagraph (i), the addition of paragraph (aa) to clause 3, and the addition of subclauses (4) and (5) to paragraph clause 3(b), as set out in the paper circularized to Members.

The Administration's amendment to add subparagraph (i) and paragraph (aa) to clause 3(a) is to make technical amendments that are necessary if the proposed new clause 3(3) is added to the Building Management Ordinance. In other words, the amendments are directly related to clause 3(3). I would like to give a technical analysis for Members' reference now.

In last week's meeting at Committee stage, the principal amendments put forward by the Government and Mr LEE Wing-tat were negatived by Members. So, the original wording of clause 3(3) in the Blue Bill is retained. That means an owners' meeting with a quorum of not less than 10% of the owners can be convened for new buildings to pass a resolution not to set up an owners' corporation. If Members intend to accept the new clause 3(3) in the Blue Bill, they should pass the amendments relevant to it. On the other hand, if Members have decided not to accept the amended new clause 3(3) later, they do not have to accept the relevant amendments now.

Thank you, Madam Chairman.

Proposed amendment

Clause 3 (see Annex XXIII)

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

MR ALBERT HO (in Cantonese): Madam Chairman, the amendments proposed by the Secretary are closely related to the original clause 3(3) which has to do with one of the three major reforms in the Bill proposed by the Government and that is, lowering the requirement for the formation of an owners' corporation in new buildings to the effect that an owners' corporation can be set up by a resolution passed at a meeting with a quorum of 10% of the owners. The amendments proposed by the Secretary do not specify the voting method under clause 3(3). The other schedules to the existing Building

Management Ordinance and section 5 of the Ordinance provide that voting should base on the number of shares. But this is not the legislative intent of the Government. The intent of the Government is that a meeting can be convened with a quorum of 10% of owners and a vote be taken on the basis of the number of owners. I wonder if this point was overlooked when the clause was scrutinized by the Legislative Council, so it is not incorporated into the Bill. As a result, it is now stated in the Bill that voting shall base on the number of shares. So, it is still useless even if 10% of owners are present at a meeting because the presence of the developer alone can vote down the proposal with the proportion of shares he holds. In the course of the scrutiny, we did bring up this point with government counsels from the Department of Justice responsible for drafting the Bill. They agreed to make technical amendments to the effect that voting will base on the number of owners, instead of the number of shares.

I wish to stress that while we are now discussing a technical amendment, our decision on whether or not to support this amendment will have a bearing on whether clause 3(3) will be supported later on. If we do not support this technical amendment, clause 3(3) will become meaningless. It will be meaningless even if 10% of owners attend a meeting because the presence of the developer alone can represent 80% of votes and thus he can vote down all proposals. So, it will simply be meaningless.

Then, should we support this technical amendment? Later on, the Chairman will ask if we support clause 3(3). I just wish to raise two points. Firstly, I am not very clear about the position of the Government from its earlier remarks. Is it the wish of the Government to have our support for this amendment or otherwise? This is one of the three major reforms proposed by the Government. If we do not support this major amendment proposed by the Government, then clause 3(3) which is to be introduced later will become meaningless. In other words, one of the three major reforms will then go down the drain. What exactly is the Government's position? We would like to know about it.

I wish to repeat what I said in the last meeting. I attended at least 11 of the 12 meetings held on the Bill, so I heard very clearly the views of members. Colleagues from the Liberal Party raised some concerns. They did not state that they would definitely oppose it but I heard very clearly that they had misgivings about it. Other colleagues generally supported the spirit to relax the requirement to 10% of owners and agreed that this relaxation gives no cause

for concern. In particular, colleagues from the Democratic Alliance for the Betterment of Hong Kong (DAB) even proposed that the quorum requirement for meetings convened to dissolve a management committee and terminate the appointment of a management company be lowered to 20% or 200 people, which is indeed a very lenient requirement. Obviously, colleagues from the DAB are very progressive. They share our view that we can place more trust in owners as they will be able to make rational decisions as to whether an owners' corporation should be formed or the appointment of a management company and management committee be terminated. This is critical. In the last meeting, we all supported the 10% requirement proposed by the Government. Another complication is that after the lobbying by property developers, the Government proposed amendments to the effect that the requirement will not be applicable to multi-phase property development and that the requirement will only apply to buildings in respect of which occupation permits have been issued. Subsequently, Mr LEE Wing-tat put forth a middle-of-the-road proposal. I believe Members will remember these developments.

If both amendments are defeated, is it reasonable that owners should be made to lose the rights to which they are originally entitled under the Bill? As we said in the last meeting, should we pull down everything? It really depends on the decision of Members in the vote today. I very much hope that colleagues who were generally supportive of the three major reforms proposed in the Bill at meetings of the Bills Committee will not make an about-turn today. I think we should trust the owners. As I have said time and again, it is not the case that owners can do whatever they like after they have set up an owners' corporation for the final decision will be subject to a vote based on the number of shares. Do not deprive small owners of their right to set up an owners' corporation more easily and revisit the options by 30% or 50% just because we are unable to accede to the request of property developers. I must say that it is not easy to meet the 30% requirement. For a multi-phase property development, the number of owners who have taken possession of their flats in the first or second phase may be very small. Even if there is consent by 30% of the owners, those owners who have not yet taken possession of their flats may still raise objection. If the shares of the uncompleted flats are still in the hands of the developer, an owners' corporation cannot be set up if the developer raises objection to its formation.

I very much hope that Members will not make an about-turn at this point in time and turn their back on this provision which is more lenient to owners

and which concerns the interest of owners. Otherwise, I believe that many small owners will be greatly disappointed. But I wish to reiterate that I hope the Government can make its position clear. Will it continue to support this proposal, which is one of the three major reforms? I trust that some colleagues will very much respect the view of the Secretary and the Government in casting their sacred votes. Let me reiterate that I hope the Government can state its position clearly. Secondly, I urge those colleagues who have explicitly indicated support for the three major reforms proposed in the Bill not to make an about-turn because many small owners would be dreadfully upset about it. Thank you.

MR EDWARD HO (in Cantonese): Madam Chairman, I just wish to reiterate that we are opposed to the requirement of 10% of owners for the appointment of a management committee for large scale, particularly multi-phase, property developments.

During the course of scrutinizing this Bill, we already considered this requirement inappropriate. We studied it and planned to propose an amendment. As the Government finally introduced amendments in this connection, it was then unnecessary for us to do so and therefore, we did not propose any amendment to it.

Even in the resumption of the Second Reading debate, I still stated expressly that we are opposed to the Bill. Therefore, I now reiterate my position.

MR GARY CHENG (in Cantonese): Madam Chairman, let us disregard the volte-face issue in regard to Members' stance on the 10% requirement for the time-being. Looking back at the deliberation process of the Bills Committee, I recall that there were doubts as to whether the 10% requirement alone would be sufficient in the absence of additional requirements when the Government first introduced the 10% proposal.

If we had not been worried, or if we had not felt that either additional requirements have to be introduced or that the applicability of the 10% requirement has to be defined, we would not have moved any further amendments, for the issue of multi-phase property development was already

covered at the initial stage of our deliberations. Therefore, we find that owners will have difficulties in complying with the more "stringent" amendments which were subsequently introduced by the Government, providing that the 10% requirement should only apply after the occupation permits for all units of a multi-phase property development are issued. In fact, ever since the Government first introduced the 10% option, the DAB has been considering whether it is necessary to attach some conditions so that the 10% requirement will not be so "flimsy" or too easy to comply with. We are not trying to make things difficult for owners. In fact, the amendments which were endorsed by the Government, amendments of the DAB (that is, amendments which I am going to move) or those ruled out by the President do all tend to be lenient.

If I remember it correctly, all members of the Bills Committee, including those of the Democratic Party have queried whether this would lead to the formation of two Owners' Corporations (OCs) in one housing development when the 10% proposal was first introduced by the Government? Actually, everyone shared this concern, and had been thinking of ways to solve this problem. Halfway through the course of our scrutiny, a government official told me that everyone was in favour of the 10% requirement, and I asked them to reconfirm as to whether other political parties and independent Members were in support of the 10% proposal. Though, nobody raised any objection, we all actually asked for a more reliable option.

Another proposal of the DAB is that we think it should be specified that OCs should only be formed in buildings which have been occupied for three years, and only when 40% of the occupation permits have been issued. This is actually in line with Mr LEE Wing-tat's amendment. Our rationale is based on the fact that it will be rather risky if the 10% requirement alone is applied.

As such, we have reservations about the option under which OCs could be formed in new multi-phase property developments on the basis of the 10% requirement alone. This does not mean that we have disregarded the interests of small owners. We have actually discussed how the 10% requirement should be defined in the course of our deliberations. Though we have reservations about passing the 10% requirement alone, we would like to remind the Government that without such a requirement or in the event that this requirement is not carried, there will not be any separate provisions on the formation of OCs in new buildings. That means, if we are to move the amendment on lowering the required percentage from 50% to 30%, the

requirement for existing buildings will be applicable to both old and new buildings. If the amendment is carried, the required percentage will be 30%, otherwise it will be 50%. However, we are still very concerned about the new buildings. The original proposal of the Government is in fact heading in the correct direction, and we still think that it merits our consideration, but additional requirements must be attached. We hope that the Government can submit a better proposal in relation to new buildings for the consideration of the Legislative Council as soon as possible. Today, we cannot support the amendment, which is based on the 10% requirement alone, to clause 3 of the Building Management (Amendment) Bill 2000.

MR RONALD ARCULLI: Madam Chairman, I think what the Honourable Gary CHENG has just said accords with my recollection of the sequence of events, but the purpose of my rising to speak is not, in fact, to go back on the history of this particular Bill.

As far as I am concerned, I have always made it clear that I do not accept the 10% rule, whichever way it is couched, particularly for new buildings, multi-phase buildings. And even within and outside the Bills Committee, I am quite sure that on occasions, I have expressed my concern to some Members of the Democratic Party who are also members of the Bills Committee.

But I think what I really want to emphasize on is that I find it quite astonishing that a Member of this Council, as experienced as the Honourable Albert HO, would actually get up and say, "If you do not object in a bills committee to a certain provision, you accept it, or you impliedly accept it." That cannot be right. All of us know that the work of a bills committee is a recommendation to this Council, and if political parties or individual members have expressed their views within a bills committee, fine. Because if what he says is correct, non-participation in a bills committee is an abrogation of your right to speak for or against any particular provision of the bill.

I am quite sure that he probably does not mean that, but he obviously wants to muster whatever argument he can in support of his cause, which is fair enough. That is what politics is all about. But I think the impracticality of the 10% rule manifests itself particularly in the unfairness that we have already debated partly during the Second Reading debate.

But I wish to say one thing to give some assurance to Members in terms of the reduction of 50% to 30% of shares of owners applying to all buildings, and this is an amendment that will be moved to clause 3(a). In other words, if the 10% rule is voted down, certainly on my part and I assume on the part of my fellow colleagues in the Liberal Party, we will support the reduction of 50% to 30%. It has the support of the Real Estate Developers' Association of Hong Kong, it is practical, it is workable and it is in fact going in a direction of making life easier for the formation of associations by owners to run their own affairs within their estate, but without the incumbent difficulty and complication of a multi-phase development. So, I would like to say to Members that, before we even vote on the 10% (as far as we are concerned, the only issue really is the 10% of the owners), we will be voting in favour of the reduction of the 50% to 30%.

Thank you, Madam Chairman.

MR LEE WING-TAT (in Cantonese): Madam Chairman, I am a member of the Bills Committee. In of our initial deliberations on the original amendment of the Government, we have discussed the 10% requirement for convening owners' meetings. And, we also differentiated between multi-phase and non-multi-phase developments.

Mr Gary CHENG was right in saying that we were a bit worried in the beginning, and we had raised some questions. Mr Gary CHENG just asked whether there would be two owners' corporations (OCs) in one building as a result of the new requirement. We have discussed this issue at the Bills Committee, but the officials of the Home Affairs Bureau and Home Affairs Department told us that this would not happen. Therefore, we had actually voiced our concerns. After a few meetings, Members were generally convinced that the proposal was feasible. Actually, the Real Estate Developers Association of Hong Kong (REDA) only expressed different views at the last two meetings of the Bills Committee. I would like to emphasize that although the REDA did express concerns about the 10% proposal, they were not against the whole proposal. They agreed that the 10% requirement should apply to non-multi-phase developments, and that is, housing developments that are granted occupation permits in one go. I think the Secretary should clarify this point.

I respect Mr Ronald ARCULLI's views on the 10% proposal, but would like to point out that the REDA was not totally against the 10% requirement. Its opposition is only directed at large scale and multi-phase developments. In other words, if occupation permits were issued to a housing development with two blocks in one go, the REDA would then have no objections to adopting 10% of owners as the quorum for convening owners' meetings. I am sure about this point.

The issues of multi-phase and non-multi-phase developments have not been covered in this Bill. At least, I think that the REDA was not against all the provisions of this Bill. They were only unhappy that this requirement should be applied to both multi-phase and non-multi-phase housing developments. Since many Members have already expressed their views, I am not going to argue this point.

I think the Secretary should give Members and the public an explanation. Since he has gained an additional week or five to six days, he should have sufficient time to consult different sectors of the community. What does the Government propose to do? Members of the public are concerned about the actions that will be taken by the Home Affairs Bureau, for to a certain extent, this will affect the way how Members will vote. Even by the time when this Council resumes in October, there may not be a consensus of views among Members. On behalf of the Liberal Party, Mr Edward HO just said they still have reservations. What does the Home Affairs Bureau propose to do? If the Government still insists that the 10% proposal should apply to non-multi-phase and multi-phase developments alike, we will have to see whether there are sufficient votes.

If the Government says said everything will depend on the progress of the multi-phase developments or that it will adopt a third proposal, then we have to discuss this in a frank and open manner. If there are significant changes in the position of the Government, I feel that the Secretary has the responsibility to inform Members and the public of its stance. So, I hope that the Secretary can respond to Mr Albert HO's comments later on, and let us know about the Government's present position and considerations.

Thank you, Madam Chairman.

MR ALBERT HO (in Cantonese): Madam Chairman, first of all I would like to respond to Mr Ronald ARCULLI's criticisms.

We all understand that what we said at the Bills Committee was not binding on the way we vote in the future. Firstly, Members can make an about-turn; secondly, Members can choose not to speak or choose to speak on a later date; thirdly, Members do not even have to join the Bills Committee but are still entitled to voice their opinions freely. All these scenarios do exist. However, those who have ever participated in the work of the Bills Committee, Mr Ronald ARCULLI in particular, will certainly appreciate that it is a good practice and tradition to express our views in good faith at a time when everyone is scrutinizing the Bill with care. By communicating in an effective manner, we all hope that a consensus can be reached and necessary amendments can be proposed before we inform the Government of our position.

As regards this Bill, the working atmosphere has always been cordial, and I believe Mr Gary CHENG will agree with me on this point. I must commend the Government for the co-operation of government officials in various aspects, and for accepting our suggestions and amendments. I really mean it. The only divergence of opinions in the Bills Committee was over the views of the Real Estate Developers Association of Hong Kong (REDA). However, this divergence is neither malicious nor confrontational. I would now like to say something on the way we work. If we have dissenting views, why is it that we cannot be honest with our objections, or raise the objections in a responsible manner? Everyone can see what had caused all the confusions at the last meeting when this Bill was discussed? The Secretary was not responsible for the confusions for he could not have anticipated that the amendment would be negatived, or that even the proposal on the inclusion of clause 3 would be negatived. I really feel very sorry for the Secretary, but no one could have guessed that even the proposal on the inclusion of clause 3 would be negatived. Since many amendments are related to clause 3, those amendments will become invalid once clause 3 does not stand part of the Bill. This is very simple, and to be honest, I really do not know how the amendments should be moved at the last meeting if we are to be successful in lowering the quorum requirement on owners from 50% to 30%.

Madam Chairman, I do not wish to offend Honourable colleagues, but if they had different opinions and refused to bring it up in the open, then to a certain extent, I think that they were being irresponsible. If we do not inform

the Government of our stance, it will imply that we intend to ambush the Government for the purpose of defeating the Bill. Otherwise, we should be working closely together by discussing the details and exchanging our views. I must say that Members should be held responsible for the confusions at the last meeting, because they had not stated their position clearly. As a result, even the most experienced Members did not know that there were controversies. In fact, the Government could have split the clause into two parts for the purpose of voting. Therefore, if Members did not make their views known, other Members could never tell what they were thinking. If our debate on this Bill had not been adjourned, Members would have been forced to vote on the whole clause. So, I think that such a working attitude is definitely unacceptable. Members should not have failed to voice their opinions at the Bills Committee meetings or failed to raise any objections after the report is released. I think that it is a good practice and tradition to state our position clearly, so that colleagues and the Government can make necessary preparations. However, it is another story if Members are trying to defeat the Bill for a special reason.

Furthermore, I have a feeling that colleagues, especially those of the DAB have always supported the 10% proposal. Members have raised their concerns over this issue, for example, Mr Gary CHENG asked whether a quorum of 10% of owners will result in two owners' corporations (OCs). I remember telling him that under the old mechanism where a quorum of only 5% of owners is required, it is still possible that two OCs will be formed and two notices of meeting will appear in the newspaper saying that owners' meeting will be held on the 1st and 2nd of the month. Then, how are we going to deal with this problem? Should an OC which is formed ahead of the other be successfully formed? How can the problem be resolved? I think this problem can be resolved as long the meetings are held on different dates. As far as I understand it, Members did not have any objection to this issue, until we are asked to vote. It was the original intention of Members to support Mr LEE Wing-tat's amendment and reject the Government's amendment. However, when the Government's amendment was negatived, they suddenly found the whole Bill unacceptable. I was really very surprised by their actions. After all, this is not what Members are most concerned about. All along our concern is whether the right of small owners in setting up OCs will be undermined. If something went wrong with the amendment on the interests of developers, does it mean that the rights of small owners in setting up OCs should not be safeguarded? This is my concern. If clause 3 is carried today,

the Government will still move amendments in the new Legislative Session in October or November. If Members can secure sufficient votes at that time, then they can introduce whatever amendments they like. Why is it that not many Members have voiced concerns over one of the Government's three original major amendments, and that is, the 10% proposal, so far? I understand that Mr Ronald ARCULLI has reservations and Mr Edward HO has different opinions, but other Members did not have strong views. But, why did they suddenly object to the amendment? I certainly think that they have made an about-turn. I am really very disappointed.

Thank you, Madam Chairman.

MR ANDREW WONG (in Cantonese): Madam Chairman, last Wednesday, many Members spoke on the amendments proposed by Secretary for Home Affairs and Mr LEE Wing-tat, and I made some strong comments. However, what Mr Albert HO has said just now made me feel very bad. I am a member of the Bills Committee and I think that the Government should not have submitted this amendment for the review was not yet completed. The proposal I had in mind was completely different from that of the Government. I had only attended half of the meetings but what I said at the meetings did not have any effect, and no one was willing to discuss the major direction suggested by me. Under such circumstances, I will definitely vote against the 10% proposal. I agree that the quorum for convening a meeting should be based on a head count, instead of the number of shares, but when the motion is put to the vote, it should be passed by a majority of owners who hold a large number of shares. These comments could be found in the minutes of meetings, and everything I wish to say had been said at the last meeting. I would have accepted this amendment if the Secretary for Home Affairs had proposed this amendment at the last meeting for he had taken a step forward and some improvements were made. However, I cannot not accept Mr LEE Wing-tat's proposal, and that is, the original clause 3 which was proposed by the Secretary for Home Affairs in the Blue Bill. Therefore, I had made it very clear last week that if Mr LEE Wing-tat's amendment were not carried under such circumstances, then we should also defeat the original clause in the Blue Bill. That means owners' corporations should not be formed with the approval of only 10% of owners. Madam Chairman, I shall not speak again today. Thank you.

MR RONALD ARCULLI: Madam Chairman, I think we should get back to the business of today, and the substance of the matter. If I remember correctly, when we last adjourned this particular dispute or issue, it was I who made it quite plain that as far as the consequential amendment was concerned, I believed that the Secretary for Home Affairs should be given time to consider the matter in the context of what I thought was at least the consensus, although not entirely within the Democratic Party's preference, if I could put it that way. And the consensus was that, certainly in terms of buildings, old and new, multi or not, the reduction of 50% to 30% of shares of owners was acceptable. What was not acceptable was the rule of 10% of owners to new buildings.

Now I think we have given the Government the time to make the amendment. The choices are in front of Members. Let us vote on it.

MR JASPER TSANG (in Cantonese): Madam Chairman, actually, even before the Government introduced this Bill, the DAB had held discussions on lowering the percentage of owners requirement for convening meetings to allow easier formation of owners' corporations (OCs). To reflect the outcome of our discussions and our views, Mr Gary CHENG introduced an amendment to this Bill. During our discussions, Members of the DAB had dissenting views on the 10% requirement. We are worried that if meetings can be convened with the presence of 10% of owners to form OCs in new buildings, very often more than one OC may be formed in those buildings. Owners may also compete against each other to form OCs at an earlier date. We think that a balance should be struck between removing obstacles so that OCs can be formed more easily, and preventing problems which may occur if the quorum requirement is too low.

Going through the minutes of the Bills Committee, we discovered that the views of Mr LEE Wing-tat are similar to ours. Let me quote the following from the minutes of the first Bills Committee meeting: "as regards the proposal to lower quorum requirement for convening an owners' meeting to not less than 10% of owners, Mr LEE Wing-tat considered that the proposal was too lax. He was of the view that the requirements of 20% to 30% were acceptable and reasonable. He pointed out that a lot of problems would arise if the percentage were lowered from 50% to 10%. He cited the following examples: (the following were examples which Mr LEE Wing-tat cited at the Bills Committee meeting, and I am very happy to relate those examples) (a) given the inherent

conflicts between owners of residential units and owners of shop units in composite buildings over the issue of building management and the low quorum requirement of 10%, it would be very easy for owners to form different interest groups to convene their own meetings to appoint their own management committees (MCs). In theory, several owners' meetings could take place at the same time within the same building, and this would cause confusions (the situation which I have just mentioned); (b) a MC dissolved by resolution at an owners' meeting could be re-appointed by resolution passed at another owners' meeting by another 10% of the owners; and (c) in the case of a tenement building where there were only a few units, one or two owners would have met the quorum requirement to convene an owners' meeting to form an OC and could control the management of the building." These are all very good examples, and if we talk about making about-turns, I would like to ask whether the Democratic Party has made an about-turn? I would say that all the abovementioned concerns are well-founded. I can also tell Honourable colleagues that members of the DAB have also raised similar concerns in the course of our discussions.

If Members say that our colleagues, including Mr Gary CHENG, have never raised any objections to the 10% requirement at the Bills Committee, it was only because we think that a balance should be struck and a reasonable solution should be found. Mr Gary CHENG just explained that we found Mr LEE Wing-tat's amendment, which is based on his concerns, more acceptable. That is why we have decided to support Mr LEE Wing-tat's amendment for we also think that this is a way to solve the problem.

Mr LEE Wing-tat's new amendment and the Government's amendment have already been negatived. As regards the remaining proposal, members of the Democratic Party who have participated in the work of the Bills Committee have expressed their doubts about it and examples have been given to prove that it is problematic. As such, why does Mr Albert HO think that we should unconditionally support this proposal? Why does he think that Members have taken an about-turn just because they have doubts? I would like to know who have made an about-turn?

MR ALBERT HO (in Cantonese): Madam Chairman, Mr Jasper TSANG has really done his homework by going through the minutes of meetings. He is really hard-working. However, it is a pity that he has not participated in the

work of the Bills Committee, and is, therefore, unfamiliar with the topic under discussion. I would not go over the doubts which Members had raised at the beginning of our discussions on the 10% proposal, or what discussions we had held before these doubts were dispelled. If Mr Jasper TSANG thinks that Mr LEE Wing-tat's amendment can clarify certain doubts, then this goes to show that he does not know anything about Mr LEE Wing-tat's amendment. Mr LEE Wing-tat's amendment will not have any impact on small owners for it is only related to large scale developments. For multi-phase developments, Mr LEE Wing-tat's amendment will only apply if 40% of the owners have moved in for a period of three years. His amendment is only a compromise to ease the doubts and worries of big developers and does not have any impact on small owners. Mr Jasper TSANG just said that there will not be any problems if Mr LEE Wing-tat's amendment is passed. However, he may not understand that the passage of Mr LEE Wing-tat's amendment will not make any difference to small owners, for the requirement is still 10%. Why should the interests of small owners and real estate developers be linked together? I hope Mr TSANG can go back and check what the amendment is all about, then he will understand why people have accused him of making an about-turn. Thank you.

MR LEE WING-TAT (in Cantonese): Madam Chairman, I wish to thank Mr Jasper TSANG. He is right and in fact, I was not the only person who raised those concerns initially. Every one of us hoped that these concerns could be addressed. So, Mr Jasper TSANG should read through all the minutes of meetings and see how the line of thinking developed.

Members raised those concerns at meetings of the Bills Committee. After several meetings, Mr Peter CHEUNG had broadly convinced members that firstly, it would not be difficult to resolve the problem of "twins", that is, having two or more owners' corporations; and secondly, it is most important that he had convinced us that the original clause was acceptable. It stipulated the quorum requirement for meetings convened to form an owners' corporation, but not enabling the owners' corporation to control everything in the entire housing estate for all resolutions pertaining to the housing estate would be subject to the number of shares. This is most explicit and important. In fact, I would not have proposed an amendment if not for the view of the Real Estate Developers Association of Hong Kong (REDA). It is because even at the ninth meeting, my amendment was not yet put forward for discussion, and there was no discussion between me and Mr Gary CHENG on the amendment either.

When did Mr Gary CHENG and I start to consider this issue? At a Bills Committee meeting, the Secretary told us that he considered the REDA's proposal worthy of consideration. Under its proposal, the quorum requirement of 10% of owners should be applicable only after all occupation permits have been issued. It was at that time that discussion between me and Mr Gary CHENG started. I remember that I told Mr Gary CHENG that we had consensus in a number of areas: first, the formation of owners' corporations for new property developments; second, the percentage in the deed of mutual covenant; and third, the percentage required to terminate the appointment of a management company.

Therefore, I would not have proposed this amendment if not for the view of the REDA, and in that case, I would support the Government's proposal today. Given the view expressed by the REDA, the Deputy Secretary then lobbied us for support. I must admit that Mr Albert HO and I had met with representatives of the REDA for we did not wish to exclude their opinions from our consideration. It was against this background that I proposed the amendment. If Mr Jasper TSANG has listened to all these developments as I recounted just now, he will see that I actually do not want to change my position.

If the Government did not make an about-turn so drastically, it was originally proposed that an owners' corporation could be formed at a meeting with a quorum of only 10% of owners, irrespective of whether or not the building is part of a multi-phase development. Now that changes are suddenly made to the effect that a decision can be taken by 10% of the owners only after all owners have taken possession of their flats. If the Secretary asked for my opinion, I would resolutely oppose such changes. Now that the Government has made an about-turn so drastically, and I learned that some Members will accept the view of the Government. Perhaps I am more of a conservative and pragmatic person. I do not only aim to get things done in accordance with principles. I also wish to come up with a proposal which is in the interest of owners. I think the Secretary has gone to extremes.

In fact, I was forced to move the amendment. It is not my wish to do so. Had the Government not changed its mind, I would not have proposed this amendment. As things now stand, Madam Chairman, I do not wish to repeat my arguments. All I wish is that the Secretary could respond to us quickly.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): I share your view. But still, there are Members who wish to speak. I shall let Members speak first and then call upon the Secretary to give a response.

MR GARY CHENG (in Cantonese): Madam Chairman, Mr Albert HO said there was a cordial relationship among members of the Bills Committee and the views put forward by them in the course of our deliberations were very similar. That was a fact, and the course of events described by Mr LEE Wing-tat rightly served to substantiate what I have said. We were really working together on this issue. I do not want to pinpoint at what Mr LEE Wing-tat has said. Perhaps he has tried to avoid using the term "about-turn" for Mr Albert HO has talked about "about-turn" from the very start of our discussions, and everyone is quite sensitive. I hope Members can still maintain a pragmatic attitude over this issue. We must admit that we have taken some time in recognizing the 10% proposal and were influenced by many other factors, such as the persuasion of others, the attitude of the Government and our own deliberations, before we finally came up with Mr LEE Wing-tat's amendment.

We support Mr LEE Wing-tat's amendment and do not agree to the Government's over restrictive requirement. I think this issue is really very simple. That was why I proposed that clause 3 should not stand part of the Bill at the last meeting. I knew that if clause 3 (that is, the 10% proposal) stands part of the Bill, then it would mean that we have not given enough thoughts to the introduction of a reliable arrangement for new buildings. If that case, then it is possible that the proposal that we have all agreed on, and that is, to lower the percentage requirement from 50% to 30%, will not be carried. So, I asked the Chairman whether other proposals would also be negatived, if I objected to the inclusion of clause 3? Mr Jasper TSANG who was sitting next to me at that time said there was no point in asking that question because it was too late to move such an amendment for the Secretary for Home Affairs, Mr David LAN, did not say that amendments would be introduced to clause 3. In that case, I think we should adopt a more pragmatic approach (I proposed at the House Committee meeting that we should split this clause into two for the purpose of voting). I hope Members will cherish the more lenient requirement that we have worked so hard to achieve, and support the proposal on lowering the percentage requirement from 50% to 30%.

As regards the 10% of owners proposal, since Members have conflicting views, and there were objections and doubts, I hope that the Government can come up with a more reliable proposal and reopen the discussion in the new Legislative Session.

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

(No Member responded)

CHAIRMAN (in Cantonese): If not, I will call upon the Secretary for Home Affairs to speak again.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam Chairman, I would like to respond to the comments made by Mr Albert HO on other amendments proposed by the Government on clause 3(3). I wish to reiterate that I support the original motion of the Government because, as I said, this is the original motion in the Blue Bill. Other than the original motion, I hope other Members can support clause 3(3) of the Bill and other amendments to it, which are going to be put to the vote.

Since the original wording of clause 3(3) of the Bill is retained, it is just logical that I support the motion as I should not oppose my own proposals. I only want to provide a technical analysis to Members for reference. Mr LEE Wing-tat just now asked me to clarify what would happen if the Bill was passed or if it was not. Mr Gary CHENG also made the same request. I could see that some Members disputed the 10% requirement. Well, if the provisions and amendments to facilitate owners to form owners' corporations in new buildings, that means my own original motion is passed, then from the viewpoint of the Government it is of course a result I would be glad to have achieved. But if the Bill is not passed, what will happen? Well, if the provisions and amendments to facilitate owners to form owners' corporations in new buildings are not passed, the Government would promise to review the issue and consult the relevant parties again. That part of the job will of course have to be left to the next Legislative Session. We hope to be able to put forward new proposals to the Legislative Council in due course. We hope that in this way we can make it easier for owners to form owners' corporations. I hope this clarifies the issues mentioned by the Members. Thank you, Madam Chairman.

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 Albert HO rose to claim a division.

CHAIRMAN (in Cantonese): Mr Albert HO 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.

CHAIRMAN (in Cantonese): The result has not yet been dispalyed …… now I can see it. (*Laughter*)

Miss Cyd HO, Mr Albert HO, Mr Michael HO, Mr LEE Wing-tat, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Dr YEUNG Sum, Mr LAU Chin-shek, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah and Mr LAW Chi-kwong voted for the motion.

Mr Kenneth TING, Mr James TIEN, 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 CHAN Kwok-keung, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Wing-chan, Dr LEONG Che-hung, Mrs Sophie LEUNG, Mr Gary CHENG, Mr Andrew WONG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Mr LAU Wong-fat, Mr Ambrose LAU, Mr Timothy FOK, Mr TAM Yiu-chung, Mr FUNG Chi-kin and Dr TANG Siu-tong voted against the motion.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that there were 51 Members present, 16 were in favour of the motion and 34 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 if any Member claims a division in respect of other clauses of the Building Management (Amendment) Bill 2000 at this meeting, the Committee shall proceed forthwith to the relevant division immediately after the division bell has rung for one minute.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That if any Member claims a division in respect of other clauses of the Building Management (Amendment) Bill 2000 at this meeting, the Committee shall proceed forthwith to the relevant division after the division bell has rung for one minute. 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 respectively of 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.

CHAIRMAN (in Cantonese): I order that if any Member claims a division in respect of other clauses of the Building Management (Amendment) Bill 2000 at this meeting, the Committee shall proceed forthwith to the division after the division bell has rung for one minute.

CHAIRMAN (in Cantonese): As the amendment of the Secretary for Planning and Lands has been turned down, I have permitted the Secretary for Home Affairs to revise the wordings of his new clause 17. I now put the question to you and that is: That clause 3(b) be made part of the Bill. Will those in favour ……

MR ALBERT HO (in Cantonese): Can I speak on this clause?

CHAIRMAN (in Cantonese): Yes. I now call upon Mr Albert HO to speak.

MR ALBERT HO (in Cantonese): Madam Chairman, actually I think that I should only speak after the government official has spoken, because the government official should first be given a chance to urge Members to support clause 3(b) moved by the Government. Why? This is because we have already negatived the Government's amendment on the addition of subclauses (4) and (5) to clause 3(b). That is actually a technical amendment on the method to calculate the 10% statutory quorum. Many people indicate that if this clause is negatived, then it is logical to reject the amendment on the

10% statutory quorum as well. However, I do not think that these two clauses may necessarily be related to each other. Even if we accept that 10% of owners can form a quorum to convene owners' meeting, the percentage of shares can still be taken as units for the purpose of voting. So, the two issues may not necessarily be closely related. If one clause is negatived, it does not mean that the other clause must also be negatived. Therefore, I still urge Members to vote in support of the Government's original clause 3(b). That means we agree that 10% of owners should form a quorum to convene a meeting, and votes should be cast on the basis of the percentage of shares under other provisions of the Building Management Ordinance. I am not sure whether the Government agrees to this arrangement? If it agrees, then I hope the Government will also urge Members to support this clause. Thank you, Madam Chairman.

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

(No Member responded)

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam Chairman, as Members have negatived the amendments related to the new clause 3(3), the wording of the law will be incomplete if this amendment is passed, but this can be amended again in future.

MR RONALD ARCULLI: Madam Chairman, I think those who voted against the earlier motion should logically vote against this particular amendment. I appreciate the difference that the Honourable Albert HO has drawn out. But I am actually surprised that one could try to persuade us to support this, simply because you might be able to convene a meeting. But the 10% owners who vote according to shares effectively have no vote. I think that it would be quite cruel to hold out to them the expectation or hope that their 10% ownership in terms of shares would actually allow them to function as an association that has been formed and formed according to the law. So I think it is illogical, I think it is unfair, too, and I do not think that we should do that to our small owners. Thank you.

MR ALBERT HO (in Cantonese): I only wish to make a brief response. In fact, if we had not reminded the Government that amendments should be introduced, this would have been the original provision. However, the problem is, even if amendments were introduced, it is still practicable. It is because, even if the quorum for convening meetings is specified at 10% of the owners, it does not mean that only 10% of owners will attend the meetings. The actual attendance can be 30% to 40% of owners. In fact, the number of owners attending the meeting will depend on their enthusiasm. This is my first point.

Secondly, as regards the casting of votes, whoever attends the meeting will have the right to vote. So, I cannot understand why Mr Ronald ARCULLI said these people effectively have no vote. Of course, if a developer attends a meeting and votes against the resolution, then it is very likely that the resolution may not be carried. However, a developer may not necessarily vote against the resolution, and his voting inclination will depend on individual cases. Very often, developers will only sit back and do nothing, and the resolution will be carried if there is a quorum. If there is no quorum, then all the better, but they may not necessarily vote against the resolution. Therefore, the motions of small owners will likely be carried if there is a quorum to convene meetings. The situation may not necessarily be like what Mr Ronald ARCULLI has said, and that is, small owners will feel helpless when they attend owners' meetings and think that their motion will definitely be turned down; this may not necessarily be the case. If we agree to let this clause stand part of the Bill, we are only following the original intention of the Government to allow small owners to convene owners' meetings with a quorum of 10%, and then allow them to vote on the basis of share percentages in order to form OCs. Since the percentage of shares is not specified in the Ordinance, owners can do so as long as there is a majority of shares. Thank you, Madam Chairman.

MR ANDREW WONG (in Cantonese): Madam Chairman, although I said I would not speak again tonight *(laughter)*, I will now like to say something in response to Mr Albert HO who has enjoyed speaking so much. I said it was reflected in many ways that the review had not been properly conducted, and there were a few things which I had not mentioned before. Let me quote some examples to illustrate to Members where the problem lies. It is provided in the Bill that 10% of owners can form a quorum to convene a meeting, and the number of shares will then be counted at the meeting. However, as to the number of proxies or authorization letters which have to be collected, no

provisions have been laid down in the whole amendment. In fact, many small owners find it annoying and think that it is a nuisance to have so many people knocking at their doors. Last Wednesday, I pointed out that in cases where initiators are residents of the Home Ownership Scheme housing units, the Home Affairs Department will make arrangements for them to have exclusive rights in obtaining a list of all owners, so that they can meet the owners. However, other people cannot obtain the list.

This is one of the issues which I am worried about. So, this is not simply a question between developers and small owners. Some developers may sit back and do nothing, but there are others who will take positive actions, especially in trying to get as many proxies as possible. If the developer has obtained control over 50% of the shares, then he will have the final say in all matters. In that case, it will be totally meaningless for owners' corporations (OCs) to be formed. These are the problems which have not been resolved.

If I were to make some proposals right now, such as on dividing a piece of property into different "lots" or different portions for sale, so that separate OCs can be formed, will the Administration consider my proposal? It is evident that the Government has not considered these questions, therefore, I hope that the Secretary for Home Affairs will reconsider this issue in the summer. It is actually more complicated than what all of us have thought. Last week, I said if we wanted to veto the two amendments, then we would have to vote against the original motion as well, so that this clause will not stand part of the Bill. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 3(b) 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)

Mr Albert HO rose to claim a division.

CHAIRMAN (in Cantonese): Mr Albert HO 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, voting shall now stop and the result will be displayed.

Miss Cyd HO, Mr Albert HO, Mr Michael HO, Mr LEE Wing-tat, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Dr YEUNG Sum, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah and Mr LAW Chi-kwong voted for the motion.

Mr Kenneth TING, Mr James TIEN, 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, Mr Ronald ARCULLI, Mr MA Fung-kwok, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Wing-chan, Dr LEONG Che-hung, Mrs Sophie LEUNG, Mr Gary CHENG, Mr Andrew WONG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Mr LAU Wong-fat, Mr Ambrose LAU, Mr Timothy FOK, Mr TAM Yiu-chung, Mr FUNG Chi-kin and Dr TANG Siu-tong voted against the motion.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that there were 49 Members present, 15 were in favour of the motion and 33 against it. Since the question was not agreed by a majority of the Members present, she therefore declared that the motion was negatived.

CHAIRMAN (in Cantonese): As the motion that clause 3(b) stand part of the Bill has been negatived, paragraph (b) is deleted from clause 3 of the Bill. The Secretary for Home Affairs has my permission to revise the terms of his new clauses 4A and 17.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam Chairman, I move that clause 3(a) be further amended, as set out in the paper circularized to Members.

This amendment to clause 3(a) of the Bill is the most important amendment to clause 3 in the Bill. It is a result of the consensus reached after negotiations with members of the Bills Committee. At present, clause 3(1) and (2) provides that owners having a total of not less than 50% of the shares can convene a meeting and the owners of not less than 50% of the shares can pass a resolution to appoint a management committee (MC), if the Deed of Mutual Covenant does not provide for the appointment of an MC. At the Bills Committee, we agreed with Members' suggestion that the above provision could be reduced from 50% to 30% to further facilitate owners of existing buildings to form owners' corporations (OCs).

Members have negatived the new clause 3(3) and other relevant amendments to clause 3 in the Bill. Therefore, owners in new buildings cannot convene owners' meetings on 10% of the owners to pass resolutions to form OCs. Thus I urge Members to support the proposal to reduce the requirement of 50% of the shares to 30% in order to form OCs. This will help owners in both new and existing buildings to form OCs more readily and in a simpler manner. Thank you, Madam Chairman.

Proposed amendment

Clause 3 (see Annex XXIII)

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

MR ALBERT HO (in Cantonese): Madam Chairman, I think this is a very important amendment. This is another amendment that will allow owners to

form OCs more easily in the future after the quorum requirement of 10% of owners to convene a meeting has been negatived.

In fact, I believe Members who have worked in geographical constituencies must have experienced a lot of difficulties when they helped owners to form OCs in the past, because OCs can only be successfully formed with the support of 50% of the shares. In fact, though it is not entirely impossible to do so, the difficulties which we encounter are hard to imagine, for 30% of the shares of many commercial and residential buildings are already in the hands of developers who own the shares in respect of shopping malls and carparks. If owners are required to secure 50% of the shares out of the remaining 70%, it is actually tantamount to asking them to secure 70% or 80% of the shares of the whole building. Moreover, some owners may have leased out their flats, and it will be even more difficult to obtain the signatures of such owners. Although, this amendment will bring about some changes, we have already experienced a lot of difficulties in the past. The requirement that proxies should be signed by the first owner on the register in cases of joint ownership is one of those difficulties. So, it was extremely difficult for owners to form OCs in the past. I hope that this amendment will resolve some of the problems for the owners.

I have to point out that the Government has only accepted this amendment at the unanimous request of Members of different political parties, including Members of the DAB and Miss CHOY So-yuk of the Hong Kong Progressive Alliance. I can recall that Members of the Liberal Party were also in support of relaxing the requirement.

Therefore, this amendment has the full support of Members, and I think this is a very important amendment. Thank you.

MR GARY CHENG (in Cantonese): Madam Chairman, I introduced this amendment at a meeting of the Bills Committee, and would like to thank Members for their support and the Government for its acceptance. Now that we have vetoed the 10% requirement under which meetings can be convened at new buildings with a quorum of only 10% of owners (I hope that this requirement was only rescinded on a temporary basis), it is all the more important that the new requirement of lowering the percentage of the number of shares from 50% to 30% be passed. It is because this requirement may also

apply to new buildings, and OCs can be formed under conditions which are somewhat relaxed. Therefore, I urge Members to support clause 3(a).

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

(No Member responded)

CHAIRMAN (in Cantonese): Secretary for Home Affairs, do you wish to speak again?

(The Secretary for Home Affairs indicated that he did not wish to speak again)

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?

(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 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 4, 6, 7 and 11.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam Chairman, I move that clauses 4, 6, 7 and 11 be amended, as set out in the paper circularized to Members.

The amendment to clause 4 retains the requirement of the original clause 4 in the Bill for a notice of meeting to be advertised on a newspaper and adds two amendments. The first new amendment adds reference to the new clause 40C to section 5 of the Building Management Ordinance. This is purely a technical amendment. The second new amendment was mentioned in my reply during the Second reading debate. It allows any one of the owners in a joint-ownership to attend and vote in an owners' meeting either in person or by proxy. This amendment is put forward after the Government has adopted the recommendation of the Bills Committee.

The two amendments to clause 6(a) are made in response to suggestions by the Hong Kong Society of Accountants (HKSA) and the Law Society of Hong Kong (Law Society). Regarding the amendment in part (a), the HKSA indicated to the Bills Committee that the professional role of accountants in auditing the accounts of clients is to report whether the information (such as income and expenditure account and balance sheet) present fairly the financial transactions and financial position of the client. In their auditing, accountants cannot "prove" whether their clients' accounts are true and proper. After consulting the relevant departments, we agree to the suggestion and thus proposed the amendment.

As regards part (b), the Law Society said in defining "flat", there are some people in the legal profession who think that spaces for cars such as

garages and carparks or carports should be included, but there are also some others who do not think so. Therefore, the Law Society is of the view that the Government should clarify the legislative intent of the relevant clause to avoid possible legal uncertainty. We accept this view and so in our amendment we specify that under the requirement for auditing by professional accountants for buildings with 50 flats or more, garages, carparks or carports should not be counted as "flats".

The amendment to clause 7 is purely textual to make the nomenclature of members of a management committee consistent with that used in the Building Management Ordinance. This is a technical amendment.

The amendment to clause 11 comparises three different amendments. The first one is textual to make the wording smoother and clearer. The amendments in (a) and (b)(i) and (ii) are of this same nature. The amendment in (a) is identical with that of clause 7 just mentioned. The second one is (b)(iii), which states clearly who should serve notices to all owners about an owners' meeting convened under clause 40C of the Bill. The third part is at (c), which seeks to delete the provision for appointing a building manager under clause 40D of the Bill for an indefinite period. This amendment is a result of our acceptance of a proposal by the Law Society. The Law Society considers that there is no justification for appointment of a building manager "for an indefinite period" as this would preclude the appointment of managers by the OC even if one has been formed. As the proposal would not affect the operation of the mandatory management scheme, we consider this proposal acceptable.

The above amendments are not disputed and I urge Members to support them.

Thank you, Madam Chairman.

Proposed amendments

Clause 4 (see Annex XXIII)

Clause 6 (see Annex XXIII)

Clause 7 (see Annex XXIII)

Clause 11 (see Annex XXIII)

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

MR ALBERT HO (in Cantonese): Madam Chairman, as the Secretary has said, of all the amendments to this Bill, the above amendments are not controversial in the least. I only want to speak on one particular amendment, and that is, which owners can attend owners' meeting in the case of joint ownership. The way in which the existing legislation is written is very ludicrous. Firstly, the co-owners can jointly appoint a proxy; secondly, one of the owners can authorize the other owner to attend the meetings, that is, if we have owners A and B, then either owner A can authorize owner B or owner B can authorize owner A; thirdly, only the precedent owner in the register (the first owner) is allowed to attend the meetings. Therefore, in reality the owner whose name stands second in relation to that share on the register (the second owner) does not have an independent right to attend the meetings. In the past, we have come across a lot of ludicrous situations resulted from these provisions. For example, the first owner is usually a male. This may be due to the practice that the name of a husband usually goes before that of a wife (women groups may criticize this phenomena). However, this is the reality. Very often, husbands may have to work outside Hong Kong and cannot always stay in their residence. So, they cannot attend owners' meeting or sign any proxy. The second scenario is that the couple was already separated and if the husband had already moved out, the wife could never attend any owners' meetings. As such, although the second owner is also an owner, he or she does not have any actual rights.

I attended an owners' meeting the other night and learned that a lot of second owners also wished to attend the meeting, but they were barred from the meeting. Of course, the manager did a bad job by refusing the entry of second owners. The manager only apologized and told the second owners that they had no right to attend the meeting. There were a lot of confusions and almost led to confrontations. Therefore, this is really a very ridiculous provision. I am very happy to take this opportunity to move an amendment to this provision so that second owners can have independent rights to attend owners' meetings. That means both the first and second owners can attend owners' meetings. However, if both of the co-owners attend a meeting, then the vote of the first owner shall prevail. If both of the co-owners have appointed proxies, then the proxy appointed by the first owner will stand. I believe that the problem can be completely resolved in this manner. Therefore, to me, this is an important amendment. If members of the press are interested in covering this provision,

I hope that they can mention this point because many people are most unhappy with the fact that second owners do not have the right to attend owners' meetings. Many people are livid whenever they think of this point and may even vent their anger at others. Therefore, if members of the press can take this opportunity to inform the public that if this amendment were carried, then second owners will be emancipated, their status will be duly recognized and they will enjoy the right to attend owners' meetings. This is of great importance.

Thank you, Madam Chairman.

MR GARY CHENG (in Cantonese): Madam Chairman, clause 6 of the Bill is on the supervision of OCs'accounts. Since the DAB is very much in favour of the idea, we will support the amendment. However, we feel that there is still a minor problem in the amendment, and that is, on the engagement of professional auditors. We received a lot of feedbacks from the OCs, including those of single buildings, and that is, the so-called "pencil buildings". Under the existing legislation, only the OC of a building with less than 50 flats will be exempted from engaging the services of professional auditors. So, if there is only a small number of units in a building, then each household of the building will have to be responsible for a higher portion of the auditors' fee. Therefore, though we support this clause, we will continue to monitor the situation. If it is discovered that the OCs have to shoulder heavy financial burdens or if there are other problems after the legislation comes into effect, the DAB will not rule out the possibility that we will move a Private Members' Bill in the next Legislative Session. If I cannot return to the legislative council in the next Session, the Private Members' Bill will be moved by another colleague.

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

(No Member responded)

CHAIRMAN (in Cantonese): Secretary for Home Affairs, do you wish to speak?

SECRETARY FOR HOME AFFAIRS (in Cantonese): No.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments 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.

(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 4, 6, 7 and 11 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): Clause 14.

CHAIRMAN (in Cantonese): Both Mr Gary CHENG and the Secretary for Home Affairs have separately given notice to move amendments to clause 14.

Committee will now proceed to a joint debate. I will first call upon Mr Gary CHENG to move his amendment.

MR GARY CHENG (in Cantonese): Madam Chairman, I move that clause 14 be amended, as set out in the paper circularized to Members.

The DAB conducted an opinion poll in 1998, and, as many colleagues have said, the results of the poll clearly indicated that over 50% of the respondents opined that it was very difficult to convene owners' meetings. The quorum requirement for convening owners' meetings can be said to be rather strict under the existing legislation. For example, under section 30 of the Ordinance, the quorum at a meeting should be 20% of the owners in the case of a meeting at which a resolution for the dissolution of the management committee (MC) is proposed, and 10% of the owners in any other case. In certain large scale housing developments where a large proportion of flats is leased out, it is even more difficult to convene owners' meetings. Apart from the fact that it is difficult to secure a sufficient number of owners to attend the meetings, the venue of the meeting also poses another problem. For a large housing development with a thousand or several thousands units, the venue of the meeting also constitutes a problem if there is a quorum to convene an owners' meeting.

On the other hand, we also understand that if the quorum for convening owners' meeting is too low, the representativeness of the meeting would be in question, and it may also be too easy for OCs to pass resolutions which are against the interests of some owners. Therefore, having considered the pros and cons, we think we should take references from a method which is adopted by a lot of statutory bodies for convening general meetings, that is, a so-called double standard method.

The main purpose of my amendment is to slightly lower the quorum requirement for convening owners' meeting at housing developments with more than 1 000 units to 10% of the owners or 100 owners. Owners' meetings can still be convened for large housing developments with the attendance of more than 100 owners, if the 10% quorum requirement cannot be met. This is similar to the case of an organization with a membership of 100 000, where it is impossible to assemble 10% of its members (that is, 10 000 people) to convene a meeting. So, it is necessary to set a quorum at a fixed number. However,

for housing developments with less than 1 000 units, the situation is different, because there may only be a total of 100 units at these developments. The 10% of the owners requirement for convening owners' meeting should apply in such cases. We think that this double standard can balance the interests of the owners of both large housing developments and single-block developments. We hope Members would support our proposal.

Proposed amendment

Clause 14 (see Annex XXIII)

CHAIRMAN (in Cantonese): I will call upon the Secretary for Home Affairs to speak on the amendment moved by Mr Gary CHENG as well as his own amendment, but will not ask the Secretary to move his amendment unless Mr Gary CHENG's amendment is negatived. If Mr Gary CHENG's amendment is agreed, that will by implication mean that the Secretary for Home Affairs' amendment is not approved.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam Chairman, the amendment proposed by Mr Gary CHENG to clause 14 includes the original clause 14 in the Bill and the amendment proposed by the Government. Paragraphs (b), (c)(2) and (e) in Mr CHENG's amendment are the same as clause 4 in the Bill and the amendment proposed by the Government. We have no objection to these paragraphs. But other provisions in Mr CHENG's amendment, including paragraphs (c)(1) and (d) are not acceptable to the Government. I repeat: they are not acceptable.

Paragraph (c)(1) of the amendment amends paragraph 5 in the existing Schedule 3 about the required quorum in percentages for meetings of owners' OCs by adding to this requirement the necessary number of persons present at such meetings. For a resolution to pass, the quorum shall be the lower number. We feel that the existing law for a quorum to pass a resolution in percentages (10% and 20% as the case may be) is appropriate and good enough to ensure resolutions passed by a corporation are supported by a reasonable percentage of owners. On the contrary, if the standard of 200 or 100 owners are used for calculation, the percentage required for resolutions to pass will be lower than 10% when the number of owners in a housing estate is greater than

1 000. The percentage will be lower when the number of owners increases. In practice, if the resolution is about the personal interests of owners or is of great significance, and the number of owners passing the resolution represents only a very low percentage, the credibility of the resolution will be questioned and it could easily lead to disputes among owners in future.

In addition, Mr CHENG's amendment also proposes that the above requirement on quorum be applied to owners' meetings to terminate the appointment of building managers convened under paragraph 7 of Schedule 7. The amendment, together with Mr CHENG's amendment to clause 15(b)(i) may enable about 10% of the owners to terminate the manager's appointment by a majority vote. This will cause polarization of owners easily and is not in the benefit of maintaining good building management.

Moreover, paragraph (d) of the amendment repeats the new clause 4A (addition of section 5B to the Ordinance) and clause 17 (addition of Schedule 11) proposed by the Government. We do not think it necessary to repeat such clauses in the Bill.

In view of the above reasons, I urge Members not to support Mr CHENG's amendment to clause 14. I also hope that after negativing Mr CHENG's amendment, Members can support the amendments moved by the Government to clause 14 later because the present procedure is that Members will be voting on the amendment proposed by Mr CHENG in respect of the difference between this amendment and that of the Government's. As regards the parts of the amendment proposed by Mr CHENG which are identical to those by the Government, they can only be put to the vote later after Members have rejected Mr CHENG's amendment, due to procedural reasons. Hence, when I later move my amendment to clause 14 of the Bill, I will request Members to support the Governemnt's amendment.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Members may now debate the amendment moved by Mr Gary CHENG as well as the amendment by the Secretary for Home Affairs.

Does any Member wish to speak?

MR ALBERT HO (in Cantonese): Madam Chairman, the amendments of Mr Gary CHENG and the Government are similar in that both amendments are not controversial. The only point of contention in Mr Gary CHENG's amendment is the proposal on significantly lowering the quorum requirement for convening owners' meetings, in particular a meeting which is conducted for the purpose of terminating a manager's appointment. I think the second point of contention is the quorum requirement, but it is not the crux of the problem. It is rather the termination of a manager's appointment which is most controversial.

As a matter of fact, clause 14 is related to an amendment that Mr Gary CHENG will move later in relation to clause 15. It is proposed that a manager's appointment could be terminated with the endorsement of the majority of owners. Mr Gary CHENG's proposal is more progressive than the proposal of the Democratic Party on lowering the share percentage requirement from 50% to 30%. I used the term "more progressive" because as a result of Mr Gary CHENG's amendment, the termination of the services of the management company (the manager) will be far more easier. Having studied the amendment, we have come to the conclusion that we can support Mr Gary CHENG's amendment. Thre are two reasons. Firstly, we always think that the quorum for convening owners' meeting should not be too big. We learn from our experiences that if the matter under discussion is controversial, then a large number of owners will attend the meeting even if a big quorum is not required. Those owners with dissenting views will mobilize other owners to attend and vote at the meeting. So naturally, there will be a high attendance rate. However, if the matter under discussion is not controversial but needs to be endorsed at the meeting, then we will have trouble. Very often, the meetings may even have to be aborted. For example, if the purpose of the meeting is to hold a non-controversial by-election, then it will not be easy to have 10% of the owners in a large housing development with 2 000 to 3 000 units (we often come across such housing developments), and that is a few hundred owners, to attend the meeting. Actually, it is very difficult. So, we think that it is acceptable to lower the quorum requirement.

As regards the question of whether the appointment of a manager will be too easily terminated, I do not think so, for if 20% of the owners attend the meeting, and the resolution to terminate the service of the manager is passed by a majority of owners, it will imply that many owners are against the continual appointment of the existing manager. If a lot of people are dissatisfied with the service of the management company, then even if the Government has set a

big quorum, the management company will actually have difficulties in performing its normal duties. In fact, from the experience of working in my own geographical constituency, I know that owners do not wish to change management companies wantonly. I have come across cases where members of the OCs have asked existing management companies to stay on after the formation of the OCs. Some management companies indicated that they did not want to carry on with their management duties after the OCs were formed because they think that the OCs can appoint other management companies. However, on some occasions, I have tried to persuade existing management companies to continue to serve the OCs. It is my impression that from 1997 to 1998, great improvements have been made in the culture of management companies, and they can better meet the requirements of owners. They are also more open and accountable to owners, and owners are generally satisfied with their services. Therefore, if 20% of the owners actually wish to convene a meeting to speak against a management company, it reflects that there are serious management problems. Under such circumstances, I do not think that it is very unreasonable to call a meeting to terminate the service of a management company.

Moreover, we all know from our experiences that after the services of a management company is terminated for the first time and a tender is called to appoint another company, the new contract will specify that a three months' notice will be sufficient to terminate the service of that company. Therefore, if an OC or MC has decided to terminate the service of a management company, it can easily do so by serving a three months' notice without compensation. So actually, OCs will only encounter difficulties when it terminates the service of a management company for the first time, and it will be comparatively easier thereafter. From this aspect, I think Mr CHENG's amendment is totally acceptable, for there will not be any drastic changes and the existing stable condition will not be greatly upset. Thank you, Madam Chairman.

DR YEUNG SUM (in Cantonese): Madam Chairman, I wish to say in brief that we support the amendment proposed by Mr Gary CHENG. According to the working experience I have in my own constituency, there are lots of private housing estates in, for example, Island South. These estates find it very difficult to convene meetings of the OCs. It would be even more difficult to terminate the appointment of a building management agent. Often times the operation of a building management agent will lead to great grievances among

the residents. But it is not easy to convene a meeting of the OC to deal with the situation. Therefore, we think that Mr Gary CHENG's amendment is worth supporting. Mr CHENG has proposed in his amendment a double-standard approach. The first is on the quorum required for the convening of a meeting of the OC which should be fixed at 20% or 10% of the owners. The second is on the requirement of 200 or 100 owners to constitute a quorum. It would be difficult to secure the attendance of 20% of the owners of a large estate at a meeting. However, if the quorum is only 200 of the owners, that will be easier. We think that Mr CHENG's proposal is acceptable.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Mr Gary CHENG, do you wish to speak again?

MR GARY CHENG (in Cantonese): Madam Chairman, my speech is a simple one, as I just want to talk about the quorum requirement. It seems that the Secretary worries about if the smaller quorum between the two criteria is used as the basis of calculation, the representativeness will be reduced. However, instead of viewing the matter from that perspective, I worry more about the successful convention of owners' meetings in view of another aspect. If a housing estate of 4 000 households is to convene an ordinary owners' meeting, 10% of the owners shall be equal to 400 households, and people from all of the 400 households should be owners, as tenants do not have the right to participate. May I ask whether we would rather adhere to the requirement of 400 households which is unable to convene the owners' meeting successfully, or to choose the participation of 200 households which is able to convene the owners' meeting successfully? In case the residents cold-shoulder the question to be discussed and only 99 people show up at the meeting, there will be nothing to blame because they have given up their rights. However, if everybody is anxious and concerned about the subject of discussion, then 400 people may show up. Therefore, no matter there are 10% or 100 people, the objective can be achieved. As I look at the matter from another perspective, worrying if the owners' meeting can be convened successfully, thus in that eventuality there is no representativeness to speak of basically.

MR ANDREW WONG (in Cantonese): Madam Chairman, this is perhaps another question that has not been studied meticulously enough in the course of

scrutiny. We have negatived the amendment which proposed the quorum requirement for an owners' meeting at 10% of the owners earlier. Now that the quorum we are talking about is based on the head-count method, not on the basis of the percentage of the undivided share of ownership.

In principle, I agree with the analysis of Mr Albert HO and Mr Gary CHENG, because I share the same opinion with them, that is, it is quite difficult to ask owners to attend meetings. However, under the present circumstances of a higher prerequisite, it is not necessarily impossible to deem the votes by proxy part of the quorum. On the contrary, I consider it workable. Basically, I also agree with the idea of lowering the quorum requirement. However, I am still concerned about the issue of advance notice. Generally speaking, most OCs do not have a clear understanding of democratic procedures. What are democratic procedures, anyway? That is to say, if the matter is of an ordinary nature, the notice period should be 14 or 21 days, accordingly, the subject cannot be an extempore motion. Therefore, the entire motion should be listed clearly. If such formalities are not gone through properly, even if we lower the quorum to the head-count basis, it is still possible for dangerous situations to pop-up.

I do not mean to criticize the analyses of Mr Albert HO and Mr Gary CHENG, as I just want to highlight the crux of the matter in order to expound the entire subject matter. In fact, as the review has not been meticulous enough, therefore the problems are not carefully deliberated and included in the legislation. As a result, the entire legislation will possibly turn out to be a meaningless piece of legislation and a lot of loopholes may emerge.

Under these circumstances, I cannot support the amendment of Mr Gary CHENG. I think the Government should put the matter on the review list.

CHAIRMAN (in Cantonese): Does any other 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 Gary CHENG 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 Gary CHENG rose to claim a division.

CHAIRMAN (in Cantonese): Mr Gary CHENG has claimed a division. The division bell will ring for one minute.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Since some Members have just entered this Chamber, I shall now repeat: we are going to vote on the amendments of Mr Gary CHENG concerning meetings and procedure of corporation, by adding "or 200 owners or 100 owners" in addition to the requirement of a quorum of 10% or 20%. 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.

Functional Constituencies:

Mr Michael HO, Mr LEE Kai-ming, Mr CHAN Wing-chan, Mr SIN Chung-kai, Mr WONG Yung-kan, Mr LAW Chi-kwong and Dr TANG Siu-tong voted for the motion.

Mr Kenneth TING, Mr James TIEN, Mr Edward HO, Dr Raymond HO, Mr Eric LI, Miss Margaret NG, Mrs Selina CHOW, Mr Ronald ARCULLI, Mr HUI Cheung-ching, Dr LEONG Che-hung, Mrs Sophie LEUNG, Mr Howard YOUNG, Mr LAU Wong-fat and Mr Timothy FOK 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 Kong-wah, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr YEUNG Yiu-chung and Miss CHOY So-yuk voted for the motion.

Miss Christine LOH, Mr Andrew WONG, Mr TAM Yiu-chung, Mr David CHU, Mr NG Leung-sing, Prof NG Ching-fai, 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, 21 were present, seven were in favour of the motion and 14 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 27 were present, 18 were in favour of the motion and eight 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 negatived.

CHAIRMAN (in Cantonese): As the amendment moved by Mr Gary CHENG has been negatived, I now call upon the Secretary for Home Affairs to move his amendment.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam Chairman, I move that clause 14 be amended, as set out in the paper circularized to Members.

This amendment, like some of the amendments passed earlier, such as the new clause 4A, has two main purposes. First, it serves to enable any one owner in a joint-ownership to appoint a proxy to attend owners' meetings and vote. Second, it serves to clarify what is the required percentage of owners to form a quorum.

As I indicated in the debate on Mr Gary CHENG's amendment to clause 14, the amendment moved by the Government has been agreed by the Bills Committee, and so I urge Members (including those who agree with Mr CHENG's amendment) to vote for the Government's amendment to clause 14.

Thank you, Madam Chairman.

Proposed amendment

Clause 14 (see Annex XXIII)

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.

(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 14 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): Clause 15.

CHAIRMAN (in Cantonese): Mr Gary CHENG, Mr Albert HO and the Secretary for Home Affairs have separately given notice to move amendments to clause 15.

Committee will now proceed to a joint debate. In accordance with the Rules of Procedure, I will first call upon Mr Gary CHENG to move his amendment.

MR GARY CHENG (in Cantonese): Madam Chairman, I move that clause 15 be amended, as set out in the paper circularized to Members. Under the existing legislation, if an OC wishes to terminate the appointment of a management company, consent of not less than 50% of the shares should be obtained, I think every Member engaging in district work has come across such kind of dispute or controversy. In most cases, small owners are unable to pool sufficient shares to dismiss the management company, or it is unnecessary for them to pool the shares, because according to the deed of mutual covenant, their shares will never exceed 50% under whatsoever circumstances. Therefore, they will never have enough shares.

Moreover, common areas of housing estates such as shopping malls and carparks are usually under the possession of major landlords, where management companies may have connection with the developers and major landlords, or they even are affiliates of each other. Therefore, under such circumstances, it will be even more difficult to dismiss management companies. As a result, to rally all the small owners and pool the majority shares of owners is the only possible way to dismiss the management company. To some public housing estates or some housing estates under the governance of the deed of mutual covenant, it is just as impossible as the stories of the Arabian Nights. Therefore, I have proposed the amendment so that decisions can be made under a more liberal, simple and majority-based circumstance. When I proposed the amendment earlier this year, some people raised their concerns as to whether it was easier to dismiss management companies, or it was possible to discourage them to participate in tenders and management work, or it would cause any

impact on the morale of the management companies. I consider such concerns excessive. Even the mechanism concerning the dismissal of the management company is relaxed, it will not be possible for us to see frequent changes of the management company. Property owners or people engaging in district work know very well that it is a major decision to employ a new management company, and the administrative work involved is no trivial matter at all. Therefore, I believe small owners will not make such decisions rashly, as they will make the decision only if they have run out of patience.

Secondly, the voting is based on the shares. However, when developers sell the flats, they usually reserve a substantial portion of shares. Therefore, before the small owners make the decision, they still have to see whether they have sufficient shares, as it is not just a matter of making up the head-counts. Thirdly, if the management company has made no mistake or it has provided consummate services, it can also do its own canvassing, as the major landlord can also canvass for support for continued operation. Therefore, I consider lowering the quorum requirement for the dismissal of the management company helpful to the supervision and compulsion objective for a quality service, in addition to the quest for continual improvement of the standard of management. I therefore implore Honourable Members to support and pass the more liberal, simple and majority-based amendment.

I am grateful that the Government has accepted another amendment moved by me earlier. Instead of the three-month period of notification for the dismissal of the management company, the amendment seeks to amend the provision by means of payment in lieu of notice. The reason is simple. When a dismissal notice is issued or a relevant decision is made, the management company will still have three months' time to operate, thus morale and quality problems may possibly arise, and that may affect the interest of the owners. On the face of it, the original arrangement seems to be fair enough to the management company because it is being notified in advance. However, according to the conspiracy theory, some companies lacking in moral character may tend to leave some bad debts and an awful mess behind. As a result, payment in lieu of notice is a better proposal, and I hope Honourable Members will support it.

In accordance with the existing arrangement of the Bill, small owners have to pay extra attention to the matter during the aforesaid three months and supervise the management company with circumspection if they want to avoid the emergence of the undesirable situation. Perhaps it is just like the saying goes, long delays cause much hitches. Because numerous items are involved,

small owners will be unable to take care of the OC on a full-time basis. Therefore, it is very difficult for them to conduct a full supervision. Especially when accounting management is involved, the average small OC without the professional knowledge or experience will find it an extremely difficult task. As a result, the Government has accepted the request and allowed small owners to terminate the appointment of the management company instantly by adopting the approach of payment in lieu of notice after the dismissal decision is made at the owners' meeting. This arrangement provides small owners an alternative to reduce some volatile factors in the course of dismissal.

The third item of amendment is also accepted by the Government. I would like to express my gratitude to the Government for its consideration. According to the amendment, shares not having to pay management fees shall have no right to vote in the dismissal of the management company. I feel that it is fair and square for small owners. I therefore implore Honourable Members to support the amendment. Thank you.

Proposed amendment

Clause 15 (see Annex XXIII)

CHAIRMAN (in Cantonese): I will call upon Mr Albert HO and then the Secretary for Home Affairs to speak on Mr Gary CHENG's amendment as well as their own amendments. I will not ask Mr Albert HO to move his amendment unless Mr Gary CHENG's amendment is negatived. Whether the Secretary for Home Affairs may move his amendment will depend on the Committee's decision on Mr Albert HO's amendment.

MR ALBERT HO (in Cantonese): Madam Chairman, I move to amend the statutory requirement for the dismissal of the management company by repealing the support and consent of 50% of owners and substituting the support of 30% of shares. I believe I do not have to repeat that 50% of shares is very difficult to come by, especially in some housing estates with a large number of households. We have to deal with cases regularly concerning housing estates of 3 000 to 5 000 households. If we are to obtain a 50% shares, on top of the shopping mall and carpark ownership, we have to gain the support from almost 70% of the owners in order to pass a resolution of dismissing the management company. I consider this prerequisite too irrationally high to achieve. In fact, to reduce the percentage to 30% is not a

low requirement at all. Comparing with the amendment proposed by Mr Gary CHENG, it is already a more stringent one, but it is still less stringent than the quorum requirement set by the Government. As I agree with many of the reasons of trimming down the percentage which has just been raised by Mr Gary CHENG a moment ago, therefore I am not going to repeat those views here.

In fact, I am reluctant to see that many owners show up to attend the meeting to support the resolution of dismissing the management company. I have once seen owners of a housing estate with over 2 000 households attending the meeting in person or by proxy with the intention to dismiss the management company, but as the total shares were only around 40%, the management company could rest assured of no dismissal even if it had not attended the meeting. I would like to point out that 30% of owners expressing a wish to dismiss the management company is already high enough to reflect their frustration. We should not forget that owners have to take the trouble to attend the meeting, to spend time on understanding the whole matter, and to go through tender and tender selection procedures for the appointment of a new management company after dismissing the old one. After all, could the situation be necessarily improved? In fact, there is actually no final conclusion yet. As a result, in my experience, unless the owners are extremely dissatisfied, otherwise, they will not demand the dismissal of the management company. Consequently, a 30% of the shares is absolutely reasonable, as the dismissal of the management company will not be a frequent matter. It is just as I have said earlier, after the initial dismissal, owners have to sign a contract with the new management company, then it will be easier to dismiss the new management company. Generally, the period of termination notice shall be three months, if the management committee agrees, the dismissal resolution can be passed at ordinary owners' meeting.

I have to reiterate that I will continue to support the amendment of Mr Gary CHENG. If his amendment is negatived, I hope Honourable Members will support my amendment. This amendment is a relatively stricter one, but it is still less stringent than the proposed requirement of the Government. Needless to say, my amendment can be put to the vote provided that both the amendments of the Government and Mr Gary CHENG are negatived. In principle, I am not opposed to the three amendments of the Government, including the payment in lieu of notice which gives the owners another alternative. I also support the idea that only the owners possessing

shares can vote. Perhaps Members will take note of the fact that I will move another amendment later. According to the proposed amendment, I will not only propose that major landlords who possess public areas and shares but pay no management fees should be prohibited from exercising the right to vote and the right to vote in the dismissal of the management company, but I will also propose to forbid them from casting any vote under whatsoever circumstances. I think only this is fair and square. Nevertheless, if all of our amendments are negatived ultimately, I will have no comments on the amendment of the Administration, and I can support the amendment. However, I still want to urge Honourable Members to support the two amendments. Thank you.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam Chairman, according to the existing provisions, a resolution to terminate the appointment of a building management agent has to gain the support from owners holding not less than 50% of the shares.

The Government's amendment to clause 15 has basically adopted the proposals of the Bills Committee, including those of Mr Gary CHENG and Mr Albert HO. Only the holders who need to pay management fees for their shares are entitled to vote in the termination of the appointment of a building management agent. By eliminating the voting rights of those shares (such as shares for common areas) for which holders do not need to pay any management fees, our amendment could facilitate the termination of appointment of building management agents. Besides, it could also avoid undue interference in property management, thereby reducing disputes among owners over the appointment of building management agents. We think that this can strike a suitable balance between the two. As regards the amendments proposed respectively by Mr CHENG and Mr HO to clause 15, the percentage of shares or number of holders required for the termination of appointment of building management agents has been substantially reduced compared to their original proposal.

Mr CHENG's amendment greatly reduces the percentage of shares required for the termination of appointment of building management agents from not less than 50% to the majority of the quorum (that is 20% or a majority of 200). Mr HO's amendment, on the other hand, proposes to reduce the percentage requirement from 50% to 30%. Although the two amendments are different, they both serve to greatly reduce the percentage of shares required for the passage of resolutions at meetings of OCs. We are very much concerned

about the inconvenience and uncertainty this may cause to the management. We also believe this would have a damaging effect on the operation of property management companies to a certain extent, since some property management companies might work in such a way as to please a few owners. Lastly, I want to stress that the existing requirement has proved to be effective since it came into operation in 1993. There have not been any significant enforcement difficulties so far. Therefore, at this stage, it is not appropriate to introduce changes that are too radical or potentially counterproductive.

In view of the above reasons, I urge Members to vote against the respective amendments proposed to clause 15 by Mr Gary CHENG and Mr Albert HO.

Before Members vote, I wish to point out that the amendment to clause 15 proposed by the Government represents a more relaxed requirement compared to that imposed by existing laws and is in line with the spirit of the amendments proposed by Mr Gary CHENG and Mr Albert HO. Indeed, it is also a proposal raised by them in the Bills Committee. Thus, I hope Members will support and pass the Government's amendment after voting against the amendments proposed by Mr Gary CHENG and Mr Albert HO.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Members may now debate the amendment moved by Mr Gary CHENG as well as the respective amendments by Mr Albert HO and the Secretary for Home Affairs.

MR ANDREW WONG (in Cantonese): Madam Chairman, we have three amendments here, and they are all correlated. I agree with the amendment proposed by the Secretary for Home Affairs because it has been improved in reality, and it is also in conformity with the amendments of Mr Gary CHENG and Mr Albert HO in essence. Of course we support the payment in lieu of notice provision with regard to the dismissal of the management company, because allowing the management company to stay in office after the termination notice is given may cause a certain degree of embarrassment.

I also agree with the proposal that only owners who are in possession of shares and have been paying the management fees are entitled to vote. Nowadays, we have seen innumerable unfair situations that the major landlords are in possession of some shares, but they need not pay the management fees. I agree with Mr Albert HO that those owners who pay no management fees should not only have no right in the voting of the dismissal of the management company, but they should also have no voting right on other things. Even though I agree with that suggestion, it is not achievable at this stage, but of course we can move a technical amendment on that.

Let us take some large scale residential development projects as an example, where most of the units on the lower-level shopping mall are rental properties of the major landlords, and most of the carparks are only for rental purpose. If the shopping mall has already accounted for 50% of the undivided shares, it is almost unquestionable that we cannot make any changes at all, provided that the major landlords have paid their management fees, then it is not a problem at all. As a result, we are perhaps unable to deprive their rights ultimately. I consider the proposal of Mr Albert HO a correct move by reducing the percentage of not less than 50% to 30%. We have mentioned the consensus we have on the reduction of from 50% to 30% when we discussed clause 3 earlier.

Mr Gary CHENG suggests that resolutions should be passed by majority votes of owners in attendance. It will cause a number of problems. That is, to dismiss the management company by a quorum in terms of head count will cause a number of problems. We should follow up this issue when we review this legislation the next time. Otherwise, if we go on adopting the percentage of undivided shares as the quorum, I think the suggestion of reducing the quorum for dismissing the management company from 50% to 30% merits our support.

We have to vote on the amendment of Mr Gary CHENG. If we vote for his amendment, then Mr Albert HO will be unable to move his amendment. Therefore, I hope we can vote against the amendment of Mr Gary CHENG. The Government's proposal of changing the requirement of shares in the resolution of dismissing the management company at the owners' meeting from 50% to majority votes of owners in attendance is not desirable at all. I hope Honourable Members will oppose the amendment and support the subsequent amendment of Mr Albert HO.

Lastly, I support the amendment of the Government. Thank you.

CHAIRMAN (in Cantonese): Mr Gary CHENG, do you wish to speak again?

MR GARY CHENG (in Cantonese): Madam Chairman, it really does not matter if my amendment is defeated, for the Government has accepted the two amendments which I have proposed.

As for the third amendment, I would like to call upon Honourable Members to support it. If they do not, then I will support Mr Albert HO's amendment which proposes to reduce the requirement of 50% of the shares to 30%.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr Gary CHENG 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 Gary CHENG rose to claim a division.

CHAIRMAN (in Cantonese): Mr Gary CHENG has claimed a division. The division bell will ring for one minute.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Have Honourable Members cast their votes? Voting shall now stop and the result will be displayed.

Functional Constituencies:

Mr Michael HO, Mr LEE Kai-ming, Mr CHAN Wing-chan, Mr SIN Chung-kai, Mr WONG Yung-kan, Mr LAW Chi-kwong and Dr TANG Siu-tong voted for the motion.

Mr Kenneth TING, Mr James TIEN, Mr Edward HO, Dr Raymond HO, Mr Eric LI, Miss Margaret NG, Mrs Selina CHOW, Mr Ronald ARCULLI, Mr HUI Cheung-ching, Dr LEONG Che-hung, Mrs Sophie LEUNG, Mr Howard YOUNG and Mr Timothy FOK 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 Kong-wah, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr YEUNG Yiu-chung and Miss CHOY So-yuk voted for the motion.

Miss Christine LOH, Mr Andrew WONG, Mr TAM Yiu-chung, Mr David CHU, Mr NG Leung-sing, Prof NG Ching-fai, 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, 20 were present, seven were in favour of the motion and 13 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 27 were present, 18 were in favour of the motion and eight 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 negatived.

CHAIRMAN (in Cantonese): I now invite Mr Albert HO to move his amendment.

MR ALBERT HO (in Cantonese): Madam Chairman, I move that clause 15 be amended, as set out in the paper circularized to Members.

Given that Mr Gary CHENG's amendment has been negatived, I now call upon Honourable Members to support this amendment, that is, to reduce the required percentage of shares from 50% to 30% for the purpose of terminating the appointment of a building management agent. I have presented three reasons. First, as the Government has accepted that the percentage of owners required for the purpose of forming an OC be reduced from 50% to 30%, and as the percentage of owners required for the purpose of forming an OC and passing a resolution to terminate the appointment of a building management agent has always been 50%, so I think the percentage of owners required should be reduced to 30% in both cases. The Secretary has said earlier and unexpectedly that this would create confusion, but I do not see how this will happen. As the percentages required for these two cases were the same in the past, now that the percentage required for forming OCs has been reduced to 30%, why is the percentage required for terminating the appointment of a building management agent not be lowered to 30% as well? Second, the Secretary has said that confusion would be created and that it would make the owners terminate the appointment of building management agents more frequently. I have explained this point already. It is most difficult to terminate the appointment of a building management agent for the first time and subsequent to that, terms can be added to a contract to stipulate that a management committee can decide to terminate the appointment of a building management agent by giving it three months' notice or to hold an ordinary meeting of owners and confirm the decision. There will not be any need for the statutory stipulation on the percentage of owners required. Therefore, the most difficult thing is the termination of the appointment of a building management agent for the first time. This is because it will usually involve a company that has a lot of problems. I think those Honourable Members who have the experience of helping owners to form OCs will know that very often the first building management agent of an estate is usually a subsidiary of the developers and the developers .....

CHAIRMAN (in Cantonese): Sorry, Mr Albert HO, I will have to interrupt you because I have heard what you have said just now.

MR ALBERT HO (in Cantonese): Madam Chairman, I would be as brief as possible, for when I was speaking just now, there were not so many Honourable colleagues here. *(Laughter)*

I shall put it very briefly. These provisions are very unreasonable. When a building management agent is appointed, very often there will be some fixed charges. Previously, the charges were set at 10% or 15% of the remuneration of a building manager. On top of that, there were also some other provisions which were set on an unequal footing. So, we have to deal with this kind of situations to make the owners feel it is necessary to terminate the appointment of the first building management agent and to allow other companies to compete. When a tender is invited for the appointment of a building management agent, the OCs will still welcome the submission of a tender from the first building management agent. So I do not think there will be any great negative impact. Instead, the market will be open for more companies to submit their tenders. I hope Honourable Members can support my amendment.

Thank you, Madam Chairman.

Proposed amendment

Clause 15 (see Annex XXIII)

CHAIRMAN (in Cantonese): Does any Member wish to speak? Secretary for Home Affairs, do you wish to speak?

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam Chairman, I just want to clarify one point. We have suggested reducing the required percentage of shares from 50% to 30% because it is our policy to encourage owners to form OCs. As regards the issue of termination of appointment under discussion, it is not the Government's policy to encourage the termination of appointment of management companies. Therefore I need to clarify that we think the 50% requirement should be retained, but we have excluded the shares not having to pay any management expenses. This is the point I want to clarify.

MR ALBERT HO (in Cantonese): Madam Chairman, I would like to make a brief reply. Just now Secretary David LAN has said that he does not allow those who own shares of the common areas of a building to vote, that is meant to make it easier for owners to choose their building management agent. I think the policy intent is that if only the owners have made their intentions clear, there should not be too many obstacles imposed on them.

In any case, I hope that Honourable Members can support my amendment in respect of the 30% shares requirement.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr Albert HO 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 Albert HO rose to claim a division.

CHAIRMAN (in Cantonese): Mr Albert HO 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, voting shall now stop and the result will be displayed.

Functional Constituencies:

Mr Michael HO, Mr LEE Kai-ming, Miss Margaret NG, Mr CHAN Wing-chan, Dr LEONG Che-hung, Mr SIN Chung-kai, Mr WONG Yung-kan, Mr LAW Chi-kwong and Dr TANG Siu-tong voted for the motion.

Mr Kenneth TING, Mr James TIEN, Mr Edward HO, Dr Raymond HO, Mr Eric LI, Mrs Selina CHOW, Mr Ronald ARCULLI, Mr HUI Cheung-ching, Mr Bernard CHAN, Mrs Sophie LEUNG, Mr Howard YOUNG and Mr Timothy FOK 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 Christine LOH, Miss CHAN Yuen-han, Mr LEUNG Yiu-chung, Mr Gary CHENG, Mr Andrew WONG, Mr Jasper TSANG, Dr YEUNG Sum, Mr LAU Kong-wah, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr NG Leung-sing, Mr YEUNG Yiu-chung and Miss CHOY So-yuk voted for the motion.

Mr TAM Yiu-chung, Mr David CHU, Prof NG Ching-fai, 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, 21 were present, nine were in favour of the motion and 12 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 27 were present, 21 were in favour of the motion and five 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 negatived.

CHAIRMAN (in Cantonese): I now call upon the Secretary for Home Affairs to move his amendments.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam Chairman, I that clause 15 be amended, as set out in the paper circularized to Members.

As I said during the joint debate a moment ago, the Government's amendment is an improvement to the original provisions of the Building Management Ordinance.

Since Honourable Members have voted down the amendments of Mr Gary CHENG and Mr Albert HO, I now urge Members who have supported the amendments of these two Members just now to support the amendment moved by the Government.

Thank you, Madam Chairman.

Proposed amendment

Clause 15 (see Annex XXIII)

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.

(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 15 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):	New clause 3A	Appointment of management committee after application to the Authority
	New clause 3B	Appointment of management committee after application to tribunal
	New clause 4A	Sections added
	New clause 4B	Application by management committee for registration of owners as a corporation
	New clause 4C	Incorporation
	New clause 7A	Interpretation
	New clause 7B	Duty to maintain property
	New clause 7C	Management committee to replace owners' committee

New clause 13A	Jurisdiction of tribunal in relation to building management
New clause 16	Terms added if consistent with deed of mutual covenant
New clause 17	Schedule added.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam Chairman, I move that the above new clauses read out just now, as set out in the paper circularized to Members, be read the Second time.

As I mentioned in the Second Reading debate of the Bill, new clauses 3A and 3B are an important part of the Committee stage amendments. These proposed amendments are formulated by the Government upon accepting Members' suggestions.

Under the existing Building Management Ordinance, if owners of existing buildings fail to appoint a management committee by a resolution of the owners of 50% of the shares as required under section 3(2)(b) of the Ordinance, owners of not less than 30% of the shares may apply to the Authority (that is, the Secretary for Home Affairs) to convene an owners' meeting to decide by resolution whether to appoint a management committee. If the application is opposed by other owners, the Lands Tribunal may, upon application by owners of not less than 20% of the shares, order that a meeting of owners shall be convened to appoint a management committee.

When the Bills Committee scrutinized the Bill, some Members proposed that the Government should consider a lower percentage requirement for the setting up of an OC for existing buildings. After careful consideration, we have found Members' opinion acceptable. Hence, I now propose an amendment to the effect that the said 30% and 20% requirements be reduced to 20% (for applications made to me) and 10% (for applications made to the Lands Tribunal) respectively.

Apart from that, when the Government put forward an amendment to amend clause 3 earlier, we have already proposed to reduce the percentage of shares required to appoint a management committee at an owners' meeting from 50% to 30%.

There are two provisions in the new clause 4A. First, it is proposed that a new section 5A be added to the Building Management Ordinance. This new provision serves two purposes. The first purpose is to make procedures of meetings under the existing section 5 applicable to owners' meetings convened under the new section 40C. Hence procedures at owners' meetings using percentage of shares as the voting basis will become applicable to meetings using the number of owners as the voting basis. The second purpose is to add a provision, on the suggestion of the Bills Committee, to provide that a co-owner in a joint-ownership be allowed to attend meetings and cast votes either personally or by proxy.

The second provision to be added under clause 4A is section 5B to the Building Management Ordinance, the object of which is to specify how references to the number of owners should be construed.

New clauses 4B and 4C are technical provisions aimed at adding reference to section 40C where appropriate in sections 7 and 8 of the Building Management Ordinance, so that management committees appointed under section 40C may apply under sections 7 and 8 to the Lands Tribunal for registration as an OC.

As regards proposed new clauses 7A, 7B and 7C, they are purely technical amendments. Clauses 7A and 7C seek to add reference to the newly added section 40C to provisions under sections 34 and 34H of the Building Management Ordinance which make reference to the setting up of OCs. Clause 7B is purely an amendment to the wording in the English text.

In my reply during the Second Reading debate, I mentioned that the legal adviser to the Bills Committee had offered some technical recommendations to the Administration, one of which was the proposed new clause 13A. On the legal adviser's suggestion we put forward an amendment with a view to providing a clarification to the effect that the Lands Tribunal does not have any jurisdiction other than civil jurisdiction. In other words, when invoking provisions in the Building Management Ordinance relating to criminal offences, the Administration must turn to courts with criminal jurisdiction to institute any prosecution.

The proposed new clause 16, just like the proposed new clause 4A mentioned before, is aimed at stating clearly how the reference to "10% of the owners" in Schedule 8 should be construed. It also allows a co-owner in a joint-ownership to appoint a poxy to attend owners' meetings and vote.

Finally, the addition of Schedule 11 proposed under new clause 17 is directly related to section 5B, which is an additional provision put forward by the proposed new clause 4A. This is to state clearly the method of enumeration whenever the percentage of owners is mentioned. The object of this technical amendment is to render the provisions in the Building Management Ordinance more specific.

With these remarks, Madam Chairman, I recommend to Members the said new clauses proposed by the Government.

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

Does any Member wish to speak?

MR ALBERT HO (in Cantonese): Madam Chairman, as the Secretary has just said, the provisions which have been proposed earlier did not cause any disputes when they were deliberated upon in the Bills Committee. We welcome the new clauses 3A and 3B in particular, for they represent important reforms. Under clause 3A, if owners fail to form an OC in accordance with the stipulations in clause 3, then under the existing practice, they may apply to the Secretary for a certificate. Originally, they should have the support of owners of not less than 30% of the shares, but now the requirement is reduced to 20%. This reduction in the percentage of shares by 10% is believed to be able to ease the difficulty faced by the owners. The question which remains is: How is the Secretary going to exercise his powers under clause 3A? I recall the Secretary was asked to give an oral reply to a question in the Legislative Council on this, but to date the Government has not yet given a concrete reply. Then what is the policy in respect of exercising the powers given under this provision? It seems to me that the Secretary is letting Honourable Members try clause 3 first, if that is proven to be unworkable, then he will let us try clause 3A. I hope the Secretary can study this provision very carefully and see under what circumstances can it be invoked. Under what circumstances can we make an application to the Secretary?

Clause 3B reduces the 20% percentage requirement to 10% to enable owners to make an application to the Lands Tribunal. We also welcome this decision. However, the Lands Tribunal does not have any precedent that can be used as reference to enable the public to know under what circumstances they can make an application to the Lands Tribunal. Will the Government issue guidelines on this? Can the public seek help from the Courts when necessary? How can clause 3B be invoked? I do not want to spend time on that any more because many of the provisions have been improved.

The new Schedule gives the definition of owners greater clarity. It the past, there were some discrepancies in the opinion given by the officials of the District Offices to the residents and it differed from one district to the other. There was a time when for example, someone holding many authorization letters was still regarded as one person. Then we found that this was not proper, for if someone holds authorization letters for so many flats, that would mean that owners of these flats were present at the meeting. That is an important point if we use a head count to meet the statutory requirement. For example, someone owns five flats, how many persons should he be regarded? The Bill has an explanatory Schedule and it gives a clear definition of the term "owner". I think that will prevent some unnecessary disputes and it will be conducive to the implementation of the legislation in future. Therefore, I urge Honourable Members to support the clauses introduced by the Secretary.

CHAIRMAN (in Cantonese): Does any other 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 of the Members present. I declare the motion passed.

CLERK (in Cantonese): New clauses 3A, 3B, 4A, 4B, 4C, 7A, 7B, 7C, 13A, 16 and 17.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam Chairman, I move that the new clauses read out just now be added to the Bill.

Proposed additions

New clause 3A (see Annex XXIII)

New clause 3B (see Annex XXIII)

New clause 4A (see Annex XXIII)

New clause 4B (see Annex XXIII)

New clause 4C (see Annex XXIII)

New clause 7A (see Annex XXIII)

New clause 7B (see Annex XXIII)

New clause 7C (see Annex XXIII)

New clause 13A (see Annex XXIII)

New clause 16 (see Annex XXIII)

New clause 17 (see Annex XXIII)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the new clauses 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): New clause 5A Establishment of funds.

MR GARY CHENG (in Cantonese): Madam Chairman, I move that new clause 5A be read the Second time, as set out in the papers circularized to Members.

I would like to speak again on a survey conducted by the DAB in 1998. I think Honourable Members can guess correctly on the findings of this survey on the issue of financial matters of owners' corporations (OCs). Findings of the survey show two common phenomena. One is owners' default in the payment of management fees. The other is the owners' default in the payment of the expenses of some maintenance works done to the buildings concerned. These show to some extent the lack of responsibility and awareness on the part of the flat owners in the management of their buildings. As a matter of fact, most of the OCs do not have savings for the purpose of undertaking maintenance works. Often they will ask owners to contribute when there is a need to carry out such works, and so a lot of discussions and deliberations have to be made. Another thing is that sometimes works cannot be carried out owing to insufficient funds available. In view of this, I propose in my amendment to make it a compulsory requirement on OCs to set up a contingency fund. A small portion of the management fees collected monthly is set aside as a reserve for some non-recurrent expenses in maintenance and improvement works. I trust that this will be conducive to the improvement of the management of a building. Those public housing flats for sale have fixed a certain proportion as a fund for the same purpose.

I think we should make this a requirement so that there will be sound financial arrangements for buildings to enable owners to act on their initiative in carrying out maintenance works. We understand that there is a need to exercise regulation, but apart from that, there should also be some encouragement. Some people may query that since a certain percentage of the management fees is used to set up a fund, then why should that percentage not be specified. I think we should allow flexibility in this matter and to give some form of encouragement. That is because the condition of each building is different. It is difficult to set the percentage at 2%, 3% or 4%. It is right to allow some flexibility. Notwithstanding this, a percentage of the management fees must be set aside for this purpose.

Apart from that, the Government has queried as to what can be done if there are people who deliberately not enforce the requirement. Should they be punished and should penalty be imposed? I have said earlier that we need to exercise regulation in this matter, but at the same time, we also need to put efforts in education. I worry that if OCs are subject to regulation and they are required also to enforce the requirements, some grievances may be caused. For we should know that we are not working under any favourable conditions, otherwise we can get the work done without having to say anything. And there will not be any need to remind the owners and exercise regulation. That is why I have not proposed to impose any penalties and to make provisions as to what can be done if OCs fail to comply.

Madam Chairman, the Bill has clearly provided for the setting up of a contingency fund. The message and the intention are beyond doubt. It can also be said to be well-intended. If only owners can be given due assistance and reminder from the Government, I think the requirement can, to a very large extent, enable them to have a sound financial basis to deal with the question of building maintenance.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 5A be read the Second time.

Does any Member wish to speak?

MR ALBERT HO (in Cantonese): This is the only amendment proposed by the DAB that we do not support. The reason is simple. First, the existing OCs know that there is a need to set up a fund for maintenance expenses and a good building management agent will give advice to these OCs on setting aside 3% to 5% of the management fees collected for this purpose. This is the common practice and so in fact there is no need to make any changes. Even if a change is made, what kind of effect can it produce? I do not think there is any. For example, what size of a fund should an OC set up? How much money should be paid for this purpose? What percentage from the management fees should be set aside? There are no clear stipulations in the provision. In other words, owners may in theory only pay one dollar and that will be enough. Does this make any sense? No.

Second, the existing legislation has provided for the setting up of funds for such purpose. There are some guiding principles for this and if the amended legislation does not have any penalties, it will not make any difference. As there are no penalties, to change the wording in the legislation from "may" to "shall" will also make no difference.

Third, the financial situation of many OCs varies. Some may be in deficit and some may not. If they are in the red, how can they set up a fund? The cause of deficits may be that some large scale maintenance works have just been completed and there may be a situation whereby the developers or the management company may reach an agreement with the OC to pay part of the expenses in advance which will be reimbursed later. That kind of arrangement happens very often and so there will not be any surpluses in the accounts of the OCs and the deficits have to be made up later. Then how can they possibly set up a fund? This kind of rigid requirement to set up a fund is firstly, not practical; secondly, not clearly written down in the legislation; and thirdly, not clear as to the effect which it seeks to produce. The change in the present arrangement where OCs may set up a fund to the new arrangement where a fund shall be set up, and given the absence of any penalties for non-compliance, will render this amendment meaningless. So the Democratic Party will not support this amendment.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam Chairman, the existing Building Management Ordinance provides that OCs must set up and maintain a general fund to defray the cost of the exercise of its powers and the performance of its duties. Under normal circumstances, the general fund is sufficient to cater to the daily or basic needs of the OC. On the other hand, the OC may set up a contingency fund to provide for any expenditure of an unexpected or urgent nature. In considering whether or not to set up a contingency fund, an OC will usually take into consideration its needs or the financial situation of owners. We think that making it mandatory for such a fund to be set up can only impose unnecessary financial and administrative burden on OCs, especially those comprising few owners. In fact, OCs may decide for themselves whether or not to set aside a sum from the general fund for contingency purposes. Furthermore, making it mandatory for a contingency fund to be set up without other details or penalties will drive OCs which are unwilling or unable to set up such funds to set up funds of a symbolic nature, thereby defeating the real meaning and effect of the law.

In view of the above reasons, we do not think it is appropriate to make laws to require a mandatory contingency fund to be set up. Instead, owners' corporations should decide for themselves. I urge Members to support our view and vote against the proposed new clause 5A.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Mr Gary CHENG, do you wish to speak again?

(Mr Gary CHENG indicated that he did not wish to speak again)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That new clause 5A be read the Second time. 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 Gary CHENG rose to claim a division.

CHAIRMAN (in Cantonese): Mr Gary CHENG has claimed a division. The division bell will ring for one minute.

CHAIRMAN (in Cantonese): Will Members please proceed to vote. The question now put is: That new clause 5A be read the Second time.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies

Mr HUI Cheung-ching, Mr CHAN Wing-chan, Mr WONG Yung-kan and Dr TANG Siu-tong voted for the motion.

Mr Kenneth TING, Mr James TIEN, Mr Edward HO, Mr Michael HO, Dr Raymond HO, Mr Eric LI, Mr LEE Kai-ming, Miss Margaret NG, Mrs Selina CHOW, Mr Ronald ARCULLI, Mrs Sophie LEUNG, Mr SIN Chung-kai, Mr Howard YOUNG, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Timothy FOK, and Mr LAW Chi-kwong voted against the motion.

Geographical Constituencies and Election Committee:

Miss CHAN Yuen-han, Mr Gary CHENG, Mr Jasper TSANG, Mr LAU Kong-wah, Mr David CHU, Mr YEUNG Yiu-chung, Mr Ambrose LAU and Miss CHOY So-yuk voted for the motion.

Mr Albert HO, MR LEE Wing-tat, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr Andrew WONG, Dr YEUNG Sum, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr TAM Yiu-chung, Mr NG Leung-sing and Mr MA Fung-kwok 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, 21 were present, four were in favour of the motion and 17 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 23 were present, eight were in favour of the motion and 14 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 negatived.

CLERK (in Cantonese): New clause 7BA Common parts.

MR ALBERT HO (in Cantonese): Madam Chairman, I move that clause 13B be amended as set out in the papers circularized to Members. Sorry ……

CHAIRMAN (in Cantonese): Clause 7BA, common parts.

MR ALBERT HO (in Cantonese): Madam Chairman, sorry, I was speaking too fast. I move that new clause 7BA, as set out in the paper circularized to Members, be read the Second time.

The amendment mainly seeks to delete a provision commonly found in deeds of mutual covenant and is unfair. A deed of mutual covenant usually designates certain areas as common parts, that is, those areas commonly enjoyed by all owners, for example, corridors, podiums and even swimming pools. They are usually owned by the building management agent or the developers. Often times the number of shares in these common parts is quite substantial. In some of the cases that I have come across, these shares may take up more than 20% of the total shares. The holders do not need to pay any management fees for these shares. I really fail to see why these shares do not

need to pay any management fees while the owners of these shares enjoy the right to vote. I fail to understand why. We can also see that many developers want to continue holding the right to manage some properties, therefore, they do not want the owners to appoint their own management companies. In many cases, these common areas which take up more than 20% of the shares, when added up with places like shopping malls and parking spaces, will exceed 50% of the shares. So, it is impossible for owners to set up an OC. We think that in order to be fair to all of the owners, at least we should do something to deprive these shares not having to pay management fees their management right. I know that the Government also agrees that this is fair.

Although I know that the Government will oppose my amendment, I also know that it has accepted my view that the idea is a fair one. Why? Because the Government issued some guidelines to the legal profession in 1998 through the Legal Advisory and Conveyancing Office (LACO). The guidelines forbid the inclusion of these terms in the deed of mutual covenant. Should the deeds contain such terms, the LACO will not grant its approval. In addition, in some of the newsletters issued to its members, the Law Society also said that even if the deed of mutual covenant does contain such terms, lawyers should not accept such instructions. That is the so-called non-consensus scheme. The Government therefore thinks that when the policy is in force, such a situation will not happen in the future. However, those housing estates which have been subject to such deeds of mutual covenant before the LACO and the Law Society have issued the guidelines will still be affected and this policy will offer no remedy. If there are still some unequal terms in the deeds of mutual covenant of some housing estates, the owners will still be treated unfairly. I therefore urge Honourable Members to support this amendment so that those who want to hold shares in ownership but do not pay management fees will not enjoy the right to vote simply as a result of these shares.

I fail to see why the Government should oppose my amendment. I hope that the Secretary will give an explanation on this. As the Lands Department and the Law Society have issued guidelines to forbid these terms, why does the Secretary still oppose my amendment to bring about the same kind of treatment for both old and new buildings? I also hope that the Liberal Party will support me, for I really cannot see what reasons they have to oppose my amendment, unless they think that this kind of unfair situation should be allowed to go on, and that the interest of certain people should be protected. I do not think that should happen. I therefore urge Honourable Members to support this amendment. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 7BA be read the Second time.

MR RONALD ARCULLI: Madam Chairman, I had not actually wanted to speak on this particular issue. But since the Honourable Albert HO asked for reasons, I will give him reasons, both serious and not so serious.

The not-so-serious one is this. I never thought that I would hear a Member of the Democratic Party urge Members of this Council to do away with voting rights in whatever form, whatever institution, but that is the tenor of the motion tonight.

The serious part is that in terms of the guidance given out by the Legislative Council or indeed the Law Society of Hong Kong, these are presumably dealing with situations that have not occurred. I do not think that either the Legislative Council or the Law Society of Hong Kong would ask for retrospective provisions in terms of rearranging the existing arrangements that happen in a lot of the housing estates, be they in the form of management companies or whatever.

Those are the two reasons why I do not believe that we can actually support the amendment.

MR GARY CHENG (in Cantonese): This is exactly one of the amendments which the DAB cannot support the Democratic Party tonight. The reasons are precisely the problems mentioned by Mr Albert HO just now. It would be difficult to say if these problems are about new buildings, as it may be possible to rewrite the terms again, but if this is about old buildings, then there will be problems. We have studied into the issues for a long time. This amendment is different from my amendment which the Government has accepted just now. The difference lies in the provision on the termination of the appointment of the building management agent that the shares which do not need to pay any management fees do not have the right to vote. As the issue at hand involves common parts, and by definition, common parts mean places in which everybody can use. Would a situation arise in which those who own a majority of the shares do not have a right to vote despite their having obligations? Would that not be a problem? It is a fact that these developers

hold a large proportion of the shares and they have the dominating rights. We cannot deprive them of their rights in respect of common parts, unless they are not required to fulfil any obligations. So how can this problem be resolved? Therefore, we still have great reservations about this point.

MR ALBERT HO (in Cantonese): Madam Chairman, I would like to respond first to the remarks made by Mr Ronald ARCULLI just now. We will certainly try our very best in fighting for the democratic right to vote. As for some undemocratic rights, not only will we not fight for them, but we will oppose them. We are talking about prerogatives, that is, the right not to pay management fees. As these prerogatives are not democratic rights, we will not support them and we will oppose them. That is the first point I wish to make.

Second, Mr Ronald ARCULLI has asked if this has any retrospective effect. We understand that it does not, because the deeds of mutual covenant concerned have all been signed and the agreements have all come into force. How can there be any retrospective effect? That is simply impossible. As for making any change to the deed of mutual covenants concerned, it is a very difficult thing for it requires the consent of 100% of the owners. Since the developers are also a party to the deed, how can they agree to the changes? But that does not mean that we cannot have some overriding terms and conditions to amend or delete some of the unequal terms and conditions in the deed. In the Buildings Ordinance, many of its provisions are laid down to address these unequal terms and conditions in deeds of mutual covenant. This is not an interference with the rights embodied in a contract, nor is it an attempt to enter into a new contract with the owners. This is not the case. We are only of the view that in certain circumstances, the law should effect proper intervention to protect those small owners who do not have much bargaining power. It is especially so when contracts are signed without the parties knowing exactly what they are signing. As the first owners have signed the deed of mutual covenant, all subsequent owners will be bound by it. It is doubtful that when people are buying flats, they will have a thorough understanding of all the provisions in the deed of mutual covenant, especially some of the not so important terms. That is why many of the provisions of the existing Buildings Ordinance are meant to amend or repeal some of these unequal terms. This is perfectly reasonable. In fact, many Honourable Members have done a lot in this respect. Section 2A was repealed at the beginning of the 1990s. Other provisions of this kind include those which stipulate that many common parts cannot be occupied by individuals for private

purposes. So even if the deed of mutual covenant has given such prerogatives to these people, these prerogatives can be abolished. I think that it is consistent.

As for the reasons given by Mr Gary CHENG to oppose the amendment, I really do not know what he is referring to. We all know that the common parts belong to all owners, not the developers alone. Then why is it that these developers can use these shares to vote? Please remember that it is all the owners' responsibility, not that of the developers, to undertake the maintenance of the common parts. According to the terms of the deed of mutual covenant, the maintenance expenses will be paid out of the management fees, but the voting rights fall into the hands of the developers. Often there is a term in the deed of mutual covenant which stipulates that the shares in respect of the common parts will be returned to the OC after the latter is formed. However, this term is often not enforced because the developers will put up obstacles to prevent the setting up of OCs. That is how the problem is caused. The amendment proposed by the Government just now cannot solve the problem of the formation of OCs because the percentage of shares is precisely the obstacle to the formation of OCs. Thus owners will be unable to form their corporations and it is impossible for them to terminate the appointment of a building management agent. The amendment proposed by the Government just now cannot solve these two problems. Those developers who hold a lot of the shares of a building but are not required to pay any management fees are precisely the cause that prevents the other owners from forming their corporations.

I hope Honourable colleagues from the DAB will really consider this issue seriously, for that is not in line with their previous line of argument. Since the DAB has supported the amendment proposed by the Government, then why can they not also support this amendment? Why do they think that the developers can have the prerogative of being not required to pay any management fees and can exert control over the votes at the same time simply by virtue of the number of shares they hold? I urge Honourable colleagues from the DAB to think seriously and not to do anything again which will damage the interest of the small owners. My colleagues have made that point very clear in the remarks made by them earlier. We should all support this amendment. Thank you.

MR ANDREW WONG (in Cantonese): Madam Chairman, on the question of terminating the appointment of a building management agent discussed earlier, I

have made it clear that those shares which do not need to pay management fees should not have any voting rights on such a decision, and these shares should also have no voting rights on other matters as well.

However, I wish to point out one thing, that is, if the people concerned hold a certain percentage of the undivided shares, then they can take part in all of the matters concerned. They may also have agreed to the paying of management fees before the legislation comes into force. If only they have paid the management fees, they will have the right to take part in the matters concerned after the legislation comes into force. However, it is obvious that after the enactment of this legislation, those who used to be protected by the deed of mutual covenant and were not required to pay management fees will be required to do so now. That is the fulfilment of responsibilities by virtue of the rights enjoyed.

In his reply just now, Mr Albert HO has expounded the idea behind it. I just wish to respond briefly to a remark made by Mr Gary CHENG. He said that the developers are required to fulfil some responsibilities but they do not enjoy any rights. That is unfair to them, according to him. But this is not the truth. They do have rights, because they hold some shares. But they have no obligations because they do not need to pay any management fees. That is a prerogative, and we should not strive for and defend this kind of prerogative.

Therefore, I fail to understand the position of the DAB. Here I urge them to support Mr Albert HO's amendment.

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

(No Member responded)

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam Chairman, the implication of the new clause proposed by Mr HO is more extensive and far-reaching than a similar amendment we have moved to clause 15. While the Government's amendment is applicable only to resolutions of OCs to terminate the appointment of building management agents, Mr HO's proposed new clause is applicable to all situations. We have sought legal advice before putting forward our amendment to clause 15. The advice we obtained was that

giving different treatment to the same title holder might constitute discrimination and might even be in breach of Articles 6 and 105 of the Basic Law which provide protection for private ownership of property. Differential treatment is lawful only when it is required out of objective and good reasons and the means commensurate with the policy objectives. However, we have not received any rationale in detail from Mr HO that is convincing enough to show that his proposal is lawful, reasonable and practicable, or that it will not impact on the economic value of the title the holders of which have been deprived of their right to vote. Moreover, Mr HO's amendment, which is very complicated and important, was not put forward until after the Bills Committee has completed scrutinizing the Bill. Despite guidelines issued after legal advice was sought and guidelines prepared by the LACO, I urge Members not to pass any proposal with far-reaching impact before detail research and extensive consultation are completed, bearing in mind that guidelines and law are very different in terms of binding effect.

Thank you, Madam Chairman.

MR ALBERT HO (in Cantonese): I would like to respond to two points. First, the Secretary said that I did not put forward this idea in the Bills Committee. I hope that he will check the records. I am not sure whether this has been put on the records, but I recall putting forward this idea in the Bills Committee. We had a discussion on that. The Secretary was not at the meeting at that time. And when we discussed this issue, the Deputy Secretary who is now sitting beside the Secretary, had not begun to attend the meetings of the Bills Committee. But I do not want to say any more on that. The Secretary knows that I have put a question to him in public in the Legislative Council on this issue. We are very concerned about it. Had I not raised this issue, the Secretary would not have proposed his amendment to the effect that in terminating the appointment of the building management agent, those who hold shares but are not required to pay management fees will be barred from voting. It is because the Secretary knows my view on this issue that he has narrowed down the application of this provision to the termination of the appointment of the building management agent. Therefore, I hope the Secretary can check the records and refrain from saying that I have not raised that issue before. That is the first point I wish to make.

Second, the Secretary said that there is a big difference between the legal advice he sought and the guidelines of the LACO and their binding effect. Does the Secretary not want these guidelines to be followed? Does he not think that these guidelines are correct? Should he not think that we need to legislate on that if the guidelines are not respected? One thing at least is certain, the direction of the guidelines and my demand are consistent. That is certain. I therefore fail to see why the Secretary has said that my amendment will create extensive impact, and some of the results are undersirable. I think these reasons are totally unfounded. Unless he think that these guidelines are rubbish and that no one will care to comply with them, otherwise, the reasons which have been given by the Secretary just now are totally unfounded.

Third, I must point out, Madam Chairman, that I do not know what kind of legal advice the Secretary has sought. His remarks are shocking. We have talked to the Home Affairs Bureau on many issues related to discrimination before. But the Secretary was not interested in them. He said that that was not discrimination. It was a matter of different points of view. He did not want to legislate on that. We have asked the Secretary to study into many issues, but he was not interested. He did not think that there was any discrimination. Well, he is saying now that if my amendment is passed, it may constitute discrimination. If that is true, then it is discrimination already when we passed the earlier amendment proposed by him. He is putting a stone to hit his own feet. He is contradicting himself. Why? It is because the amendment proposed by the Secretary just now stipulates that those holders of shares who are not required to pay management fees are not allowed to vote on the matter of terminating the appointment of the building management agent. Does it not constitute a deprivation of the right to title? Why is my amendment considered to be a deprivation of the right, but not his? I do not know if the Secretary has given all the provisions to his legal adviser to study. If the Secretary has only given my amendment to his legal adviser, then it will be misleading and it is unacceptable to me. I do not think that it will constitute any discrimination, for that is a prerogative. Mr Andrew WONG was right that this was a prerogative which would make the holder entitled to rights but not obligations. Why do we have to give those developers this prerogative? Why should this prerogative be defended? Why would it constitute discrimination when we seek to legislate to take away these rights? I hope the Secretary can think about it and give us a reply. The views which he has given are indeed shocking. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That new clause 7BA be read the Second time. 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 Albert HO rose to claim a division.

CHAIRMAN (in Cantonese): Mr Albert HO 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, voting shall now stop and the result will be displayed.

Functional Constituencies:

Mr Michael HO, Mr SIN Chung-kai and Mr LAW Chi-kwong voted for the motion.

Mr Kenneth TING, Mr James TIEN, Mr Edward HO, Dr Raymond HO, Mr Eric LI, Miss Margaret NG, Mrs Selina CHOW, Mr Ronald ARCULLI, Mr HUI Cheung-ching, Dr LEONG Che-hung, Mrs Sophie LEUNG, Mr Howard YOUNG, Mr LAU Wong-fat, Mrs Miriam LAU and Mr Timothy FOK voted against the motion.

Mr LEE Kai-ming, Mr CHAN Kwok-keung, Mr CHAN Wing-chan, Mr WONG Yung-kan and Dr TANG Siu-tong abstained.

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, Mr Andrew WONG, Dr YEUNG Sum, Miss Emily LAU, Mr Andrew CHENG and Mr SZETO Wah voted for the motion.

Mr TAM Yiu-chung, Mr David CHU, Mr NG Leung-sing, Mr MA Fung-kwok and Mr Ambrose LAU voted against the motion.

Miss CHAN Yuen-han, Mr Gary CHENG, Mr LAU Kong-wah and Mr YEUNG Yiu-chung abstained.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 23 were present, three were in favour of the motion, 15 against it and five abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 22 were present, 12 were in favour of the motion, five against it and four abstained. 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 negatived.

CLERK (in Cantonese): New clause 13B Composition and Procedure of Management Committee.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam Chairman, I move that new clause 13B, as set out in the paper circularized to Members, be read the Second time.

The new clause is a technical provision with two purposes. First, when the Bills Committee was still in the process of scrutinizing the Bill, we met with the Property Committee of the Law Society of Hong Kong after receiving its written submission to discuss the recommendations they made in respect of the Bill. We accepted some of their recommendations after the meeting. Part (a) of the clause is one example of such. The object of the amendment is to state under the first paragraph of Schedule 2 that in using the number of flats as the basis for determining the number of members in a management committee, car-parking spaces like garage are not to be counted as flats. This will make the provision more specific.

Part (b) of the new clause is a purely technical amendment. Like new clauses 4B and 4C passed just now, its object is to make reference to new section 40C in Schedule 2 where appropriate.

With these remarks, Madam Chairman, I recommend the new clause to Members.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 13B be read the Second time.

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 clause 13B.

CHAIRMAN (in Cantonese): As the Second Reading of new clause 13B has been passed, Mr HO needs not move the Second Reading of his new clause 13B. He has my permission to move amendments to new clause 13B, which has been read the Second time.

MR ALBERT HO (in Cantonese): Madam Chairman, I move that new clause 13B be amended, as set out in the paper circularized to Members.

Madam Chairman, this amendment does not involve any major policies and principles. The amendment seeks to adjust the term of office of two of the office-holders in the existing management committees of OCs, namely the treasurer and the secretary, and to align their term of office with that of the management committee as a whole.

Why is such an amendment necessary? It is because under the existing legislation, the owners may appoint some people who are not members of the management committee to hold the offices of the secretary and the treasurer. Very often in actual practice, members of the management committee will be appointed to hold these offices. But that is not important. In practice, the general impression of the owners is that people who hold these offices are working with the OC as a whole. So, a term of office is usually not prescribed for these people. The owners also do not know that there is such a need for it. The general practice is that when a new management committee is elected and when a treasurer and a secretary are elected, their term of office is often not specified. When the old management committee completes its term of office and when a new management committee is elected, there may be a situation where the treasurer and the secretary of the old management committee are still in office, because the old management committee has not specified their term of office. So the new management committee may have difficulty in finding other people to be the treasurer and the secretary. The management committee may need to convene a general meeting to terminate the duties of the original treasurer and secretary and to appoint other people to assume office. That is in fact not necessary. In my view, there may not be any great problems if this

provision is not amended, but some inconveniences may be caused in future. The advantage of this amendment is to let the people know that the treasurer and the secretary have the same term of office as the entire management committee. Their term of office will expire on the same date as the management committee. The operations of the management committee will hence be smoother when the new treasurer and secretary are appointed at the same time when the new management committee is elected. I urge Honourable Members to support my amendment. Thank you, Madam Chairman.

Proposed amendment

New clause 13B (see Annex XXIII)

CHAIRMAN (in Cantonese): Secretary for Home Affairs, do you wish to speak?

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam Chairman, I do not think there is any need to legislate to provide for Mr HO's proposal. The provisions under Schedule 2 of the existing Building Management Ordinance have already set out practicable ways to enable OCs to specify in the original appointment resolution the terms of office of the secretary and the treasurer or to pass resolutions at subsequent meetings to terminate their appointment. We hold that the flexibility provided for OCs under the existing law should be retained so that they may decide for themselves whether to terminate the appointment of the secretary and the treasurer at the same time.

With these remarks, I oppose Mr HO's amendment and urge Members to support our view.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Mr Albert HO, do you wish to speak again?

MR ALBERT HO (in Cantonese): Madam Chairman, as I have just said, I just want to reiterate that even if we do not legislate to lay down the requirements, the operations of OCs will not be seriously impeded, it will only cause some inconveniences. But since it is a general perception that the work of the management committee is collective work, then why should there not be some legal form of regulation so that the owners will not put themselves in serious troubles owing to their lack of knowledge in these matters. I can tell Honourable Members that according to common understanding, the treasurer and the secretary are part of the management committee. Having said that, I do not think this policy change will involve many issues of right and wrong, but that it will only make the operation of OCs smoother. Thank you.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr Albert HO 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 Albert HO rose to claim a division.

CHAIRMAN (in Cantonese): Mr Albert HO 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, voting shall now stop and the result will be displayed.

Functional Constituencies:

Mr Michael HO, Mr LEE Kai-ming, Mr CHAN Kwok-keung, Mr CHAN Wing-chan, Mr SIN Chung-kai, Mr WONG Yung-kan, Mr LAW Chi-kwong and Dr TANG Siu-tong voted for the motion.

Mr Kenneth TING, Mr James TIEN, Mr Edward HO, Dr Raymond HO, Mr Eric LI, Miss Margaret NG, Mrs Selina CHOW, Mr Ronald ARCULLI, Mr HUI Cheung-ching, Dr LEONG Che-hung, Mrs Sophie LEUNG, Mr Howard YOUNG, Mr LAU Wong-fat, Mrs Miriam LAU and Mr Timothy FOK voted against the motion.

Geographical Constituencies and Election Committee:

Miss Cyd HO, Mr Albert HO, Mr LEE Wing-tat, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Miss CHAN Yuen-han, Mr Gary CHENG, Dr YEUNG Sum, Mr LAU Kong-wah, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr CHAN Kam-lam and Mr YEUNG Yiu-chung voted for the motion.

Mr Andrew WONG, Mr TAM Yiu-chung, Mr David 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, 23 were present, eight were in favour of the motion and 15 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 22 were present, 15 were in favour of the motion and six 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 negatived.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam Chairman, I move that new clause 13B be added to the Bill.

Proposed addition

New clause 13B (see Annex XXIII)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 13B 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.

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading.

BUILDING MANAGEMENT (AMENDMENT) BILL 2000

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, the

Building Management (Amendment) Bill 2000

has passed through Committee with amendments. I move that this Bill be read the Third time and do pass.

I very much appreciate the support given by Honourable Members to the Building Management (Amendment) Bill 2000. As I said during the Second Reading debate, the passage of the Bill will further enhance the management work of buildings across Hong Kong, thereby enabling owners' corporations to manage their buildings in a more effective manner. The object of the Bill is to provide for mandatory management of buildings with serious management and maintenance problems, and to require owners' corporations to take out third party insurance in respect of their buildings. This will add substantially to the obligation of owners to manage and maintain their buildings.

PRESIDENT (in Cantonese): Mr Secretary, I am sorry I need to interrupt you. Have you not said all these during the Second Reading debate of the Bill?

SECRETARY FOR HOME AFFAIRS (in Cantonese): Thank you, Madam President.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Building Management (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): Building Management (Amendment) Bill 2000.

MOTIONS

PRESIDENT (in Cantonese): Motions. Proposed resolution under the Dutiable Commodities Ordinance.

PROPOSED RESOLUTION UNDER THE DUTIABLE COMMODITIES ORDINANCE

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Cantonese): Madam President, I move that the resolution as set out on the Agenda be passed. The resolution aims to introduce a concessionary duty on ultra low sulphur diesel (ULSD) as a fiscal incentive to encourage diesel vehicles to switch to this environmentally cleaner fuel.

Improving air quality is a priority for us. In reducing air pollution from motor vehicles, one of the Administration's policies is to adopt environmentally cleaner fuels as far as practicable.

ULSD has a sulphur content of less then 0.005%, 10 times lower than that of regular motor diesel now available in the market. The use of ULSD by a motor vehicle reduces its emissions of respirable suspended particulates (RSP) by between 10% and 30%, depending on different operating conditions, and its nitrogen dioxide emissions by about 5%. Use of ULSD will also cut down its black smoke emissions.

ULSD is being used in a number of European countries. Some of them successfully used duty incentives to encourage the switch from regular motor diesel to ULSD. We propose to follow suit.

At present, the duty on regular motor diesel is $2.00 per litre. The duty rate will be restored to $2.89 per litre from 1 January 2001 onwards. In order to encourage a quick switch to ULSD, we propose to introduce a duty differential of $0.89 per litre for ULSD from 7 July 2000 onwards to make its retail price competitive with that of regular motor diesel.

Hong Kong will be the first place in Asia to introduce ULSD on a comprehensive scale for its vehicle fleet. Since no oil refinery in the region produces ULSD at present, the oil companies in Hong Kong will have to import ULSD from Europe initially. According to information provided by a number of oil companies, the import price of ULSD will be $0.80 per litre higher than that of regular motor diesel. We propose to introduce a duty differential of $0.89 per litre to offset the higher price of ULSD. The oil companies have agreed to transfer the full benefit of the duty concession to customers.

According to the oil companies, when the demand from Hong Kong for ULSD is more established, the production of the new fuel in the region will become more viable. The import price of ULSD will drop then as a result of lower freight costs. However, this may not happen until a year after the full-scale introduction of ULSD into Hong Kong. We will therefore decide in 2001 whether we should maintain or revise the concession duty rate for ULSD in the light of changes in its import price.

The resolution maintains the duty differential of $0.89 per litre for ULSD until 31 December 2001 and sets the duty on ULSD at $2.89 per litre (same as the duty for regular motor diesel) on 1 January 2002. The purpose is to avoid a vacuum period during which ULSD will become undutiable. As I have said, we will conduct a review in 2001 on the appropriate duty level for ULSD in 2002.

According to the latest information available to us, some oil companies will be able to supply ULSD to Hong Kong in three to four months' time. To encourage oil companies to make ULSD available to the local market as soon as possible, we propose to introduce the concessionary rate for ULSD from 7 July 2000.

I urge Members to support my motion.

The Secretary for the Environment and Food moved the following motion:

"That the Dutiable Commodities Ordinance be amended, in Part III of Schedule 1 -

(a) in paragraph 1, by repealing "Duty" and substituting "Subject to paragraph 1A, duty";

(b) by adding -

"1A. Duty shall be payable on ultra low sulphur diesel at the following rates –

(a) from 7 July 2000 to 31 December 2000 (both dates inclusive), at $1.11 per litre;

(b) from 1 January 2001 to 31 December 2001 (both dates inclusive), at $2.00 per litre"; and

(c) from 1 January 2002, at $2.89 per litre.";

(c) by adding -

"5. For the purposes of paragraph 1A, "ultra low sulphur diesel" (超低含硫量柴油) means a light diesel oil which –

(a) contains not more than 0.005% by weight of sulphur as determined by ISO 14596;

(b) has a cetane number of not less than 51.0 as determined by ISO 5165;

(c) has a viscosity at 40°C of not less than 2.00 mm^2/s and not more than 4.50 mm^2/s as determined by ISO 3104;

(d) has a 95% distillation temperature of not more than 345°C as determined by ISO 3405;

(e) has a specific gravity at 15°C of not more than 0.835 as determined by ISO 3675; and

(f) has a distillation percentage recovered at 250°C not more than 65% by volume as determined by ISO 3405.

Note: In this Part, "ISO" followed by a numerical symbol ("ISO number") means the test procedures of the International Organization for Standardization commonly known by that ISO number."."

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

DEPUTY PRESIDENT (in Cantonese): I now put the question to you and that is: The motion moved by the Secretary for the Environment and Food as printed on the Agenda be passed.

MR SIN CHUNG-KAI (in Cantonese): Mr Deputy, the House Committee has formed a Subcommittee to study the motion proposed under section 4(2) of the Dutiable Commodities Ordinance (Cap. 109). In my capacity as the Chairman of the Subcommittee, I would like to report on the main deliberations of the Subcommittee.

In order to encourage drivers to use ultra low sulphur diesel (ULSD) which is a more environmentally-friendly fuel, the Subcommittee supports the proposal of fuel duty concessions made by the Administration for ULSD. As regards the effective date of the concessionary duty rate for ULSD, the Subcommittee points out that according to the latest estimation made by a local major oil company, ULSD will be available for sale in Hong Kong before the end of September. Hence, the Subcommittee urges the Administration to bring forward the effective date. In response to the Subcommittee's concern and the latest developments, the Administration agrees to amend the original proposal by bringing forward the effective date from 1 January 2001 to 7 July 2000. The Subcommittee supports this amendment.

The Subcommittee also notes that according to the motion, from 1 January 2002 onwards, the duty rate for ULSD will be equal to that of

general vehicle diesel, that is, $2.89 per litre. Members have reservations about the necessity of fixing the duty rate for 2002 at this stage because the actual import price and retail price of ULSD are still unknown. The Administration advises that it will conduct a review in mid-2001 to decide whether the concessionary duty rate for ULSD should remain unchanged or be revised. If necessary, the Administration will move a motion in due course to enforce the revised duty rate. In view of the undertaking made by the Administration, the Subcommittee will accept its proposal.

Mr Deputy, the Subcommittee will support this motion.

MR LAU KONG-WAH (in Cantonese): Mr Deputy, the air in Hong Kong is seriously polluted. Local residents and overseas investors speak lowly of the air quality in Hong Kong and the problem has deteriorated to the extent of impeding the economic development of Hong Kong.

There are several ways to resolve the problem of emissions from diesel vehicles and they include: first, to replace them with vehicles that meet the latest European Union emission standards; second, to install catalytic converters for large diesel vehicles and particulate traps for smaller vehicles; third, to switch to other fuels; and fourth, to use better quality diesel.

The DAB supports the introduction of ULSD. As the provision of adequate liquefied petroleum gas (LPG) filling stations for 18 000 taxis has encountered problems already, let alone over 100 000 diesel vehicles of other types. This is a problem to be faced by Hong Kong in its further use of LPG vehicles. In addition, compelling diesel vehicles to switch to petrol vehicles is not a proposal acceptable to the trade. Hence, the introduction of ULSD is the most expedient solution.

As regards the duty rate, the Government is willing at this stage to fix the duty rate for ULSD at a level below the rate for common diesel so as to offset the additional cost of ULSD, which is an approach that merits support. However, this duty rate will only be maintained until January next year when it will rise to $2 and then go further up to $2.89 the year after next. I find this period of low duty rate rather short.

The DAB very much supports the expeditious introduction of ULSD and we are therefore in favour of the motion today. However, the DAB hopes that the Government will seriously consider an extension of the period of the duty rate of $1.11 and will propose a motion again before the end of this year for consideration by this Council.

MRS MIRIAM LAU (in Cantonese): Mr Deputy, I rise to speak in support of the resolution proposed by the Government today.

With this resolution, the Government encourages oil companies to introduce environmentally-friendly diesel and encourages drivers to use environmentally-friendly diesel by offering tax concessions, which has turned Hong Kong into the first region in Asia that takes the lead in the use of ULSD. This just goes to show two points.

First, it goes to show that the promotion of environmental protection is not an easy task and cannot be accomplished without the concerted efforts of all parties. About a year ago, actually the transport sector took the initiative to propose that the Government should introduce low sulphur diesel, but the Government did not give an active response at that time; instead, it only remarked that the refineries in Asia could not refine low sulphur diesel. If low sulphur diesel should be used, it had to be imported from refineries in Scandinavia. The price would be very high for the transportation from Scandinavia to Hong Kong. Recently, through the concerted efforts of all parties and under the brilliant leadership of the Secretary for the Environment and Food as well as the mutual co-ordination between the Government and oil companies, the introduction of ULSD has been brought about in a very short time, so I would like to thank the Secretary here.

Second, it goes to show that environmental protection is not a slogan, but it requires the investment of resources. The Government was scheduled to implement duty rate concessions only after 1 January next year; in other words, oil companies will not introduce ULSD until 1 January next year, but after the announcement of this idea by the Government, I learnt that oil companies could actually introduce ULSD sooner. They indicated to us that as long as the Government puts its duty rate concession into effect, it would only take about three months for oil companies to import ULSD. Should the resolution be passed today, they will be able to sell ULSD at all filling stations at the end of

September. The Government is also determined to forge ahead in doing what is right. When it learned of this news, it offered to put in more resources and immediately brought forward the implementation of the concessions that had been scheduled to be implemented on 1 January 2001 half a year earlier.

Although the Government now indicates that it will offer concessions and reduce the current diesel duty from $2 to $1.11 with effect from 7 July until the end of the year, but as the Honourable LAU Kong-wah has said, the period of concession is really too short. We are concerned that next year when the duty rate for general vehicle diesel rebounds to $2.89, the duty rate for ULSD will also rise to $2. The trade has also reflected to me that it is worried about the increase in duty rate because there will be a full increase of 80 cents to $1 per litre, which will exert great pressure on them. In fact, the general transport trade, whether it is the taxi, minibus or freight transport business, will still have to face a rather difficult business environment. I hope the Government can try its best to keep tabs on the transport trade in the aspect of concessions by adjusting the duty rate to a level affordable to the trade. Most importantly, it is hoped that the trade will continue with the use of ULSD.

Mr Deputy, after the passage of this resolution today, I hope that the use of ULSD by general diesel vehicles will begin at the end of September this year at the latest — at the latest, I stress. If the price of ULSD is comparable to that of general vehicle diesel; that is, not above the price of general vehicle diesel, I believe the trade in general will be prepared to use it.

With respect to franchised buses, one of the franchised bus companies has decided to try out ULSD. We all know that it is the New World First Bus Company. As franchised bus operators have a huge fleet of thousands of vehicles, their emissions of respiratory suspended particulates account for approximately 10% of urban vehicle emissions while their nitrogen oxide emissions account for approximately 16% of urban vehicle emissions. With the general use of ULSD by thousands of franchised buses, coupled with the installation of catalytic convertors, emissions will be reduced significantly to approximately 30%. We hope to achieve this result, especially when many buses run on busy roads full of pedestrians.

It is an indisputable fact that ULSD can reduce emissions, but as the Secretary has just said, it is also an indisputable fact that ULSD is more expensive than general vehicle diesel by 80 cents per litre. If franchised bus

companies use ULSD on a full scale, according to them, it will increase the overall costs of the companies by 4%. This may be a rough estimate because actually ULSD is 20% higher in price than general vehicle diesel and fuel is a major element of costs, representing a high percentage of the costs and expenses to any transport trade.

Just like other environmental protection projects, when we have discussions, everyone will show their support, but we will eventually come to the subject of who shall pay for it. The tax concessions proposed by the Government now are meant to encourage general diesel vehicles to use ULSD. The so-called general diesel vehicles refer to diesel vehicles other than franchised buses. Currently these vehicles can benefit from it because the Government's reduction of the duty rate will reduce their burden. However, franchised buses cannot enjoy the concessions currently proposed by the Government because franchised buses have not been required to pay diesel duty all along. This is mainly due to the Government's good intention in the hope that franchised bus operators can suppress their fares to the lowest level so that the fares to be paid by the general public will drop to the minimum accordingly. However, this time around, if franchised bus operators accept the use of ULSD, they will have to bear about a 4% increase in costs. This is a rather high percentage for the overall operation of a company. What is to be done then?

I encourage the Government to discuss with franchised bus companies to examine if there are any ways to assist franchised companies in the expeditious use of ULSD. If all vehicles can use ULSD at the same time, I believe that air pollution in Hong Kong will improve significantly very soon. The effect is instantaneous. If they use various environmental protection measures such as ULSD, catalytic convertors and particulate traps concurrently, especially when bus companies own a huge fleet running on busy roads, I believe there will be a significant decrease in pollutants on the roads instantly.

I hope the Government will not take lightly the fact that a franchised bus company has already tried out ULSD and hence let franchised bus companies make their own decisions. I believe that in the long run, they may use ULSD on their own initiative but I hope that franchised bus companies will use it as soon as possible. How can this be done? I hope the Government will discuss with franchised bus companies as soon as possible to encourage the expeditious use of ULSD by them. If franchised bus companies agree to use it, they will have to bear a 4% increase in costs or the increase in terms of a different

percentage. I hope the Government will consult with the franchised bus companies on how to bear the increase in costs.

With these remarks, Mr Deputy, I support the motion.

THE PRESIDENT resumed the Chair.

MRS SOPHIE LEUNG (in Cantonese): Madam President, as regards the resolution today, I did not take an active part in it previously and I do not quite understand the issue. However, after I have heard my the Honourable Mrs Miriam LAU's speech just now, I find her speech full of details and she has offered a clear explanation and a lot of suggestions to the Government. Occasionally, even though we belong to the Liberal Party, we may not give her full support on some matters. However, this time around it is different. In this Council, quite a lot of people discuss environmental protection and express their concern for the environment, but how many people are there who really do solid work and undertake environmental work? I think Mrs Miriam LAU can set a good example for us.

I also hope the Government will accept her suggestions. For example, franchised buses should use ultra low sulphur diesel as soon as possible. I also hope that the Government can explore various feasible proposals with Mrs LAU more often. If her suggestions are adopted, actually there will appear to be half a public officer more to assist the Government to promote green efforts in the trade because the capability of Mrs LAU in this area can at least be equal to half of a bureau secretary.

From the angle of environmental protection alone, I hope that diesel vehicles will put to more use environmentally-friendly fuel and other new environmental protection measures. I also hope that the Secretary will have more co-operation with Mrs Miriam LAU of the Liberal Party in this area.

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

(No Member responded)

SECRETARY FOR THE ENVIRONMENT AND FOOD (in Cantonese): Madam President, I would like to thank Members for their support given to the resolution. I only want to stress two points.

The first point is that some Members queried why under the resolution the duty for ULSD at $2.00 per litre in 2001 should be increased to $2.89 per litre from 1 January 2002. I want to explain that the duty differential will start from 7 July and remain till 31 December 2001. We fix the duty at $2.00 as from 1 January next year because the duty on regular motor diesel will then return to $2.89, keeping the difference at $0.89.

As I have explained, changing the duty to $2.89 as from 1 January 2002 is purely a technical arrangement. The main reason for that is to avoid a vacuum period during which ULSD will become undutiable. I pledge again the Government will conduct a review on the latest price of ULSD in 2001 before deciding the base for the duty of ULSD as from 1 January 2002.

Some Members spoke about the use of ULSD by franchised buses. I understand that franchised bus companies are actually very environmentally friendly. They also support the use of ULSD. At the moment, some franchised bus companies have been actively negotiating with some oil companies on arrangements to introduce ULSD as soon as possible. As Mrs LAU pointed out, as fuel used by franchised bus companies are duty-free, the preferential duty provided by the resolution will not benefit franchised bus companies directly. However, through the arrangement, we can secure a steady supply of ULSD and encourage oil refineries in Asia to start producing the environmentally-friendly fuel as early as possible. Once they start to produce the fuel, I believe it will be conducive to lowering the price of ULSD. Regarding the possible rise in operating costs of franchised bus companies due to using ULSD, the Government has indicated it is willing to consider the factor in applications for fare adjustment in the future.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by the Secretary for the Environment and Food, as set out on the Agenda, be passed. 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.

PRESIDENT (in Cantonese): Proposed resolution under the Pharmacy and Poisons Ordinance.

PROPOSED RESOLUTION UNDER THE PHARMACY AND POISONS ORDINANCE

SECRETARY FOR HEALTH AND WELFARE: Madam President, I move that the Poisons List (Amendment) (No. 3) Regulation 2000 and the Pharmacy and Poisons (Amendment) (No. 3) Regulation 2000 as set out under my name in the paper circularized to Members be approved.

Currently, we regulate the sale and supply of pharmaceutical products through a registration and inspection system set up in accordance with the Pharmacy and Poisons Ordinance. The Ordinance maintains a Poisons List under the Poisons List Regulations and several Schedules under the Pharmacy and Poisons Regulations. Pharmaceutical products put on different parts of the Poisons List and different Schedules are subject to different levels of control in regard to the conditions of sale and keeping of records.

For the protection of public health, some pharmaceutical products can only be sold in pharmacies under the supervision of registered pharmacists and in their presence. For certain pharmaceutical products, proper records of the particulars of the sale must be kept, including the date of sale, the name and address of the purchaser, the name and quantity of the medicine and the purpose for which it is required. The sale of some pharmaceutical products must be authorized by prescription from a registered medical practitioner, a registered dentist or a registered veterinary surgeon.

The Amendment Regulations now before Members seek to amend the Poisons List in the Poisons List Regulations and the Schedules to the Pharmacy and Poisons Regulations, for the purpose of imposing or relaxing control on a number of medicines.

First, the Pharmacy and Poisons Board proposes to add five medicines to Part I of the Poisons List, and the First and Third Schedules to the Pharmacy and Poisons Regulations, so that pharmaceutical products containing any of them must be sold in pharmacies under the supervision of registered pharmacists and in their presence, with the support of prescriptions.

Secondly, the Board proposes to relax the control of pharmaceutical products containing not more than 5% of minoxidil, and intending for external application, as recent scientific evidence shows that pharmaceutical products containing low concentration of minoxidil are safe for use without medical supervision. As a result, the public may purchase them from a pharmacy without a prescription.

The two Amendment Regulations are made by the Pharmacy and Poisons Board, which is a statutory authority established under section 3 of the Ordinance to regulate the registration and control of pharmaceutical products. The Board comprises members engaged in the pharmacy, medical and academic professions. The Board considers the proposed amendments necessary in view of the potency, toxicity and potential side effects of the medicines concerned.

With these remarks, Madam President, I move the motion. Thank you.

The Secretary for Health and Welfare moved the following motion:

"That the following Regulations, made by the Pharmacy and Poisons Board on 10 June 2000, be approved -

(a) the Pharmacy and Poisons (Amendment) (No. 3) Regulation 2000; and

(b) the Poisons List (Amendment) (No. 3) Regulation 2000."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Health and Welfare, as set out on the Agenda, be passed.

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 motion moved by the Secretary for Health and Welfare, as set out on the Agenda, be passed. 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.

PRESIDENT (in Cantonese): Proposed resolution under the Mutual Legal Assistance in Criminal Matters Ordinance.

PROPOSED RESOLUTION UNDER THE MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS ORDINANCE

SECRETARY FOR SECURITY (in Cantonese): Madam President, I move that the resolution to make the Mutual Legal Assistance in Criminal Matters (Switzerland) Order be passed.

The Hong Kong Special Administrative Region (SAR) is fully committed to international co-operation in combating serious crimes. In this connection, we have embarked on a programme to establish a network of bilateral agreements with other jurisdictions on mutual legal assistance in criminal matters. These agreements ensure reciprocity between the contracting parties, and enhance international co-operation in the fight against transnational crime. We have so far signed eight agreements with other jurisdictions on mutual legal assistance in criminal matters. These include Australia, France, New Zealand, the United Kingdom, the United States of America, Italy, South Korea and Switzerland.

The Mutual Legal Assistance in Criminal Matters Ordinance (the Ordinance) provides the necessary statutory framework for providing assistance in the investigation, and prosecution of criminal offences which includes the taking of evidence from witnesses, search and seizure, production of materials, transfer of persons to give evidence and confiscation of the proceeds of crime, and so on.

Pursuant to section 4(2) of the Ordinance, the Chief Executive in Council has made this Mutual Legal Assistance in Criminal Matters Order to implement the bilateral arrangements with Switzerland for mutual legal assistance in criminal matters. This Order specifies the scope and procedures in relation to the provision of assistance. It also provides for safeguards of the rights of persons involved in criminal proceedings. This Order is substantially in conformity with the provisions in the Ordinance. However, as mutual legal assistance practices vary from jurisdiction to jurisdiction, it is necessary to modify some of the provisions of the Ordinance to reflect the practice of the particular negotiating partner. These are necessary to enable Hong Kong to comply with its obligations in the particular agreement. The modifications in respect to the Agreement with Switzerland are summarized in the Schedule to the Order.

I would like to thank the Chairman, the Honourable James TO, and members of the Subcommittee for their careful examination of this Order, and for their understanding and support.

An aspect which the Subcommittee has deliberated in detail concerns the arrangements for notification of imprisonment of nationals under Article 15 of the Agreement. This provision obliges each party to provide information on

nationals of the other party who have been sentenced to imprisonment within its jurisdiction. Members are concerned that some Hong Kong permanent residents might not wish to have the information on their imprisonment made known to the SAR Government. I should explain that Article 15 is to facilitate the provision of consular assistance, and is consistent with the European Convention and a number of consular agreements applicable to the SAR, for example, the consular agreements with the United States of America and the United Kingdom. Article 15 would enable the SAR Government to render assistance to Hong Kong permanent residents imprisoned in Switzerland. This would be in line with the public expectation. We believe that the general public would want the Government to provide all possible assistance to Hong Kong residents in distress outside Hong Kong. In view of Members' concern, we shall make our best endeavours to further explore with the Switzerland authorities to see if we could institute an appropriate and balanced notification system which would, on the one hand, enable both parties to fulfil the obligations under the Agreement, and on the other hand, could also have regard to the wish of certain individuals who might not wish the SAR Government to know about their imprisonment in Switzerland. The Subcommittee supports our approach, for which we are very grateful.

To strengthen our co-operation with Switzerland in criminal justice and international law enforcement, it is very important that this Mutual Legal Assistance in Criminal Matters (Switzerland) Order be made to enable the relevant bilateral agreement to be brought into force. I urge Members to approve the making of this Mutual Legal Assistance in Criminal Matters (Switzerland) Order.

Thank you, Madam President.

The Secretary for Security moved the following motion:

"That the Mutual Legal Assistance in Criminal Matters (Switzerland) Order, made by the Chief Executive in Council on 14 September 1999, be approved."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Security, as set out on the Agenda, be passed.

MR JAMES TO (in Cantonese): Madam President, in my capacity as the Chairman of the Subcommittee, I rise to speak on the Subcommittee's main deliberations on the Mutual Legal Assistance in Criminal Matters (Switzerland) Order.

As the Secretary has said, the major issue of concern to members of the Subcommittee is the requirement in Article 15 of the Hong Kong Special Administrative Region/Switzerland Agreement (the Agreement) that the Government of the Hong Kong Special Administrative Region (SAR) be notified by the Switzerland authorities of the imprisonment of Hong Kong permanent residents in Switzerland irrespective of their consent.

The Administration has explained that the provision in Article 15 of the Agreement is to facilitate the provision of consular assistance in line with Article 22 of the European Convention on Mutual Assistance in Criminal Matters. The Administration has pointed out that Article 15 of the Agreement is consistent with similar provisions in the Consular Agreements with the United States, Canada and the United Kingdom which also do not require the consent of the person concerned prior to informing his consular post of his detention.

Members have inquired whether the SAR Government would unilaterally forfeit the rights to receive such notifications by administrative means if there is no consent.

The Administration has pointed out that under Article 36 of the Vienna Convention on Consular Relations (VCCR), notification is contingent upon request of the detained individual but with the rider that the person concerned be informed of his right to request notification. However, the fact remains that many countries, when concluding bilateral agreements with other states on the establishment of consular posts, do include clauses regarding unconditional notification to the consular posts concerned of the detention of their nationals. The Administration is of the view that provisions which provide for unconditional notification can more adequately protect the interests of Hong Kong people.

Members of the Subcommittee consider that it is important to respect the wishes of the individuals concerned because some of them might not want consular help and might not want the fact of their imprisonment overseas to be known to the SAR Government. They have suggested that the Administration should discuss with the Switzerland authorities to see if a system could be instituted whereby if a Hong Kong resident is sentenced to imprisonment in Switzerland, the Swiss Government would notify the SAR Government of the details of the sentence such as the term of sentence, the crime committed and the location of imprisonment, but without disclosing the identity of the person concerned unless the Swiss Government has obtained his written consent.

The Administration has undertaken that it will make its best endeavours to explore with the Switzerland authorities to see if such a system could be put in place.

Madam President, in the light of the Administration's undertaking, the Subcommittee has concluded that the Mutual Legal Assistance in Criminal Matters (Switzerland) Order be passed forthwith. Thank you.

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

(No Member responded)

PRESIDENT (in Cantonese): Secretary for Security, do you wish to speak?

(The Secretary for Security indicated that she did not wish to speak)

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by the Secretary for Security as printed on the Agenda be passed. Will those in favour please raise their hands?

(Member 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 declared the motion passed.

SUSPENSION OF MEETING

PRESIDENT (in Cantonese): Honourable Members, it is nearing 9.20 pm and all items with legislative effect on the Agenda have been finished. I hereby declare the meeting suspended and we will deal with three motions of Members tomorrow.

Suspended accordingly at nineteen minutes past Nine o'clock.